Docket #4736 Date Filed: 08/27/2026

Geoffrey S. Harper
Texas Bar No. 00795408
gharper@kslaw.com
John Michael Gaddis
Texas Bar No. 24069747
mgaddis@kslaw.com
KING & SPALDING LLP
2601 Olive Street, Suite 2300
Dallas, TX 75201
T: (214) 764-4600

Michael J. Edney
michael.edney@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
T: (202)-739-3000
F: (202)-739-3001

Counsel for Appellant The Dugaboy Investment Trust

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Case No. 19-34054-sgj11
Reorganized Debtor.	
THE DUGABOY INVESTMENT TRUST,	On Appeal to the U.S. District Court for the Northern District of Texas
Appellant,	
v.	Case No. 3:26-cv-02315-X
HIGHLAND CLAIMANT TRUST,	Case No. 3:26-cv-02496-D
Appellee.	

APPELLANT DUGABOY'S RESPONSE IN OPPOSITION TO APPELLEE HIGHLAND'S MOTIONS TO STRIKE RECORD DESIGNATIONS ON APPEAL OF RULE 60(B) AND RULE 59(E) ORDERS (DOCKET NOS. 4706 AND 4728)

1934054260827000000000003

TABLE OF CONTENTS

Page

INTRODUCTION 1

FACTUAL AND PROCEDURAL BACKGROUND 2

LEGAL STANDARD 4

ARGUMENTS 5

A. Highland's Motions Indiscriminately Seek to Strike *All* of Dugaboy's Exhibits—Even Those This Court Has Admitted Into Evidence. 5

B. The Appellate Record Is Not Limited To Items Admitted Into Evidence. 8

C. Items That This Court Excluded Must Be Included In The Appellate Record To Allow Review Of The Challenged Evidentiary Rulings. 9

D. The Disputed Items Are Properly Designated Because They Were In The Record Before The Bankruptcy Court and Available For Its Consideration. 10

E. The Exhibits Filed With The Briefs Are Part Of The Record On Appeal Even If They Were Not Revisited At The Hearing. 12

F. Other Disputed Items Are Properly In The Record. 14

G. Excluding The Disputed Items Would Prejudice The Integrity Of The Appellate Review And Contravene Rule 8009's Accuracy Mandate. 15

CONCLUSION AND PRAYER 16

TABLE OF AUTHORITIES

Page(s)

Cases

In re Adkins,
No. 12-10314, 2014 WL 5801679 (Bankr. N.D. Tex. Nov. 7, 2014) 4, 10, 11, 12

Carmichael v. Blake,
No. 13-30466, 2022 Bankr. LEXIS 32 (Bankr. S.D. Tex. Jan 7, 2022) ..... *passim*

In re CPDC, Inc.,
337 F.3d 436 (5th Cir. 2003) 4, 5, 8, 11

In re Digerati Techs., Inc., 531 B.R. 654 (Bankr. S.D. Tex. 2015).....10, 11, 12

In re Heitmeier,
No. 13-6787, 2014 WL 1513886 (E.D. La. April 16, 2014) 5, 11

Lockwood v. GlassRatner Advisory & Cap. Grp. LLC,
Civ. No. 4:21-cv-00456, 2024 U.S. Dist. LEXIS 30186 (S.D. Tex. Feb. 22, 2024) ..... *passim*

In re SI Restructuring Inc.,
480 F. App'x 327 (5th Cir. 2012) 4, 5, 8, 11

Other Authorities

Federal Rule of Bankruptcy Procedure 8006.....4

Federal Rule of Bankruptcy Procedure 8009..... *passim*

Federal Rule of Bankruptcy Procedure 8009(e)(1).....4

Federal Rule of Bankruptcy Procedure 9019.....2

Federal Rule of Civil Procedure 59(e)..... *passim*

Federal Rule of Civil Procedure 60(b)..... *passim*

Appellant the Dugaboy Investment Trust ("Dugaboy") respectfully asks the Court to deny Appellees Highland Management, L.P. and Highland Claimant Trust's (together, "Highland") two Motions to Strike purportedly "improperly designated" items from the record on Dugaboy's appeals of the Bankruptcy Court's Rule 60(b) Order for the 3:26-cv-02315-X appeal (Dkt. 4706) and its Rule 59(e) Order for the 3:26-cv-02496-D appeal (Dkt. 4728).[1] For the reasons set forth herein, the Court should deny Highland's Motions to Strike, or, if not so inclined, the Court should require Highland to cure the defects in its Motions by resubmitting them with revised strike lists that clearly identify each specific item (not just docket entries) that Highland seeks to strike and unambiguously state the grounds for each such strike.

INTRODUCTION

Highland's Motions to Strike should be denied. These motions—like those Highland has filed in multiple other appeals from the Bankruptcy Court to various district courts—represent an unnecessary and improper attempt to pre-litigate the merits of those appeals in the form of tedious evidentiary challenges before this Court. Furthermore, Highland is forcing this Court into the odd situation of superintending arguments about whether and on what terms Dugaboy should be allowed to appeal its rulings.

Highland misconceives and misstates the purpose of Bankruptcy Rule 8009, which is to help the appellate court see what the bankruptcy court saw and what it considered or consciously declined to consider in rendering the challenged rulings. Instead, Highland treats its motions to

[1] This Response addresses Highland's two Motions to Strike together, because both Dugaboy's record designations and Highland's list of proposed strikes are nearly identical between the two appellate proceedings. The Rule 60(b) appeal (No. 3:26-cv-02315-X) is currently before Judge Brantley Starr, and the Rule 59(e) appeal (No. 3:26-cv-02496-D) is currently before Senior Judge Sidney A. Fitzwater. Pursuant to its August 24, 2026, Order (Dkt. 4731), this Court will hear both motions at the hearing set for September 3, 2026, at 9:00 a.m. Unless otherwise specified, all references herein to "Highland's Motion" refer to both motions.

strike as a means of blinding the district court by concealing facts or arguments it does not wish that court to see. The Rule 8009 process is not meant to circumvent full appellate review on the merits. Nor, respectfully, should this Court allow Highland to obtain rulings that would effectively foreclose meaningful appellate review of its own challenged decisions.

