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

RULE 8(a)(2)(B)(ii) APPENDIX IN SUPPORT OF RECEIVER'S RESPONSE TO MOTION FOR STAY PENDING APPEAL

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Because Appellant did not provide the affidavits and other sworn statements supporting facts subject to dispute as required by Rule 8(a)(2)(B)(ii), the Receiver provides the following materials in support of his Response and objection to Appellant's Motion to Stay.

TAB	Description
1	Transcript of December 19, 2022 hearing ("TR")
2	Thomas Declaration submitted with Appendix in Support of Receiver's Supplemental Brief in Support of Motion to Supplement Order Appointing Receiver ("Thomas Dec.") [Dkt. 74]
3	Appendix in Support of Receiver's Response to Motion to Stay Pending Appeal ("Appendix") [Dkt. 85]
4	Receiver's Verified Response to Motion to Stay Order Ratifying DLP Settlement ("DLP Response") [Dkt. 119]

Respectfully submitted,

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CERTIFICATE OF 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:

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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
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TAB 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

CASE NO. 3:22-cv-2118-X

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SECURITIES & EXCHANGE COMMISSION,

Plaintiffs,

v.

THOMAS LYNCH BARTON, et al.,

Defendants.

----------x

TRANSCRIPT OF THE HEARING

BEFORE THE HONORABLE BRANTLEY STARR

UNITED STATES DISTRICT JUDGE

Dallas, Texas

December 19, 2022

10:03 a.m.

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- P R O C E E D I N G S -

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THE COURT SECURITY OFFICER: All rise.

THE COURT: Thank you.

You can be seated.

Okay. We are on the record in Case No. 3:22-cv-2118. That is SEC versus Barton, et al.

Let's do appearances first, for the SEC.

MR. BERNSTEIN: Your Honor, Keefe Bernstein here on behalf of the SEC.

THE COURT: Thank you. Thanks for speaking up since we don't have a microphone for you.

Okay. Who is here for Barton?

MR. EDNEY: Good morning, your Honor.

Michael Edney and Ted Huffman from the Hunton Andrews Kurth law firm for Mr. Barton.

THE COURT: All right. Thank you, Mr. Edney.

And who is here -- so I understand, do we anyone here for Wall?

No one here today for Wall.

Okay. How about for the Receiver?

MS. KOONCE: Good morning, your Honor.

Charlene Koonce on behalf of Cort Thomas,

the Receiver.

THE COURT: Okay. Thank you, Ms. Koonce.

All righty. So we are here on the pending motion for the sale of property. So what I need to do is talk through with Receiver's counsel if we've got any other competing offers. I see that you filed your notice yesterday of no further competing offers.

But tell me the update on that. Any new ones in, and then talk me through best interests, and why you think it is in the best interest of the estate.

MS. KOONCE: Thank you, Judge.

Would you prefer that I approach at the lecturn or stand here?

THE COURT: So you can go either place.

I will say for everybody who's speaking, if you are going to sit at counsel table, just stay seated because once you stand up, you are far away from the microphone.

So wherever you want to go is fine by me, sitting at counsel table or standing at the podium.

MS. KOONCE: I'm actually just more comfortable standing, if it's okay. So I'll --

THE COURT: Fine by me. Go for it.

MS. KOONCE: As you are aware, by your reference to the Receiver's notice, that we did publish notice of the sale and notice of the hearing, which is required by the statute that governs this sale. We did not receive any competing offers.

As we stated in the motion to approve the sale, the motion to appoint the appraisers, there were negotiations on the contract that is before the Court. This was the highest offer received out of four offers.

As the Court is aware, this sale does comply and exceed what the statute requires. It is more than the two-thirds minimum. In fact, it is higher than the appraised value that was submitted.

As the Court requested, I would like to provide some information about why this is in the best interest of the estate.

As the Court is aware, from numerous filings, we have very limited cash and at the same time, we have competing requirements for the cash on hand. For instance, we need to pay insurance on this property and multiple other properties.

We have one property that is subject to HUD loans and those HUD loans require continuing

certifications from accountants. Those are very expensive. And if we don't pay those certifications, the HUD loan could go into default and it could then forfeit the interest, the receivership estate's interest in that property.

Those are just some of the competing obligations that we have for very limited cash.

I know there is a motion to stay the sale. There is a motion that is -- there's an objection to this sale that contends that this sale should not go forward now, that there could be the possibility of irreparable harm. And Judge, the sale has to go forward immediately.

This sale, this property, like every other receivership property that we have encountered so far is heavily encumbered. And it is not encumbered by a traditional loan. It's encumbered by a loan that's incurring interest at 9.9 percent. It's interest only. The lender claims that there is default interest accruing at 18 percent.

We also have to continue to pay taxes. We have to pay the utilities, so that the pipes don't freeze during this weather.

If we don't sell the property very quickly, that interest that is accruing and not

being paid, because we don't have access to pay it, will erode all equity in the property.

THE COURT: When are property taxes due? January 31st?

MS. KOONCE: I'm not confident that is correct but I think so.

THE COURT: Okay. Generally speaking, all property taxes are due January 31st.

MS. KOONCE: I believe that's correct.

THE COURT: Some people pay them the year of --

MS. KOONCE: Yes.

THE COURT: -- December 31st, so that they get the tax deduction for them but --

MS. KOONCE: That is correct. And there's a -- there's a higher assessment -- yes, if you pay late, it increases. That's absolutely true.

THE COURT: Understood.

Okay. So I understand from Barton's filings that Barton would like to rent the house.

Talk me through that scenario and why -- I know you have already talked me through, you need the cash in order to maintain the other properties. Talk me through why it's not --

MS. KOONCE: Right. That would have been

an excellent offer, possibly.

First of all, it was never made. It was suggested in a filing as an alternative as opposed to any communication in response to any conference. It was never offered.

Additionally, the monthly interest on this loan is about $11,000.

We did a little bit of research. The highest monthly rental for any property in the location is about $9,000.

So if Mr. Barton would like to offer and put in place today -- we've had a lot of delay in our communications -- but a contract in which he rents the property, pays all of the accruing mortgage expenses, the insurance, the property taxes, and he's going to warrant that he's not going to remove any more of the property from the premises.

We took possession of it on a day after we had received notice that he was moving art, not just personal belongings, but art and valuable items out of the house.

If that was something that could be put in place immediately, we would consider it. The offer was never made. It was an argument raised in a

motion. There was no conference, there was no request that that happen. So our contention, Judge, is that the time to consider that offer has long since passed.

In addition, as you have observed, paying the expenses to maintain the equity in this property would not help the receivership with our cash issues.

Now, I know the Court is aware, we've also filed a motion to ratify approval of a settlement with another entity. And that potentially could bring in sufficient assets to maintain some of these other properties for some limited period of time.

We didn't receive a conference as to what -- there was no response to our conference as to whether that is going to be opposed. We don't know if the Court is going to approve it. We don't know when that will happen, if it will happen at all.

But the receivership cannot maintain the other properties that we have an obligation to manage without cash. It is just not possible.

With respect to the contents -- I don't know if you want to take that up now.

THE COURT: Sure. I would like to hear

from you.

MS. KOONCE: So there is a motion, as you know, to sell the contents of the property as well. Mr. Barton has also objected to that proposal.

As you are aware from multiple filings and email communications between counsel, we offered to store and hold that -- those contents, at Mr. Barton's cost because, again, the receivership does not have the funds to pay to move those contents out and store them. And we got no response.

In addition, we have asked for confirmation that the furnishings in this property were actually purchased by Mr. Barton. We have received no response to that either.

The response has been, Mr. Barton lived in this property, it was owned by a single purpose entity, therefore, it is his.

Well, the receivership order says that all of the assets of all of these entities now are in the Court's possession and, therefore, the Receiver's possession.

We know, from looking at the bank records, that there was extensive commingling. The Receiver, also, in his investigation, learned that most of the contents of this property were purchased within the

last two years by receivership entities.

We have had absolutely no response to that, that, hey, we need some time to look at credit card statements, we need some time to gather information to demonstrate that these assets were actually purchased by Mr. Barton, none of that.

Instead, Judge, what we have is a continuing disregard for the Court's authority and the receivership order.

For instance, in filing a lis pendens that we discovered was filed the day we conferred on the motion to sell the property. It was filed on December 1st.

Now, the response to that was filed very early this morning was that the Court does not have the authority to declare that lis pendens void. I think that is absolutely incorrect, your Honor.

We relied on Property Code Section 12.008, not 12.007. It is a different procedure. I think the bankruptcy cases that we cited absolutely provide the Court authority.

The Duval case was an instance in which the debtor filed a lis pendens on property that he did not want to be transferred subject to a planned confirmation. The bankruptcy judge said, you cannot

accomplish a stay through a lis pendens which has already been denied in the litigation.

But if the Court is uncomfortable with that procedure, you have a much more simple and direct route as well.

Because the Defendant here has violated your receivership order, you can compel him to sign a release of lien, which we brought with us today. That's absolutely permissible, Judge, that you require the obedience and observance of your court order to allow the sale to proceed in the manner that is contemplated by the receivership order.

In short, the sale is in the best -- in the best interest of the receivership estate. It is absolutely essential to maintaining the value of the other properties that are in the Receiver's possession and control.

We have had no other competing offers. We have satisfied the statute. Everything that is necessary for the Court to consider the sale, I think, has been presented today. But we are, of course, happy to provide any additional information that you need.

THE COURT: Thank you, Ms. Koonce.

MS. KOONCE: Thank you.

THE COURT: All righty.

And let's hear from counsel for Barton, Mr. Edney.

MR. EDNEY: Thank you, your Honor.

Before the Court today is a request to authorize the sale of Mr. Barton's only home.

Since the Receiver kicked Mr. Barton out of his home on October 20th, he's been sleeping on his daughter's couch.

At this stage of the case, the Government has alleged violations of the securities laws but the Government has not produced the documents underlying those claims to us; the Government has not attempted to prove those allegations before a trier of fact.

At the same time, we are challenging the existence of this Receiver and certainly his authority to undertake liquidation.

This sale, your Honor, is permanent. It is a permanent action that would cause irreparable harm and be almost impossible to reverse.

The Court should deny this request to undertake the Receiver's action at this time.

Your Honor, respectfully, selling the -- selling Mr. Barton's home is beyond any legitimate

purpose for this Receiver at this point of the proceedings, prior to any proof, much less finding of liability on the underlying charges.

THE COURT: So receivers can't sell any property until there's a liability finding, in your view?

MR. EDNEY: No, no. I think a receiver could sell property under certain circumstances before there is a liability finding, but that is the extraordinary circumstance.

Then in the general course of events, a receiver is supposed to conserve and identity the assets for use, if there is an ultimate finding of liability, or for return to the Defendant in the event that there is not a finding of liability. It is to conserve the status quo. And this sale would alter the statute quo in a way that is almost impossible to reverse, not conserve it.

There are cases that find an extraordinary need to sell certain forms of property to raise cash to keep operations going. But that showing hasn't been made here, your Honor.

And your Honor, I think it is important to note that the Receiver's first order of business, the day 2 action here was to kick Mr. Barton out of

his home.

It was listed for sale roughly two weeks earlier, and not after some kind of sober appraisal of the financial condition of these entities. And it's not a matter of last resort; it is a matter of first resort.

In our view, respectfully, the Receiver's focus needs to be on the management of the high value commercial real estate assets that are under the control of the business entities, the business entities.

And for cash needs, for some of those assets, Mr. Barton has facilitated offers for those assets from third parties and will consent to their sale pursuant to a well thought out process. And there is many examples of that in the record before the Court at this point.

And let me just mention just a few.

Right now, there is a -- there is a pending, before the receivership order sale, 54 lots at the Venus complex for $3 million that is designed to net $600,000 in net equity.

At the Frisco complex, there is a proposed sale of $9 million in property that would net $3 million in net equity.

With regard to the big apartment portfolio, these are the HUD-backed properties in Fort Worth and elsewhere, at three locations, offers have been raised for $110 million to sell those.

There is a dispute with the Receiver about how much in net equity that would raise, but -- but, in no case is that number less than 7 figures. In fact, in the high 7 figures, into the 8 figures.

So focusing on the business operations of the legacy Barton entities themselves, the focusing on the commercial aspects, there are ways to raise cash that we would consent to, frankly, that are less drastic than selling something so personal to him as his house.

THE COURT: Have you consented to them?

MR. EDNEY: Your Honor, we have -- we have teed them up for the Receiver. We have said that we would consent to them, if they went down the process of getting serious about it and lining it up.

And on that, we have received no meaningful response. We have seen in some of the filings -- these have been in the course of arguments -- that, well, there is a complication here, there is a complication there. But it has not received serious treatment.

And I think that those commercial avenues need to be explored before we go down such a low value proposition of selling this house and something that is so personal to Mr. Barton. And -- and --

THE COURT: Are those properties under 11 percent interest-only loans?

I mean, I get your point. But I'm trying to figure out, it seems to me that this home is in dire straits of because of how it was financed.

MR. EDNEY: But --

THE COURT: And I don't know if the commercial properties were under the same dire straits.

Can you talk me through that? I mean, you are telling me that they would be more profitable to sell.

But if there needs to be a quick sale, it is probably because of the dire nature of the financing of this. So what's the dire nature of the financing of those commercial properties?

MR. EDNEY: Well, I'm not sure that there is a dire nature of financing for those properties, but they would raise cash for the -- for the Receiver's operations.

When the Receiver came and proposed the sale, the purpose of the sale was to raise cash for the Receiver to keep going and doing its work, presumably to pay its fees, presumably to pay other ongoing expenses.

These commercial avenues provide a mechanism for doing that. I mean, frankly, we don't think the house should be in the receivership at all. You know, we have urged that upon this Court. We think under the -- under the Fifth Circuit's Janvey case, there needs to be some effort to trace assets related to these lender loans that are the subject to the SEC's complaints into the purchase of that house. That hasn't been done.

The only reason it is here is because it has been -- because it was held by a special purpose corporation. It had no other business than holding this house. Other net worth -- high net individuals do this.

And I would direct the Court to the SEC's opposition to our motion to stay this receivership or aspects of it.

And this can be found at Docket No. 83 in this case.

Judge, the whole first two pages of that

submission from the Securities & Exchange Commission focuses on the decision that the SEC made not to put Mr. Barton personally in the receivership. And that was an option the SEC believed that it could have, generally speaking, in cases of this nature to choose to put the Defendant himself, in his individual capacity in the receivership.

The SEC chose not to do that. Instead, it focused, you know, just on his business and commercial interests.

And your Honor, I would submit to you that this particular piece of property -- I mean, it is unique in this regard, the house and the property inside of it, his personal belongings, is not just business. It doesn't have to do with his real estate operation. It just happened to be held by a special purpose corporation that did nothing else than hold this property.

And unlike for the 26 companies that the SEC originally thought -- sought to put in the receivership, there was an effort, through the Carol Hahn declaration, which we have some issues with, but there was an effort in that declaration to trace the -- the funds from the -- from the lenders that are subject to the SEC action into those

corporations, right?

Under Janvey versus Adams, the 2009 Fifth Circuit case. And they said, look, some of the -- some of the funds that were received from the lenders from China, they went into those corporations and they were plowed into real estate projects, into this real estate -- commercial real estate development business.

But there was no effort to do so here with regard to this particular entity whose only purpose was to hold Mr. Barton's residence.

And frankly, your Honor, if this corporation were not inside the receivership, and we don't think it should be, the mortgage, no matter its terms, and I -- you know, listen, I get the fact that the interest rate is probably not the one that you are getting or I'm getting. You know, it's higher than that.

But that interest rate and the carry and the maintenance of this house would be Mr. Barton's problem. You know, he would either have to live up to it or the house would be foreclosed upon.

It wouldn't be the Receiver's problem, and I think this is an example why this shouldn't be in the receivership to begin with.

And that is for two reasons, your Honor. First, we haven't seen that tracing of assets into this.

Second, it was a uniquely personal exercise. I'm not going to come up to your Honor with regard to other corporate entities, other of the 155 entities that have now been placed in the receivership and say that it is uniquely personal. It doesn't have to do with the commercial real estate development business that Mr. Barton was undertaking.

But this particular property, your Honor, this is -- this is very, very personal indeed. And it doesn't need to be in the receivership. It should be taken out of it. And should be made Mr. Barton's problem, not the Receiver's problem.

If that's the justification for selling this house, and it's a shifting justification, your Honor. That it is just too hard to deal with this place. It's not -- it is not worth the candle power. Then give it back to Mr. Barton and have him deal with the problem, right?

But instead, where this started was, we are going to pick out this one, this one to keep the lights on, to get our cash flow issues straight for

all the other business entities.

Your Honor, first of all, I don't think that is necessary given the other commercial properties that can be used for that purpose.

But second, your Honor, you know, it is -- it is an extremely personal invasion into Mr. Barton's property rights before he's been adjudicated to have been responsible for any wrongdoing of any kind.

Your Honor, in that regard -- in that regard, turning back to the -- to the -- to the alternatives to this, focusing where the SEC has claimed all wrong, the focus of this receivership should be on the commercial real estate development business.

There are those three other options that I talked about, you know, with regard to servicing the HUD loans, the cost of servicing those loans has been prefunded by independent lending and is on autopilot.

Now, you have not seen the sustained showing from the Receiver that this type of drastic action, taking a man's home before any adjudication of liability is necessary to prevent the loss of crucial assets that are needed to reimburse

potentially the alleged victims of these events. And we will confess that liability. We do not think that he is responsible for it.

But just assuming for sake of argument that he may be in the future, that showing of necessity has not been made.

On top of that, your Honor, we do have a pending appeal on this. And what the Receiver is asking for is liquidation authority that is not currently entailed by the Court's order under appeal.

It is an expansion of the Court's order. And under Fifth Circuit precedence, we don't think the Court has jurisdiction to take this extra step to expand the authority of the Receiver to sell this house.

Your Honor, on the personal property, I want to correct the record a little bit on this personal property issue.

We have had to drag out of the Receiver what he plans to do with this personal property. We want that personal property back. We have been willing to come by, on an hour's notice, with movers to take it out of the house. This is -- this is not receivership entity property. It is property that

happened to be in a man's house. And -- and you know, with regard to this exercise, without access to our business records, without access to the materials in his home, without access to the materials at his office, to go back and prove the financial provenance of every couch and chair, every dish and glass, every piece of clothing in that house is unreasonable.

Where else does one keep one's personal property than in the house in which he lives?

I mean, this is man is 60 years old. He's accumulated some stuff. Apparently, not a lot of it. It is proposed to be sold for $20,000. So -- so not too much.

But he's accumulated some stuff over his life and it is very harmful for that to just be taken away.

And the apparent basis for that, your Honor, is the Receiver's assertion that, well, listen, this -- this house that was owned by a corporation, we haven't traced any lender assets in it, but it was owned by a corporation, so the things in it belong to us.

I don't think there is any basis for that proposition in the Court's order. I don't think

there is any basis for that proposition in law. And whatever your Honor does with the house, I believe the Court should order the Receiver to make that personal property available to us for pickup and return to Mr. Barton's possession.

This $20,000 issue is not worth it, and is more in the manner of a personal attack than in the administration of receivership property.

THE COURT: All right.

Talk to me about their proposed alternative to where they would store it but at Barton's expense on the continued storage cost until a later adjudication can be made on tracing.

MR. EDNEY: Well, your Honor, I am personally not familiar with that proposal. But if it -- but if that is -- you know, I think the right thing to do at this point is to return the property to Barton. But absolutely, it should not be sold.

So if that is -- if that is the halfway house, that it is moved out and moved into a storage locker, where it can be kept safe, pending the resolution of the appeal, that that absolutely should be the alternative that the Court takes instead of approving the sale of this property for

$20,000 to a stranger.

THE COURT: Understood.

MR. EDNEY: Okay.

Your Honor, the -- you know, the SEC sought receivers are not unprecedented but this one, in our view, is extraordinary and contrary to precedent.

SEC-appointed receivers are for Ponzi schemes and emergencies of eminent asset flight. They are for the Stanfords and the Madoffs of the world.

And Mr. Barton is not alleged to have been running a Ponzi scheme. Is not, your Honor. I mean, there is -- there is a flake of that allegation in the SEC's papers, but it is not sustained, and there -- there is barely a sentenced behind it.

And he's not dealing in portable assets, at risk of eminent flight to Switzerland, or some other far stretch of the earth.

He has run a prominent real estate development business in Dallas/Fort Worth for the last 30 years. And because of that, the assets of that business and their associated entities, they are stationary, they are stationary commercial real

estate projects that aren't going anywhere and that can have an eye kept on them.

Moreover, the value of those assets, according to the SEC's initial filing, exceeds $70 million, well more than the $26 million that the SEC is allegedly at issue with regard to these lenders.

The value of those assets, your Honor, however, depend entirely on managing them competently to their development maturity. And the way to destroy that value is to hand them over to a receiver that does not intend to manage them, does not intend to keep going as David Wallace would have, the SEC's requested Receiver, but instead -- but instead to liquidate them now in premature sales.

Now, this is incredibly harmful to Mr. Barton, but it's also particularly harmful to the unsecured lenders, the Chinese lenders, who are the subject of the SEC's claims.

In this case, the situation explains why the Fifth Circuit, in its 2012 Netsphere versus Baron decision, set down rules for when a prejudgment receiver could be ordered. Allegations of fraud are not enough. That is what the Fifth

Circuit said.

Instead, the SEC must show that the receivership is necessary to prevent the flight of assets subject to the SEC's claims.

And again, there has been no evidence of a flight risk. And it is inconsistent with the nature of the assets that the SEC has long said they are subject here.

I mean, these are assets planted in the ground, recorded on public records and very difficult to sell without making, you know, a lot of -- a lot of ruckus with everyone else.

THE COURT: You can sell a company more quickly, though, right?

I mean, it was titled in the name of a sole purpose company. I'm sure it takes time to sell real property, but you sell a company that holds real property and that can be done in 24 hours or less.

MR. EDNEY: You can certainly try to do that, right. You can try to sell the company.

THE COURT: I have seen it done.

MR. EDNEY: Oh, I understand. I understand, your Honor.

