

No. 22-11132

**In the United States Court of Appeals
for the Fifth Circuit**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff – Appellee,

v.

TIMOTHY BARTON,

Defendant – Appellant.

From the United States District Court
for the Northern District of Texas
Honorable Brantley Starr, U.S. District Judge
Cause No. 3:22-cv-2118-X

**REAL PARTY IN INTEREST RECEIVER’S BRIEF IN
RESPONSE TO MOTION FOR STAY PENDING APPEAL**

Brown Fox PLLC
Charlene C. Koonce
State Bar No.
8111 Preston Road, Suite 300
Dallas, TX 75225
T: (214) 327-5000
F: (214) 327-5001
charlene@brownfoxlaw.com

Counsel for Receiver Courtney C. Thomas

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Parties

- a. **Defendant-Appellant:** Timothy Barton
- b. **Plaintiff-Appellee:** Securities and Exchange Commission
- c. **Intervenor:** United States of America
- d. **Other Personal Defendants (entity defendants included below)**
 - i. Haoqiang Fu also known as Michael Fu
 - ii. Stephen T. Wall

2. Attorneys

- a. **For Appellant:** Hunton Andrews Kurth LLP: Michael J. Edney, Ted Huffman, Michael Dingman; Holland & Knight LLP: Richard Roper
- b. **For Appellee:** Keefe M. Bernstein, James E. Etri, David B. Reece

- c. **For Defendant Stephen T. Wall:** Johnson Vaughn & Heiskell:
Michael P. Heiskell
- d. **For Interested Party HNGH Turtle Creek:** Kirkland & Ellis
LLP: Erin Angela Nealy Cox; Kane Russell Coleman & Logan
PC: John Joseph Kane
- e. **For Interested Parties Maximilien Barton, Gillespie Villas
LLC, Venus59 LLC, TRTX Properties LLC, MXBA LLC,
and Titan Investments LLC:** Norton Rose Fulbright US LLP:
Nathan Benjamin Baum, Chris Cooke
- f. **For Interested Party Palisades-TC, LLC:** Tillotson Law:
Jonathan Patton
- g. **For Interested Party David Dhiraj Ramolia: Chandler &
Shavin PLLC:** Eliot Dana Shavin; Chandler Law PC: Corinna
Pia Chandler
- h. **For Receiver:** Brown Fox PLLC: Charlene Cantrell Koonce
- i. **For Intervenor:** Renee M. Hunter

3. Other

- a. **Cort Thomas, Receiver**
- b. **Investors**
 - 1. Hong Guo
 - 2. Yijing Wu

3. Nanjing Sun
4. Kangying Mao
5. Huaizhen Gao
6. Wanwan Li
7. Yue Xu
8. Lan Ji
9. Wei Xing
10. Wenjun Wang
11. Jie Zou
12. Jun Wang
13. Lin Li
14. Yunding Kang
15. Shuping Yang
16. ChangHua Lin
17. Pei Guan
18. Yulan Chen
19. Hairuo Yang
20. Xuegeng Gong
21. Haiming Xu
22. Aiguo Luo
23. Yi Tang
24. Xuezhen Cai
25. Jingqiu Tang
26. Qu Chen
27. Yue Zhang
28. Sun Zhang
29. Xiangdong Zhu
30. Yaohua Lin
31. Jiancheng Chen
32. Min Deng
33. Liying Mao
34. Zhongguo Feng
35. Liying Yang
36. Dan Wu
37. Ying Ding
38. Hanjiang Fu
39. Yuan Yuan

40. Hanjiang Fu
41. Hua Cai
42. Ruiling Xiao
43. Chenchen Jiang
44. Pengfei Dong
45. Xiaodong Hao
46. Xiaoquan Dai
47. Jialin Hu
48. Heng Zhang
49. Fang Ding
50. Lin Gao
51. Fei Gao
52. Qin Chu
53. Gang Xu
54. Ling Guan
55. Chao Xu
56. Weipeng He
57. Jianjin Li
58. Zhenhua Li
59. Qiao Qin
60. Ying Zhang
61. Jiaxiang Lu
62. Weijia Kong
63. Li Jang
64. Li wen Bian
65. Jun Li
66. Youhong Zhu
67. Rongping Wu
68. Yadan Liu
69. Rufeng Ding
70. Lin Zhou
71. Jinghui Ma
72. Yun Sun
73. Guoqin Zhou
74. Qiuying Li
75. Bingjie Xu
76. Shufang Luo

77. Tianqing Song
78. Ping Chen
79. Di Tang
80. Jin Wang
81. Fuqing Chen
82. Kui Wang
83. Weisi Wang
84. Yi Qu
85. Xiaomin Fan
86. Cunxiang Ji
87. Jinzhe Wu
88. Ruinian Wu
89. Wen Wu
90. Ou Jiang
91. Feng Yan
92. Mai Ye
93. Wenjuan Yin
94. Kai Tian
95. Ling Zhong
96. Sicheng Zhan
97. Yan Zhang
98. Ying Zhou
99. Jun Zeng
100. Peng Guo

c. Creditors

1. Accounting Board
2. Accredited Insurance
3. Allen & Genevieve Hodges
4. Alpha Testing
5. Aria Pamenari
6. AT&T
7. Athas Capital Group, Inc.
8. Atmos Energy
9. Audi
10. BC Collaborations, LLC
11. Ben Pamenari

12. Benowich Law
13. BGE INC
14. Bruce Thomas
15. CHUBB
16. City of Dallas
17. CloudPhone
18. Coats Rose
19. Daikin Applied
20. Discount Edgar
21. Dooley & Associates
22. FM 544 Park Vista, Ltd.
23. Gray Reed
24. Greenberg Traurig
25. GTT Communications
26. GW Equity Capital, LLC
27. Harrison Aviation
28. Haynes and Boone
29. Home Depot
30. HumbleFax
31. Incorp Services
32. InterTek PSI
33. Jacobwitz & Gubits
34. Jennifer Villa
35. John Hassett
36. Jones Day
37. Joyce Lindaeuer
38. JW Jackson Walker
39. K. Walji
40. Lion Construction Group
41. Long Engineering
42. Mark Stromberg
43. Max M. Wayman
44. MBI Companies
45. Metzger Law
46. MJ Bobcat
47. North/South Building, LLC
48. O. Rey Rodriguez

