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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

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Chapter 11

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Case No. 19-34054-sgj11

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**REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT WITH CPCMC, LLC (CLAIM NO. 217) AND FRANK WATERHOUSE
(CLAIM NO. 218) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



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

Highland Capital Management, L.P., the above-captioned reorganized debtor (the “Reorganized Debtor” or “Debtor,” as applicable), files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a stipulation (the “Stipulation”),² a copy of which is attached as Exhibit 1 to the *Declaration of Gregory V. Demo in Support of the Reorganized Debtor’s Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 219) and Authorizing Actions Consistent Therewith* (the “Demo Dec.”) being filed simultaneously with this Motion, that, among other things, fully and finally resolves (a) the proofs of claim filed by Frank Waterhouse (“Mr. Waterhouse”), including those transferred to CPCM, LLC (“CPCM”), and (b) the *Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502* [Docket No. 2940] (the “Motion to Reconsider”). In support of this Motion, the Reorganized Debtor represents as follows:

JURISDICTION

1. 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.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Bankruptcy Rules.

² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Stipulation.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “Confirmation Order”) with respect to the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1808] (as subsequently modified, the “Plan”).

5. The Plan became effective on August 11, 2021 (the “Effective Date”) and, on that same date, the Reorganized Debtor filed the *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700].

B. Procedural Overview of the Waterhouse Claims

6. Mr. Waterhouse is a former officer of the Debtor having served as the Debtor’s chief financial officer for over a decade. Mr. Waterhouse, along with many of the Debtor’s employees, was terminated in or around February 2021 in connection with confirmation of the Plan.

7. On May 26, 2020, Mr. Waterhouse filed proof of claim number 182 (“Claim 182”) alleging that Mr. Waterhouse was owed compensation for, without limitation: (i) salary and wages, (ii) benefits, (iii) amounts due under the Debtor’s annual and deferred bonus plans (together, the “Bonus Plans”), and (iv) vacation and paid time off. Claim 182 included claims for amounts that allegedly should have been paid to Mr. Waterhouse in February and August of 2020 under the terms of the Bonus Plans but which were not paid because of this Court’s order [Docket No. 380] (the “Bonus Claims”).

8. In connection with the Plan, Mr. Waterhouse and the Debtor entered into negotiations with respect to the Bonus Claims, and, on January 20, 2021, Mr. Waterhouse and the

Debtor entered into that certain *Senior Employee Stipulation and Tolling Agreement Extending Statutes of Limitation* [Docket No. 1811-13] (the “Waterhouse Stipulation”). The Waterhouse Stipulation provided for, among other things, the allowance of Mr. Waterhouse’s Bonus Claims as Allowed Class 7 Convenience Claims.

9. The Waterhouse Stipulation was approved by the Confirmation Order.

10. Following his termination, Mr. Waterhouse became employed by Highgate Consulting, Inc., d/b/a Skyview Group (“Skyview”), and, on March 3, 2021, filed proof of claim number 217 in the original amount of \$1,514,105.57 (“Claim 217”), which included the Bonus Claims resolved by the Waterhouse Stipulation, and an unliquidated proof of claim number 218 (“Claim 218,” and together with Claims 182 and 217, the “Waterhouse Claims”).

11. Claim 217 and Claim 218 superseded and replaced Claim 182.

12. On March 24, 2021, CPCM filed the *Notice of Transfer of Claim Other Than for Security* [Docket No. 2093] that disclosed that Mr. Waterhouse had transferred Claim 217 to CPCM, a wholly owned subsidiary of Skyview.

C. Objections to the Waterhouse Claims and the Motion to Reconsider

13. On October 15, 2021, Marc S. Kirschner, in his capacity as the Litigation Trustee under the Highland Litigation Sub-Trust (the “Litigation Trustee”), filed his *Complaint and Objection to Claims*, Adv. Proc. No. 21-03076-sgj, Docket No. 1 (the “Kirschner Complaint”), seeking, among other things, disallowance of the Waterhouse Claims.

