

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TIMOTHY BARTON,
CARNEGIE DEVELOPMENT, LLC,
WALL007, LLC,
WALL009, LLC,
WALL010, LLC,
WALL011, LLC,
WALL012, LLC,
WALL016, LLC,
WALL017, LLC,
WALL018, LLC,
WALL019, LLC,
HAOQIANG FU (A/K/A MICHAEL FU),
STEPHEN T. WALL,

Defendants,

DJD LAND PARTNERS, LLC, and
LDG001, LLC,

Relief Defendants.

C.A. No.: 3:22-cv-2118-X

Jury Trial Demanded

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION
FOR APPOINTMENT OF A RECEIVER, FOR A PRELIMINARY INJUNCTION
AND ANCILLARY RELIEF, AND TO LIFT STAY FOR LIMITED PURPOSE,
AND BRIEF IN SUPPORT**

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The Securities and Exchange Commission (“SEC”) submits this Motion for Appointment of a Receiver, for a Preliminary Injunction and Ancillary Relief, and to Lift Stay for Limited Purpose, and Brief in Support, and respectfully shows the Court as follows:

I. INTRODUCTION

Timothy Barton (“Barton”), a Texas-based real estate developer, raised approximately \$26 million from over 100 investors – most of whom are Chinese nationals – in unregistered, fraudulent securities offerings related to real-estate investments in Texas.¹

Barton offered and sold investment loans issued by a series of special-purpose “Wall” entities he controls. Barton promised that the Wall entities would use investors’ funds, together with funds from the Wall entities themselves, to purchase specific parcels of land at specific prices set forth in the offering materials. He also promised investors that they would get their principal back in two years along with annual interest payments.

Instead, Barton misappropriated nearly all the investor funds, misusing them to, among other things, purchase properties in the names of other entities he controlled, pay undisclosed fees and commissions, pay expenses associated with unrelated real estate development projects, and fund his lifestyle. Barton also inflated the land purchase prices in the offering materials, which: (a) enabled him to raise more money from investors; (b) overstated the value of the assets securing the investments; and (c) concealed that the Wall entities were not actually contributing any funds themselves.

Among his misappropriations, Barton, acting through various entities that he controls,

¹ To implement the scheme, Barton partnered with Defendants Stephen Wall (“Wall”), an experienced Texas home builder, and Haoqiang (Michael) Fu (“Fu”), a Chinese businessman. Because the SEC is only seeking relief related to Barton and his controlled entities, this Motion does not directly address Fu’s and Wall’s roles in the fraud. At a high level, and among other acts, Fu marketed the investments to Chinese investors and misused investor funds to pay himself undisclosed fees and commissions, and Wall lent his name to the project and helped to provide the inflated land prices.

misused a significant portion of the investor funds to purchase or otherwise benefit real property interests. The property interests could potentially result in a recovery for investors. However, there is an imminent and substantial risk to the value of these assets if an independent third party is not put in place to protect them. For that reason, the SEC respectfully requests that the Court appoint a receiver over the entities (“Receivership Entities”) that Barton directly or indirectly controls that received or benefitted from assets traceable to Barton’s alleged fraudulent activities that are the subject of this litigation. As demonstrated below, this receivership is warranted under the factors set out in *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 (5th Cir. 2012).

Barton has extensively commingled, transferred, dissipated, and encumbered investor funds and assets purchased with investor funds. As a result, and as a result of Barton’s non-cooperation and outright interference, the SEC cannot yet demonstrate all of the Barton-controlled entities that received, or otherwise benefitted from, Barton’s fraudulent activities that are the subject of this litigation. Thus, the SEC further requests that the Court enter a preliminary injunction that enjoins Barton, and any persons in active concert or participation with him, from transferring or dissipating any assets of the entities that he directly or indirectly controls that are not placed in the receivership. This additional relief will appropriately preserve the status quo while the SEC and the receiver attempt to trace Barton’s ill-gotten gains. To aid in these tracing efforts, the SEC also requests that the Court order Barton to provide a sworn accounting and prohibit him for altering or destroying relevant documents.

II. PROCEDURAL BACKGROUND

On September 23, 2022, the SEC filed its Complaint in this action. (Dkt. 1) On September 26, 2022, the SEC moved the Court for the appointment of a receiver over the entities Barton directly or indirectly controls. (Dkt. 6) On October 18, 2022, the Court granted the

SEC's motion and appointed a receiver ("Receiver"). (Dkt. 29) On November 2, 2022, the United States Attorney's Office for the Northern District of Texas filed a motion to stay the litigation (but not the receivership), which the Court granted. (Dkts. 44, 64) Barton then appealed the Court's order appointing the receiver.

On June 28, 2023, the Fifth Circuit vacated the Court's order appointing the receiver, effective 90 days after the issuance of its mandate. On August 31, 2023, the mandate issued, and the Court ordered (1) the SEC to file a motion for entry of a new receivership by September 7, 2023, and (2) the current Receiver to file a declaration providing all information relevant to, or that he believes will assist the Court's consideration of, a proposed new receivership order. (Dkt. 305).² On September 5, 2023, the Receiver filed the declaration ("Thomas Dec."). (Dkt. 308).

III. FACTUAL SUMMARY

A. The Wall Offerings.

Barton is a Texas-based real estate developer who controls Carnegie, the Wall Entities, DJD, LDG001, and over 100 other related entities (collectively, "Barton Entities").³ See May 24, 2021 Investigative Testimony of Timothy Barton ("Barton Tr.") at 172:3-173:2; 173:19-174:5; 192:8-193:24; 200:17-22; 236:8-16 (App. 231-233; 240-243); List of Barton-Controlled Entities (App. 23-24); Thomas Dec. at ¶¶ 33, 35-36, 55.⁴

² On July 16, 2023, the Court issued an order requiring the SEC's motion for entry of a new receivership to (1) request appointment of a receiver under the factors set out in *Netsphere*, (2) request injunctive relief, and (3) provide a basis for the inclusion of entities in the receivership that received or benefitted from assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation. (Dkt. 293)

³ The "Wall Entities" refer to Defendants Wall007, LLC ("Wall 7"), Wall009, LLC ("Wall 9"), Wall010, LLC ("Wall 10"), Wall011, LLC ("Wall 11"), Wall012, LLC ("Wall 12"), Wall016, LLC ("Wall 16"), Wall017, LLC ("Wall 17"), Wall018, LLC ("Wall 18"), and Wall019, LLC ("Wall 19"). Carnegie refers to Defendant Carnegie Development, LLC. Carnegie, the Wall Entities, and Barton are collectively referred to as the "Barton Defendants." "DJD and LDG00" refer to Relief Defendants DJD Land Partners, LLC and LDG001, LLC, respectively.

⁴ The SEC's evidence in support of this motion is set forth in: (1) its **previously filed Appendix** in Support of its Expedited Motion for Appointment of Receiver ("App. ___") (Dkt. 7-9); (2) its **Supplemental Appendix** in Support of this Motion **submitted herewith** ("Supp. App. ___"); and (3) the **Thomas Dec.** (Dkt. 308).

From approximately March 2017 through June 2019, Barton, acting through Carnegie and the Wall Entities, raised at least approximately \$26 million from over 100 investors in securities offerings related to real estate investments in Texas. *See* Declaration of Carol Hahn (“Hahn Dec.”) at ¶ 14. (App. 6)

The investments were offered through a series of investment contracts styled as “Agency and Loan Agreements” (“Loan Agreements”) that each Wall Entity issued as the offering entity. *See, e.g.*, Wall 9 Loan Agreement at 1 (App. 25); Wall 12 Loan Agreement at 1. (App. 49)

Though dealing with separate parcels of land, the Loan Agreements followed a similar template and contained similar terms. Each Wall Entity:

- borrowed a fixed amount from individual investors;
- promised to repay the funds after two years;
- promised to pay interest after the first and second years;
- promised regular progress reports;
- represented that the invested funds would be combined with other investors’ funds and funds contributed by the offering entity itself (or, for Wall 7, contributed by Fu and Wall);
- the combined funds would be used to acquire a specific parcel of land identified in the loan agreement;
- specified the purchase price of the land; and
- pledged the Wall Entities’ membership interests as collateral to secure the investments.

See, e.g., Wall 9 Loan Agreement at 1-7. (App. 25-31)

Barton developed, authorized, and approved the contents of the Loan Agreements, and he

signed the Loan Agreements on behalf of Carnegie, the managing member of each of the Wall Entities. *Id.* at 8 (App. 32); *see also* August 27, 2017 Loan Agreement Approval Email at 1 (App. 143); July 20, 2021 Investigative Testimony of Haoqiang (Michael) Fu (“Fu Tr.”) at 153:9-12. (App. 263).

