No. 25-_____

In the Supreme Court of the United States

TIMOTHY BARTON, PETITIONER,

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The United States Government brought parallel criminal and civil enforcement actions against Petitioner Timothy Barton, alleging violations of the securities laws with respect to certain loans for real-estate development projects. The Securities and Exchange Commission brought the civil action, and it sought and obtained the seizure and placement into a receivership of every entity directly or indirectly controlled by Mr. Barton. That amounted to seizing all Mr. Barton's assets and left him with no resources to defend against the Government.

The Fifth Circuit reversed. On remand, the district court reimposed a receivership of similar scope, holding that Mr. Barton's entire companies and their assets could be seized if they benefitted in any way or to the slightest degree from the proceeds of the disputed loans. A second, differently constituted panel of the Fifth Circuit affirmed and rejected any "proportionality limitation" on the benefit to a company from subject property before the Government could seize all its assets. App. 17a.

The Constitution restricts the Government from seizing assets prior to judgment that a defendant needs to pay his defense lawyers. *See*, *e.g.*, *Luis v. United States*, 578 U.S. 5 (2016). The Fifth Circuit's infinitely flexible rule raises serious constitutional questions. Even when addressing congressional commands to seize property, this Court has never allowed seizure of whole companies for receiving even the smallest benefit from subject property. And this Court has not allowed agencies or courts invoking general equitable authority to come close to constitutional limits. The question presented is:

Does 15 U.S.C. § 78u(d)(5) and its authorization

for the Commission to seek "equitable relief" allow the Commission and a district court to use that general equitable authority to order a receivership—seizing every company owned by a defendant that benefitted to the slightest degree from the proceeds of his allegedly illegal acts—and thereby deprive the defendant of the resources to defend himself in a parallel criminal trial and raise serious constitutional questions?

PARTIES TO THE PROCEEDING

Petitioner is Timothy Barton, a Dallas-based real estate developer.

The Respondent is the United States Securities and Exchange Commission.

There are three categories of other parties to the proceedings below. The first are individual co-defendants Stephen Wall and Haoqiang Fu.

The second are several companies that borrowed the funds at issue: Wall007 LLC; Wall009 LLC; Wall010 LLC; Wall011 LLC Wall012 LLC; Wall016 LLC; Wall017 LLC; Wall018 LLC; and Wall019 LLC.

The third are certain companies associated with the Petitioner: Carnegie Development LLC; DJD Land Partners LLC; and LDG001 LLC.

STATEMENT OF RELATED PROCEEDINGS

The Government brought a parallel criminal prosecution, at the same time the Securities and Exchange Commission filed the action from which this petition arises. It is pending in the United States District Court for Northern District of Texas, *sub nom.*:

United States v. Barton, No. 3:22-cr-00352-K (N.D. Tx. 2022) (Kinkeade, J., presiding).

TABLE OF CONTENTS

APPENDIX

OPINIONS AND ORDERS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Other Authorities

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This case concerns whether there are crucial limits on the awesome criminal and civil enforcement powers of the United States Government and the even more formidable equitable powers of the courts.

On the same day, the Department of Justice and the Securities and Exchange Commission unsealed parallel criminal and civil actions against the Petitioner, Timothy Barton. To the present day, the civil case has existed for one reason alone: To seize all of Mr. Barton's assets, including his only home, and to place them in the hands of a court-appointed receiver. The Commission sought and obtained this within the first three weeks of the civil case, at which point the Department of Justice immediately moved to stay the civil case and any discovery into its

merits. The receivership order has allowed the Government to deprive Mr. Barton of the assets necessary to defend himself against the Government's charges, including in a criminal prosecution poised to take his liberty.

In our system of justice, this can happen when all the defendant has is the proceeds of illegal activity and Congress has commanded the pretrial seizure of those assets. But that is not what happened here. The Commission and the district court used their general equitable powers to obtain the receivership.

Then, the Fifth Circuit rejected any meaningful limits on what property the Government may seize. Instead, it crafted a rule allowing the Government to seize entire corporate entities—not only when they actually possess the disputed loan proceeds at issue in the Government's cases, but also when those proceeds have benefited the company. And the Fifth Circuit authorized the seizure of all an entity's assets when it had benefited from the disputed loan proceeds to the slightest degree, rejecting any "proportionality limitation" between the magnitude of the benefit and of the seized assets. App. 17a.

The Fifth Circuit's rule is a green light for the Government to invoke general principles of equity to take all a defendant's assets, at the beginning of an enforcement campaign, and leave him penniless to contest the Government's allegations of wrongdoing. The rule allows this to happen in the complex cases in which the Securities and Exchange Commission is involved, where millions of documents at issue are the norm. *Securities and Exchange Comm'n v. Jarkesy*, 603 U.S. 109, 144 (2024) (Gorsuch, J., concurring) (observing this phenomenon). The Govern-

ment will have armies of lawyers and agents—and even the receiver spending the defendant's own money—marching through those reams of paper. The defendant will be left with a public defender and a paralegal.

This is clearly not equitable and thus not a proper invocation of the courts' equitable powers. It also raises serious constitutional problems. Even when Congress has commanded the pretrial seizure of a criminal defendant's property, this Court has held such directives violate the Sixth Amendment when the seizure disables him from retaining counsel of his choice and Congress and the courts are not very careful about whether that property is tainted by criminal activity. *Luis v. United States*, 578 U.S. 5 (2016). But here, the Fifth Circuit has conjured a justification for pretrial seizure from its equitable powers. Without meaningful limits to ensure the property seized actually is the proceeds of wrongdoing, unelected administrative agencies and courts are using this equitable authority to come up to and potentially to cross over constitutional limits.

Agencies and courts should not leave the field with chalk on their spikes from the constitutional sideline. When Congress wants to press constitutional limits, this Court requires a clear statutory statement from the People's elected representatives. Agencies and courts exercising general equitable powers should keep several paces back from the constitutional line and not raise serious constitutional questions through pretrial seizures, absent a clear statutory command to go there.

The Securities Exchange Act, generally authorizing the Commission to seek "equitable relief," is not such a

statement. 15 U.S.C. § 78u(d)(5). As this Court has held, such bland statutory references do not give agencies—or courts adjudicating their requests—equitable superpowers. *Starbucks Corp. v. McKinney*, 602 U.S. 339 (2024). And rejecting the Fifth Circuit's indifference to the potential constitutional problems at issue here would be the latest in this Court's efforts to rein in judicial misadventure in the name of equitable powers. *See*, *e.g.*, *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025); *Liu v. SEC*, 591 U.S. 71, 86 (2020).

This Court should not await a split of authority to address this important issue. A disagreement among the circuit courts is unlikely to come, as the receivership remedy here is designed to cut off the oxygen from challenging the Government's position. This case is before the Court only because undersigned counsel did not abandon his client when all his assets were seized, a rare fortuity. And defendants are not entitled to Government-provided counsel in parallel civil cases, where the Government is choosing to seek these remedies.

In addition, whether the courts themselves are misusing equitable powers goes to the heart of structural and integrity issues of the third branch. *See*, *e.g.*, CASA, *Inc.*, 603 U.S. at 857. This Court has been a responsible steward of its own house and has promptly policed those missteps rather than let them fester. *Id.* The Court should grant the petition and do so here.

OPINIONS BELOW

The order of the district court initially imposing a receivership is unreported and reproduced at App. 131a–158a. The opinion of the court of appeals reversing the

initial receivership order is reported at 79 F.4th 573 (5th Cir. 2023) and reproduced at App. 115a–130a. On remand, the orders of the district court reimposing a receiver and a preliminary injunction are unreported and reproduced at 39a–114a. The opinion of the court of appeals affirming the district court orders on remand is reported at 135 F.4th 206 (5th Cir. 2025) and reproduced at 1a–36a.

JURISDICTION

The court of appeals entered judgment on April 17, 2025, and denied rehearing on June 16, 2025. App. 1a, 37a. On September 5, 2025, Justice Alito extended the deadline for seeking certiorari to October 14, 2025. *Barton v. SEC*, No. 25A265 (U.S. Sept. 5, 2025). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

15 U.S.C. § 78u(d)(5) provides:

> 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.

15 U.S.C. § 78u(d)(5).

The Fifth Amendment to the United States Constitution provides, in relevant part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .

U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

U.S. Const. amend. VI.

STATEMENT

In September 2022, the United States Government unsealed a parallel criminal indictment and civil enforcement action against petitioner Timothy Barton. In both actions, the Government alleged that Mr. Barton had violated federal securities laws with respect to several loans related to real-estate development projects.[1]

The Government alleged that the loan proceeds were approximately $26 million. The loans were funded entirely by Chinese nationals who lived in China. The lenders' agent, on several occasions, rejected payments on the loans to the China-based accounts, leading to concerns that the identified lenders were laundering money for others. App. 8a.

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1. The cases were assigned to two separate judges of the United States District Court for the Northern District of Texas. The Honorable Brantley Starr was assigned to the civil case brought by the Securities and Exchange Commission. *SEC v. Barton*, No. 3:22-cv-02118-X (N.D. Tex.). The Honorable James E. Kinkeade was assigned to the criminal case brought by the Department of Justice. *United States v. Barton*, No. 3:22-cr-00352-K (N.D. Tex.).

Within the first three weeks of the civil-enforcement action, the United States Securities and Exchange Commission sought, and the district court ordered, the seizure of all companies directly or indirectly controlled by Mr. Barton and all their assets. App. 119a, 132a. The district court placed these assets in the hands of a court-appointed receiver. The district court rejected as receiver a real-estate development expert who could have advanced the pending projects and was recommended by the Commission, instead appointing a litigator he knew from elsewhere.[2] App. 133a.

Because Mr. Barton had invested any meaningful personal assets he had in his real estate business and held his own home through a limited liability company, the receivership stripped him of virtually everything he owned. App. 22a. The receiver and the district court evicted him from his house as their first order of business, leaving him to sleep on couches in his children's apartments and leading to months of disputes about recovering even personal effects and furniture from the house.[3] The receiver also seized the contents of his office, including attorney work papers regarding the Commission's investigation and defending against it.

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2. *See* Plaintiff's Motion for Appointment of Receiver and Brief in Support at 20, *Barton*, No. 3:22-cv-02118-X (N.D. Tex. Sept. 26, 2022), ECF No. 6.

3. *See, e.g.*, Order Granting Motion to Approve Sale, *Barton*, No. 3:22-cv-02118-X (N.D. Tex. Dec. 20, 2022), ECF No. 104; *see also* Receiver's Motion for Permission to Abandon Certain Personal Property and Notice Regarding Abandonment, *Barton*, No. 3:22-cv-02118-X (N.D. Tex. Jan. 2, 2024), ECF No. 441.

In seeking the receiver, the Commission argued that the Securities Exchange Act gave the Commission special power to obtain one upon showing a prima facie case of securities fraud. App. 120–121a. The Commission alleged that Mr. Barton "commingled" the proceeds of the loans in question into some of his businesses. App. 125-26a. The district court undertook no additional inquiry and made no particular findings about which assets were appropriate to seize through a receivership. *Id.*

The district court stated that the purpose of the receivership was "to penaliz[e] past unlawful conduct and deter[] future wrongdoing," despite the absence of any discovery into much less a judgment validating the Government's allegations. App. 118a. The district court's use of the receivership to punish the Appellant reached Biblical proportions, invoking the Book of Ezekiel in an attempt to find support for its decision to impose a receivership of this breadth: "'The righteousness of the righteous shall be upon himself, and the wickedness of the wicked shall be upon himself.' Ezekiel 18:20. So in holding [receivership entities] accountable for the actions of their true controller—Timothy Barton—the Court acts consistently with Scripture's just admonition that each ought to be penalized for his own wrongdoing."[4]

Immediately after the Government had obtained a receivership seizing all of Mr. Barton's property, the federal prosecutors in the parallel criminal proceeding

4. Order Granting Receiver's Motion to Supplement Order Appointing Receiver at 6 n.16, *Barton*, No. 3:22-cv-02118-X (N.D. Tex. Dec. 13, 2022), ECF No. 88.

intervened in the civil action and moved for a stay.[5] According to the Department of Justice, it would prejudice the criminal prosecution if Mr. Barton were to gain any insight into the merits of the Government's case through the production of documents or deposition of Government witnesses that would occur in civil discovery. *Id.* The revelation of that information, the Government contended, should occur only through the criminal discovery process, which often delays disclosure until the eve of a criminal trial. *Id.* The Commission has not yet been required to reveal the evidence underlying the merits of their claims of wrongdoing in the civil case.

Recognizing their dramatic effect on property rights, Congress authorized immediate appeals of district-court orders imposing a receivership. 28 U.S.C. § 1292(a)(2). Mr. Barton appealed the sweeping receivership order, and the Fifth Circuit reversed. App. 115a–130a. The Fifth Circuit observed that "a 'receivership is an extraordinary remedy that should be employed with the utmost caution.'" App. 122a (quoting *Netsphere v. Barton*, 703 F.3d 296, 305 (5th Cir. 2012)). The receivership order was defective, the Fifth Circuit held, because it was not clear whether the district court had determined "whether legal and less drastic equitable remedies are adequate or whether the burdens of a receivership outweigh the burdens on affected parties." App. 123a–124a.

Next, the Fifth Circuit addressed the scope of assets seized. It was an abuse of discretion, the Fifth Circuit

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5. Government's Unopposed Motion to Intervene and to Stay Proceedings, *Barton*, No. 3:22-cv-02118-X (N.D. Tex. Nov. 2, 2022), ECF No. 44.

determined, for the district court to have placed into receivership all the Petitioner's companies without analyzing their connection to the Chinese national loan proceeds. App. 125–127a. That is because seeking a receivership is a proceeding *in rem*, against specific property. *Netsphere*, 703 F.3d at 310. It cannot be used to secure the assets of an individual defendant in hopes that they can be used to satisfy a potential future civil judgment. *Id.* Instead, a "'court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy,'" here the Chinese national loan proceeds. App. 126a (quoting *Netsphere*, 703 F. 3d at 310). The court held that alleging that the petitioner "had engaged in extensive commingling of funds" with his companies was insufficient to seize all of them. *Id.*

The Fifth Circuit vacated the receivership, effective 90 days after issuance of the appellate mandate, contemplating that the SEC might try again to seek a receivership. App. 129a–130a. During that period, the court barred the district court or receiver from disturbing the status quo of the receivership property. *Id.*

On remand, the Commission renewed its motion for a receivership. This time, the Commission presented alleged evidence that only 25 of the 54 companies the district court ultimately placed into the new receivership had some connection to the Chinese lender funds.[6] App. 72a-

6. Ex. A to Declaration of Carol Hahn in Support of 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, *Barton*, No. 3:22-cv-02118-X (N.D. Tex. Sept. 7, 2023), ECF No. 310-2.

74a.[7] The district court asked the receiver to make a submission, and he sought continued control of dozens more. App. 20a–21a. The district court held a three-hour evidentiary hearing and allowed the receiver to urge the seizure of additional companies. *Id.*; *see*, *e.g.*, App. 54a. The court seated the receiver near the bench, on grounds that he was an arm of the court, while allowing him to make arguments for a broader remedy as if he were a party to the case.

The district court reimposed the receivership, leaving out of it only a handful of historical shell companies with no assets. App. 39a–100a. Even for those, the district court issued a preliminary injunction freezing the assets of those companies indefinitely, lest those assets (if they somehow existed) be used to assist in defending against the Government's charges. App. 101a–114a.[8] The second receivership—like the first—seized the Petitioner's only home, in analysis spanning a footnote. App. 53a n.63.

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7. Real-estate developers traditionally create separate limited liability companies for each property under development and, often, for each phase of the development of that property. A developer maintaining dozens or hundreds of limited liability companies is, therefore, common.

8. The ostensible purpose of the preliminary injunction was to allow the Commission and the receiver more time to establish whether these companies were connected to the affected funds. App. 104a-105a. In the nearly two years since, neither the Government nor the receiver has made any presentation to the Court evincing any effort to do so.

On appeal, a two-judge panel of the Fifth Circuit affirmed.[9] First, the court held that the district court did not abuse its discretion, generally speaking, in seizing some assets and placing them into a receivership. App. 10a–15a. Unlike the previous panel, the second panel did not mention that a receivership is an "extraordinary remedy to be exercised with the utmost caution." *Compare* App. 122a. But it did uphold the district court's finding that the receivership was "clearly necessary to protect a party's interest in property." App. 11a. The court observed that Mr. Barton presented a risk of "dissipat[ing]" the assets of the seized corporations in part because, after the unsealing of his indictment, he spent some of them on attorneys' fees for lawyers who might defend him against the Government's charges. App. 3a, 11a–12a. The court also noted that, in part because the Government's charges had frozen the assets and prevented payments to creditors, "third-party actions" threatened those assets and the receivership came with "a parallel stay" of other litigation. App. 11a–12a. The court rejected arguments that the receivership must be focused on preventing "'a significant and imminent risk of asset flight that cannot be controlled by other means,'" holding that ensuring potential better management of the assets would be enough to justify the prejudgment seizure of them. App. 12a.

The Fifth Circuit also upheld the district court's determination that "less drastic measures" than a receivership

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9. The case was scheduled before a panel of Judges Willet, Ho, and Higginbotham. During oral argument, it was announced that Judge Ho would recuse himself and the case would proceed with only two judges. App. 1a n.*.

would be inadequate. App. 13a–14a. According to the second Fifth Circuit panel, anything that would leave the owner of the assets — Mr. Barton — in any way in charge of them "would increase[] the risk of asset dissipation," which incremental risk the court apparently believed was enough to justify a thorough prejudgment seizure of assets. App. 13a. The court did not consider the fees of the receiver, which to date exceed $2 million.[10] In so holding, the Fifth Circuit expressly rejected a standard "closely akin to strict scrutiny" and thus any requirement that no alternative less restrictive of property rights was available to protect the assets before imposing a receivership. App. 13a n.27.

Second, the Fifth Circuit upheld the district court's seizure of every company associated with Mr. Barton with any assets in it. App. 15a–21a. In so doing, the second panel of the Fifth Circuit adopted an infinitely flexible standard for determining which assets are the "subject matter of the litigation." App. 15a–16a. Specifically, the Fifth Circuit held that if subject assets — here, the proceeds of the Chinese national loans — "benefited" a company to the smallest extent, a district court could seize the entire company and place it into receivership. The Fifth Circuit rejected any "proportionality limitation" between the amount of alleged benefit and amount of assets seized. App. 17a. Any requirement that the district court determine that the benefit from subject assets be "substantial" or "sufficiently" significant would be "unworkable"

10. *See* Receiver's Partially Unopposed Verified Sixth Quarterly Fee Application, *Barton*, No. 3:22-cv-02118-X (N.D. Tex. July 8, 2025), ECF No. 656.

because of the difficulties of where to draw the line, according to the court. App. 18a.

In this case, the lack of any materiality or significance requirement to the amount of benefit had remarkable consequences. Before any of the Chinese lender loans in question provided for certain real estate development projects, Mr. Barton owned and was building apartment complexes in Texas and Alabama worth hundreds of millions of dollars. The costs of constructing those complexes were financed through loans from the United States Department of Housing and Urban Development, as well as an unrelated, Dallas-based insurance company lender, leaving the owners of them with tens of millions of net equity. App. 55a. The receiver, however, argued and the district court determined that these companies had benefited from the Chinese lender funds through a daisy chain of inchoate "benefits." The Chinese nationals had lent the funds to a company, which in turn had paid and lent some of those funds to Mr. Barton's main operating company employing some administrative staff. App. 58a. That company provided salaries for those staff and a roof over their head, and those staff had handled some ministerial work related to the apartment complexes. *Id.* The company had also advanced some modest expenses to the entities owning the complexes, before being paid back within days of having done so. App. 56–57a. And, when seeking the U.S. government loan for construction, Mr. Barton cited his work on other projects actually funded by the Chinese national loans, which (in the district court's view) strengthened the application. App. 55a–56a. The administrative support and temporary possession of some funds from the

main operating company (even without finding that the support or funds were themselves the lender proceeds) and the citation of the other projects on the government loan application were sufficient benefits to take the entire apartment complexes.

As for arguments that the benefits were not significant enough to justify seizure of the entire companies, the district court never really made a ruling that they were. Instead, in response, the district court said that its "job on remand at this posture is to determine whether entities 'received or benefited from," without regard to the magnitude of the receipt or benefit. App. 57a. The district court called this its "marching orders." App. 57a n.82. Paradoxically, for the Fifth Circuit, any meaningful review of specific implementation of its infinitely flexible benefits principle was not appropriate, because of the district court's vast "discretion" regarding it. App. 21a. With respect to the main asset at issue, the district court did not seem to think it had any discretion.

The receivership—and the second Fifth Circuit panel's affirmance of it—left Mr. Barton without the resources to pay or retain counsel to defend himself against the Government's charges. Mr. Barton requested that, if a second receivership were imposed, the district court make some of the assets therein available for his defense, as courts have done in similar settings.[11] The district court ignored this request, Mr. Barton assigned error to that

11. Brief for Appellant at 77–78, *Securities and Exchange Comm'n v. Barton*, No. 23-11237 (5th Cir. May 21, 2024), ECF No. 51; Appellant's Petition for Rehearing En Banc at 16, *Barton*, No. 23-11237 (5th Cir. June 2, 2025), ECF No. 121.

omission, and the Fifth Circuit also never addressed it, on direct appeal or in response to the petition for rehearing. It also left Mr. Barton without a home of his own.

