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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§ Chapter 11
§
§ Case No. 19-34054-sgj11
§
§
§

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT WITH UBS SECURITIES LLC AND UBS AG LONDON BRANCH
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

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.



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**TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:**

Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), files this Motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), substantially in the form attached hereto as **Exhibit A**, approving a settlement agreement (the “Settlement Agreement”)² entered into between the Debtor and certain related parties, on the one hand, and UBS Securities LLC and UBS AG London Branch (collectively, “UBS”), on the other hand. A copy of the Settlement Agreement is attached as **Exhibit 1** to the *Declaration of Robert J. Feinstein in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* (“Feinstein Declaration”), filed concurrently herewith. In support of this Motion, the Debtor respectfully states as follows:

INTRODUCTION

1. The Settlement Agreement resolves more than \$1 billion in claims that UBS filed in the Bankruptcy Case (collectively, the “UBS Claim”), as well as UBS’s claims against certain related parties that have been pending for more than a decade in the Supreme Court of the State of New York, County of New York (the “State Court”).³ The UBS Claim arises from: (i) a judgment entered by the State Court against Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC,” and together with CDO

² Capitalized terms used herein, but not defined, have the meanings ascribed to such terms in the Settlement Agreement or elsewhere in this Motion, as applicable.

³ The UBS Claim includes (i) Claim No. 190 filed by UBS Securities LLC, attached as **Exhibit 2** to the Feinstein Declaration, and (ii) Claim No. 191 filed by UBS AG London Branch, attached as **Exhibit 3** to the Feinstein Declaration.

Fund, the “Funds”) and (ii) related claims against the Debtor and other funds managed by the Debtor.

2. The Settlement Agreement provides for the allowance of the UBS Claim as (i) a single general unsecured claim in the amount of \$65,000,000 against the Debtor, which will be treated as a Class 8 General Unsecured Claim under the Plan,⁴ and (ii) a single subordinated unsecured claim in the amount of \$60,000,000 against the Debtor, which will be treated as a Class 9 Subordinated General Unsecured Claim under the Plan. The Settlement Agreement also provides for a payment of \$18,500,000 to UBS by Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“Multi-Strat”), a non-Debtor fund managed by the Debtor that is a co-defendant in the State Court litigation. In exchange for the allowance of the UBS Claim as set forth above and the payment by Multi-Strat, UBS will, among other things, release claims against the Debtor, Multi-Strat, and the Debtor’s general partner, Strand Advisors, Inc. (“Strand”), also named as a defendant in the State Court litigation, as described in Section 3 of the Settlement Agreement. The Settlement Agreement also obligates the Debtor to assist UBS in its collection efforts against the Funds in the State Court litigation and its pursuit of other claims, subject to a cap on its expenses of \$3,000,000, provided that, to the extent provided for in Section 1(c) of the Settlement Agreement, for every dollar UBS recovers from the Funds (other than certain of the preferred shares issued by Greenbriar CLO Ltd. or Greenbriar CLO Corp. (collectively, “Greenbriar”), Sentinel Reinsurance, Ltd. (“Sentinel”), Multi-Strat (other than the initial payment of \$18,500,000 referred to above), or any other person or entity described in Section 1(c)(iii) of the Settlement Agreement (the “UBS Recovery”), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP.

⁴ As used herein, the term “Plan” refers to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Dkt. No. 1808], as may be amended, supplemented, or restated.

3. The Settlement Agreement is the product of extensive arms-length negotiations among the parties and their counsel, as well as multiple mediation sessions with Judge Allan L. Gropper (Ret.) and Sylvia A. Mayer (together, the “Mediators”). Moreover, the parties had the benefit of this Court’s decision on the motions for partial summary judgment filed by the Debtor and the Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”), and the Court’s ruling on UBS’s motion to temporarily allow its claim for voting purposes. After the Debtor, Redeemer Committee, and UBS submitted comprehensive briefing and voluminous exhibits, and the Court heard approximately five hours of argument, the Court granted the partial summary judgment motions to the extent set forth in its December 9, 2020 Order, and temporarily allowed the UBS Claim for the purposes of voting in the amount of \$94,761,076 (the “UBS Rulings”). Of that amount, approximately \$43,000,000 (inclusive of pre-judgment interest) related to transfers made to Multi-Strat, based on the Court estimating a 90% chance that UBS would prevail on that portion of its claim (under either a fraudulent conveyance or breach of implied covenant theory).

4. After the mediation and the UBS Rulings, the parties reached an initial settlement in principle. The Debtor disclosed that initial settlement to the Court and parties-in-interest at the February 2, 2021, hearing on confirmation of the Plan. Specifically, with UBS’s consent, the Debtor announced the initial settlement under which UBS was to receive (i) a single Class 8 General Unsecured Claim of \$50,000,000, (ii) a single Class 9 Subordinated General Unsecured Claim of \$25,000,000 (along with \$18,500,000 from Multi-Strat and an agreement to assist UBS, to the extent possible, with the conveyance of CDO Fund’s assets to UBS). Those amounts were well in line with the UBS Rulings and reflected the parties’ respective assessments of the risks of litigating the claims to a final decision based on the then-known facts and the rulings.

5. Notably, among the critical facts predating UBS’s prosecution of its Proof of Claim was information provided to UBS in formal and informal discovery regarding the Funds’

assets. Before the Bankruptcy Case was filed, UBS was advised by the Debtor's prepetition management that the Funds had no material assets. During the course of the Bankruptcy Case, the Debtor's prepetition management – including its general counsel and senior litigation counsel – reiterated those “no asset” representations to the Independent Board,⁵ including claiming that the Funds were “ghost funds” that had no material assets. These representations were, in turn, relayed to UBS.

