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

In re: Highland Capital Management, L.P.[1] *Debtor*.	Chapter 11 Case No. 19-34054 (SGJ)
Charitable DAF Fund, L.P., *Plaintiff*, v. Alvarez & Marsal CRF Management, LLC *Defendant*.	Adversary No. _____ *Removed from the 116th Judicial District Court of Dallas County, Texas* *Cause No. DC-22-10107*

NOTICE OF REMOVAL

Alvarez & Marsal CRF Management, LLC ("A&M") files this Notice of Removal of Cause No. DC-22-10107 ("State Court Action") from the 116th Judicial District Court of Dallas County, Texas to the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division.

INTRODUCTION

1. Nearly three years ago, this Court remanded James Dondero's Rule 202 Petition to state court because, despite its "apparent relatedness to the Highland bankruptcy case," the Rule 202 Petition did not present a removable "civil action" within the meaning of 28 U.S.C. § 1452(a).

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

1934054240917000000000005

See In re Highland Cap. Mgmt., L.P., No. 19-34054-SGJ11, 2022 WL 38310, at *1 (Bankr. N.D. Tex. Jan. 4, 2022). In that same Order, however, the Court went out of its way to note that "if the Rule 202 Proceeding leads to any civil suit, [it] may ultimately be 'related to' the Highland confirmed plan and the issue [of removability] may be raised in that civil suit." *Id.* at *9.

2. Now, almost three years later, the precise scenario the Court imagined has materialized.

3. Just two months after the state court (on remand) denied James Dondero's Rule 202 Petition for pre-suit discovery, an organization he founded and controlled, Plaintiff Charitable DAF, L.P. (DAF), initiated the present State Court Action against A&M. Although the original basis for DAF's claim against A&M has been effectively mooted, DAF has refused to dismiss the State Court Action and used it, on multiple occasions, as an excuse to seek the very same information regarding the Highland Capital bankruptcy that Mr. Dondero sought in his failed Rule 202 Petition. And to make the near-complete overlap explicit, on August 28, 2024, DAF amended its petition in the State Court Action to include new breach of fiduciary duty allegations based on the sale of the very same bankruptcy claims described in Mr. Dondero's Rule 202 Petition.

4. In particular, the State Court Petition alleges damages to the Crusader Funds arising out of A&M's and the Redeemer Committee's settlement with and allowance of claims against the Highland Capital bankruptcy estate, as well as A&M's supposed wrongful conduct in connection with the subsequent sale of the allowed claims against the Highland Capital bankruptcy estate for less than their supposed fair value.

5. Making the connection to this bankruptcy action and the prior Dondero discovery efforts patently clear, the discovery DAF seeks in the State Court Action includes the identical subjects of discovery that Mr. Dondero sought in the Rule 202 proceeding—including, for

instance, the price and material terms of the sale of claims, the role and involvement of James Seery in the solicitation and negotiation of the claim sale, and any communications with Mr. Seery concerning the sale or the risks of recover on the bankruptcy claims. There is little question that the State Court Action is effectively round two of Mr. Dondero's failed Rule 202 Petition and should be adjudicated in Bankruptcy Court because it implicates the administration of the Highland Capital bankruptcy estate and the plan of reorganization in the same way that the Court recognized the Rule 202 Petition did.

6. Removal is therefore appropriate, and this Court has jurisdiction, because the State Court Action is a "civil action" within the meaning of 28 U.S.C. § 1452 and is "related to" the Highland Bankruptcy Case, as that term has been interpreted by the courts in this Circuit, in multiple respects.

BACKGROUND, PROCEDURAL HISTORY, AND RELEVANT PARTIES

I. The Parties and the Bankruptcy

7. Defendant A&M is the Investment Manager of four related investment funds collectively referred to as the "Crusader Funds." The Crusader Funds include Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd. ("Offshore Fund II"), and Highland Crusader Offshore Partners, L.P.

8. Plaintiff DAF is a limited partnership that claims to have purchased a limited partnership interest in one of the Crusader Funds—Offshore Fund II, a Bermuda company—in or around June 2016.

9. The Debtor Highland Capital Management, L.P. (Highland Capital) was A&M's predecessor as Investment Manager of the Crusader Funds. Highland Capital filed for bankruptcy protection on October 16, 2019. That case was transferred to this Court and received case number 19-34054.

10. The Crusader Funds and a committee of investors in the Crusader Funds, the Redeemer Committee, filed proofs of claim against Highland Capital (Claim Nos. 72 and 81). By Order dated October 22, 2020 (Dkt. No. 1273), this Court approved a settlement whereby, among other things, those two claims (the "Bankruptcy Claims") were allowed in the total amount of approximately $138 million. The Crusader Funds and the Redeemer Committee later sold the Bankruptcy Claims to a third-party purchaser.

11. Highland Capital's Fifth Amended Plan of Reorganization (the "Plan") was confirmed by this Court by Order dated February 22, 2021. Dkt. No. 1943 ("Confirmation Order").

12. James Dondero is the founder and former CEO of Highland Capital, an adviser and/or manager of several trusts who owned equity in Highland Capital, and an investor in the Crusader Funds.

13. James Dondero is also the founder of, former investment advisor to, and on information and belief the former CEO of, Charitable DAF Fund, L.P., the Plaintiff in this action. *See, e.g.*, *Matter of Highland Cap. Mgmt., L.P.*, 98 F.4th 170, 173 (5th Cir. 2024); *Charitable DAF Fund LP v. Highland Cap. Mgmt. LP*, No. 3:21-CV-01974-X, 2022 WL 4538466, at *1 (N.D. Tex. Sept. 28, 2022), *vacated and remanded sub nom. Matter of Highland Cap. Mgmt., L.P.*, 98 F.4th 170 (5th Cir. 2024).

14. In the course of the Highland Capital bankruptcy case and other related proceedings, the Court has become intimately familiar with the litigious tactics of Mr. Dondero and his related entities. Section IX.F of the Plan included a "gatekeeper provision," which the Court found was necessary and justified by the harassment and litigiousness of Mr. Dondero and his related entities, including the threat that "Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions

other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims." Confirmation Order ¶ 78.

15. This Court has also been forced to issue contempt findings against Mr. Dondero and various of his related entities, including DAF. Dkt. No. 2660.[2]

II. Dondero's Rule 202 Petition

16. On July 22, 2021, Dondero filed a petition in the 95th Judicial District Court of Dallas County, Texas, seeking pre-suit discovery from, among others, A&M. Ex. 4. Dondero sought testimony and documents from A&M regarding a variety of topics, including:

- the "valuation, marketing and sale of the [Bankruptcy] Claims";
- the "negotiations and communications leading up to the purchase or sale of the [Bankruptcy] Claims"; and
- any "discussions with James Seery regarding the [Bankruptcy] Claims."

Id.

17. Dondero purported to justify his pre-suit discovery request by implying that James Seery, then-CEO of Highland Capital, had helped broker the sale of certain claims against Highland Capital, allegedly in violation of various duties. *Id.* He also suggested that "there is reason to doubt that A&M sought or obtained the highest price" in selling the Bankruptcy Claims. *Id.*

18. A&M removed the Rule 202 Petition to this Court. Dondero moved to remand.

19. On January 4, 2022, this Court entered a Memorandum Opinion and Order granting the motion to remand. *See In re Highland Cap. Mgmt., L.P.*, 2022 WL 38310. Finding itself

[2] This Court's award of contempt sanctions was vacated on appeal to the Fifth Circuit and remanded for further proceedings concerning the amount of such sanctions. *See Charitable DAF Fund, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 94 F.4th 170, 177 (5th Cir. 2024). On remand, the parties entered a stipulation resolving the dispute, which was approved by the Court. *See* Dkt. No. 4107.

bound by prior decisions holding that a Rule 202 proceeding is not a "civil action" within the meaning of 28 U.S.C. § 1452, this Court held that remand was appropriate. *Id.* at *9. Nevertheless, the Court granted remand "with grave misgivings." *Id.* at *9. The Court noted that it was familiar with the concept of claims-trading in bankruptcy, and with the fiduciary duties of unsecured creditors committees, which were implicated because of the sale of the Redeemer Committee's Bankruptcy Claim. *Id.* The Court also noted that Dondero's motives in filing the Rule 202 proceeding were "highly suspect," and that "[i]f judicial efficiency and economy were the only considerations that mattered here, clearly remand would ***not*** be the correct result." *Id*. The Court concluded by observing that "if the Rule 202 Proceeding leads to any civil suit, this may ultimately be 'related to' the Highland confirmed plan and the issue may be raised in that civil suit." *Id.*

20. On remand, the Texas state court denied Dondero's petition by order dated June 1, 2022. Ex. 5.

III. DAF's State Court Action

21. On August 15, 2022, barely two months after Dondero's Rule 202 petition was denied, DAF commenced the State Court Action in the District Court for the 116th Judicial District, Dallas County, Texas, alleging claims against A&M for breach of fiduciary duty, conversion, and money had and received.

22. DAF's claims in its Original Petition in the State Court Action were grounded in its allegation that A&M improperly withheld partnership distributions to which DAF claimed entitlement on account of its supposed limited partner interest in Highland Crusader Fund II, Ltd. (Offshore Fund II), a Bermuda company that is one of the Crusader Funds.

23. DAF has since twice amended its petition—largely because A&M and the Crusader Funds subsequently paid DAF all of the distributions that had been withheld and committed to include DAF in all subsequent distributions to Offshore Fund II's limited partners. Its most recent

amendment to its petition on August 28, 2024, directly implicates the bankruptcy estate of Highland Capital.

24. In particular, DAF now alleges damages to the Crusader Funds arising out of A&M's and the Redeemer Committee's settlement of claims against the Highland Capital bankruptcy estate, as well as A&M's subsequent sale of the Bankruptcy Claims.

GROUNDS FOR REMOVAL TO BANKRUPTCY COURT

25. "A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334[.]" 28 U.S.C. § 1452(a). Here, there is jurisdiction under 28 U.S.C. § 1334 because the State Court Action is "related to" the Highland Bankruptcy Case.

26. According to § 1334(b), "the district courts shall have original but not exclusive jurisdiction of all civil proceedings . . . related to cases under title 11." A matter is "related to" a bankruptcy if its outcome "could 'conceivably have an effect on the estate being administered in bankruptcy.'" *In re Brooks Mays Music Co.*, 363 B.R. 801, 808 (Bankr. N.D. Tex. 2007) (Jernigan, J.) (quoting *In re Wood*, 825 F.2d 90, 93 (5th Cir. 1987)). For instance, a matter can be "'related to' bankruptcy if the outcome could alter, positively or negatively, the debtor's rights, liabilities, options, or freedom of action or could influence the administration of the bankrupt estate." *In re TXNB Internal Case*, 483 F.3d 292, 298 (5th Cir. 2007).

27. Where, as here, a plan of reorganization has been confirmed, bankruptcy jurisdiction is more limited than pre-confirmation, and exists only for "matters pertaining to the

implementation or execution of the plan." *In re Craig's Stores of Texas, Inc.*, 266 F.3d 388, 390 (5th Cir. 2001); *see also In re Highland Cap. Mgmt., L.P.*, 2022 WL 38310 at *9 n.14.

28. The State Court Action relates to the Highland Capital bankruptcy because, at its core, the amended petition targets A&M's management of Bankruptcy Claims against the Highland Capital bankruptcy estate and, moreover, implicates the involvement of James Seery, Highland Capital's then-CEO, in the sale of such claims. Specifically, it alleges that A&M breached its fiduciary duties to the Crusader Funds by entering into a settlement with Highland Capital, which reduced the amounts of certain claims against the Highland Capital bankruptcy estate, and then "s[itting] on the sideline abdicating its responsibilities" by allowing the Redeemer Committee to sell those claims at a further reduced value. Am. Pet. ¶ 22. By its very terms, therefore, the claims in the amended petition purport to impact the "administration of the bankrupt estate."

29. And while the amended petition does not expressly reference James Seery (as Dondero's Rule 202 petition did), DAF's Second Set of Interrogatories and Requests for Production to A&M (attached as Ex. 6, dated July 29, 2024) include multiple document requests concerning Mr. Seery, including:

- "All Documents and Communications concerning or reflecting Seery's role in the solicitation or negotiation of any of the offers made in connection with the Sale of the Claims" (Request No. 48);
- "All Documents reflecting any Communications involving and/or including Seery, on the one hand, and A&M, on the other hand, regarding the Sale of Claims or the Claims" (Request No. 50); and
- "All Documents reflecting any Communications between and/or among one or

more of A&M, Seery, Grosvenor, Stonehill, and/or Jessup regarding any risks of recovery on the Claims" (Request No. 55).

There can be no doubt that Mr. Seery's involvement will be a critical part of the adjudication of DAF's current claims and that DAF's badly concealed aim in this action is discovering and pursuing claims against Mr. Seery.

30. With this included among the discovery being sought by DAF, it is inevitable that Mr. Seery will be drawn into discovery, distracted from his role on behalf of the Highland Claimant Trust, and entitled to indemnification from the reorganized Highland Capital. The terms of the Plan, and in particular its gatekeeper provisions, were specifically designed to protect Mr. Seery from harassment such as this, and the Court will need to carefully monitor and adjudicate at what point DAF's actions with respect to Mr. Seery cross the line and breach the gatekeeper provisions. Thus, this action involves the administration of the estate and the implementation or execution of the Plan.

31. Removal directly to this Bankruptcy Court is appropriate pursuant to the Northern District of Texas's Standing Order of Reference of Bankruptcy Cases and Proceedings. Misc. Order No. 33 (Aug. 3, 1984). This Standing Order provides that "any or all cases . . . related to a case under Title 11 . . . are referred to the Bankruptcy Judges of this district for consideration and resolution consistent with law." *Id.* Removal directly to the Bankruptcy Court is a regular and accepted practice. *See, e.g.*, Local Bankr. R. 9027-1(a); *TNT Quadrangle Partners, LP v. SRPF B/Quadrangle Prop., LLC*, No. 3:20-AP-03103, Dkt. 1, 59 (Bankr. N.D. Tex. Feb. 26, 2021) (Jernigan, J.) (granting summary judgment in adversary proceeding removed directly from Texas state court); *Lycoming Engines v. Superior Air Parts, Inc.*, No. 3:12-AP-03035, Dkt. 1, 38 (Bankr. N.D. Tex. July 6, 2012) (Houser, J.) (denying motion to remand in action removed directly from

Texas state court).

THE STATE COURT ACTION IS A CORE PROCEEDING

32. The State Court Action is a "core proceeding" under 28 U.S.C. § 157(b)(2)(A) and (O). Nevertheless, even if the State Court Action is not considered a core proceeding, A&M consents to this Court's issuance of final orders and judgment.

TIMELINESS OF REMOVAL

33. This Notice of Removal is timely pursuant to Bankruptcy Rule 9027(a)(3) because it is being filed within 30 days of A&M's receipt of DAF's amended petition containing "the claim or cause of action sought to be removed." Fed. R. Bankr. P. 9027(a)(3); *see also id.* advisory committee note to subsection (a)(3) ("The time for filing the application for removal begins to run on receipt of *the first pleading containing the removable claim or cause of action*." (emphasis added)).

CONCLUSION

For these reasons, A&M hereby removes the State Court Action from the 116th Judicial District Court, Dallas County, Texas, to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

Dated: September 13, 2024

Respectfully submitted,

By: */s/ John T. Cox III*

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September 2024, the foregoing document was electronically filed with the Court using CM/ECF, which will send notification of this filing to counsel of record in the above-captioned case.

/s/ Patrick A. Vickery
Patrick A. Vickery

EXHIBIT 1

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
CHARITABLE DAF FUND, L.P.	ALVAREZ & MARSAL CRF MANAGEMENT, LLC
ATTORNEYS (Firm Name, Address, and Telephone No.) See attachment	**ATTORNEYS** (If Known) See attachment
PARTY (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor X Other □ Trustee	**PARTY** (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor X Other □ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Lawsuit concerning sale of claims held by creditors of the Debtor Highland Capital Management, L.P. in the pending bankruptcy case numbered 19-34054 (SGJ).

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☒ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

□ Check if this case involves a substantive issue of state law	□ Check if this is asserted to be a class action under FRCP 23
□X Check if a jury trial is demanded in complaint	Demand $ over 1,000,000

Other Relief Sought

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054 (SGJ	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas Division	NAME OF JUDGE Stacey G. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF N/A	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Trey Cox		
DATE September 13, 2024	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Trey Cox Gibson Dunn & Crutcher Attorney for Alvarez & Marsal CRF Management, LLC	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

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EXHIBIT 2

Case Information

DC-22-10107 | CHARITABLE DAF FUND LP, et al vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC, et al

Case Number DC-22-10107	Court 116th District Court	Judicial Officer PARKER, TONYA
File Date 08/15/2022	Case Type OTHER (CIVIL)	Case Status OPEN

Party

PLAINTIFF
CHARITABLE DAF FUND LP

Active Attorneys
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Retained

Attorney
MCCLEARY, ROGER L
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Attorney
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Active Attorneys
Lead Attorney

COX, JOHN T III
Retained

DEFENDANT
Alvarez & Marsal CRF Management, LLC

Active Attorneys
Lead Attorney
BEAN, ANDREW
Retained

Events and Hearings

08/15/2022 NEW CASE FILED (OCA) - CIVIL

08/15/2022 ORIGINAL PETITION

ORIGINAL PETITION

08/15/2022 ISSUE CITATION COMM OF INS OR SOS

ISSUE CITATION SOS - ALVAREZ & MARSAL CRF MANAGEMENT LLC

ISSUE CITATION SOS - ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

Comment
SEE NOTES TAB

08/15/2022 JURY DEMAND

FP FILE DESK JURY DEMAND FORM

08/24/2022 CORRESPONDENCE - LETTER TO FILE

COVER LETTER

09/23/2022 CITATION SOS/COI/COH/HAG

Unserved

Anticipated Server
ESERVE

Anticipated Method
Comment
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

09/23/2022 CITATION SOS/COI/COH/HAG

Unserved

Anticipated Server
ESERVE

Anticipated Method

Comment
UPDATED ONLY - ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

01/12/2023 CERTIFICATE OF SERVICE

Comment
SOS - ALVAREZ & MARSAL CRF MANAGEMENT LLC

01/19/2023 MOTION - RETAIN

VERIFIED MOTION TO RETAIN

01/19/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER VERIFIED MOTION TO RETAIN

Comment
PROPOSED ORDER VERIFIED MOTION TO RETAIN

01/24/2023 DISMISSAL FOR WANT OF PROSECUTION

Original Type
DISMISSAL FOR WANT OF PROSECUTION

dism letter (116th)

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
8:45 AM

Result
HEARING HELD

Comment
MOTION TO RETAIN PENDING

02/16/2023 MOTION - RETAIN

PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

Comment
VERIFIED SECOND

02/16/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER GRANTING PLTFS 2ND VERIFIED MOTION RETAIN

Comment
PROPOSED ORDER GRANTING PLAINTIFFS VERIFIED SECOND MOTION TO RETAIN

02/20/2023 ORIGINAL ANSWER - GENERAL DENIAL

ORIGINAL ANSWER

02/20/2023 MOTION - RETAIN

PLAINTIFF-SUPPLEMENT TO 2ND M/RETAIN

Comment
PLAINTIFF'S VERIFIED SUPPLEMENT TO PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

02/22/2023 DISMISSAL FOR WANT OF PROSECUTION

DISM NOTICE FINAL

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
8:45 AM

Cancel Reason
BY COURT ADMINISTRATOR

03/16/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

NON-SIGNED PROPOSED ORDER-AGREED SCHEDULING ORDER

Comment
AGREED SCHEDULING ORDER

03/21/2023 SCHEDULING ORDER

SCHEDULING ORDER

Comment
AGREED - LEVEL 3

03/22/2023 Scheduling Conference

116 Sched Conf

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
8:45 AM

Cancel Reason
BY COURT ADMINISTRATOR

03/28/2023 VACATION LETTER

08/11/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

08/11/2023 MOTION - PROTECT

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
AND MOTION TO ABATE

08/17/2023 NOTICE OF HEARING / FIAT

NOTICE OF HEARING ON DEF MOTION TO PROTECT & ABATE

Comment
ON DEF MOTION TO PROTECT & ABATE

10/10/2023 NOTICE OF HEARING / FIAT

AMENDED NOH MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
AMENDED / MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

10/12/2023 Motion - Protect

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

NOTICE OF HEARING ON DEF MOTION TO PROTECT & ABATE

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
9:00 AM

Cancel Reason
HEARING RESCHEDULED

Comment
SET BY WENDY CASSIDY 214-906-8196, MOTION PROTECT/ABATE, IN PERSON

10/18/2023 RETURNED MAIL

NOTICE OF TRIAL / SCHEDULING ORDER - BRYAN HAYNES

Comment
NOTICE OF TRIAL / SCHEDULING ORDER - BRYAN HAYNES

11/06/2023 AMENDED PETITION

PLAINTIFF'S FIRST AMENDED PETITION

Comment
FIRST

11/13/2023 MOTION - CONTINUANCE

MOTIONFOR CONTINUAND AND FOR ENTRY OF AMENDED SCHEDULING ORDER

Comment
AND ENTRY OF AMENDED SCHEDULING ORDER

11/13/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER FOR CONTINUANCE

Comment
PROPOSED ORDER FOR CONTINUANCE AND AMENDED SCHEDULING ORDER

11/25/2023 SCHEDULING ORDER

SCHEDULING ORDER

Comment
FIRST AMENDED LEVEL 3

11/30/2023 MISCELLANOUS EVENT

E-SERVE COVER LETTER

E-SERVE ORDER 1ST AMENDED SCHEDULNG

Comment
ESERVE COVER LETTER - ORDER 1ST AMENDED SCHEDULING

11/30/2023 NOTICE OF HEARING / FIAT

2ND AMENDED NOTICE OF HEARING ON MOTIONS PROTECT/ABATE

Comment
2ND AMENDED ON MOTIONS PROTECT/ABATE

12/07/2023 Motion - Protect

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

AMENDED NOH MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
09:30 AM

Cancel Reason
HEARING RESCHEDULED

Comment
30 MIN / SET BY WENDY CASSIDY 214-906-8196, MOTION PROTECT/ABATE, / CC REQ / IN PERSON

01/03/2024 RETURNED MAIL

NOTICE OF NOTICE OF AGREED MEDIATOR WITH ATTACHED SCHEDULING ORDER FOR BRYAN HAYNES

Comment
NOTICE OF NOTICE OF AGREED MEDIATOR WITH ATTACHED SCHEDULING ORDER FOR BRYAN HAYNES

01/26/2024 NOTICE OF HEARING / FIAT

3RD AMENDED NOH-MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
3RD AMENDED / MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

02/01/2024 Motion - Protect

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

2ND AMENDED NOTICE OF HEARING ON MOTIONS PROTECT/ABATE

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
09:30 AM

Cancel Reason
HEARING RESCHEDULED

Comment
30 MIN / SET BY WENDY CASSIDY 214-906-8196, MOTION PROTECT/ABATE, / CC REQ / IN PERSON

02/29/2024 RESPONSE

PLTF'S RESPONSE IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

Comment
IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

02/29/2024 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER DENYING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
PROPOSED ORDER DENYING MOTIONS FOR PROTECTIVE ORDER AND TO ABATE

02/29/2024 MOTION - COMPEL

PLTF'S MOTION TO COMPEL DISCOVERY

Comment
DISCOVERY

03/01/2024 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER COMPELLING DISCOVERY

Comment
PROPOSED ORDER COMPELLING DISCOVERY

03/01/2024 NOTICE OF HEARING / FIAT

NOH-MOTON TO COMPEL SET 4/3 @ 1:15 P.M.

Comment
MOTION TO COMPEL SET 4/3/1:15 P.M.

03/04/2024 NOTE - CLERKS

Comment
REC CC RESPONSE TO MOTION FOR PROTECTIVE ORDER FOR FOR 3/6 @ 1:15 A.M HEARING

03/05/2024 NOTICE OF HEARING / FIAT

4TH AMD NOH / MOTION PROTECT SET 4/3/@ 1:15 P.M.

Comment
4TH AMD / MOTION PROTECT SET 4/3/@ 1:15 P.M.

03/06/2024 NOTE - CLERKS

Comment
CC REC' FOR 4/3 1:15PM HEARING ON MOTION TO COMPEL

03/29/2024 OBJECTION

DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ETC

Comment
DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY & REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER & MOTION TO ABATE

04/01/2024 RESPONSE

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

Comment
REPLY IN SUPPORT OF ITS MOTION TO COMPEL

04/03/2024 Motion - Protect

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

3RD AMENDED NOH-MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

PROPOSED ORDER DENYING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

PLTF'S RESPONSE IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

4TH AMD NOH / MOTION PROTECT SET 4/3/@ 1:15 P.M.

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Comment
'DEFT ALVAREZ M/PROTECTIVE ORDER" SET BY WENDY CASSIDY 214-906-8196/ CC REQ / IN PERSON. PARTIAL COURTESY COPY (ST)

04/03/2024 Motion - Compel

PROPOSED ORDER COMPELLING DISCOVERY

PLTF'S MOTION TO COMPEL DISCOVERY

NOH-MOTON TO COMPEL SET 4/3 @ 1:15 P.M.

DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ETC

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Comment
'PLTF'S M/COMPEL DISCVOERY" SET BY BEATRICE 214.237.4369; NOH AND CC REQ'D; IN-PERSON. CC RECEIVED (ST)

04/08/2024 MOTION - CONTINUANCE

MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

Comment
AGREED / AND ENTRY OF AMENDED SCHEDULING ORDER

04/18/2024 ORDER - DENY CONTINUANCE

ORDER - DENY CONTINUANCE

Comment
AND ENTRY OF AMENDED SCHEDULNG ORDER

04/24/2024 E-SERVED COPY OF ORDER

E-SERVE COVER LETTER

ESERVE ORDER DENY CONTINUANCE

04/24/2024 NOTICE OF HEARING / FIAT

NOH-PLAINTIFF MOTION TO COMPEL

Comment
PLAINTIFF MOTION TO COMPEL SET 5/8 @ 1:15 P.M.

04/24/2024 MOTION - CONTINUANCE

AMENDED AGREED MOTION FOR CONTINUANCE

Comment
AMENDED AGREED

04/26/2024 NOTE - CLERKS

Comment
COURTESY COPY FOR MOTION TO COMPEL ON 5/8 RECEIVED

04/29/2024 Status Conference

Judicial Officer
PARKER, TONYA

Hearing Time
1:30 PM

04/29/2024 ORDER - GRANTING CONTINUANCE

ORDER - GRANTING CONTINUANCE

Comment
AMENDED

05/01/2024 E-SERVED COPY OF ORDER

E-SERVE COVER LETTER

E-SERVE ORDER CONTINUANCE

05/08/2024 Motion - Compel

PROPOSED ORDER COMPELLING DISCOVERY

PLTF'S MOTION TO COMPEL DISCOVERY

DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ETC

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

NOH-PLAINTIFF MOTION TO COMPEL

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Comment
214-237-4315 IAN SALZER / CC REQ / IN PERSON. CC RECEIVED

05/23/2024 Motion - Continuance

AMENDED AGREED MOTION FOR CONTINUANCE

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
09:30 AM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Comment
15 MIN / 214-237-4315 IAN SALZER / CC REQ / IN PERSON

07/03/2024 NOTICE OF HEARING / FIAT

NOH-PLAINTIFF MOTION TO COMPEL

Comment
PLAINTIFF MOTION TO COMPEL SET 8/7 @ 1:15

07/09/2024 CERTIFICATE OF CONFERENCE

CERTIFICATE OF CONFERENCE ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE

Comment
ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE

07/10/2024 NOTICE OF HEARING / FIAT

5TH AMENDED NOTICE OF HEARING ON MOTION TO PROTECT

Comment
5TH AMENDED ON MOTION TO PROTECT

07/19/2024 CASE NOT SETTLED AT MEDIATION

CASE NOT SETTLED AT MEDIATION

08/02/2024 NOTE - CLERKS

Comment
COURTESY COPY FOR MOTION TO PROTECT/COMPEL ON 8/7 RECEIVED

08/07/2024 Motion - Compel

PLTF'S MOTION TO COMPEL DISCOVERY

NOH-PLAINTIFF MOTION TO COMPEL

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Comment
'PLTF'S M/COMPEL DISCOVERY" 214-237-4369 BEATRICE CANDIS / CC REQ / IN PERSON. CC RECEIVED (ST)

08/07/2024 Motion - Protect

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

CERTIFICATE OF CONFERENCE ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE

5TH AMENDED NOTICE OF HEARING ON MOTION TO PROTECT

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Comment
214-906-8196 WENDY CASSIDY / CC REQ / IN PERSON. CC RECEIVED (ST)

08/07/2024 NOTICE OF APPEARANCE

PLAINTIFF'S NOTICE OF APPEARANCE

08/07/2024 ORDER - DENY

ORDER - DENY

Comment
MOTION FOR PROTECTIVE AND ABATE

08/07/2024 ORDER - COMPEL

ORDER - COMPEL

08/09/2024 E-SERVED COPY OF ORDER

08/28/2024 AMENDED PETITION

2ND AMENDED PETITION

Comment
2ND

09/04/2024 MOTION - QUASH

DEFENDANT'S MOTION TO QUASH

09/12/2024 MOTION - COMPEL

PLAINTIFF'S SECOND MOTION TO COMPEL AND MOTION TO EXTEND

Comment
SECOND

01/27/2025 Jury Trial - Civil

Judicial Officer
PARKER, TONYA

Hearing Time
9:00 AM

Comment
(Level 3)

Financial

CHARITABLE DAF FUND LP

Total Financial Assessment	$368.00
Total Payments and Credits	$368.00

8/23/2022	Transaction Assessment			$368.00
8/23/2022	CREDIT CARD - TEXFILE (DC)	Receipt # 52334-2022-DCLK	CHARITABLE DAF FUND LP	($231.00)
8/23/2022	STATE CREDIT			($137.00)

Charitable DAF Fund, L.P.

Total Financial Assessment	$4.00
Total Payments and Credits	$4.00

8/29/2022	Transaction Assessment			$4.00
8/29/2022	CREDIT CARD - TEXFILE (DC)	Receipt # 53740-2022-DCLK	Charitable DAF Fund, L.P.	($4.00)

Documents

ORIGINAL PETITION

FP FILE DESK JURY DEMAND FORM

COVER LETTER

ISSUE CITATION SOS - ALVAREZ & MARSAL CRF MANAGEMENT LLC

ISSUE CITATION SOS - ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

dism letter (116th)

VERIFIED MOTION TO RETAIN

PROPOSED ORDER VERIFIED MOTION TO RETAIN

DISM NOTICE FINAL

PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

PROPOSED ORDER GRANTING PLTFS 2ND VERIFIED MOTION RETAIN

ORIGINAL ANSWER

PLAINTIFF-SUPPLEMENT TO 2ND M/RETAIN

116 Sched Conf

NON-SIGNED PROPOSED ORDER-AGREED SCHEDULING ORDER

SCHEDULING ORDER

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

NOTICE OF HEARING ON DEF MOTION TO PROTECT & ABATE

AMENDED NOH MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

NOTICE OF TRIAL / SCHEDULING ORDER - BRYAN HAYNES

PLAINTIFF'S FIRST AMENDED PETITION

PROPOSED ORDER FOR CONTINUANCE

MOTIONFOR CONTINUAND AND FOR ENTRY OF AMENDED SCHEDULING ORDER

SCHEDULING ORDER

E-SERVE COVER LETTER

E-SERVE ORDER 1ST AMENDED SCHEDULNG

2ND AMENDED NOTICE OF HEARING ON MOTIONS PROTECT/ABATE

NOTICE OF NOTICE OF AGREED MEDIATOR WITH ATTACHED SCHEDULING ORDER FOR BRYAN HAYNES

3RD AMENDED NOH-MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

PROPOSED ORDER DENYING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

PLTF'S RESPONSE IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

PROPOSED ORDER COMPELLING DISCOVERY

PLTF'S MOTION TO COMPEL DISCOVERY

NOH-MOTON TO COMPEL SET 4/3 @ 1:15 P.M.

4TH AMD NOH / MOTION PROTECT SET 4/3/@ 1:15 P.M.

DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ETC

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

ORDER - DENY CONTINUANCE

E-SERVE COVER LETTER

ESERVE ORDER DENY CONTINUANCE

NOH-PLAINTIFF MOTION TO COMPEL

AMENDED AGREED MOTION FOR CONTINUANCE

ORDER - GRANTING CONTINUANCE

E-SERVE COVER LETTER

E-SERVE ORDER CONTINUANCE

NOH-PLAINTIFF MOTION TO COMPEL

CERTIFICATE OF CONFERENCE ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE

5TH AMENDED NOTICE OF HEARING ON MOTION TO PROTECT

CASE NOT SETTLED AT MEDIATION

PLAINTIFF'S NOTICE OF APPEARANCE

ORDER - DENY

ORDER - COMPEL

2ND AMENDED PETITION

DEFENDANT'S MOTION TO QUASH

PLAINTIFF'S SECOND MOTION TO COMPEL AND MOTION TO EXTEND

EXHIBIT 3
Part 1

DC-22-10107

CASE NO. _____

CHARITABLE DAF FUND, L.P., *Plaintiff,*	§	IN THE DISTRICT COURT
VS.	§	DALLAS COUNTY, TEXAS
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC *Defendant.*	§	116th _____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and files this Original Petition and Jury Demand against Defendant Alvarez & Marsal CRF Management, LLC ("A&M" or "Defendant"), and respectfully shows the following:

I. DISCOVERY PLAN

1. Plaintiff asserts that discovery should be conducted under Level 3 pursuant to Texas Rules of Civil Procedure 190.1 and 190.4.

II. PARTIES

2. DAF is a limited partnership organized in the Cayman Islands. DAF conducts charitable activities in the State of Texas.

3. A&M is a foreign limited liability company organized and existing under the laws of the State of Delaware. A&M engages in business in Texas but has not designated or maintained a resident agent for service of process in Texas. A&M may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin,

Texas 78701, who is requested to forward process to A&M's Registered Agent for service in the State of Delaware: Alvarez & Marsal CRF Management, LLC, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Tex. Civ. Prac. & Rem. Code Ann. § 17.044.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action as DAF seeks monetary relief over $1,000,000.00. The damages sought by DAF are within the jurisdictional limits of the Court.

5. Venue is proper under Texas Civil Practice and Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to this claim occurred in Dallas County, Texas.

6. This Court has personal jurisdiction over A&M because: (i) A&M is and has been doing business in Texas pursuant to section 17.042 of the Texas Civil Practices and Remedies Code (ii) A&M has purposefully availed itself of the benefits and protections offered by the State of Texas by conducting business in this State; (iii) A&M has committed wrongful acts within this State, and (iv) A&M's conduct in and contacts with this State give rise to or relate to the causes of action alleged herein.

IV. FACTUAL BACKGROUND

7. DAF's exclusive mission involves charity. Since 2012, DAF's supporting organizations committed over $42 million to nonprofit organizations and funded

approximately $32 million of total commitments. These charitable causes include education, military veterans, first responders, health and medical research, economic and community development initiatives, and youth and family programs in the State of Texas. This lawsuit is necessary because of A&M's improper withholding of assets lawfully owned by and due to DAF and A&M's associated interference with DAF's charitable mission.

8. On or about June 30, 2016, DAF purchased shares in the Highland Crusader Fund II, Ltd. ("Crusader Fund II") from the Promethee T Fund (formerly known as Promethee Tremont Fund) ("Promethee") for in excess of $1.0 million ("DAF's Direct Interest"). DAF is the lawful owner of all beneficial right, title, and interest in and to DAF's Direct Interest and to DAF's Full Direct Interest, as described below. The Crusader Fund II is a segregated, identifiable fund held separate from other funds managed by A&M. A&M has no legitimate claim to DAF's Full Direct Interest, as described below.

9. A&M is the investment manager of the Crusader Fund II and has been so at all times relevant to the claims asserted in this lawsuit. As the investment manager, A&M receives payment from the Crusader Fund II for A&M's management services. Upon information and belief, A&M's compensation is based on the value of Crusader Fund II; accordingly, A&M earns more compensation if Crusader Fund II has more available funds. A&M is improperly exercising control over DAF's Full Direct Interest.

10. DAF previously made a written demand to A&M, through A&M's legal counsel, for payment to DAF of the full value of DAF's Direct Interest, plus all related distributions and other withholdings owed DAF in regard to DAF's Direct Interest ("DAF's Full Direct Interest"). A&M refused to comply with this demand without legal justification. In doing so, A&M continues to deprive DAF of DAF's access to and right to possess and use DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. In short, A&M is depriving DAF of DAF's property without any appropriate legal basis or justification.

11. Upon information and belief, A&M is a registered investment advisor subject to the Investment Advisors Act of 1940. Notwithstanding its role as a registered investment advisor, A&M has continued to improperly withhold DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, and A&M refuses to distribute equivalent funds to the DAF. A&M entered into an informal confidential and special relationship with DAF. A&M controls and manages funds which DAF has a direct interest. DAF places trust and confidence in A&M to control, manage, and distribute DAF's Full Direct Interest. DAF's damages arise out of A&M's refusal to recognize DAF's right to control DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, and A&M's decision, instead, to unlawfully withhold the same even though it should be distributed to DAF.

V. CAUSES OF ACTION

Count One – Breach of Fiduciary Duties

12. DAF incorporates all of the foregoing factual averments by reference as if set fully set forth herein.

13. A&M is exercising dominion and control over DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M holds a position of special trust and confidence with DAF regarding DAF's Full Direct Interest. A&M owes DAF common law fiduciary duties arising out of A&M's position of trust and confidence.

14. The fiduciary duties A&M owes DAF include, but are not limited to, the duty of loyalty - to always act in the best interest of the investor, the duty to act with utmost good faith, the duty to refrain from self-dealing, the duty of fair and honest dealing, the duty to act with integrity of the strictest kind, and the duty of candor and full disclosure. Central to the fiduciary duties A&M owes DAF is the duty to not deprive DAF of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M's failure and refusal to pay and return the same, even after DAF has made specific written demand for DAF's Full Direct Interest, is intentional misconduct that breaches one or more of the fiduciary duties A&M owes DAF and has caused damage to DAF.

15. A&M is, therefore, liable to DAF for actual damages, punitive damages, and all other relief to which DAF is justly and legally entitled as the result of A&M's breach of fiduciary duties owed to DAF.

Count Two – Conversion

16. DAF respectfully incorporates by reference all of the foregoing factual and legal averments as if fully set forth herein.

17. DAF has ownership of and a right to immediate possession of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M has no legitimate claim to DAF's Full Direct Interest or to the Crusader Fund II regarding DAF's Full Direct Interest.

18. The Crusader Fund II funds were delivered to A&M for safekeeping and management. The Crusader Fund II funds were intended to be segregated from other funds managed by A&M.

19. Upon information and belief, A&M continues to hold the Crusader Fund II funds in substantially the same form as received.

20. DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, are separate and identifiable funds held by A&M for the benefit of DAF. DAF has made demand upon A&M to immediately relinquish possession of DAF's Full Direct Interest to DAF. A&M has ignored DAF's demand and A&M continues to

wrongfully exercise dominion and control over DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest.

21. DAF has been deprived of its lawful right to ownership and control of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, by A&M's unauthorized withholding of the same without a legally correct basis to do so.

22. As a proximate and/or direct result of A&M's conversion of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, DAF has suffered significant damages for which damages DAF now sues.

23. A&M is, therefore, liable to DAF for actual damages, punitive damages, and all other relief to which DAF is justly and legally entitled as the result of A&M's conversion.

Count Three – Money Had and Received

24. DAF incorporates all of the foregoing factual averments, and the factual and legal averments in Counts One and Two above, by reference as if fully set forth herein and further alleges the following in the alternative.

25. A&M has received and wrongfully holds and retains control over DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M has benefitted and continues to benefit from receipt of the same. Principles of equity and good conscience require that A&M should not be permitted to keep, in

whole or in part, DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest.

VI. DAMAGES

26. DAF incorporates the foregoing factual averments, and the factual and legal averments in Counts One through Four above, as if fully set forth herein and further alleges the following in the alternative.

27. DAF requests judgment against A&M for all of DAF's actual damages, including, without limitation, direct damages, special damages, consequential damages, lost savings, lost profits, out-of-pocket damages, future damages, and incidental damages, to which DAF is entitled, in addition to punitive or exemplary damages, prejudgment and post-judgment interest at the highest legal rate, and costs of Court.

VII. CONDITIONS PRECEDENT

28. All conditions precedent, if any, to the claims asserted herein have been performed, excused, waived, satisfied, or have otherwise occurred.

VIII. JURY DEMAND

29. DAF demands a trial by jury and tenders the jury fee pursuant to Rule 216 of the Texas Rules of Civil Procedure.

IX. DAF'S RULE 193.7 NOTICE

30. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, DAF intends to use any and all documents produced in A&M's discovery responses as evidence at the time of any hearing or trial in this matter.

X. REQUEST FOR DISCLOSURES

31. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, A&M is requested to disclose, within fifty (50) days of service of this request, the information or material described in Texas Rule of Civil Procedure l 94.2(a)-(I).

PRAYER

Plaintiff, Charitable DAF Fund, L.P., respectfully requests that Defendant Alvarez & Marsal CRF Management, LLC be cited to appear and answer herein, that this Court grant judgment in DAF's favor over and against said Defendant as set forth herein, for all actual damages DAF has suffered, punitive or exemplary damages, prejudgment and post-judgment interest at the highest rate permitted by law, and that DAF be granted all other and further relief, at law and in equity, general and special, to which DAF may be justly entitled.

Dated: August 15, 2022

Respectfully submitted,

/s/ Sawnie A. McEntire

Sawnie A. McEntire
Texas Bar No. 13590100
smcentire@pmmlaw.com
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PARSONS MCENTIRE MCCLEARY PLLC
One Riverway, Suite 1800 Houston, Texas 77056
(713) 960-7315 (Phone)
(713) 960-7347 (Facsimile)

ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

3106604.1

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Nicholle Trimbach on behalf of Sawnie Mcentire
Bar No. 13590100
ntrimbach@pmmlaw.com
Envelope ID: 67293009
Status as of 8/23/2022 5:43 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Alejandra Godoy		agodoy@pmmlaw.com	8/15/2022 2:30:19 PM	SENT
Gini Romero		gromero@pmmlaw.com	8/15/2022 2:30:19 PM	SENT
Linda Kimball		lkimball@pmmclaw.com	8/15/2022 2:30:19 PM	SENT
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Roger LMcCleary		rmccleary@pmmlaw.com	8/15/2022 2:30:19 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	8/15/2022 2:30:19 PM	SENT
Tim Miller		tmiller@pmmlaw.com	8/15/2022 2:30:19 PM	SENT

FELICIA PITRE
DALLAS COUNTY DISTRICT CLERK

NINA MOUNTIQUE
CHIEF DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND LP

vs.

ALVAREZ & MARSAL CRF MANAGEMENT LLC

116th District Court

ENTER DEMAND FOR JURY

JURY FEE PAID BY: PLAINTIFF

FEE PAID: $10

600 COMMERCE STREET DALLAS, TEXAS 75202 (214) 653-7261
FAX (214)653-7781 E-mail: Felicia.Pitre@dallascounty.org
Web site: http://www.dallascounty.org/distclerk/index.html

FORM NO. 3534 CITATION
THE STATE OF TEXAS

To: ALVAREZ & MARSAL CRF MANAGEMENT LLC
BY SERVING THE SECRETARY OF STATE
OFFICE OF THE SECRETARY OF STATE
CITATIONS UNIT - P.O. BOX 12079
AUSTIN, TX, 78711

GREETINGS:
You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. Your answer should be addressed to the clerk of the **116th District Court** at 600 Commerce Street, Dallas Texas, 75202.

Said **PLAINTIFF** being **CHARITABLE DAF FUND LP**

Filed in said Court on the **15th day of August, 2022** against

ALVAREZ & MARSAL CRF MANAGEMENT LLC
For suit, said suit being numbered **DC-22-10107** the nature of which demand is as follows:
Suit On **OTHER (CIVIL)** etc.
as shown on said petition a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office **on this the 23rd day of September, 2022**
ATTEST: FELICIA PITRE Clerk of the District Courts of Dallas, County, Texas

By_____, Deputy
SHELIA BRADLEY

ESERVE (SOS)

CITATION

No.: **DC-22-10107**
CHARITABLE DAF FUND LP
vs.
ALVAREZ & MARSAL CRF MANAGEMENT LLC

ISSUED
ON THIS THE 23RD DAY OF SEPTEMBER, 2022

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By **SHELIA BRADLEY**, Deputy

Attorney for : Plaintiff
SAWNIE A MCENTIRE
PARSONS MCENTIRE MCCLEARY PLLC
1700 PACIFIC AVENUE SUITE 4400
DALLAS TX 75201
214-237-4300
smcentire@pmmlaw.com

DALLAS COUNTY
SERVICE FEES
NOT PAID

OFFICER'S RETURN
FOR INDIVIDUALS

Cause No. DC-22-10107
Court No: 116th District Court

Style: CHARITABLE DAF FUND LP
vs.
ALVAREZ & MARSAL CRF MANAGEMENT LLC

Received this Citation the _____day of_____, 20_____at_____o'clock. Executed at _____, within the County of _____, State of_____, on the _____day of _____, 20_____, at _____o'clock, by delivering to the within named_____ each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first endorsed on same the date of delivery.

----------000000----------

OFFICER'S RETURN
FOR CORPORATIONS

Received this Citation the _____day of_____, 20_____at_____o'clock ___.M. Executed at _____, within the County of _____, State of_____, on the _____day of _____, 20_____, at _____ o'clock ____ .M. by summoning the within named Corporation, _____
_____President - Vice President - Registered Agent - in person, of the said _____
a true copy of this citation together with the accompanying copy of Plaintiff's original petition, having first endorsed on same the date of delivery.

----------000000----------

The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness by my hand.

For Serving Citation $_____ Sheriff_____
For Mileage $_____ County of_____
For Notary $_____ State of_____
Total Fees $_____ By _____Deputy

(Must be verified if served outside the State of Texas)
State of_____
County of_____
Signed and sworn to me by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

Seal

_____
State & County of
_____

FORM NO. 3534 CITATION
THE STATE OF TEXAS

To: ALVAREZ & MARSAL CRF MANAGEMENT LLC
BY SERVING THE SECRETARY OF STATE
OFFICE OF THE SECRETARY OF STATE
CITATIONS UNIT - P.O. BOX 12079
AUSTIN, TX, 78711

GREETINGS:
You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. Your answer should be addressed to the clerk of the **116th District Court** at 600 Commerce Street, Dallas Texas, 75202.

Said **PLAINTIFF** being **CHARITABLE DAF FUND LP**

Filed in said Court on the **15th day of August, 2022** against

ALVAREZ & MARSAL CRF MANAGEMENT LLC
For suit, said suit being numbered **DC-22-10107** the nature of which demand is as follows:
Suit On **OTHER (CIVIL)** etc.
as shown on said petition a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office **on this the 23rd day of September, 2022**
ATTEST: FELICIA PITRE Clerk of the District Courts of Dallas, County, Texas

By_____, Deputy
SHELIA BRADLEY

ESERVE (SOS)

CITATION

No.: **DC-22-10107**
CHARITABLE DAF FUND LP
vs.
ALVAREZ & MARSAL CRF MANAGEMENT LLC

ISSUED
ON THIS THE 23RD DAY OF SEPTEMBER, 2022

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By **SHELIA BRADLEY**, Deputy

Attorney for : Plaintiff
SAWNIE A MCENTIRE
PARSONS MCENTIRE MCCLEARY CLARK PLLC
1700 PACIFIC AVENUE SUITE 4400
DALLAS TX 75201
214-237-4300
smcentire@pmmclaw.com

DALLAS COUNTY
SERVICE FEES
NOT PAID

OFFICER'S RETURN
FOR INDIVIDUALS

Cause No. DC-22-10107
Court No: 116th District Court

Style: CHARITABLE DAF FUND LP
vs.
ALVAREZ & MARSAL CRF MANAGEMENT LLC

Received this Citation the _____day of_____, 20_____at_____o'clock. Executed at _____, within the County of _____, State of_____, on the _____day of _____, 20_____, at _____o'clock, by delivering to the within named_____ each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first endorsed on same the date of delivery.

----------000000----------

OFFICER'S RETURN
FOR CORPORATIONS

Received this Citation the _____day of_____, 20_____at_____o'clock ___.M. Executed at _____, within the County of _____, State of_____, on the _____day of _____, 20_____, at _____ o'clock ____ .M. by summoning the within named Corporation, _____
_____President - Vice President - Registered Agent - in person, of the said _____
a true copy of this citation together with the accompanying copy of Plaintiff's original petition, having first endorsed on same the date of delivery.

----------000000----------

The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness by my hand.

For Serving Citation $_____ Sheriff_____
For Mileage $_____ County of_____
For Notary $_____ State of_____
Total Fees $_____ By _____Deputy

(Must be verified if served outside the State of Texas)
State of_____
County of_____
Signed and sworn to me by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

Seal

_____
State & County of
_____

Parsons McEntire McCleary PLLC

1700 Pacific Ave., Ste. 4400
Dallas, Texas 75201
Tel. (214) 237-4300
Fax (214) 237-4340

Nicholle Trimbach
Paralegal

(972) 885-2628
ntrimbach@pmmlaw.com

August 24, 2022

Clerk, 116th District Court
George L. Allen, Sr. Courts Building
600 Commerce Street, Suite 103
Dallas, Texas 75202

Via E-file

Re: Cause No. DC-22-10107; *Charitable Daf Fund, L.P. v. Alvarez & Marsal, CRF Management, LLC*; in the 116th Judicial District Court of Dallas County, Texas

Dear Clerk:

In the above-captioned matter, please email the Secretary of State citation to ntrimbach@pmmlaw.com. In accordance with your instructions, there will be a $4.00 payment. The additional $8.00 was paid in envelope number 67293009. Thank you for your attention on this matter.

Sincerely,

/s/ Nicholle Trimbach

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Nicholle Trimbach on behalf of Sawnie Mcentire
Bar No. 13590100
ntrimbach@pmmlaw.com
Envelope ID: 67596808
Status as of 8/29/2022 9:13 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	8/24/2022 8:47:24 AM	SENT
Gini Romero		gromero@pmmlaw.com	8/24/2022 8:47:24 AM	SENT
Tim Miller		tmiller@pmmlaw.com	8/24/2022 8:47:24 AM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	8/24/2022 8:47:24 AM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	8/24/2022 8:47:24 AM	SENT
Nicholle Trimbach		ntrimbach@pmmlaw.com	8/24/2022 8:47:24 AM	SENT
Alejandra Godoy		agodoy@pmmlaw.com	8/24/2022 8:47:24 AM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF'S VERIFIED MOTION TO RETAIN

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and files this verified motion to retain, requesting that the Court retain this cause on the docket and not dismiss this cause for want of prosecution, and in support of which respectfully shows the following:

1. This lawsuit is set on the January 24, 2023, dismissal docket for want of prosecution. This is the first dismissal docket setting in this case. DAF submits the Court should not dismiss DAF's lawsuit because there is good cause to retain it on the Court's docket, as demonstrated below. Tex. R. Civ. P. 165a.1.

2. Plaintiff DAF conducts charitable activities in the State of Texas. DAF's charitable causes include education, military veterans, first responders, health and medical research, economic and community development initiatives, and youth and family programs in the State of Texas. In this lawsuit DAF alleges A&M improperly

withheld assets lawfully owned by and due to DAF and, in doing so, that A&M has interfered with DAF's charitable mission.

3. DAF filed this lawsuit on August 15, 2022. Defendant A&M is a foreign limited liability company, whose home office is located in New York, New York. According to the Texas Secretary of State's certificate of service, issued on or about November 7, 2022, and filed among the papers of this lawsuit, ("Certificate of Service") DAF was served with and physically received civil process in this matter by on or about October 31, 2022. A true and correct copy of the Certificate of Service is attached to and incorporated in its entirety in this motion by reference as Exhibit "A."

4. DAF and A&M are actively engaged in settlement negotiations which, if successful, will allow A&M to avoid the expense of answering. In connection with these negotiations, and the day before the Dismissal Hearing Notice was issued in this matter, DAF entered into an agreement, pursuant to Tex. R. Civ. P. Rule 11, extending A&M's deadline to answer or otherwise respond to DAF's Original Petition to February 21, 2023 ("Rule 11"). A true and correct copy of the Rule 11 is attached to and incorporated in its entirety in this motion by reference as Exhibit "B."

5. Accordingly, DAF is actively pursuing the matters that are the subject of this lawsuit and respectfully submits good cause has been shown to retain this lawsuit. DAF desires and respectfully requests that this lawsuit be retained on this Court's active docket and not dismissed for want of prosecution. In the event the parties are unable to

reach an agreement resolving the matters in dispute, DAF intends to vigorously prosecute this lawsuit against A&M. This motion is not made as a means to delay, but only so that justice may be done.

Wherefore, premises considered, Plaintiff Charitable DAF Fund, L.P. respectfully requests that this cause be retained on the docket and for such other and further relief, at law and in equity, general or special, to which Plaintiff may be entitled.

Dated: January 19, 2023

Respectfully submitted,

/s/ Roger L. McCleary

Sawnie A. McEntire
Texas Bar No. 13590100
smcentire@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Tel. (214) 237-4300
Fax (214) 237-4340

Roger L. McCleary
Texas Bar No. 133937000
rmccleary@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
One Riverway, Suite 1800
Houston, Texas 78751
Tel: (713) 960-7305
Fax: (832) 742-7387

Counsel for Plaintiff
Charitable DAF Fund, L.P.

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S VERIFIED MOTION TO RETAIN

STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

Before me, the undersigned authority, on this day personally appeared Roger L. McCleary who, after being by me duly sworn, upon his oath, deposed and said:

1. "I, Roger L. McCleary, am an attorney of record for the plaintiff, Charitable DAF Fund, L.P. ('DAF'), in the above-styled and numbered lawsuit ('Lawsuit'). I am over the age of 21 years, have never been convicted of a felony or any crime that would disqualify me from making this affidavit, and am in all ways competent to make this affidavit. I have personal knowledge of all facts stated in this affidavit, and each of the said facts, within my personal knowledge, is true and correct.

2. I have read, in its entirety, the foregoing PLAINTIFF'S VERIFIED MOTION TO RETAIN ('Motion') in this Lawsuit. The statements made in the Motion are true and correct.

3. Furthermore, Affiant sayeth not."

Roger L. McCleary, Affiant

Subscribed and sworn to before me on the 19th day of January, 2023, by Roger L. McCleary.

LINDA MARSHALL KIMBALL
Notary ID #568102
My Commission Expires
August 20, 2026

Linda Marshall Kimball
Notary Public, State of Texas

3116333.1

Exhibit “A”

The State of Texas
Secretary of State

2023-343855-2

I, the undersigned, as Secretary of State of the State of Texas, DO HEREBY CERTIFY that according to the records of this office, a copy of the Citation and Plaintiffs Original Petition and Jury Demand in the cause styled:

CHARITABLE DAF FUND LP vs ALVAREZ AND MARSAL CRF MANAGEMENT LLC
116th Judicial District Court Of Dallas County, Texas
Cause No: DC2210107

was received by this office on October 11, 2022, and that a copy was forwarded on October 27, 2022, by CERTIFIED MAIL, return receipt requested to:

Alvarez & Marsal CRF Management LLC
Registered Agent Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

The RETURN RECEIPT was received in this office dated October 31, 2022, According to the USPS.Com Track & Confirm, the item was delivered.

Date issued: November 7, 2022

John B. Scott
Secretary of State
GF/mo

Exhibit “B”

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

Marshall King

January 10, 2022

Via Electronic Mail

Roger McCleary
PMM Law
One Riverway, Suite 1800
Houston, TX 77056
rmccleary@pmmlaw.com

RE: *Charitable DAF Fund LP vs. Alvarez & Marsal CRF Management LLC*, Cause No. DC-22-10107 in the 116th District Court, Dallas County, Texas

Dear Roger:

This letter is to confirm our agreement, under Texas Rule of Civil Procedure 11, that Plaintiffs in the above-referenced action agree that the deadline for Alvarez & Marsal CRF Management LLC to answer or otherwise respond to Plaintiff's Petition is extended to February 21, 2023 at 10:00 a.m. (Monday, February 20, 2023 being Presidents' Day). If the foregoing conforms to your understanding of our agreement, please sign below in the space provided and return a copy of this letter to me by email.

Sincerely,

Marshall King
Attorney for Defendant Alvarez & Marsal CRF Management LLC

Agreed:

Roger McCleary
Attorney for Plaintiff Charitable DAF Fund LP

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Timothy Miller on behalf of Sawnie Mcentire
Bar No. 13590100
tmiller@pmmlaw.com
Envelope ID: 71953685
Status as of 1/20/2023 8:56 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	1/19/2023 3:02:22 PM	SENT
Gini Romero		gromero@pmmlaw.com	1/19/2023 3:02:22 PM	SENT
Tim Miller		tmiller@pmmlaw.com	1/19/2023 3:02:22 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	1/19/2023 3:02:22 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	1/19/2023 3:02:22 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	1/19/2023 3:02:22 PM	SENT

116TH DISTRICT COURT
GEORGE ALLEN COURTS BLDG.
600 COMMERCE STREET
DALLAS, TX 75202-4606
214-653-6015

1/11/2023

smcentire@pmmlaw.com; RMCCLEARY@PMMLAW.COM

Re: DC-22-10107: CHARITABLE DAF FUND LP vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC

DISMISSAL HEARING NOTICE

The above case is set for dismissal for want of prosecution 01/24/2023 at 8:45 AM. in the 116th District Court, Dallas County, Texas. This hearing will be conducted by phone. Please see the call in information:

Dial in Number: 425-436-6373

Access Code: 590035

If you have perfected service and no answer has been filed, you must have moved for or have proved up a default judgment on or prior to the above date. Failure to do so prior to dismissal hearing will automatically result in the dismissal of the case on the above date and time and place.

If you have not perfected service on all parties prior to said dismissal date you **MUST APPEAR AT THE DISMISSAL HEARING.** During said hearing you will have the opportunity to show by way of verified motion, good cause for maintaining the case on the docket. At the dismissal hearing the court **SHALL** dismiss for Want of Prosecution unless there is a showing of good cause.

Sincerely

/s/ Shirl Townsend_
Shirl Townsend,
Coordinator

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and files this Verified Second Motion to Retain, requesting the Court retain this cause on the docket and not dismiss this cause for want of prosecution, and in support respectfully shows the following:

1. This lawsuit is set on the February 22, 2023, dismissal docket for want of prosecution. The Court should not dismiss DAF's lawsuit because there is good cause to retain it on the Court's docket, as demonstrated below. Tex. R. Civ. P. 165a.1.

2. Plaintiff DAF conducts charitable activities in the State of Texas. DAF's charitable causes include education, military veterans, first responders, health and medical research, economic and community development initiatives, and youth and family programs in the State of Texas. In this lawsuit DAF alleges that defendant Alvarez & Marsal, CRF Management, LLC ("A&M") improperly withheld assets lawfully owned

by and due to DAF and, in doing so, that A&M has interfered with DAF's charitable mission.

3. DAF filed this lawsuit on August 15, 2022. Defendant A&M is a foreign limited liability company, whose home office is located in New York, New York. According to the Texas Secretary of State's certificate of service, issued on or about November 7, 2022, and filed among the papers of this lawsuit, ("Certificate of Service") A&M was served with and physically received civil process in this matter by on or about October 31, 2022. A true and correct copy of the Certificate of Service is attached to and incorporated in its entirety in this motion by reference as Exhibit "A."

4. DAF and A&M were actively engaged in settlement negotiations which, if successful, would have allowed A&M to avoid the expense of answering the lawsuit. In connection with those negotiations, and the day before issuance of the first Dismissal Hearing Notice for the January 24, 2023, dismissal docket, DAF entered into an agreement extending A&M's deadline to answer or otherwise respond to DAF's Original Petition to February 21, 2023 ("Rule 11"). A true and correct copy of the relevant Rule 11 is attached to and incorporated in its entirety in this motion by reference as Exhibit "B."

5. The parties' negotiations did not result in settlement. Accordingly, DAF anticipates that A&M will answer or otherwise respond to DAF's Original Petition and civil process in this lawsuit by A&M's agreed February 21, 2023, deadline. In the event

A&M does not do so, DAF will move for a default judgment on February 22, 2023, as required by this Court's Dismissal Hearing Notice dated January 25, 2023.

6. DAF has been actively pursuing the matters that are the subject of this lawsuit, and DAF intends to vigorously prosecute this lawsuit against A&M. DAF respectfully submits good cause has been shown to retain this lawsuit. DAF desires and respectfully requests that this lawsuit be retained on this Court's active docket and not dismissed for want of prosecution. This motion is not made as a means to delay, but only so that justice may be done.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Charitable DAF Fund, L.P., respectfully requests that this cause be retained on the docket and for such other and further relief, at law and in equity, general or special, to which Plaintiff may be entitled.

Dated: January 16, 2023.

Respectfully submitted,

/s/ Roger L. McCleary

Sawnie A. McEntire
Texas Bar No. 13590100
smcentire@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Tel. (214) 237-4300
Fax (214) 237-4340

Roger L. McCleary
Texas Bar No. 133937000
rmccleary@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
One Riverway, Suite 1800
Houston, Texas 78751

Tel: (713) 960-7305
Fax: (832) 742-7387

Counsel for Plaintiff
Charitable DAF Fund, L.P.

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

Before me, the undersigned authority, on this day personally appeared Roger L. McCleary who, after being by me duly sworn, upon his oath, deposed and said:

1. "I, Roger L. McCleary, am an attorney of record for the plaintiff, Charitable DAF Fund, L.P. ('DAF'), in the above-styled and numbered lawsuit ('Lawsuit'). I am over the age of 21 years, have never been convicted of a felony or any crime that would disqualify me from making this affidavit, and am in all ways competent to make this affidavit. I have personal knowledge of all facts stated in this affidavit, and each of the said facts, within my personal knowledge, is true and correct.

2. I have read, in its entirety, the foregoing PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN ('Motion') in this Lawsuit. The statements made in the Motion are true and correct.

3. Furthermore, Affiant sayeth not."

Roger L. McCleary, Affiant

Subscribed and sworn to before me on the 16th day of February, 2023, by Roger L. McCleary

Notary Public, State of Texas

GAILYA BROOKS
My Notary ID # 3550703
Expires October 28, 2025

3117553.1

Exhibit “A”

FILED
1/12/2023 2:00 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
CAROLYN SELLERS DEPUTY

The State of Texas
Secretary of State

2023-343855-2

I, the undersigned, as Secretary of State of the State of Texas, DO HEREBY CERTIFY that according to the records of this office, a copy of the Citation and Plaintiffs Original Petition and Jury Demand in the cause styled:

CHARITABLE DAF FUND LP vs ALVAREZ AND MARSAL CRF MANAGEMENT LLC
116th Judicial District Court Of Dallas County, Texas
Cause No: DC2210107

was received by this office on October 11, 2022, and that a copy was forwarded on October 27, 2022, by CERTIFIED MAIL, return receipt requested to:

Alvarez & Marsal CRF Management LLC
Registered Agent Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

The RETURN RECEIPT was received in this office dated October 31, 2022, According to the USPS.Com Track & Confirm, the item was delivered.

Date issued: November 7, 2022

John B. Scott
Secretary of State
GF/mo

Exhibit “B”

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

Marshall King

January 10, 2022

Via Electronic Mail

Roger McCleary
PMM Law
One Riverway, Suite 1800
Houston, TX 77056
rmccleary@pmmlaw.com

RE: *Charitable DAF Fund LP vs. Alvarez & Marsal CRF Management LLC*, Cause No. DC-22-10107 in the 116th District Court, Dallas County, Texas

Dear Roger:

This letter is to confirm our agreement, under Texas Rule of Civil Procedure 11, that Plaintiffs in the above-referenced action agree that the deadline for Alvarez & Marsal CRF Management LLC to answer or otherwise respond to Plaintiff's Petition is extended to February 21, 2023 at 10:00 a.m. (Monday, February 20, 2023 being Presidents' Day). If the foregoing conforms to your understanding of our agreement, please sign below in the space provided and return a copy of this letter to me by email.

Sincerely,

Marshall King
Attorney for Defendant Alvarez & Marsal CRF Management LLC

Agreed:

Roger McCleary
Attorney for Plaintiff Charitable DAF Fund LP

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Roqui Brooks on behalf of Sawnie Mcentire
Bar No. 13590100
rbrooks@pmmlaw.com
Envelope ID: 72878354
Status as of 2/20/2023 8:14 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	2/17/2023 1:09:50 PM	SENT
Gini Romero		gromero@pmmlaw.com	2/17/2023 1:09:50 PM	SENT
Tim Miller		tmiller@pmmlaw.com	2/17/2023 1:09:50 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	2/17/2023 1:09:50 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	2/17/2023 1:09:50 PM	SENT

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	2/17/2023 1:09:50 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	2/17/2023 1:09:50 PM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

BE IT REMEMBERED that on this day came on for consideration Plaintiff's Verified Second Motion to Retain ("Motion to Retain"), and the Court, finding good cause exists to retain this cause on the docket and not dismiss this cause for want of prosecution, is of the opinion that the Motion to Retain should be granted. It is, therefore,

ORDERED, ADJUDGED, AND DECREED that the Motion to Retain is GRANTED and this lawsuit is retained on the Court's docket.

_____
Judge Presiding

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Roqui Brooks on behalf of Sawnie Mcentire
Bar No. 13590100
rbrooks@pmmlaw.com
Envelope ID: 72878354
Status as of 2/20/2023 8:14 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	2/17/2023 1:09:50 PM	SENT
Gini Romero		gromero@pmmlaw.com	2/17/2023 1:09:50 PM	SENT
Tim Miller		tmiller@pmmlaw.com	2/17/2023 1:09:50 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	2/17/2023 1:09:50 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	2/17/2023 1:09:50 PM	SENT

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	2/17/2023 1:09:50 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	2/17/2023 1:09:50 PM	SENT

FILED
2/20/2023 8:45 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Madison McCarrier DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT

Defendant.

DEFENDANT ALVAREZ & MARSAL'S ANSWER TO PETITION

Defendant Alvarez & Marsal CRF Management, LLC ("A&M") respectfully files this original answer ("Answer") in response to Plaintiff Charitable DAF Fund, L.P.'s ("Plaintiff" or "DAF") Original Petition filed on August 15, 2022 ("Petition"), to respectfully show the Court the following:

I.
GENERAL DENIAL

1. Pursuant to Texas Rule of Civil Procedure 92, Defendant generally denies all allegations, demands, causes of action, and claims for relief set forth in the Petition, and demands proof thereof as required by law.

II.
A&M'S AFFIRMATIVE DEFENSES

2. A&M sets forth below its affirmative defenses. By setting forth these affirmative defenses, A&M does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Furthermore, all such defenses are pleaded in the alternative and do not constitute an admission of liability or an admission that Plaintiff is entitled to any relief whatsoever.

3. Plaintiff's Petition and each purported cause of action alleged therein fail to state any claims against A&M upon which relief can be granted.

4. Plaintiff's claims against A&M were filed in an improper forum and/or are subject to arbitration.

5. Plaintiff's claims against A&M are barred, in whole or in part, by the Partial Final Award, dated March 6, 2019, and the Final Award, dated May 9, 2019, issued by an arbitration panel under the rules of the American Arbitration Association.

6. Plaintiff's claims against A&M are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel.

7. Plaintiff's claims against A&M are barred, in whole or in part, because of agreement, acquiescence, ratification, or consent.

8. Plaintiff's claims against A&M are barred, in whole or in part, by, or for failure to comply with, the express terms and conditions of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., the Investment Management Agreement between Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., Highland Crusader Offshore Partners, L.P., House Hanover, LLC, Alvarez & Marsal CRF Management, LLC, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds.

9. Plaintiff's claims against A&M are barred, in whole or in part, because of accord and satisfaction under the terms of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement

relating to Highland Crusader Fund II, Ltd., and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds

10. Plaintiff's claims against A&M are barred, in whole or in part, because A&M's alleged obligations, if any, have been fulfilled and discharged.

11. Plaintiff's claims against A&M are barred, in whole or in part, because of estoppel.

12. Plaintiff's claims against A&M are barred, in whole or in part, by the doctrine of waiver.

13. Plaintiff's claims against A&M are barred, in whole or in part, based on the doctrine of unclean hands.

14. Plaintiff's claims against A&M are barred, in whole or in part, on the ground that any alleged damages were not proximately or legally caused by any action or omission by A&M.

15. Plaintiff's claims against A&M are barred, in whole or in part, because it has failed to exercise reasonable efforts to mitigate, minimize, or avoid any of the harm alleged.

16. A&M currently lacks sufficient knowledge or information that may serve as a basis for additional affirmative defenses or claims. Therefore, in addition to the affirmative defenses identified above, A&M reserves the right to later assert additional affirmative defenses or claims.

II.
PRAYER

WHEREFORE, Defendant prays for entry of judgment against Plaintiff and in favor of Defendant as follows:

17. That Defendant is not liable under any of the Petition's claims, Plaintiff sustained no damages, and Plaintiff takes nothing;

18. That Plaintiff is not entitled to damages, interest, attorneys' fees, or costs;

19. That Defendant be awarded judgment in its favor against Plaintiff;

20. That Defendant be awarded its attorney's fees and costs; and

21. For such other and further relief as the Court deems just and proper.

DATED: February 20, 2023 Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201-2923
Telephone: 214.698.3256
Facsimile: 214.571.2923
TCox@gibsondunn.com
ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of February, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 72906387
Status as of 2/20/2023 9:09 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	2/20/2023 8:45:31 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	2/20/2023 8:45:31 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	2/20/2023 8:45:31 AM	SENT
Gini Romero		gromero@pmmlaw.com	2/20/2023 8:45:31 AM	SENT
Andrew Bean		ABean@gibsondunn.com	2/20/2023 8:45:31 AM	SENT
Tim Miller		tmiller@pmmlaw.com	2/20/2023 8:45:31 AM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	2/20/2023 8:45:31 AM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	2/20/2023 8:45:31 AM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	2/20/2023 8:45:31 AM	SENT
John T.Cox		TCox@gibsondunn.com	2/20/2023 8:45:31 AM	SENT
Marshall R.King		MKing@gibsondunn.com	2/20/2023 8:45:31 AM	SENT

FILED
2/20/2023 4:20 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rhonda Burks DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF'S VERIFIED SUPPLEMENT TO PLAINTIFF'S
VERIFIED SECOND MOTION TO RETAIN

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and files this, Plaintiff's Verified Supplement to Plaintiff's Verified Second Motion to Retain ("Supplement"), requesting the Court retain this cause on the docket and not dismiss this cause for want of prosecution, and in support respectfully shows the following:

1. This lawsuit is set on the February 22, 2023, dismissal docket for want of prosecution. On February 16, 2023, DAF timely filed Plaintiff's Verified Second Motion to Retain ("Motion to Retain") more than two (2) days prior to the February 22, 2023, hearing and in accordance with the 116th District Court Policies and Procedures ("Policies").

2. This Supplement is filed by way of supplement only to DAF's Motion to Retain, and this Supplement does not waive, amend, or supersede DAF's Motion to Retain in any way.

3. On February 16, 2023, the undersigned counsel for DAF contacted Court Administrator Shirl Townsend by telephone, advised Ms. Shirl of the filing of the Motion to Retain, and offered to discuss the same, in accordance with the Policies.

4. On Monday, February 20, 2023, Defendant Alvarez & Marsal, CRF Management, LLC ("A&M") filed and served Defendant Alvarez & Marsal's Answer to Petition ("A&M's Answer"). A true and correct copy A&M's Answer, served on DAF via e-file, is attached as Exhibit 1 to this Supplement for the limited purposes of this Supplement and the Motion to Retain, and not by way of admission of any kind by or on behalf of DAF. A true and correct copy of the February 20, 2023, e-file Notification of Service received by the undersigned regarding A&M's Answer is attached as Exhibit 2 to this Supplement.

5. Accordingly, A&M has now appeared and answered. The Court should not dismiss DAF's lawsuit because there is good cause to retain it on the Court's docket, as demonstrated in DAF's Motion to Retain and this Supplement. Tex. R. Civ. P. 165a.1.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Charitable DAF Fund, L.P., respectfully requests that this cause be retained on the docket and for such other and further relief, at law and in equity, general or special, to which Plaintiff may be entitled.

Dated: February 20, 2023.

Respectfully submitted,

/s/ Roger L. McCleary
Sawnie A. McEntire
Texas Bar No. 13590100

smcentire@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
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Roger L. McCleary
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rmccleary@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
One Riverway, Suite 1800
Houston, Texas 78751
Tel: (713) 960-7305
Fax: (832) 742-7387

Counsel for Plaintiff
Charitable DAF Fund, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2023, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Roger L. McCleary
Roger L. McCleary

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P., *Plaintiff,*	§ § §	IN THE DISTRICT COURT
VS.	§ §	DALLAS COUNTY, TEXAS
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC *Defendant.*	§ § §	116th JUDICIAL DISTRICT

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S SUPPLEMENT TO PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

Before me, the undersigned authority, on this day personally appeared Roger L. McCleary who, after being by me duly sworn, upon his oath, deposed and said:

1. "I, Roger L. McCleary, am an attorney of record for the plaintiff, Charitable DAF Fund, L.P. ('DAF'), in the above-styled and numbered lawsuit ('Lawsuit'). I am over the age of 21 years, have never been convicted of a felony or any crime that would disqualify me from making this affidavit, and am in all ways competent to make this affidavit. I have personal knowledge of all facts stated in this affidavit, and each of the said facts, within my personal knowledge, is true and correct.

2. I have read, in its entirety, the foregoing PLAINTIFF'S SUPPLEMENT TO PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN ('Supplement') in this Lawsuit. The statements made in the Supplement are true and correct.

3. Furthermore, Affiant sayeth not."

Roger L. McCleary, Affiant

Subscribed and sworn to before me on the 20th day of February 2023, by Roger L. McCleary.

GAILYA BROOKS
My Notary ID # 3550703
Expires October 28, 2025

Notary Public, State of Texas

3117641.1

Exhibit 1

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT

Defendant.

DEFENDANT ALVAREZ & MARSAL'S ANSWER TO PETITION

Defendant Alvarez & Marsal CRF Management, LLC ("A&M") respectfully files this original answer ("Answer") in response to Plaintiff Charitable DAF Fund, L.P.'s ("Plaintiff" or "DAF") Original Petition filed on August 15, 2022 ("Petition"), to respectfully show the Court the following:

I.
GENERAL DENIAL

1. Pursuant to Texas Rule of Civil Procedure 92, Defendant generally denies all allegations, demands, causes of action, and claims for relief set forth in the Petition, and demands proof thereof as required by law.

II.
A&M'S AFFIRMATIVE DEFENSES

2. A&M sets forth below its affirmative defenses. By setting forth these affirmative defenses, A&M does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Furthermore, all such defenses are pleaded in the alternative and do not constitute an admission of liability or an admission that Plaintiff is entitled to any relief whatsoever.

3. Plaintiff's Petition and each purported cause of action alleged therein fail to state any claims against A&M upon which relief can be granted.

4. Plaintiff's claims against A&M were filed in an improper forum and/or are subject to arbitration.

5. Plaintiff's claims against A&M are barred, in whole or in part, by the Partial Final Award, dated March 6, 2019, and the Final Award, dated May 9, 2019, issued by an arbitration panel under the rules of the American Arbitration Association.

6. Plaintiff's claims against A&M are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel.

7. Plaintiff's claims against A&M are barred, in whole or in part, because of agreement, acquiescence, ratification, or consent.

8. Plaintiff's claims against A&M are barred, in whole or in part, by, or for failure to comply with, the express terms and conditions of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., the Investment Management Agreement between Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., Highland Crusader Offshore Partners, L.P., House Hanover, LLC, Alvarez & Marsal CRF Management, LLC, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds.

9. Plaintiff's claims against A&M are barred, in whole or in part, because of accord and satisfaction under the terms of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement

relating to Highland Crusader Fund II, Ltd., and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds

10. Plaintiff's claims against A&M are barred, in whole or in part, because A&M's alleged obligations, if any, have been fulfilled and discharged.

11. Plaintiff's claims against A&M are barred, in whole or in part, because of estoppel.

12. Plaintiff's claims against A&M are barred, in whole or in part, by the doctrine of waiver.

13. Plaintiff's claims against A&M are barred, in whole or in part, based on the doctrine of unclean hands.

14. Plaintiff's claims against A&M are barred, in whole or in part, on the ground that any alleged damages were not proximately or legally caused by any action or omission by A&M.

15. Plaintiff's claims against A&M are barred, in whole or in part, because it has failed to exercise reasonable efforts to mitigate, minimize, or avoid any of the harm alleged.

16. A&M currently lacks sufficient knowledge or information that may serve as a basis for additional affirmative defenses or claims. Therefore, in addition to the affirmative defenses identified above, A&M reserves the right to later assert additional affirmative defenses or claims.

II.
PRAYER

WHEREFORE, Defendant prays for entry of judgment against Plaintiff and in favor of Defendant as follows:

17. That Defendant is not liable under any of the Petition's claims, Plaintiff sustained no damages, and Plaintiff takes nothing;

18. That Plaintiff is not entitled to damages, interest, attorneys' fees, or costs;

19. That Defendant be awarded judgment in its favor against Plaintiff;

20. That Defendant be awarded its attorney's fees and costs; and

21. For such other and further relief as the Court deems just and proper.

DATED: February 20, 2023 Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201-2923
Telephone: 214.698.3256
Facsimile: 214.571.2923
TCox@gibsondunn.com
ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of February, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Exhibit 2

From: no-reply@efilingmail.tylertech.cloud
To: Roger L. McCleary
Subject: [EXTERNAL] Notification of Service for Case: DC-22-10107, CHARITABLE DAF FUND LP vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC for filing Answer/Response, Envelope Number: 72906387
Date: Monday, February 20, 2023 8:46:15 AM

Notification of Service

Case Number: DC-22-10107
Case Style: CHARITABLE DAF FUND LP vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC
Envelope Number: 72906387

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document. If the link does not work, please copy the link and paste into your browser. You can also obtain this document by following the steps on this article.

Filing Details	
Case Number	DC-22-10107
Case Style	CHARITABLE DAF FUND LP vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC
Date/Time Submitted	2/20/2023 8:45 AM CST
Filing Type	Answer/Response
Filing Description	Defendant Alvarez & Marsal's Answer to Petition
Filed By	Wendy Cassidy
	CHARITABLE DAF FUND LP: Roqui Brooks (rbrooks@pmmlaw.com) Charitable DAF Fund, L.P. : Beatrice Candis (bcandis@pmmlaw.com) Other Service Contacts not associated with a party on the case:

Service Contacts	Linda Kimball (lkimball@pmmclaw.com) Gini Romero (gromero@pmmlaw.com) Andrew Bean (ABean@gibsondunn.com) Tim Miller (tmiller@pmmlaw.com) Wendy Cassidy (WCassidy@gibsondunn.com) Roger McCleary (rmccleary@pmmlaw.com) Sawnie McEntire (smcentire@pmmlaw.com) John Cox (TCox@gibsondunn.com) Marshall King (MKing@gibsondunn.com)

Document Details	
Served Document	Download Document
This link is active for 30 days.	