14. Four days later, on October 19, 2021, the Reorganized Debtor filed the Motion to Reconsider seeking to disallow, in whole or in part, the Bonus Claims purportedly resolved by the Waterhouse Stipulation because the Reorganized Debtor had discovered that Mr. Waterhouse had received payments on account of the Bonus Claims from entities owned and/or controlled by James Dondero and Scott Ellington.

15. On November 18, 2021, CPCM, as the purported transferee of Claim 217, filed *CPCM, LLC's Objection to Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502* [Docket No. 3032] objecting to the relief requested in the Motion to Reconsider.

16. Mr. Waterhouse subsequently consented to the withdrawal with prejudice of Claim 182, and it was withdrawn by order of this Court on January 7, 2022 [Docket No. 3164].

D. The Parties Engage in Arm's-Length Settlement Discussions and Execute the Stipulation

17. There is substantial disagreement regarding the merits of the Waterhouse Claims and the Motion to Reconsider. However, counsel to the Reorganized Debtor, on the one hand, and counsel to Mr. Waterhouse and CPCM, on the other, began discussing a possible settlement after the Court denied CPCM and Mr. Waterhouse's motion to quash the subpoena of Mr. Waterhouse on March 3, 2022 [Docket No. 3302].

18. These discussions were successful. The Reorganized Debtor, Mr. Waterhouse, CPCM, and the Litigation Trustee entered into the Stipulation on March 24, 2022, which, if approved by this Court, would resolve the Waterhouse Claims and the Motion to Reconsider. The Stipulation contains the following material terms, among others:³

- CPCM will irrevocably and indefeasibly waive any right it may have to the CPCM Payment (*i.e.*, the \$100,000.00 payment contained in Paragraph 2 of that certain *Order Approving Stipulation and Agreed Order Resolving Third Omnibus Objection and Certain Other Claims* [Docket No. 3244] (the "Former Employee Order")), and, if necessary, CPCM and the Reorganized Debtor will work in good faith to amend the Former Employee Order if necessary to effectuate the waiver and release set forth in the Stipulation.
- Claim 217 and Claim 218 will be withdrawn with prejudice and disallowed.

³ The following is only a summary of the material terms. In the event of any inconsistency between this Motion and the Stipulation, the terms of the Stipulation will govern.

- Section 5 of the Waterhouse Stipulation will be amended as follows (but will otherwise remain in full force and effect):
 - The heading of Section 5 of the Waterhouse Stipulation will be deleted in its entirety and replaced with the following: “Senior Employee’s Waiver of any Bonus Amount;” and
 - Section 5(a) of the Waterhouse Stipulation will be deleted in its entirety and replaced with the following: “The Senior Employee agrees to irrevocably surrender and waive the Bonus Amount in consideration of the Employee Release and acknowledges that such agreement is an integral part of this Stipulation.”
- Any and all causes of action with respect to the Waterhouse Claims included in Cause XXXIV of the Kirschner Complaint will be withdrawn with prejudice.

See generally Demo Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

19. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

20. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound

discretion of the bankruptcy court.” See *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

21. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test “with a focus on comparing ‘the terms of the compromise with the rewards of litigation.’” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: “(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise.” *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

22. There is ample basis to approve the proposed Stipulation based on the Rule 9019 factors set forth by the Fifth Circuit.

23. First, although the Reorganized Debtor believes that it has valid defenses to the Waterhouse Claims and that the Motion to Reconsider has merit, there is no guarantee that the Reorganized Debtor would succeed in its litigation with CPCM and Mr. Waterhouse. Indeed,

CPCM has asserted substantial and significant defenses to the Motion to Reconsider, including that it is procedurally improper. Litigating these issues would take time and expense.