Another judge of the district court—Judge Kinkeade—is presiding over the Government's parallel criminal proceedings against Mr. Barton. Trial has been delayed multiple times, amidst submissions showing that this complex white-collar prosecution involves hundreds of thousands if not millions of documents and that private counsel will have to withdraw and a public defender be assigned if some, even partial, relief is not obtained from the prejudgment seizure of all of Mr. Barton's assets.[12] The criminal trial is currently scheduled for March 2026. *Id.*

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT'S RULES GOVERNING THE CIRCUMSTANCES UNDER WHICH AND THE ASSETS OVER WHICH THE GOVERNMENT MAY OBTAIN A RECEIVERSHIP IMPLICATE IMPORTANT CONSTITUTIONAL CONCERNS

When bringing a civil action to enforce the securities laws, the Securities and Exchange Commission regularly asks district courts to seize the assets of the defendant—at the beginning of the case and before judgment—and to place them into a receivership.[13] To do so, the Commission

12. *See, e.g.*, Order on Motion for Continuance, *Barton*, No. 3:22-cr-00352-K (N.D. Tex. July 11, 2025), ECF No. 99.

13. *See* Sean Kelly, *Why SEC Civil Enforcement Practice Demonstrates the Need for a Reprioritization of Securities Fraud Claims*, 37 Am. Bank. Inst. J. 40 (2018) (discussing the tendency and prevalence of the SEC seeking equity receiverships at the beginning of civil enforcement actions).

invokes its statutory authority to call upon the traditional equitable powers of courts. *See* 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."); *see also Liu v. SEC*, 591 U.S. 71, 86 (2020) (holding that the Commission's statutory authority to seek equitable relief does not provide the Commission or the courts access to equitable remedies greater than those traditionally available to courts).

In the decision below, the Fifth Circuit declined to impose important limits on agency authority to seek and judicial authority to order receiverships. These bypassed limitations are crucial to preventing interference with the fundamental fairness of government-instituted civil and criminal proceedings and potential constitutional transgressions therein.

First, the Fifth Circuit rejected meaningful limitations on the circumstances under which the Commission may seek — and district courts may order — receiverships before judgment. The court stated that a receivership must be "clearly necessary to protect a party's interest in property." App. 11a. But it did not assign any serious content to that standard. Instead, it rejected a requirement that the receivership be the least restrictive means available to protect the property interest, claiming that standards borrowed from evaluating "restrictions of fundamental constitutional rights" are not relevant to receiverships. App. 13a & n.27. In doing so, the Fifth Circuit missed the constitutional dimensions of the problem, as a receiver-

ship absolutely does strip a citizen of fundamental rights to property. And it bypassed the "less drastic" alternatives of an injunction against the sale of assets without court permission or court-appointed monitors to govern excessive spending inside the companies affected. It did so, in large part, because the court feared that leaving Mr. Barton with even a fraction of his property rights or some modicum of say over what happens to his property would open the door for Mr. Barton to dissipate his assets before final judgment. App. 14a ("keeping [Mr. Barton in charge comes with an unacceptable risk of asset dissipation"). Remarkably, the Fifth Circuit cited Mr. Barton's spending of resources on lawyers to defend him from the Government's charges, after the indictment was unsealed, as a reason for imposing a receivership that encompassed all of his assets. App. 3a, 13a.

Second, the Fifth Circuit adopted an infinitely flexible rule governing which assets may be seized and placed into a receivership. As an initial matter, a receivership is supposed to be a remedy against specific property, not against a person for wrongdoing. It is a measure *in rem*, rather than *in personam*. And, like other equitable remedies, it cannot be used to punish the defendant. *Bangor Punta Operations, Inc. v. Bangor & Aroostook R.R. Co.*, 417 U.S. 703, 717–18 n.14 (1974) ("[I]t is not the function of courts of equity to administer punishment").

The Fifth Circuit correctly recognized, therefore, that "the equitable remedy of a receivership cannot cover 'property that is not the subject of an underlying claim or controversy.'" App. 16a (quoting *Netsphere*, 703 F.3d at 310). But the Fifth Circuit crafted a rule for determining

what property is "the subject of" the "underlying claim" that has no meaningful limits and thereby licenses the seizure of all a defendant's assets. In this case, the Commission's complaint was directed at the procurement and handling of loan proceeds from Chinese nationals related to real-estate development projects.

Under the Fifth Circuit's standard, if those loan proceeds "benefited" a company to the slightest degree, that company and all of its assets may be seized at the beginning of the case. App. 16a–19a. The Fifth Circuit expressly rejected any "proportionality limitation" on a small benefit justifying the seizure of the entirety of a company's assets. App. 18a. A standard with any inquiry into whether "a particular company *sufficiently* receives or benefits from lender funds is unworkable," the Fifth Circuit explained. *Id.* The result is that, under the Fifth Circuit's rule, one drop of subject funds into a corporate bucket of assets gives the Government the right to seize all of them, from the beginning of the case.[14] And, to the

14. The second panel of the Fifth Circuit suggested that the "benefit" rule was somehow the law of the case, because it came from language in the first panel's opinion reversing the initial attempt at receivership. App. 17a–18a ("'Should the district court decide that a new receivership is justified on remand, it can only extend over entities that received or [benefited] from assets traceable to Barton's alleged fraudulent activities that are the subject 18a of this litigation.'" (quoting *Barton I*, App. 127a). The second panel also observed that Mr. Barton himself was responsible for the licentious benefit standard, referring to a passage in the first panel opinion summarizing Mr. Barton's argument that "'the district court erred by placing multiple entities he controls in the receivership without any showing that they received or [benefited] from

(continued…)

dramatic advantage of the Government, the rule prevents any of those assets from being used to retain counsel to defend against the Government's allegations.

In this case, the consequences were stark. The Fifth Circuit affirmed the seizure of significant corporate entities—with significant assets and having almost nothing to do with the Government's allegations—on attenuated chains of alleged minor benefits from the lender funds. Companies owning hundreds of millions of dollars of apartment complexes, with tens of million in net equity, were seized. The district court cited, as an example, that employees from one of Mr. Barton's other companies—allegedly having received a quantum of lender funds—had assisted with filling out paperwork that assisted in their construction and maintenance and temporarily advanced modest sums to the apartment complex companies. App. 56a–58a. This was so even though their construction was entirely financed by U.S. government and insurance company loans *having nothing to do with the Chinese or the Commission's allegations of wrongdoing*.

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ill-gotten investor funds.'" App. 18a & n.36 (quoting *Barton I*, App. 125a–126a). Both the first panel of the Fifth Circuit and Mr. Barton were describing *what the district court did not do* and how far away it was from any semblance of the showing that might justify the seizure of assets. This description of the district court's shortcomings was by no means a specification or concession as to the *sufficient* conditions for seizing assets. In any event, whatever binding effect the observations of the first Fifth Circuit panel had on the second, all of them are subject to review and reversal in this Court. *United States v. Williams*, 504 U.S. 36, 41 (1992) (citing Court's abundant authority to review any issue pressed or passed upon by a lower court).

App. 55a. In a similar way, the Commission sought and the district court ordered the seizure of Mr. Barton's only home. Together, the Fifth Circuit's flexible and capacious standard left Mr. Barton relying on his children for shelter and without resources to pay counsel defending against the Government's allegations.

The Fifth Circuit's standard is one that the Government could and, in this case, did use to zero out a defendant's resources to retain counsel and contest the Government's allegations. That is no short order in Securities and Exchange Commission cases alleging violations with respect to complex business transactions. As this Court has observed, those cases can involve millions of documents, requiring more than a single lawyer and paralegal to digest. *SEC v. Jarkesy*, 603 U.S. 109, 144 (2024) (Gorsuch, J., concurring) (noting that, in a SEC case claiming securities fraud with respect to a similar amount of loan proceeds ($24 million), "the SEC disclosed 700 gigabytes of data—equivalent to between 15 and 25 million pages of information—it had collected during its investigation," which defendant's lawyers had estimated it "would take two lawyers or paralegals working twelve-hour days over four decades to review."). This case is no exception, with millions of pages of documents at issue.[15] For the Government's part, it examined the evidence with a fleet of Commission employees and FBI agents for more than two years.

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15. Defendant's Unopposed Motion to Continue the Trial and Extend Pretrial Deadlines and Brief in Support at 2, *Barton*, No. 3:22-cr-00352-K (N.D. Tex. June 27, 2025), ECF No. 98.

The Government's taking affirmative actions (albeit with lower court approval) to deprive a defendant of resources to defend himself in a civil enforcement action raises serious due-process concerns. *See*, *e.g.*, *Powell v. Alabama*, 287 U.S. 45, 61 (1932) (explaining that, at English common law, parties had a recognized right to counsel in civil cases and misdemeanors, but not felonies, necessitating the explicit guarantee of the Sixth Amendment for all criminal cases); *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1117 (5th Cir. 1980) (citing *Powell* and observing that "the Supreme Court has indicated in its criminal decisions that the right to retain counsel in civil litigation is implicit in the concept of fifth amendment due process"); *Adir Int'l, LLC v. Starr Indem. & Liab. Co.*, 994 F.3d 1032, 1039–40 (9th Cir. 2021) (due process clause implicated in civil cases where the "government substantially interferes with a party's ability to communicate with his or her lawyer or actively prevents a party who is willing and able to obtain counsel from doing so"). It is also a gross unbalancing of the equities that is flatly inconsistent with granting any preliminary equitable relief, including a prejudgment receivership. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (the government generally must meet the four-part test for obtaining a preliminary injunction, including showing a balance of the equities in favor of it, absent a clear statutory statement to the contrary).

But the affront to equitable and constitutional principles is compounded when that same Government has launched a simultaneous criminal prosecution. That parallel criminal proceeding seeks to deprive a citizen not just

of his property, but of his liberty. And the Sixth Amendment guarantees a criminal defendant a right to counsel. The Sixth Amendment, in turn, restricts prejudgment seizures of defendant assets that would be used to retain a lawyer of his choosing and to fund a vigorous defense. *Luis*, 578 U.S. at 10.

The Fifth Circuit, however, did not take the parallel criminal prosecution—and the effect of the receivership on the ability to fund a criminal defense—into consideration when determining which assets could be seized. It mentioned that prosecution only twice in passing, and never in its substantive analysis or crafting of rules regarding the existence and scope of receiverships. App. 2a, 3a. This stands in stark contrast to this Court, which (when reviewing prejudgment seizures of defendant assets through forfeiture) has paid painstaking attention to what qualifies as an asset tainted by wrongdoing that could be removed as a resource for funding the defense. *See Luis*, 578 U.S. at 12–16.

II. THE COMMISSION'S AUTHORITY TO SEEK "EQUITABLE RELIEF" IN 15 U.S.C. § 78u(d)(5) SHOULD NOT EMPOWER IT TO IMPOSE RECEIVERSHIPS OF THIS SCOPE ABSENT A CLEAR STATEMENT FROM CONGRESS

The Commission's authority to impose receiverships comes from 15 U.S.C. § 78u(d)(5), which authorizes the SEC to seek and obtain "equitable relief" in actions or proceedings brought under the securities laws:

> 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.

15 U.S.C. § 78u(d)(5). But statutes that authorize "equitable relief" do not empower agencies or courts to do whatever they want. This Court has repeatedly held that statutes that confer "equitable" powers on federal courts authorize only remedies that were traditionally awarded by courts of equity at the time of the nation's founding. *See Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025); *see also Whole Woman's Health v. Jackson*, 595 U.S. 30, 44 (2021) ("The equitable powers of federal courts are limited by historical practice."); *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318–19 (1999) (limiting the federal courts' equitable powers to relief that was "traditionally accorded by courts of equity" at the time of the Constitution's ratification). The Court has extended this principle to 15 U.S.C. § 78u(d)(5), allowing the SEC to seek "disgorgement of improper profits" only after concluding that this remedy was traditionally available in equity and only to the extent of those historical analogues. *See Liu*, 591 U.S. at 80. Agencies and courts cannot use statutes such as section 78u(a)(5) or the Judiciary Act of 1789 to impose remedies that were unknown to equity courts at the time of the statute's enactment, such as so-called universal injunctions or remedies that purport to "enjoin" statutory enactments rather than the individuals charged with enforcing them. *See Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021).

At the same time, statutes that merely allow agencies to seek "equitable relief" should not authorize remedies

that test constitutional boundaries absent a clear and express statement from Congress. The Commission, with the assistance of the district court, has seized *all* of Mr. Barton's assets, leaving him unable to pay his lawyers in the parallel criminal prosecution brought by the Department of Justice. The Commission started this case claiming that it was entitled to a receivership by making little more than an allegation (stating a prima facie case) of securities law violations, with no showing of the necessity of this dramatic preliminary injunction to prevent irreparable harm or asset flight or that less drastic measures were inadequate. App. 120–121a. And the Commission claimed that receivership could reach all the defendant's assets, without regard to whether they were the complained-about loan proceeds. App. 125–127a. The first panel of the Fifth Circuit reversed those sweeping claims. Later, the Commission argued — and a second panel of the Fifth Circuit agreed — that it could seize entire companies not only if they possessed any of the disputed Chinese national loan proceeds, but also if they benefited from those proceeds to the slightest degree, with no "proportionality limitation." App. 18a. No act of Congress set this trivially low threshold as grounds for seizure.

This sweeping scope of seizure may have resulted from another faulty premise. The district court repeatedly stated that the purpose of the receivership imposed was "to penaliz[e] past unlawful conduct." App. 118a, 72a. That is not a proper use of such equitable remedies, which must be linked to specific property. *Liu*, 591 U.S. at 82; *see also id.* at 100 (Thomas, J., dissenting) (criticizing SEC disgorgement remedy because "it is not the function of

courts of equity to administer punishment" (quoting *Bangor Punta Operations*, 417 U.S. at 717–18 n.14).

An "equitable" remedy of this scope presents serious constitutional questions under the Sixth Amendment. The court of appeals made no serious effort to consider the effects of the seizure parallel criminal prosecution, mentioning it only twice in passing. App. 2a, 3a. Nor did the district court or the court of appeals make any effort to save assets that were not meaningfully tainted by the Chinese national disputed loans—including real-estate projects started and substantially completed before the subject loans ever existed—from the receivership. *See Luis*, 578 U.S. 5 (judicial orders freezing a criminal defendant's untainted assets violate the Sixth Amendment if they leave the defendant unable to pay his or her lawyer). Indeed, the district court claimed it had no discretion to determine whether a benefit from the loans was too small to seize a dramatically larger company: Its "job" and "marching orders" were to seize entire companies that received any benefit from the loan proceeds at all, however small, even if those companies did not possess those proceeds. App. 58a & n.82.

The SEC's and the lower courts' presumption in favor of seizure raises serious constitutional questions under *Luis*, which shields a criminal defendant's untainted assets from pretrial restraint. And this Court should not allow the SEC or the lower courts to adopt a presumption of that sort absent a clear and express command from Congress to seize that property prior to judgment. *See Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617 (1989) (upholding drug forfeiture statute that

explicitly authorized seizure of property derived from proceeds of a drug-related crime, even though it left the criminal defendant without funds to pay his lawyer); *United States v. Monsanto*, 491 U.S. 600 (1989) (similar).

This Court has long construed federal statutes to avoid presenting unnecessary questions of constitutional law. *See United States ex rel. Att'y Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 408 (1909) ("[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter."); *see also NLRB v. Cath. Bishop*, 440 U.S. 490, 500 (1979); *INS v. St. Cyr*, 533 U.S. 289, 299–300 (2001). And it has been especially insistent that administrative agencies such as the Commission identify clear and explicit statutory authorization before adopting policies or seeking judicial remedies that present serious constitutional questions—even when *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984), *overruled by Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), required judicial deference to agencies' interpretations of statutes. *See, e.g.*, *Edward J. DeBartolo Corp. v. Fl. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) ("[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.").

Interpreting 15 U.S.C. § 78u(d)(5) to allow the Commission to obtain a receivership of this scope presents serious constitutional questions. The Sixth Amendment

does not allow the SEC to seize assets that Mr. Barton needs to pay his criminal-defense lawyers unless those assets are tainted by Mr. Barton's allegedly illegal activities, even when Congress has ordered their pre-judgment seizure. *See Luis*, 578 U.S. 5. Yet the Fifth Circuit allowed the district court to presume that each of Mr. Barton's companies—and each of the assets owned by those companies—had to be seized if any of the proceeds from the disputed loans benefited the company in any way, without any consideration of whether such *de minimis* benefits rise to the level of taint that would permit seizure against the backdrop of the criminal prosecution and his ability to fund a defense and without any congressional command to seize the funds. App. 17a.

But the notion that Mr. Barton's entire companies and each of their assets can be seized under 15 U.S.C. § 78u(d)(5) if they received even the slightest benefit from the proceeds of an allegedly unlawful activity raises constitutional concerns under *Luis*, which prohibits the SEC from seizing the untainted assets of Mr. Barton that are needed to pay for his criminal defense. No decision of this Court has ever held that an entire company and each of its assets become "tainted" if the company benefits in any way from the proceeds of an illegal act. *Caplin & Drysdale* and *Monsanto* allowed the seizure of property "constituting" or "derived from" the proceeds of a drug offense. *See Caplin & Drysdale,* 491 U.S. at 620 (quoting 21 U.S.C. § 853(a)(1)); *Monsanto*, 491 U.S. at 603 (same). But nothing in *Caplin & Drysdale* or *Monsanto* suggests or implies that an entire company and each of its assets become "tainted" if they so much as receive a benefit from

the proceeds of the defendant's illegal activities. *Luis* likewise recognizes that an asset becomes "tainted" and subject to seizure regardless of Sixth Amendment concerns if it was "obtained as a result of" the crime or is "traceable" to the crime. *See Luis*, 578 U.S. at 8 (quoting 18 U.S.C. § 1345(a)(2)). But *Luis* never goes so far as to suggest that an entire company becomes "tainted" if it benefits in any way from the allegedly unlawful conduct—and it specifically holds that the untainted assets of a criminal defendant cannot be seized if it would leave him unable to pay his criminal-defense lawyers.

The theory of "tainted" assets adopted by the SEC and the courts below goes far beyond the statutes that authorized forfeitures and pre-trial seizures in *Caplin & Drysdale*, *Monsanto*, and *Luis*. And the Court should not allow the SEC to impose a receivership of this scope on Mr. Barton and other criminal defendants, thereby depriving them of their ability to hire a criminal-defense lawyer to defend themselves in their criminal proceedings, unless and until Congress adopts and codifies the far-reaching tainted-asset theory espoused by the SEC. 15 U.S.C. § 78u(d)(5)'s authorization of "equitable relief" falls far short of the clear statement needed to authorize receiverships that traipse on the curtilage of the Sixth Amendment's right to counsel in criminal cases, the protection against government interference with the right to counsel in civil cases under the Fifth Amendment's Due Process Clause, as well as its protection of property rights.

III. THE CASE PRESENTS AN APPROPRIATE VEHICLE TO RESOLVE THE QUESTION PRESENTED

There is no conflict among the circuits over whether 15 U.S.C. § 78u(d)(5) allows the Commission to freeze all of Mr. Barton's companies on the tainted-asset theory employed by the district court. But that is because a criminal defendant who has all of his assets frozen in a Commission civil-enforcement proceeding will almost always lack the resources to appeal a receivership of that scope. There is no right to taxpayer-funded counsel in civil-enforcement proceedings, even if there is a due-process right against government interference in obtaining or privately funding counsel in such cases. And the receivership obtained by the Commission is designed to prevent individuals like Mr. Barton from pursuing their appellate remedies, as they cannot use their frozen assets to pay their lawyers. Mr. Barton has been fortunate that undersigned counsel did not abandon him when, two days into counsel's retention, the Government seized all of Mr. Barton's assets and he became unable to pay that counsel. But that fortuity is the exception and not the rule. Few if any other individuals will be able to secure counsel to appeal receiverships of this scope (much less amidst a parallel criminal prosecution), so a decision to wait for a circuit split to arise is unlikely to yield any other appellate-court rulings addressing the legality of these types of receiverships.

At the same time, we can expect receiverships of this scope to continue proliferating absent swift intervention by this Court. The SEC routinely seeks to impose receiverships under 15 U.S.C. § 78u(d)(5) when it alleges

violations of the securities laws, and it continues to argue that it need not show irreparable harm or necessity, or the unavailability of less drastic alternatives, to obtain a receivership of the scope imposed on Mr. Barton. Pet. App. 120a–123a. The Commission believes that it needs only to show a prima facie case of securities fraud—and that alone entitles it to seize *all* of a defendant's assets that benefited in any way from the proceeds of the allegedly unlawful act. And the SEC is imposing these receiverships even when they deprive the targeted individual of the means to pay his criminal-defense attorneys in the parallel criminal proceedings that the Commission is largely responsible for stimulating. *See Luis*, 578 U.S. 5 (prohibiting the seizure of untainted assets that a criminal defendant needs to pay his lawyers).