Automated Certificate of eService

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Roqui Brooks on behalf of Sawnie Mcentire
Bar No. 13590100
rbrooks@pmmlaw.com
Envelope ID: 72926215
Status as of 2/20/2023 4:28 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	2/20/2023 4:20:18 PM	SENT
Gini Romero		gromero@pmmlaw.com	2/20/2023 4:20:18 PM	SENT
Andrew Bean		ABean@gibsondunn.com	2/20/2023 4:20:18 PM	SENT
Tim Miller		tmiller@pmmlaw.com	2/20/2023 4:20:18 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	2/20/2023 4:20:18 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	2/20/2023 4:20:18 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	2/20/2023 4:20:18 PM	SENT
John T.Cox		TCox@gibsondunn.com	2/20/2023 4:20:18 PM	SENT
Marshall R.King		MKing@gibsondunn.com	2/20/2023 4:20:18 PM	SENT

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	2/20/2023 4:20:18 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	2/20/2023 4:20:18 PM	SENT

116TH DISTRICT COURT

GEORGE ALLEN COURTS BLDG.

600 COMMERCE STREET

DALLAS, TX 75202-4606

214-653-6015

1/25/2023

Emailed to: smcentire@pmmlaw.com;
RMCCLEARY@PMMLAW.COM

Re:
CHARITABLE DAF FUND LP

vs.

ALVAREZ & MARSAL CRF MANAGEMENT LLC
DC-22-10107

DISMISSAL HEARING NOTICE

SECOND AND FINAL NOTICE OF NEED TO DILIGENTLY PROSECUTE CASE: YOU ARE HEREBY ADVISED THAT STRICT COMPLIANCE WITH THE REQUIREMENTS OF THIS NOTICE IS NECESSARY TO AVOID, UPON SUFFICIENT SHOWING, DISMISSAL OF THE CASE

The above case is set for dismissal for want of prosecution on 02/22/2023at 8:45 AM. in the 116th District Court, Dallas County, Texas. This hearing will be conducted by phone. Please see the call-in information:

Dial in Number: 425-436-6373

Access Code: 590035

If you have perfected service and no answer has been filed, you must have moved for or have proved up a default judgment on or prior to the above date. Failure to do so prior to dismissal hearing will automatically result in the dismissal of the case on the above date and time and place.

If you have not perfected service on all parties prior to said dismissal date you **MUST APPEAR AT THE DISMISSAL HEARING.** During said hearing you will have the opportunity to show by way of **verified motion**, good cause for maintaining the case on the docket. At the dismissal hearing the court **SHALL** dismiss for Want of Prosecution unless there is a showing of good cause.

Sincerely

/s/ Shirl Townsend

Coordinator

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AGREED UNIFORM SCHEDULING ORDER (LEVEL 3)
(Revised August 22, 2001)

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following agreed order to control the schedule of this cause.

1. This case will be ready and is set for **Non-Jury/Jury Trial on February 26, 2024, at 9:00 a.m.(the" Initial Trial Setting")**. Reset or continuance of the Initial Trial Setting will not alter any deadlines established in this Order or established by the Texas Rules of Civil Procedure unless otherwise provided by order. If not reached as set, the case may be carried to the next week.

Trial announcements must be made in accordance with rule 3.02 Local Rules of the Civil Courts of Dallas County Texas. When no announcement is made for defendant, defendant will be presumed ready. If plaintiff fails to announce or to appear at trial, the case will be dismissed for want of prosecution in accordance with Rule 165a, Texas Rules of Civil Procedure.

2. Pretrial matters will be complete by the following dates:

a. amended pleadings asserting new causes of action or defenses .....120 days before the Initial Trial Setting
b. fact discovery closes.....105 days before the Initial Trial Setting
c. party seeking affirmative relief shall designate experts and must provide reports .....105 days before the Initial Trial Setting
d. party opposing affirmative relief shall designate experts and must provide reports .....90 days before the Initial Trial Setting
e. party seeking affirmative relief shall designation of rebuttal experts and must provide reports.....75 days before the Initial Trial Setting
f. all expert discovery closes .....45 days before the Initial Trial Setting

g. other amended pleadings .....45 days before the Initial Trial Setting

The parties may by written agreement alter these deadlines. Amended pleadings responsive to timely filed pleadings under this schedule may be filed after the deadline for amended pleadings if filed within two (2) weeks after the pleading to which they respond. Except by agreement of the party, leave of court, or where expressly authorized by the Texas Rules of Civil Procedure, no party may obtain discovery of information subject to disclosure under Rule 194 by any other form of discovery.

3. Any objection or motion to exclude or limit expert testimony due to qualification of the expert or reliability of the opinions must be filed no later than seven (7) days after the close of expert discovery, or such objection is waived. Such motions must be heard no later than thirty (30) days prior to trial. Any motion to compel responses to discovery (other than relating to factual matters arising after the end of fact discovery) must be filed no later than seven (7) days after the close of fact discovery or such complaint is waived, except for the sanction of exclusion under Rule 193.6

4. Motions for summary judgment or other dispositive motions must be heard no later than thirty (30) days prior to trial.

5. Each side may have 75 hours of depositions and each party may have 50 interrogatories, subject to the conditions of Rule 190.3(b)(2) and (3).

6. No additional parties may be joined more than eight (8) months after the commencement of this case except on motion for leave showing good cause. This paragraph does not otherwise alter the requirements of Rule 38. The party joining an additional party shall serve a copy of this Order on the new party concurrently with the pleading joining that party.

7. The parties shall mediate this case no later than thirty (30) days before the Initial Trial Setting, unless otherwise provided by court order. Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer or corporate representative with authority to negotiate a settlement. **Unless, within 14 days of the date of this Order, the parties file and bring to the attention of the Court Coordinator a Joint Notice of Agreed Upon Substitute Mediator, the parties agree to mediate this case _____whose phone number is _____ Any joint motion requesting appointment of a mediator should include a brief description of the nature of the dispute, and any novel legal, language, demographic, or other issues the parties desire to have the Court consider in appointing a mediator. The provisions contained herein regarding mediation will be strictly enforced. Parties violating the requirements of this Order will be required to show cause as to why they are in violation of same.**

8 Fourteen (14) days before the Initial Trial Setting, the parties shall exchange designations of deposition testimony to be offered in direct examination and a list of exhibits, including any demonstrative aids and affidavits, and shall exchange copies of any

exhibits not previously produced in discovery; over-designation is strongly discouraged and may be sanctioned. Except for records to be offered by way of business record affidavits, each exhibit must be identified separately and not by category or group designation. Ten (10) days before the Initial Trial Setting, the parties shall exchange in writing their objections to the opposing party's proposed exhibits, including objections under Rule 193.7, and deposition testimony. **On or before ten (10)days before the Initial Trial Setting, the attorneys in charge for all parties shall meet in person to confer on stipulations regarding the materials to be submitted to the Court under this paragraph and attempt to maximize agreement on such matters.** By 4 p.m. on the Thursday before the Initial Trial Setting, the parties shall file with the Court the materials stated in Rule 166(d)-(m), an estimate of the length of trial, designation of deposition testimony to be offered in direct examination, and any motions in limine. Failure to file such materials may result in dismissal for want of prosecution or other appropriate sanction. A courtesy copy of each party's pre-trial materials shall be delivered to the Judge's Chambers by 4 p.m. the Thursday before the trial setting.

9. A pre-trial conference shall be conducted from 8 a.m. to 9 a.m. the morning of trial on all matters the parties could not resolve during their meet and confer. If, after the meet and confer between counsel, the parties anticipate more time will be needed for a pre-trial conference, a pre-trial conference shall be scheduled the week before the trial setting.

Plaintiff/Plaintiff's counsel shall serve a copy of this order on any currently named defendants all parties answering after the date of this order.

SIGNED ___/___/___.

_____
District Judge

AGREED:

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*By: /s/ Andrew Bean**_____

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***Signed by permission**

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Roqui Brooks on behalf of Roger McCleary
Bar No. 13393700
rbrooks@pmmlaw.com
Envelope ID: 73727810
Filing Code Description: Non-Signed Proposed Order/Judgment
Filing Description: AGREED SCHEDULING ORDER
Status as of 3/16/2023 2:08 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Gini Romero		gromero@pmmlaw.com	3/16/2023 12:45:43 PM	SENT
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Associated Case Party: CHARITABLE DAF FUND LP

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Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	3/16/2023 12:45:43 PM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AGREED UNIFORM SCHEDULING ORDER (LEVEL 3)
(Revised August 22, 2001)

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following agreed order to control the schedule of this cause.

1. This case will be ready and is set for ~~Non-~~**Jury/Jury Trial on February 26, 2024, at 9:00 a.m.(the" Initial Trial Setting")**. Reset or continuance of the Initial Trial Setting will not alter any deadlines established in this Order or established by the Texas Rules of Civil Procedure unless otherwise provided by order. If not reached as set, the case may be carried to the next week.

Trial announcements must be made in accordance with rule 3.02 Local Rules of the Civil Courts of Dallas County Texas. When no announcement is made for defendant, defendant will be presumed ready. If plaintiff fails to announce or to appear at trial, the case will be dismissed for want of prosecution in accordance with Rule 165a, Texas Rules of Civil Procedure.

2. Pretrial matters will be complete by the following dates:

a. amended pleadings asserting new causes of action or defenses .....120 days before the Initial Trial Setting
b. fact discovery closes.....105 days before the Initial Trial Setting
c. party seeking affirmative relief shall designate experts and must provide reports .....105 days before the Initial Trial Setting
d. party opposing affirmative relief shall designate experts and must provide reports .....90 days before the Initial Trial Setting
e. party seeking affirmative relief shall designation of rebuttal experts and must provide reports.....75 days before the Initial Trial Setting
f. all expert discovery closes.....45 days before the Initial Trial Setting

g. other amended pleadings .....45 days before the Initial Trial Setting

The parties may by written agreement alter these deadlines. Amended pleadings responsive to timely filed pleadings under this schedule may be filed after the deadline for amended pleadings if filed within two (2) weeks after the pleading to which they respond. Except by agreement of the party, leave of court, or where expressly authorized by the Texas Rules of Civil Procedure, no party may obtain discovery of information subject to disclosure under Rule 194 by any other form of discovery.

3. Any objection or motion to exclude or limit expert testimony due to qualification of the expert or reliability of the opinions must be filed no later than seven (7) days after the close of expert discovery, or such objection is waived. Such motions must be heard no later than thirty (30) days prior to trial. Any motion to compel responses to discovery (other than relating to factual matters arising after the end of fact discovery) must be filed no later than seven (7) days after the close of fact discovery or such complaint is waived, except for the sanction of exclusion under Rule 193.6

4. Motions for summary judgment or other dispositive motions must be heard no later than thirty (30) days prior to trial.

5. Each side may have 75 hours of depositions and each party may have 50 interrogatories, subject to the conditions of Rule 190.3(b)(2) and (3).

6. No additional parties may be joined more than eight (8) months after the commencement of this case except on motion for leave showing good cause. This paragraph does not otherwise alter the requirements of Rule 38. The party joining an additional party shall serve a copy of this Order on the new party concurrently with the pleading joining that party.

7. The parties shall mediate this case no later than thirty (30) days before the Initial Trial Setting, unless otherwise provided by court order. Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer or corporate representative with authority to negotiate a settlement. **Unless, within 14 days of the date of this Order, the parties file and bring to the attention of the Court Coordinator a Joint Notice of Agreed Upon Substitute Mediator, the parties agree to mediate this case** Bryan Haynes **whose phone number is** 214-649-9511 **Any joint motion requesting appointment of a mediator should include a brief description of the nature of the dispute, and any novel legal, language, demographic, or other issues the parties desire to have the Court consider in appointing a mediator. The provisions contained herein regarding mediation will be strictly enforced. Parties violating the requirements of this Order will be required to show cause as to why they are in violation of same.**

8 Fourteen (14) days before the Initial Trial Setting, the parties shall exchange designations of deposition testimony to be offered in direct examination and a list of exhibits, including any demonstrative aids and affidavits, and shall exchange copies of any

exhibits not previously produced in discovery; over-designation is strongly discouraged and may be sanctioned. Except for records to be offered by way of business record affidavits, each exhibit must be identified separately and not by category or group designation. Ten (10) days before the Initial Trial Setting, the parties shall exchange in writing their objections to the opposing party's proposed exhibits, including objections under Rule 193.7, and deposition testimony. **On or before ten (10)days before the Initial Trial Setting, the attorneys in charge for all parties shall meet in person to confer on stipulations regarding the materials to be submitted to the Court under this paragraph and attempt to maximize agreement on such matters.** By 4 p.m. on the Thursday before the Initial Trial Setting, the parties shall file with the Court the materials stated in Rule 166(d)-(m), an estimate of the length of trial, designation of deposition testimony to be offered in direct examination, and any motions in limine. Failure to file such materials may result in dismissal for want of prosecution or other appropriate sanction. A courtesy copy of each party's pre-trial materials shall be delivered to the Judge's Chambers by 4 p.m. the Thursday before the trial setting.

9. A pre-trial conference shall be conducted from 8 a.m. to 9 a.m. the morning of trial on all matters the parties could not resolve during their meet and confer. If, after the meet and confer between counsel, the parties anticipate more time will be needed for a pre-trial conference, a pre-trial conference shall be scheduled the week before the trial setting.

Plaintiff/ Plaintiff's counsel shall serve a copy of this order on any currently named defendants all parties answering after the date of this order.

SIGNED 03/21/23.

District Judge

AGREED:

By: */s/ Roger L. McCleary*
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*By: /s/ Andrew Bean**
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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC

***Signed by permission**

IN THE DISTRICT COURT
OF DALLAS COUNTY
116TH JUDICIAL DISTRICT

2/21/2023

smcentire@pmmlaw.com; RMCCLEARY@PMMLAW.COM;
TCox@gibsondunn.com

NOTICE OF SUBMISSION OF SCHEDULING ORDER, OR ALTERNATIVELY DISMISSAL FOR WANT OF PROSECUTION

CAUSE N0 DC-22-10107

CHARITABLE DAF FUND LP, et al vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC, et al	In the District Court of Dallas County, Texas 116TH Judicial District

The Court will hold a scheduling conference on the date and time indicated below. ***The Court prefers that counsel submit an agreed Scheduling Order in lieu of attending the scheduling conference hearing. Upon receipt of the signed order, the hearing will be canceled.*** Scheduling conferences WILL NOT be rescheduled. The Court asks that you confer with opposing counsel, or litigant. In the event you are unable to communicate with the other side, you are required to submit your proposed scheduling order. **This hearing will be conducted by phone. Please see the call in information below:**

Dial in Number: 425-436-6373

Access Code: 590035

PLEASE USE AND SUBMIT THE ATTACHED MODIFIED UNIFORM SCHEDULING ORDER

:

IN THE EXERCISE OF THE COURT'S DISCRETION PURSUANT TO IT'S INHERENT POWER TO DISMISS CASES NOT DILIGENTLY PROSECUTED AND RULE 165A, Failure to submit a signed scheduling order, will result in the dismissal of this case on the date and time indicated below.

Scheduling Conference, or alternatively hearing for dismissal for want of prosecution: **03/22/2023 @ 8:45 a.m.** * *Trial dates may not be changed without Court approval.*

Sincerely,

/s/ Tonya Parker
TONYA PARKER, JUDGE

FILED
8/11/2023 4:17 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Martin Reyes DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
Defendant.		

DEFENDANT ALVAREZ & MARSAL'S
MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Defendant Alvarez & Marsal CRF Management, LLC ("A&M") respectfully moves this Court for an order of protection from Plaintiff's numerous interrogatories and requests for production, which are overbroad, argumentative, and harassing. A&M also respectfully moves this Court for an order abating this action, which is now moot because A&M has already given Plaintiff all of the relief to which it is entitled on its claims. Texas Rule of Civil Procedure 192.6 does not allow this type of abusive discovery, and case law confirms that litigants should be protected from abusive discovery like this. *See In re Alford Chevrolet–Geo*, 997 S.W.2d 173, 181 (Tex. 1999) (noting that parties may resist harassing discovery when they produce "some evidence" that a discovery request is harassing). Texas case law also confirms that a defendant need not produce discovery where the underlying litigation has been rendered moot. *See, e.g., In re Taylor*, No. 14-14-00600-CV, 2015 WL 576591, at *1 (Tex. App. Feb. 10, 2015); *In re Wells Fargo Bank*, N.A., No. 13-16-00691-CV, 2017 WL 541124, at *1 (Tex. App. Feb. 7, 2017). Accordingly, this Court should grant A&M's motion for protection and motion to abate the dispute.

I. INTRODUCTION & BACKGROUND

This is not a live dispute. Defendant A&M is the Investment Manager for the "Crusader Funds"[1] which includes the liquidating "Offshore Fund II," a Bermuda exempted mutual fund company. On August 15, 2022, Plaintiff Charitable DAF Fund, L.P. ("Plaintiff" or "DAF") filed a petition, claiming to be an investor in Offshore Fund II. Plaintiff claims it has allegedly purchased a limited partnership interest in Offshore Fund II in or about June 2016 and seeks the distributions on account of its interest that it contends were improperly withheld from Plaintiff. Notwithstanding the numerous deficiencies in the Plaintiff's Petition, A&M determined that the dispute was not worth the headache and expense of litigation and agreed to the relief that Plaintiff sought. Thus, on February 17, 2023, the Crusader Funds distributed $951,060.82 to Plaintiff, representing the entirety of distributions that had previously been withheld from Plaintiff pursuant to an arbitration panel's ruling. *See* Christopher Wells Decl. ¶ 5, see also Exhibit 1[2] (Letter dated 2/21/23) at 2-3. A&M also agreed to treat Plaintiff as a limited partner in Offshore Fund II going forward, and to include Plaintiff in all future distributions to Crusader Funds investors. *See* Wells Decl. ¶ 5. Indeed on March 29, 2023, Plaintiff received $139,101.94 as part of the most recent distribution to Crusader Funds investors. *See* Wells Decl. ¶ 6. Nevertheless, Plaintiff refused to dismiss this action, and has now issued ***forty-two requests for production and fifteen interrogatories*** on August 2, 2023 (collectively, "Discovery Requests," attached as Exhibit 2).

Plaintiff's continued pursuit of this action is part and parcel of an ongoing history of meritless, costly, and time-consuming litigation pursued by Plaintiff, its founder, James Dondero, and other entities affiliated with Dondero—often in violation of applicable court and arbitral orders

[1] The Crusader Funds include Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd. ("Offshore Fund II"), and Highland Crusader Offshore Partners, L.P.

[2] All Exhibit references herein refer to Exhibits to the Declaration of Andrew Bean filed in support of this motion unless otherwise indicated.

and for collateral purposes unrelated to the merits of the particular proceeding. For starters, an arbitration panel in *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.* concluded that Plaintiff's interest had been obtained in breach of the terms of the Joint Plan of Distribution of the Crusader Funds (the "Plan") and the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd. (the "Scheme"). In May 2019, the panel directed that Plaintiff's interest in Offshore Fund II be transferred for the benefit of the Crusader Funds, or that the Crusader Funds "extinguish those claims." Exhibit 3 at 17 (May 2019 Final Award). In August 2019 and March 2020, Plaintiff was notified that the Crusader Funds would be making distributions to investors in the Crusader Funds, but would be withholding amounts that might otherwise be distributed to Plaintiff. Plaintiff did not object or even respond to these letters. As part of a settlement in the bankruptcy of Highland Capital Management, L.P. ("Highland"), Highland—which had once been controlled by Dondero and acted as Plaintiff's agent in the wrongful acquisition of the limited partnership interest—agreed that it would not object to the Crusader Funds cancelling or extinguishing Plaintiff's interest in the Crusader Funds. *In re Highland Capital Mgmt., L.P.*, No. 19-34054, Dkt. 1090-1 (Bankr. N.D. Tex. Sept. 23, 2020). Plaintiff did not object to those settlement terms, and they were approved by the Bankruptcy Court in February 2021. Confirmation Order, *In re Highland Capital Mgmt., L.P.*, No. 19-34054, Dkt. 1943 (Bankr. N.D. Tex. Feb. 22, 2021) ("Confirmation Order") (attached as Exhibit 4).

Following further developments in the Highland bankruptcy, Dondero lost his controlling interest in Highland, and since then he and his affiliates have been on a crusade against the Highland estate and anyone associated with the bankruptcy. The bankruptcy court characterized Dondero as a "serial litigator" who is trying to "burn down the place," and issued an order requiring Dondero and his affiliates to seek leave of court before initiating certain court proceedings. *See*

Confirmation Order at 9, 56. But Dondero remains undeterred in his litigation crusade. Plaintiff, along with Dondero and various other entities, was also held in contempt by the bankruptcy court for bringing a "wholly frivolous" lawsuit in violation of two Highland bankruptcy court orders. *In re Highland Cap. Mgmt., L.P.*, No. 19-34054-SGJ11, 2021 WL 3418657, at *12, *14 (Bankr. N.D. Tex. Aug. 4, 2021), *aff'd in part, vacated in part sub nom. Charitable DAF Fund LP v. Highland Cap. Mgmt. LP*, No. 3:21-CV-01974-X, 2022 WL 4538466 (N.D. Tex. Sept. 28, 2022). The Court noted that "this is the second time in the last several weeks that the court has found Mr. Dondero to be in contempt of court." *Id.* Litigation involving Plaintiff, Dondero, and his other affiliates continues in the bankruptcy court and on various appeals. *See, e.g.*, Amended Complaint and Objection to Claims, *In re: Highland Capital Mgmt., L.P.*, Case No. 19-34054 (May 19, 2022) (attached as Exhibit 5).

Simultaneously, Dondero filed a petition in the 95th Judicial District seeking pre-suit discovery from A&M and others under Texas Rule of Civil Procedure 202. Exhibit 6 (Dondero's Verified Amended Petition to Take Deposition Before Suit and Seek Documents). Judge Monica Purdy denied that petition and dismissed Dondero's case on June 1, 2022. Exhibit 7 (June 1, 2022 Order Denying Petition to Take Deposition and Dismissing Case).

Merely two months after Dondero's Rule 202 petition was dismissed, Plaintiff commenced this case. As noted above, despite A&M thereafter making the distributions about which Plaintiff was complaining, Plaintiff refused to dismiss its action. On August 2, 2023, Plaintiff served A&M with overbroad Discovery Requests. Multiple requests for production seek electronically stored information ("ESI") from June 2016 to the present, a period of more than seven years, and require "all documents" on broad topics, such as "A&M's decision to withhold and/or refusal to distribute funds" (RFP No. 15). Exhibit 2 (Discovery Requests). The interrogatories cover similarly broad

topics such as "in general the alleged legal and factual bases" for various paragraphs in A&M's February 20, 2023 Answer (Interrogatory Nos. 9-14). This discovery is entirely unnecessary and inappropriate because Plaintiff has already received the funds it claims are owed. Rather, this overbroad and burdensome discovery is just the latest attempt by Dondero to use litigation as a tool to harass.

II. LEGAL STANDARD

A trial court has broad discretion to set the terms of discovery through a protective order. *See* Tex. R. Civ. P. 192.6(b); *In re Collins*, 286 S.W.3d 911, 918 (Tex. 2009) (noting that a trial judge may exercise discretion in the granting of a protective order and in controlling the nature and form of discovery). Among other things, a court can (1) prohibit the discovery sought in whole or in part, (2) limit the extent or subject matter of discovery, (3) order that discovery not be undertaken at the time or place specified, (4) set terms or conditions on the discovery, (5) order the results of discovery to be sealed or otherwise protected, and (6) make any other order in the interest of justice. *Id.* A party seeking a protective order must show particular, specific, and demonstrable injury by facts sufficient to justify a protective order. *Collins*, 286 S.W.3d at 918; *Blankinship v. Brown*, 399 S.W.3d 303, 312 (Tex. App.–Dallas 2013, pet. denied). For the reasons explained below, A&M has met its burden, and accordingly asks the Court to protect it from Plaintiff's interrogatories and requests for production.

"In the motion to abate, the defendant must (1) identify any impediment to the continuation of the suit, (2) identify an effective cure, and (3) ask the court to abate the suit until the defect is corrected." *Truong v. City of Houston*, 99 S.W.3d 204, 216 (Tex. App. 2002).

III. ARGUMENT

Plaintiff's overbroad Discovery Requests harass A&M for discovery in a moot dispute. These demands cannot be squared with the Texas Rules of Civil Procedure, as they seek information that cannot reasonably be calculated to lead to the discovery of admissible evidence. *See* Tex. R. Civ. P. 192.3(a). Indeed, Plaintiff's Discovery Requests are emblematic of the "unnecessary expense, harassment, [and] annoyance" the Texas Rules of Civil Procedure seek to prevent. Tex. R. Civ. P. 192.6(b).

A. The case should be abated because it is moot.

Mootness presents an impediment to Plaintiff's lawsuit and therefore abatement is appropriate. "A case becomes moot if, since the time of filing, there has ceased to exist a justiciable controversy between the parties—that is, if the issues presented are no longer 'live,' or if the parties lack a legally cognizable interest in the outcome." *Growden v. Good Shepherd Health Sys.*, 550 S.W.3d 716, 722 (Tex. App. 2018) (citations omitted). In other words, a case is moot where the plaintiff "can no longer show an actual or threatened injury on her underlying claim, and any controversy between [the parties] as to that claim has been extinguished." *Id.*

Plaintiff's lawsuit has been rendered moot by Crusader Funds' distribution of funds and recognition of Plaintiff's interest. *See* Wells Decl. Plaintiff must identify damages that could be reasonably sought through this lawsuit, which have not been already covered by Crusader Funds' actions. There are no such damages.

B. A&M should not have to answer Plaintiff's Discovery Requests due to undue burden, unnecessary expense, harassment, and annoyance.

Plaintiff's Discovery Requests are patently overbroad. As noted above, multiple requests for production seek electronically stored information ("ESI") from June 2016 to the present, a period of seven years, and require "all documents" on broad topics, such as "A&M's decision to

withhold and/or refusal to distribute funds" (RFP No. 15). Exhibit 2 (Discovery Requests). The interrogatories similarly cover broad topics such as "in general the alleged legal and factual bases" for Paragraphs in A&M's February 20, 2023 Answer. *Id.*

These Discovery Requests demand information that is neither "relevant to the subject matter of the pending action" nor "reasonably calculated to lead to the discovery of admissible evidence." Tex. R. Civ. P. 192.3(a); *see also* Tex. R. Evid. 401(b) (evidence is relevant if "the fact is of consequence in determining the action.").

A&M would be unduly burdened if it was forced to answer Plaintiff's Discovery Requests. The Texas Rules of Civil Procedure provide that a trial court "should" limit discovery if "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues." Tex. R. Civ. P. 192.4(b); *see also In re Pilgrim's Pride Corp.*, No. 10-21-00305-CV, 2022 WL 3092916, at *4 (Tex. App. Aug. 3, 2022) (citations omitted) ("Rule of Civil Procedure 192.4 imposes a proportionality standard that requires a case-by-case balancing of jurisprudential considerations."). The burden imposed by discovery requests are "far out of proportion to any benefit" where the "justification for seeking the documents is rendered moot." *In Re John Crane Inc.*, No. 01-03-00698-CV, 2003 WL 22682613, at *3 (Tex. App. Nov. 13, 2003). Here, the extreme burden on A&M far outweighs any benefit to Plaintiff, given that: (1) Plaintiff has been paid $951,060.82, representing the entirety of distributions that had been purportedly withheld; (2) Plaintiff has been recognized as a limited partner in Offshore Fund II and will receive any distributions to investors going forward; and (3) Plaintiff did indeed receive the most recent

distribution to Crusader Funds investors on March 29, 2023, in the amount of $139,101.94. *See* Wells Decl. ¶ 6).

A&M should be relieved of any obligation to produce communications or materials in response to Plaintiff's Discovery Requests. Such demands constitute an undue burden and an attempt to harass the Defendant by acquiring business information removed from the purported damages.

IV. CONCLUSION

Accordingly, A&M respectfully request that this Court grant its motion for a protective order and motion to abate the dispute.

DATED: August 11, 2023 Respectfully submitted,

/s/ John T. Cox III

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TCox@gibsondunn.com
ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of August, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT

Defendant.

DECLARATION OF CHRISTOPHER WELLS IN SUPPORT OF ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

1. My name is Christopher Wells, my date of birth is May 31, 1976, and my business address is 14850 N. Scottsdale Road Suite 390, Scottsdale, Arizona 85254. I am a Managing Director of Alvarez & Marsal CRF Management, LLC ("A&M"), which serves as the Investment Manager for certain funds collectively known as the "Crusader Funds," including Highland Crusader Fund II, Ltd. ("Offshore Fund II"). I am more than 21 years old and I am fully competent to make this declaration. All facts set forth in this Declaration are based on my personal knowledge.

2. I understand that in May 2019, the arbitration panel in *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.* directed that Charitable DAF Fund, L.P.'s interest in Offshore Fund II be transferred to the Redeemer Committee of the Crusader Funds for the benefit of the Crusader Funds, or that the interest be extinguished by the Crusader Funds.

3. Thereafter, A&M, acting as investment manager for Offshore Fund II, withheld distributions on account of Charitable DAF Fund, L.P.'s interest, pursuant to the arbitration panel's

order. A&M gave notice of such withholding, and heard no timely objection from Charitable DAF Fund, L.P.

4. The entirety of distributions that had been withheld from Charitable DAF Fund, L.P. totaled $951,060.82.

5. On February 17, 2023, the Crusader Funds distributed $951,060.82 to Charitable DAF Fund, L.P., and thereafter advised Charitable DAF Fund, L.P. that it would be treated as an equity holder in Offshore Fund II going forward, and would be included in all future distributions to Crusader Funds investors.

6. On March 29, 2023, the Crusader Funds distributed $139,101.94 to Charitable DAF Fund, L.P. as part of the most recent distributions to Crusader Funds investors.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Maricopa County, State of Arizona on August 10, 2023.

/s/ _____
Christopher Wells

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT

Defendant.

DECLARATION OF ANDREW H. BEAN IN SUPPORT OF ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

1. My name is Andrew Bean, my date of birth is December 13, 1987. I am an associate attorney at Gibson Dunn & Crutcher LLP ("Gibson Dunn"), and my business address is 2001 Ross Ave, Dallas, Texas, 75201. I am more than 21 years old and I am fully competent to make this declaration. All facts set forth in this Declaration are based on my personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of the February 21, 2023 letter from Marshall R. King to Parsons McEntire McCleary LLP.

3. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff Charitable DAF Fund, L.P's Interrogatories and Requests for Production to Defendant Alvarez & Marsal, CRF Management, LLC, dated August 2, 2023.

4. Attached hereto as Exhibit 3 is a true and correct copy of the April 29, 2019 Arbitration Final Award.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief, dated February 22, 2021.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Amended Complaint and Objection to Claims, In re: Highland Capital Mgmt., L.P., Case No. 19-34054, dated May 19, 2022.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Verified Amended Petition to Take Deposition Before Suit and Seek documents, In re: James Dondero, Case No. DC21-09534, dated May 2, 2022.

8. Attached hereto as Exhibit 7 is a true and correct copy of the Order Denying Petition to Take Deposition and Dismissing Case, Case No. DC21-09534, dated June 1, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on August 11, 2023.

/s/ Andrew H. Bean
Andrew H. Bean

Exhibit 1

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

Marshall R. King
Direct: +1 212.351.3905
Fax: +1 212.351.5243
MKing@gibsondunn.com

Client: 05701-00003

February 21, 2023

VIA E-MAIL

Sawnie A. McEntire
Parsons McEntire McCleary PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201

Roger L. McCleary
Parsons McEntire McCleary PLLC
One Riverway, Suite 1800
Houston, TX 77056

Re: *Charitable DAF Fund, L.P. v. Alvarez & Marsal CRF Management, LLC*

Dear Messrs. McEntire and McCleary:

I write on behalf of Alvarez & Marsal CRF Management, LLC ("A&M"), as Investment Manager for the "Crusader Funds."[1]

Your client, Charitable DAF Fund, L.P. ("DAF"), claims to be an investor in Offshore Fund II, having allegedly purchased a limited partnership interest in or about June 2016. However, as you know, the arbitration panel in *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.* concluded that DAF's interest had been obtained in breach of the terms of the Joint Plan of Distribution of the Crusader Funds (the "Plan") and the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd. (the "Scheme"). The panel ordered that DAF's interest be transferred to the Redeemer Committee for the benefit of the Crusader Funds, or that the interest be extinguished by the Crusader Funds.

By letters dated August 8, 2019 and March 2, 2020, we provided notice to DAF, at the address that DAF had on file with the Crusader Funds, that the Crusader Funds would be making distributions to investors in the Crusader Funds, but would be withholding amounts that might otherwise be distributed to DAF. We further advised that the Crusader Funds reserved the right to extinguish DAF's interest, without further notice. DAF did not object or even respond to these letters.

[1] The Crusader Funds include Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd. ("Offshore Fund II"), and Highland Crusader Offshore Partners, L.P.

Thereafter, as part of a settlement in the bankruptcy of Highland Capital Management, L.P. ("Highland"), Highland—which had acted as DAF's agent in the acquisition of the limited partnership interest—agreed that it would not object to the Crusader Funds cancelling or extinguishing DAF's interest in the Crusader Funds. DAF did not object to those settlement terms, and they were approved by the Bankruptcy Court.

The first we heard from DAF about these issues was in July 2021, when a law firm other than your own began raising questions. Your firm first appeared in November 2021.

Notwithstanding the ruling of the arbitration panel, you and we engaged in productive settlement discussions, which included A&M making several settlement offers. Those discussions were still underway when DAF, for some reason, decided to file suit. Your Petition is deficient in numerous respects, including by completely ignoring the terms of the Plan and the Scheme, which govern DAF's rights with respect to its limited partnership interests.

Again, notwithstanding the deficiencies of DAF's Petition, and the ruling of the arbitration panel, A&M made several further settlement offers, which included offering to have the Crusader Funds pay to DAF all distributions that had been withheld from DAF, to recognize DAF's limited partnership in Offshore Fund II going forward, and additionally to pay DAF's attorneys' fees up to $60,000. In essence, A&M agreed to all of the relief that DAF could possibly hope to obtain by pursuit of its Petition, plus reimbursement of attorneys' fees—all of this despite the fact that DAF acquired its interest in breach of the Plan and the Scheme.

Nevertheless, DAF declined A&M's offers, insisting that A&M additionally agree to make available a witness for an interview relating to A&M's communications with James Seery, Highland's Chief Executive Officer and Claimant Trustee of the Claimant Trust established by Highland's plan of reorganization, concerning the Redeemer Committee's and the Crusader Funds' claims against Highland and the sale of those claims. DAF's request for such an interview followed the denial of James Dondero's petition seeking pre-suit discovery from A&M on the same topics.

Given these events, it is apparent that DAF's Petition is not being pursued in good faith. Instead, it appears that DAF is simply trying to harass A&M, cause needless expense to the Crusader Funds (to the detriment of the Crusader Funds' other investors), and obtain discovery for purposes of some other proceeding and Mr. Dondero's ongoing feud with James Seery.

As you know, on February 17, 2023, the Crusader Funds distributed $951,060.82 to DAF, representing the entirety of distributions that had been withheld from DAF pursuant to the

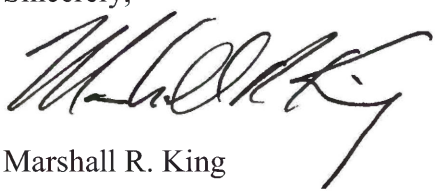
GIBSON DUNN

arbitration panel's ruling. The Crusader Funds also intend to treat DAF as a limited partner in Offshore Fund II going forward, and to include DAF in all future distributions to Crusader Funds investors. Put differently, the Crusader Funds have decided not to extinguish DAF's interest, despite the arbitration ruling and DAF's violation of the Plan and the Scheme in its acquisition of such interest.

Accordingly, DAF's Petition is effectively moot, and we urge you to dismiss the Petition. Failing that, we will have no hesitation in bringing your client's bad faith conduct to the attention of the Court and seeking appropriate sanctions.

A&M reserves all of its rights and remedies.

Sincerely,



Marshall R. King

Exhibit 2

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC	§	
	§	
	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF CHARITABLE DAF FUND, L.P.'S INTERROGATORIES AND REQUESTS FOR PRODUCTION TO DEFENDANT ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

TO: Defendant Alvarez & Marsal, CRF Management, LLC, by and through its attorneys of record, John T. Cox III and Andrew Bean, GIBSON, DUNN & CRUTCHER LLP, 2001 Ross Avenue, Suite 2100, Dallas, TX 75201-2923

Plaintiff, Charitable DAF Fund, L.P. ("DAF"), serves these Interrogatories and Requests for Production (collectively the "Requests") on Defendant, Alvarez & Marsal, CRF Management, LLC ("A&M") as authorized by Rules 196 and 197 of the Texas Rules of Civil Procedure. A&M is requested to respond fully and in writing, along with producing all responsive, non-privileged documents, within thirty (30) days of service.

INSTRUCTIONS

1. Each Request shall be construed and answered separately and shall not be combined for the purpose of supplying a common response thereto. Each answer shall set forth verbatim the Request to which it responds. The answer to a Request shall not be supplied by referring to the answer to another Request unless the Request referred to supplies a complete and accurate answer to the Request being answered. The specificity of any Request shall not be construed or understood as limiting the generality or breadth of any other Request.

2. If you object to any part of a Request, state with particularity both the grounds and reasons for your objection, specify the portion(s) of the request to which you object, and answer so much of the Request as is not objectionable.

3. These Requests require you to produce Documents and Communications and/or to provide information in your physical possession, custody, or control, as well as in the possession, custody, or control of any spouse, agents, employees, officers, directors, shareholders, partners, general partners, legal representatives, predecessors, successors, children, heirs, and assigns. All requested Documents, Communications, or information not subject to a valid objection that is known by, possessed by, or available to you that appears in your records must be provided.

4. In addition to original and final versions of Documents and Communications, each Request includes all drafts, alterations, modifications, changes,

and amendments of such Documents and Communications, as well as copies non-identical to the original in any respect, including any copies bearing non-identical markings or notations of any kind.

5. If any requested Document, Communication, or information was, but no longer is, in A&M's possession, state whether a copy thereof is in the possession, custody, or control of some other person, agency, entity, partnership, or corporation, and why such Document, Communication, or information is no longer available, who is responsible for the loss, and the circumstances under which the loss occurred.

6. Responsive Documents and Communications are to be clearly designated so as to reflect their source, owner, and/or custodian.

7. Each requested Document and Communication shall be produced in its entirety with an affixed bates stamp. If an identical copy appears in more than one person's files, each of the copies shall be produced or the extracted metadata shall reflect the source, owner, and/or custodian for all persons with identical copies. If a Document or Communication responsive to any Request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why the production of the remainder is not possible.

8. In the event you do not answer any Request, in whole or in part, on the basis of an assertion of attorney-client privilege, the work-product doctrine, or any other claim of privilege or immunity, answer each Request to the extent consistent with the

privilege or immunity asserted and provide information sufficient to permit the Court to make a determination of whether a proper basis exists for the assertion of privilege or immunity. For all documents withheld on the basis of privilege, state the basis for your claim with specificity that such a document need not be disclosed to permit the Court to determine the legal sufficiency of your objection or position, and, for each such document, identify:

a. whether the document contains a request for legal advice and, if so, identify the person who requested the legal advice;

b. whether the document contains advice as to the meaning or application of particular laws or rules in response to such request;

c. any further information to explain and support the claim of privilege and to permit the adjudication of the propriety of that claim;

d. the nature of the privilege (including work product) that is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and the type of document, e.g. letter or memorandum; the general subject of the document; and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, and other recipient of the document, and, where not apparent, the relationship of the author, addressee, and other recipient to each other.

9. If there are no Documents or Communications responsive to a particular Request, please provide a written response so stating.

10. If you find the meaning of any term in any Request unclear, without waiver of DAF's rights to seek a full and complete response to the Request, you shall assume a

reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

11. DAF specifically reserves the right to serve additional Requests.

12. These Requests are continuing in nature as to require supplemental responses in accordance with the Texas Rules of Civil Procedure if and when additional Documents, Communications, or information responsive to any of the Requests herein is/are obtained, discovered, or located between the time of responding to these Requests and the final disposition of this action.

RULES OF CONSTRUCTION

Along with the rules of construction and instructions provided under applicable discovery rules and law, these rules of construction apply to the following written discovery:

1. Unless specifically stated otherwise in a particular Request, the relevant time period is June 30, 2016, to Present.

2. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

3. The terms "any," "all," and "each" shall each be construed as encompassing any and all.

4. The use of the singular form of any word shall be construed to include the plural and vice versa.

5. All phrases following the terms "including" are intended to illustrate the kinds of information responsive to each Request, and shall be construed as "including, but not limited to." Such examples are not intended to be exhaustive of the information sought and shall not in any way be read to limit the scope of a Request.

6. The use of a verb in any tense, voice, or mood shall be construed as the use of the verb in all other tenses, voices, or moods, as necessary to bring within the scope of the Request all Documents and Communications that might otherwise be construed to be outside of its scope.

7. These Requests specifically contemplate the production of all electronic or computer data, including associated metadata.

8. References to an entity shall include past and present officers, directors, employees, agents, affiliates, subsidiaries, owners, partners, general partners, shareholders, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, and/or any other person(s) acting on behalf of such entity.

DEFINITIONS

For the purposes of these Requests, the following terms shall have the following definitions and meanings, unless expressly provided otherwise. The definition and meaning of each reference below to an entity shall automatically include the entity's past

and present officers, directors, employees, agents, affiliates, subsidiaries, owners, partners, general partners, shareholders, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, and/or any other person(s) acting on behalf of such entity:

A&M, *you*, and *your*. The terms "A&M", "you" and "your" shall mean and refer to Alvarez & Marsal, CRF Management, LLC and its managing and other members, officers, agents, employees, representatives, attorneys, partners, predecessors, successors, assigns, and anyone else acting on A&M's behalf, now or at any time relevant to the response.

Any and *all or any and/or all*. The terms "any" and "all" and "and and/or all" should be understood and applied in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

Communication(s). The term "communication(s)" shall mean any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, email, text message, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other

reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" shall mean reflecting, regarding, relating to, referring to, describing, evidencing, supporting, forming any basis for, or constituting.

Crusader Fund. The term "Crusader Fund" is defined as the Highland Crusader Fund II, Ltd., which is a subject of this Lawsuit and in which DAF purchased participating shares in or around June of 2016.

Document or Documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the Texas Rules of Civil Procedure, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data

sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms "Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) and/or all related metadata with respect to all such Documents/ESI.

Identify or *identity(ies)* (person(s)). The terms "identify" or "identity(ies)," when referring to a person, shall mean to provide the person's full first and last name; last known address, telephone number, and e-mail address; and last known place of employment.

Identify or identity(ies) (document(s)). The terms "identify" or "identity(ies)," when referring to a document, shall mean to provide the document's name; the date of the document's creation; the form of the document (e.g., letter, e-mail message, etc.); a

description of the substance of the document; and the identity of the person who currently possesses the document (and, if the document no longer exists, an explanation for why it no longer exists and the date on which it ceased to exist).

Lawsuit. The term "Lawsuit" shall mean and refer to the above-captioned lawsuit styled: *Charitable DAF Fund, L.P. v. Alvarez & Marsal, CRF Management, LLC*, Cause No. DC-22-10107; 116th Judicial District Court of Dallas County, Texas.

Person. The term "person" shall mean any natural person and/or any business, legal, or governmental entity or association.

Plaintiff and *Defendant*. The terms "Plaintiff" and "Defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, shall mean the party or parties, and where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

FIRST SET OF INTERROGATORIES TO A&M

INTERROGATORY NO. 1: Identify the person(s) providing the responses to these interrogatories, including all persons assisting in providing such answers and/or with whom the person(s) providing the responses consulted, interviewed, met with, or questioned in order to prepare the responses.

ANSWER:

INTERROGATORY NO. 2: Identify by name, address, and telephone number all persons who you expect to call to testify at trial (excluding rebuttal or impeachment witnesses the necessity of whose testimony cannot be reasonably anticipated before trial) or any hearing in this Lawsuit.

ANSWER:

INTERROGATORY NO. 3: Identify the total payments, for each calendar year from June 30, 2016, to the present and described by each most detailed category or description recorded, used, or otherwise recognized by A&M for the same, paid to or otherwise received by A&M, directly or indirectly, relating in any way to A&M's role as the investment manager for the Crusader Fund.

ANSWER:

INTERROGATORY NO. 4: Identify by calendar year from June 1, 2016, to the present all sums of money A&M has received, directly or indirectly, from, or in connection with, the Crusader Fund that are not properly defined as management fees.

ANSWER:

INTERROGATORY NO. 5: Identify the totals of all other payments, for each calendar year from June 1, 2016, to the present, by recipient(s) and the amount(s) for each most detailed category or description recorded, used, or otherwise recognized by A&M for the same as to each recipient, paid by, from, or on behalf of the Crusader Fund (including but not limited to from any Crusader Fund account(s)), that A&M has not included in A&M's answer to Interrogatory No. 4 above.

ANSWER:

INTERROGATORY NO. 6: Identify all financial accounts that A&M opened, maintained, controlled, supervised, and/or closed, which held any shares, funds, financial or

beneficial interest(s), or other assets of DAF at any and/or all times from June 1, 2016, to the present.

ANSWER:

INTERROGATORY NO. 7: Describe how A&M is compensated for its role as investment manager of the Crusader Fund and describe in general how such compensation fluctuates depending on the fund's size, performance, or other factors.

ANSWER:

INTERROGATORY NO. 8: Identify each distribution A&M made, caused to be made, and/or authorized from the Crusader Fund (including but not limited to from any Crusader Fund account(s)) between June 1, 2016 and the present (include the amount of the distribution, the date the distribution was made, and the recipients of the distribution).

ANSWER:

INTERROGATORY NO. 9: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, by the Partial Final Award, dated March 6, 2019, and the Final Award, dated May 9, 2019 . . ." as alleged in Paragraph 5 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 10: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel," as alleged in Paragraph 6 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 11: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, because of agreement, acquiescence, ratification or consent," as alleged in Paragraph 7 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 12: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, by, or for failure to comply with, the express terms and conditions of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., the Investment Management Agreement between Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., Highland Crusader Offshore Partners, L.P., House Hanover, LLC, Alvarez & Marsal CRF Management, LLC, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, and any other document or agreement that governs Plaintiff's ownership of any interest in the Crusader Funds," as alleged in Paragraph 8 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 13: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, because of accord and satisfaction under the terms of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds," as alleged in Paragraph 9 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 14: Describe in general the legal and factual bases allegedly supporting your claim(s) for attorneys' fees against DAF in this Lawsuit, if any, including the terms of any fee agreement between you and your attorneys.

ANSWER:

INTERROGATORY NO. 15: Identify the current value, including all components of the same, of DAF's capital account regarding the Crusader Fund.

ANSWER:

FIRST SET OF REQUESTS FOR PRODUCTION TO A&M

REQUEST FOR PRODUCTION NO. 1: Produce all account records for all financial accounts that A&M opened, maintained, controlled, supervised, and/or closed which held any shares, funds, financial or beneficial interest(s), or other assets of DAF at any and/or all times from June 1, 2016 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Produce all documents and/or recordings concerning any communications between A&M and DAF, from June 1, 2016, to the present, concerning or relating to DAF's participating shares and/or interest in the Crusader Fund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Produce all documents and/or recordings concerning any communications between Christopher Wells and DAF, from June 1, 2016 to the present, concerning DAF's participating shares and/or interest in the Crusader Fund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: Produce all documents you sent to or received from DAF from June 1, 2016, through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Produce all documents concerning fees paid to A&M, directly or indirectly, related to the Crusader Fund from June 1, 2016, through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: Produce all documents concerning any other monetary sums paid to A&M, directly or indirectly, concerning the Crusader Fund (other than those produced in response to Request No. 5 above) from June 1, 2016, through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: Produce documents sufficient to evidence that A&M is a registered investment advisor subject to the Investment Advisors Act of 1940.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: Produce all governing documents for the Crusader Fund, including any amendments thereto, in effect at any and all points from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: Produce all awards or other decisions made by any arbitration panel or any other judicial proceeding or formal authority which you claim impacts the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Produce all documents purportedly evidencing DAF's acquisition of an interest in the Crusader Fund allegedly in violation of the Joint Plan of Distribution of the Crusader Funds and/or the Scheme of Arrangement relating to Offshore Fund II.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: Produce all documents evidencing the capital account value of DAF's interest(s) in the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Produce all documents evidencing any distributions A&M made, caused to be made, and/or authorized from the Crusader Fund (including but not limited to from any Crusader Fund account(s)) between June 1, 2016 and the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Produce all documents evidencing each instance where A&M disclosed to DAF any of the distributions identified in Interrogatory No. 8.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: Produce all documents purportedly evidencing any notice provided by A&M to DAF regarding A&M's intent to withhold distributions from DAF relating to the Crusader Fund between June 1, 2016, and the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Produce all documents concerning A&M's decision to withhold and/or refusal to distribute funds proportional to DAF's interest in the Crusader Fund to DAF between June 1, 2016, and the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: Produce all documents concerning A&M's decision to distribute $951,060.82 to DAF on February 17, 2023.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: Produce all documents referring, forming any basis for, or otherwise relating to A&M's decision to treat DAF as an equity holder in the Crusader Fund and to include DAF in any future distributions as reflected in the February 21, 2023 Letter from Gibson, Dunn & Crutcher LLP to Parsons McEntire McCleary PLLC (the "February 21 Letter").

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: Produce all documents referring, forming any basis for, or otherwise purportedly supporting your claim that DAF's interest(s) in the Crusader Fund had been extinguished in 2019 or 2020 as reflected in the February 21 Letter.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19: Produce a true and accurate copy of the Investment Management Agreement between the Crusader funds, House Hanover, LLC, A&M, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, dated August 4, 2016, as well as any amendments thereto.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, by the Partial Final Award, dated March 6, 2019, and the Final Award, dated May 9, 2019 . . ." as alleged in Paragraph 5 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, by the

doctrines of res judicata and collateral estoppel" as alleged in Paragraph 6 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, because of agreement, acquiescence, ratification or consent" as alleged in Paragraph 7 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, by, or for failure to comply with, the express terms and conditions of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., the Investment Management Agreement between Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., Highland Crusader Offshore Partners, L.P., House Hanover, LLC, Alvarez & Marsal CRF Management, LLC, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, and any other document or agreement that governs Plaintiff's ownership of any interest in the Crusader Funds" as alleged in Paragraph 8 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, because of accord and satisfaction under the terms of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds" as alleged in Paragraph 9 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, because A&M's alleged obligation, if any, have been fulfilled and discharged" as alleged in Paragraph 10 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, by the doctrine of waiver" as alleged in Paragraph 12 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, based on the doctrine of unclean hands" as alleged in Paragraph 13 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28: Produce all documents which form any basis for your claim for attorneys' fees against DAF.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29: Produce all documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding issuance of one or more distributions to DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 30: Produce all documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding withholding one or more distributions to DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31: Produce all documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding issuance of one or more distributions to shareholders and/or limited partners other than DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32: Produce all documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding withholding any distributions to shareholders and/or limited partners other than DAF in connection with Crusader Fund at any time(s) from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33: Produce all documents accounting for or identifying any and/or all distributions from the Crusader Fund from June 1, 2016,to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34: Produce all documents showing the proportion of DAF's interest in all distributions from the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 35: Produce all documents accounting for or identifying any and/or all distributions from the Crusader Fund withheld from DAF from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36: Produce all documents accounting for or identifying any and/or all fees earned, and expenses incurred, by A&M related to the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 37: Produce all documents accounting for or identifying all monetary sums paid to A&M, directly or indirectly, related to the Crusader Fund from June 1, 2016, to the present, other than those reflected in any accounting produced by A&M in response to Request No. 36 above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 38: Produce all documents concerning any third-party financial audits concerning the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 39: Produce all documents concerning any internal financial audits concerning the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 40: Produce all documents concerning any analyses, from June 1, 2016, to the present, of the performance and/or valuation of the underlying assets held by the Crusader Fund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 41: Produce all documents concerning any analyses from June 1, 2016, to the present, of the performance and/or valuation of the Crusader Fund overall.

RESPONSE:

REQUEST FOR PRODUCTION NO. 42: Produce all documents you may introduce as exhibits at trial in this Lawsuit.

RESPONSE:

Respectfully submitted,

/s/ *Roger L. McCleary*
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Counsel for Plaintiff Charitable DAF Fund, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2023, a true and correct copy of this instrument was served on Defendant's counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *Roger L. McCleary*
Roger L. McCleary

3125360.6

Exhibit 3

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal

REDEEMER COMMITTEE OF THE
HIGHLAND CRUSADER FUND,

Claimant,

v. Case No. 01-16-0002-6927

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Respondent.

FINAL AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with Section 9.03 of the Joint Plan of Distribution, and the Scheme of Arrangement, both entered into between the above-named parties and adopted in July 2011, and having been duly sworn, and having duly heard the proofs and allegations of the parties, do hereby, AWARD, as follows:

A. On March 6, 2019, we issued a Partial Final Award, finding Respondent Highland Capital Management, L.P. ("Respondent") liable in a number of respects and awarding damages, interest, attorneys' fees, and costs to Claimant Redeemer Committee of the Highland Crusader Fund ("Claimant"), as described, in relevant part, below. We "le[ft] the hearing open until all issues set forth ... have been agreed upon by the Parties or decided by the Tribunal."

B. In response to an email from Claimant, dated March 7, 2019, seeking clarification on an apparent omission from the Partial Final Award, we issued a Disposition of Application for Modification of Award dated March 14, 2019 ("Modification of Award").[1]

C. This Final Award incorporates the Partial Final Award and the Modification of Award (together, the "Partial Award"). We re-adopt all prior findings and conclusions of the Partial Award, except as specifically modified hereinafter.

D. We have before us the following:

---

[1] The Modification of Award referred to Rule R-46 of the AAA Commercial Arbitration Rules, instead of Rule R-50, as the basis for the modification of a clerical error, relying upon the predecessor version of Rule R-50. The substantive text of old Rule R-46 and present Rule R-50 are the same.

a. Respondent's Memorandum, dated March 17, 2019, requesting that (1) the Panel withdraw its Modification of Award entered on March 16, 2019; (2) cease any further attempts to award additional damages, attorneys' fees, or costs that are not expressly set forth in the Partial Award; and (3) reconfirm that the hearing and all evidence is closed and the Panel is not empowered to take any further action beyond the issuance of its Partial Award ("Respondent's March 17 Memorandum").

b. Claimant's Submission Regarding Fees and Costs, dated March 21, 2019, made pursuant to Rules R-28, R-47, R-53, R-54, and R-55, AAA Commercial Arbitration Rules, seeking an award of $11,865,181.28 in attorneys' fees and costs, including Claimant's attorneys' fees, AAA administrative fees, arbitration expenses, fees incurred by A&M, expert fees, and Panel compensation paid by the Respondent Highland on behalf of the Committee in this arbitration ("Claimant's Fee Submission").

c. Claimant's Application, dated March 25, 2019, made pursuant to Rule 50, AAA Commercial Arbitration Rules, to modify the Partial Award, issued by this Panel on March 6, 2019 (Claimant's March 25 Application").

d. Claimant's and Respondent's Joint Submission on Damages dated April 5, 2019, in which the Parties agreed on the mathematical calculation of the amount of damages and interest contained in the Partial Award and Modification of Award, subject to Highland's objections to the inclusion of any damages awards that were not specified in the Partial Award and subject to objections on two specific issues: (1) whether the Eames residual LP interests would be extinguished; and (2) whether prejudgment interest awarded by the Panel will continue to run after March 6, 2019 until the earlier of the date the amount awarded is paid to the Committee for the benefit of the Fund, or the date on which a Final Judgment is issued on the Award ("Joint Submission").

e. Respondent's Memorandum dated April 5, 2019 opposing the motion to modify the Partial Award; and opposing any award for damages, attorneys' fees, or costs ("Respondent's April 5 Memorandum").

f. Claimant's Memorandum dated April 5, 2019 arguing that (1) the Panel should award further damages in connection with the Barclays claim measured by the Fund's loss of the residual value of the Eames LP interests, either by extinguishing the former Barclays LP interests, or alternatively, by awarding an appropriate amount of damages to compensate the Fund for loss of the value of those interests, which the Committee puts at $11,589,474; and (2) the Panel should award prejudgment interest through the date the Award is paid or final judgment is entered ("Claimant's April 5 Memorandum").

g. On April 10, 2019, Respondent sought leave, which we granted on consent, to file an additional Memorandum on two issues raised by Claimant in its April 5

Memorandum, namely, that Claimant adds a new and improper request that interest after March 6, 2019 be compound, and not simple, interest by applying an additional 9% statutory interest to both (a) the damages awarded and (b) the interest accrued through March 6, 2019; and that Claimant has provided a new and improper damages calculation relating to the extinguishment of the Eames LP interests.

h. Having reopened the record on March 6, 2019, for additional submissions, as described above, we deem the record closed as of April 10, 2019.

E. Issues

a. Fees and costs

1. In the Partial Award, we evaluated the competing claims made by Claimant and Respondent regarding an award of fees, which both sides had sought in their pleadings. As we noted in the Partial Award, ¶VI.A, 52, AAA Commercial Arbitration Rule R-47 (d)(ii) authorizes the Arbitrator to award attorneys' fees if, as here, "all parties have requested such an award . . . " "[M]utual demands for counsel fees in an arbitration proceeding constitute, in effect, an agreement to submit the issue to arbitration, with the resultant award being valid and enforceable." *R.F. Lafferty & Co., Inc. v. Winter*, 161 A.D.3d 535, 536 (1st Dep't 2018) (internal quotation marks and citations omitted); *In re U.S. Offshore, Inc. and Seabulk Offshore Ltd.*, 753 F. Supp. 86, 92 (S.D.N.Y. 1990) ("If both parties sought attorney's fees, . . . then both parties agreed *pro tanto* to submit that issue to arbitration, and the arbitrators had jurisdiction to consider that issue and to award them.")."

2. During closing oral arguments, Respondent did not mention its own request for an award of fees, but "*acknowledge[d] the Tribunal's discretion* to order an award of attorneys' fees..." Indeed, Respondent made oral and written closing arguments that conceded that it was "*not disputing the discretion that the Panel has* [to award fees]." Tr. 13 444:2-3 (emphasis added). In its closing slides, Respondent also urged that "The Panel *should exercise its discretion in applying the American Rule*." Respondent Closing Slides at 261 (emphasis added).

3. Respondent also argued that denying the Claimant's request for attorneys' fees would be consistent with Section 9.02 of the Plan which provides that "each of the Crusader Funds retains obligations it has to pay . . . legal fees." Second, Respondent urged that the only basis upon which Claimant is seeking an award is that Respondent allegedly engaged in bad faith and vexatious conduct.

4. Respondent now chooses to oppose the grant of fees on grounds distinctly different from those set forth above. It belatedly argues an alleged lack of proof and the Panel's being *functus officio* to award fees.

    1. Respondent argues that the Panel "found that the evidence in the record was insufficient to determine many of the Committee's claims for damages, as well as its claims for costs and fees." Resp. April 5 Mem. 14.

    2. But that is incorrect; we did not find any insufficiency; instead, with no objection, we adopted a well-recognized method of dealing with attorneys' fees and costs by deciding entitlement before amount. See *Franco v. Dweck*, 87 N.Y.S.3d 5 (2018) ("Contrary to respondents' contention, the final award did not run afoul of the doctrine of *functus officio*, which precludes an arbitrator from altering in substance a prior award (see *Matter of Wolff & Munier [Diesel Constr. Co.]*, 41 A.D.2d 618, 340 N.Y.S.2d 455 [1st Dept. 1973]). As the partial final award *expressly reserved* the issue of attorneys' fees, it cannot bar a *subsequent* award of those fees (see *Shimon v. Silberman*, 26 Misc.3d 910, 914–915, 891 N.Y.S.2d 891 [Sup. Ct., Kings County 2009])."

5. Accordingly, we reject Respondent's new positions. From at least the time the pre-hearing briefs, witness lists, and list of exhibits were mutually filed, it was clear that whichever side that was going to seek attorneys' fees if it prevailed was reserving on the specific rates and amounts of legal fees, as well as costs and expenses, many of which had not yet been incurred. To do otherwise would be a waste of resources. Not once did Respondent ever raise the question of proof regarding attorneys' fees and costs; by its silence and conduct, Respondent consented to the process regarding proof of attorneys' fees that the Panel was following, see CCA Guide to Best Practices in Commercial Arbitration (3d edition), 246.

6. Second, we explicitly denominated the award of March 6 as a "Partial Final Award," making clear to the Parties that the arbitral proceeding was still ongoing. We also explicitly left the hearing open so that the Parties could meet and confer or make submissions, including providing additional evidence, "until *all issues* set forth ... have been agreed upon by the Parties or decided by the Tribunal." Under these circumstances, the doctrine of *functus officio* does not apply. *Kennecott Utah Copper Corp. V. Becker, 186 F.3d 1261, 1270-71 & n.4* (10th Cir. 1999) (*Functus*

officio provides that, "once an arbitrator has issued a *final* award and thus discharged his or her office, that arbitrator lacks any continuing power to revise the award or issue a new one.")(emphasis added).

i. Accordingly, we turn to an examination of the application for attorneys' fees and costs, sought by Claimant:

a. Claimant seeks the following in fees and costs:
i. Jenner & Block Fees - $9,278,248.99
1. In support of its fee application, Claimant has provided detailed time records, billing records, and a declaration of Andrew Vail, a partner of Jenner & Block, that establishes that records were maintained on a contemporaneous basis, that time billed on duplicative, inefficient, or extraneous to the arbitral proceeding was excluded from the application, and that hourly rates, and a fixed-fee discount, where applicable, were discounted by 15%. Vail Declaration ¶¶13-18. The hourly rates are shown to be comparable to rates charged by other similar firms and consistent with prevailing market rates for attorneys of similar high levels of expertise and experience. We note that Respondent does not object to the amount sought, except on the bases previously discussed. We find the request for legal fees to be reasonable, especially given the complex factual and legal setting, and grant Claimant's application.

ii. FTI Expert Fees - $1,274,853.26; and A&M Arbitration Fees - $655,160.00
1. In support of the FTI fees, Claimant submitted a declaration, with supporting exhibits, of Mr. Vail, who affirmed that the fees reflected "services that were necessary for the Committee to prosecute its claims against [Respondent] and to defend against [Respondent's] counterclaims, and ... the amounts charged for such services were reasonable given the necessity of those services." Vail Declaration ¶26.

2. In support of the A&M Arbitration Fees, Claimant has provided the declaration of Steven Varner, a Managing Director of A&M, who affirms that A&M maintained billing records on a contemporaneous basis for its services throughout the course of this arbitration, but did not keep detailed descriptions of its billed time for specific matters within that engagement. He further affirmed that he and another managing director compiled a "conservative estimate of the time that A&M personnel spent on matters that were specifically required in connection with HCMLP's failure to timely provide A&M with books and records relating to the Fund." That work totaled approximately $655,160.00, after discounts were applied to their normal billing rates. Varner Declaration ¶¶6, 7, and 10.

3. Claimant is not seeking recovery for over $140,000 in attorneys' fees and costs for A&M's counsel to pursue information from Cornerstone pursuant to Del. Code Ann. tit. 8 § 220. Varner Declaration ¶8.

4. Respondent principally opposes the fees of FTI and A&M on the grounds that "while the AAA Rules permit the award of certain expenses (e.g. administrative costs and Panel compensation), they are much more restrictive when it comes to witness costs for the parties. In fact, Rule 54 expressly divides expenses into two categories: (i) witness expenses—which are to be borne by the party presenting the witness; and (ii) '[a]ll other expenses'—which may be apportioned by the arbitrator(s)."

5. While acknowledging some dispute among the courts as to whether Rule R-54 permits a prevailing party to recover its expert witness fees, Claimant urges that the weight of authority provides that both consulting and testifying witness fees are recoverable under the AAA's rules, citing *Dealer Comp.*

Servs., Inc. v. Hammonasset Ford Lincoln-Mercury, Inc., 2008 WL 5378065, at *2, *4 (S.D. Tex. Dec. 22, 2008) (confirming final arbitration award that included expert witness fees); *In re Pos'tive Produc, Inc. v Thermal C/M Services, Inc.*, 2011 WL 13220365, at *4 (N.Y. Sup. Ct. Nov. 18, 2011) (confirming award that included "expert fees and costs"); and *Cardno Int'l Pty, Ltd. v. Merino*, 2017 WL 6034172 (S.D. Fla. Oct. 30, 2017).

6. Rule 47(a) gives the Tribunal the power to "grant any remedy or relief that the arbitrator deems *just and equitable* and within the scope of the agreement of the parties…", while Rule 47(c) provides that "In the final award, the arbitrator *shall* assess the fees, expenses, and compensation provided in Sections R-53, R-54, and R-55. The arbitrator *may apportion* such fees, expenses, and compensation among the parties in such amounts *as the arbitrator determines is appropriate*." (Emphasis added.) Parsing these sections in conjunction with R-54 leads us to conclude that we have the power to award the expenses of the arbitration, including expert fees, as we deem just, equitable, and appropriate. *White Springs Agric. Chemicals, Inc. v. Glawson Investments Corp.*, No. 3:07-CV-752-J-25JRK, 2010 WL 11507082, at *4 (M.D. Fla. Sept. 13, 2010) (confirming award where tribunal awarded prevailing party its expert fees), *aff'd*, 660 F.3d 1277 (11th Cir. 2011).

7. Under the complex circumstances presented here, we find that the experts were essential to the prosecution of the Claimant's case and that their services, and consequent fees, were a necessary obligation the Claimant was bound to its members to undertake in its pursuit of the claims against Respondent.

8. We note, specifically with respect to the A&M fees, that a large portion of the fees appear to relate to "time spent organizing the tens of thousands of individual page PDF files that HCMLP provided as books and records instead of complete documents." Varner Declaration ¶7.

9. From our observations at the hearing and our review of the reported rates and fees of FTI and A&M, we conclude that such fees were fair and reasonable and we find that it would be "just and equitable" and "appropriate" relief to award Claimant all of the expert fees it seeks, and we do so.

iii. Respondent does not object to the following categories of fees sought by Claimant:

1. AAA Administrative Costs - $64,750.00;
2. Court Reporter Hr'g Costs - $114,697.77;
3. Court Reporter Dep. Costs - $28,890.04; and
4. AAA Panel Compensation - $448,581.22 (to date).

b. Accordingly, in our discretion, we award Claimant the total sought in fees, costs, and expenses, as detailed and updated in section F. below.

b. Claimant's Motion for Modification of the Partial Final Award

i. On March 25, 2019, Claimant moved, pursuant to AAA Rule 50, to modify the Partial Final Award in several respects.

1. First, with respect to the Partial Final Award regarding the finding of liability of Respondent with respect to the Barclays LP interests, Claimant moved to correct a clerical error that resulted in the omission of a Barclays damages paragraph from the Partial Final Award by modifying that Award to include the paragraph set forth in the Panel's March 14, 2019 Modification of Award.

2. Second, also pursuant to Rule 50, Claimant moved that the Panel modify the award to address other clerical, typographical, and computational errors in the Partial Final Award.

3. AAA Rule 50 provides in relevant part, as follows: "R-50. Modification of Award. Within 20 calendar days after the

transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto."

4. With respect to the Barclays issues, Respondent contends both that Rule 50 does not apply and that the doctrine of *functus officio* divests the Panel of the power to modify the Partial Final Award, as the Panel would be adding an "additional award" that "represents an entirely new award of $34 million in damages not included in the [Partial Final Award] ... constitut[ing] a material revision of the award."(Respondent's April 5 Memorandum at 5).

5. First, we are not adding an "additional award," as it is clear from the structure of the Partial Final Award that a paragraph was missing from the damages portion; all other findings of liability were accompanied by a section delineating the applicable damages except for the finding of a breach of the Plan and Scheme by reason of the transfer of LP interests to Eames. In other words, we found liability in two respects but omitted a paragraph regarding the remedy for Respondent's breach of the Plan and Scheme that we had found with respect to the transfer, without the required Committee approval, of Barclays' fund interests to itself through entities it controlled as part of the settlement. That omission is a classic example of a clerical error.

6. Second, although the effect of the Modification was to add additional damages to the award against the Respondent, the Panel did not "materially revise" the Partial Final Award since liability had already been found.

7. In addition, as previously discussed, the doctrine of *functus officio* "provides that, *while an arbitrator may correct clerical, typographical, or computational errors in a final award, he has no power to revisit the merits of the award after it has issued...*" *Int'l Broth. Of Elec. Workers, Local Union 824 v. Verizon Florida, LLC*, 803 F.3d 1241, 1250 (11th Cir. 2015). However, we did not issue a final award; it was explicitly labeled a Partial Final Award and was explicitly subject to being supplemented by subsequent presentations of damages analyses by both Parties.

8. Finally, there is ample case law for the proposition that the Panel is not divested of power, even when issuing a final award, from correcting clerical, typographical, or computational errors. See *Rain CII Carbon, LLC v. ConocoPhillips Co.*, 674 F.3d 469, 472-73 (5th Cir. 2012); *E. Seaboard Const. Co., Inc. v. Gray Const., Inc.*, 553 F.3d 1, 5-6 (1st Cir. 2008).

9. Respondent also argues that the Panel is barred from correcting the Partial Final Award by AAA Rule 45, which provides that "The award shall be made ... no later than 30 calendar days from the date of closing the hearing..." Respondent urges that "the parties agreed that the final award would be made on or before March 7, 2019. Accordingly, any award made after that date is untimely and beyond the scope of the Panel's authority." (Resp. April 5 Mem. at 7). But, once again, this argument ignores the explicit nature of the March 6 Partial Final Award, which "le[ft] the hearing open until all issues set forth above have been agreed upon by the Parties or decided by the Tribunal."

10. Respondent also argues that we are "reopening" the record in violation of AAA Rule 40. That rule provides, in relevant part, as follows: "The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award..."

11. We acknowledge that a communication from the AAA, dated December 12, 2018, stated that the "no additional evidence is to be submitted and that the hearings are declared closed as of December 12, 2018," but this statement was subsequently withdrawn by the previously-quoted language of the Partial Final Award where we explicitly left the record open "until all issues set forth ... have been agreed upon by the Parties or decided by the Tribunal."

12. That language is equivalent to the language that "we will reopen the hearing." *Int'l Bhd. of Teamsters Local 959 v. Horizon Lines of Alaska, LLC*, 22 F. Supp. 3d 1005, 1007–08 (D. Alaska 2014) ("Where an arbitrator specifically retains jurisdiction to resolve disputes regarding damages, that indicates that the arbitrator did not intend the award to be Final. Put simply, an arbitration award that postpones the determination of a remedy should not constitute

a final and binding award"); *Golden v. Lim*, 2016 WL 520302, at *3, *9 (E.D. Mich. Feb. 10, 2016)(holding that the arbitrator had the authority under the AAA Rules to reopen the hearing to accept further submissions on attorneys' fees).

13. Second, even if the relief sought required a reopening of the record, Rule 40 authorizes the Panel to do so "upon the application of a party," so long as doing so did not violate "the specific time agreed to by the parties in the arbitration agreement" for the making of the award. No such time period is set forth in the arbitration agreement. Finally, we interpret Rule 40 to be speaking to the instance of reopening the hearing after the final award is made, which is, again, not the situation we are in.

ii. We grant Claimant's application under AAA Rule 50[2] and formally correct the clerical error by re-adopting the additional paragraph, previously included in the Panel's March 16 Modification of Award, as follows:

1. "Insert the following paragraph at page 54, immediately after VII.B.2.f: "3. The transfer of Barclays Fund interests: By transferring, without the required Committee approval, Barclays' fund interests to itself through entities it controlled as part of the settlement, Highland breached the Plan and Scheme. We award the Committee damages measured by the benefits Highland received in excess of the amount it would have been entitled to receive from the Redeemer Trust Account because Barclays claim was settled for less than its value. In Table 11, Version 2, Claimant's damages expert, Basil Imburgia, calculated that such an amount totaled $34,661,749. RC-522. As with other amounts awarded, the Parties are to confer to determine the actual amount of damages including the 9% interest to date."

iii. Claimant also moves under Rule 50 to correct four other clerical errors, set forth below, as to which Respondent does not object. The motion is granted; the clerical errors are set forth below and corrected as noted:

1. The Partial Final Award reference to the amount of Deferred Fees improperly taken from the Fund by Highland as "$33,313,000" (Partial Final Award at 14, 54) is corrected to read "$32,313,000."

[2] We acknowledge Respondent's interesting linguistic analysis of the differences between ICDR Article 33 and AAA Rule 50, see Respondent April 5 Memorandum at 5-6, but we deny the underlying premise that what we are being asked to do is to make an "additional award as to claims, counterclaims, or setoffs presented but omitted from the award." We had found liability as to two claims involving the Barclays LP interests but omitted the damages component of one of the two liability findings. That does not constitute an award as to a claim argued by Claimant but omitted from the partial final award.

2. The Partial Final Award reference to the amount of improper Distribution Fees calculated by Mr. Imburgia as $14,452,275 (Partial Final Award at 24, 54) is corrected to read "$14,457,275."

3. The Partial Final Award reference to the amount of "$23.5/9" and "$23.5 million" (Partial Final Award at 36, 40) is corrected to read "$23,938,568."

4. The Partial Final Award reference to the incentive period as ending on "December 30, 2016" (Partial Final Award at 40, 41, 42, 55) is corrected to read "September 30, 2016."

iv. Eames

1. In the March 6 Partial Final Award, as modified herein, we found Respondent liable for having transferred the Barclays LP interests to an entity which it wholly controlled, Eames [LLC].[3] We awarded damages "measured by the benefits Highland received in excess of the amount it would have been entitled to receive from the Redeemer Trust Account because Barclays claim was settled for less than its value." We estimated — but did not find — that amount by referring to a damages calculation by Claimant's damages expert, Basil Imburgia, who "calculated that such an amount totaled $34,661,749. RC-522." "As with other amounts awarded," we directed "the Parties ... to confer to determine the actual amount of damages including the 9% interest to date."

2. The Parties have conferred and disagree as to the appropriate amount of damages for Respondent's breach of the Plan and Scheme. Claimant asserts that the appropriate amount of damages is $29,609,015, which is lower than the amount estimated by its expert and cited in the Partial Final Award, because "the value of the Barclays interests which [Respondent] now controls through Eames is expressly excluded, as it would be extinguished and that value would be spread amongst the remaining Fund investors." Claimant April 5 Memorandum, 5.

3. Thus, Claimant urges that "the Panel should either (1) award $29,609,015 and order the extinguishment of the Barclays LP interests owned and controlled by Highland, or (2) award $29,609,015 plus the current value of those LP interests, which its

[3] We found, and it is not disputed, that Highland controls Eames through an entity, Hockney, Ltd., that Highland wholly owns, and which, along with Eames, was created solely for the purpose of holding the Barclays LP interests for Highland's financial benefit. JX24; Tr. Day 8 83:21-86:13; Tr. Day 9 144:21-25, 220:18-25.)

damages expert estimates to be $11,589,474. Claimant April 5 Mem. at 10; Imburgia April 5 Declaration, ¶15.

4. Respondent urges that the "March 16 Modification contains specific language awarding the Committee a specific amount of monetary damages." However, as discussed above, that is not what the Panel did. We directed the Parties to confer on the exact amount to be awarded and to come to the Panel if they could not agree.

5. Respondent further argues that nowhere in the March 6 Partial Final Award or the March 16 Modification did the Panel award Claimant equitable relief concerning the Barclays Claim, and that had the Panel wanted to do so, it knew how to do so.

6. Respondent goes on to argue that Eames is not a party to this arbitration, and, therefore, the Panel lacks the authority to issue an award determining Eames' legal rights and obligations." Even if the Panel determines that the remaining equity interest should have been extinguished at the time of the 2012 settlement, "the fact remains that the equity interest was transferred to—and is still held by—Eames." Respondent April 5 Memorandum, 21-22.

7. Finally, in its April 10 submission, Respondent objects to the Claimant's calculation of interest on any award regarding Barclays or the other claims, to wit, Claimant's April 5 Request adds an improper request that interest after March 6, 2019 be compound, and not simple, interest by applying an additional 9% statutory interest to both (a) the damages awarded and (b) the interest accrued through March 6, 2019.

8. We disagree with Respondent's arguments except as relating to the compounding of interest sought by Claimant, which we discuss more fully below. First, when we found that "Highland breached the Plan and Scheme by transferring the LP interests to a wholly-controlled affiliate after the Committee had specifically disapproved of the transfer," we sought a remedy to deprive Respondent of the benefits that it had received illegitimately, or, in other words, to void the Eames transaction and put the parties back into the position they should have been in. Respondent may not benefit in the future by its breach of the Plan and Scheme, and the illegitimate transaction it engaged in, by forfeiting some, but receiving future, benefits through its absolute control of the entity it created, Eames.

9. Second, although Eames is not a party in this proceeding, that is irrelevant to the relief we grant. The operating party throughout all of the machinations that resulted in the transfer of Barclays' LP interests to an entity it created solely for the purpose of holding such interests was, and remains, Respondent. It is completely within its power to unwind the transfer and re-transfer those interests back to the Fund for the benefit of its investors, as we now order.

10. Regarding the appropriate amount upon which to award interest, for reasons set forth below, we reject Claimant's argument that $29,609,015 is the appropriate amount upon which to award interest, as to do so would be to violated well-settled law in New York regarding pre-judgment interest, CPLR §§5003-5004.

11. We award Claimant monetary damages against Respondent in the amount of $21,768,743, plus 9% simple prejudgment interest from the date of the breach until the earlier of either (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

12. We further order that Respondent take all necessary steps to cause the improperly taken Fund LP interests currently owned and controlled by Respondent through Eames, Ltd to be returned to Claimant within sixty (60) days from the date of transmittal of this Final Award to the Parties.

v. Interest

1. In the March 6 Partial Final Award, we awarded damages and interest through the date of that award, but then, as already referred to, directed the Parties to confer regarding all damages and interest issues. Claimant now urges that we award 9% prejudgment interest on the damage amounts awarded until the earlier of: (1) the date on which the amounts due are paid to the Committee for the benefit of the Fund; or (2) the date on which a court of competent jurisdiction enters a final judgment on the Final Award.

2. However, as Respondent points out, Claimant is, in effect, arguing for a compounding of interest upon interest. We agree. The effect of Claimant's interest calculations would violate New York law, as an award of 9% interest post-March 6 on an amount that already includes 9% interest from the breach through March 6, would amount to compound interest after March 6, 2019. "[T]he statutory

scheme [in New York] for awarding ..., where applicable, prejudgment interest, does not provide for compound interest." *520 East 81st Street Associates* v. *State of New York*, 19 AD3d 24 (2005).

