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

In re:

Highland Capital Management, L.P.<sup>1</sup>

*Debtor.*

Chapter 11

Case No. 19-34054 (SGJ)

Charitable DAF Fund, L.P.,

*Plaintiff,*

Adversary No. 24-03073

<sup>1</sup> 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.



v.

Alvarez & Marsal CRF Management,  
LLC

*Defendant.*

**DEFENDANT ALVAREZ & MARSAL CRF MANAGEMENT, LLC'S BRIEF IN  
OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

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## INTRODUCTION

If DAF's motion to remand confirms anything, it is that bankruptcy jurisdiction over this dispute is both proper and appropriate if there's to be any hope of bringing this decade-old litigation crusade to an end. Nothing in DAF's motion—which is short on legal argument and long on specious rhetoric—alters that fact.

Despite its repeated representations to A&M and the state court that this case is “irrelevant” to the Highland Capital bankruptcy, DAF's amended pleadings now confirm that the opposite is true. In DAF's own words, its amended claims are “based on the extent to which A&M or the Redeemer Committee controlled negotiations and decision-making concerning the settlement and sale of the Crusader Funds' bankruptcy claims.” Mot. at 7. By adding those amended claims and seeking discovery relating to the Debtor's CEO in furtherance of those claims—discovery identical to that sought by James Dondero in his earlier Rule 202 Petition that this Court found nearly conferred bankruptcy jurisdiction—DAF injected those bankruptcy issues into this case. By all accounts, that should be good enough to create bankruptcy jurisdiction here. Post-confirmation bankruptcy jurisdiction extends to state-law disputes between non-debtors so long as they implicate bankruptcy plan provisions or concern pre-confirmation relations between the parties. The claims in dispute here do both.

DAF does not and cannot deny that its amended pleadings claim injuries arising largely out of pre-confirmation conduct. Instead, DAF focuses on the Gatekeeper provision, arguing that nothing in dispute between the parties threatens to breach its terms because Mr. Seery is not (yet) a defendant and has not (yet) been served

with discovery. But DAF's analysis rests on a deeply flawed interpretation of the Gatekeeper provision's scope—one that would enable DAF to continue to use harassing litigation against A&M and others in service of embroiling Mr. Seery in proceedings that it is otherwise enjoined from pursuing directly.

Bankruptcy jurisdiction over this dispute is therefore proper, and the Court need not abstain from exercising it because if the two-and-a-half years that this case has already been pending are any indication, this case cannot be timely adjudicated in state court. DAF's entire argument to the contrary relies on the parties' January 2025 trial date that was set prior to the amendment of DAF's claims. But DAF just recently amended its petition with *brand new* allegations and claims regarding the Highland bankruptcy, which will inevitably add delay to the schedule to account for motions to dismiss, discovery, dispositive motions, expert discovery and reports, and pretrial proceedings. And that's to say nothing of the upcoming election, which may result in a brand-new judge presiding over this case who will have more than a decade of facts and history to learn before trial is a possibility. Thus, as this Court has already observed, judicial efficiency and economy counsel *overwhelmingly* in favor of *this Court* bringing this years-long dispute to an end.

DAF's other arguments to evade this Court's jurisdiction also fail.

*First*, there is no issue with the timeliness of A&M's removal. Within thirty days of receiving DAF's second amended petition, which for the first time alleged claims implicating the Highland Capital bankruptcy, A&M filed its notice of removal. DAF's arguments that A&M was required to remove earlier are nonsensical and



would require the Court either to adopt a tortured interpretation of the bankruptcy removal rule or else do the same for the general removal statute. No pleading, discovery request, or other paper filed or served in the state court action prior to the second amended petition started the clock for removal.

*Second*, there are no equitable grounds for a piecemeal remand. If anything, equity counsels in favor of just the opposite. DAF has for years used what were facially non-bankruptcy claims to set up what has now become a case related to the Highland Capital bankruptcy. All of DAF's claims belong in bankruptcy court and should be resolved together in the same forum.

### STATEMENT OF FACTS

**I. James Dondero, the founder of DAF and Highland Capital, tries and fails to obtain pre-suit discovery from A&M regarding claims trading in the Highland Capital bankruptcy.**

Undeterred by the mounting consequences of his years-long litigation crusade, on July 22, 2021, Mr. Dondero petitioned the 95th Judicial District Court of Dallas County, Texas for approval to take pre-suit discovery from A&M and Farallon Capital Management, LLC (Farallon) under Texas Rule of Civil Procedure 202. At the time, Mr. Dondero speculated (without basis) that Highland Capital's then CEO, James Seery, along with A&M and other claim holders, had developed and executed a nefarious scheme to sell certain bankruptcy claims below market value. In the hopes of substantiating this theory, Mr. Dondero crafted five document requests and five deposition topics aimed principally at obtaining information related to the settlement and subsequent sale of those claims.