It is especially important that this Court reject Highland's Motions at least in their current form, where they improperly seek a wholesale and indiscriminate removal of substantially all of the record before the Court by proposing to strike entire docket entries without any distinction among the numerous exhibits filed along with them. Because Highland has failed to state specifically which individual items it wishes to strike and for what reasons, Dugaboy is forced to defend its designations in the abstract and without context. "Strike them all and let the Court sort them out" is not an acceptable avenue for challenging record designations under Rule 8009, and this Court should not countenance it.

FACTUAL AND PROCEDURAL BACKGROUND

Highland's first Motion to Strike aims at Dugaboy's appeal from the Bankruptcy Court's denial of its February 9, 2026, Motion For Relief From Order and Motion to Vacate under Federal Rule of Civil Procedure 60(b). Dkt. 4513. The Rule 60(b) motion sought to vacate the Bankruptcy Court's prior ruling of June 30, 2025, in which it approved a settlement under Bankruptcy Rule 9019 between Highland and Hunter Mountain Investment Trust. *See* Dkt. 4297.

On May 11–12 and 21, 2026, this Court held an evidentiary hearing on Dugaboy's Rule 60(b) motion. Immediately before and throughout the hearing days, Dugaboy regularly filed updated lists of potential exhibits. *See* Dkt. Nos. 4612, 4617–4625, 4628–4629, 4659, 4661, and 4669. As required by this Court's Judge-Specific Procedures, Dugaboy was required to file all of its actual exhibits onto the Court's docket together with the lists on which they appeared.

On June 15, 2026, this Court entered an Order and Memorandum Opinion denying Dugaboy's Rule 60(b) motion. Dkt. 4679, 4678. On July 13, 2026, Dugaboy timely filed its Notice of Appeal from this Court's denial of its Rule 60(b) motion. Dkt. 4692. On July 24, 2026, Dugaboy filed its original Statement of Issues and Record Designations. Dkt. 4699. On July 27, 2026, the Bankruptcy Clerk wrote to Dugaboy and directed Dugaboy to make several non-substantive changes to its appellate designations. Dkt. 4700. On July 31, 2026, Dugaboy implemented the Clerk's changes and submitted an Amended Statement of Issues and Record Designations for the Rule 60(b) appeal. Dkt. 4705. On August 7, 2026, Highland filed its Motion to Strike Dugaboy's appellate designations for the Rule 60(b) appeal.

Meanwhile, on June 26, 2026, Dugaboy filed its Motion for Reconsideration of the Court's denial of its Rule 60(b) motion pursuant to Federal Rule of Civil Procedure 59(e). Dkt. 4684. That motion was accompanied and supported by an Appendix incorporating twelve exhibits that had previously been admitted during the May 2026 hearing. Dkt. 4684-1. On July 10, 2026, this Court denied Dugaboy's Rule 59(e) motion. Dkt. 4689.

On July 24, 2026, Dugaboy timely filed its Notice of Appeal from this Court's denial of its Rule 59(e) motion. Dkt. 4698. On August 7, 2026, Dugaboy timely filed its Statement of Issues and Designation of Record Items for the Rule 59(e) appeal. Dkt. 4707. On August 21, 2026, Highland filed its Motion to Strike Dugaboy's appellate designations for the Rule 59(e) appeal. Dkt. 4728.

On August 24, 2026, this Court granted Highland's unopposed Motion to Expedite Hearing (Dkt. 4729) and ordered that both Motions to Strike be considered together at the September 3, 2026, hearing. Dkt. 4731.

LEGAL STANDARD

Federal Rule of Bankruptcy Procedure 8009(e)(1) states:

> If any difference arises about whether the record accurately discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by the bankruptcy court and the record confirmed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike that item.

Rule 8009, like its pre-2014 predecessor Rule 8006,[2] prohibits the designation of items for appeal "if they were not part of the record before the bankruptcy court." *In re CPDC, Inc.,* 337 F.3d 436, 443 (5th Cir. 2003). Courts have generally found that there are two ways for items to be considered "part of the record" before the bankruptcy court. First, the item was introduced and admitted as evidence in the underlying proceeding. *See In re SI Restructuring Inc*., 480 F. App'x 327, 328 (5th Cir. 2012).

Second, the item was available for the bankruptcy judge's consideration without being entered into evidence, such as a previous filing in the same case. *See In re Adkins*, No. 12-10314, 2014 WL 5801679, at *1 (Bankr. N.D. Tex. Nov. 7, 2014). In the latter circumstance, the item can be designated for the record if it was considered or was available to be considered by the bankruptcy judge in ruling on the underlying motion. *See id*. (holding that designated items must be "of record and available for consideration by the bankruptcy court when it rendered its decision"). Furthermore, items that "were part of the bankruptcy court's own docket and record" can be designated even if not expressly admitted, where they "pertained to the issues on appeal" and "provided context to the underlying bankruptcy court proceedings." *See Lockwood v. GlassRatner Advisory & Cap. Grp. LLC*, Civ. No. 4:21-cv-00456, 2024 U.S. Dist. LEXIS 30186,

[2] Because the differences between the current Rule 8009 and the prior Rule 8006 are minor and have no significance for the issues here, Dugaboy discusses cases decided under both rules.

at *7 (S.D. Tex. Feb. 22, 2024) (finding bankruptcy court did not abuse its discretion in denying motion to strike non-admitted items filed on its own docket). "It simply can't be said that it's improper for the entire record to be reviewed in this circumstance." *Id*.; *see also id*. at *8 ("It isn't unreasonable to conclude that reference to the bankruptcy court's docket sheet may properly include the documents themselves."); *In re Heitmeier*, No. 13-6787, 2014 WL 1513886, at *1 (E.D. La. April 16, 2014) ("The Court is persuaded that the challenged items may properly be included in the record on appeal. The items were of record and available for consideration by the bankruptcy court when it rendered its decision.").[3]

The bankruptcy court's "primary concern" in determining what should be part of the record is providing the district court with a record that "accurately discloses what occurred in the bankruptcy court." *Carmichael v. Blake*, No. 13-30466, 2022 Bankr. LEXIS 32, at *13 (Bankr. S.D. Tex. Jan 7, 2022). "The District Court should be given all it needs to determine what happened before this Court and whether, based on what happened, this Court reached the correct result." *Id*. at *3.