49. OKSU Student Loan
50. Pacific StockTransfer
51. Pioneer Finance
52. Palisades TC
53. Pape-Dawson Engineers
54. Park Vista Seniors, LLC
55. Pavist, LLC
56. Porche
57. Premier Systems Inc.
58. Quiddity
59. Regis Property Management
60. Richard Shaw
61. Riner Engineering
62. Robert V. Allen
63. RP Shaw Investments, LLC
64. Scheef & Stone
65. Simplex Business Solutions
66. Simplex Copy
67. Spectrum
68. State Farm
69. State of Delaware
70. Steptoe & Johnson
71. Tech Patrol
72. The Marx Firm
73. The Rinaldi Group of Texas
74. Trustees of the BOS Trust
75. TWC
76. TXU
77. TXU Energy
78. United Healthcare
79. Valcon Consulting
80. Wildland Services
81. Winstead Attorneys
82. Wolters Kluwer

**d. Parties (creditors) whose lawsuits against Barton or his entities
are stayed**

Party	Counsel
Allen L. Hodges, III LAH III Family Specific Interest Ltd. Blackfoot Interest Ltd Tejas Group Ltd. The Estate of Leland A. Hodges, Jr.	Kelly Hart & Hartman LLP Joseph D. Austin Dee J. Kelly, Jr. Joakim G. Soederbaum Katherine Thomas
Somerset-Lost Creek Golf Ltd.	Padfield & Stout, LLP S. Gary Werley
Rhonda Artz, Individually, and as Trustee of Beryl Artz Bypass	Padfield & Stout, LLP S. Gary Werley
Elite Jet Solutions LLC Raymond Weeks, Jr.	Coats & Evans, P.C. Gary Linn Evans George Andrew Coats
Dhiraj “David” Ramolia	Chandler & Shavin, PLLC Eliot D. Shavin
Richard Shaw Park Vista Seniors, LLC FM 544 Park Vista LTD Pavist LLC North/South Building, LLC GW Equity Capital, LLC BOS Trust RP Shaw Investments, LLC	Stromberg Stock, PLLC Mark Stromberg
Tower 98, LLC Roger Sefzik Hoss Holdings, LLC	Marshall Law Joe E. Marshall
BSPV-Plano, LLC	Munsch Hardt Kopf & Harr, P.C. Thanhan Nguyen Thomas D. Bergham Jay H. Ong
BGE, Inc.	DuBois, Bryant, & Campbell, LLP

	Seth E. Meisel
Haoquiang Fu aka Michael Fu Jin Wang aka Tina Wang	Fettner Thompson David A. Fettner
Stream SPE Ltd	Brown Sims Robert M. Browning Karl R. Taylor
A.J. Babaria	Lawrence L. Mealer
Bilal Khaleeq	Pro Se
Dan Morenof	Thompson, Coe, Cousins & Irons, L.L.P. Alison H. Moore Robert Boone
Gao Huaizhen Ma Jinghui Qu Yi Sun Yn	William A. Pigg, PLLC William A. Pigg
Rone Engineering Services, Ltd.	MacDonald Devin Ziegler Madden Kenefick & Harris, P.C. Derek J. Kammerlocher Gregory N. Ziegler William L. Gardner
Palisades TC LLC	Reese Marketos LLP Joel W. Reese Leslie R. Chaggaris
Tamamoi, LLC 3820 Illinois, LLC	Ghrist Law Firm PLLC Ian D. Ghrist Warren Fonville Kyle Fonville
Serena Badgley	Arnold & Itkin LLP Kurt B. Arnold Trent Shelton
Nitya Capital, LLC	Baker Botts, L.L.P. Lindsay L. Buchanan Monica H. Smith Tina Q. Nguyen
John Dowdall	Justin M. Guenley
Cardno, Inc.	Grable Martin Fulton Brian A. Farlow
Circle H. Contractors, LP	Slates Harwell, LLP

Aaron T. Capps

e. Other Entities Controlled by Barton

1. Carnegie Development, LLC
2. WALL007, LLC
3. WALL009, LLC
4. WALL010, LLC
5. WALL011, LLC
6. WALL012, LLC
7. WALL016, LLC
8. WALL017, LLC
9. WALL018, LLC
10. WALL019, LLC
11. DJD Land Partners, LLC
12. LDG001, LLC
13. BM318 LLC
14. D4DS LLC
15. D4FR LLC
16. D4KL LLC
17. Enoch Investments, LLC
18. FHC Acquisition LLC
19. Goldmark Hospitality LLC
20. JMJ Acquisitions LLC
21. JMJ Development LLC
22. JMJAV LLC
23. JMR100 LLC
24. Lajolla Construction Management LLC
25. Mansions Apartment Homes at Marine Creek LLC
26. MO 2999TC, LLC
27. Orchard Farms Village, LLC
28. Villita Towers LLC
29. 126 Villita LLC
30. AVEG WW, LLC (Delaware)
31. AVG West, LLC fka JMJ Acquisitions, LLC (Texas)
32. Barton Texas Water District, LLC

33. Barton Water District, LLC (Delaware)
34. BC Acquisitions, LLC (Delaware)
35. BEE2019, LLC
36. Broadview Holdings, LLC (Texas)
37. Broadview Holdings Trust
38. BSJ Trading, LLC
39. BUILD VIOLET, LLC
40. Carnegie Development, Inc.
41. D4AT, LLC
42. D4AVEG, LLC
43. D4BM, LLC
44. D4BR, LLC (Texas)
45. D4IN, LLC (Texas)
46. D4MC, LLC (Texas)
47. D4OP, LLC
48. D4OPM, LLC (Texas)
49. D4SMC, LLC
50. D4WP, LLC
51. Dallas Real Estate Investors, LLC
52. Dallas Real Estate Lenders, LLC (Delaware)
53. Dallas Real Estate Management, LLC
54. Five Star GM, LLC (Delaware)
55. Five Star MM, LLC (Delaware)
56. FIVE STAR MM, LLC (Texas)
57. Five Star TC, LLC (Delaware)
58. Gillespie Villas, LLC
59. Glenwood (18340) Property, LLC (Delaware)
60. HR Sterling, LLC
61. Illuminate Dallas, LLC (Texas)
62. JB Special Asset, LLC
63. JMJ Acquisitions Mgmt, LLC
64. JMJ Aviation, LLC (Texas)
65. JMJ BLUES TX, LLC
66. JMJ Centre, LLC
67. JMJ Development Brasil, LTDA
68. JMJ Development, Inc.
69. JMJ Development Fund