6. As the recently uncovered facts described below reveal, the representations of the Debtor's prepetition management to UBS prior to the Bankruptcy Case and to the Independent Board *after* the filing of the Bankruptcy Case were fraudulent. The fraudulent representations appear to have been made as part of an orchestrated scheme by former management to hide from the Independent Board and UBS that in August 2017 more than \$300 million in face amount of securities and cash were secretly transferred from the Funds to a related entity owned and controlled by James Dondero and Scott Ellington.

7. The Independent Board's initial investigation into the UBS Claim and the defenses and potential liabilities of the Debtor and its managed and owned funds began in January 2020. The UBS Claim was the largest in the case, and the Independent Board brought intense focus to all of the legal and factual matters surrounding the underlying contracts, the defaults, and the decade-long litigation underlying the UBS Claim. In directing that extensive investigation, the Independent Board instructed Mr. Ellington, Isaac Leventon, and other members of the Debtor's legal department to provide detailed information regarding the history of the transactions, the Funds, and the UBS Claim generally. Mr. Dondero also provided information to the Independent Board regarding the transactions, the Funds, the litigation, and the pre-petition settlement negotiations with UBS. This post-petition information provided by the Debtor's employees

⁵ The term “Independent Board” means the independent board of directors at Strand appointed by this Court on January 9, 2020. *See Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*. Dkt. No. 399.

became part of the factual support for the Debtor's objection to the UBS Claim, and undergirded the Debtor's aggressive objection to the UBS Claim.

8. Prior to the mediation, UBS made additional discovery requests of the Debtor and the Funds. James P. Seery, Jr. (a member of the Independent Board and the Debtor's Chief Executive Officer and Chief Restructuring Officer) tasked the Debtor's in-house legal team with providing the responses to UBS's discovery requests. When Mr. Seery and outside counsel pressed the Debtor's employees for a timely response, Mr. Ellington claimed that he and Mr. Leventon were engaged in a "Herculean task" and had spent "in excess of 100 hours trying to piece together everything we can to create a true and accurate document based record of what happened" to the Funds and their assets. Ultimately, Mr. Leventon claimed that substantially all of the assets that had been at the Funds were used to pay the Funds' legal fees incurred in the litigation against UBS. He also provided specific documents purporting to show that certain assets were "written off" with the exception of certain preferred shares in Greenbriar that were supposedly difficult to locate. The Debtor reported the findings to UBS and used the findings in its presentation to the Mediators and this Court. As the Debtor ultimately learned, Mr. Ellington and Mr. Leventon's statements were false and were apparently made as part of a coordinated post-petition conspiracy to cover-up the illegal pre-petition transfers.

9. After the mediation and the UBS Rulings failed to result in a resolution of the UBS Claim, the Debtor and UBS continued to negotiate. During that time, the Debtor was also involved in significant disputes with Mr. Dondero. Upon learning that Mr. Ellington and Mr. Leventon had breached their respective duties to the Debtor by assisting Mr. Dondero's actions against the estate, they were terminated on January 5, 2021. Upon further investigation, in late January 2021, Mr. Seery working in conjunction with the Debtor's bankruptcy advisors, uncovered certain facts and circumstances relating to the Funds that were extremely disturbing.

10. Specifically, the Debtor's investigation revealed that in or around August 2017, shortly after rulings were issued in favor of UBS in the State Court Action (defined below), and in advance of the impending trial in State Court, Highland's principal, Mr. Dondero, acting in concert with others then employed by Highland, orchestrated the surreptitious transfer of all or substantially all of the assets of the Funds, among others, which had a face value of more than \$300 million in the aggregate (the "Transferred Assets"), to Sentinel. Sentinel is a Cayman-domiciled entity that, on information and belief, is indirectly owned and controlled by Mr. Dondero and Mr. Ellington.⁶ The transfer of the Funds' assets appears to be for (at best) a fraction of their total value.⁷ Upon information and belief, the Transferred Assets included, among other assets: (i) CDO Fund's interest in Multi-Strat that was ostensibly "redeemed" in November 2019 (the "Sentinel Redemption"), and (ii) assets held by CDO Fund related to Greenbriar, Aberdeen Loan Funding Ltd., Eastland CLO Ltd., Grayson CLO Ltd., Valhalla CLO Ltd., and Governance Re, Ltd., including cash payments related to those assets.⁸ The Independent Board disclosed this information to UBS promptly upon its discovery in February 2021. Prior to that disclosure, neither these assets nor the transfers was ever disclosed to UBS.

⁶ On information and belief, Mr. Dondero indirectly owns 70% of Sentinel and Mr. Ellington indirectly owns the remaining 30%. Although Mr. Dondero and Mr. Ellington are the ultimate beneficial owners, their ownership of Sentinel is held through a series of exceedingly complicated intermediate holding and operating companies.

⁷ Highland and the Funds, acting through Mr. Dondero, Mr. Ellington, Mr. Leventon, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and other Highland employees, fraudulently (or, at a bare minimum, in breach of their fiduciary duties) transferred these assets pursuant to a so-called purchase agreement (the "Purchase Agreement"), purportedly to satisfy a \$25,000,000 premium on a \$100,000,000 "after the event," legal liability insurance policy issued by Sentinel (the "Insurance Policy"). The Insurance Policy was supposedly intended to insure against an adverse judgment in the UBS State Court Action (defined below), notwithstanding that the Transferred Assets were worth more than both the premium and the policy limit combined.