To name but a few examples, Mr. Dondero’s discovery requests sought information bearing on 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.” Ex. B at 6.

A&M removed the Rule 202 Petition to this Court, and Mr. Dondero sought a remand. Finding that Rule 202 proceedings are not “civil actions” within the meaning of 28 U.S.C. § 1452, this Court remanded the petition to state court. *See In re Highland Cap. Mgmt., L.P.*, 2022 WL 38310. But it did so “with grave misgivings” in light of its intimate familiarity with claims-trading in bankruptcy, the fiduciary duties of unsecured creditors committees, and the “highly suspect” motives of Mr. Dondero in continuing to bring harassing lawsuits. And it went out of its way to observe (correctly) that if a civil suit materialized out of similar subject matter as the Rule 202 petition, related-to jurisdiction may exist. *Id.*

On remand, the Texas state court promptly denied the Rule 202 petition.

**II. Immediately following the dismissal of Mr. Dondero’s Rule 202 petition, DAF sues A&M and harasses it for years after receiving all of the relief it asked for.**

Just two months after the Court dismissed Mr. Dondero’s petition against A&M and Farallon, DAF sued A&M in Texas state court. In DAF’s own words, the suit was “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.” Ex. C at ¶ 7. In truth, A&M had a perfectly good-faith basis for withholding

funds from DAF—three years earlier, an arbitration panel found that DAF had wrongfully obtained its interest in Offshore Fund II and ordered that the interest be transferred for the benefit of the Crusader Funds or extinguished. And A&M received no response or objection from DAF when it subsequently notified DAF of its intent to withhold distributions in compliance with the arbitration order.

Yet, desiring to avoid costly litigation at the Crusader Funds' expense, A&M *complied* with DAF's demands by distributing to DAF every nickel that had been withheld, agreeing to treat DAF as a limited partner in Offshore Fund II going forward, and agreeing to include DAF in all future distributions to Crusader Funds investors. That should have been the end of this case, but it wasn't—not by a long shot.

Instead of dismissing its claims, DAF served A&M with forty-two requests for production and fifteen interrogatories seeking seven years' worth of information on issues that had just been resolved. It then amended its petition to add a claim for tortious interference, doubling down on the same moot allegations that plagued its original petition. All the while, DAF represented to A&M and the Court that its suit was “irrelevant to . . . the bankruptcy of Highland Capital Management.” Ex. D at 1.

**III. DAF seeks discovery into the negotiation, settlement, and sale of claims against Highland Capital and amends its petition with new allegations premised on the same issues.**

Not six months after insisting that the bankruptcy of Highland Capital had nothing to do with this case, DAF could conceal its hand no longer. On July 29, 2024, DAF served A&M with nine interrogatories and eighteen document requests targeting information pertaining to the negotiation, settlement, and sale of claims against

Highland Capital.<sup>2</sup> And on August 28, 2024, apparently recognizing that issues relating to the handling of the bankruptcy claims were outside the scope of its existing pleading, DAF filed a second amended petition to add allegations arising out of A&M’s participation in the negotiation, settlement, and sale of those claims.

The resemblance between Mr. Dondero’s Rule 202 discovery requests and DAF’s new discovery requests and allegations is unmistakable. Compare, for example, a sample of DAF’s recent document requests to A&M with the document requests Mr. Dondero served.

<b><u>Request in Dondero’s 202 Petition</u></b>	<b><u>Request Served by DAF</u></b>
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)	<p>All Documents and Communications concerning the solicitation and negotiation of offers to purchase the Claims.</p> <p>All Documents and Communications concerning A&amp;M’s involvement in the solicitation and negotiation of offers to purchase the Claims.</p> <p>Any and all bids, offers, solicitation packages, term sheets, or similar documents, relating to the Sale of the Claims.</p>
All communications with James Seery regarding the Claims	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.

<sup>2</sup> DAF asserts (at 17), that it “served A&M with proposed interrogatories” seeking the same information on February 13, 2024. As the cited document (Remand Ex. II) makes clear, however, those “proposed interrogatories” were (a) unsigned, and (b) tendered in connection with a “confidential settlement communication” submitted “pursuant to T.R.E. 408.” They were never formally served in the state court action and, plainly, did not trigger any ability for A&M to remove the claims to bankruptcy court. They do demonstrate, however, that DAF has always been attempting to evade the Gatekeeper provisions and dig up information it could try to use against Mr. Seery.

	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.
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)	<p>All Documents reflecting any Communications between and/or among one or more of A&amp;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.</p> <p>All Documents reflecting any Communications between and/or among one or more of A&amp;M, Seery, Grosvenor, Stonehill, and/or Jessup regarding any risks of recovery on the Claims.</p>

Ex. B; Ex. E.