ARGUMENT

A. Highland's Motions Indiscriminately Seek to Strike *All* of Dugaboy's Exhibits—Even Those This Court Has Admitted Into Evidence.

Highland's Motions to Strike should be denied because they fail to identify the specific exhibits it considers "improper" and instead makes a sweeping request to the Court to strike entire docket entries containing numerous exhibits on a wholesale basis. As such, they do not adequately

[3] Highland's contrary authorities are inapposite. *See* Dkt. 4706 at 6–7. Those cases addressed the distinct question (not present here) of whether an appellant could designate items filed in *other* related cases or separate adversary proceedings but which were not filed in the record before the bankruptcy court at the time it made the challenged ruling. *See, e.g.*, *SI Restructuring*, 480 F. App'x at 328 (disallowing items filed only in other proceedings); *CPDC*, 337 F.3d at 443 (disallowing items filed only after the bankruptcy court had made the appealed ruling).

inform Dugaboy or the Court which particular record items Highland seeks to strike or for what reasons. Furthermore, nearly all of those "improper" docket entries were filed along with numerous individual exhibits or documents—at least some of which *were* admitted into evidence and therefore should be proper even under Highland's narrow criteria. *See* Dkt. 4706-1, Exhibit A (Proposed Order and List of Improper Items To Be Stricken); *cf*. Dkt. 4706 at 4–6 (arguing that only admitted exhibits should be included in the appellate record). It is apparent that Highland seeks to strike ***all*** of Dugaboy's evidentiary exhibits, even those that the Court ***actually admitted*** into evidence or that the parties agreed not to oppose. Evidently, Highland hopes the Court will simply rubber-stamp its proposed strike lists and issue an order directing the Bankruptcy Clerk to strike everything. Were this Court to capitulate, the district court would be left with a severely truncated evidentiary record and without the facts and evidence needed to meaningfully review Dugaboy's claims of error.

To illustrate the arbitrary and sweeping nature of Highland's approach, set forth below is just one example of the numerous docket entries Highland seeks to strike from the record for the Rule 60(b) appeal. Twenty of the twenty-two exhibits filed under this entry (all but Nos. 3 and 4) were admitted at the May 2026 hearing. *See* D4706-1 p.8.[4]

05/11/2026	4617	(444 pgs; 23 docs) Amended Exhibit List Third Amended Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) 4612 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 001 # 2 Exhibit 002 # 3 Exhibit 003 # 4 Exhibit 004 # 5 Exhibit 005 # 6 Exhibit 006 # 7 Exhibit 007 # 8 Exhibit 008 # 9 Exhibit 009 # 10 Exhibit 010 # 11 Exhibit 011 # 12 Exhibit 012 # 13 Exhibit 013 # 14 Exhibit 014 # 15 Exhibit 015 # 16 Exhibit 016 # 17 Exhibit 017 # 18 Exhibit 018 # 19 Exhibit 019 # 20 Exhibit 020 # 21 Exhibit 021 # 22 Exhibit 022) (Welker, Avery)

[4] Exhibits 1–2 and 5–22 were all admitted at the hearing on May 11, 2026. *See* Hrg. Tr. at 2.

Highland's indiscriminate and wholesale assault on the evidentiary record continues in its second Motion to Strike Dugaboy's designations for its Rule 59(e) appeal. Dkt. 4728-1 at 6. One of the purported "improper" items on that strike list is the Appendix Dugaboy submitted with its Rule 59(e) Motion. *Id.; see* Dkt. 4684–1.

06/29/2026	4684-1	Appendix to Motion to Reconsider (related documents 4679 Order on motion to reconsider) Filed by Partner Dugaboy Investment Trust (Attachments: # 1 Appendix) (Edney, Michael)

Highland fails to mention in its Motion that this Appendix consists ***entirely*** of exhibits the Court admitted into evidence at the May 2026 hearing.[5] *See* Dkt. 4684-1:

Description	Page No.
Dugaboy Ex 001 - 2015-12-17 HMIT Trust Agreement	App. 001
Dugaboy Ex 007 - 2025-07-15 Shields Work Plan	App. 005
Dugaboy Ex 011 - 2024-09-30 Valuation Analysis of 100 Participation Shares of DAF HoldCo, Ltd.	App. 015
Dugaboy Ex 012 - 2025-03-25 Valuation Analysis of Certain Participation Shares of DAF HoldCo, Ltd.	App. 020
Dugaboy Ex 015 - 2025-02-12 Membership Interest Purchase Agreement	App. 026
Dugaboy Ex 036 - 2025-04-09 Dondero Affidavit	App. 030
Dugaboy Ex 169 - 2024-02-05 Email-Shields Legal Group_Mark Patrick	App. 041
Dugaboy Ex 204 - 2025-07-01 Texas Business Court Petition	App. 043
Dugaboy Ex 211 - 2025-08-19 Aff & Exh Index-MacInnis	App. 059
Dugaboy Ex 242 - 2024-03-06 DAF-Rand Structure Chart (slides 18–19)	App. 063
June 23, 2025 Transcript – Highland Ex. 58	App. 067
June 25, 2025 Transcript – Dugaboy Ex. 35	App. 072
May 11, 2026 Transcript	App. 077
May 12, 2026 Transcript	App. 105
May 21, 2026 Transcript	App. 116

[5] Dkt. 4684-1. Dugaboy Exhibits 001, 007, 011, 012, 015, 204, and 211 were admitted at the hearing on May 11, 2026. Hrg. Tr. at 2. Dugaboy Exhibit 036 (James Dondero's Affidavit) was a duplicate of Highland's already-admitted Exhibit 48. Specific slides from Dugaboy Exhibit 242 were admitted at the hearing on May 12, 2026. Hrg. Tr. 41:6–42:11.