3. Respondent also contends that the March 6 Partial Final Award contained specific language awarding interest "through the date of this Partial Final Award"— i.e., March 6, 2019, and that awarding interest through any other date would constitute an untimely modification of the Partial Final Award.

4. We disagree with Respondent that changing the termination date of prejudgment interest would constitute an untimely modification. Although the Partial Final Award did use the date of March 6 as a reference point for calculation of interest, that fact is not determinative of this issue. We also explicitly left open calculations of damages and interest until the Parties had fully conferred on the extremely complex financial calculations that had to be made. Among the calculations was a further calculation of interest. It is not an unlawful modification of the Partial Final Award to make, as we do here, a final award on all damages and interest issues based upon a final record.

5. Furthermore, failing to continue the running of interest through payment or entry of a final judgment could well, under the circumstances presented here, result in Fund investors with no compensation for their documented losses during that time, as well as provide an incentive to Respondent to prolong the confirmation process. We have already had occasion to comment on Respondent's tactics of putting forth witnesses who were "unworthy of belief" and an "[il]legitimate defense to many of the Committee's claims." Partial Award ¶VI(E). We will not adopt a result that would allow Respondent to impose more hardships on the Fund Investors.

6. We award Claimant 9% prejudgment simple interest on all sums awarded from the dates of each breach through the earlier of the date paid or the entry of a final judgment.

F. FINAL AWARD

a. We reaffirm the findings of fact, conclusions of law, and findings of liability as set forth in the March 6 Partial Award, and make the following awards with respect to such findings and conclusions:

i. Claimant's Application to modify the Partial Final Award is granted pursuant to the Disposition of Application for Modification dated March 14, 2019.

ii. Claimant's Motion to Correct Errors is granted, on consent; the clerical errors are set forth below and corrected as noted:

1. The Partial Final Award reference to the amount of Deferred Fees improperly taken from the Fund by Highland as "$33,313,000" (Partial Final Award at 14, 54) is corrected to read "$32,313,000."

2. The Partial Final Award reference to the amount of improper Distribution Fees calculated by Mr. Imburgia as $14,452,275 (Partial Final Award at 24, 54) is corrected to read "$14,457,275."

3. The Partial Final Award reference to the amount of "$23.5/9" and "$23.5 million" (Partial Final Award at 36, 40) is corrected to read "$23,938,568."

4. The Partial Final Award reference to the incentive period as ending on "December 30, 2016" (Partial Final Award at 40, 41, 42, 55) is corrected to read "September 30, 2016."

5. In all other respects, the Partial Final Award dated March 6, 2019 and the Disposition of Application for Modification dated March 14, 2019 are reaffirmed and incorporated by reference.

iii. For the Deferred Fee Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the Deferred Fees in the amount of $32,313,000 as directed in the Partial Final Award, plus prejudgment interest at the New York statutory rate of 9% simple applied to that sum from the dates of the breaches and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

iv. For the Distribution Fee Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the amount of $14,457,275, plus prejudgment interest at the New York statutory rate of 9% simple applied to that sum from the dates of breach and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

v. For the Taking of Plan Claims, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21,

2019, the amount of $3,106,414. The Panel further orders that LP interests identified in RC411 be transferred to Claimant for the benefit of the Crusader Fund or that Claimant cause the Fund to extinguish those claims. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple applied to $3,106,414 beginning on March 7, 2019 and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

vi. For the CLO Trades Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the amount of $449,375.00. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple, from the dates of the breaches and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

vii. For the Credit Suisse Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the amount of $2,735,411. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple on that sum, from the date of the breach and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

viii. For the UBS Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the amount of $2,041,664. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple applied to that sum from the date of breach until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

ix. For the Cornerstone Claim, the Panel awards the following relief: the Panel orders Respondent to pay to Claimant, on or before May 21, 2019, the amount of $48,070,407 for the sale of the Crusader Fund's shares in Cornerstone. The Panel also awards pre-prejudgment interest at the New York statutory rate of 9% simple on that sum from the date of breach and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award. When the amount awarded for the Cornerstone claim is paid by Respondent, Claimant shall cause the Crusader Fund to tender its Cornerstone shares to Respondent.

x. For the Barclays Claim, the Panel awards the following relief:

1. The Panel orders Respondent to pay to Claimant, on or before May 21, 2019, the amount of $21,768,743. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple applied to that sum from the date of the breach and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

2. Further to the Barclays Claim, the Panel orders that Respondent take all necessary steps to cause the improperly taken Fund LP interests currently owned and controlled by Respondent through Eames, Ltd to be transferred to Claimant for the benefit of the Crusader Fund within sixty (60) days from the date of transmittal of this Final Award to the Parties, or, alternatively, that Claimant cause the Fund to extinguish those interests.

xi. For Claimant's Application for Legal Fees, Costs, and Expenses, we award Claimant $11,351,850.06 in fees, costs, and expenses as per the following:

1. Jenner & Block Fees - $9,278,248.99;
2. FTI Expert Fees - $1,274,853.26;
3. A&M Arbitration Fees - $655,160.00;
4. Court Reporter Hr'g Costs - $114,697.77;
5. Court Reporter Dep. Costs - $28,890.04

xii. The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling US$94,693.88 and the compensation and expenses of the Tribunal totaling US$887,427.89 shall be borne by Respondent. Therefore, Respondent shall reimburse Claimant the additional sum of US$514,163.97, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

G. We have carefully considered, although not discussed in their entirety herein, all arguments made by Claimant and Respondent. Any other claims or requests for relief, made by either Party, are denied.

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, New York, USA.

Date: April 29, 2019

David M. Brodsky, Chair

John S. Martin, Jr.

Michael D. Young

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, New York, USA.

Date: April 29, 2019

David M. Brodsky, Chair

John S. Martin, Jr.

Michael D. Young

State of New York)
) SS:
County of New York)

I, David M. Brodsky, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

5/9/19
Date

David M. Brodsky, Chairperson

State of New York)
) SS:
County of New York)

On this 9 day of May, 2019, before me personally came and appeared David M. Brodsky, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public

ISAIAS MATEO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MA6274151
Qualified in New York County
My Commission Expires 12-31-2020

State of Florida)
) SS:
County of Lee)

I, John S. Martin, Jr., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

_Date April 29,2019

John S. Martin, Jr., Arbitrator

State of Florida)
) SS:
County of Lee)

On this 29th day of April, 2019, before me personally came and appeared John S. Martin, Jr., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public

ROBIN A. YEOMANS
MY COMMISSION # GG 121122
EXPIRES: November 3, 2021
Bonded Thru Notary Public Underwriters

State of New York)
) SS:
County of New York)

I, Michael D. Young, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

4/29/19
Date

Michael Young
Michael D. Young, Arbitrator

State of New York)
) SS:
County of New York)

On this 29 day of April, 2019, before me personally came and appeared Michael D. Young, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Vickie L. Johnston
Notary Public

VICKIE L. JOHNSTON
Notary Public - State of New York
No. 01JO6113096
Qualified in Queens County
My Commission Expires July 19, 20 20

Exhibit 4

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

IN T E UNITED STATES BANKRUPTC COURT
FOR T E NORT ERN DISTRICT OF TE AS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER I CONFIRMING T E FIFT AMENDED PLAN OF REORGANIZATION OF IG LAND CAPITAL MANAGEMENT, L.P. AS MODIFIED AND II GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *rder A Approving the Ade uacy of the Disclosure Statement, B Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorgani ation C stablishing Deadline for Filing b ections to Confirmation of Plan, D Approving Form of Ballots, oting Deadline and Solicitation Procedures, and Approving Form and Manner of otice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorgani ation of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *otice of I ntry of rder Approving Disclosure Statement II Hearing to Confirm and III Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor s otice of Filing of Plan Supplement for the Third Amended Plan of Reorgani ation of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor s otice of Filing of Plan Supplement for the Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor s otice of Filing of Plan Supplement for the Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *otice of Filing Plan Supplement to the Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P. with Technical Modifications t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor s otice of Filing of Plan Supplement to the Fifth Amended Plan of Reorgani ation of Highland of Highland Capital Management, L.P. As Modified* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *otice of I xecutory Contracts and nexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, II Cure Amounts, if Any, and III Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second otice of I xecutory Contracts and*

nexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, II Cure Amounts, if Any, and III Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third otice of I xecutory Contracts and nexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, II Cure Amounts, if Any, and III Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *otice of Withdrawal of Certain xecutory Contracts and nexpired Leases from List of xecutory Contracts and nexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth otice of I xecutory Contracts and nexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan II Cure Amounts, if Any, and III Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *otice of Hearing on Agreed Motion to I Assume onresidential Real Property Lease with Crescent TC Investors, L.P. pon Confirmation of Plan and II xtend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth otice of I xecutory Contracts and nexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan II Cure Amounts, if Any, and III Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor s mnibus Reply to b ections to Confirmation of the Fifth Amended Chapter Plan of Reorgani ation of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of otes on the Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of otes on the Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *otice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing);

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

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[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LA

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor s Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not our Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The ighland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational istory.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not our Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the ighland Crusader Fund the Redeemer Committee** . This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC Acis** . Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch** **UBS** . UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta E Discovery** **Meta E**"). Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not our Garden Variety Post Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

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[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with fficial Committee of nsecured Creditors Regarding the Governance of the Debtor and Procedures for peration in the rdinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the fficial Committee of nsecured Creditors Regarding Governance of the Debtor and Procedures for perations in rdinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour,* 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not our Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See rder Approving the Debtor s Motion nder Bankruptcy Code Sections a and b Authori ing Retention of James P. Seery, Jr., as Chief xecutive fficer, Chief Restructuring fficer, and Foreign Representative unc Pro Tunc to March ,* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not our Garden Variety Plan Ob ectors That Is, Those That Remain** . Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *b ection to Confirmation of the Debtor s Fifth Amended Plan of Reorgani ation* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *b ection to Confirmation of Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P. filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare pportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland pportunistic Credit Fund, Highland Small Cap uity Fund, Highland Socially Responsible uity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan TF, exPoint Advisors, L.P., exPoint Capital, Inc., exPoint Real state Strategies Fund, exPoint Strategic pportunities Fund* [Docket No. 1670];

c. A *Joinder to the b ection filed at by: exPoint Real state Finance Inc., exPoint Real state Capital, LLC, exPoint Residential Trust, Inc., exPoint Hospitality Trust, exPoint Real state Partners, LLC, exPoint Multifamily Capital Trust, Inc., ineBrook Homes Trust, Inc., exPoint Real state Advisors, L.P., exPoint Real state Advisors II, L.P., exPoint Real state Advisors III, L.P., exPoint Real state Advisors I , L.P., exPoint Real state Advisors , L.P., exPoint Real state Advisors I, L.P., exPoint Real state Advisors II, L.P., exPoint Real state Advisors III, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *exPoint Real state Partners LLC s b ection to Debtor s Fifth Amended Plan of Reorgani ation filed by exPoint Real state Partners LLC f/k/a HCR Partners LLC* [Docket No. 1673]; and

e. *exBank s b ection to Debtor s Fifth Amended Plan of Reorgani ation filed by exBank Title, Inc., exBank Securities, Inc., exBank Capital, Inc., and exBank* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **uestionability of Good Faith as to Outstanding Confirmation Ob ections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Ob ectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Bac ground Regarding Dondero Ob ecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Ob ections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *nited States Trustee s Limited b ection to Confirmation of Debtor s Fifth Amended Plan of Reorgani ation* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CL Holdco, Ltd. s Joinder to b ection to Confirmation of Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P. and Supplemental b ections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *b ection of Dallas County, City of Allen, Allen ISD, City of Richardson, and aufman County to Confirmation of the Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior mployees Limited b ection to Debtor s Fifth Amended Plan of Reorgani ation filed by Scott llington, Thomas Surgent, Frank Waterhouse, Isaac Leventon* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited b ection of Jack ang and Brad Borud to Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *nited States IRS Limited b ection to Debtor s Fifth Amended Plan of Reorgani ation* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty s b ection to Confirmation of Fifth Amended Plan of Reorgani ation* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitali ed Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **urisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **udicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P.*

as Modified filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor s otice of Filing of Plan Supplement to Fifth Amended Plan of Reorgani ation of Highland Capital Management, L.P. as Modified* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *otice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code 11 U.S.C. 1129(a)(1).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification 11 U.S.C. 1122, 1123(a)(1).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non Classified Claims 11 U.S.C. 1122, 1123 a 1 .** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes 11 U.S.C. 1123 a 2 .** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes 11 U.S.C. 1123 a 3 .** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination 11 U.S.C. 1123 a 4 .** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan 11 U.S.C. 1123 a 5 .** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorgani ed Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non Voting Equity Securities 11 U.S.C. 1123 a 6 .** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors 11 U.S.C. 1123 a 7 .** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code 11 U.S.C. 1129(a)(2).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law 11 U.S.C. 1129 a 3 .** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *rder Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses 11 U.S.C. 1129 a 4 .** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders 11 U.S.C. 1129 a 5 .** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes 11 U.S.C. 1129 a 6 .** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors 11 U.S.C. 1129 a 7 .** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes 11 U.S.C. 1129 a 8 .** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims 11 U.S.C. 1129 a 9 .** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class 11 U.S.C. 1129 a 1 .** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility 11 U.S.C. 1129 a 11 .** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees 11 U.S.C. 1129 a 12 .** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions 11 U.S.C. 1129 a 14 16 .** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination Fair and Equitable Treatment 11 U.S.C. 1129 b .** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan 11 U.S.C. 1129 c .** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose 11 U.S.C. 1129 d .** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation 11 U.S.C. 1125 e .** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge 11 U.S.C. 1141 d 3).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of urisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions 11 U.S.C. 1123 b .** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases 11 U.S.C. 1123 b 2 .** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan 11 U.S.C. 1123 b 3 .** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and In unctions 11 U.S.C. 1123 b .** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See otice of Withdrawal of James Dondero s b ection Debtor s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *uid pro uo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res udicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res udicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber* s denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber s* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber s* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **In unction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gate eeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gate eeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide In re Carroll*) 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gate eeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour,* 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon entures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017).

81. **urisdiction to Implement Gate eeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *nited States Brass Corp. v. Travelers Ins. Group, Inc. In re nited States Brass Corp.* , 301 F.3d 296 (5th Cir. 2002) and *P Colonnade of Dallas Ltd. P Ship v. Faulkner In re Stonebridge Techs., Inc.* , 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *illegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall.* The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Ob ections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior mployees Limited b ection to Debtor s Fifth Amended Plan of Reorgani ation* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, AD UDGED AND DECREED T AT

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Ob ections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorgani ed Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

. **Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res udicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

. **Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell elms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Ob ections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

. **Re ection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty 3 days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however,* that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authori ation to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty 6 days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

. **Release, Exculpation, Discharge, and In unction Provisions. The following release, exculpation, discharge, and in unction provisions set forth in the Plan are approved and authori ed in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.**

. **Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

. **Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. In unction. Upon entry of this Confirmation Order, all En oined Parties are and shall be permanently en oined, on and after the Effective Date, from ta ing any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Ban ruptcy Court, all En oined Parties are and shall be permanently en oined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly i commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any ind including any proceeding in a udicial, arbitral, administrative or other forum against or affecting the Debtor or the property of the Debtor, ii enforcing, levying, attaching including any pre udgment attachment , collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any udgment, award, decree, or order against the Debtor or the property of the Debtor, iii creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any ind against the Debtor or the property of the Debtor, iv asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Ban ruptcy Code, and v acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The in unctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses i v of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorgani ed Debtor, the Litigation Sub Trust, and the Claimant Trust and their respective property and interests in property. Sub ect in all respects to Article II.D of the Plan, no En oined Party may commence or pursue a claim or cause of action of any ind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorgani ed Debtor, the administration of the Claimant Trust or the Litigation Sub Trust, or the transactions in furtherance of the foregoing without the Ban ruptcy Court i first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any ind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and ii specifically authori ing such En oined Party to bring such claim or cause of action against any such Protected Party *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions ta en, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Ban ruptcy Court will have sole and exclusive urisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article I of the Plan, shall have urisdiction to ad udicate the underlying colorable claim or cause of action.

BB. Duration of In unction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Ban ruptcy Court, i all in unctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms and ii the automatic stay arising under section 362 of the Ban ruptcy Code shall remain in full force and effect sub ect to Section 362 c of the Ban ruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Ban ruptcy Court will enter an equivalent order under Section 1 5.

CC. Continuance of anuary 9 Order and uly 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *rder Approving Settlement with fficial Committee of nsecured Creditors Regarding Governance of the Debtor and Procedures for perations in the rdinary Course, entered by the Bankruptcy Court on January ,* [Docket No. 339] and *rder Approving the Debtor s Motion nder Bankruptcy Code Sections a and b Authori ing Retention of James P. Seery, Jr., as Chief xecutive fficer, Chief Restructuring fficer, and Foreign Representative unc Pro Tunc to March ,* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

. **Post Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonban ruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

. **Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. aiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. eadings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

. **Resolution of Ob ection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Ob ection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO oldco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CL Holdco, Ltd., and Highland Capital Management, L.P., dated January , * [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

. **Retention of urisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

. **Payment of Statutory Fees Filing of uarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

. **Dissolution of the Committee**. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

END OF ORDER

Exhibit A

Fifth Amended Plan as Modified

IN T E UNITED STATES BANKRUPTC COURT
FOR T E NORT ERN DISTRICT OF TE AS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFT AMENDED PLAN OF REORGANIZATION OF IG LAND CAPITAL MANAGEMENT, L.P. AS MODIFIED

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Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S C APTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LA AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative xpense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative xpense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative xpense Claims b ection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or uity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust versight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation rder*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. *Convenience Claim* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class lection*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. *Delaware Bankruptcy Court* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor s Fifth Amended Chapter Plan of Reorgani ation*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. " *ffective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. " *mployees*" means the employees of the Debtor set forth in the Plan Supplement.

56. " *n oined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. " *ntity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. " *uity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. " *uity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. " *state*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. " *state Claims*" has the meaning given to it in Exhibit A to the *otice of Final Term Sheet* [D.I. 354].

62. " *xculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. " *xecutory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. " *xhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final rder*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. " *ew Frontier ote*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. " *ew GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. " *ew GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. " *rdinary Course Professionals rder*" means that certain *rder Pursuant to Sections a , , , and of the Bankruptcy Code Authori ing the Debtor to Retain, mploy, and Compensate Certain Professionals tili ed by the Debtor in the rdinary Course* [D.I. 176].

89. " *ther nsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. *Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "Petition *Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor s Fifth Amended Chapter Plan of Reorgani ation*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority on Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims b ection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PT Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced mployee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Re ection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related ntity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related ntity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorgani ed Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorgani ed Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorgani ed Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. " *BS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. " *nexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. " *nimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. " *oting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. " *oting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE E PENSES AND PRIORIT TA CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND E UIT INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired Non Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired Non Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

. **Classification and Treatment of Claims and Equity Interests**

1. *Class – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.
- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and oting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and oting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class – ther Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and oting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class – Priority on Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and oting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class – Retained mployee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and oting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class – PT Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and oting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and oting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class – General nsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and oting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and oting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and oting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and oting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF T IS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust versight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorgani ed Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *nited States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorgani ed Debtor

1. *Corporate xistence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of uity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of ew Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorgani ed Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *esting of Assets in the Reorgani ed Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorgani ed Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorgani ed Debtor Assets Transfer of Reorgani ed Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

. **Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *rder Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. ighland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF E ECUTOR CONTRACTS AND UNE PIRED LEASES

A. Assumption, Assignment, or Re ection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed rder Granting Motion to xtend Time to Assume or Re ect nexpired onresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Re ection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *e i i i* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. ithholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLI UIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *stimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

E CEPT AS OT ER ISE PROVIDED EREIN OR AS AGREED TO B T E DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

AN AND ALL PROOFS OF CLAIM FILED AFTER T E BAR DATE S ALL BE DEEMED DISALLO ED AND E PUNGED AS OF T E EFFECTIVE DATE IT OUT AN FURT ER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF T E BANKRUPTC COURT, AND OLDERS OF SUC CLAIMS MA NOT RECEIVE AN DISTRIBUTIONS ON ACCOUNT OF SUC CLAIMS, UNLESS SUC LATE PROOF OF CLAIM AS BEEN DEEMED TIMEL FILED B A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF T IS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. aiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE I .
E CULPATION, IN UNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided*, *however,* the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action ot xpressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. In unction

Upon entry of the Confirmation Order, all En oined Parties are and shall be permanently en oined, on and after the Effective Date, from ta ing any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Ban ruptcy Court, all En oined Parties are and shall be permanently en oined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly i commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any ind including any proceeding in a udicial, arbitral, administrative or other forum against or affecting the Debtor or the property of the Debtor, ii enforcing, levying, attaching including any pre udgment attachment , collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any udgment, award, decree, or order against the Debtor or the property of the Debtor, iii creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any ind against the Debtor or the property of the Debtor, iv asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Ban ruptcy Code, and v acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The in unctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses i v of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorgani ed Debtor, the Litigation Sub Trust, and the Claimant Trust and their respective property and interests in property.

Sub ect in all respects to ARTICLE II.D, no En oined Party may commence or pursue a claim or cause of action of any ind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorgani ed Debtor, the administration of the Claimant Trust or the Litigation Sub Trust, or the transactions in furtherance of the foregoing without the Ban ruptcy Court

i first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any ind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and ii specifically authori ing such En oined Party to bring such claim or cause of action against any such Protected Party *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions ta en, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Ban ruptcy Court will have sole and exclusive urisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE I, shall have urisdiction to ad udicate the underlying colorable claim or cause of action.

G. Duration of In unctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Ban ruptcy Court, i all in unctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms and ii the automatic stay arising under section 362 of the Ban ruptcy Code shall remain in full force and effect sub ect to Section 362 c of the Ban ruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 1 5.

. Continuance of anuary 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *rder Approving Settlement with fficial Committee of nsecured Creditors Regarding Governance of the Debtor and Procedures for perations in the rdinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE .
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE I.
RETENTION OF URISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE II.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorgani ed Debtor

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146 a of the Ban ruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP
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Dallas, TX 75231
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Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

EXHIBIT 3
Part 2

Exhibit 5

QUINN EMANUEL URQUHART & SULLIVAN LLP
Susheel Kirpalani (admitted *pro hac vice*)
Deborah J. Newman (admitted *pro hac vice*)
Robert S. Loigman (admitted *pro hac vice*)
Benjamin I. Finestone (admitted *pro hac vice*)
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Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300

Co-Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Plaintiff, v. JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST –	Adv. Pro. No. 21-03076-sgj AMENDED COMPLAINT AND OBJECTION TO CLAIMS

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

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Plaintiff Marc S. Kirschner (the "Litigation Trustee"), as Litigation Trustee of the Litigation Sub-Trust (the "Trust") established pursuant to the Fifth Amended Plan of Reorganization (the "Plan") of Highland Capital Management L.P. ("HCMLP" or the "Reorganized Debtor") (Docket No. 1472), through his undersigned counsel, brings this action and alleges as follows:

I. INTRODUCTION[2]

1. The Litigation Trustee brings this action to recover hundreds of millions of dollars in damages that HCMLP suffered at the hands of its founder, James Dondero, acting in concert with other entities that he owned and/or controlled (collectively, the "Dondero Entities"), and with the aid of other HCMLP officers and attorneys who disregarded their fiduciary duties to HCMLP in favor of Dondero and their own self-interests.

2. HCMLP was founded in 1993 as an investment advisor that also provided middle- and back-office services and engaged in proprietary trading. Prior to its bankruptcy filing on October 16, 2019, HCMLP was one of more than 2,000 Dondero Entities. The Dondero Entities were operated and controlled for Dondero's benefit, with Dondero utilizing complex corporate structures and transactions to transfer money and assets between the various Dondero Entities in the manner he viewed most advantageous to his own bottom line, including to avoid creditors, exploit personal tax benefits, and ensure that assets were preserved for his benefit and profits ultimately flowed to him.

3. HCMLP was at the center of Dondero's web: it employed nearly all of the people who performed services for myriad Dondero Entities, and it was those employees who carried out the substantive work for the Dondero Entities. Even when HCMLP's full role was hidden—

[2] Capitalized terms not defined in this section are defined later in the Amended Complaint.

either because it was not credited at all, or because it was identified only as a sub-advisor or service provider to Dondero's other management companies—it was HCMLP personnel executing Dondero's strategies for a wide array of Dondero Entities.

4. In or about 2008, after years of successful operations, HCMLP was hit hard by the economic recession. The recession gave rise to a multitude of lawsuits against HCMLP, and it became embroiled in litigations that threatened to impose crippling damages amounting to hundreds of millions of dollars.

5. Faced with this looming threat, Dondero devised a plan to siphon business away from HCMLP through the creation of "lifeboats" that he owned and controlled, which he sought to insulate from the claims of HCMLP's litigation creditors once they crystalized. The lifeboats were set up to provide the management services that HCMLP had been providing before the lifeboats' creation. The lifeboats were really HCMLP in disguise, however, as they conducted their business through HCMLP's employees, operated out of HCMLP's office, and in several cases, simply took over HCMLP's contracts, diverting the resulting fees away from HCMLP while HCMLP continued to provide the underlying services. The lifeboats collected the lion's share of the profits for HCMLP's work, while HCMLP bore the majority of expenses.

6. In the years that followed, Dondero—acting with the aid of certain HCMLP officers and employees—operated HCMLP to further his own personal interests, to HCMLP's detriment. Among other transgressions, Dondero, standing behind HCMLP's perceived corporate shield:

- Caused HCMLP to pay tens of millions of dollars to or for the benefit of Dondero and his affiliates in order to evade creditors, at a time when HCMLP was insolvent, inadequately capitalized, or intended to incur debts beyond its ability to pay;

- Caused HCMLP to transfer assets to other Dondero Entities for less than reasonably equivalent value at a time when HCMLP was insolvent, inadequately capitalized, or intended to incur debts beyond its ability to pay, in order to deprive creditors of the value of the transferred assets;

- Exploited HCMLP to exact vendettas on employees he perceived as disloyal, going so far as to destroy value at HCMLP and other Dondero Entities solely to inflict losses on his perceived enemies;

- Used HCMLP as a vehicle to fraudulently induce an investment of approximately $75 million into another Dondero Entity, with the goal of moving funds to yet another Dondero Entity;

- Caused the fraudulent transfer of assets worth at least $100 million out of HCMLP-managed funds to evade pending litigation claims asserted by UBS;

- Disregarded HCMLP's contractual and fiduciary obligations to investors in certain of HCMLP liquidating funds; and

- Siphoned funds out of HCMLP for use by other Dondero Entities, in exchange for artificially low interest, long-term notes that Dondero later purported to extend (by 30 years) or retroactively forgive, all for no consideration to HCMLP.

7. Dondero's conduct resulted in a second wave of litigation against HCMLP, exacerbating HCMLP's insolvency, inadequate capitalization, and inability to pay its debts. As was wholly foreseeable, Dondero's conduct hobbled HCMLP with hundreds of millions of dollars of additional contingent litigation liabilities that were all but certain to come due given Dondero's brazen wrongdoing.

8. In October 2019, the dam broke, and the repercussions of Dondero's actions came crashing down on HCMLP. An arbitration award of approximately $190 million was issued against HCMLP based on Dondero's failure to abide by a negotiated plan of distribution for certain of its liquidating funds, forcing HCMLP to file for bankruptcy protection. Shortly thereafter, a judgment of more than $1 billion was rendered for UBS against two HCMLP-managed funds, leading UBS to file a proof of claim against HCMLP that sought to hold

HCMLP responsible for its role in preventing the Fund Counterparties (defined below) from satisfying any of their debt to UBS.

9. In 2020, HCMLP, finally operating under the control of true and independent fiduciaries, negotiated a settlement with UBS for a total of $75 million in allowed claims. HCMLP was forced to reopen settlement discussions and increase that number to $125 million, however, when HCMLP discovered that in 2017, Dondero and his loyalists had surreptitiously transferred the two funds' remaining assets to a Dondero Entity. Other settlements followed, as HCMLP, burdened by Dondero's blatant wrongdoing, was forced to compromise claim after claim in order to avoid even greater dilution of creditor recoveries.

10. HCMLP now stands liable for more than $350 million in allowed creditor claims—in addition to tens of millions of dollars of costs occasioned by HCMLP's bankruptcy filing—that stem solely from, and would not exist but for, the knowing misconduct of Dondero and his loyalists. The Litigation Trustee thus brings this action to seek redress for the significant harm Dondero and his affiliates and accomplices inflicted on HCMLP, and to ensure that Dondero and those who aided him are not permitted to abscond with or divert value that rightfully belongs to HCMLP and its creditors.

II. PARTIES

11. Plaintiff Marc S. Kirschner is the Litigation Trustee for the Trust established under HCMLP's Plan.

12. Defendant James D. Dondero is an individual who, upon information and belief, at all times relevant to this Amended Complaint was residing in Dallas, Texas. Dondero is the co-founder of HCMLP and, prior to his removal on January 9, 2020, was the Chief Executive Officer and President of HCMLP. From the time that HCMLP was founded through October

16, 2019, when it filed for bankruptcy (the "Petition Date"), Dondero controlled HCMLP through his position at HCMLP, his ownership of HCMLP's general partner, and his ownership of, or control over the owners of, HCMLP's limited partnership interests. As set forth below, Dondero also owns and/or directly or indirectly controls hundreds of Dondero Entities within the Highland web, including the dozens of Dondero Entities referenced herein.

13. Defendant Mark A. Okada is an individual who, upon information and belief, at all times relevant to this Amended Complaint was residing in Dallas, Texas. Okada is the co-founder of HCMLP and was its Chief Investment Officer until he stepped down in 2019, after which he assumed an advisory role through the end of that year. After Dondero, Okada was the next-largest owner of HCMLP or a beneficiary of the distributions it made to its limited partners. Like Dondero, Okada held his interest in HCMLP directly and through trusts.

14. Defendant Strand Advisors, Inc. ("Strand") is a Delaware corporation that is wholly-owned by Dondero. Since HCMLP's formation, Strand has been its general partner and owned limited partnership interests in HCMLP. At all times relevant to this Amended Complaint, Strand's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

15. Defendant NexPoint Advisors, L.P. ("NexPoint") is a Delaware limited partnership. NexPoint is 99.9% owned by the Dugaboy Investment Trust, its sole limited partner. NexPoint's general partner, NexPoint Advisors GP, LLC ("NexPoint GP"), owns the remaining 0.1%. NexPoint and NexPoint GP were both formed on March 20, 2012. NexPoint concedes that it is controlled by Dondero, who owns 100% of NexPoint GP and is NexPoint GP's sole member and president. At all times relevant to this Amended Complaint, NexPoint's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

16. Defendant Nancy Dondero is named in her capacity as Trustee of Defendant Dugaboy Investment Trust ("Dugaboy"). Dugaboy is a grantor trust established under the laws of the state of Delaware. Dugaboy was formed pursuant to an October 2010 Trust Agreement between Dana Scott Breault, as Settlor, and James D. Dondero and Commonwealth Trust Company, as Trustees. Dondero is Dugaboy's primary beneficiary. Under the Dugaboy trust agreement, Dondero has the power to remove trustees without cause, as well as the power to appoint successive trustees. Dugaboy's original Family Trustee was Dondero, and Defendant Grant James Scott III ("Scott") was its Independent Trustee. In 2015, Dondero appointed Scott as the Family Trustee, and shortly thereafter replaced Scott with his sister Nancy. Between 2016 through confirmation of the Plan, Dugaboy owned a 0.1866% economic interest and a 74.4426% voting interest in HCMLP's Class A partnership interests, and, as set forth above, owns a 99.9% economic interest in NexPoint. At all times relevant to this Amended Complaint, Dugaboy's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

17. Defendant Highland Capital Management Fund Advisors, L.P. ("HCMFA") is a Delaware limited partnership.[3] HCMFA is owned by Strand Advisors XVI, Inc.[4] (which is HCMFA's general partner and owns a 1% interest in HCMFA); Highland Capital Management Services, Inc. ("HCMS") (which owns limited partnership interests in HCMFA equal to a 89.6667% ownership interest); and the Okada Family Revocable Trust (which owns limited partnership interests in HCMFA equal to a 9.3333% ownership interest). Dondero controls,

[3] HCMFA was originally created by Dondero on February 9, 2009, as Highland Funds Asset Management, L.P. ("HFAM"). On January 9, 2012, HFAM was renamed Pyxis Capital, L.P. ("Pyxis"), and on February 8, 2013, Pyxis was renamed HCMFA.

[4] Strand Advisors XVI, Inc. purports to be managed by six individuals, all but one of whom were previously on HCMLP's payroll.

and is the sole stockholder and director of, Strand Advisors XVI, Inc. Additionally, Dondero and Okada own 75% and 25% of HCMS, respectively.[5] HCMFA has acknowledged that it is controlled by Dondero. At all times relevant to this Amended Complaint, HCMFA's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

18. Defendant Scott is an individual who currently resides in North Carolina. At all times relevant to this proceeding, Scott had various roles at numerous Dondero-controlled or affiliated entities: he was the trustee of Get Good Trust; a director of the Highland Dallas Foundation; the managing member of Charitable DAF GP, LLC; the sole director of Charitable DAF Holdco, Ltd.; the managing member of the Charitable DAF Fund; and the director of CLO Holdco, Ltd. Scott is Dondero's long-time friend, former college roommate, and was the best man at Dondero's wedding. Scott has testified under oath that Dondero is his "closest friend." Dondero personally selected Scott as his successor to run the Charitable DAF Fund. Dondero also caused Scott to serve on multiple boards on which Dondero also served, including the boards of the Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc. Scott is also the executor of Dondero's will. Dondero, HCMLP, and/or entities controlled by Dondero transferred tens of thousands of dollars' worth of "business gifts" to Scott in the five years prior to the Petition Date. Scott has no training in finance or compliance and no investment experience. Scott routinely rubber-stamped Dondero's and HCMLP's directives without asking questions or requesting additional information.

[5] Dondero is the Director and President of Highland Capital Management Services, Inc. Scott Ellington is its Secretary.

19. Defendant Scott Ellington ("Ellington") was HCMLP's Chief Legal Officer and General Counsel until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interest. At all times relevant to this Amended Complaint, Ellington was a Texas resident.

20. Defendant Isaac Leventon ("Leventon") was Assistant General Counsel at HCMLP from March 2011 until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interests. At all times relevant to this Amended Complaint, Leventon was a Texas resident.

21. Defendant Charitable DAF Fund, LP (the "DAF") is an exempted company incorporated in the Cayman Islands. Dondero was the initial managing member of the DAF's General Partner, Charitable DAF GP, LLC ("DAF GP"), but in January 2011 he transferred all membership interests to Scott, who held those interests until March 2021. At all times relevant to this proceeding, Scott served as managing member of DAF GP and director of the DAF. HCMLP acted as the formal or informal non-discretionary investment manager for the DAF from its inception through 2020, and provided advisory and back-office services to the DAF and its subsidiaries, including CLO Holdco, Ltd., from 2012 until HCMLP terminated that relationship in February 2021. According to the DAF, Dondero currently serves as its investment advisor (although without an advisory contract).

22. Defendant Charitable DAF Holdco, Ltd. ("DAF Holdco") is an exempted company incorporated in the Cayman Islands. At all times relevant to this proceeding, Scott served as DAF Holdco's managing member and sole director. DAF Holdco is the limited partner of the DAF and owns 100% of the partnership interests in the DAF.

23. Defendant CLO Holdco, Ltd. ("CLO Holdco") is an exempted company incorporated in the Cayman Islands that was formed on December 13, 2010. CLO Holdco is a wholly-owned subsidiary of the DAF. CLO Holdco filed a proof of claim in HCMLP's bankruptcy case, which was subsequently amended to reduce the claim amount to zero.[6] In January 2022, CLO Holdco attempted to further amend the proof of claim to reassert a positive claim amount. CLO Holdco has no employees or officers. According to CLO Holdco, Dondero currently serves as an investment advisor to CLO Holdco (although without an advisory contract). Until Dondero's departure from HCMLP in January 2020, HCMLP (through Dondero) effectively made all investment decisions for the DAF which allocated the investments to CLO Holdco, which would then be rubber-stamped by Scott. At all times relevant to this Amended Complaint, CLO Holdco's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

24. As of December 31, 2020, CLO Holdco and the DAF collectively controlled approximately $260 million in assets. Dondero has testified under oath that he was unaware of a single investment decision that HCMLP ever recommended to Scott regarding the DAF that Scott rejected. Likewise, Dondero was unaware of any investment Scott made on behalf of the DAF that did not originate with HCMLP.

25. Defendant Highland Dallas Foundation ("Highland Dallas") is registered as a Delaware nonprofit, nonstock corporation. The directors of Highland Dallas at the time of the events relevant to this proceeding were Dondero, Scott, and Mary Jalonick. Dondero also acted

[6] This proof of claim was signed by Grant Scott in his capacity as CLO Holdco's sole director. Grant Scott served in that capacity at all times relevant to this proceeding.

as Highland Dallas's president, and Scott served as its treasurer. Highland Dallas's principal office address is 3963 Maple Avenue, Suite 390, Dallas, Texas, 75219.

26. Defendant Scott, in addition to being named above in his individual capacity, is named in his capacity as Trustee of Get Good Trust, a trust established under the laws of the State of Delaware. According to Get Good's July 9, 2021, disclosure to this Court, Get Good consists of three related trusts: Get Good Trust, Get Good Non Exempt Trust No. 1, and Get Good Non Exempt Trust No. 2, all of which are included in the term "Get Good." Dondero is the settlor of Get Good, its beneficiaries are his "living descendants," and Scott was Get Good's trustee at all times relevant to this Amended Complaint.

27. Defendant Hunter Mountain Investment Trust ("Hunter Mountain") is a statutory trust established under the laws of the state of Delaware. Hunter Mountain was formed on December 17, 2015, shortly before it purchased limited partnership interests in HCMLP from HCMLP's then-existing limited partners (*i.e.*, Dondero, Okada, and entities that they controlled) and HCMLP. Through a complex series of transactions that occurred on December 21, 2015, and December 24, 2015, Dondero caused Hunter Mountain to become the owner-in-name of 99.5% of the economic interests of HCMLP. Meanwhile, Dondero caused Hunter Mountain to issue a series of notes and cash, such that Dondero, Okada, and certain entities that they controlled (including Dugaboy, The Mark & Pamela Okada Family Trust – Exempt Trust #1, and The Mark & Pamela Okada Family Trust – Exempt Trust #2) continued to receive the economic benefit of limited partnership distributions made by HCMLP to Hunter Mountain even after they had purportedly sold their limited partnership interests to Hunter Mountain. One such note was a $63 million secured promissory note Hunter Mountain entered into with HCMLP on December 21, 2015 (the "Hunter Mountain Note").

28. Rand PE Fund I, LP, Series 1 ("Rand") is a Delaware series limited partnership. Rand is the indirect parent of Hunter Mountain and is a guarantor of the Hunter Mountain Note.

29. Defendant Lawrence Tonomura is named in his capacity as trustee of Defendant The Mark & Pamela Okada Family Trust – Exempt Trust #1 ("MAP #1"), a trust established under the laws of the state of Texas. Okada controls MAP #1, which he created for the benefit of his children.

30. Defendant Lawrence Tonomura is named in his capacity as trustee of Defendant The Mark & Pamela Okada Family Trust – Exempt Trust #2 ("MAP #2"), a trust established under the laws of the state of Texas. Okada controls MAP #2, which he created for the benefit of his siblings.

31. Defendant Massand Capital, Inc. ("Massand Inc.") is a New York corporation that was created in 2002. Defendant Massand Capital, LLC ("Massand LLC") is a Delaware limited liability company created in 2014, pursuant to a certificate of incorporation signed by Leventon. Massand Inc. received payments from HCMLP between February 4, 2014 and January 7, 2015. Massand LLC received payments from HCMLP between February 25, 2015, and August 1, 2019. Massand Inc. and Massand LLC are referred to collectively herein as "Massand Capital".

32. Defendant SAS Asset Recovery Ltd. ("SAS") is a Cayman Island entity created in 2012, whose principal place of business is Dallas, Texas. Upon information and belief, SAS is a litigation funding and management business created by Dondero and Ellington in 2012 and operated out of HCMLP's headquarters. SAS, along with its direct and indirect subsidiaries, is owned and controlled by Dondero and Ellington, who own 70% and 30% of the economic

interests in SAS, respectively. Upon information and belief, Ellington is the Chief Executive Officer of SAS.

III. JURISDICTION, VENUE & STANDING

33. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 because this is a civil proceeding arising under or relating to the bankruptcy petition filed by HCMLP under Chapter 11 of the United States Bankruptcy Code. *See In re Highland Capital Management, L.P.*, No. 19-34054-sgj11 (Bankr. N.D. Tex.). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

34. Venue is proper in this Court under 28 U.S.C. § 1409(a).

35. This Court has personal jurisdiction over the defendants because each of the Defendants: (i) is a Texas resident; (ii) was formed under the laws of Texas; (iii) is the alter ego of a Texas resident or an entity that was formed under the laws of Texas; (iv) has a business presence in Texas; (v) filed a proof of claim in HCMLP's bankruptcy case; and/or (vi) had minimum contacts with the state of Texas by either invoking the benefits and protections of the state of Texas or otherwise purposefully directing conduct toward a Texas resident.

36. The Plan created the Claimant Trust, which was vested with assets including substantially "all Causes of Action" and "any proceeds realized or received from such Assets." The Plan also created the Litigation Sub-Trust, as a "sub-trust established within the Claimant Trust or as a wholly-owned subsidiary of the Claimant Trust," for the purpose of "investigating, prosecuting, settling, or otherwise resolving the Estate Claims" transferred to it by the Claimant Trust pursuant to the Plan. The Plan defines Estate Claims to include "any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of [HCMLP], and each of the Related Entities, including any promissory notes held by any of the foregoing." Proceeds

from the Litigation Trust's pursuit of claims "shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries[.]"

37. On October 8, 2021, the Claimant Trust confirmed the assignment of certain Causes of Action (as defined in the Plan) to the Trust, including all claims set forth in this Amended Complaint. All of the claims asserted in this Amended Complaint belong to the Litigation Sub-Trust, not the Reorganized Debtor.

38. Under the Plan, the Claimant Trust Beneficiaries are (i) the Holders of Allowed General Unsecured Claims and (ii) the Holders of Allowed Subordinated Claims, whose Claims are junior to those distributed to Holders of Allowed General Unsecured Claims.[7] The Claimant Trust Beneficiaries' claims against the Reorganized Debtor's estate are substantial and exceed, in aggregate, $380 million. To date, neither the Holders of Allowed General Unsecured Claims nor the Holders of Allowed Subordinated Claims have been paid at all.

39. The Trustee has standing to avoid all transfers described herein pursuant to 11 U.S.C. § 544(b) and applicable law. On the date of the Debtor's bankruptcy filing, at least one or more unsecured creditors who held an allowable claim, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis (all as defined herein), could have sought under state law to avoid each of the transfers made on or after October 16, 2015. The Internal Revenue Service filed an amended Proof of Claim in the Debtor's bankruptcy case on October 6, 2021, which asserts unsecured claims including for the tax period of June 30, 2015. Under applicable state and federal law, the IRS was entitled to seek to avoid all transfers at issue herein

[7] Holders of certain Allowed Limited Partnership Interests may become Claimant Trust Beneficiaries but only if *all* Allowed General Unsecured Claims, Allowed Subordinated Claims, and costs and expenses are indefeasibly paid in full.

as a present or future creditor, including transfers that occurred on or before October 16, 2015, because the IRS's claim arose within a reasonable time of those transfers.

IV. FACTUAL ALLEGATIONS

A. Dondero Creates HCMLP

40. HCMLP was a global alternative investment manager and registered investment advisor that was founded in 1993 by Dondero and Okada. The funds managed by HCMLP originally focused on the leveraged loan market, and subsequently expanded into other asset classes such as high-yield credit, public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific industries.

41. By the mid-2000s, HCMLP employed over 100 employees, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. As of the Petition Date, HCMLP had three primary business lines: (i) investment management; (ii) the provision of middle- and back-office services ("shared services") to other registered investment advisors; and (iii) proprietary trading.

42. Dondero exercised complete control over HCMLP from its founding until January 9, 2020, when this Court entered an order implementing the settlement and term sheet entered into between HCMLP and the unsecured creditors' committee, pursuant to which three new independent directors (the "Independent Board") were appointed at Strand to oversee the management and reorganization of HCMLP. HCMLP's employees have bluntly acknowledged that, prior to the appointment of the Independent Board, Dondero was HCMLP's solitary decision-maker on all matters concerning the company's operation and management. Dondero

served as HCMLP's Chief Executive Officer and President from the time that HCMLP was founded until he resigned from those roles on January 9, 2020.

43. As of December 31, 2006, HCMLP provided investment advisory services pursuant to management agreements for: (i) 22 CLOs, (ii) 1 SLT; (iii) 11 RICs, (iv) 7 warehouse transactions, (v) 4 SMAs; (vi) one trust; and (vii) 10 hedge fund structures.[8] At that time, the value of HCMLP's assets under management ("AUM") was approximately $33.1 billion.[9]

B. HCMLP Narrowly Survives The Financial Crisis Of 2008, And Emerges Facing Hundreds Of Millions Of Dollars In Potential Litigation Damages

44. Around 2008, HCMLP's business began to falter, as the financial crisis began to set in. The funds that HCMLP managed faced large losses, followed by substantial redemptions. In January 2008, HCMLP experienced its worst performance to date, with the value of many of its managed funds deteriorating significantly.

45. At the same time that HCMLP was facing significant losses that threatened its existence, the company also became ensnared in litigation posing the threat of hundreds of millions of dollars in damages. In March 2008, HCMLP and its managed funds Highland CDO

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[8] A collateralized loan obligation ("CLO") is a structure that acquires and manage a pool of debt or loans. The CLO issues multiple debt tranches as well as equity, and uses the proceeds of those issuances to obtain loans. A structured loan transaction ("SLT") is a transaction involving structured financial instruments such as collateralized loan obligations. A registered investment company ("RIC") is a corporation, partnership, or trust registered with the Securities and Exchange Commission under the Investment Company Act of 1940. A warehouse transaction is an intermediate transaction that involves purchasing loans or bonds that will undergo the warehousing period prior to serving as collateral for a CLO security. A separately-managed account ("SMA") is a managed investment vehicle that has only one investor. A trust is a fiduciary agreement in which one entity that holds property or assets as its owner for one or more beneficiaries. A hedge fund structure is an actively managed investment pool held by a limited partnership of investors that allows partners to "redeem" their investment, subject to certain limitations.

[9] At its high-water mark, HCMLP's AUM exceeded $40 billion.

Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC" and together with CDO Fund, the "Fund Counterparties")[10] had entered into a transaction with UBS to finance the purchase of various CLO tranches (*i.e.*, tranches of debt issued by existing CLOs) and other assets, including credit default swaps ("CDS"). The governing agreements required the Fund Counterparties to post collateral based on the mark-to-market value of certain collateralized debt obligations. The value of these assets dropped by more than $400 million in the fall of 2008, and in November 2008, the Fund Counterparties failed to meet UBS's margin demand. In December 2008, UBS terminated the agreements, and claimed that it was owed 100% of its losses—which UBS alleged was as much as $745 million—from HCMLP and the Fund Counterparties.

46. On February 24, 2009, UBS commenced an action against HCMLP and the Fund Counterparties in New York state court. As amended and consolidated, UBS asserted claims against HCMLP for actual and constructive fraudulent transfer and breach of the implied covenant of good faith and fair dealing. Among other things, UBS alleged that in March 2009, HCMLP had orchestrated transfers of approximately $233 million of assets from SOHC's parent entity HFP, which UBS alleged was the alter ego of SOHC or its subsidiaries (the "March 2009 Transfers"). UBS sought to disgorge those transfers, and also sought damages against

[10] The CDO Fund is an indirectly-controlled subsidiary of HCMLP. At all times relevant to this proceeding, the CDO Fund was controlled by HCMLP, either pursuant to an investment advisory agreement and/or through HCMLP's indirect ownership of CDO Fund's general partner. SOHC is a subsidiary of Highland Financial Partners, L.P. ("HFP"). At all times relevant to this proceeding, HFP was managed and controlled by Dondero in his capacity as an officer of HFP and its general partner and as a member of HFP's monitoring committee. HFP's general partner is a wholly-owned indirect subsidiary of HCMLP. After 2010, Dondero was the sole member of HFP's monitoring committee until his resignation in mid-2021. At all times relevant to this Complaint, Dondero managed and controlled SOHC through his control of HFP.

HCMLP, including punitive damages, attorneys' fees, and pre-judgment interest (calculated at 9% under New York law).

47. Meanwhile, in December 2008, CDO Fund ceased meeting margin calls issued by Citibank N.A., Citigroup Global Markets Limited, Citigroup Financial Products Inc., and Citigroup Global Markets Inc. (together, "Citi") in connection with CDS entered into by CDO Fund and Citi. Citi seized assets posted by CDO Fund to collateralize the CDS, and, by March 2009, conducted two auctions to sell the collateral. The proceeds of the collateral sales, however, were not sufficient to satisfy CDO Fund's obligations to Citi. On April 5, 2012, CDO Fund sued Citi, alleging various claims arising from the margin calls. On May 3, 2013, Citi answered and countersued CDO Fund, HCMLP, and Highland CDO Opportunity Fund GP, L.P. ("CDO Fund GP") to: (i) recover a deficit of more than $24 million, plus accrued interest, still owed under the agreements governing the CDS; (ii) recoup $3 million in liquidation proceeds mistakenly received from a third party; and (iii) seek indemnification for all losses and costs Citi incurred as a result of CDO Fund's breach.

48. In addition, on April 2, 2009, Barclays Bank PLC ("Barclays PLC") and its wholly-owned subsidiary HYMF, Inc. ("HYMF" and, together with Barclays PLC, "Barclays") commenced an action against HCMLP and certain of its managed funds (the "Fund Defendants") and related entities for breach of contract, breach of fiduciary duty, and equitable accounting (the "Barclays Action"). The Barclays Action focused on hedge contracts that HYMF had entered into with various HCMLP-managed funds, which provided that HYMF would be able to remove its investments in a preferential fashion via a "redemption" right, usually as quickly as one day. Barclays alleged that HYMF attempted to exercise that redemption right in mid-October 2008 but was rejected by HCMLP and its managed funds,

notwithstanding the clear terms of the HYMF contracts. This breach of the HYMF contracts was accompanied by Dondero personally stating he would withhold over $100 million for over a year unless HYMF performed certain unrelated financial services for the Fund Defendants. Barclays alleged that it had invested more than $700 million into the Fund Defendants, that Dondero personally held at least $100 million of that "hostage," and that "hundreds of millions of dollars" were still owed to HYMF.

49. Additionally, on June 3, 2011, HCMLP became aware that on November 1, 2010, the Securities and Exchange Commission (the "SEC") had commenced an investigation with respect to potential violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. While the SEC investigation was settled years later for a reduced amount, HCMLP's understanding in 2011 was that the SEC investigation could result in significant penalties, including substantial monetary penalties, for the company.

C. In A Scheme To Evade HCMLP's Creditors, Dondero Creates "Lifeboats" To Usurp HCMLP's Business

50. In 2012, Dondero explained HCMLP's precarious financial condition, testifying under oath that the 2008 financial crisis took HCMLP "to a state of insolvency and we've been juggling liquidity since that," and that "[t]he last three, four years have been negative to the tune of hundreds of millions of dollars[.]" Dondero testified further that the contingent liabilities resulting from the lawsuits filed against HCMLP were a primary driver of HCMLP's insolvency.

51. It was against this backdrop that in or about 2011, Dondero determined to create a series of new entities—referred to internally by some at HCMLP as "lifeboats"—to take over HCMLP's business, with the aim of placing the resulting profits beyond the reach of HCMLP's

creditors. Ultimately, the most successful of the lifeboats were NexPoint and HCMFA, which are described in greater detail below. However Dondero also created other lifeboats at or around this time, including:

- Tunstall Capital Management, LP—which was created to manage stressed and distressed investing in hedge funds, private equity funds, and retail funds;
- Falcon E&P Opportunities GP, LLC—which was created to manage oil and gas investments in private equity funds;
- Granite Bay Advisors, LP—which was created to manage long-short credit investing; and
- Highland Capital Healthcare Advisors, LP ("HCHA")—which was created to serve as a healthcare equity advisor.

1. NexPoint

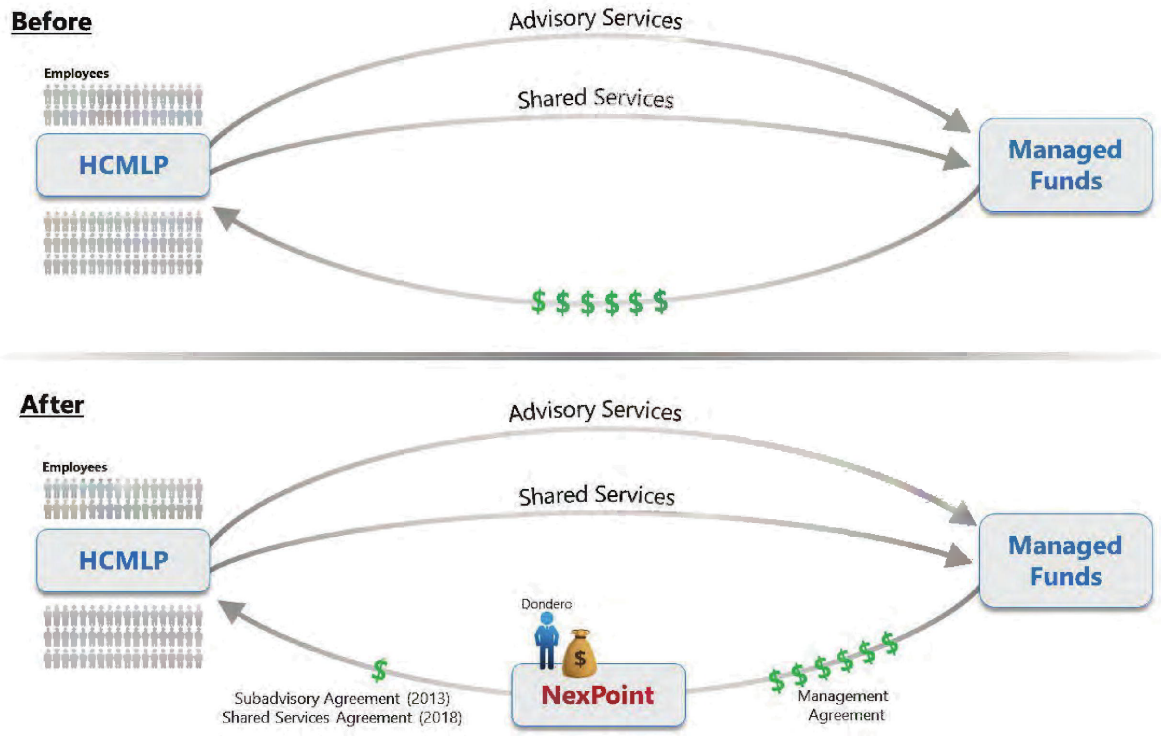
52. NexPoint was effectively a shell entity that Dondero created in March 2012 to siphon profits from HCMLP in order to evade HCMLP's creditors. Dondero's family trust Dugaboy, of which Dondero is the primary beneficiary, owns 99.9% of NexPoint.

53. Between 2012 and 2015, NexPoint had no employees of its own, and performed no business activities that were distinguishable from those performed by HCMLP. To the contrary, NexPoint used HCMLP's employees to perform the same investment management and advisory services—including investment advisory, compliance, accounting, tax, human resources, and information technology services—that were performed by HCMLP.

54. For over a year, HCMLP performed all services for NexPoint, without any sub-advisory or shared services agreements that even purported to compensate HCMLP for the use of its employees. In mid-2013, Dondero attempted to retroactively infuse this scheme with a patina of legitimacy, by causing NexPoint to enter into a shared services agreement with HCMLP that required NexPoint to pay fees to HCMLP based on a formula that resulted in low

fee payments. NexPoint continued to reap the vast majority of the generated fees, however. NexPoint's fees were based on a percentage of AUM, set at a level to yield fees far in excess of those NexPoint was paying HCMLP. The NexPoint scheme is illustrated in Figure 1, below.

Figure 1.



55. Adding insult to injury, HCMLP funded NexPoint's operations whenever needed, seeded large investments made by NexPoint, and funded a large portion of the distributions NexPoint made to its owner, Dugaboy (the beneficiary of which was Dondero). Indeed, in June 2012, at the time that Dondero was transferring HCMLP's advisory services business to NexPoint, Okada complained to Dondero that he was "using Highland's cash flow" to set up new entities controlled by Dondero and to "fund all their negative working capital."

56. Between 2012 and 2017, HCMLP loaned NexPoint approximately $30 million, and entered into a revolving line of credit to provide NexPoint with additional liquidity. Initially, the loans were in the form of demand notes and were unsecured, frequently below-

market, and had few to no covenants. NexPoint paid no principal or interest to HCMLP on the loans during the 2012-2017 period. At the same time, NexPoint made limited partner distributions of approximately $34 million—99.9% of which were made to Dugaboy for Dondero's benefit.

57. Dondero caused HCMLP to enter into multiple forbearance agreements with respect to the NexPoint loans, pursuant to which HCMLP agreed not to collect on the NexPoint loans for a period of one year from the time of the agreement. According to NexPoint's financial statements, these agreements were entered into to provide NexPoint "with the necessary financial support to fund [NexPoint's] obligations as they come due[.]" By May 2017, NexPoint owed HCMLP more than $30 million. Although all of these obligations were payable on demand, HCMLP again agreed not to demand repayment—this time through May 31, 2018—and also agreed to provide support to fund NexPoint's obligations through the same period. Meanwhile, HCMLP recorded the NexPoint loans at face amount on HCMLP's books.

58. Upon information and belief, on May 31, 2017, following discussions with NexPoint's auditors, Dondero restructured the NexPoint loans into a consolidated $30,746,812.33 note (the "NexPoint Loan") with an unusually long 30-year term maturity, a low coupon rate, no covenants, and no security. HCMLP received no consideration in exchange for its agreement to extend the NexPoint loans' maturity date from on-demand to 30 years.

59. Subsequent to Dondero's resignation from HCMLP, on December 31, 2020, NexPoint defaulted on the NexPoint Loan and the full outstanding amount of the loan was accelerated. On January 22, 2021, HCMLP filed an adversary proceeding in the Bankruptcy Court to collect on the NexPoint Loan. *See Highland Capital Management, L.P. v. NexPoint Advisors, L.P.*, Adv. Pro. 21-03005-sgj (Bankr. N.D. Tex. Jan. 22, 2021). NexPoint has raised

a series of frivolous defenses to HCMLP's claims, including that HCMLP—acting through the owner of a majority of its Class A interests, Dugaboy (which was acting through Dondero's sister, as Dugaboy's Family Trustee)—orally agreed to forgive the NexPoint Loan as part of Dondero's compensation. More than $23 million remains outstanding on the NexPoint Loan, and interest and fees continue to accrue. HCMLP has moved for summary judgment on this matter.

60. From the time that it was created in 2012 through 2019, NexPoint—which used HCMLP's employees to perform the same management and advisory services that are performed by HCMLP—earned over $150 million in revenues (including over $120 million in advisory and administrative fees) and approximately $50 million in operating income. Between 2012 and 2015, NexPoint's AUM increased 34%, from $700 million to $936 million, and revenues increased from $4.1 million to $16.2 million. Between 2015 and 2019, NexPoint's AUM increased by approximately 408%—from $936 million to $4.8 billion, and revenue increased from $16.2 million to $46.8 million. By contrast, over the same 2015 to 2019 period, HCMLP's AUM decreased from $9.5 billion to $2.3 billion.

2. HCMFA

61. Dondero utilized the same basic playbook for HCMFA, which is directly or indirectly owned by Dondero and Okada. HCMFA was created to replace HCMLP as the new investment manager for certain open-ended retail investment funds, but in a manner similarly designed to ensure that the profits generated by the business would not be available to HCMLP's litigation creditors in the event they achieved favorable judgments.

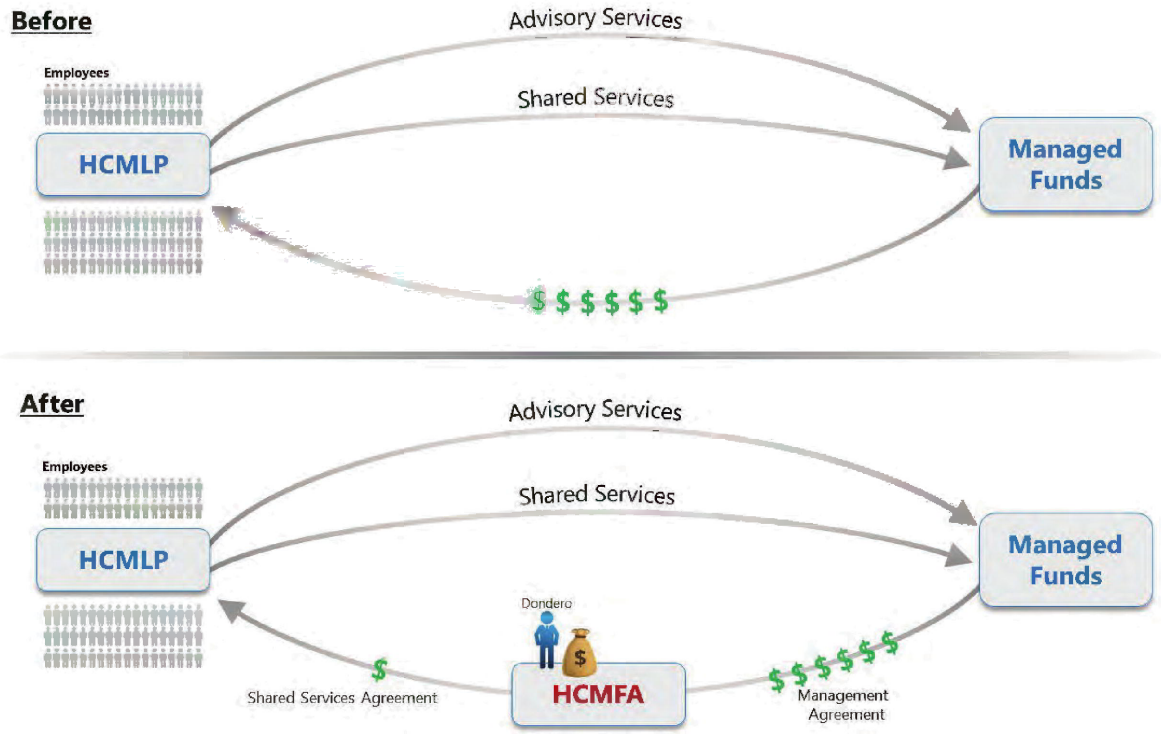
62. On December 15, 2011, Dondero caused HCMLP to transfer HCMLP's rights and obligations to provide investment advisory services for Highland Credit Strategies Fund,[11] Highland Floating Rate Opportunities Fund ("HFRO") (n/k/a Highland Income Fund), Highland Long/Short Equity Fund, Highland Long/Short Healthcare Fund, and Highland Special Situations Fund to HCMFA. HCMLP received no consideration for the transfer. Prior to the transfer, HCMLP received management and advisory fees under those agreements in return for the services it performed. Following the transfer, it was HCMFA rather than HCMLP that received those fees, notwithstanding that HCMFA used HCMLP's employees to perform most services. Thus, the effect of the transfer was to insert a new entity to reap the profits earned from the same HCMLP employees performing the same work that had been performed prior to the transfer.

63. HCMFA collected management fees from its managed funds based on a percentage of their net asset value ("NAV"). Meanwhile, HCMLP—whose employees performed most services required by HCMFA—received a low fee that was only a small fraction of the fees earned by HCMFA. And HCMLP received no fee with respect to the advisory services it provided to HCMFA, despite the fact that HCMLP's employees were named portfolio managers, and constituted entire teams of supporting investment analysts, for HCMFA-managed funds. Indeed, HCMFA did not execute a sub-advisory agreement with HCMLP, and it was only in May 2018 that HCMFA executed a payroll reimbursement agreement to partially compensate HCMLP for the services of certain HCMLP employees. If

[11] On June 13, 2012, the management agreements for Highland Credit Strategies Fund were purportedly "novated" to the newly-created NexPoint. Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as "NHF." The result of this transfer was simply to shift management fees relating to NHF—which had previously been diverted from HCMLP—from one lifeboat (Pyxis/HCMFA) to another (NexPoint).

HCMLP had managed the HCMFA-managed funds directly rather than doing so through an entity that was created to evade HCMLP's creditors, then HCMLP would have earned tens of millions of dollars (potentially over $100 million) in additional fees between 2012 and 2018. The HCMFA scheme is illustrated by Figure 2, below.

Figure 2.



64. Following Dondero's "lifeboat" playbook, HCMLP also provided financial support to HCMFA so that HCMFA was well-positioned to earn profits that bypassed HCMLP's creditors and flowed directly to Dondero and his affiliated entities, primarily through HCMFA's largest limited partner, HCMS (of which Dondero and Okada owned 75% and 25%, respectively). Between 2011 and 2019, HCMLP loaned HCMFA approximately $12 million. Those HCMFA loans were evidenced by demand notes, for which Dondero caused HCMLP to enter into multiple forbearances, ultimately preventing HCMLP from demanding payment until May 31, 2021. As of the Petition Date, $6.3 million was outstanding on the notes subject to the

forbearance agreement. In May 2019, HCMFA borrowed an additional $7.4 million from HCMLP pursuant to two additional demand notes.

65. Subsequent to Dondero's resignation from HCMLP, HCMFA defaulted on its debt to HCMLP. On January 22, 2021, HCMLP filed an adversary proceeding in the Bankruptcy Court to collect on the debt. HCMFA has raised a series of frivolous defenses to HCMLP's claims, including that the notes were executed in error. As of December 11, 2020, approximately $7.7 million in principal and interest was due and owing to HCMLP on the HCMFA notes dated May 2 and 3, 2019 and, as of June 4, 2021, approximately $3.1 million in principal and interest was due and owing to HCMLP on the HCMFA notes dated February 26, 2014, and February 26, 2016, and interest and fees continue to accrue. HCMLP has moved for summary judgment on this matter.

D. Dondero, Ellington, and Leventon Cause HCMLP To Engage In Misconduct That Exposes It To Additional Liability

66. As described more fully below, in addition to establishing the lifeboats to usurp HCMLP's business and evade its contingent creditors, Dondero, along with Scott Ellington, HCMLP's Chief Legal Officer and General Counsel, and Isaac Leventon, HCMLP's Assistant General Counsel, engaged in other actions that meaningfully harmed HCMLP. This included exposing HCMLP to significant liability by utilizing it to exact revenge on Dondero's perceived adversaries, and carrying out schemes that personally benefitted Dondero and, in certain instances, Ellington, but conferred no benefit on HCMLP. Ellington and Leventon were also financially rewarded by Dondero for faithfully serving Dondero's interest, rather than HCMLP's, even where doing was detrimental to HCMLP. As described below, these actions ultimately resulted in more than one billion dollars in litigation and arbitration claims against

HCMLP and millions of dollars in legal fees, necessitated HCMLP's bankruptcy filing, and ultimately forced HCMLP to enter into settlements for hundreds of millions of dollars.

1. Dondero Causes HCMLP To Engage In Misconduct Designed To Exact Revenge On Joshua Terry

67. In 2011, Dondero formed Acis Capital Management, L.P. ("Acis") and Acis Capital Management GP, LLC ("Acis GP"). Dondero was President both of Acis and Acis GP, and controlled their overall financial strategies and decisions. Upon information and belief, prior to its bankruptcy filing in 2018, Acis was indirectly owned by Dondero (through Dugaboy), Okada, and Joshua Terry ("Terry"), an HCMLP employee that Dondero tapped to manage Acis. Like HCMLP, Acis was a registered investment advisor whose purpose was to raise money from third-party investors to launch or invest in CLOs. HCMLP was the investment manager for Acis, and Acis performed almost all of its services through HCMLP employees. Dondero created Acis to act as another lifeboat—*i.e.*, to divert income away from HCMLP when HCMLP was facing the risk that all of its assets would be absorbed by its creditors. In 2013, HCMLP began what proved to be a short-lived turnaround, spurred by improving financial performance and settlement of the Barclays litigation. At this point, Dondero became more troubled by the dilution of his share of Acis's income, caused by Terry's ownership in Acis, than he was about evading HCMLP's liabilities. As a result, Dondero once again redirected the flow of money for his own benefit, this time by siphoning value from Acis back to HCMLP.

68. By 2016, tensions between Dondero and Terry hit a boiling point. Dondero sought to finance an acquisition by an HCMLP portfolio company through a loan from HCMLP-managed CLOs, and an extension of the maturity dates on the portfolio company's notes that were held by the CLOs. Terry was the investment manager for the CLOs, and

opposed the plan on the ground that agreeing to extend the notes' maturity dates would breach his fiduciary duties to the CLOs. Dondero responded to Terry's opposition by firing him from Acis and HCMLP, making up a pretextual claim of termination for "cause." Shortly thereafter, Dondero amended the Acis limited partnership agreement to terminate Terry's interests in Acis, and directed Acis to sue Terry in Texas state court. Terry counterclaimed and demanded arbitration.

69. On October 20, 2017, following a ten-day arbitration, the arbitration panel issued Terry an award of $7,949,749.15, plus interest, against Acis. The arbitration panel found, among other things, that (i) Terry's termination was "without cause," and Acis had "knowingly and willfully" invoked HCMLP's false pretext of "for cause" in order to deny Terry his contractual entitlement to the value of his Acis partnership interest, (ii) Acis had breached its limited partnership agreement, and breached the fiduciary duties it owed to Terry as Acis's limited partner, (iii) beginning in 2013, Dondero had caused Acis to pay HCMLP more than its contractual entitlement for shared expenses in order to reduce the amount of Terry's limited partnership distributions, and (iv) one month after Terry was terminated from Acis, Dondero significantly increased the amounts that Acis was paying HCMLP under their shared services and sub-advisory agreements, retroactive to January 1, 2016.

70. Beginning on October 24, 2017—four days after Terry's arbitration judgment was issued—Dondero, acting through HCMLP, and with the aid of Ellington and Leventon, entered into numerous transactions designed to take control of Acis's assets and business, and strip Acis of assets so that it would be unable to pay Terry's arbitration award. Ellington and Leventon aided Dondero by implementing Dondero's directives and taking the steps necessary to consummate these transactions, notwithstanding their knowledge that the transactions

benefitted only Dondero, and would ultimately harm HCMLP by exposing it to significant liability.

71. Ultimately, Dondero's elaborate schemes to render Acis judgment-proof led Terry to file involuntary petitions for protection under chapter 11 of the United States Bankruptcy Code against Acis and Acis GP on January 30, 2018. In response to the bankruptcy filings, Dondero caused HCMLP, which served as the sub-advisor to the Acis CLOs, to grossly mismanage the Acis CLOs, including by failing to purchase a single loan for the CLOs following the appointment of a chapter 11 trustee in the Acis bankruptcy case. This abrogation of duties caused the chapter 11 trustee to replace HCMLP with Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland"). Put another way, Dondero's use of HCMLP to cause damage to Acis actually harmed HCMLP itself, leading HCMLP to incur exorbitant legal fees attacking Acis, the loss of its investment management contracts and the income flowing from those contracts, and reputational harm that precluded HCMLP from launching any future CLOs and generating fee income therefrom.

72. Dondero also caused HCMLP to commence litigation against the Acis chapter 11 trustee, prompting a countersuit pursuant to which the chapter 11 trustee sought to recover fraudulent transfers Dondero had directed (through HCMLP) and to stop HCMLP from engaging in a course of conduct that was harmful to Acis and the Acis CLOs. This led to the entry of a temporary restraining order against HCMLP, which Dondero caused HCMLP to violate. Dondero also caused Highland CLO Funding, Ltd. ("HCLOF") to initiate an additional frivolous lawsuit against Terry in the Royal Court of Guernsey (the "Guernsey Suit"), which was ultimately dismissed, resulting in Terry arguing that HCMLP, as the owner of HCLOF's

advisor Highland HCF Advisors, Ltd. ("HHCFA"), was liable for Terry's attorneys' fees and expenses under Guernsey's "loser pays" regime.[12]

2. Dondero And Ellington Expose HCMLP To Liability By Fraudulently Inducing An Investment From HarbourVest

73. Dondero and Ellington also exposed HCMLP to substantial liability to third-party investors HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"). At the same time that Dondero was surreptitiously transferring valuable rights associated with the Acis CLOs away from Acis in order to evade Terry's arbitration award, he and Ellington were using HCMLP to induce the HarbourVest Entities to purchase 49.9% of HCLOF—the owner of the equity tranche of the Acis CLOs—from CLO Holdco for approximately $75 million in cash, with a commitment to invest an additional $75 million in HCLOF.[13] In soliciting this investment, Dondero and Ellington failed to disclose material facts

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[12] Dondero's litigation crusade against Terry and Acis continues to date. On May 14, 2021, NexPoint, acting under Dondero's direction, caused one of its managed retail funds, NSOF, to commence a lawsuit in the district court for the Southern District of New York against Acis, Terry, U.S. Bank, N.A., and Brigade, alleging that the Acis CLOs had been mismanaged. On May 20, 2021, NSOF then filed a motion in Acis's bankruptcy case, seeking a ruling that the complaint did not violate the injunction contained in Acis's plan of reorganization. On September 9, 2021, the bankruptcy court conducted a lengthy hearing, and on September 24, 2021, declined to issue the order requested by NSOF and held that NSOF must amend its complaint to comply with the plan injunction. On October 8, 2021, NSOF then filed a motion asking the Bankruptcy Court to reconsider its ruling, but withdrew the motion on December 1, 2021. NSOF filed an Amended Complaint in the SDNY action on November 23, 2021. Acis, U.S. Bank, N.A., Brigade, and HCLOF (as defendant intervenor) filed motions to dismiss, which were fully briefed in March 2022, and remain pending.

[13] CLO Holdco acquired Acis CLO equity tranches when the CLOs were launched and then transferred them to HCLOF in exchange for a 100% ownership interest in HCLOF after it was formed.

to HarbourVest regarding the Terry disputes and Acis frauds, thus exposing HCMLP to substantial and unnecessary liability.[14]

74. In inducing HarbourVest's investment, Dondero and Ellington, purportedly acting through HCMLP, made numerous misrepresentations and omissions, including: (1) failing to disclose that Dondero intended to cause Acis to evade Terry's $7.9 million arbitration award against it, including by causing Acis to consummate a series of fraudulent transfers; (2) misrepresenting the reasons that Dondero changed the name of the holding company for the Acis CLOs from Acis Loan Funding, Ltd. ("ALF") to HCLOF immediately prior to the HCLOF Investment; and (3) expressing confidence in HCLOF's ability to reset or redeem the CLOs under its control, when in actuality Dondero's actions to evade Terry's arbitration award against Acis resulted in Acis's bankruptcy, and rendered the resets impossible.

75. Moreover, unbeknownst to HarbourVest, Dondero intended for CLO Holdco to use the $75 million that it received from HarbourVest to make investments in other Dondero-owned entities, including entities managed by NexPoint and HCMFA. Thus, the HarbourVest investment benefitted Dondero personally, but left HCMLP exposed to hundreds of millions of dollars in potential damages to HarbourVest.

3. Dondero And His Accomplices, Including Ellington and Leventon, Cause HCMLP To Engage In Misconduct That Increases Its Liability To UBS

76. In March 2017, the New York state court presiding over UBS's claims against HCMLP and the Fund Counterparties ruled that UBS's claims against the Fund Counterparties,

[14] HCLOF has never paid a management fee to HHCFA, a wholly-owned subsidiary of HCMLP that is managed and controlled by HCMLP and operated using HCMLP employees. Consequently, HCMLP has indirectly provided free investment management services to HCLOF since its inception.

and its fraudulent transfer claims against HCMLP, could proceed to trial.[15] Shortly thereafter, Dondero, Ellington, and Leventon, along with HCMLP employees Jean Paul Sevilla, Katie (Irving) Lucas, and Matthew DiOrio, took steps to transfer the Fund Counterparties' remaining assets to Sentinel Reinsurance, Ltd. ("Sentinel"), a Cayman Islands entity indirectly owned and controlled by Dondero and Ellington,[16] in order to ensure that such assets would be out of UBS's reach in the event that a judgment was entered in its favor.[17] In or around August 2017, Dondero, Ellington, Leventon, Sevilla, Lucas, and DiOrio orchestrated the surreptitious transfer of substantially all of the Fund Counterparties' assets—with a face amount of $300 million and a fair market value of at least $100 million—to Sentinel.

77. The pretextual justification for these transfers was to satisfy a $25 million premium on an "after the event" insurance policy issued by Sentinel that purportedly insured the Fund Counterparties' first $100 million of liability to UBS. The real goal of the transfer, however, was to drain the Fund Counterparties' assets and render the Fund Counterparties judgment-proof, while keeping the assets within Dondero's and Ellington's control. There is no legitimate explanation as to why the Fund Counterparties transferred assets worth at least four times the premium payment to Sentinel. And given that Dondero and Ellington indirectly own and control Sentinel, they personally and improperly benefitted from this overpayment.

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[15] UBS's claim against HCMLP for breach of the implied covenant of good faith and fair dealing was subsequently also permitted to proceed.

[16] Sentinel was created in 2012 and is 70%-owned by Dondero and 30%-owned by Ellington through intermediate holding companies. Sentinel has no employees or physical office space. HCMLP employees, including Leventon, performed work on behalf of Sentinel.

[17] In December 2017, Ellington caused Dilip Massand and DiOrio to be appointed as directors of Sentinel.

78. Moreover, Ellington and Leventon (along with Sevilla, Lucas, and DiOrio) actively concealed the transfer of assets and the existence of the purported insurance policy from the Independent Board, apparently in order to prevent the Fund Counterparties from making a claim under the policy. Indeed, Leventon, who was directly involved in the transfers to Sentinel, was tasked with educating the Independent Board about UBS's claim and the assets potentially available to satisfy it. In response, Leventon delivered an extensive—but intentionally misleading—presentation to the Independent Board that said nothing about the August 2017 asset transfer and the purported Sentinel insurance policy, and lied to HCMLP regarding the Fund Counterparties' assets. Additionally, around the same time that Ellington and Leventon were hiding this secret insurance policy from the Independent Board, (i) Ellington charged the policy for personal expenses in excess of $500,000 that bore no relation to the UBS litigation and provided no benefit whatsoever to the Fund Counterparties or HCMLP; and (ii) Ellington and Leventon, among others, entered into agreements whereby Sentinel agreed to pay attorneys' fees and expenses they incurred in connection with HCMLP's bankruptcy.