24. The second factor—the complexity, duration, and costs of litigation—also weighs in favor of approving the Stipulation. As set forth above, the Reorganized Debtor will need to overcome CPCM’s procedural challenges to succeed on the Motion to Reconsider and has already expended significant resources fighting the Waterhouse Claims. If the Stipulation is not approved, the parties will incur additional and significant costs on discovery and on litigating a host of fact-intensive issues, including, among others, the amount, timing, and purpose of the payments believed to have been made to Mr. Waterhouse by Mr. Dondero and Mr. Ellington (or entities directly or indirectly controlled by them).

25. Third, approval of the Stipulation is justified by the paramount interest of creditors. Specifically, the settlement will enable the Reorganized Debtor to: (a) eliminate the obligation to pay CPCM \$100,000 under the Former Employee Order; (b) have the Waterhouse Claims disallowed and expunged in their entirety; (c) avoid incurring significant litigation costs; (d) avoid the litigation risk associated with the Waterhouse Claims; and (e) focus on monetizing assets for the benefit of its creditors.

26. Finally, the Stipulation was unquestionably negotiated at arm’s-length. The terms of the settlement are the result of hard-fought negotiations between the parties and represent neither party’s “best-case scenario.” The Stipulation should be approved as a rational exercise of the Reorganized Debtor’s business judgment made after due deliberation of the facts and circumstances concerning Waterhouse Claims.

NO PRIOR REQUEST

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

NOTICE

28. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for Mr. Waterhouse and CPCM; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; and (d) parties requesting notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Reorganized Debtor respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

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Dated: March 24, 2022.

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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 APPROVING SETTLEMENT WITH CPCM, LLC (CLAIM NO. 217) AND
FRANK WATERHOUSE (CLAIM NO. 218) AND AUTHORIZING
ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No.217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith* [Docket No. [__]] (the "Motion"),² filed by Highland Capital Management, L.P., the above-captioned reorganized debtor (the

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

“Reorganized Debtor” or “Debtor,” as applicable) in the above-captioned chapter 11 case (the “Bankruptcy Case”); and this Court having considered (a) the Motion and (b) the arguments made during the hearing held on [____], 2022; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Reorganized Debtor, the Debtor’s creditors, and other parties-in-interest; and this Court having found the Stipulation fair and equitable; and this Court having analyzed (1) the probability of success in litigating the claims subject to the Stipulation, with due consideration for the uncertainty in fact and law, (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views, and (ii) the extent to which the settlement is the product of arm’s-length bargaining, and not of fraud or collusion; and this Court having found that the Reorganized Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and good and sufficient cause appearing therefor,

it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The Stipulation attached as Exhibit 1 to the Demo Decl. is approved in all respects.
3. Claim 217 is **DISALLOWED** with prejudice.

4. Claim 218 is **DISALLOWED** with prejudice.
5. This Stipulation amends Section 5 of the Waterhouse Stipulation as follows:
 - a. The heading of Section 5 of the Waterhouse Stipulation is deleted in its entirety and replaced with the following: “Senior Employee’s Waiver of any Bonus Amount;” and
 - b. Section 5(a) of the Waterhouse Stipulation is deleted in its entirety and replaced with the following: “The Senior Employee agrees to irrevocably surrender and waive the Bonus Amount in consideration of the Employee Release and acknowledges that such agreement is an integral part of this Stipulation.”

Except as specifically amended by this Order and the Stipulation, the Waterhouse Stipulation remains in full force and effect.

6. CPCM has irrevocably and indefeasibly waived any right it may have to the CPCM Payment and has released the Reorganized Debtor from any and all obligations to make the CPCM Payment. No amendment to the Former Employee Order is necessary to effectuate the foregoing waiver and release.

7. The Reorganized Debtor, CPCM, and Mr. Waterhouse are authorized to take any and all actions necessary and desirable to implement the Stipulation without need of further approval or notice.

8. To the extent applicable, the official claims register in the Debtor’s Bankruptcy Case will be modified in accordance with this Order.

9. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###