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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 THIRD OMNIBUS OBJECTION TO CERTAIN NO LIABILITY CLAIMS

*****CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS IN THE SCHEDULES ATTACHED TO THE PROPOSED ORDER ON THIS OBJECTION*****

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

1934054210318000000000009

A COPY OF YOUR CLAIM IS AVAILABLE ONLINE AT HTTP://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH OR BY EMAIL REQUEST TO JONEILL@PSZJLAW.COM

A HEARING WILL BE CONDUCTED ON THIS MATTER ON MAY 3, 2021, AT 1:30 P.M. CENTRAL TIME.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS 75242-1496 BEFORE CLOSE OF BUSINESS ON APRIL 20, 2021, WHICH IS AT LEAST THIRTY-THREE (33) DAYS FROM THE DATE OF SERVICE HEREOF. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS NOTICE; OTHERWISE THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Highland Capital Management, L.P. (the "Debtor"), by and through its undersigned counsel, hereby files this omnibus objection (the "Objection"), seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"), disallowing the claims listed on **Schedule 1** to the Order on the grounds that the Debtor has no liability. In support of this Objection, the Debtor represents as follows:

I. JURISDICTION

1. The Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 3007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 3007-1 and 3007-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "Local Rules").

II. BACKGROUND

I. The Chapter 11 Case

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the United States Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's bankruptcy case to this Court [Docket No. 186].[2]

6. On December 27, 2019, the Debtor filed the *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). The Settlement Motion sought approval of a settlement between the Debtor and the Committee and provided for, among other things, the creation of a new independent board of directors at the Debtor's general partner, Strand Advisors, Inc., consisting of James P. Seery, Jr., John S. Dubel, and Russell Nelms (collectively, the "Independent Directors"). The Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "January 9 Order"), and the Independent Directors were appointed.

7. On July 23, 2020, the Debtor filed the *Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 774] (the "CEO/CRO Motion"). On July 16, 2020, the Court approved the

[2] All docket numbers refer to the docket maintained by this Court.

CEO/CRO Motion and appointed Mr. Seery as the Debtor's Chief Executive Officer and Chief Restructuring Officer.

8. On March 2, 2020, the Court entered its *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488] (the "Bar Date Order"). The Bar Date Order fixed April 8, 2020 at 5:00 p.m. (prevailing Central Time) as the deadline for any person or entity, other than Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file proofs of claim against the Debtor (the "General Bar Date"). The Debtor also sought and obtained the extended employee bar date of May 26, 2020 per the *Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims* [Docket No. 560].

9. On March 3, 2020, the Debtor filed the *Notice of Bar Dates for Filing Claims* [Docket No. 498] (the "Bar Date Notice"). The Bar Date Notice was mailed to all known creditors and equity holders on March 5, 2020. *See Certificate of Service* [Docket No. 530].

10. The Debtor caused the Bar Date Notice to be published on two occasions each in *The New York Times* and *The Dallas Morning News*—once on March 12, 2020, and once on March 13, 2020. *See Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The New York Times* [Docket No. 533] and *Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The Dallas Morning News* [Docket No. 534].

11. On May 8, 2020, this Court entered the *Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order* [Docket No. 628] (the "Employee Bar Date Order"). Pursuant to the Employee Bar Date Order, the Debtor was authorized to provide certain employees with a letter (the "Employee Letter") setting forth the prepetition deferred, contingent bonuses awarded to such employees under the Bonus Programs

(as defined below). For confidentiality reasons, the Debtor provided the Employee Letters in lieu of requiring such employees to file a proof of claim publicly that disclosed his or her compensation, and the amounts included in the Employee Letters were deemed to constitute *prima facie* evidence of the validity and amount of such covered employees' claims under Bankruptcy Rule 3003(c). If a covered employee disagreed with the amounts included in his or her Employee Letter, such employee was required to file a proof of claim no later than 5:00 p.m. Central Time on May 26, 2020.

12. On February 22, 2021, this Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order"), which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as amended, the "Plan").[3]

13. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

II. The Claims Resolution Process

14. The Debtor's register of claims, prepared and maintained by Kurtzman Carson Consultants LLC – the court-appointed notice and claims agent in this case – reflects that 194 proofs of claim were filed in the Debtor's chapter 11 case prior to February 2021.

