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Counsel for Highland Capital Management, L.P.

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

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Chapter 11

Case No. 19-34054-sgj11

**MOTION OF THE REORGANIZED DEBTOR FOR AN ORDER AUTHORIZING
ENTRY INTO AN AMENDED AND RESTATED EMPLOYEE STIPULATION**

Highland Capital Management, L.P., the above-captioned reorganized debtor ("HCMLP")
in the above-captioned chapter 11 case ("Bankruptcy Case"), files this motion (the "Motion") for

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



entry of an order, substantially in the form attached as **Exhibit A**, pursuant to section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing HCMLP to enter into that certain *Amended and Restated Senior Employee Stipulation and Tolling Agreement Extending Statutes of Limitation* (the “**Restated Stipulation**”) with Thomas Surgent (“**Mr. Surgent**”), a copy of which is attached as **Exhibit B**. In support of this Motion, HCMLP represents as follows:

PRELIMINARY STATEMENT²

1. Mr. Surgent is a long-time employee of HCMLP, serving as Chief Compliance Officer prior to Confirmation and as General Counsel since that time.

2. Following the Petition Date, HCMLP sought the Court’s approval to pay certain employees accrued benefits under HCMLP’s Bonus Plans. The Committee objected to the Bonus Motion as applied to the Senior Employees, including Mr. Surgent, and in the face of the Committee’s objection, HCMLP and the Committee agreed to the entry of an order granting the Bonus Motion that excluded the Senior Employees.

3. Unbeknownst to HCMLP’s Independent Board³ and outside counsel, James Dondero responded to the resolution of the Bonus Motion by covertly using a structure to funnel to the Senior Employees the cash that was denied them under the Bonus Order. Specifically, HCMLP recently learned that Mr. Dondero and Scott Ellington, HCMLP’s former General Counsel, created and otherwise used certain entities owned and controlled by them to enter into “consulting agreements” with, and pay millions of dollars in cash to, the Senior Employees (including Mr. Surgent) or entities directly or indirectly owned and controlled by such employees during HCMLP’s bankruptcy case.

² Unless noted otherwise, capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

³ “**Independent Board**” refers to the Independent Board that was appointed at Strand Advisors, Inc., on January 9, 2020, to manage HCMLP during the pendency of its bankruptcy [Docket No. 339].

4. Upon information and belief, the “consulting agreements” were fictions because (a) no services were performed by the “consultants” in their capacities as such, and (b) the contracting parties either did not engage in business or otherwise had no need for such services. Even if the arrangements had economic substance (which they did not), each of the Senior Employees who entered into a “consulting agreement” and received payments after the Petition Date from a source other than HCMLP breached their fiduciary duties of loyalty and candor (by not divulging that they worked for other entities controlled by Mr. Dondero), as well as HCMLP’s employment policies.

5. Despite having been compensated by Mr. Dondero for the bonus amounts denied them in the Bonus Order, the Senior Employees, including Mr. Surgent, filed proofs of claim seeking, among other things, benefits under the Bonus Plans. In January 2021, just before HCMLP’s confirmation hearing, with no knowledge of the “consulting agreements” or any other surreptitious arrangements, HCMLP entered into stipulations with two Senior Employees – Mr. Surgent and Frank Waterhouse, HCMLP’s then Chief Financial Officer – that ostensibly resolved their claims and that were approved as part of the confirmation of HCMLP’s Plan.

6. In July 2021, James P. Seery, Jr., then HCMLP’s Chief Executive Officer and Chief Restructuring Officer, learned that Mr. Surgent had entered into the Consulting Agreements and received the Payments. Following an investigation by HCMLP’s outside counsel, and with the support of the Independent Board, Mr. Seery demanded that Mr. Surgent agree to amend his Original Stipulation to, among other things, reduce his claimed amount by the amount of the Payments and make certain other representations and warranties. In response to these developments, Mr. Surgent accepted responsibility for not disclosing the facts and circumstances

concerning the Payments, voluntarily provided additional information regarding the Payments, and accepted Mr. Seery's demands.

7. HCMLP believes that entry into the Restated Stipulation is in its best interests. Mr. Surgent (i) admitted to the facts uncovered, (ii) assisted in HCMLP's discovery and understanding of additional facts, (iii) accepted responsibility, and (iv) agreed to Mr. Seery's conditions for resolving the dispute over the Payments and continuing to serve in his Current Positions. Moreover, Mr. Surgent is a significant member of the management team and plays a critical role in the execution of HCMLP's Plan.