79. As a direct result of Ellington's and Leventon's fraudulent concealment of the transfers to Sentinel, HCMLP inadvertently made factually inaccurate statements to the Bankruptcy Court and incurred millions of dollars in additional fees litigating (rather than settling) with UBS. In March 2021, after the policy was uncovered through HCMLP's diligence (notwithstanding Ellington's and Leventon's cover-up), the CDO Fund made a claim on the policy. To date, Sentinel has refused to make any payments.

80. On February 10, 2020, the New York state court entered a judgment against the Fund Counterparties in connection with the phase one litigation, in the principal amount of $519,374,149, plus $523,016,882.79 in prejudgment interest, for an overall judgment of

$1,042,391,031.79. Trial on UBS's claims against HCMLP was still pending when HCMLP filed for bankruptcy on October 16, 2019 (as discussed *infra*).

4. Dondero Causes HCMLP To Engage In Misconduct That Results In Liability To HERA And Patrick Daugherty

81. HCMLP's poor performance during the 2008-09 financial crisis left it with insufficient available cash and assets to offer incentive-based compensation to key senior employees. After HCMLP defaulted on a credit facility with a group of unsecured banks, the lender group demanded a security interest in all HCMLP's assets, but permitted the creation of a retention program to stave off an exodus of employees. With the consent of the lenders, on June 23, 2009, HCMLP created Highland Employee Retention Assets LLC ("HERA"), an employee-owned (subject to a two-year vesting period) entity that served as a replacement for certain senior employees' deferred compensation, which had been previously-awarded but wiped out by the financial crisis. HCMLP contributed assets to HERA, which then distributed proceeds from time to time. Patrick Daugherty, a former senior HCMLP employee, was a director of HERA and its largest unitholder.

82. Dondero's relationship with Daugherty deteriorated, and Daugherty resigned from HCMLP in the fall of 2011. Instead of simply allowing HERA to pay Daugherty what he was owed, Dondero caused HCMLP to carry out his personal vendetta against Daugherty through years of spiteful, unnecessary litigation borne out of personal animosity. As a result of that litigation, HCMLP accrued (i) litigation expenses and pre- and post-judgment interest that exceeded the amounts that HERA owed Daugherty in the first place; and (ii) liability in connection with a jury verdict that HCMLP defamed Daugherty with malice and breached the implied covenant of good faith and fair dealing.

83. Moreover, Dondero, through HCMLP, engaged in an asset-stripping campaign designed to render HERA judgment-proof, further exposing HCMLP to liability and unnecessary legal costs. In furtherance of that scheme, Dondero caused: (i) HCMLP to buy out all HERA unitholders except for Daugherty; (ii) HERA's board to transfer its powers to Highland ERA Management, a newly formed entity for which Dondero served as president and sole member; and (iii) HERA to distribute substantially all of HERA's assets to HCMLP, while claiming that HCMLP would place Daugherty's interests in HERA into escrow.

84. When Daugherty demanded payment of his judgment from HERA, HERA claimed it had become insolvent, citing that it owed HCMLP more than $7.5 million for legal expenses—approximately $4.9 million of which HCMLP had written off because of "lack of collectability."

85. Daugherty then sued HCMLP, HERA, Highland ERA Management, and Dondero in the Delaware Chancery Court. A Vice Chancellor concluded that HCMLP, Dondero, and the other defendants (who were also controlled by Dondero) were "improperly withholding documents," that "there is a reasonable basis to believe" that they perpetrated a fraud—and solicited "the services of attorneys to aid in furtherance of that fraud"—as part of an effort to evade Daugherty's judgment during the pendency of his case. The Vice Chancellor concluded that "defendants, with [counsel's] advice and assistance, were never going to let the assets held in the escrow agreement to make their way to Daugherty."

86. In total, HCMLP suffered at least $10 million in harm as a result of Dondero's decision to launch a protracted and unnecessary war against Daugherty.

E. Dondero, Ellington, and Leventon Cause HCMLP To Engage In Conduct That Results In An Arbitration Award Against It Of Approximately $190 Million And Forces HCMLP Into Bankruptcy

87. Dondero, Ellington, and Leventon also engaged in misconduct relating to HCMLP managed funds Highland Offshore Partners L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Crusader Funds") that resulted in an arbitration award against HCMLP of approximately $190 million. HCMLP had placed the Crusader Funds into wind-down in October 2008. Investors in the funds subsequently commenced lawsuits alleging breach of fiduciary duty claims against HCMLP, based on allegations that Dondero had refused to make mandated distributions and honor redemption requests, and traded the funds' positions in a manner designed to render them illiquid in order to deter future redemptions, which led to multiple disputes among redeeming investors. Certain of these lawsuits were ultimately resolved in July 2011, when the parties entered into a Joint Plan of Distribution of the Crusader Fund and a Scheme of Arrangement for its creditors (together, the "Joint Plan and Scheme"). As part of the Joint Plan and Scheme, a committee referred to as the "Redeemer Committee" was elected from the Crusader Funds' investors to oversee HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors.

88. The peace would not last, however. On July 5, 2016, the Redeemer Committee (i) terminated HCMLP as investment manager; (ii) filed a complaint in Delaware Chancery Court against HCMLP seeking a limited status quo order, a declaration that the Redeemer Committee had "cause" to terminate HCMLP as manager, and a declaration that HCMLP had forfeited any right to indemnification as a result of its failure to distribute proceeds to investors of various funds; and (iii) commenced an arbitration proceeding (the "Redeemer Arbitration")

against HCMLP alleging that it had engaged in various forms of misconduct in its role as investment advisor. After two years of arbitration proceedings, the Redeemer Arbitration culminated in a nine-day evidentiary hearing in September 2018 that included testimony from eleven fact witnesses and four expert witnesses. On March 6, 2019, the arbitration panel issued an award in favor of the Redeemer Committee, which resulted in gross damages of $136.8 million and total damages (including interest) of $190.8 million. Ultimately, the panel awarded ten forms of damages: (1) the Deferred Fee Claim ($43,105,395); (2) the Distribution Fee Claim ($22,922,608); (3) the Taking of Plan Claims ($3,277,991); (4) the CLO Trades Claim ($685,195); (5) the Credit Suisse Claim ($3,660,130); (6) the UBS Claim ($2,600,968); (7) the Barclays Claim ($30,811,366); (8) the Legal Fees, Costs, and Expenses Claim ($11,351,850); (9) the Portfolio Company Award ($71,894,891); and (10) the Administrative Fees Award ($514, 164).

89. The claims that were asserted against HCMLP by the Redeemer Committee stemmed from the various breaches of fiduciary duty to the Crusader Funds that Dondero, Ellington, and Leventon caused HCMLP to commit. For example, the "Barclays Claim"—which gave rise to over $30 million in liability for HCMLP—arose out of Dondero, Ellington, and Leventon causing HCMLP to transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, after the Redeemer Committee had already refused to approve that transfer. In so doing, Dondero, Ellington, and Leventon caused HCMLP to violate the Joint Plan and Scheme and its fiduciary duties. Because of Dondero, Ellington, and Leventon's wrongful conduct, HCMLP was ordered to pay: (1) over $30 million on account of disgorged partnership interests; (2) additional sums for disgorgement

of distribution fees (that were included within the $22.9 million Distribution Fee Award); and (3) interest, fees, and expenses incurred in connection with the arbitration.

90. In addition, from December 2013 through January 2016, Dondero, Ellington, and Leventon caused HCMLP to purchase 28 Plan Claims from Crusader investors in violation of the Redeemer Committee's right of first refusal ("ROFR"). During this time, Leventon told multiple investors interested in possible transfers of their interests that Highland had a ROFR to purchase any Plan Claims, never mentioning the Committee's prior and superior ROFR. Leventon also made affirmative misrepresentations to the Redeemer Committee to disguise the fact that HCMLP had purchased the Plan Claims. Pursuant to the arbitration award, HCMLP was required to transfer the 28 Plan Claims to the Redeemer Committee, and to disgorge to the Committee whatever financial benefits Highland obtained from the 28 transactions, plus interest at the rate of 9%, from the date of each purchase.

91. Dondero's, Ellington's, and Leventon's conduct also resulted in HCMLP becoming liable to the Redeemer Committee for over $71 million (the "Portfolio Company Claim") in connection with claims arising from a portfolio company that was owned, directly and indirectly, by HCMLP (the "Portfolio Company"). Some of the Portfolio Company's stock was owned by the Crusader Funds. Dondero, Ellington, and Leventon caused HCMLP to covertly purchase shares in the Portfolio Company from another fund that Dondero controlled at below-market prices, and failed to liquidate the Crusader Funds' shares in the Portfolio Company as their fiduciary duties required. Pursuant to the arbitration award, HCMLP was required to purchase the Crusader Funds' shares in the Portfolio Company at a fixed price of $48,070,407, and to pay pre-judgment interest that brought the total claim to $71,894,891.

92. Additionally, the Joint Plan and Scheme required HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete. Dondero, Ellington, and Leventon caused HCMLP to violate that provision of the Joint Plan and Scheme by causing HCMLP to surreptitiously transfer approximately $32 million in Deferred Fees from the Crusader Funds' accounts on January 21 and April 6, 2016. The arbitration panel ruled that as a consequence of Dondero's, Ellington's, and Leventon's blatant breach of the payment requirements of the Joint Plan and Scheme, HCMLP forfeited its right to these fees entirely.

93. The Redeemer Committee set a hearing in Delaware Chancery Court for October 8, 2019 to obtain entry of a judgment with respect to the award. The hearing was subsequently continued to October 16, 2019. HCMLP filed for bankruptcy on the day of oral arguments for the Redeemer Committee's motion to enforce the Award in Delaware Chancery Court.

F. Dondero's Schemes Result In Hundreds Of Millions Of Dollars Of Liability For HCMLP

94. As noted, Dondero's schemes ultimately resulted in hundreds of millions of dollars of liability for HCMLP. As described below, the creditors that Dondero had sought to cheat and evade filed proofs of claim in HCMLP's bankruptcy proceeding, and HCMLP's management, burdened with Dondero's blatant misconduct (and that of Ellington, Leventon, and other of Dondero's loyalists), was forced to settle these claims for amounts that enabled HCMLP to escape the risk of even greater liability.

95. Additionally, HCMLP has incurred in excess of $40 million in professional fees in connection with the bankruptcy filing, which was necessitated solely as a result of Dondero's misconduct. HCMLP also incurred legal expenses for entities that HCMLP did not own, including several of the "lifeboats."

1. HCMLP Incurs $125 Million In Liability To UBS As A Result Of Dondero's, Leventon's, and Ellington's Misconduct

96. On June 26, 2020, UBS filed a proof of claim (the "UBS Claim") in HCMLP's bankruptcy proceeding for the full $1,039,957,799.44 of its judgment against the Fund Counterparties.[18] The UBS claim sought "damages arising from HCMLP's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP," and interest, punitive damages, and attorneys' fees.

97. In November 2020, the Court considered the value of the UBS Claim for purposes of plan voting. In connection therewith, the Court temporarily allowed the UBS Claim in the amount of $94,761,076. Of that amount, approximately $43 million related to transfers HCMLP caused to be made to one of HCMLP's managed funds, based on the Court's estimation that there was a 90% chance that UBS would prevail on that portion of its claim under either a fraudulent conveyance or breach of implied covenant theory.

98. Subsequently, HCMLP and UBS engaged in settlement discussions and mediation. Following mediation, the parties reached an initial settlement in principle, pursuant to which UBS would receive a $75 million unsecured claim, consisting of a $50 million Class 8 General Unsecured Claim and a $25 million Class 9 Subordinated General Unsecured Claim. That settlement was disclosed to the Court at the February 2, 2021 confirmation hearing. This settlement was in satisfaction of damages resulting from conduct that Dondero, Ellington, and Leventon perpetrated on behalf of HCMLP. But for that conduct, HCMLP would not have been liable to, or required to enter into the settlement with, UBS.

[18] The UBS Claim consists of two substantively identical claims: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG, London Branch.

99. While the preliminary settlement for the known misconduct of Dondero, Ellington, and Leventon was being finalized, the Independent Board learned that Dondero and Ellington had surreptitiously caused the Fund Counterparties to transfer their remaining assets to Sentinel, and had caused HCMLP to misrepresent to UBS that the Fund Counterparties had no assets prior to that transfer occurring. Purportedly acting on behalf of HCMLP, Dondero, Ellington, and Leventon had concealed this transfer from the Independent Board, while advising the Independent Board that the Fund Counterparties lacked any material assets. The Independent Board had communicated that information to UBS (and the Court) and negotiated with UBS on those bases.

100. When the Independent Board discovered that Dondero, Ellington, and Leventon engaged in a conspiracy to cover up the fraudulent Sentinel transfer, it disclosed the transfer to UBS. As a result, the parties reopened settlement discussions. Ultimately, in order to limit HCMLP's potential liability to UBS as a result of Dondero's, Leventon's, and Ellington's bad acts, HCMLP entered into a revised settlement with UBS that granted UBS a claim totaling $125 million, consisting of a $65 million Class 8 General Unsecured Claim and a $60 million Class 9 Subordinated Unsecured Claim. In addition to the increased settlement amount and litigation costs, HCMLP is required to expend up to $3 million (subject to reimbursement) pursuant to certain cooperation provisions contained in the settlement agreement with UBS as a result of the fraudulent Sentinel transfer. The Bankruptcy Court approved the UBS settlement on May 27, 2021.

2. HCMLP Incurs More Than $185 Million In Liability To The Redeemer Committee And Crusader Funds As A Result Of Dondero's Misconduct

101. On April 3, 2020, the Redeemer Committee filed a general unsecured claim in the amount of its $190,824,557.00 arbitration award, plus "post-petition interest, attorneys' fees, costs and other expenses that continue to accrue." Likewise, on April 3, 2020, the Crusader Funds filed a claim for $23.5 million, consisting of $8.2 million in management fees and $15.3 million in distribution fees. Faced with this potential liability, HCMLP entered into a settlement whereby, among other things: (i) the Redeemer Committee was granted an allowed general unsecured claim of $136,696,610.00; (ii) the Crusader Funds were granted an allowed general unsecured claim of $50,000.00; (iii) HCMLP and Eames each consented to the cancellation of interests they and the Charitable DAF held in the Crusader Funds that the arbitration panel had determined were wrongfully-acquired; (iv) HCMLP and Eames each acknowledged that they would not receive any portion of distributions reserved by the Crusader Funds, and HCMLP further acknowledged that it will not receive any future payments from the Crusader Funds in respect of any Deferred Fees, Distribution Fees, or Management Fees; and (v) HCMLP and the Redeemer Committee agreed to a form of amendment to the Portfolio Company's shareholders' agreement and to a process whereby HCMLP would use commercially reasonable efforts to monetize all Portfolio Company shares held by HCMLP, funds managed by HCMLP, and the Crusader Funds.[19] The Bankruptcy Court approved HCMLP's settlement with the Redeemer Committee and Crusader Funds on October 23, 2020.

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[19] Because HCMLP did not have the money to purchase the shares, the Redeemer Committee and HCMLP agreed to treat the Portfolio Company's shares differently than the process required under the arbitration award. Rather than having HCMLP purchase the Crusader Funds' shares in the Portfolio Company for approximately $48 million, they agreed that the Crusader Funds would

3. HCMLP Incurs More Than $100 Million In Liability To Acis, Terry, And HarbourVest As A Result Of Dondero's Misconduct

102. Acis also filed proofs of claim against HCMLP, seeking, among other things, the amounts Dondero had caused HCMLP to overcharge Acis in order to diminish Terry's limited partner distributions from Acis, and damages arising from HCMLP's efforts to transfer assets out of Acis, in order to evade Terry's arbitration award and ensure that Dondero would benefit from the transferred assets. Terry and his wife also filed a proof of claim against HCMLP, alleging that HCMLP, acting through Dondero, had misappropriated assets in their retirement account. The Acis and Terry proofs of claim were settled in mediation after Dondero resigned from HCMLP. Pursuant to that settlement, Acis received a $23 million allowed claim against HCMLP, and HCMLP was required to pay (1) Terry and his wife $425,000 plus 10% interest to resolve the Terry's claim that HCMLP had misappropriated their retirement account;[20] (ii) Terry $355,000 in legal fees because of HCLOF's frivolous suit in Guernsey; and (iii) Acis an additional $97,000 for legal fees incurred defending another frivolous lawsuit initiated by Dondero.

103. On April 8, 2020, the HarbourVest entities filed proofs of claim against HCMLP (the "HarbourVest Proofs of Claim") alleging that HCMLP had fraudulently induced them into entering into the HCLOF Investment based on HCMLP's misrepresentations and omissions concerning certain material facts, including that HCMLP: (1) failed to disclose that Dondero intended to cause Acis to evade Terry's $7.9 million arbitration award; (2) failed to disclose that it orchestrated a series of fraudulent transfers to prevent Terry from collecting on his

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retain their shares in the Portfolio Company and that the total damages award would be reduced by approximately $30.5 million to account for the perceived fair market value of those shares.

[20] Because of the interest component, HCMLP ultimately paid the Terrys approximately $1 million to compensate them for Dondero's theft of their retirement account.

arbitration award, and misrepresented the reasons for changing the portfolio manager for HCLOF immediately prior to HarbourVest's HCLOF Investment; (3) indicated that the dispute with Terry would not impact HCLOF's investment activities; and (4) falsely expressed confidence in HCLOF's ability to reset or redeem the CLOs under its control.

104. HarbourVest sought to rescind its HCLOF Investment and alleged damages in excess of $300 million. Ultimately, following Dondero's departure from HCMLP, the parties reached a resolution whereby HarbourVest agreed to transfer its interests in HCLOF to a new entity designated by HCMLP in exchange for a $45 million general unsecured claim and a $35 million subordinated general unsecured allowed claim. The value of the HCLOF interests that HarbourVest transferred to the HCMLP-designated entity was tens of millions of dollars less than the allowed amount of HarbourVest's claim against HCMLP.

G. HCMLP Was Insolvent, Inadequately Capitalized, And/Or Intended To Incur Debts Beyond Its Ability To Pay Well Before The Redeemer Committee Arbitration Award Forced It Into Bankruptcy

105. The Redeemer Committee's $190 million arbitration award left HCMLP with no choice but to file for bankruptcy. But HCMLP was insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay well before the Redeemer Committee arbitration award was issued. As Dondero himself has acknowledged under oath, as a result of the economic recession of 2008 HCMLP "almost went under and . . . moved to a state of insolvency" from which HCMLP was still struggling to emerge in 2012.[21] Indeed, as shown below, a valuation of HCMLP's assets and liabilities shows that HCMLP was balance sheet insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay in

[21] Mar. 28, 2012 H'rg Tr. 62:06-10 (J. Dondero), *In the Matter of the Marriage of I.C. and Q.C.*, Cause No. 11-16417-Z (Tex. Dist. [256th Dist.]).

2011 and 2012, when Dondero created lifeboats NexPoint and HCMFA, and transferred certain of HCMLP's management contracts to HCMFA for no value. Contemporaneous valuations performed by the company itself corroborate this conclusion.

106. More specifically, these valuations show that when litigation liabilities resulting from claims by Barclays and UBS against HCMLP are taken into account, HCMLP was insolvent from no later than April 9, 2010 until no earlier than April 30, 2013.

	Apr. 9, 2010	Dec. 31, 2010	Dec. 31, 2011	Dec. 31, 2012	Apr. 30, 2013
Total Assets Less Financial Liabilities[22]	($32M)	($22)	$60M	$101M	$145M
Litigation Liabilities[23]	$365M	$365M	$365M	$145M	$145M
Net Value	($397M)	($387M)	($305M)	($44M)	($1M)

107. The creation of the lifeboats and subsequent transfer of management contracts (and business value) all but ensured HCMLP's demise. HCMLP's assets under management, operating income from its investment management business, and operating margins steadily declined, and almost no new third-party investor money came into the company. HCMLP continued to shoulder the burden of providing services to NexPoint and HCMFA without compensation. HCMLP's financial condition began to improve in late 2013, due largely to

[22] HCMLP's "Total Assets Less Financial Liabilities" is exclusive of litigation liabilities and is estimated as the sum of the enterprise value of the investment fund management business, the fair market value of HCMLP's investment portfolio, and the value of related parties notes receivable, less HCMLP's non-contingent financial liabilities. HCMLP's valuation is corroborated by valuations prepared by CBIZ, Inc. on behalf of HCMLP's general partner. Figures are rounded to the nearest million.

[23] Litigation liabilities are set at the values at which they were settled, or the values at which they were estimated by the Court in the course of the bankruptcy proceeding.

successful proprietary trading and overall improving market conditions, but those gains began to dissipate in 2015 due to Dondero's reckless trading.

108. By December 2016, the company was again firmly insolvent, inadequately capitalized, and/or unable to pay its debts as they came due, in large part because its CLOs were generating diminishing returns, and the company was earning only minimal fees for servicing other Dondero Entities rather than generating new business of its own, while continuing to bear significant employee expenses. HCMLP's financial condition deteriorated further between 2017 and 2019, as additional litigation claims were levied against the company, and it was forced to answer for the misconduct perpetrated in its name by Dondero and his loyalists.

109. Specifically, as shown below, when litigation liabilities resulting from claims by UBS, the Redeemer Committee, and Acis against HCMLP are taken into account in valuations prepared on HCMLP's behalf, HCMLP was insolvent from no later than December 31, 2016, until the date it filed for bankruptcy.

	Dec. 19, 2016	Dec. 31, 2017	Dec. 31, 2018	Oct. 16, 2019
Total Assets Less Financial Liabilities[24]	$183M	$260M	$184M	$101M
Litigation Liabilities[25]	$212M	$365M	$365M	$365M
Net Value	($29M)	($105M)	($181M)	($264M)

[24] HCMLP's "Total Assets Less Financial Liabilities" is exclusive of litigation liabilities and is estimated as the sum of the enterprise value of the investment fund management business, the fair market value of HCMLP's investment portfolio, and the value of related parties notes receivable, less HCMLP's non-contingent financial liabilities. HCMLP's valuation is corroborated by valuations prepared by CBIZ, Inc. on behalf of HCMLP's general partner. Figures are rounded to the nearest million.

[25] Litigation liabilities are set at the values at which they were settled, or the values at which they were estimated by the Court in the course of the bankruptcy proceeding.

H. At All Time Relevant To This Amended Complaint, Dondero Hopelessly Commingled And Exploited Entities Within His Enterprise For His Own Personal Benefit

110. At all times relevant to this Amended Complaint, Dondero exploited HCMLP, Strand, and the various entities he controlled within the Highland empire for his own personal benefit, both directly and through other HCMLP fiduciaries whose loyalties ran to Dondero rather than HCMLP, and who aided Dondero in his various schemes. Dondero treated the elaborate corporate web he had created as a single integrated entity that existed solely to further his own self-enriching schemes, rather than as individual entities with their own respective stakeholders and corporate governance.

1. Prior To Dondero's Resignation From Strand, Dondero Was The Alter Ego Of Strand

111. Dondero singularly dominated and controlled HCMLP and was its solitary decision-maker. Dondero made every material business, operational, management, and financial decision for HCMLP. Dondero exercised his complete control of HCMLP through HCMLP's general partner Strand, which Dondero similarly dominated and controlled. Dondero was Strand's 100% owner, sole director, and president between 1993 and 2020. For eight years he was also its secretary and only officer.

112. Strand did not even attempt to maintain the pretenses of observing corporate formalities. As an initial matter, Strand did not hold regular board meetings. Indeed, the Litigation Trustee, having reviewed HCMLP's books and records, has been unable to identify a single instance in which a Strand board meeting was held prior to the Petition Date. This is consistent with Dondero's own testimony in 2020 in an unrelated proceeding that he cannot recall ever attending a board meeting for Strand or seeing Strand board meeting minutes.

113. Although Strand's bylaws require annual meetings of stockholders, over the 26 years that Dondero controlled Strand, only six annual stockholder meetings were ever held, and no such meetings took place after 2005. The Litigation Trustee was able to identify only twelve instances of documented corporate action taken by the Strand board over the course of approximately 26 years, eight of which related to the appointment or removal of officers.

114. Dondero was the only officer of Strand between 1993 and 2001. Although Strand had certain elected officers between 2001 and 2019, they performed no duties in their capacities as officers of Strand and were appointed or fired from their roles based on their loyalty to, and standing with, Dondero. Indeed, when Dondero was asked under oath in 2020 about Strand's officers, he testified that he did not know if Strand even had officers, and stated that he was "not aware of [Strand] having any employees or active … governance." Moreover, he did not know whether Strand had a board of directors or if he was solely Strand's president.

2. Dondero Routinely Commingled Entities And Employees Throughout The Dondero Corporate Web And Abused The Corporate Form

115. As of the Petition Date, the Highland complex spanned more than 2,000 entities. For at least the last two decades, it has functioned largely as a single economic unit that was operated and controlled by Dondero, who abused his direct or indirect ownership stakes for his own personal benefit. Dondero directed the integrated enterprise himself, using friends, family members, and directors-for-hire that the Court has previously described as "nominal figureheads"[26] to carry out his will. As high-level HCMLP employees have testified under

[26] *See In re Acis Cap. Mgmt., L.P.*, No. 18-30264-SGJ-11, 2019 WL 417149, at *17 (Bankr. N.D. Tex. Jan. 31, 2019), *aff'd*, 604 B.R. 484 (N.D. Tex. 2019), *appeal dismissed as moot sub nom. Matter of Acis Cap. Mgmt. G.P., L.L.C.*, 850 F. App'x 300 (5th Cir. 2021), and *aff'd sub nom. Matter of Acis Cap. Mgmt., L.P.*, 850 F. App'x 302 (5th Cir. 2021).

oath, Dondero was the "ultimate decision-maker" for "every [] entity in the firm and for the firm as a whole."

116. Dondero managed the entities as a single integrated unit. Internal business plans and projections were prepared in the aggregate across entities, including entities that were not owned by HCMLP, but were instead otherwise directly or indirectly owned by Dondero. Internal financial forecasts even projected AUM growth in non-HCMLP entities that was predicated upon HCMLP acting as support and service provider, even though HCMLP itself was effectively a melting ice-cube when those projections were made. Indeed, as far back as 2011, company projections provided to the valuation advisor CBIZ Valuation Group projected negative operating income for HCMLP.

117. Dondero used his domination of his web of entities, operated as a single unit, to facilitate his pillaging of HCMLP, moving HCMLP's assets and revenue out of reach of its creditors while preserving those funds and assets for his own use or for the benefit of other entities he created or controlled. As described above, Dondero operated NexPoint and HCMFA for the purpose of siphoning off HCMLP's revenue and value; in addition, he used HCMLP as NexPoint's and HCMFA's direct piggy-bank, transferring not only HCMLP's business and agreements, but also its cash, which was used to seed new funds and investment vehicles, among other things.

118. Dondero's control of the various entities within the Highland web was so pervasive that his own co-founder Okada remarked at one point in 2012, "I am not cool with you coming up with ideas, using Highland's cash flow to set them up, fund all their negative working capital and then somehow think the split shouldn't be 75 25 without some sort of negotiation and true up [(i.e., making new entities that Dondero owned entirely on his own)]."

Indeed, a 2016 draft accounting memo concluded that HCMLP, HCMFA, and NexPoint (and all of their subsidiaries) "are considered to be under common control … James Dondero controls all 3 of the entities." This conclusion accords with statements NexPoint's and HCMFA's own funds have made in public filings,[27] as well as the Bankruptcy Court's finding that they are both "controlled by Dondero."[28]

119. Dondero also funneled his own personal expenses through HCMLP, routinely seeking expense reimbursements from HCMLP in excess of $1 million per year. At Dondero's direction, HCMLP employed certain employees whose only responsibilities and obligations were to manage Dondero's and Okada's personal affairs and private business interests. For example, Melissa Schroth was employed by HCMLP, but her only duties were to serve as Dondero's and Okada's personal bookkeeper. Her duties involved no work for HCMLP, but rather concerned Dondero's and Okada's personal investments and entities, including but not limited to Dugaboy and Get Good. Dondero also used HCMLP and its employees for the benefit of other entities he dominated without adequate compensation to HCMLP—including for the benefit of NexPoint and HCMFA as described above, as well as for the benefit of his personal trusts. For example, Dondero used his domination of HCMLP to make its employee resources available to Dugaboy and Get Good at his sole discretion. HCMLP employees were involved

[27] *See, e.g.*, NexPoint Real Estate Strategies Fund, Prospectus (Form 497) (as filed Apr. 29, 2022) ("NexPoint Advisors, L.P. … is controlled by James Dondero by virtue of his control of its general partner, Nexpoint Advisors GP, LLC."); Highland Income Fund, Prospectus Supplement (To Prospectus dated July 1, 2019) (Form 497) (July 29, 2019) ("HCMFA is owned by Highland Capital Management Services, Inc. ("HCM Services") and its general partner, Strand Advisors XVI, Inc., of which James Dondero is the sole stockholder. HCM Services is controlled by Mr. Dondero and Mr. Mark Okada by virtue of their respective share ownership.").

[28] *See* Order Dismissing as Moot Debtor's Motion for a Mandatory Injunction, *Highland Capital Mgmt., L.P. v. Highland Capital Mgmt. Fund Advisors, L.P. (In re Highland Capital Mgmt., L.P.)*, Adv. Proc. No. 21-03010-sgj11 (Bankr. N.D. Tex. Feb. 24, 2021) (Docket No. 25).

in creating, managing, and providing accounting services to Dugaboy, and certain of those employees, including Melissa Schroth, performed work on behalf of Get Good in connection with Dondero's estate planning and transactions between Get Good and other Dondero Entities. Moreover, both Dugaboy and Get Good have acknowledged in the course of HCMLP's bankruptcy that HCMLP hosted their documents on its server. However, neither Dugaboy nor Get Good compensated HCMLP for the use of its employees or its resources.

120. This use of HCMLP's employees for Dondero's personal benefit continued even after the commencement of HCMLP's bankruptcy. For example, after the bankruptcy commenced, Schroth instructed Nancy Dondero to send a letter in her capacity as a trustee of Dugaboy instructing the Swiss entity Highland Capital Management AG ("HCM AG"), which is majority-owned by Dugaboy (which is ultimately owned and controlled by Dondero), to write off a liability that it owed to HCMLP for payments that HCMLP had made on its behalf. Schroth even ghost-wrote a letter for Nancy Dondero to send to HCM AG authorizing this theft. Likewise, Dondero frequently instructed HCMLP's employees to perform services in connection with Dondero's personal and business interests, which conferred no value on HCMLP.

121. Highland employees frequently did not know whether they or their colleagues were employees of HCMLP or another entity within the Dondero web. Employees shared the same office space in HCMLP's headquarters. Indeed, each of Strand, NexPoint, NexPoint GP, HCMFA, Dugaboy, CLO Holdco, the Highland Dallas Foundation, the Highland Santa Barbara Foundation, the Highland Kansas City Foundation, HFP, SAS, and Acis listed its business headquarters at this same address: 300 Crescent Court, Suite 700, Dallas, Texas 75201. Moreover, when employees of HCMLP performed services for other Dondero entities, they

sometimes did so pursuant to agreements that Dondero signed for both HCMLP, on the one hand, and the counterparty, on the other hand. In other instances, HCMLP's employees performed services for non-HCMLP entities without any formal agreements in place at all. For example, Leventon testified that he performed work for SAS "on and off" for approximately seven years (*e.g.*, in connection with whether to invest in a new litigation funding case), notwithstanding that he was never an employee of SAS and HCMLP did not have a shared services agreement with SAS.[29] Moreover, when shared services and advisory agreements were in place, HCMLP frequently charged Dondero's other entities below-market rates for use of HCMLP's employees and resources.

122. Additionally, Dondero delegated authority to his loyalists irrespective of their titles or roles. For example, Dondero delegated decision-making authority for Acis to Ellington, notwithstanding that he was not an officer, director, or employee of Acis. And Leventon testified that although he was an HCMLP employee, HCMLP could request that he perform legal services for any of the 2,000 entities in the Highland web.

123. Dondero would also use HCMLP as his own personal piggy-bank. For example, between January and August of 2018, Dondero borrowed $16,725,000 on four demand notes. Dondero remains obligated on three of the demand notes and maintains an outstanding principal

[29] Similarly, several HCMLP employees, including Ellington, Leventon, Katie Irving, and JP Sevilla, had SAS email addresses, and there were frequent meetings among HCMLP's legal department—including Ellington, Leventon, and Sevilla—and Dilip Massand in connection with SAS. SAS did not compensate any of these HCMLP employees for their work for SAS. Moreover, in 2014, when a telephone call was placed to the number listed on SAS's website, the call was routed to HCMLP's office in Dallas with a message that stated: "Thank you for calling SAS Asset Recovery. For reception press 0. For Scott [Ellington], press 1. For Dilip [Massand], press 2. For JP [Sevilla], press 3. For Tabor [Pittman, former HCMLP Associate GC], press 4. For Katie [Irving], press 5. For Isaac [Leventon], press 6. Thanks and have a good day."

balance of approximately $9 million. HCMLP has demanded payment on all of the outstanding demand notes, but to date, Dondero has failed to make any repayments on that debt.[30]

124. Dondero also effectively paid himself and Okada distributions from HCMLP through other Dondero Entities, including HCMS. Between 2013 and 2017, HCMS issued dozens of demand notes to HCMLP in return for tens of millions of dollars in cash, and between May 2017 through 2020, HCMS issued four additional promissory demand notes with an aggregate face amount of $900,000. Frequently, these notes functioned as disguised distributions to Dondero and Okada, by virtue of a "loan" from HCMLP to HCMS followed by a "loan" from HCMS to Dondero and Okada. As with other intercompany notes between HCMLP and other Dondero Entities, these notes had minimal covenants. Moreover, Dondero caused HCMLP to issue these loans to HCMS with minimal interest.

125. To take yet another example, Dondero exploited HCMLP's employees and capital in order to launch HCRE Partners, LLC ("HCRE"), another entity designed to evade HCMLP's creditors.[31] HCRE pursued financial and real estate investments, failing to pay

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[30] In January 2021, HCMLP filed adversary proceedings against Dondero and four of his affiliated entities (HCMFA, NexPoint, HCRE, and HCMS) in the Bankruptcy Court to collect on these notes. *See*, *e.g.*, *Highland Capital Management, L.P. v. James Dondero*, Adv. Pro. 21-03003-sgj (Bankr. N.D. Tex. Jan. 22, 2021). Dondero and his affiliated entities have raised a series of frivolous defenses to repayment of the notes, including that Dugaboy—acting through Dondero's sister—agreed to forgive the notes as part of Dondero's compensation. As of December 2021, the defendants owed an aggregate of over $50 million in past-due principal and interest on the notes. In November 2021, HCMLP filed a second adversary proceeding against HCMFA to collect on additional notes. *See Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, Adv. Pro. 21-03082-sgj. In this second notes litigation, HCMFA has raised a similarly frivolous defense.

[31] HCRE is 70% owned by Dugaboy, 25% owned by Highland Capital Management Real Estate Holdings I, LLC ("HCMRE I") (owned by a former HCMLP managing director) and 5% owned by Highland Capital Management Real Estate Holdings II, LLC ("HCMRE II") (owned by Ellington).

HCMLP any consideration for advisory, administrative, and other services HCMLP provided. Moreover, Dondero (1) caused HCMLP to loan HCRE tens of millions of dollars on terms that were unfair to HCMLP; (2) used the proceeds of those loans to pay approximately $32 million in distributions (between 2016 and 2020) to Dugaboy, Ellington, and another former HCMLP employee; and (3) caused HCRE to default on its debt to HCMLP and assert frivolous defenses to HCMLP's right to repayment. As of January 8, 2021, approximately $6.1 million in principal and interest was due and owing to HCMLP on HCRE notes.

126. As explained above, Dondero also used HCMLP to support the growth of lifeboats like NexPoint and HCMFA. Additionally, in December 2010, certain preferred tranches of CLOs managed by HCMLP and held by Highland CDO Holding Company, a portion of which was indirectly owned by HCMLP, were sold to CLO Holdco, a Cayman Islands entity then owned and controlled by a Dondero trust. CLO Holdco purported to pay approximately $39 million in return, but $33 million of that amount consisted of a note that was never repaid. The value of these preferred securities predictably skyrocketed soon thereafter, and generated substantial income that was used to benefit Dondero's lifeboats. An analysis of CLO Holdco's cash flows over time demonstrates that income generated from these assets was used to seed a variety of NexPoint-managed funds and entities, HCMFA-managed funds and entities, and Acis-managed CLOs and other vehicles—all for Dondero's benefit—rather than accruing in favor of HCMLP or its subsidiaries.

127. Dondero used HCMLP's funds to support other entities in his web as well. In or around 2013, HCM AG entered into a joint venture with a Brazilian entity named Brasilinvest Investimentos e Participacoes Ltda ("Brasilinvest Investimentos") for a shared interest in a Brazilian entity named Highland Capital Brasilinvest Gestora de Recursos, Ltda (a.k.a Highland

Capital Brasil Gestora de Recursos). With Dondero's approval, HCM AG acquired Brasilinvest Investimentos's shares in this joint venture through a $230,000 cash payment in October 2016. However, at Dondero's direction, the $230,000 was paid by HCMLP rather than HCM AG or Dugaboy.

128. Dondero did not bother to distinguish between himself and HCMLP. After Dondero was removed as HCMLP's Chief Executive Officer and President in January 2020, he continued using his HCMLP email account and continued working out of HCMLP's headquarters until his forced resignation in October 2020 and removal from HCMLP's premises in December 2020. When the Court entered an order restraining Dondero from communicating with HCMLP employees, Dondero flouted the order, including by communicating with Ellington and instructing Melissa Schroth (an HCMLP employee at the time) to resist Dugaboy-related document production requests, even though those documents were always kept on HCMLP's computer system. Likewise, a temporary restraining order entered by this Court prohibited Dondero from participating in, or encouraging others to participate in, any action that undermined decisions made by HCMLP's Chief Restructuring Officer, James Seery ("Seery"), regarding the disposition of HCMLP assets. Nevertheless, Dondero did so multiple times, including by contacting various employees and instructing them to act in a manner that was inconsistent with Seery's directions.

129. Dondero evinced no respect for HCMLP as an entity separate and apart from himself. Thus, he disposed of a cell phone that belonged to HCMLP that contained relevant data, likely resulting in the spoliation of valuable evidence that HCMLP could have used to pursue claims benefitting HCMLP. In addition, Dondero interfered with document productions of HCMLP and trespassed on HCMLP's property.

I. Dondero And His Loyalists Also Engaged In Other Conduct That Harmed HCMLP

1. Dondero And His Loyalists Fraudulently Transferred Assets To Themselves And Their Affiliated Entities

130. Dondero and his loyalists also engaged in other transactions that siphoned value from HCMLP to themselves. As described in greater detail below, these included (i) transfers of liquid assets for illiquid notes that could not have been monetized for the same value as the assets for which they were exchanged, (ii) limited partner distributions, and (iii) payments for services provided to other Dondero Entities rather than HCMLP.

(a) The Fraudulent CLO Holdco Transaction

131. On December 28, 2016, shortly after the Redeemer Committee commenced its Delaware state court action and arbitration against HCMLP, and while UBS's action against HCMLP was pending, Dondero, acting with substantial assistance from Scott, undertook a scheme whereby HCMLP transferred assets valued by the company at approximately $24 million through a series of related assignments (the "Transferred CLO Holdco Assets") to CLO Holdco, in exchange for an assignment from Get Good of an existing Dugaboy obligation (the "Dugaboy Note"), which was worth significantly less than the transferred assets (the "CLO Holdco Transaction").

132. Upon information and belief, Dondero consummated the CLO Holdco Transaction in order to claim a charitable deduction on his tax returns, and to place value out of his ex-wife's reach. Specifically, Dondero wanted to transfer assets out of Get Good so that they would not be available to his ex-wife, and to do so through a charitable donation so that he would get the added benefit of a tax deduction. Get Good, however, did not own enough assets that qualified for a tax-deductible charitable donation. Accordingly, Dondero caused Get Good

to exchange the Dugaboy Note, which did not qualify for a tax-deductible donation, for HCMLP's Transferred CLO Holdco Assets, which did. Dondero, acting with Scott's assistance, then caused the Transferred CLO Holdco Assets to be immediately transferred from Get Good to Highland Dallas, to the Charitable DAF, to the DAF, and ultimately to CLO Holdco. The CLO Holdco Transaction thus furthered Dondero's personal interests, but harmed HCMLP and its creditors by replacing liquid and liquidating assets with an illiquid note of significantly less value.

133. The Transferred CLO Holdco Assets consisted of: (1) $2,032,183.24 or potentially more in Series A Interests in Highland Capital Loan Fund, L.P., an HCMLP-managed hedge fund investing primarily in liquid loans; (2) a participation interest worth $8,710,000 or potentially more in call options of publicly-traded American Airlines Group, Inc. (the "AA Interests"); and (3) a participation interest in certain Highland Crusader Fund L.P. and Highland Crusader Fund II, Ltd. shares, as well as a tracking interest in certain participation shares of Highland Crusader Fund II, Ltd., which at the time of the transfer HCMLP valued at $12,625,395.44 (the "Crusader Interests"). The transfer of the Transferred CLO Holdco Assets was initiated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good. Pursuant to that agreement, the Transferred CLO Holdco Assets were received by Get Good.

134. Dondero caused HCMLP to transfer the Transferred CLO Holdco Assets to Get Good in exchange for the Dugaboy Note. While the face amount of the Dugaboy Note was equal to the reported value of the Transferred CLO Holdco Assets, in actuality, the value of the Dugaboy Note did not come close to the value of the Transferred CLO Holdco Assets. The interest rate on the Dugaboy Note was a paltry 2.75%. There was no security interest provided

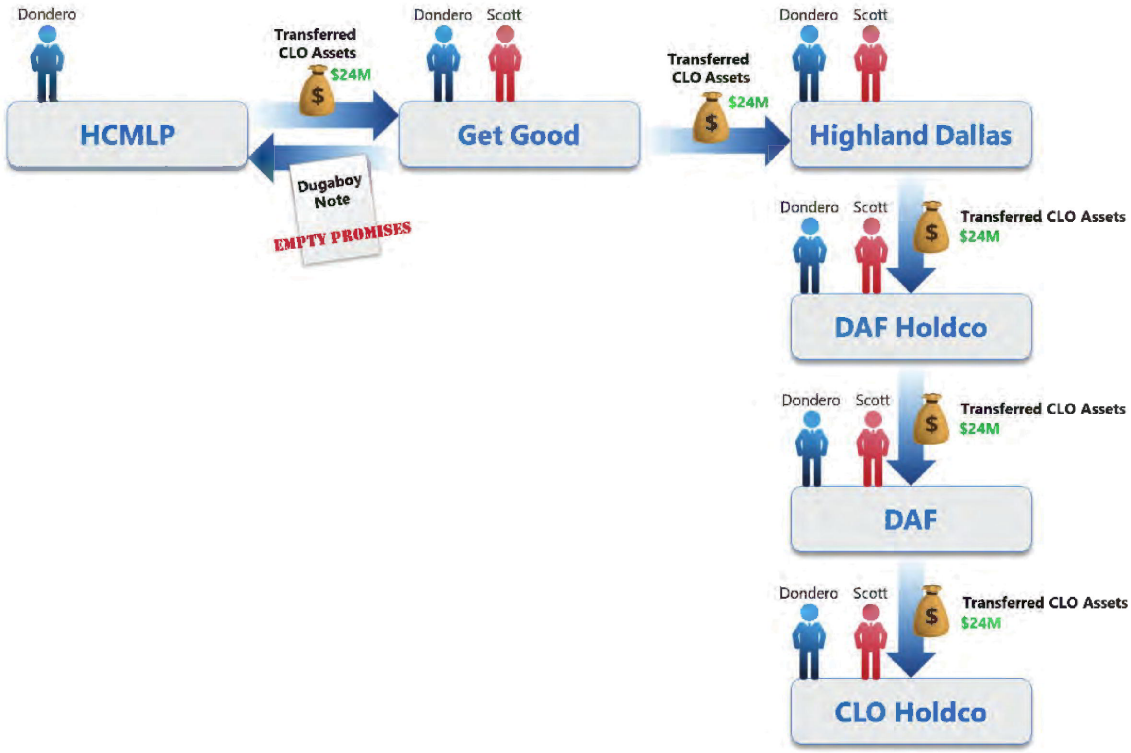
in respect of the Dugaboy Note or other material covenants or lender protections other than rights to cost of collections. No payments of principal or interest were required on the note until 2036. And because Dugaboy was a completely private and opaque counterparty, there was no third-party market for the sale of the Dugaboy Note. Lastly, from a counterparty risk perspective, Dondero's control over the repayment of a note clearly does not ensure timely repayment without litigation, as evidenced by the several entities controlled by Dondero that are currently seeking to evade their unambiguous payment obligations on other notes owed to HCMLP, on frivolous grounds such as mistake and subsequent alleged oral agreements between Dondero and his sister. In the end, Dondero caused HCMLP to exchange valuable liquid or otherwise near-term liquidating assets for a paper-thin promise 20 years into the future.

135. Following Get Good's receipt of the Transferred CLO Holdco Assets, Scott—at Dondero's direction—immediately caused Get Good to donate the assets to Highland Dallas Foundation in his capacity as trustee of Get Good. Dondero and Scott caused the Highland Dallas Fund to immediately contribute the Transferred CLO Holdco Assets to DAF Holdco by unanimous written consent executed by Dondero, Scott, and Jalonick, each in their capacity as the directors of Highland Dallas Foundation. Following that transfer, through an omnibus assignment agreement, Scott caused DAF Holdco to transfer the Transferred CLO Holdco Assets to the DAF, which itself immediately transferred them to CLO Holdco. The DAF GP issued a written resolution, as general partner of the DAF and as 100% owner of CLO Holdco, contributing the Transferred CLO Holdco Assets to CLO Holdco. Scott again executed this document as managing member of DAF GP. As purported consideration for these transfers, the Highland Dallas Foundation, DAF Holdco, the DAF, and CLO Holdco all agreed to be fully bound by apparently unrelated "Multi Strat Governing Documents." Scott executed the

requisite consent documents on behalf of each entity, in his capacities as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Upon information and belief, Scott consented to each step of the CLO Holdco Transaction on behalf of Get Good, DAF Holdco, the DAF, DAF GP, and CLO Holdco solely at Dondero's request, and without performing any independent analysis.

136. The structure of the CLO Holdco Transaction is set forth below in Figure 3.

Figure 3.



(b) Fraudulent Distributions

137. Notwithstanding HCMLP's limited liquidity and hundreds of millions of dollars in looming liabilities, Dondero caused HCMLP to make a series of equity distributions between 2010 and 2012, and 2015 and 2019, for Dondero's and Okada's ultimate benefit, and to the detriment of HCMLP's creditors. These distributions were made at a time when HCMLP was insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay, and

were intended to hinder, delay, and/or defraud creditors by siphoning value to limited partners that should have been preserved for creditors' benefit.

138. Although Dondero and Okada placed certain of their limited partnership interests in trusts that they ultimately owned or controlled, Dondero frequently disregarded corporate formalities, including with respect to limited partnership distributions. Until 2015, distributions were made to Dondero personally, notwithstanding that he owned HCMLP largely through certain trusts. Beginning in 2015, it appears that distributions were made directly to Strand and Dugaboy, *i.e.*, the Dondero Entities that actually held HCMLP limited partnership interests. As such, the distributions made to Dondero between April 9, 2010 and February 28, 2015 (identified below) were made for the benefit of Dondero, Dugaboy, and/or Strand. The distributions made after February 28, 2015, were, upon information and belief, made directly to the limited partnership interest holders, for the benefit of Dondero and Okada.

139. Likewise, until 2015, distributions were made to Okada individually, rather than HCMLP's limited partners MAP #1 and MAP #2. As such, the distributions made to Okada between April 9, 2010, and February 28, 2015, (identified below) were made for the benefit of Okada, MAP #1, and/or MAP #2. The distributions to Okada made after February 28, 2015, were broken out into three transfers in HCMLP's records, in amounts proportionate to the limited partnership interests of Okada, MAP #1, and MAP #2.

140. On or around April 9, 2010, HCMLP made distributions to Dondero and Okada, in the amounts of $1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87) and

$405,585.62 (two transfers of $375,000.00 and $30,585.62), respectively (the "April 9, 2010 Distributions").[32]

141. On or around April 13, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $649,318.45 and $216,439.49, respectively (the "April 13, 2011 Distributions").

142. On or around May 2, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $3,124,435.00 and $1,024,018.00, respectively (the "May 2, 2011 Distributions").

143. On or around September 13, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $5,351,316.00 and $1,705,813.00, respectively (the "September 13, 2011 Distributions").

144. On or around November 25, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $5,250,000.00 and $1,750,000.00, respectively (the "November 25, 2011 Distributions").

145. On or around February 22, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $3,000,000.00 and $1,000,000.00, respectively (the "February 22, 2012 Distributions").

146. On or around February 29, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $4,514,780.25 and $1,504,926.75, respectively (the "February 29, 2012 Distributions").

[32] Plaintiff's original Complaint referred to the distributions as being made on or around the dates reflected on HCMLP's general ledger. Plaintiffs have now located the bank transfer statements for each distribution, and use the bank transfer date instead. The distributions being challenged, however, have not changed.

147. On or around April 10, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $6,221,364.15 and $2,073,788.05, respectively (the "April 10, 2012 Distributions").

148. On or around April 9, 2013, HCMLP made distributions to Dondero and Okada, in the amounts of $25,375,083.16 and $8,440,148.31, respectively (the "April 9, 2013 Distributions").

149. On or around December 19, 2016, HCMLP made distributions to Hunter Mountain,[33] Dugaboy, and Strand, in the amounts of $4,769,570, $8,945, and $12,017, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $2,334, $470, and $201, respectively (the "December 19, 2016 Distributions").

150. On or around January 5, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $11,034,754, $20,694, and $27,803, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2,[34] in the amounts of $5,401, $1,087, and $466, respectively (the "January 5, 2017 Distributions").

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[33] In December 2015, Dondero orchestrated two sequential transactions, whereby Hunter Mountain purchased virtually all of HCMLP's limited partnership interests in exchange for cash and notes (collectively, the "Hunter Mountain Transaction"). The effect of the Hunter Mountain Transaction was to consolidate over 99% of all existing limited partners' interests in HCMLP into a single entity, Hunter Mountain. Hunter Mountain is owned through a series of intermediate shell companies, and ultimately all economic interests are held in a series of tax-favored life insurance accounts at Crown Global Life Insurance Ltd. ("Crown Global"). On information and belief, these accounts were created by Dondero and Okada, who were the direct or indirect owners of nearly all of the Debtor's limited partner interests prior to the Hunter Mountain Transaction. Dondero orchestrated the Hunter Mountain Transaction in order to avail himself of personal tax benefits.

[34] At the time of the December 19, 2016 distributions and thereafter, Okada and two trusts (MAP #1 and MAP #2) established for the benefit of Okada's children and siblings held economic interests in HCMLP. HCMLP's accounting records indicate that distributions allocated to Okada, MAP #1, and MAP #2 were all made to a single account in Okada's name. Thus, with respect to this and subsequent, applicable distributions, Plaintiff pleads that they were made to or for the benefit of Okada, MAP #1, and MAP #2.

151. On or around February 7, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $7,169,970.00, $13,446.40, and $18,065.44, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $3,509.32, $706.19, and $302.65, respectively (the "February 7, 2017 Distributions").

152. On or around June 15, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $79,600.00, $149.28, and $200.56, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $38.96, $7.84, and $3.36, respectively (the "June 15, 2017 Distributions").

153. On or around December 21, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $2,651,675.00, $4,972,89, and $6,681.16, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $1,297.86, $261.17, and $111.93, respectively (the "December 21, 2017 Distributions").

154. On or around March 9, 2018, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $84,575.00, $158.61, and $213.10, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $41.40, $8.33, and $3.57, respectively (the "March 9, 2018 Distributions").

155. On or around December 19, 2018, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $4,930,722.50, $9,246.96, and $12,423.44, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $2,413.33, $485.64, and $208.13, respectively (the "December 19, 2018 Distributions").

156. On or around March 28, 2019, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $3,711,456.47, $6,960.38, and $9,351.38, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $1,816.56, $365.55,

and $156.66, respectively (the "March 28, 2019 Distributions," and together with the April 9, 2010 Distributions, April 13, 2011 Distributions, May 2, 2011 Distributions, September 13, 2011 Distributions, November 25, 2011 Distributions, February 22, 2012 Distributions, February 29, 2021 Distributions, April 10, 2012 Distributions, April 9, 2013 Distributions, December 19, 2016 Distributions, January 5, 2017 Distributions, February 7, 2017 Distributions, June 15, 2017 Distributions, December 21, 2017 Distributions, March 9, 2018 Distributions, December 19, 2018 Distributions, March 28, 2019 Distributions, the "HCMLP Distributions").

157. All of these distributions were made at a time when HCMLP was insolvent and as part of a scheme to transfer HCMLP's value to Dondero and Okada and divert value away from HCMLP's current and potential future creditors. The March 28, 2019 Distributions, which were made shortly after the arbitration panel awarded the Redeemer Committee over $190 million, were the final distributions made by HCMLP. The distributions ceased at that time—the end result of HCMLP's valuable businesses being usurped by the "lifeboats" and a years-long effort to transfer HCMLP's remaining cash to its limited partners via distributions.

(c) Fraudulent Transfers To Massand

158. HCMLP also made payments of at least $519,000 per year to Massand Capital from November 2014 through 2019. On January 1, 2014, HCMLP entered into a one-year consulting agreement with Massand Inc., pursuant to which HCMLP agreed to pay Massand Inc. $25,000 per month in fees, $7,500 per month in "accommodations," $750 per month in cell phone expenses, and other "reasonable" expenses. Then, on January 5, 2015, HCMLP entered into a consulting agreement (together, the "Massand Consulting Agreements") on the same terms with Massand LLC, pursuant to which HCMLP agreed to pay Massand LLC $35,000 per

month in fees, $7,500 per month in "accommodations," $750 per month in cell phone expenses, and other "reasonable" expenses. In exchange, the Massand Consulting Agreements provided that HCMLP's Chairman, Dondero, and its General Counsel, Ellington, would assign certain unspecified "tasks" to Massand Capital.

159. Massand Capital's monthly invoices to HCMLP were consecutively numbered, indicating that Massand Capital had no customers other than HCMLP. Moreover, Massand Capital's invoices contained no information about the services it purportedly rendered to HCMLP.

160. The Massand Consulting Agreements noted that Massand Capital would be responsible for advising HCMLP on its "Investment Recovery Strategies business in the Countries of the Gulf Cooperation Council"—specifically Bahrain, Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, and Oman. Based upon a review of information to date, it appears that Massand Capital provided no actual services to HCMLP, and that HCMLP did not have any "business" that was related to "investment recovery strategies."

161. Rather, Massand Capital appears to have provided services solely to SAS—a separate entity that was owned and controlled by Dondero and Ellington. The owner of Massand Capital, Dilip Massand, was assigned an SAS email address, was bestowed the title of "Managing Director" of SAS, and was involved in communications relating to SAS's claims purchase litigation financing business.[35] As set forth above, SAS was owned by Dondero and Ellington, not HCMLP.

[35] In a speaker profile in 2014, Dilip Massand was described as overseeing "the operations of SAS Asset Recovery in the Middle East."

162. Thus, based on the documents and information that Plaintiff has reviewed to date, Dondero caused HCMLP to pay millions of dollars in consulting fees to Massand Capital in exchange for no value to HCMLP, all solely to benefit other Dondero-controlled entities. HCMLP received no value for the payments that Dondero and Ellington directed to Massand Capital.

J. Dondero And Ellington Breach Their Fiduciary Duties To HCMLP By Misappropriating Its Funds

163. HCMLP owned a 97.5% interest in HE Capital 232 Phase I, LLC ("HE Capital 232"). In February 2018, HE Capital 232 and its wholly-owned subsidiary, HE Capital 232 Phase I Property, LLC ("HE Capital 232 Property"), sold real property in Arizona. Net of costs and expenses in connection with the transaction, HE Capital 232 was due $8,687,245.15. These proceeds were placed in an escrow account maintained by HCMLP's counsel, Wick Phillips Gould & Martin LLP ("Wick Phillips"), "pending distribution of the proceeds to the direct and indirect owners of interests in [HE Capital 232 Property]."

164. On March 2, 2018, Ellington directed Wick Phillips to disburse from the escrow account $4,510,000 to HCMLP and $1,200,000 to an HCMLP managed fund to pay down mezzanine debt. This left $2,977,245.15 in the escrow account that was due and owing to HCMLP. On information and belief, Dondero and Ellington directed Wick Phillips to keep these funds in the escrow account so that they could funnel the money to themselves. For three months, Wick Phillips requested disbursement instructions for the remaining funds from Ellington, but Ellington demurred while "waiting for answers from others so can tell you where to send." Upon information and belief, during this period, Ellington and Dondero were determining how to direct the funds to themselves.

165. On June 4, 2018, Ellington dropped HCMLP's Managing Director (Real Estate) from an email chain and directed Wick Phillips to disburse the remainder to an account in the name of MaplesFS—a fiduciary services company in the Cayman Islands acting as a payment agent—for further credit to Grey Royale Ltd., a Cayman Islands shell company owned and controlled by Dondero and Ellington. MaplesFS subsequently transferred the full amount to Grey Royale Ltd. A Wick Phillips employee commented that the payment to Grey Royale Ltd. was "pretty suspicious."

166. In September 2019, in connection with the preparation of HE Capital 232's tax return, HCMLP's Tax Director inquired about the missing funds owed to HCMLP as a result of the Arizona property sale. Ellington responded that the "facts as I know them" were that the approximately $3 million in missing HCMLP funds were "additional cost[s] of sale, reducing the gain," and "used to pay various legal expenses and other closing costs." Ellington did not disclose that he had directed that the funds be paid to a Cayman Islands shell company owned by Dondero and Ellington, which had no role in the real estate transaction and was not owed any legal expenses or closing costs.

167. Neither Dondero, Ellington, nor Grey Royale Ltd. were parties to the escrow agreement or had any legal claim to the proceeds of the real estate sale held by the escrow agent.

K. Dondero Loyalists Receive Their Deferred Compensation By Engaging In The Tall Pine Transaction

168. HCMLP employees other than Dondero also engaged in, and improperly benefited from, self-interested transactions and schemes involving HCMLP.

169. In early 2020, only months after the Petition Date, Ellington and Leventon formed a group of entities that have received millions of dollars of payments from four Dondero Entities pursuant to a services agreement dated March 13, 2020, among Tall Pine, NexBank,

DAF Holdco, NexPoint, and HCMFA (the "Tall Pine Services Agreement"). The Tall Pine scheme was an elaborate arrangement pursuant to which Dondero would be able to keep certain key employees, including Ellington and Leventon, loyal to Dondero during the bankruptcy. Through the Tall Pine scheme, Ellington and Leventon ensured that they would profit off their wrongdoing, and that Dondero would compensate them no matter what happened to HCMLP.

170. Pursuant to the Tall Pine Services Agreement, HCMLP employees, including Ellington and Leventon, would receive approximately $17 million through pass-through entities that they created and owned over the course of two years. When Tall Pine would receive a payment from any of the counterparties to the Tall Pine Services Agreement, Tall Pine contemporaneously transferred funds to Leventon's pass-through entity, Clairmont Holdings, LLC ("Clairmont"). Ellington, who owned Tall Pine, profited from the amounts that remained in Tall Pine after it had distributed sums to Clairmont and other pass-through entities controlled by HCMLP employees.

171. After the Petition Date, Dondero surreptitiously approved wire transfers from accounts held by NexPoint, NexBank, and the DAF to Tall Pine for the benefit of himself, Ellington, and Leventon. These payments were made to compensate Ellington and Leventon for the amounts that would have been paid to them in 2020 but for the Committee's objection. Ellington and Leventon did not disclose these payments to the Independent Board.

V. CAUSES OF ACTION

COUNT I
Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain)

172. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

173. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

174. As set forth below, HCMLP made the following HCMLP Distributions to or for the benefit of Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain.

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
April 9, 2010 Distributions	$1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87)	N/A	N/A	$405,585.62 (two transfers of $375,000.00 and $30,585.62)			N/A
April 13, 2011 Distributions	$649,318.45	N/A	N/A	$216,439.49			N/A
May 2, 2011 Distributions	$3,124,435.00	N/A	N/A	$1,024,018.00			N/A
September 13, 2011 Distributions	$5,351,316.00	N/A	N/A	$1,705,813.00			N/A
November 25, 2011 Distributions	$5,250,000.00	N/A	N/A	$1,750,000.00			N/A
February 22, 2012 Distributions	$3,000,000.00	N/A	N/A	$1,000,000.00			N/A
February 29, 2012 Distributions	$4,514,780.25	N/A	N/A	$1,504,926.75			N/A
April 10, 2012 Distributions	$6,221,364.15	N/A	N/A	$2,073,788.05			N/A
April 9, 2013 Distributions	$25,375,083.16	N/A	N/A	$8,440,148.31			N/A
December 19, 2016 Distributions	N/A	$4,769,570.00	$8,945.00	$2,334.00	$470.00	$201.00	$12,017.00

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
January 5, 2017 Distributions	N/A	$11,034,754.00	$20,694.00	$5,401.00	$1,087.00	$466.00	$27,803.00
February 7, 2017 Distributions	N/A	$7,169,970.00	$13,446.40	$3,509.32	$706.19	$302.65	$18,065.44
June 15, 2017 Distributions	N/A	$79,600.00	$149.28	$38.96	$7.84	$3.36	$200.56
December 21, 2017 Distributions	N/A	$2,651,675.00	$4,972.89	$1,297.86	$261.17	$111.93	$6,681.16
March 9, 2018 Distributions	N/A	$84,575.00	$158.61	$41.40	$8.33	$3.57	$213.10
December 19, 2018 Distributions	N/A	$4,930,722.50	$9,246.96	$2,413.33	$485.64	$208.13	$12,423.44
March 28, 2019 Distributions	N/A	$3,711,456.47	$6,960.38	$1,816.56	$365.55	$156.66	$9,351.38
Total	$54,703,053.88	$34,432,322.97	$64,573.52	$18,142,416.67			$86,755.08
Grand Total	$107,429,122.12						

175. At the time of each HCMLP Distribution, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

176. HCMLP received less than reasonably equivalent value in exchange for each of HCMLP Distributions set forth above. Indeed, HCMLP received no value for HCMLP the Distributions, each of which was a gratuitous transfer from HCMLP, either to one of its limited partners or for the benefit of one of its limited partners and/or Dondero.

177. Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain did not receive HCMLP Distributions in good faith. To the contrary, at the times that Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain received each of HCMLP Distributions, they knew that HCMLP was balance sheet insolvent (or would be rendered balance sheet insolvent), inadequately capitalized, and/or unable to pay its debts as they came due. Each of these defendants was aware that Dondero had siphoned HCMLP's valuable assets and business opportunities after HCMLP had incurred substantial contingent liabilities. Moreover, each of these defendants was aware that HCMLP Distributions were yet another effort to siphon value from HCMLP to Dondero, Okada, and their affiliated entities at a time when HCMLP was insolvent, inadequately capitalized, and unable to pay its debts as they came due.

178. Dondero, Dugaboy, Okada, MAP #1, and MAP #2 were the beneficiaries of distributions made to Hunter Mountain, given that Hunter Mountain transferred proceeds of such distributions to them.

179. Each HCMLP Distribution is voidable as a constructively fraudulent transfer. Accordingly, each HCMLP Distribution should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT II
Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain)

180. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

181. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

182. As set forth below, HCMLP made the following HCMLP Distributions to or for the benefit of Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain.

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
April 9, 2010 Distributions	$1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87)	N/A	N/A	$405,585.62 (two transfers of $375,000.00 and $30,585.62)			N/A
April 13, 2011 Distributions	$649,318.45	N/A	N/A	$216,439.49			N/A
May 2, 2011 Distributions	$3,124,435.00	N/A	N/A	$1,024,018.00			N/A
September 13, 2011 Distributions	$5,351,316.00	N/A	N/A	$1,705,813.00			N/A
November 25, 2011 Distributions	$5,250,000.00	N/A	N/A	$1,750,000.00			N/A
February 22, 2012 Distributions	$3,000,000.00	N/A	N/A	$1,000,000.00			N/A
February 29, 2012 Distributions	$4,514,780.25	N/A	N/A	$1,504,926.75			N/A
April 10, 2012 Distributions	$6,221,364.15	N/A	N/A	$2,073,788.05			N/A
April 9, 2013 Distributions	$25,375,083.16	N/A	N/A	$8,440,148.31			N/A
December 19, 2016 Distributions	N/A	$4,769,570.00	$8,945.00	$2,334.00	$470.00	$201.00	$12,017.00

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	Hunter Mountain	Dugaboy	Okada (for the benefit of Okada)	Okada (for the benefit of MAP #1)	Okada (for the benefit of MAP #2)	Strand
January 5, 2017 Distributions	N/A	$11,034,754.00	$20,694.00	$5,401.00	$1,087.00	$466.00	$27,803.00
February 7, 2017 Distributions	N/A	$7,169,970.00	$13,446.40	$3,509.32	$706.19	$302.65	$18,065.44
June 15, 2017 Distributions	N/A	$79,600.00	$149.28	$38.96	$7.84	$3.36	$200.56
December 21, 2017 Distributions	N/A	$2,651,675.00	$4,972.89	$1,297.86	$261.17	$111.93	$6,681.16
March 9, 2018 Distributions	N/A	$84,575.00	$158.61	$41.40	$8.33	$3.57	$213.10
December 19, 2018 Distributions	N/A	$4,930,722.50	$9,246.96	$2,413.33	$485.64	$208.13	$12,423.44
March 28, 2019 Distributions	N/A	$3,711,456.47	$6,960.38	$1,816.56	$365.55	$156.66	$9,351.38
Total	$54,703,053.88	$34,432,322.97	$64,573.52	$18,142,416.67			$86,755.08
Grand Total	$107,429,122.12						

183. Dondero was HCMLP's Chief Executive Officer, President, Co-Chief Investment Officer, and Co-Founder. Okada was HCMLP's Co-Chief Investment Officer and Co-Founder. Together, Dondero and Okada directly or indirectly owned substantially all of the equity interests in HCMLP, or were the beneficiaries of all distributions HCMLP made to its limited partners. Dondero exercised complete control over HCMLP, and Okada acquiesced to and profited from schemes orchestrated by Dondero to enrich HCMLP's direct and indirect owners.

184. To that end, Dondero caused HCMLP to make the HCMLP Distributions set forth above with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero and Okada were insiders of HCMLP;

(b) before HCMLP Distributions were made, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved both siphoning HCMLP's valuable business opportunities through newly-created "lifeboat" entities and siphoning HCMLP's value through HCMLP Distributions (among other means);

(d) HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the HCMLP Distributions;

(e) at the time of each HCMLP Distribution, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(f) The initial recipients of the HCMLP Distributions were Dondero, Dugaboy, Okada, Strand, and Hunter Mountain, each of which was owned and/or controlled by Dondero and Okada;

(g) Dondero and Okada personally received certain HCMLP Distributions instead of HCMLP's limited partners Dugaboy, Strand, MAP #1, and MAP #2; and

(h) Dondero made HCMLP Distributions during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming

contingent liabilities, and effected the transfers in order to siphon value so that such value would not be available to satisfy HCMLP's creditors.

185. Dondero, Dugaboy, Okada, MAP #1, and MAP #2 were the beneficiaries of distributions made to Hunter Mountain, given that Hunter Mountain transferred proceeds of such distributions to them.

186. Each HCMLP Distribution is voidable as an intentionally fraudulent transfer. Accordingly, each of the HCMLP Distributions should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT III
Illegal Distributions Under Delaware Revised Uniform Limited Partnership Act
(Against Dondero, Dugaboy, Strand, and Hunter Mountain)

187. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

188. The Delaware Revised Uniform Limited Partnership Act ("DRULPA") § 17-607(a) prohibits distributions "to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership … exceed the fair value of the assets of the limited partnership[.]"

189. Under 17-607(b), "[a] limited partner who receives a distribution in violation of subsection (a) … and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited partnership for the amount of the distribution."

190. As set forth below, between December 31, 2016 and the Petition Date, HCMLP made the following distributions to Hunter Mountain, Dugaboy, and Strand (the "Illegal Distributions").

	Hunter Mountain	Dugaboy	Strand
December 31, 2016 Distributions	$4,769,570.00	$8,945.00	$12,017.00
January 31, 2017 Distributions	$11,034,754.00	$20,694.00	$27,803.00
February 28, 2017 Distributions	$7,169,970.00	$13,446.40	$18,065.44
June 30, 2017 Distributions	$79,600.00	$149.28	$200.56
December 31, 2017 Distributions	$2,651,675.00	$4,972.89	$6,681.16
March 31, 2018 Distributions	$84,575.00	$158.61	$213.10
December 31, 2018 Distributions	$4,930,722.50	$9,246.96	$12,423.44
March 31, 2019 Distributions	$3,711,456.47	$6,960.38	$9,351.38
Total	$34,432,322.97	$64,573.52	$86,755.08
Grand Total	$34,583,651.57		

191. Hunter Mountain, Dugaboy, and Strand knew that HCMLP made the Illegal Distributions at a time that its liabilities exceeded the fair value of its assets. As set forth herein and in the counts below, each of Hunter Mountain, Dugaboy, and Strand were the alter egos of Dondero. Even if Hunter Mountain, Dugaboy, or Strand were not the alter egos of Dondero, they would be imputed with Dondero's knowledge. Dondero was the sole owner of Strand. Likewise, Dondero created Hunter Mountain as a shell entity whose sole purpose was to purchase the majority of HCMLP's limited partnership interests from himself and his Dugaboy trust (among others). Through Hunter Mountain, Dondero continued to receive the economic

benefit of HCMLP's limited partnership distributions through distributions on notes that would be triggered by those Illegal Distributions made to Hunter Mountain.

192. Hunter Mountain, Dugaboy, and Strand are liable to HCMLP and its creditors for the full amount of the Illegal Distributions, plus interest.

COUNT IV
Breach of Fiduciary Duty Arising Out Of Dondero's Lifeboat Scheme
(Against Dondero and Strand)

193. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

194. During all periods relevant to the allegations set forth herein, Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner. Likewise, during all periods relevant to the allegations set forth herein, Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP and as an officer of HCMLP.

195. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero or Strand set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given Strand's and Dondero's fiduciary obligations, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit. Dondero and Strand transferred HCMLP's valuable business to the lifeboat entities, including but not limited to NexPoint and HCMFA. Pursuant to the scheme, the lifeboats utilized HCMLP's employees to

perform management and advisory services that HCMLP had provided directly, and should have continued to provide directly. As a result of this scheme, HCMLP would perform the same services via the same employees, but would now either receive only a small fraction of the profits that were generated or, in some instances, provide these services at a loss because the service agreements between HCMLP and the lifeboats would not even cover HCMLP's costs of providing the services. The majority of profits were paid to the lifeboats, which were owned by Dondero and/or entities that he controlled, placing those profits beyond the reach of HCMLP's creditors.

196. Dondero and Strand willfully and wantonly orchestrated this scheme in bad faith in order to evade HCMLP's present and future creditors.

197. Strand was dominated and controlled by its sole owner, Dondero. Dondero also owned substantial economic interests in each of the lifeboats either directly or through entities that he owned and/or controlled. As such, Dondero appeared on both sides of the agreements and transactions entered into between HCMLP, on one hand, and NexPoint, HCMFA, Acis, and the other lifeboats, on the other hand.

198. The wrongful acts that Dondero and Strand committed in connection with the lifeboat scheme—including but not limited to funneling new business to the lifeboat entities and undercompensating HCMLP for the use of its employees—continued through the Petition Date. Likewise, injury to HCMLP—in the form of lost profits and misappropriation of its employees and resources—continued through the Petition Date.

199. HCMLP suffered tens or hundreds of millions of dollars of harm, as the result of Dondero's and Strand's breaches, in the form of lost management and advisory fee revenue that far exceeded the amounts that the lifeboats paid to HCMLP under their respective shared

services and other agreements. Between the date of its formation and the Petition Date, NexPoint earned approximately $120 million in advisory and administrative fees and approximately $50 million in profits. Between the date of its formation and the Petition Date, HCMFA earned approximately $150 million in advisory and administrative fees.

200. Strand and Dondero profited from their breaches of fiduciary duties in connection with their lifeboat scheme in violation of Delaware law. Strand and Dondero are liable to HCMLP for their breaches of fiduciary duty in connection with the lifeboat scheme in an amount to be proven at trial.

COUNT V
Breach of Fiduciary Duty Arising Out Of Conduct That Resulted in HCMLP Liabilities To Third Parties
(Against Dondero, Strand, Ellington, and Leventon)

201. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

202. During all periods relevant to the allegations set forth herein: (1) Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner; (2) Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP, and as an officer of HCMLP; (3) Ellington owed fiduciary duties to HCMLP in his capacity as HCMLP's Chief Legal Officer and General Counsel; and (4) Leventon owed fiduciary duties to HCMLP in his capacity as HCMLP's Assistant General Counsel.

203. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero, Strand, Ellington, or Leventon set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed by all these parties to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into

the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

204. Dondero (and in turn, Strand), Ellington, and Leventon each breached their fiduciary duties to HCMLP by engaging in willful and wanton misconduct that foreseeably resulted in liability to HCMLP. In total, these breaches resulted in more than $350 million in allowed claims against HCMLP. But for their breaches of fiduciary duty, either HCMLP never would have incurred these claims, or HCMLP would have resolved these claims for substantially lower amounts. These breaches resulted in millions of dollars to Dondero, Ellington, and Leventon, either directly, through transfers from HCMLP to entities owned in whole or in part by Dondero and Ellington, or indirectly, through compensation paid to Ellington and Leventon in exchange for their loyalty to Dondero in perpetrating schemes that breached their duties to HCMLP.

205. **Liabilities to UBS.** Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to incur substantial liability to UBS. Dondero exposed HCMLP and its subsidiaries to litigation against UBS that resulted in an adverse judgment that exceeded $1 billion. Among other things, acting through HCMLP, Dondero caused the Fund Counterparties to refuse to meet their obligations to UBS, and orchestrated transfers of more than $233 million of assets from HFP, exposing HCMLP to claims for fraudulent transfer, breach of the implied covenant of good faith and fair dealing, and extensive prejudgment interest and legal fees.

206. Then, in 2017, after a New York state court ruled that UBS's fraudulent transfer claims against HCMLP and claims against the Fund Counterparties could proceed to trial,

Dondero, Ellington, Leventon, Sevilla, Lucas, and DiOrio caused HCMLP, in its capacity as investment manager for the Fund Counterparties, to orchestrate the surreptitious transfer of assets worth at least $100 million to Sentinel, an entity located in the Cayman Islands that was indirectly owned and controlled by Dondero and Ellington. Neither HCMLP nor the Fund Counterparties received legitimate value in exchange for this transfer.

207. After the Petition Date, Dondero, Ellington, and Leventon actively concealed this transfer from the Independent Board, UBS, and the Bankruptcy Court. Ellington even went so far as to state in August 2020 that "[Leventon] and myself have spent in excess of 100 hours trying to piece together everything we can [about the Fund Counterparties' assets] to create a true and accurate document based record of what happened with these target entities['s assets]." Ellington made this statement knowing that the Fund Counterparties' assets had been transferred to an offshore entity he owned and controlled. When this transfer was uncovered, HCMLP was forced to increase the amount of its settlement with UBS from a total of $75 million in allowed claims to $125 million in allowed claims.

208. **Liabilities to Acis.** Dondero willfully and wantonly caused HCMLP to incur over $23 million in liability to Acis and Terry. As with NexPoint and HCMFA, Acis was originally created to perform management and advisory services that were previously provided by HCMLP. When Dondero's relationship with Terry deteriorated, Dondero set in motion a series of contentious litigation with Terry, which resulted in Terry obtaining a $7.95 million arbitration award against Acis.

209. Dondero then embarked on a crusade to ensure Terry would not collect from Acis. In connection therewith, Dondero acted through HCMLP to, among other things: (1) siphon assets from Acis, causing Terry to commence an involuntary bankruptcy against Acis

and causing HCMLP to lose its advisory and shared services contracts with Acis; (2) enter into costly, frivolous litigation with Terry in Guernsey, a "loser pays" jurisdiction; (3) convert the retirement accounts owned by Terry and his wife, leading to additional legal fees incurred in litigation in Texas state court; (4) violate injunctive provisions set forth in Acis's plan of reorganization, exposing HCMLP to additional liability; (5) enter into costly litigation with Acis's chapter 11 trustee in connection with Acis's bankruptcy case; and (6) mismanage Acis CLOs, exposing HCMLP to substantial liability in its capacity as advisor and fiduciary to Acis. As a result of these actions and the reputational harm they caused, it became impossible for HCMLP to launch another CLO either directly or indirectly.

210. In connection with his vendetta against Terry, Dondero willfully and wantonly subjected HCMLP to substantial liability to Acis and Terry, including by giving testimony at trial which, along with Leventon's testimony, was found "to be of questionable reliability" and structured "to convey plausible deniability." Ultimately, in order to avoid further liability to Terry and Acis, HCMLP settled those claims for more than $23 million pursuant to a settlement approved by this Court.

211. Beginning on October 24, 2017, four days after Terry's arbitration judgment was issued, Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to enter into numerous transactions to take control of Acis's business and strip it of assets so it could not pay the arbitration award. Ellington and Leventon implemented Dondero's directives and took the steps necessary to consummate the transactions.

212. Leventon willfully and wantonly helped to transfer value away from Acis in an attempt to make it judgment-proof. Among other things, Leventon assisted in the drafting and execution of the agreement that transferred Acis's interest in a note receivable from HCMLP,

which had a balance owing of over $9.5 million, to Cayman Island entity Highland CLO Management Ltd. just ten days after Terry obtained his arbitration award. The agreement recites that (1) HCMLP is no longer willing to continue providing support services to Acis; (2) Acis, therefore, can no longer fulfill its duties as a collateral manager; and (3) Highland CLO Management Ltd. agrees to step in to the collateral manager role. Given the timing of the assignment—just days after Terry's arbitration award—Leventon knew that it was part of a scheme to strip Acis of its assets, which ultimately resulted in millions of dollars of damage to HCMLP.

213. **Liabilities to HarbourVest.** Dondero and Ellington also willfully and wantonly caused harm to HCMLP by exposing it to substantial liability to HarbourVest. Dondero and Ellington, acting through HCMLP, fraudulently induced HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash, with a commitment for an additional $75 million in the future, while concealing that Dondero was actively engaged in a campaign against Terry that would significantly impair the value of HarbourVest's investment. In addition, Dondero did not intend to use the $75 million that CLO Holdco received from HarbourVest to satisfy capital calls at HCLOF, and instead intended for CLO Holdco to use those funds as part of a scheme to infuse other Dondero Entities (including entities that benefitted the NexPoint and HCMFA lifeboats) with additional cash. Ultimately, HCMLP was forced to settle with HarbourVest by providing it with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to a new entity designated by HCMLP. But for Dondero's and Ellington's conduct, HCMLP would not have incurred the foregoing liabilities. As a result of their conduct, those interests in HCLOF were then worth tens of millions of dollars less than the $75 million HarbourVest paid to acquire them.

