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

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT	§	(Consolidated with 3:21-cv-00880;
FUND ADVISORS, L.P., et al.,	§	3:21-cv-01010; 3:21-cv-01360; 3:21-
Defendants.	§	cv-01362; 3:21-cv-01378; 3:21-cv-
	§	01379; 3:21-cv-03207; 3:22-cv-0789)
	§	

<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



**HIGHLAND’S REPLY TO DEFENDANTS’ OPPOSITION TO MOTION FOR AN  
ORDER OF WITHDRAWAL PURSUANT TO 28 U.S.C. § 2042 WITH RESPECT TO  
THE JUDGMENTS ENTERED AGAINST DEFENDANTS**

Highland Capital Management, L.P. (“Plaintiff” or “Highland”), the plaintiff in the above-captioned consolidated Action<sup>2</sup> and the reorganized debtor in the above-captioned Bankruptcy Case, by and through its undersigned counsel, files this reply to Defendants’ *Response in Opposition to Plaintiff’s Motion for an Order of Withdrawal Pursuant to 28 U.S.C. § 2042 with Respect to the Judgments Entered Against Defendants* [Docket No. 228] (the “Opposition”). In reply to the Opposition and in further support of the Motion, Highland respectfully states as follows:

**REPLY**

1. Whether mistakenly or malevolently in error, Defendants’ Opposition is arithmetically and legally wrong. In fact, the Opposition proves that Plaintiff is entitled to an order from this Court directing the Clerk of the Court to immediately turnover to Plaintiff all amounts in the Registry deposited to secure the Final Judgments.<sup>3</sup>

**There Is No Genuine Dispute That Paid Interest Is Less Than Interest Due**

2. There is no dispute that the aggregate amount of the Final Judgments equals \$68,902,707.24 (the “Combined Judgment Amount” or the “Cash Security”), the aggregate

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<sup>2</sup> “Action” and all other terms not otherwise defined herein have the meanings ascribed to them in Highland’s *Motion for an Order of Withdrawal Pursuant to 28 U.S.C. § 2042 with Respect to the Judgments Entered Against Defendants* [Docket No. 223] (the “Motion”) or the respective Final Judgments, as the case may be.

<sup>3</sup> As a professional courtesy, and in an effort to alleviate the burden on the Court and the parties, Highland immediately brought the basic and obvious arithmetical errors to the attention of Defendants’ counsel on Wednesday morning, November 27, and demanded that Defendants withdraw the Opposition and consent to the relief requested in the Motion. Defendants’ counsel stated that they would “look into” Highland’s contentions but would be unable to respond until November 29. The afternoon of November 29, Defendants’ counsel stated Defendants would issue a “correction” later that day or on Monday, December 2, but ignored Highland’s specific inquiry as to whether Defendants would consent to the relief requested. Given the egregious and fatal nature of Defendants’ arithmetical errors, Defendants’ continued refusal to consent to the relief requested necessitated the filing of this Reply.

amount Defendants deposited into the Registry in 2023. Opposition ¶3; Bonding Stipulation (first recital).

3. There is also no dispute that the Final Judgments provide that interest accrues on the Combined Judgment Amount at the applicable Federal Judgment Rate (“FJR”) of 5.35% per annum up to the date of satisfaction, and accrued interest is compounded annually. *See Order Adopting Report and Recommendation and Final Judgment* [Docket No. 128] at 8; *Order Adopting Report and Recommendation and Final Judgment* [Docket No. 133] ¶4. *See also* Opposition ¶¶ 9 and 10(b) (recognizing requirement that interest be “compounded annually”).<sup>4</sup>

4. To secure the Final Judgments pending appeal to the Fifth Circuit, at various times in 2023 following entry of this Court’s order granting the Bonding Motion [Docket No. 149], the Defendants deposited the Cash Security into the Registry. Opposition ¶3.

5. The Parties agree that, through October 31, 2024, interest in the aggregate amount of \$4,531,143.57<sup>5</sup> was added to the Cash Security (the “Paid Interest”). Opposition ¶10(a). Thus, as of October 31, 2024, the Registry held a total of \$73,433,850.81 to secure the Final Judgments.