8. Based on the foregoing, HCMLP requests that the Court enter an order approving the Restated Stipulation.

JURISDICTION

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory predicate for the relief sought herein is section 105(a) of the Bankruptcy Code.

RELEVANT BACKGROUND

A. Procedural Background

11. On October 16, 2019 (the "Petition Date"), HCMLP filed with the United States Bankruptcy Court for the District of Delaware a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case").

12. On October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the “Committee”) in the Chapter 11 Case.

13. On December 4, 2019, the Delaware Court entered an order transferring venue of HCMLP’s bankruptcy case to this Court [Docket No. 186].⁴

14. On December 4, 2019, HCMLP filed its *Motion for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 177] (the “Bonus Motion”). Pursuant to the Bonus Motion, HCMLP sought authority to honor obligations under certain Bonus Plans (as defined in the Bonus Motion) and to continue a dividend reinvestment plan for certain employees.

15. At a hearing conducted on January 21, 2020, the Committee indicated that it did not oppose the Bonus Motion *except* as it related to certain senior employees, including Mr. Ellington, Isaac Leventon, Mr. Waterhouse, and Mr. Surgent (collectively, the “Senior Employees”). The Committee argued that the Senior Employees were the subject of the Committee’s investigation of potential “estate claims” and that they should not receive their Bonus Plan awards under the circumstances.

16. In the face of the Committee’s strenuous objection to the Bonus Motion as applied to the Senior Employees, and in order to protect HCMLP’s other employees, HCMLP agreed to limit the order approving the Bonus Motion to certain non-Senior Employees. *See Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 380] (the “Bonus Order”). Consequently, none of the Senior Employees received any payments under the Bonus Plans on account of the Bonus Order.

⁴ All docket numbers refer to the docket maintained by this Court.

17. On May 26, 2020, Mr. Surgent filed a proof of claim [Claim No. 183] (the “Proof of Claim”) for an amount “not less than \$3,958,628.14” that included a demand for amounts purportedly due under the Bonus Plans.

18. On November 24, 2020, HCMLP filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as amended and supplemented, the “Plan”).

19. Mr. Surgent and HCMLP executed that certain *Senior Employee Stipulation and Tolling Agreement Extending Statute of Limitations* as of January 20, 2021 (the “Original Stipulation”).

20. The Original Stipulation was entered into to, among other things, resolve Mr. Surgent’s claims under the Bonus Plans and grant Mr. Surgent an allowed Class 7 claim in the amount of \$1,191,748.00 (the “Original Stipulated Amount”). Notably, the Original Stipulation left unresolved Mr. Surgent’s claims that were unrelated to the Bonus Plans. *See* Original Stipulation §5(a) (nothing in the Original Stipulation “will prejudice or otherwise impact any Other Employee Claim, or prevent [Mr. Surgent] from prosecuting, pursuing, or enforcing any Other Employee Claim.”)⁵

21. The Original Stipulation was attached as Exhibit BB to the *Debtor’s Notice of Filing of Plan Supplement to Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* [Docket No. 1811].

⁵ Under the Original Stipulation, “Other Employee Claims” include “all prepetition and postpetition Claims of [Mr. Surgent], including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable), but shall not include the Bonus Amounts” (as that term is defined in the Original Stipulation). *See* Original Stipulation at 2, n.2.

22. On February 22, 2021 (the “Confirmation Date”), the Bankruptcy Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943], which confirmed the Plan.⁶

23. The Plan provides for the release of certain of the Causes of Action (the “Released Causes of Action”) against Mr. Surgent as set forth therein (the “Employee Release”).

24. The Plan became effective on August 11, 2021 [Docket No. 2700] (the “Effective Date”). The Committee was disbanded pursuant to the terms of the Plan on the Effective Date.

25. As described in more detail below, in July 2021, HCMLP learned that Mr. Surgent received certain payments after the Petition Date from entities believed to be owned and/or controlled by Mr. Dondero and Mr. Ellington.