15. Beginning on February 26, 2021, twenty-four proofs of claim were either newly filed or amended to assert administrative priority claims against the Debtor's estate (collectively,

[3] The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Exh. B [Docket No. 1875].

the "Administrative Priority Claims"). Each Administrative Priority Claim was filed by a former employee (a "Terminated Employee") of the Debtor and asserted claims related to the Debtor's "Annual Bonus Plan" and/or "Deferred Bonus Plan" (collectively, the "Bonus Plans").[4] The Administrative Priority Claims are generally duplicative of the claims set forth in the Employee Letters issued to such Terminated Employees. Certain other former employees (such employees together with the Terminated Employees, the "Former Employees") also received Employee Letters that included claims related to the Bonus Plans (collectively, the "Employee Claims").[5]

16. Each of the Former Employees listed on **Schedule 1** has been terminated. Although the termination dates were staggered, all Former Employees were terminated prior to the date of this Objection.

III. RELIEF REQUESTED

17. The Debtor seeks entry of an order, pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3007, disallowing the Employees Claims listed on Schedule 1 to the Order for the reasons set forth herein.

IV. OBJECTIONS

18. Section 502(a) of the Bankruptcy Code provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A chapter 11 debtor has the duty to object to the allowance of any claim that is improper. 11 U.S.C. §§ 704(a)(5), 1106(a)(1), and 1107(a); *see also Int'l Yacht &*

[4] The Debtor's "Annual Bonus Plan" and "Deferred Bonus Plan" are defined and described more fully in the *Motion Authorizing the Debtor to Grant and Honor Postpetition Awards under Ordinary Course Non-Insider Employee Bonus Plans and Granting Related Relief* [Docket No. 177] (the "Ordinary Course Bonus Motion").

[5] Scott Ellington, Frank Waterhouse, and Isaac Leventon have also asserted claims for amounts related to the Bonus Plans, among other claims. Those claims will be addressed in separate objections.

Tennis, Inc. v. Wasserman Tennis, Inc. (In re Int'l Yacht & Tennis, Inc.), 922 F.2d 659, 661-62 (11th Cir. 1991).

19. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under section 502(a) of the Bankruptcy Code. *See In re O'Connor*, 153 F.3d 258, 260 (5th Cir. 1998); *In re Texas Rangers Baseball Partners*, 10-43400 (DML), 2012 WL 4464550, at *2 (Bankr. N.D. Tex. Sept. 25, 2012). To receive the benefit of *prima fac*ie validity, however, "[i]t is elemental that a proof of claim must assert facts or allegations . . . which would entitle the claimant to a recovery." *In re Heritage Org., L.L.C.*, 04-35574 (BJH), 2006 WL 6508477, at *8 (Bankr. N.D. Tex. Jan. 27, 2006), *aff'd sub nom., Wilferth v. Faulkner*, 3:06 CV 510 K, 2006 WL 2913456 (N.D. Tex. Oct 11, 2006). Additionally, a claimant's proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes "at least one of the allegations that is essential to the claim's legal sufficiency." *In re Am. Reit, Inc.*, 07-40308, 2008 WL 1771914, at *3 (Bankr. E.D. Tex. Apr. 15, 2008); *In re Starnes,* 231 B.R. 903, 912 (N.D. Tex. May 14, 2008). "The ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

20. Section 502(b)(1) of the Bankruptcy Code requires disallowance of a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . ." 11 U.S.C. § 502(b)(1).

21. For the reasons set forth below, the Employees Claims are not enforceable and should be disallowed, expunged, or reduced as set forth herein.

I. Annual Bonus Plan

22. In the ordinary course of business, the Debtor awarded deferred, contingent employee bonuses under the Annual Bonus Plan based upon employee performance in the prior calendar year. The Annual Bonus Plan claims asserted in the Employee Claims relate to deferred, contingent awards granted in February 2019 for services provided in 2018. Those amounts – in the aggregate amount of approximately $2.5 million – were paid to such Former Employees in the ordinary course, and no amounts related thereto are outstanding. Consequently, such claims should be disallowed and expunged.