6. Defendants contend that the Paid Interest exceeds the amounts due to Highland for post-judgment interest at the FJR. Opposition ¶10(a). But simple arithmetic—even using one of Defendants’ erroneous assumptions—proves that Paid Interest is less than the required FJR interest due and owing to Highland as of October 31, 2024, and Highland is entitled to the entire amount held in the Registry.

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<sup>4</sup> Notwithstanding this recognition, Defendants’ calculation of amounts due did not actually include any annual compounding of interest—an error Highland accepts for purposes of this Motion only. Highland reserves the right to seek interest that includes the effects of compounding.

<sup>5</sup> Paid Interest included interest earned at the Registry plus any Top-Up Interest paid into the Registry by Defendants to cover Registry earnings shortfalls versus the 5.35% FJR. Highland calculates a *de minimis* difference of \$0.01.

7. Defendants assume that post-judgment interest should be calculated during a 456-day period from August 3, 2023 (the date the amended judgments were entered) and October 31, 2024 (the last day before “per diem” interest begins) (the “Interest Day Assumption”). See Opposition, Ex. 1, column 4.<sup>6</sup>

8. Based on the three applicable inputs ((i) the Cash Security, (ii) the FJR, and (iii) the Interest Day Assumption, all of which Highland and Defendants agree on for purposes of this Motion), Paid Interest (\$4,531,143.57) is indisputably less than the interest legally due under the Final Judgments: **(i) \$68,902,707.24 x (ii) 5.35% / 365 x (iii) 456 = \$4,605,343.69** (“Interest Due”).

9. Since Paid Interest was \$74,200.12 *less* than Interest Due, the Court should grant the Motion and direct the Clerk to immediately release all funds in the Registry to Highland, subject to Highland’s reservation of rights.

**Defendants’ Analysis Contains Numerous (and Obvious) Arithmetic Errors**

10. Defendants’ analysis (**Exhibit A** attached hereto (highlighting added)) contains eight (8) obvious arithmetical errors which—when corrected—again prove that Paid Interest is less than Interest Due. Quite simply, in eight separate rows of their spreadsheet, Defendants ***added*** per diem interest to the number of days instead of ***multiplying*** per diem interest amount by the number of days. This obvious error ***understates the Interest Due by \$852,658.44*** and magically converts a deficit into an imaginary “surplus.” See Opposition ¶10(a).

11. As set out on Exhibit A, the fifth column of the spreadsheet purports to show the product of per diem interest multiplied by the Interest Day Assumption (*i.e.*, 456 days).

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<sup>6</sup> Highland accepts the Interest Day Assumption for purposes of this Motion only and reserves the right to seek interest from July 31, 2023 (the stipulated date of the Final Judgments), plus all required compound interest.

12. But beginning in the second row of column 5 and continuing with *every* third row thereafter, the calculation is simply—and egregiously—wrong. The incorrect entries are pulled from Exhibit A and described below (annotated Exhibit A highlights the errors):

<u>Summary of basic math</u>	A	B	A + B	A x B		
Judgment Debtor [Dkt ref]	Judgment amount [Reference Judgment Debtors Ex. 1]	Per Diem [Reference Judgment Debtors Ex. 1]	# Days per Defendants [Reference Judgment Debtors Ex. 1]	Incorrect Calculation of Interest Total per Judgment Debtors	Correct Highland re-calculation <sup>7</sup>	Difference due to basic math errors
NPAM (HCMFA) [Dkt. 143 P2]	\$5,452,960.55	\$ 799.27	456	\$ 1,255.27	\$ 364,466.92	\$ 363,211.65
NPAM (HCMFA) [Dkt. 144 P2]	1,034,106.08	151.57	456	607.57	69,117.95	68,510.38
NPA [Dkt. 145 P2]	1,102,978.87	161.67	456	617.67	73,721.29	73,103.62
NREP (HCRE) [Dkt. 146 P3]	1,061,829.42	155.64	456	611.64	70,970.93	70,359.29
NREP (HCRE) [Dkt. 146 P6]	556,279.67	81.54	456	537.54	37,180.82	36,643.28
HCMS [Dkt. 147 P3]	436,232.03	63.94	456	519.94	29,157.03	28,637.09
HCMS [Dkt. 147 P6]	332,249.78	48.70	456	504.70	22,207.03	21,702.33
Dondero [Dkt. 148 P1]	2,863,123.24	419.66	456	875.66	191,366.45	190,490.79
Total				\$ 5,529.99	\$ 858,188.43	\$ 852,658.44