The danger presented by these receiverships is apparent. The SEC can quickly move to freeze all of a targeted individual's assets by alleging a prima facie case of securities fraud and seeking the seizure of any asset that received *any* type of benefit, however small, from the proceeds of the alleged fraud. The Commission can simultaneously encourage the Department of Justice to bring parallel criminal charges against an individual who is now unable to hire a criminal-defense lawyer despite the Sixth Amendment and the protection of this Court's ruling in *Luis*, restricting seizure of a criminal defendant's assets that are needed to pay his defense lawyers. The defendant who finds himself in this situation will be unable to appeal the receivership unless he can find counsel who are willing to appeal pro bono, and in the meantime he will face enormous pressure to settle with the Commission before his

criminal trial so that he can hire defense attorneys of his choosing. These scenarios are unlikely to produce appeals that lead to additional appellate opinions on the legality of these receiverships. So the Court should grant certiorari now if it wishes to rein in receiverships of this scope, rather than waiting for percolation in the appellate courts that is unlikely to ever occur.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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October 14, 2025

APPENDIX

OPINIONS AND ORDERS

United States Court of Appeals
Fifth Circuit
FILED
April 17, 2025

Lyle W. Cayce
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-11237
CONSOLIDATED WITH
No. 24-10004

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff–Appellee,

versus

TIMOTHY BARTON,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 3:22-CV-2118, 3:22-CV-2118

Before HIGGINBOTHAM and WILLETT, *Circuit Judges*.

DON R. WILLETT, *Circuit Judge*:[*]

This case involves a receivership and preliminary injunction in an ongoing securities enforcement action. Tim-

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* This appeal is being decided by a quorum. 28 U.S.C. § 46(d).

othy Barton was involved in a scheme to develop underutilized land with assistance from loans given by Chinese nationals. Eventually, the Securities and Exchange Commission and the Department of Justice opened parallel civil and criminal proceedings against Barton and his associates. As relevant here, the SEC alleged violations of antifraud provisions of the Securities Act, 17 U.S.C. § 77q(a), and the Exchange Act, 15 U.S.C. § 78j(b). In an effort to preserve lenders' assets, the SEC sought a receivership. Barton now appeals various district- court orders imposing and administering a receivership and preliminary injunction freezing Barton's assets (those which were not included in the receivership). He also requests reassignment of the case on remand. As there was no abuse of discretion by the district court, we AFFIRM the imposition and scope of the receivership and the grant of a preliminary injunction. We DISMISS Barton's appeal of certain orders administering the receivership for lack of jurisdiction. And we DENY Barton's request to reassign the case to another district-court judge.

I

In 1990, Timothy Barton founded JMJ Development, an entity focused on developing "underutilized land into single family homes, apartments, and hotels." Since then, Barton and JMJ Development have engaged in "major, revenue-producing projects."

Nearly thirty years later, in 2017, Barton worked with Texas builder Stephen Wall and Chinese businessman Haoqiang Fu to offer investment opportunities to Chinese investors. To implement this scheme, they established a series of special-purpose entities, each responsible for

funding the purchase and development of a specific parcel of land. The SEC refers to these as "Wall Entities." And in pitching the project to Chinese nationals, Barton, Fu, and Wall highlighted it as an opportunity for them to "invest to avoid risk" and attain "higher profit[s] than overseas bond investment[.]" Those who participated were promised a high fixed rate of interest—10%—in exchange for their loans.

The loan agreements indicated that funds would go to the purchase and development of a specified property. But instead, according to the SEC's complaint, Barton spent investor funds on his lavish lifestyle and developments not contemplated in the loan agreements.

Following an investigation, the SEC and Department of Justice opened parallel civil and criminal proceedings against Barton and his associates. Relevant here, the SEC alleged Barton violated the antifraud provisions of the Securities Act and Exchange Act.

Despite these legal proceedings, Barton's spending continued. Remarkably, in the period following the SEC's complaint, Barton spent, at the very least, hundreds of thousands of dollars in traceable investor funds by paying lawyers, moving funds to other entities, making payments on his personal credit card, and spending on "meals, car payments, educational expenses, . . . payments to [his] ex-wife and children, and mortgage payments on the residence [he] lived in." Barton also purchased a private plane.

To curtail this spending of investor funds, the SEC sought to establish a receivership over any company controlled by Barton. The district court granted it, and Barton appealed in 2023. On appeal, our court vacated the

receivership order.[1] We found that the district court erred in both determining that the receivership was necessary and determining the scope of the entities covered by the receivership. As to propriety of the receivership, we emphasized that the district court used the wrong standard in determining whether a receivership was warranted. Our court instructed the district court to, on remand, apply the test set forth in *Netsphere, Inc. v. Baron* ("*Netsphere I*").[2] As to the receivership's scope, we determined that the receivership swept too broadly and stated that "a receivership's jurisdiction extends only over property subject to the underlying claims[.]"[3] So "the district court abused its discretion by including all Barton-controlled entities in the receivership without first finding that they had received or benefited from the ill-gotten funds."[4]

On remand, the SEC again asked the district court to impose a receivership. Following extensive briefing and evidentiary hearings, the district court granted a new receivership. The district court determined that the receivership was proper under *Netsphere I* and set the scope of the new receivership to include all entities that "received or benefited from assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation." The SEC requested that the receivership cover 82 entities, but the district court ultimately included only 54 of those entities.

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1. *See SEC v. Barton*, 79 F.4th 573, 575 (5th Cir. 2023).
2. 703 F.3d 296, 305 (5th Cir. 2012)
3. *Barton*, 78 F.4th at 580.
4. *Id.* (citation omitted).

After it had established the receivership and appointed a receiver, the district court performed its role in supervising the receivership. It ratified certain actions taken in the course of the prior receivership. And it later approved the sale of certain properties held by the receivership. Additionally, the district court issued a preliminary injunction freezing the assets of Barton-controlled entities outside the receivership.

Barton again appeals. In this second appeal, Barton challenges the district court's jurisdiction to appoint the receiver, its decision to appoint the receiver, the scope of the receivership, the district court's administration of the receivership, and the preliminary injunction. And he asks us to, on remand, reassign the case to a different district-court judge.

II

Because jurisdiction is a threshold matter, we address it first.[5] Barton claims that the district court failed to determine whether the loan agreements qualified as "securities[.]" In Barton's view, such an error is relevant to both "whether the Commission had the power to bring this case and whether the District Court had the power to hear it." He relies on two out-of-circuit cases to suggest that "[i]f the transaction does not involve a 'security' the court lacks subject matter jurisdiction."[6]

Barton is correct that "if the [loan agreements] are not securities, there is not only no federal jurisdiction to hear

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5. *See United States v. Shkambi*, 993 F.3d 388, 389 (5th Cir. 2021).

6. *Mishkin v. Peat, Marwick, Mitchell & Co.*, 744 F. Supp. 531, 553 (S.D.N.Y. 1990); *see also GBJ Corp. v. Sequa Corp.*, 804 F. Supp. 564, 565 (S.D.N.Y. 1992).

the case but also no federal cause of action on the stated facts."[7] However, "[a]lthough the district court did not expressly address" whether the loan agreements are securities, "a finding that it had subject matter jurisdiction is implicit" in its imposition of a receivership and grant of a preliminary injunction.[8] And moreover, it expressly stated it had subject matter jurisdiction in the initial appointment of a receiver — after the SEC argued in its motion that the loan agreements were securities.

Even if the district court erred by failing to explicitly address whether the loan agreements were securities prior to imposing the receivership, any error was

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7. *Williamson v. Tucker*, 645 F.2d 404, 416 (5th Cir. 1981); *see also United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 859 (1975) (holding the court had no federal jurisdiction at when so-called "stock" did not qualify as "securities" under federal securities laws).

8. *Passmore v. Baylor Health Care Sys.*, 823 F.3d 292, 295–96 (5th Cir. 2016) ("Although the district court did not expressly address this issue, a finding that it had subject matter jurisdiction is implicit in its dismissal of the Passmores' suit based on Texas law. *See Cadle Co. v. Neubauer*, 562 F.3d 369, 371 (5th Cir. 2009) (district court's denial of motions to vacate was implicit finding of subject matter jurisdiction)."); *see also Blanchard 1986 Ltd. v. Park Plantation LLC*, No. CV 04-1864, 2007 WL 2381268, at *6 (W.D. La. July 30, 2007) ("In *Royal*, the court issued a final judgment on the merits of the case without discussing jurisdictional-related issues. Implicit in that court's judgment, therefore, was a finding that the court had subject matter jurisdiction." (citing *Royal Insurance Co. of America v. Quinn–L Capital Corp.*, 960 F.2d 1286 (5th Cir. 1992))), *report and recommendation adopted sub nom. Blanchard 1986 Ltd. v. Park Plantation, LLC*, No. CV 04- 1864, 2007 WL 9813122 (W.D. La. Aug. 17, 2007), *aff'd sub nom. Blanchard 1986, Ltd. v. Park Plantation, LLC*, 553 F.3d 405 (5th Cir. 2008).

harmless. The district court later answered the very question Barton contests, when granting the preliminary injunction: "[T]he Court finds, by a preponderance of the evidence, that the loan agreements are securities because they are investment contracts and notes[.]"

We agree. A preponderance of the evidence shows that the loan agreements are investment contracts, regardless of whether they are notes, thus establishing subject matter jurisdiction.[9]

By its terms, 15 U.S.C. § 78c(a)(10) defines securities to include investment contracts, among other instruments. "[T]he essential ingredients of an investment contract[,]" as the Supreme Court instructed in *SEC v. W.J. Howey Co.*, include: (1) "an investment of money"; (2) "in a common enterprise"; (3) with an expectation of profits;

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9. *See Reule v. Jackson*, 114 F.4th 360, 365 (5th Cir. 2024) (requiring a preponderance of the evidence to establish that the court has subject matter jurisdiction); *see also id.* ("The issue of subject matter jurisdiction cannot be waived, and federal courts are duty-bound to examine the basis of subject matter jurisdiction at all stages in the proceedings and dismiss if jurisdiction is lacking." (internal quotation marks and citations omitted)); *Sentry Ins. v. Morgan*, 101 F.4th 396, 398 (5th Cir. 2024) ("As the party invoking federal jurisdiction, [plaintiff] has 'the burden of proving subject matter jurisdiction by a preponderance of the evidence.'" (citation omitted)). Even if the district court did not consider this issue—though we find it did—we may still consider it. See Masel v. Villarreal, 924 F.3d 734, 743 (5th Cir. 2019), as revised (June 6, 2019) ("Before proceeding to the merits of plaintiffs' securities-fraud claims, we must first address the threshold question—not considered by the district court—whether plaintiffs have successfully pleaded the existence of a security.").

and (4) those profits are generated "solely from the efforts of others."[10]

First, the loan agreements involved an investment of money: The Chinese national investors invested money by loaning it to the Wall entities in exchange for the promise of greater returns. Barton argues that nothing was "purchased or otherwise acquired in exchange for value" because the "money was simply loaned and for the primary purpose of providing the Chinese national lenders an excuse to move money to the United States." But Barton's own promotional materials contradict such a purpose. In promoting the business venture, he described the opportunities as "overseas real estate investment[s]" that promised "higher profit[s] than overseas bond investment[.]"And the loan agreements themselves promised a return of 10% in interest on the initial loan.

Second, the Chinese nationals' "loans" were given, via loan agreement, to a "common enterprise." We apply "so-called broad vertical commonality, under which a common enterprise exists when 'the fortuity of the investments collectively is essentially dependent upon promoter expertise.'"[11] In other words, all we require for commonality is that the investors collectively rely on the promoter's expertise.[12] Here, the lenders' fortunes collectively depend on Barton's (the promoter's) expertise in developing the relevant properties and repaying the loans, with interest.

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10. 328 U.S. 293, 301 (1946).

11. *Matter of Living Benefits Asset Mgmt., L.L.C.*, 916 F.3d 528, 536 (5th Cir. 2019) (quoting *SEC v. Cont'l Commodities Corp.*, 497 F.2d 516, 522 (5th Cir. 1974)).

12. *See id.* (quoting *Long v. Shultz Cattle Co.*, 881 F.2d 129, 140–41 (5th Cir. 1989)).

Barton contends the lenders' fortunes are not linked to Barton's expertise because the loan agreements contemplate pre-determined repayment no matter how the Wall Entities performed. But "an investment scheme promising a fixed rate of return can be an 'investment contract' and thus a 'security' subject to the federal securities laws."[13] In assessing the loan agreements, we look to the "economic reality" of the transaction.[14] And the "economic reality" of the loan agreements show that the lenders' returns depended on Barton's expertise in developing property, avoiding default, and repaying the loans.

Third, the lenders expected profits. Under our "broad vertical commonality approach, 'the second and third prongs of the *Howey* test may in some cases overlap to a significant degree.'"[15] That's the case here. The lenders relied on Barton's expertise (the second prong) *to obtain profits* (the third prong). And Barton's promotional materials promised the lenders that exact outcome—the opportunity to make profits.

Finally, the lenders' profits were wholly dependent on the efforts of others—Barton and Wall. Generally, we inquire into "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise."[16] Here, the lenders' profits depend on more than just Barton's and Wall's "undeniably

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13. *SEC v. Edwards*, 540 U.S. 389, 397 (2004).

14. *Howey*, 238 U.S. at 298.

15. *Living Benefits Asset Mgmt.*, 916 F.3d at 536 (quoting *Long*, 821 F.2d at 141).

16. *SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473, 483 (5th Cir. 1974) (cleaned up).

significant" efforts, going beyond what we have historically required. The profits here are inextricably and entirely dependent on Barton's and Wall's work developing and managing the properties.

Accordingly, the loan agreements qualify as investment contracts, and thus as securities—so we need not assess whether they also qualify as notes. And as a result, the district court correctly found it had subject-matter jurisdiction.

III

As the district court had jurisdiction, we now turn to the heart of Barton's appeal: the imposition of a receivership. Barton argues that the district court abused its discretion by again granting a receivership. Not so.

We have jurisdiction over the imposition of the receivership pursuant to 28 U.S.C. § 1292(a)(2), which grants jurisdiction for "interlocutory orders appointing receivers[.]"[17] We review the imposition of a receivership for abuse of discretion.[18]

Federal Rule of Civil Procedure 66 permits "anyone showing an interest in certain property or a relation to the party in control or ownership thereof such as to justify conservation of the property by a court officer" to seek

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17. 28 U.S.C. § 1292(a)(2) ("[T]he courts of appeals shall have jurisdiction of appeals from: . . . *[i]nterlocutory orders appointing receivers*, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property[.]" (emphasis added)).

18. *See, e.g.*, *Barton*, 79 F.4th at 577; *SEC v. Spence & Green Chem. Co.*, 612 F.2d 896, 904 (5th Cir. 1980).

appointment of a receiver.[19] "Correspondingly, a district court has authority to place into receivership assets in litigation 'to preserve and protect the property pending its final disposition.'"[20]

As we previously instructed,[21] the district court applied *Netsphere I*, and in doing so, it determined that a receivership was necessary. Under *Netsphere I*, a receivership is appropriate where there's "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."[22] Contrary to Barton's arguments, the district court did not abuse its discretion because these factors weigh in favor of the SEC.

A

First, the receivership is "clear[ly] necess[ary] to protect a party's interest in property[.]"[23]The investors' property interests face numerous threats — from Barton, market conditions, and third-party actions.

Without a receivership, Barton's actions threaten to further dissipate the investment assets. Recall that Barton continued his spending spree even after he had been indicted. And accordingly, there is no indication that he has been deterred from his conduct.

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19. *Netsphere I*, 703 F.3d at 305 (quotation marks and citation omitted).
20. *Id.* (citing *Gordon v. Washington*, 295 U.S. 30, 37 (1935)).
21. *See Barton*, 79 F.4th 573.
22. *Id.* at 578–79 (citing *Netsphere I*, 703 F.3d at 305).
23. *Id.* at 578; *Netsphere I*, 703 F.3d at 305.

Furthermore, the value of the assets will decline if they are not well managed. Indeed, as the district court recognized, "[a] number of the properties require active management, including an operating hotel, apartment complexes, and properties in development." Without such management, investors' assets—and the ability to gain interest as well—will deteriorate. A receivership provides a mechanism to actively manage the property without Barton at the helm.

Additionally, the receivership is necessary because it protects investor assets from third-party actions. The district court noted that the assets included in the receivership are "mired in liens, lawsuits, and foreclosures that threaten to further diminish the value of the assets." And "[e]very piece of real property but one in the initial receivership is encumbered by debt[.]" A receivership allows the court to issue a parallel stay of litigation and foreclosure while the receiver works "to mollify secured creditors' concerns." Without such a stay, "foreclosures would have eliminated millions of dollars in property value" from the assets in the receivership. Therefore, the receivership was necessary to protect investor's property interests from creditors.

Barton argues for a standard outside the confines of *Netsphere I*, requesting that we require "a significant and imminent risk of asset flight that cannot be controlled by other means[,]" such as "where liquid assets are at high risk of being transferred outside the court's jurisdiction." But *Netsphere I* only suggested a receivership may be justified "to prevent the threatened diversion of assets through fraud or mismanagement[,]" "to prevent the corporation from dissipating corporate assets[,]" and "to pay

defrauded investors'"[24]—not the higher standard that Barton now requests. Barton fails to show why we should hold real-property receiverships to a different standard than those for liquid assets; indeed, his reliance on the Stanford securities fraud litigation[25] is misplaced, given that it, like Barton's, included real property.[26] And regardless, the district court aptly "held that there was . . . asset flight" based on Barton's spending of investor funds after the SEC filed its civil enforcement action.

B

Second, any "less drastic remedies" would be inadequate. Barton's proposed alternative arrangements all involve Barton exerting some degree of control over investor assets—which increases the risk of asset dissipation.[27]

Barton proffered an alternative arrangement consisting of a monitorship paired with a temporary injunction freezing asset transfer. The district court rejected both monitorships and asset freezes. It found monitorships unsuitable because such an arrangement would still allow Barton too much control over the relevant assets and would not provide a method to stay litigation. And it rejected asset freezes because the assets required dynamic

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24. *Netsphere I*, 703 F.3d at 306.

25. *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 836 (5th Cir. 2019).

26. *See* Order Approving Procedures for Sales of Real Property by the Receiver, *SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-298 (N.D. Tex. Jan. 25, 2010), ECF No. 979.

27. Barton also advocates for a standard "closely akin to the strict scrutiny standard applied against restrictions of fundamental constitutional rights." But Barton identifies no authority for such a standard, so we proceed by applying *Netsphere I*.

management due to operational requirements and potential exposure to liability or waste.

But while the district court considered each potential remedy in isolation, it did not consider them as a combination. Barton proposes a hybrid monitorship-injunction that would "prohibit certain categories of transactions without appropriate approvals, including selling or incumbering any asset, taking out a loan, and making an expenditure over a certain threshold."

Barton's authorities in support of this hybrid monitorship-injunction miss the mark. For example, he cites a monitorship order seemingly without any explicit power to enjoin or approve certain transactions.[28] Even if monitorships *with* power to enjoin or approve transactions exist,[29] such an arrangement is not preferable to a receivership in this case. The district court made a strong showing that keeping Barton in charge comes with an unacceptably high risk of further asset dissipation. Moreover, Barton has been held in contempt for violating certain requirements in place under the previous receivership order. Barton has made no showing that a monitorship would police his conduct any more effectively than a contempt order. And the district court was correct that

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28. *See In re American Registrar & Transfer Co.*, Exchange Act Release No. 77,922, at 8 (May 25, 2016) (monitor shall "conduct a comprehensive review . . . and recommend corrective measures"), https://www.sec.gov/files/litigation/admin/2016/33-10082.pdf.

29. *See, e.g.*, *SEC v. GPB Capital Holdings, LLC*, No. 23-8010-CV, 2024 WL 4945247, at *1 (2d Cir. Dec. 3, 2024) (discussing order affirming "monitor's 'authority to approve or disapprove of' " certain corporate decisions).

"[s]uch a gamble of a remedy is insufficient to protect investors' interests."

In sum, a receivership is the only appropriate remedy because no other remedy insulates the investor assets from Barton while also allowing for a litigation stay and active management.

C

Finally, the benefits of a receivership—evidenced by the two prior factors discussed—outweigh its burdens. If there's no receivership, creditors will chip away at the assets, assets requiring active management will fall into disrepair or disuse, and Barton may further dissipate investor assets—as he has done already. Without the receivership, the foreclosures alone would cost, as the receiver and district court noted, millions of dollars that would be "otherwise available for satisfaction of Investor claims." These costs would severely limit recovery for the defrauded investors in the future. In short, a benefit of the receivership is that it virtually eliminates all of these risks.