70. JMJ Development Fund, Inc.
71. JMJ EB5 Fund, LP (Delaware)
72. JMJ EB5 Fund GP, LLC (Delaware)
73. JMJ Holdings, LLC
74. JMJ Holdings US LLC
75. JMJ Holdings USA, Inc.
76. JMJ Home Building Inc (Nevada)
77. JMJ Hospitality, LLC
78. JMJ Hospitality General Trading FZE
79. JMJ Hospitality UAE
80. JMJ Investments Limited
81. JMJ Land Acquisition, Inc (Nevada)
82. JMJ Land Development, Inc (Nevada)
83. JMJ Land Venture, LLC
84. JMJ MF Development, LLC
85. JMJ Mezzanine, Inc (Nevada)
86. JMJ Multifamily, Inc (Nevada)
87. JMJ Offshore, LTD
88. JMJ Regional Center, LLC (Delaware)
89. JMJ Residential, LLC
90. JMJ Valley Center, LLC
91. JMJ VC Management, LLC
92. JMJ148, LLC (Texas)
93. JMJAV, LLC
94. JMJD4, LLC (Delaware)
95. JMJD4Allensville LLC
96. JMJDWG, LLC (Texas)
97. JMJKH, LLC
98. LC Aledo TX, LLC
99. Lynco Ventures, LLC
100. Lynn Investments, LLC
101. Lynco Ventures, LLC
102. Mansion Apartment Homes at Marine Creek, LLC
103. MCFW, LLC
104. MCRS2019, LLC (Texas)
105. Middlebury Trust (Texas)
106. MMCYN, LLC

107. MXBA, LLC
108. MXBA Managed, LLC
109. MXBA Services, LLC
110. Myra Park 635, LLC
111. Northstar 114, LLC (Delaware)
112. Northstar PM, LLC (Delaware)
113. One Agent, LLC (Delaware)
114. One Agent Texas, LLC (Texas)
115. ONE FHC, LLC (Texas)
116. One MFD4, LLC
117. One Pass Investments, LLC (Delaware)
118. One RL Trust
119. ONE SF Residential, LLC
120. Residential MF Assets, LLC (Delaware)
121. Ridgeview Addition, LLC (Texas)
122. Riverwalk Invesco, LLC (Delaware)
123. Riverwalk Opportunity Management, LLC (Delaware)
124. Riverwalk OZFM, LLC (Delaware)
125. Riverwalk OZFV, LLV (Delaware)
126. Riverwalk QOZBJ, LLC (Delaware)
127. Riverwalk QOZBM, LLC (Delaware)
128. Riverwalk QOZBV, LLC (Delaware)
129. Seagoville Farms, LLC
130. SF Rock Creek, LLC
131. SK Carnegie, LLC
132. STL Park, LLC (Delaware)
133. The MXBA Trust
134. The Timothy L. Barton Irrevocable Life Insurance Trust
135. Titan Investments, LLC
136. TLB 2018 Trust
137. TLB 2019 Trust
138. TLB 2020 Trust
139. TRTX Properties, LLC
140. TRWF, LLC
141. TRWF LODGE, LLC
142. Venus59, LLC (Texas)
143. VenusBK195, LLC (Texas)

144. VenusPark201, LLC (Delaware)
145. WRL2019, LLC (Texas)
146. 126 Villita Towers, LLC (Delaware)
147. 2999 Acquisitions, LLC (Delaware)
148. 2999 Middlebury, LLC (Delaware)
149. 2999 Roxbury, LLC (Delaware)
150. 2999TC Acquisitions, LLC fka 2999TC, LLC
151. 2999TC Acquisitions MZ, LLC fka MO 2999TC MZ, LLC
152. 2999TC Founders, LLC (Delaware)
153. 2999TC JMJ, LLC (Delaware)
154. 2999TC JMJ, LLC (Texas)
155. 2999TC JMJ CMGR, LLC (Delaware)
156. 2999TC JMJ Equity, LLC
157. 2999TC LP, LLC (Delaware)
158. 2999TC JMJ MGR, LLC (Delaware)
159. 2999TC MM, LLC
160. 2999TC MZ, LLC (Delaware)
161. Gillespie Villas LLC
162. Venus59 LLC
163. TRTX Properties LLC
164. MXBA LLC
165. Titan Investments LLC
166. TC Hall, LLC
167. Titan 2022 Investment, LLC
168. Marine Creek SP, LLC
169. Aledo TX, LLC

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
A.	The Receivership Order.....	2
B.	Barton Has Not Complied with the Receivership Order (and Would Not Comply with a Monitor Order).....	3
C.	Limited Sales Are Necessary to Operate the Receivership.....	4
III.	LEGAL STANDARD.....	5
IV.	ARGUMENT.....	6
A.	Barton Cannot Prevail on the Merits.....	6
1.	The Receivership Order Was Necessary	6
2.	A Monitorship Would Return an Admitted Fraudster to Control.....	12
3.	The Receivership Was Not Imposed For an Improper Purpose.....	14
4.	The District Court Did not Err in Authorizing a Sale	14
5.	All Entities Controlled by Barton Are Properly Included in the Receivership	17
6.	The Balance of Harm and Public Interests Requires Denying the Stay...20	
V.	CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

Eberhard v. Marcu, 530 F.3d 122, 132 (2d Cir. 2008).....17

FDIC v. Faulkner, 991 F.2d 262 (5th Cir. 1993).....19

FTC v. Consumer Def., LLC, No. 2:18-CV-30 JCM, 2019 WL 266287, at *3 (D. Nev. Jan. 18, 2019)16

FTC v. World Travel Vacation Brokers, Inc., 861 F.2d 1020, 1031 (7th Cir. 1988) 14, 21

Janvey v. Alguire, 647 F.3d 585 (5th Cir. 2011)21

Long Beach Mortg. Co. v. White,
No. 95 C 4068, 1995 WL 470234 (N.D. Ill. Aug. 7, 1995)20

Matter of McGaughey, 24 F.3d 904 (7th Cir. 1994)20

Netsphere, Inc. v. Baron, 799 F.3d 327 (5th Cir. 2015) 6, 13

Nken v. Holder, 556 U.S. 418, 433, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009)5

S.E.C. v. Dobbins, No. CIV.3:04-CV-0605-H, 2004 WL 957715 (N.D. Tex. Apr. 14, 2004) 12, 13

SEC v. Am. Bd. of Trade, Inc., 830 F.2d 431 (2d Cir. 1987).....17

SEC v. Current Fin. Services, Inc., 783 F. Supp. 1441 (D.D.C. 1992)17

SEC v. Path Am., LLC, No. C15-1350JLR, 2016 WL 1588384, at *5 (W.D. Wash. Apr. 20, 2016)16

SEC v. Stanford Int’l Bank, 927 F.3d 830 (5th Cir. 2019)14

SEC v. TLC Investments & Trade Co., 147 F. Supp. 2d 1031 (C.D. Cal. 2001).....16

Tanzer v. Huffines, 408 F.2d 42 (3rd Cir. 1969)20

Other Authorities

TEX. BUS. & COM. CODE § 24.01022

Cortney C. Thomas, the Court-appointed Receiver, responds to Tim Barton’s Emergency Motion for Stay and respectfully shows the Court as follows.