Fu, acting directly or through personnel at his company, solicited Chinese investors living in China and in one or more U.S. states via emails, social media applications (*e.g.*, “WeChat”), internet sites, telephone and VOIP calls, and in-person presentations using the Loan Agreements, written investor presentations, and oral pitches. *See, e.g.*, Wall 10 Investor Presentation (with English translation) (App. 66-109); Wall 12 Investor Presentation (Chinese only) (App. 110-142); Fu Tr. at 30:1-14; 30:25-31:15; 139:15-24; 153:17-19; 157:14-158:18. (App. 260-265)

Investors invested money to obtain a fixed investment return, and their funds were pooled with other investors’ funds (and were also supposed to be pooled with funds from the Wall Entities). *See, e.g.*, Wall 9 Loan Agreement at 1-2 (App. 25-26); Hahn Dec. at ¶ 15. (App. 6-7)

These were entirely passive investments: the investors had no role or say in the operations or management of the Wall Entities or the underlying real-estate projects, and the investors were entirely dependent upon, and expecting to profit solely from, the Barton Defendants’ and Wall’s expertise and efforts to manage the real-estate ventures. *See, e.g.*, January 25, 2021 Investigative Transcript of Stephen Wall (“Wall Tr.”) at 53:19-54:14 (App. 271-272); Barton Tr. at 294:3-296:17. (App. 247-249)

B. The Barton Defendants Defrauded Investors.

1. Misappropriation of investor funds.

Each of the Loan Agreements represented that *all* investor funds would be used to buy a specific, identified piece of land. For example, the Wall 12 Loan Agreement represented that

investor funds:

shall be used to acquire 172 acres located in Fort Worth ETJ, Parker County, State of Texas for residential lot development known as Lyons Ranch (“Property”). The Property has a purchase price of \$5,250,000 and the balance of funds will be provided by Borrower. (emphasis added)

Wall 12 Loan Agreement at 2 (App. 50); *see also* March 9, 2022 Investigative Testimony of investor Hong Chen (“Chen Tr.”) at 36:2-38-1 (App. 285-287); March 15, 2022 Investigative Testimony of investor Sun Yun (“Yun Tr.”) at 5:25-6:13; 23:10-24:6; 26:7-25; 30:22-31-7. (App. 299-305)

These representations were false. Of the approximately \$26.3 million raised, only two Wall Entities (Wall 7 and Wall 9) actually purchased the properties described in their agreements for a total purchase price of approximately \$2.6 million. Hahn Dec. at ¶ 17. (App. 7)

Even in those two limited instances, neither Wall 7 nor Wall 9 used its own investors’ funds to purchase its property, and instead used commingled funds from one or more other offerings. *Id.* (App. 7) None of the other Wall Entities acquired the properties described in their respective agreements. *Id.* at ¶ 22. (App. 9)

Instead, Barton misappropriated and misused the remaining approximately \$23.7 million of investor funds to, among other things:

- pay personal expenses of Barton and his family, including exorbitant credit card bills, rent, and to buy a plane;
- pay Fu undisclosed and unauthorized commissions and fees;
- make Ponzi payments to earlier investors (as well as other interest payments to investors using commingled funds);
- to make political contributions;

- acquire properties not related to the offerings in the names of other Barton companies;
- acquire properties identified in a Wall offering but in the name of other Barton companies (including LDG001 and DJD) and using funds from a different Wall Entity;⁵
- pay professional fees (such as engineering, surveying, and land development) for, in most cases, properties unrelated to the offerings; and
- make payments to Wall.

Hahn Dec. at ¶¶ 22-27 (App. 9-11); *see also* Barton Tr. at 345:7-14; 346:4-11; 349:1-350:17; 357:8-24 (App. 250-254); Thomas Dec. at ¶¶ 199-204.

Barton controlled the bank accounts for the Wall Entities and Carnegie, and he had signatory authority over most of the accounts. Hahn Dec. at ¶ 12 (App. 5-6); *see also* Barton Tr. at 178:2-12; 181:2-6; 187:12-190:20 (App. 234-239); Fu Tr. at 192:4-18. (App. 266) Barton often directed his administrative assistant to make the improper transfers. *See* Barton Tr. at 178:2-12 (App. 234); March 10, 2022 Investigative Testimony of Saskya Bedoya (“Bedoya Tr.”) at 129:14-130:20 (App. 277-278); June 27, 2017, November 15, 2017, and January 9, 2019 Examples of Barton Payment Instruction Emails. (App. 152-155)

A significant portion of the investor funds were misused to purchase real property interests. Hahn Dec. at ¶¶ 33-36 & Ex. B. (App. 14 & 17) Barton also took out loans on properties acquired with investor funds, and he used the loan proceeds (which were also

⁵ LDG001 used commingled investor funds to purchase the property that the Wall 18 Loan Agreement stated Wall 18 was supposed to purchase, and DJD used the proceeds of a partial sale of a property purchased with investor funds to purchase the property that the Wall 11 Loan Agreement represented that Wall 11 was supposed to purchase. Hahn Dec. at ¶¶ 23-24. (App. 9)

commingled with investor funds) to, among other things, purchase other properties, support his businesses, and fund his lifestyle. *Id.* at ¶ 29-30. (App. 12-13)

Despite promising to make annual interest payments and to return investors' principal, the Barton Defendants never returned any of the principal to investors as promised and failed to pay over 80% of the promised interest payments. Hahn Dec. at ¶ 28. (App. 11-12)

Barton knew how investor funds were required to be used, because he was responsible for developing the Loan Agreements, he received copies of Loan Agreements, and he was a signatory to the Loan Agreements. Barton knew the investor funds were being misused and misappropriated, because he controlled the bank accounts and caused the funds to be transferred and spent for improper purposes.

2. Inflation of property purchase prices.

The Loan Agreements represented that the Wall Entity would purchase a specific parcel of land with the investor funds and represented that the offering entity would also contribute money to fund the purchase.

For example, the Wall 9 Loan Agreement had a total offering amount of \$2,320,000. It represented that the purchase price for the property was \$2,900,000, and the offering entity would fund the difference between the offering amount and the purchase price:

[The Loans] shall be used to acquire 100 acres located in Venus, Texas for residential lot development known as Venus 100 located on Country Rd 501 and West of FM157 in Venus, Texas ("Property"). **The Property has a purchase price of \$2,900,000 and the balance of funds will be provided by Borrower.** (emphasis added)

Wall 9 Loan Agreement at 2. (App. 26)

The representations about the purchase prices were also false. The disclosed purchase prices were inflated. At the time of the offerings, the Barton Defendants had already secured, or

were in the process of negotiating, purchase prices for the properties that were significantly lower than the prices set forth in the Loan Agreements. Hahn Dec. at ¶¶ 31-32. (App. 13-14)

For example, Wall 10 issued a Loan Agreement on October 18, 2017 that set a land purchase price of \$4,400,000. Wall 10 Loan Agreement at 2. (App. 34) However, Barton had already executed a contract months earlier to purchase the Wall 10 property for \$2,200,000. *See* May 2, 2017 Lost Creek Price Email at 1 (App. 157); Lost Creek Land Sale Contract at 1 and 13 (App. 195 & 207).⁶

As another example, Wall 11 issued a Loan Agreement on February 7, 2018 that set a land purchase price of \$2,950,000. *See* Wall 11 Loan Agreement at 2. (App. 42). Yet, Barton had already executed a contract months earlier to purchase the Wall 11 property for \$1,577,125. *See* Anastasia Land Sale Contract at 1 and 8 (App. 219 & 226).

Barton knew that the inflated purchase prices were being provided to investors, because he, Fu, and Wall secretly agreed to inflate the prices. *See* August 29, 2016 Wall to Barton Markup Email at 1 (App. 160); February 28, 2019 Wall to Fu and Barton Markup Email at 1 (App. 176); November 3, 2016 Fu to Wall Markup Email (forwarded to Barton) at 1-4. (App. 177-179). Further, as discussed above, he was involved in the underlying purchase negotiations (or received details on the purchase transactions) setting the actual prices, and he executed the Loan Agreements containing the inflated prices.

By overstating the purchase prices, Barton could use the inflated prices to raise more funds from investors in each offering. The inflated purchase prices also created the false appearance that the investments were safer than they were. The Loan Agreements pledged the

⁶ The Wall 9 property purchase price referenced in the previous paragraph was also inflated. The actual purchase price was approximately \$1,014,900. *See* Hahn Dec. at ¶ 32. (App. 13)

Wall Entities' membership interests to secure the investments. *See, e.g.*, Wall 9 Loan Agreement at 6. (App. 30) Barton led investors to believe that the Wall Entities were obtaining properties at the higher prices that could be sold to pay back investors via their share of the membership interests if necessary, when in fact the properties, and thus the Wall Entities, had far lower actual values.