B. HCMLP Learns that Mr. Surgent Received Undisclosed Payments and Mr. Surgent Agrees to Reduce His Claim by an Amount Equal to Such Payments

26. Prior to the Petition Date and continuing thereafter through the Confirmation Date, Mr. Surgent was employed by HCMLP as its Chief Compliance Officer and Deputy General Counsel, and in such role he provided services to HCMLP.

27. Since on or around the Confirmation Date and continuing to the present, Mr. Surgent has been employed by HCMLP as General Counsel and Chief Compliance Officer (together, the “Current Positions”), and in such roles he has provided services to HCMLP. Mr. Surgent is expected to continue to serve in his Current Positions, subject to the terms of the Restated Stipulation and otherwise at the sole discretion of the HCMLP Parties (as defined in the Restated Stipulation).

⁶ Unless noted otherwise, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. 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)*, Ex. B [Docket No. 1875].

28. Notwithstanding his continuing status as an employee of HCMLP since the Petition Date, HCMLP recently learned that Mr. Surgent (and other Senior Employees) received substantial, post-petition payments from entities believed to be owned and/or controlled by Mr. Dondero and Mr. Ellington. HCMLP believes that these previously undisclosed payments were conceived of by Mr. Dondero and others acting at his direction for the purpose of providing them with the benefits under the Bonus Plans that they were denied after the Committee objected to the Bonus Motion (as it related to the Senior Employees) and “retaining” the Senior Employees’ loyalty to Mr. Dondero.

29. Mr. Surgent is the sole beneficial owner of Prive Solutions LLC (“Prive”) and the vehicle through which he arranged to receive the Payments (as defined below).

30. On March 13, 2020, Tall Pine Group, LLC (“Tall Pine”), an entity directly or indirectly owned and/or controlled by Mr. Ellington, and Prive executed a *Consulting Agreement* (the “Tall Pine Consulting Agreement”).

31. Effective as of May 6, 2020, Mainspring Ltd. (“Mainspring”), a Cayman Islands entity HCMLP believes to be directly or indirectly owned and/or controlled by Mr. Dondero, and Prive executed a *Consulting Agreement* (the “Mainspring Consulting Agreement”, and together with the Tall Pine Consulting Agreement, the “Consulting Agreements”).⁷

32. Between on or around March 18, 2020 and on or around September 3, 2020, Mr. Surgent, directly or indirectly, received (a) payments in the aggregate amount of \$750,906.13 from Tall Pine under the Tall Pine Consulting Agreement, (b) payments in the aggregate amount of \$1,887,929.00 from Mainspring under the Mainspring Consulting Agreement, and (c) a lump sum

⁷ Mainspring appears to be an entity associated with Messrs. Dondero and Ellington and appears in the chain of ownership of Sentinel Re (Cayman Islands).

of \$135,437.00 from NexPoint Advisors, L.P., an entity owned and controlled by Mr. Dondero, for total payments of \$2,774,272.13 (together, the “Payments”).

33. Upon information and belief, the Consulting Agreements were intended by Mr. Dondero to create the appearance of legitimate business dealings in order to disguise the fact that their real purpose was to retain the Senior Employees by surreptitiously funneling cash to them during HCMLP’s bankruptcy after they were denied benefits under the Bonus Plans. Indeed, neither Mr. Surgent nor Prive provided any services under the Consulting Agreements, yet Prive nonetheless received the Payments.⁸

34. Mr. Surgent did not disclose (and, at the time, did not believe he needed to disclose) the Distributions to (i) HCMLP’s bankruptcy counsel, Pachulski Stang Ziehl & Jones, LLP; (ii) HCMLP’s chief executive officer and chief restructuring officer, Mr. Seery; or (iii) the Independent Board.

35. Mr. Surgent and HCMLP have agreed that, as a condition to Mr. Surgent’s continued employment by HCMLP in his Current Positions, and to resolve all claims and disputes between them, including those relating to the Distributions as well as the previously unresolved Other Employee Claims, Mr. Surgent and HCMLP will amend and restate the Original Stipulation by entering into the Restated Stipulation.

C. HCMLP’s Decision to Enter into the Restated Stipulation

36. In or around July 2021, HCMLP learned that Mr. Surgent received the Payments.

⁸ In addition to the Payments, Mr. Surgent also received in the ordinary course dividends incident to his ownership of certain common and preferred shares (the “NexBank Stock”) in NexBank Capital, Inc. (“NexBank”), an entity affiliated with Mr. Dondero, and he expects to receive dividends in the future when, as, and if declared by NexBank (all post-petition dividends received by Mr. Surgent are referred to as the “Dividends” and together with the Payments, the “Distributions”). HCMLP does not believe there is anything improper about the Dividends.