I. INTRODUCTION

Barton’s Emergency Motion for Stay (the “Motion”) seeks to stay an Order appointing Receiver **ROA.594-618**, and two orders granting motions filed by the Receiver **ROA.1172-1177; 1172-1177**. The Motion relies on demonstrably false statements, omits key facts, and ignores the immense harm that would result from a stay.¹ Barton confesses² rather than denies liability to the investors whose funds he misappropriated and comingled in more than 130 entities. In asking this Court to step into the trial court’s role by converting the receivership to a monitorship, Barton implicitly concedes the necessity of court-supervision over the limited assets available to repay the defrauded investors. Barton’s demonstrated misappropriation, lack of credibility, and repeated disregard for the Receivership Order, preclude reinstating his control in any way, shape, or form. The evidence and the consequences from a stay or imposition of a monitorship mandate denying the Motion.

¹ Verified motions and responses that provide the only *evidence* related to the *many* disputed facts Barton presents as unfounded and incorrect conclusions are included in the supporting Appendix.

² See Transcript of December 19, 2022 hearing, included in the **Appendix (“TR”), p. 24, l. 2.**

II. FACTUAL AND PROCEDURAL BACKGROUND

For brevity, most of the *many* inaccuracies in Barton’s factual recitation are addressed in the arguments below.

A. The Receivership Order

Barton controlled more than 130 entities, into which he comingled or otherwise misappropriated approximately \$26M obtained from investors. **ROA.693-699; 712-716; Receiver’s Supplemental Brief ISO Motion to Supplement Order Appointing Receiver (“Supplemental Brief”), Dkt. 73, pp. 3-5;**³ **Declaration in Support of Supplemental Brief, Dkt. 74-1 (“Thomas Dec.”) pp. 3-5; 9.**⁴ Although Barton leans heavily on the purported admission by the SEC that the first “29 entities placed into the receivership had more than \$70 million in assets,” *Motion p. 3, 13*, that contention is blatantly false. As discussed below, the potential value of the Receivership Properties is *far* short of what is necessary to compensate the Investors. **ROA.1206-1220; Response to Motion to Stay, Dkt. 84 (“Response to Stay”) p. 6; Appendix in Support of Motion to Stay Response, Dkt. 85, (“Appendix”), pp. 4-6.**

³Motions and supporting evidence filed in the District Court after the record was filed are referenced by their docket number, unless included in the Appendix.

⁴ **Page references to the Thomas Declaration and the Appendix In Support of the Response to Stay are referenced by the Appendix page numbers (APPXX), rather than the page number of each document.** The attachments to the Thomas Declaration in Support of the Supplemental Motion are voluminous and are not included in the Appendix but are available in the docket.

After considering Barton’s opposition to the SEC’s Motion to Appoint Receiver (“Motion to Appoint”) **ROA.551-589**, on October 18, 2022, the District Court entered its Order Appointing Receiver (the “Receivership Order”), by which it assumed exclusive jurisdiction and control over “... the assets, of ... [certain entities], *and any other entities that Defendant Timothy Barton directly or indirectly controls, including, but not limited to*, [additional entities]. **ROA.596-597**. The District Court appointed Mr. Thomas, a respected trial attorney whose experience includes prior service as receiver. **Dkt. 84 pp. 14-15; Appendix pp. 10-12**. Mr. Thomas was selected to eliminate any argument that the Receiver would collude with the SEC and the government to impede Barton’s defense. **TR. p. 36, ll. 9-25; p. 37, ll. 1-8**.

B. Barton Has Not Complied with the Receivership Order (and Would Not Comply with a Monitor Order)

The Receiver has worked diligently and exhaustively to perform the extremely broad mandate of the Receivership Order. **ROA.1192-1226; Appendix pp. 5-6; 10-11**. Despite specific requirements to cooperate and provide extensive financial and operation information, Barton has largely failed and refused to comply with the Receivership Order. **ROA.1202-03; Appendix p. 8-9; Thomas Dec. pp. 9-10; 14**. For instance, Barton has refused to provide any of the information required

by paragraphs 8, 9, 10, and 18 of the Receivership Order.⁵ **Thomas Dec. pp. 10-11; Verified Response to Motion to Stay DLP Settlement, Dkt. 119, (“DLP Response”) pp. 4-5.** He has also actively violated the Receivership Order by (a) interfering in one sale—of the residence he complains most insistently about—resulting in the buyer’s refusal to close the sale; **DLP Response pp. 10-11;** (b) changing data access credentials and refusing to provide the new credentials to the Receiver; **TR. p. 48; Thomas Dec. pp. 10-12;** (c) attempting to divert mail; **Thomas Dec. pp. 6-7;** and (d) communicating with lenders on current developments.

C. Limited Sales Are Necessary to Operate the Receivership

Despite Barton’s receipt of not less than \$2M in cash from selling real estate purchased at least in part with Investor funds within the year before the Receivership Order was entered, **Thomas Dec. pp. 5-6; DLP Response p. 3,** the Receivership is starved for cash necessary to preserve and operate the Receivership Properties. **ROA.1202-03; Appendix pp. 5-6; Reply In Support of Motion for Appointment of Appraisers, Dkt. 93, pp. 6-7.**

Rather than embarking on a punitive selling spree, to address that urgent issue, the Receiver attempted to sell two properties that were listed for sale on the date of

⁵Requiring production of information and documents identifying properties and assets, employees, agents and personnel, bank and brokerage accounts, credit cards, inter-entity and defendant transfers, tax returns, keys, codes, passwords, identification and location of safe deposit boxes, and a host of related documents and information. **ROA.600-601; 603.**

his appointment, the Rock Creek Property (which owns Barton’s residence), **Dkt. 76, 77, 93, 100, 101**, and the “Frisco Property.” **Dkt. 110, 111**. The Receiver also negotiated a carefully considered settlement—the DLP Settlement. **Dkt. 95; DLP Response pp. 6-10**. Approval of the sale of the Frisco Property is pending, but even if approved, the sale will not close for several months. **DLP Response pp. 6-10**. As he was informed, Barton’s interference postponed the sale of the Rock Creek Property, although Barton nonetheless makes that sale a pivotal argument in his Motion. **DLP Response p. 10-11**.