But -- you know, again, when we -- look,

what the Netsphere case says, right? Is it needs to be necessary to prevent asset flight. So you can't just say, I think it is going to happen. There needs to be proof that is happening.

We didn't see that in the SEC's submission. And this is not a case that the SEC just dipped its toe into yesterday. They have been investigating Mr. Barton for two years.

And we will have many things to say about the SEC's substantive allegations when the time comes.

But there is no evidence in the record that this was some kind of emergency where -- where the assets were about to fly away. There is no showing of that in the record.

On top of that, your Honor, what Netsphere says -- and I think this is important, not just for the existence of the receivership, but how the receivership is administered, is there a less drastic, a less burdensome on the Defendant alternative to achieve the goals of conserving assets and making sure that they are around in the event of an eventual finding of liability.

And this is -- this is -- this is absolutely applicable to the SEC cases. And you

need to look no further than -- than a decision authored by the judge, who is peering over us today, Judge Fitzwater, the SEC versus Faulkner decision in 2018, where he applied these standards and made sure that they were satisfied.

With regard to that less burdensome alternative is the proposal that we put before your Honor in opposing the imposition of this receivership. And that is, a monitorship, under the SEC's selection of David Wallace, a man very experienced in running a real estate business, that would have achieved this end, it would have prohibited any sales of the corporations or the real estate that you are talking about, but it would have permitted the management of those projects so they could continue to create value.

And Mr. Barton certainly has an incentive to make sure that they're as valuable as possible, not only to pay back the unsecured lenders that are the subject of the SEC's case, but to make sure that they create as much value as possible to be left over for other investors in the project.

That -- that alternative navigates through the -- through the problems that are presented here. We don't have -- we don't have evidence of imminent

asset flight.

We do have evidence that if we -- if we bring in somebody to run this business that cannot move these projects to development maturity value is going to be destroyed.

The solution is to put orders in place that prevents their sale, put a monitor in place that is sophisticated in terms of making sure that the projects move forward, that transactions that need to be done to move those projects forward are done, but those that present any risk of asset flight or loss to the assets are not done, and to continue to report to this Court and to the SEC about it.

That -- that alternative was presented in our papers, but I think recent events show how important that alternative is, how important it is for the lenders that are the subject of the SEC's complaint, how important it is under the Baron -- Netsphere versus Baron standards.

Because these projects can't just be sold right now. They are going to be left with a massive loss if they are; they're not ready yet.

That's what real estate projects are. They have a cycle. And for many of these that you

are going to hear about over the next couple weeks where they -- where the Receiver comes to you for permission to sell these properties, they are not ready to be sold. If they are sold now, they are going to be sold for pennies on the dollar.

But instead, we need a system where these things are managed to their maturity. And that's -- and that's very possible here. And look, I understand the real estate development business is complicated. I wouldn't be very good at it. But we need somebody in place who is good at it. And we need -- and we need a system where they can be managed and we are not just fire-selling for pennies on the dollar because that is not good for any of the entities that are involved here.

Also, your Honor, we have to be mindful of the situation we find ourselves in.

This is a situation where the Government chose to launch a parallel criminal prosecution on the same day as this SEC case. And this SEC case was always meant to achieve this receivership and be stayed and turn the criminal case into the main event.

In light of that, this is also not an emergency. The SEC has been investigating this for

two years.

In light of that, we need to be mindful of whether the receivership and the steps the Receiver is taking are truly necessary or whether they involve an effort to increase the pressure on a criminal defendant by taking his property without any proof of wrongdoing -- before any proof of wrongdoing is made and by hampering his ability to defend himself, to forfeit is right, to put the United States to its burden of proof in the criminal case.

And with so many questions surrounding the propriety of this receivership, we believe that your Honor should not approve the irreversible permanent sale of Mr. Barton's only home.

And if your Honor is inclined to grant the Receiver's motion, we ask that your Honor stay it with immediate affect pending appeal to the Fifth Circuit.

Thank you, your Honor.

THE COURT: Thank you. I appreciate that, Mr. Edney.

Okay. Let me ask, then, SEC, does the SEC have anything to say at this point? I should probably give final word to Receiver's counsel.

You can say anything you want to; I just didn't know if you want to talk today.

MR. BERNSTEIN: Your Honor, I don't think we have anything to add on the issue of the sale of the home. I think it's in our view --

THE COURT: I'm sorry. Do you mind hitting that mic just for us to hear what you do want to say.

MR. BERNSTEIN: The Receiver has put forth a compelling case for why the home needs to be sold. The Receiver has put forth competent evidence that they will be achieving fair value, and nothing that we saw in the papers or that was argued today led us to believe that there would be any reason to second guess the Receiver's judgment in this situation.

And that is our position on the sale of the home.

We obviously reserve our rights to make arguments and have been making arguments in the papers about all the different issues that Mr. Barton's counsel attempted to raise here at argument today about the receivership itself and the scope of the receivership. But I'm also happy to answer any questions the Court may have on those issues as well.

THE COURT: I really only have one question for you today.

And that is, I know there were allegations made that because there is a prosecution going on, this may -- them acting on the home first may seem to be leverage on the prosecution.

I'm going to try to tell you a disclaimer and then ask you a question.

The disclaimer is, in cases like this, I usually don't pick the SEC's recommended receiver. And it's not because I think you are bad people. I think you are lovely people and your proposer picks would be lovely.

But I like separation when it comes to the receiver in cases where there is also a criminal prosecution, so that we can't have the type of collusion that he's suggesting might be occurring in this case.

So my question is this: Has the SEC been suggesting to the Receiver that they go after the home first to apply more pressure on Barton as a result of the criminal proceeding?

MR. BERNSTEIN: Absolutely not, your Honor.

THE COURT: Okay.

Have they suggested that to you -- that if they go after the home first, that might help your case on the criminal side?

MR. BERNSTEIN: They have not.

THE COURT: Okay. Got it. That is my only question for you.

MR. BERNSTEIN: Thank you, your Honor.

THE COURT: You bet.

Okay. Final word. And I would like to hear your thoughts. I know their suggestion of David Wallace as the Court-appointed monitor will conserve resources for the receivership estate.

I know, in my mind, that is an argument more largely directed to future discussions rather than today's discussions.

We are not talking about a real estate project that is 80 percent developed with regard to this home.

But that is a key question in my mind.

And then the other question I would have is, talk to me about offers on other properties, like the Frisco property, how quickly you think they could bring cash in to the receivership that would keep the lights on at the other properties.

MS. KOONCE: So you do want me to address

the monitorship? I want to be clear.

THE COURT: I would like to hear but not in full depth because I think it is largely a question for another day, if that makes sense.

MS. KOONCE: Yes.

THE COURT: But when the other day comes, you will be a hundred percent down the track you want to. And I know y'all are thinking of which track to take at this point.

So my question is largely one of this 30,000-foot discussion on the monitorship.

MS. KOONCE: Let me step back from that just for a second because I would like to address the contention that receiverships are only for Ponzi schemes and the suggestion here is that a receivership or a monitorship would simply hold assets until the end of the day following a judgment.

Your Honor, that's a post-judgment remedy, right? If you're not going to sell anything, we can't do anything, that is a post-judgment remedy.

If you want a receivership or a monitorship, you have to have assets to manage what you have. Whether or not those assets are necessary to continue paying for appraisals on a property or

development to see it to fruition, you have to have assets. And if that occurs in the context of a monitorship, the Receiver is still going to have -- needs cash. It is going to have to raise money somehow.

There is no cash here. So whether you had a monitorship or a receivership is irrelevant to that particular issue.

I have been involved in many monitorships. I've been a monitor for the FTC in cases. It is far more expensive than a receivership, to be perfectly honest. And if the goal here is to preserve assets for the victims of the fraud that is alleged by the SEC, then the goal here is to be expedient with the money that we have.

A monitorship requires extra layers of supervision and it is very difficult to supervise, for the Court to supervise, for the monitor to supervise.

It is very difficult for banks and third parties to comply with, because you have to look at every single thing that comes through as opposed to appointing one person who is the receiver, who is the Court's agent, who is complying with the Court's order. It is much more expedient.

So my suggestion with respect to a monitorship is that you would be undermining the goal of the remedy that is here. Even if you wanted to have a monitorship, however, as I said, you have to have assets. You have to have cash in order to protect the value of what is at stake.

My understanding with many of these developments is that, for instance, the properties that should be sold quickly, but at the same time they are going to take years to develop -- that is what we just heard, right? The Receiver should be accomplishing these sales very quickly but we're not going to see the value until many, many years down the road. That is a contradiction, your Honor.

If we have to develop these properties by putting in roads or obtaining entitlements from the government, somebody has to supervise that process and we have to pay vendors and other people to accomplish that.

That has to happen in a monitorship or a receivership, either way. So the problem here is, the way these businesses were structured, at least from our perspective is, they are all highly leveraged. There is almost no cash.

Mr. Barton, himself, was struggling to pay

for the development of these. We know that is true, because when we stepped in, we stayed four foreclosures, four of them.

So if the issue here is preserving assets and you want to have a monitorship, are you going to still stay foreclosures so that we can preserve these other assets?

We have -- the problem here, your Honor, is a failure to be in touch with reality. These properties -- the property at issue here was on the market. There was a listing agreement signed that we found in the office when we came in.

So while it may be Mr. Barton's personal residence, and we are not unsympathetic to that issue, he was preparing to sell it when the receivership -- when the receiver order was entered.

I don't know what was behind that. I also am frankly shocked that Mr. Barton would come to the Court and make arguments that the SEC or the Receiver, for instance, has not been able to trace assets into this property.

While at the same time, he has failed and in fact refused to comply with the Court's order to provide bank records and accountings and information and indeed an inventory of the assets that he

removed from that property. Items that could have been sold that would have been less dear and personal to Mr. Barton.

Additionally, we know, just from the information that we saw in the Turtle Creek office, that Mr. Barton has treated these entities as his personal wallet, if you will.

We have assets that were listed on an accounting statement for JMJ Holdings, which reflected $12 million in art. $12 million in 2019. And yet Mr. Barton has given us an inventory of art worth, I think, $80,000 and said it was all his, purchased with his own money.

Where did that $12 million in art go, your Honor? We don't know. Because Defendant Barton will not comply with the Court's order.

For him to come to the Court today and complain that the Receiver or the SEC, for that matter, has been unable to trace assets into -- trace the investor funds into these assets is very disingenuous.

With respect to the personal belongings -- I don't know if you want to get into any of that. I can address those issues, but I know you wanted me to speak to the monitorship.

THE COURT: Yes. I think you already have.

MS. KOONCE: Okay.

And what was the other issue that you wanted me to address specifically?

THE COURT: If sale of other properties, like the Frisco property, could be accomplished in time to generate cash for the receivership.

MS. KOONCE: Yes.

And thank you. I'm sorry I had to ask you to repeat the question.

Absolutely not. These are, as Mr. Barton has alluded, these are complex properties. Every single one of them is subject to extensive liens or competing claims in equity. Some of them, those competing claims, potentially extinguish any value held by the receivership estate.

But even if you assume that is not the case, if you just look at one property that is not subject to a competing claim of ownership, as opposed to a lien, it will take months. And we do have, I think, letters of intent on several of them. We have one that is potentially subject to a contract; Mr. Thomas could speak to that more clearly.

But even those contracts contemplate months and months and months to get to a potential sale.

And as Mr. Barton also has stated, while he might agree to the sale of those properties, he's alluded that the Receiver has not given full attention or full effort to the sales that he would prefer that we -- that we focus on, and that is because what we have said in emails that are part of the Court's record, I think they were submitted with the Receiver's response to the motion to stay, the properties at issue there are subject to huge liens.

So while we would prefer to sell those properties as well, we would have been happy to proceed immediately to that.

It still would not have satisfied our immediate need for cash to preserve the other assets and, frankly, to sell those additional properties.

We can't sell them without paying for appraisals. We can't sell them without accommodating the requirements of the statute.

So our hands are tied. And Mr. Barton has tied them in the way that he has managed these properties, drained all the cash out of the bank accounts, at least the bank accounts we have been

able to find to date. There may be more, we don't know. He won't tell us.

With respect to Mr. Barton and his counsel's familiarity with our request or offer to store the contents of these properties, with all due respect, Mr. Edney is aware of that offer. It was sent to him in an email, very, very specific. We would be happy to do this. And that email is in the Court's record, in the appendix, in support of the Receiver's response to the motion to stay.

I highlighted that. It is in the docket. We sent, I think it was two weeks ago that we would be happy to do that. We got no response.

So respectfully, your Honor, we are stuck. The Court has appointed Mr. Thomas to oversee these properties, to manage them, and to preserve their value. We cannot preserve the value in the more larger properties, the properties that will take months to years to either bring to fruition or to sell.

We are not receiving cooperation from the Defendant. We are not receiving the materials that the Court ordered him to provide.

And yet, we are being told to sit and wait while these properties potentially dissipate in

value and we are not able to accomplish the mandate of the order.

THE COURT: Thank you.

Can I ask you one final, quick question?

Can you flush out your tracing argument a little more? Because I know he made a lot of that, in not following Janvey and having an exact tracing of the funds used to pay for this home, tracing back to the original alleged unlawful conduct.

MS. KOONCE: Yes, your Honor. So let me start also with the Janvey versus Adams. There's a million Janvey cases.

Janvey versus Adams, first of all, was not a tracing case. It was a -- an issue as to whether or not certain investors were properly named as relief defendants. And a relief defendant is completely different context than what is going on here.

But with respect to tracing, I think this is Mr. Barton's argument that the Court reconsider entry of the receivership order from its inception.

The Receiver, as you know, we didn't have anything to do with the SEC filing its case, didn't have anything to do with the Court's decision as to whether to appoint a receiver but the -- in seeking

a receiver and filing that motion to appoint a receiver, the SEC engaged in some tracing and what the evidence in support of that said was, to the best of their ability at that time to trace, they had discovered commingling, I think the Hahn declaration said from the very beginning of the investments.

And what the Receiver has discovered, obviously, we were able to go in and obtain additional information that the SEC did not have at the time it filed that motion, we have discovered additional commingling.

We filed, as you know, a massive appendix in support of the Receiver's motion to demonstrate that the additional entities that were operated by Mr. Barton were properly within the scope of the receivership order as entities controlled by him.

But in addition to that, we have seen extensive commingling, that one entity takes out a loan to purchase property for another entity and that same entity pays off another loan.

We have also seen evidence that we believe suggests -- and I'm not going to testify that it does or provide testimony -- but it suggests that there were some efforts here to put intercompany

loans in place after this happened in order to justify the banking transactions that we've seen.

Now, we have sent the receivership order out to dozens of banks, and we have received some banking records back.

We do not have access yet to all the QuickBooks accounts. Our understanding is there are 26, I think -- QuickBooks accounts. We tried to get access to that. It was denied. We were not given those credentials.

We still do not have credentials to the websites. We don't have credentials to the cloud data that would allow us to find information about what was happening with these assets. It's not been provided. Even though the receivership order compels it, we specifically asked for it over and over again.

And we have conferred about a motion to show cause and -- because of the violations of the receivership order.

If we had that information, it might have allowed us to provide more detail in terms of the potential commingling of investor assets that we have seen.

But what we have seen to date says, we

haven't seen any evidence that any money was not commingled; it was all commingled. We haven't seen any segregation of assets between specific entities. It just -- there is no evidence that that actually happened.

So it is not possible for us at this -- I think we are 60 days in, to tell the Court, absolutely, we saw money coming, you know, from one investor into this entity to purchase the house. We have seen no other explanation, however, for how these businesses were operated.

So we -- while I believe down the road is it possible that we may be able to provide that information? Very likely. I think it is probably going to be the SEC's burden.

But at this point, it is not possible for Mr. Thomas to perform the Court's mandate to protect these additional assets without cash. We just can't do it.

THE COURT: Understood. Thank you.

Okay. So what I need to do is make some findings and rulings now that I have heard the parties out.

What I'm going to do is talk first about the sale of the home, second about personal

property, and then third about the stay.

On the sale of the home, here are my findings:

First, just mechanically from a numbers standpoint, I think the sale price being above the appraised value, obviously meets the two-thirds test in the law. So I think it meets the legal test for sufficiency, and I find that there are no competing offers that meet the threshold of being 10 percent higher than that offer.

Is it in the best interest of the receivership? I think it is, notwithstanding the personal connection of the home.

On the personal connection of the home, I do note the listing agreement that they found when -- when they took possession of the property.

I have had another situation like this where someone argued it was intrinsically personal to them. I went with them on that and then they put the home up for rent.

So I have been burned by that before and the listing agreement tells me that perhaps the personal nature of the home isn't as strong as it otherwise would be.

But here is my analysis on the rest of it.

First, it is an interest-only loan, right? 9 percent is the floor and then foreclosure rates go up from there.

Interest rates are still increasing. And then we had the Federal Reserve in Dallas say that residential properties could diminish in value by 20 percent, given the economic forecast that they are seeing. Could; doesn't mean it will. And so that is the backdrop I'm looking at this in. And I will take judicial notice of that because it is the kind of the thing I can take judicial notice of.

Property taxes are due January 31st. There is cash needed to keep the receivership going to maintain the other properties that are in the receivership estate.

The sale of other properties are not as efficient from a timeline standpoint as the sale of this property because they are not properties in development or have other encumbrances on them, like the other commercial properties would.

On commingling and tracing, it seems like commingling was the rule of the day for how Barton ran his different entities. And so I think I have seen enough to know that it was funds that were at issue in the SEC allegations that were used for the

home.

And then seventh is, while this property isn't necessarily mobile and subject to offshore dissipation, I do think the asset value of the property is dissipating, right? When we look at the potential 20 percent drop in the value of all homes in the coming year, when we look at the interest-only nature of the loan, the property taxes that are due, this property is unlike the other properties, in that it is a quickly depreciating asset, given the current nature of its financing and property taxes that are coming due.

So I will say that the sale of the home is in the best interest of the receivership, and I will approve that sale for -- for completion on the 28th of the month.

I will get to the stay just in a moment.

Personal property.

I view personal property a little bit differently than I view the home itself.

I don't see the personal property as rapidly dissipating in value. And so I don't think I can sign off on the sale of it, because it is not under interest-only financing and property taxes due on it.

I will say that I'm fine moving it into storage, right? I don't think you need to return it to Barton because I do still think the receivership has a valid claim to it and then we need to adjudicate that at the right point in this case.

I'm not going to order the storage be at Barton's expense yet, but I don't know the cost of the storage and y'all don't either yet. And so that is an issue that we need to keep thinking through.

If we are storing property that's worth $20,000 total and it is cost him $3,000 a month, we need to make a quick determination on that. And then I need Barton to be ready to decide if he wants to shoulder the cost of that. If that property is uniquely personal enough to him to where he would rather pay the storage costs until we can reach a determination, then that needs to be a decision he can make.

Which takes us to a stay. I know there's a request for me to stay my ruling if I grant the motion. I'm granting it, certainly in part, as it relates to the home, not as it relates to the personal property.

I'm going to deny that request. The reason being, I think time is of the essence on

this. I think it is -- the closing date is on the 28th. And I think if we push off beyond that, I think we can see an increase in interest rates that's drives an increase in mortgage rates, that drives an increase in the student loan -- student loan -- this mortgage interest-only rate.

So students loans are all the rage of court challenges these days.

So I don't think it's -- I don't think I can grant the motion and also grant the stay. I think it's illogical for me to do that. I can't split the baby like that. I'll ruin the whole thing if I do that.

But I recognize the Fifth Circuit might disagree with me and stay this and shut it down. In which case, we will all abide by whatever they say. So I don't plan on going with your stay. I will deny that request.

Okay. That is all I'm prepared to rule on at this hearing.

Other questions or issues that --

MS. KOONCE: Yes. Your Honor, we have the issue of the lis pendens. That while Mr. Barton contends it is not -- we can still close the sale with lis pendens, our title company begs to differ.

So we either need the Court to declare that void or compel Mr. Barton to sign a release of lien. The release lis pendens. He will have to sign it in front of Notary, but I have a copy here. I can provide it to Mr. Barton's counsel, but we would request that you compel him to sign this by the close of the day and provide it to the Receiver.

THE COURT: Understood.

Okay. We have got the choose-your-own-adventure now.

What I will say is, I do think the lis pendens is void. The question is, will Barton sign it or do I need to declare it void?

Do you need to confer with your client on that basis? We can take a five-minute recess and you talk.

MR. EDNEY: I don't need to confer, your Honor. If you are going to declare it void, we would disagree with that decision, and -- but, you know, obviously, your Honor is set on that path.

So we think the lis pendens is perfectly valid. We are -- we have a pending proceeding before your Honor contesting the Receiver's authority to sell it. This issue is under appeal. It hasn't been resolved by the Fifth Circuit yet.

It won't block the sale. It is not a lien. It is constructive notice to the buyer that in the event that this proceeding goes in the other direction, either here or in front of the Court of Appeals, that we are going to be coming back for this property.

So it is the buyer's choice. It is not a lien. It is not a legal impediment to sale and it was properly filed.

THE COURT: Understood.

Have you've gotten me a proposed order or can you get me one?

MS. KOONCE: I believe we submitted a proposed order on Friday. I'm happy to submit it again. We have to have something to give to the title company, so that they show it is clear.

THE COURT: Understood.

Okay. And then the last thing I will ask is, can the Receiver order a copy of this, just so I have my findings on the record.

It doesn't have to be expedited, a copy of the transcript of this proceeding.

And then we will find your proposed order from Friday. If we have any trouble locating it, we'll email all counsel and ask for you to reply all

to that email.

All right. Anything further for this proceeding?

MR. EDNEY: Yes, your Honor.

Earlier in these proceedings we had a discussion.

THE COURT: Y'all can stay seated, just so I can hear you better.

MR. EDNEY: Okay. Sure. You bet.

Your Honor, earlier in these proceedings, we had a discussion about alternatives to this receivership and the necessity to continue to manage these real estate projects to create value as opposed to liquidating them and the potential for doing that through a monitorship.