Highland asks the Court to take a "scalpel" to Dugaboy's designations, Dkt. 4706 at 7, yet itself wields a chainsaw, slashing indiscriminately with no basis or explanation. Such a sweeping and unsystematic method is not an acceptable approach to challenging record designations under Rule 8009.

B. The Appellate Record Is Not Limited To Items Admitted Into Evidence.

Highland makes the aggressive—and wrong—contention that only items admitted into evidence by the Bankruptcy Court can become part of the record on appeal. Dkt. 4706 at 4–6. In doing so, Highland misreads the controlling authorities, which were decided on very different facts than are present here and offer no support for such a severe rule. *See id*., citing *SI Restructuring*, F. App'x at 328, and *CPDC*, 337 F.3d at 443. Both of those cited cases involved materials either filed in other proceedings or filed only after the bankruptcy court had made the challenged rulings, and both courts properly rejected attempts to supplement the appellate record with external materials the bankruptcy court did not see and plainly could not have considered in making its rulings. *See SI Restructuring*, 480 F. App'x at 328; *CPDC*, 337 F.3d at 442–43. Nothing in those authorities supports a rule that would strike exhibits or items ***from the same case*** that the bankruptcy court considered or that were available for its consideration when it made the challenged rulings. To the contrary, items like the disputed ones in this case are properly included in the appellate record to ensure that it accurately reflects what happened in this Court.[6]

[6] *See Lockwood*, 2024 U.S. Dist. LEXIS 30186, at *7; *Carmichael*, 2022 Bankr. LEXIS 32, at *12.

C. Items That This Court Excluded Must Be Included In The Appellate Record To Allow Review Of The Challenged Evidentiary Rulings.

Both common sense and black-letter law dictate that when an appellant seeks review of the bankruptcy court's evidentiary rulings, the appellate record must include the items excluded by the bankruptcy court so that the district court can review the propriety of those rulings. *See, e.g.*, *Carmichael*, 2022 Bankr. LEXIS 32, at *12 ("[E]ven if admission of the offered document is denied[,] the appellate court may consider whether the court's exclusion of the document was error. To do so, the appellate court may need to review the document itself."). That is especially true in this appeal, where Dugaboy is challenging multiple evidentiary rulings.

Highland apparently does not respect this rule, as reflected in its far-from-clear initial meet-and-confer email in which Highland imposed an impossible predicate on the designation of excluded exhibits:

> "Highland demands that Dugaboy withdraw the items identified on Exhibit 1 that Dugaboy improperly included in the Designations (the "Improper Items") such that only (a) documents admitted into evidence, or (b) items the Bankruptcy Court excluded from evidence—***provided that Dugaboy first establish that the Court abused its discretion in doing so***."
>
> Exhibit A, July 31, 2026, email from John Morris to Michael Edney and Mike Gaddis (emphasis added).

Highland seems to have suggested that Dugaboy cannot put excluded exhibits into the appellate record unless it ***first*** establishes that the Bankruptcy Court abused its discretion in not admitting them—a precept that is both impossible and nonsensical. Highland cites no authority (and we know of none) for the proposition that an appellant must prevail on a merits issue at this early stage before it can designate the very record materials necessary to decide that issue. Such a requirement would be entirely contrary to the order and sequence of the Bankruptcy Rules, pursuant to which the appellant must designate the record before filing its merits brief and not the other way around. In order to meaningfully review whether the Bankruptcy Court erred in any of

its evidentiary rulings, the appellate court must see the materials this Court decided to exclude. Censoring or withholding those materials from the appellate record makes no sense.

When Dugaboy counsel asked Highland to clarify its position on this point, Highland provided no response. *See* Exhibit B, August 7, 2026, email from Mike Gaddis to John Morris. Nor do Highland's Motions provide any clarity since they make no reference to offered-but-excluded exhibits or the propriety of designating such items for the appellate record. Therefore, to the extent Highland may oppose Dugaboy's inclusion of excluded exhibits, it has waived that argument.

D. The Disputed Items Are Properly Designated Because They Were In The Record Before The Bankruptcy Court and Available For Its Consideration.

The purpose of Bankruptcy Rule 8009 is to give the reviewing court a complete and accurate picture of what transpired in the bankruptcy court. While the appellate court cannot consider materials the bankruptcy court did not see or have available for its own consideration, it can, and must, have the same full view and context the Bankruptcy Court had when it made the challenged rulings. *See Lockwood*, 2024 U.S. Dist. LEXIS 30186, at *6–*8; *Adkins*, 2014 WL 5801679, at *1–*2.[7] As such, the appellate record properly encompasses items actually considered by the bankruptcy court or filed on the docket and also items that were known to the court and available for its consideration at the time that it made the challenged rulings—even if they were not formally entered as evidentiary exhibits in the appealed proceeding. *Lockwood*, 2024 U.S. Dist. LEXIS 30186, at *6–*7 (finding bankruptcy court did not abuse its discretion by declining to strike items that "provided context" for the underlying proceedings); *Adkins*, 2014 WL 5801679,

[7] Highland's reliance on *Digerati*'s purported disapproval of designating record items for the purpose of providing "historical context and factual background" is inapposite here. Dkt. 4706 at 7. The *Digerati* court was commenting on *Adkins*, where the key issue was that the challenged items came from other cases or separate proceedings and did not become part of the record before the bankruptcy court until after it had made the rulings at issue. *Digerati*, 531 B.R. at 662; *Adkins*, 2014 WL 5801679, at *1–*2.

at *1–*2; *Heitmeier*, 2014 WL 1513886, at *1 (allowing designation of items that "were of record and available for consideration by the bankruptcy court").