13. Again, it appears that for these specific entries, instead of *multiplying* (AxB) the per diem interest by the number of days to determine aggregate interest owed, Defendants mistakenly *added* (A+B) one day of per diem interest to \$456.00 [sic]: a simple and obvious material error.

14. The aggregate amount of these obvious arithmetical errors equals \$852,658.44—an amount that exceeds the \$778,458.32 that Defendants mistakenly contend is a “surplus.” Opposition ¶10(a).

<sup>7</sup> Solely for purposes of demonstrating the magnitude of Defendants’ basic arithmetical error, Highland has re-calculated the interest using Defendants’ non-compounding convention. A full calculation of the amounts due to Highland under the Final Judgments, with proper compounding and the current per diem interest amount, is set out on **Exhibit B** hereto.

15. Thus, using Defendants' own analysis (and ignoring any of its other faults (*e.g.*, actual days, lack of required compounding)), but simply correcting for their eight obvious arithmetical errors, Paid Interest is indisputably less than Interest Due. Therefore, the Court should grant the Motion and direct the Clerk to disburse all amounts in the Registry, subject to Highland's reservation of rights to seek such further and additional interest and costs it contends are due and owing.

### **CONCLUSION**

WHEREFORE, Highland respectfully requests that the Court grant the Motion, enter the Proposed Order, and grant Highland any further relief as the Court deems just and proper.