And just for a small digression, your Honor, the value in a monitorship here that leaves management in control of these projects, experienced management, driving the projects forward but while preventing sales and other dissipation is that these projects can come to their full fruition for investors and for the lenders that are subject of the SEC complaint.

As your Honor pointed out earlier in this hearing, there will come a point where the Receiver

is 100 percent down the road of selling things because it cannot manage them.

And I would like a hearing before your Honor, sooner rather than later, in the early part of next year, that discusses that fork in the road. Because, you know, I understand your Honor put in the receivership order on the 19th of October. We did not have a hearing then.

You know, this is a pretty focused issue now about -- about whether -- whether -- what the time horizon is on these projects and what is going to be required to maximize their value versus what is appearing to become a liquidation strategy at the receiver level.

And I would just ask your Honor to consider putting a hearing on the schedule to consider that issue.

THE COURT: Understood.

I have hearings on motions, and what I have heard from you is not enough to convince me yet. I would say file a motion with an accompanying request for a hearing, right?

The person in the best position right now to make that argument is Barton. And so make the argument, tell me how much cash it would take. They

think it would take a lot more cash than you are suggesting it would, right? But I need something more concrete and more convincing from you.

But I don't have hearings to have chit-chats. I have hearings on motions, but very specific and concrete, which is why I don't really like motions coming up in responses to replies, right? Don't embed a motion in a response to a reply. File a motion, right? And if I need to get an expedited response, I can get that.

But file your motion, if you want a hearing on it. And we can talk more fully through it. But in your motion, lay out how much cash you think it would take to accomplish the objectives of a monitorship and then we will see what their position is.

MR. EDNEY: Yes, your Honor. We are happy to do that.

We do have a fully briefed motion for stay of the receivership pending appeal that deals with broader issues but -- including this. But if it would help the Court, we would be more than happy to put a targeted motion on file to address this particular issue.

THE COURT: Understood. I will look

forward to it.

Okay. Not having anything further, I will go into recess, and I will see y'all at the point we have a hearing on that motion.

MR. EDNEY: Thank you, your Honor.

THE COURT: Thank you.

THE COURT SECURITY OFFICER: All rise.

(Proceedings concluded at 11:03 a.m.)

C E R T I F I C A T E

I, Kelli Ann Willis, RPR, CRR, CSR certify that the foregoing is a transcript from the record of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

This 30th day of December 2022.

s/ Kelli Ann Willis
Official Court Reporter
The Northern District of Texas
Dallas Division

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TAB 2

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**C.A. No. 3:22-cv-2118-X**
	§	
TIMOTHY BARTON, et al.	§	
	§	
Defendants.	§	

APPENDIX IN SUPPORT OF RECEIVER'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SUPPLEMENT ORDER APPOINTING RECEIVER

Respectfully submitted,

By: */s/ Charlene C. Koonce*

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(d)(1)(B), as amended, no certificate of service is necessary, because this document is being filed with the Court's electronic-filing system.

EXHIBIT	DESCRIPTION	PAGES
A	Declaration of Cortney C. Thomas	APP000001-0018
A-1	SEC Subpoena	APP000019-0046
A-2	Email dated May 23, 2016 from Tim Barton to Sakya Bedoya making Max Barton owner in TRTX Properties	APP000047-0048
A-3	Excerpts of testimony of Saskya Bedoya, taken March 10, 2022	APP000049-0057
A-4	Bedoya emails regarding transfers	APP000058-0062
A-5	Excerpts of testimony of Tim Barton, taken May 24, 2021	APP000063-0067
A-6	Resolutions of TRTX Properties, LLC dated December 17, 2020	APP000068-0070
A-7	Certificate of Amendment for TRTX Properties, LLC dated July 20, 2020	APP000071-0074
A-8	Statement of Change of Registered Office/Agent dated May 2, 2022	APP000075-0077
A-9	Warranty Deed with Vendor's Lien of TRTX Properties, LLC dated May 29, 2020	APP000078-0082
A-10	**GILLESPIE VILLAS** Amended and Restated Company Agreement of Gillespie Villas LLC dated April 28, 2022 • Certificate of Formation Limited Liability Company for Gillespie Villas, LLC, filed on April 18, 2022 • Deed of Trust and Security Agreement dated May 11, 2022, between Broadview Holdings and Gillespie Villas, LLC • Broadview Holdings checks referencing "Gillespie" • Guaranty dated August 23, 2022 between Gillespie Villas, LLC ("Borrower"), Xiao-En Fang ("Lender") and Enoch Investments, LLC ("Guarantor") signed by Maximilien Barton as President • Subordination Agreement dated August 23, 2022, between Broadview Holdings, LLC and Gillespie Villas, LLC	APP000083-0117 APP000118-0120 APP000121-0140 APP000141-0146 APP000147-0151 APP000152-0156
A-11	**ONE SF RESIDENTIAL** • Corporate Entity Name List • Certificate of Formation – ONE SF Residential	APP000157-0159 APP000161-0162

EXHIBIT	DESCRIPTION	PAGES
	• Texas Franchise Tax PIR – ONE SF Residential	APP000163
A-12	**VENUS59 LLC** • VENUS59 EIN • Certificate of Formation – VENUS59, LLC • Company Agreement – Venus59, LLC • Texas Franchise Tax PIR – VENUS59, LLC • Broadview Holdings check to VENUS59, LLC • Funding Agreement – Venus59, One SF Residential	 APP000164-0171 APP000171A-B APP000172-0204 APP000205-0207 APP000208 APP000209-0261
A-13	**TRTX PROPERTIES, LLC** • Texas SOS – TRTX Properties, LLC • Certificate of Formation – TRTX Properties, LLC • Reinstated Regulations of TRTX Properties • Barton email to Bedoya • Notice of Appeal; *In re: FM 544 Park Vista, Ltd, et al.* • Texas Franchise Tax PIR – TRTX Properties • Statement of Change of Registered Agent – TRTX Properties • Broadview Holdings check re TRTX Properties	 APP000262-0265 APP000266-0267 APP000268-0303 APP000304 APP000305-0308 APP000309 APP000310-311 APP000312
A-14	**MXBA LLC** • EIN – MXBA – Maximilien Barton sole member • Broadview Holdings checks to MXBA LLC	 APP000313 APP000316
A-15	**TITAN INVESTMENTS** • Statement of Organizer – Titan Investments • State of Delaware Certificate of Formation – Titan Investments, LLC • Limited Liability Company Agreement – Titan Investments • Application for Registration of Foreign LLC – Titan Investments • Contract of Sale between First Development Co. of Ohio and Titan Investments, LLC • Letter of Intent – Titan Investments and Datavault Joint Venture • Letter of Intent – Titan Investments and First Development Co. of Ohio • Resignation of Tim Barton from Titan Investments • Contract of Sale between Kingdom Road Equities and Titan Investments	 APP000317-0318 APP000319 APP000320-0323 APP000324-0325 APP000326-0347 APP000348-0351 APP000352-0356 APP000357 APP000358-0373 APP000374-0376

EXHIBIT	**DESCRIPTION**	**PAGES**
	• Receipts and Disbursements Ledger – Titan Investments • Broadview Holdings checks – Titan Investments	APP000377-0383
A-16	Participation Agreement – Marine Creek	APP000384-0413
A-17	**TC HALL, LLC** • Limited Liability Company of TC Hall, LLC • Texas Secretary of State – TC Hall, LLC • 07.19.22 Email from Tim Barton to Area Pamenari • 06.30.22 Letter from Louisiana National Bank to Enoch Investments • Broadview Holdings checks re: Hall Street • Prosperity Bank – Receipts and Disbursements Ledger • Commonwealth Title – Single Ledger Balance • Vista Bank statements • Commonwealth Title of Dallas Substitution Form 1099-S • 08.24.22 Email from Barton regarding wiring instructions • Broadview Holdings checks referencing TC Hall	 APP000414 APP000420 APP000421 APP000422-0423 APP000424-0426 APP000427-0428 APP000429-0432 APP000433-0442 APP000443 APP000444 APP000444A-B
A-18	Texas Secretary of State Certificate of Filing of Titan Investments, LLC	APP000445-0448
A-19	**LC ALEDO TX, LLC** • Statement of Change of Registered Agent – LC Aledo TX, LLC • Texas Secretary of State Registered Agent – LC Aledo TX, LLC • Excerpts from Supplement to Amended Motion to Compel, *Somerset-Lost Creek Golf, Ltd. v. LC Aledo TX, LLC*, Cause No. 096-319595-20 • Affidavit of Timothy Barton - *Somerset-Lost Creek Golf, Ltd. v. LC Aledo TX, LLC*, Cause No. 096-319595-20	 APP000449-0451 APP000452-0454 APP000455-0458 APP000459-466
A-20	Wire Transfers	APP000467-0472
A-21	Broadview Holdings check to Holland & Knight	APP000473-0474
A-22	Spreadsheet – TC Hall	APP000475-0480

EXHIBIT	**DESCRIPTION**	**PAGES**
A-23	Communications between Receiver counsel and Barton counsel	APP000481-487

EXHIBIT A

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**No. 3:22-cv-2118-X**
	§	
TIMOTHY BARTON, et al.	§	
	§	
Defendants.	§	

DECLARATION OF CORTNEY C. THOMAS
IN SUPPORT OF MOTION TO SUPPLEMENT RECEIVERSHIP ORDER

1. My name is Cortney C. Thomas. I have personal knowledge of the matters set forth in this Declaration, I am of sound mind, and I am otherwise competent to testify to these matters.

2. I am an attorney licensed to practice law in the State of Texas. On October 18, 2022, I was appointed Receiver in the above-styled case and ordered to take exclusive possession and control over all assets belonging to or under the control of the Receivership Entities. *See* Order Appointing Receiver (the "Receivership Order") ¶1.

3. This Declaration supplements the information provided in support of the Motion (the "Original Declaration"), and is provided in support of the Motion and in response to the Objection filed by Max Barton regarding Gillespie Villas LLC, Venus 59 LLC, TRTX Properties LLC, MXBA LLC, and Titan Investments LLC (collectively the "Disputed Entities"), as well as my request to identify TC Hall, LLC, Titan 2022 Investment, LLC,[1] Marine Creek SP, LLC, and LC

[1] As demonstrated below, Titan 2022 Investment, LLC is the same entity as Titan Investments, LLC. The former is the name under which the entity is registered to conduct business in Texas, while the latter is the entity's name based on its Delaware incorporation.

Aledo TX, LLC (collectively the "Additional Entities") as Barton-controlled entities within the scope of the Receivership Order.

4. As explained in the Original Declaration, on October 18, 2022, and the days following, my team and I travelled to the Turtle Creek Property utilized by JMJ Development, LLC and most Receivership Entities as their office location. While there, my counsel or I interviewed two attorneys who provided legal services to Barton and the Receivership Entities. We also spoke to both attorneys subsequently in person, over the phone, and communicated by emails. In those conversations, one or both of the attorneys informed me or my counsel (1) that certain entities, including but not limited to TC Hall, LLC, had been created by Barton with Max placed in charge to create distance between the deals and Barton as a result of the SEC's investigation and (2) that Receivership Entities had contributed capital and, indirectly, collateral towards the purchase of assets by TC Hall, LLC.

5. Notably, a subpoena the SEC served on Barton in December 2020 reveals that Barton was aware of the Commission's investigation at least by that date. A true and correct copy of a Subpoena the Commission served on Barton on December 11, 2020 is attached as Exhibit A-1. As discussed below, additional documents support the information I obtained in these interviews, that not later than December 2020, Barton began structuring deals and creating or using certain entities to obscure his involvement by identifying Max as the owner or manager of the entities.

6. Similarly, but perhaps even more importantly, other documents demonstrate that Barton shifted ownership of entities to Max his son, at least on paper, to obtain more favorable financing. For instance, in an email to his administrative assistant following instructions from another person regarding how to obtain favorable refinancing, Barton instructed her to "Do as Robert says and make Max owner in TRTX and we will make him sign and then I will be added

as guarantor." A true and correct copy of this email, which was discovered in the Turtle Creek Property, is attached as Exhibit A-2. Transferring ownership for the reasons and in the manner demanded by Barton demonstrates he treated the Disputed Entities, like all Receivership Entities, as nothing more than his alter egos and that he must have known that in transferring ownership he was not giving up control.

7. Through her attorney, Saskya Bedoya informed my counsel that she served as Barton's employee (through various entities) and followed his instructions in setting up entities, obtaining bank accounts and tax IDs for them. True and correct copies of excerpted pages from Ms. Bedoya's testimony to the SEC, where she testified about the same practice for various Wall Entities and her role with Barton generally, are also attached as Exhibit A-3. True and correct copies of emails the SEC submitted in support of the Motion to Appoint which demonstrate Barton's control over Bedoya regarding treatment of funds received from investors, are attached as Exhibit A-4. Similarly, in testimony before the Commission, Barton identified Bedoya as his personal assistant. True and correct copies of relevant pages from Barton's testimony regarding Bedoya's role is attached as Exhibit A-5.

8. My team and I continued investigating the Receivership Entities, their assets and operations and determined it was necessary to obtain an order clarifying their inclusion in the Receivership Order. Before filing the Motion, my counsel sent a preliminary list of supplemental entities to all counsel. Barton's counsel identified several entities that Barton claimed he did not control, or regarding which Barton otherwise objected to inclusion but did not object to the majority of the entities included in the list as subject to his control.

9. Additional email conferences followed during which I or my counsel provided additional evidence and my rationale for including the Disputed Entities. Because agreement was

not reached, and although my investigation was ongoing and suggested additional entities not included in the Motion would need to be identified on a later date, I filed the Motion.

10. One entity that we conferred about, but did not include initially, was TC Hall, LLC. We continued investigating that entity and as described below, have now obtained sufficient information demonstrating Barton's control over it to warrant its inclusion in the Receivership Order as an entity controlled by Barton.

11. In the initial days of the Receivership, my counsel and I also interviewed Max Barton, together with his counsel, primarily to discuss management and operations of a property owned by Goldmark Hospitality, LLC, the "Amerigold Suites." We also discussed TC Hall, LLC, an entity Max claimed he together with an individual who invested in TC Hall, LLC, controlled.

12. During the interview, Max disclosed that although he had been placed in charge of the Amerigold Suites by his father, he had been unable to manage it profitably and had requested his father's intervention and assistance. An additional individual I spoke with in person also stated that Max was not capable of running any of the businesses operated by the Receivership Entities. I find it extremely unlikely that Max controls, alone, the real estate investment deals for any of the Disputed Entities. As described below, documents and Barton's role in each of the Disputed Entities supports my conclusion in this regard.

13. Based on the information described below and attached as exhibits, I have concluded that each of the Disputed Entities and the Additional Entities are controlled by Barton and are properly included within the Receivership Order as Receivership Entities. My investigation has revealed that regardless of who is identified in corporate records as the "manager," or officer of any such entity, Barton controls each, either directly or indirectly. As one example only of Barton's disregard for authority or control as reflected in corporate records relates to TRTX

Properties, LLC, Barton and Max were both initially designated as managers. App. 302-304. As of July 20, 2020, MXBA Trust, however, was designated as the "Manager" for TRTX Properties, App. 71-74. A December 17, 2020 Resolution removed Max as President and appointed Barton in that role, App. 18-70. Copies of documents reflecting Max's title as President and the Resolution by which he was purportedly removed are attached as Exhibits A-6 and A-7; App. 68-74. As reflected in Exhibit A-8, on May 2, 2022, Barton signed a Statement Change of Registered Officer/Agent for TRTX, thereby reflecting his continuing control, App. 75-77, despite substitution of MXBA Trust as the Manager. Similarly, although Max was purportedly President of TRTX until December 17, 2020, on June 9, 2020, Barton signed a Warranty Deed on behalf of TRTX. A true and correct copy of the Warranty Deed is attached as Exhibit A-9; App. 75-82.

14. As to each of the Disputed Entities listed below, I and my team discovered corporate formation binders and other documents that were housed in the office of Barton's primary administrator, Saskya Bedoya. There was no distinction between the Disputed Entities and the other Receivership Entities; rather, the binders for each entity were kept in alphabetical order over a series of multiple drawers.

15. The documents in the binders, for instance correspondence with the IRS regarding EIN numbers, or mail found at the Turtle Creek Location demonstrate that most entities, including the Disputed Entities and the Additional Entities, generally use a UPS store address at 13901 Midway Rd., Ste. 102-243, Dallas, TX 75244 (the "Midway Address"). Based on notices received from banks and vendors, I believe that Gillespie Villas and perhaps one or more of the Disputed Entities changed their mailing address after entry of the Receivership Order.

16. After I began collecting mail from the Midway Address, the proprietor of the UPS store informed me that Tim Barton had demanded the proprietor "close" that mailbox when the

proprietor refused to provide all mail delivered to that address directly to Barton rather than the Receiver. Through counsel, I demanded that Barton cease and desist from this activity, which directly violates ¶¶ 30-32A of the Receivership Order. In response, Barton denied having interfered with the mail delivery.

17. More specifically regarding each of the Disputed Entities, I have discovered the following information and documents demonstrating Barton's control over each.

18. **Gillespie Villas, LLC**

- Texas entity formed April 18, 2022; uses 2999 Turtle Creek as its address, the location from which JMJ Development operated. Real estate purchased by Gillespie Villas, LLC is only blocks away from 2999 Turtle Creek.
- MXBA, LLC is identified as only member in Amended Company Agreement, executed April 28, 2022. [Dkt. 53-1, pdf pg. 33]; App. 116.
- The Certificate of Formation filed for the entity, on April 13, 2022, however, reflects MXBA, LLC and One SF Residential, LLC, which is admittedly controlled by Barton. [Dkt. 7-1, pdf pg. 24] [2].
- Property owned by Gillespie Villas is subject to a lien held by Broadview Holdings, LLC, an entity that Barton admitted he controlled.
- On September 9, 2022, Broadview Holdings paid Stone Street Development LLC $15,000 for "Gillespie."
- On September 15, 2022, Broadview Holdings paid Texas Brand Bank $17,100 for "Cashier CK in the name of Gillespie Villas LLC." Checks from the Broadview account at Texas Brand Bank evidence similar and additional payments made by Broadview Holdings on behalf of Gillespie Villas, as if the two entities were one and the same.
- Gillespie borrowed $550,000 from a third-party lender, secured by real estate purchased by Gillespie with a loan from Broadview Holdings.
- Enoch Investments, LLC, an entity Barton admits controlling, [Dkt. 7-1, pdf pg. 24; Dkt. 42, pdf pg. 39], guaranteed the loan.

True and correct copies of documents evidencing these facts related to Gillespie Villas, LLC are attached as Exhibit A-10; App. 83-156.

19. **Venus59, LLC**

- Texas entity formed June 1, 2020; uses Midway Address.

[2] For ease of reference, the list of entities over which Barton conceded control which was included in the SEC's Appendix filed in support of its Motion to Appoint is also include as an exhibit here, and is attached as Exhibit A-9.

- ONE SF Residential, LLC, an entity Barton admits he controls. [Dkt. 7-1, pdf pg. 24; Dkt. 42, pdf pg. 39], is the current manager, [Dkt. 53-1, pdf pg. 69]. In an earlier Company Agreement, JMJ Residential, LLC (an entity also controlled by Barton) is identified as a Member.
- The Certificate of Formation filed for the entity, on April 13, 2022, reflects MXBA, LLC and One SF Residential, LLC as the Governing Authority.
- Form SF-4 filed with the IRS on June 11, 2020 lists Tim Barton as the sole member.
- Officers identified in the Company Agreement were Max Barton as President, and Saskya Bedoya as Treasurer/Secretary.
- On September 15, 2022, Broadview Holdings paid $23,325.62 to Venus 59, LLC in reference to a loan.
- On August 31, 2021, Venus 59 entered into a funding agreement with Daniel Crow, which provided that the funding agreement was "consented to by One SF Residential, LLC . . . (as the manager and a member of the Company) and MXBA, LLC ("MXBA") (collectively, "Members") as the members in the Company."
- Despite not being identified as an officer or manager in the Company Agreement, on October 31, 2022, after the Receivership Order was entered, Barton resigned as an officer or agent. [Dkt. 53-1, pdf pg. 72].
- The property purchased by Venus59, LLC in Johnson County is part of (and essential to) a larger planned development by Barton. Barton controlled the development as a whole and was negotiating a development agreement on behalf of Venus59, LLC (which would then be the template for development agreements for the other properties that comprised the development) at the time of my appointment.
-

True and correct copies of documents evidencing these facts related to Venus 59, LLC are attached as Exhibit A-12; App. 164-261.

20. **TRTX Properties, LLC**

- Texas entity formed August 20, 2010 [Dkt. 53-1, pdf pg. 115]; uses Midway Address.
- William Vance McMcMurry, an attorney who represented Barton and most Receivership Entities for many years and who officed at the Turtle Creek Property, was identified as the Managing Member in TRTX's Certificate of Formation. In 2015, the members were changed to Enoch Investments, LLC and Max Barton. In later filings, TRWF, LLC was identified as a manager. [Dkt. 53-1, pdf pg. 115]] Barton admitted control over TRWF, LLC [Dkt. 7-1, pdf pg. 24].
- A 2016 email from Barton to employee Saskya Bedoya instructed her to "make Max owner in TRTX" to follow instructions of Barton's attorney to facilitate refinancing debt owed by the entity. *See* Exhibit A-2, described above.
- Pursuant to an amendment, on July 7, 2020, TRWF, LLC was deleted as a manager and replaced with the MXBA Trust. [DKT 53-1, pdf page 116, 212].
- Tim Barton is the Grantor of the MXBA Trust, and his personal assistant and primary administrator, Saskya Bedoya, is the Trustee. [Dkt. 53-1, pdf. pg. 119]. As evidenced through Bedoya's testimony, her statements through her attorney, and Barton's own testimony, included in Exhibits A-3, A-4 and A-5 above, Barton controlled Bedoya.