214. **Liabilities to Crusader Funds.** Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to incur substantial liability to the Redeemer Committee due to their conduct in connection with HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors. Among other things, Dondero, Ellington, and Leventon caused HCMLP to: (1) transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, Ltd., after the Redeemer Committee had refused to approve that transfer, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (2) purchase 28 Plan Claims for the benefit of HCMLP without the approval of the Redeemer Committee, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (3) covertly purchase the stock of the Portfolio Company and fail to liquidate the Crusader Funds' shares in the Portfolio Company, in violation of HCMLP's fiduciary duties; and (4) violate the provision of the Joint Plan and Scheme requiring HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete, causing HCMLP to forfeit its rights to those fees entirely. Both Ellington and Leventon provided false narratives and misrepresentations in furtherance of Dondero's harm to the Crusader Funds. The Redeemer Arbitration panel found, for example, that Leventon "was significantly involved in providing direction" to keep the Redeemer Committee in the dark and "was the principal instrument through which [certain] misrepresentation[s] and omission[s] were communicated." As a result of Dondero's, Ellington's, and Leventon's conduct, the Redeemer Committee received an arbitration award against HCMLP in excess of $190 million, and in HCMLP's bankruptcy, HCMLP agreed to pay over $136 million in connection therewith.

215. Beyond the direct losses identified in the preceding paragraphs, HCMLP suffered additional harm from the breaches of fiduciary duty committed by Dondero, Ellington,

Leventon and Strand. For example, the $190 million Redeemer arbitration award—which was itself caused by Dondero's, Ellington's, Leventon's and Strand's breaches of their fiduciary duty to HCMLP—caused HCMLP to file for bankruptcy. As of October 15, 2021, HCMLP had incurred in excess of $40 million in professional fees in connection with the bankruptcy. But for Dondero's, Ellington's, Leventon's, and Strand's willful and wanton misconduct, HCMLP would not have been obligated to pay any of these fees.

216. In light of the foregoing, Dondero, Strand, Ellington, and Leventon are liable for breaches of their fiduciary duties to HCMLP in an amount to be determined at trial.

COUNT VI
Declaratory Judgment That Strand Is Liable For HCMLP's Debts In Its Capacity As HCMLP's General Partner
(Against Strand)

217. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

218. Under DRULPA § 17-403(b), "a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law … to persons other than the partnership and the other partners." Moreover, "[e]xcept as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law … to the partnership and to the other partners." *Id.*

219. Under Delaware Uniform Partnership Law ("DUPL") § 15-306(a), partners of a partnership "are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law."

220. During all periods relevant to the allegations set forth herein, Strand was the general partner of HCMLP. Moreover, Strand has not been relieved of its obligation to satisfy HCMLP's obligations by agreement or law.

221. Accordingly, under the operative partnership agreements and applicable law, Strand is liable to HCMLP and "to persons other than [HCMLP]" for the full amount of HCMLP's liabilities.

COUNT VII
Declaratory Judgment That Dondero Is Liable For Strand's Debts As Strand's Alter Ego
(Against Dondero)

222. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

223. Between the formation of Strand and the Petition Date, Dondero, Strand's sole equity owner, dominated and controlled Strand such that Dondero and Strand operated as a single economic entity. Although Strand was the general partner of HCMLP, Strand—as opposed to Dondero himself—rarely took any official corporate action. Between its formation and the Petition Date, Strand documented only 12 instances in which it took corporate action, eight of which related to the appointment or removal of officers.

224. Dondero was the only officer of Strand between 1993 and 2001. Although Strand elected certain officers between 2001 and the Petition Date, they performed no duties in their capacities as officers of Strand and were appointed or fired from their roles based on their loyalty to, and their current relationship with, Dondero. Dondero testified that he did not know whether Strand even had any officers, stating that he was "not aware of [Strand] ever having any employees or active … governance." Likewise, Dondero did not know whether Strand had a board of directors and whether he sat on Strand's board.

225. Strand did not observe corporate formalities. Based on a review of HCMLP's books and records, between the formation of Strand and the Petition Date, Strand never held a board meeting. Indeed, Dondero testified that he is not aware of attending a board meeting for Strand and does not recall ever seeing board minutes for Strand.

226. Strand did not comply with its own bylaws, which require annual meetings of stockholders.

227. Strand was a sham entity whose sole purpose was to serve as a vehicle through which Dondero could dominate and control HCMLP. Dondero used this abuse of the corporate form to facilitate his scheme to make HCMLP act contrary to its own interests and in favor of Dondero's interests by insulating assets from HCMLP's creditors, including those whose liabilities were the direct result of Dondero's own wrongdoing. As such, Dondero is Strand's alter ego, and the Court should pierce the corporate veil to hold Dondero liable for Strand's debts.

COUNT VIII
Declaratory Judgment That Dondero and Strand Are Liable For HCMLP's Debts In Their Capacities As HCMLP's Alter Ego
(Against Dondero and Strand)

228. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

229. Dondero, using his alter ego Strand, dominated and exercised total control over HCMLP through the Petition Date, such that Dondero, Strand, and HCMLP operated as a single economic entity. Dondero had total decision-making authority and governed HCMLP by decree—using the lack of an independent Strand to render HCMLP a mere instrumentality of Dondero. HCMLP had no independence and could not exercise any business discretion separate

and apart from Dondero, in service of his personal interests and the interests of his integrated web of entities.

230. Strand, like innumerable entities within Dondero's empire—including NexPoint GP, HCMFA, Dugaboy, CLO Holdco, Highland Dallas, Highland Santa Barbara, Highland Kansas City, HFP, and Acis—listed HCMLP's headquarters as its business address.

231. Dondero failed to observe corporate formalities with regard to HCMLP. Indeed, he did not distinguish between HCMLP and his personal interests and businesses. Dondero used HCMLP employees to service his own interests that were unrelated to HCMLP. For example, Dondero caused HCMLP to employ individuals to carry out roles serving Dondero personally. Such employees included Dondero's accountant, security guard, and landscaper. Dondero also frequently instructed HCMLP's legal department to perform legal services in connection with his own personal and business interests, which conferred no value on HCMLP.

232. Dondero used his domination and control over HCMLP to perpetrate numerous injustices, abuses, and frauds.

233. Dondero siphoned value from HCMLP to other entities he owned and controlled by causing HCMLP's employees and resources to be used for his lifeboat businesses. In connection with this fraudulent scheme to move assets out of the reach of HCMLP's creditors, Dondero exploited HCMLP by using its employees and resources for the benefit of other lifeboat entities, either at no cost to the lifeboats, at a loss to HCMLP, or at substantially below-market rates. In fact, HCMLP should have received all of the profits generated from the services performed by the lifeboats, which in fact were performed by HCMLP's employees. The purpose and effect of this scheme was to cause HCMLP to provide the employees and

infrastructure that were needed by Dondero's profitable business ventures, while also ensuring that HCMLP would remain cash poor and lack the funds to satisfy its own obligations.

234. Dondero caused HCMLP to enter into agreements, including the Massand Consulting Agreement, the object and purpose of which were to cause HCMLP to incur obligations for services that conferred benefits on Dondero, through benefits conferred to entities he owned other than HCMLP.

235. Dondero used his abusive domination and control to cause HCMLP's assets to be commingled with those of his other businesses, without observing corporate formalities. By commingling entities and using HCMLP's employees and resources to further his own personal goals, Dondero exposed HCMLP to hundreds of millions of dollars in liability to numerous parties, including UBS, Acis, Terry, HarbourVest, the Redeemer Committee, and the Crusader Funds.

236. By virtue of his complete control over HCMLP, Dondero caused HCMLP to willfully and wantonly breach contractual obligations and take measures to render HCMLP "judgment-proof." Ultimately, this brazen disregard for HCMLP as an independent entity with its own obligations rendered HCMLP insolvent, including by resulting in multiple adverse awards such as the $190 million arbitration award that caused HCMLP to file for bankruptcy.

237. Dondero further abused the corporate form to siphon assets from HCMLP by orchestrating intercompany transfers that were designed to siphon assets from HCMLP. For example, Dondero orchestrated the CLO Holdco Transaction, through which he caused HCMLP to transfer assets valued by the company at approximately $24 million through a series of entities he controlled in exchange for consideration that was worth a small fraction of the value of the transferred assets.

238. Because Dondero operated Strand and HCMLP as a single economic entity and used that domination to defraud HCMLP's creditors, Dondero and Strand are the alter egos of HCMLP and should be held liable for the full amount of HCMLP's obligations.

COUNT IX
Declaratory Judgment That Dugaboy Is Liable For The Debts Of Dondero and HCMLP In Its Capacity As Dondero's Alter Ego
(Against Dugaboy)

239. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

240. Dondero operated Dugaboy—Dondero's personal trust—as an extension of himself and his alter ego HCMLP. Dondero treated himself, Dugaboy, and HCMLP as a single economic entity. Dondero dominated and controlled Dugaboy. Under the terms of Dugaboy's trust agreement, Dondero has the power to remove trustees without cause—leverage that allowed him to control Dugaboy. Dondero appointed Scott, his longtime personal friend, as the trustee of Dugaboy, for the purpose of serving as a rubber stamp of approval for all transactions that Dondero (or HCMLP employees acting at Dondero's direction) presented to Scott.

241. Dondero treated Dugaboy as a vehicle for his own interests. For example, Dondero caused Dugaboy to falsely assert in HCMLP's notes litigation that Dugaboy, acting through Dondero's sister, Nancy Dondero, allegedly caused HCMLP to enter into an agreement whereby the notes owed to HCMLP by various Dondero Entities would be forgiven as compensation to Dondero upon satisfaction of certain conditions subsequent. Dondero also caused Dugaboy to help facilitate HCMLP's transfer of the Transferred CLO Holdco Assets to Get Good, by agreeing to provide the Dugaboy Note, purportedly but not actually equal to the value of the Transferred CLO Holdco Assets and with a paltry 2.75% interest rate and no security, covenants, lender protections provided to Dugaboy, or payments due until 2036.

242. Dondero disregarded corporate formalities between Dugaboy and HCMLP. Dondero used HCMLP employees, on HCMLP's payroll, to transact business on behalf of Dugaboy, without any compensation to HCMLP. Dondero used HCMLP employees for Dondero's personal estate planning and caused HCMLP to comingle Dugaboy's electronically stored information with HCMLP's data. Dugaboy shared its principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities.

243. With Dondero as the primary beneficiary of Dugaboy, there are no other innocent shareholders whose expectations could be impaired by holding Dugaboy liable for Dondero or HCMLP's debts. There are no innocent third-party creditors of Dugaboy who would be harmed by holding Dugaboy liable for Dondero's or HCMLP's debts.

244. Dugaboy is the alter ego of Dondero, and the Court should hold Dugaboy liable for Dondero's debts. Because Dondero is also HCMLP's alter ego, and because Dugaboy knowingly participated in Dondero's scheme to abuse the corporate form to defraud creditors, Dugaboy is also the alter ego of HCMLP and the Court should hold Dugaboy liable for the debts of HCMLP.

COUNT X
Declaratory Judgment That NexPoint Is Liable
For The Debts Of Dondero and HCMLP As Their Alter Egos
(Against NexPoint)

245. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

246. Dondero dominated and controlled NexPoint such that Dondero, NexPoint, and Dondero's alter ego HCMLP operated as a single economic entity. NexPoint is owned and controlled by Dondero through Dugaboy and NexPoint GP.

247. NexPoint knowingly participated in—and played a core role in accomplishing—Dondero's scheme to move HCMLP's assets out of reach of its creditors by operating NexPoint as a facade of HCMLP, in order to siphon profits away from HCMLP and to Dondero and other entities he controlled. Dondero and NexPoint acted together to place the profits that were generated from HCMLP's business and services beyond the reach of HCMLP's then present and future creditors.

248. Dondero disregarded the corporate formalities and the distinctions between himself, NexPoint, and HCMLP. Between 2012 and 2015, NexPoint had no employees of its own, and performed no business activities that were distinguishable from those performed by HCMLP. NexPoint shared its principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities. NexPoint was a facade of HCMLP that used HCMLP's employees to perform the same investment management and advisory services that HCMLP routinely performed. Dondero caused internal business plans and projections to be prepared as if these entities were part of a single economic unit.

249. For over one year, HCMLP performed all services for NexPoint without any sub-advisory or shared services agreements that even purported to compensate HCMLP for the use of its employees. Even after Dondero attempted to infuse this scheme with a patina of legitimacy by causing NexPoint to enter into agreements with HCMLP, they were structured to ensure that NexPoint retained the vast majority of profits for the work performed by HCMLP and its employees.

250. Dondero used NexPoint as a part of his scheme to extract value from HCMLP. Dondero caused HCMLP to fund NexPoint's operations, seed its investments, and provide a substantial amount of the capital that ultimately funded distributions NexPoint made to its

owner, Dugaboy. Transferring funds from HCMLP to NexPoint funded distributions by NexPoint to Dondero's alter ego Dugaboy, draining HCMLP's value to Dondero with NexPoint's knowledge and participation. Between 2012 and 2017, HCMLP loaned NexPoint approximately $30 million, and during that same period, NexPoint made limited partner distributions of approximately $34 million—99.9% of which were paid to Dugaboy. Distributions to Dugaboy were made at the direction of, and for the benefit of, Dondero.

251. Dondero and NexPoint worked together to further extract value from HCMLP by causing HCMLP to lend to NexPoint on terms entirely determined by Dondero. Dondero further caused HCMLP to enter into multiple agreements with NexPoint providing for forbearance and other relief. As of the Petition Date, NexPoint owed HCMLP approximately $23 million, and HCMLP is currently embroiled in litigation with Dondero and NexPoint following a payment default that occurred January 2021.

252. There are no other innocent shareholders whose expectations could be impaired by holding NexPoint liable for Dondero or HCMLP's debts. Similarly, there are no innocent third-party creditors of NexPoint who would be harmed by holding NexPoint liable for Dondero or HCMLP's debts.

253. NexPoint is the alter ego of Dondero and the Court should hold NexPoint liable for the debts of its ultimate shareholder Dondero. Because Dondero is also HCMLP's alter ego, and because NexPoint knowingly participated in Dondero's scheme to abuse the corporate form to defraud creditors, NexPoint is also alter ego of HCMLP and the Court should hold NexPoint liable for the debts of HCMLP.

COUNT XI
Declaratory Judgment That HCMFA Is Liable
For The Debts Of Dondero and HCMLP As Their Alter Ego
(Against HCMFA)

254. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

255. Dondero dominated and controlled HCMFA such that Dondero, HCMFA, and Dondero's alter ego HCMLP operated as a single economic entity. HCMFA is controlled by Dondero through its general partner, Strand Advisors XVI, Inc., which owns a 1% interest in HCMFA and is wholly-owned by Dondero. Dondero and Okada are the ultimate owners of the remaining stakes in HCMFA: HCMS owns an 89.6667% ownership interest in HCMFA, and is itself owned 75% by Dondero and 25% by Okada; the Okada Family Revocable Trust owns the remaining 9.3333% ownership interest in HCMFA. Dondero caused internal business plans and projections to be prepared as if these entities were part of a single economic unit.

256. HCMFA knowingly participated in—and played a key role in accomplishing—Dondero's scheme to move HCMLP's assets out of reach of its creditors by operating HCMFA as a facade of HCMLP, in order to siphon profits away from HCMLP and to Dondero directly or indirectly through other entities he controlled. Dondero and HCMFA acted together to place the profits that were generated from HCMLP's business and services beyond the reach of HCMLP's then present and future creditors.

257. Dondero disregarded the corporate formalities and the distinctions between HCMFA and HCMLP. HCMFA was a facade of HCMLP that used HCMLP's employees to perform the same investment management and advisory services that HCMLP routinely performed. Strand Advisors XVI, Inc., HCMFA's general partner, purports to be managed by six individuals, all but one of whom were previously on HCMLP's payroll. HCMFA shared its

principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities.

258. HCMFA was effectively a shell entity created to replace HCMLP as the new investment manager for open-ended retail investment funds. Agreements between HCMLP and HCMFA were structured to ensure that HCMFA retained the vast majority of profits for the work performed by HCMLP and its employees. To the extent that sub-advisory and shared services agreements existed between HCMLP and HCMFA, they existed to lend credibility to Dondero's fraudulent scheme to divert HCMLP's profits to himself and Okada through HCMFA.

259. Dondero used HCMFA as a part of his scheme to extract value from HCMLP. Dondero caused HCMLP to use its resources to support HCMFA. Between 2011 and 2019, HCMLP loaned HCMFA approximately $12 million; Dondero caused HCMLP to enter into multiple forbearances on HCMFA's debts. In May 2019, HCMLP loaned HCMFA an additional $7.4 million, and HCMFA again failed to repay. Dondero exerted his control and dominance of these entities to direct both sides of those agreements, with the knowing participation of HCMFA, to accomplish his own ultimate goal of siphoning value from HCMLP to insulate it from creditors.

260. There are no other innocent shareholders whose expectations could be impaired by holding HCMFA liable for Dondero or HCMLP's debts. Similarly, there are no innocent third-party creditors of HCMFA who would be harmed by holding NexPoint liable for Dondero or HCMLP's debts.

261. HCMFA is the alter ego of Dondero and the Court should hold HCMFA liable for Dondero's debts. Because Dondero is also HCMLP's alter ego, and because HCMFA

knowingly participated in Dondero's scheme to abuse of the corporate form to defraud creditors, HCMFA is also the alter ego of HCMLP and the Court should hold HCMFA liable for the debts of HCMLP.

COUNT XII
Avoidance of Transfer of Management Agreements As Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against HCMFA and NexPoint)

262. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

263. On the date of the Debtor's bankruptcy filing, the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

264. On December 15, 2011, HCMLP entered into a novation agreement, pursuant to which HCMFA became the investment advisor for Highland Credit Strategies Fund, Highland Floating Rate Opportunities Fund, the Highland Long/Short Equity Fund, the Highland Long/Short Healthcare Fund, and the Highland Special Situations Fund (collectively, the "Transferred Funds"). Dondero caused HCMLP to transfer these agreements to HCMFA as part of his scheme to evade HCMLP's creditors.

265. HCMLP received less than reasonably equivalent value in connection with the novation agreement. Prior to the transfer, HCMLP received management and advisory fees in return for the services that its employees performed for the Transferred Funds. After the transfer, HCMLP's employees provided the same services for the Transferred Funds, except that the vast majority of the profits were diverted to HCMFA following the extinguishment of HCMLP's credit facility.

266. At the time of the transfer, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

267. On June 13, 2012, Dondero caused HCMFA to transfer the Highland Credit Strategies Fund to the newly-created NexPoint, after which Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as NHF. The result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another.

268. The transfer of HCMLP's valuable management and advisory contracts with the Transferred Funds (the fair market value of which likely exceeded $25 million at the time of transfer) is voidable as constructively fraudulent against HCMFA and its subsequent transferee, NexPoint. Accordingly, these transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIII
Avoidance of Transfer of Management Agreements As Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against HCMFA and NexPoint)

269. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

270. On the date of the Debtor's bankruptcy filing, the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count. On December 15, 2011, HCMLP entered into

a novation agreement, pursuant to which HCMFA became the investment advisor for the Transferred Funds. Dondero caused HCMLP to transfer these agreements to HCMFA as part of his scheme to evade HCMLP's creditors.

271. Dondero caused HCMLP to make the transfer with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP and HCMFA;

(b) before the transfer, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, causing HCMLP to transfer its valuable management contracts and business opportunities to newly-created "lifeboat" entities;

(d) at the time of the transfer, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) Dondero caused HCMLP to make the transfer during a period when he believed the value of HCMLP may ultimately be distributed to its creditors, as a result of its looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's present and future creditors; and

(f) HCMLP did not receive reasonably equivalent value in return for transferring its valuable management and advisory contracts with the Transferred Funds to HCMFA.

272. On June 13, 2012, Dondero caused HCMFA to transfer the Highland Credit Strategies Fund to the newly-created NexPoint, after which Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as NHF. The result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another.

273. The transfer of HCMLP's valuable management and advisory contracts with the Transferred Funds is voidable as intentionally fraudulent against HCMFA and its subsequent transferee, NexPoint. Accordingly, these transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIV
Breach of Fiduciary Duty In Connection With Fraudulent Transfers And Schemes
(Against Dondero, Strand, Ellington, and Okada)

274. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

275. During all periods relevant to the allegations set forth herein: (1) Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner; (2) Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP, and as an officer of HCMLP; (3) Ellington owed fiduciary duties to HCMLP in his capacity as HCMLP'S Chief Legal Officer and General Counsel; and (4) Okada owed fiduciary duties to HCMLP in his capacity as Chief Investment Officer.

276. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero, Strand, Ellington, or Okada set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed by all these parties to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

277. Dondero and Ellington caused HCMLP to enter into the Massand Consulting Agreements, with the intent to have Massand Capital perform services for SAS, an entity that they surreptitiously created and owned. Likewise, Dondero and Ellington oversaw and approved the Massand Transfers. The payment obligations Dondero and Ellington caused HCMLP to incur, and the payments that Dondero and Ellington caused HCMLP to make, conferred no benefit on HCMLP. In addition, Dondero and Ellington caused HCMLP employees to perform work for SAS—at least seven HCMLP employees received SAS email addresses—without compensating HCMLP.

278. Likewise, Dondero orchestrated the fraudulent CLO Holdco Transaction, pursuant to which he (acting through Strand) siphoned valuable assets from HCMLP in return for illusory consideration, in the form of a note from Dugaboy, an entity that he controlled. Dondero siphoned these assets from HCMLP in order to benefit other entities that he owned and controlled, including CLO Holdco, NexPoint, and HCMFA.

279. Moreover, as part of his scheme to evade HCMLP's creditors, Dondero, acting through Strand, approved hundreds of millions of dollars of distributions from HCMLP at a time that Dondero believed HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

280. As Dondero's co-founder and HCMLP's Chief Investment Officer, Okada knew or willfully blinded himself to the fact that the HCMLP Distributions—including, but not limited to, the distributions made to Okada, MAP #1, and MAP #2—were made at times that HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

281. By willfully and wantonly not returning the distributions made to Okada, MAP #1, and MAP #2 that were made at times that Okada knew that HCMLP was insolvent, and knowingly permitting unlawful distributions to Dondero and his controlled entities, Okada breached his fiduciary duties to HCMLP.

282. Dondero and Okada further breached their fiduciary duties by using HCMLP employees for their own personal affairs and private business interests, on HCMLP's time and payroll.

283. Dondero and Ellington breached their fiduciary duties by diverting approximately $3 million that was held in escrow for HCMLP to an entity that they owned in the Cayman Islands.

284. By willfully and wantonly orchestrating these fraudulent transfers, Dondero, Strand, and Ellington breached their fiduciary duties to HCMLP.

COUNT XV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law
(Against NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, Highland Dallas)

285. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

286. NexPoint and HCMFA aided and abetted the breaches of fiduciary duty committed by Dondero and Strand. NexPoint and HCMFA were each dominated and controlled by Dondero. As such, each of NexPoint and HCMFA knowingly participated in their breaches of their fiduciary duties to HCMLP. NexPoint and HCMFA knowingly participated in Dondero's scheme to divert HCMLP's valuable business into new "lifeboat" entities that he owned and controlled. The breaches of fiduciary duty that were aided and abetted by NexPoint and HCMFA caused tens of million (and potentially over one hundred million) of dollars in damage to HCMLP.

287. SAS, which was owned and controlled by Dondero and Ellington, knowingly participated in Dondero's and Ellington's breaches of their fiduciary duties in connection with the Massand Consulting Agreement and Massand Transfers. SAS was aware of the fiduciary duties that Dondero and Ellington owed to HCMLP as high ranking officers. SAS received the benefit of the services performed by Massand Capital, which Dondero and Ellington surreptitiously charged to HCMLP. The breaches of fiduciary duty that were aided and abetted by SAS caused millions of dollars of damage to HCMLP.

288. Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas aided and abetted Dondero's breach of fiduciary duties relating to the CLO Holdco Transaction. Scott—and in turn, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas—

knowingly participated in the scheme to transfer assets valued by the company at approximately $24 million to CLO Holdco in exchange for a note worth significantly less than the transferred assets. Scott either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP by orchestrating the CLO Holdco Transaction, as evidenced by, among other things, the low interest rate on the Dugaboy Note; the lack of security, material covenants; or other protections; the unfair repayment terms; and the fact that Dondero stood on both sides of the transaction. Moreover, Scott dutifully executed the necessary documentation in order to cause the Transferred CLO Holdco Assets to be transferred to Get Good, DAF Holdco, DAF, CLO Holdco, and Highland Dallas.

289. Neither the Litigation Trustee nor the Estate could have discovered the conduct set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

COUNT XVI
Civil Conspiracy to Breach Fiduciary Duties Under Texas Law
(Against Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, Highland Dallas)

290. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

291. Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets away from HCMLP to evade HCMLP's creditors. To effectuate the conspiracy, Dondero, Ellington, and Leventon acted outside the scope of their HCMLP employments, as agents of the non-HCMLP entities they owned and controlled, and for their personal benefits.

292. Neither the Litigation Trustee nor the Estate could have discovered the conduct set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By its nature, the conspiracy alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

293. Dondero, Ellington, and Leventon orchestrated myriad transactions to divert funds from HCMLP to Dondero and the entities that he owned and controlled, as well as to Ellington, Leventon, and the entities they owned and controlled. NexPoint and HCMFA took over valuable HCMLP management agreements and used HCMLP's employees to usurp HCMLP's business in return for little or no consideration to HCMLP. SAS—which is owned and controlled by Dondero and Ellington, who own 70% and 30% of the economic interests in SAS, respectively—received valuable services from Massand while HCMLP bore the expense. Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas participated in the

fraudulent CLO Holdco Transaction that siphoned valuable assets from HCMLP in return for patently insufficient consideration.

294. Ellington and Leventon understood that their conduct was directed at enriching themselves and Dondero at the expense of HCMLP, and each of them were compensated in excess of their HCMLP salaries by Dondero (sometimes via minority ownership in an entity, like Ellington's stake in SAS, and sometimes via complex, circuitous schemes like the Tall Pine arrangement) for their participation. NexPoint, HCMFA, and SAS—each of which was controlled by Dondero—likewise understood that their role in the conspiracy was to obtain value for Dondero at HCMLP's expense. Scott, too, understood that he was appointed to be a rubber-stamp for Dondero's self-interested schemes to siphon value from HCMLP and distribute it throughout the vast web of Dondero Entities. Scott acted on the basis of his longstanding loyalty to his "closest friend" Dondero and was compensated with "business gifts" for his service in furtherance of the conspiracy.

295. In furtherance of the conspiracy, Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, CLO Holdco, DAF Holdco, the DAF, Get Good, and Highland Dallas undertook, *inter alia*, the following schemes and overt acts:

(a) Dondero, NexPoint, and HCMFA conspired to perpetrate the lifeboat scheme in order to place valuable assets outside the reach of HCMLP's creditors, in violation of Dondero's fiduciary duties. NexPoint and HCMFA were each dominated and controlled by Dondero and, as such, they each consciously acted in furtherance of the conspiracy, including by transferring existing business to NexPoint and HCMFA, generating new business through NexPoint and HCMFA, and failing to compensate

HCMLP for the use of its employees and resources. NexPoint and HCMFA were aware that the lifeboat scheme caused substantial damages to HCMLP.

(b) Dondero, Ellington, and SAS caused HCMLP to enter into the fraudulent Massand Consulting Agreements, pursuant to which HCMLP paid Massand millions of dollars in return for services that were rendered for SAS, which Dondero and Ellington owned and controlled. Likewise, SAS acted in furtherance of the conspiracy by surreptitiously receiving the benefits from the Massand Consulting Agreements while HCMLP incurred the costs under those agreements. Each of Dondero, Ellington, and SAS were aware that causing HCMLP to pay SAS's expenses—for the benefit of SAS and its owners Dondero and Ellington—harmed HCMLP.

(c) Dondero, Scott, CLO Holdco, DAF Holdco, the DAF, Get Good, and Highland Dallas conspired to cause HCMLP to transfer valuable assets to CLO Holdco for less than reasonably equivalent value. Scott—and in turn, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas—consciously participated in the scheme to transfer assets valued by the company at approximately $24 million to CLO Holdco in exchange for a note worth significantly less than the transferred assets, including by executing the necessary documentation to cause the Transferred CLO Holdco Assets to be transferred to Get Good, DAF Holdco, DAF, CLO Holdco, and Highland Dallas. Each of Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas were aware that the CLO Holdco Transaction breached fiduciary duties to HCMLP, constituted a

fraudulent transfer, and harmed HCMLP by diverting valuable assets in exchange for the far less valuable Dugaboy Note.

(d) Ellington and Dondero conspired to disburse to a Cayman Islands shell company they owned and controlled nearly $3 million of escrowed proceeds rightfully owing to HCMLP.

(e) In furtherance of the conspiracy and to maintain loyalty to Dondero, Ellington and Leventon accepted benefits like minority ownership in entities (like Ellington's stake in SAS) and additional compensation via complex, circuitous schemes like the Tall Pine arrangement.

296. Each of Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas understood that his or its conduct was causing damage to HCMLP and that Dondero was breaching his fiduciary duties to HCMLP by orchestrating and participating in these transactions. The participants specifically intended to benefit themselves and Dondero at the expense of HCMLP, and agreed with Dondero to undertake acts in furtherance of the conspiracy notwithstanding the harm to HCMLP.

COUNT XVII
Tortious Interference with Prospective Business Relations
(Against Dondero, NexPoint, and HCMFA)

297. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

298. Dondero siphoned business away from HCMLP and its creditors through the creation of "lifeboats" owned and controlled by Dondero. The "lifeboats," which included

NexPoint and HCMFA, were companies set up to provide management services that HCMLP had previously been providing.

299. But for the actions of Dondero, NexPoint, and HCMFA, HCMLP would have continued to pursue the business opportunities that Dondero diverted to NexPoint and HCMFA. Indeed, NexPoint and HCMFA used HCMLP's employees, operated out of HCMLP's office, and performed the same advisory and administrative services for its managed funds that HCMLP had previously performed.

300. By using NexPoint and HCMFA as part of his lifeboat scheme, Dondero breached his fiduciary duties to HCMLP. In addition, Dondero breached his fiduciary duties to HCMLP by causing HCMLP to fraudulently transfer certain of its existing management contracts to NexPoint and HCMFA. NexPoint and HCMFA conspired with, and aided and abetted, Dondero's breaches of his fiduciary duties and HCMLP's fraudulent transfers.

301. Dondero, NexPoint, and HCMFA acted with a conscious desire to prevent HCMLP from continuing to directly manage the funds that were subsequently managed by NexPoint and HCMFA. Moreover, Dondero, NexPoint, and HCMFA knew that their interference in HCMLP's business relationships was certain to occur as a result of their conduct.

302. HCMLP suffered, at minimum, tens of millions of dollars in damage from Dondero's, NexPoint's, and HCMFA's tortious interference with its prospective business relations.

COUNT XVIII
Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550 and Applicable State Law
(Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas Foundation)

303. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

304. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

305. On December 28, 2016, HCMLP transferred to Get Good the Transferred CLO Holdco Assets, which were valued by the company at approximately $24 million. The transfer of the Transferred CLO Holdco Assets was effectuated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good.

306. As purported consideration for the Transferred CLO Holdco Assets, HCMLP received the Dugaboy Note, which was worth substantially less than the Transferred CLO Holdco Assets. The Dugaboy Note replaced HCMLP's liquid or liquidating assets with an illiquid, private loan on below market terms.

307. Immediately after HCMLP transferred the Transferred CLO Holdco Assets to Get Good, Dondero caused Get Good to transfer the Transferred CLO Holdco Assets to Highland Dallas by an exercise of discretion executed by Scott in his capacity as trustee of Get Good.

308. Immediately after the Transferred CLO Holdco Assets were transferred to Highland Dallas by Get Good, Dondero caused Highland Dallas to transfer the Transferred CLO Holdco Assets to DAF Holdco by unanimous written consent executed by Dondero, Scott, and Jalonick in their capacities as the sole directors of Highland Dallas.

309. Immediately after the Transferred CLO Holdco Assets were transferred to DAF Holdco by Highland Dallas, Dondero caused DAF Holdco, DAF, and CLO Holdco to enter into an omnibus assignment agreement, pursuant to which DAF Holdco transferred the Transferred CLO Holdco Assets to DAF, and DAF transferred the Transferred CLO Holdco Assets to CLO Holdco. Scott signed on behalf of each entity, as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Scott also executed a written resolution by DAF GP, in his capacity as the managing member of the general partner of the DAF, effectuating the transfer of the Transferred CLO Holdco Assets to CLO Holdco (which was wholly-owned by the DAF).

310. Dondero directly or indirectly controlled each entity in the chain of transfers that together constitute the CLO Holdco Transaction. Dondero controlled each of Get Good, Highland Dallas, DAF Holdco, DAF, and CLO Holdco either along with or through Scott, who was Dondero's longtime friend, former roommate, loyalist, and fellow board member on multiple boards of directors.

311. At the time of the CLO Holdco Transaction, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

312. None of Get Good, DAF Holdco, the DAF, or CLO Holdco paid reasonably equivalent value for the Transferred CLO Holdco Assets, or received the Transferred CLO Holdco Assets in good faith.

313. At all relevant times, each of Get Good, DAF Holdco, the DAF, and CLO Holdco was aware that, pursuant to the CLO Holdco Transaction, HCMLP transferred its assets to CLO Holdco for less than reasonably equivalent value.

314. The CLO Holdco Transaction is voidable as constructively fraudulent transfers. Accordingly, the CLO Holdco Transaction should be set aside and avoided and Transferred CLO Holdco Assets should be recovered under 11 U.S.C. §§ 544 and 550 and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIX
Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550 and Applicable State Law
(Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas Foundation)

315. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

316. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

317. On December 28, 2016, HCMLP transferred to Get Good the Transferred CLO Holdco Assets, which the company valued at approximately $24 million. The transfer of the Transferred CLO Holdco Assets was effectuated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good.

318. As purported consideration for the Transferred CLO Holdco Assets, HCMLP received the Dugaboy Note, which was worth substantially less than the Transferred CLO Holdco Assets. The Dugaboy Note replaced HCMLP's liquid or liquidating assets with an illiquid, private loan that was worth significantly less than the value of the transferred assets.

319. After HCMLP transferred the Transferred CLO Holdco Assets to Get Good, Dondero caused the assets to be transferred to Get Good, Highland Dallas, DAF Holdco, DAF, and CLO Holdco. Dondero effected each transfer through his direct or indirect control of each of these entities.

320. Dondero caused HCMLP to enter into the CLO Holdco Transaction with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP;

(b) Dondero controlled Get Good, the initial transferee, and each of the subsequent transferees, Highland Dallas, DAF Holdco, DAF, and CLO Holdco, through Scott;

(c) before the CLO Holdco Transaction, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(d) at the time of the CLO Holdco Transaction, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were

unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) The CLO Holdco Transaction siphoned value away from HCMLP, so that such value would not be available to satisfy HCMLP's creditors; and

(f) The purported consideration for the Transferred CLO Holdco Assets, the Dugaboy Note, was worth less than the reasonably equivalent value of the Transferred CLO Holdco Assets, and replaced HCMLP's liquid or liquidating assets with an illiquid, private loan on below-market terms, the repayment of which was subject to Dondero's control.

321. None of Get Good, DAF Holdco, the DAF, or CLO Holdco paid reasonably equivalent value for the Transferred CLO Holdco Assets, or received the Transferred CLO Holdco Assets in good faith.

322. At all relevant times, each of Get Good, DAF Holdco, the DAF, and CLO Holdco was aware that the CLO Holdco Transaction transferred HCMLP's assets to CLO Holdco for less than reasonably equivalent value.

323. The CLO Holdco Transaction is voidable as an intentionally fraudulent transfer. Accordingly, the CLO Holdco Transaction should be set aside and avoided, and the Transferred CLO Holdco Assets should be recovered under 11 U.S.C. §§ 544 and 550 and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XX
Avoidance of Obligations Under Massand Consulting Agreement as Constructively Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand LLC)

324. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

325. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

326. On January 5, 2015, HCMLP entered into a consulting agreement with Massand LLC. Pursuant to each agreement, HCMLP agreed to pay Massand Capital tens of thousands of dollars per month.

327. HCMLP received less than reasonably equivalent value in exchange for the payment obligations that it incurred under the Massand Consulting Agreements (and in fact, received zero value). Dondero and Ellington caused HCMLP to hire Massand Capital in order for Massand Capital to provide services to SAS, which conferred no benefit to HCMLP.

328. At the time it entered into the Massand Consulting Agreements, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

329. HCMLP's obligations incurred under the Massand Consulting Agreements are voidable as constructively fraudulent.

COUNT XXI
Avoidance of Obligations Under Massand Consulting Agreement as Intentionally Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital)

330. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

331. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

332. On January 1, 2014, HCMLP entered into a consulting agreement with Massand Inc. On January 5, 2015, HCMLP entered into a consulting agreement with Massand LLC. Pursuant to each agreement, HCMLP agreed to pay them tens of thousands of dollars per month.

333. Dondero caused HCMLP to enter into the Massand Consulting Agreements with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP;

(b) Dondero was an insider of SAS;

(c) Dondero benefitted from HCMLP's payments to Massand Capital because they conferred value on SAS, an entity that Dondero owned and controlled;

(d) before HCMLP entered into the Massand Consulting Agreements, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(e) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved, among other things, causing HCMLP to incur obligations of other entities owned or controlled by Dondero, including SAS;

(f) at the time HCMLP entered into the consulting agreement with Massand LLC, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due; and

(g) Dondero caused HCMLP to enter into the Massand Consulting Agreements during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's creditors.

334. HCMLP's obligations incurred under the Massand Consulting Agreements are voidable as intentionally fraudulent.

COUNT XXII
Avoidance and Recovery of Certain Massand Transfers as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital, SAS, Dondero, and Ellington)

335. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

336. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and

Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

337. HCMLP entered into the fraudulent Massand Consulting Agreements, pursuant to which HCMLP agreed to pay Massand Capital tens of thousands of dollars per month. The transfers from HCMLP to Massand Capital (the "Massand Transfers") are set forth below:

Date	Amount	Date	Amount
January 3, 2017	$49,644	May 1, 2018	$55,852
February 1, 2017	$55,691	June 1, 2018	$55,093
March 3, 2017	$47,929	July 2, 2018	$64,516
April 3, 2017	$57,563	August 1, 2018	$56,539
May 1, 2017	$57,861	September 4, 2018	$53,749
June 1, 2017	$60,814	October 1, 2018	$52,537
July 3, 2017	$51,974	November 1, 2018	$53,278
August 1, 2017	$58,074	December 3, 2018	$52,219
September 5, 2017	$50,371	January 2, 2019	$47,812
October 2, 2017	$53,016	February 1, 2019	$51,437
November 1, 2017	$59,971	March 1, 2019	$51,156
December 1, 2017	$56,031	April 2, 2019	$54,063
January 2, 2018	$52,894	May 1, 2019	$55,359
February 1, 2018	$51,378	June 3, 2019	$56,470
March 1, 2018	$54,396	July 1, 2019	$54,878
April 3, 2018	$54,538	August 1, 2019	$54,979
		Total	$1,742,082

338. HCMLP did not receive any consideration in exchange for its payments to Massand Capital. The consulting agreement between Massand Capital and HCMLP provided that Massand would be responsible for advising HCMLP on its "investment recovery strategies" business in certain countries where HCMLP did not have any business.

339. Rather, upon information and belief, Massand Capital provided services to SAS, a separate entity owned and controlled by Dondero. As such, HCMLP's transfers to Massand Capital were made for the benefit of SAS and Dondero.

340. Massand Capital's monthly invoices to HCMLP were consecutively numbered, indicating that Massand Capital had no customers other than HCMLP, and Massand Capital's invoices contained no information about the services it purportedly rendered to HCMLP.

341. At the time of each of the Massand Transfers, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

342. The Massand Transfers are voidable as constructively fraudulent transfers. Accordingly, the Massand Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXIII
Avoidance and Recovery of Massand Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital, SAS, Dondero, and Ellington)

343. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

344. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

345. On January 5, 2015, HCMLP entered into a fraudulent consulting agreement, pursuant to which HCMLP agreed to pay Massand Capital tens of thousands of dollars per month. The transfers from HCMLP to Massand Capital (the "Massand Transfers") are set forth below:

Date	Amount	Date	Amount
January 3, 2017	$49,644	May 1, 2018	$55,852
February 1, 2017	$55,691	June 1, 2018	$55,093
March 3, 2017	$47,929	July 2, 2018	$64,516
April 3, 2017	$57,563	August 1, 2018	$56,539
May 1, 2017	$57,861	September 4, 2018	$53,749
June 1, 2017	$60,814	October 1, 2018	$52,537
July 3, 2017	$51,974	November 1, 2018	$53,278
August 1, 2017	$58,074	December 3, 2018	$52,219
September 5, 2017	$50,371	January 2, 2019	$47,812
October 2, 2017	$53,016	February 1, 2019	$51,437
November 1, 2017	$59,971	March 1, 2019	$51,156
December 1, 2017	$56,031	April 2, 2019	$54,063
January 2, 2018	$52,894	May 1, 2019	$55,359
February 1, 2018	$51,378	June 3, 2019	$56,470
March 1, 2018	$54,396	July 1, 2019	$54,878

Date	Amount	Date	Amount
April 3, 2018	$54,538	August 1, 2019	$54,979
		Total	$1,742,082

346. Dondero caused HCMLP to make the Massand Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP and Massand Capital;

(b) before the Massand Transfers, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, causing HCMLP to become an obligor on certain contracts, including the Massand Consulting Agreements, that did not confer value on HCMLP;

(d) at the time of the transfers to Massand LLC, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) Dondero caused HCMLP to make the Massand Transfers during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's creditors; and

(f) The Massand Transfers were made for no consideration to HCMLP, and the services provided by Massand were made for the benefit of SAS, an entity that was not owned by HCMLP.

347. The Massand Transfers are voidable as intentionally fraudulent transfers. Accordingly, the Massand Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXIV
Breach of Contract Arising Out of Hunter Mountain Note
(Against Hunter Mountain and Rand)

348. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

349. On December 21, 2015, HCMLP and Hunter Mountain entered into the Hunter Mountain Note, pursuant to which Hunter Mountain agreed to pay HCMLP $63 million at an interest rate of 2.61% per annum.

350. Rand is a guarantor on the Hunter Mountain Note.

351. Pursuant to the Hunter Mountain Note, accrued interest and principal is due and payable in accordance with an amortization schedule attached to the note.

352. Hunter Mountain breached the Hunter Mountain Note by failing to make the payments due under the note on December 21, 2019 and December 21, 2020.

353. On May 3, 2021, HCMLP sent a demand letter to Hunter Mountain stating that the Hunter Mountain Note was in default and therefore, pursuant to the "Remedies" section of the note, all principal, interest, and any other amounts due and owing on the Hunter Mountain

Note are immediately due and payable. As of May 5, 2021, that amount was more than $72 million, with interest continuing to accrue.

354. The Hunter Mountain Note is currently in default. Pursuant to the Hunter Mountain Note, HCMLP is entitled to damages from Hunter Mountain and Rand in an amount equal to all unpaid principal and interest, in addition to HCMLP's cost of collection, including attorneys' fees.

COUNT XXV
Conversion
(Against Dondero and Ellington)

355. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

356. In February 2018, HE Capital 232 and its wholly-owned subsidiary, HE Capital 232 Property obtained the HE Capital 232 Proceeds and placed them in an escrow account maintained by HCMLP's counsel, Wick Phillips, "pending distribution of the proceeds to the direct and indirect interest owners in [HE Capital 232 Property]."

357. On March 2, 2018, Wick Phillips disbursed a portion of those funds from the escrow account. The Remaining HE Capital 232 Proceeds, worth approximately $2.98 million, were never disbursed to HCMLP.

358. HCMLP owned, had possession of (through its counsel Wick Phillips), or had entitlement to possession of the Remaining HE Capital 232 Proceeds.

359. The Remaining HE Capital 232 Proceeds had been held for safekeeping, were intended to be kept segregated, specific and identifiable money, in the form they were received, and not subject to a claim by anyone other than HCMLP.

360. Upon information and belief, Dondero and Ellington directed Wick Phillips to withhold the Remaining HE Capital 232 Proceeds in a scheme to funnel the money to themselves through shell companies that they owned in the Cayman Islands. Indeed, on June 4, 2018, at Ellington's direction, Wick Phillips disbursed the remainder of the proceeds to MapleFS, a fiduciary services company in the Cayman Islands, which subsequently transferred the full amount to Grey Royale Ltd., a Cayman Islands shell company owned and controlled by Dondero and Ellington.

361. Dondero's and Ellington's acts manifest a clear repudiation of HCMLP's rights in the Remaining HE Capital 232 Proceeds.

COUNT XXVI
Unjust Enrichment or Money Had and Received
(Against Dondero)

362. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

363. As set forth above, Dondero caused HCMLP to enter into numerous intercompany note transactions with other Dondero Entities in order to, among other things: (i) fund distributions to himself and his loyalists; (ii) inject funds into other entities he owns; and (iii) obtain personal tax benefits. Now, Dondero is actively spearheading an expensive, frivolous litigation campaign against HCMLP, through these same Dondero Entities, in order to avoid or delay their repayment obligations.

364. Dondero exploited HCMLP by using it to pursue goals that did not benefit HCMLP. Dondero orchestrated countless transactions and schemes designed to benefit himself and other Dondero Entities at the expense of HCMLP, including but not limited to: (i) the lifeboat scheme; (ii) distributions from HCMLP to himself and certain trusts he owned and

controlled during periods when HCMLP was insolvent; and (iii) intercompany transactions involving various Dondero Entities that distributed cash throughout his vast web of entities. Dondero unjustly profited from these schemes, either by directly transferring value to himself (*e.g.*, through distributions) or by using HCMLP's money to seed business activities and investments that would inure to his own personal benefit. Dondero diverted millions or tens of millions of dollars to himself, at HCMLP's expense.

365. Likewise, Dondero was willing to harm HCMLP even when it would seem economically irrational for him to do so, such as when he caused HCMLP to incur more in legal fees pursuing a vendetta against Daugherty than the total funds Daugherty was owed.

366. Dondero, together with Ellington, caused HCMLP's counsel to improperly divert approximately $3 million of HCMLP's cash being held in an escrow account to an entity that they owned and controlled in the Cayman Islands.

367. Dondero obtained personal services from individuals who were employed and paid by HCMLP, including with respect to private business ventures.

368. There was no valid express contract governing the subject matter of this dispute.

369. As a result of fraud, duress, or taking undue advantage of his own position of authority within HCMLP, Dondero holds or has held money that in equity and good conscience belongs to HCMLP, which unjustly enriched him and would be unconscionable to retain.

370. Plaintiff seeks restitution from Dondero and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by him as a result of the unjust conduct set forth above.

COUNT XXVII
Unjust Enrichment or Money Had and Received
(Against Ellington and Leventon)

371. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

372. Ellington and Leventon were employees of HCMLP who received millions of dollars in compensation. However, each of them understood and performed their duties as functionaries for Dondero. As such, both Ellington and Leventon subordinated the interests of HCMLP to the interests of Dondero, and actively participated in and implemented his schemes to divert value from HCMLP. Portions of Ellington's and Leventon's compensation, paid for by HCMLP, was consideration for their willingness to elevate Dondero's interests over those of HCMLP.

373. Together with Dondero, Ellington caused HCMLP's counsel to improperly divert approximately $3 million of HCMLP's cash being held in an escrow account to an entity that they owned and controlled in the Cayman Islands.

374. Ellington and Leventon engaged in willful and wanton misconduct that gave rise to more than $350 million in allowed claims against HCMLP. Among other things, Ellington and Leventon participated in the scheme to evade UBS collection efforts by fraudulently transferring assets to Sentinel.

375. There was no valid express contract governing the subject matter of this dispute.

376. As a result of fraud, duress, or taking undue advantage of their own positions of authority within HCMLP, Ellington and Leventon hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

377. Plaintiff seeks restitution from Ellington and Leventon and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXVIII
Unjust Enrichment or Money Had and Received
(Against NexPoint and HCMFA)

378. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

379. The lifeboat scheme was perpetrated primarily through NexPoint and HCMFA. NexPoint and HCMFA utilized HCMLP's employees to perform management and advisory services that HCMLP had directly provided, and should have continued to provide directly. Neither NexPoint nor HCMFA fairly compensated HCMLP for the use of its employees or resources.

380. HCMLP provided substantial financial support for NexPoint and HCMFA, including in the form of below-market note agreements. Both NexPoint and HCMFA have defaulted on their debts to HCMLP and are currently pursuing expensive, frivolous litigation against HCMLP in an effort to evade their payment obligations.

381. NexPoint and HCMFA were effectively HCMLP in disguise, conducting HCMLP's business, with HCMLP's employees, operating out of HCMLP's office, beginning with HCMLP's contracts.

382. Through their exploitation of HCMLP, NexPoint and HCMFA received tens or hundreds of millions of dollars of profits.

383. There was no valid express contract governing the subject matter of this dispute.

384. As a result of fraud, duress, or taking undue advantage of HCMLP, NexPoint and HCMFA hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

385. Plaintiff seeks restitution from NexPoint and HCMFA and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXIX
Unjust Enrichment or Money Had and Received
(Against Massand Capital and SAS)

386. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

387. Massand Capital received millions of dollars in payments from HCMLP under the Massand Consulting Agreements. Nevertheless, Massand Capital was aware that it would not and never intended to perform any services on behalf of HCMLP. Rather, Massand Capital was performing services on behalf of SAS, with HCMLP footing the bill. HCMLP received no benefit under the Massand Consulting Agreements.

388. Further, the value of the services provided to SAS were far less than HCMLP's payments, resulting in Massand receiving unearned profits to the tune of millions of dollars.

389. HCMLP employees performed work for SAS. Indeed, at least four HCMLP employees even received SAS email addresses. SAS did not compensate HCMLP for these services.

390. SAS has profited from the services performed by Massand Capital and from the use of HCMLP's employees and resources.

391. There was no valid express contract governing the subject matter of this dispute.

392. As a result of fraud, duress, or taking undue advantage of HCMLP, Massand and SAS hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

393. Plaintiff seeks restitution from Massand Capital and SAS and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXX
Unjust Enrichment or Money Had and Received
(Against CLO Holdco)

394. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

395. Dondero, acting through HCMLP, fraudulently induced HarbourVest to purchase 49% of HCLOF for approximately $75 million, with a commitment to fund an additional $75 million. CLO Holdco was the beneficiary of the funds invested by HarbourVest. HCMLP received no benefit from the HarbourVest investment. Nevertheless, HarbourVest filed a proof of claim against HCMLP for fraudulently inducing the HarbourVest investment, and HCMLP was ultimately forced to settle with HarbourVest by providing them with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to a new entity designated by HCMLP. As a result of Dondero's conduct, however, the HCLOF interests were then worth significantly less than the face amount of HarbourVest's allowed claim. HCMLP bore the consequences for Dondero and CLO Holdco in a scheme that deposited $75 million into the coffers of CLO Holdco.

396. CLO Holdco was aware that HarbourVest was fraudulently induced by Dondero to make the $75 million investment. Nonetheless, CLO Holdco said nothing to HarbourVest

and received their money, all while leaving HCMLP on the hook when HarbourVest ultimately filed their proof of claim.

397. There was no valid express contract governing the subject matter of this dispute.

398. As a result of fraud, duress, or taking undue advantage of HCMLP, CLO Holdco holds or has held money that in equity and good conscience belongs to HCMLP, which unjustly enriched it and would be unconscionable to retain

399. Plaintiff seeks restitution from CLO Holdco and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by it as a result of its unjust receipt and use of the proceeds of the HarbourVest investment.

COUNT XXXI
Avoidance and Recovery of the One-Year Transfers as Preferential Transfers under 11 U.S.C. §§ 547 and 550
(Against Dondero and Ellington)

400. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

401. Dondero and Ellington are insiders of HCMLP.

402. As set forth below, within one year of the Petition Date, HCMLP made payments to Dondero of $4,753,911 and payments to Ellington of $318,893 (the "Alleged Expense Transfers" and the "March 28, 2019 Repayment Transfer," as set forth below, and collectively the "One-Year Transfers"):

March 28, 2019 Repayment Transfer		
Date	Transferee	Amount
March 28, 2019	Dondero	$3,750,000
Alleged Expense Transfers		
Date	Transferee	Amount
October 31, 2018	Dondero	$8,986

November 15, 2018	Dondero	$65,078
December 14, 2018	Dondero	$115,481
January 15, 2019	Dondero	$96,786
January 31, 2019	Dondero	$38,628
February 15, 2019	Dondero	$42,435
February 28, 2019	Dondero	$19,063
March 15, 2019	Dondero	$50,771
March 29, 2019	Dondero	$21,935
April 15, 2019	Dondero	$60,191
April 30, 2019	Dondero	$7,164
May 15, 2019	Dondero	$89,257
May 31, 2019	Dondero	$38,804
June 14, 2019	Dondero	$82,710
June 28, 2019	Dondero	$7,605
July 15, 2019	Dondero	$47,006
August 15, 2019	Dondero	$85,059
August 30, 2019	Dondero	$12,714
August 30, 2019	Ellington	$205,788
September 13, 2019	Dondero	$56,763
September 30, 2019	Dondero	$24,498
October 15, 2019	Dondero	$32,977
October 15, 2019	Ellington	$113,105
Total	Dondero	$4,753,911
Total	Ellington	$318,893
Grant Total		$5,072,804

403. The One-Year Transfers were made on account of antecedent debt.

404. HCMLP was insolvent when each One-Year Transfer was made.

405. Each One-Year Transfer enabled Dondero and Ellington to receive more than they would have if (i) the One-Year Transfers had not been made; and (ii) Dondero and Ellington received payment on account of the debt paid by the One-Year Transfers to the extent provided by the Bankruptcy Code.

406. Each One-Year Transfer constitutes an avoidable preference pursuant to Section 547(b) of the Bankruptcy Code.

407. Plaintiff is entitled to an order and judgment under 11 U.S.C. §§ 547 and 550 that each of the One-Year Transfers is avoided and recoverable.

COUNT XXXII
Avoidance and Recovery of the Alleged Expense Transfers as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, and Other Applicable Law
(Against Dondero and Ellington)

408. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

409. To the extent the Alleged Expense Transfers do not constitute reimbursement for valid expenses, they constitute constructive fraudulent transfers that were made to or for the benefit of Dondero and Ellington.

410. At the time of each Alleged Expense Transfer, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

411. HCMLP received less than reasonably equivalent value in exchange for each of the Alleged Expense Transfers. Indeed, HCMLP received no value for the Alleged Expense Transfers, each of which was a gratuitous transfer from HCMLP to or for the benefit of Dondero and Ellington.

412. Each Alleged Expense Transfer is voidable as a constructively fraudulent transfer. Accordingly, each Alleged Expense Transfer should be set aside, avoided, and recovered under 11 U.S.C. §§ 544, 548, and 550, and Delaware and Texas law, as applicable,

against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXXIII
Avoidance and Recovery of the Alleged Expense Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, and Other Applicable Law
(Against Dondero and Ellington)

413. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

414. To the extent the Alleged Expense Transfers do not constitute reimbursement for valid expenses, they constitute intentional fraudulent transfers that were made to or for the benefit of Dondero and Ellington.

415. Dondero was HCMLP's Chief Executive Officer, President, Co-Chief Investment Officer, and Co-Founder. Ellington was HCMLP's Chief Legal Officer and General Counsel until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interest. Dondero exercised complete control over HCMLP, and Ellington acquiesced to and profited from schemes orchestrated by Dondero to enrich Dondero, Ellington, and HCMLP's direct and indirect owners.

416. To that end, Dondero and Ellington caused HCMLP to make the Alleged Expense Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero and Ellington were insiders of HCMLP;

(b) although Dondero and Ellington assert that the Alleged Expense Transfers constitute reimbursement for valid expenses, on information and belief, there is no factual basis for that assertion;

(c) before the Alleged Expense Transfers were made, HCMLP had been sued and Dondero and Ellington believed HCMLP's legal exposure rendered it insolvent;

(d) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved both siphoning HCMLP's valuable business opportunities through newly-created "lifeboat" entities and siphoning HCMLP's value through HCMLP Distributions (among other means);

(e) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved siphoning HCMLP's value through the Alleged Expense Transfers (among other means);

(f) HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the Alleged Expense Transfers;

(g) at the time of each Alleged Expense Transfer, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(h) Dondero and Ellington made the Alleged Expense Transfers during a period when they believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to

siphon value so that such value would not be available to satisfy HCMLP's creditors.

417. Each Alleged Expense Transfer is voidable as an intentionally fraudulent transfer. Accordingly, each of the Alleged Expense Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544, 548, and 550, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXXIV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law Out Of Conduct That Resulted in HCMLP Liabilities
(Against Ellington and Leventon)

418. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

419. Ellington and Leventon aided and abetted the breaches of fiduciary duty committed by Dondero and Strand that foreseeably resulted in liability to HCMLP. Ellington and Leventon knowingly participated in Dondero's schemes that foreseeably resulted in liability to HCMLP. In total, these breaches that were aided and abetted by Ellington and Leventon resulted in more than $350 million in allowed claims against HCMLP.

420. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Ellington and Leventon set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the conduct set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of

the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

421. **Liabilities to UBS.** Ellington and Leventon aided and abetted Dondero in causing HCMLP to incur substantial liability to UBS. In 2017, after a New York state court ruled that UBS's fraudulent transfer claims against HCMLP and claims against the Fund Counterparties could proceed to trial, Ellington and Leventon aided Dondero in causing HCMLP, in its capacity as investment manager for the Fund Counterparties, to orchestrate a surreptitious transfer of more than $300 million in face amount of assets from the Fund Counterparties to Sentinel, an entity located in the Cayman Islands that was indirectly owned and controlled by Dondero and Ellington, ostensibly to pay a premium on the Sentinel insurance policy that was only $25 million. Ellington and Leventon knew or willfully blinded themselves to the fact that Dondero breached his fiduciary duties to HCMLP by orchestrating the transfer to Sentinel

422. After the Petition Date, Dondero, Ellington, and Leventon actively concealed this transfer from the Independent Board, UBS, and the Bankruptcy Court. When this transfer was uncovered, HCMLP was forced to increase the amount of its settlement with UBS from a total of $75 million in allowed claims to $125 million in allowed claims.

423. **Liabilities to Acis.** After the Terry arbitration award issued, Ellington and Leventon aided and abetted Dondero in causing HCMLP to enter into numerous transactions to take control of Acis's business and strip it of assets so it could not pay the arbitration award. Ellington and Leventon implemented Dondero's directives and took necessary steps to

consummate the transactions, knowingly or willfully blinding themselves to the fact that Dondero breached his fiduciary duties to HCMLP by stripping Acis of assets.

424. Leventon knowingly participated in the scheme to transfer value away from Acis in an attempt to make it judgment-proof. Among other things, Leventon assisted in the drafting and execution of the agreement, approved by Dondero in a breach of his fiduciary duty, that transferred Acis's interest in a note receivable from HCMLP, which had a balance owing of over $9.5 million, to Cayman Island entity Highland CLO Management Ltd. just ten days after Terry obtained his arbitration award. The agreement recites that (1) HCMLP is no longer willing to continue providing support services to Acis; (2) Acis, therefore, can no longer fulfill its duties as a collateral manager; and (3) Highland CLO Management Ltd. agrees to step in to the collateral manager role. Given the timing of the assignment—just days after Terry's arbitration award—Leventon knew that it was part of a scheme to strip Acis of its assets and a breach of Dondero's fiduciary duty, which ultimately resulted in millions of dollars of damage to HCMLP.

425. **Liabilities to HarbourVest.** Ellington also aided and abetted Dondero in causing harm to HCMLP by exposing it to substantial liability to HarbourVest. Ellington aided Dondero, acting through HCMLP, in fraudulently inducing HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash, with a commitment for an additional $75 million in the future, while concealing that Dondero was actively engaged in a campaign against Terry that would significantly impair the value of HarbourVest's investment. In addition, Dondero did not intend to use the $75 million that CLO Holdco received from HarbourVest to satisfy capital calls at HCLOF, and instead intended for CLO Holdco to use those funds as part of a scheme to infuse other Dondero Entities (including entities that

benefitted the NexPoint and HCMFA lifeboats) with additional cash. Ultimately, HCMLP was forced to settle with HarbourVest by providing it with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to an affiliate of HCMLP. As a result of Dondero's and Ellington's conduct, those interests in HCLOF were then worth tens of millions of dollars less than the $75 million HarbourVest paid to acquire them. Ellington either knew or willfully blinded himself to the fact that Dondero breach his fiduciary duties to HCMLP by fraudulently inducing HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash.

426. **Liabilities to Crusader Funds.** Ellington and Leventon aided and abetted Dondero in causing HCMLP to incur substantial liability to the Redeemer Committee due to his conduct in connection with HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors. Among other things, Dondero, Ellington, and Leventon caused HCMLP to: (1) transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, Ltd., after the Redeemer Committee had refused to approve that transfer, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (2) purchase 28 Plan Claims for the benefit of HCMLP without the approval of the Redeemer Committee, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (3) covertly purchase the stock of the Portfolio Company and fail to liquidate the Crusader Funds' shares in the Portfolio Company, in violation of HCMLP's fiduciary duties; and (4) violate the provision of the Joint Plan and Scheme requiring HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete, causing HCMLP to forfeit its rights to those fees entirely. Additionally, both Ellington and Leventon were active participants in Dondero's scheme; they both provided false narratives or misrepresentations in furtherance

of Dondero's harm to the Crusader Funds. The Redeemer Arbitration panel found, for example, that Leventon "was significantly involved in providing direction" to keep the Redeemer Committee in the dark and "was the principal instrument through which [certain] misrepresentation[s] and omission[s] were communicated." As a result of Dondero's, Ellington's, and Leventon's conduct, the Redeemer Committee received an arbitration award against HCMLP in excess of $190 million, and in HCMLP's bankruptcy, HCMLP agreed to pay over $136 million in connection therewith. Ellington and Leventon either knew or willfully blinded themselves to the fact that Dondero breached his duties to HCMLP through the foregoing acts.

427. Beyond the direct losses identified in the preceding paragraphs, HCMLP suffered additional harm from Ellington's and Leventon's aiding and abetting the breaches of fiduciary duty committed by Dondero and Strand. For example, the $190 million Redeemer arbitration award—which was itself caused by the Dondero's and Strand's breaches of their fiduciary duty to HCMLP and Ellington's and Leventon's aiding and abetting of those breaches—caused HCMLP to file for bankruptcy. As of October 15, 2021, HCMLP had incurred in excess of $40 million in professional fees in connection with the bankruptcy. Ellington and Leventon either knew or willfully blinded themselves to the fact that Dondero and Strand breached their fiduciary duties to HCMLP through their actions that led to the $190 million Redeemer arbitration award.

428. In light of the foregoing, Ellington and Leventon are liable for aiding and abetting Dondero's breaches of fiduciary duties to HCMLP in an amount to be determined at trial.

COUNT XXXV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law In Connection With Fraudulent Transfers And Schemes
(Against Ellington and Okada)

429. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

430. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Ellington and Okada set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the conduct set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

431. Ellington aided and abetted Dondero in causing HCMLP to enter into the Massand Consulting Agreements. Likewise, Ellington aided and abetted Dondero in overseeing and approving the Massand Transfers. The payment obligations Dondero and Ellington caused HCMLP to incur, and the payments that Dondero and Ellington caused HCMLP to make, conferred no benefit on HCMLP. In addition, Ellington aided and abetted Dondero in causing HCMLP employees to perform work for SAS—at least seven HCMLP employees received SAS email addresses—without compensating HCMLP. Ellington either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP through the foregoing actions.

432. Moreover, as part of his scheme to evade HCMLP's creditors, Dondero, acting through Strand, approved hundreds of millions of dollars of distributions from HCMLP at a time that Dondero believed HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

433. As Dondero's co-founder and HCMLP's Chief Investment Officer, Okada knew or willfully blinded himself to the fact that the HCMLP Distributions—including the distributions made to Okada, MAP #1, and MAP #2—were made at times that HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors. Okada either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP by approving hundreds of millions of dollars of distributions from HCMLP at a time HCMLP was insolvent.

COUNT XXXVI
Disallowance or Subordination of Claims Under Section 502 and 510 of the Bankruptcy Code
(Against CLO Holdco)

434. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

435. On April 8, 2020, CLO Holdco filed Claim No. 133 seeking approximately $11 million (the "CLO Holdco Claim"). The basis of the CLO Holdco Claim was that CLO Holdco purchased a participation interest in certain interests that HCMLP held in the Crusader Fund.

436. HCMLP acquired the interests in the Crusader Fund that are the subject of the CLO Holdco Claim in violation of the Joint Plan and Scheme. HCMLP released its claim on those interests in connection with HCMLP's settlement with the Redeemer Committee. Accordingly, CLO Holdco is not entitled to any value on account of the CLO Holdco Claim. In recognition of this fact, on October 21, 2020, CLO Holdco amended its claim to seek $0.

437. Additionally, CLO Holdco subsequently agreed to withdraw the CLO Holdco Claim. Nevertheless, CLO Holdco has failed to date to actually withdraw the claim, notwithstanding the Reorganized Debtor's request. Accordingly, out of an abundance of caution, and to the extent that CLO Holdco attempts to pursue the CLO Holdco Claim, the Litigation Trustee objects to the CLO Holdco Claim, and the CLO Holdco Claim should be disallowed in its entirety or subordinated.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendants as follows:

A. awarding Plaintiff damages against, and disgorgement and restitution from each Defendant in an amount to be determined at trial;

B. setting aside, avoiding, and granting recovery of the HCMLP Distributions;

C. setting aside, avoiding, and granting recovery of the CLO Holdco Transfer;

D. setting aside and avoiding the payment obligations under the Massand Consulting Agreement;

E. setting aside, avoiding, and granting recovery of the Massand Transfers;

F. setting aside and avoiding the transfers of management and advisory agreements to HCMFA and NexPoint;

G. setting aside, avoiding, and granting recovery of the One-Year Transfers;

H. disallowing or subordinating, to the extent applicable, the CLO Holdco Claim;

I. awarding Plaintiff pre- and post-judgment interest at the maximum rate permitted by law;

J. awarding Plaintiff his attorneys' fees, costs, and other expenses incurred in this action; and

K. awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: May 19, 2022
Dallas, Texas

Respectfully submitted,

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/s/ *Paige Holden Montgomery*
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Counsel for the Litigation Trustee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail via the Court's ECF system to parties authorized to receive electronic notice in this case on May 19, 2022.

/s/ Paige Holden Montgomery
Paige Holden Montgomery

Exhibit 6

CAUSE NO. DC-21-09534

IN RE JAMES DONDERO,	§	**IN THE DISTRICT COURT**
	§	
Petitioner.	§	**95th JUDICIAL DISTRICT**
	§	
	§	**DALLAS COUNTY, TEXAS**

VERIFIED AMENDED PETITION TO TAKE DEPOSITION BEFORE SUIT AND SEEK DOCUMENTS

Petitioner James Dondero respectfully requests that this Court order, pursuant to Texas Rule of Civil Procedure 202, the deposition of the corporate representatives and/or employees of Alvarez & Marsal CRF Management, LLC, and of Farallon Capital Management, LLC. Petitioner further requests that the Court order certain limited, yet relevant, documents to be provided under Texas Rule of Civil Procedure 199.2 as set forth in below.

Petitioner would respectfully show the Court that:

I.

PARTIES

1. Petitioner James Dondero ("Petitioner") is an individual resident in Dallas County, Texas, and is impacted by the potential acts and omissions.

2. Respondent Alvarez & Marsal CRF Management, LLC ("A&M") is a Delaware limited liability company serving as an investment adviser, with offices in Dallas County, Texas, at 2100 Ross Ave., 21st Floor, Dallas, Texas 75201.

3. Respondent Farallon Capital Management, L.L.C. ("Farallon") is an investment fund located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111, and Respondent Michael Lin is a principal at Farallon.

II.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this matter pursuant to Texas Rule of Civil Procedure 202. The anticipated lawsuit would include common law claims.

5. The Court has personal jurisdiction over Respondent Alvarez & Marsal because it maintains a regular place of business in Dallas County. Personal jurisdiction is also proper under Tex. Cir. Prac. Rem. Code § 17.003, and under §17.042(1)-(3) because A&M contracted with counterparties, Joshua Terry and Acis Capital Management, L.P., both of whom at the time had their principal place of business in Dallas County, Texas, and because its acts on behalf of the Crusader Funds (as defined below), if they occurred as believed they did, will have been tortious as to Petitioner. Moreover, this Court has quasi *in rem* jurisdiction because the action concerns the sale of personal property located in Dallas County in which Plaintiff claims an interest.

6. The Court has personal jurisdiction over Farallon because it contracted with A&M to purchase claims in the Highland Capital Management, L.P. Chapter 11 bankruptcy ("Highland bankruptcy") upon the recommendation of James Seery, Highland's CEO. Such acts, if shown to have occurred as believed and under the alleged circumstances, will have been tortious as to the Petitioner. Moreover, this Court has quasi *in rem* jurisdiction because the action concerns the sale of personal property located in Dallas County in which Plaintiff claims an interest.

7. Venue is proper in Dallas County, Texas, where venue of the anticipated lawsuit may lie and where the property at issue exists, and where a substantial amount of the acts and omissions underlying the potential suit occurred.

8. Removal is not proper because there is no basis for federal jurisdiction because a Rule 202 petition does not meet Article III of the United States Constitution's standing requirement.

III.

FACTUAL BACKGROUND

9. This matter arises out of purchase of certain bankruptcy claims in the Highland Bankruptcy.

10. Petitioner is the founder and former CEO of Highland Capital Management, L.P., currently a bankrupt debtor. He is also an investor in Highland Crusader Fund, Ltd. and several of its companion and affiliated funds (the "Crusader Funds"). Therefore, Petitioner has an interest in seeing to it that A&M properly marketed the claims for proper purposes and for the right price.

11. Until recently, the Crusader Funds were managed by Highland, and then by A&M when those funds went into liquidation.

12. Petitioner has an interest in the bankruptcy estate by virtue of his affiliation, and the fact that he is an adviser and/or manager of several trusts who own the equity of the debtor and therefore has an interest in seeing the equity properly protected in bankruptcy.

13. Shortly after the Highland bankruptcy was filed, the Chapter 11 Trustee issued an invitation to creditors to serve on the unsecured creditors committee (the "UCC").

14. The Trustee's invitation included a condition: namely, that anyone who served on the committee would have to agree that they would not sell their claims or in any way alienate them (including allowing them to be used as security) without leave of Court. Specifically, the United Trustee's instruction sheet stated:

> Creditors wishing to serve as fiduciaries on any official committee are advised that may not purchase, sell or otherwise trade in or transfer

> claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed questionnaire and accepting membership on official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing the creditor from the committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violation, or for any other reason the United States Trustee believes is proper in the exercise of her discretion.

15. Upon information and belief, two of the Highland creditors – the Redeemer Committee and the Crusader Fund, who between them owned approximately $191 million in claims in the bankruptcy as well as other assets (the "Crusader Claims") – sold their Claims and assets to Jessup Holdings LLC, a subsidiary of Stonehill Capital Management, LLC. Alvarez and Marsal made this sale, which was in violation of the foregoing order.

16. Alvarez and Marsal arguably owe fiduciary duties to the funds and funds investors, and may have violated those duties by failing to conduct a sale for proper value, and/or by engaging in other acts that resulted in a sale of assets that was not authorized and/or not allowed by the terms of the funds or by law.

17. Around the same time, another Highland creditor—Joshua Terry and Acis Capital Management, who have approximately $25 million in claims—also sold their claims to Muck Holdings, LLC, set up by Farallon Capital Management (the "Acis Claims").

18. And a third creditor, HarbourVest, sold its $80 million worth of claims (the "HarbourVest Claims") to Muck Holding as well.

19. The above interests are generally referred to hereinafter as the "Claims".

20. The sales of the Claims were not reported contemporaneously as they were supposed to have been, nor was leave of the bankruptcy court ever sought, much less obtained, for the sales.

21. However, Acis/Terry, and Crusader continued to serve on the UCC for a substantial period of time as if they hadn't sold their claims at all.

22. As was discovered by the Petitioner, the current CEO of Highland, James Seery, has an age-old connection to Farallon and to Stonehill and, upon information and belief, advised Farallon and Stonehill to purchase the Claims.

23. On a telephone call between Petitioner and Michael Lin, a representative of Farallon, Mr. Lin informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Mr. Seery's say-so because they had made so much money in the past when Mr. Seery told them to purchase claims.

24. In other words, Mr. Seery had inside information on the price and value of the claims that he shared with no one but Farallon for their benefit.

25. Mr. Seery's management duties come with a federally-imposed fiduciary duty under the Advisers Act of 1940.

26. Mr. Seery had much to gain by Farallon holding the claims—namely, his knowledge that Farallon—as a friendly investor—would allow him to remain as CEO while Highland remains bankrupt and get paid (whereas plainly, the selling members of the UCC were ready to move on, thus truncating Seery's supposed gravy train). Mr. Seery's rich compensation package incentivized him to continue the bankruptcy for as long as possible.

27. However, Mr. Seery is privy to material non-public information (i.e., "Inside Information") of many of the securities that Highland deals in, as well as in the funds that Mr. Seery manages through Highland. One of the assets was a publicly traded security that Highland was an insider of, and therefore, should not have traded (whether directly or indirectly), given its possession of insider information.

28. Thus, his confidential tip to Farallon to purchase the claims may have violated certain of his duties as a Registered Investment Adviser, federal Securities laws, and his duties to the bankruptcy estate.

29. Mr. Seery's duties also involve duties to manage the bankruptcy estate in a manner that would expeditiously resolve the bankruptcy. If the Unsecured Creditor Committee members (Acis, HarbourVest, and Redeemer) were indeed interested in selling their claims for less than the notional amount, then that would have been publicized in the required court filing. By failing to file them publicly and seeking court approval, the bankruptcy has been prolonged whilst Farallon seeks to reap a massive windfall return on its investment—a return that Seery apparently promised.

30. The sale of assets authorized by A&M was not pursuant to normal means, and there is reason to doubt that A&M sought or obtained the highest price for the assets that it sold.

IV.

RELIEF SOUGHT FROM ALVAREZ AND MARSAL

31. Petitioner asks this Court to issue an Order authorizing Petitioner to take a pre-suit deposition of a designated representative, or representatives, of A&M, on the following topics, and to investigate any potential lawsuits arising out of the highly irregular manner in which the assets were marketed and sold, within ten days of the Court's Order, or as agreed by the parties:

a. A&M's rights and responsibilities and duties, including, but not limited to, under A&M's agreement(s) with the Crusader Funds and the Agreement(s) of those funds governing Petitioner's rights and duties as an investor (whether directly or indirectly);

b. The solicitation, offer, valuation, marketing, negotiation, and sale of the Highland bankruptcy claims or other assets by A&M on behalf of the Crusader Funds (and/or the Redeemer Committee) to any or all of Farallon, Stonehill Capital Management, LLC, Muck Holdings, LLC, Jessup Holdings, LLC, or any third party;

c. A&M's valuation, and negotiation of the price, of the Claims, its bases therefor, and what it communicated to potential purchasers about the value of the Claims, if anything;

d. The negotiations and communications leading up to the purchase or sale of the Claims, including, but not limited to:

i. Any discussions with James Seery or anyone at or on behalf of Highland Capital Management, L.P., the Creditors Committee, Sidley Austin, LLP, and/or F.T.I. Consulting, regarding the Claims, any plans with regards to Highland Capital Management, L.P., the liquidation or the value of the Claims, the likelihood of and quantum of payout of the Claims, the pricing of the Claims, and/or the assets that would secure the Claims or be liquidated to fund the Claims' liquidation;

ii. Any discussions with the purchasers of the Claims or other assets to, including, but not limited to, Farallon, Stonehill Capital Management, LLC, Jessup Holdings LLC or Muck Holdings, LLC, regarding the Claims or other assets, Highland Capital Management, L.P., the value of the Claims, the likely payout of the Claims, the pricing of the Claims, and/or the assets that would secure the Claims or be liquidated to fund the Claims' liquidation.

32. As part of the Court's Order, Petitioner requests this Court to require A&M to produce the following documents at their respective depositions:

a. All offers to sell or purchase the Claims and/or all correspondence regarding same;

b. A&M's agreement(s) with the Crusader Funds and the Agreement(s) of those funds governing Petitioner's rights and duties as an investor (whether directly or indirectly);

c. Any document reflecting the purported assets of, or valuation of, Highland Capital Management, L.P. at the time of the sale or marketing of the Claims;

d. Marketing materials, presentations, decks, information sheets, spreadsheets, or other documents sent to or provided to any purchaser, whether in a data room or as part of any marketing pitch, or during any due diligence process, relating to or concerning the liquidation value, potential or likely return on investment, asset valuation, purchase, marketing or sale of the Claims;

e. All documents, agreements, contracts (including any drafts, letters of intent, confidentiality agreements, term sheets) or communications related to same,

relating to or concerning the valuation, purchase, marketing or sale of the Claims (or any subset of the Claims);

f. Communications with James Seery or any other person on behalf of the Debtor, the U.S. Trustee's office, the Unsecured Creditors Committee, Joshua Terry, Acis Capital Management, LLC, Farallon, Stonehill Capital Management, LLC, Jessup Holdings LLC, or Muck Holdings, LLC (or anyone representing or signing on behalf of the foregoing) regarding the sale of the Claims or other assets, the value thereof, the expected amount or percentage of the Claims that would be paid and when such payment was expected to occur, the liquidation value of Highland Capital Management, L.P., potential sources of other cash to pay the claims, the liquidation of the Claims, the likely return from purchasing the Claims, the underlying assets securing the Claims.

g. Proofs of purchase of the Claims and other assets of the Crusader entities.

V.