Dated: November 29, 2024

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*/s/ Zachery Z. Annable*

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**EXHIBIT A**



Party and Source	Bond Amount	Per Diem (bond amount *5.35%)/365	Number of Days (8/3/23 through 10/31/24)	Interest Total per diem * number of days	Bond Amount plus Interest Total	Subtotal Bond Amount plus Interest Total by Party	Amount in Court Registry as of 10/31/24, Highland's "Total Cash Security"	Amount in Court Registry as of 10/31/24 w/o Bond Amount (interest and top-up payments in Court Registry)	Difference between Interest Total and Amount in Court Registry as of 10/31/24 w/o Bond Amount
NPAM (HCMFA) [Dkt. 143 ¶ 1]	\$2,617,415.34	\$383.65	456	\$174,943.74	\$2,792,359.08				
NPAM (HCMFA) [Dkt. 143 ¶ 2]	\$5,452,960.55	\$799.27 X	456 =	\$1,255.27 ?	\$5,454,215.82				
NPAM (HCMFA) [Dkt. 143 ¶ 3]	\$371,148.76	\$54.40	456	\$24,806.97	\$395,955.73				
NPAM (HCMFA) [Dkt. 144 ¶ 1]	\$2,206,160.24	\$323.37	456	\$147,456.12	\$2,353,616.36				
NPAM (HCMFA) [Dkt. 144 ¶ 2]	\$1,034,106.08	\$151.57 X	456 =	\$607.57 ?	\$1,034,713.65	NPAM (HCMFA)			
NPAM (HCMFA) [Dkt. 144 ¶ 3]	\$388,426.05	\$56.93	456	\$25,961.76	\$414,387.81	\$12,445,248.46	\$12,884,068.57	\$813,851.55	\$(438,820.11)
NPA [Dkt 145 ¶ 1]	\$24,746,838.07	\$3,627.28	456	\$1,654,037.98	\$26,400,876.05	NPA			
NPA [Dkt 145 ¶ 2]	\$1,102,978.87	\$161.67 X	456 =	\$617.67 ?	\$1,103,596.54	\$27,504,472.59	\$27,592,777.32	\$1,742,960.38	\$(88,304.73)
NREP (HCRE) [Dkt 146 ¶ 1]	\$210,395.08	\$30.84	456	\$14,062.46	\$224,457.54				
NREP (HCRE) [Dkt 146 ¶ 2]	\$3,822,585.00	\$560.30	456	\$255,495.30	\$4,078,080.30				
NREP (HCRE) [Dkt 146 ¶ 3]	\$1,061,829.42	\$155.64 X	456 =	\$611.64 ?	\$1,062,441.06				
NREP (HCRE) [Dkt 146 ¶ 4]	\$932,827.77	\$136.73	456	\$62,348.67	\$995,176.44				
NREP (HCRE) [Dkt 146 ¶ 5]	\$6,667,744.06	\$977.33	456	\$445,661.05	\$7,113,405.11	NREP (HCRE)			
NREP (HCRE) [Dkt 146 ¶ 6]	\$556,279.67	\$81.54 X	456 =	\$537.54 ?	\$556,817.21	\$14,030,377.66	\$14,117,566.60	\$865,905.60	\$(87,188.94)
HCMS [Dkt 147 ¶ 1]	\$171,155.61	\$25.09	456	\$11,439.76	\$182,595.37				
HCMS [Dkt 147 ¶ 2]	\$229,906.25	\$33.70	456	\$15,366.56	\$245,272.81				
HCMS [Dkt 147 ¶ 3]	\$436,232.03	\$63.94 X	456 =	\$519.94 ?	\$436,751.97				
HCMS [Dkt 147 ¶ 4]	\$163,470.17	\$23.96	456	\$10,926.08	\$174,396.25				
HCMS [Dkt 147 ¶ 5]	\$6,245,606.57	\$915.45	456	\$417,446.08	\$6,663,052.65	HCMS			
HCMS [Dkt 147 ¶ 6]	\$332,249.78	\$48.70 X	456 =	\$504.70 ?	\$332,754.48	\$8,034,823.52	\$8,089,619.63	\$510,999.22	\$(54,796.11)
Dondero [Dkt 148 ¶ 1]	\$3,981,474.95	\$583.59	456	\$266,115.24	\$4,247,590.19				
Dondero [Dkt 148 ¶ 1]	\$2,863,095.74	\$419.66	456	\$191,364.61	\$3,054,460.35				
Dondero [Dkt 148 ¶ 1]	\$2,863,123.24	\$419.66 X	456 =	\$875.66 ?	\$2,863,998.90	Dondero			
Dondero [Dkt 148 ¶ 1]	\$444,697.94	\$65.18	456	\$29,722.88	\$474,420.82	\$10,640,470.27	\$10,749,818.69	\$597,426.82	\$(109,348.42)

In each highlighted Row, Judgment Debtor incorrectly adds Columns 3 and 4 instead of multiplying the Columns

- Sum of Interest in Column 5: \$3,752,685.27 (see Defendants' response at ¶ 10).
- Sum of Interest incorrectly calculated by adding days to per diem amount, instead of multiplying (see boxes highlighted above, Column 5): \$5,529.99
- Sum of Interest incorrectly calculated above when correctly calculated by multiplying days times amounts per diem (sum of boxes highlighted above, Column 5): \$858,188.43
- Difference between the two amounts due to Defendants' arithmetic errors: \$858,188.43 less \$5,529.99 = \$852,658.44 (note: this amount does not reflect annual compounding required by the judgments and 28 USC 1961)

**EXHIBIT B**

Highland calculation of Post-Judgment Interest Owed and comparison of similarities and differences with the Judgment Debtors ("JD"s)