Barton contends that this receivership is without benefit due the appointed receiver's alleged incompetence. But such a claim overlooks the significant benefits a receivership offers, as noted above. It also ignores the receiver's experience in managing disputes and consultation with other professionals, which are highly relevant—and helpful—in navigating the myriad issues plaguing receivership property. The only real burdens of the receivership fall upon Barton—and we recognize that difficulty. While the district court considered these burdens, it soundly exercised its discretion to conclude that the above benefits to the defrauded investors outweigh the burdens on Barton.

Accordingly, the district court, after assessing the *Netsphere I* factors, did not abuse its discretion in imposing the receivership.

IV

We next turn to the scope of the receivership, which is within this court's jurisdiction over interlocutory appeals from orders imposing receiverships.[30] Barton contends that the district court included property which is not the subject matter of the litigation. We disagree.

"[A] court's equitable powers do not extend to property unrelated to the underlying litigation[.]"[31] So the equitable remedy of a receivership cannot cover "property that is not the subject of an underlying claim or controversy."[32] Applying this principle, we previously instructed the district court that any possible receivership "can only extend over entities that *received or benefited from* assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation."[33] And that's exactly the scope of the receivership at issue here.

Barton argues the district court committed eight legal errors regarding the scope of the receivership, including:

1. "[D]etermining that it was sufficient that a company [benefited] from lender funds to seize it";
2. "[D]etermining that receipt of a small amount of lender funds was sufficient to seize a whole company";

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30 *Cf. Barton*, 79 F.4th at 577, 580–81; 28 U.S.C. § 1292(a)(2).

31 *Netsphere I*, 703 F.3d at 310.

32 *Id.*

33 *Barton*, 79 F.4th at 580–81 (emphasis added).

3. "[H]olding that, once a company received some assets traced to lender funds, everything that company spent thereafter was lender funds";
4. "[F]inding that temporary receipt of alleged lender funds sufficed to seize an entire company and all its assets";
5. "[N]ot demanding that the Commission use the Wall and other entities' accounting records, which documented the sources and uses of the lender funds";
6. "[N]ot requiring competent expert testimony on the apparently complex accounting issue of tracing lender funds through multiple business entities";
7. "[A]ccepting purported tracing evidence from the receiver, whose appointment and seizure of records was illegal"; and
8. "[N]ot exercis[ing] any discretion over what assets should be included in the receivership."

In practice, these supposed "errors" boil down to three arguments: The district court included entities who did not receive or benefit *enough* from lender funds; failed to require proper tracing evidence; and finally, did not exercise discretion.

A

Start with the first category—whether the included entities received or benefited *enough* from lender funds. The district court followed the rule we previously articulated: "Should the district court decide that a new receivership is justified on remand, *it can only extend over entities that received or [benefited] from assets traceable to Barton's alleged fraudulent activities that are the subject*

of this litigation."[34] Nothing in this rule sets a proportionality limitation or requires that the receipt of lender funds be permanent. Indeed, if the rule did so, it would encourage rapid reshuffling of assets—the very problem which has confounded tracing efforts so far in this case, let alone those to come. Accordingly, the district court did not abuse its discretion in following a rule our court already set, and we do not change that rule now, following the rule of orderliness.[35]

More tellingly, the received-or-benefited-from rule is the rule Barton himself requested in the initial district court proceedings and appeal.[36] Barton cannot have a second bite at the apple to change the standard after *winning* his first appeal (and getting the standard which he requested), even if the rule he requested isn't quite as beneficial as he'd originally thought.

Perhaps most importantly, the alternative rule that Barton now seeks—that a particular entity *sufficiently* receives or benefits from lender funds—is unworkable. Counsel at oral argument seemed to recognize as much. When asked how much an entity would need to receive or benefit from lender funds to be properly included in a receivership, counsel only stated that entities would need to

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34. *Id.* (emphasis added).

35. *See Jacobs v. Nat'l Drug Intelligence Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008) ("It is a well-settled Fifth Circuit rule of orderliness that one panel of our court may not overturn another panel's decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our *en banc* court.").

36. *See Barton*, 79 F.4th at 580 ("Barton . . . argues that the district court erred by placing multiple entities he controls in the receivership without any showing that they received or [benefited] from ill-gotten investor funds.").

possess "substantial amounts of lender funds," otherwise lesser measures should be used. According to Barton, "in this context, with real estate assets," there are lesser measures to preserve "the quantum"—"less than half of the company's funds"—through less drastic measures of liens or injunctions. But that is both unworkable and inconsistent with the rule Barton sought in his initial appeal.

The district court limited asset seizures that are attenuated from the litigation. Specifically, the district court declined to extend the benefits analysis up the chain of ownership, which kept certain assets outside of the receivership. And for assets where an asset freeze was enough to "offer the needed protection to investors[,]" the district court also refused to extend the receivership.

B

Next, take the second category of errors—whether the district court required proper tracing evidence.

To begin, trial courts have "wide latitude" in deciding the admissibility of lay or expert testimony.[37] Barton argues the district court abused its discretion by not requiring expert testimony in tracing funds because the analysis in this case was more than "basic math[.]" Additionally, Barton emphasizes that the SEC's staff accountant (who is not a certified public accountant) could not admit to any methodology for distinguishing funds in JMJ accounts received from sources other than investor funds.

Contrary to Barton's argument, the SEC's offered testimony and tracing evidence was sufficient. Indeed, the

37. *Williams v. Manitowoc Cranes, L.L.C.*, 898 F.3d 607, 625 (5th Cir. 2018); *see United States v. Davis*, 53 F.4th 833, 848–49 (5th Cir. 2022).

SEC relied on actual evidence—specific examples from financial records—of funds or benefits flowing from the investors to the benefitting entities—not just expenditures from entities that received investor funds. And the SEC did so because the accounting records of the Wall and other entities were insufficient to trace the relevant funds—never mind that Barton refused to provide many of the records he faults the SEC for not using.

As the SEC accountant testified, the SEC's method was to "take the bank records, identify investor deposits and then trace those investor funds through the bank accounts to see how they were used." That does not require expert testimony.[38] Even Barton's expert testified that specialized tracing methodology is not required for actual tracing. And even more tellingly, Barton's expert did not perform his own tracing analysis or otherwise opine that even a single entity placed in the receivership had not received or benefited from investor funds.

Additionally, courts in this circuit routinely allow testimony from the receiver.[39] And the receiver's testimony—which Barton argues should not have been admitted—was especially useful here because the receiver was

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38. *See, e.g.*, *Davis*, 53 F.4th at 848–49 (holding forensic accountant's tracing analysis was admissible, nonexpert testimony which "relied on basic math" to trace the flow of funds from bank records).

39. *See, e.g., Taylor v. U.S. Bank Nat. Ass'n*, No. H–12–3550, 2015 WL 507526, at *14 (S.D. Tex. Feb. 6, 2015) ("The court finds that the advocate-witness rule is not applicable because the receiver is not serving as the attorney for the receivership."); *cf. Janvey v. Romero*, 817 F.3d 184, 190 (5th Cir. 2016) (discussing receiver testimony); *In re Ondova Ltd. Co.*, No. 09-34784-SGJ-11, 2012 WL 5879147, at *8 (Bankr. N.D. Tex. Nov. 21, 2012) (similar).

tasked with tracing funds under the first receivership order.

The district court committed no abuse of discretion in its admission and assessment of the tracing evidence.

C

Finally, look at the district court's use of discretion. The district court's "marching order[]"—which Barton argues showed a *lack* of discretion—was merely a legal rule to determine what types of property or assets over which a receivership *may* extend. As such, our court's standard was a ceiling for the receivership, not a floor. And the district court properly applied the received-or-benefited-from rule as a floor: *Using its discretion*, it only included 54 of the 82 entities the SEC sought the receivership to cover. For instance, the exclusion of certain entities that owned (or were higher in the ownership chain above) entities that benefited from the investor funds demonstrates that the district court's application of the received-or- benefited-from principle was anything but mechanical. And, again *using its discretion*, the district court froze other assets via preliminary injunction, rather than placing them in the receivership.

D

Barton draws attention to "several significant entities" that, in his view, erroneously fell within the scope of the receivership due to a combination of these supposed "errors." These include companies which owned four apartment complexes, FHC Acquisitions LLC (which was allegedly "funded through identified third parties unrelated to the Chinese- national lenders at issue in this case"), companies which JMJ Development had owner-

ship claims to, and "the Defendant's only home, which was held by an LLC[.]" For each of these entities, Barton re-emphasizes some subset of the errors described above.

Though these examples are illustrative of Barton's arguments, none change the outcome. Indeed, none of the supposed "errors" Barton asserts rise to the level of an abuse of discretion. Accordingly, we affirm the orders related to the scope of the receivership.

V

Next, we turn to Barton's challenges to the district court's administration of the receivership. Specifically, Barton contends the district court erred when it ratified actions taken during the prior receivership, approved appraisals, and confirmed the sale of assets from the receivership estate. But we only have jurisdiction to review the orders approving sales of property, thanks to a "wrinkle" in our precedent.[40] And we hold that the district court did not abuse its discretion in confirming those sales.

A

The text of 28 U.S.C. § 1292(a)(2) precludes our jurisdiction to review receivership orders: "[T]he courts of appeals shall have jurisdiction of appeals from: . . . [i]nterlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the

40. *Netsphere, Inc. v. Baron ("Netsphere II")*, 799 F.3d 327, 333 (5th Cir. 2015); *see United States v. "A" Manufacturing Co., Inc.*, 541 F.2d 504, 506 (5th Cir. 1976) (relying mainly on cases interpreting the final-judgment doctrine); *SEC v. Janvey*, 404 F. App'x 912, 914 (5th Cir. 2010).

purposes thereof, such as directing sales or other disposals of property[.]"

In *Netsphere II*, we held that § 1292(a)(2) permits interlocutory appeals only for "orders appointing receivers" or orders "refusing . . . to take steps to accomplish the purposes of [winding up receiverships]."[41] To reach that conclusion, we looked at the text and structure of § 1292(a)(2). We "interpret[ed] the verb phrase 'refusing orders' to modify both the infinitive phrase 'to wind up receiverships' and the infinitive phrase 'to take steps to accomplish.' The parallel structure of both infinitive phrases suggest that is a reasonable outcome."[42] We also recognized that "every circuit to squarely consider this question has reached the same result."[43] And, most importantly, such a conclusion relied on our circuit's prior caselaw applying this statute,[44] in cases such as *Belleair Hotel Co. v. Mabry*[45] and *Wark v. Spinuzzi*.[46] Where a district court had "not refused an order to wind up the receivership or to take appropriate steps to that end[,]" we did not have jurisdiction.[47]

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41. *Netsphere II*, 799 F.3d at 331–34.

42. *Id.* at 332 (cleaned up).

43. *Id.*

44. *See id.*

45. 109 F.2d 390 (5th Cir. 1940).

46. 376 F.2d 827 (5th Cir. 1967) (per curiam).

47. *Belleair Hotel Co.*, 109 F.2d at 390–91 ("[S]ection 129 of the Judicial Code, as amended, 28 U.S.C.A. §§ 225, 227" — a precursor to § 1292(a)(2) with nearly identical phrasing — "makes provision for appeals from interlocutory orders refusing to take appropriate steps to wind up a pending receivership, such as directing a sale or other disposal of the property, but we have no such order

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The receivership orders Barton appeals are not "orders appointing receivers" or a district court's "*refus[al]* . . . to wind up receiverships or to take steps to accomplish the purpose" of winding up the receivership.[48] Nevertheless, Barton argues we have jurisdiction under *United States v. "A" Manufacturing Co., Inc.*, which found jurisdiction under § 1292(a)(2) for an interlocutory appeal of an order confirming a sale of property.[49] But that court—decades after *Belleair Hotel Co.* and *Wark*—based its conclusion on three cases untethered to § 1292(a)(2): a case "taken from a final decree and not from an interlocutory order[;]"[50] an out-of-circuit case concerning sale of property by a receiver without reference to the then-existing interlocutory appeal statute (which is similar to today's § 1292(a)(2));[51] and a case which "[wa]s final, so far

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before us. In this case, the court has not refused an order to wind up the receivership or to take appropriate steps to that end."); *see also Wark*, 376 F.2d at 827 ("Under 28 U.S.C.A. 1292(2) 'interlocutory orders appointing receivers or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of [property]' are appealable. This is not such an order nor is it a final decision . . . The appeal is therefore [d]ismissed.").

48. 28 U.S.C. § 1292(a)(2) (emphasis added); *see Netsphere II*, 799 F.3d at 331.

49. 541 F.2d 504, 506 (5th Cir. 1976).

50. *Id.* at 506 (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 85 (1887)).

51. *New York v. Kilsheimer*, 251 F.2d 175, 176 (2d Cir. 1957). *Kilsheimer* followed *Belleair* by almost twenty years, but *Kilsheimer* didn't cite to the jurisdictional statute relied upon by the court in *Belleair Hotel Co.*—nor could it. *See Belleair Hotel Co.*, 109 F.2d at 390–91. *Belleair Hotel Co.* precluded the availability

(continued…)

as title under the sale is concerned" and which found "[w]e have often decided that a decree confirming a sale, if it is final, may be appealed from."[52] *"A" Manufacturing*, standing alone, would ordinarily give us jurisdiction to at least review the sale orders.

But the rule of orderliness prohibits such a conclusion now. *"A" Manufacturing*'s conclusion—that appellate courts have jurisdiction under § 1292(a)(2) for interlocutory appeals of property-sale orders—conflicts with that of the earlier courts in *Belleair Hotel Co.* and *Wark*—that "interlocutory orders which do not refuse orders to wind-down a receivership are not reviewable[.]"[53] Accordingly, the rule of orderliness mandates that we follow the earlier reading of the statute[54]—the *Belleair Hotel Co.-Wark* approach—which does not permit interlocutory appeals for these types of administrative receivership orders and which *Netsphere II* faithfully applied.

Even though § 1292(a)(2) does not grant us jurisdiction for the *administrative* orders in this case, the collateral-order doctrine does grant us jurisdiction to review the *sales* orders.

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of that statutory basis for interlocutory appeal for *Kilsheimer*'s set of facts. *See id.*

52. *"A" Manufacturing*, 541 F.2d at 506 (quoting *Sage v. Cent. R. Co. of Iowa*, 96 U.S. 712, 714 (1877)).

53. *Netsphere II*, 799 F.3d at 334 (first citing *Belleair*, 109 F.2d at 390–91; then citing *Wark*, 376 F.2d at 827 (5th Cir. 1967)). The fact that *Belleair Hotel Co* and *Wark* involved a lease of property and turnover of bonds to the receiver, respectively, are of no consequence. The central conclusions about the statutory basis for jurisdiction over interlocutory orders are in direct conflict with *"A" Manufacturing*. *See id.*

54. *See Rios v. City of Del Rio*, 444 F.3d 417, 425 n.8 (5th Cir. 2006).

We have previously found a district court's approval of a receiver's distribution plan was within the collateral-order doctrine (without discussing any statutory basis for jurisdiction), and thus, we had jurisdiction.[55] Our reasoning reflected the finality of the manner in which the assets would be distributed and the actual distribution of those assets, thus making the assets "likely unrecoverable" and the order "effectively unreviewable."[56]

That same reasoning applies with equal force to reviewing property sales—in other words, we can review "likely unrecoverable" assets and "effectively unreviewable" orders—but nothing more. This conclusion aligns with *"A" Manufacturing*'s reasoning (aside from its incorrect reading of § 1292(a)(2)) based on the finality of property sales. Accordingly, our jurisdiction over interlocutory appeals of receivership orders is limited to those related to sales or distributions under the collateral-order doctrine.

In sum, we have jurisdiction to review the district court's orders approving property sales, but we do not have jurisdiction to review the orders refusing the use of receivership funds for defense costs and blessing certain actions of the earlier (vacated) receivership. As for the latter category, the district court only ratified orders that approved the receiver's settlement of claims (none of which were sale orders).[57]

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55. *See SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 330–31 (5th Cir. 2001).

56. *Id.* at 330.

57. *See Netsphere II*, 799 F.3d at 332 (summarizing Fifth and sister circuits' refusal of jurisdiction for "orders directing the payment

(continued…)

B

Having established that we have jurisdiction to review *only* the orders approving sales of assets in the receivership, we turn to the merits of those orders. "It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership."[58] The district court acted within its discretion to approve the sales of certain assets from the receivership. The district court only approved the sales after determining that it was in the best interests of the receivership estate and otherwise complied with the law. Indeed, the district court considered changes in market conditions and all statutory requirements before determining the sales were in the best interest of the receivership estate and approving the sales. And as the SEC notes, evidence showed market conditions had deteriorated since the prior approvals of the sales, which reinforced that sales would be better than allowing the property value to decrease. Accordingly, the district court did not abuse its discretion when it approved certain sales of assets from the receivership estate.

VI

Next, we turn to the preliminary injunction, which froze the assets which the district court did not include in the receivership. We have appellate jurisdiction over the preliminary injunction freezing Barton's assets pursuant

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of monies or the transfer of property to receivers and their professionals" and "other orders issued in the course of a receivership, such as authorizing the execution of a lease by a receiver").

58. *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372–73 (5th Cir. 1982) (internal quotation marks and citation omitted).

to 28 U.S.C. § 1292(a)(1). We review the issuance of a preliminary injunction for abuse of discretion.[59] And we review any findings of fact for clear error and conclusions of law *de novo*.[60]

Barton argues that the district court "misinterpreted and misapplied the legal standard" in granting the injunction. But Barton is incorrect.

A

In *Starbucks Corp. v. McKinney*, the Supreme Court required that "absent a clear command from Congress, courts must adhere to the traditional four-factor [*Winter v. Natural Resources Defense Council, Inc.*] test."[61] Admittedly, the district court focused its analysis on the then- prevailing test from *SEC v. First Financial Group of Texas*.[62] That test was a Commission-specific test to obtain a preliminary injunction and required "a proper showing . . . by the SEC that there is a reasonable likelihood that the defendant is engaged or about to engage in practices that violate the federal securities laws."[63]

Contrary to Barton's argument, however, the district court *did* address the traditional *Winter* four-factor test for injunctions, albeit in a footnote. The Supreme Court has not mandated that such analysis is in the body of the

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59. *See Perez v. City of San Antonio*, 98 F.4th 586, 594 (5th Cir. 2024).

60. *See id.*

61. 602 U.S. 339, 346 (2024) (discussing *Winter v. Nat. Resources Def. Council, Inc.*, 555 U.S. 7, 20, 22 (2008))

62. *See* 645 F.2d 429, 434 (5th Cir. 1981).

63. *Id.* (cleaned up).

opinion versus a footnote—only that the analysis is completed.[64] Accordingly, the district court did not err.

Additionally, the district court did not abuse its discretion when it imposed a preliminary injunction based on the traditional four factors. Under that test, a plaintiff seeking a preliminary injunction must make a clear showing that he is "likely to succeed on the merits," "likely to suffer irreparable harm in the absence of preliminary relief," "that the balance of equities tips in his favor," and that "an injunction is in the public interest."[65]

First, the SEC has sufficiently shown a substantial likelihood of success on the merits.[66] To establish a violation of the specified securities laws, the SEC must prove by a preponderance of the evidence that in connection with the purchase, offer, or sale of any security, Barton made a material misrepresentation or omission of material fact with the requisite mental state.[67] And the district court found, by a preponderance of the evidence, "a reasonable likelihood that defendants, acting with scienter, obtained money from Wall Investors by making false statements about the use of the investments, misappropriating the money, misstating land purchase prices, and making false statements about whether the investments

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64. *See, e.g.*, *Starbucks*, 602 U.S. at 346; *Winter*, 555 U.S. at 20, 22.

65. *Starbucks*, 602 U.S. at 345–46 (quoting *Winter*, 555 U.S. at 20, 22).

66. The SEC's complaint alleged that Barton violated 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, and Section 17(a) of the Securities Act, 17 U.S.C. § 77q(a).

67. *See generally SEC v. Gann*, 565 F.3d 932, 936 (5th Cir. 2009); *SEC v. Seghers*, 298 F. App'x 319, 327 (5th Cir. 2008).

were fully guaranteed, in violation of § 17(a) of the 1933 Act and § 10(b) of the 1934 Act and Rule 10bn-5." We agree. The record reflects extensive fraudulent activity by which Barton, with scienter,[68] solicited investments from Chinese nationals for real estate development projects but misappropriated those funds and used them for improper, personal purposes. Moreover, Barton inflated land purchase prices to increase investments and falsely told investors that the investments were fully guaranteed, even though the guaranteeing company had no assets.

Second, the SEC has also shown irreparable harm to the defrauded investors through further dissipation of assets. If those assets were distributed, there would be no recovery for the defrauded investors—thus making the harm irreparable. And freezing the assets which are not in the receivership is appropriate to prevent such irreparable harm, given that Barton's commingling of funds and transferring of properties hindered tracing efforts. Such an injunction provides the SEC and the district court additional time to trace funds and prevent further dissipation of assets which would cause irreparable harm.