37. Promptly thereafter, as instructed by HCMLP's board, HCMLP's counsel conducted a confidential investigation into the circumstances surrounding Mr. Surgent's receipt of the Payments. On July 19, 2021, HCMLP's counsel delivered a confidential report to the Board detailing their findings and advice.

38. In response, the Board authorized Mr. Seery to negotiate certain terms and conditions required for Mr. Surgent's continued employment, including (a) a dollar-for-dollar reduction in Mr. Surgent's claim equal to the amount of the Payments, and (b) representations and warranties concerning Mr. Surgent's (i) receipt of any payments or anything of value from any entity Mr. Surgent knows or should reasonably know is directly or indirectly owned and/or controlled by Mr. Dondero, Mr. Ellington, or any employee of Skyview, and (ii) compliance with his fiduciary duties.

39. During negotiations with Mr. Surgent and his counsel, and as reflected in the Restated Stipulation, Mr. Surgent agreed to HCMLP's requirements, the most significant of which include (i) the application of the Payments against his claim, (ii) the elimination of the "Other Employees Claims" that Mr. Surgent had retained under the Original Stipulation, and (iii) the requisite representations and warranties:

The Senior Employee shall have an Allowed Class 8 Claim under the Plan of \$1,978,484.22 calculated as the sum of (i) \$1,300,000.00 of bonus payments vested in February 2020 and August 2020 under the Bonus Plan, (ii) \$650,000 payable as retention payments in lieu of amounts that would have vested in February 2021 and August 2021 but for the termination of the Bonus Plan, and (iii) \$2,802,756.35 of deferred compensation payments vesting (or to vest) in May 2020, May 2021 and May 2022, using August 10, 2021 as the calculation date (close of trading immediately prior to the Effective Date) as a retention bonus on account of the Senior Employees status as a current and continuing employee of the Reorganized Debtor, minus (iii) the Payments (the "Amended Senior Employee Claim"). The Amended Senior Employee Claim is based on the fact that as a current and continuing employee it is agreed that Senior Employee's deferred compensation has and will continue to vest.

The Senior Employee represents and warrants to the Debtor that, to the best of his current knowledge, since the Petition Date (i) the Senior Employee has not received any payments or anything of value from any entity the Senior Employee knows or should reasonably know is directly or indirectly owned and/or controlled by James Dondero, Scott Ellington, or any employee of Skyview, other than the Distributions and market sales or pro rata distributions relating to publicly traded funds, and (ii) the Senior Employee believes in good faith that he has complied with the fiduciary duties that he acknowledges owing to the Debtor and the Reorganized Debtor.

Exhibit B.⁹

40. Mr. Seery (and, prior to the Effective Date, the Independent Board) was disturbed to learn of the undisclosed and unauthorized Payments. Nevertheless, HCMLP believes that the terms of the Restated Stipulation properly address the concerns and are in HCMLP's best interests because (a) Mr. Surgent readily acknowledged the relevant facts and accepted responsibility for not disclosing the Payments by agreeing to HCMLP's demands as conditions for continued employment; (b) HCMLP has no reason to believe that Mr. Surgent has breached any duty to HCMLP; and (c) unlike the Original Stipulation, it fully and finally resolves all claims that Mr. Surgent has, or may contend he has, against HCMLP, including the Other Employee Claims.

41. In addition, Mr. Surgent has performed exceptionally well, is an important member of HCMLP's management team, and is integral to the execution of the Plan.

42. Based on the foregoing, HCMLP believes that it is in its best interests to enter into and perform the Restated Stipulation.

⁹ Under section 5(b) of the Restated Stipulation, the gross amount of Mr. Surgent's claim is \$4,752,756.35 (the "Amended Claim Amount"). The Amended Claim Amount exceeds the amount Mr. Surgent asserted in his Proof of Claim by \$794,128.21; this agreed-upon increase takes into account the benefits Mr. Surgent (i) accrued, and is expected to accrue, as a continuing employee under HCMLP's deferred compensation plan, and (ii) accrued, and would have accrued, under the bonus plan had it not been terminated for continuing employees. Under the terms of the Restated Stipulation, the Amended Claim Amount is reduced, dollar-for-dollar, by the total amount of the Payments.

