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

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

**DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT
ON PROOF OF CLAIM NOS. 190 AND 191
OF UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

¹ The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), respectfully moves the Court (the “Motion”) for entry of an order, in substantially the form attached hereto as **Exhibit A**, granting partial summary judgment in favor of the Debtor on Proof of Claim No. 190 and Proof of Claim No. 191 (collectively, the “UBS Claim”), which are substantively identical claims filed by UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”).

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, RM. 1254, DALLAS, TX 75242-1496 BY 5:00 P.M. CENTRAL TIME ON NOVEMBER 6, 2020, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.²

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

By this Motion, the Debtor seeks entry of summary of judgment in its favor, and against UBS, as follows:

In UBS’s omnibus response [D.E. 1105] (“UBS Response”) to the objections to the UBS Claim, UBS states that it is not presently seeking to hold the Debtor liable for the approximately \$1.1 billion breach of contract judgment [NY D.E. 646] (the “2020 Judgment”) entered on February 10, 2020 in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) against two non-debtors (the “Funds”), and is not presently asserting that the

² The deadline to file any response to the Motion is set forth in the *Scheduling Order With Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.E. 1163]. Pursuant to that scheduling order, any hearing on the Motion will be held on November 20, 2020 at 9:30 a.m. Central Time.

Debtor is the alter ego of the Funds.³ UBS Response pgs. 19-20. UBS, however, filed the UBS Claim in the exact amount of its breach of contract judgment with prejudgment interest (\$1,039,957,799), and also states that it “preserves all rights to pursue any post-trial relief, including holding the Debtor liable as an alter ego.” UBS Response p. 20 fn. 16.

Any claim UBS may have had to attempt to hold the Debtor liable for the 2020 Judgment, to otherwise hold the Debtor liable as an alter ego on account of any claim relating to the Restructured Warehouse Agreements or any claim asserted in the State Court Litigation, or to obtain other post-trial relief against the Debtor (each, a “Post-Trial Claim”) was a pre-petition claim against the Debtor that UBS was required to assert by June 26, 2020, the bar date applicable to UBS’s claims against the Debtor.⁴ UBS failed to assert any such Post-Trial Claim against the Debtor by June 26, 2020. Thus, the Debtor requests entry of summary judgment disallowing any Post-Trial Claim against the Debtor, and providing, in accordance with the Bar Date Order, that UBS shall not be treated as a creditor with respect to any Post-Trial Claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in the Bankruptcy Case.

Any Post-Trial Claim, and the UBS Claim itself, also are barred by the doctrine of *res judicata* to the extent UBS seeks recovery from the Debtor for claims that arose prior to the date – February 24, 2009 – that UBS filed its first complaint against the Debtor in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.), which resulted in a final judgment on the merits in favor of the Debtor [NY D.E. 84] entered on February 22, 2010. The *res judicata* doctrine prohibits UBS from seeking to enforce the 2020 Judgment against the

³ As used herein, the term “State Court Litigation” means and includes *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) and *UBS v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.).

⁴ As used herein, the term “Restructured Warehouse Agreements” means and includes (i) the Engagement Letter dated as of March 14, 2008 entered into between UBS Securities LLC and the Debtor, (ii) the Cash Warehouse Agreement dated as of March 14, 2008 entered into between UBS Securities LLC, the Debtor, and the Funds, and (iii) the Synthetic Warehouse Agreement dated as of March 14, 2008 entered into between UBS AG, London Branch, the Debtor, and the Funds.

Debtor, because the New York trial court has determined that the breach of contract by the Funds occurred on December 5, 2008. The *res judicata* doctrine also prohibits UBS from recovering from the Debtor for any other claim (including any other Post-Trial Claim) that arose prior to February 24, 2009. Therefore, the Debtor requests entry of summary judgment disallowing any portion of the UBS Claim that seeks recovery from the Debtor for any claims that arose prior to February 24, 2009, and disallowing any Post-Trial Claim by UBS that seeks recovery from the Debtor for any claims that arose prior to February 24, 2009.