The representations about the contributions of the Wall Entities' funds were also false. Neither the Wall Entities nor any of the other Defendants contributed funds towards the purchase of the properties. Hahn Dec. at ¶ 31. (App. 13) The inflation of the purchase prices was used to mask this misrepresentation. Indeed, in the two instances where the Wall Entities actually purchased their specified properties, no developer contribution was necessary to pay the balance of the difference between the offering amount and the purchase price, because the actual purchase price was lower than the offering amount. Hahn Dec. at ¶¶ 17, 32. (App. 7 & 13-14)

3. Worthless guarantee.

The Loan Agreements for many of the offerings also included a purported corporate guarantee by one of Barton's other entities, JMJ Holdings, for "up to the principal loan amount in the event of default." *See, e.g.*, Wall 10 Loan Agreement at 6 (App. 38); Wall 12 Loan Agreement at 6. (App. 54)

Barton approved the guarantees after learning that certain Chinese investors considered them to be an important consideration for their investment decisions. *See* January 23, 2019 Barton Guarantee Email at 1. (App. 181) Barton also executed a balance sheet purportedly showing that JMJ Holdings had total assets of more than \$100 million. *See, e.g.*, Wall 10 Investor Presentation at 27 (App. 92); Wall 12 Investor Presentation at 19 (App. 128); Chen Tr. at 48:16-49:24. (App. 288-289) The purported guarantees were simply more deception. In

reality, JMJ Holdings is a dormant company that has never done any business or had any assets. Barton Tr. at 252:22-253:18; 254:1-24. (App. 244-246)

4. Lulling statements

The Loan Agreements required the Wall Entities to provide investors with quarterly progress reports about the status of the relevant real estate developments. One of Barton's other controlled entities, JMJ Development, acting on behalf of the Wall Entities, sent investors progress reports that misrepresented the actual status of the projects. For example, a fourth quarter 2019 update sent to investors stated that "all of [the Wall Entities] appear to be tracking with the initial ... development plans." 2019 Q4 Lender Update at 2 (App. 184); *see also* Yun Tr. at 33:7-16; 34:20-35:7; 36:4-14. (App. 306-309) Yet, most of the properties were never actually acquired by a Wall Entity, much less developed as planned.

C. The Barton Entities

1. Commingling and dissipation

Before the Court ordered the current receivership, Barton engaged in extensive commingling and transferring of funds and properties between and among the Barton Entities. Hahn Dec. at ¶¶ 16-30, 37 (App. 7-13, 15); Thomas Dec. at ¶¶ 22-32 & Exs. 1 & 2, 199-204; *supra* 5-8. Barton treated his controlled entities as one, fungible piggybank, using their assets as he saw fit, including to fund his lifestyle and other business ventures. *Id.* Barton continued to misuse investor funds even after the SEC filed its Complaint, and until the Receiver was appointed. *See, e.g.*, Thomas Dec. at ¶ 200. Further, the Receiver found less than \$75,000 in cash available in the Barton Entities' bank accounts upon his appointment, despite the fact that at least several million dollars in receipts flowed into the Barton Entities during the 12-months

immediately preceding the entry of the current receivership. Thomas Dec. at ¶¶ 20, 191; Order Denying Motion to Stay Pending Appeal at 8. (Dkt. 132)

In addition to his direct misuse of assets, Barton failed to protect the properties. Because Barton misused funds, he did not deploy those funds for the benefit of the properties. As a result, the Barton Entities are cash-starved, and one or more of the properties were in a state of disrepair and not current on property insurance or other obligations when the Receiver took possession of them last year. Thomas Dec. at ¶¶ 104-105, 191, 201, 207-210. Substantially all of the properties are encumbered with liens, and because Barton failed to pay lenders and other creditors, several properties are facing foreclosure and the Barton Entities are embroiled in approximately 35 lawsuits. *Id.* at ¶¶ 18, 20, 191, 212-216, 228. The properties have also been declining in value. *Id.* at ¶¶ 207, 236.

It is uncertain, and in fact unlikely, that Barton and the Barton Entities hold assets sufficient to satisfy an order requiring the Barton Defendants to disgorge their ill-gotten gains for the benefit of investors. *Id.* at ¶¶ 191-196, 205-206. The current Receiver has undertaken efforts to preserve the remaining value of the Barton Entities' assets, including by, among other actions: (a) obtaining insurance for the properties; (b) valuing, marketing, and selling property interests to maximize their values; and (c) beginning to settle claims. *See, e.g., Id.* at ¶¶ 191, 207-212. However, those efforts are far from complete, and the assets remain at significant risk. The properties, which are in various stages of development, need competent management in place to develop, operate, maintain, and/or sell them. *Id.* at ¶¶ 212, 226-227.

2. The Receivership Entities

The Receivership Entities are listed at Exhibit B to the Supplemental Hahn Declaration

and in the proposed Receivership Order submitted herewith. Supp. Hahn Dec. at Ex. B.⁷ (Supp. App. 11-12) Barton controls the Receivership Entities. *See supra* at 3.

As set forth in the Thomas Declaration, the Hahn Declaration, and the Supplemental Hahn Declaration, each of the Receivership Entities received or benefitted from assets traceable to Barton's fraudulent activities that are the subject of this litigation. *See* Thomas Dec. at ¶¶ 53-59, 71, 77, 80-84, 91, 95, 97, 103, 117, 120-126, 129-131, 139, 146-162, 164, 167, 170, 177-179 & Exs. 3-27; Hahn Dec. at ¶ 37 & Ex. C (App. 15 & 18); Supp. Hahn Dec. at ¶¶ 3-5 & Ex. A. (Supp. App. 2-3, 5-10)

Many of the Receivership Entities: (1) received investor funds; (2) hold property where investor funds were used in whole or in part to purchase the property, pay down the mortgage on the property, develop the property, or pay for property expenses or operations; (3) held property purchased in whole or in part with investor funds and now hold proceeds of the sales or contractual rights or claims relating thereto; and/or (4) received loan proceeds from loans secured with properties purchased in whole or in part with investor funds. *Id.*

The other Receivership Entities (as well as many of the above-referenced Receivership Entities) otherwise benefitted from assets traceable to the fraudulent securities offerings at issue. For example, Barton used investor funds to pay employees who secured financing for the Receivership Entities' real estate projects, worked on the projects, and managed the properties. *See, e.g.,* Thomas Dec. at ¶¶ 81, 103. Investor funds were also used to maintain the corporate offices of the Receivership Entities. *See, e.g., Id.* at ¶ 81.

⁷ The Receiver identified several additional entities for potential inclusion in the receivership at Paragraphs 184-188 of the Thomas Declaration. At this time, the SEC is not moving to include most of those entities in the receivership. However, tracing efforts are ongoing, and the SEC (or the receiver if appointed) may move to add some or all of those entities as additional information is obtained.

As another example, several Receivership Entities were able to obtain loans by using property purchased with investor funds and held by other Receivership Entities to establish their credit. Thomas Dec. at ¶¶ 81-82. Other Receivership Entities benefitted from investor funds, because they obtained participation interests in developments that received investor funds. *Id.* at 180. Still others benefitted, because they are the owners or beneficial interest holders (*e.g.*, a trust) of another Receivership Entity that received investor funds or property purchased with investor funds. *Id.* at ¶¶ 181-182.

3. Other Barton Entities likely received or benefitted from investor funds

The SEC, the current Receiver, and the current Receiver's retained professionals have been working to determine whether additional Barton Entities have received or benefitted from assets traceable to Barton's fraud. These efforts are ongoing. *See, e.g.*, Thomas Dec. at ¶¶ 43, 188; Supp. Hahn Dec. at ¶ 6. (Supp. App. 3-4) Barton's extensive commingling, transferring, and encumbering of investor funds and assets obtained with investor funds has made these tracing efforts difficult. *See, e.g.*, Thomas Dec. at ¶¶ 22-32; Hahn Dec. at ¶ 37 (App. 15); Supp. Hahn Dec. at ¶ 6. (Supp. App. 3-4)

Barton has compounded the problem he created by refusing to comply with the current Receivership Order. In violation of the Receivership Order, Barton has failed to provide critical information to the Receiver, and he is also actively obstructing the Receiver's efforts to obtain assets and perform a complete tracing analysis. Thomas Dec. at ¶¶ 19, 40-41, 45, 197. However, the successful tracing efforts to-date indicate that the SEC, and a receiver if appointed, would likely be able to trace funds or benefits to additional Barton Entities if they are provided a reasonable, unobstructed opportunity to perform additional analysis.

IV. ARGUMENT AND AUTHORITIES

A. The Barton Defendants Committed Securities Fraud

The SEC alleges that the Barton Defendants violated the antifraud provisions of the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”). Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] prohibits fraud in the offer or sale of a security, and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] prohibit fraud in connection with the purchase or sale of any security.

To establish a violation under these sections, the SEC must prove by a preponderance of the evidence: (1) that in connection with the purchase, offer, or sale of any security; (2) the Barton Defendants made a material misrepresentation or omission of material fact, or employed a fraudulent device; (3) with the requisite mental state. *See generally SEC v. Gann*, 565 F.3d 932, 936 (5th Cir. 2009); *SEC v. Seghers*, 298 F. App’x 319, 327-28 (5th Cir. 2008).⁸

Liability arises not only from affirmative representations but also from failures to disclose material information. *See SEC v. Fehn*, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996) (the antifraud provisions impose a “duty to disclose material facts that are necessary to make disclosed statements, whether mandatory or volunteered, not misleading.”).

