

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

In re:	§	
	§	
Highland Capital Management, L.P. ¹	§	Chapter 11
	§	
Debtor.	§	Case No. 19-34054 (SGJ)
	§	
	§	
	§	
	§	
	§	
	§	
	§	
	§	
	§	
	§	
<i>In re James Dondero</i>	§	Adversary No. _____
	§	
James Dondero,	§	<i>Removed from the 95th Judicial District</i>
	§	<i>Court of Dallas County, Texas</i>
Petitioner,	§	<i>Cause No. DC-21-09534</i>
	§	
v.	§	
	§	
Alvarez & Marsal CRF Management, LLC,	§	
and Farallon Capital Management, L.L.C.,	§	
	§	
Respondents.	§	
	§	

NOTICE OF REMOVAL

Alvarez & Marsal CRF Management, LLC (“A&M”) and Farallon Capital Management, L.L.C. (“Farallon”) file this Notice of Removal of Cause No. DC-21-09534 (“State Court Action”) from the 95th Judicial District Court of Dallas County, Texas to the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division.

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.



The State Court Action, filed on July 22, 2021, alleges impropriety in the sale of claims held by several creditors of the Debtor, Highland Capital Management, L.P., in the bankruptcy case currently pending in this Court, No. 19-34054 (the “Highland Bankruptcy Case”). The petitioner in the State Court Action, James Dondero, is the former CEO of the Debtor, and claims to be an investor in some of the creditor entities that sold the claims. He alleges that the sale of claims contravened certain requirements of the Bankruptcy Court and—upon “information and belief”—that the Debtor’s current CEO violated federal law in recommending that Farallon purchase the claims, and that A&M sold its claims “not pursuant to normal means.” Ex. 1 ¶¶ 23–24 (Petition in State Court Action). The State Court Action seeks relief in the form of an “Order” requiring Respondents A&M and Farallon to sit for depositions and produce five broad categories of documents. *See id.* at 6–7. The State Court Action asserts that this relief is available as pre-suit discovery under Texas Rule of Civil Procedure 202.

Removal is appropriate, and this Court has jurisdiction, because the State Court Action relates to the Highland Bankruptcy Case in multiple respects: (i) it asserts that Debtor’s current CEO, James Seery, unlawfully engineered the sale of creditors’ claims against the Debtor to Farallon for the purpose of giving him “virtually unfettered discretion” to administer the Debtor, Ex. 1 ¶¶ 22–23; (ii) it alleges impropriety in failing to obtain this Court’s approval of the sale of claims in this bankruptcy, *id.* ¶ 18; and (iii) it contravenes this Court’s gatekeeper orders, which essentially forbid pursuing legal action against Seery and others related to the bankruptcy without this Court’s approval, and require any such action to be adjudicated in this Court, *see* Mem. Opinion & Order Holding Certain Parties & Their Attorneys in Civil Contempt of Court for Violation of Bankruptcy Court Orders at 12–13, 26–27, *In re Highland Capital Mgmt., L.P.*, No. 19-34054, Dkt. 2660 (Aug. 3, 2021) (“August 2021 Contempt Order”).

As explained below, Dondero's State Court Action is removable to this Court pursuant to 28 U.S.C. § 1452(a).

BACKGROUND

1. The Debtor Highland Capital Management, L.P. ("Highland") filed for bankruptcy protection on October 16, 2019. That case was transferred to this Court and received case number 19-34054.

2. James Dondero "is the founder and former CEO of Highland," "an adviser and/or manager of several trusts who own the equity in Highland," and "an investor in the Highland Crusader Fund, Ltd. and several of its companion and affiliated funds (the 'Crusader Funds')." Ex. 1 ¶ 10.

3. A&M currently acts as investment manager of the Crusader Funds. The Crusader Funds held claims against the Debtor in the Highland Bankruptcy Case, which they sold to Jessup Holdings LLC ("Jessup") on April 30, 2021. Although the Petition alleges that Jessup is "a newly established limited liability company established by Farallon right before the sale," Ex. 1 ¶ 15, Jessup is, in fact, not related to Farallon.