The remainder of the UBS Claim seeks recovery from the Debtor based on a transaction in March 2009 in which \$233,455,147 of assets were transferred from non-debtors to various entities. UBS seeks to recover this amount from the Debtor as an alleged fraudulent conveyance and an alleged breach of a purported implied covenant of good faith and fair dealing.

Of the total amount transferred, \$172,411,785 of assets were transferred collectively to Highland Crusader Offshore Partners, L.P., Highland Crusader Holding Corporation, and Highland Credit Strategies Master Fund, L.P. (collectively, the “Settling Defendants”). In 2015, UBS entered into settlement agreements with the Settling Defendants in which UBS expressly released the Debtor and its affiliates from any claims for losses arising from the transfers to the Settling Defendants. Therefore, the Debtor requests entry of summary judgment in its favor (i) disallowing any portion of the UBS Claim that seeks recovery (whether on a fraudulent transfer claim, a claim for breach of the implied covenant of good faith and fair dealing, or otherwise) of any purported losses relating to the \$172,411,785 of assets transferred to the Settling Defendants in March 2009, and (ii) disallowing any principal recovery on the UBS Claim in excess of \$61,043,362, *i.e.*, the difference between the total amount transferred in March 2009 (\$233,455,147) and the amount released by UBS (\$172,411,785) pursuant to the settlement agreements.

The Motion is made pursuant to FED. R. CIV. P. 56, FED. R. BANKR. P. 7056, FED. R. BANKR. P. 9014, N.D. TEX. L.B.R. 7056-1 and N.D. TEX. L.B.R. 9014-1. The Motion is based on the record in the Bankruptcy Case, the *Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the "Opening Brief"), the *Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the "Appendix"), the *Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch*, and such further evidence as may be presented at or prior to the hearing on the Motion.⁵ Each of the matters required under N.D. TEX. L.B.R. 7056-1(c)(1) is set forth in the Opening Brief.

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⁵ Concurrently herewith, the Debtor is requesting the Court's permission to file an unredacted version of its Opening Brief and certain portions of the Appendix under seal.

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion in its entirety, by entry of an order in substantially the form attached hereto as Exhibit A, and grant the Debtor such other and further relief as the Court deems just and proper.

Dated: October 16, 2020.

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Exhibit A

Proposed Order

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
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§
§
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER GRANTING PARTIAL SUMMARY JUDGMENT
ON PROOF OF CLAIM NOS. 190 AND 191
OF UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

This matter having come before the Court on the *Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the "Motion"); and the Court having considered Motion, the opening brief and evidence submitted in support of the Motion, all responses to the Motion and any evidence submitted in

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support of such responses, all replies and other materials filed in connection with the Motion, and the arguments presented by counsel at the hearing on the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b) and that the Court may issue a final order consistent with Article III of the United States Constitution; and venue of the Motion being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The Motion is **GRANTED**.²
2. Any Post-Trial Claim against the Debtor is disallowed. UBS shall not be treated as a creditor with respect to any Post-Trial Claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in the Bankruptcy Case.
3. The UBS Claim is disallowed as to any portion of the UBS Claim that seeks recovery from the Debtor for any claims that arose prior to February 24, 2009, and any Post-Trial Claim that seeks recovery from the Debtor for any claims that arose prior to February 24, 2009 is disallowed. UBS shall not be treated as a creditor with respect to such disallowed portion of the UBS Claim, or such disallowed Post-Trial Claim, for purposes of voting upon, or receiving distributions under, any chapter 11 plan in the Bankruptcy Case.
4. The UBS Claim is (i) disallowed as to any portion of the UBS Claim that seeks recovery (whether on a fraudulent transfer claim, a claim for breach of the implied covenant of good faith and fair dealing, or otherwise) of alleged losses relating to the \$172,411,785 of assets transferred to the Settling Defendants in March 2009, and (ii) disallowed as to any principal recovery on the UBS Claim in excess of \$61,043,362. UBS shall not be treated as a creditor

² All capitalized terms not defined herein have the meanings ascribed to such terms in the Motion.

with respect to such disallowed portion of the UBS Claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in the Bankruptcy Case.

END OF ORDER