Establishing violations of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 require proof of scienter. *See Aaron v. SEC*, 446 U.S. 680, 695-97 (1980). Scienter is “a mental state embracing intent to deceive, manipulate, or defraud.” *Ernst &*

⁸ Both statutes require that securities be offered or sold through the use of interstate communications, commerce, or the mails. The Loan Agreements were offered and sold using wires, emails, phone calls, and internet applications. *Supra* at 5; Hahn Dec. at ¶ 15 (App. 6); *see also SEC v. Straub*, 921 F.Supp.2d 244, 262 (S.D.N.Y. 2013) (“[I]t is undisputed that the use of the internet is an ‘instrumentality of interstate commerce’”); *SEC v. One or More Unknown Traders in Common Stock of Certain Issuers*, No. 08CV1402, 2009 WL 3233110, at *4 (E.D.N.Y. Oct. 2, 2009) (holding that wire transfers were instrumentalities of interstate commerce).

Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). To prove scienter, the SEC need only show the defendant acted with “severe recklessness.” *SEC v. Sethi*, 910 F.3d 198, 206 (5th Cir. 2018) (citing *Broad v. Rockwell, Int’l Corp.*, 642 F.2d 929, 961 (5th Cir. 1981) (en banc)).⁹

Negligence is sufficient to show a violation of Sections 17(a)(2) and (3) of the Securities Act. *See Aaron*, 446 U.S. at 701-02.

To establish violations of Sections 17(a) and 10(b) and Rule 10b-5 based on misrepresentations or omissions, the facts at issue must be material. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). A misstatement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *Id.*; *SEC v. Seghers*, 298 F. App’x 318, 328 (5th Cir. 2008).

The evidence set forth in support of this motion establishes that the SEC is likely to succeed on the merits of its claims that the Barton Defendants violated the antifraud provisions of the federal securities laws.

First, the Barton Defendants offered and sold securities. Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act define “security” to include, among other instruments, any “investment contract” or “note.” 15 U.S.C. § 77b(a)(1); 15 U.S.C. § 78c(a)(10).

The Loan Agreements are “investment contracts.”¹⁰ The investors invested money that was pooled in a common enterprise with the expectation of investment returns based and dependent solely on the efforts of the promoters. *Supra* at 4-5; *see also SEC v. The Better Life*

⁹ A company’s scienter can be imputed from individuals who control it. *See Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1089, n.3 (2nd Cir. 1972); *Southland Sec. Corp. v. INSpire Ins. Solution, Inc.*, 365 F.3d 353, 366 (5th Cir. 2004).

¹⁰ An investment contract exists where: (1) individuals are led to invest money; (2) in a common enterprise; and (3) with the expectation that they would earn a profit solely through the efforts of the promoter or of someone other than themselves. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298–99 (1946). Courts do not take the word “solely” literally. *See, e.g., SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476 (9th Cir. 1973).

Club of America, Inc., 995 F. Supp. 167, 173-174 (D.D.C. 1998), *aff'd*, 203 F.3d 54 (D.C. Cir. 1999) (holding loan agreements in which investors contributed funds to common enterprise with expectation of receiving profits based solely on the efforts of the promoters were securities, and finding it “hard to imagine a more perfect example” of an “investment contract”).

The Loan Agreements are also securities, because they are “notes.” “The Supreme Court has held that the definition of ‘note’ may ‘be viewed as a relatively broad term that encompasses instruments with widely varying characteristics,’ and as with the term ‘security,’ the definition of ‘note’ looks to the economic reality and surrounding circumstances of a transaction.” *SEC v. Tyler*, 2002 WL 32538418, at *3 (N.D. Tex. Feb. 21, 2002) (citing *Reves v. Ernst & Young*, 494 U.S. 56, 59 (1990)). Here, the Loan Agreements evidence a promise to pay a financial return on set terms and are notes in economic substance. *See Id.* (holding letters outlining maturity date and annual rate of return for viaticals investment were both notes and investment contracts); *SEC v. Smart*, No. 2:09-CV-00224, 2011 WL 2297659, at 12-14 (D. Utah June 8, 2011) (note agreements that pooled investor funds and promised fixed returns were securities as either investment contracts or notes). The subscription agreements provided to several investors also represented that the investment was a note. *See, e.g.*, Wall 19 Subscription Agreement at 1 (“I hereby subscribe to the Note (promissory note) as co-lender.”) (App. 57).

Second, the Barton Defendants made material misstatements and omissions and engaged in deceptive acts in connection with the offer, purchase, and sale of the securities:

- The Barton Defendants falsely told investors that the Wall Entities would use their money to purchase specific parcels of land, but then misappropriated the money and spent it on a litany of improper purposes. A reasonable investor would consider the fact that their investment would not be used for the represented investment purpose

important in deciding whether to invest. *SEC v. Brooks*, No. 3:99-cv-1326-D, 1999 WL 493052 at *2 (N.D. Tex. July 12, 1999) (misrepresentations about use of investor funds are material); *see also* Chen Tr. at 36:2-38-1 (App. 285-287); Yun Tr. at 23:10-24:6; 26:7-25. (App. 301-303)

- The Barton Defendants misstated the land purchase prices. A reasonable investor would consider the fact that the promoter was intentionally inflating the value of the collateral securing their investments important in deciding whether to invest.
- The Barton Defendants falsely told the investors that the Wall Entities would be contributing funds towards the land purchases. A reasonable investor would consider the fact that the promoter was lying about putting its own money into a venture side-by-side with the investors important in deciding whether to invest. *See, e.g.*, Chen Tr. at 63:5-64:21; 65:8-12. (App. 290-292)
- The Barton Defendants claimed to certain investors that their investments were fully guaranteed by one of Barton's other companies but omitted that the guaranteeing company had no assets. A reasonable investor would consider the fact that he or she was receiving a worthless guarantee important in deciding whether to invest.

Third, Barton acted with scienter. Barton knew how investor funds were required to be used, because he was responsible for developing the Loan Agreements and he was a signatory to the Loan Agreements. Barton knew the investor funds were being misused, because he controlled the bank accounts and caused the funds to be transferred and spent for improper purposes. Barton also knew that the inflated purchase prices were being provided to investors, because he agreed to the scheme with Fu and Wall, he was involved in underlying purchase negotiations setting the actual prices, and he executed the Loan Agreements containing the

inflated prices. Finally, Barton knew that the company he was using to guarantee the investments had no assets.¹¹

B. A Receivership Is Warranted Under the *Netsphere* Factors

In *Netsphere*, the Fifth Circuit “catalogued the various contexts where receiverships are used, including ‘cases of non-compliance with SEC regulations, [where] a receiver may be appointed to prevent the corporation from dissipating corporate assets and to pay defrauded investors.’” *SEC v. Barton*, 2023 WL 5618997, *3 --- F.4th --- (5th Cir. 2023) (citing *Netsphere*, 703 F.3d at 306). To establish that a receivership is justified under *Netsphere*, the SEC must show: “(1) a clear necessity to protect the defrauded investors’ interest in property, (2) legal and less drastic equitable remedies are inadequate, and (3) the benefits of receivership outweigh the burdens on the affected parties.” *Id.* (citing *Netsphere*, 703 F.3d at 305).¹² These factors are readily satisfied here.

1. Clear necessity to protect the defrauded investors’ interest in property.

A receivership is a clear necessity to protect the defrauded investors’ interests in property. A receiver is necessary to manage the Receivership Entities’ assets, which include an operating hotel, several apartment complexes, and development projects. Before the Court ordered the current receivership, Barton misused these assets, including by using investor funds for personal expenses rather than to protect and maximize the value of the properties. *See supra*

¹¹ The evidence of scienter here is overwhelming. However, the SEC’s antifraud claims under Sections 17(a)(2) and (3) of the Securities Act only require a showing of negligence. There is no question that Barton did not exercise reasonable care in his use of investor funds and in making the other misstatements and omissions.

¹² *See also* Exchange Act Section 21(d)(5) [15 U.S.C. § 78u(d)(5)] (“In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.”); *SEC v. Complete Bus. Sols. Grp., Inc.*, 44 F.4th 1326, 1334 (11th Cir. 2022) (recognizing that “the appointment of a receiver is a well-established equitable remedy available to the SEC” under Exchange Act Section 21(d)(5)).

at 5-8, 11-12. Several of the properties have been left in a state of disrepair or are facing foreclosure, and the properties are declining in value. *Id.* at 12. The current Receiver has not yet completed his work, and the fundamental problems facing the Receivership Entities remain. Absent a receiver to manage, maximize, and protect the properties' values, the investors' interest in these properties is at substantial risk.