4. Separately, Muck Holdings LLC ("Muck"), which is affiliated with Farallon, purchased claims against the Debtor from other creditors.

5. Dondero initiated the State Court Action at issue on July 22, 2021 with a filing styled "Verified Petition to Take Deposition Before Suit and Seek Documents." Ex. 1 at 1. The Petition alleges that James Seery, Highland's current CEO, violated the "Registered Investment Advisor Act 15 U.S.C. § 80b-1 et seq., among other things" in connection with Farallon's purchase of claims, supposedly because he had material non-public information at the time he supposedly recommended that Farallon purchase such claims. *Id.* ¶ 23. The Petition also alleges that "there is reason to doubt" that A&M sought or obtained the highest price for the sale of its claims, which

“would have injured Dondero as an investor in the Crusader Funds.” *Id.* ¶ 24. Finally, the Petition contends that certain non-parties failed to “obtain[] Court approval to sell their respective claims.” *Id.* ¶ 18. The State Court Action seeks “relief” in the form of an “Order” against A&M and Farallon (i) “authorizing Petitioner to take a pre-suit deposition of a designated representative, or representatives, of A&M, and to depose Michael Lin[n] [of Farallon]” on topics including the “sale of the Claims to Farallon” and “[a]ny discussions with James Seery regarding the Claims”; and (ii) “requir[ing] Respondents to produce the following documents,” including “[a]ll communications with James Seery regarding the Claims” and “[a]ll communications regarding . . . seeking [the Bankruptcy] Court’s approval for the sale or purchase of the Claims.” *Id.* at 6–7.

6. To the best of Respondents’ knowledge, the Petition in the State Court Action has not yet been served on them. Respondents reserve all rights and defenses they may have, including lack of service and lack of personal jurisdiction.

BASIS FOR REMOVAL

7. “A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334[.]” 28 U.S.C. § 1452(a). Here, there is jurisdiction under 28 U.S.C. § 1334 because the State Court Action is “related to” the Highland Bankruptcy Case. According to § 1334(b), “the district courts shall have original but not exclusive jurisdiction of all civil proceedings . . . related to cases under title 11.” A matter is “related to” a bankruptcy if its outcome “could ‘conceivably have an effect on the estate being administered in bankruptcy.’” *In re Brooks Mays Music Co.*, 363 B.R. 801, 808 (Bankr. N.D. Tex. 2007) (Jernigan, J.) (quoting *In re Wood*, 825 F.2d 90, 93 (5th Cir. 1987)). For instance, a matter can be “‘related to’ bankruptcy if the outcome could alter, positively or negatively, the debtor’s rights, liabilities,

options, or freedom of action or could influence the administration of the bankrupt estate.” *In re TXNB Internal Case*, 483 F.3d 292, 298 (5th Cir. 2007).

8. The State Court Action relates to the Highland Bankruptcy Case in multiple ways.

9. At its core, the State Court Action asserts that the Debtor’s current CEO unlawfully engineered the sale of claims to Farallon, allegedly for the purpose of giving him “virtually unfettered discretion to administer Highland.” Ex. 1 ¶ 22. By its very terms, therefore, the Petition purports to impact the “administration of the bankrupt estate.”

10. The State Court Action also alleges impropriety in failing to obtain this Court’s approval of the sale of creditors’ claims in this bankruptcy. *See* Ex. 1 ¶ 18. How this Court supervises the Official Committee of Unsecured Creditors likewise directly impacts the “administration of the bankruptcy estate.” *TXNB Internal Case*, 483 F.3d at 298.

11. Finally, by putting at issue the conduct of the Debtor’s current CEO, James Seery, the State Court Action contravenes this Court’s July 2020 gatekeeper order forbidding actions against Seery without Court approval. That order provided:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

August 2021 Contempt Order at 13 (quoting prior order). This Court recently made clear that legal actions *concerning* Seery, even if not formally alleging claims against him, are contemptuous violations of the Court’s order. *See id.* at 27 (rejecting Dondero’s argument to the contrary as “linguistic gymnastics that does not fly”).