- On October 4, 2022, in *In re FM 544 Park Vista, Ltd.*, Cause No. 17-34255-SGJ-11 and Cause No. 17-34274-SGJ-11, pending in the United States Bankruptcy Court for the Northern District of Texas, TRTX Properties, LLC and JMJ Development, Inc. filed a notice of appeal in which they identified Barton and counsel, McMurry as the "principals" of those entities.
- Timothy Barton signed the Statement of Change of Registered Office/Agent dated May 2, 2022, although he purportedly had no authority over the entity on that date.
-

True and correct copies of documents evidencing these facts related to TRTX Properties, LLC are attached as Exhibit 13; App. 262-312.

21. **MXBA, LLC**

- Delaware corporation formed on August 24, 2020, [DKT. 53-1, pdf pg. 160-212]; uses Midway Address
- The Company Agreement identifies MXBA Trust as the only member, on behalf of which Max Barton signed as *President*. Max Barton is not the President of the MXBA Trust, however. He is the beneficiary, and as such lacks authority to sign anything on behalf of the trust. *Compare* Dkt. 53-1, pdf pgs. 169-170 (member signature for MXBA Trust is "Max Barton, President") *and* MXBA Trust, identifying Max as beneficiary and Saskya Bedoya as Trustee. [Dkt. 53-1, pdf. pg. 119].
- Tim Barton is the Grantor of the MXBA Trust, and his administrator, Saskya Bedoya, is the Trustee. [Dkt. 53-1, pdf. pg. 119]. As his employee, Barton controlled Bedoya and therefore also controlled the trust.
-

True and correct copies of documents evidencing these facts related to MXBA, LLC are attached as Exhibit A-14; App. 313-314.

22. **Titan Investments, LLC**

- Formed in Delaware on August 20, 2022 by Vance McMurry; uses 3600 Gillespie St., owned by Gillespie Villas, as its mailing address.
- In formative documents, Max Barton is identified as Manager and the only officer.
- Filed Application of Registration in Texas on October 5, 2022, using Titan Investments 2022, LLC as its name.
- On January 17, 2022, Barton signed a contract for Titan to purchase real estate, as Titan's President, although corporate records reflect that Max held that position as of that date.
- Tim Barton again signed a purchase contract on February 10, 2022 as President, although Max is listed as the only officer in the company documents.
- On January 12 and 18, 2022, on behalf of Titan Investments, Barton also signed two Letters of Intent for Titan to purchase property.
- Tim Barton signed resignation from role as signatory/agent *effective* October 6, 2022. [Dkt. 53-1, pdf pg. 177]

- On February 23, 2022, Titan contracted to purchase real estate from Patricia Butler. The earnest money and extension fees were provided by Broadview Holdings, LLC, which is a Receivership Entity that was controlled by Barton.

True and correct copies of documents evidencing these facts related to Titan Investments, LLC are attached as Exhibit A-15, App. 317-383.

Continuing Investigation and the Additional Entities

23. My preliminary investigation revealed that Barton used *many* additional entities—on top of those specifically listed in the Receivership Order—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, particularly at this early juncture.

24. For example, I discovered several instances in which a Receivership Entity sold property into which the SEC had traced investor funds and identified in Exhibit B to the Hahn Declaration, [Dkt. 7-1, pdf pg. 17] where Barton, through the selling entity or another Barton-controlled entity, for instance Marine Creek SP, LLC, entered into "Participation Agreements" by which he retained entitlement to future profits in the properties he purchased with commingled investor funds, and sold. A true and correct copy of one such Participation Agreement is attached as Exhibit A-16; App. 384-413.

25. Although my team and I have worked tirelessly and diligently to discover the current assets and liabilities of all Receivership Entities and uses of the funds Barton received from the investors, Barton has refused to comply with many of the Receivership Order's terms intended to provide more specific information that would inform the Court's decision here. For instance, despite numerous requests and in violation of ¶ 18 B. 3, Barton, his counsel, and an IT vendor have to date failed to provide the Receiver with the access information—user-names and passwords—

necessary for my retained IT professional to access the Receivership Entities' servers, cloud storage, emails and other electronic information.

26. Neither has Barton provided the documents or information required by Paragraphs 8, 9, 10, and 18B of the Receivership Order.

27. And despite repeated requests for credentials and access information to the entities' Quickbook accounts, Defendant Barton, his children and former employees all either professed ignorance or refused to provide that information. I was instead forced to task an attorney with communicating with Intuit, the entity that owns that accounting service, to obtain access. Although Intuit is cooperating, due to technological issues, it has yet to provide that access and thus my accountants have not been able to review the entities' accounting records at this early stage of the Receivership.

28. Despite these limitations, I and my team have identified at least four Additional Entities that are controlled "directly or indirectly" by Barton. More specifically and accordingly, I believe that TC Hall, LLC, Titan 2022 Investment, LLC, Marine Creek SP, LLC, and LC Aledo TX, LLC fall within the scope of the Receivership Order based on the following evidence that Tim Barton controls each Additional Entity:

29. **TC Hall, LLC**

- Formed in Texas July 16, 2022; uses New Hampshire address.
- Sole member and manager is MF Container, LLC, a Delaware company, which in turn was formed July 11, 2022.
- In communications with a lender, Louisiana National Bank, the bank offered a loan to Enoch Investments, LLC (admittedly a Barton controlled entity), or a TBD entity, but corresponded with Barton about the loan.
- On May 6, 2022, Broadview Holdings paid Commonwealth Title $100,000 for "Earnest Money Deposit for 3407 & 3409 N. Hall St."
- On May 25, 2022, Broadview Holdings paid Commonwealth Title $100,000 for "Earnest Money Deposit-3407 & 3409 N. Hall St."
- On July 25, 2022, Broadview Holdings paid Commonwealth Title $40,000 for "Earnest Money Deposit-3407 & 3409 N. Hall St."

- On August 9, 2022, Broadview Holdings paid Commonwealth Title $40,000 for "Extension for 3407 & 3409 N. Hall St."
- On or about August 24, 2022, TC Hall, LLC purchased property at 3407 and 3409 N. Hall Street Dallas, Texas. The purchase was funded, at least in part, by $545,806.40 received from Gillespie Villas, LLC, which in turn had borrowed $550,000 from a third party, after obtaining Barton's Guaranty on that loan and subordinating Broadview's lien on the collateral.
- Barton controlled the flow of money on behalf of TC Hall as evidenced by an email from Barton to his attorney Randy Marx in which Barton provided instructions about where to originate payments for the benefit of TC Hall.
- On May 6, May 10, 2022 and June 8, 2022, Broadview Holdings made payments to James Langford, an architect, in the amounts of $3,500, $6,150, and $3,850 for "Turtle Creek Hall."
- However, long before TC Hall was formed, and continuing after it was formed, Broadview Holdings, LLC and JMJ Development spent over $1.4M on the same Hall Street property. *See* summary attached as Exhibit 22; App. 475-480.
- As explained in more detail below, an August 24, 2022 refinance of 3600 Gillespie, owned by Gillespie Villas, LLC was used for the TC Hall purchase of 3407 & 3409 N. Hall St.
- A Confidential Offering Memorandum located at 2999 Turtle Creek shows proposed uses for the property purchased by TC Hall, LLC, and references JMJ Development as the developer of the property and Tim Barton as the point of contact.
-

True and correct copies of documents evidencing these facts related to TC Hall, LLC are attached as Exhibit A-17. App. 414-444B.

30. **Titan 2022 Investment, LLC**

- Titan 2022 Investment, LLC is the same entity as Titan Investments, LLC. The former is the name under which the entity is registered to conduct business in Texas, while the latter is the entity's name based on its Delaware incorporation.

True and correct copies of documents evidencing these facts related to Titan 2022 Investment, LLC are attached as Exhibit A-15; App. 324-325.

31. **Marine Creek SP, LLC**

- The date the entity was formed is unknown. Contracts, however, identify it as a Delaware entity, with Barton as President.
- Marine Creek SP, LLC received a contractual Participation Interest when the Mansions Apartment Homes at Marine Creek LLC (admittedly a Barton-controlled entity, Dkt. 7-1, pdf pg. 24), sold property into which the SEC had traced investor funds.

True and correct copies of documents evidencing these facts related to Marine Creek SP, LLC is attached as Exhibit A-16; App. 384-413; *see also,* Dkt. 7-1 pdf pgs. 14-15, 17.

32. **LC Aledo TX, LLC**

- Barton admits control over this entity. [Dkt. 7-1 pdf pgs. 14-15, 17]. *See also* App. 449-451.
- In February 2019 Wall10, LLC loaned Somerset-Lost Creek Golf Course $300,000 ("Somerset Loan"). As evidenced by an Affidavit signed by Barton in the case referenced below, Wall10 then conveyed the note for the Somerset Loan to LC Aledo TX, LLC, and the note is purportedly still outstanding. App. 459-466.
- The transaction is tied up in litigation styled as *Somerset-Lost Creek Golf, LTD v. Tim Barton, LC Aledo TX, LLC, JMJ Acquisitions, LLC and Wall10, LLC.*, Cause no. 096-319595-20 in the 96th District Court for Tarrant County.
-

True and correct copies of documents evidencing these facts related to Marine Creek SP, LLC are attached as Exhibit A-19; App. 449-466.

33. In furtherance of his effort to support the illusion that he did not control the Disputed Entities and in violation of the Receivership Order, on an unknown date, Barton signed documents with effective dates immediately before and after the date of the Receivership Order, resigning from authority that did not exist on paper. [Dkt. 53-1, pdf. pg. 72, 177].

34. Barton also paid expenses and made purchases for most of the Disputed Entities using Broadview Holdings' funds, which included the proceeds of property sales funded at least in part from investor funds. True and correct copies of wire transfers evidencing funds received from Mansions Apartment Homes at Marine Creek, LLC, Orchard Farms Village, LLC and AVG West, LLC transferred to Broadview Holdings and JMJ VC Management, LLC's[3] accounts at Texas Brand Bank are attached as Exhibit A-20; App. 467-472. The SEC traced investor funds to

[3] The SEC traced investor funds to Mansions Apartment Homes at Marine Creek, LLC Orchard Farms Village, LLC, and JMJ Acquisitions LLC a/k/a AVG West LLC. [Dkt. 7-1, pdf pg. 10, 16-17]. Barton admitted his control over JMJ VC Management LLC and the Mansions Apartment Homes and Orchard Farms entities are identified as Receivership Entities. Receivership Order ¶ 1. I have not yet obtained bank records for JMJ VC Management LLC's accounts.

Mansions Apartment Homes at Marine Creek and LLC Orchard Farms Village. Dkt. 7-1, ¶ 36, pdf pg. 14-15 ("36. There were also numerous other properties acquired, at least in part, with Wall Entity investor funds, or where investor funds used in connection with the properties, that were sold, some within the last year, but Commission staff has not traced the disposition of the proceeds from those sales. These sold properties are also included on Exhibit B."). True and correct copies of checks issued from the Broadview Holdings account for expenses or purchases made for the benefit of Gillespie Villas, LLC, TC Hall, LLC, Titan Investments, LLC, MXBA, LLC and Venus 59, LLC are included in Exhibits A-10, A-12, A-14, A-15, A-17 at App. 141-146; 208; 316; 377-383; and 424-426.

35. Based on the use of Broadview Holdings' Texas Brand Bank account to fund and operate the Disputed and Additional Entities as evidenced just in the last few months of statements, it is likely that substantial and additional comingling occurred. To date, however, I have only received a few months of the statements for these accounts and have not yet had my accountant review them.

36. The SEC alleges that Barton used comingled funds to pay his personal expenses and fund his lifestyle. While my investigation is still in its early stages, it appears that this is correct. For instance, Barton used funds in the Broadview Holdings, LLC account to pay his personal attorneys in this lawsuit. A true and correct copy of one such check evidencing these payments is attached as Exhibit A-21; App. 473-474. Bank records I have reviewed also reflect continued and substantial payments for Barton's personal expenses.

37. As reflected in the Exhibits attached above related to Barton's control over Gillespie Villas, Barton also would use one Receivership Entity, including the Disputed Entities, to fund others. For instance, Gillespie Villas, LLC purchased 3600 Gillespie Street, using a $1.4M note

(the "Broadview Loan") obtained from Broadview Holdings, LLC. Gillespie Villas then refinanced the purchase using a $550,000 loan from a third-party in favor of whom Broadview Holdings subordinated its loan and lien. Through a series of bank transfers, the proceeds of the Broadview Loan were then used to purchase 3407 and 3409 N. Hall Street by TC Hall, LLC. *See* Exhibit A-10; App. 121-140; 147-156.

38. Similarly, a spreadsheet found in the Turtle Creek Property attached as Exhibit A-22 summarizes $1,401,914.40 in payments made from Broadview Holding's bank account at Texas Brand Bank, and on various credit cards owned by JMJ Development, LLC (a Receivership Entity) for TC Hall's purchase of 3407 and 3409 Hall Street. App. 467-472.

39. Although I have not yet received all relevant records (due in part to Barton's refusal to produce any and to identify the banks at which the various Receivership Entities maintained accounts) neither I nor my accountants have had an adequate opportunity to review all bank records. Nonetheless, in the short time since my appointment, I have discovered additional transfers between and among Gillespie Villas, Broadview Holdings, and TC Hall, LLC. For instance, on August 22, 2022, Gillespie Villas received a $100,000 loan from a third party. On August 23, 2022, Gillespie transferred $70,000 from its new account at Vista Bank to Broadview Holdings, LLC, potentially in repayment of some of the payments Broadview made as reflected in the summary attached as Exhibit A-22; App. 475-480. On August 25, 2022, as part of the purchase of 3407 & 3409 N. Hall St., Commonwealth Title transferred $132,138.55 to TC Hall, LLC's newly opened bank account at Vista Bank. On August 26, 2022, TC Hall, LLC transferred $100,000 from its Vista Bank account to Gillespie Villas, LLC, which likely served as reimbursement for the transfer from Gillespie Villas to Broadview Holdings. On September 16,

2022, Gillespie Villas repaid the $100,000 loan to the third party. True and correct copies of documents evidencing these transactions are included in Exhibit A-17; App. 429-432, 433, 448.

40. Barton's indirect control over Gillespie (through One SF Residential and use of Broadview Holdings to fund it) and TC Hall (as evidenced, among other things, by his role in obtaining the loan from Louisiana National Bank and his control over the funds TC Hall used to purchase the property), and Barton's use of JMJ Development (another Receivership Entity) to develop and solicit investors for both Gillespie and TC Hall properties, demonstrates a shell game of comingled fund, including funds that originated from investors, the interdependency of the Receivership Entities, the Disputed Entities and the Additional Entities, and Barton's disregard for the corporate existence of these entities.

41. As reflected in the summary above for each Disputed and Additional Entity, the Disputed Entities and most of the Additional Entities use, or recently used, the same mailing or physical address as all other Receivership Entities. None appears to have any outside directors, managers, or officers, and each is undercapitalized or capitalized through loans from other Receivership Entities (although TC Hall apparently also received investment capital from a third party). Each of the Disputed Entities and the Additional Entities appear to have all been incorporated by either Ms. Bedoya, or one of two attorneys who worked for Barton.

42. Documents evidencing formation, tax information, bills, contracts, or mail for the Disputed Entities was found at the Turtle Creek Location, and all are used for real estate investments or activities incident to real estate investments. *Id.* Other than documents evidencing incorporation and tax ID numbers, very few documents suggest observation of any corporate formalities.

43. Based on my review of the bank records received to date, purchase agreements, communications with or documents received from lenders, settlement statements and related documents and information received from title companies, it is currently impossible to determine whether any of the funds used to operate, fund, or purchase assets for any of the Disputed Entities or the Additional Entities originated from any untainted source, i.e., projects, accounts, or properties that were not purchased with funds comingled with investor funds or the proceeds of properties purchased with investor funds. Based on the SEC's investigation, however, investor funds or their proceeds appear to have been the primary source of cash used by Barton, other than third party loans. Dkt. 7-1, pdf pgs. 14, 17.

44. As stated in my Initial Report, most properties owned by Receivership Entities, including some owned by the Disputed or Additional Entities, are highly leveraged. The equity, and indeed ownership interest held by the Receivership Entities and the Disputed and Additional Entities is in many instances questionable. Although Barton contends the sale of just two properties would provide more than enough to repay the defrauded investors, as my counsel informed him, he is ignoring the debt on those properties. A true and correct copy of an email communication from my counsel to Barton, responding to his letter suggesting that the sale of two properties would allow a speedy end to the receivership, as well as Barton's letter, are attached as Exhibit A-23. App. 481-487. I also explained many of these details in my Initial Status Report [Dkt. 67].

45. Based on liens, ownership disputes, and other facts that complicate the potential recovery of any net equity in the assets owned by the Receivership Entities, including properties owned by the Disputed and Additional Entities, if third-parties are successful in defeating Receivership Entity's ownership or contractual rights, as discussed in my Initial Report, far less

than the $26M necessary to repay the investors will be recovered. These estimates also do not account for the cost and expenses of administering a claims process and the receivership estate, nor the claims of a host of other creditors who have indicated that they will be submitting several million dollars in claims.

46. Accordingly, and as outlined above, inclusion of the Disputed and Additional Entities (as well as the entities identified originally in the Motion) is not only within the plain language of the Receivership Order, but essential to protect potential recoveries for the investors. For instance, Gillespie Villas owns 3600 Gillespie Street, but purchased that property, in part, with assets obtained from Broadview Holdings, which in turn received proceeds from the sale of property the Mansions Apartment Homes at Marine Creek, LLC purchased with investor funds. Gillespie funds in turn, funded, in part, TC Hall's purchase of property, and I understand that Gillespie's property was used as collateral for TC Hall's loan. Marine Creek SP, LLC holds valuable contractual rights in the form of a Participation Agreement, related to the sale of real estate by the Mansions Apartment Homes at Marine Creek, LLC, real estate which the SEC alleges was purchased with investor funds, and those rights are, unlike virtually every other property interest included in the estate, unencumbered.

47. I declare under penalty of perjury that the foregoing is true and correct.

November 30, 2022

/s/ Cortney C. Thomas
CORTNEY C. THOMAS

TAB 3

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**C.A. No. 3:22-cv-2118-X**
	§	
TIMOTHY BARTON, et al.	§	
	§	
Defendants.	§	

APPENDIX IN SUPPORT OF RECEIVER'S RESPONSE
TO MOTION TO STAY PENDING APPEAL

Respectfully submitted,

By: */s/ Charlene C. Koonce*

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(d)(1)(B), as amended, no certificate of service is necessary, because this document is being filed with the Court's electronic-filing system.

EXHIBIT	DESCRIPTION	APP PAGES
A	Declaration of Receiver Cortney C. Thomas in Support of Receiver's Response to Motion to Stay Pending Appeal	APP000001-14
A-1	JMJ Holdings 2019 Balance Sheet	APP000015-16
A-2	Letter from counsel for Tim Barton to Receiver Cort C. Thomas, dated November 1, 2022	APP000017-20
A-3	Letter from counsel for Tim Barton to my attorney, Charlene Koonce, dated November 1, 2022	APP000021-23
A-4	Email from my attorney, Charlene Koonce, to counsel for Tim Barton, Michael Edney, dated November 7, 2022	APP000024-26
A-5	Email from my attorney, Charlene Koonce, to counsel for Tim Barton, Michael Edney, dated November 11, 2022	APP000027-30
A-6	Email from my attorney, Charlene Koonce, to counsel for Tim Barton, Ted Huffman, Richard Roper, et al. dated November 29, 2022	APP000031-34
A-7	Email from my attorney, Charlene Koonce, to counsel for Tim Barton, Michael Edney dated December 5, 2022	APP000035-39
A-8	Agreed Rescission of Special Warranty Deed, recorded on September 1, 2021	APP000040-49

EXHIBIT A

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**No. 3:22-cv-2118-X**
	§	
TIMOTHY BARTON, *et al*.	§	
	§	
Defendants.	§	

DECLARATION OF CORTNEY C. THOMAS
IN SUPPORT OF RECEIVER'S RESPONSE TO
MOTION TO STAY PENDING APPEAL

1. My name is Cortney C. Thomas. I have personal knowledge of the matters set forth in this Declaration, I am of sound mind, and I am otherwise competent to testify to these matters.

2. I am an attorney licensed to practice law in the State of Texas. On October 18, 2022, I was appointed Receiver in the above-styled case and ordered to take exclusive possession and control over all assets belonging to or under the control of the Receivership Entities. *See* Order Appointing Receiver (the "Receivership Order") ¶1.

3. The requested stay of the Receivership is not feasible, nor do I believe it is in any of the interested parties' interest. Many of the Receivership Entities' already have continuing, urgent operational requirements that have been greatly exacerbated by the dearth of cash available to the Receivership Estate to date.

4. For example, Receivership Entity Goldmark Hospitality, LLC is the record owner of an extended-stay hotel located at 13636 Goldmark Dr. in Dallas, Texas (the "Amerigold Suites"). In the months prior to the institution of the Receivership, the Amerigold Suites appears to have had negative cashflow, at least in part, because of a large number of vacant units, the

generally poor condition of some of the units, and the general mismanagement by Barton and his son Maximilian Barton ("Max").

5. Within days of my appointment, I learned that insurance on the property was on the verge of cancellation for non-payment, shut off notices for the electricity had been received, significant water bills were owed, and at least one vendor was owed over $16,000 for months of unpaid invoices related to HVAC maintenance and repairs.

6. A full-time property manager and maintenance person are necessary employees, as is a contracted security officer (though to date I have been unable to afford to hire a security service for the Amerigold Suites, and the prior security service had been terminated prior to entrance of the Receivership Order).

7. The stay of collection or foreclosure efforts by creditors in the Receivership Order has allowed me to pause payment on the mortgage, thereby freeing up sufficient funds to pay the past due electric bills and bring the account current, preventing cancellation. However, such a stay cannot continue forever, and interest on the loan continues to accrue daily.

8. I have also been able to secure new, albeit expensive, insurance for the property and negotiate with the Dallas City Attorney's Office to prevent termination of water service. Oversight and management is required to ensure continued habitability for this occupied property, as well as to attempt increasing its occupancy to generate additional value for the Receivership Estate.

