



on December 19, 2020. [Dkt.79]. Subject to the Court’s approval, the sale is set to close on December 28, 2022. [Dkt. 76].

2. Today, just before noon, the Receiver discovered that on December 1, 2022, Defendant Barton had filed a Notice of Lis Pendens on the Rock Creek Property (the “Lis Pendens”). A true and correct copy of the Lis Pendens is attached as **Exhibit A**.

3. The Lis Pendens blatantly violates several provisions of the Receivership Order, including provisions that prohibit interference with the Receiver’s efforts to manage Receivership Property; prohibits actions that dissipate the value of Receivership Property; requiring cooperation with the Receiver’s efforts to exercise his authority under the Receivership Order; and prohibiting any legal proceeding of any nature involving Receivership Property. *Receivership Order*, Dkt. 29, ¶¶ 32A, 32C, 33, and 34. Although the Lis Pendens may evidence Barton’s most deliberate and egregious disregard for this Court’s authority to date, it is not the only instance of his intentional violation of the Receivership Order. *See* Dkt. 73, p. 19; 84, p. 9.

4. Understandably, given the direct violation of the Receivership Order in filing the Lis Pendens, Barton failed to provide any notice when he filed it.<sup>1</sup>

5. This lawsuit, however, does not fall within the parameters of instances in which lis pendens are permitted. *See Petito v. Brewster*, No. CIV.A.3:08CV0006L, 2008 WL 2446905, at \*3 (N.D. Tex. June 18, 2008) (“notice of *lis pendens* may be filed only during the pendency of an action involving: 1) title to real property, 2) the establishment of an interest in real property, or 3) the enforcement of an encumbrance against real property.”) (internal quotation omitted)); *see also Matter of Tex. Extrusion Corp.*, 844 F.2d 1142, 1152–53 (5th Cir. 1988) (appeal of confirmation

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<sup>1</sup> Section 12.007(d) of the Property Code required Barton to provide notice of the Lis Pendens within three days after filing it. TEX. PROP. CODE § 12.007(d).

of reorganization plan, which included conveyances of certain real property but did not specifically involve title to property on which lis pendens was filed was not proper basis for lis pendens, and bankruptcy court properly declared lis pendens, filed in violation of automatic stay, void).

6. Thus, although the Texas Property Code provides two specific methods for cancelling or expunging lis pendens,<sup>2</sup> this Court has no obligation to follow those procedures. *In re Duval Cnty. Ranch Co.*, 155 B.R. 723, 727 (Bankr. S.D. Tex. 1993). As in *Duval County Ranch*, the Bankruptcy Court refused to allow the debtors to accomplish by statute what they “were unsuccessful at accomplishing under Federal law.”

“That is, the Manges Debtors unsuccessfully sought numerous stays pending appeal of the confirmation of the Creditor Plan. No doubt frustrated by their lack of success, the Manges Debtors have filed notices of lis pendens in an attempt to prevent the Liquidating Trust from transferring property pursuant to the confirmed plan. When there is an outright conflict between Federal and State law, or when compliance of both Federal and State laws are impossible, this Court is bound by Federal law.”

*Id.* The *Duval County Ranch* Court declared the lis pendens at issue in that case void. *Id.*

7. The Receiver requests the same relief here: a declaration that the Lis Pendens filed by Barton on the Rock Creek Property is void. In the alternative, the Receiver requests that the Court cancel the Lis Pendens.

8. Finally, because the Receiver was forced to expend not less than \$1,200 in preparing this Motion to rectify Barton’s contumacious conduct, he requests that the Court order Barton to pay the fees as sanctions, within three days from the date of any Order on this Motion.

9. The Receiver requests such other and further relief to which he may show himself entitled.

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<sup>2</sup> “Once a notice of lis pendens has been filed, the Texas Property Code provides two methods for removal of the lis pendens: (1) expunction of a notice of lis pendens under § 12.0071; and (2) cancellation of a lis pendens under § 12.008.” *In re Briar Bldg. Houston LLC*, 609 B.R. 589, 597 (Bankr. S.D. Tex. 2019).