12. Removal directly to this Bankruptcy Court is appropriate pursuant to the Northern District of Texas's Standing Order of Reference of Bankruptcy Cases and Proceedings. Misc. Order No. 33 (Aug. 3, 1984). This Standing Order provides that "any or all cases . . . related to a case under Title 11 . . . are referred to the Bankruptcy Judges of this district for consideration and resolution consistent with law." *Id.* Removal directly to the Bankruptcy Court is a regular and accepted practice. *See, e.g.,* Local Bankr. R. 9027-1(a); *TNT Quadrangle Partners, LP v. SRPF B/Quadrangle Prop., LLC*, No. 3:20-AP-03103, Dkt. 1, 59 (Bankr. N.D. Tex. Feb. 26, 2021) (Jernigan, J.) (granting summary judgment in adversary proceeding removed directly from Texas state court); *Lycoming Engines v. Superior Air Parts, Inc.*, No. 3:12-AP-03035, Dkt. 1, 38 (Bankr. N.D. Tex. July 6, 2012) (Houser, J.) (denying motion to remand in action removed directly from Texas state court).

THE STATE COURT ACTION IS A CORE PROCEEDING

13. The State Court Action is a "core proceeding" under 28 U.S.C. § 157(b)(2)(A) and (O). Nevertheless, even if the State Court Action is not considered a core proceeding, A&M and Farallon consent to this Court's issuance of final orders and judgment.

CONCLUSION

14. For the reasons described above, A&M and Farallon hereby remove the State Court Action to this Court. Pursuant to Bankruptcy Rule 9027, A&M will file a copy of this Notice of Removal with the Clerk of Court for the 95th Judicial District Court in Dallas County, and will serve a copy on all parties to the removed action.

Dated: August 9, 2021

Respectfully submitted,

By: /s/ Michael Rosenthal

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Bennett Rawicki (Tex. Bar No. 24083708)
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Attorneys for Farallon Capital Management, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2021, the foregoing document was filed through the ECF portal of the Bankruptcy Court for the U.S. District Court for the Northern District of Texas, and served by email on Petitioner's counsel of record in the State Court Action.

/s/ Michael Rosenthal

Michael Rosenthal

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

[illegible]

APPENDIX TO NOTICE OF REMOVAL

Pursuant to N.D. Tex. Local Bankruptcy Rule 9027-1(c), Respondent Alvarez & Marsal CRF Management, LLC (“A&M”) and Farallon Capital Management, L.L.C. (“Farallon”) submit this appendix of the docket sheet and all pleadings from the court from which this action is being removed. Exhibit 1 is the Petition filed to initiate Cause No. DC-21-09534 in the 95th Judicial District Court of Dallas County, Texas (“State Court Action”). Exhibit 2 is a copy of the docket sheet for the State Court Action. Exhibit 3 contains copies of the remaining documents filed on the docket in the State Court Action.

Dated: August 9, 2021

Respectfully submitted,

By: /s/ Michael Rosenthal

Michael Rosenthal (Tex. Bar No. 17281490)
John T. Cox III (Tex. Bar No. 24003722)
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Attorneys for Farallon Capital Management, L.L.C.

EXHIBIT 1

IN RE JAMES DONDERO,

Petitioner.

§ IN THE DISTRICT COURT
§ 95th
§ _____ JUDICIAL DISTRICT
§
§ DALLAS COUNTY, TEXAS

**VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT
AND SEEK DOCUMENTS**

Petitioner James Dondero respectfully requests that this Court order, pursuant to Texas Rule of Civil Procedure 202, the deposition of the corporate representatives of Alvarez & Marsal CRF Management, LLC, and of Farallon Capital Management, LLC. Petitioner further requests that the Court order certain limited, yet relevant documents to be provided under Texas Rule of Civil Procedure 199.2 as set forth below.

Petitioner would respectfully show the Court that:

I.