RELIEF SOUGHT FROM FARALLON CAPITAL MANAGEMENT, L.L.C., MUCK HOLDINGS, LLC AND MICHAEL LIN

33. Petitioner asks this Court to issue an Order authorizing Petitioner to take a pre-suit deposition of a designated representative, or representatives, of Farallon Capital Management, L.L.C. or Muck Holdings, LLC, and to depose Michael Lin, on the following topics, to investigate any potential lawsuits arising out of the highly irregular manner in which the assets were marketed and sold, within ten days of the Court's Order, or as agreed by the parties:

a. Farallon, Muck Holdings, LLC, and/or Lin's understanding of the value of the Claims, the assets held or controlled by or to be acquired by Highland Capital Management, L.P.., the liquidation value of the Estate of Highland Capital Management, L.P., and/or Claims, how and when the claims were expected to be paid and what the expected percentage payoff was going to be, and the bases for such understanding or belief, and what was communicated to them about the value of the Claims;

b. The negotiations and communications leading up to the purchase or sale of the Claims, including, but not limited to, any discussions with sellers of any of the Claims regarding the Claims and the sale/purchase of the Claims, discussions with James Seery or anyone at or on behalf of Highland Capital Management, L.P. regarding the Claims and his plans with regards to Highland, the value of the Claims, the likely payout of the Claims, the

pricing of the Claims, and/or the assets that would secure the Claims or be liquidated to fund the Claims' liquidation, or any disclosures by James Seery or Highland Capital Management, L.P. regarding how the Claims were going to be paid;

c. Farallon and Michael Lin's awareness of material non-public information regarding Highland Capital Management, L.P. or securities held by Highland Capital Management, L.P.;

d. Farallon and Michael Lin's relationship with James Seery or Highland Capital Management, L.P. and their knowledge of his role and their ongoing relationship with him.

34. As part of the Court's Order, Petitioner requests this Court to require Farallon Capital Management, L.L.C., Muck Holdings LLC, and Michael Lin to produce the following documents at their respective depositions:

a. All offers to sell or purchase the Claims and/or all correspondence regarding same;

b. Any document reflecting the purported assets of, or valuation of, Highland Capital Management, L.P. at the time of the sale or marketing of the Claims;

c. Marketing materials, presentations, decks, information sheets, spreadsheets, or other documents sent to or provided to any purchaser, whether in a data room or as part of any marketing pitch, or during any due diligence process, relating to or concerning the liquidation value, potential or likely return on investment, asset valuation, purchase, marketing or sale of the Claims.

d. All agreements, contracts, or other documents (including any drafts, letters of intent, confidentiality agreements, term sheets, or communications related to same) relating to or concerning the valuation, purchase, marketing or sale of the Claims (or any subset of the Claims);

e. All communications with James Seery or any other person on behalf of the Debtor, the U.S. Trustee's office, the Unsecured Creditors Committee, Joshua Terry, Acis Capital Management, LLC, Farallon, Stonehill Capital Management, LLC, Jessup Holdings, LLC or Muck Holdings, LLC (or anyone representing or signing on behalf of the foregoing) regarding the sale of the Claims or other assets, the value thereof, the expected amount or percentage of the Claims that would be paid and when such payment was expected to occur, the liquidation value of Highland Capital Management, L.P., potential sources of other cash to pay the Claims, the liquidation of the

Claims, the likely return from purchasing the Claims, the underlying assets securing the Claims.

f. Proofs of purchase of the Claims and other assets of the Crusader entities.

VI.

REQUEST FOR HEARING & ORDERS

35. After service of this Amended Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on the Petition and order the requested relief.

36. Document discovery is permitted by Rule 199.2. Rule 202.5 states that "depositions authorized by this Rule are governed by the rules applicable to depositions of nonparties in a pending suit. The scope of discovery in depositions authorized by this rule is the same as if the anticipated suit or potential claim had been filed…." Rule 199.2 governs such actions and "expressly allows a party noticing a deposition to include a request for production of documents or tangible things within the scope of discovery and within the witness's possession, custody, or control." *In re City of Tatum*, 567 S.W.3d 800, 808 (Tex. App.—Tyler 2018) (holding that district court properly ordered document discovery in Rule 202 action). *See also* Tex. R. Civ. P. 205.1(c) (authorizing party to compel discovery from a nonparty by court order or subpoena, including a request for production served with a deposition notice). *See also City of Dall. v. City of Corsicana*, Nos. 10-14-00090-CV, 10-14-00171-CV, 2015 Tex. App. LEXIS 8753, at *15-16 (Tex. App.—Waco Aug. 20, 2015) ("Under rule 202, documents can be requested in connection with a deposition…. Accordingly, the trial court's order is not an abuse of discretion to the extent that it allows Navarro to obtain documents in an oral deposition under rule 199 or a deposition on written questions under rule 200."); *In re Anand*, No. 01-12-01106-CV, 2013 Tex. App. LEXIS 4157, at *9 (Tex. App.—Houston [1st Dist.] Apr. 2, 2013) ("the language of these rules when read together

permits a petition seeking a pre-suit deposition under Rule 202 to also request the production of documents").

37. **FOR THESE REASONS**, Petitioner asks the Court to set a date for hearing on this Amended Petition, and after the hearing, to find that the likely benefit of allowing Petitioner to take the requested depositions outweighs the burden or expense of the procedure. Petitioner further asks the Court to issue an Order authorizing Petitioner to take the oral depositions of the Respondents after proper notice and service at the offices of Sbaiti & Company PLLC, 2200 Ross Avenue, Suite 4900W, Dallas, Texas 75201, within ten (10) days of the Court's Order, or as otherwise agreed to by the parties, and to produce the requested documents prior to said deposition. Petitioner also seeks any further relief to which he may be justly entitled.

Dated: May 2, 2022

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti
Texas Bar No. 24058096
Brad J. Robinson
Texas Bar No. 24058076
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Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367
E: mas@sbaitilaw.com
bjr@sbaitilaw.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure on this 2nd day of May, 2022.

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti

VERIFICATION

STATE OF TEXAS §
§
DALLAS COUNTY §

Before me, the undersigned Notary Public, on this day personally appeared James Dondero (hereinafter "Affiant"), who is over the age of 21 and of sound mind and body, who being by me duly sworn, on his oath deposed and said that he has read the foregoing Amended Verified Petition to Take Deposition Before Suit, and that the statements of fact therein are within his personal knowledge and are true and correct as stated, Further, Affiant stated that the Affiant has personal knowledge because of Affiant's relationships and interactions as described therein.

James Dondero

SUBSCRIBED AND SWORN TO BEFORE ME on this 25 day of April, 2022, to certify which witness my hand and official seal.

My commission expires on 12.9.2025.

Notary Public of the State of Texas

seal

Exhibit 7

CAUSE NO. DC-21-09534

IN RE:	§	IN THE DISTRICT COURT
JAMES DONDERO,	§	DALLAS COUNTY, TEXAS
Petitioner.	§	95TH JUDICIAL DISTRICT

ORDER

Came on for consideration the *Verified Amended Petition to Take Deposition Before Suit and Seek Documents* ("Petition") filed by petitioner James Dondero ("Dondero"). The Court, having considered the Petition, the responses filed by respondents Farallon Capital Management, L.L.C. ("Farallon") and Alvarez & Marsal CRF Management, LLC ("A&M"), the record, and applicable authorities, and having conducted a hearing on the Petition on June 1, 2022, concludes that Dondero's Petition should be denied and that this case should be dismissed. Therefore,

The Court ORDERS that Dondero's Petition be, and is hereby, DENIED, and that this case be, and is hereby, DISMISSED.

THE COURT SO ORDERS.

Signed this 13th day of June, 2022.

HONORABLE MONICA PURDY

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 78462315
Filing Code Description: Motion - Protect
Filing Description: AND MOTION TO ABATE
Status as of 8/12/2023 5:49 PM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	8/11/2023 4:17:48 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	8/11/2023 4:17:48 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	8/11/2023 4:17:48 PM	SENT
Gini Romero		gromero@pmmlaw.com	8/11/2023 4:17:48 PM	SENT
Andrew Bean		ABean@gibsondunn.com	8/11/2023 4:17:48 PM	SENT
Tim Miller		tmiller@pmmlaw.com	8/11/2023 4:17:48 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	8/11/2023 4:17:48 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	8/11/2023 4:17:48 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	8/11/2023 4:17:48 PM	SENT
John T.Cox		TCox@gibsondunn.com	8/11/2023 4:17:48 PM	SENT
Marshall R.King		MKing@gibsondunn.com	8/11/2023 4:17:48 PM	SENT

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
Defendant.		

ORDER ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

On this day the Court considered Defendant Alvarez & Marsal's Motion for Protective Order and Motion to Abate. After considering the motion, and all evidence properly before it, the Court finds that Defendant Alvarez & Marsal's Motion for Protective Order and Motion to Abate should be and is hereby GRANTED.

IT IS THEREFORE ORDERED THAT Defendant Alvarez & Marsal's Motion for Protective Order and Motion to Abate is GRANTED.

Signed this _____ day of August, 2023 in Dallas County, Texas.

_____
JUDGE PRESIDING

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Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 78462953
Filing Code Description: Non-Signed Proposed Order/Judgment
Filing Description: PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE
Status as of 8/12/2023 5:44 PM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	8/11/2023 4:21:17 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	8/11/2023 4:21:17 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	8/11/2023 4:21:17 PM	SENT
Gini Romero		gromero@pmmlaw.com	8/11/2023 4:21:17 PM	SENT
Andrew Bean		ABean@gibsondunn.com	8/11/2023 4:21:17 PM	SENT
Tim Miller		tmiller@pmmlaw.com	8/11/2023 4:21:17 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	8/11/2023 4:21:17 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	8/11/2023 4:21:17 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	8/11/2023 4:21:17 PM	SENT
John T.Cox		TCox@gibsondunn.com	8/11/2023 4:21:17 PM	SENT
Marshall R.King		MKing@gibsondunn.com	8/11/2023 4:21:17 PM	SENT

FILED
8/17/2023 12:08 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Jenifer Trujillo DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023 is hereby set for hearing on Thursday, October 12, 2023, at 9:00 a.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: August 17, 2023

Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201-2923
Telephone: 214.698.3256
Facsimile: 214.571.2923
TCox@gibsondunn.com
ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 78618383
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: ON DEF MOTION TO PROTECT & ABATE
Status as of 8/17/2023 9:46 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	8/17/2023 12:08:17 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	8/17/2023 12:08:17 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	8/17/2023 12:08:17 AM	SENT
Gini Romero		gromero@pmmlaw.com	8/17/2023 12:08:17 AM	SENT
Andrew Bean		ABean@gibsondunn.com	8/17/2023 12:08:17 AM	SENT
Tim Miller		tmiller@pmmlaw.com	8/17/2023 12:08:17 AM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	8/17/2023 12:08:17 AM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	8/17/2023 12:08:17 AM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	8/17/2023 12:08:17 AM	SENT
Ian Salzer		isalzer@pmmlaw.com	8/17/2023 12:08:17 AM	SENT
John T.Cox		TCox@gibsondunn.com	8/17/2023 12:08:17 AM	SENT
Marshall R.King		MKing@gibsondunn.com	8/17/2023 12:08:17 AM	SENT

FILED
10/10/2023 7:33 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

AMENDED NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023 and originally set for hearing on Thursday, October 12, 2023, at 9:00 a.m. has been re-set for hearing on Thursday, December 7, 2023 at 9:30 a.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: October 10, 2023

Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
GIBSON, DUNN & CRUTCHER LLP
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Facsimile: 214.571.2923
TCox@gibsondunn.com
ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 80408950
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: AMENDED / MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE
Status as of 10/10/2023 8:16 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	10/10/2023 7:33:28 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	10/10/2023 7:33:28 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	10/10/2023 7:33:28 AM	SENT
Gini Romero		gromero@pmmlaw.com	10/10/2023 7:33:28 AM	SENT
Andrew Bean		ABean@gibsondunn.com	10/10/2023 7:33:28 AM	SENT
Tim Miller		tmiller@pmmlaw.com	10/10/2023 7:33:28 AM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	10/10/2023 7:33:28 AM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	10/10/2023 7:33:28 AM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	10/10/2023 7:33:28 AM	SENT
Ian Salzer		isalzer@pmmlaw.com	10/10/2023 7:33:28 AM	SENT
John T.Cox		TCox@gibsondunn.com	10/10/2023 7:33:28 AM	SENT
Marshall R.King		MKing@gibsondunn.com	10/10/2023 7:33:28 AM	SENT

FILED
8/17/2023 12:08 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Jenifer Trujillo DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023 is hereby set for hearing on Thursday, October 12, 2023, at 9:00 a.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: August 17, 2023

Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
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Telephone: 214.698.3256
Facsimile: 214.571.2923
TCox@gibsondunn.com
ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Automated Certificate of eService

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Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 78618383
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: ON DEF MOTION TO PROTECT & ABATE
Status as of 8/17/2023 9:46 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	8/17/2023 12:08:17 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	8/17/2023 12:08:17 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	8/17/2023 12:08:17 AM	SENT
Gini Romero		gromero@pmmlaw.com	8/17/2023 12:08:17 AM	SENT
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FILED
10/10/2023 7:33 AM
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Rosa Delacerda DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

AMENDED NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023 and originally set for hearing on Thursday, October 12, 2023, at 9:00 a.m. has been re-set for hearing on Thursday, December 7, 2023 at 9:30 a.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: October 10, 2023

Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
GIBSON, DUNN & CRUTCHER LLP
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TCox@gibsondunn.com
ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 80408950
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: AMENDED / MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE
Status as of 10/10/2023 8:16 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	10/10/2023 7:33:28 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

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Beatrice Candis		bcandis@pmmlaw.com	10/10/2023 7:33:28 AM	SENT

Case Contacts

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Marshall R.King		MKing@gibsondunn.com	10/10/2023 7:33:28 AM	SENT

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DALLAS CO., TEXAS

116th-F

Bryan Haynes DEPUTY

BRYAN HAYNES PC
8150 N CENTRAL EXPWY
10TH FLOO
DALLAS TX

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600 COMMERCE STREET, DALLAS, TEXAS 75202-4631

3/22/2023

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Cause No. DC-22-10107
CHARITABLE DAF FUND LP, et al
vs.
ALVAREZ & MARSAL CRF MANAGEMENT LLC, et al

Please be advised that Haynes, Bryan has been appointed the mediator in the above styled and numbered cause. Attached is the scheduling order signed by the court.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Tonya Parker, Presiding Judge

MEDIATOR: Bryan Haynes @ Work: 214-649-9511
Update your information at:
http://www.dallascounty.org/department/districtclerk/atty-add-form.html

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Bryan Haynes
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DALLAS, TX 75206

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AGREED UNIFORM SCHEDULING ORDER (LEVEL 3)
(Revised August 22, 2001)

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following agreed order to control the schedule of this cause.

1. This case will be ready and is set for ~~Non-Jury~~/Jury Trial on **February 26, 2024, at 9:00 a.m.(the" Initial Trial Setting").** Reset or continuance of the Initial Trial Setting will not alter any deadlines established in this Order or established by the Texas Rules of Civil Procedure unless otherwise provided by order. If not reached as set, the case may be carried to the next week.

Trial announcements must be made in accordance with rule 3.02 Local Rules of the Civil Courts of Dallas County Texas. When no announcement is made for defendant, defendant will be presumed ready. If plaintiff fails to announce or to appear at trial, the case will be dismissed for want of prosecution in accordance with Rule 165a, Texas Rules of Civil Procedure.

2. Pretrial matters will be complete by the following dates:

a. amended pleadings asserting new causes of action or defenses ..... 120 days before the Initial Trial Setting
b. fact discovery closes ..... 105 days before the Initial Trial Setting
c. party seeking affirmative relief shall designate experts and must provide reports ..... 105 days before the Initial Trial Setting
d. party opposing affirmative relief shall designate experts and must provide reports ..... 90 days before the Initial Trial Setting
e. party seeking affirmative relief shall designation of rebuttal experts and must provide reports ..... 75 days before the Initial Trial Setting
f. all expert discovery closes ..... 45 days before the Initial Trial Setting

g. other amended pleadings .....45 days before the Initial Trial Setting

The parties may by written agreement alter these deadlines. Amended pleadings responsive to timely filed pleadings under this schedule may be filed after the deadline for amended pleadings if filed within two (2) weeks after the pleading to which they respond. Except by agreement of the party, leave of court, or where expressly authorized by the Texas Rules of Civil Procedure, no party may obtain discovery of information subject to disclosure under Rule 194 by any other form of discovery.

3. Any objection or motion to exclude or limit expert testimony due to qualification of the expert or reliability of the opinions must be filed no later than seven (7) days after the close of expert discovery, or such objection is waived. Such motions must be heard no later than thirty (30) days prior to trial. Any motion to compel responses to discovery (other than relating to factual matters arising after the end of fact discovery) must be filed no later than seven (7) days after the close of fact discovery or such complaint is waived, except for the sanction of exclusion under Rule 193.6

4. Motions for summary judgment or other dispositive motions must be heard no later than thirty (30) days prior to trial.

5. Each side may have 75 hours of depositions and each party may have 50 interrogatories, subject to the conditions of Rule 190.3(b)(2) and (3).

6. No additional parties may be joined more than eight (8) months after the commencement of this case except on motion for leave showing good cause. This paragraph does not otherwise alter the requirements of Rule 38. The party joining an additional party shall serve a copy of this Order on the new party concurrently with the pleading joining that party.

7. The parties shall mediate this case no later than thirty (30) days before the Initial Trial Setting, unless otherwise provided by court order. Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer or corporate representative with authority to negotiate a settlement. **Unless, within 14 days of the date of this Order, the parties file and bring to the attention of the Court Coordinator a Joint Notice of Agreed Upon Substitute Mediator, the parties agree to mediate this case** Bryan Haynes **whose phone number is** 214-649-9511 **Any joint motion requesting appointment of a mediator should include a brief description of the nature of the dispute, and any novel legal, language, demographic, or other issues the parties desire to have the Court consider in appointing a mediator. The provisions contained herein regarding mediation will be strictly enforced. Parties violating the requirements of this Order will be required to show cause as to why they are in violation of same.**

8 Fourteen (14) days before the Initial Trial Setting, the parties shall exchange designations of deposition testimony to be offered in direct examination and a list of exhibits, including any demonstrative aids and affidavits, and shall exchange copies of any

exhibits not previously produced in discovery; over-designation is strongly discouraged and may be sanctioned. Except for records to be offered by way of business record affidavits, each exhibit must be identified separately and not by category or group designation. Ten (10) days before the Initial Trial Setting, the parties shall exchange in writing their objections to the opposing party's proposed exhibits, including objections under Rule 193.7, and deposition testimony. **On or before ten (10)days before the Initial Trial Setting, the attorneys in charge for all parties shall meet in person to confer on stipulations regarding the materials to be submitted to the Court under this paragraph and attempt to maximize agreement on such matters.** By 4 p.m. on the Thursday before the Initial Trial Setting, the parties shall file with the Court the materials stated in Rule 166(d)-(m), an estimate of the length of trial, designation of deposition testimony to be offered in direct examination, and any motions in limine. Failure to file such materials may result in dismissal for want of prosecution or other appropriate sanction. A courtesy copy of each party's pre-trial materials shall be delivered to the Judge's Chambers by 4 p.m. the Thursday before the trial setting.

9. A pre-trial conference shall be conducted from 8 a.m. to 9 a.m. the morning of trial on all matters the parties could not resolve during their meet and confer. If, after the meet and confer between counsel, the parties anticipate more time will be needed for a pre-trial conference, a pre-trial conference shall be scheduled the week before the trial setting.

Plaintiff/Plaintiff's counsel shall serve a copy of this order on any currently named defendants all parties answering after the date of this order.

SIGNED 03/21/23.

District Judge

AGREED:

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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

*By: /s/ Andrew Bean**

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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC

***Signed by permission**

FILED
11/6/2023 4:30 PM
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DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF" or "Plaintiff"), and files this First Amended Petition against Defendant Alvarez & Marsal CRF Management, LLC ("A&M" or "Defendant"), and respectfully shows:

I. DISCOVERY PLAN

1. Plaintiff asserts that discovery should be conducted under Level 3 pursuant to Texas Rules of Civil Procedure 190.1 and 190.4.

II. PARTIES

2. DAF is a limited partnership organized in the Cayman Islands. DAF conducts charitable activities in the State of Texas.

3. A&M is a foreign limited liability company organized and existing under the laws of the State of Delaware. A&M engages in business in Texas but has not designated or maintained a resident agent for service of process in Texas. A&M has generally appeared and answered in this lawsuit.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action as DAF currently seeks monetary relief over $250,000 but not more than $1,000,000. The damages sought by DAF are within the jurisdictional limits of the Court.

5. Venue is proper under Texas Civil Practice and Remedies Code §15.002(a)(1) because all or a substantial part of the events or omissions giving rise to this claim occurred in Dallas County, Texas.

6. This Court has personal jurisdiction over A&M because: (i) A&M is and has been doing business in Texas pursuant to § 17.042 of the Texas Civil Practices and Remedies Code (ii) A&M has purposefully availed itself of the benefits and protections offered by the State of Texas by conducting business in this State; (iii) A&M committed wrongful acts within this State, (iv) A&M's conduct in and contacts with this State give rise to or relate to the causes of action alleged herein; and (v) A&M has submitted to this Court's jurisdiction by appearing and answering in this lawsuit.

IV. FACTUAL BACKGROUND

7. DAF's exclusive mission involves charity. Since 2012, DAF's supporting organizations committed over $42 million to nonprofit organizations and funded approximately $32 million of total commitments. These charitable causes include education, veterans, first responders, health and medical research, economic and community development initiatives, and youth and family programs in the State of

Texas. This lawsuit is necessary because of A&M's improper withholding of assets lawfully owned by and due to DAF and A&M's associated interference with DAF's charitable mission.

8. On or about June 30, 2016, DAF purchased shares in the Highland Crusader Fund II, Ltd. ("Crusader Fund II") from the Promethee T Fund (formerly known as Promethee Tremont Fund) ("Promethee") for in excess of $1.0 million ("DAF's Direct Interest"). In connection with DAF's acquisition of its interest in Crusader Fund II, DAF was required to execute certain Subscription Documents and became a party to (or beneficiary of) Crusader Fund II's Offering Memorandum, Memorandum of Association, By-Laws, and various other agreements governing the relationship between Crusader Fund II and its investors.

9. DAF is the lawful owner of all right, title, and interest in and to DAF's Direct Interest and to DAF's Full Direct Interest, as described below. The Crusader Fund II is a segregated, identifiable fund held separate from other funds managed by A&M. A&M has no legitimate claim to DAF's Full Direct Interest, as described below.

10. A&M is the investment manager of the Crusader Fund II and has been so at all times relevant to the claims asserted in this lawsuit. As the investment manager, A&M receives payment from the Crusader Fund II for A&M's management services. Upon information and belief, A&M's compensation is based on the value of Crusader

Fund II; accordingly, A&M earns more compensation if Crusader Fund II has more available funds.

11. On or about July 12, 2021, A&M informed DAF that DAF's Direct Interest "will not exist as of June 30 NAV." A&M then refused to make distributions to DAF and treated DAF's Direct Interest as having been extinguished.

12. DAF previously made a written demand to A&M, through A&M's legal counsel, for payment to DAF of the full value of DAF's Direct Interest, plus all related distributions and other withholdings owed DAF in regard to DAF's Direct Interest ("DAF's Full Direct Interest"). A&M initially refused to comply with this demand without legal justification. In doing so, A&M deprived DAF of DAF's access to and right to possess and use DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. In short, A&M deprived DAF of DAF's property without any legal basis or justification.

13. A&M's actions have deprived DAF of the use of its funds, namely the ability to earn profits on such funds to promote charitable causes, for the time period when A&M improperly exercised control over and withheld distributions—and, upon information and belief, while A&M continued to charge additional fees based on an inflated value of the Crusader Fund II.

14. Upon information and belief, A&M is a registered investment advisor subject to the Investment Advisors Act of 1940. Notwithstanding its role as a registered

investment advisor, A&M improperly withheld DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, and A&M refused to distribute equivalent funds to DAF.

15. A&M entered into an informal confidential and special relationship with DAF. A&M controls and manages funds in which DAF has a direct interest. DAF placed trust and confidence in A&M to control, manage, and distribute DAF's Full Direct Interest. DAF's damages arise out of A&M's refusal to recognize DAF's right to control DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, and A&M's decision, instead, to unlawfully withhold the same even though it should have been distributed to DAF.

16. On or about February 17, 2023, after this lawsuit was filed, A&M belatedly transferred $951,060.82 to DAF, in acknowledgement of its prior breaches of its duties as manager of the Crusader Fund II. On or about March 29, 2023, A&M again transferred $139,101.94 to DAF in further acknowledgement of DAF's Direct Interests and effectively confirming A&M's prior breaches of duties.

V. CAUSES OF ACTION

Count One – Breach of Fiduciary Duties

17. DAF incorporates all of the foregoing factual averments by reference as if set fully set forth herein.

18. A&M has exercised and continues to exercise dominion and control over DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M holds a position of special trust and confidence with DAF regarding DAF's Full Direct Interest. A&M owes DAF common law fiduciary duties arising out of A&M's position of trust and confidence. Upon information and belief, as Investment Manager, the governing documents, including the Offering Memorandum and the advisory management agreements, required A&M to act fairly, equitably, and in accordance with reasonable commercial standards. Upon information and belief, these duties further obligated A&M to not unlawfully and improperly withhold investor's interests, including DAF Direct Interest.

19. The fiduciary duties A&M owes DAF include, but are not limited to, the duty of loyalty—to always act in the best interest of the investor, the duty to act with utmost good faith, the duty to refrain from self-dealing, the duty of fair and honest dealing, the duty to act with integrity of the strictest kind, and the duty of candor and full disclosure. Central to the fiduciary duties A&M owed and continues to owe DAF is the duty to not deprive DAF of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M's failure and refusal to pay and return the same, even after DAF made specific written demand for DAF's Full Direct Interest, is intentional misconduct that breached one or more of the fiduciary duties A&M owed and continues to owe DAF and has caused damage to DAF.

20. Because A&M knowingly committed a clear and serious breach of its fiduciary duties to garner additional fees for itself, DAF is entitled to disgorge fees, profits, and/or funds received by A&M in connection with its purported management of the Crusader Fund II during the period it unlawfully withheld DAF's funds.

21. DAF also is entitled to an accounting of its interest in the Crusader Fund II to verify the accuracy of the distributions made to DAF by A&M after this suit was originally filed. This audit is also necessary to confirm all other benefits to which the DAF is entitled but which have been withheld by A&M.

22. A&M is, therefore, liable to DAF for actual damages, disgorgement, exemplary damages, an accounting, and all other relief to which DAF is justly and legally entitled as the result of A&M's breach of fiduciary duties owed to DAF.

Count Two – Conversion

23. DAF incorporates by reference all of the foregoing factual and legal averments as if fully set forth herein.

24. DAF owns and has a right to immediate possession of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M had no legitimate claim to DAF's Full Direct Interest or to the Crusader Fund II regarding DAF's Full Direct Interest.

25. The Crusader Fund II funds were delivered to A&M for safekeeping and management. The Crusader Fund II funds were intended to be segregated from other funds managed by A&M.

26. Upon information and belief, A&M held the Crusader Fund II funds in substantially the same form as received.

27. DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, were separate and identifiable funds held by A&M for the benefit of DAF. DAF made demand upon A&M to immediately relinquish possession of DAF's Full Direct Interest to DAF. A&M ignored DAF's demand and A&M wrongfully exercised dominion and control over DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest.

28. DAF was deprived of its lawful right to ownership and control of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, by A&M's unauthorized withholding of the same without a legally correct basis to do so.

29. As a proximate and/or direct result of A&M's conversion of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, DAF has suffered significant damages for which damages DAF now sues.

30. A&M is, therefore, liable to DAF for actual damages, punitive damages, and all other relief to which DAF is justly and legally entitled as the result of A&M's conversion.

Count Three – Tortious Interference

31. DAF respectfully incorporates by reference all of the foregoing factual and legal averments as if fully set forth herein.

32. DAF's investment in, and relationship with, Crusader Fund II is the subject of various contracts, including, without limitation, the Crusader Fund II's Subscription Documents, Offering Memorandum, Memorandum of Association, and By-Laws.

33. As investment manager of Crusader Fund II, A&M was and is in possession of these agreements and, during all material time, A&M was aware of the terms of these agreements.

34. Despite knowing that A&M had no right to unilaterally cancel DAF's Direct Interest under any of the relevant transactional documents, A&M did so without justification or excuse.

35. A&M's cancellation of DAF's Direct Interest is a direct interference with A&M's rights and expectancies under the relevant transactional documents, which has proximately caused DAF damages.

36. Because A&M had no business justification for cancelling DAF's Direct Interest—a move that was calculated solely to harm DAF—the only conclusion is that

A&M acted with malicious intent in interfering in the relationship between DAF and Crusader Fund II.

37. A&M is, therefore, liable to DAF for actual damages, punitive damages, and all other relief to which DAF is justly and legally entitled as the result of A&M's tortious interference.

VI. DAMAGES

38. DAF incorporates the foregoing factual averments, and the factual and legal averments in Counts One through Three above, as if fully set forth herein and further alleges the following in the alternative.

39. DAF requests judgment against A&M for all of DAF's actual damages, including, without limitation, direct damages, special damages, consequential damages, lost savings, lost profits, out-of-pocket damages, future damages, and incidental damages, to which DAF is entitled, in addition to punitive or exemplary damages, prejudgment and post-judgment interest at the highest legal rate, and costs of Court.

40. DAF further requests judgment against A&M for disgorgement of all of A&M's fees, profits, and/or other funds received in connection with its purported management of the Crusader Fund II with respect to DAF's interest in that fund during the relevant period when A&M unlawfully withheld DAF's funds, and an accounting of DAF's interest in the Crusader Fund II and of the related fees and expenses charged by A&M.

VII. CONDITIONS PRECEDENT

41. All conditions precedent, if any, to the claims asserted herein have been performed, excused, waived, satisfied, or have otherwise occurred.

VIII. JURY DEMAND

42. DAF demands a trial by jury and tenders the jury fee pursuant to Rule 216 of the Texas Rules of Civil Procedure.

IX. RULE 193.7 NOTICE

43. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, DAF intends to use any and all documents produced in A&M's discovery responses as evidence at the time of any hearing or trial in this matter.

PRAYER

Plaintiff, Charitable DAF Fund, L.P., respectfully requests that this Court grant judgment in DAF's favor over and against Defendant Alvarez & Marsal CRF Management, LLC as set forth herein, including but not limited to, for an accounting of DAF's interest in the Crusader Fund II and the related fees and expenses charged by A&M, for disgorgement of all of A&M's fees, profits, and/or other funds received by A&M with respect to DAF's interest in that fund during the relevant period when A&M unlawfully withheld DAF's funds, for all actual damages DAF has suffered, for exemplary damages, for disgorgement, prejudgment and post-judgment interest at the highest rate permitted by law, for DAF's costs of court, and that DAF be awarded all

other and further relief, at law and in equity, general and special, to which DAF may be justly entitled.

Dated: November 6, 2023

Respectfully submitted,

/s/ Roger L. McCleary

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(713) 960-7347 (Facsimile)

ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2023, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Roger L. McCleary
ROGER L. MCCLEARY

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Beatrice Candis on behalf of Roger McCleary
Bar No. 13393700
bcandis@pmmlaw.com
Envelope ID: 81355783
Filing Code Description: Amended Petition
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Status as of 11/7/2023 8:19 AM CST

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Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	11/6/2023 4:30:26 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	11/6/2023 4:30:26 PM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P., *Plaintiff,*	§	IN THE DISTRICT COURT
v.	§	DALLAS COUNTY, TEXAS
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC *Defendant.*	§	116th JUDICIAL DISTRICT

PLAINTIFF'S VERIFIED MOTION FOR CONTINUANCE AND FOR ENTRY OF AMENDED SCHEDULING ORDER

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and files this Verified Motion for Continuance and for Entry of Amended Scheduling Order ("Motion") pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, and respectfully shows the Court as follows:

I. REQUESTED RELIEF.

1. Plaintiff requests a continuance of the current February 26, 2024 trial setting and entry of a First Amended Uniform Scheduling Order (Level 3), with a new trial date of August 5, 2024, (or the next available date for the Court that is mutually convenient to the parties) and with updated deadlines corresponding to the Uniform Scheduling Order (Level 3). A copy of the proposed First Amended Uniform Scheduling Order (Level 3) is attached hereto as Exhibit "A" (the "Amended Scheduling Order").

II. GROUNDS FOR RELIEF.

2. This Motion is filed pursuant to Tex. R. Civ. P. 251.

3. The current trial date is no longer feasible.

4. On August 11, 2023, Defendant filed its *Motion for Protective Order and Motion to Abate* ("Defendant's Motion") seeking protection from Plaintiff's written discovery requests. Other than initial disclosures, no substantive discovery has occurred because of the filing of Defendant's Motion.

5. Defendant's Motion was scheduled for hearing on October 12, 2023, but the hearing was rescheduled to December 7 because the parties entered into settlement discussions. These discussions are ongoing and Defendant's counsel has agreed that all deadlines in November and December 2023 are "pushed".

6. In light of the foregoing, Plaintiff submits that the current Scheduling Order is no longer viable and a new scheduling order is needed.

III. CONCLUSION.

7. Plaintiff respectfully requests that the Court continue the current trial setting and enter the Amended Scheduling Order attached as Exhibit "A." Plaintiff has submitted the proposed Amended Scheduling Order for agreement, but Defendant's counsel has not yet responded.

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

WHEREFOREPREMISES CONSIDERED, Plaintiff, Charitable DAF Fund, L.P. respectfully requests that this Motion for Continuance and Entry of Amended Scheduling

Order be granted; that the Court grant a continuance of the current trial setting; that the Court approve and enter the requested Amended Scheduling Order filed with this motion or, alternatively, a version of the Amended Scheduling Order with a trial date convenient to the Court and the parties no earlier than August 5, 2024, and with associated modification of other deadlines; and, that the Court grant Plaintiff such further relief to which it may show itself to be justly entitled to, either at law or in equity.

Dated: November 13 2023

Respectfully submitted,

/s/ Sawnie A. McEntire
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ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AFFIDAVIT OF SAWNIE A. MCENTIRE

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day there personally appeared Sawnie A. McEntire who, being by me first duly sworn, upon his oath deposes and states as follows:

1. "My name is Sawnie A. McEntire. I am over twenty-one years of age and I am fully competent to make this affidavit. I am an attorney duly licensed to practice law in the State of Texas. I am a Shareholder with the law firm of Parsons McEntire McCleary PLLC, where I practice law in that firm's Dallas office located at 1700 Pacific Avenue, Suite 4400, Dallas, Texas 75201 (Tel.: 214-237-4300). I am the lead counsel representing Plaintiff, Charitable DAF Fund, L.P. in the above-styled and numbered lawsuit ('Lawsuit'). All of the statements made in this affidavit are true and correct and are based on my personal knowledge.

2. I have reviewed in its entirety the foregoing Plaintiff's Verified Motion for Continuance and for Entry of Amended Scheduling Order (the 'Motion') and the factual statements made in the Motion are true and correct.

Further affiant sayeth not."

Sawnie A. McEntire

SWORN TO AND SUBSCRIBED before me, the undersigned authority, by Sawnie A. McEntire on this the 13th day of November, 2023.

Notary Public, State of Texas

CERTIFICATE OF CONFERENCE

I hereby certify that my office has contacted Trey Cox, Counsel for Defendant Alvarez & Marsal CRF Management, LLC, several times regarding the substance of this motion, including sending a proposed Amended Scheduling Order on October 24, 2023, November 1, 2023, and November 2, 2023, a revised proposed Amended Scheduling Order on November 9, 2023, related follow-up e-mail correspondence on November 13, 2023, and telephone communications with Defendant's counsel on November 2, November 8, and November 13, 2023, in an effort to resolve the issues described in this motion. Defendant's counsel has not agreed to the Amended Scheduling Order to date, therefore, this motion is necessary.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2023, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3134332

EXHIBIT A

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PROPOSED FIRST AMENDED UNIFORM SCHEDULING ORDER (LEVEL 3)
(Revised August 22, 2001)

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following first amended agreed order to control the schedule of this cause.

1. This case will be ready and is set for **Non-Jury/Jury Trial on August 5, 2024, at 9:00 a.m. (the "Trial Setting")**. Reset or continuance of the Trial Setting will not alter any deadlines established in this Order or established by the Texas Rules of Civil Procedure unless otherwise provided by order. If not reached as set, the case may be carried to the next week.

Trial announcements must be made in accordance with rule 3.02 Local Rules of the Civil Courts of Dallas County Texas. When no announcement is made for defendant, defendant will be presumed ready. If plaintiff fails to announce or to appear at trial, the case will be dismissed for want of prosecution in accordance with Rule 165a, Texas Rules of Civil Procedure.

2. Pretrial matters will be complete by the following dates:

a. amended pleadings asserting new causes of action or defenses ..... 120 days before the Trial Setting
b. fact discovery closes ..... 105 days before the Trial Setting
c. party seeking affirmative relief shall designate experts and must provide reports..... 105 days before the Trial Setting
d. party opposing affirmative relief shall designate experts and must provide reports..... 90 days before the Trial Setting
e. party seeking affirmative relief shall designation of rebuttal experts and must provide reports..... 75 days before the Trial Setting
f. all expert discovery closes..... 45 days before the Trial Setting

g. other amended pleadings ..... 45 days before the Trial Setting

The parties may by written agreement alter these deadlines. Amended pleadings responsive to timely filed pleadings under this schedule may be filed after the deadline for amended pleadings if filed within two (2) weeks after the pleading to which they respond. Except by agreement of the party, leave of court, or where expressly authorized by the Texas Rules of Civil Procedure, no party may obtain discovery of information subject to disclosure under Rule 194 by any other form of discovery.

3. Any objection or motion to exclude or limit expert testimony due to qualification of the expert or reliability of the opinions must be filed no later than seven (7) days after the close of expert discovery, or such objection is waived. Such motions must be heard no later than thirty (30) days prior to trial. Any motion to compel responses to discovery (other than relating to factual matters arising after the end of fact discovery) must be filed no later than seven (7) days after the close of fact discovery or such complaint is waived, except for the sanction of exclusion under Rule 193.6

4. Motions for summary judgment or other dispositive motions must be heard no later than thirty (30) days prior to trial.

5. Each side may have 75 hours of depositions and each party may have 50 interrogatories, subject to the conditions of Rule 190.3(b)(2) and (3).

6. No additional parties may be joined more than eight (8) months after the commencement of this case except on motion for leave showing good cause. This paragraph does not otherwise alter the requirements of Rule 38. The party joining an additional party shall serve a copy of this Order on the new party concurrently with the pleading joining that party.

7. The parties shall mediate this case no later than thirty (30) days before the Initial Trial Setting, unless otherwise provided by court order. Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer or corporate representative with authority to negotiate a settlement. **Unless, within 14 days of the date of this Order, the parties file and bring to the attention of the Court Coordinator a Joint Notice of Agreed Upon Substitute Mediator, the parties agree to mediate this case Bryan Haynes whose phone number is 214-649-9511 Any joint motion requesting appointment of a mediator should include a brief description of the nature of the dispute, and any novel legal, language, demographic, or other issues the parties desire to have the Court consider in appointing a mediator. The provisions contained herein regarding mediation will be strictly enforced. Parties violating the requirements of this Order will be required to show cause as to why they are in violation of same.**

8 Fourteen (14) days before the Initial Trial Setting, the parties shall exchange designations of deposition testimony to be offered in direct examination and a list of exhibits, including any demonstrative aids and affidavits, and shall exchange copies of any

exhibits not previously produced in discovery; over-designation is strongly discouraged and may be sanctioned. Except for records to be offered by way of business record affidavits, each exhibit must be identified separately and not by category or group designation. Ten (10) days before the Initial Trial Setting, the parties shall exchange in writing their objections to the opposing party's proposed exhibits, including objections under Rule 193.7, and deposition testimony. **On or before ten (10) days before the Initial Trial Setting, the attorneys in charge for all parties shall meet in person to confer on stipulations regarding the materials to be submitted to the Court under this paragraph and attempt to maximize agreement on such matters.** By 4 p.m. on the Thursday before the Initial Trial Setting, the parties shall file with the Court the materials stated in Rule 166(d)-(m), an estimate of the length of trial, designation of deposition testimony to be offered in direct examination, and any motions in limine. Failure to file such materials may result in dismissal for want of prosecution or other appropriate sanction. A courtesy copy of each party's pre-trial materials shall be delivered to the Judge's Chambers by 4 p.m. the Thursday before the trial setting.

9. A pre-trial conference shall be conducted from 8 a.m. to 9 a.m. the morning of trial on all matters the parties could not resolve during their meet and confer. If, after the meet and confer between counsel, the parties anticipate more time will be needed for a pre-trial conference, a pre-trial conference shall be scheduled the week before the trial setting.

Plaintiff/Plaintiff's counsel shall serve a copy of this order on any currently named defendants all parties answering after the date of this order.

SIGNED ___/___/___.

_____

District Judge

AGREED:

By: /s/_____
Sawnie A. McEntire
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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

By: /s/_____
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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC

3133166.1

Automated Certificate of eService

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Envelope ID: 81590562
Filing Code Description: Motion - Continuance
Filing Description: AND ENTRY OF AMENDED SCHEDULING ORDER
Status as of 11/14/2023 8:11 AM CST

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Name	BarNumber	Email	TimestampSubmitted	Status
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Gini Romero		gromero@pmmlaw.com	11/13/2023 4:51:08 PM	SENT
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Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	11/13/2023 4:51:08 PM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116TH JUDICIAL DISTRICT

ORDER FOR CONTINUANCE AND
ENTERING AMENDED SCHEDULING ORDER

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") Verified Motion for Continuance and for Entry of Amended Scheduling Order ("Motion for Amended Scheduling Order"), and any response thereto, and arguments of counsel, the Court has determined that the Motion for Amended Scheduling Order is well taken and should be granted.

IT IS THERFORE ORDERED that DAF's Verified Motion for Continuance and for Entry of Amended Scheduling Order is in all things **GRANTED**.

Signed this _____ day of _____ 2023.

_____
Judge Presiding

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PROPOSED FIRST AMENDED UNIFORM SCHEDULING ORDER (LEVEL 3)
(Revised August 22, 2001)

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following first amended agreed order to control the schedule of this cause.

1. This case will be ready and is set for ~~**Non-Jury**~~**/Jury Trial on August 5, 2024, at 9:00 a.m. (the "Trial Setting").** Reset or continuance of the Trial Setting will not alter any deadlines established in this Order or established by the Texas Rules of Civil Procedure unless otherwise provided by order. If not reached as set, the case may be carried to the next week.

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a. amended pleadings asserting new causes of action or defenses ..... 120 days before the Trial Setting
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7. The parties shall mediate this case no later than thirty (30) days before the Initial Trial Setting, unless otherwise provided by court order. Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer or corporate representative with authority to negotiate a settlement. **Unless, within 14 days of the date of this Order, the parties file and bring to the attention of the Court Coordinator a Joint Notice of Agreed Upon Substitute Mediator, the parties agree to mediate this case Bryan Haynes whose phone number is 214-649-9511 Any joint motion requesting appointment of a mediator should include a brief description of the nature of the dispute, and any novel legal, language, demographic, or other issues the parties desire to have the Court consider in appointing a mediator. The provisions contained herein regarding mediation will be strictly enforced. Parties violating the requirements of this Order will be required to show cause as to why they are in violation of same.**

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Plaintiff/Plaintiff's counsel shall serve a copy of this order on any currently named defendants all parties answering after the date of this order.

SIGNED 11/25/23.

District Judge

AGREED:

By: */s/* _____
Sawnie A. McEntire
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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

By: /s/ _____
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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC

3133166.1

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PROPOSED FIRST AMENDED UNIFORM SCHEDULING ORDER (LEVEL 3)
(Revised August 22, 2001)

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following first amended agreed order to control the schedule of this cause.

1. This case will be ready and is set for ~~**Non-Jury**~~**/Jury Trial on August 5, 2024, at 9:00 a.m. (the "Trial Setting").** Reset or continuance of the Trial Setting will not alter any deadlines established in this Order or established by the Texas Rules of Civil Procedure unless otherwise provided by order. If not reached as set, the case may be carried to the next week.

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7. The parties shall mediate this case no later than thirty (30) days before the Initial Trial Setting, unless otherwise provided by court order. Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer or corporate representative with authority to negotiate a settlement. **Unless, within 14 days of the date of this Order, the parties file and bring to the attention of the Court Coordinator a Joint Notice of Agreed Upon Substitute Mediator, the parties agree to mediate this case Bryan Haynes whose phone number is 214-649-9511 Any joint motion requesting appointment of a mediator should include a brief description of the nature of the dispute, and any novel legal, language, demographic, or other issues the parties desire to have the Court consider in appointing a mediator. The provisions contained herein regarding mediation will be strictly enforced. Parties violating the requirements of this Order will be required to show cause as to why they are in violation of same.**

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exhibits not previously produced in discovery; over-designation is strongly discouraged and may be sanctioned. Except for records to be offered by way of business record affidavits, each exhibit must be identified separately and not by category or group designation. Ten (10) days before the Initial Trial Setting, the parties shall exchange in writing their objections to the opposing party's proposed exhibits, including objections under Rule 193.7, and deposition testimony. **On or before ten (10) days before the Initial Trial Setting, the attorneys in charge for all parties shall meet in person to confer on stipulations regarding the materials to be submitted to the Court under this paragraph and attempt to maximize agreement on such matters.** By 4 p.m. on the Thursday before the Initial Trial Setting, the parties shall file with the Court the materials stated in Rule 166(d)-(m), an estimate of the length of trial, designation of deposition testimony to be offered in direct examination, and any motions in limine. Failure to file such materials may result in dismissal for want of prosecution or other appropriate sanction. A courtesy copy of each party's pre-trial materials shall be delivered to the Judge's Chambers by 4 p.m. the Thursday before the trial setting.

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Plaintiff/Plaintiff's counsel shall serve a copy of this order on any currently named defendants all parties answering after the date of this order.

SIGNED 11/25/23.

District Judge

AGREED:

By: */s/* _____
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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

By: /s/ _____
John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
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2001 Ross Avenue, Suite 2100
Dallas, TX 75201-2923
Telephone: 214.698.3256
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TCox@gibsondunn.com
ABean@gibsondunn.com

COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC

3133166.1

FELICIA PITRE
District Clerk

NINA MOUNTIQUE
Chief Deputy

DALLAS COUNTY DISTRICT CLERK'S OFFICE

To: ALL ATTORNEYS/PARTIES

Please see the attached order signed and entered in your case.

Regards,

Felicia Pitre

Dallas County District Clerk

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 82091792
Filing Code Description: Miscellanous Event
Filing Description: ESERVE COVER LETTER - ORDER 1ST AMENDED SCHEDULING
Status as of 11/30/2023 2:41 PM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	11/30/2023 10:45:02 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	11/30/2023 10:45:02 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	11/30/2023 10:45:02 AM	SENT
Gini Romero		gromero@pmmlaw.com	11/30/2023 10:45:02 AM	SENT
Andrew Bean		ABean@gibsondunn.com	11/30/2023 10:45:02 AM	SENT
Tim Miller		tmiller@pmmlaw.com	11/30/2023 10:45:02 AM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	11/30/2023 10:45:02 AM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	11/30/2023 10:45:02 AM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	11/30/2023 10:45:02 AM	SENT
Ian Salzer		isalzer@pmmlaw.com	11/30/2023 10:45:02 AM	SENT
John T.Cox		TCox@gibsondunn.com	11/30/2023 10:45:02 AM	SENT
Marshall R.King		MKing@gibsondunn.com	11/30/2023 10:45:02 AM	SENT

FILED
11/30/2023 7:24 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Elizabeth Ferguson DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

SECOND AMENDED NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023 and set for hearing on Thursday, December 7, 2023 at 9:30 a.m. has been re-set for hearing on Thursday, February 1, 2023 at 9:30 a.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: November 30, 2023

Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
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TCox@gibsondunn.com
ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 82126921
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: 2ND AMENDED ON MOTIONS PROTECT/ABATE
Status as of 12/1/2023 8:18 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	11/30/2023 7:24:29 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	11/30/2023 7:24:29 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	11/30/2023 7:24:29 PM	SENT
Gini Romero		gromero@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
Andrew Bean		ABean@gibsondunn.com	11/30/2023 7:24:29 PM	SENT
Tim Miller		tmiller@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	11/30/2023 7:24:29 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
Ian Salzer		isalzer@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
John T.Cox		TCox@gibsondunn.com	11/30/2023 7:24:29 PM	SENT
Marshall R.King		MKing@gibsondunn.com	11/30/2023 7:24:29 PM	SENT

FILED
11/30/2023 7:24 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Elizabeth Ferguson DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

SECOND AMENDED NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023 and set for hearing on Thursday, December 7, 2023 at 9:30 a.m. has been re-set for hearing on Thursday, February 1, 2023 at 9:30 a.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: November 30, 2023

Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
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ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2023, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 82126921
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: 2ND AMENDED ON MOTIONS PROTECT/ABATE
Status as of 12/1/2023 8:18 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	11/30/2023 7:24:29 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	11/30/2023 7:24:29 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	11/30/2023 7:24:29 PM	SENT
Gini Romero		gromero@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
Andrew Bean		ABean@gibsondunn.com	11/30/2023 7:24:29 PM	SENT
Tim Miller		tmiller@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	11/30/2023 7:24:29 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
Ian Salzer		isalzer@pmmlaw.com	11/30/2023 7:24:29 PM	SENT
John T.Cox		TCox@gibsondunn.com	11/30/2023 7:24:29 PM	SENT
Marshall R.King		MKing@gibsondunn.com	11/30/2023 7:24:29 PM	SENT

FILED
1/26/2024 4:58 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

THIRD AMENDED NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023 and set for hearing on Thursday, February 1, 2024 at 9:30 a.m. has been re-set for hearing on Wednesday, March 6, 2024 at 1:15 p.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: January 26, 2024

Respectfully submitted,

/s/ John T. Cox III

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
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2001 Ross Avenue, Suite 2100
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Telephone: 214.698.3256
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ABean@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 2024, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 83859301
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: 3RD AMENDED / MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE
Status as of 1/29/2024 8:06 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	1/26/2024 4:58:34 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	1/26/2024 4:58:34 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	1/26/2024 4:58:34 PM	SENT
Gini Romero		gromero@pmmlaw.com	1/26/2024 4:58:34 PM	SENT
Tim Miller		tmiller@pmmlaw.com	1/26/2024 4:58:34 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	1/26/2024 4:58:34 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	1/26/2024 4:58:34 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	1/26/2024 4:58:34 PM	SENT
Ian Salzer		isalzer@pmmlaw.com	1/26/2024 4:58:34 PM	SENT
Andrew Bean		ABean@gibsondunn.com	1/26/2024 4:58:34 PM	ERROR
Maria Kountz		MKountz@pmmlaw.com	1/26/2024 4:58:34 PM	SENT
John T.Cox		TCox@gibsondunn.com	1/26/2024 4:58:34 PM	SENT
Marshall R.King		MKing@gibsondunn.com	1/26/2024 4:58:34 PM	SENT

FILED
2/29/2024 12:32 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Elizabeth Ferguson DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

Plaintiff, Charitable DAF Fund, L.P. ("DAF"), files this Motion to Compel Discovery ("Motion") pursuant to Rule 215 of the Texas Rules of Civil Procedure, seeking an order compelling Defendant, Alvarez & Marsal CRF Management, LLC's ("A&M" or "Defendant"), to provide discovery A&M refuses to answer, and would respectfully show:

I. INTRODUCTION & BACKGROUND

1. DAF is suing for damages, disgorgement, and an accounting related to A&M's wrongful withholding of DAF's assets and interference with DAF's interest in an investment fund known as the "Crusader Fund."

2. On August 2, 2023, DAF served Interrogatories and Requests for Production to A&M ("Discovery Requests"), as authorized by Rules 196 and 197 of the Texas Rules of Civil Procedure. A copy of these Discovery Requests, including proof of service, is attached to this Motion as **Exhibit A**.

3. Although A&M was required to respond fully and in writing, and to produce all responsive, non-privileged documents by September 1, 2023, A&M refused to do so. Instead, A&M filed a Motion for Protective Order and Motion to Abate ("A&M's Motion") on August 11, 2023. A&M's Motion, which is procedurally inappropriate, is now scheduled to be heard on March 6, 2024. The parties engaged in extended, but ultimately unsuccessful, settlement negotiations during the interlude between the filing of A&M's Motion and the filing of this Motion.

4. DAF's Discovery Requests involve appropriate and reasonable inquiries concerning the amount of funds and benefits A&M knowingly and wrongfully withheld. For example, Request for Production No. 1 requests A&M to "[p]roduce all account records for all financial accounts that A&M opened, maintained, controlled, supervised, and/or closed which held any shares, funds, financial or beneficial interest(s), or other assets of DAF at any and/or all times from June 1, 2016, to the present." A&M's apparent position is that it should not have to produce any records for financial accounts that it maintained, controlled, or supervised. But this is disingenuous, at best, because A&M now concedes that monies were owed to DAF.

5. A&M cannot wrongfully withhold assets and deny DAF's ownership rights for nearly two years, forcing DAF to initiate this lawsuit, and then try to avoid basic discovery concerning currently live claims.

II. ARGUMENTS AND AUTHORITIES

6. The purpose of discovery is to seek the truth so that disputes may be decided by what facts are revealed, "not by what facts are concealed." *In re K&L Auto Crushers, LLC*, 627 S.W.3d 239, 248 (Tex. 2021); *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 555 (Tex. 1990). A party may seek discovery of any matter that is relevant to the subject matter and proportional to the needs of the case. *See* Tex. R. Civ. P. 192.3(a), 192.4(b); *In re K&L Auto Crushers*, 627 S.W.3d at 247–48; *In re Turner*, 591 S.W.3d 121, 126 (Tex. 2019); *In re State Farm Lloyds*, 520 S.W.3d 595, 607 (Tex. 2017). Discovery can include evidence that may be inadmissible as long as it "appears reasonably calculated to lead to the discovery of admissible evidence." Tex. R. Civ. P. 192.3(a).

7. A court may compel discovery pursuant to Tex. R. Civ. P. 215.1(b). A&M did not respond to Interrogatory Nos. 1-15 and Requests for Production Nos. 1-42, as required by Texas Rules of Civil Procedure 193.1. Therefore, the Court should compel A&M to respond.

8. A&M did not timely serve objections to DAF's Discovery Requests. A party "should not move for protection when an objection to written discovery or an assertion of privilege is appropriate." Tex. R. Civ. P. 192.6. A&M was required to comply with the written discovery to the extent that it did not object. *Id.* A&M's complete refusal to provide any discovery or otherwise partially comply is impermissible under the discovery rules.

9. A&M's proper course was to object to the extent it found any specific request(s) objectionable, instead of wholly refusing to respond to requests that are clearly relevant and within the permissible scope of discovery.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Charitable DAF Fund, L.P., respectfully requests that the Court set this motion for hearing and, following the hearing, enter an Order compelling A&M to respond to the Discovery Requests and produce responsive documents within 20 days of the Court's order, and grant DAF such further relief to which it may show itself to be justly entitled to, either at law or in equity.

Dated: February 29, 2024

Respectfully submitted,

/s/ Sawnie A. McEntire

Sawnie A. McEntire
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(713) 960-7315 (Phone)
(713) 960-7347 (Facsimile)

ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF CONFERENCE

Counsel for movant and counsel for respondent have personally conducted a conference at which there was a substantive discussion of every item presented to the Court in this motion and despite best efforts the counsel have not been able to resolve those matters presented.

/s/ Roger L. McCleary
Roger L. McCleary

CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3134078

EXHIBIT A

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC	§	
	§	
	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF CHARITABLE DAF FUND, L.P.'S INTERROGATORIES AND REQUESTS FOR PRODUCTION TO DEFENDANT ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

TO: Defendant Alvarez & Marsal, CRF Management, LLC, by and through its attorneys of record, John T. Cox III and Andrew Bean, GIBSON, DUNN & CRUTCHER LLP, 2001 Ross Avenue, Suite 2100, Dallas, TX 75201-2923

Plaintiff, Charitable DAF Fund, L.P. ("DAF"), serves these Interrogatories and Requests for Production (collectively the "Requests") on Defendant, Alvarez & Marsal, CRF Management, LLC ("A&M") as authorized by Rules 196 and 197 of the Texas Rules of Civil Procedure. A&M is requested to respond fully and in writing, along with producing all responsive, non-privileged documents, within thirty (30) days of service.

INSTRUCTIONS

1. Each Request shall be construed and answered separately and shall not be combined for the purpose of supplying a common response thereto. Each answer shall set forth verbatim the Request to which it responds. The answer to a Request shall not be supplied by referring to the answer to another Request unless the Request referred to supplies a complete and accurate answer to the Request being answered. The specificity of any Request shall not be construed or understood as limiting the generality or breadth of any other Request.

2. If you object to any part of a Request, state with particularity both the grounds and reasons for your objection, specify the portion(s) of the request to which you object, and answer so much of the Request as is not objectionable.

3. These Requests require you to produce Documents and Communications and/or to provide information in your physical possession, custody, or control, as well as in the possession, custody, or control of any spouse, agents, employees, officers, directors, shareholders, partners, general partners, legal representatives, predecessors, successors, children, heirs, and assigns. All requested Documents, Communications, or information not subject to a valid objection that is known by, possessed by, or available to you that appears in your records must be provided.

4. In addition to original and final versions of Documents and Communications, each Request includes all drafts, alterations, modifications, changes,

and amendments of such Documents and Communications, as well as copies non-identical to the original in any respect, including any copies bearing non-identical markings or notations of any kind.

5. If any requested Document, Communication, or information was, but no longer is, in A&M's possession, state whether a copy thereof is in the possession, custody, or control of some other person, agency, entity, partnership, or corporation, and why such Document, Communication, or information is no longer available, who is responsible for the loss, and the circumstances under which the loss occurred.

6. Responsive Documents and Communications are to be clearly designated so as to reflect their source, owner, and/or custodian.

7. Each requested Document and Communication shall be produced in its entirety with an affixed bates stamp. If an identical copy appears in more than one person's files, each of the copies shall be produced or the extracted metadata shall reflect the source, owner, and/or custodian for all persons with identical copies. If a Document or Communication responsive to any Request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why the production of the remainder is not possible.

8. In the event you do not answer any Request, in whole or in part, on the basis of an assertion of attorney-client privilege, the work-product doctrine, or any other claim of privilege or immunity, answer each Request to the extent consistent with the

privilege or immunity asserted and provide information sufficient to permit the Court to make a determination of whether a proper basis exists for the assertion of privilege or immunity. For all documents withheld on the basis of privilege, state the basis for your claim with specificity that such a document need not be disclosed to permit the Court to determine the legal sufficiency of your objection or position, and, for each such document, identify:

a. whether the document contains a request for legal advice and, if so, identify the person who requested the legal advice;

b. whether the document contains advice as to the meaning or application of particular laws or rules in response to such request;

c. any further information to explain and support the claim of privilege and to permit the adjudication of the propriety of that claim;

d. the nature of the privilege (including work product) that is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and the type of document, e.g. letter or memorandum; the general subject of the document; and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, and other recipient of the document, and, where not apparent, the relationship of the author, addressee, and other recipient to each other.

9. If there are no Documents or Communications responsive to a particular Request, please provide a written response so stating.

10. If you find the meaning of any term in any Request unclear, without waiver of DAF's rights to seek a full and complete response to the Request, you shall assume a

reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

11. DAF specifically reserves the right to serve additional Requests.

12. These Requests are continuing in nature as to require supplemental responses in accordance with the Texas Rules of Civil Procedure if and when additional Documents, Communications, or information responsive to any of the Requests herein is/are obtained, discovered, or located between the time of responding to these Requests and the final disposition of this action.

RULES OF CONSTRUCTION

Along with the rules of construction and instructions provided under applicable discovery rules and law, these rules of construction apply to the following written discovery:

1. Unless specifically stated otherwise in a particular Request, the relevant time period is June 30, 2016, to Present.

2. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

3. The terms "any," "all," and "each" shall each be construed as encompassing any and all.

4. The use of the singular form of any word shall be construed to include the plural and vice versa.

5. All phrases following the terms "including" are intended to illustrate the kinds of information responsive to each Request, and shall be construed as "including, but not limited to." Such examples are not intended to be exhaustive of the information sought and shall not in any way be read to limit the scope of a Request.

6. The use of a verb in any tense, voice, or mood shall be construed as the use of the verb in all other tenses, voices, or moods, as necessary to bring within the scope of the Request all Documents and Communications that might otherwise be construed to be outside of its scope.

7. These Requests specifically contemplate the production of all electronic or computer data, including associated metadata.

8. References to an entity shall include past and present officers, directors, employees, agents, affiliates, subsidiaries, owners, partners, general partners, shareholders, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, and/or any other person(s) acting on behalf of such entity.

DEFINITIONS

For the purposes of these Requests, the following terms shall have the following definitions and meanings, unless expressly provided otherwise. The definition and meaning of each reference below to an entity shall automatically include the entity's past

and present officers, directors, employees, agents, affiliates, subsidiaries, owners, partners, general partners, shareholders, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, and/or any other person(s) acting on behalf of such entity:

A&M, *you*, and *your*. The terms "A&M", "you" and "your" shall mean and refer to Alvarez & Marsal, CRF Management, LLC and its managing and other members, officers, agents, employees, representatives, attorneys, partners, predecessors, successors, assigns, and anyone else acting on A&M's behalf, now or at any time relevant to the response.

Any and *all or any and/or all*. The terms "any" and "all" and "and and/or all" should be understood and applied in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

Communication(s). The term "communication(s)" shall mean any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, email, text message, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other

reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" shall mean reflecting, regarding, relating to, referring to, describing, evidencing, supporting, forming any basis for, or constituting.

Crusader Fund. The term "Crusader Fund" is defined as the Highland Crusader Fund II, Ltd., which is a subject of this Lawsuit and in which DAF purchased participating shares in or around June of 2016.

Document or Documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the Texas Rules of Civil Procedure, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data

sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms "Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) and/or all related metadata with respect to all such Documents/ESI.

Identify or *identity(ies)* (person(s)). The terms "identify" or "identity(ies)," when referring to a person, shall mean to provide the person's full first and last name; last known address, telephone number, and e-mail address; and last known place of employment.

Identify or identity(ies) (document(s)). The terms "identify" or "identity(ies)," when referring to a document, shall mean to provide the document's name; the date of the document's creation; the form of the document (e.g., letter, e-mail message, etc.); a

description of the substance of the document; and the identity of the person who currently possesses the document (and, if the document no longer exists, an explanation for why it no longer exists and the date on which it ceased to exist).

Lawsuit. The term "Lawsuit" shall mean and refer to the above-captioned lawsuit styled: *Charitable DAF Fund, L.P. v. Alvarez & Marsal, CRF Management, LLC*, Cause No. DC-22-10107; 116th Judicial District Court of Dallas County, Texas.

Person. The term "person" shall mean any natural person and/or any business, legal, or governmental entity or association.

Plaintiff and *Defendant*. The terms "Plaintiff" and "Defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, shall mean the party or parties, and where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

FIRST SET OF INTERROGATORIES TO A&M

INTERROGATORY NO. 1: Identify the person(s) providing the responses to these interrogatories, including all persons assisting in providing such answers and/or with whom the person(s) providing the responses consulted, interviewed, met with, or questioned in order to prepare the responses.

ANSWER:

INTERROGATORY NO. 2: Identify by name, address, and telephone number all persons who you expect to call to testify at trial (excluding rebuttal or impeachment witnesses the necessity of whose testimony cannot be reasonably anticipated before trial) or any hearing in this Lawsuit.

ANSWER:

INTERROGATORY NO. 3: Identify the total payments, for each calendar year from June 30, 2016, to the present and described by each most detailed category or description recorded, used, or otherwise recognized by A&M for the same, paid to or otherwise received by A&M, directly or indirectly, relating in any way to A&M's role as the investment manager for the Crusader Fund.

ANSWER:

INTERROGATORY NO. 4: Identify by calendar year from June 1, 2016, to the present all sums of money A&M has received, directly or indirectly, from, or in connection with, the Crusader Fund that are not properly defined as management fees.

ANSWER:

INTERROGATORY NO. 5: Identify the totals of all other payments, for each calendar year from June 1, 2016, to the present, by recipient(s) and the amount(s) for each most detailed category or description recorded, used, or otherwise recognized by A&M for the same as to each recipient, paid by, from, or on behalf of the Crusader Fund (including but not limited to from any Crusader Fund account(s)), that A&M has not included in A&M's answer to Interrogatory No. 4 above.

ANSWER:

INTERROGATORY NO. 6: Identify all financial accounts that A&M opened, maintained, controlled, supervised, and/or closed, which held any shares, funds, financial or

beneficial interest(s), or other assets of DAF at any and/or all times from June 1, 2016, to the present.

ANSWER:

INTERROGATORY NO. 7: Describe how A&M is compensated for its role as investment manager of the Crusader Fund and describe in general how such compensation fluctuates depending on the fund's size, performance, or other factors.

ANSWER:

INTERROGATORY NO. 8: Identify each distribution A&M made, caused to be made, and/or authorized from the Crusader Fund (including but not limited to from any Crusader Fund account(s)) between June 1, 2016 and the present (include the amount of the distribution, the date the distribution was made, and the recipients of the distribution).

ANSWER:

INTERROGATORY NO. 9: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, by the Partial Final Award, dated March 6, 2019, and the Final Award, dated May 9, 2019 . . ." as alleged in Paragraph 5 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 10: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel," as alleged in Paragraph 6 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 11: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, because of agreement, acquiescence, ratification or consent," as alleged in Paragraph 7 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 12: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, by, or for failure to comply with, the express terms and conditions of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., the Investment Management Agreement between Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., Highland Crusader Offshore Partners, L.P., House Hanover, LLC, Alvarez & Marsal CRF Management, LLC, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, and any other document or agreement that governs Plaintiff's ownership of any interest in the Crusader Funds," as alleged in Paragraph 8 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 13: Describe in general the alleged legal and factual bases, including identification of all alleged documents and communications, for your contention that DAF's "claims against A&M are barred, in whole or in part, because of accord and satisfaction under the terms of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds," as alleged in Paragraph 9 of A&M's February 20, 2023 Answer.

ANSWER:

INTERROGATORY NO. 14: Describe in general the legal and factual bases allegedly supporting your claim(s) for attorneys' fees against DAF in this Lawsuit, if any, including the terms of any fee agreement between you and your attorneys.

ANSWER:

INTERROGATORY NO. 15: Identify the current value, including all components of the same, of DAF's capital account regarding the Crusader Fund.

ANSWER:

FIRST SET OF REQUESTS FOR PRODUCTION TO A&M

REQUEST FOR PRODUCTION NO. 1: Produce all account records for all financial accounts that A&M opened, maintained, controlled, supervised, and/or closed which held any shares, funds, financial or beneficial interest(s), or other assets of DAF at any and/or all times from June 1, 2016 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Produce all documents and/or recordings concerning any communications between A&M and DAF, from June 1, 2016, to the present, concerning or relating to DAF's participating shares and/or interest in the Crusader Fund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Produce all documents and/or recordings concerning any communications between Christopher Wells and DAF, from June 1, 2016 to the present, concerning DAF's participating shares and/or interest in the Crusader Fund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: Produce all documents you sent to or received from DAF from June 1, 2016, through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Produce all documents concerning fees paid to A&M, directly or indirectly, related to the Crusader Fund from June 1, 2016, through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: Produce all documents concerning any other monetary sums paid to A&M, directly or indirectly, concerning the Crusader Fund (other than those produced in response to Request No. 5 above) from June 1, 2016, through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: Produce documents sufficient to evidence that A&M is a registered investment advisor subject to the Investment Advisors Act of 1940.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: Produce all governing documents for the Crusader Fund, including any amendments thereto, in effect at any and all points from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: Produce all awards or other decisions made by any arbitration panel or any other judicial proceeding or formal authority which you claim impacts the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Produce all documents purportedly evidencing DAF's acquisition of an interest in the Crusader Fund allegedly in violation of the Joint Plan of Distribution of the Crusader Funds and/or the Scheme of Arrangement relating to Offshore Fund II.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: Produce all documents evidencing the capital account value of DAF's interest(s) in the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Produce all documents evidencing any distributions A&M made, caused to be made, and/or authorized from the Crusader Fund (including but not limited to from any Crusader Fund account(s)) between June 1, 2016 and the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Produce all documents evidencing each instance where A&M disclosed to DAF any of the distributions identified in Interrogatory No. 8.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: Produce all documents purportedly evidencing any notice provided by A&M to DAF regarding A&M's intent to withhold distributions from DAF relating to the Crusader Fund between June 1, 2016, and the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Produce all documents concerning A&M's decision to withhold and/or refusal to distribute funds proportional to DAF's interest in the Crusader Fund to DAF between June 1, 2016, and the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: Produce all documents concerning A&M's decision to distribute $951,060.82 to DAF on February 17, 2023.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: Produce all documents referring, forming any basis for, or otherwise relating to A&M's decision to treat DAF as an equity holder in the Crusader Fund and to include DAF in any future distributions as reflected in the February 21, 2023 Letter from Gibson, Dunn & Crutcher LLP to Parsons McEntire McCleary PLLC (the "February 21 Letter").

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: Produce all documents referring, forming any basis for, or otherwise purportedly supporting your claim that DAF's interest(s) in the Crusader Fund had been extinguished in 2019 or 2020 as reflected in the February 21 Letter.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19: Produce a true and accurate copy of the Investment Management Agreement between the Crusader funds, House Hanover, LLC, A&M, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, dated August 4, 2016, as well as any amendments thereto.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, by the Partial Final Award, dated March 6, 2019, and the Final Award, dated May 9, 2019 . . ." as alleged in Paragraph 5 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, by the

doctrines of res judicata and collateral estoppel" as alleged in Paragraph 6 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, because of agreement, acquiescence, ratification or consent" as alleged in Paragraph 7 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, by, or for failure to comply with, the express terms and conditions of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., the Investment Management Agreement between Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., Highland Crusader Offshore Partners, L.P., House Hanover, LLC, Alvarez & Marsal CRF Management, LLC, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, and any other document or agreement that governs Plaintiff's ownership of any interest in the Crusader Funds" as alleged in Paragraph 8 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, because of accord and satisfaction under the terms of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds" as alleged in Paragraph 9 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, because A&M's alleged obligation, if any, have been fulfilled and discharged" as alleged in Paragraph 10 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, by the doctrine of waiver" as alleged in Paragraph 12 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27: Produce all documents which form any basis for your contention that DAF's "claims against A&M are barred, in whole or in part, based on the doctrine of unclean hands" as alleged in Paragraph 13 of A&M's February 20, 2023, Answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28: Produce all documents which form any basis for your claim for attorneys' fees against DAF.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29: Produce all documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding issuance of one or more distributions to DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 30: Produce all documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding withholding one or more distributions to DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31: Produce all documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding issuance of one or more distributions to shareholders and/or limited partners other than DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32: Produce all documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding withholding any distributions to shareholders and/or limited partners other than DAF in connection with Crusader Fund at any time(s) from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33: Produce all documents accounting for or identifying any and/or all distributions from the Crusader Fund from June 1, 2016,to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34: Produce all documents showing the proportion of DAF's interest in all distributions from the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 35: Produce all documents accounting for or identifying any and/or all distributions from the Crusader Fund withheld from DAF from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36: Produce all documents accounting for or identifying any and/or all fees earned, and expenses incurred, by A&M related to the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 37: Produce all documents accounting for or identifying all monetary sums paid to A&M, directly or indirectly, related to the Crusader Fund from June 1, 2016, to the present, other than those reflected in any accounting produced by A&M in response to Request No. 36 above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 38: Produce all documents concerning any third-party financial audits concerning the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 39: Produce all documents concerning any internal financial audits concerning the Crusader Fund from June 1, 2016, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 40: Produce all documents concerning any analyses, from June 1, 2016, to the present, of the performance and/or valuation of the underlying assets held by the Crusader Fund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 41: Produce all documents concerning any analyses from June 1, 2016, to the present, of the performance and/or valuation of the Crusader Fund overall.

RESPONSE:

REQUEST FOR PRODUCTION NO. 42: Produce all documents you may introduce as exhibits at trial in this Lawsuit.

RESPONSE:

Respectfully submitted,

/s/ Roger L. McCleary

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Counsel for Plaintiff Charitable DAF Fund, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2023, a true and correct copy of this instrument was served on Defendant's counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Roger L. McCleary
Roger L. McCleary

3125360.6

From: no-reply@efilingmail.tylertech.cloud
To: Roqui Brooks
Subject: [EXTERNAL] Notification of Service for Case: DC-22-10107, CHARITABLE DAF FUND LP, et al vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC, et al for filing Service Only, Envelope Number: 78141502
Date: Wednesday, August 2, 2023 3:17:49 PM

Notification of Service

Case Number: DC-22-10107
Case Style: CHARITABLE DAF FUND LP, et al vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC, et al
Envelope Number: 78141502

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document. If the link does not work, please copy the link and paste into your browser. You can also obtain this document by following the steps on this article.

Filing Details	
Case Number	DC-22-10107
Case Style	CHARITABLE DAF FUND LP, et al vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC, et al
Date/Time Submitted	8/2/2023 3:16 PM CST
Filing Type	Service Only
Filing Description	DAF Written Discovery Requests to A&M
Filed By	Ian Salzer
	CHARITABLE DAF FUND LP: Roqui Brooks (rbrooks@pmmlaw.com) Other Service Contacts not associated with a party on the case: Linda Kimball (lkimball@pmmclaw.com) Gini Romero (gromero@pmmlaw.com) Andrew Bean (ABean@gibsondunn.com)

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Beatrice Candis on behalf of Roger McCleary
Bar No. 13393700
bcandis@pmmlaw.com
Envelope ID: 85050938
Filing Code Description: Motion - Compel
Filing Description: DISCOVERY
Status as of 3/1/2024 8:18 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Tim Miller		tmiller@pmmlaw.com	2/29/2024 12:32:06 PM	SENT
John T.Cox		TCox@gibsondunn.com	2/29/2024 12:32:06 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	2/29/2024 12:32:06 PM	SENT
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Pat A.Vickery		PVickery@gibsondunn.com	2/29/2024 12:32:06 PM	SENT

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	2/29/2024 12:32:06 PM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	2/29/2024 12:32:06 PM	SENT
Maria Kountz		MKountz@pmmlaw.com	2/29/2024 12:32:06 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	2/29/2024 12:32:06 PM	SENT

FILED
2/29/2024 9:25 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Elizabeth Ferguson DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and files this Response (the "Response") in Opposition to Defendant Alvarez & Marsal CRF Management, LLC's ("A&M" or "Defendant") Motion for Protective Order and Motion to Abate ("Motion"), and Evidentiary Objections, and would respectfully show the following:

INTRODUCTION AND BACKGROUND

A&M devotes significant energy in its Motion discussing matters irrelevant to the present dispute, including the bankruptcy of Highland Capital Management, and factually unsupported attempts to link DAF with James Dondero. It is also curious that A&M elects to criticize DAF for filing this lawsuit when A&M effectively admitted it wrongfully failed to make distributions to DAF until *after* DAF was forced to file this lawsuit. A&M's criticisms are even more illogical in light of its ultimate concession to

treat DAF as a vested equity holder in "Offshore Fund II." Indeed, A&M's conduct following the filing of this lawsuit screams volumes that DAF's claims had and continue to have substantial merit. Under any analysis, this lawsuit is not moot.

A&M's Motion is also weighed down by irrelevant and misleading rhetoric. This Response is supported by the Declaration of Mark Patrick, which is attached as **Exhibit 1**, and which establishes that: (1) Mr. Dondero did not, and does not, control DAF; (2) Mr. Dondero's purported actions which A&M alleges are linked to DAF have no relevance to the issues in this lawsuit; (3) there remains a live controversy between DAF and A&M; and (4) discovery from A&M is necessary to protect DAF's interests as an investor in Offshore Fund II.

This Response is further supported by the Declaration of Roger L. McCleary, which is attached as **Exhibit 2**, and which establishes that: (1) DAF provided early notice to A&M that DAF disputed A&M's interpretation of the arbitration award (referred in A&M's Motion) and whether that award allegedly extinguished DAF's *direct* (as opposed to *indirect*) interest in Offshore Fund II (*see* "July 16, 2021, Letter" attached as **Exhibit 2-A**);[1] and (2) DAF did not waive any, and in fact expressly reserved all, of its rights against A&M when receiving distributions owed to DAF, which would include the February 17, 2023 and March 29, 2023 distributions (*see* "February 13, 2023, E-Mail" attached as **Exhibit**

[1] Exhibit 2-A is correspondence from counsel for DAF to A&M making clear DAF's position that its direct interest could not be extinguished and could not be cancelled.

2-B).[2] In sum, for a variety of factual and legal reasons, the Arbitration Award referenced in the Motion does not impact DAF's direct interests.[3]

RESPONSE TO MOTION TO ABATE

A&M's request to abate is procedurally defective. The Motion fails to comply with basic requirements for an abatement:

- there is no indication of how long the case should be abated; and
- there is no indication of what would be required to remove or terminate the abatement.

The case law cited by A&M confirms that an abatement must "identify an effective cure, and . . . ask the court to abate the suit until the defect is corrected." *Truong v. City of Houston*, 99 S.W.3d 204, 216 (Tex. App.—Hous. [1st Dist.] 2002). The failure to address these two requirements is fatal to the Motion.

Rather than engage in legitimate discovery, A&M attempts to stop DAF from obtaining an audit of all benefits to which DAF may be entitled as an equity owner. Indeed, A&M opted to file its Motion rather than providing basic discovery that should allow DAF to make these determinations. Under these circumstances, neither DAF nor this Court should accept A&M's unilateral *ipsi dixit* that no more benefits are forthcoming.

[2] Exhibit 2-B is an e-mail from Roger McCleary, counsel for DAF, to A&M counsel Marshall King (and others).
[3] Exhibits 1, 2, 2-A, and 2-B to this Response are incorporated herein by reference in their entirety.

DAF recently filed an Amended Petition that makes clear that the prior distributions to it as an equity holder do not resolve DAF's causes of action or the damages at issue. As the Amended Petition alleges:

- A&M breached an informal fiduciary duty owed to DAF.
- A&M tortiously inferred with DAF's rights as an equity holder in Offshore Fund II.
- A&M diverted monies owed to DAF, and DAF is entitled to recover damages for the loss of use of all wrongfully withheld funds.
- DAF is entitled to an audit to confirm whether additional distributions or other benefits are owed to DAF and that DAF has received all past and current benefits to which it is entitled. *See Yeske v. Piazza Del Arte, Inc.*, 513 S.W.3d 652, 674 (Tex. App.—Hous. [14th Dist.] 2016); *T.F.W. Mgt., Inc. v. Westwood Shores Prop. Owners Ass'n*, 79 S.W.3d 712, 717-18 (Tex. App.—Hous. [14th Dist.] 2002).
- Because A&M has breached its informal fiduciary duties, DAF also seeks disgorgement of fees taken by A&M during the period of its breaches.

RESPONSE TO REQUEST FOR PROTECTIVE ORDER

A&M's request for a protective order is equally infirm. A&M largely relies on the false premise that this case is moot. *Growden*, the sole case upon which A&M relies, involved a defendant's "unconditional waiver" of the debt underlying a declaratory judgment action. *Growden v. Good Shepherd Health Sys.*, 550 S.W.3d 716, 722 (Tex. App.—Texarkana 2018, no pet.) (emphasis added). But that factual scenario is far removed from A&M's unilateral representation that it has paid DAF everything that DAF owes while

refusing to supply any backup documentation. Indeed the plaintiff here—DAF—disputes that A&M's obligations here have been fully satisfied.