The DLP Settlement was approved and is wholly performed. **Dkt. 109; DLP Response p. 10**. There is nothing to stay with respect to that Settlement.

III. LEGAL STANDARD

“A stay is not a matter of right. . . . It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009) (alteration omitted) (internal quotation marks and citations omitted). Four factors govern consideration of a stay: (1) a strong showing of a likelihood of success on the merits; (2) the applicant’s demonstration of irreparable injury absent a stay; (3) the potential for substantial injury to other interested parties; and (4) public interest concerns. *Id.* at 434.

IV. ARGUMENT

A. **Barton Cannot Prevail on the Merits**⁶

Barton addresses his likelihood of success on the merits peripherally. The extensive evidence offered by the SEC in support of its Motion for Appointment of Receiver (“Motion for Receiver”), **ROA.154-351**, refutes Barton’s arguments. The Receiver accordingly defers to and incorporates the SEC’s arguments with respect to the legal standard governing appointment of receivers,⁷ and thus the propriety of the Receivership Order from a legal perspective.

1. **The Receivership Order Was Necessary**

In arguing the absence of “no clear necessity” for a receivership, Barton asserts real estate assets do not “take flight.” The Receivership Assets, however, are at risk of dissipation or diminishing value without continuing oversight. **ROA.1206-1220; Thomas Dec. pp. 5-6**. If Barton is returned to control, those risks expand to misuse, misappropriation, or waste. **ROA.164-166; Thomas Dec. pp. 10-15**.

⁶ This Court lacks jurisdiction to consider the interlocutory appeal or stay, of any order except the Receivership Order. 28 U.S.C. § 1292(a)(2); *see also Netsphere, Inc. v. Baron*, 799 F.3d 327 (5th Cir. 2015).

⁷ The Receiver nonetheless addressed the same arguments in the District Court and incorporates those arguments here. **Dkt. 73 pp. 14-24**.

a. Barton Has Refused to Account for Several Million Dollars and Interfered with the Receivership

In late 2021, Barton sold real properties into which the SEC had traced investor funds and received net cash of not less than \$2M. **Thomas Dec. pp. 10, 13-14; DLP Response p. 10-11, 15.** Despite that influx of cash, the Receiver discovered less than \$75,000 in cash in the Receivership Entities' bank accounts. **ROA.1205-1206; DLP Response, p. 3.** Barton has failed and refused to provide the cooperation, documents and information required of him by the Receivership Order. **ROA.1201-02; Appendix p. 11; Thomas Dec. p. 10-11.**

Barton also violated the Receivership Order by filing a Lis Pendens on the "Rock Creek Property" which owns the residence he complains the Receiver improperly sold. **Dkt. 96.** When the District Court declared the Lis Pendens void, **Dkt. 99,** Barton reached out to the buyer and told him the property was subject to flooding and foundation problems. **DLP Response p. 10-11, 15.** The sale, which was made on an "AS IS" basis, has been postponed because of Barton's direct interference in the sale. *Id.*

b. The Value of the Receivership Properties Is At Risk

Virtually every real property held by the Estate is *heavily* leveraged, several at abnormally high interest rates. **ROA.1206; Thomas Dec. p. 17; Appendix pp. 4-5.** While the Receivership Order stays collection and foreclosure efforts, debt continues to accrue and eat away any equity held by the Receivership Entities. *Id.*;

TR. pp. 7-8, ll.24-25; 1-2. The Receivership Estate lacks sufficient cash to service the debt, and thus a lengthy stay imperils the value of the Receivership Properties. **ROA.1206-07; DLP Response p. 15; Dkt. 93, pp. 5-6; TR. p. 10, ll. 20-22.** Similarly, the Litigation Stay included in the Receivership Order has prevented, to date, four foreclosures, thereby preserving those properties. **ROA.609; TR.41.** But such a stay cannot continue indefinitely. And, given climbing interest rates and the slowing economy, industry experts have advised the Receiver that selling the Receivership Entities' real property soon will likely generate the best price and thus maximize the asset value. **ROA.1206-07; DLP Response p. 2.**

Because he has already demonstrated a willingness to misappropriate investor funds and disobey court orders, **ROA.164-166; 1202-03; Appendix p. 8-9; Thomas Dec. pp. 9-10; 14,** returning Barton to control through a monitorship would imperil the remaining equity available to satisfy investor claims, particularly if Barton is permitted to borrow against these properties, as he requests in seeking a monitor to supervise only sales and borrowing. *Motion pp. 5-6.*

Barton also placed Receivership Assets at risk through contractual arrangements and defaults. **ROA.1192-1226; 1230.** For instance, the lender on apartment complex developments ("Pillar") contends it converted its loans on three of these properties into an equity interest before the receivership, such that the Receivership Entities purportedly no longer hold any ownership position.

ROA.1211-1213. With respect to the Turtle Creek Property, the lender contends Barton’s defaults resulted in a bankruptcy court judgment declaring the lender is the current owner. **ROA.1230-1246; Dkt.116, 117.** And with respect to one short-stay hotel complex, the Amerigold Suites, immediately upon his appointment, the Receiver was forced to negotiate with electricity and water providers to avoid termination of service that had been threatened weeks before his appointment. **ROA.1215; Appendix p. 6.** As further explained below, a receivership is crucial to maintaining the value of these properties and preventing Barton’s role in managing or controlling the entities and assets from which any recovery for the Investors will originate.

c. The Net Value of the Receivership Assets May Fall *Far Short* of Investor Losses

Barton’s assertion that the “SEC itself assesses [the value of the Receivership Assets] at more than \$70 million,” *Motion* p. 3, 13 teeters on a Rule 11 violation. Even if the Receiver succeeds in defeating Pillar’s contention that it extinguished the Receivership Entities’ equity, the net proceeds of those asset sales, and indeed the totality of all assets, likely amount to less than the \$26 million misappropriated. **ROA. 1206-1233; Thomas Dec. pp. 17-18.** Assuming equity in all three apartment developments, an uncertain proposition, after accounting for total HUD debt (approximately \$78.7 million), Pillar debt (approximately \$17.7 million), and commissions (approximately \$1.1 million), the net benefit to the Receivership

Estate, which will not be realized until after a lengthy process to allow assumption of the HUD debt, would be approximately \$9.9 million before closing costs and other expenses. **Appendix p 5.**

In comparison, two creditors hold abstracted judgments against Receivership Entities and Barton for not less than \$7.8M. **Appendix p. 5, n.1.** Other creditors' claims, including a pending but stayed motion to assess sanctions against Barton personally, amount to hundreds of thousands of dollars at least, although the totality of all creditor claims is still unknown. *Id.*; **Thomas Dec. pp. 17-18.**

d. The “Burdens Imposed” by the Receivership Order Are No More Extraordinary Than Any Other Receivership Order

Barton's arguments regarding the burden imposed by this receivership focus largely on the “DLP Settlement,” and his contention that the Receiver recovered less than 5% of the value of “Participation Agreements.” *Motion* pp. 14-15. The argument is grossly inaccurate, lacks credible supporting evidence, and demonstrates Barton's willingness to mislead the Court.

