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*Co-counsel for Marc S. Kirschner, as Litigation
Trustee of the Highland Litigation Sub-Trust*

**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
)
)
)
)
)

**THE LITIGATION TRUSTEE'S OMNIBUS OBJECTION TO CERTAIN
AMENDED AND SUPERSEDED CLAIMS AND ZERO DOLLAR CLAIMS**

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

**A COPY OF YOUR CLAIM IS AVAILABLE ONLINE AT
[HTTP://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH](http://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH) OR BY EMAIL
REQUEST TO CROGNES@SIDLEY.COM**

**A HEARING WILL BE CONDUCTED ON THIS MATTER NO EARLIER
THAN DECEMBER 20, 2021. ONCE SET, A NOTICE OF HEARING
WILL BE SERVED UPON CLAIMANTS.**

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.



IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS 75242-1496 BEFORE CLOSE OF BUSINESS ON DECEMBER 9, 2021, WHICH IS AT LEAST THIRTY (30) DAYS FROM THE DATE OF SERVICE HEREOF. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Pursuant to section 502(b) of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3007-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”), Marc S. Kirschner (the “Litigation Trustee”), as Litigation Trustee of the Litigation Sub-Trust established pursuant to the Fifth Amended Plan of Reorganization (the “Plan”) of Highland Capital Management L.P. (“HCMLP” or the “Reorganized Debtor”) [Docket No. 1808], through his undersigned counsel, hereby files this objection (the “Objection”) to Proof of Claim Nos. 133, 182, 184, 185, 187, 192, 198, 214, 215, 245, and 253 filed by former HCMLP employees and CLO Holdco, Ltd. Claim Nos. 133, 182, 184, 185, 187, 192, 214, 215, and 245 have been amended and superseded by subsequent proofs of claims (the “Amended and Superseded Claims”),² and Claim Nos. 198 and 253 amended certain claims to reflect the fact that the claimants sought zero dollars (the “Zero Dollar Claims”). The Litigation Trustee requests that the Amended and Superseded Claims and the Zero Dollar Claims be summarily disallowed and expunged and respectfully represents as follows.

² A chart of the Amended and Superseded Claims is also attached as Schedule 1 to the proposed order attached hereto as Exhibit A.

I. JURISDICTION

1. The Court has jurisdiction over this matter under the Bankruptcy Code and 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). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

II. RELEVANT FACTUAL BACKGROUND

A. General Background

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

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

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

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

7. On May 8, 2020, this Court entered the *Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order* [Docket No. 628] (the “Employee Bar Date Order”). Pursuant to the Employee Bar Date Order, HCMLP was authorized to provide certain employees with a letter (the “Employee Letter”) setting forth the prepetition deferred, contingent bonuses awarded to such employees under the Bonus Programs (as defined below). For confidentiality reasons, HCMLP provided the Employee Letters in lieu of requiring such employees to file a proof of claim publicly that disclosed his or her compensation, and the amounts included in the Employee Letters were deemed to constitute prima facie evidence of the validity and amount of such covered employees’ claims under Bankruptcy Rule 3003(c). If a covered employee disagreed with the amounts included in his or her Employee Letter, such employee was required to file a proof of claim no later than 5:00 p.m. Central Time on May 26, 2020.

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

9. On March 18, 2021, HCMLP filed the *Debtor’s Third Omnibus Objection to Certain No Liability Claims* [Docket No 2059], requesting the disallowance of certain former employees’ claims related to annual performance bonuses and deferred performance awards on various grounds.

10. On October 15, 2021, the Litigation Trustee commenced an adversary proceeding against certain former employees, including Dondero, Ellington, and Leventon, captioned *Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust v. Dondero, et al.*, No. 21-03076-sgj (N.D. Tex.). The adversary complaint (the “Adversary Complaint”) brings 36 counts against the

various defendants, including three counts seeking disallowance of certain proofs of claims filed by former HCMLP employees.

III. RELIEF REQUESTED

11. The Litigation Trustee seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), disallowing and expunging the Amended and Superseded Claims and Zero Dollar Claims for the reasons set forth herein.

IV. OBJECTION

12. Pursuant to the Plan, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Assignment Agreement—executed between the Highland Claimant Trust² and the Litigation Sub-Trust and effective as of August 11, 2021—the Litigation Trustee has standing to object to the Claim.

13. Section 502(b)(1) of the Bankruptcy Code requires disallowance of a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law” 11 U.S.C. § 502(b)(1). For the reasons contained herein, the Amended and Superseded Claims and Zero Dollar Claims are unenforceable against HCMLP and should be disallowed or expunged.

14. Certain former employees of HCMLP and related entities have filed various proofs of claims throughout HCMLP’s bankruptcy case. Several of these proofs of claim have been amended and superseded by subsequent claims filed against the same Reorganized Debtor by or on behalf of the same claimant(s). The Litigation Trustee has reviewed the Amended and Superseded Claims identified in the column “*Claim No(s). to be Disallowed*” in the chart set forth

² The terms “Claimant Trust Agreement,” “Litigation Sub-Trust Agreement,” and “Highland Claimant Trust” shall have the meaning ascribed to them as set forth in the Plan.

below and in Schedule 1 to the Proposed Order and has determined that each Amended and Superseded Claims has been amended and superseded by the subsequently filed claims identified under the column “*Superseding Claim No(s).*” (the “Superseding Claims”).