⁸ The Debtor believes that the timing of both the transfer of the Transferred Assets and the Sentinel Redemption are relevant. In July 2016, the Redeemer Committee commenced its arbitration for, among other things, breach of contract and breach of fiduciary duty against the Debtor. In March 2017 (approximately five months before the Purchase Agreement), the State Court denied the Debtor's motion for summary judgment as to UBS's fraudulent transfer claim, among others, and UBS's suit was being set for trial. In the spring and summer of 2017, Patrick Daugherty and Joshua Terry commenced their own actions against the Debtor or its affiliates. The walls of Mr. Dondero's fraudulent fortress were under attack. Similarly, in April 2019, Redeemer received its final arbitration award, and in November 2019, the State Court entered its \$1 billion judgment in favor of UBS against the Funds – around the same time that the Sentinel Redemption was ostensibly made.

11. It also became clear to Mr. Seery and the Independent Board that they had been materially misled by a coordinated conspiracy to cover up the fraud, which was engineered by, among others, Mr. Dondero, Mr. Ellington, Mr. Leventon, as in-house senior litigation counsel, and certain other employees of the Debtor.

12. In light of these shocking revelations, UBS sought to reopen the settlement discussions. Due to the potential increased risk of additional monetary exposure to the Debtor's estate, the Debtor agreed to revisit the terms of the settlement and ultimately came to revised terms as reflected in the Settlement Agreement. As revised and incorporated into the Settlement Agreement, UBS will receive an increased allowed Class 8 Claim in the amount of \$65 million, and an increased subordinated Class 9 Claim in the amount of \$60 million. These increases reflect the facts and circumstances recently uncovered which increase the Debtor's potential exposure on UBS's asserted claim for breach of the implied covenant of good faith and fair dealing. While the revised, settled UBS Claim exceeds the total estimate the Court previously provided in the UBS Rulings, the non-subordinated amount of UBS's allowed Class 8 Claim, \$65 million, remains less than the Court's estimate of \$94,761,076. And, while that increased Class 8 Claim is potentially dilutive of the recoveries of other creditors, in the Debtor's judgment, the newly discovered facts increase the risk of UBS obtaining a higher recovery on the UBS Claim if it were litigated to conclusion.

13. The Settlement Agreement reflects informed decisions made by highly sophisticated parties, represented by experienced counsel, taking into account (among other things) the significant litigation risk to both UBS and the Debtor if the parties proceed to trial on UBS's claims against the Debtor, Multi-Strat, and Strand. As just a few examples, and as discussed at length in the parties' submissions and oral argument in connection with the partial summary judgment motions and the 3018 Motion (defined below), a litigated resolution of the UBS Claim would involve (i) a determination as to whether Highland Financial Partners, L.P. ("HFP") was the

alter ego of the Funds that contracted with UBS, (ii) factual and legal disputes as to whether HFP received fair consideration for the allegedly fraudulent transfers at issue, including whether the underlying debt could be recharacterized as equity, and whether the debt was secured, and (iii) vigorously contested issues as to whether the Debtor owed or breached a duty of good faith and fair dealing in connection with the transfers made by HFP or its subsidiaries.

14. There is no guarantee that the Debtor would prevail, particularly in light of the number and variety of complex issues that would need to be determined, the recently uncovered fraud, and the fact that it no longer controls many of the witnesses. Moreover, even if the Debtor ultimately prevailed on most (if not all) of its defenses, the time and expense required to litigate the issues outlined above, and the other issues that would need to be addressed to fully resolve the dispute with UBS, would be a significant drain on the Debtor's estate, with a concomitant detrimental impact on the Debtor's creditors. Absent the Settlement Agreement, further litigation of the UBS Claim would involve substantial (and expensive) pre-trial preparation, a lengthy trial, and likely appeals. The Debtor also would need to defend against UBS's claims against Multi-Strat and Strand in the State Court Action, as the Debtor is the investment manager of Multi-Strat, and Strand has been sued for derivative liability as the Debtor's general partner. It has not yet been determined where those claims would be tried, an issue that itself would generate additional litigation and cause further delay. Any attempt to remove the claims to this Court in all likelihood would be vigorously contested by UBS; and if the claims remained in the State Court, the case could not be tried for the foreseeable future due to the pandemic, particularly if UBS continued to demand a jury trial.

15. The Settlement Agreement ends the Debtor's decade-long dispute with UBS, and avoids the expense, delay, and uncertainty of further litigation on the UBS Claim. The Independent Board, including Mr. Seery, has been intimately involved in the negotiation of the Settlement Agreement and believes it to be a fair and reasonable compromise that undoubtedly is

in the best interests of the Debtor's estate and its creditors. Accordingly, the Debtor respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

JURISDICTION AND VENUE

16. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

17. The statutory predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

RELEVANT BACKGROUND

I. The State Court Litigation

18. On February 24, 2009, UBS filed its first complaint against the Debtor and the Funds in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the "2009 Action"). In that complaint, UBS asserted an indemnification claim for breach of contract against the Debtor based on restructured warehouse agreements entered into in 2008 among UBS, the Debtor, and the Funds which provided that the Funds, not the Debtor, would bear the risk of any investment losses.

19. UBS's breach of contract claim against the Debtor was dismissed in early 2010. UBS then amended its complaint in the 2009 Action to add new claims and five new defendants, HFP, Multi-Strat, Strand, Highland Credit Strategies Master Funds, L.P. ("Credit Strategies"), and Highland Crusader Offshore Partners, L.P. ("Crusader"). The claims against the new defendants included, among other things, (i) actual and constructive fraudulent transfer claims based on transfers of \$233,455,147 of assets by HFP or its subsidiaries in March 2009, (ii) a claim for declaratory relief against HFP seeking a determination that HFP was the alter ego of one of the Funds, and (iii) a claim against Strand for general partner liability.