The DLP Settlement mitigated certain Receivership Entities' growing liability for breaches of construction and development services contracts while also recovering reasonable value for other Entities' participation interests in the developments at issue. **Dkt. 95 pp. 2-4; DLP Response pp. 6; 9-10.** Barton wholly ignores his pre-receivership obligations under the development and construction

agreements, and the default notices served on the second day of the receivership because of Barton's total failure to perform those obligations. **DLP Response p. 9.** Even ignoring the benefit of mitigating damages, the Settlement Amount achieved more than the estimated value of the Receivership Entities' contractual entitlement on the Participation Agreements. **DLP Response p. 9.**

More specifically, under the Participation Agreements, the Receivership Estate is only entitled to 25% of the "Achieved Increased Value" on each project, meaning the Fair Market Value of the Project less capital expenditures (including property acquisition costs and total development costs). **DLP Response pp. 9-10.** The first point of contention in negotiating with DLP was whether a valuation today would be dependent upon increased value as of today or as of a future date when a point of stabilized occupancy had been reached, discounted to present value. DLP eventually agreed to give the Receiver the benefit of the future anticipated increases in value, minus capital expenditures, discounted to present value and shared its own detailed opinions of value for each project based upon an income capitalization approach, comparing anticipated value to anticipated costs. The Receiver analyzed the various assumptions in this approach, solicited feedback from multiple respected multifamily real estate industry participants and determined DLP's projections were both credible and likely accurate. Even if certain assumptions were incorrect, however, and the model was revised, the overall value of the Receivership Estate's

participation interest would still be **below** the \$750,000 settlement that was reached.” **DLP Response pp. 9-10.**

Barton’s contrary arguments, based upon his son’s vague “recollection of the transactional documents,” *Motion p. 15* depend on inflated valuation and ignore the necessary capital expenditures for the project. The present estimated net step-up in value for Phase One of the Marine Creek project is between \$500,000 to \$1 million. **Dkt. 95; DLP Response p. 10.**

Nor do Barton’s contentions that he may run short of funds to pay his counsel’s \$1,200 hourly rate, *Motion p. 24*, warrant any consideration with respect to his likelihood of success on the merits, the burden of the receivership, or indeed the request to convert the receivership into a monitorship. *S.E.C. v. Dobbins*, No. CIV.3:04-CV-0605-H, 2004 WL 957715, at *2 (N.D. Tex. Apr. 14, 2004) (“[A] swindler in securities markets cannot use the victims’ assets to hire counsel who will help him retain the gleanings of crime.”) (quoting *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir.1993) (internal citations omitted)).

2. A Monitorship Would Return an Admitted Fraudster to Control

Barton argues the District Court failed to consider “less drastic remedies,” and asks this Court to supplant the District Court’s broad discretion in evaluating the need for and overseeing the equitable remedy of a receivership. In response to the Motion to Appoint, however, Barton provided no evidence that a monitorship would

provide a better remedy than a receivership. **ROA.582-589**. Barton also buried his “request” for a monitor in a Response, **ROA.575-76**, rather than filing a motion seeking that relief as instructed. **TR.58-59**.

Barton has also failed and refused to provide most information and materials required of him by the Receivership Order. For instance, Barton has refused to provide any of the information required by paragraphs 8, 9, 10, and 18⁸, and has interfered with the Receiver’s efforts to obtain access to the Receivership Entities’ data. **Appendix pp. 10-11; Thomas Dec. pp. 9-11**.

In contrast to the vexatious litigant in *Netsphere*⁹ a case on which Barton relies in asking this Court to exercise a district court’s discretion in finding that a monitorship is preferable to a receivership, here, the SEC requested a receiver after demonstrating Barton’s misappropriation and misuse of investor assets “from the outset.” **ROA.161**. Given Barton’s pre-receivership conduct and his impunity in violating the Receivership Order, a monitorship invites further misappropriation. *Dobbins*, 2004 WL 957715, at *2 (requests to modify or terminate equitable orders for ancillary relief require consideration of “best interests of defrauded investors”);

⁸ See Receivership Order, which requires production of information and documents identifying properties and assets, employees, agents and personnel, bank and brokerage accounts, credit cards, inter-entity and defendant transfers, tax returns, keys, codes, passwords, identification and location of safe deposit boxes, and a host of related documents and information. **ROA.599-605; 610**.

⁹ *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 (5th Cir. 2012).

see also SEC v. Stanford Int'l Bank, 927 F.3d 830, 840 (5th Cir. 2019) (“[O]nce assets have been placed in receivership, . . . the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.”) (internal quotation omitted)); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir. 1988)(defendant’s failure to comply with court orders requiring disclosure of financial information, eliminated ability to evaluate less drastic remedy).

3. The Receivership Was Not Imposed For an Improper Purpose

The District Court’s reference to punishing wrongdoing, one purpose among several, was made in furtherance of finding that entry of the Receivership Order did not violate the automatic stay protecting several of the “Wall” Defendants. **ROA.595**. When viewed in the context of the voluminous and specific evidence supporting the need for a receivership, **ROA.154-469**, the District Court did not enter the Receivership Order to “punish” Barton before any adjudication of guilt or liability.