23. Additional deferred, contingent awards were granted to the Former Employees in 2020 under the Annual Bonus Plan related to services provided in 2019 in the aggregate amount of approximately $5.8 million of which approximately half was previously paid by the Debtor in the ordinary course. These amounts were not included in the Employee Claims; however, claims for any unpaid amounts should also be disallowed. On January 14, 2021, the Debtor's general partner terminated the Annual Bonus Plan in accordance with its terms. Pursuant to the Annual Bonus Plan, as a result of such termination, employees were no longer entitled to receive deferred, contingent awards issued in any other year under the previously operative Annual Bonus Plan. As discussed below, the Debtor publicly disclosed the termination of the Annual Bonus Plan and that no awards would be paid thereunder.

24. Consequently, all claims under the Annual Bonus Plan, regardless of award year, should be disallowed and expunged.

II. Deferred Bonus Plan

25. Separately, under the Deferred Bonus Plan,[6] awards were issued to certain eligible employee using a standardized agreement called the "Contingent Bonus Agreement." Contingent

[6] The Debtor has not terminated the Deferred Bonus Plan. However, most employees who would otherwise be entitled to awards under the Deferred Bonus Plan have been terminated and, as discussed herein, are not entitled to any awards

Bonus Agreements were subject to the Deferred Bonus Plan and included, among other things, the amount of the award, the date of award, when the award would vest, and when the award would be paid, and were to be executed by the employee and the administrator of the Deferred Bonus Plan. Deferred awards were issued to certain employees in 2017 for services rendered in 2016 (the "2017 Award"), in 2018 for services rendered in 2017 (the "2018 Award"), in 2019 for services rendered in 2018 (the "2019 Award"), and in 2020 for services rendered in 2019 (the "2020 Award"). Although the 2020 Awards were issued in August 2020, none of the Former Employees asserted a claim for the 2020 Awards in the Employee Claims.

a. The 2017 Award, 2018 Award, and 2019 Award

26. The 2017 Awards, 2018 Awards, and 2019 Awards were issued pursuant to the standard Contingent Bonus Agreement, which provides that awards do not vest – and therefore are not due and payable – unless the employee is employed on the applicable vesting date as follows:

> Normal Vesting. Subject to **Sections 3.2** and **3.3** of this Agreement, 100% of the Award will Vest on [the vesting date]. . . if the Participant remains continuously employed by the [Debtor] until such date . . . .
>
> ***
>
> Forfeiture Upon Termination of Employment. If the Participant's employment terminates for any reason other than on account of death or Disability before the Vesting Date, then the Award will be forfeited automatically and without further notice on such date without compensation or any other consideration.

Contingent Bonus Agreement, §§ 3.1, 3.4. As such, if an employee is not employed by the Debtor on the applicable vesting date, the employee will not receive an award. And, even if the Debtor terminates an employee, with or without cause, any deferred awards, which might otherwise have been payable to such employee under the Deferred Bonus Plans, are forfeited. In the ordinary

thereunder. Certain employees who are being retained by the Debtor may be entitled to distributions under the Deferred Bonus Plan if they are employed on May 31, 2021. Those employees, however, have agreed to have such amounts treated as Class 8 claims under the Plan.

course of its business – both prior to and after the Petition Date – the Debtor did not pay deferred awards to employees who were terminated or quit their employment.

27. Certain of the Former Employees assert claims related to the 2017 Awards in the aggregate amount of approximately $530,000. Those amounts were paid to such Former Employees in the ordinary course during 2020, and no amounts related thereto are outstanding. Consequently, such claims should be disallowed and expunged.