Here, the disputed designations fit squarely within that framework—they were either admitted into evidence, or considered by the Bankruptcy Court, or available to the Bankruptcy Court before its ruling, or from related docket entries from the same case to supply the context that gave rise to the appealed order. *See Lockwood*, 2024 U.S. Dist. LEXIS 30186, at *6–*7. Unlike in the inapposite cases that Highland relies on, the items Dugaboy has designated are not plucked from other cases or separate proceedings never seen by the Bankruptcy Court, *see SI Restructuring*, F. App'x at 328, or created after the Court had already issued the rulings being appealed. Dkt. 4706 at 4–5; *see CPDC*, 337 F.3d at 442–43. Nor are they dredged up from the remote prehistory of the more than 4,700 docket entries filed with this Court over the past seven years. All of the challenged items were filed between February and July 2026 and were submitted with either the briefing or the exhibit lists filed in the May 2026 hearing in this contested matter. As such, these items were readily available for the Bankruptcy Court's consideration and the Court was well aware of their presence on the docket.

Contrary to Highland's assertion (Dkt. 4706 at 6–7), none of the cases it relies on states that only "pleadings"—and not the documents or exhibits attached to those same pleadings—belong in the appellate record. Such a notion is especially ludicrous in this context where those documents and exhibits were filed on record in this Court and unquestionably available for this Court's consideration. *See In re Digerati Techs., Inc.*, 531 B.R. 654, 662 (Bankr. S.D. Tex. 2015) (challenged items were all pleadings and docket entries); *Adkins*, 2014 WL 5801679, at *1 (challenged items were from other proceedings or postdated the appealed rulings); *cf. Lockwood*, 2024 U.S. Dist. LEXIS 30186, at *6–*7 (allowing designation of items filed on the bankruptcy

court's docket prior to the hearing).[8] Dugaboy's opening briefs on the Rule 60(b) motion (Dkt. 4513) and the Rule 59(e) motion (Dkt. 4684) and their accompanying exhibits plainly qualify as "pleadings" under any such rule, because they were the filings that opened the "contested matters" of the Rule 60(b) and 59(e) motion. Key filings such as these often have documents and exhibits attached to them, and it is understood that the court will consider such materials together with the brief itself. *See Lockwood*, 2024 U.S. Dist. LEXIS 30186, at *8 ("It isn't unreasonable to conclude that reference to the bankruptcy court's docket sheet may properly include the documents themselves.").

E. The Exhibits Filed With The Briefs Are Part Of The Record On Appeal Even If They Were Not Revisited At The Hearing.

For the reasons discussed above, Dugaboy's briefing and accompanying exhibits on both the Rule 60(b) and Rule 59(e) motions are properly part of the record. Nevertheless, Highland inexplicably requests that the Court strike both the motion and its attached exhibits from the Rule 60(b) record as well as the evidentiary Appendix (which consists entirely of exhibits actually admitted) from the Rule 59(e) record. This makes no sense, as these materials are the very foundation of Dugaboy's appeals and without them there would be nothing for the district court to review. *Carmichael* makes clear that such key filings and their associated exhibits belong in the appellate record:

> "With respect to *rulings* unaccompanied by a typical evidentiary record (*e.g.*, a motion for summary judgment with accompanying exhibits), the documents (*e.g.*, the summary judgment motion itself and its exhibits) precipitating the ruling may

[8] Highland misstates what these cases actually say. Dkt. 4706 at 7. That is only partly Highland's fault, as *Digerati* itself misstates *Adkins*' holding. *Adkins* merely remarked that the appellant's proposed designations were "mostly pleadings" but did not decide the propriety of their inclusion on that basis. *Adkins*, 2014 WL 5801679, at *1. *Digerati* misinterpreted *Adkins* as stating a rule. *Digerati*, 531 B.R. at 662. And where *Digerati* simply says "if the designated items are pleadings," Highland stretches the purported rule exclusive by adding the word "only" in front of that quote, Dkt. 4706 at 7, thereby transforming "mostly pleadings" into "only pleadings." *See id*.

> be designated as part of the appellate record so the appellate court can determine whether the ruling was correct. Such documents need not be reoffered into evidence to become part of the record on appeal."

2022 Bankr. LEXIS 32, at *12 (emphasis in original).

The inclusion of briefing exhibits in the appellate record is the only sensible result. The Court could have exercised its discretion to dispense with a hearing and decide the Rule 60(b) motion entirely on the papers, as it did with the Rule 59(e) reconsideration motion. That the Court instead proceeded with the hearing does not divest the briefing exhibits of their evidentiary weight.

Highland's Motions contain only two specific examples of exhibits it contends should be excluded from the record—namely, the complete paperback copies of Chief Judge Jernigan's two novels, *He Watches All My Paths* and *Hedging Death*.[9] In both its opening brief and its reply on the Rule 60(B) motion, Dugaboy extensively argues issues relating to Chief Judge Jernigan's refusal to recuse herself. Dkt. 4513, Opening Brief at 43–50; Dkt. 4607, Reply at 32–40. To support those arguments, Dugaboy submitted the complete paperback copies to the Court. Given the importance of this issue to its arguments here and in related proceedings, Dugaboy thought it best to have the entire novels available in the record. The reviewing court needs a holistic view of the entire works to determine the significance of the passages Dugaboy has cited in detailing the resemblances between Chief Judge Jernigan's fictional villain and James Dondero. If nothing else, the inclusion of the complete books will preclude any claims by Highland that it is "cherry-picking" quotes out of context.