4. The District Court Did not Err in Authorizing a Sale

The District Court did not err in authorizing one sale—that Barton caused to be cancelled—and approving one settlement. Barton’s contrary arguments ignore the Estate’s dire need for cash and Barton’s role in creating the problem. Save and except for the DLP Settlement, less than \$75,000 in cash was recovered initially,

despite several million dollars flowing into the Receivership Entities during the last twelve months. **ROA.1205-06. Appendix pp. 5-6; DLP Response p. 3.**

Numerous and urgent bills, many long past due upon the Receiver's appointment, compete for these extremely limited assets. **Appendix pp. 2-3.** For instance, at the time of appointment several properties, including the Amerigold Suites, had received shut off notices from energy providers and trash collection services. **Appendix pp. 5-6.** Notices of cancellation for property insurance on several properties were discovered. *Id.* The dearth of liquid assets continues to present immense challenges in securing and maintaining assets. Absent an influx of cash *from the sale of something*, the value of the properties owned by the Receivership Entities are in jeopardy. **Appendix p. 6; Dkt. 93 pp.6-7.**

Nor did the Receiver remove Barton from his home or seek to sell it for any improper purpose. That property provided the most likely avenue for an immediate influx of cash needed to continue operating the estate. **Dkt. 93, pp. 5-7.** Barton's contrary protestations ignores: (1) Barton had signed a listing agreement to sell the property days before the Receiver was appointed; (2) the sales price exceeded the statutory valuation requirements; (3) a Receivership Entity, not Barton personally, owned the property; (4) Barton was moving valuable art and contents out of the house *after* the Receivership Order was entered; (5) the diminishing equity in the

property; and (6) the urgent need for liquid assets to fund management of other Receivership properties. **Dkt. 93 pp. 5-7; Appendix pp. 6-7.**

The “AS IS” sale, however, did not close because in direct violation of the Receivership Order, Barton interfered with the sale by informing the buyer, falsely in all likelihood, that the property was subject to flooding and foundation problems.

DLP Response pp.11-12.

Liquidation under these circumstances is not an abuse of discretion; it is expedient. *See FTC v. Consumer Def., LLC*, No. 2:18-CV-30 JCM, 2019 WL 266287, at *3 (D. Nev. Jan. 18, 2019) (“Courts regularly . . . authorize the sale of those [frozen] assets prior to finding liability in order to preserve the value of the estate.”); *SEC v. Path Am., LLC*, No. C15-1350JLR, 2016 WL 1588384, at *5 (W.D. Wash. Apr. 20, 2016) (authorizing pre-judgment sale of real estate assets, due to high costs of maintaining “stasis,” impending expiration of master use permits necessary for development, and timeline for a third-party purchaser to comply with building requirements); *SEC v. TLC Investments & Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Cal. 2001) (“[L]iquidation . . ., prior to entry of judgment, is appropriate because the evidence . . . demonstrated that the . . . entities’ liabilities were greater than their assets and . . . ongoing management alone will drain money out of the estate . . . that otherwise could be returned to investors.”).

Nor do the authorities Barton cites mandate a contrary result. *Compare, Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) (reiterating in *dicta*, Second Circuit’s strong preference for bankruptcy procedures over receivership); *SEC v. Am. Bd. of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987) (same); *SEC v. Current Fin. Services, Inc.*, 783 F. Supp. 1441, 1445–46 (D.D.C. 1992) (denying authority to wholly liquidate the defendant entity and place it in bankruptcy at the inception of a receivership). In none of these cases was a receiver’s authority to sell specific and limited assets before entry of final judgment, an issue.

5. All Entities Controlled by Barton Are Properly Included in the Receivership

Barton’s argument that the District Court erred in concluding all entities he controlled are appropriately included within the Receivership misstate the controlling law and ignore the voluminous evidence supporting (1) Barton’s control over each entity; **ROA.705-744; Thomas Dec. pp. 3-12** (2) the extensive commingling between Barton’s entities; **ROA.161-166; Thomas Dec. pp. 13-15; 17;** and (3) Barton’s failure and refusal to comply with the Receivership Order such that additional tracing *would be possible at this early juncture*. **Thomas Dec. pp. 14-16.**

The evidence supporting the Motion to Appoint demonstrated Barton’s practice of commingling investor funds and transferring those funds for his own use to other Barton-controlled entities, “*including but not limited to*” those listed in the Motion to Appoint. **ROA.166** (“Barton controls multiple other entities that may have also

received or benefited from investor funds, including the sales proceeds for the recent property sales.”); **ROA.161-165**.

The Receiver moved the District Court for an Order expressly identifying the many, many “*other entities that Defendant Timothy Barton directly or indirectly controls*,” **ROA.693**, and which Barton used to spend, hide, and improperly use investor funds, the proceeds of investor funds, or funds so commingled with investor funds as to render tracing or segregation nearly impossible. **Dkt. 73, pp. 2-3, 7-13, 16-10; Thomas Dec. pp. 14-16.**¹⁰ The evidence demonstrating Barton’s actual control was extensive and included: (a) binders with entity formation information located at property occupied by Barton and the entities; (b) tax records; (c) the common addresses used by Barton and virtually all entities; (d) additional documents, for instance real property records, contracts, bank records and bills; (e) a spread sheet located identifying virtually all entities included in the Motion; (f) inclusion of several of the entities in a list of on-going litigation managed by counsel who officed with Barton; and (g) interviews during which the Receiver was informed that certain entities were created identifying Max Barton as the manager/in control to create an illusion of distance between those entities and the deals in which they engaged, and Barton. **ROA.710-712; Thomas Dec. p. 3, 5-17.** Barton submitted documents but no

¹⁰ Barton’s appeal includes the Order granting this Motion, **Dkt. 62**.

evidence in response. **ROA.1118-1160**. Based on an objection, **ROA.855-863**, the District Court granted the Motion in part but ordered additional briefing as to several entities. **ROA.1173**.

Overwhelming and undisputed evidence supporting the supplemental motion included Barton signing contracts as President of entities for which he was not an officer and using certain entities to obscure his involvement after learning of the SEC's investigation. **Thomas Dec. pp. 3-4, 9**. Further, although Barton's refusal to comply with many of the directives of the Receivership Order exacerbates the difficulty of tracing, Barton's practice of commingling—using one Receivership Entity to fund others and using several Receivership Entities to fund his lifestyle—is *undisputed*. For instance, Broadview Holdings, LLC received the proceeds of the sale of property owned by Mansions Apartment Homes at Marine Creek, LLC, into which the SEC had traced investor funds. **Thomas Dec. p. 13; see also ROA.166-170**. Barton used Broadview Holdings' funds to pay his personal attorneys and make payments for the benefit of at least five other entities. **Thomas Dec. p. 13-14**.

Barton will not prevail in challenging inclusion of all Barton-controlled entities in the Receivership. *See FDIC v. Faulkner*, 991 F.2d 262, 267-68 (5th Cir. 1993) (Upholding injunction freezing assets not traceable to fraud, where party refused to “aid the district court in determining which of their assets were traceable” to underlying fraud); *see also Long Beach Mortg. Co. v. White*, No. 95 C 4068, 1995

WL 470234, at *2 (N.D. Ill. Aug. 7, 1995) (“[W]here the presumed wrongdoer’s conduct has itself created the roadblock that prevents resort to that usual process [tracing], it is entirely appropriate for a court to freeze all of that party’s assets pending the determination of just which assets may be traceable to the allegedly fraudulent activities.”); *see also, e.g. Matter of McGaughey*, 24 F.3d 904, 907 (7th Cir. 1994) (Affirming appointment of receiver as “an especially appropriate remedy in cases involving fraud and the possible dissipation of assets since the primary consideration in determining whether to appoint a receiver is the necessity to protect, conserve and administer property pending final disposition of a suit.”); *Tanzer v. Huffines*, 408 F.2d 42, 43 (3rd Cir. 1969) (Affirming appointment of receiver “to avert further loss of assets through waste and mismanagement.”).