20. On June 28, 2010, UBS filed a new, separate action against the Debtor captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the “2010 Action”). In the 2010 Action, UBS asserted claims against the Debtor for fraudulent transfer (actual and constructive) and breach of the implied covenant of good faith and fair dealing, alleging that the Debtor received certain of the March 2009 transfers (which UBS alleged were orchestrated by the Debtor) and that the March 2009 transaction breached a purported duty of good faith and fair dealing under the warehouse agreements. UBS also sought pre-judgment interest, calculated at nine percent under New York law, attorneys’ fees, and punitive damages. The 2009 Action and 2010 Action (collectively, the “State Court Action”) were later consolidated.

21. The claims asserted in the State Court Action were bifurcated for purposes of trial. Phase I of the trial commenced on July 9, 2018, and was limited to UBS’s breach of contract claim against the Funds, and certain contractual counterclaims asserted by the Debtor. Phase I of the trial concluded on July 27, 2018. The State Court issued its decision more than a year later, on November 14, 2019, determining that the Funds breached the warehouse agreements on December 5, 2008. The Phase I judgment was entered against the Funds on February 10, 2020, in the principal amount of \$519,374,149 with \$520,583,650.44 in prejudgment interest included for an overall judgment of \$1,039,957,799.44. UBS Claim ¶ 23.

22. The claims to be tried in Phase II of the State Court Action included (i) UBS’s claim against the Debtor for breach of the implied covenant of good faith and fair dealing, (ii) UBS’s fraudulent transfer claims against the Debtor, HFP, and Multi-Strat, (iii) UBS’s claim for declaratory relief against HFP, and (iv) UBS’s general partner liability claim against Strand.⁹ Phase II of the trial was automatically stayed as to the Debtor by its bankruptcy filing.

⁹ UBS’s claims against Credit Strategies and Crusader, as the recipients of \$172,411,785 of the assets transferred in the March 2009 transaction, were settled in June 2015.

II. The Bankruptcy Case

23. The Debtor commenced the Bankruptcy Case in the District of Delaware on October 16, 2019, by filing its voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Bankruptcy Case was transferred to this Court on December 4, 2019. The Official Committee of Unsecured Creditors (“OCUC”) was appointed by the U.S. Trustee on October 29, 2019, before the Bankruptcy Case was transferred to this Court.

24. On May 20, 2020, UBS moved for relief from the automatic stay (the “Stay Relief Motion”), seeking stay relief to prosecute its claims against the Debtor in the State Court. Dkt. No. 644. The Debtor, Redeemer Committee, OCUC, and Acis Capital Management, L.P. and Acis Capital Management GP, LLC all objected to the Stay Relief Motion. Following a hearing on June 15, 2020, the Court denied the Stay Relief Motion and set June 26, 2020 as the deadline for UBS to file its proof of claim against the Debtor. Dkt. No. 765.

25. On August 3, 2020, the Court entered the *Order Directing Mediation*, pursuant to which the Debtor and UBS (among other parties) were directed to mediate their disputes before the Mediators. Dkt. No. 912.

26. On February 22, 2021, the Bankruptcy Court entered the *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief*, Dkt. No. 1943, which confirmed the Plan.¹⁰

III. The UBS Claim

27. UBS filed the UBS Claim in the Bankruptcy Case on June 26, 2020. The UBS Claim consists of two substantively identical claims: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch. Feinstein Decl. Exhibits 2 and 3. UBS asserted a general unsecured claim against the Debtor for \$1,039,957,799.40, *i.e.*,

¹⁰ 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)*, Docket No. 1875, Exh. B.

the exact amount of UBS's breach of contract judgment against the Funds. The UBS Claim seeks "damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP" and interest, punitive damages and attorneys' fees. UBS Claim ¶ 26.

28. The Debtor and the Redeemer Committee and the Highland Crusader Funds ("Redeemer/Crusader") each objected to the UBS Claim on August 7, 2020. Dkt. Nos. 928, 933. UBS filed its response to the claim objections on September 25, 2020. Dkt. No. 1105.

IV. The Partial Summary Judgment Motions and UBS's 3018 Motion

29. On October 16, 2020, the Debtor filed a motion for partial summary judgment on the UBS Claim, as did Redeemer/Crusader. Dkt. Nos. 1214, 1215. UBS filed its response on November 6, 2020, and the moving parties submitted their replies on November 16, 2020. Dkt. Nos. 1337, 1402, 1408. The Debtor and Redeemer/Crusader sought to disallow (i) any claim against the Debtor that arose prior to February 24, 2009, including any claim to enforce the Phase I judgment against the Debtor, (ii) any claim to impose alter ego liability on the Debtor, and (iii) any claim seeking recovery from the Debtor pertaining in any way to the transfers of \$172,411,785 of assets made collectively to Credit Strategies and Crusader in March 2009. By Order dated December 9, 2020, the Court granted the motions for partial summary judgment filed by the Debtor and Redeemer/Crusader, and denied UBS's request for leave to file an amended proof of claim. Dkt. No. 1526.