DAF’s mirror-image requests are noteworthy for two additional reasons. *First*, they plainly seek information regarding communications, conduct, and relationships that occurred prior to the Court’s confirmation of the Plan. *Second*, they toe the line, if not altogether flout, the boundaries set forth in the Plan’s “Gatekeeper” provision, which requires certain parties like Mr. Dondero to obtain Court approval prior to taking certain legal actions. Indeed, on August 25, 2023, this Court rejected an effort by yet another Dondero-related entity, Hunter Mountain Investment Trust (HMIT), to pursue claims against James Seery and others relating to the same sale of bankruptcy claims that DAF has now injected into this action. *See* Dkt. No. 3904.

In its order confirming the Plan, the Court explained that the Gatekeeper provision 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.” Dkt. 1943 at ¶ 78. One of the parties whom the Gatekeeper provision was specifically designed to protect was James Seery—the subject of numerous discovery requests DAF recently served on A&M to substantiate its new bankruptcy-related claims.

### LEGAL STANDARD

“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).<sup>3</sup> Jurisdiction under 28 U.S.C. § 1334 exists over “all civil proceedings . . . related to cases under title 11.”

Where, as here, a plan of reorganization has been confirmed, the court’s related-to jurisdiction is more limited than pre-confirmation and exists only “for matters pertaining to the implementation or execution of the plan.” *In re GenOn Mid-Atl. Dev., L.L.C.*, 42 F.4th 523, 534 (5th Cir. 2022) (quoting *In re Craig’s Stores of Texas, Inc.*, 266 F.3d 388, 390 (5th Cir. 2001)). In general, a dispute pertains to the “implementation or execution” of a plan of reorganization when it implicates (1) “a specific plan’s provision,” (2) “the parties’ bankruptcy-law rights or responsibilities,”

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<sup>3</sup> In addition, removal directly to the bankruptcy court, rather than first to the district court, is appropriate and an accepted practice in the Northern District of Texas pursuant to its Standing Order of Reference of Bankruptcy Cases and Proceedings. See Misc. Order No. 33 (Aug. 3, 1984); 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.); *Lycoming Engines v. Superior Air Parts, Inc.*, No. 3:12-AP-03035, Dkt. 1, 38 (Bankr. N.D. Tex. July 6, 2012). A&M does not understand this to be a contested point between the parties.

or (3) the “[pre]-confirmation relations between the parties.” *Id.* at 538–39; *see also In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 589 (5th Cir. 2008) (“[Post-confirmation] jurisdiction extends to matters that impact compliance with . . . the reorganization plan.”) (internal quotations omitted).

A notice of removal of a civil action initiated after commencement of a case under the Code must be filed, as relevant here, within “30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed.” Fed. R. Bankr. P. 9027(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.” *Id.* (advisory committee note).

## **ARGUMENT**

This Court should deny DAF’s motion to remand. There is bankruptcy jurisdiction over the claims alleged in the second amended petition, which the Court is not required to abstain from exercising. Moreover, A&M timely removed in accordance with Rule 9027(a)(3), and no equitable grounds for a partial remand exist. DAF’s arguments to the contrary are meritless.

### **I. The Court has related-to jurisdiction over this post-confirmation adversary proceeding.**

The claims presented in DAF’s second amended petition bring this action comfortably within the related-to jurisdiction of this Court.

DAF’s argument to avoid jurisdiction boils down to this: disputes between non-debtors that were not in existence during the bankruptcy or under the Plan fall out-

side bankruptcy court review. But that is not the law, as three decades of Fifth Circuit bankruptcy jurisprudence confirm. To the contrary, the Fifth Circuit has on multiple occasions recognized bankruptcy jurisdiction over state-law disputes like this one arising between non-debtors after Plan confirmation. *See, e.g., Matter of Zale Corp.*, 62 F.3d 746 (5th Cir. 1995); *In Re Biloxi Casino Belle Inc.*, 368 F.3d 491 (5th Cir. 2004); *Matter of Galaz*, 841 F.3d 316 (5th Cir. 2016); *In re GenOn Mid-Atlantic Development, L.L.C.*, 42 F.4th at 538–39. Those decisions, which DAF conveniently omits from its motion, teach that post-confirmation jurisdiction exists over state-law disputes between non-debtors when the claims at issue concern conduct between the parties prior to confirmation of a bankruptcy plan or implicate a plan provision.

Because DAF’s claims against A&M squarely implicate the *pre*-confirmation relations between the parties and invite violations of the Plan’s Gatekeeper provision, jurisdiction exists and remand is improper. *See GenOn Mid-Atlantic Development, L.L.C.*, 42 F.4th at 538–39.

**A. DAF alleges injuries arising from A&M’s conduct prior to this Court’s confirmation of the Plan.**

DAF’s latest petition pleads various harms arising out of A&M’s participation in the “Sale of Claims” against the Highland Capital bankruptcy estate. Ex. F. at ¶¶ 17–26. Those allegations—conspicuously absent from any prior petition filed by DAF—target conduct that occurred well before the Court’s confirmation of the Plan on February 22, 2021.