Claimant	Claim No(s). to be Disallowed	Claim Amount	Superseding Claim No(s).
Jean-Paul Sevilla	185	Not less than \$400,000.00	241 (transferred to CPCM, LLC) 242
Scott Ellington	187 192 ³ 245 ⁴	Not less than \$7,604,375.00	244 (amending 192 and transferred to CPCM, LLC) 251 (amending 245)
Isaac Leventon	184 214 ⁵ 215 ⁶	Not less than \$1,342,379.68	216 (amending 215) 253 (amending 214)
Frank Waterhouse	182	Not less than \$2,102,260.99	217 (transferred to CPCM, LLC) 218
CLO Holdco, Ltd.	133	\$11,340,751.26	198

15. The Amended and Superseded Claims should be disallowed and expunged because claimants may not seek multiple recoveries from HCMLP for a single claim or liability. In addition, elimination of such claims will streamline and enable the Reorganized Debtor to maintain a more accurate claims register. Accordingly, the Litigation Trustee requests that—in light of the Superseding Claims⁷—the Amended and Superseded Claims be disallowed and expunged from

³ Ellington’s proof of claim number 192 amended and superseded Ellington’s original proof of claim, number 187.

⁴ Ellington’s proof of claim number 245 amended the portion of proof of claim number 192 not amended by proof of claim 244.

⁵ Leventon’s proof of claim number 214 amended a portion of proof of claim number 184.

⁶ Leventon’s proof of claim number 215 amended the portion of proof of claim number 184 not amended by proof of claim 214.

⁷ The Litigation Trustee has objected to each of the Superseding Claims. Superseding Claim No. 242 is objected to in the *Litigation Trustee’s Objection to Proof of Claim Filed By Jean Paul Sevilla (Claim No. 242)*, filed contemporaneously with this Objection and incorporated fully herein. The Litigation Trustee objected to Superseding Claims Nos. 216, 217, 218, 244 and 251 in the Litigation Trustee’s Adversary Complaint, which is incorporated fully herein.

the Claims Register.⁸ See *In re Ideal Mortgage Bankers, Ltd.*, 539 B.R. 409, 425-26 (Bankr. E.D.N.Y. 2015), *aff'd sub nom. Holzer v. Barnard*, 15-CV-6277 (JFB), 2016 WL 4046767 (E.D.N.Y. July 27, 2016) (“Claims that are amended and superseded by subsequent claims filed by the same creditor are routinely disallowed and expunged.”).

16. Likewise, the Zero Dollar Claims (Claim Nos. 198 and 253) should be disallowed and expunged. Claim No. 198 amended and superseded Claim No. 133—which the Litigation Trustee objected to in the Adversary Complaint (the “CLO Holdco Claim”)—reducing the amount claimed to \$0. However, CLO Holdco, Ltd. has not withdrawn the claim. As set forth in the Adversary Complaint, and for the avoidance of doubt, the Litigation Trustee requests that the CLO Holdco Claim be disallowed in its entirety. Further, on October 28, 2021, after the Litigation Trustee filed his Adversary Complaint, which included an objection to Leventon’s Proof of Claim 214 that sought payment for purported indemnification claims and wrongful termination damages, Leventon filed Superseding Claim No. 253. Zero Dollar Claim No. 253 amended Proof of Claim 214, reducing Leventon’s claims for indemnification and wrongful termination to a liquidated claim in the amount of \$0 and stating that Leventon “is no longer asserting the claims set forth in claim 214 and does not seek any recovery from the estate on account of such claim.” However, Leventon has not withdrawn Proof of Claim No. 214. Accordingly, out of an abundance of caution, and to the extent that Leventon attempts to pursue any indemnification or wrongful termination claims, the Litigation Trustee requests that the Zero Dollar Claims be disallowed and expunged.

⁸ “Claims Register” means the Reorganized Debtor’s register of claims, prepared and maintained by Kurtzman Carson Consultants LLC – the court-appointed notice and claims agent in this case.

V. RESPONSES TO OBJECTIONS

17. To contest an objection, a claimant must file and serve a written response to this Objection (each, a “Response”) so that it is received no later than December 9, 2021 (the “Response Deadline”). Every Response must be filed with the Office of the Clerk of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, TX 75242-1496 and served upon the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

QUINN EMANUEL URQUHART & SULLIVAN LLP

Susheel Kirpalani
Deborah J. Newman
Robert Loigman
Benjamin I. Finestone
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-and-

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pmontgomery@sidley.com
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18. Every Response to this Objection must contain, at a minimum, the following information:

- a. A caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the objection to which the Response is directed;
- b. The name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;
- c. The specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;
- d. Any supporting documentation (to the extent it was not included with the proof of claim previously filed with the clerk of the Court or KCC) upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and
- e. The name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

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

VI. REPLIES TO RESPONSES

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

VII. SEPARATE CONTESTED MATTER

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

VIII. RESERVATION OF RIGHTS

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

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

IX. NOTICE

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

X. COMPLIANCE WITH LOCAL RULES

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

Litigation Trustee upon request. Accordingly, the Litigation Trustee submits that this Objection satisfies Local Rule 3007-2.

