Case 21-03006-sgj Doc 250 Filed 07/06/23 Entered 08/10/23 16:40:48 Decc Main Case 3:21-cv-00881-X DocuDocutme6, ringaye / Ducket #0250 Date Filed: 8/10/2023 raye 1 01 9 rayer 04/2

### UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	Ş Ş Ş	
Plaintiff,	ş	Civil Action No. 3:21-CV-0881-X
v.	ş ş	Consolidated with: 3:21-CV-0880-x
NEXPOINT ASSET MANAGEMENT, L.P., (F/K/A HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.), et al.,	§ § §	3:21-CV-1010-x 3:21-CV-1378-x 3:21-CV-1379-x
	\$ \$	3:21-CV-3160-x 3:21-CV-3162-x
Defendants.	§ § §	3:21-CV-3179-X 3:21-CV-3207-X 3:22-CV-0789-X

### ORDER ADOPTING REPORT AND RECOMMENDATION AND FINAL JUDGMENT

Before the Court is the Bankruptcy Court's Report and Recommendation on Plaintiff Highland Capital Management, L.P.'s ("Highland") motion for partial summary judgment. [Doc. 50]. Having carefully considered (1) Highland's motion and all arguments and evidence admitted into the record in support of the motion, (2) all responses and objections to the motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the motion, and for the reasons set forth in the Report and Recommendation (the "R&R") filed by the Bankruptcy Court on July 19, 2022, and the Supplement to the R&R filed December 5, 2022, the Court **ACCEPTS** the report and recommendation. The Court



**OVERRULES** the objections to the report and recommendation and **OVERRULES** the objection to the supplement to the report and recommendation. [Docs. 63, 87].

In accordance with the report and recommendation, the Court **GRANTS** partial summary judgment for Highland and **ENTERS FINAL JUDGMENT** as follows.

IT IS ORDERED, ADJUDGED, AND DECREED that Highland recover the following from James Dondero:

1. Dondero will owe Highland \$3,873,613.93 in accrued but unpaid principal and interest due under Dondero's First Note<sup>1</sup> (issued on February 2, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the First Dondero Note at the rate of \$278.50 per day and will increase to \$285.91 per day on February 2, 2023.

2. Dondero will owe Highland \$2,778,356.23 in accrued but unpaid principal and interest due under Dondero's Second Note (issued on August 1, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on Dondero's Second Note at the rate of \$224.43 per day and will increase to \$231.05 per day on August 1, 2023.

3. Dondero will owe Highland \$2,778,339.88 in accrued but unpaid principal and interest due under Dondero's Third Note (issued on August 13, 2018) as of August

<sup>&</sup>lt;sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

### Case 21-03006-sgj Doc 250 Filed 07/06/23 Entered 08/10/23 16:40:48 Desc Main Case 3:21-cv-00881-X DocuDocutnent Filed of 306/29 Page 3 of 9 Page D 8474

8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on Dondero's Third Note at the rate of \$218.20 per day and will increase to \$224.64 per day on August 13, 2022.

4. In addition to the forgoing, and pursuant to the terms of each applicable Note, Dondero shall pay to Highland the amount of \$443,074.35, which is his pro rata allocation (based on the ratio of the outstanding principal and interest owed by Dondero to Highland as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

**IT IS ORDERED, ADJUDGED, AND DECREED** that Highland recover the following from NexPoint Asset Management, L.P. (f/k/a Highland Capital Management Fund Advisors, L.P.) ("NexPoint Asset Management"):

1. NexPoint Asset Management will owe Highland \$2,552,628.61 in accrued but unpaid principal and interest due under NexPoint's First Note (issued on May 2, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on NexPoint's First Note at the rate of \$166.08 per day and will increase to \$170.05 per day on May 2, 2023.

 NexPoint Asset Management will owe Highland \$5,317,989.86 in accrued but unpaid principal and interest due under NexPoint's Second Note (issued on May 3, 2019), as of August 8, 2022, after application of all payments to outstanding

3

#### Case 21-03006-sgj Doc 250 Filed 07/06/23 Entered 08/10/23 16:40:48 Desc Main Case 3:21-cv-00881-X DocuDocutment Filed 07/06/29 Page 4 of 9 Page D 8475

principal and interest. As of August 9, 2022, interest will continue to accrue on NexPoint's Second Note at the rate of \$346.02 per day and will increase to \$354.29 per day on May 3, 2023.

3. In addition to the forgoing, and pursuant to the terms of each applicable Note, NexPoint Asset Management shall pay to Highland the amount of \$369,793.69, which is its pro rata allocation (based on the ratio of the outstanding principal and interest owed by NexPoint Asset Management to Highland as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

**IT IS ORDERED, ADJUDGED, AND DECREED** that Highland recover the following from NexPoint Advisors, L.P. ("NexPoint Advisors"):

1. NexPoint Advisors will owe Highland \$23,389,882.79 in accrued but unpaid principal and interest due under the NexPoint Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the NexPoint Term Note at the rate of \$3,801.79 per day and will increase to \$4,029.90 per day on May 31, 2023.