Further, the Receivership Entities and their assets continue to be mired in liens, lawsuits, and foreclosures that threaten to further diminish the value of the assets. *Id.* A receiver would have the power to stay litigation and foreclosures, and to defend, pursue, and compromise claims. These powers are critical to protecting the investors' interests in the properties. It is unlikely that Barton and the Barton Entities, much less the Receivership Entities, hold assets sufficient to satisfy an order requiring the Barton Defendants to disgorge their ill-gotten gains for the benefit of investors. *Id.* A receiver is therefore necessary to marshal and maximize the available property assets and claims.

In addition, based on Barton's prior misconduct, it is also highly likely, if not certain, that Barton will continue to dissipate or conceal assets if he is left in control of the Receivership Entities. As the Court has previously found:

And in direct contradiction of Barton's narrative, the Receiver notes that his "[e]xtensive 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 the Receiver is aware of several million dollars in receipts flowing into the Receivership Entities during the last twelve months alone." Clearly, imposing a receivership to prevent dissipation and asset flight was, and continues to be, a clear necessity.

Order Denying Motion to Stay Pending Appeal at 8. (Dkt. 132) Barton would be in a position to transfer or hide the assets (including outside the jurisdiction of this Court), pledge or further encumber assets, and/or liquidate and misuse assets for his benefit and without Court supervision.

2. Legal and less drastic equitable remedies are inadequate.

There are no legal or less drastic equitable measures that that will protect investors and address the risks to their interests in property discussed above. Without Court protection, Barton will continue to misuse and dissipate assets. However, merely enjoining Barton from misusing and dissipating the assets is not enough, because, as discussed above, the entities have no cash, many of the properties require active management, and an independent third party must be put in place to marshal, manage, and maximize the available assets and claims.¹³ Barton has previously proposed a monitorship. Yet, a monitorship is clearly inadequate in this situation. At the outset, it puts Barton, the person who orchestrated the wide-ranging fraud, misused investor funds, and mismanaged assets, back in a primary management position, and then relies on a monitor to catch his misconduct. In any event, a monitor would not have the powers necessary to protect the investors' interests, including, but not limited to, the power to stay litigation and foreclosures, investigate and trace assets, sell assets to generate cash, and investigate, pursue, and settle claims.

3. The benefits of a receivership outweigh the burdens on the affected parties.

The benefits of a receivership are substantial. It would put a competent, independent party in place to maximize the value of the available assets and claims for the benefit of defrauded investors, and a receivership will stay litigation and foreclosures, among other protections, that are necessary to protect the assets. At the same time, it would oust Barton – the perpetrator of the extensive fraud detailed above – from control over the entities, assets, and claims at issue. Barton has identified no burden beyond his contention that he could manage the

¹³ Barton has also failed to comply with previous court orders, and there is no assurance that he will not do so again even if enjoined. This is yet another reason that means other than a receivership are insufficient. A receivership would take control of the properties.

properties or their sale better than the current receiver. However, the evidence shows otherwise, and there is no benefit to putting the party that committed fraud back in control of his fraudulent enterprise. Further, Barton would still be in a position to make recommendations to the receiver on property issues, which the receiver would evaluate using appropriate business judgment.¹⁴

The evidence demonstrates that the Receivership Entities received or benefitted from assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation (*see supra* at 12-14), and that the Court should place those entities in receivership under the factors set out in *Netsphere* and pursuant to Section 21(d)(5) of the Exchange Act.

C. A Preliminary Injunction is Also Warranted

Because the SEC cannot yet demonstrate all of the Barton-controlled entities that received or otherwise benefitted from Barton's ill-gotten gains, the SEC is also seeking "an injunction freezing asset transfers while it trace[s] the funds and determine[s] which entities should be placed in the receivership." *Barton*, 2023 WL 5618997, at *5 (discussing *FDIC v. Faulkner*, 991 F.2d 262, 267-68 (5th Cir. 1993)); *see also CFTC v. American Metals Exch. Corp.*, 991 F.2d 71, 79 (3d Cir. 1993) ("Because a freeze is designed to preserve the status quo by preventing the dissipation and diversion of assets, we will allow the freeze to remain in effect until the district court determines whether it can make an informed determination of the amount of unlawful proceeds retained by [the defendant], and, if it can, what that amount may approximate. The district court can then decide to maintain, remove or modify the freeze.").

Specifically, the SEC seeks a preliminary injunction that enjoins Barton – and, pursuant to FED. R. CIV. P. 65(d)(2), any other persons who are in active concert or participation with him

¹⁴ Barton has also claimed that the current Receiver's fees and costs are too high. While all receiverships incur fees and costs, the receiver's fees and costs would be subject to both interim and final Court approval.

– from transferring, selling, dissipating, assigning, concealing, pledging, withdrawing, alienating, encumbering, incurring debt upon, disposing of, or diminishing the value of any funds, property, or other assets of any entity that he directly or indirectly controls that is not placed in receivership. Such a preliminary injunction is appropriate and necessary for the benefit of investors. 15 U.S.C. § 78u(d)(5); *see Porter v. Warner Holding Co.*, 328 U.S. 395, 397-98 (1946) (having “invoked the jurisdiction of the District Court to enjoin [illegal] acts and practices, . . . all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction”); *see also* 15 U.S.C. § 77v(a); 15 U.S.C. § 78aa.

As described above, the SEC has made a substantial showing that it is likely to succeed on the merits of its claims that Barton violated the federal securities laws. Moreover, the threatened injury if the preliminary injunction is denied also far outweighs any harm that will result if the asset freeze is not granted, and the preliminary injunction is indisputably in the public interest. Again, the harm at issue is the dissipation of assets that will preclude a recovery for defrauded investors. This interest far outweighs any potential harm that Barton may suffer if the status quo is maintained and Barton is enjoined from transferring assets held in his controlled entities. It is also in the public interest to protect defrauded investors.

Finally, because a preliminary injunction preventing the transferring of assets is a provisional remedy intended to preserve the status quo, the SEC need not demonstrate irreparable harm. *See, e.g., Smith v. SEC*, 653 F.3d 121, 128 (2d Cir. 2011) (“Where an asset freeze is involved, the SEC must show either a likelihood of success on the merits, or that an inference can be drawn that the party has violated the federal securities laws.”). But even were that not so, irreparable harm is presumptively established by a showing of a statutory violation. *See, e.g., EEOC v. Cosmair, Inc., L’Oreal Hair Care Div.*, 821 F.2d 1085, 1090 (5th Cir. 1987).

In any event, beyond that presumption there is a clear likelihood of irreparable harm without the requested preliminary injunction. The SEC is seeking equitable relief for the benefit of investors. The threatened harm is the further dissipation of the assets that are the subject of this litigation, and such dissipation would impair the Court's ability to grant an effective remedy. More specifically, as a result of Barton's extensive commingling of funds, transferring of properties, and interference with tracing efforts, the SEC cannot yet identify and demonstrate all of the Barton Entities that received or benefitted from investor funds. However, the fact that the SEC and the current Receiver have, despite Barton's extensive commingling and refusal to provide tracing information, already identified numerous entities that have received or benefitted from investor funds indicates that, given time, additional entities will likely be added to the list.

Moreover, based on Barton's prior conduct, it is also highly likely that Barton will continue to dissipate or conceal assets held by those entities if he is not enjoined. Further, it is unlikely that the value of the Barton Entities' assets – which are encumbered with liens and claims and have been declining in value – exceed the approximately \$26 million that investors lost as a result of Barton's fraud. Thus, without the injunction, it is likely that Barton would dissipate assets traceable to the fraud at issue in this litigation and render them unrecoverable to satisfy the SEC's equitable remedies for the benefit of investors. *See Federal Sav. & Loan Ins. Corp. v. Dixon*, 835 F. 2d 554, 560 (5th Cir. 1987) (upholding preliminary injunction prohibiting defendants from dissipating assets pending resolution of claims for equitable relief); *see also Enterprise Intern, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464 (5th Cir. 1985) (“The absence of an available remedy by which the movant can later recover monetary damages, however, may also be sufficient to show irreparable injury.”).

For the foregoing reasons, the SEC is entitled to a preliminary injunction.

D. Sworn Accounting and Preservation Order

The SEC also requests that the Court order Barton to provide a sworn accounting and to preserve all relevant documents throughout the litigation. The accounting and preservation orders will further the purpose of the requested injunction by assisting the SEC and the Receiver in tracing assets to and among the Barton Entities. *See SEC v. International Swiss Inv. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Unifund SAL*, 910 F.2d 1028, 1040, n.11 (2d Cir. 1990); 15 U.S.C. § 78u(d)(5).

E. The Court Should Lift the Stay for the Limited Purpose of This Motion.

The Court ordered the SEC to file this motion, and it is therefore appropriate to lift the stay for the limited purpose of adjudicating this motion.

VI. CONCLUSION

For the foregoing reasons, the SEC respectfully requests that the Court grant the SEC's motion and grant the SEC such other or further relief as this Court may deem just, proper, and equitable.