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

[Remainder of Page Intentionally Blank]

Dated: November 9, 2021
Dallas, Texas

Respectfully submitted,

SIDLEY AUSTIN LLP

/s/ Paige Holden Montgomery

Paige Holden Montgomery

Juliana L. Hoffman

2021 McKinney Avenue

Suite 2000

Dallas, Texas 75201

Telephone: (214) 981-3300

Facsimile: (214) 981-3400

-and-

QUINN EMANUEL URQUHART &

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51 Madison Avenue

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New York, NY 10010

Telephone: (212) 849-7000

Counsel for the Litigation Trustee

CERTIFICATE OF SERVICE

The undersigned hereby certifies, that on this 9th day of November 2021, the undersigned caused to be served a true and correct copy of the *Litigation Trustee's Omnibus Objection to Certain Amended and Superseded Claims and Zero Dollar Claims*, by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Paige Holden Montgomery
Paige Holden Montgomery

EXHIBIT A

**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 SUSTAINING THE LITIGATION TRUSTEE’S OMNIBUS OBJECTION TO
CERTAIN AMENDED AND SUPERSEDED CLAIMS AND ZERO DOLLAR CLAIMS**

¹ The last four digits of the Reorganized Debtor’s taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor’s headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Having considered *The Litigation Trustee's Omnibus Objection to Certain Amended and Superseded Claims and Zero Dollar Claims* (the "Objection"), the Amended and Superseded Claims² identified in Schedule 1 to this Order, the Zero Dollar Claims, any responses to the Objection, and the arguments of counsel, the Court finds that (i) notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given; (ii) the Objection is a core proceeding under 28 U.S.C. § 157(b)(2); (iii) each holder of the Amended and Superseded Claims and the Zero Dollar Claims was properly and timely served with a copy of the Objection, the proposed form of this Order, and the notice of hearing on the Objection; (iv) any entity known to have an interest in the claims subject to the Objection has been afforded reasonable time to respond to, or be heard regarding, the relief requested in the Objection; and (v) the relief requested in the Objection is in the best interests of HCMLP's creditors, its estate, and other parties-in-interest. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED**:

1. The Objection is **SUSTAINED** as set forth in further detail herein.
2. Each Amended and Superseded Claim on Schedule 1 is disallowed and expunged in its entirety.
3. The Zero Dollar Claims are disallowed and expunged in their entirety.
4. The official claims register in the Reorganized Debtor's chapter 11 case shall be modified in accordance with this Order.
5. The Litigation Trustee's rights to amend, modify, or supplement the Objection, to file additional objections to the Amended and Superseded Claims and Zero Dollar Claims and any

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

other claims (filed or not, including any other claims filed by holders of the Amended and Superseded Claims or the Zero Dollar Claims) which may be asserted against HCMLP, and to seek further reduction of any claim to the extent such claim has been paid, are preserved. Additionally, should one or more of the grounds in the Objection be overruled, the Litigation Trustee's right to object on other stated grounds or any other ground that the Litigation Trustee may discover are further preserved.

6. Each Amended and Superseded Claim and Zero Dollar Claim, and the objections by the Litigation Trustee to such Amended and Superseded Claim and Zero Dollar Claim, as addressed in the Objection, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate Order with respect to each claim. Any stay of this Order pending appeal by any claimant whose claims are subject to this Order shall apply only to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of the Order with respect to the other contested matters listed in the Objection or this Order.

7. The Litigation Trustee is authorized and empowered to take any actions necessary to implement and effectuate the terms of this Order.

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

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

###END OF ORDER###

Schedule 1
(Amended and Superseded Claims)

Claimant	Claim No(s). to be Disallowed	Date Filed	Claim Amount	Superseding Claim No(s).
Jean-Paul Sevilla	185	05/26/2020	Not less than \$400,000.00	241 (transferred to CPCM, LLC) 242
Scott Ellington	187 192 245	05/26/2020 07/16/2020 03/23/2021	Not less than \$7,604,375.00	244 (amending 192 and transferred to CPCM, LLC) 251 (amending 245)
Isaac Leventon	184 214 215	05/26/2020 02/26/2021 02/26/2021	Not less than \$1,342,379.68	216 (amending 215) 253 (amending 214)
Frank Waterhouse	182	05/26/2020	Not less than \$2,102,260.99	217 (transferred to CPCM) 218
CLO Holdco, Ltd.	133	04/08/2020	\$11,340,751.26	198