9. A second example of why a stay is impractical is Receivership Entity D4OP, LLC, which owns an Alabama apartment complex that is still under construction and is financed in part by a HUD loan. HUD's involvement requires extensive regulatory approval and cost certification, absent which, the project could face default and significant penalties. I, or someone else in my

stead, must provide continued oversight to ensure this project does not lapse so that its value can be captured.

10. Moreover, all of the Properties identified in my Initial Status Report have extensive debt and property tax obligations that will continue to accrue during the pendency of any stay. Even if the Court were willing to continue the stay on lenders' ability to foreclose on these loans indefinitely pending Barton's appeal, interest, taxes, and expenses will only continue to grow, and I must have a source of revenue to pay necessary expenses. Because Defendant Barton drained or otherwise appropriated all but approximately $75,000 of available cash away from the Receivership Entities' bank accounts, I have limited resources other than the liquidation of properties and contractual interests.

11. While Barton asserts in his Motion to Stay that "all parties acknowledge that there are more than enough assets in corporations associated with the defendant to cover any alleged liability associated with the loan agreements at issue in this case," I strongly disagree with this assertion. In support of his position, Barton attaches an unauthenticated Letter of Intent ("LOI") to purchase three Texas apartment complexes—in DeSoto, Forney, and Corpus Christi—for $107 million. Dkt. 72, pp. 4-9. Although I agrees that selling these properties will be essential to *potentially* recovering sufficient funds to satisfy just the investor claims, what is once again notably absent from the LOI and Barton's discussion of the same is any reference to Pillar Asset Management ("Pillar"). As outlined in my Initial Status Report, Pillar contends it provided a second loan to the Receivership Entities in connection with the development of each of the three Texas properties. As best I can tell with the documents provided to date, it appears that the total principal amount is $17.7 million. While I am still working to determine the current balance on the Pillar loans, Pillar asserts it exercised certain purported contractual rights to convert its loan

rights in two of the Texas apartment complexes into an equity interest *such that the Receivership Entities purportedly no longer hold **any** ownership position in these properties*. While I intend to oppose any attempt by Pillar to enforce any conversion rights, if Pillar is ultimately successful, these properties will result in a recovery of $0 to the Receivership Estate. *Id.*

12. Even if I succeed in my efforts to treat Pillar's loans as loans, I still anticipate the net proceeds of any sale to amount to less than the $26 million that the SEC claims has been misappropriated.[1] If the LOI obtained by Barton were ultimately executed, after accounting for total HUD debt (approximately $78.7 million), Pillar debt (approximately $17.7 million), and the LOI's 1% broker's commission (approximately $1.1 million), I estimate that the net benefit to the Receivership Estate would be approximately $9.9 million before closing costs and other expenses. This net benefit would only be realized after assumption of the HUD loans that are currently in place, a process that is likely to take four to six months or more. Moreover, the LOI provided by Barton says nothing of the Pillar contingency, the need for Court approval, or the process mandated by 28 U.S.C. § 2001, and it gives CEI broad assignment powers.

13. As noted in my Initial Report, substantial disputes exist regarding the value and ownership of other Receivership properties in addition to the three apartments discussed above, with every property identified to date being encumbered by substantial loans and often other competing liens and claims. The limited amount of cash available to me to manage these properties—which have substantial worth but often equally substantial debt—only exacerbates the issue. Extensive efforts to identify all Receivership Entity bank accounts have resulted in recovery of less than $75,000 in cash to date, despite the fact that I am aware of several million dollars in

[1] The SEC claims that at least $26 million flowed into the Wall Entities from investors. *Complaint* ¶ 1. That loss does not account for the many, many millions of dollars owed to judgement creditors, and creditors or claimants whose lawsuits are currently stayed by paragraph 34 of the Receivership Order is in place.

receipts flowing into the Receivership Entities during the last twelve months alone. Numerous and urgent bills, many long past due upon my appointment, compete for these extremely limited assets. 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. Notices of cancellation for property insurance on several properties were in the Receivership Entities' offices when I entered to take possession and control. The dearth of liquid assets has presented and continues to present immense challenges in performing one of my most fundamental duties, securing and maintaining assets.[2] In short, absent an influx of cash *from the sale of something(s)*, the value of certain properties owned by the Receivership Entities are in jeopardy.

14. Barton's Motion to Stay focusses particularly on my attempts to sell 4107 Rock Creek (the "Rock Creek Residence"). Although Barton professes harassment, the specter of irreparable harm, and an unnecessary liquidation spree based my sale of the Rock Creek Property, I hold no such sentiments and instead am seeking to best fulfill the mandates of the Receivership Order. Barton's position ignores that facts that (1) Barton himself had signed a listing agreement with a realtor to sell the property within the weeks prior to the commencement of the Receivership; (2) the sales price exceeds the average value of the three independent appraisals I obtained on the property, far exceeding the two-thirds threshold; (3) the property is owned by a Receivership Entity and not Barton personally; (4) I received notice from a person known to Barton that Barton was moving valuable art and contents out of the house *after* the Receivership Order was entered; (5) the diminishing equity in the property due to the accruing but unpaid mortgage and property taxes,

[2] In discovering, acknowledging, and reporting these difficulties I in no way agree with Barton's suggestions of incompetence and ineptitude. Instead, I continue to seek to diligently and competently inform the Court of the challenges presented by Defendant Barton's decision to have very limited funds in the Receivership Entities' bank accounts as of October 18, 2022.

the net proceeds of which are as yet unknown; and (6) the urgent need for liquid assets to fund management of other Receivership properties.

15. To fund the Receivership's continuing obligations and eliminate the continuing costs of maintaining them, I immediately began the process of attempting to sell the least encumbered and most easily salable properties, including the Rock Creek Residence.[3] While I believe the sale of art or other moveable items theoretically might have been a quicker process, Barton to this day refuses to identify certain artwork, to disclose the location to which he has moved such items, or to confirm who owns those items. During my investigation, I discovered a balance sheet from 2019 which Barton claimed that JMJ Holdings owned $12 million in artwork. Attached hereto as Exhibit A-1 is a true and correct copy of the JMJ Holdings 2019 Balance Sheet. *App.* pp. 13-14.

16. Sales of the Receivership Entities' commercial properties, such as the apartment complexes discussed above, will take many months at a minimum, after a willing buyer is found, while the Rock Creek Residence is already set to close on December 28.

17. Relatedly, Barton and Max both complain of my purported refusal to allow them to remove "personal items" from the Rock Creek Property. Besides the fact that these complaints ignore my repeated requests for (1) a list of the personal items at the Rock Creek Residence and 2999 Turtle Creek and (2) evidence showing that such items were not purchased with the Receivership Entities' funds, I have been told that the majority of these furnishings were purchased within the last two years by a Receivership Entity. Nonetheless, in recognition of the limited value to the estate of clothing and similar items, I have already allowed Barton, Max, and others to

[3] The Rock Creek Property is encumbered by a lien resulting from Barton's recent refinancing of the property recently. Two judgment liens filed in Dallas County against Barton individually, which should not attach to the property but which nonetheless have required time to communicate with those judgment creditors, possibly explain Barton's use of an entity to hold ownership of the Property.

remove items of minimal value from the Rock Creek Residence. As to all other items, I offered to allow Barton and Max to retrieve them if they could demonstrate what they wanted to remove was not purchased by Receivership Entities, or to store the items (at Barton's cost) until such time as ownership is established. Barton has ignored both of my proposals and instead continues to insist that he be allowed to remove unspecified contents.

18. When I originally took possession of the Rock Creek Residence, I allowed Barton's daughter, a housekeeper, and a designer to take over a dozen large bags of clothes, bedding, and other personal effects. Virtually, the only things remaining in the house are furniture, appliances, decorations, and kitchenware. If Barton can demonstrate his personal ownership of any of these items, I remain willing to provide them to him. However, to date, he has made no such efforts, and I must claim or sell the contents prior to a December 28 closing of my sale of the Property.

19. Max similarly refused to provide me with a list of the property he claims as his own until December 7, when, rather than providing that information to me, he instead filed the list with his Response to a different motion. His list contains certain items that I have already turned over to him, other items that I am willing for him to pick up, and still other items that he has never provided any documentation indicating his personal ownership of the items.

20. In sum, Barton seeks the Court's sympathy and a carve-out from the terms of the Receivership Order with respect to items he refuses to demonstrate were purchased from his own, rather than Receivership Entity assets, while at the same time refusing to provide information about art he removed from the Rock Creek Property or provide truthful and helpful information about additional assets and properties. His complaints about and assertions of overreach by me merit no weight.

21. Barton also claims that a stay is warranted because of my attempts to secure the digital assets of the Receivership Entities. Barton's actions to date have disregarded the Receivership Order and increased the burden on me and my team. Despite requesting passwords and other IT credentials upon my appointment (and multiple times since), Barton has continually failed and refused to provide the requested information me or my counsel. Instead, Barton, Max, and the Receivership Entities' employees refused to identify which IT professionals controlled the Receivership Entities' email and any other cloud accounts. When I discovered, through independent efforts, the identity of the Receivership Entities' former IT professional, I discovered that Barton had hired a different IT professional who changed the credentials that would have allowed access to the servers and email accounts.

22. Barton has consistently used my purported access to privileged documents and information as an excuse for ignoring the clear mandate to turnover access to the Receivership Entities' digital assets, despite my repeated statements that I am willing to enter into an FRE 502(b) agreement or other protocol to protect information and documents for which Barton *legitimately* holds the privilege. Despite my continued request for the IT credentials and willingness to preserve Barton's privilege, the IT credentials have still not been provided, and Barton failed to provide any proposed privilege protocol for the electronic data—again, despite repeated requests—until December 7, 2022, and only after my counsel threatened to take the continued delay to the Court. The proposal that Barton has proposed is extremely overbroad and would apply to protect communications between the Receivership Entities and their prior counsel, irrespective of whether or not these communications have any ties to Barton's individual criminal investigation.

23. Notably, in separating and sifting Barton's privilege from the Receivership Entities', which is now held by me, the Court should be aware that at least 36 lawsuits involving

Receivership Entities are currently stayed. Indeed, I only recently discovered yet another lawsuit, filed on December 5, 2022, which Max Barton, purportedly through Titan Investments, LLC, filed in Ellis County without notice to me and despite extensive briefing on the fact that I contend Titan Investments is already a Receivership Entity. Access to prior communications with counsel regarding this and the other lawsuits is essential to my ability to evaluate how and when to potentially resolve them.

24. In the alternative to a stay of the entire receivership, Barton seeks a stay of the Order Governing Administration of the Receivership Estate, Dkt. 63 (the "Administrative Order") which permitted I shred certain irrelevant and bulky documents. Barton fails to explain how, or why destruction of these materials jeopardizes his defense or suggests anything other than appropriate efforts to conserve limited receivership assets. **Nonetheless, to eliminate any further concerns regarding these documents and despite the increased storage and packing costs, I will refrain from shredding any until further order of the Court.**

25. Finally, Barton claims that my qualifications do not justify appointment in this case. If the Court concludes that the Receivership Estate will be better served by a different receiver, the I will willingly and dutifully step down from my current role. At the same time, I believe that the Court's decision to appoint me was wholly justified for a number of reasons, including but not limited to, the fact that (1) as to the five properties with the highest gross value in the Receivership, the Receivership Estate will recover $0 absent litigation because of the way Barton structured the deals, and thus, as a seasoned commercial litigation attorney, I am in many ways a better fit to deal with these properties regardless of my prior commercial real estate experience; (2) by simply labeling the Receiver a "trial attorney," Barton wholly ignores my background, which includes service as a law clerk to another federal judge in the district, extensive litigation in federal and

bankruptcy courts (including litigation involving commercial real estate and other receiverships involving realty), other relevant commercial real estate experience, and a prior receivership appointment that included the sale of multiple properties pursuant to 28 U.S.C. § 2001; and (3) in this Receivership, I moved quickly and diligently to assemble a top-notch team to assist me, and in that regard have consulted with numerous leading commercial realty firms, brokers, and advisors who have to date been willing to assist the Receivership at no cost to the Receivership Estate based upon my prior relationships with these individuals.

26. Barton's complaints surrounding my appointment are belied by his disregard for the facts regarding the situation he himself has created (including the raising of and apparent failure to return, investor funds), his unrealistic views of value, and his refusal to provide information as required by paragraphs 8, 9, 10, and 18 the Receivership Order. I or my attorneys have requested (but generally not yet received) information and documents from Barton that identify 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.

27. Attached hereto as Exhibit A-2 is a true and correct copy of a letter from counsel for Tim Barton to Receiver Cort C. Thomas, dated November 1, 2022. *App.* pp. 15-18.

28. Attached hereto as Exhibit A-3 is a true and correct copy of a letter from counsel for Tim Barton to my attorney Charlene Koonce, dated November 1, 2022. *App.* pp. 19-21.

29. Attached hereto as Exhibit A-4 is a true and correct copy of an email from my attorney, Charlene Koonce to counsel for Tim Barton, Michael Edney, dated November 7, 2022. *App.* pp. 22-24.

30. Attached hereto as Exhibit A-5 is a true and correct copy of an email from my attorney Charlene Koonce to counsel for Tim Barton, Michael Edney, dated November 11, 2022. *App.* pp. 25-28.

31. Attached hereto as Exhibit A-6 is a true and correct copy of an email from my attorney Charlene Koonce to counsel for Tim Barton, Ted Huffman, Richard Roper, et al. dated November 29, 2022. *App.* pp. 29-32.

32. Attached hereto as Exhibit A-7 is a true and correct copy of an email from my attorney Charlene Koonce to counsel for Tim Barton, Michael Edney dated December 5, 2022. *App.* pp. 33-37.

33. Attached hereto as Exhibit A-8 is a true and correct copy of an Agreed Rescission of Special Warranty Deed, recorded on September 1, 2021. *App.* pp. 38-47.

34. Below is a list of the litigation matters involving Receivership Entities that have been stayed to date:

(1) *Hodges III, L. Allen, as Independent Executor of the Estate of Leland A. Hodges, Jr., Tejas Group, Ltd., LAH III Family Specific Interests, Ltd., and Blackfoot Interest, Ltd. v. 2999TC LP, LLC, JMJ Development, LLC and Timothy Barton*, No. 141-316567-20, (141st District Court Tarrant County, Texas)

(2) *In re 2999TC LP, LLC*, Chap. 11 BK , No. 4:20-BK-43204 (US Bk Ct, ND Fort Worth Division)

(3) *Hodges III, L. Allen, as Independent Executor of the Estate of Leland A. Hodges, Jr., Tejas Group, Ltd., LAH III Family Specific Interests, Ltd., and Blackfoot Interest, Ltd. v. 2999TC LP, LLP, JMJ Development, LLC and Timothy Barton*, No. 141-328490-21 (141st District Court, Tarrant County, Texas)

(4) *"David" Dhirah Ramolia, v. Timothy Barton and JMJ Development*, No. DC-19-11030 (191st District Court, Dallas County, Texas)

(5) *Timothy Barton and JMJ Development, LLC v. A.J. Babaria, Bilal Khaleeq and Dan Morenof*, No. DC-20-17086, (Related case DC-19-11030) (191st District Court, Dallas County, Texas)

(6) *JMJ Development, LLC and Timothy Barton v. "David" Dhiraj Ramolia*, No. 05-21-01100-CV (From DC-19-11030, 5th Court of Appeals)

(7) *"David" Dhirah Ramolia, v. Timothy Barton and JMJ Development*, No. 02-0922 (Appellate Case (to Sup. Ct.) Supreme Court from 5th Court of Appeals)
(8) *TRTX Properties, LLC and JMJ Development v. Dhirah "David" Ramolia*, No. 471-00033-2022 (471st District Court, Collin County, Texas)
(9) *Sun Yun, Qu Yi, Ma Jinghui, Gao Huaizen v. WALL012, LLC, WALL016, LLC, WALL017, LLC, WALL018, LLC, Platinum Investment Corporation (PIC), JMJ Holdings, LLC*, No. DC-20-04575 (44th District Court, Dallas County, Texas)
(10) *JMJAV, LLC v. Michael Fu, Jin Wang, Lynn Zhou, Tidy Fan, Summer Tian, Shirley Qing, and Michele Guo*, No. 2020-00720 (281st District Court, Harris County, Texas)
(11) *Rone Engineering Services, Ltd. v. JMJ Development, LLC, WALL017, LLC, WALL009, LLC, and Seagoville Farms, LLC*, No. DC-19-20384 (116th District Court, Dallas County, Texas)
(12) *The Somerset-Lost Creek Golf Ltd.v. Timothy Barton, LC Aledo TX LLC, WALL010, LLC, JMJ Acquisitions*, No. 096-319595-20 (96th District Court, Tarrant County, Texas)
(13) *BM318, LLC v. Dixon Water Foundation*, No. 4:20-BK-42789 (US Bk Ct, ND Dallas Division)
(14) *BM318, LLC v. Dixon Water Foundation*, Adversary No. 4:21-AP-4051, Related to 4:20-BK-42789 (United States Bankruptcy Court, Northern District of Texas, Dallas Division)
(15) *BM318, LLC v. Lumar Land Cattle, et al.*, WF AP: 4:21-AP-4051 (United States Bankruptcy Court, Northern District of Texas, Dallas Division, Related to 4:20-BK-42789)
(16) *JMJAV v. Elite Jet*, No. 017-333443-22 (17th District Court, Tarrant County)
(17) *JMJ Development, LLC v. Tamamoi, LLC and 3820 Illinois, LLC*, No. DC-22-02622 (68th District Court, Dallas County)
(18) *2999TC Acquisitions, LLC*, Chap. 11 Bk, No. 3:21-bk-31954 (United States Bankruptcy Court for the Northern District of Texas, Dallas Division)
(19) *2999TC Acquisitions, LLC v. HNGH*, No. 22-03061-swe (United States Bankruptcy Court for the Northern District of Texas, Dallas Division)
(20) *2999 Turtle Creek, LLC v. Timothy Lynch Barton*, No. DC-20-12133 (192nd District Court Dallas County, Texas)
(21) *Serena Badgley, As Next Friend of Bryson Badgley, Minor v. Goldmark Hospitality, LLC*, No. CC-21-02991-B (County Court at Law No. 2, Dallas County, Texas)
(22) *BGE, Inc. v. JMJ Development, LLC*, No. 471-03497-2020 (471st District Court, Collin County, Texas)
(23) *Deshazo Group v. Timothy Barton, JMJ Development*, No. CC-22-04381-B (County Court at Law No. 2, Dallas County, Texas)
(24) *Nitya Capital, LLC v. 2999TC Acquisitions MZ, LLC*, No. DC-22-09841 (14th District Court, Dallas County, Texas)
(25) *Stream SPE LTD. v. Goldmark Hospitality by and through its General Partner, TRTX Properties, LLC*, No. 2021-81644 (80th District Court, Harris County, Texas

(26) *Pamela Kirby v. Timothy L. Barton, John McElwee, JMJ Development, LLC, 2999TC Acquisitions, LLC, 2999TC Founders, LLC, 2999TC JMJ, LLC, 2999TC JMJ GM, LLC, 2999 Five Star GM, LLC, Five Star GM, LLC, Five Star MM, LLC, Five Star TC, LLC*, No. 3:22-CV-01447-M (United States District Court for the Northern District of Texas, Dallas Division)

(27) *John Dowdall v. 2999TC JMJ MGR, LLC and Timothy Barton*, No. DC-22-14770 (193rd District Court, Dallas County, Texas)

(28) *In Re: 2999FC Finders, LLC* (Bk.), No. 22-40911 (United States Bankruptcy Court for the Eastern District of Texas)

(29) *In Re: Dallas Real Estate Investors Palisades TC, LLC, Individually and on behalf of Five Star GM, LLC v. Dallas Real Estate Investors, LLC et al.*, No. 21-04073US Bk Ct, (United States District Court for the Northern District of Texas, Fort Worth Division)

(30) *In Re: Dallas Real Estate Investors*, No. 21-41488 (US Bk Ct, ND Fort Worth Division)

(31) *In Re: FM 544 Park Vista, Ltd. and Pavist, LLC*, No. 17-34255-SGJ-11/17-34274-SJG-11 (US Bk Ct, ND Dallas Division)

(32) *JMJ Development, LLC, et al. v. Roger Sefzik, et al.*, No. 3:22-CV-02254-L (related to 17-34255-sgj11) (USDC, ND)

(33) *JMJ Development, LLC and Tim Barton v. L. Allen Hodges III, et al.*, No. 02-21-00414-CV (Second Court of Appeals, Fort Worth Division)

(34) *Cardno, Inc. v. JMJ Development, LLC, Villita Towers, LLC and Tim Barton*, No. DC-22-10928 (160th District Court Dallas County)

(35) *JMJ Development, LLC and Tim Barton v. L. Allen Hodges III, et al.*, No. 02-22-00288-CV (2nd COA, Fort Worth)

(36) *Circle H Contractors, LP*, No. DC-C202200522 (18th Dist. Ct. Johnson Cnty., Tex.)