Dated: September 7, 2023

Respectfully submitted,

/s/ Keefe M. Bernstein
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CERTIFICATE OF SERVICE

I affirm that on September 7, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court for the Northern District of Texas, Dallas Division, by using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants.

/s/ Keefe M. Bernstein
Keefe M. Bernstein

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TIMOTHY BARTON,
CARNEGIE DEVELOPMENT, LLC,
WALL007, LLC,
WALL009, LLC,
WALL010, LLC,
WALL011, LLC,
WALL012, LLC,
WALL016, LLC,
WALL017, LLC,
WALL018, LLC,
WALL019, LLC,
HAOQIANG FU (A/K/A MICHAEL FU),
STEPHEN T. WALL,

Defendants,

DJD LAND PARTNERS, LLC, and
LDG001, LLC,

Relief Defendants.

C.A. No.: 3:22-cv-2118-X

Jury Trial Demanded

ORDER APPOINTING RECEIVER

WHEREAS this matter has come before this Court upon Plaintiff Securities and Exchange Commission's ("SEC") Motion for Appointment of a Receiver, for a Preliminary Injunction and Ancillary Relief, and to Lift Stay for Limited Purpose.

WHEREAS the Court finds that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Receivership Entities (defined below).

WHEREAS the Court finds that: (a) there is a clear necessity for the receivership to

protect defrauded investors' interest in property; (b) legal and less drastic equitable remedies are inadequate; and (c) the benefits of a receivership outweigh the burdens on the affected parties.

WHEREAS the Court finds that: (a) a receiver is necessary to manage the Receivership Entities' properties; (b) Defendant Timothy Barton ("Barton") has misused and mismanaged the Receivership Entities' properties and has, and is likely to continue to, misuse, dissipate and/or conceal investor funds and assets obtained with, or that otherwise benefited from, investor funds; (c) certain Receivership Entities and their assets are subject to liens, lawsuits, and foreclosures that threaten to further diminish their value without the protection of a receiver that would have the power to stay litigation and foreclosures, among other powers; (d) there is a substantial risk that Barton, the Receivership Entities, and other entities that Barton directly or indirectly controls do not hold assets sufficient to satisfy the potential disgorgement of ill-gotten gains for the benefit of investors; (e) absent a receiver to manage, maximize, and protect the value of the Receivership Entities' assets, the investors' interest in these properties is at substantial risk; and (f) these benefits outweigh the burden on Barton.

WHEREAS the Court finds that Barton directly or indirectly controls each of the Receivership Entities and that each of the Receivership Entities received or benefitted from assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation.

WHEREAS the Court has subject matter jurisdiction over this action and personal jurisdiction over the Receivership Entities, and venue properly lies in this district.

WHEREAS the Court finds that the SEC has brought this action to enforce the federal securities laws, in furtherance of the SEC's police and regulatory powers, and the relief sought by the SEC and provided in this Order is in the public interest by preserving the illicit proceeds of fraudulent conduct and is not in furtherance of a pecuniary purpose, and, therefore, the Court concludes that the entry of this Order is excepted from the automatic stay pursuant to 11 U.S.C. §

362(b)(4).

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
THAT:**

1. The Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the following entities that Barton directly or indirectly controls and that each received or benefitted from assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation (collectively, "Receivership Entities"):

2. 126 Villita, LLC
3. 2999TC Acquisitions LLC
4. 2999TC Acquisitions MZ, LLC fka MO 2999TC MZ, LLC
5. 2999TC JMJ CMGR, LLC (Delaware)
6. AVG West, LLC
7. BEE2019, LLC
8. BM318, LLC
9. Broadview Holdings Trust
10. Broadview Holdings, LLC (Texas)
11. Carnegie Development, LLC
12. D4AVEG, LLC
13. D4DS LLC
14. D4FR LLC
15. D4IN, LLC (Texas)
16. D4KL, LLC
17. D4MC, LLC (Texas)
18. D4OP, LLC
19. D4OPM, LLC (Texas)
20. Dallas Real Estate Investors, LLC
21. Dallas Real Estate Lenders, LLC (Delaware)
22. DJD Land Partners, LLC
23. Enoch Investments, LLC
24. FHC Acquisition, LLC
25. Five Star MM, LLC (Delaware)
26. Five Star MM, LLC (Texas)
27. Five Star TC, LLC (Delaware)
28. Gillespie Villas, LLC
29. Goldmark Hospitality, LLC
30. HR Sterling, LLC
31. JMJ Acquisitions, LLC
32. JMJ Development LLC (f/k/a JMJ Development, Inc.)

33. JMJ Hospitality, LLC
34. JMJ Residential, LLC
35. JMJ VC Management, LLC
36. JMJAV, LLC
37. JMJD4, LLC
38. JMJD4, LLC (Delaware)
39. JMR100, LLC
40. Lajolla Construction Management, LLC
41. LC Aledo TX, LLC
42. LDG001, LLC
43. Lynco Ventures, LLC
44. Mansions Apartment Homes at Marine Creek, LLC
45. Marine Creek SP, LLC
46. MF Container, LLC (Delaware)
47. Middlebury Trust
48. MO 2999TC, LLC
49. MXBA, LLC
50. Northstar PM, LLC (Texas)
51. ONE MF Residential, LLC
52. One MFD4, LLC
53. One Pass Investments, LLC (Delaware)
54. One RL Trust
55. ONE SF Residential, LLC
56. Orchard Farms Village, LLC
57. Ridgeview Addition, LLC (Texas)
58. Seagoville Farms, LLC
59. SF Rock Creek, LLC
60. TC Hall, LLC
61. The MXBA Trust
62. The Timothy L. Barton Irrevocable Life Insurance
63. Titan Investments, LLC a/k/a Titan 2022 Investments, LLC
64. TLB 2012 IRR Trust
65. TLB 2018 Trust
66. TLB 2019 Trust
67. TLB 2020 Trust
68. TRTX Properties, LLC
69. TRWF LODGE, LLC
70. TRWF, LLC
71. Venus59, LLC
72. Villita Development, LLC
73. Villita Towers, LLC
74. WALL007, LLC
75. WALL009, LLC
76. WALL010, LLC

- 77. WALL011, LLC
- 78. WALL012, LLC
- 79. WALL016, LLC
- 80. WALL017, LLC
- 81. WALL018, LLC
- 82. WALL019, LLC
- 83. WRL2019, LLC (Texas)

84. Until further Order of this Court, _____ is hereby appointed to serve without bond as receiver (the “Receiver”) for the estates of the Receivership Entities.

I. General Powers and Duties of Receiver

85. The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the entity Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and FED. R. CIV. P. 66.

86. The trustees, directors, officers, managers, employees, investment advisers, accountants, attorneys, and other agents of the Receivership Entities are hereby dismissed and the powers of any general partners, directors, and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Entities’ operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operations of the Receivership Entities and shall pursue and preserve all of their claims.

87. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the Receivership Entities.

88. Subject to the specific provisions in Sections II through XIIV below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest, or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property” or, collectively, the “Receivership Estates”);
- B. To take custody, control, and possession of all Receivership Property and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive, and take into possession from third parties all Receivership Property and records relevant thereto;
- C. To manage, control, operate, and maintain the Receivership Estates and hold in his possession, custody, and control all Receivership Property, pending further Order of this Court;
- D. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees, and agents of the Receivership Entities;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders, or auctioneers;
- G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;
- H. The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based in law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;

- J. To pursue, resist, and defend all suits, actions, claims, and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,
- K. To take such other action as may be approved by this Court.

II. Access to Information

89. The individual Receivership Entities and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants, and employees of the entity Receivership Entities, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts, and all other instruments and papers.

90. Within ten (10) days of the entry of this Order, Barton shall, to the extent he has not already done so, file with the Court and serve upon the Receiver and the SEC a sworn statement, listing: (a) the identity, location, and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys, accountants, and any other agents or contractors of the Receivership Entities; and (c) the names, addresses, and amounts of claims of all known creditors of the Receivership Entities.

91. Within twenty (20) days of the entry of this Order, the Barton, to the extent he has not already done so, shall file with the Court and serve upon the Receiver and the SEC a sworn statement and accounting, with complete documentation, covering the period from January 1, 2017 to the present:

- A. Of all Receivership Property, wherever located, held by or in the name of the Receivership Entities, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not

limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry, and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage, or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage, or other financial institution;

- B. Identifying every account at every bank, brokerage, or other financial institution: (a) over which Receivership Entities have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Entities;
- C. Identifying all credit, bank, charge, debit, or other deferred payment card issued to or used by each Receivership Defendant, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve (12) months;
- D. Of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. Of all funds received by the Receivership Entities, and each of them, in any way related, directly or indirectly, to the conduct alleged in the SEC's Complaint. The submission must clearly identify, among other things, all investors, the securities they purchased, the dates and amounts of their investments, and the current locations of such funds;
- G. Of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and
- H. Of all transfers of assets made by any of them.