Ref	JD [Dkt reference]	Judgment Amount	B = A x 5.35% / 365		C (simple count)		D = B x C		E = (A + D) x 5.35% / 365		F (simple count)		G = E x F		H = D + G		I		J = H - I	
			Year 1 Per Diem (Judgment amount x 5.35%/365 (unrounded))	# Days (8/3/23 - 8/3/24, including leap day)	Year 1 Interest (Year 1 Per Diem x # Days)	Year 2 Per Diem (Judgment amount + Year 1 interest x 5.35% / 365 (unrounded))	# Days 8/3/23 through 10/31/24	Year 2 Interest through 10/31/24	Total Post-Judgment Interest Owed 8/3/23 - 10/31/24	Interest Total Per Exhibit 1 of JD's Opposition [3]	Difference between Highland and JD's	Reason for difference								
1	NPAM (HCMFA) [Dkt. 143 P1]	\$ 2,617,415.34	\$ 383.65	366	\$ 140,415.37	\$ 404.23	90	\$ 36,380.70	\$ 176,796.07	\$ 174,943.74	\$ 1,852.33	Compounding only								
2	NPAM (HCMFA) [Dkt. 143 P2]	5,452,960.55	799.27	366	292,532.66	842.15	90	75,793.29	368,325.95	1,255.27	367,070.68	Basic arithmetic error + small compounding								
3	NPAM (HCMFA) [Dkt. 143 P3]	371,148.76	54.40	366	19,910.86	57.32	90	5,158.77	25,069.63	24,806.97	262.66	Compounding only								
4	NPAM (HCMFA) [Dkt. 144 P1]	2,206,160.24	323.37	366	118,352.94	340.72	90	30,664.47	149,017.41	147,456.12	1,561.29	Compounding only								
5	NPAM (HCMFA) [Dkt. 144 P2]	1,034,106.08	151.57	366	55,476.25	159.71	90	14,373.53	69,849.78	607.57	69,242.21	Basic arithmetic error + small compounding								
6	NPAM (HCMFA) [Dkt. 144 P3]	388,426.05	56.93	366	20,837.73	59.99	90	5,398.92	26,236.65	25,961.76	274.89	Compounding only								
7	NPA [Dkt. 145 P1]	24,746,838.07	3,627.28	366	1,327,583.11	3,821.87	90	343,968.05	1,671,551.16	1,654,037.98	17,513.18	Compounding only								
8	NPA [Dkt. 145 P2]	1,102,978.87	161.67	366	59,171.04	170.34	90	15,330.83	74,501.87	617.67	73,884.20	Basic arithmetic error + small compounding								
9	NREP (HCRE) [Dkt. 146 P1]	210,395.08	30.84	366	11,286.98	32.49	90	2,924.38	14,211.36	14,062.46	148.90	Compounding only								
10	NREP (HCRE) [Dkt. 146 P2]	3,822,585.00	560.30	366	205,068.59	590.35	90	53,131.92	258,200.52	255,495.30	2,705.22	Compounding only								
11	NREP (HCRE) [Dkt. 146 P3]	1,061,829.42	155.64	366	56,963.51	163.99	90	14,758.87	71,722.38	611.64	71,110.74	Basic arithmetic error + small compounding								
12	NREP (HCRE) [Dkt. 146 P4]	932,827.77	136.73	366	50,043.02	144.06	90	12,965.82	63,008.83	62,348.67	660.16	Compounding only								
13	NREP (HCRE) [Dkt. 146 P5]	6,667,744.06	977.33	366	357,701.63	1,029.76	90	92,678.14	450,379.77	445,661.05	4,718.72	Compounding only								
14	NREP (HCRE) [Dkt. 146 P6]	556,279.67	81.54	366	29,842.50	85.91	90	7,732.00	37,574.49	537.54	37,036.95	Basic arithmetic error + small compounding								
15	HCMS [Dkt. 147 P1]	171,155.61	25.09	366	9,181.91	26.43	90	2,378.97	11,560.89	11,439.76	121.13	Compounding only								
16	HCMS [Dkt. 147 P2]	229,906.25	33.70	366	12,333.68	35.51	90	3,195.58	15,529.26	15,366.56	162.70	Compounding only								
17	HCMS [Dkt. 147 P3]	436,232.03	63.94	366	23,402.35	67.37	90	6,063.40	29,465.75	519.94	28,945.81	Basic arithmetic error + small compounding								
18	HCMS [Dkt. 147 P4]	163,470.17	23.96	366	8,769.61	25.25	90	2,272.15	11,041.76	10,926.08	115.68	Compounding only								
19	HCMS [Dkt. 147 P5]	6,245,606.57	915.45	366	335,055.40	964.56	90	86,810.65	421,866.05	417,446.08	4,419.97	Compounding only								
20	HCMS [Dkt. 147 P6]	332,249.78	48.70	366	17,824.06	51.31	90	4,618.10	22,442.16	504.70	21,937.46	Basic arithmetic error + small compounding								
21	Dondero [Dkt. 148 P1]	3,981,474.95	583.59	366	213,592.50	614.89	90	55,340.41	268,932.91	266,115.24	2,817.67	Compounding only								
22	Dondero [Dkt. 148 P1]	2,863,095.74	419.66	366	153,595.28	442.17	90	39,795.53	193,390.81	191,364.61	2,026.20	Compounding only								
23	Dondero [Dkt. 148 P1]	2,863,123.24	419.66	366	153,596.76	442.18	90	39,795.91	193,392.67	875.66	192,517.01	Basic arithmetic error + small compounding								
24	Dondero [Dkt. 148 P1]	444,697.94	65.18	366	23,856.52	68.68	90	6,181.07	30,037.59	29,722.88	314.71	Compounding only								
<b>Grand total</b>		<b>\$ 68,902,707.24</b>	<b>\$ 10,099.44</b>		<b>\$ 3,696,394.28</b>	<b>\$ 10,641.24</b>		<b>\$ 957,711.44</b>	<b>\$ 4,654,105.71</b>	<b>\$ 3,752,685.25</b>	<b>\$ 901,420.46</b>									