December 16, 2022

Respectfully submitted,

By: /s/ Charlene C. Koonce

Charlene C. Koonce

State Bar No. 11672850

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*Attorneys for Receiver Cortney C. Thomas*

### **VERIFICATION**

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

/s/ Cortney C. Thomas

Cortney C. Thomas

### **CERTIFICATE OF CONFERENCE**

The undersigned certifies that on December 16, 2022, counsel for the Receiver conferred via email with counsel for the SEC and counsel for Barton. Barton's counsel chose not to respond to the conference, although the Receiver had notice that counsel communicated amongst themselves about it. The SEC is unopposed.

/s/ Charlene C. Koonce

Charlene C. Koonce

# EXHIBIT A

**STATE OF TEXAS**

§

**COUNTY OF DALLAS**

§

§

**NOTICE OF LIS PENDENS**

**NOTICE IS HEREBY GIVEN** that in the United States District Court for the Northern District Court of Texas, Dallas Division, Cause No. 3:22-CV-2118-X, styled:

**SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. TIMOTHY LYNCH 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, and DJD LAND PARTNERS, LLC LDG001, LLC, Relief Defendants.**

**NATURE OF THE PROCEEDING:**

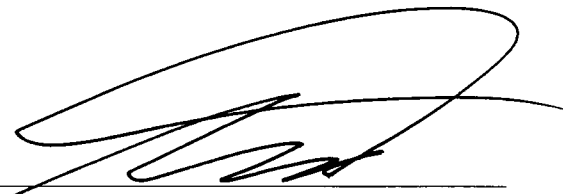
In the above-styled civil enforcement action brought by the SEC, a receiver was appointed on October 18, 2022, by the district court judge (Starr, J.) at the request of the SEC to take control of any entity directly or indirectly controlled by Timothy Barton. SF Rock Creek LLC is one such entity. The residential property located at 4107 Rock Creek Drive is titled in the name of SF Rock Creek LLC, which is a special purpose entity that exists for the purpose of holding title to this residence. The court-appointed receiver has expressed an intent to sell the property under the auspices of his receivership authority and despite the opposition of Mr. Barton. Mr. Barton is currently in the process of appealing the district court’s appointment of the receiver and has also sought other affirmative relief in the form of staying the receivership in its entirety during the pendency of his appeal. By these efforts, Mr. Barton is claiming that a receiver should not have been given control or authority over SF Rock Creek LLC or the residential property held thereunder, and that the appointment of a receiver with the purported power to sell the property should be overturned. Copies of Mr. Barton’s Notice of Appeal and Motion for Stay Pending Appeal are attached.

**LEGAL DESCRIPTION:**

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

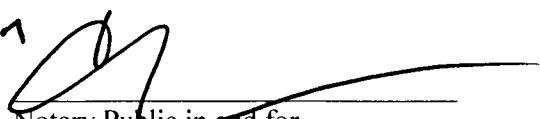
Property Address: 4107 Rock Creek Dr., Dallas, Texas, 75204

SIGNED this the 1 day of December, 2022.

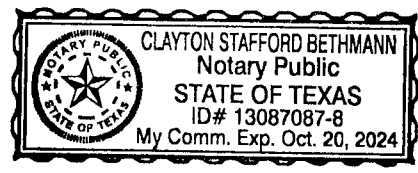
  
\_\_\_\_\_  
Timothy L. Barton

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this, the 1<sup>st</sup> day of December, 2022.

By Timothy L. Barton  
aa

  
\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: 10-20-2024





\*VG-364-2022-202200306143\*

Dallas County  
John F. Warren  
Dallas County Clerk

**Instrument Number:** 202200306143

Real Property Recordings

Recorded On: December 01, 2022 02:01 PM

Number of Pages: 31

**" Examined and Charged as Follows: "**

Total Recording: \$142.00

**\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\***

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 202200306143  
Receipt Number: 20221201000684  
Recorded Date/Time: December 01, 2022 02:01 PM  
User: Kaylee V  
Station: CC47

**Record and Return To:**

SPECIAL DELIVERY  
5470 LBJ FRWY STE 100  
  
DALLAS TX 75240



**STATE OF TEXAS  
Dallas County**

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

John F. Warren  
Dallas County Clerk  
Dallas County, TX



Additionally, because the Receiver was forced to expend not less than \$1,200 in preparing his Motion and because Barton's conduct violates the Order Appointing Receiver, the Court **ORDERS** Barton to pay the Receiver \$1,200 in compensatory sanctions, within three days from the date of this Order.

**SO ORDERED**, this \_\_\_\_\_ day of December, 2022.

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BRANTLEY STARR  
UNITED STATES DISTRICT JUDGE