30. On November 6, 2020, UBS filed a motion pursuant to Bankruptcy Rule 3018, seeking the temporary allowance of the UBS Claim for purposes of voting on the Plan. Dkt. No. 1338 (the "3018 Motion"). UBS requested that the Court temporarily allow the UBS Claim in the amount of \$543,620,736.03, which included (i) the \$233,455,147 of assets transferred in March 2009, (ii) approximately \$45,000,000 that UBS asserted was held by HFP after the March 2009 transaction, and (iii) \$265,165,589.03 for nine percent pre-judgment interest from March

2009 to the petition date. Dkt. No. 1342 ¶ 38. With respect to the March 2009 transfers, UBS included the following chart:

Recipient	Market Value of Assets
Credit Strategies	\$20,044,219
Crusader Holding	\$108,961,751
Crusader Offshore	\$43,405,815
Multi-Strat Entities	\$25,782,988
Debtor	\$17,778,566
Citibank, N.A.	\$17,481,808
<u>Total</u>	<u>\$233,455,147</u>

Dkt. No. 1342 ¶ 15. UBS also asserted that the Debtor could be liable for additional amounts purportedly held by CDO Fund, because the Debtor interfered (in breach of its implied covenant of good faith and fair dealing) with CDO Fund's obligation to bear responsibility for 51% of the losses suffered by UBS under the warehouse agreements. *See, e.g.*, 11/20/20 Hrg. Tr. [Dkt. 1482] at 207:21 (asserting that \$23,000,000 was held by CDO Fund as of December 31, 2009).

31. The Debtor and Redeemer/Crusader objected to the 3018 Motion on November 16, 2020. Dkt. Nos. 1404, 1409. The Debtor (joined by Redeemer/Crusader) argued that the UBS Claim should be temporarily allowed in the maximum amount of \$35,742,978.98. The calculation of that amount used the \$233,455,147 of transfers in March 2009 as a starting point, then subtracted the \$172,411,785 transferred to Credit Strategies and Crusader (*i.e.*, the parties that settled with UBS in 2015), leaving a remaining principal amount of \$61,043,362 (or \$119,143,263.26 with 9% prejudgment interest). The Debtor further argued that a 70% discount should be applied to account for the substantial likelihood that UBS would not be able to establish most, if not all, of its claims at trial ($\$119,143,263.26 \times .30 = \$35,742,978.978$). Dkt. No. 1404 at 1.

32. The Debtor, Redeemer/Crusader, and UBS collectively submitted more than 3,000 pages of exhibits in connection with the partial summary judgment motions and 3018 Motion. *See, e.g.*, Dkt. Nos. 1413, 1414, 1418.

33. On November 20, 2020, the Court held a hearing on the partial summary judgment motions and 3018 Motion. During the all-day hearing, the Court heard lengthy arguments by counsel for the Debtor, Redeemer/Crusader, and UBS. The Court received extensive evidence, including deposition clips and excerpts from one of UBS's expert's report relating to, among other things, the terms of the warehouse agreements, the March 2009 transfers and underlying notes, the pre-petition operation of the Debtor's business, and the convoluted history of the State Court Action to date. At the conclusion of the hearing, the Court granted the partial summary judgment motions (as discussed above) and temporarily allowed the UBS Claim for voting purposes in the amount of \$94,761,076. 11/20/20 Hrg. Tr. at 213:25-214:1.¹¹ That amount reflected the following:

- \$8 million for the amount transferred to the Debtor in March 2009. The Court used the adjusted amount included in one of the tables to UBS's expert's report, with no discount applied for litigation risk. 11/20/20 Hrg. Tr. at 215:16-22. UBS continued to dispute whether the original amount (\$17,778,566) or the adjusted amount should be used. *Id.* at 217:4-23.
- Approximately \$23.2 million for the total amount transferred to Multi-Strat in March 2009 (\$25,782,988), reflecting a 90% chance that UBS would prevail on that portion of its claim. 11/20/20 Hrg. Tr. at 214:14-215:15.
- Approximately \$3.5 million for the total amount transferred to Citibank, N.A. in March 2009 (\$17,481,808), reflecting a 20% chance that UBS would prevail on that portion of its claim. 11/20/20 Hrg. Tr. at 215:23-216:3.
- \$30 million for pre-judgment interest on the above three amounts. 11/20/20 Hrg. Tr. at 216:4-7.
- \$10 million relating to the approximately \$68 million that UBS argued was held by HFP and CDO Fund, at minimum, after the March 2009 transfers. 11/20/20 Hrg. Tr. at 216:8-15.
- \$10 million relating to pre-judgment interest on the above amount. 11/20/20 Hrg. Tr. at 216:15-16.

¹¹ An excerpt of the transcript from the November 20, 2020 hearing setting forth the Court's ruling on the 3018 Motion is attached as **Exhibit 4** to the Feinstein Declaration.

- \$10 million to take into account UBS's demand for attorneys' fees. 11/20/20 Hrg. Tr. at 216:17-24.

The Court's order on the 3018 Motion was entered on December 7, 2020. Dkt. No. 1518.

V. Summary of the Salient Terms of the Settlement Agreement

34. In an effort to resolve the long-standing and highly contentious dispute between the Debtor and UBS, the parties and their counsel engaged in extensive negotiations and multiple sessions with the Mediators. *See, e.g.*, Settlement Agreement at 2. Those efforts resulted in the Settlement Agreement, which the parties executed on March 30, 2021.

35. The principal terms of the Settlement Agreement are as follows:¹²

- The parties to the Settlement Agreement are (i) the Debtor, (ii) Multi-Strat, together with its general partner and its direct and indirect wholly-owned subsidiaries, (iii) Strand, and (iv) UBS. Settlement Agreement at 1.
- The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of \$65,000,000 against the Debtor, which shall be treated as a Class 8 General Unsecured Claim under the Plan, and (ii) a single, subordinated unsecured claim in the amount of \$60,000,000 against the Debtor, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan. *Id.* § 1(a).
- Multi-Strat will pay \$18,500,000 to UBS, to be funded in part with certain Multi-Strat assets previously placed in escrow pursuant to an agreement between Multi-Strat and UBS (among other parties) entered into in May 2020. *Id.* § 1(b).¹³
- UBS will withdraw with prejudice its appeal of this Court's order approving the Debtor's settlement with Redeemer/Crusader [Dkt. No. 1273] if Redeemer/Crusader do not object to this Settlement Agreement. *Id.* § 1(d).
- The Debtor will transfer to UBS any claim it may have against Sentinel or any other party with respect to the Multi-Strat Interest transferred as part of the Transferred Assets. *Id.* § 1(g).