28. The Former Employees also assert claims related to the 2018 Awards in the aggregate amount of approximately $650,000, and the 2019 Awards in the aggregate amount of approximately $880,000. However, the vesting date for the 2018 Awards is May 31, 2021, and the vesting date for the 2019 Awards is May 31, 2022. Because the Former Employees have been terminated, they are not entitled to the 2018 Awards or the 2019 Awards. These claims should also be disallowed and expunged.

b. The 2020 Award

29. Certain of the Former Employees received 2020 Awards in August 2020. However, none these Former Employees included a claim for the 2020 Awards in their Employee Claims, although they purportedly reserved their right to assert additional claims. Nevertheless, for purposes of transparency and efficiency, the unusual circumstances surrounding the 2020 Awards should be addressed now in conjunction with the Employee Claims.

30. Like the other awards, the 2020 Awards were issued pursuant to a Contingent Bonus Agreement (the "2020 Contingent Bonus Agreement"); however, the 2020 Contingent Bonus Agreement included a new provision not found in prior versions of the Contingent Bonus Agreement. With respect to vesting, it provided:

> Normal Vesting. Subject to **Sections 3.2** and **3.3** of this Agreement, 100% of the Award will Vest on May 31, 2023 . . . if the Participant remains continuously employed by the [Debtor] until such date . . . .
>
> ***
>
> Forfeiture Upon Termination of Employment. If the Participant's employment terminates for any reason other than on account of death or Disability before the Vesting Date, then the Award will be forfeited automatically and without further notice on such date without compensation or any other consideration. The Administrator determines when the Participant's employment terminates for this purpose. ***Notwithstanding the foregoing, the Award will not be forfeited and the Vesting set forth in this Section 3 shall continue in the event Employee continues to be employed by an entity that is the Company's affiliate, successor or assign, including, without limitation, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. and NexPoint Securities, Inc., and their respective affiliates, successors and assigns.***

2020 Contingent Bonus Agreement, §§ 3.1, 3.4 (emphasis added). The newly-added provision to Section 3.4 (the sentence highlighted above) – which purports to require the Debtor to pay the 2020 Award if an employee is terminated by the Debtor but "continues to be employed" by an "affiliate" – was made ***without*** the knowledge or consent of the Independent Directors or Mr. Seery and without this Court's approval. The purported amendment was never disclosed to the Independent Directors and was only recently discovered by the Debtor in connection with preparing this Objection.

31. The Debtor is still investigating the circumstances surrounding this "amendment." However, upon information and belief, the Debtor's employees surreptitiously sought to obligate the Debtor to pay over a million dollars in 2020 Awards that the Debtor was not otherwise obligated to pay ***after*** such employees went to work for another Dondero-controlled entity.[7] The

[7] The Debtor does know, from a review of the Debtor's emails, that the change was requested by the head of the Debtor's human resources department on June 16, 2020. Although certain ministerial changes to the Deferred Bonus Plan were actively disclosed to Mr. Seery, the amendment to the 2020 Contingent Bonus Agreement was not disclosed and authority to make that change was not sought. Instead, when directly asked for a copy of the 2020 Contingent Bonus Agreement to confirm that there were ***no*** changes to the vesting provisions, the Debtor's employee supplied the wrong document.

amendment – made without the approval of the Independent Directors, Mr. Seery, or this Court – is, at best, an unauthorized and willful use of the Debtor's property in violation of 11 U.S.C. § 363 and, at worst, fraud.[8] The Debtor reserves all rights and remedies it might have, including the right to seek reversal of the 2020 Awards pursuant to, among other things, 11 U.S.C. § 549.

32. However, even if the amended language in the 2020 Contingent Award is ***not*** reversed, the Former Employees are still not entitled to the 2020 Award. Under Section 3.1 of the 2020 Contingent Bonus Agreement, the Former Employees must be employed ***by the Debtor*** on the vesting date – May 31, 2023 – in order to vest in the 2020 Awards. 2020 Contingent Award Agreement, § 3.1. None of the Former Employees are currently employed by the Debtor or will be employed by the Debtor on May 31, 2023, and the 2020 Award will never vest.

33. Further, the amended language in Section 3.4 – as written – would ***only*** apply to an employee that was transferred to an "affiliate" of the Debtor. As an initial matter, the term "affiliate" is defined in the Deferred Bonus Plan, and the administrator of the Deferred Bonus Plan does not have the authority under the Deferred Bonus Plan to change that definition. Under the Deferred Bonus Plan, "Affiliate" is defined as:

> a Person, including a joint venture entity, that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. An entity will be deemed an Affiliate of the Company for purposes of this definition only for such periods as the requisite ownership or control relationship is maintained.