**\$ 73,556,812.95** Judgment + Post-Judgment Interest to 10/31/24 (A + H)

Breakdown by cause of differences	Amount
Due to basic arithmetic errors	\$ 852,658.44
Due to the effect of compounding	48,762.02
Other [1][2]	-
Sub-total	\$ 901,420.46

[1] Defendants utilized a date of August 3, 2023 from which to accrue post-judgment interest. The amounts that were stipulated as Final Judgments were as of July 31, 2023. At the latest, the Final Judgments should accrue from the July 31, 2023 date; otherwise there would essentially be zero interest accruing for three days. However, Highland is not seeking to litigate this "lost interest" at this time for the sake of judicial economy and avoiding even further wasteful motion practice. If Highland pursued the additional three days of interest, the overall difference would increase by approximately \$30k (Year 1 Per Diem of approx \$10k x 3 days). Highland reserves all rights with respect to collection of these costs.

[2] In addition to the other differences described herein, under the Notes, Highland is entitled to costs of collection, but the Final Judgments only awarded costs through July 31, 2022. Thus, Highland's costs for the work done in the District Court and the Fifth Circuit since July 31, 2022, are recoverable. The costs have not been factored into the above analysis as there is a shortfall of funds in the registry before even considering these costs. Highland reserves all rights with respect to collection of these costs.

[3] Exhibit 1 of JD's opposition to the motion, which serves as the basis for many of the numbers discussed within the JD's opposition, contains 8 basic arithmetic errors. The 8 errors are highlighted, but as a single example, the JD's describe the NPAM Judgment amount of \$5,452,960.55 (reference line 2) as having a simple Per Diem interest rate of \$799.27 and 456 days elapsing. \$799.27 x 456 = \$364,467.12, yet JD's calculate the amount as \$1,255.27 or the equivalent of less than two days-worth of interest. These basic arithmetic errors contribute to approximately \$853k or 95% of the difference between the JD's calculations and Highland's, with the other 5% resulting from Highland's calculation of the effects of compounding (JD's calculation does not include compounding). Regardless of the application of compounding, the basic arithmetic errors alone are enough to turn the JD's total calculated surplus of \$778k into a deficit. With proper application of compounding, the deficit only grows larger.

[4] Adding the Year 1 days and the Year 2 days equals 456 days. JD's also accrued interest for 456 days, so there is no difference in the cumulative count of days elapsed between Highland and the JD's.