PARTIES

1. Petitioner James Dondero ("Petitioner") is an individual resident in Dallas County, Texas and is impacted by the potential acts and omissions alleged herein.
2. Respondent Alvarez & Marsal CRF Management, LLC ("A&M") is a Delaware limited liability company serving as an investment adviser, with offices in Dallas County, Texas, at 2100 Ross Ave., 21st Floor, Dallas, Texas 75201.
3. Respondent Farallon Capital Management LLC is a limited liability company with its primary place of business in California ("Farallon" and together with A&M, the "Respondents") which is an investment fund located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111.

II.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this matter pursuant to Texas Rule of Civil Procedure 202. The anticipated lawsuit would include common law claims.

5. The Court has personal jurisdiction over A&M because it maintains a regular place of business in Dallas County. Personal jurisdiction is also proper under TEX. CIV. PRAC. REM. CODE § 17.003, and under § 17.042(1)-(3) because its acts on behalf of the Crusader Funds (as defined below), would constitute a tort in this state. Furthermore, it participated in substantial acts in this state which are the subject of the investigation. Moreover, this Court has quasi *in rem* jurisdiction over any potential claims because the action concerns the sale of personal property that was located in Dallas County, and in which Plaintiff claims an interest.

6. The Court has personal jurisdiction over Farallon because it, acting on behalf of itself or one of its subsidiaries/affiliates, communicated with representatives of Highland Capital Management, LP which is located in Dallas County, and with representatives of Acis and Josh Terry (both of whom are residents in Dallas County), to purchase claims in the Highland Capital Management, LP (“Highland”) Chapter 11 bankruptcy case (the “Highland Bankruptcy Case”). Such acts, if shown to have occurred could constitute a tort in this state. Moreover, this Court has quasi *in rem* jurisdiction over any potential claims because the action concerns the sale of personal property that was located in Dallas County, and in which Plaintiff claims an interest.

7. Venue is proper in Dallas County, Texas, where venue of the anticipated lawsuit may lie and where the property at issue exists, and where a substantial amount of the acts and omissions underlying the potential suit occurred.

8. Removal is not proper because there is no basis for federal jurisdiction because a Rule 202 petition, as a pre-suit mechanism, does not meet Article III of the United States Constitution's standing requirement of an actual, live case or controversy.

III.

FACTUAL BACKGROUND

9. This matter arises out of Farallon's purchase of certain bankruptcy claims in the Highland Bankruptcy Case, pending in the Northern District of Texas bankruptcy court, from three sources: HarbourVest, Acis Capital Management, LP, and the Crusader Funds (as defined below).

10. Petitioner is the founder and former CEO of Highland and is an adviser and/or manager of several trusts who own the equity in Highland. In addition, Petitioner is an investor in Highland Crusader Fund, Ltd. and several of its companion and affiliated funds (the "Crusader Funds").

11. Until recently, the Crusader Funds were managed by Highland, but are now managed and advised by A&M.

12. Shortly after the commencement of the Highland Bankruptcy Case, the Office of the United States Trustee solicited Highland's twenty largest unsecured creditors to serve on the Official Committee of Unsecured Creditors in the Highland Bankruptcy Case (the "UCC").

13. As set forth below, the Information Sheet attached to such solicitation provided, *inter alia*,

Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any

other reason the United States Trustee believes is proper in the exercise of her discretion. (Emphasis in Original)

14. The UCC was originally populated by four members, (i) the Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”), (ii) Acis Capital Management, L.P. (iii) UBS Securities LLC and UBS AG London Branch (together, “UBS”) and (iv) Meta-E Discovery LLC.

15. Upon information and belief, two of Highland’s creditors – the Redeemer Committee (a member of the UCC) and the Crusader Funds, who between them held approximately \$191 million in claims in the Highland Bankruptcy Case (the “Crusader Claims”)—sold their claims to Jessup Holdings LLC (“Jessup”), a newly established limited liability company established by Farallon right before the sale. It was formed for the purpose of holding claims Farallon purchased in the Highland Bankruptcy Case.

16. Upon information and belief, two other Highland creditors—Joshua Terry and Acis Capital Management (another member of the UCC), who between them held approximately \$25 million in claims (the “Acis Claims”)—sold their claims to Muck Holdings LLC (“Muck”), a newly established limited liability company set up by Farallon solely for the purpose of holding the Acis Claims that Farallon purchased.