Growden clarifies that a case is moot "if the court's ruling on the merits can no longer affect the parties' rights or interests." *Id.* But that is not the case here. In *Picton v. Excel Group, Inc.*, a defendant-employer argued that a plaintiff-employee's FLSA claim based on a dispute over overtime pay was moot because the defendant-employer "offered to provide plaintiff with the exact relief requested" in the form of a corrected tax return and even payment of the cost to file an amended tax return. 192 F. Supp. 2d 706, 710 (E.D. Tex. 2001). The court found, however, that the defendant-employer did *not* provide the "exact relief requested" because there remained claims for "statutory attorney's fees and liquidated damages, among other damages, because Defendant committed a willful violation of the FLSA." *Id.* at 711.

As described above, there are several remaining issues in this case, including claims for disgorgement, equitable relief and exemplary damages. Moreover, A&M does not argue that it provided DAF the "exact relief requested." Motion, p. 1. By attempting to unilaterally dictate what A&M believes to be the relief to which DAF is entitled, A&M is invading the province of this Court and the jury. This case is not moot. *See also Martinez v. Allstate Vehicle & Prop. Ins. Co.*, No. 4:19-CV-2975, 2020 WL 6887753, *2 n.1 (S.D. Tex. Nov. 20, 2020) (Insurer's attempt to make additional payment to plaintiff "for a tactical reason: to moot her TPPCA claim" did not dispose of plaintiff's claim; "[n]otwithstanding

the [additional] payment, [the plaintiff] was forced to hire a lawyer only due to [the insurer's] initial errors . . . forcing [plaintiff] to file suit to recover her damages." The insurer "belatedly attempted to resolve the case" by making the additional payment, which "failed to make [the plaintiff] whole, because she had been forced—by [the insurer's] initial refusal to pay . . . to pursue litigation and pay an attorney." Further, insurer's position that the additional payment constituted a settlement was rejected due to lack of "evidence of a mutual intent to avoid litigation by accepting a contract and relinquishing the relevant legal claims.").

It is also noteworthy that the Motion for Protection attaches a declaration that does not support any purported discovery burden or any other procedural objection to DAF's discovery. A&M carries the burden to demonstrate the legitimacy of its objections, which it has failed to do. *See In re K & L Auto Crushers, LLC*, 627 S.W.3d 239, 248 (Tex. 2021), *reh'g denied* (Sept. 3, 2021) ("[A] party resisting discovery must do more than 'make conclusory allegations that the requested discovery is unduly burdensome.'"). The attached declaration does nothing to carry this burden, and any attempt to do so at this late date violates Tex. R. Civ. P. 193.4.

Notwithstanding the flawed premise on which A&M's Motion is founded, A&M's specific arguments concerning discovery fail for the following reasons:

- Of the 15 interrogatories—10 less than the amount permitted under the Texas Rules (*see* Tex. R. Civ. P. 190.3(b)(3), 190.4(b))—seven (7) are ordinary contention interrogatories under Rule 197.1 that are

specifically targeted at A&M's own allegations.[4] *See In re Sting Soccer Group, LP*, 05-17-00317-CV, 2017 WL 5897454, at *5 (Tex. App.—Dallas Nov. 30, 2017) ("Rule 197.1 permits a party to serve contention interrogatories . . .").

- Nine (9) of DAF's requests for production are directed at A&M's defenses in this case.[5] A&M cannot claim any burden is imposed by requests seeking documents and information supporting A&M's alleged defenses in this lawsuit. *Sting Soccer*, 2017 WL 5897454 at *7 ("[T]he rules permit parties to seek discovery supporting its adversary's specific factual and legal contentions.").

- Regarding the remaining (non-contention-based) discovery requests, A&M has made no showing that the requests are harassing, abusive, or anything other than ordinary discovery requests. A&M contends that DAF's requests are overbroad because they encompass "a period of more than seven years," but this is not an arbitrary timeframe: it is directly tied to DAF's acquisition of its interest in the Offshore Fund II.[6] *See id.* at 251-52 ("[T]he sheer volume of a discovery requests does not in itself render the request irrelevant or overbroad as a matter of law . . . discovery requests and orders are overbroad if they are not properly 'tailored with regard to time, place, or subject matter.'").

- A&M's complaint that DAF seeks "'all documents' on broad topics, such as 'A&M's decision to withhold and/or refusal to distribute funds'"[7] is a red herring—not only does A&M conveniently omit the remainder of RFP 15, which explicitly limits the request to "funds proportional to DAF's interest in [Offshore Fund II],"[8] this topic goes to the very heart of this matter. *See Sting Soccer*, 2017 WL 5897454 at *7 ("[R]equests for production may properly ask a party to provide 'all,' 'each,' or 'every' document pertaining to a relevant, narrow subject of the litigation."); *K & L*, 627 S.W.3d at 248 ("Evidence is relevant if it has 'any tendency' to make 'more or less probable' a fact that is 'of consequence in determining the action.'").

[4] Motion, Ex. 2, pp. 12-13, Interrogatory Nos. 9-15.
[5] Motion, Ex. 2, pp. 16-18, RFP Nos. 17-28.
[6] Plaintiff's Original Petition, filed August 15, 2022 ("Petition"), ¶ 8.
[7] Motion, p. 4
[8] Motion, Ex. 2, p. 16.

In any event, A&M fails to provide any evidence to support any alleged burden imposed by DAF's discovery requests. *See K & L*, 627 S.W.3d at 253 ("[A] party resisting discovery must do more than 'make conclusory allegations that the requested discovery is unduly burdensome.'"). Thus, A&M's argument is reduced to the incorrect notion that A&M should not be required to respond to any discovery because it contends it has no liability. This defies the entire structure and purpose of civil litigation in Texas. *Sting Soccer*, 2017 WL 5897454 at *6 ("The purpose of discovery is to find the truth and parties are permitted to choose which discovery devices to use in the search for the truth.").

For these reasons, A&M's Motion for Protective Order should be denied.

EVIDENTIARY OBJECTIONS

Attached to A&M's Motion is the Declaration of Christopher Wells ("Wells Declaration") that purports to demonstrate (in conclusory fashion) the basis for A&M's misguided argument that DAF's claims are moot. However, the Wells Declaration is objectionable in several respects and should be stricken:

- Paragraphs 2-4 of the Wells Declaration include rank hearsay. *See* Tex. R. Evid 801, 802. These paragraphs are also unsupported by an adequate foundation upon which personal knowledge could be demonstrated, and they are not supported by any references to any purported supporting documentary evidence.
- Paragraphs 2-3 of the Wells Declaration are also conclusory and include unqualified, self-serving, and impermissible legal conclusions as to (1) what the Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P. arbitration ("Redeemer Arbitration") panel purportedly "directed" regarding DAF's interest in Offshore Fund II (*see* ¶ 2 of the Wells Declaration)

in an arbitration to which DAF was not a party; (2) A&M's purported actions "pursuant to the arbitration panel's order"; and (3) that A&M purportedly "heard no timely objection from [DAF]" (*see* ¶ 3 of the Wells Declaration).

- Paragraphs 2-4 of the Wells Declaration also fail to provide any support for A&M's argument that DAF's discovery requests are unduly burdensome, which is the only pertinent inquiry. Paragraphs 2-4 should be stricken as irrelevant. *See* Tex. R. Evid. 401, 402.

Also attached to A&M's Motion is the Declaration of Andrew H. Bean ("Bean Declaration") to which DAF objects and moves to strike, together with the various exhibits in purported support of the Motion. DAF objects to and moves to strike the Bean Declaration and the attachments as follows:

- Exhibit 1 (February 21, 2023, Marshall King letter), Exhibit 3 (April 29, 2019, Award), Exhibit 4 (February 22, 2021, Order), Exhibit 5 (May 19, 2022, Amended Complaint and Objection to Claims), Exhibit 6 (May 2, 2022, Verified Amended Petition to Take Deposition), and Exhibit 7 (Order Denying Petition to Take Deposition) to the Bean Declaration contain inadmissible hearsay, hearsay within hearsay, and are not relevant. *See* Tex. R. Evid. 801, 802, 401, 402, and 405.

- Also as to Exhibit 1 to the Bean Declaration, DAF already had notified A&M that DAF's receipt of any distribution from or on behalf of A&M was without prejudice to or waiver of any of DAF's claims, causes of action, rights, or damages against A&M. *See* Exhibit 2-B. In any event, Exhibit 1 to the Bean Declaration is conclusory and also inadmissible on the grounds of hearsay, hearsay within hearsay, and relevance. *See* Tex. R. Evid. 801, 802, 401, 402 and 405.

- Exhibit 1 to the Bean Declaration also impermissibly contains references to settlement discussions in violation of Tex. R. Evid. 408.

- Exhibits 5 and 6 to the Bean Declaration amount to no more than irrelevant hearsay and provide no justification for A&M's

> withholding of the funds at issue or any basis for the Motion. Exhibits 5 and 6 to the Bean Declaration should be stricken. *See* Tex. R. Evid. 801, 802, 401, 402 and 405.

A&M is fully aware that DAF was not a party to the Redeemer Arbitration—and A&M never suggests otherwise. The Redeemer Arbitration award (which does not identify the interests described in confidential arbitration exhibit "RC411"—which DAF did not possess at any relevant time—referred to in paragraph F.a.v., p. 17, of Exhibit 3 to the Bean Declaration) and Exhibits 3-4 from the Bean Declaration afford no justification for A&M's withholding of the funds at issue or any basis for the Motion.

PRAYER

Plaintiff, Charitable DAF Fund, L.P., respectfully requests that its evidentiary objections be sustained, and that Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate be denied in their entirety, and that DAF be awarded all other and further relief, at law and in equity, general and special, to which DAF may be justly entitled.

Dated: February 28, 2024

Respectfully submitted,

/s/ Sawnie A. McEntire

Sawnie A. McEntire
Texas Bar No. 13590100
smcentire@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
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Roger L. McCleary
Texas Bar No. 13393700
rmccleary@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
One Riverway, Suite 1800
Houston, Texas 77056
(713) 960-7315 (Phone)
(713) 960-7347 (Facsimile)

ATTORNEYS FOR PLAINTIFF
CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Sawnie A. McEntire
SAWNIE A. MCENTIRE

3128876

EXHIBIT 1

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

DECLARATION OF MARK PATRICK

STATE OF TEXAS	§
	§
COUNTY OF DALLAS	§

The undersigned provides this Declaration pursuant to Texas Civil Practice and Remedies Code Section 132.001 and declares as follows:

1. My name is Mark Patrick. I am over 21 years of age. I am of sound mind and body and I am competent to make this declaration. Unless otherwise, indicated, the facts stated within this declaration are based upon my personal knowledge and are true and correct. I submit this declaration in support of Charitable DAF Fund, L.P.'s ("DAF") Response in Opposition to Defendant Alvarez & Marsal CRF Management, LLC's ("A&M") Motion for Protective Order and Motion to Abate ("Motion").

2. Since approximately March 24, 2021, I have been the Managing Member of Charitable DAF GP, LLC ("DAF GP") and/or related control entity over DAF. In connection with my duties as DAF GP's Managing Member, I am generally familiar with the ownership and organizational structure of DAF GP and the other entities described in this declaration. DAF GP has been the general partner of DAF continuously from at least March 24, 2021, through the present. DAF GP, as DAF's general partner, has controlled DAF continuously since at least March 24, 2021, through the present.

3. As the Managing Member of DAF GP (or related control entity), I am the duly authorized person to act on behalf of DAF. As such, I am familiar with the organizational structure of DAF and its present and historical status. DAF is a charitable fund that helps fund several charitable causes throughout the country, including veteran's welfare associations, women's shelters, public works, and education.

4. Since approximately March 24, 2021, I have also been the Director of Charitable DAF HoldCo, Ltd. ("DAF HoldCo"). DAF HoldCo is the sole (100%) limited partner of DAF.

5. Before I assumed the position of Director for DAF, DAF's sole director was Grant J. Scott, a resident of North Carolina. James Dondero has never been a director of DAF. Mr. Dondero was the original managing member of DAF GP, but has not held that role since 2012. Mr. Dondero has not been a member, manager, or director of DAF, DAF GP, or DAF HoldCo since he relinquished his position as the managing member of DAF GP in 2012.

6. Since at least March 24, 2021, as the Managing Member of DAF GP and the Director of DAF HoldCo, I have continuously had exclusive control to make operational decisions for DAF GP, DAF HoldCo, and DAF, including (but not limited to) the decision of whether to cause DAF to file suit upon claims it may have, including the above-captioned lawsuit against A&M ("Lawsuit"). I did not consult with Mr. Dondero in connection with my decision to file this Lawsuit.

7. Attached as Exhibit 3 to A&M's Motion is a copy of an arbitration award ("Arbitration Award") that was entered in a matter (the "Arbitration") involving the Redeemer Committee of the Highland Crusader Fund ("Redeemer Committee") and Highland Capital Management, L.P. ("HCM"). DAF was not a party to this Arbitration. DAF's Direct Interest in the Crusader Fund was acquired directly by DAF.

8. In this Lawsuit, among other relief, DAF seeks an accounting of all distributions made since 2016, when the Arbitration was commenced. This information is necessary for DAF to ensure that it has been treated fairly as a full shareholder in the Crusader Fund. DAF also seeks disgorgement of fees paid to A&M during the period when A&M was refusing to honor DAF's interest in the Crusader Fund, as well as its interest in all distributions owed to DAF for the period in which the funds were withheld from DAF by A&M.

9. The Rule 202 Petition attached as Exhibit 6 to A&M's Motion has nothing to do with this Lawsuit. Indeed, DAF also was not a party to that proceeding. I had no knowledge concerning the filing of the Rule 202 Petition.

10. Nor does the contempt proceeding referenced on page 4 of A&M's Motion have anything to do with this Lawsuit. Further, the contempt proceeding is currently on appeal before the 5th Circuit as Case No. 22-11036.

11. My name is Mark Patrick my date of birth is April 23, 1972, and my address is 6716 Glenhurst Drive, Dallas, Texas 75254, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER DECLARANT SAYETH NOT.

Executed in Dallas County, State of Texas, on the 28th day of February 2024.

Mark Patrick

Mark Patrick

EXHIBIT 2

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

DECLARATION OF ROGER L. MCCLEARY

STATE OF TEXAS	§
	§
COUNTY OF DALLAS	§

The undersigned provides this Declaration pursuant to Texas Civil Practice and Remedies Code Section 132.001 and declares as follows:

1. My name is Roger L. McCleary. I am over 21 years of age. I am of sound mind and body and I am competent to make this declaration. Unless otherwise, indicated, the facts stated within this declaration are based upon my personal knowledge and are true and correct. I submit this declaration in support of Charitable DAF Fund, L.P.'s ("DAF") Response in Opposition ("Response") to Defendant Alvarez & Marsal CRF Management, LLC's ("A&M") Motion for Protective Order and Motion to Abate ("Motion"). I am a counsel of record for DAF in this matter and I have read the Response in its entirety.

2. Attached hereto as Exhibit 2-A is a true and correct copy of what is described in the Response as the "July 16, 2021, Letter" from DAF to A&M.

3. Attached hereto as Exhibit 2-B is a true and correct copy of what is described in the Response as the "February 13, 2023, E-Mail" from DAF counsel Roger L. McCleary to A&M counsel Marshall King (and others).

4. My name is Roger L. McCleary, my date of birth is July 3, 1959, and my business address is One Riverway, Suite 1800, Houston, Texas 77056, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER DECLARANT SAYETH NOT.

Executed in Harris County, State of Texas, on the 28th day of February 2024.

Roger L. McCleary

3152686

EXHIBIT 2-A

SBAITI & COMPANY
A TEXAS PROFESSIONAL LIMITED LIABILITY COMPANY

July 16, 2021'

Via Email: cwells@alvarezandmarsal.com

Christopher Wells
Alvarez and Marsal-NACR
One East Washington Street
Suite 1850
Phoenix, AZ 85004

Re: ***The Charitable DAF Fund Ltd. Interest in the Highland Crusader Fund II, Ltd.***

Dear Mr. Wells:

I write on behalf of the Charitable DAF Fund, Ltd. As you know, the DAF owns a percentage interest in the Crusader Funds which we understand is undergoing a liquidation and potential distribution on July 30, 2021.

We further understand that you have taken the position that the DAF's interests was extinguished via an arbitration award between Crusader, the Redeemer Committee, and Highland Capital Management, LP. We write to inform you that the DAF was not a party to the arbitration, nor does the arbitral panel have jurisdiction over the DAF. As such, the arbitral award is of no effect as to the DAF. This is made further true given that no one has ever sought to confirm the award in any court against the DAF. At most, the settlement between the Redemer Committee, Crusader Fund, and Highland Capital Management, LP, posits that Highland would not object to the cancelation of the DAF's interest. But that is not equivalent to an action to cancel the DAF's interest. To highlight the problematic you face: if the DAF's interest has indeed been rescinded, then why has no one has even sought to tender the DAF the consideration it paid for the interest?

Were a cancellation to unilaterally occur by you, the DAF would be entitled to damages directly from your firm under a myriad of theories of liability, including under several breaches of fiduciary duty under state and federal law, including the Advisers Act of 1940.

The purpose of this letter is to seek your confirmation by close of business Eastern Time, Monday, July 19, 2021, that you will not make any distribution of any capital or assets on behalf of the Crusader Funds to any investor in Crusader before we are able to resolve the question of the DAF's ownership.

Please reach out to me if you have any questions or concerns. Pls cc my paralegal Kim James on any email correspondence (krj@SbaitiLaw.com).

Sincerely,

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti, Esq.

EXHIBIT 2-B

Roger L. McCleary

From: Roger L. McCleary
Sent: Monday, February 13, 2023 5:08 PM
To: King, Marshall R.
Cc: Cox, Trey; Rosenthal, Michael A.; Bean, Andrew; Sawnie A. McEntire
Subject: RE: [EXTERNAL] Crusader Funds distribution

Marshall,

Please be advised that Charitable DAF Fund, L.P.'s ("DAF") receipt of this or any other distribution from Alvarez & Marsal CRF Management, LLC ("A&M"), or on its behalf, is without prejudice to or waiver of any of DAF's claims, causes of action, rights, or damages against A&M. DAF expressly reserves the same.

Subject to the foregoing, we do not know what wire instructions are on record for DAF - or if they have changed - but the wire instructions are as follows (for confirmation purposes only):

Bank: NexBank SSB
Bank Address: 2515 McKinney Avenue, 11th Floor, Dallas, TX 75201
Account: Charitable DAF Fund LP
Account No: 1623057
Routing: 311973208

Please let us know if these wire instructions are the same as those currently on record.

Regards, Roger.

Roger L. McCleary
Parsons McEntire McCleary PLLC
One Riverway, Suite 1800
Houston, TX 77056
Tel: (713) 960-7305
Fax: (832) 742-7387
www.pmmlaw.com

From: King, Marshall R. <MKing@gibsondunn.com>
Sent: Saturday, February 11, 2023 8:05 AM
To: Sawnie A. McEntire <smcentire@pmmlaw.com>; Roger L. McCleary <rmccleary@pmmlaw.com>
Cc: Cox, Trey <TCox@gibsondunn.com>; Rosenthal, Michael A. <MRosenthal@gibsondunn.com>; Bean, Andrew <ABean@gibsondunn.com>
Subject: [EXTERNAL] Crusader Funds distribution

Sawnie, Roger:

Please provide us with current wire instructions for Charitable DAF so that the forthcoming distribution can be made at the end of the week. If I don't hear from you by Tuesday it will go via the wire instructions that the Funds have on record for your client.

Marshall R. King

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
200 Park Avenue, New York, NY 10166-0193
Tel +1 212.351.3905 • Fax +1 212.351.5243
MKing@gibsondunn.com • www.gibsondunn.com

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Beatrice Candis on behalf of Roger McCleary
Bar No. 13393700
bcandis@pmmlaw.com
Envelope ID: 85035815
Filing Code Description: Response
Filing Description: IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS
Status as of 2/29/2024 2:28 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	2/29/2024 9:25:03 AM	SENT
Tim Miller		tmiller@pmmlaw.com	2/29/2024 9:25:03 AM	SENT
John T.Cox		TCox@gibsondunn.com	2/29/2024 9:25:03 AM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	2/29/2024 9:25:03 AM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	2/29/2024 9:25:03 AM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	2/29/2024 9:25:03 AM	SENT
Ian Salzer		isalzer@pmmlaw.com	2/29/2024 9:25:03 AM	SENT
Marshall R.King		MKing@gibsondunn.com	2/29/2024 9:25:03 AM	SENT
Pat A.Vickery		PVickery@gibsondunn.com	2/29/2024 9:25:03 AM	SENT

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	2/29/2024 9:25:03 AM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	2/29/2024 9:25:03 AM	SENT
Maria Kountz		MKountz@pmmlaw.com	2/29/2024 9:25:03 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	2/29/2024 9:25:03 AM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PROPOSED ORDER DENYING DEFENDANT'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

The Court, having considered Defendant Alvarez & Marsal CRF Management, LLC's ("A&M" or "Defendant") Motion for Protective Order and Motion to Abate ("Motion"), Plaintiff Charitable DAF Fund, L.P.'s ("DAF") Response in Opposition ("Response"), any reply, and any arguments of counsel, is of the opinion that the Motion should be DENIED.

IT IS THEREFORE ORDERED that A&M's Motion for Protective Order and Motion to Abate are DENIED in their entirety.

IT IS FURTHER ORDERED that Defendant, Alvarez & Marsal CRF Management, LLC shall serve full and complete answers to all served interrogatories (Nos. 1-15) and full and complete responses to all requests for production, (Nos. 1-42), and produce responsive documents to DAF's document requests within thirty (30) days.

SIGNED on this _____ day of _____, 2024.

_____

District Judge

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") Motion to Compel Discovery ("Motion"), seeking an order compelling Defendant, Alvarez & Marsal CRF Management, LLC's ("A&M" or "Defendant") to respond and produce discovery, any response, and any arguments of counsel, is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that DAF's Motion to Compel Discovery is GRANTED.

IT IS FURTHER ORDERED that Defendant, Alvarez & Marsal CRF Management, LLC shall serve full and complete answers to all served interrogatories (Nos. 1-15) and full and complete responses to all requests for production, (Nos. 1-42), and produce responsive documents to DAF's document requests within twenty (20) days.

SIGNED on this _____ day of _____, 2024.

_____

District Judge

FILED
3/1/2024 11:52 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff Charitable DAF Fund, L.P.'s Motion to Compel Discovery, filed February 29, 2024, is set for hearing on **April 3, 2024, at 1:15 p.m.**, before the Honorable Judge Tonya Parker in the 116th Judicial District Court of Dallas County, Texas at 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: March 1, 2024

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3152748

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Filing Code Description: Notice Of Hearing / Fiat
Filing Description: MOTION TO COMPEL SET 4/3/1:15 P.M.
Status as of 3/4/2024 8:51 AM CST

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FILED
3/5/2024 1:46 PM
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CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

FOURTH AMENDED NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023 and set for hearing on Wednesday, March 6, 2024 at 1:15 p.m. has been re-set for hearing on Wednesday, April 3, 2024 at 1:15 p.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: March 5, 2024

Respectfully submitted,

/s/ John T. Cox III

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2024, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *John T. Cox III*
John T. Cox III

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Filing Code Description: Notice Of Hearing / Fiat
Filing Description: 4TH AMD / MOTION PROTECT SET 4/3/@ 1:15 P.M.
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Associated Case Party: Charitable DAF Fund, L.P.

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CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P., Plaintiff, v. ALVAREZ & MARSAL, CRF MANAGEMENT, LLC Defendant.	IN THE DISTRICT COURT DALLAS COUNTY, TEXAS 116TH JUDICIAL DISTRICT

DEFENDANT'S COMBINED OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY AND REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Defendant Alvarez & Marsal CRF Management, LLC ("A&M") files this combined opposition to Plaintiff Charitable DAF Fund, L.P.'s ("DAF") Motion to Compel Discovery and reply in support of its own Motion for Protective Order and Motion to Abate, and would respectfully show as follows:

INTRODUCTION & SUMMARY OF ARGUMENT

In Plaintiff's own words, the reason for this case was Plaintiff's assertions about "A&M's improper withholding of assets lawfully owned by and due to DAF." FAC ¶¶ 7, 12–14. That issue is long resolved. As DAF acknowledges, A&M agreed to treat it as a limited partner in Offshore Fund II, has *already paid* DAF for its entire share of distributions previously withheld, and has made subsequent distributions to DAF—in total, well over $1 million. *See* Pltf's Resp. to Def's Mot. at 1–2; FAC ¶¶ 16. And although DAF is entitled to nothing more, A&M has even offered to pay DAF hundreds of thousands in attorneys' fees and interest to compensate it for the lost value of that money.

Yet, in its usual spirit of wanting to "burn down the place," DAF presses on. *See* Def's Mot. for Protection at 3. Despite getting exactly what it wanted from A&M, DAF demands responses to ***forty-two requests for production and fifteen interrogatories***—the bulk of which seek information having nothing to do with this case. Its sole justification: developing a supposedly "unresolved" claim for breach of fiduciary duty and the equitable remedies that purportedly follow, including disgorgement, exemplary damages, and an accounting. *See* Pltf's Resp. at 5.

But that justification implodes when considered with even minimal scrutiny. Just because DAF *says* A&M owes it a fiduciary duty doesn't make it so. Relationships of "trust and confidence" (FAC ¶ 15) do not arise out of thin air, and it is *DAF's burden* to identify the legal authority establishing such a relationship. It has not done so, and indeed A&M is not aware of any such authority creating a fiduciary duty between a third-party fund manager and downstream investors in the subject fund. DAF's breach of fiduciary duty claim should be seen for what it is: a ploy to harass A&M with pointless discovery and prolong a suit that's been resolved for months.

The Court should abate this matter until DAF identifies a live controversy between the parties justifying any kind of discovery at all. At minimum, however, the Court should deny DAF's motion to compel discovery and enter an order protecting A&M from DAF's broad and harassing requests bearing little resemblance to the issues identified in the First Amended Petition.

RESPONSE TO EVIDENTIARY OBJECTIONS

The Court should disregard DAF's objections to the Declarations of Christopher Wells and Andrew Bean to the extent they relate to publicly available information that is not in dispute and whose accuracy cannot reasonably be questioned. That includes Exhibits 4 and 5 of the Bean Declaration, which are judicial opinions issued by the United States Bankruptcy Court for the Northern District of Texas, *see* Tex. R. Evid. 202(a) (obligating court to judicially notice federal court decisions when requested by a party and supplied with the necessary information); as well as Exhibit 6 to the Bean Declaration, which is a verified petition filed by Mr. James Dondero in the 95th Judicial District of Dallas County, Texas, and Exhibit 7 to the Bean Declaration, which is an order issued by the same court denying Mr. Dondero's request for pre-suit discovery, *see* Tex. R. Evid. 201 (permitting court to judicially notice facts generally known within its territorial jurisdiction and that can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned"). A&M respectfully requests that the Court take judicial notice of the findings and conclusions contained within those public documents.

The Court should also reject DAF's Rule 408 and 801 objections to Exhibit 1 of the Bean Declaration, which is a letter from A&M's counsel to DAF's. The letter provides the background of the parties' dispute and explains A&M's position that the Crusader Funds' distributions to DAF and agreement to recognize its limited partnership interests in the Offshore Fund II going forward render the present controversy moot. The letter does not run afoul of Rule 408 or 801 because it is not being offered "to prove or disprove the validity or amount of a disputed claim," *see* Tex. R.

Evid. 408, nor is it being offered for the truth of any statements it contains, *see id.* 801. Instead, it is being offered to establish DAF's bad faith in pursuing its claim even after receiving over $1 million in distributions and full recognition as a limited partner in Offshore Fund II—facts DAF does not and cannot dispute. In fact, DAF attaches similar correspondence from its counsel as an exhibit to its opposition to A&M's motion.

Relatedly, DAF's Rule 801 objection to Exhibit 3 of the Bean Declaration—the April 29, 2019 Arbitration Final Award—is meritless. A&M attaches the arbitration decision to aid the court in its understanding of the background of this case, not for the truth of any facts set forth in the award. DAF is free to dispute the legal significance of any part of the award it wishes, but it cannot dispute the existence of the award or that it affects a host of entities with legal relationships to one or both parties in this case.

Finally, the Court should reject DAF's objections to the Wells Declaration. Paragraphs 3–6 of the Wells Declaration set forth matters within Mr. Wells' personal knowledge—as A&M's Managing Director—regarding A&M's understanding of the arbitration decision and the monies that the Crusader Funds subsequently distributed to DAF as limited partner of the Offshore Fund II. No rule of civil procedure or evidence prohibits a party (or a party representative) from executing a declaration as to matters within their personal knowledge; indeed, parties do so all the time at varying stages of litigation prior to presenting live testimony, just as DAF has done in presenting declarations in response to A&M's motion. *See Trico Techs. Corp. v. Montiel*, 949 S.W.2d 308, 310 (Tex. 1997). And notably, DAF does not and cannot dispute the key contents of the Wells Declaration: the Crusader Funds' recognition of DAF as a limited partner in Offshore Fund II, the amounts distributed to DAF, and the existence of an arbitration award.

ARGUMENT

I. The Court should abate this action because there is no live controversy.

This case cannot proceed in its current posture because there is no live dispute between the parties with respect to the underlying controversy. *See Growden v. Good Shepherd Health Sys.*, 550 S.W.3d 716 (Tex. App.—Texarkana 2018, no pet.) (explaining that a case is moot when the plaintiff "can no longer show an actual or threatened injury on her underlying claim, and any controversy between [the parties] as to that claim has been extinguished").

The underlying controversy that forms the basis of DAF's Amended Petition is DAF's naked assertion that A&M improperly withheld assets to which it was entitled as limited partner of Offshore Fund II. *See* FAC ¶ 7 ("This lawsuit is necessary because of A&M's improper withholding of assets lawfully owned by and due to DAF and A&M's associated interference with DAF's charitable mission."). A&M did so in furtherance of its duties to the Crusader Funds, and in recognition of the arbitration award that investors in the Crusader Funds had obtained *directing* the extinguishment of DAF's partnership interest. *See* Wells Decl. ¶¶ 2-3. But after DAF complained, A&M has since distributed to DAF everything that it is owed as a limited partner in the Offshore Fund II, and it has agreed to make all appropriate distributions to DAF going forward. This case is therefore moot.

The best that DAF can do to avoid that inevitability is to manufacture an "unresolved" breach of fiduciary duty claim and assert entitlement to various forms of relief that might flow from such a breach, such as disgorgement, exemplary damages, and an audit. *See* FAC ¶ 22 ("A&M is, therefore, liable to DAF for actual damages, disgorgement, exemplary damages, an accounting, and all other relief to which DAF is justly and legally entitled *as the result of A&M's breach of fiduciary duties owed to DAF*.") (emphasis added). But DAF's own pleadings doom its breach of fiduciary duty claim from the start because they do not identify the source of the

supposed fiduciary relationship between A&M—the investment manager of the Crusader Funds—and DAF—a limited partner in one of the funds, Offshore Fund II, which is a Bermuda company. *Plotkin v. Joekel*, 304 S.W.3d 455, 479 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (explaining that the "existence of a fiduciary relationship between the plaintiff and defendant" is a required element of a breach of fiduciary duty claim).

And without an underlying fiduciary duty owed to DAF, much less an intentional breach of that duty, DAF is not entitled to the remedies of disgorgement, exemplary damages, or an accounting. *See Pennington v. Ray*, No. 05-98-01168-CV, 2001 WL 33067, at *2 (Tex. App.—Dallas Jan. 16, 2001, no pet.) (concluding that plaintiff was not entitled to an accounting because she could not prevail on her breach of fiduciary duty claim, among others); *Power v. Chapman*, 994 S.W.2d 331, 336 (Tex. App.—Texarkana 1999, no pet.) (denying request for accounting when plaintiff could not establish underlying fiduciary relationship forming the basis of the request); *Bohatch v. Butler & Binion*, 905 S.W.2d 597, 604 (Tex. App.—Houston [14th Dist.] 1995), *aff'd as modified*, 977 S.W.2d 543 (Tex. 1998) (declining to consider the issue of exemplary damages because evidence was insufficient to support jury's finding of breach of fiduciary duty); *see Meridien Hotels, Inc. v. LHO Fin. P'ship I, L.P.*, 255 S.W.3d 807, 821 (Tex. App. 2008) (holding that disgorgement was not proper remedy absent an underlying fiduciary relationship).[1]

Accordingly, there is no live controversy as to DAF's invented breach of fiduciary duty claim or any of the associated equitable remedies DAF seeks. This case is therefore moot and should be abated until DAF can identify a live dispute between the parties.

[1] DAF's request for an "accounting" is especially perplexing, since DAF receives, as every limited partner does, annual audited financial statements concerning the Crusader Funds and periodic reports from A&M, as investment manager, of the Funds' assets and financial activity.

II. At minimum, a protective order is necessary to protect A&M from the cost, burden, and harassment that would result from responding to DAF's discovery requests.

The Court should, at a minimum, enter an order protecting A&M from having to respond to DAF's harassing and overbroad discovery requests, which are largely untethered from the single (and now moot) issue underlying DAF's petition. Some examples of DAF's overbroad and harassing requests are illustrative.

In particular, DAF's interrogatories seek information on broad and irrelevant topics such as:

- "the total payments . . . from June 30, 2016 to present and described by each most detailed category or description . . . paid to or otherwise received by A&M . . . relating in any way to A&M's role as the investment manager for the Crusader Fund"
- "each distribution A&M made . . . from any Crusader Fund account(s)"

See Bean Decl. Exh. 2 at 11–13. The scope of DAF's requests for production is equally broad and disconnected from the allegations in the First Amended Petition:

- "all documents concerning any other monetary sums paid to A&M, directly or indirectly, concerning the Crusader Fund"
- "all awards or other decisions made by any arbitration panel or any other judicial proceeding or formal authority, which you claim impacts the Crusader Fund"
- "all documents evidencing any distributions A&M made, caused to be made, and/or authorized from the Crusader Fund"

Id. at 14–15.

DAF cannot provide a single reason (and indeed there is none) why topics like (i) payments to A&M by the Crusader Funds (not by DAF) for serving as the Crusader Funds' investment manager and (ii) distributions that A&M has made to *other* limited partners are relevant or will lead to the discovery of relevant evidence. Any such reasons—to the extent they ever existed—no longer have any force now that A&M has given DAF everything to which it is entitled.

These examples simply spotlight some of the more egregious discovery requests served by DAF. There are more. The burden imposed by these requests is "far out of proportion to any benefit" to DAF, given that their "justification . . . is rendered moot." *In re John Crane Inc.*, No. 01-03-00698-CV, 2003 WL 22682613, at *3 (Tex. App. Nov. 13, 2003); *In re Taylor*, No. 14-14-00600-CV, 2015 WL 576591, at *1 (Tex. App. Feb. 10, 2015) (confirming that a defendant need not produce discovery when the underlying litigation has become moot). But even absent the issue of mootness, DAF's discovery requests are out of touch with the dispute pleaded on the face of the First Amended Petition, which simply concerns A&M's treatment of *DAF* in A&M's capacity as investment manager of the Crusader Funds. Discovery concerning topics outside the bounds of that dispute—including but not limited to distributions to *other* limited partners—is irrelevant and prohibited. Tex. R. Civ. P. 192.3(a).

CONCLUSION

The Court should grant A&M's motion and abate this case until DAF can articulate a live legal dispute between the parties that has not already been fully resolved. Alternatively, and at a minimum, it should deny DAF's motion to compel and enter an order protecting A&M from having to serve responses and objections to DAF's broad and harassing discovery requests.

Dated: March 29, 2024

Respectfully submitted,

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2024, the foregoing document was electronically filed with the Court using CM/ECF, which will send notification of this filing to counsel of record in the above-captioned case.

/s/ John T. Cox III
John T. Cox III

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Filing Description: DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY & REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER & MOTION TO ABATE
Status as of 3/31/2024 5:32 PM CST

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Associated Case Party: Charitable DAF Fund, L.P.

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CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC	§	
	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and files this Reply in Support ("Reply") of its Motion to Compel ("Motion") and in response to Defendant, Alvarez & Marsal CRF Management, LLC's ("A&M") Combined Opposition to Plaintiff's Motion to Compel Discovery and Reply in Support of Motion for Protective Order and Motion to Abate ("Combined Opposition"), and respectfully shows the Court as follows:

1. Although A&M never moved to dismiss under Rule 91a and is not entitled to seek summary judgment at this early stage, A&M nevertheless improperly attacks the merits of DAF's claims and does so without any support under Texas law or the Texas Rules of Civil Procedure. A&M certainly knows it is not entitled to seek dispositive relief under Rule 166a because A&M has completely barred DAF from any meaningful discovery. *See Levinthal v. Kelsey-Seybold Clinic, P.A.*, 902 S.W.2d 508, 512 (Tex. App.—Houston [1st Dist.] 1994, no writ) ("[Rule 166a] clearly contemplates that the trial court will allow the parties a reasonable opportunity to conduct discovery before granting summary judgment."). The timetable to seek dismissal under Rule 91a also has long since

passed. Thus, A&M is forced to fabricate a procedural attack which is not recognized by Texas law. Fundamentally, A&M simply seeks to avoid discovery and what it may show.

2. Although DAF is not required to provide specific legal authorities to support the merits of its claims at this early stage, DAF has plainly alleged the elements for a breach of informal fiduciary duty claim. *See Matter of Est. of Poe*, 648 S.W.3d 277, 287 (Tex. 2022) ("[A]n 'informal' fiduciary duty may arise from 'a moral, social, domestic or purely personal relationship of trust and confidence.'"); *Mary E. Bivins Found. v. Highland Capital Mgt. L.P.*, 451 S.W.3d 104, 113 (Tex. App.—Dallas 2014) (leaving open possibility that a fund's investment manager could be a fiduciary of the fund's investors upon proof of "informal trust or confidential relationship").

3. It is curious that A&M only focuses on DAF's fiduciary duty claim and ignores DAF's other claims for conversion and tortious interference.[1] Indeed, in the alternative, to the extent necessary, DAF is entitled to damages arising from A&M's wrongful conduct.[2] *See R.J. Suarez Enterprises Inc. v. PNYX L.P.*, 380 S.W.3d 238, 342 (Tex. App.—Dallas 2012) (loss of use damages for conversion); *Winkle Chevy-Olds-Pontiac, Inc. v. Condon*, 830 S.W.2d 740, 746 (Tex. App.—Corpus Christi 1992), *writ dismissed* (Sept. 9, 1992) (lost profits damages for conversion); *Fluor Enterprises, Inc. v. Conex Intern. Corp.*, 273 S.W.3d 426, 446-47 (Tex. App.—Beaumont 2008, pet. denied) (lost profits for tortious

[1] Plaintiff's First Amended Petition, ¶¶ 23-37.
[2] Plaintiff's First Amended Petition, ¶¶ 39-40.

interference). DAF also has claims for punitive damages and an accounting.[3] DAF is entitled to recover, at a minimum, lawful pre-judgment interest. *See Associated Tel. Directory Publishers, Inc. v. Five D's Pub. Co., Inc.*, 849 S.W.2d 894, 898 (Tex. App.—Austin 1993, no writ) ("The measure of damages for conversion is the fair-market value of the property at the time of conversion, plus legal interest."); *Sandare Chem. Co., Inc. v. WAKO Intern., Inc.*, 820 S.W.2d 21, 25 (Tex. App.—Fort Worth 1991, no writ) (awarding prejudgment interest to victim of tortious interference).

4. In its Combined Opposition, A&M confuses discovery burdens and is again attempting to require DAF to affirmatively support DAF's discovery requests even though A&M wholly failed to timely object or respond to specific discovery requests. In any event, DAF is entitled to broad discovery, "to allow parties to obtain the fullest knowledge of facts and issues before the disposition of their case." *Levinthal*, 902 S.W.2d at 512; *see* Tex. R. Civ. P. 192.3(a). Each of the requests A&M now highlights in its Combined Opposition relate to the heart of the dispute between DAF and A&M—the failure to make distributions to DAF and the associated liability issues.[4] The only objections A&M now belatedly raises in its Combined Opposition—***for the first time***—relate to the breadth of DAF's requests.[5] But A&M's objection in this regard was waived because A&M failed to timely object when it had a duty to do so. Tex. R. Civ. P. 193.2(e).

[3] Plaintiff's First Amended Petition, ¶¶ 39-40.
[4] Combined Opposition, 6.
[5] Combined Opposition, 6-7.

Moreover, A&M's proper remedy was to object to the purported breadth of DAF's requests and otherwise respond to the extent not objected to. Tex. R. Civ. P. 192.6, 193.1, 193.2. Even further, A&M's declarations do nothing to support any purported burden other than to provide conclusory statements without describing the nature of the purported burden on a request-by-request basis. Accordingly, this objection was also waived.

WHEREFORE PREMISES CONSIDERED, Plaintiff, Charitable DAF Fund, L.P. respectfully requests that the Court grant DAF's Motion, enter an Order compelling A&M to respond to the Discovery Requests and produce responsive documents within 20 days of the Court's order, and grant DAF such further relief to which it may show itself to be justly entitled to, either at law or in equity.

Dated: April 1, 2024

Respectfully submitted,

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(713) 960-7315 (Phone)
(713) 960-7347 (Facsimile)

ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ *Sawnie A. McEntire*
Sawnie A. McEntire

3154908

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 86165826
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Filing Description: REPLY IN SUPPORT OF ITS MOTION TO COMPEL
Status as of 4/2/2024 9:15 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	4/1/2024 4:42:10 PM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	4/1/2024 4:42:10 PM	SENT
Maria Kountz		MKountz@pmmlaw.com	4/1/2024 4:42:10 PM	SENT

Case Contacts

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Pat A.Vickery		PVickery@gibsondunn.com	4/1/2024 4:42:10 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	4/1/2024 4:42:10 PM	SENT

FILED
4/8/2024 4:00 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and Defendant, Alvarez & Marsal CRF Management, LLC ("A&M") (collectively the "Parties") file this Agreed Motion for Continuance and Entry of Amended Scheduling Order ("Motion") pursuant to Tex. R. Civ. P. 251 and respectfully shows the Court as follows:

I. REQUESTED RELIEF

1. The Parties request a continuance of the current August 5, 2024 trial setting to no earlier than January 27, 2025, and a corresponding extension of the deadlines on the Court's First Amended Uniform Scheduling Order (Level 3), entered November 25, 2023, in accordance with the proposed Order Granting Agreed Motion for Continuance attached as **Exhibit A**.

II. GROUNDS FOR RELIEF

2. On August 11, 2023, A&M filed its *Motion for Protective Order and Motion to Abate* ("A&M's Motion") seeking protection from DAF's written discovery requests.

Other than initial disclosures, no substantive discovery has occurred because of the filing of A&M's Motion.

3. A&M's Motion was scheduled for hearing on October 12, 2023, but the hearing was rescheduled to December 7, 2023, because the Parties entered into settlement discussions. In the interim, A&M's counsel agreed that all deadlines in November and December 2023 were "pushed," and DAF filed a Verified Motion for Continuance and for Entry of Amended Scheduling Order on November 13, 2023. The Court entered the First Amended Uniform Scheduling Order the following week.

4. The hearing on A&M's Motion was then rescheduled again to March 6, 2024, because the Parties' settlement discussions were ongoing.

5. Prior to the March 6, 2024 hearing, last-minute conflicts necessitated again rescheduling the hearing on A&M's Motion. The hearing was rescheduled for April 3, 2023, but by mutual agreement the hearing was postponed to explore the possibility of further negotiations.

6. Because no discovery has occurred while A&M's Motion has been pending, the current case deadlines are no longer tenable.

III. CONCLUSION

7. The Parties respectfully request that the Court continue the current trial setting to no earlier than January 27, 2025 and enter the attached order extending the case deadlines.

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

WHEREFORE PREMISES CONSIDERED, Plaintiff, Charitable DAF Fund, L.P. and Defendant, Alvarez & Marsal CRF Management, LLC respectfully request that this Agreed Motion for Continuance be granted; that the Court grant a continuance of the current trial setting to no earlier than January 27, 2025; that the Court grant a continuance of all other case deadlines in accordance with the attached proposed order; and that the Court grant the Parties all such further relief to which they may show themselves to be justly entitled, either at law or in equity.

Respectfully submitted,

By: */s/ Sawnie A. McEntire*

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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

By: /s/ John T. Cox

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
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TCox@gibsondunn.com
ABean@gibsondunn.com

COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3152925

EXHIBIT A

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AGREED ORDER GRANTING AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") and Defendant, Alvarez & Marsal CRF Management, LLC ("A&M") (collectively the "Parties") Agreed Motion for Continuance and Entry of Amended Scheduling Order ("Motion"), and noting that this Order is agreed, is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the current trial setting is reset for January 27, 2025.

IT IS FURTHER ORDERED that the deadline to file amended pleadings asserting new causes of action or defenses is extended to September 29, 2024.

IT IS FURTHER ORDERED that the deadline to complete fact discovery is extended to October 14, 2024.

IT IS FURTHER ORDERED that the deadline for parties seeking affirmative relief to designate experts and provide reports is extended to October 14, 2024.

IT IS FURTHER ORDERED that the deadline to file motions to compel is extended to October 21, 2024.

IT IS FURTHER ORDERED that the deadline for parties opposing affirmative relief to designate experts and provide reports is extended to October 29, 2024.

IT IS FURTHER ORDERED that the deadline for parties seeking affirmative relief to designate rebuttal experts is extended to November 13, 2024.

IT IS FURTHER ORDERED that the deadline to complete expert discovery is extended to December 13, 2024.

IT IS FURTHER ORDERED that the deadline to file other amended pleadings is extended to December 13, 2024.

IT IS FURTHER ORDERED that the mediation deadline is extended to December 28, 2024.

IT IS FURTHER ORDERED that the deadlines set forth in paragraph 8 of the Court's First Amended Uniform Scheduling Order, entered November 25, 2023, shall be based on the reset trial date of January 27, 2025, not the Initial Trial Setting.

IT IS FURTHER ORDERED that all deadlines other than the new trial date may be revised by written agreement of the parties.

SIGNED on this _____ day of _____, 2024.

_____

District Judge

AGREED:

By: */s/ Sawnie A. McEntire*

Sawnie A. McEntire
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smcentire@pmmlaw.com
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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

By: /s/ John T. Cox

John T. Cox III
Texas Bar No. 24003722
Andrew Bean
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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC

3155689

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Envelope ID: 86416913
Filing Code Description: Motion - Continuance
Filing Description: AGREED / AND ENTRY OF AMENDED SCHEDULING ORDER
Status as of 4/8/2024 4:23 PM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	4/8/2024 4:00:58 PM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	4/8/2024 4:00:58 PM	SENT
Maria Kountz		MKountz@pmmlaw.com	4/8/2024 4:00:58 PM	SENT

Case Contacts

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Tim Miller		tmiller@pmmlaw.com	4/8/2024 4:00:58 PM	SENT
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Marshall R.King		MKing@gibsondunn.com	4/8/2024 4:00:58 PM	SENT
Pat A.Vickery		PVickery@gibsondunn.com	4/8/2024 4:00:58 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	4/8/2024 4:00:58 PM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P., *Plaintiff,*	§	IN THE DISTRICT COURT
VS.	§	DALLAS COUNTY, TEXAS
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC *Defendant.*	§	116th JUDICIAL DISTRICT

AGREED ORDER ~~GRANTING~~ Denying AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") and Defendant, Alvarez & Marsal CRF Management, LLC ("A&M") (collectively the "Parties") Agreed Motion for Continuance and Entry of Amended Scheduling Order ("Motion"), and noting that this Order is agreed, is of the opinion that the Motion should be ~~GRANTED~~ DENIED.

IT IS THEREFORE ORDERED that the current trial setting is ~~reset for January 27~~ not reset, 2025.

IT IS FURTHER ORDERED that the deadline to file amended pleadings asserting new causes of action or defenses is extended to September 29, 2024.

IT IS FURTHER ORDERED that the deadline to complete fact discovery is extended to October 14, 2024.

IT IS FURTHER ORDERED that the deadline for parties seeking affirmative relief to designate experts and provide reports is extended to October 14, 2024.

IT IS FURTHER ORDERED that the deadline to file motions to compel is extended to October 21, 2024.

IT IS FURTHER ORDERED that the deadline for parties opposing affirmative relief to designate experts and provide reports is extended to October 29, 2024.

IT IS FURTHER ORDERED that the deadline for parties seeking affirmative relief to designate rebuttal experts is extended to November 13, 2024.

IT IS FURTHER ORDERED that the deadline to complete expert discovery is extended to December 13, 2024.

IT IS FURTHER ORDERED that the deadline to file other amended pleadings is extended to December 13, 2024.

IT IS FURTHER ORDERED that the mediation deadline is extended to December 28, 2024.

IT IS FURTHER ORDERED that the deadlines set forth in paragraph 8 of the Court's First Amended Uniform Scheduling Order, entered November 25, 2023, shall be based on the reset trial date of January 27, 2025, not the Initial Trial Setting.

IT IS FURTHER ORDERED that all deadlines other than the new trial date may be revised by written agreement of the parties.

SIGNED on this 18th day of April, 2024.

District Judge

AGREED:

By: */s/ Sawnie A. McEntire*
Sawnie A. McEntire
Texas Bar No. 13590100
smcentire@pmmlaw.com
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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

By: /s/ John T. Cox
John T. Cox III
Texas Bar No. 24003722
Andrew Bean
Texas Bar No. 24097352
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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC

3155689

FILED
4/24/2024 9:24 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

FELICIA PITRE
District Clerk

NINA MOUNTIQUE
Chief Deputy

DALLAS COUNTY DISTRICT CLERK'S OFFICE

To: ALL ATTORNEYS/PARTIES

Please see the attached order signed and entered in your case.

Regards,

Felicia Pitre

Dallas County District Clerk

Automated Certificate of eService

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Status as of 4/24/2024 11:34 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	4/24/2024 9:24:29 AM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	4/24/2024 9:24:29 AM	SENT
Maria Kountz		MKountz@pmmlaw.com	4/24/2024 9:24:29 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

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Beatrice Candis		bcandis@pmmlaw.com	4/24/2024 9:24:29 AM	SENT

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Pat A.Vickery		PVickery@gibsondunn.com	4/24/2024 9:24:29 AM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P., *Plaintiff,*	§	IN THE DISTRICT COURT
VS.	§	DALLAS COUNTY, TEXAS
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC *Defendant.*	§	116th JUDICIAL DISTRICT

AGREED ORDER ~~GRANTING~~ Denying AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") and Defendant, Alvarez & Marsal CRF Management, LLC ("A&M") (collectively the "Parties") Agreed Motion for Continuance and Entry of Amended Scheduling Order ("Motion"), and noting that this Order is agreed, is of the opinion that the Motion should be ~~GRANTED~~ DENIED.

IT IS THEREFORE ORDERED that the current trial setting is not reset ~~for January 27, 2025~~.

IT IS FURTHER ORDERED that the deadline to file amended pleadings asserting new causes of action or defenses is extended to September 29, 2024.

IT IS FURTHER ORDERED that the deadline to complete fact discovery is extended to October 14, 2024.

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IT IS FURTHER ORDERED that all deadlines other than the new trial date may be revised by written agreement of the parties.

SIGNED on this 18th day of April, 2024.

District Judge

AGREED:

By: */s/ Sawnie A. McEntire*

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Texas Bar No. 13590100
smcentire@pmmlaw.com
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**COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.**

By: /s/ John T. Cox

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**COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC**

3155689

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC	§	
	§	
Defendant.	§	116th JUDICIAL DISTRICT

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff Charitable DAF Fund, L.P.'s Motion to Compel Discovery, filed February 29, 2024, is set for hearing on **May 8, 2024, at 1:15 p.m.**, before the Honorable Judge Tonya Parker in the 116th Judicial District Court of Dallas County, Texas at 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: April 24, 2024

Respectfully submitted,

/s/ Sawnie A. McEntire

Sawnie A. McEntire
Texas Bar No. 13590100
smcentire@pmmlaw.com
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ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3157897

Automated Certificate of eService

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Beatrice Candis on behalf of Sawnie Mcentire
Bar No. 13590100
bcandis@pmmlaw.com
Envelope ID: 87002916
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: PLAINTIFF MOTION TO COMPEL SET 5/8 @ 1:15 P.M.
Status as of 4/24/2024 12:05 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	4/24/2024 10:39:11 AM	SENT
Tim Miller		tmiller@pmmlaw.com	4/24/2024 10:39:11 AM	SENT
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Associated Case Party: CHARITABLE DAF FUND LP

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Associated Case Party: Charitable DAF Fund, L.P.

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Beatrice Candis		bcandis@pmmlaw.com	4/24/2024 10:39:11 AM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AGREED ORDER GRANTING AMENDED AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") and Defendant, Alvarez & Marsal CRF Management, LLC ("A&M") (collectively the "Parties") Amended Agreed Motion for Continuance and Entry of Amended Scheduling Order ("Motion"), and noting that this Order is agreed, is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the current trial setting is reset for January 27, 2025.

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IT IS FURTHER ORDERED that all deadlines other than the new trial date may be revised by written agreement of the parties.

SIGNED on this 29th day of April, 2024.

District Judge

2

AGREED:

By: */s/ Sawnie A. McEntire*
Sawnie A. McEntire
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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

*By: /s/ John T. Cox III**
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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC
*Signed by permission

FILED
5/1/2024 1:29 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

FELICIA PITRE
District Clerk

NINA MOUNTIQUE
Chief Deputy

DALLAS COUNTY DISTRICT CLERK'S OFFICE

To: ALL ATTORNEYS/PARTIES

Please see the attached order signed and entered in your case.

Regards,

Felicia Pitre

Dallas County District Clerk

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Status as of 5/1/2024 1:45 PM CST

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Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	5/1/2024 1:29:57 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	5/1/2024 1:29:57 PM	SENT
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Marshall R.King		MKing@gibsondunn.com	5/1/2024 1:29:57 PM	SENT
Pat A.Vickery		PVickery@gibsondunn.com	5/1/2024 1:29:57 PM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AGREED ORDER GRANTING AMENDED AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") and Defendant, Alvarez & Marsal CRF Management, LLC ("A&M") (collectively the "Parties") Amended Agreed Motion for Continuance and Entry of Amended Scheduling Order ("Motion"), and noting that this Order is agreed, is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the current trial setting is reset for January 27, 2025.

IT IS FURTHER ORDERED that the deadline to file amended pleadings asserting new causes of action or defenses is extended to September 29, 2024.

IT IS FURTHER ORDERED that the deadline to complete fact discovery is extended to October 14, 2024.

IT IS FURTHER ORDERED that the deadline for parties seeking affirmative relief to designate experts and provide reports is extended to October 14, 2024.

IT IS FURTHER ORDERED that the deadline to file motions to compel is extended to October 21, 2024.

IT IS FURTHER ORDERED that the deadline for parties opposing affirmative relief to designate experts and provide reports is extended to October 29, 2024.

IT IS FURTHER ORDERED that the deadline for parties seeking affirmative relief to designate rebuttal experts is extended to November 13, 2024.

IT IS FURTHER ORDERED that the deadline to complete expert discovery is extended to December 13, 2024.

IT IS FURTHER ORDERED that the deadline to file other amended pleadings is extended to December 13, 2024.

IT IS FURTHER ORDERED that the mediation deadline is extended to December 28, 2024.

IT IS FURTHER ORDERED that the deadlines set forth in paragraph 8 of the Court's First Amended Uniform Scheduling Order, entered November 25, 2023, shall be based on the reset trial date of January 27, 2025, not the Initial Trial Setting.

IT IS FURTHER ORDERED that all deadlines other than the new trial date may be revised by written agreement of the parties.

SIGNED on this 29th day of April, 2024.

District Judge

2

AGREED:

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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC
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FILED
4/24/2024 4:30 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC	§	
	§	
Defendant.	§	116th JUDICIAL DISTRICT

AMENDED AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("DAF"), and Defendant, Alvarez & Marsal CRF Management, LLC ("A&M") (collectively the "Parties") file this Amended Agreed Motion for Continuance and Entry of Amended Scheduling Order ("Motion"), and respectfully shows the Court as follows:

I. REQUESTED RELIEF

1. Pursuant to Tex. R. Civ. P. 251, the Parties request a continuance of the current August 5, 2024 trial setting to no earlier than January 27, 2025, and a corresponding extension of the deadlines on the Court's First Amended Uniform Scheduling Order (Level 3), entered November 25, 2023, in accordance with the proposed Order Granting Amended Agreed Motion for Continuance attached as **Exhibit A** ("Proposed Agreed Order").

II. GROUNDS FOR RELIEF

2. On August 11, 2023, A&M filed its *Motion for Protective Order and Motion to Abate* ("A&M's Motion") seeking protection from DAF's written discovery requests.

Other than initial disclosures, no substantive discovery has occurred because of the filing of A&M's Motion.

3. A&M's Motion was scheduled for hearing on October 12, 2023, but the hearing was rescheduled to December 7, 2023, because the Parties entered into settlement discussions. In the interim, A&M's counsel agreed that all deadlines in November and December 2023 were "pushed," and DAF filed a Verified Motion for Continuance and for Entry of Amended Scheduling Order on November 13, 2023. The Court entered the First Amended Uniform Scheduling Order the following week.

4. The hearing on A&M's Motion was then rescheduled again to March 6, 2024, because the Parties' settlement discussions were ongoing.

5. Prior to the March 6, 2024 hearing, last-minute conflicts necessitated again rescheduling the hearing on A&M's Motion. The hearing was rescheduled for April 3, 2023, along with a hearing on DAF's Motion to Compel Discovery (filed March 1, 2024), but by mutual agreement the hearing on these motions was postponed to explore the possibility of further settlement negotiations.

6. The Parties have agreed to schedule a prompt mediation, subject to entry of the Proposed Agreed Order. To facilitate the potential for resolution through mediation rather than through trial, the Parties wish to conduct that mediation without incurring significant additional costs and expenses in conducting discovery or otherwise developing this case, if possible, in advance of mediation.

7. Moreover, because the Parties have engaged in settlement negotiations, without the benefit of mediation, no discovery has occurred while A&M's Motion has been pending and the current August 5, 2024, trial setting and case deadlines are no longer tenable for the Parties. Accordingly, the Parties consent and agree to a continuance pursuant to Rule 251 of the Texas Rules of Civil Procedure.

8. The Parties will not request any further agreed continuances absent unforeseen and compelling reasons.

III. CONCLUSION

9. The Parties respectfully request that the Court continue the current trial setting to no earlier than January 27, 2025 and enter the Proposed Agreed Order filed with this Motion resetting the trial date and extending the case deadlines.

10. This Motion is not for delay only, but so that justice may be done.

WHEREFORE PREMISES CONSIDERED, Plaintiff, Charitable DAF Fund, L.P. and Defendant, Alvarez & Marsal CRF Management, LLC respectfully request that this Amended Agreed Motion for Continuance be granted; that the Court grant a continuance of the current trial setting to no earlier than January 27, 2025; that the Court grant a continuance of all other case deadlines in accordance with the Proposed Agreed Order filed with this Motion; and that the Court grant the Parties all such further relief to which they may show themselves to be justly entitled, either at law or in equity.

Respectfully submitted,

By: */s/ Sawnie A. McEntire*
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COUNSEL FOR PLAINTIFF, CHARITABLE DAF FUND, L.P.

*By: /s/ John T. Cox III**
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Andrew Bean
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COUNSEL FOR DEFENDANT, ALVAREZ & MARSAL CRF MANAGEMENT, LLC

*Signed by permission

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Roger L. McCleary
Roger L. McCleary

EXHIBIT A

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

AGREED ORDER GRANTING AMENDED AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") and Defendant, Alvarez & Marsal CRF Management, LLC ("A&M") (collectively the "Parties") Amended Agreed Motion for Continuance and Entry of Amended Scheduling Order ("Motion"), and noting that this Order is agreed, is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the current trial setting is reset for January 27, 2025.

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IT IS FURTHER ORDERED that all deadlines other than the new trial date may be revised by written agreement of the parties.

SIGNED on this _____ day of _____, 2024.

_____

District Judge

AGREED:

By: */s/ Sawnie A. McEntire*

Sawnie A. McEntire
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COUNSEL FOR PLAINTIFF,
CHARITABLE DAF FUND, L.P.

*By: /s/ John T. Cox III**

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COUNSEL FOR DEFENDANT,
ALVAREZ & MARSAL CRF MANAGEMENT, LLC
*Signed by permission

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Beatrice Candis on behalf of Sawnie Mcentire
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bcandis@pmmlaw.com
Envelope ID: 87032974
Filing Code Description: Motion - Continuance
Filing Description: AMENDED AGREED
Status as of 4/25/2024 9:01 AM CST

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Linda Kimball		lkimball@pmmclaw.com	4/24/2024 4:30:50 PM	SENT
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John T.Cox		TCox@gibsondunn.com	4/24/2024 4:30:50 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	4/24/2024 4:30:50 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	4/24/2024 4:30:50 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	4/24/2024 4:30:50 PM	SENT
Ian Salzer		isalzer@pmmlaw.com	4/24/2024 4:30:50 PM	SENT
Marshall R.King		MKing@gibsondunn.com	4/24/2024 4:30:50 PM	SENT
Pat A.Vickery		PVickery@gibsondunn.com	4/24/2024 4:30:50 PM	SENT

Associated Case Party: CHARITABLE DAF FUND LP

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Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	4/24/2024 4:30:50 PM	SENT

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff Charitable DAF Fund, L.P.'s Motion to Compel Discovery, filed February 29, 2024, is set for hearing on **August 7, 2024, at 1:15 p.m.**, before the Honorable Judge Tonya Parker in the 116th Judicial District Court of Dallas County, Texas at 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Respectfully submitted,

/s/ *Sawnie A. McEntire*
Sawnie A. McEntire
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ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ *Sawnie A. McEntire*
Sawnie A. McEntire

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This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Beatrice Candis on behalf of Sawnie Mcentire
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Envelope ID: 89465025
Filing Code Description: Notice Of Hearing / Fiat
Filing Description: PLAINTIFF MOTION TO COMPEL SET 8/7 @ 1:15
Status as of 7/3/2024 11:59 AM CST

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Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	7/3/2024 11:30:13 AM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	7/3/2024 11:30:13 AM	SENT
Maria Kountz		MKountz@pmmlaw.com	7/3/2024 11:30:13 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	7/3/2024 11:30:13 AM	SENT

FILED
7/9/2024 5:24 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

CERTIFICATE OF CONFERENCE ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

I hereby certify that on July 9, 2024, I spoke with counsel for Plaintiff regarding the relief requested in this motion, who responded that Plaintiff is opposed to the relief requested in this motion.

/s/ *Patrick A. Vickery*
Patrick A. Vickery

Dated: July 9, 2024

Respectfully submitted,

/s/ Patrick A. Vickery

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pvickery@gibsondunn.com

Counsel for Defendant Alvarez & Marsal

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2024, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *Patrick A. Vickery*
Patrick A. Vickery

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
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WCassidy@gibsondunn.com
Envelope ID: 89607548
Filing Code Description: Certificate Of Conference
Filing Description: ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE
Status as of 7/10/2024 8:09 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Roqui Brooks		rbrooks@pmmlaw.com	7/9/2024 5:24:15 PM	SENT
Juslyn Young		jyoung@pmmlaw.com	7/9/2024 5:24:15 PM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	7/9/2024 5:24:15 PM	SENT
Maria Kountz		MKountz@pmmlaw.com	7/9/2024 5:24:15 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	7/9/2024 5:24:15 PM	SENT

Case Contacts

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FILED
7/10/2024 8:48 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Jenifer Trujillo DEPUTY

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	DALLAS COUNTY, TEXAS
vs.	§	
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC.	§	
	§	116TH JUDICIAL DISTRICT
	§	
Defendant.	§	

FIFTH AMENDED NOTICE OF HEARING ON DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Please take notice that *Defendant Alvarez & Marsal CRF Management, LLC's Motion for Protective Order and Motion to Abate* filed on August 11, 2023, is set for hearing on Wednesday, August 7, 2024 at 1:15 p.m. The hearing will take place before the Honorable Judge Tonya Parker in the 116th District Court, 600 Commerce Street, 6th Floor New Tower, Dallas, Texas 75202.

Dated: July 10, 2024

Respectfully submitted,

/s/ Patrick A. Vickery

John T. Cox III
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Patrick A. Vickery
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pvickery@gibsondunn.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2024, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *Patrick A. Vickery*
Patrick A. Vickery

Automated Certificate of eService

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Filing Description: 5TH AMENDED ON MOTION TO PROTECT
Status as of 7/10/2024 9:34 AM CST

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Associated Case Party: Charitable DAF Fund, L.P.

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SCHEEF & STONE
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July 16, 2024

Via: E-Mail
Honorable Tonya Parker
116th Judicial District Court
George L. Allen, Sr. Courts Building
600 Commerce Street
6th Floor New Tower
Dallas, TX 75202

Re: *Charitable DAF Fund, L.P. v. Alvarez & Marsal CRF Management, LLC*; Cause No. 22-10107; In the 116th Judicial District Court of Dallas County, Texas.

Judge Parker:

The above-referenced case was mediated on July 18, 2024. The case did not settle, but I will keep the mediation open and follow up with them in August.

Thank you for the appointment.

Sincerely,

/s/ Bryan Haynes

Bryan Haynes

cc: Sawnie A. McEntire (Via Email)
Roger L. McCleary (Via Email)
John T. Cox III (Via Email)
Marshall R. King (Via Email)
Patrick A. Vickery (Via Email)

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

PROPOSED ORDER DENYING DEFENDANT'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

The Court, having considered Defendant Alvarez & Marsal CRF Management, LLC's ("A&M" or "Defendant") Motion for Protective Order and Motion to Abate ("Motion"), Plaintiff Charitable DAF Fund, L.P.'s ("DAF") Response in Opposition ("Response"), any reply, and any arguments of counsel, is of the opinion that the Motion should be DENIED.

IT IS THEREFORE ORDERED that A&M's Motion for Protective Order and Motion to Abate are DENIED in their entirety.

IT IS FURTHER ORDERED that Defendant, Alvarez & Marsal CRF Management, LLC shall serve full and complete answers to all served interrogatories (Nos. 1-15) and full and complete responses to all requests for production, (Nos. 1-42), and produce responsive documents to DAF's document requests within thirty (30) days.

SIGNED on this 7th day of August, 2024.

District Judge

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY

The Court, having considered Plaintiff, Charitable DAF Fund, L.P.'s ("DAF") Motion to Compel Discovery ("Motion"), seeking an order compelling Defendant, Alvarez & Marsal CRF Management, LLC's ("A&M" or "Defendant") to respond and produce discovery, any response, and any arguments of counsel, is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that DAF's Motion to Compel Discovery is GRANTED.

IT IS FURTHER ORDERED that Defendant, Alvarez & Marsal CRF Management, LLC shall serve full and complete answers to all served interrogatories (Nos. 1-15) and full and complete responses to all requests for production, (Nos. 1-42), and produce responsive documents to DAF's document requests within twenty (20) days.

SIGNED on this 7th day of August, 2024.

District Judge

FILED
8/7/2024 10:00 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
Defendant.	§	116th JUDICIAL DISTRICT

NOTICE OF APPEARANCE

COMES NOW, Plaintiff Charitable DAF Fund, L.P. ("DAF") and hereby adds attorneys James J. McGoldrick and Ian B. Salzer as additional counsel on behalf of DAF.

The address, telephone number, facsimile number, email address, and State Bar of Texas identification number for James J. McGoldrick and Ian B. Salzer are:

James J. McGoldrick
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DAF respectfully requests that the Court and all parties include the above counsel on any future notices and copies of pleadings, papers, and other materials relevant to this matter. Sawnie A. McEntire shall remain as the attorney in charge and lead trial counsel for DAF, and Roger L. McCleary shall also remain as counsel of record for DAF.

Respectfully submitted,

PARSONS MCENTIRE MCCLEARY PLLC

/s/ Ian B. Salzer

Sawnie A. McEntire
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ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Ian B. Salzer
IAN B. SALZER

3164616.1

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Filing Description:
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Associated Case Party: Charitable DAF Fund, L.P.

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Beatrice Candis		bcandis@pmmlaw.com	8/7/2024 10:00:48 AM	SENT

Associated Case Party: CHARITABLE DAF FUND LP

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8/28/2024 1:21 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC,	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Charitable DAF Fund, L.P. ("**DAF**" or "**Plaintiff**"), and files this Second Amended Petition against Defendant Alvarez & Marsal CRF Management, LLC ("**A&M**" or "**Defendant**"), and for causes of action would respectfully show:

I. DISCOVERY PLAN

1. Plaintiff asserts that discovery should be conducted under Level 3 pursuant to Texas Rules of Civil Procedure 190.1 and 190.4.

II. PARTIES

2. DAF is a limited partnership organized in the Cayman Islands. DAF conducts charitable activities in the State of Texas.

3. A&M is a foreign limited liability company organized and existing under the laws of the State of Delaware. A&M engages in business in Texas but has not

designated or maintained a resident agent for service of process in Texas. A&M has generally appeared and answered in this lawsuit.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action as DAF currently seeks monetary relief over $1,000,000. The damages sought by DAF are within the jurisdictional limits of the Court.

5. Venue is proper under Texas Civil Practice and Remedies Code §15.002(a)(1) because all or a substantial part of the events or omissions giving rise to this claim occurred in Dallas County, Texas.

6. This Court has personal jurisdiction over A&M because: (i) A&M is and has been doing business in Texas pursuant to § 17.042 of the Texas Civil Practices and Remedies Code, (ii) A&M has purposefully availed itself of the benefits and protections offered by the State of Texas by conducting business in this State, (iii) A&M committed wrongful acts within this State, (iv) A&M's conduct in and contacts with this State give rise to or relate to the causes of action alleged herein, and (v) A&M has submitted to this Court's jurisdiction by appearing and answering in this lawsuit.

IV. FACTUAL BACKGROUND

7. DAF's exclusive mission involves charity. Since 2012, DAF's supporting organizations committed over $42 million to nonprofit organizations and funded approximately $32 million of total commitments. These charitable causes include

education, veterans, first responders, health and medical research, economic and community development initiatives, and youth and family programs in the State of Texas. This lawsuit is necessary because of A&M's improper withholding of assets lawfully owned by and due to DAF and A&M's associated interference with DAF's charitable mission.

8. On or about June 30, 2016, DAF purchased shares in the Highland Crusader Fund II, Ltd. ("**Crusader Fund II**")[1] from the Promethee T Fund (formerly known as Promethee Tremont Fund) ("**Promethee**") for in excess of $1.0 million ("**DAF's Direct Interest**"). In connection with DAF's acquisition of this interest, DAF became a party to (or beneficiary of) Crusader Fund II's Subscription Documents, Offering Memorandum, Memorandum of Association, By-Laws, and various other agreements governing the relationship between Crusader Fund II and its investors.

9. DAF is the lawful owner of all right, title, and interest in and to DAF's Direct Interest and to DAF's Full Direct Interest, as described below. The Crusader Fund II is a segregated, identifiable fund held separate from other funds managed by A&M. A&M has no legitimate claim to DAF's Full Direct Interest.

10. A&M is the investment manager of the Crusader Fund II and has been so at all times relevant to the claims asserted in this lawsuit. As the investment manager,

[1] Crusader Fund II is part of an investment scheme with an "Onshore Fund," an "Offshore Fund" (Crusader Fund II), and a "Master Fund," which is collectively referred to as the "**Crusader Funds**."

A&M receives payment from the Crusader Fund II for A&M's management services. Upon information and belief, A&M's compensation is based on the value of Crusader Fund II; accordingly, A&M earns more compensation if Crusader Fund II has more available funds.

A. Withheld Distributions

11. On or about July 12, 2021, A&M informed DAF that DAF's Direct Interest "will not exist as of June 30 NAV."[2] A&M then refused to make distributions to DAF and treated DAF's Direct Interest as having been extinguished.

12. DAF previously made a written demand to A&M, through A&M's legal counsel, for payment to DAF of the full value of DAF's Direct Interest, plus all related distributions and other withholdings owed to DAF in regard to DAF's Direct Interest ("**DAF's Full Direct Interest**"). A&M initially refused to comply with this demand and did so wrongfully without legal justification. In doing so, A&M deprived DAF of DAF's access to and right to possess and use DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. In short, A&M deprived DAF of DAF's property without any legal basis or justification.

13. A&M's actions deprived DAF of the use of its funds, namely the ability to earn profits on such funds to promote charitable causes, for the time period when A&M

[2] NAV stands for Net Asset Value.

improperly exercised control over and withheld distributions—and, upon information and belief, while A&M continued to charge additional fees based on an inflated value of the Crusader Fund II due to A&M's failure to make timely distributions to DAF.

14. Upon information and belief, A&M is a registered investment advisor subject to the Investment Advisors Act of 1940. Notwithstanding its role as a registered investment advisor, A&M improperly withheld DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, and A&M refused to distribute equivalent funds to DAF.

15. A&M entered into an informal confidential and special relationship with DAF. A&M controls and manages funds in which DAF has a direct interest. DAF placed trust and confidence in A&M to control, manage, and distribute DAF's Full Direct Interest. DAF's damages arise out of A&M's refusal to recognize DAF's right to control DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, and A&M's decision, instead, to unlawfully withhold these funds even though they should have been distributed to DAF.

16. On or about February 17, 2023, after this lawsuit was filed, A&M belatedly transferred $951,060.82 to DAF, effectively acknowledging its prior breaches of its duties as manager of the Crusader Fund II. On or about March 29, 2023, A&M again transferred $139,101.94 to DAF in further acknowledgement of DAF's Direct Interest and again confirming A&M's prior breaches of duties.

B. Sale of Claims

17. Upon information and belief, A&M also preferred the interests of one or more other Crusader Fund II interest holders. When doing so, A&M created, and violated, separate and independent fiduciary duties which should have ensured, but did not, that all Crusader Fund investors were treated fairly, regardless of class.

18. A&M's claimed basis for withholding DAF's Direct Interest was an award issued in a prior arbitration involving Crusader Fund II, styled *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.* This arbitration was a dispute between certain investors in the Crusader Funds, known as the "**Redeemer Committee**," and the Fund's previous investment manager, Highland Capital Management, L.P. ("**HCM**"), which was replaced as investment manager by A&M during the pendency of the arbitration.

19. Ultimately the arbitration panel issued a partial final award, followed by a final award, against HCM in favor of the Redeemer Committee on behalf of the Crusader Funds. Neither DAF nor A&M were parties to the arbitration, and no party ever attempted to confirm the arbitration award against DAF in any civil court. DAF is also not referenced in either the partial or the final awards issued by the arbitration panel.

20. Several months after the final arbitration award was issued, HCM filed bankruptcy and the Redeemer Committee and the Crusader Funds filed overlapping claims in the amount of $190,824,557 against HCM's estate (Claim Nos. 72 and 81) based

on the arbitration award (the "**Claims**"). The Crusader Funds' claim was filed by A&M and also included a claim for $23,483,446 in additional damages for management fees, resulting in a total claim of over $214 million.

21. A&M and the Redeemer Committee then entered into a settlement with HCM which reduced the Claims to the allowed amounts of $136.7 million—in favor of the Redeemer Committee—and $50,000—in favor of the Crusader Funds. A motion to approve the Claims was filed in the bankruptcy court by HCM [Dkt. 1089] ("**Settlement Motion**"), which confirms that A&M allowed the Redeemer Committee to control negotiations concerning funds to which the Crusader Funds asserted entitlement.[3]

22. In doing so, the Redeemer Committee became one of the largest creditors in HCM's bankruptcy estate and held a position on the Unsecured Creditors' Committee, while A&M effectively sat on the sideline abdicating its responsibilities. In effect, A&M abdicated—to the Redeemer Committee—its duties to manage Crusader Fund II's assets, thereby failing to ensure fair treatment of all interest holders and maximization of recovery.

23. In or around April 2021, the approved Claims were sold to a special purpose entity, Jessup Holdings, LLC ("**Jessup**"), which is owned and controlled by a hedge fund, Stonehill Capital Management, LLC ("**Stonehill**"). On July 6, 2021, A&M

[3] Settlement Motion, ¶ 27 (emphasis added).

issued a letter ("**July 6 Letter**") notifying the investors of the Crusader Funds that A&M had brokered this sale, and further disclosing that A&M and the Redeemer Committee sold both Claims for approximately 50% of the allowed amount of the Redeemer Committee's claim alone, or approximately one third of the Crusader Funds' total original claim.

24. HCM has since paid out almost $320 million—$255 million of which had been distributed by the end of Q3 2022.[4] Had A&M done nothing and simply held the Claims for one year after HCM's plan was confirmed the Crusader Funds' investors would have received an additional $10 million, and if A&M had held the Claims through Q2 2024, the Crusader Funds' investors would have received an additional $30 million over what was paid for the Claims. Investors not on the Redeemer Committee, such as DAF, were never consulted about the sale to Jessup nor the timing of the sale.

25. A&M's July 6 Letter concludes by informing investors that a distribution of $78 million in funds received from the sale of the Claims to Jessup would occur by July 31, 2021, and would be "based on the [NAV] as of June 30, 2021"—the same NAV date that A&M later informed DAF would reflect the cancellation of DAF's interests. It appears the sale was timed deliberately to either (a) avoid any distributions to DAF, or (b) appease the Redeemer Committee's apparent need for liquidity rather than holding onto the Claims to maximize the realization on those assets.

[4] HCM Dkts. 3582, 4131.

26. One or more of A&M's foregoing acts or omissions proximately caused or, alternatively, contributed to cause DAF to be damaged in an amount far exceeding the jurisdictional limit of this Court.

V. CAUSES OF ACTION

Count One – Breach of Fiduciary Duties

27. DAF incorporates all foregoing factual averments by reference as if set fully set forth herein.

28. A&M has exercised and continues to exercise dominion and control over DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M holds a position of special trust and confidence with DAF regarding DAF's Full Direct Interest. A&M owes DAF common law fiduciary duties arising out of A&M's position of trust and confidence. Upon information and belief, as Investment Manager, the governing documents, including the Offering Memorandum and the advisory management agreements, required A&M to act fairly, equitably, and in accordance with reasonable commercial standards. Upon information and belief, these duties further obligated A&M to not unlawfully and improperly withhold investor's interests, including DAF's Direct Interest.

29. The fiduciary duties A&M owed, and continues to owe, to DAF include, but are not limited to, the duty of loyalty—to always act in the best interests of the investor, the duty to act with utmost good faith, the duty to refrain from self-dealing, the

duty of fair and honest dealing, the duty to act with integrity of the strictest kind, and the duty of candor and full disclosure. Central to the fiduciary duties A&M owed and continues to owe DAF are the duties to not deprive DAF of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, and to not wrongfully reduce the values of those interests.

30. A&M's failure and refusal to pay or return DAF's Full Direct Interest, even after DAF made specific written demand, is intentional misconduct that breached one or more of the fiduciary duties A&M owed and continues to owe DAF and has caused damage to DAF.