¹² In the event of any inconsistency between this Motion and the Settlement Agreement, the terms of the Settlement Agreement shall control.

¹³ The two other parties to the May 2020 agreement – Highland Credit Opportunities CDO, Ltd. and Highland Credit Opportunities CDO Asset Holdings, L.P. – also are signatories to the Settlement Agreement. Settlement Agreement at 3, 14.

- The parties will exchange broad mutual releases upon the effective date of the Settlement Agreement. *Id.* §§ 2(a), 3(a)-(c).
- If UBS ever controls or has authority over any HCMLP-affiliated defendant(s) in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment, neither UBS nor such defendant(s) will assert or pursue any claims that such defendant(s) has or may have against the Debtor or any other HCMLP Parties (as defined in the Settlement Agreement) (provided that nothing prohibits those actions set forth in Section 3(a)(1)-(6) of the Settlement Agreement), and if UBS receives any distribution from any such defendant(s) that is derived from a claim such defendant(s) has against the Debtor (subject to the exceptions set forth in Section 3(a)) which distribution is directly attributable to any property such defendant(s) receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such amount will be credited against amounts due to UBS under Section 1(a) of the Settlement Agreement. *Id.*, § 5.
- The Debtor will use reasonable efforts to assist UBS in, among other things, collecting its judgment against the Funds and assets the Funds may own, including by cooperating with UBS (i) to assign or convey any assets owned or controlled by the Funds and/or HFP and (ii) in its pursuit of the Transferred Assets and claims against the individuals and entities set forth in 1(c)(ii)-(iii) of the Settlement Agreement, subject to a limit on the Debtor's incurrence of no more than \$3 million in expenses in connection therewith and the right to reimbursement of those amounts as set forth in the Settlement Agreement. *Id.* § 1(c).
- The effectiveness of the Settlement Agreement is expressly conditioned upon this Court's approval of the Settlement Agreement. *Id.* §§ 2(c), 6.

RELIEF REQUESTED

36. By this Motion, the Debtor requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the Motion, approving the Settlement Agreement, and authorizing the Debtor and its agents to take all actions necessary or desirable to implement the Settlement Agreement without the need for further notice or approval by the Court. The Debtor seeks approval of the Settlement Agreement pursuant to Bankruptcy Rule 9019 and,

to the extent that the Settlement Agreement is viewed as requiring the Debtor to take action outside the ordinary course of business as the investment manager of Multi-Strat, the Debtor also seeks approval of the Settlement Agreement pursuant to Bankruptcy Code section 363(b).

BASIS FOR RELIEF REQUESTED

37. Bankruptcy Rule 9019 provides that “[o]n motion ... and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a). Settlements are favored in the bankruptcy context to “minimize litigation and expedite the administration of a bankruptcy estate.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). The approval of a settlement is within the “sound discretion” of the Court. *In re Jackson Brewing Co.*, 624 F.2d 599, 603 (5th Cir. 1980).

38. Pursuant to Bankruptcy Rule 9019(a), the Court may approve a settlement if it is fair, reasonable, and in the best interests of the estate. *See, e.g., Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015). A settlement should be approved unless it falls below the lowest point in the range of reasonableness, based on a comparison between the terms of the settlement and the costs and benefits of further litigation. *See, e.g., Jackson Brewing Co.*, 624 F.2d at 602 (court must compare the “terms of the compromise with the likely rewards of litigation”); *Cook v. Waldron*, 2006 U.S. Dist. LEXIS 31411, *10 (S.D. Tex. April 18, 2006) (court should “canvass the issues” to decide if settlement falls “below the lowest point in the range of reasonableness”).

39. In evaluating a proposed settlement, courts consider (i) the “probability of success in the litigation, with due consideration for the uncertainty in fact and law,” (ii) the “complexity and likely duration of the litigation and any attendant expense, inconvenience and delay,” and (iii) “[a]ll other factors bearing on the wisdom of the compromise.” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (quoting *Jackson Brewing Co.*, 624 F.2d at 602). The “other factors” include

“the best interests of the creditors, ‘with proper deference to their reasonable views,’” as well as “the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.* (quoting *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917-18 (5th Cir. 1995)).

40. A trustee (or debtor-in-possession) also “is permitted to settle lawsuits pursuant to section 363(b)” of the Bankruptcy Code. *Id.* at 354. Section 363(b) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. 363(b)(1). A settlement involving a transaction outside the ordinary course of business “must be supported by an articulated business justification, good business judgment, or sound business reasons.” *Gluckstadt Holdings, L.L.C. v. VCR I, L.L.C. (In re VCR I, L.L.C.)*, 922 F.3d 323, 327 (5th Cir. 2019) (quoting *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010)).

41. As discussed in detail below, all of the factors to be considered pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 363(b) weigh **heavily** in favor of approving the Settlement Agreement in this case.

42. **Probability of Success in the Litigation.** While the first factor to be considered does not require a “mini-trial” on the merits, *Cajun Elec. Power Coop.*, 119 F.3d at 356, the Court can evaluate the Settlement Agreement with the benefit of having already considered the extensive briefing, evidence, and argument presented by the Debtor, UBS, and the Redeemer Committee in connection with the partial summary judgment motions and 3018 Motion. As illustrated at the November 20, 2020 hearing and in the parties’ briefs, resolution of the UBS Claim through litigation would involve many complex issues, with resulting uncertainty as to whether the Debtor or UBS ultimately would prevail.