17. Finally, another group of affiliated creditors, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P. (collectively, “HarbourVest”) also sold \$80 million worth of their claims (the “HarbourVest Claims”, together with the Crusader Claims and Acis Claims, the “Claims”) to Muck.

18. Notwithstanding the instructions issued by the Office of the United States Trustee, no one—not Farallon, nor the Redeemer Committee, HarbourVest or Acis Capital Management—ever sought, much less obtained Court approval to sell their respective claims.

19. Upon information and belief, a substantial amount of time passed between the agreement to sell the Claims and the consummation of such sales. Notwithstanding their agreement to sell their respective claims, neither the Redeemer Committee nor Acis Capital Management resigned from the UCC.

20. The current CEO of Highland, James Seery, has an age-old connection to Farallon and, upon information and belief, advised Farallon to purchase the claims.

21. On a telephone call between Petitioner and a representative of Farallon, Michael Lin, Mr. Lin informed Petitioner that Farallon had purchased the claims sight unseen—relying entirely on Mr. Seery’s advice solely because of their prior dealings.

22. Mr. Seery had much to gain by brokering a sale of the Claims to Jessup and Muck—namely, his knowledge that Farallon—as a friendly investor—would allow him to remain as Highland’s CEO with virtually unfettered discretion to administer Highland. In addition, Mr. Seery’s rich compensation package incentivized him to continue the bankruptcy for as long as possible.

23. As Highland’s current CEO, Mr. Seery had non-public, material information concerning Highland. Upon information and belief, such non-public, material information was the basis for instructing Farallon to purchase the Claims, in violation the Registered Investment Advisor Act 15 U.S.C § 80b-1 et seq., among other things.

24. Additionally, A&M, upon information and belief, did not put the Crusader Claims on the open market prior to selling them to Farallon. The sale of the Crusader Claims by A&M

was not pursuant to normal means and there is reason to doubt that A&M sought or obtained the highest price for the assets that it sold. This would have injured Petitioner as an investor in the Crusader Funds.

IV.

RELIEF SOUGHT

1. Petitioner asks this Court to issue an Order authorizing Petitioner to take a pre-suit deposition of a designated representative, or representatives, of A&M, and to depose Michael Lin, on the following topics, to investigate any potential claims by Petitioner arising out of the highly irregular manner in which the Claim were marketed (if at all) and sold, within ten days of the Court's Order, or as agreed by the parties:

- a. A&M's agreements with the Crusader Funds, and the agreement(s) of those funds with their respective investors;
- b. The valuation, marketing and sale of the Claims to Farallon (or its subsidiaries/ affiliates);
- c. The negotiations and communications leading up to the purchase or sale of the Claims;
- d. Any discussions with James Seery regarding the Claims;
- e. Any prior relationship with James Seery.

2. As part of the Court's Order, Petitioner requests this Court to require Respondents to produce the following documents at their respective depositions:

- a. All agreements, contracts, or other documents (including any e-mails, correspondence, texts, drafts, term sheets, or communications related to same) related to or concerning the valuation, purchase, marketing or sale of the Claims (or any subset of the Claims);
- b. All communications with James Seery regarding the Claims;
- c. All communications with, between or among A&M, Seery, HarbourVest, Joshua Terry, Acis, or Highland Capital Management ,LP (or any agent or

representative thereof), regarding or related to the Claims (or any subset or portion thereof);

- d. All communications regarding filing any notice with the Bankruptcy Court overseeing the Highland Bankruptcy Case or seeking such Court's approval for the sale or purchase of the Claims;
- e. All offers to sell or purchase the Claims and/or all correspondence regarding same;

V.

HEARING

21. After service of this Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on the Petition.

22. FOR THESE REASONS, Petitioner asks the Court to set a date for hearing on this Petition, and after the hearing, to find that the likely benefit of allowing Petitioner to take the requested depositions outweighs the burden or expense of the procedure. Petitioner further asks the Court to issue an Order authorizing Petitioner to take the oral depositions of Michael Lin and a designated representative or representatives of A&M after proper notice and service at the offices of Sbaiti & Company PLLC, 2200 Ross Avenue, Suite 4900W, Dallas, Texas 75201, within ten (10) days of the Court's Order, or as agreed by the parties, and to produce the requested documents at said deposition. Petitioner also seeks any further relief to which he may be justly entitled.