Barton's suggestion that the SEC should already know exactly which entities received or benefited from lender funds—and thus, any entities which should be enjoined—ignores the reality that the SEC and receiver haven't been able to "trace all entities that have 'received or benefited from' [investor funds]" due to Barton's conduct. The asset freeze is necessary to permit additional tracing

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68. *See 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)) (requiring a showing only of "severe recklessness" to prove scienter).

before more assets are dissipated.[69] While the "[t]he general federal rule of equity is that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential money judgment[,]"[70] as Barton emphasizes, such a rule does not apply here. The asset freeze is merely to determine which assets are the subject matter of the litigation.

Third, the concern for dissipation of assets and the defrauded investors' irreparable harm outweighs any harm to Barton if he is enjoined from transferring assets. Indeed, Barton's most significant interests are his defense costs and alleged homelessness. But neither of these are impacted by the injunction; instead, they are relevant to the receivership.[71] Accordingly, these interests—and any others which Barton could claim—do not outweigh recovery for the defrauded investors.

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69. *See Barton*, 79 F.4th at 580 ("Under [*FDIC v. Faulkner*, 991 F.2d 262, 267–68 (5th Cir. 1993)], the SEC could have sought an injunction freezing asset transfers while it traced the funds and determined which entities should be placed in the receivership."); *see also In re Fredeman Litig.*, 843 F.2d 821, 825 (5th Cir. 1988) (commenting that "orders issued (a) to preserve property that might be the subject of a final decree or (b) to enjoin conduct that might be enjoined under a final decree . . . would be permissible because '[a] preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally'" (alterations in original) (citations omitted)).

70. *In re Fredeman Litig.*, 843 F.2d at 824.

71. *See SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993) (collecting cases) ("Just as a bank robber cannot use the loot to wage the best defense money can buy, . . . a swindler in securities markets cannot use the victims' assets to hire counsel who will help him retain the gleanings of crime.").

Finally, as the district court found, "seeking to protect the interests of defrauded investors and uphold federal securities law is in the public interest."

As a result, the district court did not abuse its discretion in granting the preliminary injunction according to the *Winter* factors.

B

Barton's other challenges to the injunction are unavailing. He contends that the district court should not have relied on what the SEC "alleges" as evidence. But the district court relied on SEC filings, which contained ample record evidence—including deposition and investigative testimony, loan agreements, investor presentations, and declarations—to reach its conclusion.

Relatedly, Barton faults the district court for failing to demand that the SEC prove that he knowingly made false statements to lenders when procuring the loans. But the district court found by a preponderance of the evidence "a reasonable likelihood that defendants, acting with scienter, obtained money from [investors] by making false statements about the use of the investments, . . . misstating land purchase prices, and making false statements about whether the investments were fully guaranteed." Nothing more was required,[72] and we do not impose a more onerous standard today.

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72. *See, e.g.*, *First Fin. Grp. of Tex.*, 645 F.2d at 434; *Gann*, 565 F.3d at 936; *Seghers*, 298 F. App'x at 327; *Aaron v. SEC*, 446 U.S. 680, 695–97 (1980) (requiring proof of scienter for violation of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5); *Sethi*, 910 F.3d at 206 (citing *Broad*, 642 F.2d at 961) (requiring a showing only of "severe recklessness"

(continued…)

Barton also argues that "evidence of past violations is not sufficient for a preliminary injunction." But evidence of Barton's "past violations" is irrelevant to the *Winter* analysis now required, rather than the test in *First Financial*.

Accordingly, there was no abuse of discretion.

VII

Finally, we address Barton's request that we reassign the case on remand to someone other than Judge Starr. Reassignment is an "extraordinary" and "rarely invoked" remedy[73]—one that is nowhere near warranted here.

We have two tests for determining whether to reassign a case—a "stringent" one and an "informal" one. The stringent test considers three factors: (1) "whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his mind or her mind previously-expressed views or findings determined to be erroneous . . . [,]" (2) "whether reassignment is advisable to preserve the appearance of justice," and (3) "whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness."[74] The lenient test asks whether

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to prove scienter); *see also CIGNA Corp. v. Amara*, 563 U.S. 421, 444 (2011) (noting the "default rule for civil cases" is preponderance of the evidence).

73. *Fort Bend Cnty. v. U.S. Army Corps of Engineers*, 59 F.4th 180, 202 (5th Cir. 2023) (cleaned up).

74. *Pulse Network, L.L.C. v. Visa, Inc.*, 30 F.4th 480, 495–96 (5th Cir. 2022) (internal quotation marks and citation omitted) (reassigning antitrust case where judge "candidly revealed his disdain for antitrust law and antitrust plaintiffs" and "repeatedly stymied [Plaintiff's] legitimate requests to engage in critical discovery").

an objective observer would reasonably "question the judge's partiality."[75] Because the stringent test's second factor "aligns with the question posed by the [lenient] test[,]"[76] we will address the factors of the stringent test—each of which shows why reassignment is unwarranted.

First, Judge Starr cannot "reasonably be expected" to have "difficulty" putting aside "previously-expressed views" determined on appeal to be erroneous.[77] Far from "fail[ing] . . . to address our earlier opinion on this matter,"[78] Judge Starr followed what he termed our "marching orders" after we found he initially did not apply the correct legal test. Indeed, he dutifully implemented the remand and applied *Netsphere I*, conducting a thorough analysis on why the receivership was proper under that test and establishing its scope.

Second, as to the appearance of justice, Barton claims that the district court's reference to "defrauded investors" and Barton's likelihood to "dissipate, conceal, or transfer assets" and "alter or destroy documents relevant to this action" show that Judge Starr pre-judged the case against him.[79] But that's not true. Judge Starr was

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75. *Id.* at 495 n.25 (internal quotation marks and citation omitted).

76. *United States v. Khan*, 997 F.3d 242, 249 (5th Cir. 2021); *see also Pulse Network*, 30 F.4th at 495 n.25 ("[T]he two tests are 'redundant' . . . So, we needn't apply the second test." (cleaned up)).

77. *Pulse Network*, 30 F.4th at 495.

78. *In re DaimlerChrysler Corp.*, 294 F.3d 697, 701 (5th Cir. 2002).

79. Barton also takes the extreme approach of accusing the district court of freezing assets "to aid the Commission in winning a case." Such an accusation, in this case, is both baseless and improper.

required to find fraud before granting a preliminary injunction. And that finding was supported by significant record evidence. Moreover, the district court was similarly required to make findings, based on Barton's conduct, relevant to the necessity of a receivership and injunction. Barton can't complain that the district court seemed biased merely because it ruled against him. If such a ruling was a basis for showing judicial bias, *every* losing party would make the same argument (but they don't).[80]

Third, given the length and complexity of the proceedings, reassignment risks significant delay and waste. Despite this risk, Barton argues that "reassignment will not involve waste or duplicative proceedings" because the case is "still in its procedural infancy." Regardless that Barton hasn't filed an Answer and discovery hasn't started, the nearly 600 docket entries in the district court and 16,815-page record on appeal indicate otherwise.

Reassignment here is not just unwarranted; it would be highly inefficient and wasteful of judicial resources.

* * *

The abuse-of-discretion standard is a high bar, and one that Barton has failed to meet across the board. The district court did not abuse its discretion in imposing the receivership, setting its scope, administering the receivership's sales, or in granting a preliminary injunction.

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80. Indeed, the district court has denied relief sought by the SEC and receiver: "I want to preserve [receivership assets] as much as possible for either a return to Barton, if he wins, or sending back to the . . . investors, if Mr. Barton loses." But the SEC and receiver do not complain of judicial bias.

Moreover, there is no basis to reassign the case on remand.

Accordingly, we AFFIRM the imposition and scope of the receivership and the grant of a preliminary injunction. We DISMISS Barton's appeal of administrative orders unrelated to sales for lack of jurisdiction. And we DENY his request to reassign the case to another district-court judge.

United States Court of Appeals
Fifth Circuit
FILED
June 16, 2025

Lyle W. Cayce
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-11237
CONSOLIDATED WITH
No. 24-10004

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff–Appellee,

versus

TIMOTHY BARTON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 3:22-CV-2118, 3:22-CV-2118

ON PETITION FOR REHEARING EN BANC

Before HIGGINBOTHAM and WILLETT, *Circuit Judges*.*

PER CURIAM:

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* This appeal is being decided by a quorum. 28 U.S.C. § 46(d).

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R. 40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P. 40 and 5th Cir. R. 40), the petition for rehearing en banc is DENIED.

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,	§	Civil Action No. 3:22-CV-2118-X
Defendants,	§	
DJD LAND PARTNERS, LLC, and LDG001, LLC,	§	
Relief Defendants.	§	

MEMORANDUM OPINION AND ORDER

The Securities and Exchange Commission ("SEC") accused Timothy Barton of committing securities fraud and sought a receivership. (Doc. 309). One year ago, the Court

imposed one but used a standard for the receivership the Fifth Circuit later held to be incorrect (the *First Financial* standard). The Fifth Circuit held the correct standard to be the *Netsphere* standard. The Court now engages in the analysis it should have done the first time, determines a receivership should exist, and determines its scope under the Fifth Circuit standard as set forth below. Accordingly, the Court **GRANTS IN PART** the SEC's motion.[1]

I. Background

The SEC alleges in its complaint that Timothy Barton, a Texas-based real-estate developer, defrauded over 100 Chinese investors of over $26 million through supposed real-estate investments in Texas.[2] Barton worked with a Texas home builder, Stephen T. Wall, and a Chinese businessman, Haoqiang Fu, to offer investment loans to Chi-

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1. The SEC seeks to include 82 entities in a new receivership. Of the 82, the Court finds that the following 28 entities are excluded from this Receivership Order for insufficient evidence of having received or benefited from Wall Investor Funds: 2999TC Acquisitions MZ, LLC fka MO 2999TC MZ, LLC; Broadview Holdings Trust; D4AVEG, LLC; D4OPM, LLC; Dallas Real Estate Investors, LLC; Dallas Real Estate Lenders, LLC (Delaware); Five Star MM, LLC (Delaware); Five Star MM, LLC (Texas); Five Star TC, LLC (Delaware); JMJ Residential, LLC; JMJD4, LLC (non-Delaware); MF Container, LLC (Delaware); Middlebury Trust; MXBA, LLC; One MF Residential, LLC; One MFD4, LLC; One Pass Investments, LLC (Delaware); One RL Trust; One SF Residential, LLC; The MXBA Trust; The Timothy L. Barton Irrevocable Life Insurance; TLB 2012 IRR Trust; TLB 2018 Trust; TLB 2019 Trust; TLB 2020 Trust; TRTX Properties, LLC; TRWF LODGE, LLC; and TRWF, LLC.

2. Doc. 1 at 2.

nese investors, through a series of "Wall Entities."[3] The loan agreements promised to "purchase specific parcels of lands at specific prices" with the Wall Investor Funds.[4] Instead, the land purchase prices were inflated, so Barton, Wall, and Fu could raise more money.[5] And with those funds and the Wall Entities, which Barton controlled, Barton "misappropriated nearly all the investor funds, misusing them to, among other things, purchase properties in the name of other entities he controlled, pay undisclosed fees and commissions to Fu, pay expenses associated with unrelated real estate development projects, and fund his lifestyle."[6]

On September 23, 2022, the SEC sued Barton, Wall, Fu, the Wall Entities, Carnegie Development, LLC, and the Relief Defendants for violating securities law.[7] The SEC sought a permanent injunction, disgorgement order, and civil penalties.[8] Days later, the SEC moved to appoint a receiver.[9] The SEC argued that a receivership was warranted, relying on the standard in *SEC v. First Financial Group of Texas* that allows for the appointment of a receiver on a prima facie showing of fraud and mismanagement.[10]

On October 18, 2022, the Court granted the SEC's motion and appointed Cortney C. Thomas as Receiver over

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3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* at 2–3.
7. Doc. 1.
8. *Id.* at 27–28.
9. Doc. 6.
10. *Id.* at 18 (discussing *First Fin.*, 645 F.2d 429, 438 (5th Cir. 1981)).

twenty-nine entities and "any other entities that Defendant Timothy Barton directly or indirectly controls."[11] The initial Order Appointing Receiver took "exclusive jurisdiction and possession" of all Barton- controlled entities.[12] The Receiver then moved to supplement the Order Appointing Receiver to expressly identify over 130 newly discovered Barton-controlled entities.[13] On November 16, 2022, the Court entered its first Supplemental Order Appointing Receiver designating an additional 126 Receivership Entities, *nunc pro tunc*.[14] The Court noted that it

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11. Doc. 29 ¶ 1. In that Order, the Court including the following entities in the receivership: Wall007, LLC; Wall009, LLC; Wall010, LLC; Wall011, LLC; Wall012, LLC; Wall016, LLC, Wall017, LLC; Wall018, LLC; Wall019, LLC; Carnegie Development, LLC; DJD Land Partners, LLC; LDG001, LLC, BM318 LLC; D4DS, LLC; D4FR, LLC; D4KL, LLC; Enoch Investments, LLC; FHC Acquisition, LLC; Goldmark Hospitality, LLC; JMJ Acquisitions, LLC; JMJ Development, LLC; JMJAV, LLC; JMR100, LLC; LaJolla Construction Management, LLC; Mansions Apartment Homes at Marine Creek, LLC; MO 2999TC, LLC; Orchard Farms Village, LLC; Villita Towers, LLC; and 126 Villita, LLC.

12. *Id.*

13. Doc. 41.

14. Doc. 62 at 3–6. In that Order, the Court identified the following entities in the receivership: AVEG WW, LLC (Delaware); AVG West, LLC fka JMJ Acquisitions, LLC (Texas); Barton Texas Water District, LLC; Barton Water District, LLC (Delaware); BC Acquisitions, LLC (Delaware); BEE2019, LLC; Broadview Holdings, LLC (Texas); Broadview Holdings Trust; BSJ Trading, LLC; BUILD VIOLET, LLC; Carnegie Development, Inc.; D4AT, LLC; D4AVEG, LLC; D4BM, LLC; D4BR, LLC (Texas); D4IN, LLC (Texas); D4MC, LLC (Texas); D4OP, LLC; D4OPM, LLC (Texas); D4SMC, LLC; D4WP, LLC; Dallas Real Estate

(continued…)

Investors, LLC; Dallas Real Estate Lenders, LLC (Delaware); Dallas Real Estate Management, LLC; Five Star GM, LLC (Delaware); Five Star MM, LLC (Delaware); FIVE STAR MM, LLC (Texas); Five Star TC, LLC (Delaware); Glenwood (18340) Property, LLC (Delaware); HR Sterling, LLC; Illuminate Dallas, LLC (Texas); JB Special Asset, LLC; JMJ Acquisitions Mgmt, LLC; JMJ Aviation, LLC (Texas); JMJ BLUES TX, LLC; JMJ Centre, LLC; JMJ Development Brasil, LTDA; JMJ Development, Inc.; JMJ Development Fund; JMJ Development Fund, Inc.; JMJ EB5 Fund, LP (Delaware); JMJ EB5 Fund GP, LLC (Delaware); JMJ Holdings, LLC; JMJ Holdings US LLC; JMJ Holdings USA, Inc.; JMJ Home Building Inc (Nevada); JMJ Hospitality, LLC; JMJ Hospitality General Trading FZE; JMJ Hospitality UAE; JMJ Investments Limited; JMJ Land Acquisition, Inc (Nevada); JMJ Land Development, Inc (Nevada); JMJ Land Venture, LLC; JMJ MF Development, LLC; JMJ Mezzanine, Inc (Nevada); JMJ Multifamily, Inc (Nevada); JMJ Offshore, LTD; JMJ Regional Center, LLC (Delaware); JMJ Residential, LLC; JMJ Valley Center, LLC; JMJ VC Management, LLC; JMJ148, LLC (Texas); JMJAV, LLC; JMJD4, LLC (Delaware); JMJD4Allensville LLC; JMJDWG, LLC (Texas); JMJKH, LLC; LC Aledo TX, LLC; Lynco Ventures, LLC; Lynn Investments, LLC; Lynco Ventures, LLC; Mansion Apartment Homes at Marine Creek, LLC; MCFW, LLC; MCRS2019, LLC (Texas); Middlebury Trust (Texas); MMCYN, LLC; MXBA Managed, LLC; MXBA Services, LLC; Myra Park 635, LLC; Northstar 114, LLC (Delaware); Northstar PM, LLC (Delaware); One Agent, LLC (Delaware); One Agent Texas, LLC (Texas); ONE FHC, LLC (Texas); One MFD4, LLC; One Pass Investments, LLC (Delaware); One RL Trust; ONE SF Residential, LLC; Residential MF Assets, LLC (Delaware); Ridgeview Addition, LLC (Texas); Riverwalk Invesco, LLC (Delaware); Riverwalk Opportunity Management, LLC (Delaware); Riverwalk OZFM, LLC (Delaware); Riverwalk OZFV, LLV (Delaware); Riverwalk QOZBJ, LLC (Delaware); Riverwalk QOZBM, LLC (Delaware); Riverwalk QOZBV, LLC (Delaware); Seagoville Farms, LLC; SF Rock Creek, LLC; SK Carnegie, LLC; (continued…)

needed more briefing to determine whether certain entities (the "Max Barton Entities") should be identified in the Receivership as entities that Barton controlled.[15] The Receiver provided supplemental briefing,[16] and the Court, having carefully considered the Second Motion to Supplement the Order Appointing Receiver, identified nine entities in the Receivership, *nunc pro tunc*, including the Max Barton Entities.[17]

The Receivership was underway (and had been since October 18, 2022). The Receiver was busy moving to sell

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STL Park, LLC (Delaware); The MXBA Trust; The Timothy L. Barton Irrevocable Life Insurance Trust; TLB 2018 Trust; TLB 2019 Trust; TLB 2020 Trust; TRWF, LLC; TRWF LODGE, LLC; VenusBK195, LLC (Texas); VenusPark201, LLC (Delaware); WRL2019, LLC (Texas); 126 Villita Towers, LLC (Delaware); 2999 Acquisitions, LLC (Delaware); 2999 Middlebury, LLC (Delaware); 2999 Roxbury, LLC (Delaware); 2999TC Acquisitions, LLC fka 2999TC, LLC; 2999TC Acquisitions MZ, LLC fka MO 2999TC MZ, LLC; 2999TC Founders, LLC (Delaware); 2999TC JMJ, LLC (Delaware); 2999TC JMJ, LLC (Texas); 2999TC JMJ CMGR, LLC (Delaware); 2999TC JMJ Equity, LLC; 2999TC LP, LLC (Delaware); 2999TC JMJ MGR, LLC (Delaware); 2999TC MM, LLC; 2999TC MZ, LLC (Delaware).

15. *Id.* at 2.

16. Doc. 73.

17. Doc. 88. With each supplemental order, the Court did not add entities to the Receivership, rather it just "recognize[d] entities the Receivership already contain[ed]" under the general rule that the Receiver included entities Barton owned or controlled. *Id.* at 5. In this Supplemental Order Appointing Receiver, the Court identified the following identities in the receivership: Gillespie Villas, LLC; Venus59, LLC; TRTX Properties, LLC; MXBA, LLC; Titan Investments, LLC; TC Hall, LLC; Titan 2022 Investment, LLC; Marine Creek SP, LLC; Aledo TX, LLC.

real property to maximize assets for the defrauded investors, and Barton was busy appealing the Order Appointing Receiver and the Supplemental Orders. The Receiver and Barton both had good cause for these acts, as explained below.

On appeal, the Fifth Circuit held that, because the SEC had not first obtained an injunction against Barton before moving for a receivership, the proper test for appointment of a receivership is the three-factor test in *Netsphere, Inc. v. Baron*, not the test in *First Financial*.[18] *Netsphere* outlines that a receivership is justified when: (1) there is a clear necessity for the receivership to protect defrauded investors' interest in property; (2) legal and less drastic equitable remedies are inadequate, and (3) the benefits of a receivership outweigh the burdens on the affected parties.[19] The Fifth Circuit then vacated this Court's prior appointment of the Receiver, effective 90 days from its mandate on August 31, 2023, and remanded it.[20]

II. Basis for Receivership

With the Fifth Circuit's marching orders, the Court turns to the *Netsphere* test. The Court finds that the three *Netsphere* factors are met, and a receivership is justified for the following reasons.

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18. *SEC v. Barton*, 79 F.4th 573, 578–79 (5th Cir. 2023) (discussing *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 (5th Cir. 2012)).

19. *Barton*, 79 F.4th at 578–79.

20. *Id.* at 581.

A. Clear Necessity to Protect the Defrauded Investors' Interests

When the Receiver was previously appointed, the bank accounts for the initial receivership entities held less than a combined $75,000.[21] All but one piece of real estate subject to the receivership had "sizeable debt" and multiple properties were facing foreclosures.[22] The Receiver explained that "[b]ut for the initial Receivership Order's stay of foreclosures on these properties and my extensive efforts to mollify secured creditors' concerns . . . foreclosures would have eliminated millions of dollars in property value otherwise available for satisfaction of Investor claims."[23] Such is *still* the case as many of the assets and entities with traceable Wall Investor Funds "continue to be mired in liens, lawsuits, and foreclosures that threaten to further diminish the value of the assets."[24] A receivership is necessary now, as it was a year ago, to stay third-party litigation and foreclosures, allowing for the assets to retain as much value as possible.[25]

The Court is also concerned about the real risk that Barton would conceal or dissipate assets if left in control. This is no imaginary threat. Last fall, *after* the SEC filed its complaint on September 23, 2022, Barton spent at least $225,000 of traceable Wall Investor Funds, paying law-

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21. Doc. 308 ¶ 191. The Court relies on the Receiver's declaration, not on Mr. Cecil's testimony about the declaration during the October 11, 2023 hearing for the appointment of a receivership.