The importance of these materials is not weakened by this Court's conclusion that Dugaboy "abandoned" or waived the recusal issue by not further pursuing it at the hearing. *See* Dkt. 4678

[9] These copies were lodged with the Court as Dugaboy Exhibits 53 and 54 to accompany Dugaboy's opening brief on its Rule 60(b) motion. They appear on Dugaboy's designation lists under docket entries 4513 and again in Dkt. 4705 at p.21 ¶ 6.

at 5 n.6. Dugaboy respectfully disagrees with the Court's ruling on this point, especially given Dugaboy's extensive treatment of the issue in both opening and reply briefs. This is an issue Dugaboy will raise on appeal. *See* Dkt. 4705 at 4, Statement of Issues No. 18:

> Did the Bankruptcy Court err in finding that Dugaboy had abandoned its argument regarding whether Judge Jernigan was disqualified or should have been recused for not introducing additional testimonial evidence at the hearing on the matter, despite having fully briefed the issue in its Federal Rule of Civil Procedure 60(b) Motion and Reply thereto and having place[d] the fully published versions of the judge's novels before the Court?

There is no question that this Court was aware of the novels, had access to them, and could readily have considered them had it decided to tackle the merits of the recusal argument. The Court's conscious decision not to consider the novels and not to reach the merits of recusal is itself a decision subject to review by the appellate court. But the appellate court cannot conduct a meaningful review of this Court's treatment of the recusal issue without seeing "the fully published versions of the judge's novels" and related exhibits.

F. Other Disputed Items Are Properly In The Record.

Both Dugaboy and Highland submitted numerous proposed exhibits with their briefing and in advance of and during the hearing. In doing so, they cast a broad net for any materials that might potentially be relevant or useful, while recognizing they likely would not have time or space to use everything they found. For this reason, and for the sake of judicial economy, Dugaboy will withdraw the following items from its record designations:[10]

Dkt. 4617: Exhibits 003 and 004.

Dkt. 4618: Exhibits 028, 029, 030, 031, 032, 033, 034.

Dkt. 4619: Exhibit 047.

[10] Dugaboy reserves the right to make further cuts from its designations up to and including the upcoming hearing. Dugaboy also remains willing to meet with Highland and discuss revisions to the designations.

Dkt. 4620: Exhibits 053, 057, 058, 060, 061, 062, 065, 067, 068, 069, 070, 071, 072, 073, 084, 089, 090, 091.

Dkt. 4621: Exhibits 110, 118, 119, 120, 121, 122, 128, 134, 135, 136, 137, 138.

Dkt. 4622: Exhibits 142, 143, 144, 145, 146, 147, 148, 151, 152, 153, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 167, 171, 173, 181, 184, 186, 188, 189, 190, 193.

Dkt. 4625: Exhibits 194, 196, 201, 202.

Dkt. 4628: Exhibits 213, 214, 223, 226.

Dkt. 4629: Exhibits 229, 233, 234, 235, 236, 237, 238, 239, 240, 241.

Dkt. 4659: Exhibits 248, 249, 250, 254, 260, 261, 264, 265, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278.

Dugaboy is voluntarily withdrawing the above-listed designations listed above purely for the sake of compromise and judicial economy and does not concede that any of the withdrawn items were in any way "improper." To the contrary, both the withdrawn items and the remaining disputed items are properly part of the appellate record for the reasons explained above.

G. Excluding The Disputed Items Would Prejudice The Integrity Of The Appellate Review And Contravene Rule 8009's Accuracy Mandate.

Granting Highland's Motions and stripping these materials from the record would render it difficult if not impossible to discern what was available to the Bankruptcy Court and what the Court considered or chose not to consider. This in turn would thwart the appellate court's ability to meaningfully review whether the Bankruptcy Court erred on the various issues Dugaboy is raising on appeal. The appellate record must be sufficient for the district court to "determine what happened before [the Bankruptcy] Court and whether, based on what happened, [the] Court reached the correct result." *Carmichael,* 2022 Bankr. LEXIS 32, at *3. Highland's proposed strikes will only obscure rather than illuminate those issues, undermining Rule 8009's core purpose.

CONCLUSION AND PRAYER

For the reasons set forth above, this Court should deny Highland's Motions. Highland's wholesale failure to identify the specific items it seeks to strike is reason enough to do so. To the extent its intended targets can be discerned at all, those items were properly in the record before or available for consideration by the Bankruptcy Court and are necessary to provide a full appellate record that accurately discloses what occurred in the proceedings below. Alternatively and at minimum, the Court should direct Highland to resubmit its Motions with revised Appendices that clearly identify each specific item (not just docket entries) that Highland seeks to strike and that unambiguously state the grounds for each such strike.

Dated: August 27, 2026

Respectfully submitted,

KING & SPALDING LLP

By: */s/ Geoffrey S. Harper*

Geoffrey S. Harper
Texas Bar No. 00795408
gharper@kslaw.com
John Michael Gaddis
Texas Bar No. 24069747
mgaddis@kslaw.com
2601 Olive Street, Suite 2300
Dallas, TX 75201
(214) 764-4600

Michael J. Edney
D.C. Bar No. 492024
michael.edney@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
T. (202) 739-3000
F. (202) 739-3001

Counsel for Appellant The Dugaboy Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 27, 2026, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Geoffrey S. Harper
Geoffrey S. Harper

EXHIBIT A

From: John A. Morris
To: michael.edney; Mike Gaddis
Cc: jpomerantz; Stancil, Mark; Levy, Joshua S.; Geoffrey Harper; martha.stolley
Subject: FW: Highland: Meet and confer on propriety of Dugaboy"s designation of Items on the record on appeal
Date: Friday, July 31, 2026 3:44:56 PM
Attachments: Exhibit 1 - List of Improper Items to Be Stricken.docx

CAUTION: MAIL FROM OUTSIDE THE FIRM

Re-sending with Mike's correct email address.