6. The Balance of Harm and Public Interests Requires Denying the Stay

A stay would wreak unmitigated chaos and cause incalculable harm to the injured investors and the Entities’ creditors. Barton’s rosy prediction of value sufficient to repay the investors *ignores the debt and uncertainty surrounding these Properties*. **ROA.1206-1220; Appendix pp. 5-7; Dkt. 84, pp. 5-7.** Without continued management and expedient sales, value will be lost and the Investors will be irreparably injured. In light of the overwhelming evidence of Barton’s liability, **ROA.154-327**, the District Court had “a duty to ensure that the assets of the corporate defendants were available to make restitution to the injured customers.”

FTC v. World Travel Vacation Brokers, Inc., 861 F.2d at 1031; *see also Janvey v. Alguire*, 647 F.3d 585, 600–01 (5th Cir. 2011) (affirming imposition of asset freeze to protect court’s ability to grant an effective remedy, “at law or in equity”).

Perhaps most urgently, extremely limited resources other than the liquidation of properties and contractual interests from which to fund operations and protect the Receivership Properties, are available. **Appendix p. 3-4; DLP Response pp. 2-3.** If stayed, how and from what would the Receiver pay continuing obligations, if he were in fact authorized to pay anything?

Many of the Receivership Entities have continuing operational requirements, which necessitate operating funds, for instance an extended-stay hotel (the “Amerigold Suites”). **Appendix p. 3, 6.** Daily oversight and management is required to ensure continued habitability, as well as paying the employees and attempting to increase its occupancy to generate additional value for the Receivership Estate. **Appendix p. 3.** Another Receivership Entity owns a property financed by a HUD construction loan, requiring extensive regulatory approval and cost certification, absent which default and significant penalties will result. **Appendix p. 5.** All Properties discovered to date have extensive debt and tax obligations that will continue to accrue. **ROA.1210; Dkt. 84 pp. 4-5.** Lenders and competing litigants whose lawsuits are stayed complain daily about their inability to foreclose or otherwise seek relief, which the Receiver would be unable to address during a stay.

ROA.1221-1224; Dkt. 84 pp. 5. Other lenders continue to attempt foreclosures or other activities in violation of the Receivership Order, necessitating continued communication by the Receiver. **Dkt. 94 p. 4.**

The value of the Properties is also in flux, with interest rates rising and markets for sales softening. **ROA.1206-1207; Dkt. 93 pp. 5-6; DLP Response p. 2.** More than thirty lawsuits are stayed. **ROA.1222-1225.** For instance, one lawsuit involves a vacant property for which safety citations have been issued. A second involves a personal injury tort claimant—a child—injured in a fall at the Amerigold Suites. **Dkt. 84 p. 5.** Absent continuing efforts to resolve these lawsuit the counter-parties to these lawsuit will suffer irreparable harm because the dwindling value of the Receivership Properties will render any judgment or settlement uncollectible.

Finally, Barton’s refusal to provide the IT credentials necessary to obtain access to the entities’ cloud-stored data, email accounts, and servers, **Appendix p. 9-10; TR.41-42.** despite his obligation to do so, **ROA.604-605,** frames his disingenuous complaint about harm arising from potential access to privileged documents. *Motion p. 23.* The Receiver has no access to electronic data and has voluntarily limited his access to potentially privileged materials in Barton’s office, despite Barton’s refusal to agree to a privilege protocol. **Appendix p. 9; Dkt. 85 pp. 25-26.**

Similarly, Barton knowingly misleads the Court by complaining about the Receiver's authority to destroy personal property and documents—which was provided over very specific and limited documents and property—**ROA.1180-1183** because the Receiver voluntarily agreed to refrain from these activities. **Dkt. 84 pp. 12-13.**

The balance of harm arising from a stay would cause *much* greater injury to the Investors and the Receivership Entities' creditors than allowing the Receiver to continue performing his mandate, subject to the District Court's able supervision.

V. CONCLUSION

Barton fails to demonstrate a likelihood of success on the merits, any error by the District Court or any other factor supporting ending to a stay. Granting a stay, however, would irreparably harm investors and the Estate's creditors. The Court should deny the Motion.

Respectfully submitted,

By: /s/ Charlene C. Koonce

Charlene C. Koonce
State Bar No. 11672850
charlene@brownfoxlaw.com
BROWN FOX PLLC
8111 Preston Road, Suite 300
Dallas, Texas 75225
T: (214) 327-5000
F: (214) 327-5001

*Attorneys for Receiver Cortney C.
Thomas*

Certificate of Filing and Service

I hereby certify that on January 5, 2023, this motion was filed and served in PDF format using the United States Court of Appeals for the Fifth Circuit's CM/ECF system upon all counsel of record, as follows:

Ezekiel L. Hill
hillez@sec.gov
Securities and Exchange Commission
100 F St., N.E.
Washington, DC 20549

Keefe M. Bernstein
bernsteink@sec.gov
James E. Etri
etrij@sec.gov
David B. Reece
reeced@sec.gov
Securities and Exchange Commission
801 Cherry St., Suite 1900
Fort Worth, TX 76102

Counsel for the Securities and Exchange Commission

Michael J. Edney
medney@huntonak.com
Michael Dingman
mdingman@huntonak.com
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue NW
Washington, DC 20037

Ted A. Huffman
thuffman@huntonak.com
Hunton Andrews Kurth LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202

Richard Roper
Richard.roper@hkllaw.com
Javan Porter
Javan.porter@hkllaw.com
Holland & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201

Counsel for Timothy Lynch Barton

In addition, I further certify that this electronic filing is an exact copy of the paper document and any privacy redactions have been made. This filing has been scanned for viruses and has been found to be free of viruses.

/s/ Charlene C. Koonce

Charlene C. Koonce

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the word limit of Fed. R. App. P. 27(d)(2)(A), because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), the document contains 5,199 words, as calculated using the word processor used to prepare this document, Microsoft Word for Microsoft 365. I also certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Charlene C. Koonce

Charlene C. Koonce