- Several months after the final arbitration award was issued, HCM filed bankruptcy and the Redeemer Committee and the Crusader Funds filed overlapping claims . . . against HCM’s estate. . . . The



Crusader Funds' claim was filed by A&M.

- A&M and the Redeemer Committee then entered into a settlement with HCM which reduced the Claims . . . in favor of the Redeemer Committee . . . [and the] Crusader Funds. A motion to approve the Claims was filed in the bankruptcy court by HCM . . . which confirms that A&M allowed the Redeemer Committee to control negotiations concerning funds to which the Crusader Funds asserted entitlement.
- 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 [including DAF] and maximization of recovery.

Ex. F at ¶¶ 20–22.

DAF also alleges injuries arising from A&M's participation in the subsequent sale of those same Claims. While those sales occurred post-confirmation (yet before the Plan went into effect), they concern the same pre-confirmation relations between A&M, the Redeemer Committee, and investors like DAF that form the basis of DAF's grievances.

- In or around April 2021, the approved Claims were sold to a special purpose entity, Jessup Holdings, LLC . . . On July 6, 2021, A&M 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 . . . .
- HCM has since paid out almost \$320 million . . . . 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.

- 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.

*Id.* ¶¶ 23–25.

DAF does not dispute these facts because it cannot. Instead, in the *one* instance it actually acknowledges the pre-confirmation state of affairs, it sets up a straw man by first *conceding* shared facts between this case and the Highland bankruptcy—namely, claims trading and the Crusader Settlement—and then dismissing them as an insufficient basis for jurisdiction. Mot. at 11.

But DAF misses the point. No one is arguing that jurisdiction exists just because this case and the Highland bankruptcy have facts in common. Instead, A&M is arguing that jurisdiction exists when those facts concern pre-confirmation activity and form the basis of the allegations in the state law petition—which became true only when DAF recently amended its state court petition to add claims specifically arising from A&M's handling of the Crusader Funds' bankruptcy claims against Highland. That is the law of this Circuit, and it controls—even in “lawsuit[s] between a non-debtor investor [and] a non-debtor investment advisor.” Mot. at 1.

Jurisdiction exists for that reason alone, so DAF's motion should be denied.

**B. The claims in DAF's second amended petition will almost inevitably lead to a breach of the Plan's Gatekeeper provision.**

Post-confirmation jurisdiction is proper for the additional reason that this dispute implicates a provision in the Plan. *In re GenOn Mid-Atlantic Development, L.L.C.*, 42 F.4th at 534. This is at least the third time in three years that Mr. Seery

has found himself on the business end of harassing discovery efforts led by Mr. Dondero and his affiliates—the very kind of thing this Court designed the Gatekeeper provision to guard *against*.<sup>4</sup> If this dispute continues as is without the Court’s supervision, DAF’s relentless efforts to obtain discovery from Mr. Seery are all but certain to run afoul of the Plan’s injunction.

DAF struggles mightily to articulate why the Gatekeeper provision does not apply. While it acknowledges (at 11) that the injunction prohibits direct claims against Mr. Seery, it denies that such protections exist here because the only defendant is A&M.

But DAF’s argument is dubious at best and grafts onto the injunction an unnecessarily narrow scope. The Court crafted the Gatekeeper provision for the express purpose of *protecting* people like Mr. Seery from getting dragged into endless Dondero-led litigation following reorganization. By its terms, it prohibits not only *claims* against Mr. Seery, but also any *judicial proceedings* of any kind that would *affect* the Debtor or the property of the Debtor. Dkt. 1943 (Plan) § IX.F. While DAF’s discovery requests do not directly require Mr. Seery’s compliance (as they are not addressed to him), they require A&M’s. And, crucially, Mr. Seery’s centrality to the discovery all but guarantees that A&M’s compliance will be an impossibility without his significant involvement.

That’s why it makes no difference at all that Mr. Seery’s name does not appear

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<sup>4</sup> In addition to this action and the earlier Rule 202 Petition involving A&M, HMIT also pursued a Rule 202 proceeding in state court relating to the “Seery/Claims Purchasers conspiracy theory.” Dkt. No. 3904, at 6–7.

in the petition, as DAF repeatedly points out. *Of course it's not.* After Mr. Dondero earned the Court's ire for including Mr. Seery's name *nine times* in his Rule 202 petition—a blatant abuse of the Gatekeeper provision the Court could only describe as “[d]isturbing[]”—it is hardly surprising that DAF's lawyers knew better than to make the same mistake. See *In re Highland Capital*, 2022 WL 38310, at \*3. In any event, as far as the injunction is concerned, it's far less relevant *how* the litigation involves Mr. Seery than *that* it involves him. The Court should not permit a bit of not-so-artful pleading to thwart the purposes of the injunction, which would be the ultimate elevation of form over substance.