31. By abdicating its responsibility to manage the recovery and sale of the Redeemer Committee's and Crusader Funds' bankruptcy Claims, A&M further breached its fiduciary duties to the investors of Crusader Fund II, including DAF. Furthermore, by preferring certain equity holders (*i.e.*, various members of the Redeemer Committee), A&M breached its fiduciary duties to Crusader Fund II's other shareholders like DAF, including the duty of loyalty. A&M assumed independent fiduciary duties to DAF by preferring the interests of other interest holders to those of DAF. When A&M solicited offers to purchase the Claims and entered into exclusive negotiations with buyers, A&M was required to ensure that the sale of the Claims was in the best interests of all investors, not just for various members of the Redeemer Committee, yet it appears A&M either (a) orchestrated and timed the sale of the Claims to freeze-out DAF and retain proceeds

owed to DAF for A&M's own benefit or the benefit of other investors (such as the Redeemer Committee), or (b) allowed the Redeemer Committee to dominate the management of the Claims in derogation of A&M's fiduciary duties as investment manager, to DAF's detriment, so that the Redeemer Committee could quickly liquidate its interest, rather than managing the Claims to maximize the return on those assets.

32. Because A&M knowingly committed a clear and serious breach of its fiduciary duties, DAF is entitled to disgorge fees, profits, and/or funds received by A&M in connection with its purported management of Crusader Fund II and the Claims.

33. DAF also is entitled to an accounting of its interest in the Crusader Fund II to verify the accuracy of the distributions made to DAF by A&M after this suit was originally filed. This audit is also necessary to confirm all other benefits to which the DAF is entitled but which have been withheld by A&M.

34. A&M is liable to DAF for actual damages, disgorgement, exemplary damages, an accounting, and all other relief to which DAF is justly and legally entitled as the result of A&M's breach of fiduciary duties owed to DAF.

Count Two – Conversion

35. DAF incorporates by reference the foregoing factual and legal averments as if fully set forth herein.

36. DAF owns and has a right to immediate possession of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest. A&M

had no legitimate claim to DAF's Full Direct Interest or to the Crusader Fund II regarding DAF's Full Direct Interest.

37. The Crusader Fund II funds were delivered to A&M for safekeeping and management. The Crusader Fund II funds were intended to be segregated from other funds managed by A&M.

38. Upon information and belief, A&M held the Crusader Fund II funds in substantially the same form as received.

39. DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, were separate and identifiable funds held by A&M for the benefit of DAF. DAF made demand upon A&M to immediately relinquish possession of DAF's Full Direct Interest to DAF. A&M ignored DAF's demand and A&M wrongfully exercised dominion and control over DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest.

40. DAF was deprived of its lawful right to ownership and control of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, by A&M's unauthorized withholding of the same without a legally correct basis to do so.

41. As a proximate and/or direct result of A&M's conversion of DAF's Full Direct Interest or, in the alternative, the capital account value of DAF's Direct Interest, DAF has suffered significant damages for which damages DAF now sues.

42. A&M is liable to DAF for actual damages, punitive damages, and all other relief to which DAF is justly and legally entitled as the result of A&M's conversion.

Count Three – Tortious Interference

43. DAF respectfully incorporates by reference the foregoing factual and legal averments as if fully set forth herein.

44. DAF's investment in, and relationship with, Crusader Fund II is the subject of various contracts, including, without limitation, the Crusader Fund II's Subscription Documents, Offering Memorandum, Memorandum of Association, and By-Laws.

45. As investment manager of Crusader Fund II, A&M was and is in possession of these agreements and, during all material times, A&M was aware of the terms of these agreements.

46. Despite knowing that A&M had no right to unilaterally cancel DAF's Direct Interest under any of the relevant transactional documents, A&M did so without justification or excuse.

47. A&M's cancellation of DAF's Direct Interest is a direct interference with A&M's rights and expectancies under the relevant transactional documents, which has proximately caused or, alternatively, contributed to cause DAF damages.

48. Upon information and belief, A&M timed the sale of the Claims to further interfere with DAF's Direct Interest by attempting to ensure that DAF would not receive

its pro rata proceeds from the sale, enabling A&M to instead retain those proceeds for A&M's own benefit or the benefit of other investors (such as the Redeemer Committee).

49. Because A&M had no business justification for cancelling DAF's Direct Interest and A&M timed the sale of the Claims either (a) around the cancellation of DAF's Direct Interest or (b) when the Redeemer Committee wanted to liquidate rather than when it would be prudent to monetize the Claims for all investors—moves that were calculated solely to harm DAF—the only conclusion is that A&M acted with malicious intent in interfering in the relationship between DAF and Crusader Fund II.

50. A&M is liable to DAF for actual damages, punitive damages, and all other relief to which DAF is justly and legally entitled as the result of A&M's tortious interference.

VI. DAMAGES

51. DAF incorporates the foregoing factual averments, and the factual and legal averments in Counts One through Three above, as if fully set forth herein and further alleges the following in the alternative.

52. DAF requests judgment against A&M for all of DAF's actual damages, including, without limitation, direct damages, special damages, consequential damages, lost savings, lost profits, out-of-pocket damages, future damages, and incidental damages, to which DAF is entitled, in addition to punitive or exemplary damages, prejudgment and post-judgment interest at the highest legal rate, and costs of Court.

53. DAF further requests judgment against A&M for disgorgement of all of A&M's fees, profits, and/or other funds received in connection with its purported management of the Crusader Fund II with respect to DAF's interest in that fund, and an accounting of DAF's interest in the Crusader Fund II and of the related fees and expenses charged by A&M.

VII. CONDITIONS PRECEDENT

54. All conditions precedent, if any, to the claims asserted herein have been performed, excused, waived, satisfied, or have otherwise occurred.

VIII. JURY DEMAND

55. DAF has demanded a trial by jury and tendered the jury fee pursuant to Rule 216 of the Texas Rules of Civil Procedure.

IX. RULE 193.7 NOTICE

56. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, DAF intends to use any and all documents produced in A&M's discovery responses as evidence at the time of any hearing or trial in this matter.

PRAYER

Plaintiff, Charitable DAF Fund, L.P., respectfully requests that this Court grant judgment in DAF's favor over and against Defendant Alvarez & Marsal CRF Management, LLC as set forth herein, including but not limited to, for an accounting of DAF's interest in the Crusader Fund II and the related fees and expenses charged by

A&M, for disgorgement of all of A&M's fees, profits, and/or other funds received by A&M with respect to DAF's interest in that fund, for all actual damages DAF has suffered, for exemplary damages, prejudgment and post-judgment interest at the highest rate permitted by law, for DAF's costs of court, and that DAF be awarded all other and further relief, at law and in equity, general and special, to which DAF may be justly entitled.

Dated: August 28, 2024

Respectfully submitted,

PARSONS MCENTIRE MCCLEARY PLLC

/s/ Sawnie A. McEntire

Sawnie A. McEntire
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(713) 960-7347 (Facsimile)

ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure via the Court's E-File system.

/s/ Sawnie A. McEntire
SAWNIE A. MCENTIRE

3166176.1

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 91423897
Filing Code Description: Amended Petition
Filing Description: 2ND
Status as of 8/29/2024 8:48 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Juslyn Young		jyoung@pmmlaw.com	8/28/2024 1:21:25 PM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	8/28/2024 1:21:25 PM	SENT
Maria Kountz		MKountz@pmmlaw.com	8/28/2024 1:21:25 PM	SENT
James J.McGoldrick		jmcgoldrick@pmmlaw.com	8/28/2024 1:21:25 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	8/28/2024 1:21:25 PM	SENT
Tim Miller		tmiller@pmmlaw.com	8/28/2024 1:21:25 PM	SENT
John T.Cox		TCox@gibsondunn.com	8/28/2024 1:21:25 PM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	8/28/2024 1:21:25 PM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	8/28/2024 1:21:25 PM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	8/28/2024 1:21:25 PM	SENT
Ian Salzer		isalzer@pmmlaw.com	8/28/2024 1:21:25 PM	SENT
Marshall R.King		MKing@gibsondunn.com	8/28/2024 1:21:25 PM	SENT
Pat A.Vickery		PVickery@gibsondunn.com	8/28/2024 1:21:25 PM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	8/28/2024 1:21:25 PM	SENT

CAUSE NO. DC-22-10107

CHARITABLE DAF FUND, L.P., Plaintiff, v. ALVAREZ & MARSAL CRF MANAGEMENT, LLC Defendant.	IN THE DISTRICT COURT DALLAS COUNTY, TEXAS 116TH JUDICIAL DISTRICT

DEFENDANT'S MOTION TO QUASH PLAINTIFF'S FIRST AMENDED NOTICE OF DEPOSITION OF DEFENDANT'S CORPORATE REPRESENTATIVE

Pursuant to Texas Rule of Civil Procedure 199.4, Defendant Alvarez & Marsal CRF Management, LLC (A&M) moves to quash the First Amended Notice of Deposition of A&M, served on A&M by Plaintiff Charitable DAF Fund, L.P. (DAF) on August 29, 2024. A true and correct copy of the Notice is attached hereto as Exhibit A and is incorporated herein by reference.

A&M objects to the time of the deposition under Texas Rule of Civil Procedure 199.4 because DAF has not provided a reasonable date and time for the depositions as required by Texas Rule of Civil Procedure 199.2(b)(2). DAF did not confer with A&M before it served the Notice, and A&M's corporate designee is not available on the date listed in the Notice (September 13, 2024). A&M's designee is, however, available on October 8, 2024 and October 10, 2024, and A&M proposes one of those two dates to hold the deposition. A&M will meet and confer in good faith with DAF about those dates.

A&M therefore respectfully requests that the Court grant this motion and order the Notice quashed. As this motion has been filed within three business days of the receipt of the Notice, the

deposition sought by the Notice is automatically stayed unless and until the Court rules otherwise. Tex. R. Civ. P. 199.4.

Dated: September 4, 2024

Respectfully submitted,

By: */s/ John T. Cox III*
John T. Cox III
Texas Bar No. 24003722
Patrick A. Vickery
Texas Bar No. 24115905
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Ste. 2100
Dallas, Texas 75201-2923
Telephone: (214) 698-3256
Facsimile: (214) 571-2923
TCox@gibsondunn.com
PVickery@gibsondunn.com

Counsel for Defendant Alvarez & Marsal CRF Management, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September, 2024, the foregoing document was electronically filed with the Court using CM/ECF, which will send notification of this filing to counsel of record in the above-captioned case.

/s/ Patrick A. Vickery
Patrick A. Vickery

Exhibit A

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC	§	
	§	
	§	
Defendant.	§	116th JUDICIAL DISTRICT

FIRST AMENDED NOTICE OF DEPOSITION OF ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

TO: Defendant Alvarez & Marsal, CRF Management, LLC, by and through its attorneys of record, John T. Cox III and Andrew Bean, GIBSON, DUNN & CRUTCHER LLP, 2001 Ross Avenue, Suite 2100, Dallas, TX 75201.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, Plaintiff Charitable DAF Fund, L.P. ("DAF") will take the deposition on oral examination under oath of Defendant Alvarez & Marsal, CRF Management, LLC ("A&M") on **September 13, 2024, at 9:00 a.m.**, before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at Gibson, Dunn & Crutcher LLP, 2001 Ross Avenue, Suite 2100, Dallas, TX 75201, before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), A&M is requested to designate one or more person(s) most knowledgeable and prepared to testify

on behalf of A&M concerning the topics identified on **Exhibit 1**, and to produce the documents described in **Exhibit 2**, attached hereto.

Respectfully submitted,

PARSONS MCENTIRE MCCLEARY PLLC

/s/ James J. McGoldrick
Sawnie A. McEntire
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(713) 960-7315 (Phone)
(713) 960-7347 (Facsimile)

COUNSEL FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2024, a true and correct copy of this instrument was served on Defendant's counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ James J. McGoldrick
JAMES J. MCGOLDRICK

EXHIBIT A
TO NOTICE OF DEPOSITION OF ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

For purposes of the attached Exhibits 1 and 2, the following rules and definitions shall apply, along with the rules of construction and instructions provided under applicable discovery rules and law:

RULES OF CONSTRUCTION

1. Unless specifically stated otherwise in a particular Topic or Request, the relevant time period is June 30, 2016, to Present.

2. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the topic or document request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

3. The terms "any," "all," and "each" shall each be construed as encompassing any and all.

4. The use of the singular form of any word shall be construed to include the plural and vice versa.

5. All phrases following the terms "including" are intended to illustrate the kinds of information responsive to each Topic or Request, and shall be construed as "including, but not limited to." Such examples are not intended to be exhaustive of the information sought and shall not in any way be read to limit the scope of a Topic or Request.

6. References to an entity are intended to include past and present officers, directors, employees, agents, affiliates, subsidiaries, owners, partners, general partners, shareholders, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, and/or any other person(s) acting on behalf of such entity.

DEFINITIONS

For the purposes of these Topics and Requests, the following terms shall have the following definitions and meanings, unless expressly provided otherwise:

A&M, *you*, and *your*. The terms "A&M", "you" and "your" shall mean and refer to Alvarez & Marsal, CRF Management, LLC and its managing and other members, directors, officers, agents, employees, representatives, attorneys, partners, predecessors, successors, assigns, and anyone else acting on A&M's behalf, now or at any time relevant to the topic matters in this notice *Big Boy Clause*. The term "Big Boy Clause" shall mean and refer to any agreement, or provision in any agreement, that purports to waive claims based on one party's superior knowledge and the non-disclosure of that superior knowledge to the other transacting party.

Bankruptcy. The term "Bankruptcy" shall mean and refer to the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

Claims. The term "Claims" shall mean and refer to collectively the "Redeemer Committee Claim," as defined herein, and the "Crusader Funds Claim," as defined herein.

Communication(s). The term "communication(s)" shall mean any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, email, text message, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" shall mean reflecting, regarding, relating to, referring to, describing, evidencing, supporting, forming any basis for, or constituting.

Crusader Fund. The term "Crusader Fund" is defined as the Highland Crusader Fund II, Ltd., which is a subject of this Lawsuit and in which DAF purchased participating shares in or around June of 2016.

Crusader Funds Claims. The term "Crusader Funds Claims" shall mean and refer to the Crusader Funds' allowed general unsecured claim of $50,000 against Highland Capital Management L.P., as referred to in the July 6 Letter.

Document or Documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the Texas Rules of Civil Procedure, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the

original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms "Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) and/or all related metadata with respect to all such Documents/ESI.

Governing Documents. The term "Governing Documents" shall mean and include all documents, including any amendments or supplements thereto, governing the relationship(s) between the Crusader Fund and its parent(s), subsidiaries, affiliates, partners, limited partners, shareholders, investors, members, managers, directors, officers, or employees, including, by way of example, (1) the Memorandum of Association of the Fund, (2) the Crusader Fund's By-Laws, (3) the Master Fund's Limited Partnership Agreement, (4) the Investment Management Agreement, (5) the Administration Agreement, (6) the Subscription Documents investors must execute to obtain an interest in the Fund; (7) the Offering Memorandum for the Crusader Fund dated September 1, 2006, and (8) the Crusader Fund's partnership agreement.

Grosvenor. The term "Grosvenor" shall mean and refer to Grosvenor Capital Management, L.P. and its managing and other members, directors, officers, agents, employees, representatives, attorneys, general and limited partners, predecessors,

successors, assigns, and anyone else acting on Grosvenor Capital Management, L.P.'s behalf, now or at any time relevant to the topic matters in this notice.

HCM. The term "HCM" shall mean and refer to Highland Capital Management L.P. and its managing and other members, directors, officers, agents, employees, representatives, attorneys, general and limited partners, predecessors, successors, assigns, and anyone else acting on its behalf, now or at any time relevant to the topic matters in this notice.

Identify or *identity(ies)* (person(s)). The terms "identify" or "identity(ies)," when referring to a person, shall mean to provide the person's full first and last name; last known address, telephone number, and e-mail address; and last known place of employment.

Identify or identity(ies) (document(s)). The terms "identify" or "identity(ies)," when referring to a document, shall mean to provide the document's name; the date of the document's creation; the form of the document (e.g., letter, e-mail message, etc.); a description of the substance of the document; and the identity of the person who currently possesses the document (and, if the document no longer exists, an explanation for why it no longer exists and the date on which it ceased to exist).

Jessup. The term "Jessup" shall mean and refer to Jessup Holdings LLC and its managing and other members, officers, directors, agents, employees, representatives, attorneys, general and limited partners, predecessors, successors, assigns, and anyone

else acting on Jessup Holdings LLC's behalf, now or at any time relevant to the topic matters in this notice.

July 6 Letter. The term "July 6 Letter" shall mean and refer to the letter sent by A&M to Highland Crusader Funds Stakeholders re: "Update & Notice of Distribution" dated July 6, 2021.

Lawsuit. The term "Lawsuit" shall mean and refer to the above-captioned lawsuit styled: *Charitable DAF Fund, L.P. v. Alvarez & Marsal, CRF Management, LLC,* Cause No. DC-22-10107; 116th Judicial District Court of Dallas County, Texas.

Person. The term "person" shall mean any natural person and/or any business, legal, or governmental entity or association.

Plaintiff and *Defendant*. The terms "Plaintiff" and "Defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, shall mean the party or parties, and where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

Redeemer Committee. The term "Redeemer Committee" shall mean the Redeemer Committee of the Crusader Funds.

Redeemer Committee Claim. The term "Redeemer Committee Claim" shall mean and refer to the Redeemer Committee's allowed general unsecured claim of $137,696,610 against HCM, as referred to in the July 6 Letter.

Sale of the Claims. The term "Sale of the Claims" shall mean and refer to the sale of

the Claims that occurred on or about April 30, 2021, as described in the July 6 Letter.

Seery. The term "Seery" shall mean and refer to James P. Seery, individually and/or in any representative capacity.

Stonehill. The term "Stonehill" shall mean and refer to Stonehill Capital Management, LLC and its managing and other members, officers, directors, agents, employees, representatives, attorneys, general and limited partners, predecessors, successors, assigns, and anyone else acting on Stonehill Capital Management, LLC's behalf, now or at any time relevant to the topic matters in this notice.

EXHIBIT 1
TOPIC CATEGORIES

The witness(es) designated by A&M to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

1. The current value of DAF's capital account in the Crusader Fund;

2. The total payments, from June 30, 2016, to the present, paid to or otherwise received by A&M relating to A&M's role as the investment manager for the Crusader Fund;

3. All sums of money, from June 1, 2016, to the present, A&M has received, directly or indirectly, from, or in connection with, the Crusader Fund;

4. All payments, from June 1, 2016, to the present, and the identity of the recipient(s) and the amount(s) paid by, from, or on behalf of the Crusader Fund;

5. Identification of all financial accounts that A&M opened, maintained, controlled, supervised, and/or closed, which held any shares, funds, other financial interests, or assets of DAF from June 1, 2016, to the present;

6. A&M's compensation for its role as investment manager of the Crusader Fund and how this compensation fluctuates depending on the fund's size, performance, or other factors;

7. Each distribution A&M made, caused to be made, and/or authorized from the Crusader Fund between June 1, 2016 and the present (including the amount of the distribution, the date the distribution was made, and the recipients of the distribution);

8. The alleged legal and factual bases for the contentions made by A&M in A&M's February 20, 2023 Answer, including but not limited to the following:

    i. that DAF's "claims against A&M are barred, in whole or in part, by the Partial Final Award, dated March 6, 2019, and the Final Award, dated May 9, 2019 . . .";

ii. that DAF's "claims against A&M are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel";

iii. that DAF's "claims against A&M are barred, in whole or in part, because of agreement, acquiescence, ratification or consent";

iv. that DAF's "claims against A&M are barred, in whole or in part, by, or for failure to comply with, the express terms and conditions of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., the Investment Management Agreement between Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., Highland Crusader Offshore Partners, L.P., House Hanover, LLC, Alvarez & Marsal CRF Management, LLC, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, and any other document or agreement that governs Plaintiff's ownership of any interest in the Crusader Funds";

v. that DAF's "claims against A&M are barred, in whole or in part, because of accord and satisfaction under the terms of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds";

9. The substance, types, and sources of information A&M considered in making any decision impacting DAF's interest in the Crusader Fund;

10. Whether A&M conducted due diligence, and the details of any due diligence, when evaluating any decision impacting DAF's interest in the Crusader Fund;

11. Any and all communications with Jim Seery relating in any way to the Crusader Fund and/or the Redeemer Committee;

12. Any and all communications with Grosvenor relating in any way to the Crusader Fund, the Redeemer Committee and/or Stonehill;

13. Grosvenor's legal and/or other financial interest in the Crusader Fund and/or the Redeemer Committee;

14. The legal and/or other relationship (financial or otherwise) by and between Grosvenor, Stonehill, and Jessup;

15. The relationship between Grosvenor, Stonehill, Jessup, and A&M;

16. Communications with the Redeemer Committee, or anyone on the Redeemer Committee, relating in any way to DAF's interest in the Crusader Fund;

17. All communications relating to the Sale of the Claims, or the brokerage of any claim in the Bankruptcy held by the Redeemer Committee or the Crusader Fund;

18. A&M's role in the Sale of the Claims, including solicitation and/or participation in the negotiation of bids or offers to purchase the Claims;

19. Seery's role the Sale of the Claims, including solicitation and/or participation in the negotiation of bids or offers to purchase the Claims;

20. Grosvenor's role in the Sale of the Claims, including solicitation and/or participation in the negotiation of bids or offers to purchase the Claims;

21. Stonehill's role in the Sale of the Claims, including solicitation and/or participation in the negotiation of bids or offers to purchase the Claims;

22. Jessup's role in the Sale of the Claims, including solicitation and/or participation in the negotiation of bids or offers to purchase the Claims;

23. The Redeemer Committee's, and anyone on the Redeemer Committee's, role in the Sale of the Claims, including solicitation and/or participation in the negotiation of bids or offers to purchase the Claims;

24. All bids or offers received to purchase the Claims, whether collectively or individually, including all material terms of each such offer or bid;

25. The value of each of the Claims, including all valuations performed by A&M or others, prior to the Sale of the Claims;

26. Valuations of the Crusader Fund's Net Asset Value (NAV), as well as all assets owned by the Crusader Fund, including identification of such valuations, the amounts of such valuations, and the methodology for such valuations;

27. Any external valuation or audits of the NAV attributable to the Crusader Fund;

28. Any documents reflecting profit forecasts relating to any of the Claims;

29. The factual and legal bases for any and all defenses A&M attends to assert in this Lawsuit; and

30. All communications between A&M and DAF.

EXHIBIT 2
DOCUMENT REQUESTS

1. All financial records for all accounts that A&M opened, maintained, controlled, supervised, and/or closed which held any shares, funds, financial or beneficial interest(s), or other assets of DAF at any and/or all times from June 1, 2016 to the present.

2. All documents and/or recordings concerning any communications between A&M and DAF, from June 1, 2016, to the present, concerning or relating to DAF's participating shares and/or interest in the Crusader Fund.

3. All documents and/or recordings concerning any communications between Christopher Wells and DAF, from June 1, 2016 to the present, concerning DAF's participating shares and/or interest in the Crusader Fund.

4. All documents you sent to or received from DAF from June 1, 2016, through the present.

5. All documents concerning fees paid to A&M, directly or indirectly, related to the Crusader Fund from June 1, 2016, through the present.

6. All documents concerning any other sums paid to A&M, directly or indirectly, concerning the Crusader Fund (other than those produced in response to Request No. 5 above) from June 1, 2016, through the present.

7. Documents sufficient to evidence that A&M is a registered investment advisor subject to the Investment Advisors Act of 1940.

8. All Governing Documents for the Crusader Fund in effect at any point in time from June 1, 2016, to the present.

9. All awards or other decisions made by any arbitration panel or any other judicial proceeding or formal authority which you claim impacts the Crusader Fund from June 1, 2016, to the present.

10. All documents purportedly evidencing DAF's acquisition of an interest in the Crusader Fund allegedly in violation of the Joint Plan of Distribution of the Crusader Funds and/or the Scheme of Arrangement relating to Offshore Fund II.

11. All documents evidencing the capital account value of DAF's interest(s) in the Crusader Fund from June 1, 2016, to the present.

12. All documents evidencing any distributions A&M made, caused to be made, and/or authorized from the Crusader Fund (including but not limited to from any Crusader Fund account(s)) between June 1, 2016 and the present.

13. All documents evidencing each instance where A&M disclosed to DAF any of the distributions identified in Topic No. 7 above.

14. All documents purportedly evidencing any notice provided by A&M to DAF regarding A&M's intent to withhold distributions from DAF relating to the Crusader Fund between June 1, 2016, and the present.

15. All documents concerning A&M's decision to withhold and/or refusal to distribute funds to DAF proportional to DAF's interest in the Crusader Fund between June 1, 2016, and the present.

16. All documents concerning A&M's decision to distribute $951,060.82 to DAF on February 17, 2023.

17. All documents concerning A&M's decision to distribute $139,101.94 to DAF on March 29, 2023.

18. All documents referring, forming any basis for, or otherwise relating to A&M's decision to treat DAF as an equity holder in the Crusader Fund and to include DAF in any future distributions as reflected in the February 21, 2023 Letter from Gibson, Dunn & Crutcher LLP to Parsons McEntire McCleary PLLC (the "February 21 Letter").

31. All documents and communications with or including Jim Seery relating in any way to the Crusader Fund.

32. Any documents and communications with the Redeemer Committee relating in any way to the Crusader Fund.

19. All communications relating to the sale or brokerage of any claim in the Bankruptcy held by the Redeemer Committee or the Crusader Fund.

20. All documents referring, forming any basis for, or otherwise purportedly supporting your claim that DAF's interest(s) in the Crusader Fund had been allegedly extinguished in 2019 or 2020 as reflected in the February 21 Letter.

21. A true and accurate copy of the Investment Management Agreement between the Crusader funds, House Hanover, LLC, A&M, Alvarez & Marsal Asset

Management Services, LLC, and the Redeemer Committee of the Crusader Funds, dated August 4, 2016, as well as any amendments thereto.

22. All documents which you claim support your contention that DAF's "claims against A&M are barred, in whole or in part, by the Partial Final Award, dated March 6, 2019, and the Final Award, dated May 9, 2019 . . ." as alleged in Paragraph 5 of A&M's February 20, 2023, Answer.

23. All documents which you claim support your contention that DAF's "claims against A&M are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel" as alleged in Paragraph 6 of A&M's February 20, 2023, Answer.

24. All documents which you claim support your contention that DAF's "claims against A&M are barred, in whole or in part, because of agreement, acquiescence, ratification or consent" as alleged in Paragraph 7 of A&M's February 20, 2023, Answer.

25. All documents which you claim support your contention that DAF's "claims against A&M are barred, in whole or in part, by, or for failure to comply with, the express terms and conditions of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., the Investment Management Agreement between Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., Highland Crusader Offshore Partners, L.P., House Hanover, LLC, Alvarez & Marsal CRF Management, LLC, Alvarez & Marsal Asset Management Services, LLC, and the Redeemer Committee of the Crusader Funds, and any other document or agreement that governs Plaintiff's ownership of any interest in the Crusader Funds" as alleged in Paragraph 8 of A&M's February 20, 2023, Answer.

26. All documents which you claim support your contention that DAF's "claims against A&M are barred, in whole or in part, because of accord and satisfaction under the terms of the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd., the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement relating to Highland Crusader Fund II, Ltd., and any other document or agreement that governs Plaintiff's ownership of an interest in the Crusader Funds" as alleged in Paragraph 9 of A&M's February 20, 2023, Answer.

27. All documents which you claim support your contention that DAF's "claims against A&M are barred, in whole or in part, because A&M's alleged obligation, if

any, have been fulfilled and discharged" as alleged in Paragraph 10 of A&M's February 20, 2023, Answer.

28. All documents which you claim support your contention that DAF's "claims against A&M are barred, in whole or in part, by the doctrine of waiver" as alleged in Paragraph 12 of A&M's February 20, 2023, Answer.

29. All documents which you claim support your contention that DAF's "claims against A&M are barred, in whole or in part, based on the doctrine of unclean hands" as alleged in Paragraph 13 of A&M's February 20, 2023, Answer.

30. All documents which you claim support your claim for attorneys' fees against DAF.

31. All documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding issuance of one or more distributions to DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

32. All documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding withholding one or more distributions to DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

33. All documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding issuance of one or more distributions to shareholders and/or limited partners other than DAF in connection with the Crusader Fund at any time(s) from June 1, 2016, to the present.

34. All documents concerning any meeting minutes, Board minutes, notes, or other documents relating to any decision by A&M regarding withholding any distributions to shareholders and/or limited partners other than DAF in connection with Crusader Fund at any time(s) from June 1, 2016, to the present.

35. All documents accounting for or identifying any and/or all distributions from the Crusader Fund from June 1, 2016,to the present.

36. All documents showing the proportion of DAF's interest in all distributions from the Crusader Fund from June 1, 2016, to the present.

37. All documents accounting for or identifying any and/or all distributions from the Crusader Fund withheld from DAF from June 1, 2016, to the present.

38. All documents accounting for or identifying any and/or all fees earned, and expenses incurred, by A&M related to the Crusader Fund from June 1, 2016, to the present.

39. All documents accounting for or identifying all monetary sums paid to A&M, directly or indirectly, related to the Crusader Fund from June 1, 2016, to the present, other than those reflected in any accounting produced by A&M in response to Request No. 36 above.

40. All documents concerning any third-party financial audits concerning the Crusader Fund from June 1, 2016, to the present.

41. All documents concerning any internal financial audits concerning the Crusader Fund from June 1, 2016, to the present.

42. All documents concerning any analyses, from June 1, 2016, to the present, of the performance and/or valuation of the underlying assets held by the Crusader Fund.

43. All documents concerning any analyses from June 1, 2016, to the present, of the performance and/or valuation of the Crusader Fund overall.

44. All reports generated for the Crusader Fund and distributed to shareholders from June 1, 2016 to present, including but not limited to all annual and monthly reports.

45. All documents and communications concerning the solicitation and negotiation of offers to purchase the Claims.

46. All documents and communications concerning A&M's involvement in the solicitation and negotiation of offers to purchase the Claims.

47. Any and all bids, offers, solicitation packages, term sheets, or similar documents, relating to the Sale of the Claims.

48. All documents and communications concerning or reflecting the value of each of the Claims prior to or after the Sale of the Claims, or in connection with the solicitation or negotiation of offers as described in the July 6 Letter.

49. Any and all agreements granting the Redeemer Committee, or any member of the Redeemer Committee, and/or the Crusader Fund the right to participate in the ultimate recoveries on the Claims, and all Communications relating to any such grant.

50. All documents and communications concerning or reflecting Seery's role in the solicitation or negotiation of any of the offers made in connection with the Sale of the Claims.

51. All documents and communications concerning or reflecting Grosvenor's and/or anyone on the Redeemer Committee's role in the solicitation or negotiation of any of the offers made in connection with the Sale of the Claims.

52. All documents reflecting any communications involving and/or including Seery, on the one hand, and A&M, on the other hand, regarding the Sale of Claims or the Claims.

53. All documents reflecting any communications involving and/or including Grosvenor, on the one hand, and A&M, on the other hand, regarding the Sale of Claims or the Claims.

54. All documents reflecting any communications involving and/or including Stonehill, on the one hand, and A&M, on the other hand, regarding the Sale of Claims or the Claims.

55. All documents reflecting any communications involving and/or including Jessup, on the one hand, and A&M, on the other hand, regarding the Sale of Claims.

56. All documents reflecting any communications between and/or among one or more of A&M, Seery, Grosvenor, Stonehill, and/or Jessup regarding any Big Boy Clause proposed or agreed to in connection with the Sale of the Claims or the Claims.

57. All documents reflecting any communications between and/or among one or more of A&M, Seery, Grosvenor, Stonehill, and/or Jessup regarding any risks of recovery on the Claims.

58. All documents reflecting any communications between and/or among one or more of A&M, Seery, Grosvenor, Stonehill, and/or Jessup regarding any deferred payment(s) for the Claims, including but not limited to, any agreement to pay any additional money based on the ultimate/percentage of recovery on the Claims from HCM's bankruptcy estate.

59. All documents and communications concerning or reflecting all persons and/or entities that communicated with A&M concerning DAF's Direct Interest, DAF's Full Direct Interest, DAF's capital account value, and/or DAF's shares in the Crusader Fund.

60. All documents and communications concerning or reflecting Grosvenor's interest in the Crusader Fund.

61. All documents and communications concerning or reflecting Grosvenor's interest, if any, in Stonehill.

62. All documents and communications concerning or reflecting Grosvenor's interest, if any, in Jessup.

3164221.2

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Wendy Cassidy on behalf of John Cox
Bar No. 24003722
WCassidy@gibsondunn.com
Envelope ID: 91610158
Filing Code Description: Motion - Quash
Filing Description:
Status as of 9/4/2024 8:39 AM CST

Associated Case Party: CHARITABLE DAF FUND LP

Name	BarNumber	Email	TimestampSubmitted	Status
Juslyn Young		jyoung@pmmlaw.com	9/4/2024 8:30:19 AM	SENT
TRACY CRATTY		TCRATTY@PMMLAW.COM	9/4/2024 8:30:19 AM	SENT
Maria Kountz		MKountz@pmmlaw.com	9/4/2024 8:30:19 AM	SENT
James J.McGoldrick		jmcgoldrick@pmmlaw.com	9/4/2024 8:30:19 AM	SENT

Associated Case Party: Charitable DAF Fund, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
Beatrice Candis		bcandis@pmmlaw.com	9/4/2024 8:30:19 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Linda Kimball		lkimball@pmmclaw.com	9/4/2024 8:30:19 AM	SENT
Tim Miller		tmiller@pmmlaw.com	9/4/2024 8:30:19 AM	SENT
John T.Cox		TCox@gibsondunn.com	9/4/2024 8:30:19 AM	SENT
Wendy Cassidy		WCassidy@gibsondunn.com	9/4/2024 8:30:19 AM	SENT
Roger LMcCleary		rmccleary@pmmlaw.com	9/4/2024 8:30:19 AM	SENT
Sawnie McEntire		smcentire@pmmlaw.com	9/4/2024 8:30:19 AM	SENT
Ian Salzer		isalzer@pmmlaw.com	9/4/2024 8:30:19 AM	SENT
Marshall R.King		MKing@gibsondunn.com	9/4/2024 8:30:19 AM	SENT
Pat A.Vickery		PVickery@gibsondunn.com	9/4/2024 8:30:19 AM	SENT

Case Information

DC-22-10107 | CHARITABLE DAF FUND LP, et al vs. ALVAREZ & MARSAL CRF MANAGEMENT LLC, et al

Case Number	Court	Judicial Officer
DC-22-10107	116th District Court	PARKER, TONYA
File Date	Case Type	Case Status
08/15/2022	OTHER (CIVIL)	OPEN

Party

PLAINTIFF
CHARITABLE DAF FUND LP

Active Attorneys
Lead Attorney
MCENTIRE, SAWNIE A
Retained

Attorney
MCCLEARY, ROGER L
Retained

Attorney
MCGOLDRICK, JAMES J
Retained

Attorney
SALZER, IAN B.
Retained

PLAINTIFF
Charitable DAF Fund, L.P.

Active Attorneys
Lead Attorney
MCENTIRE, SAWNIE A
Retained

DEFENDANT
ALVAREZ & MARSAL CRF MANAGEMENT LLC

Active Attorneys
Lead Attorney
COX, JOHN T III
Retained

DEFENDANT
Alvarez & Marsal CRF Management, LLC

Active Attorneys
Lead Attorney
BEAN, ANDREW
Retained

Events and Hearings

08/15/2022 NEW CASE FILED (OCA) - CIVIL

08/15/2022 ORIGINAL PETITION

ORIGINAL PETITION

08/15/2022 ISSUE CITATION COMM OF INS OR SOS

ISSUE CITATION SOS - ALVAREZ & MARSAL CRF MANAGEMENT LLC

ISSUE CITATION SOS - ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

Comment
SEE NOTES TAB

08/15/2022 JURY DEMAND

FP FILE DESK JURY DEMAND FORM

08/24/2022 CORRESPONDENCE - LETTER TO FILE

COVER LETTER

09/23/2022 CITATION SOS/COI/COH/HAG

Unserved

Anticipated Server
ESERVE

Anticipated Method
Comment
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

09/23/2022 CITATION SOS/COI/COH/HAG

Unserved

Anticipated Server
ESERVE

Anticipated Method
Comment
UPDATED ONLY - ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

01/12/2023 CERTIFICATE OF SERVICE

Comment
SOS - ALVAREZ & MARSAL CRF MANAGEMENT LLC

01/19/2023 MOTION - RETAIN

VERIFIED MOTION TO RETAIN

01/19/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER VERIFIED MOTION TO RETAIN

Comment
PROPOSED ORDER VERIFIED MOTION TO RETAIN

01/24/2023 DISMISSAL FOR WANT OF PROSECUTION

Original Type
DISMISSAL FOR WANT OF PROSECUTION

dism letter (116th)

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
8:45 AM

Result
HEARING HELD

Comment
MOTION TO RETAIN PENDING

02/16/2023 MOTION - RETAIN

PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

Comment
VERIFIED SECOND

02/16/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER GRANTING PLTFS 2ND VERIFIED MOTION RETAIN

Comment
PROPOSED ORDER GRANTING PLAINTIFFS VERIFIED SECOND MOTION TO RETAIN

02/20/2023 ORIGINAL ANSWER - GENERAL DENIAL

ORIGINAL ANSWER

02/20/2023 MOTION - RETAIN

PLAINTIFF-SUPPLEMENT TO 2ND M/RETAIN

Comment
PLAINTIFF'S VERIFIED SUPPLEMENT TO PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

02/22/2023 DISMISSAL FOR WANT OF PROSECUTION

DISM NOTICE FINAL

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
8:45 AM

Cancel Reason
BY COURT ADMINISTRATOR

03/16/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

NON-SIGNED PROPOSED ORDER-AGREED SCHEDULING ORDER

Comment
AGREED SCHEDULING ORDER

03/21/2023 SCHEDULING ORDER

SCHEDULING ORDER

Comment
AGREED - LEVEL 3

03/22/2023 Scheduling Conference

116 Sched Conf

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
8:45 AM

Cancel Reason
BY COURT ADMINISTRATOR

03/28/2023 VACATION LETTER

08/11/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

08/11/2023 MOTION - PROTECT

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
AND MOTION TO ABATE

08/17/2023 NOTICE OF HEARING / FIAT

NOTICE OF HEARING ON DEF MOTION TO PROTECT & ABATE

Comment
ON DEF MOTION TO PROTECT & ABATE

10/10/2023 NOTICE OF HEARING / FIAT

AMENDED NOH MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
AMENDED / MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

10/12/2023 Motion - Protect

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

NOTICE OF HEARING ON DEF MOTION TO PROTECT & ABATE

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
9:00 AM

Cancel Reason
HEARING RESCHEDULED

Comment
SET BY WENDY CASSIDY 214-906-8196, MOTION PROTECT/ABATE, IN PERSON

10/18/2023 RETURNED MAIL

NOTICE OF TRIAL / SCHEDULING ORDER - BRYAN HAYNES

Comment
NOTICE OF TRIAL / SCHEDULING ORDER - BRYAN HAYNES

11/06/2023 AMENDED PETITION

PLAINTIFF'S FIRST AMENDED PETITION

Comment
FIRST

11/13/2023 MOTION - CONTINUANCE

MOTIONFOR CONTINUAND AND FOR ENTRY OF AMENDED SCHEDULING ORDER

Comment
AND ENTRY OF AMENDED SCHEDULING ORDER

11/13/2023 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER FOR CONTINUANCE

Comment
PROPOSED ORDER FOR CONTINUANCE AND AMENDED SCHEDULING ORDER

11/25/2023 SCHEDULING ORDER

SCHEDULING ORDER

Comment
FIRST AMENDED LEVEL 3

11/30/2023 MISCELLANOUS EVENT

E-SERVE COVER LETTER

E-SERVE ORDER 1ST AMENDED SCHEDULNG

Comment
ESERVE COVER LETTER - ORDER 1ST AMENDED SCHEDULING

11/30/2023 NOTICE OF HEARING / FIAT

2ND AMENDED NOTICE OF HEARING ON MOTIONS PROTECT/ABATE

Comment
2ND AMENDED ON MOTIONS PROTECT/ABATE

12/07/2023 Motion - Protect

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

AMENDED NOH MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
09:30 AM

Cancel Reason
HEARING RESCHEDULED

Comment
30 MIN / SET BY WENDY CASSIDY 214-906-8196, MOTION PROTECT/ABATE, / CC REQ / IN PERSON

01/03/2024 RETURNED MAIL

NOTICE OF NOTICE OF AGREED MEDIATOR WITH ATTACHED SCHEDULING ORDER FOR BRYAN HAYNES

Comment
NOTICE OF NOTICE OF AGREED MEDIATOR WITH ATTACHED SCHEDULING ORDER FOR BRYAN HAYNES

01/26/2024 NOTICE OF HEARING / FIAT

3RD AMENDED NOH-MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
3RD AMENDED / MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

02/01/2024 Motion - Protect

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

2ND AMENDED NOTICE OF HEARING ON MOTIONS PROTECT/ABATE

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
09:30 AM

Cancel Reason
HEARING RESCHEDULED

Comment
30 MIN / SET BY WENDY CASSIDY 214-906-8196, MOTION PROTECT/ABATE, / CC REQ / IN PERSON

02/29/2024 RESPONSE

PLTF'S RESPONSE IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

Comment
IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

02/29/2024 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER DENYING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

Comment
PROPOSED ORDER DENYING MOTIONS FOR PROTECTIVE ORDER AND TO ABATE

02/29/2024 MOTION - COMPEL

PLTF'S MOTION TO COMPEL DISCOVERY

Comment
DISCOVERY

03/01/2024 NON-SIGNED PROPOSED ORDER/JUDGMENT

PROPOSED ORDER COMPELLING DISCOVERY

Comment
PROPOSED ORDER COMPELLING DISCOVERY

03/01/2024 NOTICE OF HEARING / FIAT

NOH-MOTON TO COMPEL SET 4/3 @ 1:15 P.M.

Comment
MOTION TO COMPEL SET 4/3/1:15 P.M.

03/04/2024 NOTE - CLERKS

Comment
REC CC RESPONSE TO MOTION FOR PROTECTIVE ORDER FOR FOR 3/6 @ 1:15 A.M HEARING

03/05/2024 NOTICE OF HEARING / FIAT

4TH AMD NOH / MOTION PROTECT SET 4/3/@ 1:15 P.M.

Comment
4TH AMD / MOTION PROTECT SET 4/3/@ 1:15 P.M.

03/06/2024 NOTE - CLERKS

Comment
CC REC' FOR 4/3 1:15PM HEARING ON MOTION TO COMPEL

03/29/2024 OBJECTION

DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ETC

Comment
DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY & REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER & MOTION TO ABATE

04/01/2024 RESPONSE

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

Comment
REPLY IN SUPPORT OF ITS MOTION TO COMPEL

04/03/2024 Motion - Protect

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

3RD AMENDED NOH-MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

PROPOSED ORDER DENYING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

PLTF'S RESPONSE IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

4TH AMD NOH / MOTION PROTECT SET 4/3/@ 1:15 P.M.

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Comment
'DEFT ALVAREZ M/PROTECTIVE ORDER" SET BY WENDY CASSIDY 214-906-8196/ CC REQ / IN PERSON. PARTIAL COURTESY COPY (ST)

04/03/2024 Motion - Compel

PROPOSED ORDER COMPELLING DISCOVERY

PLTF'S MOTION TO COMPEL DISCOVERY

NOH-MOTON TO COMPEL SET 4/3 @ 1:15 P.M.

DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ETC

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Comment
'PLTF'S M/COMPEL DISCVOERY" SET BY BEATRICE 214.237.4369; NOH AND CC REQ'D; IN-PERSON. CC RECEIVED (ST)

04/08/2024 MOTION - CONTINUANCE

MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

Comment
AGREED / AND ENTRY OF AMENDED SCHEDULING ORDER

04/18/2024 ORDER - DENY CONTINUANCE

ORDER - DENY CONTINUANCE

Comment
AND ENTRY OF AMENDED SCHEDULNG ORDER

04/24/2024 E-SERVED COPY OF ORDER

E-SERVE COVER LETTER

ESERVE ORDER DENY CONTINUANCE

04/24/2024 NOTICE OF HEARING / FIAT

NOH-PLAINTIFF MOTION TO COMPEL

Comment
PLAINTIFF MOTION TO COMPEL SET 5/8 @ 1:15 P.M.

04/24/2024 MOTION - CONTINUANCE

AMENDED AGREED MOTION FOR CONTINUANCE

Comment
AMENDED AGREED

04/26/2024 NOTE - CLERKS

Comment
COURTESY COPY FOR MOTION TO COMPEL ON 5/8 RECEIVED

04/29/2024 Status Conference

Judicial Officer
PARKER, TONYA

Hearing Time
1:30 PM

04/29/2024 ORDER - GRANTING CONTINUANCE

ORDER - GRANTING CONTINUANCE

Comment
AMENDED

05/01/2024 E-SERVED COPY OF ORDER

E-SERVE COVER LETTER

E-SERVE ORDER CONTINUANCE

05/08/2024 Motion - Compel

PROPOSED ORDER COMPELLING DISCOVERY

PLTF'S MOTION TO COMPEL DISCOVERY

DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ETC

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

NOH-PLAINTIFF MOTION TO COMPEL

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Comment
214-237-4315 IAN SALZER / CC REQ / IN PERSON. CC RECEIVED

05/23/2024 Motion - Continuance

AMENDED AGREED MOTION FOR CONTINUANCE

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
09:30 AM

Cancel Reason
REQUESTED BY ATTORNEY/PRO SE

Comment
15 MIN / 214-237-4315 IAN SALZER / CC REQ / IN PERSON

07/03/2024 NOTICE OF HEARING / FIAT

NOH-PLAINTIFF MOTION TO COMPEL

Comment
PLAINTIFF MOTION TO COMPEL SET 8/7 @ 1:15

07/09/2024 CERTIFICATE OF CONFERENCE

CERTIFICATE OF CONFERENCE ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE

Comment
ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE

07/10/2024 NOTICE OF HEARING / FIAT

5TH AMENDED NOTICE OF HEARING ON MOTION TO PROTECT

Comment
5TH AMENDED ON MOTION TO PROTECT

07/19/2024 CASE NOT SETTLED AT MEDIATION

CASE NOT SETTLED AT MEDIATION

08/02/2024 NOTE - CLERKS

Comment
COURTESY COPY FOR MOTION TO PROTECT/COMPEL ON 8/7 RECEIVED

08/07/2024 Motion - Compel

PLTF'S MOTION TO COMPEL DISCOVERY

NOH-PLAINTIFF MOTION TO COMPEL

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Comment
'PLTF'S M/COMPEL DISCOVERY" 214-237-4369 BEATRICE CANDIS / CC REQ / IN PERSON. CC RECEIVED (ST)

08/07/2024 Motion - Protect

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

CERTIFICATE OF CONFERENCE ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE

5TH AMENDED NOTICE OF HEARING ON MOTION TO PROTECT

Judicial Officer(s)
PARKER, TONYA, PARKER, TONYA

Hearing Time
1:15 PM

Comment
214-906-8196 WENDY CASSIDY / CC REQ / IN PERSON. CC RECEIVED (ST)

08/07/2024 NOTICE OF APPEARANCE

PLAINTIFF'S NOTICE OF APPEARANCE

08/07/2024 ORDER - DENY

ORDER - DENY

Comment
MOTION FOR PROTECTIVE AND ABATE

08/07/2024 ORDER - COMPEL

ORDER - COMPEL

08/09/2024 E-SERVED COPY OF ORDER

08/28/2024 AMENDED PETITION

2ND AMENDED PETITION

Comment
2ND

09/04/2024 MOTION - QUASH

DEFENDANT'S MOTION TO QUASH

01/27/2025 Jury Trial - Civil

Judicial Officer
PARKER, TONYA

Hearing Time
9:00 AM

Comment
(Level 3)

Financial

CHARITABLE DAF FUND LP

Total Financial Assessment	$368.00
Total Payments and Credits	$368.00

8/23/2022	Transaction Assessment			$368.00
8/23/2022	CREDIT CARD - TEXFILE (DC)	Receipt # 52334-2022-DCLK	CHARITABLE DAF FUND LP	($231.00)
8/23/2022	STATE CREDIT			($137.00)

Charitable DAF Fund, L.P.

Total Financial Assessment	$4.00
Total Payments and Credits	$4.00

8/29/2022	Transaction Assessment			$4.00

8/29/2022	CREDIT CARD - TEXFILE (DC)	Receipt # 53740-2022-DCLK	Charitable DAF Fund, L.P.	($4.00)

Documents

ORIGINAL PETITION

FP FILE DESK JURY DEMAND FORM

COVER LETTER

ISSUE CITATION SOS - ALVAREZ & MARSAL CRF MANAGEMENT LLC

ISSUE CITATION SOS - ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

dism letter (116th)

VERIFIED MOTION TO RETAIN

PROPOSED ORDER VERIFIED MOTION TO RETAIN

DISM NOTICE FINAL

PLAINTIFF'S VERIFIED SECOND MOTION TO RETAIN

PROPOSED ORDER GRANTING PLTFS 2ND VERIFIED MOTION RETAIN

ORIGINAL ANSWER

PLAINTIFF-SUPPLEMENT TO 2ND M/RETAIN

116 Sched Conf

NON-SIGNED PROPOSED ORDER-AGREED SCHEDULING ORDER

SCHEDULING ORDER

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

DEFENDANT ALVAREZ & MARSAL'S MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

NOTICE OF HEARING ON DEF MOTION TO PROTECT & ABATE

AMENDED NOH MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

NOTICE OF TRIAL / SCHEDULING ORDER - BRYAN HAYNES

PLAINTIFF'S FIRST AMENDED PETITION

PROPOSED ORDER FOR CONTINUANCE

MOTIONFOR CONTINUAND AND FOR ENTRY OF AMENDED SCHEDULING ORDER

SCHEDULING ORDER

E-SERVE COVER LETTER

E-SERVE ORDER 1ST AMENDED SCHEDULNG

2ND AMENDED NOTICE OF HEARING ON MOTIONS PROTECT/ABATE

NOTICE OF NOTICE OF AGREED MEDIATOR WITH ATTACHED SCHEDULING ORDER FOR BRYAN HAYNES

3RD AMENDED NOH-MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

PROPOSED ORDER DENYING MOTION FOR PROTECTIVE ORDER AND MOTION TO ABATE

PLTF'S RESPONSE IN OPPOSITION TO PROTECTIVE ORDER, MOTION TO ABATE, AND EVIDENTIARY OBJECTIONS

PROPOSED ORDER COMPELLING DISCOVERY

PLTF'S MOTION TO COMPEL DISCOVERY

NOH-MOTON TO COMPEL SET 4/3 @ 1:15 P.M.

4TH AMD NOH / MOTION PROTECT SET 4/3/@ 1:15 P.M.

DEFENDANTS' COMBINED OPPOSTION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ETC

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

MOTION FOR CONTINUANCE AND ENTRY OF AMENDED SCHEDULING ORDER

ORDER - DENY CONTINUANCE

E-SERVE COVER LETTER

ESERVE ORDER DENY CONTINUANCE

NOH-PLAINTIFF MOTION TO COMPEL

AMENDED AGREED MOTION FOR CONTINUANCE

ORDER - GRANTING CONTINUANCE

E-SERVE COVER LETTER

E-SERVE ORDER CONTINUANCE

NOH-PLAINTIFF MOTION TO COMPEL

CERTIFICATE OF CONFERENCE ON DEFENDANT MOTION FOR PROTECTIVE ORDER AND ABATE

5TH AMENDED NOTICE OF HEARING ON MOTION TO PROTECT

CASE NOT SETTLED AT MEDIATION

PLAINTIFF'S NOTICE OF APPEARANCE

ORDER - DENY

ORDER - COMPEL

2ND AMENDED PETITION

DEFENDANT'S MOTION TO QUASH

EXHIBIT 4

FILED
7/22/2021 5:53 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
JAVIER HERNANDEZ DEPUTY

DC-21-09534

CAUSE NO. _____

IN RE JAMES DONDERO,	§	IN THE DISTRICT COURT
	§	95th
Petitioner.	§	_____ JUDICIAL DISTRICT
	§	
	§	DALLAS COUNTY, TEXAS

VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT AND SEEK DOCUMENTS

Petitioner James Dondero respectfully requests that this Court order, pursuant to Texas Rule of Civil Procedure 202, the deposition of the corporate representatives of Alvarez & Marsal CRF Management, LLC, and of Farallon Capital Management, LLC. Petitioner further requests that the Court order certain limited, yet relevant documents to be provided under Texas Rule of Civil Procedure 199.2 as set forth below.

Petitioner would respectfully show the Court that:

I.

PARTIES

1. Petitioner James Dondero ("Petitioner") is an individual resident in Dallas County, Texas and is impacted by the potential acts and omissions alleged herein.

2. Respondent Alvarez & Marsal CRF Management, LLC ("A&M") is a Delaware limited liability company serving as an investment adviser, with offices in Dallas County, Texas, at 2100 Ross Ave., 21st Floor, Dallas, Texas 75201.

3. Respondent Farallon Capital Management LLC is a limited liability company with its primary place of business in California ("Farallon" and together with A&M, the "Respondents") which is an investment fund located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111.

II.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this matter pursuant to Texas Rule of Civil Procedure 202. The anticipated lawsuit would include common law claims.

5. The Court has personal jurisdiction over A&M because it maintains a regular place of business in Dallas County. Personal jurisdiction is also proper under TEX. CIR. PRAC. REM. CODE § 17.003, and under § 17.042(1)-(3) because its acts on behalf of the Crusader Funds (as defined below), would constitute a tort in this state. Furthermore, it participated in substantial acts in this state which are the subject of the investigation. Moreover, this Court has quasi *in rem* jurisdiction over any potential claims because the action concerns the sale of personal property that was located in Dallas County, and in which Plaintiff claims an interest.

6. The Court has personal jurisdiction over Farallon because it, acting on behalf of itself or one of its subsidiaries/affiliates, communicated with representatives of Highland Capital Management, LP which is located in Dallas County, and with representatives of Acis and Josh Terry (both of whom are residents in Dallas County), to purchase claims in the Highland Capital Management, LP ("Highland") Chapter 11 bankruptcy case (the "Highland Bankruptcy Case"). Such acts, if shown to have occurred could constitute a tort in this state. Moreover, this Court has quasi *in rem* jurisdiction over any potential claims because the action concerns the sale of personal property that was located in Dallas County, and in which Plaintiff claims an interest.

7. Venue is proper in Dallas County, Texas, where venue of the anticipated lawsuit may lie and where the property at issue exists, and where a substantial amount of the acts and omissions underlying the potential suit occurred.

8. Removal is not proper because there is no basis for federal jurisdiction because a Rule 202 petition, as a pre-suit mechanism, does not meet Article III of the United States Constitution's standing requirement of an actual, live case or controversy.

III.

FACTUAL BACKGROUND

9. This matter arises out of Farallon's purchase of certain bankruptcy claims in the Highland Bankruptcy Case, pending in the Northern District of Texas bankruptcy court, from three sources: HarbourVest, Acis Capital Management, LP, and the Crusader Funds (as defined below).

10. Petitioner is the founder and former CEO of Highland and is an adviser and/or manager of several trusts who own the equity in Highland. In addition, Petitioner is an investor in Highland Crusader Fund, Ltd. and several of its companion and affiliated funds (the "Crusader Funds").

11. Until recently, the Crusader Funds were managed by Highland, but are now managed and advised by A&M.

12. Shortly after the commencement of the Highland Bankruptcy Case, the Office of the United States Trustee solicited Highland's twenty largest unsecured creditors to serve on the Official Committee of Unsecured Creditors in the Highland Bankruptcy Case (the "UCC").

13. As set forth below, the Information Sheet attached to such solicitation provided, *inter alia*,

> **Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any**

> **other reason the United States Trustee believes is proper in the exercise of her discretion**. (Emphasis in Original)

14. The UCC was originally populated by four members, (i) the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee"), (ii) Acis Capital Management, L.P. (iii) UBS Securities LLC and UBS AG London Branch (together, "UBS") and (iv) Meta-E Discovery LLC.

15. Upon information and belief, two of Highland's creditors – the Redeemer Committee (a member of the UCC) and the Crusader Funds, who between them held approximately $191 million in claims in the Highland Bankruptcy Case (the "Crusader Claims")–sold their claims to Jessup Holdings LLC ("Jessup"), a newly established limited liability company established by Farallon right before the sale. It was formed for the purpose of holding claims Farallon purchased in the Highland Bankruptcy Case.

16. Upon information and belief, two other Highland creditors—Joshua Terry and Acis Capital Management (another member of the UCC), who between them held approximately $25 million in claims (the "Acis Claims")—sold their claims to Muck Holdings LLC ("Muck"), a newly established limited liability company set up by Farallon solely for the purpose of holding the Acis Claims that Farallon purchased.

17. Finally, another group of affiliated creditors, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P. (collectively, "HarbourVest") also sold $80 million worth of their claims (the "HarbourVest Claims", together with the Crusader Claims and Acis Claims, the "Claims") to Muck.

18. Notwithstanding the instructions issued by the Office of the United States Trustee, no one—not Farallon, nor the Redeemer Committee, HarbourVest or Acis Capital Management—ever sought, much less obtained Court approval to sell their respective claims.

19. Upon information and belief, a substantial amount of time passed between the agreement to sell the Claims and the consummation of such sales. Notwithstanding their agreement to sell their respective claims, neither the Redeemer Committee nor Acis Capital Management resigned from the UCC.

20. The current CEO of Highland, James Seery, has an age-old connection to Farallon and, upon information and belief, advised Farallon to purchase the claims.

21. On a telephone call between Petitioner and a representative of Farallon, Michael Lin, Mr. Lin info rmed Petitioner that Farallon had purchased the claims sight unseen—relying entirely on Mr. Seery's advice solely because of their prior dealings.

22. Mr. Seery had much to gain by brokering a sale of the Claims to Jessup and Muck—namely, his knowledge that Farallon—as a friendly investor—would allow him to remain as Highland's CEO with virtually unfettered discretion to administer Highland. In addition, Mr. Seery's rich compensation package incentivized him to continue the bankruptcy for as long as possible.

23. As Highland's current CEO, Mr. Seery had non-public, material information concerning Highland. Upon information and belief, such non-public, material information was the basis for instructing Farallon to purchase the Claims, in violation the Registered Investment Advisor Act 15 U.S.C § 80b-1 et seq., among other things.

24. Additionally, A&M, upon information and belief, did not put the Crusader Claims on the open market prior to selling them to Farallon. The sale of the Crusader Claims by A&M

was not pursuant to normal means and there is reason to doubt that A&M sought or obtained the highest price for the assets that it sold. This would have injured Petitioner as an investor in the Crusader Funds.

IV.

RELIEF SOUGHT

1. Petitioner asks this Court to issue an Order authorizing Petitioner to take a pre-suit deposition of a designated representative, or representatives, of A&M, and to depose Michael Lin, on the following topics, to investigate any potential claims by Petitioner arising out of the highly irregular manner in which the Claim were marketed (if at all) and sold, within ten days of the Court's Order, or as agreed by the parties:

   a. A&M's agreements with the Crusader Funds, and the agreement(s) of those funds with their respective investors;

   b. The valuation, marketing and sale of the Claims to Farallon (or its subsidiaries/. affiliates);

   c. The negotiations and communications leading up to the purchase or sale of the Claims;

   d. Any discussions with James Seery regarding the Claims;

   e. Any prior relationship with James Seery.

2. As part of the Court's Order, Petitioner requests this Court to require Respondents to produce the following documents at their respective depositions:

   a. All agreements, contracts, or other documents (including any e-mails, correspondence, texts, drafts, term sheets, or communications related to same) related to or concerning the valuation, purchase, marketing or sale of the Claims (or any subset of the Claims);

   b. All communications with James Seery regarding the Claims;

   c. All communications with, between or among A&M, Seery, HarbourVest, Joshua Terry, Acis, or Highland Capital Management ,LP (or any agent or

representative thereof), regarding or related to the Claims (or any subset or portion thereof);

d. All communications regarding filing any notice with the Bankruptcy Court overseeing the Highland Bankruptcy Case or seeking such Court's approval for the sale or purchase of the Claims;

e. All offers to sell or purchase the Claims and/or all correspondence regarding same;

V.

HEARING

21. After service of this Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on the Petition.

22. FOR THESE REASONS, Petitioner asks the Court to set a date for hearing on this Petition, and after the hearing, to find that the likely benefit of allowing Petitioner to take the requested depositions outweighs the burden or expense of the procedure. Petitioner further asks the Court to issue an Order authorizing Petitioner to take the oral depositions of Michael Lin and a designated representative or representatives of A&M after proper notice and service at the offices of Sbaiti & Company PLLC, 2200 Ross Avenue, Suite 4900W, Dallas, Texas 75201, within ten (10) days of the Court's Order, or as agreed by the parties, and to produce the requested documents at said deposition. Petitioner also seeks any further relief to which he may be justly entitled.

Dated: July 22, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti
Texas Bar No. 24058096
Brad J. Robinson
Texas Bar No. 24058076
J.P. Morgan Chase Tower
2200 Ross Avenue Suite 4900W
Dallas, Texas 75205
T: (214) 432-2899
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E: mas@sbaitilaw.com
bjr@sbaitilaw.com

Counsel for Petitioner

VERIFICATION

I, the undersigned, have reviewed attached *Verified Petition to Take Deposition Before Suit and Seek Documents* and verify, pursuant to Tex. Civ. Prac. Rem. Code § 132.001 under penalty of perjury, that the factual statements therein, as stated, are true and correct, and are within the best of my personal knowledge as stated therein. The date of my birth is June 29, 1962, and my address is 2515 McKinney Avenue, Suite 1100, Dallas, Texas 75201.

Verified this 22nd Day of July, 2021.

James Dondero

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Kim James on behalf of Mazin Sbaiti
Bar No. 24058096
krj@sbaitilaw.com
Envelope ID: 55626531
Status as of 7/23/2021 3:02 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kim James		krj@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT
Jonathan E.Bridges		jeb@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT
Charlotte Casso		bcc@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT
Brad Robinson		bjr@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT
Mazin Sbaiti		mas@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT

EXHIBIT 5

CAUSE NO. DC-21-09534

IN RE:	§	IN THE DISTRICT COURT
JAMES DONDERO,	§	DALLAS COUNTY, TEXAS
Petitioner.	§	95TH JUDICIAL DISTRICT

ORDER

Came on for consideration the *Verified Amended Petition to Take Deposition Before Suit and Seek Documents* ("Petition") filed by petitioner James Dondero ("Dondero"). The Court, having considered the Petition, the responses filed by respondents Farallon Capital Management, L.L.C. ("Farallon") and Alvarez & Marsal CRF Management, LLC ("A&M"), the record, and applicable authorities, and having conducted a hearing on the Petition on June 1, 2022, concludes that Dondero's Petition should be denied and that this case should be dismissed. Therefore,

The Court ORDERS that Dondero's Petition be, and is hereby, DENIED, and that this case be, and is hereby, DISMISSED.

THE COURT SO ORDERS.

Signed this 14 day of June, 2022.

HONORABLE MONICA PURDY

EXHIBIT 6

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF MANAGEMENT, LLC	§	
	§	
Defendant.	§	116th JUDICIAL DISTRICT

PLAINTIFF CHARITABLE DAF FUND, L.P.'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO DEFENDANT ALVAREZ & MARSAL, CRF MANAGEMENT, LLC

TO: Defendant Alvarez & Marsal, CRF Management, LLC, by and through its attorneys of record, John T. Cox III and Andrew Bean, GIBSON, DUNN & CRUTCHER LLP, 2001 Ross Avenue, Suite 2100, Dallas, TX 75201-2923

Plaintiff, Charitable DAF Fund, L.P. ("DAF"), serves this Second Set of Interrogatories and Requests for Production (collectively "Requests") on Defendant, Alvarez & Marsal, CRF Management, LLC ("A&M") as authorized by Rules 196 and 197 of the Texas Rules of Civil Procedure. A&M is requested to respond fully and in writing, along with producing all responsive, non-privileged documents, within thirty (30) days of service.

INSTRUCTIONS

1. Each Request shall be construed and answered separately and shall not be combined for the purpose of supplying a common response thereto. Each answer shall set forth verbatim the Request to which it responds. The answer to a Request shall not be supplied by referring to the answer to another Request unless the Request referred to supplies a complete and accurate answer to the Request being answered. The specificity of any Request shall not be construed or understood as limiting the generality or breadth of any other Request.

2. These Requests require you to produce Documents and Communications and/or to provide information in your physical possession, custody, or control, as well as in the possession, custody, or control of any agents, employees, officers, members, managing members, directors, shareholders, partners, general partners, legal representatives, predecessors, successors, and assigns. All requested Documents, Communications, or information not subject to a valid objection that is known by, possessed by, or available to you that appears in your records must be provided.

3. In addition to original and final versions of Documents and Communications, each Request includes all drafts, alterations, modifications, changes, and amendments of such Documents and Communications, as well as copies non-identical to the original in any respect, including any copies bearing non-identical markings or notations of any kind.

4. If any requested Document, Communication, or information was, but no longer is, in A&M's possession, state whether a copy thereof is in the possession, custody, or control of some other person, agency, entity, partnership, or corporation, and why such Document, Communication, or information is no longer available, and the circumstances under which the loss occurred.

5. Each requested Document and Communication shall be produced in its entirety with an affixed bates stamp. If an identical copy appears in more than one person's files, each of the copies shall be produced or the extracted metadata shall reflect the source, owner, and/or custodian for all persons with identical copies. If a Document or Communication responsive to any Request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why the production of the remainder is not possible.

6. In the event you do not answer any Request, in whole or in part, on the basis of an assertion of attorney-client privilege, the work-product doctrine, or any other claim of privilege or immunity, answer each Request to the extent consistent with the

privilege or immunity asserted and provide information sufficient to permit the Court to make a determination of whether a proper basis exists for the assertion of privilege or immunity. For all documents withheld on the basis of privilege, state the basis for your claim with specificity and, for each such document, identify:

a. whether the document contains a request for legal advice and, if so, identify the person who requested the legal advice;

b. whether the document contains advice as to the meaning or application of particular laws or rules in response to such request;

c. any further information to explain and support the claim of privilege and to permit the adjudication of the propriety of that claim;

d. the nature of the privilege (including work product) that is being claimed and, if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and the type of document, *e.g*. letter or memorandum; the general subject of the document; and such other information sufficient to identify the document, including, where appropriate, the date, author, addressee, and other recipient(s) of the document.

7. If there are no Documents or Communications responsive to a particular Request, please provide a written response so stating.

8. DAF specifically reserves the right to serve additional Requests.

9. These Requests are continuing in nature as to require supplemental responses in accordance with the Texas Rules of Civil Procedure if and when additional Documents, Communications, or information responsive to any of the Requests herein is/are obtained, discovered, or located between the time of responding to these Requests and the final disposition of this action.

RULES OF CONSTRUCTION

Along with the rules of construction and instructions provided under applicable discovery rules and law, these Rules of Construction apply to the following Requests:

1. Unless specifically stated otherwise in a particular Request, the relevant time period is October 16, 2019, to the present.

2. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

3. The terms "any," "all," and "each" shall each be construed as encompassing any and all.

4. The use of the singular form of any word shall be construed to include the plural and vice versa.

5. All phrases following the terms "including" are intended to illustrate the kinds of information responsive to each Interrogatory, and shall be construed as "including, but not limited to." Such examples are not intended to be exhaustive of the information sought and shall not in any way be read to limit the scope of an Interrogatory.

6. References to an entity are intended to include past and present officers, directors, employees, agents, affiliates, subsidiaries, owners, partners, general partners, shareholders, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, and/or any other person(s) acting on behalf of such entity.

DEFINITIONS

For the purposes of these Requests, the following terms shall have the following definitions and meanings, unless expressly provided otherwise:

1. "A&M," "you," and "your," shall mean Alvarez & Marsal, CRF Management, LLC, and its managing members and other members, officers, agents, employees, representatives, attorneys, partners, predecessors, successors, assigns, and anyone else acting on A&M's behalf, now or at any time relevant to the response.

2. "Big Boy Clause" shall mean any agreement, or provision in any agreement, that purports to waive claims based on one party's superior knowledge and the non-disclosure of that superior knowledge to the other transacting party.

3. "Claims" shall mean collectively the "Redeemer Committee Claim," as defined herein, and the "Crusader Funds Claim," as defined herein.

4. "Communication(s)" and "communicate" shall mean any manner in which the mental processes of one individual are relayed to another, including, without limitation, any verbal utterance, correspondence, email, text message, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

5. "Concerning" shall mean reflecting, regarding, relating to, referring to, describing, evidencing, supporting, forming any basis for, or constituting.

6. "Crusader Fund" shall mean the Highland Crusader Fund II, Ltd., which is subject to this Lawsuit, and in which DAF purchased participating shares in or around June of 2016.

7. "Crusader Funds Claims" shall mean the Crusader Funds' allowed general unsecured claim of $50,000 against Highland Capital Management L.P., as referred to in Exhibit 1 hereto.

8. "Document" or "Documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the Texas Rules of Civil Procedure, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or

other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

9. "Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) and/or all related metadata with respect to all such Documents/ESI.

10. "Grosvenor" shall mean Grosvenor Capital Management, L.P.

11. "HCM" shall mean Highland Capital Management L.P.

12. "Identify" or "Identity(ies)" (person(s)) when referring to person shall, shall mean to provide the person's full first and last name; last known address, telephone number, and e-mail address; and last known place of employment.

13. "Identify" or "Identity(ies)" (document(s)) when referring to a document, shall mean to provide the document's name; the date of the document's creation; the form of the document (e.g., letter, e-mail message, etc.); a description of the substance of the document; and the identity of the person who currently possesses the document (and, if the document no longer exists, an explanation for why it no longer exists and the date on which it ceased to exist).

14. "Lawsuit" shall mean and refer to the above-captioned lawsuit styled: *Charitable DAF Fund, L.P. v. Alvarez & Marsal, CRF Management, LLC*, Cause No. DC-22-10107; 116th Judicial District Court of Dallas County, Texas.

15. "Jessup" shall mean Jessup Holdings LLC.

16. "Material Terms" shall mean the purchase price, any "Bigboy" clauses, value disclaimers, closing deadlines and any conditions precedent or conditions subsequent.

17. "Person" shall mean any natural person and/or any business, legal, or governmental entity or association.

18. "Plaintiff" and "Defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, shall mean the party or parties, and where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

19. "Redeemer Committee Claim" shall mean the Redeemer Committee's allowed general unsecured claim of $137,696,610 against HCM, as referred to in Exhibit 1 hereto.

20. "Sale of the Claims" shall mean the sale of the Claims that occurred on or about April 30, 2021, as described in Exhibit 1 hereto.

21. "Seery" shall mean James P. Seery.

22. "Stonehill" shall mean Stonehill Capital Management, LLC.

SECOND SET OF INTERROGATORIES

INTERROGATORY NO. 16: Describe A&M's role in preparing any written solicitation and participation in the negotiation of offers to purchase the Claims.

ANSWER:

INTERROGATORY NO. 17: Identify the asking price of the Redeemer Committee and the Crusader Fund relating to the Sale of the Claims.

ANSWER:

INTERROGATORY NO. 18: Identify all persons and/or entities that submitted an offer or offers to purchase the Claims.

ANSWER:

INTERROGATORY NO. 19: Identify the price set forth in each offer to purchase the Claims.

ANSWER:

INTERROGATORY NO. 20: Other than price, identify all other material terms of each offer to purchase either of the Claims.

ANSWER:

INTERROGATORY NO. 21: Describe whether the Redeemer Committee and/or the Crusader Fund has any right to participate in ultimate recoveries on the Claims and, if so, the terms of any such participation arrangement.

ANSWER:

INTERROGATORY NO. 22: Identify all persons and/or entities that communicated with A&M concerning DAF's Direct Interest, DAF's Full Direct Interest, DAF's capital account value, and/or DAF's shares in the Crusader Fund.

ANSWER:

INTERROGATORY NO. 23: Identify and describe in detail the role of Seery, Grosvenor, and/or anyone on the Redeemer Committee in the solicitation or negotiation of any of the offers leading up to the Sale of the Claims.

ANSWER:

INTERROGATORY NO. 24: Identify the material terms of the Sale of the Claims to Jessup.

ANSWER:

SECOND SET OF REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 43: All Documents and Communications concerning the solicitation and negotiation of offers to purchase the Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 44: All Documents and Communications concerning A&M's involvement in the solicitation and negotiation of offers to purchase the Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 45: Any and all bids, offers, solicitation packages, term sheets, or similar documents, relating to the Sale of the Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 46: All Documents and Communications concerning or reflecting the value of each of the Claims prior to or after the Sale of the Claims, or in connection with the solicitation or negotiation of offers as described in Exhibit 1.

RESPONSE:

REQUEST FOR PRODUCTION NO. 47: Any and all agreements granting the Redeemer Committee, or any member of the Redeemer Committee, and/or the Crusader Fund the right to participate in the ultimate recoveries on the Claims, and all Communications relating to any such grant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 48: All Documents and Communications concerning or reflecting Seery's role in the solicitation or negotiation of any of the offers made in connection with the Sale of the Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 49: All Documents and Communications concerning or reflecting Grosvenor's and/or anyone on the Redeemer Committee's role in the solicitation or negotiation of any of the offers made in connection with the Sale of the Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 50: All Documents reflecting any Communications involving and/or including Seery, on the one hand, and A&M, on the other hand, regarding the Sale of Claims or the Claims

RESPONSE:

REQUEST FOR PRODUCTION NO. 51: All Documents reflecting any Communications involving and/or including Grosvenor, on the one hand, and A&M, on the other hand, regarding the Sale of Claims or the Claims

RESPONSE:

REQUEST FOR PRODUCTION NO. 52: All Documents reflecting any Communications involving and/or including Stonehill, on the one hand, and A&M, on the other hand, regarding the Sale of Claims or the Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 53: All Documents reflecting any Communications involving and/or including Jessup, on the one hand, and A&M, on the other hand, regarding the Sale of Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 54: All Documents reflecting any Communications between and/or among one or more of A&M, Seery, Grosvenor, Stonehill, and/or Jessup regarding any Big Boy Clause proposed or agreed to in connection with the Sale of the Claims or the Claims

RESPONSE:

REQUEST FOR PRODUCTION NO. 55: All Documents reflecting any Communications between and/or among one or more of A&M, Seery, Grosvenor, Stonehill, and/or Jessup regarding any risks of recovery on the Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 56: All Documents reflecting any Communications between and/or among one or more of A&M, Seery, Grosvenor, Stonehill, and/or Jessup regarding any deferred payment(s) for the Claims, including but not limited to, any agreement to pay any additional money based on the ultimate/percentage of recovery on the Claims from HCM's bankruptcy estate.

RESPONSE:

REQUEST FOR PRODUCTION NO. 57: All Documents and Communications concerning or reflecting all persons and/or entities that communicated with A&M concerning DAF's Direct Interest, DAF's Full Direct Interest, DAF's capital account value, and/or DAF's shares in the Crusader Fund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 58: All Documents and Communications concerning or reflecting Grosvenor's interest in the Crusader Fund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 59: All Documents and Communications concerning or reflecting Grosvenor's interest, if any, in Stonehill.

RESPONSE:

REQUEST FOR PRODUCTION NO. 60: All Documents and Communications concerning or reflecting Grosvenor's interest, if any, in Jessup.

RESPONSE:

Dated: July 29, 2024

Respectfully submitted,

/s/ *Sawnie A. McEntire*

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ATTORNEYS FOR PLAINTIFF CHARITABLE DAF FUND, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2024, a true and correct copy of this instrument was filed and served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ *Sawnie A. McEntire*
Sawnie A. McEntire

3163998.1

EXHIBIT 1

Alvarez & Marsal CRF Management, LLC 2029 Century Park East Suite 2060 Los Angeles, CA 90067

July 6, 2021

Re: Update & Notice of Distribution

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of $137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of $50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

A timely appeal of the settlement was taken by UBS (the "UBS Appeal) in the United States District Court for the Northern District of Texas, Dallas Division. However, the Bankruptcy Court subsequently approved a settlement between HCM and UBS, resulting in dismissal of the UBS Appeal with prejudice on June 14, 2021.

On April 30, 2021, the Crusader Funds and the Redeemer Committee consummated the sale of the Claims against HCM and the majority of the remaining investments held by the Crusader Funds to Jessup Holdings LLC ("Jessup") for $78 million in cash, which was paid in full to the Crusader Funds at closing. The sale specifically excluded the Crusader Funds' investment in Cornerstone Healthcare Group Holding Inc. and excluded certain specified provisions of the settlement agreement with HCM (the "Settlement Agreement"), including, but not limited to, the Retained Rights. The sale of the Claims and investments was made with no holdbacks or escrows.

The sale to Jessup resulted from a solicitation of offers to purchase the Claims commenced by Alvarez & Marsal CRF Management LLC ("A&M CRF"), as Investment Manager of the Crusader Funds, in consultation with the Redeemer Committee. Ultimately, the Crusader Funds and the Redeemer Committee entered exclusive negotiations with Jessup, culminating in the sale to Jessup.

A&M CRF, pursuant to the Plan and Scheme and with the approval of House Hanover, the Redeemer Committee and the Board of the Master Fund, now intends to distribute the proceeds from the Jessup transaction ($78 million), net of any applicable tax withholdings and with no reserves for the Extinguished Claims or the Released Claims. In addition, the distribution will include approximately $9.4 million in proceeds that have been redistributed due to the cancellation

and extinguishment of the interests and shares in the Crusader Funds held by HCM, Charitable DAF and Eames in connection with the Settlement Agreement, resulting in a total gross distribution of $87.4 million. Distributions will be based on net asset value as of June 30, 2021.

Please note that A&M CRF intends to make the distributions by wire transfer no later than July 31, 2021. Please confirm your wire instructions on or before **July 20, 2021**. If there are any revisions to your wire information, please use the attached template to provide SEI and A&M CRF your updated information on investor letterhead. This information should be sent on or before **July 20, 2021** to Alvarez & Marsal CRF and SEI at CRFInvestor@alvarezandmarsal.com and AIFS-IS_Crusader@seic.com, respectively.

The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: 

Steven Varner
Managing Director

On investor letterhead, please use the template below to provide Alvarez & Marsal CRF Management, LLC and SEI your updated wire information.

Information Needed	**Wire Information Input**
Investor name (as it reads on monthly statements) Fund(s) Invested Contact Information (Phone No. and Email) Updated Wire Information • Beneficiary Bank • Bank Address • Beneficiary (Account) Name • ABA/Routing # • Account # • SWIFT Code International Wires • Correspondent Bank • ABA/Routing # • SWIFT Code	

Signed By: _____ Date: _____