43. For instance, to establish its fraudulent transfer claims relating to the March 2009 transfers, UBS would need to prove that it was a creditor of the entity (HFP) that allegedly

made the purported fraudulent transfers, which would require proof that HFP was the alter ego of one of the Funds that was a party to the contracts with UBS. While the Debtor believes that it would be difficult for UBS to establish its alter ego claim, UBS is equally confident that it will prevail, relying on (among other things) the survival of its alter ego allegations following dispositive motion practice in the State Court Action (and the recently uncovered fraud may help its case).

44. Litigation of the UBS Claim also would require a determination as to whether HFP received fair consideration in exchange for the March 2009 transfers. The Debtor asserts that the transfers were made on account of secured notes issued by HFP. UBS, on the other hand, contends that the debt should be recharacterized as equity, that the notes were unsecured, and that the value of the notes was not equivalent to the amount of the March 2009 transfers. Other hotly contested issues include: (i) whether the Debtor could be held responsible for transfers made by HFP to any entity other than the Debtor, including the transfer made to a completely unrelated third-party (Citibank, N.A.); (ii) whether the transfers were made in good faith, or with actual fraudulent intent; and (iii) whether UBS can recover the attorneys' fees it has incurred – which likely are substantial – from the Debtor, in light of the high standard required for an award of attorneys' fees under New York law. *See, e.g.*, Dkt. No. 1404 ¶¶ 22-23.

45. The Debtor also disputes the merits of UBS's claim for breach of the implied covenant of good faith and fair dealing. The Debtor maintains that UBS cannot use the implied covenant to "rewrite" the warehouse agreements, which were heavily negotiated contracts among sophisticated parties that placed all risk of loss on the Funds, not the Debtor. The Debtor also maintains that UBS will not be able to prove the Debtor breached any purported duty of good faith and fair dealing as to the March 2009 transfers made by HFP or its subsidiaries, given that HFP was not a party to the warehouse agreements and was not a defendant in the State Court Action at the time of the transfers, and the transfers were made after UBS terminated the warehouse agreements.

UBS, of course, has raised its own arguments in response to each of the Debtor's points. Specifically, UBS maintains that its claim does not "rewrite" the warehouse agreements because the Debtor was a party to all three contracts – and in fact was the only Highland party to one of the three contracts – whereby it expressly promised that the Funds would bear all losses on the contracts, thus obligating itself not to interfere with, injure, or frustrate UBS's right to recover such losses from the Funds. UBS also maintains that the Debtor exerted its control over the Funds to move assets out of UBS's reach and into the pockets of other Highland-affiliated entities. And UBS maintains that the Debtor's principal arguments have already been rejected by the New York appellate courts (although the Debtor disputes that contention). Accordingly, UBS is confident that it will prevail on its implied covenant claim. (Moreover, the recent discovery of the Sentinel transactions, including the transfer of the Transferred Assets by CDO Fund, provides additional weight to UBS's claim.)

46. As one final example of the plethora of issues that would need to be resolved absent the Settlement Agreement, the parties dispute whether UBS's implied covenant claim is limited to the allegedly fraudulent transfers made by HFP or its subsidiaries in March 2009. The Debtor has asserted that the March 2009 transfers – with only approximately \$61 million of transfers remaining at issue in light of the Court's ruling on the partial summary judgment motions – are the only basis for UBS's implied covenant claim. UBS, on the other hand, has argued that damages on its implied covenant claim may include, in addition to the remaining \$61 million of March 2009 transfers still at issue, all or some portion of any assets held by HFP, SOHC, and CDO Fund after the March 2009 transfers were made, which until, the Independent Board informed it of the Transferred Assets, UBS believed to be approximately \$45 million at HFP and approximately \$23 million at CDO Fund – but now understands was significantly more. *See, e.g.*, 11/20/20 Hrg. Tr. at 138:10-139:5; 207:19-208:14.

47. These and other issues were the subject of extensive discovery and numerous competing expert opinions in the State Court Action. For the more than ten years that the State Court

Action has been pending, UBS and the Debtor – each represented by sophisticated business people and experienced counsel – have maintained diametrically different views on the merits of UBS’s claims and the Debtor’s defenses. The Settlement Agreement appropriately takes into account the complexity of the issues that would need to be resolved in further litigation, and the resulting uncertainty. Moreover, the settlement amount agreed upon by the parties is consistent with the Court’s evaluation of the UBS Claim in connection with the 3018 Motion. Therefore, the Settlement Agreement satisfies the “probability of success” factor.

48. **Expense, Inconvenience, and Delay.** The Settlement Agreement resolves claims that UBS asserted against the Debtor, Multi-Strat, and Strand more than ten years ago. The convoluted history of the State Court Action itself speaks volumes about the expense, inconvenience, and delay likely to result from further litigation of the UBS Claim. Indeed, the only claims resolved to date – UBS’s breach of contract claim against the Funds and the Debtor’s contractual counterclaims (which were rejected) – required a thirteen-day bench trial in the State Court.