Because DAF's claims implicate the Gatekeeper provision, or make a breach of the Gatekeeper provision a virtual inevitability, bankruptcy jurisdiction exists.

## **II. The Court is not required to abstain from adjudicating this adversary proceeding.**

Where, as here, the court has bankruptcy jurisdiction, it must abstain from hearing any state law claims or causes of action ***only when*** (1) “an action with respect to those state-law claims could not have been commenced in federal court absent bankruptcy jurisdiction”; (2) “the claims only relate to a bankruptcy case; that is, they are not core bankruptcy claims”; (3) “an action regarding the claims has been commenced in state court”; ***and*** (4) “such an action can be timely adjudicated there.” *In re GenOn Mid-Atl. Dev., L.L.C.*, 42 F.4th at 539 (citing 28 U.S.C. § 1334(c)(2) and *In re TXNB Internal Case*, 483 F.3d 292, 300 (5th Cir. 2007)) (cleaned up).

Relying primarily on the fourth factor, DAF argues that abstention is required because the parties' January 2025 trial setting means timely resolution in state court

is possible. But to call DAF's outlook optimistic would be an understatement.

This case has been pending for nearly two-and-a-half years. Those two-and-a-half years have seen DAF's claims nearly dismissed for want of prosecution; three separate petitions; multiple hearings and discovery disputes; and two continuances. And the outlook for the next year of this case—if not longer—is just as murky. DAF's recent amendments to its petition, which add new claims entirely unrelated to those originally pleaded, effectively restart the schedule. Those claims will inevitably require a substantial extension to the discovery schedule and other schedule extensions that account for motions to dismiss, discovery, dispositive motions, expert discovery, and pretrial proceedings. That includes discovery from Mr. Seery, which may itself be a violation of this Court's Gatekeeper injunction. None of that has even started.

On top of the natural amendments to the case schedule that will be required due to DAF's new allegations, there is also substantial uncertainty in the case schedule attributable to the upcoming election. The judge overseeing this dispute, the Honorable Tonya Parker, is a candidate for the Fifth Court of Appeals, so she may not be overseeing this case by the time that trial comes around. If that is the case, another judge will have to learn more than a decade of facts, law, and history in order to make trial in this matter productive.

For these and other reasons, this Court was correct more than two years ago when it observed that “judicial efficiency and economy” counseled *overwhelmingly* in favor of deciding the issues presented in Mr. Dondero's Rule 202 petition rather than remanding them to state court. *See In re Highland Capital*, 2022 WL 38310, at \*9.

The very same logic manifestly applies here. The issues that are now in dispute as a consequence of DAF's new allegations are precisely those that gave the Court "grave misgivings" when it remanded the Rule 202 petition. And the civil action arising out of the Rule 202 petition that the Court predicted may implicate bankruptcy jurisdiction has now arisen.

If this really were the straightforward state court dispute over withheld partnership distributions that DAF initially advertised it to be, then it would have been resolved years ago when A&M paid DAF everything to which it is entitled as an investor in the Offshore Fund II. But it is much more than that, as DAF's belated amended claims make clear, which is why it has turned into a years-long dispute in the state court with no resolution in sight. Bankruptcy court is the appropriate forum to resolve this dispute.

Moreover, DAF has not carried its burden to show the first element—that this action could not originally have been brought in federal court. On the face of DAF's pleadings, the amount in controversy far exceeds \$75,000 and the parties appear completely diverse. It is DAF's burden to show that this action could not have been brought in federal court, which it has not attempted to do and should not now be permitted to do. *Teal Energy USA, Inc. v. GT, Inc.*, 369 F.3d 873, 879 & n.18 (5th Cir. 2004) (declining to consider new diversity-related allegations in reply brief because "arguments raised for the first time in a reply brief are waived").

Accordingly, as DAF fails to show that this action could be timely resolved in

state court and that it could not have brought its suit in federal court initially, abstention is not required. *See In re GenOn Mid-Atl. Dev., L.L.C.*, 42 F.4th at 539 (“The statute requires abstention only if all four conditions are met.”)

### **III. A&M’s notice of removal was timely.**

DAF next says that even if jurisdiction is proper and abstention not mandatory, the Court should still remand because A&M filed its notice of removal too late. Not even close. Federal Rule of Bankruptcy Procedure 9027(a)(3) requires a removing party to file its notice of removal within thirty days of receiving “the initial pleading setting forth the claim or cause of action sought to be removed.” On any reasonable reading of the Rule, A&M did just that.