Dated: July 22, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

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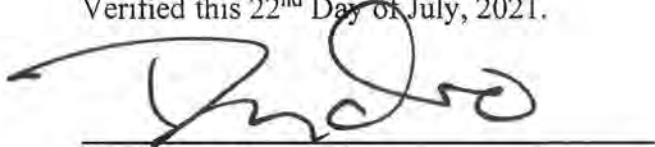
bjr@sbaitilaw.com

Counsel for Petitioner

VERIFICATION

I, the undersigned, have reviewed attached *Verified Petition to Take Deposition Before Suit and Seek Documents* and verify, pursuant to Tex. Civ. Prac. Rem. Code § 132.001 under penalty of perjury, that the factual statements therein, as stated, are true and correct, and are within the best of my personal knowledge as stated therein. The date of my birth is June 29, 1962, and my address is 2515 McKinney Avenue, Suite 1100, Dallas, Texas 75201.

Verified this 22nd Day of July, 2021.



James Dondero

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Kim James on behalf of Mazin Sbaiti
Bar No. 24058096
krj@sbaitilaw.com
Envelope ID: 55626531
Status as of 7/23/2021 3:02 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Jonathan E.Bridges		jeb@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT
Charlotte Casso		bcc@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT
Brad Robinson		bjr@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT
Mazin Sbaiti		mas@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT

EXHIBIT 2

Case Information

DC-21-09534 | IN RE: JAMES DONDERO

Case Number

DC-21-09534

File Date

07/22/2021

Court

95th District Court

Case Type

OTHER (CIVIL)

Judicial Officer

PURDY, MONICA

Case Status

OPEN

Party

PLAINTIFF

DONDERO, JAMES

Active Attorneys ▼

Lead Attorney

SBAITI, MAZIN A

Retained

DEFENDANT

ALVAREZ & MARSAL CRF MANAGEMENT, LLC

Address

2100 ROSS AVE 21ST FLOOR

DALLAS TX 75201

DEFENDANT

FARALLON CAPITAL MANAGEMENT, LLC

Address

ONE MARITIME PLAZA STE 2100

SAN FRANCISCO CA 94111

Events and Hearings

07/22/2021 NEW CASE FILED (OCA) - CIVIL

07/22/2021 ORIGINAL PETITION ▼

VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT AND SEEK DOCUMENTS

Comment

VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT AND SEEK DOCUMENTS

07/22/2021 ISSUE CITATION ▼

ISSUE CITATION - FARALLON CAPITAL MGMT. LLC

ISSUE CITATION - ALVAREZ & MARSAL CRF MGMT., LLC

07/27/2021 CITATION ▼

Unserved

Anticipated Server

ESERVE

Anticipated Method

Comment

FARALLON CAPITAL MANAGEMENT LLC

07/27/2021 CITATION ▼

Unserved

Anticipated Server

ESERVE

Anticipated Method

Comment

ALVAREZ & MARSAL CRF MANAGEMENT, LLC

Financial

DONDERO, JAMES

Total Financial Assessment	\$308.00
Total Payments and Credits	\$308.00

7/23/2021	Transaction Assessment		\$308.00
7/23/2021	CREDIT CARD - TEXFILE (DC)	Receipt # 47514-2021-DCLK	DONDERO, JAMES (\$308.00)

Documents

VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT AND SEEK DOCUMENTS
 ISSUE CITATION - FARALLON CAPITAL MGMT. LLC
 ISSUE CITATION - ALVAREZ & MARSAL CRF MGMT., LLC

EXHIBIT 3

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

**To: ALVAREZ & MARSAL CRF MANAGEMENT, LLC
2100 ROSS AVE 21ST FLOOR
DALLAS TX 75201**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written Answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **VERIFIED** petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. Your answer should be addressed to the clerk of the **95th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **JAMES DONDERO**