Defined Bonus Plan, § 1(b). As this Court knows, prior to January 9, 2020, the Debtor was controlled by Mr. Dondero, but Mr. Dondero lost control of the Debtor with the entry of the

[8] The Debtor is investigating whether the administrator of the Deferred Bonus Plan – Frank Waterhouse – had authority to amend the Contingent Bonus Agreement under the terms of the Deferred Bonus Plan in the first place. However, even if Mr. Waterhouse had corporate authority, the Debtor still required this Court's approval to make such change as it would potentially obligate the Debtor to pay over $1 million in claims if the Former Employees, among other employees, went to work for Mr. Dondero.

January 9 Order and the appointment of the Independent Directors. As none of the Former Employees work for an entity "controlled" by the Independent Directors, none of the Former Employees is employed by an "affiliate" of the Debtor. Accordingly, the language in amended Section 3.4 "including, without limitation, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. and NexPoint Securities, Inc., and their respective affiliates, successors and assigns" is a nullity as it identifies entities that are not affiliates of the Debtor within the definition provided in the Deferred Bonus Plan.

34. Although the Former Employees do not at this time assert claims related to the 2020 Awards, they have reserved the right to do so in the Employee Claims and these potential claims would aggregate approximately $1,000,000. It is unknown why the Former Employees did not raise the 2020 Awards in their Employee Claims. It could have been an oversight or it could have been done to preserve a second bite at the apple and the chance to bring additional litigation against the Debtor. However, because each of the Former Employees has been terminated, they will never vest and are not and never will be entitled to the 2020 Awards. Further, as outlined above, the terms of the unauthorized "amendment" give the Former Employees no rights against the Debtor, and these claims should also be disallowed with a clear order preventing this type of litigation tactic. The Debtor reserves all rights and defenses it has against these claims.

III. The KERP Motion

35. Mr. Seery previously testified to this Court via proffer and informed the Court and the Debtor's employees, including the Former Employees, that (a) the Debtor would only retain a handful of employees after confirmation of the Plan, (b) the Annual Bonus Plan had been terminated and no awards thereunder would be paid, and (c) the contingent right of such employees

to receive payment for any bonuses under the Deferred Bonus Plan would never vest and would never be payable because employees would be terminated prior to the vesting date.[9]

36. To incentivize employees to continue working for the Debtor for a limited time, on January 19, 2021, the Debtor filed its *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief* [Docket No. 1777] (the "KERP Motion"). The KERP Motion clearly disclosed that (a) the Annual Bonus Plan had been terminated and no rights thereunder remained for any employee, (b) the Former Employees would be terminated, and (c) the Former Employees would not receive any amounts under the Annual Bonus Plan.

37. However, the KERP Motion provided for the creation of a "Retention Plan" (as defined in the KERP Motion), and provided each eligible Former Employee – except for insiders – the opportunity to enter into a "Termination Agreement."[10] The Termination Agreements provided for specified bonus payments in return for employees remaining employees in good standing with the Debtor through the Separation Date (as defined in the Termination Agreements) and releasing any claims against the Debtor. A key component of the Retention Plan was that the Former Employees would be entitled to specific bonus payments if they did not voluntarily terminate their employment with the Debtor prior to the Separation Date and were not terminated

[9] *See* Transcript, Jan. 26, 2021, 7:24-25; 8:1-3; 9-14.

> He would testify that he analyzed the current employees to determine which, if any, would need to be continued to be retained by the Debtor and operate during the Reorganized Debtor and Claimant Trust period following the effective date of the plan.
>
> He would testify, that based upon his review, the company determined that it was in the best interests of the estate to terminate the existing annual bonus plan, as it was no longer necessary to effectively incentivize the remaining non-insider employees who would be terminated prior to being entitled to any further payments under the annual bonus plan.