#### **A. DAF’s second amended petition was the “initial pleading” referenced in Rule 9027(a)(3).**

Unable to dispute A&M’s timeliness on any reasonable reading of Rule 9027(a)(3), DAF offers a nonsensical one and argues (at 15) that what Congress *really* meant by “initial pleading setting forth the claim or cause of action sought to be removed” was “first pleading in the case.” On DAF’s view, the initial pleading referenced in Rule 9027(a)(3) *cannot be* an amended pleading because the Rule does not specifically reference “amended pleading” as does its statutory counterpart—28 U.S.C. § 1446, which governs the ordinary removal of state court actions.

The Court should reject DAF’s tortured interpretation of Rule 9027(a)(3). One look at the advisory committee notes to Rule 9027(a)(3) resolves what should have been obvious all along: the kind of pleading to which Rule 9027(a)(3) refers is “the first pleading containing the removable claim or cause of action.” In other words,

Rule 9027(a)(3) gives parties thirty days to remove once they receive the pleading that first contains removable allegations.

Any contrary rule would create absurdities. Parties could creatively plead to defeat removal in every single case by intentionally omitting allegations from the first pleading and then amending them on the thirty-first day after filing. That cannot be, and is not, the law—not just because it makes no practical sense, but because it requires an unnatural reading of an otherwise straightforward procedural rule and would sow needless disharmony between Rule 9027(a)(3) and 28 U.S.C. § 1446, which are supposed to work together.

DAF's position also finds support in exactly zero decisions applying Rule 9027(a)(3). The one case DAF does offer (at 15–16) it grossly misrepresents. *See In re Hofmann*, 248 B.R. 79 (Bankr. W.D. Tex. 2000). *In re Hofmann* dealt with what the Court described as a “unique” situation in which a defendant was served with a state court action just one day before the related bankruptcy action closed. *Id.* at 80–82, 88. The Court later reopened the bankruptcy action, and the question was whether the defendant's deadline to remove under Rule 9027(a)(3) ran from the date it was served with the petition or from the date it learned the case was reopened. *Id.* at 83. After deciding that the removal was improper on jurisdictional grounds, the Court stated *in dicta* that the timeline for removal ran from the “initiation of the litigation” rather than from the date of the order reopening the bankruptcy matter. *Id.* at 86–87. *In re Hofmann* did not contemplate the entirely different situation presented here, in which an initially unremovable case becomes removable through new



allegations pleaded in an amended petition.

The thirty-day clock for removing this case began on August 28, 2024—the date DAF filed its first *pleading that contained claims making this case removable*. Because A&M filed its notice of removal on September 13, 2024, well before that thirty-day clock expired, its removal was timely.

**B. None of DAF’s discovery requests made the case removable.**

DAF’s second untimeliness argument is even worse than its first. Desperate to avoid bankruptcy court, DAF next argues (at 16–18) that A&M’s removal was untimely under the “other paper” provision in subsection (a)(3) of the general removal statute, 28 U.S.C. § 1446. According to § 1446(a)(3), removing parties have thirty days to remove an action that, while not initially removable, becomes removable through an “amended pleading, motion, order or other paper.”

On DAF’s view, *if* this case ever became removable, then it became removable in February or July 2024 when it served discovery requests (or, apparently, unsigned “proposed interrogatories” in connection with confidential settlement discussions, *see* footnote 2, *supra*) on A&M that it claims requested the information that A&M is now using in support of removal. And according to DAF (at 17), “[c]ourts have long held that the term ‘other paper’ includes discovery requests.”

But DAF overplays its hand. No Fifth Circuit decision has *ever* recognized a discovery request as “other paper” under § 1446(a)(3). And two of the three district court decisions DAF cites are flatly distinguishable, either because they simply didn’t involve a discovery request at all, *e.g.*, *Fernando Garcia v. MVT Servs., Inc.*, 589 F.

Supp. 2d 797, 804 (W.D. Tex. 2008) (settlement agreement produced in discovery was “other paper”), or because the discovery request made jurisdiction plainly obvious in a way not applicable here, *John Hunter, Inc. v. Great Impressions Apparel, Inc.*, 313 F. Supp. 2d 644, 648 (N.D. Tex. 2002) (amount in controversy, which is an immediately verifiable number, was stated plainly on the face of the request).

In any event, DAF’s mere suggestion that its discovery requests should have alerted A&M that it had a basis to remove is beyond the pale and should be dismissed out of hand. DAF’s *consistent* position in this case has been that matters implicating “the bankruptcy of Highland Capital Management” are “irrelevant to the present dispute.” *See* Ex. D at 1. It’s been on that very premise that DAF has justified its continued prosecution of this suit. And discovery relating to the bankruptcy claims was plainly outside the scope of the claims as they existed before the second amended petition, which related only to alleged wrongdoing by A&M in withholding partnership distributions to DAF. So, while DAF may *now* have an interest in changing its tune, the Court should see DAF’s about face for what it is—an opportunistic attempt to keep this case out of the forum in which it belongs.