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | New York | Wilmington, DE | Houston | San Francisco

From: John A. Morris
Sent: Friday, July 31, 2026 4:40 PM
To: Edney, Michael <michael.edney@morganlewis.com>; Gaddis, Mike <mgaddis@winston.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>; Mark T. Stancil (mstancil@willkie.com) <mstancil@willkie.com>; Levy, Joshua S. <jlevy@willkie.com>; Geoffrey Harper <gharper@kslaw.com>; Martha Stolley <martha.stolley@morganlewis.com>
Subject: Highland: Meet and confer on propriety of Dugaboy's designation of Items on the record on appeal

Michael and Michael:

We write with respect to Dugaboy's designation of items to be included on the appeal of the denial of the Rule 60 Motion. Docket No. 4699 (the "Designations").

As you will recall, last fall Highland was forced to spend time, money, and effort filing multiple motions to strike items that Dugaboy improperly designated for various appeals. *See* Docket Nos. 4434, 4450, and 4451 (together, the "Prior Motions").

Citing applicable law, the Prior Motions set forth the boundaries for records on appeal, and, to our knowledge, the law has not changed since they were filed. Accordingly, Highland demands that

Dugaboy withdraw the items identified on Exhibit 1 that Dugaboy improperly included in the Designations (the "Improper Items") such that only (a) documents admitted into evidence, or (b) items the Bankruptcy Court excluded from evidence—provided that Dugaboy first establish that the Court abused its discretion in doing so.

Please let us know by **Monday, August 3, at 4:00 pm Central Time**, whether Dugaboy will agree to promptly withdraw the Improper Items from the record on appeal or Highland will file another motion to strike.

We hope that won't be necessary. Highland reserves all rights,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn



Los Angeles | New York | Wilmington, DE | Houston | San Francisco

EXHIBIT B

Mike Gaddis

From: John A. Morris <jmorris@pszjlaw.com>
Sent: Friday, August 7, 2026 11:16 AM
To: Mike Gaddis; michael.edney
Cc: jpomerantz; Stancil, Mark; Levy, Joshua S.; Geoffrey Harper; martha.stolley; mark.ingram; Welker, Avery Joseph; zannable
Subject: RE: Highland: Meet and confer on propriety of Dugaboy's designation of Items on the record on appeal

Categories: Oppo, Dondero

CAUTION: MAIL FROM OUTSIDE THE FIRM

Thanks, Mike.

We'll put Dugaboy down as opposed.

Have a good weekend.

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn



Los Angeles | New York | Wilmington, DE | Houston | San Francisco

---

From: Mike Gaddis <MGaddis@kslaw.com>
Sent: Friday, August 7, 2026 12:12 PM
To: John A. Morris <jmorris@pszjlaw.com>; michael.edney <michael.edney@morganlewis.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>; Stancil, Mark <mstancil@willkie.com>; Levy, Joshua S. <jlevy@willkie.com>; Geoffrey Harper <gharper@kslaw.com>; Martha Stolley <martha.stolley@morganlewis.com>; mark.ingram <mark.ingram@morganlewis.com>; Welker, Avery Joseph <avery.welker@morganlewis.com>; zannable <zannable@haywardfirm.com>; Mike Gaddis <MGaddis@kslaw.com>
Subject: RE: Highland: Meet and confer on propriety of Dugaboy's designation of Items on the record on appeal

John,

It's good to hear from you and I hope you're feeling a bit less constrained.

Your email is a bit sparse as to the particular reasons for striking particular record items, other than telling us to go read three prior strike motions that involved similar issues applied to entirely different record materials. We are left to guess, *e.g.*, whether you are really asking the court to strike Dugaboy's entire opening brief on the Rule 60(b) motion (Dkt. 4513) which you've put at the very top of your "improper items" list. Nevertheless, to the extent we can follow the argument, here is our response:

Dugaboy opposes any motion to strike because none of its record designations are "improper" within the meaning of the applicable law we discussed when last we briefed one of these motions. As you know, the court never ruled on any of Highland's three prior motions to strike so they do not "set forth" any "boundaries." Of course the same is true for our counter-arguments, which we made in response to Highland's motion to strike in the Class 11 appeal (Dkt. 4497). In that filing we discussed at length the authorities you relied on (*e.g., id*. at 8–9 discussing *Carmichael*, *Digerati*, and *Lockwood*). We established that Dugaboy's record designations were well within the bounds set by those authorities because all of them were documents filed in the same proceeding as the motion at issue, were available for the bankruptcy court's consideration in ruling on that motion, and provided important context for the district court's appellate review of those rulings.

The same is true for the items Highland is challenging in the current appeal, all of which were filed on the court's docket not only in the same main bankruptcy case but in the same contested matter involving the Rule 60(b) proceedings. Whether the items were attached as exhibits to the briefing or filed during the hearing, there is no question that the bankruptcy court was made aware of them in connection with the Rule 60(b) proceedings and either considered them or made an informed decision to ignore them. That is all that's required under Rule 8009, whose purpose is simply to prevent the reviewing court from considering things that were never known or shown to the bankruptcy court.

To the extent Highland wants to limit the record only to items actually admitted into evidence, it commits a category error. As explained in the cases discussed in our MTS response (pp.6–7), items can be "in the record" of the trial court for purposes of appellate designation regardless of whether they were admitted into evidence. That's especially so in this appeal, where Dugaboy is challenging numerous evidentiary rulings on specific exhibits as well as any further such errors as it may identify in its opening brief on the merits. In order to meaningfully review whether the bankruptcy court erred in any of these evidentiary rulings, the appellate court must see the materials the bankruptcy court chose to exclude. Censoring such materials from the appellate record makes no sense.