35. I declare under penalty of perjury that the foregoing is true and correct.

December 9, 2022

/s/ Cortney C. Thomas
CORTNEY C. THOMAS

EXHIBIT A-1

JMJ HOLDINGS
Consolidated Balance Sheet
As of 15th Feb., 2019

Assets	
Current Asset	
Cash	$174,536
1 Account Receivables	$807,503
note 1 All short term receivables renew every 30 days and are callable within a 30 day notice.	
Prepaid Expenses	$0
2 Working Capital Loans	$617,675
note 2 TR Carnegie and Lajolla working Capital revolvers callable with 30 days notice	
Total Current Assets	**$1,599,714**
Fixed (Long-Term) Assets	
4 Account Receivables	$0
note 4 All long term receivables are stated at 12 months.	
Villital Towers	$8,000,000
Bellwether	$24,766,400
Parc at Windmill Farms	$42,988,946
Turtle Creek	$36,000,000
Long Term Investments	$4,500,000
Art Work	$12,670,000
(less accumulated depreciation)	($63,000)
Total Fixed Assets	**$128,862,346**
Other Assets	
5 Other	$1,543,000
note 5 shares in private company and is not liquid	
Total Other Assets	**$1,543,000**
Total Assets	**$132,005,060**
Liabilities and Owners Equity	
Current Liabilities	
Accounts Payable	$41,542
Villita Towers	$2,100,000
Bellwether	$19,331,000
Parc at Windmill Farms	$36,540,600
6 Long-term Loans	$868,311
note 6 inter company note due 3/17/2019	
Notes Payable	$17,465,000
7 Current portion of Long-Term Debt	$2,150,311
note 7 Goldmark note matures 9/19 and will be refinanced at that time	
Total Liabilities	**$78,496,764**
Owner's equity	
Owner's Investments	$53,508,296
Retained Earnings	$0
Other	$0
Total Owner's Equity	**$53,508,296**
Total Liabilities and Owner's Equity	**$132,005,060**

To the best of my knowledge, the above statement is true and correct

Tim Barton
as President

EXHIBIT A-2

HUNTON
ANDREWS KURTH

HUNTON ANDREWS KURTH LLP
2200 PENNSYVANIA AVENUE, NW
WASHINGTON, DC 20037

MICHAEL J. EDNEY
HEAD OF GOVERNMENT INVESTIGATIONS PRACTICE
DIRECT DIAL: 202 • 778 • 2204
EMAIL: medney@hunton.com

November 1, 2022

VIA ELECTRONIC MAIL

Cort C. Thomas, Esq.
Brown Fox PLLC
8111 Preston Road, Suite 300
Dallas, Texas 75225
Email: cort@brownfoxlaw.com

Re: *Securities and Exchange Commission v. Barton, et al.*, No. 3:22-cv-2118-X

Dear Mr. Thomas:

The Hunton Andrews Kurth LLP law firm represents Mr. Timothy Barton in a civil matter initiated by the Securities and Exchange Commission and the criminal prosecution initiated by the United States Attorney for the Northern District of Texas. I write today to memorialize our position on crucial issues regarding the attorney-client privilege and attorney work product protections.

The receiver has taken possession of Mr. Barton's personal office and home and is seeking to take possession of an email account at JMJ Development that he used for personal purposes. His office has also been the epicenter of preparation by him and his lawyers to defend himself against the SEC's and the DOJ's charges of fraud. This includes entire offices dedicated to the use of his lawyers, and materials created in conjunction with and under the supervision of counsel by Mr. Barton.

As such, the receiver now taken possession of documents and communications that are protected by the attorney-client privilege and the attorney work product doctrine. Before you review these documents, there must be a protocol that ensures that neither receiver nor its staff is exposed to this privileged and/or protected information, especially given the receiver's intention and mandate to communicate with Government agents and prosecutors.

To this end, we are requesting that all documents contained in the personal offices of Mr. Barton and his three counsel in the building not be reviewed by any member of your team, until a group of Mr. Barton's attorneys have reviewed them for privilege and created a log of documents over which we are asserting privilege. In that review, Mr. Barton's counsel would not remove any documents from the premises. Instead, they would physically segregate, and prepare a log detailing, the documents over which Mr. Barton is asserting

privilege. Depending on your plans to search the electronic communication of Mr. Barton and his attorneys on JMJ Development servers, a similar protocol should be put in place for those data.

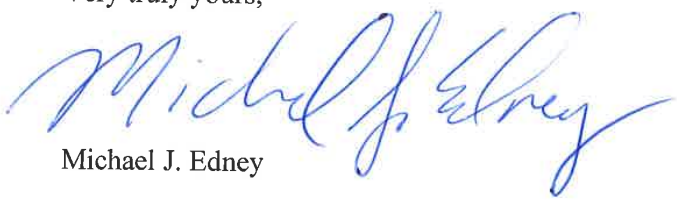
We would propose that the receiver then review that log and identify any documents over which the receiver has concerns regarding the assertion of privilege. We would then meet and confer and, in the event that agreement cannot be reached, the parties can seek a judicial resolution of the privilege claim. This proposed protocol also will conserve resources, as it will avoid the retention of separate professionals to review for privilege in the first instance.

I want to address, in advance, an issue that arose in our discussion on Thursday, October 20, 2022. The concept was raised that the receiver has been given control over the privilege of various corporate entities, such that everything on the premises, to the extent privileged, is now in the receiver's control. As an initial matter, the facilities that you now control also served as Mr. Barton's personal offices and home, and there are many documents therein prepared by or under the supervision of Mr. Barton's personal lawyers in the SEC and DOJ matters. In any event, the presence of closely held corporations in Mr. Barton's privilege communication does not give the receiver control over jointly-privileged documents. This issue has been addressed before by the courts, and the participation of the corporation in many of these privileged communications does not destroy Mr. Barton's right to confidentiality. *See*, *e.g.*, *In re Bounds*, 443 B.R. 729 (Bankr. W.D. Tex. 2010) ("In the instant case, this Court finds that [a new control person] is not entitled to the work product generated on behalf of the Corporations insofar as it contains the Debtor's own confidential information. Handing over all the work product of the Corporations, for whom the Debtor once served as an officer, would almost certainly result in a disclosure of the Debtor's own confidential information."); *In re: Taproot Sys., Inc.*, No. 11-05255-8-JRL, 2013 WL 3505621 (Bankr. E.D.N.C. July 11, 2013) ("The general rule with regard to materials protected by the common interest doctrine or a joint defense agreement is that one party to the agreement cannot unilaterally waive the protection.").

These are important matters. The seizure of these documents and e-mail accounts is over Mr. Barton's objection. Should these privileged materials make their way into your substantive review and become part of briefings to the Government, they will taint the integrity of a criminal prosecution that is threatening Mr. Barton's liberty. I hope to resolve this issue with you through mutual agreement, but will not hesitate to take this issue to the Court given its importance in the event appropriate arrangements are not reached.

I look forward to working with you through these matters.

Very truly yours,



Michael J. Edney

cc: Richard Roper, Esq.
Charlene Koonce, Esq.

EXHIBIT A-3

HUNTON
ANDREWS KURTH

HUNTON ANDREWS KURTH LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20037

MICHAEL J. EDNEY
HEAD OF GOVERNMENT INVESTIGATIONS PRACTICE
DIRECT DIAL: 202 • 778 • 2204
EMAIL: medney@hunton.com

November 1, 2022

VIA ELECTRONIC MAIL

Charlene Koonce, Esq.
Brown Fox PLLC
8111 Preston Road, Suite 300
Dallas, Texas 75225
Email: charlene@brownfoxlaw.com

Re: Sections 8-10, 18, and 24 of the Court's Order Appointing a Receiver: *SEC v. Barton et al.*, No. 3:22-CV-2118 (N.D. Tx.)

Dear Ms. Koonce:

The Hunton Andrews Kurth LLP law firm represents Mr. Timothy Barton in both the above-entitled matter and in *United States v. Barton*, pending in the Northern District of Texas. We write today regarding terms of the Receivership Order requiring the provision of certain information to the receiver. These terms include paragraphs 8-10, 18, and 24. We note the October 25, 2022, correspondence from your office seeking to remind Mr. Barton of his obligation to provide information pursuant to paragraph 18B and suggesting that he may also be required to do so under paragraphs 8-10 of that order.

Paragraphs 8-10 require "the Receivership Entities" to provide a variety of information. The Receivership Order, however, dismissed all "trustees, directors, officers, managers, employees, investment advisers, accountants, attorneys, and other agents of the Receivership Entities," and "suspended" the authority "of any general partners, directors, and/or managers" of those entities. *See* Receivership Order at ¶ 4. The Receivership Order, therefore, divested Mr. Barton personally of any authority or responsibility to direct the Receivership Entities to provide the sworn statements or other information required by paragraphs 8-10.

Paragraph 18B does place obligations on "any person who receives actual or constructive notice of this Order who has or *had* possession or control of any Receivership Assets." (Emphasis added.) To the extent that this term might apply to Mr. Barton personally rather than the corporations holding the assets and now under the control over the receiver, certain actions of the receiver have eliminated Mr. Barton's effective or practical access to the information necessary to make the "sworn statement" required by Paragraph 18B. These actions including excluding Mr. Barton of access to his home, place of business, and business

records. These actions have also cut off the access of Mr. Barton's assistants and employees to this information.

To the extent the intervening actions of the receiver cutting Mr. Barton off from the information necessary to make the statements contemplated by Paragraph 18B were not sufficient to excuse his compliance with that paragraph, Paragraph 18B clearly seeks to *compel* through judicial order the sworn testimony of Mr. Barton regarding matters directly pertinent to criminal charges pending in *United States v. Barton*. Accordingly, we have advised Mr. Barton to invoke his constitutional right against self-incrimination, to include his right against compelled testimony and production of information and materials, in response to any obligation Paragraph 18B seeks to impose on him. *See*, *e.g.*, *United States v. Hubbell*, 530 U.S. 27, 36-37 (2000) (explaining that compelling production of documents may itself violate the Fifth Amendment because document production speaks to existence, possession, control, and authenticity); *S.E.C. v. Farmer*, 560 F. App'x 324, 326 (5th Cir. 2014) (quoting *Hubbell* and explaining that "[t]he Fifth Amendment protects against both self-incriminating testimony and production of documents where production implicitly communicates" existence, possession, control, or authenticity). Please regard this letter as notice that Mr. Barton is invoking his Fifth Amendment privilege against any effort to compel a sworn statement from him pursuant to Paragraph 18B of the Receivership Order.

As you know, counsel for Mr. Barton have been providing information to the receiver to assist in its efforts to identify the many commercial real estate assets held by the receivership entities and will continue to do so. Mr. Barton's sincere hope is that the receiver will continue Mr. Barton's efforts, well advanced prior to the Court's order, to assemble liquid assets that could be available for those lenders who are the focus of the SEC's action and who choose to seek the return of their funds in a manner consistent with U.S. tax and anti-money laundering laws. My colleague, Richard Roper, has spent extensive time briefing you on these efforts and other information about the extensive commercial real estate assets associated with Mr. Barton and will continue to do so. All of us look forward to continue working with the receiver to provide additional information on concrete actions that, we believe, will achieve that outcome in short order.

Should you have any questions, please do not hesitate to contact me directly.

My very best regards,

Michael J. Edney

Cc: Cort Thomas, Esq.
Richard Roper, Esq.

EXHIBIT A-4

Charlene Koonce

Subject: FW: Securities and Exchange Commission v. Barton, No. 3:22-cv-2118-X

From: Charlene Koonce
Sent: Monday, November 7, 2022 7:52 AM
To: Edney, Michael <MEdney@huntonak.com>; Cort Thomas <cort@brownfoxlaw.com>
Cc: Richard Rooper <Richard.Roper@hklaw.com>; Huffman, Ted <THuffman@hunton.com>
Subject: RE: Securities and Exchange Commission v. Barton, No. 3:22-cv-2118-X

Michael – thank you for these letters. First, with respect to your proposed privilege protocol, I note that you had promised to provide Mr. Barton's proposed protocol by the close of business on 10/20. Your proposal arrived almost two weeks late. In the intervening time, we had discussed an FRE 502(b) snapback proposal with Mr. Roper and we propose that we use that process here. If we proceeded with your proposal to review, segregate, and log documents in which Mr. Barton claims a privilege, a member of the Receiver's team would need to be present at the premises while your team reviewed, thereby multiplying the cost of the review for the estate. A 502(b) agreement would save both sides time and money.

More generally, I see no basis in the Receivership Order or otherwise for your concerns about "the receiver's intention and mandate to communicate with Government agents and prosecutors." The Receiver's mandate compels him to perform many tasks and report to the Court about the status of the estate and his efforts. While he is certainly empowered to provide testimony regarding Mr. Barton's cooperation or lack thereof at any sentencing hearing, that effort has *nothing* to do with communicating any purportedly privileged information to anyone. And as you may know, a receiver serves as *the Court's* agent. *See Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 896 (5th Cir. 2019) ("The receiver is not an agent of the parties, nor is he like any other party affected by the wrongdoing of the entity's leaders—in this case, by way of a classic Ponzi scheme. He is "an officer or arm of the court ... appointed to assist the court in protecting and preserving, for the benefit of all parties concerned, the properties in the court's custody."). In the event the Receiver discovered privileged documents in reviewing the materials located in the Receivership Entity's offices that he is *required* to review, he would put them aside for your retrieval on behalf of Mr. Barton. After ascertaining the existence of a privilege in such materials, under no circumstances would the Receiver continue reviewing the subject documents or include reference to them in any report to the Court or in communications with the government. Your concerns to the contrary are simply unfounded. Please let us know by the close of business on Thursday whether you will agree to the use of a FRE 502(b) agreement with respect to documents located in the Receivership Entities' offices.

I also note that with respect to Mr. Barton individually claiming a privilege in what you deem "jointly-privileged documents" finds little if any support in the cases you cite. We are unaware of any joint defense agreement between Mr. Barton individually and any other Receivership Entity, nor would the common interest doctrine have any application in these circumstances. Nor is the Receiver akin to a successor in interest who was previously adverse to Mr. Barton as in *In re Bounds.*

Finally, while we appreciate Mr. Roper's efforts to provide the information requested to date by the Receiver and required by the Receivership Oder, we must disagree that Mr. Barton's privilege against incrimination excuses his obligation to produce documents requested by the Receiver or required by the Order. First, you provide no basis for any assertion that the act of production in these circumstances would have any incriminating consequences. For instance, providing appraisals of certain items of art or other identifying information for Receivership Assets could not provide any basis to incriminate Mr. Barton. Moreover, other requested information and documents, such as the location, account numbers, and balances easily falls within the "foregone conclusion" exception to any testimonial conduct in producing the requested information, if in the context presented here, the act of production actually qualified as compelled testimony rather than the mere production of previously existing documents. In short, the law does not support your assertion that Mr. Barton's Fifth Amendment privilege insulates him from his obligation to produce documents and information requested by the Receiver.

CHARLESTE KOONCE
214.360.2505
BROWNFOXLAW.COM

From: Edney, Michael <MEdney@huntonak.com>
Sent: Tuesday, November 1, 2022 5:17 PM
To: Cort Thomas <cort@brownfoxlaw.com>; Charlene Koonce <charlene@brownfoxlaw.com>
Cc: Richard Rooper <Richard.Roper@hklaw.com>; Huffman, Ted <THuffman@hunton.com>
Subject: Securities and Exchange Commission v. Barton, No. 3:22-cv-2118-X

Dear Mr. Thomas and Ms. Koonce:

Attached please find two letters regarding the above entitled matter. Please contact us with any questions.

My very best regards,

Mike

Michael J. Edney
Head of Government Investigations Practice
Hunton Andews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 778-2204

EXHIBIT A-5

Charlene Koonce

Subject: FW: Securities and Exchange Commission v. Barton et al., No. 3:22-cv-2118-X

From: Charlene Koonce
Sent: Friday, November 11, 2022 4:26 PM
To: Bernstein, Keefe <bernsteink@SEC.GOV>
Subject: FW: Securities and Exchange Commission v. Barton et al., No. 3:22-cv-2118-X

CHARLENE KOONCE
214.367.7503
BROWNFOXLAW.COM

From: Charlene Koonce
Sent: Friday, November 11, 2022 3:40 PM
To: Edney, Michael <MEdney@huntonak.com>; Cort Thomas <cort@brownfoxlaw.com>
Cc: Richard Rooper <Richard.Roper@hklaw.com>; Huffman, Ted <THuffman@hunton.com>; Tim Wells <tim@brownfoxlaw.com>
Subject: RE: Securities and Exchange Commission v. Barton et al., No. 3:22-cv-2118-X

Mike – Thank you for your letter providing Mr. Barton's recommendation regarding how the Receiver should proceed to perform the mandate of the Receivership Order and recommending that he sell the Forney and DeSoto properties. We will carefully consider your recommendation but want to be clear about several inaccuracies in your letter and provide additional perspective that your proposal ignores.

First, as you know, the Receiver's possession and control over all Receivership Assets is required by the Receivership Order. He cannot pick and choose which properties to potentially exclude for Mr. Barton's continued control or development.

Second, many of the properties owned by Receivership Entities have existing and urgent financial obligations tied to them. For instance, property and liability insurance coverage, long past due utility payments, and payroll obligations owed on the Amerigold extended stay property. To date, the Receiver has recovered $25,000 in cash that can be used for these continuing and substantial obligations. All other cash, which is limited, is encumbered or necessary for the continued operation of several other properties. (The dearth of cash also explains why the Receivership Entities had apparently not been paying virtually any of their debts as they become due). Thus, even if the Receiver agreed with your proposal to sell the two properties you identified, those sales would take time and he would be required to liquidate additional assets to pay for the administration of the estate.

Third, like every other receivership property, the two which are the subject of your proposal carry more than one lien or encumbrance. As to Bellwether Ridge in Desoto, the latest information we have is that $17,957,371 is still owed on the HUD loan, and at least $3.8 million is owed to Pillar Income Asset Management for a second loan on the property. As to the Parc at Windmill Farms in Forney, the latest information we have is that $35,490,553 is still owed on that property's HUD loan and at least $7.3 million is owed to Pillar Income Asset Management. Even if we assume that the appraisal you cite (which we understand was prepared by an entity and/or individual that is closely connected to Mr. Barton) is accurate and not inflated, the best-case sale scenario on Desoto prior to closing costs and any commissions and legal fees would be $4,942,629–$6,242,629, while Forney would be $10,509,447–$13,209,447. In other words, even under Mr. Barton's assumptions, successful sales of these two properties alone will still be considerably less than $27 million.

Fourth, and perhaps most importantly at this point, there is no guarantee that the sale of these properties will result in any value to the Receivership Estate. As Mr. Barton is well aware, Pillar (the second lender on the properties) contends that prior to entry of the Receivership Order it exercised a right of conversion, which operates to extinguish (in whole) *any* interest in those properties held or claimed by the Receivership Entities. While the Receiver plans on vehemently contesting that purported conversion, the outcome is far from certain, and again, will require time and expense.

Fifth, as you note, the process of returning investor funds will be complex and therefore time-consuming and expensive. Thus, as noted above regarding the continuing cost of administering the estate for properties that require management and have accruing expenses, the estate will incur additional and extensive expenses related to other aspects of administration. Indeed, just selling the properties you identify will require additional cash outlays to comply with the statutory sales process that would govern the sale. At this very early juncture we have no estimate of what those costs may be and are unwilling to commit to or limit the receiver's efforts to an uncertain recovery on properties in which the estate may or may not hold any interest as providing sufficient funds to fully reimburse all investors, pay all creditors holding claims on those properties, and pay for the accrued and expected costs of administering the estate.

Finally, without waiver of the *many* other arguments, facts, and authorities that necessitate liquidating some assets in this case as soon as possible, we also direct you to the extremely broad discretion afforded judges supervising equitable receiverships. *See SEC v. Hardy,* 803 F.2d 1036,1037–38 (9th Cir. 1986). Due in part to the considerations listed above, your assertion that a receiver may not liquidate assets held by the estate prior to entry of a judgment is simply incorrect. On the contrary, in instances where the ongoing administration of the estate will drain assets otherwise available for distribution to defrauded investors, liquidation prior to entry of a judgment is *expressly* permissible. *See S.E.C. v. TLC Investments & Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Cal. 2001) ("[L]iquidation at this time, prior to entry of judgment, is appropriate because the evidence presented to the Court demonstrated that the TLC entities' liabilities were greater than their assets and because ongoing management alone will drain money out of the estate, money that otherwise could be returned to investors."). Additionally, but not inconsequently, the Fifth Circuit does not adhere to other circuits' (particularly the Second Circuit's) preference for use of bankruptcy procedures over receiverships. Thus, your citations to Second Circuit cases in which "reservations" are expressed about liquidation in the context of receiverships are unpersuasive and inapplicable here. *See for example,* the dozens if not hundreds of opinions arising from the Stanford Receiver's liquidation efforts, much of which occurred for several years before any final judgment was entered against Allan Stanford.

We are in agreement that the Receiver is required to marshal and preserve Receivership Assets. To the extent he must sell some properties to preserve others, he will do so in the most expeditious manner possible and will in all instances seek to maximize the value of all properties. We appreciate Mr. Barton's efforts to assist the Receiver and look forward to receiving the many documents and additional information that has been requested of him in that regard.

CHARLENE KOONCE
214.367.7503
BROWNFOXLAW.COM

From: Edney, Michael <MEdney@huntonak.com>
Sent: Wednesday, November 9, 2022 5:27 PM
To: Cort Thomas <cort@brownfoxlaw.com>
Cc: Charlene Koonce <charlene@brownfoxlaw.com>; Richard Rooper <Richard.Roper@hklaw.com>; Huffman, Ted <THuffman@hunton.com>
Subject: Securities and Exchange Commission v. Barton et al., No. 3:22-cv-2118-X

Dear Mr. Thomas,

Attached please find a letter and an accompanying exhibit regarding the above entitled matter. Please feel free to contact me with any questions.

My very best regards,

Mike

Michael J. Edney
Hunton Andews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 778-2204

EXHIBIT A-6

Charlene Koonce

Subject: FW: Securities and Exchange Commission v. Barton et al.

From: Charlene Koonce
Sent: Tuesday, November 29, 2022 4:43 PM
To: Huffman, Ted <THuffman@hunton.com>; Roper, Richard B (DAL - X31210) <Richard.Roper@hklaw.com>; Edney, Michael <MEdney@huntonak.com>
Cc: Wester, Lori <lwester@hunton.com>; Robert@ckcconsulting.com; Tim Wells <tim@brownfoxlaw.com>; Morgan Buller <morgan@brownfoxlaw.com>
Subject: RE: Securities and Exchange Commission v. Barton et al.

Mr. Roper – thank you for your agreement to provide the lists of art, its ownership, and approximate value. We ask that Mr. Barton include all art located in the Turtle Creek location that he can recall and we can provide access to that location or provide photos of pieces he does not recall if necessary.

Mr. Huffman, with respect to your letter, we expended significant time and effort to identify the IT consultant previously contracted by the Receivership Entities. When we spoke with that individual a few weeks ago, he tried using his credentials to log in and no longer had access. Obviously, however, Mr. Heller has access. So, either Mr. Barton, one of his children, or his employees changed that access, or Mr. Heller did. In any event, the credentials are known to someone that you represent or your agent, all of whom have received a copy of the Receivership Order.