\* \* \*

A&M’s notice of removal was timely. DAF’s motion should be denied.

**IV. No equitable grounds exist to justify remand of any of DAF’s claims.**

DAF next suggests (at 4) that even if jurisdiction exists over some claims, equity counsels in favor of remanding any other claims the Court determines are not bankruptcy related. *See* 28 U.S.C. § 1452(b). Not so.

The problem with DAF's argument is, of course, that none of its claims are non-bankruptcy related claims. In fact, no part of this case is non-bankruptcy related. While that is how this case was initially pleaded, it has become manifest that we are here only because DAF for years used what were facially non-bankruptcy claims to set up what has now become a bankruptcy case with discovery on bankruptcy-related issues outstanding.

All of DAF's claims belong in bankruptcy court and should be decided together.

**V. DAF is not entitled to fees and costs.**

DAF's final act is to request its costs and fees, claiming (at 21) that it could have avoided this whole removal ordeal had A&M just done some "basic research." But as demonstrated above, A&M had "objectively reasonable" grounds for removing this case on the basis of related-to jurisdiction. *See In re Highland Capital*, 2022 WL 38310, at \*10 n.15 (fees and costs not awarded where arguments in favor of removal are "objectively reasonable") (quoting *Renegade Swish, L.L.C. v. Wright*, 857 F.3d 692, 701 (5th Cir. 2017)). Indeed, it was this Court that first suggested related-to jurisdiction may exist over civil actions arising from the same subject matter as the Rule 202 petition. *Id.* at \*9 ("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"). And given the deep, unmistakable connection between Mr. Dondero's Rule 202 petition and DAF's claims and discovery requests that form the basis of A&M's removal, there was at minimum a reasonable basis for removal here.

Accordingly, the Court should deny DAF's request for costs and fees even if it

ultimately determines that remand or abstention is warranted.

### CONCLUSION

The Court should deny DAF's motion to remand.

Dated: November 4, 2024

Respectfully submitted,

/s/ John T. Cox III

John T. Cox III

Texas Bar No. 24003722

Patrick A. Vickery

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*Attorneys for Defendant Alvarez &  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 4, 2024, the foregoing document was filed with the Court's CM/ECF electronic filing system, providing notice to all counsel of record.

Dated: November 4, 2024

*/s/ Patrick A. Vickery*  
Patrick A. Vickery

*Attorney for Defendant Alvarez & Marsal CRF Management, LLC*

# EXHIBIT A

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*Attorneys for Defendant Alvarez &  
Marsal CRF Management, LLC*

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

In re:

Highland Capital Management, L.P.<sup>1</sup>

*Debtor.*

Chapter 11

Case No. 19-34054 (SGJ)

Charitable DAF Fund, L.P.,

*Plaintiff,*

<sup>1</sup> 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.

v.

Alvarez & Marsal CRF Management,  
LLC

*Defendant.*

Adversary No. 24-03073

**DECLARATION OF PATRICK A. VICKERY IN SUPPORT OF DEFENDANT  
ALVAREZ & MARSAL CRF MANAGEMENT, LLC'S BRIEF IN  
OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

I, Patrick Alan Vickery, hereby declare as follows:

1. I am an associate at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Alvarez & Marsal CRF Management, LLC (A&M) in the above-captioned matter. I am a member in good standing of the State Bar of Texas. I submit this declaration in support of A&M's Brief in Opposition to Plaintiff's Motion to Remand. I make this declaration on my own knowledge, and I would testify to the matters stated herein under oath if called upon to do so.

2. Exhibit B is a true and correct copy of the document titled "Verified Petition to Take Deposition Before Suit and Seek Documents," filed by James Dondero in Cause No. DC-21-09534 in the 95th Judicial District of Dallas County, Texas.

3. Exhibit C is a true and correct copy of the document titled "Plaintiff's Original Petition and Jury Demand" filed by Charitable DAF Fund, L.P. in the above styled matter.

4. Exhibit D is a true and correct copy of the document titled "Plaintiff's Response in Opposition to Defendant's Motion for Protective Order and Motion to



Abate, and Evidentiary Objections” filed by Charitable DAF Fund, L.P. in the above styled matter.

5. Exhibit E is a true and correct copy of the document titled “Plaintiff Charitable DAF Fund, L.P.’s Second Set of Interrogatories and Requests for Production to Defendant Alvarez & Marsal, CRF Management, LLC” served by Charitable DAF Fund, L.P. on A&M in the above styled matter.

6. Exhibit F is a true and correct copy of the document titled “Plaintiff’s Second Amended Petition” filed by Charitable DAF Fund, L.P. in the above styled matter.

\* \* \*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 4, 2024, in Dallas, Texas.