49. Litigation of UBS’s claims against the Debtor, including the resolution of the complex issues outlined above, would require enormous time and effort, and the expenditure of millions of dollars by the Debtor’s estate. Pre-trial preparation and trial is, of course, expensive and time-consuming in any complex case. And here, expert witnesses who prepared their expert reports years ago would need to be re-engaged, and fact witnesses involved in transactions that occurred more than ten years ago would need to be prepared for trial – many of whom are no longer under the Debtor’s control and some of whom are adverse to the Debtor today. Furthermore, any result obtained at trial in all likelihood would be subjected to appellate review. By finally ending the acrimonious, decade-old dispute between the Debtor and UBS without further expense, the Settlement Agreement easily satisfies the “expense, inconvenience, and delay” factor.

50. **Other Factors.** As an initial matter, there can be no doubt that the Settlement Agreement was the product of good faith, arms-length negotiations between the Debtor and UBS.

The parties reached agreement after extensive negotiations and multiple sessions with the Mediators. And, no party could credibly contend that there was collusion between the Debtor and UBS, who have been aggressive adversaries for more than a decade.

51. As to the second “other factor” identified by the Fifth Circuit, approval of the Settlement Agreement is in the best interests of the Debtor’s creditors. The UBS Claim was filed as a \$1 billion claim in June 2020, and already has been the subject of vigorously contested litigation in this Court. Pursuant to the Settlement Agreement, the UBS Claim will be resolved, without further litigation expense to the Debtor’s estate, with (i) allowance of a single, general unsecured claim in the amount of \$65 million against the Debtor, (ii) allowance of a single, subordinated unsecured claim in the amount of \$60 million against the Debtor, and (iii) the \$18.5 million payment by Multi-Strat. Resolution of the UBS Claim on these terms benefits the many other Class 8 unsecured creditors who share ratably with UBS and would be at risk of substantial dilution if the UBS Claim were allowed at \$1 billion, as UBS has asserted, or anything approaching that amount.

52. **Sound Business Reasons and Justifications.** As outlined above, there are sound business reasons and justifications for entering into the Settlement Agreement, particularly as it pertains to Multi-Strat. UBS has alleged that Multi-Strat was the direct recipient of \$25,782,988 of the amount allegedly fraudulently transferred by HFP in March 2009. While the Debtor believes there are numerous meritorious defenses to that claim, litigation of UBS’s claim against Multi-Strat would involve the same uncertainty and expense as litigation of UBS’s fraudulent transfer claim against the Debtor, including the impact of the fraud on certain Multi-Strat transactions. Furthermore, after hearing extensive evidence and argument relating to, among other things, the fraudulent transfer claims, the Court determined there was a 90% chance that UBS would prevail on the Multi-Strat portion of its claim (*i.e.*, a value of approximately \$43 million, including pre-judgment interest, and potentially attorney fees). *See* 11/20/20 Hrg. Tr. at 214:10-215:15. The settlement payment to be made by Multi-Strat (\$18,500,000) takes into account the strengths and

weaknesses of both parties' positions, as well as the benefit of resolving the litigation without further expense. Therefore, the Debtor respectfully requests that the Settlement Agreement be approved pursuant to both Bankruptcy Rule 9019 and section 363(b) of the Bankruptcy Code (to the extent necessary).

53. Finally, the Debtor is also authorized, as investment manager, to cause Multi-Strat to settle the claims UBS has asserted against Multi-Strat in the State Court Action without seeking leave under 11 U.S.C. § 363(b). *First*, section 363(b) applies to "property of the estate." 11 U.S.C. § 363(b)(1). However, the assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate. *See, e.g., In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D. Tex. 1994) ("As a general rule, property of the estate includes the debtor's stock in a subsidiary but not the assets of the subsidiary."). Here, Multi-Strat is not wholly owned by the Debtor and has meaningful third party investors. Thus, the payment to be made by Multi-Strat pursuant to the Settlement Agreement will not involve property of the Debtor's estate or implicate 11 U.S.C. § 363(b). Instead, it will involve the transfer of Multi-Strat's property in settlement of UBS's claim against Multi-Strat. *Second*, even if 11 U.S.C. § 363 is relevant, the Debtor is authorized to operate its business in the ordinary course without notice or hearing pursuant to 11 U.S.C. § 363(c)(1). As the investment manager of Multi-Strat, the Debtor can, in the ordinary course of business, cause Multi-Strat to settle the claims UBS has asserted against Multi-Strat in the State Court Action. *Finally*, even if the Settlement Agreement is viewed as requiring the Debtor to take action outside the ordinary course of business as the investment manager of Multi-Strat, the Settlement Agreement should be approved pursuant to section 363(b) of the Bankruptcy Code for the reasons set forth above.

NO PRIOR REQUEST

54. No previous request for the relief sought herein has been made to this Court or any other court.

NOTICE

55. Notice of this Motion shall be given to (i) counsel for UBS, (ii) counsel to the OCUC, (iii) the Debtor's principal secured parties, (iv) the Office of the United States Trustee, and (v) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested herein, no other or further notice need be given.

PRAYER

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

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Dated: April 15, 2021.

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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.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER APPROVING DEBTOR'S SETTLEMENT WITH
UBS SECURITIES LLC AND UBS AG LONDON BRANCH
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on the *Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* (the "Motion")² filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case; and the

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.

² Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.

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)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered the Motion, the materials submitted in support of the Motion, all responses to the Motion, and the arguments presented by counsel at the hearing on the Motion; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest, and is supported by sound business reasons and justifications; and the Court having determined that the legal and factual bases set forth in the Motion establish sufficient cause for the relief granted herein; and adequate notice of the Motion having been given; and after due deliberation and good cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED**.
2. The Settlement Agreement attached as **Exhibit 1** to the Feinstein Declaration is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code.
3. The Debtor and its agents are authorized to take any and all actions necessary or desirable to implement the Settlement Agreement without further notice or further Court approval.
4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

END OF ORDER