Regarding the privilege protocol, we have proposed a protocol for handling privileged materials *several times*, the last time on November 7, 2022. We received no response.

While the Receiver is willing to work towards resolution of the privilege issues and would prefer not to have to file a MSC, he is not agreeable to you or your consultant holding the IT access credentials hostage while we attempt to negotiate that process. As previously requested, please provide the IT credentials.

Based on your communications today and in an effort to avoid the necessity of a MSC, we will wait to the close of business tomorrow to receive that information, as well as the lists of the art described previously by Mr. Roper.

CHARLENE KOONCE
214.367.7503
BROWNFOXLAW.COM

From: Huffman, Ted <THuffman@hunton.com>
Sent: Tuesday, November 29, 2022 4:04 PM
To: Roper, Richard B (DAL - X31210) <Richard.Roper@hklaw.com>; Charlene Koonce <charlene@brownfoxlaw.com>; Edney, Michael <MEdney@huntonak.com>
Cc: Wester, Lori <lwester@hunton.com>; Robert@ckcconsulting.com
Subject: RE: Securities and Exchange Commission v. Barton et al.

Ms. Koonce—

Following up on Mr. Roper's email below, please see the attached correspondence.

From: Roper, Richard B (DAL - X31210) <Richard.Roper@hklaw.com>
Sent: Tuesday, November 29, 2022 2:27 PM
To: Charlene Koonce <charlene@brownfoxlaw.com>; Edney, Michael <MEdney@huntonak.com>
Cc: Huffman, Ted <THuffman@hunton.com>; Wester, Lori <lwester@hunton.com>; Robert@ckcconsulting.com
Subject: RE: Securities and Exchange Commission v. Barton et al.

Caution: This email originated from outside of the firm.

Rule 408 Communication

Ms. Koonce:

Thanks for speaking with me today. As we discussed, Barton, through counsel, will provide you two lists. First, a list of the art work, and each work's approximate value, located in the residence, 4107 Rock Creek Drive, Dallas, Texas, including art work taken out of the residence. Second, a list of art work, and each art work's approximate value located at 2999 Turtle Creek, Dallas, Texas. Regarding the latter list, Baron may need to walk through the building to ensure that he can accurately list the art work.

Also, Barton will immediately cease from using any Barton-entity email address.

Finally, we will respond this afternoon regarding the receiver's request for the credentials to access the entity file server.

Please respond if I am missing something.

Regards,

Richard Roper | **Holland & Knight**
Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, Texas 75201
Phone 214.969.1210 | Fax 214.964.9501 | Mobile 682.465.1008
richard.roper@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Charlene Koonce <charlene@brownfoxlaw.com>
Sent: Wednesday, November 16, 2022 7:09 PM
To: Edney, Michael <MEdney@huntonak.com>
Cc: Huffman, Ted <THuffman@hunton.com>; Roper, Richard B (DAL - X31210) <Richard.Roper@hklaw.com>; Wester, Lori <lwester@hunton.com>; Robert@ckcconsulting.com
Subject: RE: Securities and Exchange Commission v. Barton et al.
Importance: High

[External email]
Mr. Edney – As Mr. Heller knows, and as he undoubtedly informed you, we contacted him because we were informed that he had become the IT professional *for the Defendant Entities.*

Regardless of whatever Mr. Heller's role is, based on additional information we received, it is abundantly clear that Mr. Heller has received the admin credentials for the Receivership Entities' servers, email accounts and additional electronic data, *and that he changed those credentials.* In so doing, he is interfering with the Receiver's ability to access that information and data.

Based on your request that we not communicate with Mr. Heller's counsel regarding this or which in any way insulates Mr. Heller from the mandates in the Receivership Order, I will direct the following to you and your clients:

Pursuant to ¶¶ 12, 18B.3, and 33 you are hereby instructed to provide me with all access credentials for all Receivership Entity data storage devices, clouds, servers, etc. to me by 9 a.m. tomorrow. Regardless of who retained Mr. Heller, or why, he and you as his principal, or your clients if you prefer to concede that they are the source of this information, are obligated to provide this requested information to the Receiver. If you on behalf of Mr. Heller fail to provide this requested information, we will so advise the Court and seek the appropriate relief, including but not limited to a request to hold each and both of you in contempt of Court until the access credentials are provided, and sanctions for the costs of obtaining this information that was requested nearly a month ago and expressly required by the Receivership Order. There is no attorney-client privilege, work product protection, or Fifth Amendment privilege in this access information.

Moreover, as Mr. Heller was informed and as the Receivership Order makes abundantly clear ALL data should have been preserved. We will of course seek all and any appropriate remedies if we discover that data or information has been altered or deleted.

CHARLENE KOONCE
214.367.7503
BROWNFOXLAW.COM

From: Edney, Michael <MEdney@huntonak.com>
Sent: Wednesday, November 16, 2022 5:40 PM
To: Charlene Koonce <charlene@brownfoxlaw.com>
Cc: Huffman, Ted <THuffman@hunton.com>; Richard Rooper <Richard.Roper@hklaw.com>; Wester, Lori <lwester@hunton.com>
Subject: Securities and Exchange Commission v. Barton et al.

Dear Ms. Koonce:

Attached please find correspondence in the above entitled matter.

EXHIBIT A-7

Charlene Koonce

Subject: FW: Documents to be signed_Parc at Opelika

From: Charlene Koonce
Sent: Monday, December 5, 2022 3:21 PM
To: Edney, Michael <MEdney@huntonak.com>; Cort Thomas <cort@brownfoxlaw.com>
Cc: Huffman, Ted <THuffman@hunton.com>; Roper, Richard B (DFW - X31210) <Richard.Roper@hklaw.com>
Subject: RE: Documents to be signed_Parc at Opelika

All – thanks for the call this morning. I know we discussed the issue of the personal property in the Rock Creek Property, and given the offer to purchase the place with its furnishings vis a vis Mr. Barton's contention that he owns the contents and the pending appeal, we see three options:

1) Mr. Barton provides evidence showing that he purchased the items with his personal funds, rather than purchasing through an entity, an entity credit card, or funds traced to a Receivership Entity; (please note that we understand that virtually all of the home furnishings were purchased within the last two years and that they were purchased with Receivership Entities' money);
2) Mr. Barton agrees to pay, in advance, to have the contents moved and stored during the pendency of the appeal so that property can be delivered to purchaser at the December 28 closing; or
3) Subject to Court approval (which we will request shortly), the Receiver proceeds with the sale of the contents (minus certain artwork and antiques) for $25K.

We are not proposing to sell Mr. Barton (or Victoria's or Max's) clothing, or any similar "personal" items, but rather the furnishings, including soft goods, like sheets, towels, dishes, etc. We are agreeable to allowing one person – not all three Barton family members at once- to meet at the property and retrieve (or have someone retrieve on their behalf) any remaining "personal" items that would not be sold. As Cort mentioned on the call today, substantial personal items were already retrieved.

Because we need to get this resolved quickly, please let us know by the end of the day tomorrow whether Mr. Barton wants to proceed under option 1 or 2 above, and if #2, (a) provide the identity of two alternate moving/packing companies who can pack the personal items and will move them to a storage unit selected by the Receiver, and, (b) let us know how Mr. Barton will advance payment for 6 months for a storage unit of the Receiver's choice.

CHARLENE KOONCE
214.367.7503
BROWNFOXLAW.COM

From: Edney, Michael <MEdney@huntonak.com>
Sent: Monday, December 5, 2022 8:59 AM
To: Cort Thomas <cort@brownfoxlaw.com>
Cc: Huffman, Ted <THuffman@hunton.com>; Roper, Richard B (DFW - X31210) <Richard.Roper@hklaw.com>; Charlene Koonce <charlene@brownfoxlaw.com>
Subject: Re: Documents to be signed_Parc at Opelika

Dear Cort:

Thank you. In terms of times, would 9:30am or 12:30pm today or 2pm tomorrow work for you? We would be happy to send around a number.

My very best,

Mike

From: Cort Thomas <cort@brownfoxlaw.com>
Sent: Friday, December 2, 2022 11:37 PM
To: Edney, Michael <MEdney@huntonak.com>
Cc: Huffman, Ted <THuffman@hunton.com>; Roper, Richard B (DFW - X31210) <Richard.Roper@hklaw.com>; Charlene Koonce <charlene@brownfoxlaw.com>
Subject: Re: Documents to be signed_Parc at Opelika

9 am central works on our end. Let us know if you want us to call you or if better to use a dial-in.

Cort

On Dec 2, 2022, at 9:05 PM, Edney, Michael <MEdney@huntonak.com> wrote:

Dear Cort:

Thank you apprising us of this situation and passing these materials along. We are reviewing and want to be as helpful as we can, in light of the change of roles effected by the intervening receivership order (which, as you know, we are challenging as entered in error).

I have returned from my federal court commitments in another matter, and we understand the time sensitivity of this and other issues. We are conferring on these issues over the weekend, and I propose that we have a call at 9am Monday morning (or such other time Monday morning that is convenient for you and your team) to address this and all other pending issues.

We are confident that, working together, we can resolve forge a path forward on all pending matters.

We look forward to speaking with you and your colleagues Monday morning.

My very best regards,

Mike

From: Cort Thomas <cort@brownfoxlaw.com>
Sent: Thursday, December 1, 2022 9:53 PM
To: Edney, Michael <MEdney@huntonak.com>; Huffman, Ted <THuffman@hunton.com>; Roper, Richard B (DFW - X31210) <Richard.Roper@hklaw.com>
Cc: Charlene Koonce <charlene@brownfoxlaw.com>
Subject: FW: Documents to be signed_Parc at Opelika

Caution: This email originated from outside of the firm.

Richard/Mike/Ted,

Please see below and attached from Greystone. When I spoke with Richard and Mr. Barton a couple of weeks ago, Mr. Barton offered to assist as needed with signatures involving the HUD loan to ensure that we get through cost certification. It has taken considerable effort, but Greystone finally appears to be swimming in the same direction. I had a lengthy call with them today, during which they indicated that HUD has asked that Mr. Barton sign the attached forms on behalf of D4OP since he is still listed on the Regulatory Agreement.

This request of course does not waive our position that D4OP is properly a Receivership Entity, nor do we view Mr. Barton's cooperation in this respect as a violation of the Receivership Order. To the contrary, Mr. Barton's assistance furthers the goals and purposes of the Receivership Order.

Despite Greystone's delays, there is a great deal of urgency here because of potential defaults (I am happy to jump on the phone to elaborate further and discuss). If there is an way that we could get this resolved one way or the other tomorrow or early next week, it would be very much appreciated.

Best,

Cort

Cort Thomas
214.367.6094
Brown Fox PLLC
www.brownfoxlaw.com

From: Amy Briseno <Amy.Briseno@greyco.com>
Sent: Thursday, December 1, 2022 4:18 PM
To: Cort Thomas <cort@brownfoxlaw.com>; Theresa Johnson <Theresa.Johnson@greyco.com>; Jill L. Nicholson (jnicholson@foley.com) <jnicholson@foley.com>; Debi Martin <Debi.Martin@greyco.com>; Samantha Brooks <Samantha.Brooks@greyco.com>
Subject: Documents to be signed_Parc at Opelika

Hi Cort-

Please see the following documents for signatures:

1. 92403 – bottom of Page 1
2. 92464M – "Borrower" Page 6 ***and*** Page 7
3. 92464M IOD – Page 6

Please let me know if you have any questions or would like to review before you obtain signatures- thank you!

** I will be out of the office tomorrow, however, please feel free to reply to this email and someone will definitely get back to you.

Thanks again!

Amy Briseno | **Senior Asset Manager**
Greystone | www.greyco.com
amy.briseno@greyco.com | o: 540.359.7679

EXHIBIT A-8

2021 - 202100261387 09/01/2021 9:50AM Page 1 of 9

Capital Title
GF # 21-L003645-WB

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE OUT ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS LICENSE NUMBER

AGREED RESCISSION OF SPECIAL WARRANTY DEED

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DALLAS

WHEREAS SF Rock Creek LLC, a Texas limited liability company, (the "Grantor") agreed to sell and convey to Timothy Barton (the "Grantee") the Property (as described herein) to Grantee in accordance with certain agreed terms;

WHEREAS the executed Special Warranty Deed ("Deed") conveying the Property to Grantee was executed by Grantor to be held in escrow but then erroneously recorded prior to any actual conveyance or closing of the sale of the Property;

WHEREAS the closing of the sale of the Property to Grantee did not actually occur and neither the agreed sales price nor any consideration was paid to the Grantor for the Property;

WHEREAS the filing of the Deed was in error;

WHEREAS Grantee never took possession of the Property; and

WHEREAS the Parties have agreed to rescind the Deed as stated herein.

NOW THEREFORE Grantor and Grantee hereby rescind in full the execution, granting, and recording of the Special Warranty Deed ("Deed") as recorded in the real property records of Dallas County, Texas as document number 202100223187 (attached hereto as Exhibit "B") recorded on July 27, 2021, which purported to grant, bargain, sell, and convey the property and improvements located at 4107 Rock Creek Drive. Dallas, Texas 75204 situated in Dallas County, Texas, as described on Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes, together with any and all buildings and other improvements, plants, trees and shrubbery now or hereafter located on said property and together with all and singular all rights and appurtenances pertaining to such property, including any right, title and interest of Grantor in and to adjacent roads, streets, alleys, easements or rights-of-way (with the property, together with all such improvements, rights and appurtenances being collectively referred to herein as the "Property").

Grantee represents, warrants, and affirms that it never took possession of the Property; that it has not altered nor encumbered the Property in any way; that it has no claims related to the Property; and that it has acquired no rights, title, or interests of any kind in the Property.

Except as stated herein, Grantee and Grantor fully release one another including their successors and assigns and related parties from any and all obligations, claims, rights, and covenants related to the purported conveyance of the Property as described herein.

The effect of this rescission shall be as if the conveyance never happened and Grantor and Grantee are each restored to their respective positions as existed prior to the purported conveyance of the Property and as such, the Deed is void and of no force and effect.

[Signature Pages to Follow]

EXECUTED this 30 day of August 2021.

GRANTOR:

SF ROCK CREEK LLC
a Texas limited liability company

By: _____
Name: Timothy Barton
Its: President

STATE OF TEXAS
COUNTY OF DALLAS

On this 30 day of August, 2021, before me, a notary public in and for the jurisdiction aforesaid, personally appeared Timothy Barton who acknowledged that he/she executed the foregoing instrument in such person's capacity as the President of Grantor, being authorized to do as his/her free act and deed.

Witness my hand and official seal.

[Notary Seal]

Notary Public
Print Name: Bella D Khusal

Bella D Khusal
My Commission Expires
09/24/2022
ID No. 131734480

EXECUTED this 30 day of August 2021.

GRANTEE:

Timothy Barton

STATE OF TEXAS
COUNTY OF DALLAS

On this 30 day of August 2021, before me, a notary public in and for the jurisdiction aforesaid, personally appeared Timothy Barton who acknowledged that he executed the foregoing instrument in his individual capacity as Grantee.

Witness my hand and official seal.

[Notary Seal]

Notary Public
Print Name: Bella D. Khusal

Bella D Khusal
My Commission Expires
09/24/2022
ID No. 131734480

EXHIBIT "A"

Lot 32, Block 2, TURTLE CREEK PARK, an Addition to the City of Dallas, Dallas County, Texas, according to the Map or Plat thereof, recorded in Volume 4, Page 83, Map Records, Dallas County, Texas

Address: 4107 Rock Creek Drive, Dallas, Texas 75204
Parcel ID: 00000195718000000

2021 - 202100261387 09/01/2021 9:50AM Page 6 of 9

2021 - 202100223187 07/27/2021 12:42PM Page 1 of 3

EXHIBIT "B"

Capital Title

GF # 21-603645-WB

Special Warranty Deed

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: **July 27, 2021**

Grantor: **SF Rock Creek, LLC, a Texas limited liability company**

Grantor's Mailing Address: 13901 Midway Rd suite 102 Dallas TX 75244

Grantee: **Timothy L. Barton**

Grantee's Mailing Address: 13901 Midway Rd suite 102 Dallas TX 75244

Consideration: the sum of TEN DOLLARS ($10.00) cash, and other good and valuable consideration

Property (including any improvements):

Lot 32, Block 2, TURTLE CREEK PARK, an Addition to the City of Dallas, Dallas County, Texas, according to the Map or Plat recorded in Volume 4, Page 83, Map Records of Dallas County, Texas.

Reservations from Conveyance: None

Exceptions to Conveyance and Warranty:

This conveyance is made and accepted subject to all restrictions, encumbrances, easements, covenants, and conditions relating to the Property filed for record in Dallas County, Texas.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through or under Grantor but not otherwise except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this 27 day of July, 2021

SF Rock Creek, LLC, a Texas limited liability company

By: TLB 2018 Trust, dated November 21, 2018 and any amendments thereto
Its: Manager

By: _____
Timothy L. Barton, Trustee

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, a Notary Public, the foregoing instrument was acknowledged on 27 day of July, 2021 by Timothy L. Barton, Trustee for TLB 2018 Trust, dated November 21, 2018 and any amendments thereto as Manager for SF Rock Creek, LLC, a Texas limited liability company who personally appeared before me, and who is known to me through personal knowledge to be the person(s) who executed it for the purposes and consideration expressed therein, and in the capacity stated.

Bella D Khusal
My Commission Expires
09/24/2022
ID No 131734480

_____
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING, RETURN TO:
TIM BARTON
8901 Midway Rd Ste 102
Dallas, TX 75244

PREPARED IN THE LAW OFFICE OF
Shaddock & Associates, P. C.
2400 N. Dallas Parkway, Ste. 560
Plano, Texas 75093

Dallas County
John F. Warren
Dallas County Clerk

Instrument Number: 202100223187

eRecording - Real Property

Recorded On: July 27, 2021 12:42 PM

Number of Pages: 3

" Examined and Charged as Follows: "

Total Recording: $30.00

********** **THIS PAGE IS PART OF THE INSTRUMENT** **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	202100223187
Receipt Number:	20210727000813
Recorded Date/Time:	July 27, 2021 12:42 PM
User:	Lynn G
Station:	CC18

Record and Return To:
Simplifile

STATE OF TEXAS
COUNTY OF DALLAS

I hereby certify that this Instrument was FILED **In the File Number sequence on the date/time printed hereon, and was duly** RECORDED **in the Official Records of Dallas County, Texas.**

John F. Warren
Dallas County Clerk
Dallas County, TX

Dallas County
John F. Warren
Dallas County Clerk

Instrument Number: 202100261387

eRecording - Real Property

Recorded On: September 01, 2021 09:50 AM

Number of Pages: 9

" Examined and Charged as Follows: "

Total Recording: $54.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	202100261387
Receipt Number:	20210901000175
Recorded Date/Time:	September 01, 2021 09:50 AM
User:	Lynn G
Station:	CC18

Record and Return To:

Simplifile

STATE OF TEXAS
COUNTY OF DALLAS

I hereby certify that this Instrument was FILED **In the File Number sequence on the date/time printed hereon, and was duly** RECORDED **in the Official Records of Dallas County, Texas.**

John F. Warren
Dallas County Clerk
Dallas County, TX

TAB 4

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
***Plaintiff*,**	§	
	§	
v.	§	**No. 3:22-cv-2118-X**
	§	
TIMOTHY BARTON, et al.	§	
	§	
***Defendants*.**	§	

RECEIVER'S VERIFIED RESPONSE TO BARTON'S MOTION TO STAY PENDING APPEAL OF ORDER GRANTING RECEIVER'S MOTION TO RATIFY AGREEMENT WITH DLP CAPITAL ETC.

Respectfully submitted,

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
***Plaintiff*,**	§	
	§	
v.	§	**No. 3:22-cv-2118-X**
	§	
TIMOTHY BARTON, et al.	§	
	§	
***Defendants*.**	§	

RECEIVER'S VERIFIED RESPONSE TO BARTON'S MOTION TO STAY PENDING APPEAL OF ORDER GRANTING RECEIVER'S MOTION TO RATIFY AGREEMENT WITH DLP CAPITAL ETC.

Cort Thomas, the Court-appointed Receiver, responds to Barton's Motion to Stay Pending Appeal of Order Granting Receiver's Motion to Ratify Agreement with DLP Capital, etc., [Dkt. 114] (the "Motion") and in support respectfully shows the Court as follows.

SUMMARY

Barton's Motion to stay the Receivers' settlement agreement with DLP Capital [Dkt. 109, 114] ignores most facts and significant aspects of the law. It also lacks any supporting evidence. The Motion relies primarily on the argument that sale of the "Frisco" property will provide adequate funds for the continued maintenance of other Receivership Properties during the pendency of Barton's interlocutory appeal of the Order Appointing Receiver (the "Receivership Order"), [Dkt. 29] and the Order by which the Court ratified the DLP settlement (the "Order"). [Dkt. 109]. But the Frisco transaction will not close and fund for almost three months (at the earliest), and the Fifth Circuit lacks jurisdiction to consider Barton's appeal of the Order. And perhaps most importantly, the Motion seeks to stay a contractual settlement that has already funded and which is fully performed. Thus, any "stay" would merely preserve the already accomplished

settlement, a settlement that the Court correctly found did not even need to be judicially approved by the Receivership Court in the first place. The Court should deny the motion.

I. FACTS

1. Because Barton's Motion depends in part on other sales transactions and grossly misrepresents or omits key facts regarding those transactions as well as the DLP Settlement, the Receiver provides a more accurate record for the Court's consideration.

2. First, and foremost, the Receiver did not seek the sales and settlement listed below to punish Barton, or because of an ill-advised liquidation strategy. On the contrary, as discussed in his Initial Status Report, [Dkt. 67], after consulting with experienced and respected real estate professionals (who did not charge the estate for their services as a result of their respect and relationship with the Receiver) he determined that attempting to sell certain real estate assets as soon as possible would likely result in greater values than waiting several months to begin a sales process. [Dkt. 67, pp. 14-15].