22. *Id.*

23. *Id.*

24. Doc. 309 at 26.

25. Approximately thirty-five lawsuits were stayed through the prior Receivership Order's litigation stay. Doc. 308 ¶ 216.

yers and moving funds to other entities.[26] At other times, Barton used Wall Investor Funds to make payments on his personal credit card and spent Wall Investor Funds on "meals, car payments, educational expenses, airplane repair expenses, payments to Barton's ex-wife and children, and mortgage payments on the residence Barton lived in."[27] But wait, there's more! Barton even used Wall Investor Funds to purchase a plane.[28] Barton is alleged to have committed widespread fraud and misused Wall Investor Funds. But the Court must now look at those facts through the lens of the *Netsphere* factors. And so the Court finds here that a receivership is necessary to protect the defrauded investors' interests by staying litigation and foreclosures and preventing further dissipation of assets.

B. Legal and Less Drastic Remedies are Inadequate

Barton claims that other remedies, such as a monitorship or temporary injunction freezing asset transfer, would be sufficient to preserve assets.[29] The Court disagrees.

Let's start with a monitorship. This is a bad idea. Barton claims that a monitor "must approve a class of the subject corporation's major business decisions, including asset transfers."[30] If the Court creates a monitorship, Barton is put back in charge. It would be up to Barton what a "major business decision" is and then hopefully the moni-

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26. *Id.* ¶ 200.
27. *Id.* ¶ 202.
28. *Id.* ¶ 204.
29. Doc. 400 at 6.
30. *Id.*

tor would be looped in.[31] Such a gamble of a remedy is insufficient to protect investors' interests. The Court already found Barton in contempt for his violation of disclosure obligations under the prior Receivership Order.[32] Should Barton be placed in the primary management position (as he once was), the Court is concerned about mismanagement and misuse of Wall Investor Funds (as he once did). Worse yet, a monitor couldn't stay litigation or foreclosures or even investigate or trace assets.[33]

So, too, an asset freeze alone is inadequate. A number of the properties require active management, including an operating hotel, apartment complexes, and properties in development.[34] A receiver has the power to sell properties and assets. But without a receivership, assets are abandoned, subject to liens with increasing accrued interest and property taxes.[35] So while a temporary injunction alone would freeze the sale or transfer of any properties or assets, it wouldn't freeze the alive-and-well accruing interest rates or taxes. Such a limited remedy would fail to preserve assets for defrauded investors. The prior Receivership Entities have insufficient cash to pay the ongoing expenses.[36] The Receiver pointed to examples of on-

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31. *See* Doc. 308 ¶¶ 218–220; Doc. 390 at 36.
32. Doc. 235.
33. *See* Doc. 308 ¶ 220; Doc. 390 at 39.
34. Doc. 390 at 35.
35. Every piece of real property but one in the initial receivership is encumbered by debt. Doc. 308 ¶ 20. Every month, an additional $165,000 in interest (at standard, non-default rates) accrues collectively on these loans, further eroding the value of the assets held in the receivership. Doc. 359 at 83:20–25.
36. Doc. 308 ¶ 231.

going expenses related to the properties, such as "the cost certification of D4OP, insurance and management for Amerigold . . . property taxes. . . costs related to physical and electronic document and data storage and electronic document review and management, and fees for accountants and lawyers."[37] Put simply, it's not enough to only enjoin Barton from transferring assets or funds or to freeze such assets.

C. Benefits of a Receivership Outweigh the Burdens on the Affected Parties

The benefits of a receivership are significant in a case like this. At bottom, a receiver would be able to maximize, marshal, and preserve the assets in the receivership.[38] A receivership would put an independent, proficient person in charge. In addition, a receivership would stay third-party litigation and foreclosure, further protecting assets.

Barton makes arguments about the burdens of a receivership.[39] The Court isn't persuaded by them. For example, Barton claims there is a "cost" that the Receivership "does not appear equipped to advance the real estate development projects."[40] The purpose of a receivership is to protect the interests of defrauded investors. And the previous Receiver was doing so, netting over four million dollars in sales of properties (though the closings of those sales were stayed on numerous appeals by Barton).[41] Barton also points to the "cost of violently wresting property

37. *Id.*
38. Doc. 309 at 27.
39. Doc. 334 at 28–31.
40. *Id.* at 29.
41. Doc. 308 ¶ 21.

rights from the companies' owners before discovery much less a trial proving wrongdoing and liability."[42] The Court is mindful of this—which is exactly why the Court undertakes a thorough analysis below to ensure that only those entities that met the Fifth Circuit's standard for the jurisdiction of a receivership are included.[43] The Court finds that any burden Barton claims to be imposed by a receivership is outweighed by the benefits of a receivership.

Here, there is a clear necessity to protect defrauded investors' interests, no less drastic remedy is adequate, and the benefits of the receivership outweigh the burdens to affected parties. The Court acknowledges that a receivership "is an extraordinary remedy that should be employed with the utmost caution," but the Court also finds that the situation with Barton is an extraordinary one.[44]

III. Scope of Receivership

Now that the Court has found that a new receivership is justified under the *Netsphere* factors, it needs to determine the scope of the receivership. The Court follows the Fifth Circuit's directive to extend the receivership to only "entities that received or benefit[]ed from assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation."[45] This standard adopts language Barton proposed.[46] The Court's job is to ascertain whether

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42. Doc. 334 at 29.

43. *See infra* III.

44. *Netsphere*, 703 F.3d at 305.

45. *Barton*, 79 F.4th at 580–81.

46. *See id.* at 580 ("Barton next argues that the district court erred by placing multiple entities he controls in the receivership

(continued…)

and which entities received or benefited from ill-gotten Wall Investor Funds. As such, the Court finds that the following entities meet the Fifth Circuit's standard and categorized the entities accordingly.[47]

A. Entities that the Parties Agree Received or Benefited from Wall Investor Funds

First, both the SEC and Barton agree that eighteen entities received Wall Investor Funds. As Barton puts it, "[t]here is no question that several companies received the subject loan proceeds."[48] Consistent with Barton's statement, the Court finds that the following entities "received or benefited from"[49] assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation: WALL007, LLC;[50] WALL009, LLC; WALL010, LLC; WALL011, LLC; WALL012, LLC; WALL016, LLC; WALL017, LLC; WALL018, LLC; WALL019, LLC; Carnegie Development, LLC;[51] Orchard Farms

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without any showing that they received or benefit[]ed from ill-gotten investor funds.").

47. These categories are not mutually exclusive, and where there is overlap between categories, the Court notes it.

48. Doc. 400 at 11–12; *see* Doc. 335 at 21.

49. *See Barton*, 79 F.4th at 580–81 (relying on language from Barton, *id.* at 580).

50. For all ten of the collective "Wall Entities," each directly received Wall Investor Funds. Doc. 310-1 ¶¶ 3–5; Doc. 308 ¶¶ 56–57.

51. Carnegie Development, LLC ("Carnegie Development") received and transferred Wall Investor Funds on numerous occasions. For example, in February 2019, Carnegie Development received $2.5 million from Wall017, LLC and then transferred over $2 million to multiple Barton- controlled entities. Doc. 310-1 ¶¶ 3–5; Doc. 310-2 at 1–6; Doc. 308 ¶¶ 23–24 & Ex. 1.

Village, LLC;[52] BM318, LLC;[53] Northstar PM, LLC (Texas);[54] Lynco Ventures, LLC;[55] DJD Land Partners, LLC;[56] LDG001, LLC;[57] Seagoville Farms, LLC;[58] Ridgeview Addition, LLC (Texas).[59]

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52. A Wall entity (Wall007, LLC) purchased a property with Wall Investor Funds and then transferred ownership of the property to Orchard Farms Village, LLC. Doc. 310-2 at 6; Doc. 308 ¶ 146 & Ex. 17.
53. BM318, LLC received Wall Investor Funds to purchase a property in Aledo, Texas known as the "Bear Creek Ranch." Doc. 310-2 at 1; Doc. 308 ¶ 154 & Ex. 21.
54. NorthStar PM, LLC received Wall Investor Funds to purchase the "NorthStar Property" in Venus, Texas. Doc. 308 ¶ 121 & Ex. 10.
55. Lynco Ventures, LLC ("Lynco Ventures") is the record owner of property in Venus, Texas, and it received Wall Investor Funds to purchase the property from a third-party and sell it to Wall009, LLC at an inflated price. In August 2022, Lynco Ventures acquired the property again. Doc. 310-2 at 5; Doc. 308 ¶ 122 & Ex. 11.
56. DJD Land Partners, LLC is the record owner of property in Venus, Texas and received Wall Investor Funds toward the purchase of the property. Doc. 308 ¶ 121 & Ex. 10.
57. LDG001, LLC is the record owner of a property ("the Griffin Property") in Venus, Texas. Wall Investor Funds from Wall0016, LLC and Wall012, LLC were used to purchase the Griffin Property. Doc. 310-2 at 4; Doc. 308 ¶ 123 & Ex. 12.
58. Wall Investor Funds were used to purchase a property in Seagoville, Texas that Seagoville Farms, LLC once owned. Doc. 310-2 at 6; Doc. 308 ¶ 158 & Ex. 23.
59. Ridgeview Addition, LLC owns the "Ridgeview Property," and Wall Investor Funds have been traced both to the entity and the property. Doc. 310-2 at 1; Doc 308 ¶ 126 & Ex. 14.

B. Entities Holding Properties Purchased with, or that Otherwise Benefited from Wall Investor Funds

The Courts finds that ten additional entities currently hold property purchased with, or that otherwise benefited from Wall Investor Funds, and therefore "received or benefited from"[60] assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation. These entities are: FHC Acquisition, LLC;[61] Goldmark Hospitality, LLC;[62] SF Rock Creek, LLC;[63] Gillespie

60. *See Barton*, 79 F.4th at 580–81 (relying on language from Barton, *id.* at 580).

61. Wall Investor Funds were used to pay down FHC Acquisition, LLC's loan on a property in Frisco, Texas. Doc. 310-2 at 3; Doc. 308 ¶ 71 & Ex. 4.

62. Goldmark Hospitality, LLC is the record owner of a 70-unit extended-stay hotel in Dallas, Texas (the "Amerigold Suites"). Wall Investor Funds were used to make improvements to the hotel, fund hotel operations, and pay the manager of the hotel. In addition, Goldmark Hospitality, LLC received $200,000 of Wall Investor Funds. Doc. 310-2 at 3; Doc. 308 ¶ 103 & Ex. 9.

63. SF Rock Creek, LLC is the record owner of a home in Dallas, Texas. Wall Investor Funds were used to fund the purchase of the home. Doc. 308 ¶ 59 & Ex. 3.

Villas, LLC;[64] TC Hall, LLC;[65] Venus59, LLC;[66] and D4DS, LLC; D4FR, LLC; D4IN, LLC (Texas); D4OP, LLC (collectively, the "D4 entities" and individually, "D4DS," "D4FR," "D4IN," and "D4OP").

The Court turns to the D4 entities. The D4 entities are the record owners and HUD borrowers of four separate apartment complexes[67]—Bellwether Ridge in DeSoto Texas (owned by D4DS);[68] the Parc at Windmill Farms in

64. Gillespie Villas, LLC owns a residential multi-family property in Dallas, Texas. The property was purchased using the proceeds from the sale of two properties—the "Marine Creek Property" and the "Winter Haven Property"—both of which were purchased using Wall Investor Funds. Doc. 308 ¶ 164 & Ex. 25.

65. TC Hall, LLC ("TC Hall") owns property (the "Hall Property") in Dallas, Texas. Wall Investor Funds have been traced to the purchase of the Hall Property. TC Hall also received at least $1.4 million from other entities Broadview Holdings, LLC and JMJ Development, LLC (discussed elsewhere), both of which also received commingled Wall Investor Funds. Doc. 308 ¶¶ 167, 169 & Ex. 26.

66. Venus59, LLC ("Venus59") owns land in Venus, Texas. Before the initial receivership, several entities controlled by Barton "were in the process of developing single-family communities around Venus and were negotiating a development agreement with the City of Venus." Doc. 308 ¶ 117. Venus59 benefited from "extensive engineering and other-predevelopment expenses" used to turn the properties into a single development. *Id.* ¶¶ 170, 171 & Ex. 27. Venus59 also received $23,325.62 from Broadview Holdings, LLC which received Wall Investor Funds. *Id.* ¶ 171.

67. Doc. 390 at 19; Doc. 308 ¶ 77.

68. D4DS is the record owner of the Bellwether Ridge apartment complex in DeSoto, Texas. Doc. 310-2 at 1; Doc. 308 ¶ 84 & Ex. 5.

Forney, Texas (owned by D4FR);[69] the Parc at Ingleside in Ingleside, Texas (owned by D4IN),[70] and the Parc at Opelika in Opelika, Alabama (owned by D4OP).[71] Each of these apartment complexes was in large part funded by a HUD loan and a secondary mezzanine loan from Southern Properties Capital, Ltd. ("SPC").[72]

Let's start with the primary benefit the D4 entities received from Wall Investor Funds. The D4 entities were able to secure HUD loans for the four apartment complexes by relying on assets that were purchased with or received Wall Investor Funds.[73] For example, the four loan packets submitted to the lender listed properties that received Wall Investor Funds.[74] As the Receiver testified during the hearing for the underlying motion, "the primary reason these developments exist is because of the HUD loans. And the only reason those HUD loans exist is because in the loan application, it was the properties

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69. D4FR is the record owner of the Parc at Windmill Farms apartment complex in Forney, Texas. Doc. 310-2 at 2; Doc. 308 ¶ 91 & Ex. 6.

70. D4IN is the record owner of the Parc at Ingleside apartment complex in Ingleside, Texas. Doc. 308 ¶ 95 & Ex. 7

71. D4OP is the record owner of the Parc at Opelika apartment complex in Opelika, Alabama. Doc. 308 ¶ 97 & Ex. 8.

72. Doc. 390 at 20; Doc. 308 ¶ 78.

73. Doc. 308 ¶ 81(d).

74. To access HUD benefits, D4DS and D4FR relied on real property assets owned by Wall009, LLC and Seagoville Farms, LLC into which the Receiver's "accountants have traced substantial Wall Investor Funds." *Id.* So, too, did D4IN and D4OP. The applications for D4IN and D4OP relied on other assets with traced Wall Investor Funds to justify their HUD loans. *Id.*

purchased with Wall investor monies [that] were used to support that."[75]

The Court finds that each D4 entity benefited from Wall Investor Funds in this manner and such a benefit is sufficient for these entities to be included in the new receivership. But since the inclusion of the D4 entities in the receivership is in dispute, not just with Barton, but also SPC, the Court will provide further examples of the D4 entities receiving or benefiting from Wall Investor Funds.

SPC argues that these four apartment complexes shouldn't be included in the receivership.[76] It relies on two arguments: (1) Wall Investor Funds cannot be traced to the four apartment complexes;[77] and (2) the SPC loans were convertible to equity in the parent companies of the D4 entities, and that SPC exercised that right and converted its loans into equity in D4DS, D4FR, and D4IN, and therefore owns the Bellwether Ridge, Windmill Farms, and Ingleside properties.[78] The Court will address each entity and argument in turn.

First, D4DS received commingled funds from a loan secured, at least in part, by a property purchased with Wall Investor Funds.[79] The SEC and the Receiver traced Wall Investor Funds into D4DS through two transactions

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75. Doc. 359 at 77: 5–14. The Receiver further stated that to secure the HUD loan, "by far the biggest contributor to the development of these properties," Barton filed HUD applications in which he listed "properties that were purchased with Wall Investor Funds." *Id.* at 28: 8–9, 15–16.

76. *See generally* Docs. 247, 329, and 330.

77. Doc. 330 at 8–14.

78. *Id.* at 15–17; Doc. 247 at 33–37.

79. Doc. 308 ¶ 84 & Ex. 5; Doc. 310-2 at 1.

from an entity that received Wall Investor Funds, JMJ Development, LLC ("JMJ Development"): $25,000 on August 1, 2019 and $30,000 on August 12, 2019.[80] SPC claims that those examples don't tell the whole story. Specifically, SPC claims that the $25,000 and $30,000 payments were "made in error" and were, in fact, "in-and-out/cancelled transaction[s]."[81] The Court's job on remand at this posture is to determine whether entities "received or benefited from"[82] Wall Investor Funds, and that occurred here — even if the funds were later transferred out. D4DS received the $25,000 payment on August 1, 2019 and did not transfer it out to JMJ Development until September 9, 2019; and the $30,000 payment was received on August 12, 2019 and not returned until September 11, 2019.[83] In other words, D4DS received commingled Wall Investor Funds on at least two separate occasions for over a month.

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80. *Id.* Those in-and-out transactions are reminiscent of the 2017 incident in which D4DS received a $3,000,000 payment from SPC on May 5, 2017, and then just four days later the same amount was sent back to SPC, importantly just *days* after D4DS submitted documentation for a HUD deposit verification. *See id.* ¶ 81(d).

81. Doc. 330 at 8–9.

82. *See Barton*, 79 F.4th at 580–81 (relying on language from Barton, *id.* at 580). The phase of the litigation can change the analysis. At the end of the case, the Receiver would have custody of commingled funds (some attributable to Wall Investors Funds and some not). Different methodologies like the lowest intermediate balance test might be used to apportion those funds, and those methodologies have their own rules for handling arguments like SPC's arguments on refunded transactions. But for now, the Court's marching orders are to determine whether entities like D4DS received Wall Investor Funds, and it did.

83. *Compare* Doc. 308 at Ex. 5, *with* Doc. 330 at 8–9.

Now to D4FR. The SEC's tracing analysis and the Receiver's tracing analysis show that on July 17, 2019, D4FR, LLC received $106,097.70 from JMJ Development which received funds from Wall investors.[84] SPC has a similar argument as above, that the $106,097.70 payment was made in error and ultimately returned to JMJ Development (albeit weeks later).[85] Again, the Fifth Circuit has only instructed that the Court look to whether entities "received or benefited from" Wall Investor Funds.[86] For the same reasons as with D4DS, the Court finds that D4FR received, or at least benefited from, Wall Investor Funds to construct the Windmill Farms apartment complex.

Third, D4IN also benefited from Wall Investor Funds.[87] Wall Investor Funds benefited D4IN by paying the salaries of employees who worked on the development of the HUD apartments, as well as paying to maintain the D4IN office.[88]

Fourth, D4OP likewise received and benefited from Wall Investor Funds to build the Parc at Opelika[89] The Receiver found that D4OP received Wall Investor Funds through other entities that received investor funds in two

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84. Doc. 310-2 at 2; Doc. 308 ¶ 91 & Ex. 6.

85. Doc. 330 at 10.

86. *See Barton*, 79 F.4th at 580–81 (relying on language from Barton, *id.* at 580).

87. Doc. 308 ¶ 95 & Ex. 7.

88. *See* Doc. 308 ¶ 81(a),(b); Doc. 390 at 20. Notably, this benefit of Wall Investor Funds going towards paying employees' salaries and maintaining the offices likewise applies to D4DS, D4FR, and D4OP. *Id.*

89. Doc. 308 ¶ 97 & Ex. 8.

separate transactions, $210,000 from Enoch Investments, LLC ("Enoch") on December 3, 2021, and $15,000 from JMJD4, LLC (Delaware) ("JMJD4") on June 23, 2021.[90] SPC contends that those two payments were "in-and-out/cancelled transaction[s]" but for different reasons.[91] SPC claims that the $210,000 payment from Enoch was actually a $210,000 payment in *return* that D4OP previously made in error *to* Enoch on November 10, 2021.[92] And, as for the $15,000 payment, SPC further argues that it was of the same "in-and-out" vein as the transactions going towards the Bellwether Ridge and Windmill Farms properties.[93] Regardless of SPC's grounds for refuting those transactions, the Receiver traced Wall Investor Funds into D4OP and, thus, D4OP received or benefited from those funds.

Finally, SPC claims that it owns the Bellwether Ridge, Windmill Farms, and Ingleside apartment complexes.[94] This claim, largely contested, was the subject of a pending summary judgment proceeding between the Receiver and SPC until the Court denied without prejudice all previously pending motions while it resolved the motion at

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90. *Id.* at Ex. 8.

91. Doc. 330 at 13–14.

92. Doc. 330 at 13.

93. *See id.*

94. SPC claims that, before the D4 entities were included in the previous receivership, it exercised its right to convert its debt into equity, did so for the Bellwether Ridge, Windmill Farms, and Ingleside properties, and therefore owns those properties. SPC also claims that it reserves the right to convert its debt into equity in the Opelika property. *See* Doc. 330 at 20.

hand.[95] As such, whether SPC had the right to convert its debt into equity and whether it did so for the Bellwether Ridge, Windmill Farms, and Ingleside properties is outside the scope of this motion. Should the parties revisit this issue in a summary judgment motion after this ruling, the Court will address it then.