/s/ Patrick A. Vickery

Patrick A. Vickery

# EXHIBIT B

DC-21-09534

CAUSE NO. \_\_\_\_\_

IN RE JAMES DONDERO,

*Petitioner.*

§ IN THE DISTRICT COURT  
 § 95th  
 § \_\_\_\_\_ 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 informed 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**

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**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 22<sup>nd</sup> 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

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# EXHIBIT C

DC-22-10107

CASE NO. \_\_\_\_\_

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	116th
MANAGEMENT, LLC	§	
<i>Defendant.</i>	§	_____ 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 194.2(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

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**ATTORNEYS FOR PLAINTIFF  
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3106604.1

### Automated Certificate of eService

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Nicholle Trimbach on behalf of Sawnie McEntire

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Status as of 8/23/2022 5:43 PM CST

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# EXHIBIT D



CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
<i>Defendant.</i>	§	116 <sup>th</sup> 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**);<sup>1</sup> 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**

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<sup>1</sup> 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).<sup>2</sup> In sum, for a variety of factual and legal reasons, the Arbitration Award referenced in the Motion does not impact DAF's direct interests.<sup>3</sup>

### 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. [1<sup>st</sup> 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.

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<sup>2</sup> Exhibit 2-B is an e-mail from Roger McCleary, counsel for DAF, to A&M counsel Marshall King (and others).

<sup>3</sup> 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 interfered 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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’”<sup>7</sup> 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],”<sup>8</sup> 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.’”).

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<sup>4</sup> Motion, Ex. 2, pp. 12-13, Interrogatory Nos. 9-15.

<sup>5</sup> Motion, Ex. 2, pp. 16-18, RFP Nos. 17-28.

<sup>6</sup> Plaintiff's Original Petition, filed August 15, 2022 (“Petition”), ¶ 8.

<sup>7</sup> Motion, p. 4

<sup>8</sup> 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

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**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
<i>Plaintiff,</i>	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC	§	
<i>Defendant.</i>	§	116 <sup>th</sup> 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 5<sup>th</sup> 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 28<sup>th</sup> day of February 2024.

A handwritten signature in blue ink that reads "Mark Patrick". The signature is written in a cursive style with a horizontal line underneath it.

Mark Patrick



# EXHIBIT 2

CASE NO. DC-22-10107

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

**DECLARATION OF ROGER L. MCCLEARY**

STATE OF TEXAS	§
	§
COUNTY OF DALLAS	§

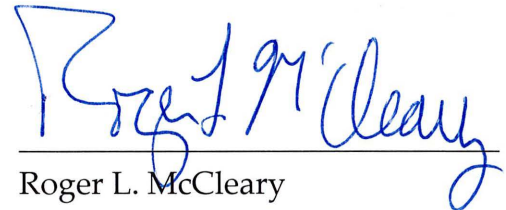
The undersigned provides this Declaration pursuant to Texas Civil Practice and Remedies Code Section 132.001 and declares as follows:

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 28<sup>th</sup> 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](mailto: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.

October 25, 2016  
Page 2

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](mailto: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](http://www.pmmlaw.com)

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---

**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](https://www.gibsondunn.com/200-Park-Avenue-New-York-NY-10166-0193)

Tel [+1 212.351.3905](tel:+12123513905) • Fax [+1 212.351.5243](tel:+12123515243)

[MKing@gibsondunn.com](mailto:MKing@gibsondunn.com) • [www.gibsondunn.com](https://www.gibsondunn.com)

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**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

# EXHIBIT E

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL, CRF	§	
MANAGEMENT, LLC	§	
<i>Defendant.</i>	§	116 <sup>th</sup> 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

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. 13393700

rmccleary@pmmlaw.com

One Riverway, Suite 1800

Houston, Texas 77056

(713) 960-7315 (Phone)

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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**



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](mailto:CRFInvestor@alvarezandmarsal.com) and [AIFS-IS\\_Crusader@seic.com](mailto: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.**

<b>Information Needed</b>	<b>Wire Information Input</b>
<p>Investor name (as it reads on monthly statements)</p> <p>Fund(s) Invested</p> <p>Contact Information (Phone No. and Email)</p> <p>Updated Wire Information</p> <ul style="list-style-type: none"><li>• Beneficiary Bank</li><li>• Bank Address</li><li>• Beneficiary (Account) Name</li><li>• ABA/Routing #</li><li>• Account #</li><li>• SWIFT Code</li></ul> <p>International Wires</p> <ul style="list-style-type: none"><li>• Correspondent Bank</li><li>• ABA/Routing #</li><li>• SWIFT Code</li></ul>	

Signed By: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT F

CASE NO. DC-22-10107

CHARITABLE DAF FUND, L.P.,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
ALVAREZ & MARSAL CRF	§	
MANAGEMENT, LLC,	§	
<i>Defendant.</i>	§	116 <sup>th</sup> 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**")<sup>1</sup> 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,

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<sup>1</sup> 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."<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup>

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

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<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> 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*

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**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