CONCLUSION

43. For the foregoing reasons, HCMLP respectfully requests that the Court enter an order in the form attached as **Exhibit A** approving the Restated Stipulation.

NO PRIOR REQUEST

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

NOTICE

45. Notice of this Motion will be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the Northern District of Texas; (c) HCMLP's principal secured parties; (d) counsel to the Claimant Trust; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002. HCMLP submits that, in light of the nature of the relief requested, no other or further notice need be given.

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Dated: September 21, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for Highland Capital Management, L.P.

EXHIBIT A

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

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Chapter 11

Case No. 19-34054-sgj11

**ORDER GRANTING MOTION
OF THE REORGANIZED DEBTOR FOR AN ORDER AUTHORIZING
ENTRY INTO AN AMENDED AND RESTATED EMPLOYEE STIPULATION**

Having considered the *Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation* (the “Motion”)² filed by Highland Capital Management, L.P., the reorganized debtor (“HCMLP” or the “Reorganized Debtor”, and prior to confirmation of the Plan, the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), the Court finds that (i) notice of the Motion was good and sufficient upon the particular

¹ The Reorganized Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

² Capitalized terms not otherwise defined in this Order have the same meanings ascribed to them in the Motion.

circumstances and that no other or further notice need be given; (ii) the Motion is a core proceeding under 28 U.S.C. § 157(b)(2); and (iii) the relief requested in the Motion is in the best interests of HCMLP, its creditors, and other parties-in-interest. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. HCMLP is authorized to enter into that certain *Amended and Restated Senior Employee Stipulation and Tolling Agreement Extending Statutes of Limitation* (the “Restated Stipulation”) with Thomas Surgent (“Mr. Surgent”), a copy of which was attached to the Motion as **Exhibit B**.
3. To the extent applicable, the official claims register in the Debtor’s Bankruptcy Case shall be modified in accordance with this Order.
4. HCMLP is authorized and empowered to take any action necessary to implement and effectuate the terms of this Order.
5. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

End of Order

EXHIBIT B

**AMENDED AND RESTATED SENIOR EMPLOYEE STIPULATION AND TOLLING
AGREEMENT EXTENDING STATUTES OF LIMITATION**

This amended and restated stipulation (the "Stipulation") is entered into as of September 20, 2021, by and between Thomas Surgent (the "Senior Employee") and Highland Capital Management, L.P. (the "Debtor"). The Debtor and the Senior Employee are individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, on October 16, 2019 (the "Petition Date"), the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the "Committee") in the Chapter 11 Case;

WHEREAS, on November 24, 2020, the Debtor filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended or supplemented, the "Plan") [Docket No. 1472];

WHEREAS, the Senior Employee and the Debtor executed that certain *Senior Employee Stipulation and Tolling Agreement Extending Statute of Limitations* as of January 20, 2021 (the "Original Stipulation");

WHEREAS, the Original Stipulation was entered into, among other things, to resolve the Senior Employee's claim to (i) certain amounts allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 in the aggregate amount at the time of \$1,191,748.00 ((i) and (ii), collectively, the "Original Stipulated Amount");

WHEREAS, the Original Stipulated Amount was not paid because of objections raised by the Committee;

WHEREAS, on May 26, 2020, the Senior Employee filed a proof of claim [Claim No. 183] (the "Proof of Claim") which Proof of Claim will be deemed revised pursuant to the terms of this Stipulation;

WHEREAS, on February 22, 2021 (the "Confirmation Date"), the Bankruptcy Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No.

1943], which confirmed the Plan;¹

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been retained pursuant to the Plan (the "Causes of Action");

WHEREAS, the Plan provides for the release of certain of the Causes of Action (the "Released Causes of Action") against the Senior Employee as set forth therein (the "Employee Release");

WHEREAS, the Plan became effective on August 11, 2021 (the "Effective Date");

WHEREAS, prior to the Petition Date and continuing thereafter through the Confirmation Date, the Senior Employee was employed by the Debtor as its Chief Compliance Officer and Deputy General Counsel and in such role provided services to the Debtor;

WHEREAS, since on or around the Confirmation Date and continuing to the present, the Senior Employee has been employed by the Debtor as General Counsel and Chief Compliance Officer (together, the "Current Positions") and in such roles provided services to the Debtor;