Even more bewildering is Highland's apparent contention that Dugaboy cannot put non-admitted exhibits into the appellate record unless it ***first*** establishes that the bankruptcy court abused its discretion in not admitting them. That is both impossible and nonsensical. Highland cites no authority (and we know of none) that requires an appellant to somehow prevail on a merits issue at this early stage before it can designate the very record materials necessary to decide that issue. Such a requirement would be entirely contrary to the order and sequence of the Bankruptcy Rules, which sensibly require the appellant to designate the record before filing its merits brief and not the other way around.

Of course, if we have misunderstood your position on any of the matters discussed above, we welcome your clarification. And we're happy to discuss further at a mutually convenient time.

Sincerely,

Mike Gaddis
Senior Attorney

T: +1 214 764 4502 | mgaddis@kslaw.com

From: John A. Morris <jmorris@pszjlaw.com>
Sent: Thursday, August 6, 2026 4:04 PM
To: Mike Gaddis <MGaddis@kslaw.com>; michael.edney <michael.edney@morganlewis.com>
Cc: jpomerantz <jpomerantz@pszjlaw.com>; Stancil, Mark <mstancil@willkie.com>; Levy, Joshua S. <jlevy@willkie.com>; Geoffrey Harper <gharper@kslaw.com>; martha.stolley <martha.stolley@morganlewis.com>; mark.ingram <mark.ingram@morganlewis.com>; Welker, Avery Joseph <avery.welker@morganlewis.com>; zannable <zannable@haywardfirm.com>
Subject: RE: Highland: Meet and confer on propriety of Dugaboy's designation of Items on the record on appeal

CAUTION: MAIL FROM OUTSIDE THE FIRM

Thanks, Mike.

Tomorrow will be a week since we sent the list to you—more than enough time to have considered these issues. The only reason we haven't filed the motion is because my schedule has been constrained.

Under the circumstances, please provide any substantive response Dugaboy may have by noon Central Time tomorrow because we'll file the motion at that time if we don't hear from you by then.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn



Los Angeles | New York | Wilmington, DE | Houston | San Francisco

From: Mike Gaddis <MGaddis@kslaw.com>
Sent: Thursday, August 6, 2026 2:21 PM
To: John A. Morris <jmorris@pszjlaw.com>; michael.edney <michael.edney@morganlewis.com>

Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>; Stancil, Mark <mstancil@willkie.com>; Levy, Joshua S. <jlevy@willkie.com>; Geoffrey Harper <gharper@kslaw.com>; Martha Stolley <martha.stolley@morganlewis.com>; Mike Gaddis <MGaddis@kslaw.com>; mark.ingram <mark.ingram@morganlewis.com>; Welker, Avery Joseph <avery.welker@morganlewis.com>
Subject: RE: Highland: Meet and confer on propriety of Dugaboy's designation of Items on the record on appeal

John,

We are reviewing these and hope to get back to you by close of business tomorrow.

Regards,

Mike Gaddis
Senior Attorney

T: +1 214 764 4502 | mgaddis@kslaw.com

From: John A. Morris <jmorris@pszjlaw.com>
Sent: Friday, July 31, 2026 3:44 PM
To: michael.edney <michael.edney@morganlewis.com>; Mike Gaddis <MGaddis@kslaw.com>
Cc: jpomerantz <jpomerantz@pszjlaw.com>; Stancil, Mark <mstancil@willkie.com>; Levy, Joshua S. <jlevy@willkie.com>; Geoffrey Harper <gharper@kslaw.com>; martha.stolley <martha.stolley@morganlewis.com>
Subject: FW: Highland: Meet and confer on propriety of Dugaboy's designation of Items on the record on appeal

CAUTION: MAIL FROM OUTSIDE THE FIRM

Re-sending with Mike's correct email address.

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn



Los Angeles | New York | Wilmington, DE | Houston | San Francisco

---

From: John A. Morris
Sent: Friday, July 31, 2026 4:40 PM
To: Edney, Michael <michael.edney@morganlewis.com>; Gaddis, Mike <mgaddis@winston.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>; Mark T. Stancil (mstancil@willkie.com) <mstancil@willkie.com>; Levy, Joshua S. <jlevy@willkie.com>; Geoffrey Harper <gharper@kslaw.com>; Martha Stolley

<martha.stolley@morganlewis.com>
Subject: Highland: Meet and confer on propriety of Dugaboy's designation of Items on the record on appeal

Michael and Michael:

We write with respect to Dugaboy's designation of items to be included on the appeal of the denial of the Rule 60 Motion. Docket No. 4699 (the "Designations").

As you will recall, last fall Highland was forced to spend time, money, and effort filing multiple motions to strike items that Dugaboy improperly designated for various appeals. *See* Docket Nos. 4434, 4450, and 4451 (together, the "Prior Motions").

Citing applicable law, the Prior Motions set forth the boundaries for records on appeal, and, to our knowledge, the law has not changed since they were filed. Accordingly, Highland demands that Dugaboy withdraw the items identified on Exhibit 1 that Dugaboy improperly included in the Designations (the "Improper Items") such that only (a) documents admitted into evidence, or (b) items the Bankruptcy Court excluded from evidence—provided that Dugaboy first establish that the Court abused its discretion in doing so.

Please let us know by **Monday, August 3, at 4:00 pm Central Time**, whether Dugaboy will agree to promptly withdraw the Improper Items from the record on appeal or Highland will file another motion to strike.

We hope that won't be necessary. Highland reserves all rights,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn



Los Angeles | New York | Wilmington, DE | Houston | San Francisco

King & Spalding Confidentiality Notice:

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender

immediately by e-mail and delete all copies of the message or attachments and we ask that you please comply with any additional instructions from the sender regarding deletion of messages or attachments sent in error. Click here to view our Privacy Notice.