3. Nor do the two sales and settlement represent a race to liquidate all Receivership Properties. As explained in prior reports, motions, and responses, the Receiver sought to sell the Rock Creek Property because it provided the most likely avenue for an immediate influx of cash needed to continue operating the estate, and because Barton had listed the property for sale before the Receiver's appointment. He negotiated the DLP Settlement because the Receivership Entities' default was brought to his attention on the second day of his appointment, and the settlement served to both mitigate damages that would and could have been assessed against Receivership Entities and compensate the estate for the participation interest. And the Frisco Property sale was pursued because again, Barton had listed that property for sale before the Receiver was appointed, Barton promoted the sale to the Receiver, and, if approved and closed, the sale will allow the Receiver to continue operating and preserving the value of other properties.

4. The influx of cash was necessary, because despite Barton's receipt of cash from real estate sales of properties to DLP (including the Marine Creek and Orchard Farms properties) of not less than $2M within the year before the Receivership Order was entered, Barton had either spent, secreted, or otherwise transferred those funds away. Notably, the SEC had traced investor funds into Barton's purchase of the properties that he in turn sold through the Mansions Apartment Homes at Marine Creek LLC.

A. Sale Of The Frisco Property

5. As reflected in the Receiver's Motion to Appoint Appraisers, etc. regarding the Frisco Property ("Motion to Sell Frisco Property") [Dkt. 110], in the initial days of his appointment, the Receiver learned that prior to his appointment, the Frisco Property had been listed for sale by Defendant for many months. However, no buyers had been identified at the approximately $10 million list price, and Defendant's broker's listing agreement had either terminated or expired.

6. After receiving a Letter of Intent (the "LOI") in late October 2022 from a prospective purchaser of the Frisco Property offering $9M for its purchase, the Receiver solicited information regarding entitlements, other obligations, and financial information related to the property. Despite specific and direct provisions of the Receivership Order compelling Barton's assistance and cooperation, Barton provided no assistance on this issue.

7. The Receiver also sought information from lenders with liens on the Frisco Property to evaluate the current debt and thus the likelihood of any net recovery on the sale of the Frisco Property. He received no assistance in this regard from Barton. Notably, the Receiver was particularly concerned about whether a sale would ultimately result in any net recovery for the estate, given the discovery of significant debt and legal issues impeding virtually every other Receivership Property and Barton's failure to disclose or indeed even acknowledge that debt. *See*

Appendix ISO Barton's Response to Motion for Order Governing Estate, Dkt. 57, App. p. 4-6; *Receiver's Initial Report*, Dkt. 67; *Receiver's Response to Motion to Stay*, Dkt. 84, pp. 6-8; *Appendix ISO Response to Motion to Stay*, Dkt. 85, App. pp. 28-29.

8. The Receiver's investigation regarding the Frisco Property occurred while he was also gathering information about multiple other Receivership Properties, including four apartment complexes that Barton inexplicably continues to argue will make the investors whole and negate the need for any continuation of the receivership from their sale alone. Investigation of those properties has revealed that one of the lenders on the property contends that it has converted its debt position to one of equity and eliminated any ownership or entitlement interest previously held by any Receivership Entity. *See* Dkt. 67, pp.19-22. While the Receiver is hopeful that he will be able to defeat these arguments, Barton, again, provided no information regarding these issues and instead has continued to ignore them in his unrealistic assertions about how the estate should be managed and which properties can and should be sold to satisfy the unrebutted debt owed to the investors and dozens if not hundreds of creditors.

9. The Receiver and his team also spent considerable time investigating and evaluating the more than one hundred and thirty additional entities operated by Barton and the properties or assets each controlled; communicating with banks, investors, creditors, angry lawyers whose lawsuits against Barton and Receivership Entities were stayed by the Receivership and the creditor who claims the Receivership Entities' interest in the Turtle Creek Property was extinguished prior to issuance of the Receivership Order; and negotiating with utility providers, literally, to keep the lights on and the water flowing at the Amerigold Suites. And, considerable time has been necessary to address Barton's many instances of contempt and interference with the Receiver's management of the estate, as well as Barton's opposition to all but one motion filed by

the Receiver. All of these activities occurred concurrently with the Receiver's efforts to identify, evaluate, and control more than a dozen real properties, and many more contractual rights and obligations.

10. With respect to the Frisco Property and indeed all other real estate properties, the Receiver has expended considerable time meeting and conferring with expert brokers, developers, appraisers, and others to determine realistic sales prices, sales horizons, development plans and obligations. The Receiver's efforts regarding these Properties could have been minimized if Barton had complied with the Receivership Order, and if the limited information Barton has provided (almost exclusively via filings in this case) was trustworthy or credible. Those predicates, however, were glaringly absent.

11. After performing due diligence related to the likelihood of a net recovery for the estate resulting from the proposed sale of the Frisco Property, including obtaining and evaluating broker's opinions of value and a Title Commitment, the Receiver spent several weeks negotiating a purchase and sale agreement ("PSA") with the potential purchaser and its attorneys. While negotiations were delayed, in part, because of the Thanksgiving holiday and multiple rounds of revisions to the agreement, the Receiver and his team worked diligently to finalize the PSA, which was ultimately executed by the purchaser on December 15, 2022. Per the terms of the PSA, a thirty-day due diligence period commenced on December 15 and lasts until January 14. If the buyer does not execute its right to terminate the contract during this period, closing will then occur within sixty (60) days thereafter—*i.e.*, March 15, 2023. The Receiver was unwilling to expend time seeking confirmation of the sale until and unless the buyer signed the PSA, which did not occur until December 15. Additionally, to comply with 28 U.S.C. § 2001, the Receiver obtained an appraisal and an additional opinion of value.

12. Thus, the Frisco Property sale was not "on the shelf ready to go" when the Receiver was appointed. A willing buyer, who made an offer below the prior list price, was identified by a broker that represented Defendants months prior to the Receiver's appointment, but as in any sale of commercial real estate, a lengthy diligence, negotiation, and sale process remained.

13. Although the Receiver conferred with Barton prior to filing his Motion to Appoint Appraisers, etc., regarding approval of the Frisco Property sale, Barton did not respond. His opposition is thus presumed.

14. If the Court approves the sale of the Frisco Property, and if the Fifth Circuit does not stay the sale of the Property in connection with Barton's pending appeal, the sale will not close or fund until mid-March at the earliest. Based on the two liens on the Frisco Property and after closing costs, the Receiver expects the sale to net approximately $2M.

B. The DLP Settlement

15. As reflected in his Verified Motion to Ratify Agreement with DLP Capital and Other DLP Entities, [Dkt. 95] (the "DLP Motion"), on December 15, 2022, following negotiations with DLP's counsel,[1] the Receiver sought the Court's approval of a settlement agreement between various Receivership Entities and DLP Capital and related entities (the "DLP Settlement"). As reflected in the Motion, the DLP Settlement compromised the respective Receivership Entities' obligation to provide development and construction management services—regarding which the Receivership Entities had defaulted prior to the Receiver's Appointment—and by separate agreement, entitled one Receivership Entity to a "participation fee" payable upon substantial completion with respect to specific real estate developments. [Dkt. 95, pp. 2-4.]

[1] On October 19, 2022, DLP sent Notices of Default dated October 18, 2022, regarding the Receivership Entities' development and construction services obligations. True and correct copies of each Notice of Default are included in the supporting Appendix.

16. The DLP Settlement did not include the sale of an interest in any real estate. *Id.*[2] Instead, the Settlement compromised only contractual rights related to the participation fee and the development and construction services at issue, none of which qualified as a "lien, claim, easement, servitude or encumbrance" burdening the real estate that had been sold prior to entry of the Receivership.

17. As reflected in the DLP Motion, the settlement was in the Receivership Estate's best interest because:

(a) it brought much needed capital into the Receivership Estate, enabling the Receiver to continue managing the Receivership Assets in accordance with the Receivership Order;

(b) minimized the amount of monetary damages owed to the DLP Entities as a result of the Receivership Entities' pre- and post-receivership breaches of the Orchard Farms Development Agreement, Marine Creek Development Agreement, and the Marine Creek Construction Management Agreement, which damages continued to accrue on a daily basis;

(c) similarly minimized the attorneys' fees and expenses that would otherwise be incurred by the Receiver in pursuit or defense of any claims surrounding the DLP Transactions;

[2] *See also*, discussion below at pp. 12-13. While the Settlement Agreement required the Receiver to file in the real property records instruments quit-claiming participation interests in the real estate developments at issue, that requirement was necessary because Barton filed a "Memorandum of Contract" in the real property records evidencing the terms of the Participation Agreement. Dkt. 107, pp. 4-24. Filing notice of the Participation Agreement in real property records did not create any interest in the land that was not provided in the Participation Agreement, and the Memorandum expressly states that the parties' agreement was governed by the Participation Agreement, not the "Memorandum." Dkt. 107, p. 6. Thus, releasing a contractual right to participate in the "Achieved Increased Value" of a development, even if the release is also reflected in real property records, does not convert the contractual rights at issue into a conveyance of an interest in the real estate.

(d) avoided the uncertainty surrounding the value of the Receivership Entities' participation in the properties given:

(i) the current instability in the market and the economy at large,

(ii) the delays in construction on the properties, and

(iii) the varying amounts of debt on the properties;

(e) maximized the value received by the Receivership because:

(i) the Participation Agreements only entitle the Receivership Entities to a percentage of the "Achieved Increased Value" after the sale of the properties,

(ii) limited construction has occurred on the properties to date, and thus substantial increases in value have not yet occurred,

(iii) nevertheless, the DLP Entities have agreed to apply a valuation methodology that estimates what the value of the project will be upon stabilization and then discounts that value to present value,

(iv) one real estate consultant who advised the Receiver has indicated that the valuation methodology and execution of that methodology by DLP Capital were both reasonable, and yet

(v) the Settlement Payment still greatly exceeds this discounted income capitalization approach; and

(f) reviewing the totality of the situation from a position of equity, the Participation Agreements appeared to have been designed to reward Defendant Barton and the Receivership Entities for their efforts in developing and managing construction of

the properties; however, such work had not occurred at the time of the Receiver's appointment and cannot occur moving forward.

18. In contrast, Barton's claims that the Receiver is engaged in a "continued effort to fire sale and liquidate assets" and the DLP payment of $750,000 amounts to "less than 5% of their value" are misplaced, unsupported by credible evidence, and part of a pattern of bold, unsupportable assertions. As an initial matter, Barton's position wholly ignores his pre-receivership obligations under the development and construction agreements. Indeed, DLP sent default notices to Defendants on the same day the Receiver was appointed, and representatives for DLP have informed the Receiver that Barton did not fulfill any of his obligations under those agreements. While the Participation Agreement is arguably independent of the Development and Construction Agreements (and the Receiver argued as much in negotiating with DLP), the intent of the documents is clear that the purpose of the participation interest was to incentivize Barton's continued participation in the development and construction of the properties.

19. Putting the defaults and the equities to the side however, under the DLP 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). In negotiating with DLP, the first point of contention 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 initially insisted on the former but eventually agreed to give the Receiver the benefit of the future anticipated increases in value, minus capital expenditures, discounted to present value. DLP agreed to share its own detailed opinions of value for each project based upon an income capitalization approach, comparing anticipated value to

anticipated costs. The Receiver took this approach, analyzed its various assumptions, solicited feedback from multiple respected participants in the real estate industry (and specifically multifamily) and determined that DLP's projections were both credible and likely accurate. Even if certain assumptions were incorrect and the model was updated, however, the overall value of the Receivership Estate's participation interest would still be **below** the $750,000 settlement that was reached, and all without any account for the setoffs created by Barton's breaches of the development and construction agreements.

20. Barton nonetheless appears to contend, based upon his son's "recollection" of the transactional documents, that the value of the Marine Creek property was estimated to be "approximately $187 million," with the increased value for Phase One of the project alone to be "approximately $23 million." Barton's numbers, while inflated, also wholly ignore the necessary capital expenditures for the project. The present estimated step-up in value for Phase One of the Marine Creek project is closer to $500,000 to $1 million. It is nowhere near the $23 million Max Barton vaguely recalls being referenced in transactional documents.

21. Following the Court's ratification of the sale on December 22, 2022 (the "DLP Order"), on December 28, 2022, DLP funded the settlement payment. All incidental requirements have also been satisfied or performed. Thus, any "stay" would merely preserve the completed DLP Settlement.

C. Sale of the Rock Creek Property

22. Through the sale of property owned by SF Rock Creek, LLC, the Receiver had hoped to fund some of the expenses required for continued administration of the estate. *See* Dkts. 76, 77, 84, 93. Although the Court approved that sale, (which was on an "AS IS" basis) at a hearing on December 19, 2022, the sale did not close.

23. As will be disclosed more fully in a forthcoming Motion to Show Cause, in the afternoon following the hearing and in direct violation of the Receivership Order, Barton contacted the purchaser and informed him, the Receiver believes falsely, that the property was subject to flooding and had foundation problems. The buyer was unwilling to close on December 28 as scheduled because of Barton's direct communications to the buyer. Although the Receiver entered into a short-term lease to mitigate losses and will seek sanctions against Mr. Barton as compensation for the lost sale, the estate will not receive any proceeds from the sale of the Rock Creek Property in the immediate future.

24. Although Barton points to the sale of the Frisco Property as an excuse for the Court to stay the DLP Settlement, when the Receiver conferred about his motion to approve that sale, Barton has not agreed to that sale. That sale is accordingly still contingent, not only on the Court's approval, but on closing and the absence of additional interference by Barton. In addition to Barton's motion to stay the Receivership filed in this Court [Dkt. 71], he has also filed a motion to stay in the Fifth Circuit, which would also stay the sale of the Frisco Property. In other words, other than the DLP Settlement, the Receivership Estate has no other source of cash on the immediate horizon. Combined with the dearth of Defendants' available cash on hand on the date of his appointment, particularly in light of the twenty-days' notice Barton had before the Court entered the Receivership Order, Barton's continued litigation tactics appear designed to starve the Receivership of resources necessary to administer its ongoing needs. The Court should reject these improper efforts.

II. ARGUMENT

Barton contends the Court should "stay the impending sale" he contends was involved in the DLP Settlement and argues the four familiar factors governing stays warrant the relief he seeks. But not one of those factors supports a stay, including, but not limited to the fact that the settlement

was not a sale, and it has funded and closed. Thus, any stay would preserve the consummated transaction rather than unraveling it as Barton intends.

A. Barton Will Not Prevail on the Merits

Barton justifies his request for a stay based on his interlocutory appeal of the Receivership Order and the DLP Order. The SEC has responded to the legal merits of Barton's appeal of the Receivership Order, [Dkt. 83], and, for purposes of efficiency and economy, the Receiver incorporates those arguments here.

1. No Jurisdiction Exists for Barton's Appeal of the DLP Order

With respect to any order save the Receivership Order, including the DLP Order, the Fifth Circuit lacks appellate jurisdiction. 28 U.S.C. § 1292(a)(2); *Netsphere, Inc. v. Baron*, 799 F.3d 327, 331-32 (5th Cir. 2015) (every circuit to address the meaning of § 1292(a)(2)'s 'refusing orders' interprets it to "permit[ ] appeals only from orders 'refusing . . . to take steps to accomplish the purposes of [winding up receiverships].'"); *see also U.S. v. Solco I, LLC*, 962 F.3d 1244, 1250 (10th Cir. 2020). In addressing the different scope of an interlocutory appeal of an injunction as compared with orders issued in receiverships, the Eleventh Circuit aptly explained:

> "That provision [1292(a)(1)] more broadly confers jurisdiction over orders 'granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions.' 28 U.S.C. § 1292(a)(1). It thereby expressly authorizes immediate appeals not only of front- and back-end orders 'granting,' 'refusing,' or 'dissolving' injunctions, but also of mid-stream orders 'continuing,' 'modifying,' or 'refusing to dissolve or modify' them. The contrast is unmistakable. Had Congress wanted to authorize the same robust interlocutory appellate review of interim receivership-related orders, it could have included similar language in § 1292(a)(2). It didn't, and its decision in that respect is 'telling.'"

SEC v. Complete Bus. Sols. Group, Inc., 44 F.4th 1326, 1331–32 (11th Cir. 2022). Thus, Barton's appeal of the DLP Order provides no basis for a stay of the DLP Order.

2. The Court Did Not Err in Ratifying the DLP Settlement

Barton contends the stay is also warranted because the Court erred in approving the DLP Settlement, contending the Receiver failed to comply with the sales process governing sales of realty by Receivers and settled for a fraction of the value held by Receivership Entities. Both contentions are incorrect.

As discussed above and in the DLP Motion, the DLP Settlement represented a compromise of contractual participation interests in the potential appreciation of real estate based on its development, and the concurrent termination of development and construction management obligations. The "participation interest," however, was not premised on any Receivership Entity's ownership interest in the land or minerals located therein, but rather on contractual obligations to develop the land. Indeed, the real estate was fully conveyed to DLP by certain Receivership Entities in late 2021. As such, no realty was conveyed in the settlement of those obligations. *Sewing v. Bowman*, 371 S.W.3d 321, 330 (Tex. App.—Houston [1st Dist.] 2012, pet. dism'd) ("[A]n agreement to share in the profits of contemplated speculative deals in real estate simply does not involve the transfer of real estate, or an interest in real estate . . ."") (quoting *Berne v. Keith,* 361 S.W.2d 592, 597 (Tex. Civ. App.—Houston 1962, writ ref'd n.r.e.)). In contrast, the authorities Barton relied upon for contending participation agreements convey an interest in realty rely on participation agreements related to production of oil and gas still in the ground.[3] *See Conocophillips Co. v. Dahlberg*, No. CIV.A. C-10-285, 2011 WL 710604, at *1 (S.D. Tex. Feb. 22, 2011) (discussing conveyance of working mineral interest rights); and *compare In re Primera Energy, LLC*, 560 B.R. 448, 463 (Bankr. W.D. Tex. 2016) ("As such . . . 'a conveyance of an interest in the minerals that are produced from land, such as a working interest or a royalty interest,

[3] *See* Dkt. 106, pp. 8-9.

passes a right to the land itself.'") (quoting *Exxon Corp. v. Breezevale, Ltd.*, 82 S.W.3d 429, 437 (Tex. App.—Dallas 2002, pet. denied). Nor does Barton's contention that "liens, claims, easements, [] servitudes" or other "encumbrance[s]" are "interest[s] in realty,"[4] provide any support for his contention that the DLP Settlement included a conveyance of an interest in real estate, since no evidence whatsoever demonstrates that the contractual rights and obligations at issue were a "lien, claim, easement, servitude or encumbrance."

Likewise, Barton's wholly unsupported contention that the Settlement represented a mere fraction of the value of the Receivership Entities' contractual expectation is grossly inaccurate. In fact, the $750,000 payment not only exceeds the Receiver's estimate of the Receivership Estate's 25% of the Achieved Increased Value for the project, but also included releases related to Barton's pre-Receivership breaches of the construction and development agreements.

Finally, when considering the merits of the Barton's arguments regarding the propriety of the Receivership Order, the continuing absence of *any* denial of liability to the Investors or indeed any evidence supporting *any* argument made to date by Barton speaks loudly. On the contrary, in "instructing" the Receiver regarding which properties to sell, Barton implicitly concedes the $26M liability owed to the Investors. He also fails to challenge the Receiver's evidence regarding millions owed to creditors. The need for a receivership to marshal, preserve, and maintain Receivership Assets, even if preservation of the majority of the properties requires liquidation of others, is thus undisputed.

B. Barton Does Not Demonstrate Irreparable Injury

Barton's sole argument regarding irreparable injury is his purported loss of an interest in real estate. Dkt. 114, p. 4. On the contrary, however, as demonstrated by the DLP Motion, the

[4] *Id.*

Receiver's verified testimony herein and Barton's failure to appreciate the difference between participation interests in mineral interests and the participation interest at issue here, the DLP Settlement did not involve any interest in realty. Barton fails to demonstrate irreparable injury.

C. Barton Ignores the Injury to the Receivership Estate and Thus the Injury to the Public that Would Arise from a Stay

Barton wholly ignores the prejudice and injury to the Receivership Estate—and thus the already injured Investors for whose benefit the Estate exists—in asserting the balance of prejudice weighs in his favor. First and foremost, the Receivership Estate cannot continue operating without cash.[5] Within the first thirty-days of his appointment, the Receiver recovered less than $75,000 in cash. Property insurance, fees to pay costs necessary to comply with HUD regulations and protect the value in several other developments, utilities and services necessary to operate the Amerigold Suites, among other things, require the Estate to liquidate some assets to protect others.[6] Nor is the Estate in any position to expend assets to develop properties, for instance by providing construction management services that Barton himself had defaulted on prior to entry of the Receivership Order.

Barton interfered with sale of the Rock Creek Property thereby eliminating that source of cash. Sale of the Frisco Property will not close, even if approved, until mid-March 2023, at the earliest. In the interim, the DLP Settlement provides the only realistic avenue of recoverable cash. Unwinding or otherwise "staying" the DLP Settlement could be catastrophic to the Receivership Estate. Barton's conduct created the need for a receivership, and his continuing unwillingness to comply with the Receivership Order compels a continuing, active Receiver.

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[5] The same would be true of a monitorship, a remedy that is also extremely unrealistic. Barton has demonstrated time and again that he lacks credibility and cannot be trusted. *See for example*, Dkts. 73, 74, 84. Returning him to control over these properties would be putting the fox in charge of the henhouse.

[6] The arguments and evidence submitted in the Receiver's Response to Barton's Motion to Stay, Dkts. 84 & 85, are incorporated by reference.

III. CONCLUSION

The DLP Settlement is complete. There is nothing to stay. But even if there was, Barton failed to demonstrate entitlement to a stay. The Court should deny Barton's Motion.

Respectfully submitted,

By: */s/ Charlene C. Koonce*

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VERIFICATION

My name is Cortney C. Thomas. I am over the age of 18 and am fully competent to make this verification. I declare under penalty of perjury that the facts stated above are within my personal knowledge and are true and correct.

/s/ Cortney C. Thomas
Cortney C. Thomas

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(d)(1)(B), as amended, no certificate of service is necessary, because this document is being filed with the Court's electronic-filing system.