Filed in said Court **22nd day of July, 2021** against

**ALVAREZ & MARSAL CRF MANAGEMENT, LLC AND FARALLON CAPITAL
MANAGEMENT LLC**

For Suit, said suit being numbered **DC-21-09534**, the nature of which demand is as follows:
Suit on **OTHER (CIVIL)** etc. as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 27th day of July, 2021.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By *Carlenia Bouligny*, Deputy
CARLENIA BOULIGNY



ESERVE

CITATION

DC-21-09534

IN RE: JAMES DONDERO

**ISSUED THIS
27th day of July, 2021**

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: CARLENIA BOULIGNY, Deputy

**Attorney for Plaintiff
MAZIN A SBAITI
SBAITI & COMPANY PLLC
JP MORGAN CHASE TOWER
2200 ROSS AVENUE
SUITE 4900W
DALLAS TX 75201
214-432-2899
mas@sbaitilaw.com**

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-21-09534

Court No.95th District Court

Style: IN RE: JAMES DONDERO

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____ .M. Executed at _____, within the County of _____ at _____ o'clock _____ .M. on the _____ day of _____, 20_____, by delivering to the within named _____

Each in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery.

The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$ _____

For mileage \$ _____ of _____ County, _____

For Notary \$ _____ by _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____,

To certify which witness my hand and seal of office.

Notary Public _____ County _____

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

**To: FARALLON CAPITAL MANAGEMENT LLC
ONE MARITIME PLAZA, STE. 2100
SAN FRANCISCO, CA 94111**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written Answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **VERIFIED** petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. Your answer should be addressed to the clerk of the **95th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **JAMES DONDERO**

Filed in said Court **22nd day of July, 2021** against

**ALVAREZ & MARSAL CRF MANAGEMENT, LLC AND FARALLON CAPITAL
MANAGEMENT LLC**

For Suit, said suit being numbered **DC-21-09534**, the nature of which demand is as follows:
Suit on **OTHER (CIVIL)** etc. as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 27th day of July, 2021.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By *Carlenia Bouligny*, Deputy
CARLENIA BOULIGNY



ESERVE

CITATION

DC-21-09534

IN RE: JAMES DONDERO

**ISSUED THIS
27th day of July, 2021**

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: CARLENIA BOULIGNY, Deputy

**Attorney for Plaintiff
MAZIN A SBAITI
SBAITI & COMPANY PLLC
JP MORGAN CHASE TOWER
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For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	by _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____,

To certify which witness my hand and seal of office.

Notary Public _____ County _____

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS James Dondero	DEFENDANTS Alvarez & Marsal CRF Management, LLC, and Farallon Capital Management, L.L.C.,			
ATTORNEYS (Firm Name, Address, and Telephone No.) Mazin A. Sbaiti & Brad J. Robinson, Sbaiti & Company PLLC, 2200 Ross Ave., Suite 4900W Dallas, Texas 75205. (214) 432-2899	ATTORNEYS (If Known) *Full contact info is in filing For Alvarez & Marsal: Michael Rosenthal (Gibson, Dunn & Crutcher, LLP) For Farallon: Brent McIlwain (Holland & Knight LLP)			
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Action seeking discovery for anticipated lawsuit concerning sale of claims held by creditors of the Debtor Highland Capital Management, L.P. in the pending bankruptcy case numbered 19-34054 (SGJ). Allegations include violation of Registered Investment Advisor Act (15 U.S.C. § 80b-1).				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input checked="" type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input checked="" type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ None specified by Petitioner in the removed state court action			
Other Relief Sought <div style="text-align: center;">Discovery: Depositions and document production</div>				

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.		BANKRUPTCY CASE NO. 19-34054 (SGJ)
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas Division	NAME OF JUDGE Stacey G. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>/s/ Michael Rosenthal</i>		
DATE August 9, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Michael Rosenthal Gibson, Dunn & Crutcher, LLP Attorney for Alvarez & Marsal CRF Management, LLC	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.