2. In addition to the forgoing, and pursuant to the terms of each the Note, NexPoint Advisors shall pay to Highland the amount of \$1,098,951.89, which is its pro rata allocation (based on the ratio of the outstanding principal and interest owed by NexPoint Advisors to Highland as of August 8, 2022, to the total principal and

4

## Case 21-03006-sgj Doc 250 Filed 07/06/23 Entered 08/10/23 16:40:48 Desc Main Case 3:21-cv-00881-X DocuDocumentation Fileage 5 of 9 Page 5 of 9 Page D 8476

interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

**IT IS ORDERED, ADJUDGED, AND DECREED** that Highland recover the following from Highland Capital Management Services, Inc. ("HCMS"):

1. HCMS will owe Highland \$166,196.60 in accrued but unpaid principal and interest due under HCMS's First Demand Note1 (issued on March 28, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's First Demand Note at the rate of \$12.98 per day and will increase to \$13.35 per day on March 26, 2023.

2. HCMS will owe Highland \$222,917.23 in accrued but unpaid principal and interest due under HCMS's Second Demand Note (issued on June 25, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's Second Demand Note at the rate of \$18.56 per day and will increase to \$19.13 per day on June 25, 2023.

3. HCMS will owe Highland \$425,435.63 in accrued but unpaid principal and interest due under HCMS's Third Demand Note (issued on May 29, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under HCMS's Third

 $\mathbf{5}$ 

#### Case 21-03006-sgj Doc 250 Filed 07/06/23 Entered 08/10/23 16:40:48 Desc Main Case 3:21-cv-00881-X DocuDocutnent Filedor /06/29 Page 6 of 9 PageID 8477

Demand Note at the rate of \$27.73 per day and will increase to \$28.39 per day on May 29, 2023.

4. HCMS will owe Highland \$159,454.92 in accrued but unpaid principal and interest due under HCMS's Fourth Demand Note (issued on June 26, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's Fourth Demand Note at the rate of \$10.32 per day and will increase to \$10.57 per day on June 26, 2023.

5. HCMS will owe Highland \$6,071,718.32 in accrued but unpaid principal and interest due under the HCMS Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCMS Term Note at the rate of \$455.09 per day and will increase to \$467.61 per day on May 31, 2023.

6. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCMS shall pay to Highland the amount of \$331,036.73, which is its pro rata allocation (based on the ratio of the outstanding principal and interest owed by HCMS to Highland as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

IT IS ORDERED, ADJUDGED, AND DECREED that Highland recover the following from NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) ("NexPoint Real Estate"):

6

### Case 21-03006-sgj Doc 250 Filed 07/06/23 Entered 08/10/23 16:40:48 Desc Main Case 3:21-cv-00881-X DocuDocutnent Filedor /06/29 Page 7 of 9 Page D 8478

1. NexPoint Real Estate will owe Highland \$195,476.70 in accrued but unpaid principal and interest due under HCRE's First Demand Note (issued on November 27, 2013), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's First Demand Note at the rate of \$40.58 per day and will increase to \$43.83 per day on November 27, 2022.

2. NexPoint Real Estate will owe Highland \$3,551,285.37 in accrued but unpaid principal and interest due under HCRE's Second Demand Note (issued on October 12, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's Second Demand Note at the rate of \$730.34 per day and will increase to \$788.77 per day on October 12, 2022.

3. NexPoint Real Estate will owe Highland \$986,472.32 in accrued but unpaid principal and interest due under HCRE's Third Demand Note (issued on October 15, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's Third Demand Note at the rate of \$203.00 per day and will increase to \$219.24 per day on October 15, 2022.

4. NexPoint Real Estate will owe Highland \$866,600.77 in accrued but unpaid principal and interest due under HCRE's Fourth Demand Note (issued on September 25, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under

 $\mathbf{7}$ 

# Case 21-03006-sgj Doc 250 Filed 07/06/23 Entered 08/10/23 16:40:48 Desc Main Case 3:21-cv-00881-X DocuDocutinent Fileage 8 of 9 PageID 8479

HCRE's Fourth Demand Note at the rate of \$177.60 per day and will increase to \$191.81 per day on September 25, 2022.

5. NexPoint Real Estate will owe Highland \$6,196,688.51 in accrued but unpaid principal and interest due under the HCRE Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCRE Term Note at the rate of \$1,337.94 per day and will increase to \$1,444.98 per day on May 31, 2023.

6. In addition to the forgoing, and pursuant to the terms of each applicable Note, NexPoint Real Estate shall pay to Highland the amount of \$554,248.69, which is its pro rata allocation (based on the ratio of the outstanding principal and interest owed by NexPoint Real Estate to Highland as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

\* \* \* \* \*

The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of 5.35%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually. Case 21-03006-sgj Doc 250 Filed 07/06/23 Entered 08/10/23 16:40:48 Desc Main Case 3:21-cv-00881-X DocuDocutment Fileage 9 of 9 PageID 8480

IT IS SO ORDERED, this 6th day of July, 2023.

BRANTLEY STARR UNITED STATES DISTRICT JUDGE