92. Within thirty (30) days of the entry of this Order, the Receivership Entities shall provide to the Receiver and the SEC copies of the Receivership Entities' federal income tax returns for the years 2017 through 2021 with all relevant and necessary underlying documentation.

93. The Receivership Entities and their past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and

general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

94. To issue subpoenas to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of FED. R. CIV. P. 26(d)(1), concerning any subject matter within the powers and duties granted by this Order.

95. The Receivership Entities are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

III. Access to Books, Records, and Accounts

96. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records, and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody, or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

97. The Receivership Entities, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, email, facsimile transmission, or otherwise, having possession of the property, business, books, records, accounts, or assets of the Receivership Entities are

hereby directed to deliver the same to the Receiver, his agents, and/or employees.

98. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody, or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, any of the Receivership Entities that receive actual notice of this Order by personal service, email, facsimile transmission, or otherwise shall:

- A. Not liquidate, transfer, sell, convey, or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities except upon instructions from the Receiver;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;
- C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the SEC a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. Cooperate expeditiously in providing information and transferring funds, assets, and accounts to the Receiver or at the direction of the Receiver.

IV. Access to Real and Personal Property

99. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies, and equipment.

100. The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including but not limited to all ownership and leasehold

interests and fixtures. Upon receiving actual notice of this Order by personal service, email, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing, or erasing anything on such premises.

101. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

102. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

103. Upon the request of the Receiver, the United States Marshal Service, in any judicial district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody, and control of, or identify the location of, any assets, records, or other materials belonging to the Receivership Estate.

V. Notice to Third Parties

104. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

105. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendant shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Defendant had received such payment.

106. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity, or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the SEC.

107. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations, or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities.

108. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any individual Receivership Entities, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mailbox, depository, business or service, or mail courier or delivery service, hired, rented, or used by the Receivership Entities. The

Receivership Entities shall not open a new mailbox or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository, or courier service.

109. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage, or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

VI. Injunction Against Interference with Receiver

110. The Receivership Entities and all persons receiving notice of this Order by personal service, email, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;
- B. Hinder, obstruct, or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to concealing, destroying, or altering records or information;
- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to releasing claims or disposing, transferring, exchanging, assigning, or in any way conveying any Receivership Property, enforcing judgments, assessments, or claims against any Receivership Property or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke, or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement, or other agreement executed by any Receivership Defendant or which otherwise affects any Receivership Property; or
- D. Interfere with or harass the Receiver or interfere in any manner with the

exclusive jurisdiction of this Court over the Receivership Estates.

111. The Receivership Entities shall cooperate with and assist the Receiver in the performance of his duties.

112. The Receiver shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

VII. Stay of Litigation

113. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the SEC related to the above-captioned enforcement action, are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

114. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

115. All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitations is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

VIII. Managing Assets

116. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the “Receivership Funds”).

117. The Receiver’s deposit account shall be entitled “Receiver's Account, Estate of Barton Companies” together with the name of the action.

118. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

119. Subject to Paragraph 38 immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

120. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

121. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

122. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable “Settlement Fund,” within the meaning of Section 468B of the Internal Revenue Code and of the regulations.

IX. Investigate and Prosecute Claims

123. The Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene or otherwise participate in, compromise, and/or adjust actions in any state, federal, or foreign court or proceeding of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.

124. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the SEC before commencing investigations and/or actions.

125. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all Receivership Entities.

126. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

X. Bankruptcy Filing

127. Effective immediately, the Receiver, as sole and exclusive officer, director, and managing member of Wall007, LLC, Wall009, LLC, Wall010, LLC, Wall011, LLC, Wall012, LLC, Wall016, LLC, Wall017, LLC, Wall018, LLC, and Wall019, LLC (collectively, “Wall Entities”), shall possess sole and exclusive authority and control over the Wall Entities, as debtors-in-possession, in their respective Chapter 11 cases titled *In re WALL007 LLC, et al.*, No. 22-41049 (Bankr. E.D. Tex.) (the “Bankruptcy Cases”) pending in the U.S. Bankruptcy Court for the Eastern District of Texas (the “Bankruptcy Court”). The employment of any and all other officers, directors, managers, or other employees of the Wall Entities is and are hereby terminated by the Court. All such persons shall comply with the applicable provisions of this Order.

128. The Receiver shall file the appropriate pleadings with the Court and the Bankruptcy Court effectuating this Order.

129. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) for other Receivership Entities. If a Receivership Defendant is (or has been) placed into bankruptcy, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor-in-possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor-in-possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 3 above, the Receiver is vested with management authority for all Receivership Entities and may therefore file and manage a Chapter 11 petition.

130. All persons and entities, other than the Receiver, are barred from commencing any bankruptcy proceedings against any of the Receivership Entities.

XI. Liability of Receiver

131. Until further Order of this Court, the Receiver shall not be required to post bond

or give an undertaking of any type in connection with his fiduciary obligations in this matter.

132. The Receiver and his agents, acting within the scope of such agency (“Retained Personnel”), are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel.

133. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

134. In the event that the Receiver decides to resign, the Receiver shall first give written notice to the SEC’s counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

XII. Recommendations and Reports

135. The Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property (the “Liquidation Plan”).

136. Within ninety (90) days of the entry date of this Order, the Receiver shall file the Liquidation Plan in the above-captioned action, with service copies to counsel of record.

137. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the “Quarterly Status Report”), reflecting (to the best of the Receiver’s knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates.

138. The Quarterly Status Report shall contain the following:
- A. A summary of the operations of the Receiver;
 - B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
 - C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
 - D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
 - E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and (ii) collecting such judgments);
 - F. A list of all known creditors with their addresses and the amounts of their claims;
 - G. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
 - H. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

139. On the request of the SEC, the Receiver shall provide the SEC with any documentation that the SEC deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the SEC's mission.

XIIV. Fees, Expenses, and Accountings

140. Subject to the paragraphs below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state, or local taxes.

141. Subject to the paragraph immediately below, the Receiver is authorized to solicit persons and entities (“Retained Personnel”) to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

142. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the “Billing Instructions”). Such compensation shall require the prior approval of the Court.

143. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

144. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

145. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

146. Each Quarterly Fee Application shall:

A. Comply with the terms of the Billing Instructions agreed to by the

Receiver; and,

- B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

147. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

IT IS SO ORDERED, this _____ day of _____, _____

**HONORABLE BRANTLEY STARR
UNITED STATES DISTRICT JUDGE**

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TIMOTHY BARTON,
CARNEGIE DEVELOPMENT, LLC,
WALL007, LLC,
WALL009, LLC,
WALL010, LLC,
WALL011, LLC,
WALL012, LLC,
WALL016, LLC,
WALL017, LLC,
WALL018, LLC,
WALL019, LLC,
HAOQIANG FU (A/K/A MICHAEL FU),
STEPHEN T. WALL,

Defendants,

DJD LAND PARTNERS, LLC, and
LDG001, LLC,

Relief Defendants.

C.A. No.: 3:22-cv-2118-X

Jury Trial Demanded

**PRELIMINARY INJUNCTION ORDER AND ORDER REQUIRING SWORN
ACCOUNTING, PROHIBITING THE DESTRUCTION OF DOCUMENTS,
AND LIFTING STAY FOR LIMITED PURPOSE**

This matter came before the Court upon Plaintiff Securities and Exchange Commission's ("SEC") Motion for Appointment of a Receiver, for a Preliminary Injunction and Ancillary Relief, and to Lift Stay for Limited Purpose (the "Motion").

The Court, having considered the pleadings and submissions in this case, including the Motion and the supporting declarations and exhibits thereto, and the other evidence and argument presented to the Court, finds that:

1. This Court has jurisdiction over the parties to, and the subject matter of, this action, and the SEC is a proper party to bring this action seeking the relief sought in its Complaint, and its Motion.

2. The SEC has established a substantial likelihood of success on the merits of its claims that Defendants Timothy Barton (“Barton”), Wall007, LLC, Wall009, LLC, Wall010, LLC, Wall011, LLC, Wall012, LLC, Wall016, LLC, Wall017, LLC, Wall018, LLC, Wall019, LLC, and Carnegie Development, LLC violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

3. The SEC has established a substantial threat of irreparable injury if a preliminary injunction is not issued.

4. The SEC has established that the threatened injury if a preliminary injunction is denied outweighs any harm that will result if the injunction is granted.

5. The SEC has established that the grant of a preliminary injunction will not disserve the public interest.

6. Good cause exists to believe that Barton used improper and unlawful means to obtain investor funds and that investor funds and assets obtained with investor funds have been misappropriated and misapplied, as described in the SEC’s Complaint and in the Motion. Good cause exists to believe that, unless restrained and enjoined by order of this Court, Barton will dissipate, conceal, or transfer assets, including investor funds and assets obtained with, or that otherwise benefited from, investor funds.