C. Entities that Purchased Properties with Wall Investor Funds that Were then Sold Before the Prior Receivership Appointment

Next, the Court finds that eleven entities purchased property, in whole or in part, with Wall Investor Funds that have since been sold, and therefore "received or benefited from"[96] assets traceable to Barton's allegedly fraudulent activities that are the subject of this litigation. Each of these entities currently holds contractual or legal rights related to those properties and the sales proceeds, including potential fraudulent transfer claims. These entities include three of the uncontested entities discussed at (A) above—BM318, LLC;[97] Orchard Farms Village, LLC;[98]

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95. *See* Docs. 206, 207, 254 (Receiver's motion for summary judgment regarding SPC's claimed ownership interest in certain properties and SPC's response).

96. *See Barton*, 79 F.4th at 580–81 (relying on language from Barton, *id.* at 580).

97. Discussed *supra* note 53; Doc. 310-2 at 1; Doc. 308 ¶ 154 & Ex. 21 (received Wall Investor Funds to purchase a property in the name of BM318, LLC).

98. Discussed *supra* note 52; Doc. 310-2 at 6; Doc. 308 ¶ 146 & Ex. 17 (Wall Investor Funds were used to purchase a property that was transferred to Orchard Farms Village, LLC).

and Seagoville Farms, LLC[99]—and the following eight additional entities: 2999TC Acquisitions, LLC;[100] Mansion Apartment Homes at Marine Creek, LLC;[101] AVG West, LLC;[102] D4KL, LLC;[103] 126 Villita, LLC;[104] LC Aledo TX, LLC;[105] Villita Towers, LLC;[106] and JMR100, LLC.[107]

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99. Discussed *supra* note 58; Doc. 310-2 at 5–6; Doc. 308 ¶ 158 & Ex. 23 (received Wall Investor Funds to purchase a property in the name of Seagoville Farms, LLC).

100. Doc. 308 ¶ 131 & Ex. 15. (2999TC Acquisitions, LLC previously owned the 2999 Turtle Creek Boulevard office in Dallas, Texas that was purchased, at least in part, with Wall Investor Funds).

101. Doc. 310-2 at 5; Doc. 308 ¶ 139 & Ex. 16 (Mansions Apartment Homes at Marine Creek, LLC received loan proceeds from a Wall Entity loan).

102. Doc. 308 ¶ 148 & Ex. 18 (AVG West, LLC used to own property in Winter Haven, Florida (the "Winter Haven Property") and Wall Investor Funds have been traced to the purchase of the Winter Haven Property).

103. Doc. 310-2 at 2; Doc. 308 ¶ 150 & Ex. 19 (Wall Investor Funds were used to purchase a property in Killeen, Texas that was transferred to D4KL, LLC).

104. Doc. 310-2 at 6; Doc. 308 ¶ 152 & Ex. 20 (126 Villita, LLC used to own a property in San Antonio, Texas (the "Villita Property") that was purchased and developed with Wall Investor Funds).

105. Doc. 308 ¶ 156 & Ex. 22 (Wall010, LLC assigned rights to LC Aledo TX, LLC and Wall Investor Funds were used to purchase a property in Aledo, Texas by providing earnest money payments and loans for the property).

106. Doc. 310-2 at 6; Doc. 308 ¶ 152 & Ex. 20 (Villita Towers, LLC used to own a property in San Antonio, Texas (the "Villita Property") that was purchased and developed with Wall Investor Funds).

107. Doc. 310-2 at 4; Doc. 308 ¶ 160 & Ex. 24 (JMR100, LLC received Wall Investor Funds, and investor funds were wired to a title company for the purchase of a property in Aledo, Texas).

D. Additional Entities that Received Wall Investor Funds

The Court finds that several additional entities "received or benefited from"[108] assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation. These entities either received funds: from Wall investors or the Wall Entities' bank accounts, from other Barton Entities that received Wall Investor Funds, through proceeds of the sales of properties that were originally purchased with or benefited by Wall Investor Funds, or through receiving Wall Loan Proceeds. These entities are: 126 Villita, LLC (discussed elsewhere);[109] 2999TC JMJ CMGR, LLC (Delaware);[110] BEE2019, LLC;[111] Broadview Holdings, LLC (Texas);[112] Carnegie Development, LLC (discussed elsewhere);[113] D4MC,

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108. *See Barton*, 79 F.4th at 580–81 (relying on language from Barton, *id.* at 580).

109. Discussed *supra* note 104; Doc. 310-2 at 6; Doc. 308 ¶ 152 & Ex. 20 (126 Villita, LLC used to own a property in San Antonio, Texas (the "Villita Property") that was purchased and developed with Wall Investor Funds).

110. Doc. 310-2 at 5 (2999TC JMJ CMGR, LLC (Delaware) benefited from receiving Wall Loan Proceeds).

111. Doc. 310-2 at 1 (BEE2019, LLC benefited from receiving Wall Loan Proceeds).

112. Doc. 308 ¶¶ 34, 142, 169 & Ex. 25 (Broadview Holdings, LLC (Texas) benefited by receiving proceeds of the sale of property owned by Mansions Apartment Homes at Marine Creek, LLC and other properties which were purchased with Wall Investor Funds).

113. Discussed *supra* note 51; Doc. 310-2 at 1 (Carnegie Development, LLC ("Carnegie Development") directly benefited from the use

(continued…)

LLC (Texas);[114] Enoch Investments, LLC;[115] HR Sterling, LLC;[116] JMJ Acquisitions, LLC;[117] JMJ Development LLC (f/k/a JMJ Development, Inc.);[118] JMJ Hospitality, LLC;[119] JMJ VC Management, LLC;[120] JMJAV, LLC;[121]

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of Wall Investor Funds to purchase a property previously owned by Carnegie Development, and loan proceeds from a loan secured by a Wall Entity helped pay off a loan of Carnegie Development).

114. Doc. 310-2 at 5 (A signed agreement between Mansions Apartment at Marine Creek, LLC and D4MC, LLC stipulates that D4MC, LLC has ownership of the Marine Creek Property which benefited from Wall Entity Loan proceeds).

115. Doc. 310-2 at 2 (Enoch received $250,000 through other entities that received Wall Investor Funds (Carnegie Development and JMJ Development)).

116. Doc. 310-2 at 3; Doc. 308 ¶ 81(a) (HR Sterling, LLC received funds from JMJ Development and Carnegie Development that received Wall Investor Funds or Wall Entity Loan proceeds).

117. Doc. 310-2 at 3 (JMJ Acquisitions, LLC benefited by receiving commingled Wall Investor Funds).

118. *See* Doc. 308 at Exs. 3, 5, 6, 9, 13, 15, 16, 18, 19, 20, 24, 27; *see also* Doc. 7-1 at 16 (JMJ Development, LLC received extensive Wall Investor Funds through other entities, often from Carnegie Development).

119. Doc. 310-2 ¶¶ 3–5; Doc. 7-1 at 5–6 (Wall Investor Funds were traced into JMJ Hospitality LLC's account).

120. Doc. 308 at Ex. 7 (commingled Wall Investor Funds were transferred to JMJ VC Management, LLC).

121. Doc. 310-2 at 4; Doc. 308 ¶¶ 29, 204 & Exs. 13, 18 (JMJAV, LLC received Wall Investor Funds through other entities that received Wall Investor Funds, such as Carnegie Development and JMJ Development).

JMJD4;[122] LaJolla Construction Management, LLC;[123] MO 2999TC, LLC;[124] Titan Investments, LLC (a/k/a Titan 2022 Investments LLC);[125] and WRL2019, LLC (Texas).[126]

E. Entities that Benefited from Wall Investor Funds by Receiving a Participation Interest in a Development that Received Wall Investor Funds

The Court finds that several additional entities received and are holding participation interests in continuing development projects that received Wall Investor Funds, therefore "benefit[ing] from"[127] assets traceable to Barton's fraudulent activities that are the subject of this litigation. Wall Investor Funds have been traced to the Marine Creek, Orchard Farms, Killeen, and Villita properties. The Barton Entity that owned each property sold

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122. Doc. 308 ¶ 38 & Exs. 7, 8 (JMJD4 both received Wall Investor Funds through other entities, as well as passed on investor funds to D4OP).

123. Doc. 310-2 at 4; Doc 308 at Exs. 8, 14 (LaJolla Construction Management, LLC directly received proceeds from a Wall Entity loan).

124. Doc. 310-2 at 5 (MO 2999TC, LLC benefited by receiving Wall Loan Proceeds).

125. Doc. 308 ¶¶ 176–77 (Titan Investments, LLC received funds from Broadview Holdings that were the sale proceeds of properties acquired with or benefited from Wall Investor Funds, and Titan Investments received earnest money from Broadview Holdings).

126. Doc. 310-2 at 6 (loan proceeds from a loan secured by property purchased in part with Wall Investor Funds were put toward the purchase of a Dallas, Texas property in the name of WRL 2019, LLC).

127. *See Barton*, 79 F.4th at 580–81 (relying on language from Barton, *id.* at 580).

its ownership interests in these developments for several million dollars prior to the Court's initial Order Appointing Receiver.[128] In connection with the sales, several entities retained some form of participation interest in each of the projects, including two of the entities discussed above—Orchard Farms Village, LLC;[129] and Enoch Investments, LLC[130]—as well as Marine Creek SP, LLC,[131] and Villita Development, LLC.[132]

IV. Limits of the Scope of Receivership

The SEC seeks to include other entities in the receivership on the basis that those entities received certain types of benefits from Wall Investor Funds. The Court finds these types of benefits are outside the current scope of the receivership. The first type of benefit comes from owning or being a managing member of entities that received Wall Investor Funds.[133] The SEC claims that these entities "through the chain of ownership" benefited from Wall Investor Funds since they could control the entities that held the assets that received the Wall Investor

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128. Doc. 308 ¶¶ 140–44.

129. Discussed *supra* notes 52, 98; Doc. 310-2 at 6; Doc. 308 ¶ 158 & Ex. 17.

130. Discussed *supra* note 115; Doc. 310-2 at 5–6; Doc. 308 ¶ 158 & Ex. 23.

131. Doc. 308 ¶ 34 (Marine Creek SP, LLC held a participation interest in the sale of the Marine Creek Property which was purchased, in part, with Wall Investor Funds).

132. *Id.* ¶ 152 (Villita Property was purchased, in part, with Wall Investor Funds); ¶ 180 (Barton sold Villita Property but retained participation interest in the name of a wholly separate entity, Villita Development, LLC).

133. Doc. 390 at 27.

Funds.[134] In short, the SEC thinks the chain of ownership is like a Russian nesting doll of corporate control. The Court finds that there is insufficient evidence in the present record to extend the receivership this far. The Court is mindful of the *Netsphere* analysis, which includes discussion of whether a less restrictive tool will preserve assets. Here, an asset freeze is a less restrictive tool that still preserves these particular assets in question. Thus, the entities that are justified in the receivership solely under the owning/managing theory are not included in the Receivership.

The second type of benefit is for trusts that hold the ultimate beneficial interest in entities that hold property connected to Wall Investor Funds.[135] The Court likewise sees no legally sufficient justification to extend the receivership this far, when an asset freeze will offer the needed protection to investors. As such, the trusts justified solely on the ultimate-beneficial-interest theory will not be included in the receivership.[136]

V. Conclusion

The Court finds that a receivership is justified here because there is a clear necessity to protect defrauded investors' interests, legal and less drastic remedies are inadequate, and the benefits of the receivership outweigh the burdens to affected parties.[137] The Court further finds

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134.*Id.*

135.Doc. 390 at 27.

136.*Id.*

137.*See Netsphere*, 703 F.3d at 305.

the following 54 entities "received or benefited from"[138] Wall Investor Funds and, as detailed in the Court's separate Order Appointing Receiver, appoints Cortney C. Thomas as Receiver without bond for the estates of the following Receivership Entities:

- 126 Villita, LLC
- 2999TC Acquisitions LLC
- 2999TC JMJ CMGR, LLC (Delaware)
- AVG West, LLC
- BEE2019, LLC
- BM318, LLC
- Broadview Holdings, LLC (Texas)
- Carnegie Development, LLC
- D4DS, LLC
- D4FR LLC
- D4IN, LLC (Texas)
- D4KL, LLC
- D4MC, LLC (Texas)
- D4OP, LLC
- DJD Land Partners, LLC
- Enoch Investments, LLC
- FHC Acquisition, LLC
- Gillespie Villas, LLC
- Goldmark Hospitality, LLC
- HR Sterling, LLC
- JMJ Acquisitions, LLC
- JMJ Development LLC (f/k/a JMJ Development, Inc.)

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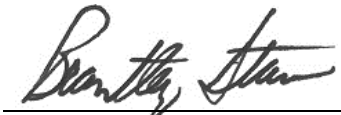
138. *See Barton*, 79 F.4th at 580–81 (relying on language from Barton, *id.* at 580).

- JMJ Hospitality, LLC
- JMJ VC Management, LLC
- JMJAV, LLC
- JMJD4, LLC (Delaware)
- JMR100, LLC
- LaJolla Construction Management, LLC
- LC Aledo TX, LLC
- LDG001, LLC
- Lynco Ventures, LLC
- Mansions Apartment Homes at Marine Creek, LLC
- Marine Creek SP, LLC
- MO 2999TC, LLC
- Northstar PM, LLC (Texas)
- Orchard Farms Village, LLC
- Ridgeview Addition, LLC (Texas)
- Seagoville Farms, LLC
- SF Rock Creek, LLC
- TC Hall, LLC
- Titan Investments, LLC a/k/a Titan 2022 Investments, LLC
- Venus59, LLC
- Villita Development, LLC
- Villita Towers, LLC
- WALL007, LLC
- WALL009, LLC
- WALL010, LLC
- WALL011, LLC
- WALL012, LLC
- WALL016, LLC
- WALL017, LLC

- WALL018, LLC
- WALL019, LLC
- WRL2019, LLC (Texas)

It is SO ORDERED, this 29th day of November, 2023.



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*.	§	CIVIL ACTION NO. 3:22-CV-2118-X

ORDER APPOINTING RECEIVER

For the reasons set out in a memorandum opinion and order filed today, the Court enters the following order.

WHEREAS this matter has come before this Court upon motion of Plaintiff Securities and Exchange Commission ("SEC") to appoint a receiver in the above- captioned action; and, **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 to preserve and protect the value of such 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 each of the Receivership Entities received or benefited from assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation.

WHEREAS this 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, penalizing past unlawful conduct and deterring future wrongdoing, 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, each of which received or benefited 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 JMJ CMGR, LLC (Delaware)
5. AVG West, LLC
6. BEE2019, LLC

7. BM318, LLC
8. Broadview Holdings Trust
9. Carnegie Development, LLC
10. D4DS LLC
11. D4FR LLC
12. D4IN, LLC (Texas)
13. D4KL, LLC
14. D4MC, LLC (Texas)
15. D4OP, LLC
16. DJD Land Partners, LLC
17. Enoch Investments, LLC
18. FHC Acquisition, LLC
19. Gillespie Villas, LLC
20. Goldmark Hospitality, LLC
21. HR Sterling, LLC
22. JMJ Acquisitions, LLC
23. JMJ Development LLC (f/k/a JMJ Development, Inc.)
24. JMJ Hospitality, LLC
25. JMJ VC Management, LLC
26. JMJAV, LLC
27. JMJD4, LLC (Delaware)
28. JMR100, LLC
29. LaJolla Construction Management, LLC
30. LC Aledo TX, LLC
31. LDG001, LLC
32. Lynco Ventures, LLC
33. Mansions Apartment Homes at Marine Creek, LLC
34. Marine Creek SP, LLC
35. MO 2999TC, LLC
36. Northstar PM, LLC (Texas)

37. Orchard Farms Village, LLC
38. Ridgeview Addition, LLC (Texas)
39. Seagoville Farms, LLC
40. SF Rock Creek, LLC
41. TC Hall, LLC
42. Titan Investments, LLC a/k/a Titan 2022 Investments, LLC
43. Venus59, LLC
44. Villita Development, LLC
45. Villita Towers, LLC
46. WALL007, LLC
47. WALL009, LLC
48. WALL010, LLC
49. WALL011, LLC
50. WALL012, LLC
51. WALL016, LLC
52. WALL017, LLC
53. WALL018, LLC
54. WALL019, LLC
55. WRL2019, LLC (Texas)

2. Until further Order of this Court, Cortney C. Thomas is hereby appointed to serve without bond as receiver (the "Receiver") of the Receivership Entities.

3. The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the officers, directors, trustees, managers and general and limited partners of the entity Receivership Entities under applicable state and federal law, by the governing charters, bylaws, 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 Rule 66 of the Federal Rules of Civil Procedure.

I. GENERAL POWERS AND DUTIES OF RECEIVER

4. 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.

5. 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.

6. Subject to the specific provisions in Sections II through XII 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; To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation, concealment, or inequitable distribution of Receivership Property;

G. Enter into and cancel contracts and purchase insurance as the Receiver deems necessary or advisable;

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, defend, compromise or otherwise dispose of all suits, actions, claims, and demands which may now be pending or which may be brought by or asserted against the Receivership Entities; and,

K. To take such other action as may be approved by this Court.

II. ACCESS TO INFORMATION

7. 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.

8. Within ten (10) days of the entry of this Order, the Receivership Entities shall 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.

9. Within twenty (20) days of the entry of this Order, the Receivership Entities 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 date and amount of their investments, and the current location of such funds;

F. Of all expenditures exceeding $1,000 made by any of them, including those made on their behalf by any person or entity; and

G. Of all transfers of assets made by any of them.

10. 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.

11. The Receivership Entities and the Receivership Entities' 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.

12. 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

13. 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.

14. 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.

15. 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

16. 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.

17. 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.

18. The Receivership Entities, all persons acting on behalf of any Receivership Defendant, and any person who receives actual or constructive notice of this Order who has or had possession or control over any Receivership Assets, is directed to:

A. Hold and retain any such Receivership Assets that are within his or her control and prohibit any person or entity from assigning, concealing, converting, disbursing, dissipating, encumbering, liquidating, loaning, pledging, selling, spending, transferring, or withdrawing any such Asset except:

1. As directed by further order of the Court; or
2. As directed in writing by the Receiver.

B. Within five (5) business days after being served a copy of this Order, provide the Receiver a sworn statement setting forth:

1. The account number and other identifying information for any such Receivership Asset belonging to, for the use or benefit of, under the control of, or subject to access by any Defendant or Receivership Defendant;

2. The balance of each such account, or a description of the nature and value of such Asset as of the close of business on the day on which this Order is received, and, if the account or other Asset has been closed or removed, or more than $5,000 withdrawn or transferred from it, on or after March 1, 2021, the date of the closure or removal of the funds, the total funds removed or transferred, and the name of the person or entity to whom such account or other Asset was remitted;

3. All keys, codes, and passwords, entry codes, combinations to locks, and information or devices required to open or gain access to any Asset or Document, including, but not limited to, access to the business premises, computer servers, networks, or databases, or telecommunications systems or devices;

4. The identification and location of any safe deposit box, commercial mailbox, or storage facility belonging to, for the use or benefit of, under the control of, or subject to access by any Defendant or

Receivership Entity, and if the safe deposit box, storage facility, commercial mailbox, or storage facility has been closed or removed, the date closed or removed;

5. Within five (5) business days of a written request from the Receiver, provide the Receiver copies of all Documents relating to each Receivership Asset, including, but not limited to account applications, statements, corporate resolutions, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

19. 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.

20. 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.

21. 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. REPATRIATION OF ASSETS AND DOCUMENTS

22. Immediately upon service of this Order, any person or entity with possession or control over any Receivership Assets shall:

A. Take such steps as are necessary to transfer to the United States all Documents and Assets that are located outside the United States and belong to, are for the use or benefit of, under the control of, or subject to access by any Defendant or Receivership Entity; and

B. Hold and retain all repatriated Assets and prevent the disposition, transfer, or dissipation of such Assets except as required by this Order.

23. Receivership Entities, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are preliminarily restrained and enjoined from taking any action that may result in the encumbrance or dissipation of foreign Assets, or in the hindrance of the repatriation required by this Order, including:

A. Sending any statement, letter, fax, email or wire transmission, telephoning, or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time as all Assets have been fully repatriated according to Section VIII of this Order; or

B. Notifying any trustee, protector, or other agent of any Defendant or Receivership Entity of the existence of this Order, or of the fact that repatriation is required under a court Order, until such time as all Assets have been fully repatriated according to Section VIII of this Order.

VI. NOTICE TO THIRD PARTIES

24. Defendants and the Receivership Entities shall immediately provide a copy of this Order to each affiliate, sales entity, successor, assign, member, officer, director, employee, agent, independent contractor, client, servant, attorney, subsidiary, division, and representative of any Defendant or Receivership Defendant. Within ten (10) business days following service of this Order, Defendants and Receivership Entities shall serve on the Receiver a declaration identifying the name, title, address, telephone number, date of service, and manner of service of each person Defendants or Receivership Entities served with a copy of this Order in compliance with this provision.