WHEREAS, the Senior Employee is currently expected to continue to serve in his Current Positions, subject to the terms of the Stipulation and otherwise at the sole discretion of the HCMLP Parties (as defined below), and as a continuing employee of the Debtor, and subsequent to the Effective Date, the Reorganized Debtor, is entitled to additional deferred compensation that accrues while the Senior Employee remains employed by the Debtor and Reorganized Debtor;

WHEREAS, the Senior Employee is the sole beneficial owner of Prive Solutions LLC ("Prive");

WHEREAS, the Senior Employee acknowledges that on March 13, 2020, Tall Pine Group, LLC ("Tall Pine"), an entity believed by the Debtor to be directly or indirectly owned and/or controlled by Scott Ellington, and Prive executed a *Consulting Agreement* (the "Tall Pine Consulting Agreement");

WHEREAS, the Senior Employee acknowledges that, effective as of May 6, 2020, Mainspring Ltd. ("Mainspring"), an entity believed by the Debtor to be directly or indirectly owned and/or controlled by James Dondero, and Prive executed a *Consulting Agreement* (the "Mainspring Consulting Agreement");

WHEREAS, the Senior Employee acknowledges that between on or around March

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. 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), Ex. B [Docket No. 1875].

18, 2020 and on or around September 3, 2020, the Senior Employee, directly or indirectly, received (a) payments in the aggregate amount of \$750,906.13 from Tall Pine under the Tall Pine Consulting Agreement, (b) payments in the aggregate amount of \$1,887,929.00 from Mainspring under the Mainspring Consulting Agreement, and (c) a lump sum of \$135,437.00 from NexPoint Advisors, L.P., an entity controlled by James Dondero, for total payments of \$2,774,272.13 (together, the "Payments");

WHEREAS, prior to the Petition Date, the Senior Employee received common and preferred shares (the "NexBank Stock") in NexBank Capital, Inc. ("NexBank"), an entity affiliated with James Dondero;

WHEREAS, after the Petition Date, the Senior Employee received dividends incident to his ownership of the NexBank Stock (and, to the best of the Senior Employee's knowledge, consistent with dividends paid to all holders of NexBank common and preferred stock), and he expects to receive dividends in the future when, as, and if declared by NexBank (all post-Petition dividends received by the Senior Employee are referred to as the "Dividends" and together with the Payments, the "Distributions");

WHEREAS, the Senior Employee acknowledges that he did not disclose the Distributions to the (i) Debtor's bankruptcy counsel, Pachulski Stang Ziehl & Jones, LLP, (ii) Debtor's chief executive officer and chief restructuring officer, James P. Seery, Jr.; or (iii) the independent board of directors at the Debtor's general partner, Strand Advisors, Inc. because the Distributions came from entities other than the Debtor;

WHEREAS, the Senior Employee and the Debtor have agreed that, as a condition to the Senior Employee's continued employment by the Debtor in his Current Positions and to resolve, in part, the Proof of Claim and any disputes that may exist because of the Distributions, the Senior Employee and the Debtor will amend and restate the Original Stipulation by entering into this Stipulation;

WHEREAS, the Original Stipulation will be superseded and replaced in all respects by the terms of this Stipulation.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties agrees to amend and restate the Original Stipulation as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee's agreement to toll the statutes of limitation (including but not limited to the application of section 108 of the Bankruptcy Code) with respect to any Causes of Action that can be asserted against him and to waive a portion of the Bonus Amount (defined below) which would otherwise be part of the Senior Employee Claim (defined below), the Debtor, its wholly-owned subsidiaries, and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the "HCMLP Parties"), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the "Termination Date"). This Stipulation shall

expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten any of the HCMLP Parties or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the "Notice") to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the "Notice Date").

b. Notwithstanding anything herein to the contrary, the Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the "Dissolution Date").