7. There is good cause to believe that Barton and the entities that Barton directly or indirectly controls do not have sufficient funds or assets to satisfy the potential disgorgement of ill-gotten gains for the benefit of investors.

8. Good cause exists to believe that an accounting of assets held by Barton and the entities that Barton directly or indirectly controls is necessary to determine the disposition of investor funds and assets obtained with, or that otherwise benefited from, investor funds, and to determine which entities that Barton directly or indirectly controls received or benefited from investor funds.

9. Good cause exists to believe that, unless restrained and enjoined by order of this Court, Barton may alter or destroy documents relevant to this action, and it is necessary to preserve and maintain the business records of Barton and his controlled entities from destruction.

10. The Court finds that the SEC has brought this action to enforce the federal securities laws, in furtherance of the SEC's police and regulatory powers, and the relief sought by the SEC and provided in this Order is in the public interest by preserving the illicit proceeds of fraudulent conduct and is not in furtherance of a pecuniary purpose, and, therefore, the Court concludes that the entry of this Order is excepted from the automatic stay pursuant to 11 U.S.C. § 362(b)(4).

11. Good cause exists to lift the Court-imposed stay for the limited purpose of adjudicating the Motion.

The Court therefore grants the following relief without prejudice to any of the remaining relief requested by the SEC in its Motion.

IT IS THEREFORE ORDERED that the stay is lifted for the limited purpose of adjudicating the Motion and **IT IS FURTHER ORDERED:**

I.

Preliminary Injunction Order

Barton is preliminarily enjoined from transferring, selling, dissipating, assigning, concealing, pledging, withdrawing, alienating, encumbering, incurring debt upon, disposing of,

or diminishing the value of any funds, property, or other assets of any entity that he directly or indirectly controls that is not placed in receivership.

As provided in Rule 65(d)(2) of the Federal Rules of Civil Procedure, the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) Barton's officers, agents, servants, employees, and attorneys; and (b) other persons who are in active concert or participation with Barton or with anyone described in (a).

Entities that Barton directly or indirectly controls that have not been placed in receivership include, but are not limited to:

1. 2999 Acquisitions, LLC (Delaware)
2. 2999 Middlebury, LLC (Delaware)
3. 2999 Roxbury, LLC (Delaware)
4. 2999TC Founders, LLC (Delaware)
5. 2999TC JMJ Equity, LLC
6. 2999TC JMJ MGR, LLC (Delaware)
7. 2999TC JMJ, LLC (Delaware)
8. 2999TC JMJ, LLC (Texas)
9. 2999TC LP, LLC (Delaware)
10. 2999TC MM, LLC
11. 2999TC MZ, LLC (Delaware)
12. AVEG WW, LLC (Delaware)
13. Barton Texas Water District, LLC
14. Barton Water District, LLC (Delaware)
15. BC Acquisitions, LLC (Delaware)
16. BSJ Trading, LLC
17. BUILD VIOLET, LLC
18. Carnegie Finance, LLC
19. Condo Towers GP, LLC
20. CYNKFP, LLC
21. D4AT, LLC
22. D4BM, LLC
23. D4BR, LLC (Texas)
24. D4SMC, LLC
25. D4WP, LLC
26. Dallas Real Estate Management, LLC
27. Five Star GM, LLC (Delaware)
28. Food & Leverage Real Estate, LLC (Delaware)
29. Glenwood (18340) Property, LLC (Delaware)

30. Illuminate Dallas, LLC (Texas)
31. JB Special Asset, LLC
32. MJM Acquisitions Mgmt, LLC
33. MJM Aviation, LLC (Texas)
34. MJM BLUES TX, LLC
35. MJM Blues, LLC
36. MJM Centre, LLC
37. MJM Development Brasil, LTDA
38. MJM Development Fund
39. MJM Development Fund, Inc.
40. MJM EB5 Fund GP, LLC (Delaware)
41. MJM EB5 Fund, LP (Delaware)
42. MJM Holdings, LLC
43. MJM Holdings US, LLC
44. MJM Holdings USA, Inc.
45. MJM Home Building Inc. (Nevada)
46. MJM Hospitality General Trading FZE
47. MJM Hospitality UAE
48. MJM Investments Limited
49. MJM Land Acquisition, Inc (Nevada)
50. MJM Land Development, Inc (Nevada)
51. MJM Land Venture, LLC
52. MJM Mezzanine, Inc (Nevada)
53. MJM MF Development, LLC
54. MJM Multifamily, Inc (Nevada)
55. MJM Offshore, LTD
56. MJM Regional Center, LLC (Delaware)
57. MJM Valley Center, LLC
58. MJM148, LLC (Texas)
59. MJM4Allensville, LLC
60. MJMDWG, LLC (Texas)
61. MJMKH, LLC
62. Lynn Investments, LLC
63. MCFW, LLC
64. MCRS2019, LLC (Texas)
65. MMCYN, LLC
66. MV9490 Land Lot, LLC
67. MV9490 Management, LLC
68. MV9490, LLC
69. MXBA Managed, LLC
70. MXBA Services, LLC
71. Myra Park 635, LLC
72. Northstar 114, LLC (Delaware)
73. Northstar PM, LLC (Delaware)

74. One Agent Texas, LLC (Texas)
75. One Agent, LLC (Delaware)
76. ONE FHC, LLC (Texas)
77. Residential MF Assets, LLC (Delaware)
78. Rhino Stainless US, LLC
79. Riverwalk Invesco, LLC (Delaware)
80. Riverwalk Opportunity Management, LLC (Delaware)
81. Riverwalk OZFM, LLC (Delaware)
82. Riverwalk OZFV, LLC (Delaware)
83. Riverwalk QOZBJ, LLC (Delaware)
84. Riverwalk QOZBM, LLC (Delaware)
85. Riverwalk QOZBV, LLC (Delaware)
86. SK Carnegie, LLC
87. STL Park, LLC (Delaware)
88. Tarm Carnegie Management, LLC (Delaware)
89. Tarm Carnegie, LLC (Texas)
90. The Towers Condominium Partners Ltd.
91. VenusBK195, LLC (Texas)
92. VenusPark201, LLC (Delaware)

The SEC may cause a copy of this Order to be served on any bank, trust company, broker-dealer, depository institution, third-party payment processor, title company, any other holder or custodian of any digital assets, or on any entity or individual either by United States mail, email, or facsimile as if such service were personal service, to restrain and enjoin any such institution, entity, or individual from disbursing assets, directly or indirectly, to or on behalf of Barton, or any persons or entities under his control.

II.

Sworn Accounting

Barton shall provide a sworn accounting, under oath, within ten (10) days of the issuance of this Order. The accounting shall detail by amount, date, method and location of transfer, payee and payor, purpose of payment or transfer: (a) all investor monies and other benefits received, directly and indirectly, from or as a result of the activities alleged in the Complaint or thereafter transferred; (b) all monies and other assets received, directly or indirectly, from

investors; (c) all current assets and liabilities of Barton or any entity he directly or indirectly controls or controlled any point during the period from January 1, 2017 to the present wherever the assets and liabilities may be located and by whomever they are being held; and (d) all accounts with any bank, credit union, trust company, title company, financial or brokerage institution maintained for Barton or any entity he directly or indirectly controls or controlled at any point during the period from January 1, 2017 to the present. The accounting shall be sufficient to permit a full understanding of the flow of investor funds from the investor to its present location to the extent known by Barton or within his power to learn. The accounting and all documents reviewed in the course of the preparation thereof or otherwise pertaining thereto shall be filed with the Court and served on all counsel of record by the deadline set forth above.

After completion of the accounting, Barton shall produce to the SEC at a time agreeable to the SEC, all books, records, and other documents supporting or underlying the accounting.

III.

Document Preservation Order

Except as otherwise ordered by this Court, Barton is hereby temporarily restrained and enjoined from, directly or indirectly: destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, any (1) documents, which includes all books, records, computer programs, computer files, computer printouts, contracts, emails, correspondence, memoranda, brochures, or any other documents of any kind his possession, custody, or control, however created, produced, or stored (manually, mechanically, electronically, or otherwise) relevant to this lawsuit or the assets or liabilities of Barton or any entity he directly or indirectly controls or controlled any point during the period from January 1, 2017, and (2) accounts, account passwords, computer passwords, device PINs and passwords, cryptographic keys, or digital

wallets, pertaining in any manner to Barton or any entity he directly or indirectly controls or controlled any point during the period from January 1, 2017 to the present.

As provided in Rule 65(d)(2) of the Federal Rules of Civil Procedure, the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) Barton's officers, agents, servants, employees, and attorneys; and (b) other persons who are in active concert or participation with Barton or with anyone described in (a).

IV.

Retention of Jurisdiction

This Court shall retain jurisdiction over this action for the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IT IS SO ORDERED, this _____ day of _____, _____

**HONORABLE BRANTLEY STARR
UNITED STATES DISTRICT JUDGE**