[10] Certain employees were terminated for cause on January 5, 2021, and were no longer eligible to receive amounts under the Annual Bonus Plan or Deferred Bonus Plan as of such date. The Debtor also terminated another Former Employee for cause on February 25, 2021, and that employee was no longer eligible to receive amounts under the Annual Bonus Plan or Deferred Bonus Plan as of such date.

for cause. Subject to a cap, these bonuses were in substantially the same amounts as the Former Employees would have received under the Annual Bonus Plan or, in certain cases, more.[11]

38. No parties, including the Former Employees, objected to the KERP Motion, and this Court approved the KERP Motion on January 27, 2021 [Docket No. 1849]. The Debtor subsequently offered each eligible Former Employee the opportunity to enter into a Termination Agreement and informed the Former Employees that they would receive no payments under the Bonus Plans. Upon termination, not one Former Employee executed the Termination Agreement. On information and belief, the Former Employees are either working for, or providing services to, a Dondero-related entity.[12] Without informing the Debtor, the Terminated Employees filed the Administrative Priority Claims seeking administrative priority treatment for amounts that in the aggregate are similar to amounts that would have been payable to such Former Employees under the Bonus Plans.

39. On information and belief, Mr. Dondero – either directly or via proxy – conditioned each Former Employee's employment with a Dondero-controlled entity on such employee's refusal to execute a Termination Agreement, which agreement included a standard release in favor of the Debtor and a non-disparagement clause. Termination Agreement, §§ 2, 4. Certain other employees subsequently transferred their claims to NexPoint Advisors, L.P. ("NPA"), and NPA is

[11] *See* Transcript, Jan. 26, 2021, 9:25; 10:1-15.

> Mr. Seery would further testify that the retention plan is being offered to approximately 53 employees, and the projected aggregate amount of payments under the retention plan is approximately $1,481,000, which is $32,000 approximately less than the amount that would have been paid to such employees under the annual bonus plan.
>
> He would testify that the retention plan includes 20 employees who are not entitled to benefits under the annual bonus plan. Fourteen employees are entitled to receive more under the retention plan than they would have received under the annual bonus plan.
>
> With respect to the 20 employees I've previously mentioned who are not otherwise entitled to receive anything under the annual bonus plan, the vast majority of those -- 18 -- will be entitled to payments of $2,500 each, and the other two entitled to payments of $10,000 and $7,500, respectively.

[12] The only terminated employees that did execute Termination Agreements are working for entities that are unrelated to Mr. Dondero.

now trying to use those claims as the basis for its alleged standing to object to the Confirmation Order.[13] The Debtor intends to investigate whether the foregoing was done in connection with or in furtherance of the unauthorized amendment to the 2020 Contingent Bonus Agreement.

IV. Administrative Priority

40. The Former Employees state that they believe their claims "are entitled to be paid as administrative expenses under 503(b)(1) and 507(a)(2) of the Bankruptcy Code. . . [and] also may be entitled to priority under section 507(a)(4) or section 507(a)(5) of the Bankruptcy Code." Employee Claim, Rider 4. Because the Former Employees do not state with specificity the provision in section 503(b)(1) that would entitle them to administrative priority, the Debtor is not able to respond appropriately to such claims. However, assuming the Former Employees seek administrative priority under 11 U.S.C. § 503(b)(1)(A)(i) ("wages, salaries, and commissions for services rendered after the commencement of the case"), their claims for administrative priority fail.

41. *First*, as set forth above, no Former Employee is entitled to any deferred, contingent payments under the Bonus Plans, and there are no "wages, salaries, and commissions" due to the Former Employees. *Second*, even if the Former Employees were entitled to payments under the Bonus Plans (which they are not), those amounts were not for "services rendered after the commencement of the case." The deferred, contingent amounts awarded under the Annual Bonus Plan related to services rendered during 2018. The 2017 Award related to services rendered during

[13] *See Advisors' Reply in Support of Motion for Stay Pending Appeal* [Docket No. 2036], ¶ 4:

> However, should there be any question regarding the Advisors' economic, or pecuniary, interests with respect to the Plan as a whole, the Advisors point out the following facts. . . . [W]ith specific reference to the rights of unsecured Class 8 creditors, various former Debtor employees have assigned their claims against the Debtor to the Advisors, and the Advisors are in the process of filing notices of transfer of those claims. The Advisors now own those claims, those claims have not been disallowed, and those claims are directly impacted by the Plan's cramdown provisions and the Advisors' appeal based on the Absolute Priority Rule. Thus, the Advisors hold pecuniary interests of directly the type of Class 8 unsecured claim that is impacted by the economics of the Plan.