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitations applicable to any Cause of Action (including but not limited to the application of section 108 of the Bankruptcy Code) is hereby tolled as of, and

extended from, the date of this Stipulation through and including the Termination Date (the "Tolling Period"). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, the Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. The Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Resolution of Senior Employee Claim.

a. Notwithstanding anything to the contrary in the Stipulation or otherwise, (i) the Payments shall be applied against the Proof of Claim as revised by this Stipulation, and (ii) the Proof of Claim is hereby revised and shall be treated in accordance with subsection (b) of Section 5 of the Stipulation.

b. The Senior Employee shall have an Allowed Class 8 Claim under the Plan of \$1,978,484.22 calculated as the sum of (i) \$1,300,000.00 of bonus payments vested in February 2020 and August 2020 under the Bonus Plan, (ii) \$650,000 payable as retention payments in lieu of amounts that would have vested in February 2021 and August 2021 but for the termination of the Bonus Plan, and (iii) \$2,802,756.35 of deferred compensation payments vesting (or to vest) in May 2020, May 2021 and May 2022, using August 10, 2021 as the calculation date (close of trading immediately prior to the Effective Date), as a retention bonus on account of the Senior Employee's status as a current and continuing employee of the Reorganized Debtor, minus (iii) the Payments (the "Amended Senior Employee Claim"). Senior Employee's Amended Senior Employee Claim is based on the fact that as a current and continuing employee it is agreed that Senior Employee's deferred compensation has and will continue to vest.

c. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee Claim pursuant to this Section 5.

6. Limited Release. In consideration for the Senior Employee's agreement to reduce the Senior Employee Claim by an amount equal to the Payments as set forth herein and to calculate deferred compensation payments as set forth in paragraph 5 (b) hereof, the HCMLP Parties hereby release the Senior Employee and any

of his affiliates, agents, heirs, beneficiaries, representatives and assigns from and against any claims and causes of action arising out of or in connection with Tall Pine Consulting Agreement, the Mainspring Consulting Agreement, or the Senior Employee's receipt of the Distributions.

7. Senior Employee's Representations and Warranties. The Senior Employee represents and warrants to the Debtor that, to the best of his current knowledge, since the Petition Date (i) the Senior Employee has not received any payments or anything of value from any entity the Senior Employee knows or should reasonably know is directly or indirectly owned and/or controlled by James Dondero, Scott Ellington, or any employee of Skyview, other than the Distributions and market sales or pro rata distributions relating to publicly traded funds, and (ii) the Senior Employee believes in good faith that he has complied with the fiduciary duties that he acknowledges owing to the Debtor and the Reorganized Debtor.

8. Amended Senior Employee Claim. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Amended Senior Employee Claim.

9. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned on the entry of a final order by the Bankruptcy Court approving of this Stipulation.

10. Plan Support. The Senior Employee acknowledges and affirms that the Senior Employee withdrew the *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669].

11. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights.

(1) Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

(2) Notwithstanding anything to the contrary in this Stipulation or any other document, the Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Amended Senior Employee Claim, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the HCMLP Parties, to object to or otherwise challenge any claim for indemnification or limit the Senior Employee's obligations under Section 10 hereof. Additionally, this Agreement does not affect or impair Senior Employee's rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof for actions taken by the Senior Employee before or after the Petition Date nor does it affect or impair the right of the Debtor, or any of the Debtor's successor in interests under the Plan, to challenge such request.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

Senior Employee

Thomas Surgent
4441 Beverly Drive
Dallas, Texas 75205
Email: thomas.surgent@gmail.com

With a copy to:

Attorneys for Senior Employee

Danny Ashby, Esq.
Morgan, Lewis & Bockius, LLP
1717 Main Street
Suite 3200
Dallas, Texas 75201-7347
Email: danny.ashby@morganlewis.com

HCMLP

Highland Capital Management, LP
100 Crescent Court, Suite 1850
Dallas, Texas 75201
Attention: James P. Seery, Jr.
Telephone No.: (631) 804-2049
Email: jpseeryjr@gmail.com

With a copy to:

Attorneys for HCMLP

John A. Morris
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue
34th Floor
New York, New York 10017-2024
Telephone No.: (212) 561-7760
Email: jmorris@pszjlaw.com

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

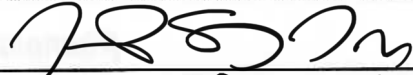
k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. During the pendency of the Chapter

11 Case, each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement and thereafter to any state or federal court located in Dallas County, Texas.

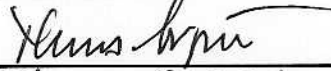
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IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 
Name: James P. Sargent
Its: CEO

SENIOR EMPLOYEE

By: 
Name: Thomas Sargent
Its: _____