2016; the 2018 Award was given for services rendered during 2017; and the 2019 Award related to services rendered during 2018. In each case, such services were rendered ***before*** the Petition Date. Similarly, the 2020 Awards related to services rendered during 2019. The Petition Date occurred on October 16, 2019, and the majority of services provided by the Former Employees during 2019 were for services rendered prior to the Petition Date.

42. Based upon the foregoing, the Debtor requests the Court disallow each of the Employee Claims identified on **Schedule 1** to the proposed Order.

V. RESPONSES TO OBJECTIONS

43. To contest an objection, a claimant must file and serve a written response to this Objection (each, a "Response") so that it is received no later than **April 20, 2021 at 5:00 p.m. (Central Time)** (the "Response Deadline"). Every Response must be filed with the Office of the Clerk of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, TX 75242-1496 and served upon the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

Pachulski Stang Ziehl & Jones LLP
Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

Hayward PLLC
Melissa S. Hayward
Zachery Z. Annable
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
mhayward@haywardfirm.com
zannable@haywardfirm.com

44. Every Response to this Objection must contain, at a minimum, the following information:

i. A caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the objection to which the Response is directed;

ii. The name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;

iii. The specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;

iv. Any supporting documentation (to the extent it was not included with the proof of claim previously filed with the clerk of the Court or KCC) upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and

v. The name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

45. If a claimant fails to file and serve a timely Response by the Response Deadline, the Debtor will present to the Court an appropriate order disallowing such claimant's claim, as set forth in **Exhibit A**, without further notice to the claimant.

VI. REPLIES TO RESPONSES

46. Consistent with the Local Rules, the Debtor may, at its option, file and serve a reply to a Response by no later than 5:00 p.m. (prevailing Central Time) three (3) days prior to the hearing to consider the Objection.

V. VII. SEPARATE CONTESTED MATTERS

47. To the extent that a Response is filed regarding any claim listed in this Objection and the Debtor is unable to resolve the Response, the objection by the Debtor to each such claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Objection shall be deemed a separate order with respect to each claim.

VIII. RESERVATION OF RIGHTS

48. The Debtor hereby reserves the right to object in the future to any of the claims that are the subject of this Objection on any ground, including, but not limited to, 11 U.S.C. § 502(d), and to amend, modify, and/or supplement this Objection, including, without limitation, to object to amended or newly filed claims. The Debtor also reserves the right to object in the future to any other claim filed by a claimant whose claim is subject to this Objection.

49. Notwithstanding anything contained in this Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights that the Debtor may have to exercise rights of setoff against the holders of such claims.

IX. NOTICE

50. Notice of this Objection shall be provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) each of the claimants whose claim is subject to this Objection; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice is required.

X. COMPLIANCE WITH LOCAL RULES

51. This Objection includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Objection. The Debtor objects to no more than 100 proofs of claim herein. The Debtor has served notice of this Objection on those persons whose names appear in the signature blocks on the proofs of claim and in accordance with Bankruptcy Rule 7004. Moreover, the Debtor has notified claimants that a copy of their claim may be obtained from the Debtor upon request. Accordingly, the Debtor submits that this Objection satisfies Local Rule 3007-2.

WHEREFORE, the Debtor respectfully requests the entry of the proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested and granting such other and further relief as the Court deems just and proper.

[Remainder of Page Intentionally Blank]

Dated: March 18, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
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-and-

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/s/ Zachery Z. Annable

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Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A
(Proposed Order)

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.	)	**Re: Docket No. ____**

ORDER SUSTAINING DEBTOR'S
THIRD OMNIBUS OBJECTION TO CERTAIN
NO LIABILITY CLAIMS

Having considered the *Debtor's Third Omnibus Objection to Certain No Liability Claims* (the "Objection"),[2] the claims listed on **Schedule 1** attached hereto, any responses thereto, and the arguments of counsel, the Court finds that (i) notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given; (ii) the Objection is a core proceeding under 28 U.S.C. § 157(b)(2); (iii) each holder of a claim listed on Schedule 1

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

[2] Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Objection.

attached hereto was properly and timely served with a copy of the Objection, the proposed form of this Order, the accompanying schedules, and the notice of hearing on the Objection; (iv) any entity known to have an interest in the claims subject to the Objection has been afforded reasonable opportunity to respond to, or be heard regarding, the relief requested in the Objection; and (v) the relief requested in the Objection is in the best interests of the Debtor's creditors, its estate, and other parties-in-interest. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED THAT:**

1. The Objection is **SUSTAINED** as set forth herein.

2. Each of the claims listed as an Employee Claim on **Schedule 1** hereto is disallowed and expunged in its entirety.

3. The official claims register in the Debtor's chapter 11 case shall be modified in accordance with this Order.

4. The Debtor's rights to amend, modify, or supplement the Objection, to file additional objections to the Employee Claims and any other claims (filed or not, including any other claims filed by holders of Employee Claims) which may be asserted against the Debtor, and to seek further reduction of any claim to the extent such claim has been paid, are preserved. Additionally, should one or more of the grounds of objection stated in the Objection be overruled, the Debtor's rights to object on other stated grounds or any other grounds that the Debtor may discover are further preserved.

5. Each claim and the objections by the Debtor to such claim, as addressed in the Objection and set forth on **Schedule 1** attached hereto, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate Order with respect to each claim. Any stay of this Order pending appeal by any claimant whose claims are

subject to this Order shall apply only to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters listed in the Objection or this Order.

6. The Debtor is authorized and empowered to take any action necessary to implement and effectuate the terms of this Order.

7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

###END OF ORDER###

Schedule 1

Employee Name	Claim No.
Christopher Rice	Claim No. 220
Helen Kim	Claim No. 226
Jason Rothstein	Claim No. 229
Jerome Carter	Claim No. 223
Kari Kovelan	Claim No. 227
Kellie Stevens	Claim No. 221
Lauren Thedford	Claim No. 222
Mark Patrick	Claim No. 219
Charles Hoedebeck	Claim No. 228
Stephanie Vitiello	Claim No. 225
Steven Haltom	Claim No. 224
William Gosserand	Claim No. 232
Brian Collins	Claim No. 233
Hayley Eliason	Claim No. 236
Lucy Bannon	Claim No. 235
Mary Irving	Claim No. 231
Matthew DiOrio	Claim No. 230
Ricky Swadley	Claim No. 237
William Mabry	Claim No. 234
Jean Paul Sevilla	Claim No. 241
Jon Poglitsch	Employee Letter
Clifford Stoops	Employee Letter
Jason Post	Employee Letter
Ajit Jain	Employee Letter
Paul Broaddus	Employee Letter
Melissa Schroth	Employee Letter
Mauro Staltari	Employee Letter
Will Mabry	Employee Letter
Yegor Nikolayev	Employee Letter
Sahan Abayarathna	Employee Letter
Kunal Sachdev	Employee Letter
Kent Gatzki	Employee Letter
Scott Groff	Employee Letter
James Mills	Employee Letter
Bhawika Jain	Employee Letter
Jae Lee	Employee Letter
Cyrus Eftekhari	Employee Letter
Tara Loiben	Employee Letter
Michael Jeong	Employee Letter
Will Duffy	Employee Letter
Sarah Goldsmith	Employee Letter
Sarah Hale	Employee Letter
Heriberto Rios	Employee Letter
Mariana Navejas	Employee Letter
Joye Luu	Employee Letter
Austin Cotton	Employee Letter
Lauren Baker	Employee Letter
Phoebe Stewart	Employee Letter
Blair Roeber	Employee Letter
Brad McKay	Employee Letter
Jennifer School	Employee Letter