25. Copies of this Order may be served by the Receiver by any means, including U.S. first class mail, overnight delivery, facsimile, electronic mail, or personally by agents or employees of the Receiver, by any law enforcement agency, or by process server, upon any person, including financial institutions, that may have possession, custody, or control over any Asset or Document belonging to, for the use or benefit of, under the control of, or subject to access by any Receivership Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall constitute service upon the entire financial institution.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

VII. INJUNCTION AGAINST INTERFERENCE WITH RECEIVER

32. 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;

D. Create, operate, or exercise any control over any new business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Receiver with a written statement disclosing: (1) the name of the business entity; (2) the address, telephone number, e-mail address, and website address of the business entity; (3) the names of the business entity's officers,

directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities; or,

E. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

VIII. COOPERATION WITH THE RECEIVER

33. Defendants and Receivership Entities, and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, whether acting directly or indirectly and all persons who receive actual notice of this Order, shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the Assets and Documents of the Receivership Entities. This cooperation and assistance shall include, but is not limited to:

A. Providing information to the Receiver as directed above or that the Receiver deems necessary to exercise the authority and discharge the responsibilities delegated to the Receiver under this Order;

B. Advising all persons who owe money to the Receivership Entities that all debts should be paid directly to the Receiver; and

C. Transferring funds at the Receiver's direction and producing Documents related to the Assets and sales of the Receivership Entities. The entities obligated to cooperate with the Receiver under this provision include financial institutions and persons that have transacted business with the Receivership Entities. 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.

IX. STAY OF LITIGATION

34. 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, parent or affiliated entities, 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").

35. 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.

36. 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 limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

X. MANAGING ASSETS

37. 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").

38. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of Barton Companies" together with the name of the action.

39. 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.

40. Subject to Paragraph 42 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 Receiver-

ship Estate, and with due regard to the realization of the true and proper value of such real property.

41. 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.

42. 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.

43. 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.

XI. INVESTIGATE AND PROSECUTE CLAIMS

44. The Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in 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.

45. 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.

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

47. 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.

XII. BANKRUPTCY FILING

48. 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.

49. Within thirty (30) days of the entry of this Order, the Receiver shall report to this Court as to whether the Bankruptcy Cases should continue in Chapter 11, or be converted to Chapter 7, dismissed or suspended during the course of the receivership. The Receiver shall file the appropriate pleadings with the Court and the Bankruptcy Court effectuating this Order.

50. 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 in bankruptcy proceedings, 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 entity Receivership Entities and may therefore file and manage a Chapter 11 petition.

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

XIII. LIABILITY OF RECEIVER

52. 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.

53. The Receiver and his agents, acting within scope of such agency ("Retained Personnel"), are entitled to rely on all 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.

54. 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.

55. In the event 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.

XIV. RECOMMENDATIONS AND REPORTS

56. 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").

57. 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.

58. Within thirty (30) days after the end of each subsequent calendar quarter following the date on which the Receiver files his Liquidation Plan, 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.

59. 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.

60. 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.

XV. FEES, EXPENSES, AND ACCOUNTINGS

61. 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.

62. 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.

63. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates. Such compensation shall require the prior approval of the Court.

64. 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.

65. 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.

66. 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.

67. Each Quarterly Fee Application shall:

A. Contain representations that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) unless previously disclosed to and approved by the Court, 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.

68. 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 29th day of November, 2023.

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,	§	CIVIL ACTION NO. 3:22-CV-2118-X
Defendants,	§	
DJD LAND PARTNERS, LLC, and LDG001, LLC,	§	
Relief Defendants.		

PRELIMINARY INJUNCTION ORDER

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 (Doc. 309, the "Motion"). Having carefully considered the Motion, the Court **GRANTS IN PART** the SEC's request for a preliminary injunction and ancillary relief and to lift the stay.

The SEC here has multiple requests, including for: an asset freeze; a sworn accounting; and preservation order.[1]

There is "explicit statutory authorization" that allows a preliminary injunction in an SEC civil enforcement action.[2] The Court is "empowered" to freeze assets "to preserve the status quo and prevent dissipation of ill-gotten gains so that they remain available."[3] If the SEC can make a "proper showing" that there is a "reasonable likelihood that the defendant[s] [are] engaged or about to engage in practices that violate the federal securities laws," it can receive injunctive relief.[4] This showing is "usually made

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1. Doc. 309 at 28–31.

2. *SEC v. Faulkner*, No. 3:16-CV-1735-D, 2017 WL 4238705, at *2 (N.D. Tex. Sept. 25, 2017) (Fitzwater, J.) (discussing § 20(b) of the 1933 Act, 15 U.S.C. § 77t(b), and § 21(d) of the 1934 Act, 15 U.S.C. § 77u(d)).

3. *Id.* at *3.

4. *SEC v. First Fin. Grp. of Tex.*, 645 F.2d 429, 434 (5th Cir. 1981) (citing to *Aaron v. SEC*, 446 U.S. 680, 699 (1980)). In the case at hand, the Fifth Circuit instructed this Court that the *First Financial* receivership test did not control since the SEC had not previously obtained an injunction. *See SEC v. Barton*, 79 F.4th 573, 578 (5th Cir. 2023). Here, the Court relies on *First Financial* only for the standard the Fifth Circuit said it applied to: a preliminary injunction in a SEC civil enforcement action, not for the receivership test. The Court believes this is the standard it should follow, though the Court also finds that a preliminary injunction is warranted because the SEC has established that there is a

(continued…)

with proof of past substantive violations that indicate a reasonable likelihood of future substantive violations."[5] And the standard of proof is preponderance of the evidence.[6]

Here, there is significant record evidence of Barton's "past substantive violations" of federal securities law.[7] The SEC alleges the following facts. Timothy Barton, Stephen T. Wall, and Haoqiang Fu (collectively "Barton Defendants") raised over $26 million from Chinese investors for real estate investments in Texas.[8] But instead of using those investor funds for the specific land parcels as the Barton Defendants had told the investors, the money was misappropriated and spent on numerous improper purposes.[9] The misuse of funds included purchasing properties in the name of other entities that Barton controlled, paying other unrelated real estate expenses, and paying

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substantial likelihood of success on the merits that Barton violated the federal securities laws, there will be irreparable harm without the preliminary injunction, the balance of equities favors an injunction, and it is in the public interest to issue a preliminary injunction. *See* Doc. 309 at 22–24; Doc. 390 ¶¶ 4–30, 47–55. Without an injunction, there is a clear likelihood of irreparable harm to the defrauded investors of further dissipation of assets. Such dissipation of assets will preclude recovery for the investors—this important interest outweighs any harm that Barton may suffer if he is enjoined from transferring assets. And seeking to protect the interests of defrauded investors and uphold federal securities law is in the public interest.

5. *First Fin.*, 645 F.2d at 434.
6. *Id.*
7. *See* Doc. 1 at 5–23; *see also* Doc. 309 at 9–17; Doc. 390 ¶¶ 22–25.
8. Doc. 309 at 7 note 1, 9–11.
9. *Id.* at 11–14.

Barton's personal and family expenses, "including exorbitant credit card bills, rent, and to buy a plane."[10] The Barton Defendants also falsely told the investors that the investments were fully guaranteed, but left out that the guaranteeing company had no assets.[11] In addition, the Barton Defendants inflated the land purchase prices in communications with the investors, allowing the Barton Defendants to raise more money.[12] The Court thus finds that that the SEC has made a "proper showing" that, based on proof of "past substantial violations," there is a reasonable likelihood that the defendant[s] [are] engaged or about to engage in practices that violate the federal securities laws."[13]

And not only is an injunction expressly authorized by law,[14] it's a good idea in this case. Barton's commingling is extensive.[15] And because of Barton's "commingling of funds, transferring of properties, and interference with tracing efforts,"[16] the SEC and the Receiver haven't been able to trace all entities that have "received or benefited from"[17] Wall Investor Funds. An asset freeze would enable both the SEC and the Receiver to investigate and trace assets to other entities that are subject to the

10. *Id.* at 12.
11. *Id.* at 16–17.
12. *Id.* at 14–16.
13. *First Fin.*, 645 F.2d at 434.
14. *See Faulkner*, 2017 WL 4238705, at *2.
15. Doc. 308 ¶¶ 23–32.
16. Doc. 390 ¶ 52.
17. *Barton*, 79 F.4th at 580.

freeze.[18] Preserving assets also protects this Court's ability to provide a recovery for the defrauded investors. It seems unlikely that the entire value of the assets within the Receivership will meet the approximate $26 million that investors lost due to Barton's fraud.[19] Every piece of real property but one in the initial receivership is encumbered by debt, and many of Barton's assets are constrained by liens and claims.[20] Given Barton's prior conduct, without an injunction, it's likely that Barton would further dissipate or conceal assets, limiting recovery for the defrauded investors.

Having considered the pleadings and submissions in this case, including the Motion and the supporting declarations and exhibits, and the other evidence and argument presented to the Court,[21] the Court finds, by a preponderance of the evidence, that the loan agreements are securities because they are investment contracts and notes, and there is a reasonable likelihood that defendants, acting with scienter, obtained money from Wall Investors by making false statements about the use of the investments, misappropriating the money, misstating land purchase prices, and making false statements about whether the investments were fully guaranteed, in violation of § 17(a) of

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18. Just one example of Barton's commingling is using loan proceeds obtained by one entity for the benefit of another. *See* Doc. 308 ¶¶ 29, 184.

19. Doc. 390 ¶ 54; Doc. 308 ¶ 101.

20. *See* Doc. 308 ¶ 20.

21. *See* Docs. 309 at 22–24; 390 ¶¶ 4–30, 47–55. The Court also considers all of the argument, testimony, and unobjected to evidence presented at the evidentiary hearing for this motion on October 11, 2023. *See* Doc. 359.

the 1933 Act and § 10(b) of the 1934 Act and Rule 10bn-5. The Court thus enters the order below granting the requested injunctive relief.

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 that, by a preponderance of the evidence, based on proof of past substantive violations, there is a reasonable likelihood 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 are engaged or about to engage in practices that violate the federal securities laws, including Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

3. 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.

4. 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.

5. 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.

6. 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.

7. The Court finds that the SEC has brought this action to enforce the federal securities laws, in furtherance of the SEC's 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).

8. 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

All funds, property, or other assets (the "Freeze Assets") of any entity that Barton directly or indirectly controls that is not placed in receivership are hereby frozen until further order of this Court. Barton and any other person or entity with direct or indirect control over any Freeze Assets are preliminarily enjoined from transferring, selling, dissipating, assigning, concealing, pledging, withdrawing, alienating, encumbering, incurring debt upon, disposing of, or diminishing the value of any Freeze Asset.

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. JMJ Acquisitions Mgmt, LLC
33. JMJ Aviation, LLC (Texas)
34.JMJ BLUES TX, LLC
35. JMJ Blues, LLC
36. JMJ Centre, LLC
37. JMJ Development Brasil, LTDA
38. JMJ Development Fund
39. JMJ Development Fund, Inc.
40. JMJ EB5 Fund GP, LLC (Delaware)
41. JMJ EB5 Fund, LP (Delaware)
42. JMJ Holdings, LLC
43. JMJ Holdings US, LLC

44. JMJ Holdings USA, Inc.
45. JMJ Home Building Inc. (Nevada)
46. JMJ Hospitality General Trading FZE
47. JMJ Hospitality UAE
48. JMJ Investments Limited
49. JMJ Land Acquisition, Inc (Nevada)
50. JMJ Land Development, Inc (Nevada)
51. JMJ Land Venture, LLC
52. JMJ Mezzanine, Inc (Nevada)
53. JMJ MF Development, LLC
54. JMJ Multifamily, Inc (Nevada)
55. JMJ Offshore, LTD
56. JMJ Regional Center, LLC (Delaware)
57. JMJ Valley Center, LLC
58. JMJ148, LLC (Texas)
59. JMJD4Allensville, LLC
60. JMJDWG, LLC (Texas)
61. JMJKH, 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. Northstar 114, LLC (Delaware)
72. Northstar PM, LLC (Delaware)
73. One Agent Texas, LLC (Texas)
74. One Agent, LLC (Delaware)
75. ONE FHC, LLC (Texas)

76. Residential MF Assets, LLC (Delaware)
77. Rhino Stainless US, LLC
78. Riverwalk Invesco, LLC (Delaware)
79. Riverwalk Opportunity Management, LLC (Delaware)
80. Riverwalk OZFM, LLC (Delaware)
81. Riverwalk OZFV, LLC (Delaware)
82. Riverwalk QOZBJ, LLC (Delaware)
83. Riverwalk QOZBM, LLC (Delaware)
84. Riverwalk QOZBV, LLC (Delaware)
85. SK Carnegie, LLC
86. STL Park, LLC (Delaware)
87. Tarm Carnegie Management, LLC (Delaware)
88. Tarm Carnegie, LLC (Texas)
89. The Towers Condominium Partners Ltd.
90. VenusBK195, LLC (Texas)
91. VenusPark201, LLC (Delaware)
92. 2999TC Acquisitions MZ, LLC fka MO 2999TC MZ, LLC
93. Broadview Holdings Trust
94. D4AVEG, LLC
95. D4OPM, LLC
96. Dallas Real Estate Investors, LLC
97. Dallas Real Estate Lenders, LLC (Delaware)
98. Five Star MM, LLC (Delaware)
99. Five Star MM, LLC (Texas)
100. Five Star TC, LLC (Delaware)
101. JMJ Residential, LLC
102. JMJD4, LLC
103. MF Container, LLC (Delaware)
104. Middlebury Trust
105. MXBA, LLC

106. One MF Residential, LLC
107. One MFD4, LLC
108. One Pass Investments, LLC (Delaware)
109. One RL Trust
110. One SF Residential, LLC
111. The MXBA Trust
112. The Timothy L. Barton Irrevocable Life Insurance
113. TLB 2012 IRR Trust
114. TLB 2018 Trust
115. TLB 2019 Trust
116. TLB 2020 Trust
117. TRTX Properties, LLC
118. TRWF LODGE, LLC
119. TRWF, LLC

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 an ex parte sworn accounting, under seal and under oath, within ten (10) days of the issuance of this Order. The accounting shall be made available only to the Receiver. 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 must be sufficiently detailed 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.

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,

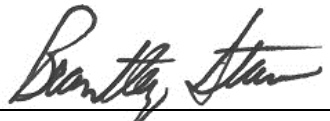
computer passwords, device PINs and passwords, cryptographic keys, or digital wallets, pertaining in any manner to Barton or any entity he directly or indirectly controls or controlled any point during the period from January 1, 2017 to the present.

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 29th day of November, 2023.



BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

United States Court of Appeals
Fifth Circuit
FILED
August 31, 2023

Lyle W. Cayce
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22-11132

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff–Appellee,

versus

TIMOTHY BARTON,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 3:22-CV-2118, 3:22-CV-2118

ON PETITION FOR REHEARING

Before CLEMENT, GRAVES, and HIGGINSON, *Circuit Judges*.

JAMES E. GRAVES, JR., *Circuit Judge*:

The petition for panel rehearing is DENIED. We withdraw our previous opinion, reported at 72 F.4th 64, and substitute the following.

The Securities and Exchange Commission ("SEC") sued Defendant Timothy Barton as well as other individual Defendants and corporate entities for securities violations. Barton appeals the district court's order appointing a receiver over all corporations and entities controlled by him. For the following reasons, we VACATE the order appointing the receiver effective 90 days after the issuance of this court's mandate and REMAND for further proceedings. We also GRANT in part Barton's motion for a partial stay pending appeal.

I. BACKGROUND

a. Factual Background

The SEC alleges the following facts in its complaint. Beginning around 2015, Defendant Haoqiang Fu, a Chinese national, began brokering homes for Defendant Stephen Wall, a Texas-based home builder. After deciding to expand into real estate development projects, they partnered with Barton, a Texas-based real estate developer. Their plan was to offer and sell investment loans to Chinese investors. To effectuate this plan, Barton formed single-purpose entities (the "Wall Entities") to receive and control investor funds, purchase specific parcels of land, and later develop the land into residential housing. After Wall identified the land for projects, Fu marketed the investments to Chinese investors. For each investment contract, the Wall Entity would borrow a fixed amount from investors and use it in conjunction with other investors' funds and money in hand to acquire a specific parcel of

land at a specified price. In return, the investors were promised repayment of the principal after two years and interest payments after the first and second year. Between 2017 and 2019, the Wall Entities raised approximately $26.3 million dollars from over 100 investors. However, only two of the nine Wall entities purchased the property described in their respective investment contracts for a total of $2.6 million. Even these purchases were not made using the investor funds earmarked for those properties—instead, the purchases were made using commingled funds from other offerings. In addition, two other entities controlled by Barton (the Relief Defendants) purchased the properties that two Wall entities were supposed to purchase. In all, approximately $23.7 million of the investors' funds were commingled and misused to: 1) pay Barton's personal expenses, 2) pay Fu commissions and fees, 3) make Ponzi payments to the earlier investors, 4) make political contributions, 5) acquire unrelated properties, 6) pay professional fees for unrelated properties, and 7) make payments to Wall.

b. Procedural Background

On September 23, 2022, the SEC sued Barton, Wall, Fu, the Wall Entities, Carnegie Development (the managing member of the Wall entities), and the Relief Defendants for securities violations. The SEC sought a permanent injunction, disgorgement of ill-gotten gains, and civil penalties.

Soon after filing its complaint, the SEC moved to appoint a receiver over the Wall Entities, Carnegie Development, the Relief Defendants, and any other entities that Barton directly or indirectly controls. It supported its motion with a declaration from an SEC Staff Accountant who

was involved in the investigation. The declaration details the transfer, commingling, and misuse of the investors' funds. In its motion, the SEC argued that the district court may appoint a receiver on a prima facie showing of fraud and mismanagement based on this court's decision in *SEC v. First Financial Group of Texas*, 645 F.2d 429, 438 (5th Cir. 1981) ("*First Financial*"). Barton opposed the motion, arguing that the district court must instead find that a receivership is appropriate under the factors in *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 (5th Cir. 2012).

On October 18, 2022, the district court granted the SEC's motion and appointed a receiver over assets belonging to the Defendant entities, the Relief Defendants, and any other entities directly or indirectly controlled by Barton. It made the following findings in its order:

> 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
>
> . . .
>
> 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, penalizing past unlawful conduct and deterring future wrongdoing, 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).

The order gave the receiver numerous powers, including the power to determine the nature of the property interests, take possession of any property belonging to receivership entities, and take any actions necessary to preserve receivership property or prevent its dissipation, concealment, or inequitable distribution.

Barton moved to strike the clause allowing the receiver to take possession of assets belonging to "any other entities that Defendant Timothy Barton directly or indirectly controls." The district court denied his motion. On November 1, 2022, the receiver moved for the district court to supplement its receivership order to include over a hundred newly discovered Barton-controlled entities by name. The district court supplemented its order *nunc pro tunc* to expressly identify 126 newly discovered receivership entities. The receiver then moved for the court to set procedures for the disposition of personal property in the custody of receivership entities. The district court granted the motion and adopted the procedures proposed by the receiver. Barton timely appealed the order appointing the receiver and both follow-up orders. On November 28, 2022, he moved in the district court for a stay pending appeal of the receivership order. While that motion was still pending, he also asked this court for a stay pending appeal. A motions panel of this court denied his request on January 6, 2023, and the district court denied his request on January 17, 2023.

II. JURISDICTION & STANDARD OF REVIEW

We have jurisdiction over interlocutory appeals from "orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property." 28 U.S.C. § 1292(a)(2). We review a district court's decision to appoint a receiver for abuse of discretion. *Netsphere*, 703 F.3d at 305.

III. DISCUSSION

a. The Applicable Test

A central dispute between the parties is what test the district court should have applied before imposing a receivership. Barton argues the district court abused its discretion because it did not apply the standard or make the proper findings under the factors set forth in *Netsphere* ("*Netsphere* factors"). The SEC responds that *Netsphere* is inapplicable and the district court's findings were sufficient under *First Financial*.

In *First Financial*, the SEC sued a securities dealer and its officers for securities violations. 645 F.2d at 431. The district court granted the SEC's motion for a preliminary injunction and enjoined each individual defendant "from offering, purchasing, or selling packages of the specified securities in violation of the federal securities laws, and from disposing of assets and records of First Financial." *Id.* at 432. It also enjoined the defendants from disposing of more than $1,500 in personal assets per week. *Id.* Twelve days later, it granted the SEC's motion for a temporary receiver over the defendant entity, First Financial. *Id.* The order directed the receiver "to take exclusive control of the corporate assets in order to prevent

injury to First Financial investors and to prevent further violations of the federal securities laws." *Id.* at 437-38. Reviewing the injunction order, this court first explained that under the relevant securities laws, preliminary injunctive relief is appropriate upon a showing of "a reasonable likelihood that the defendant is engaged or about to engage in practices that violate the federal securities laws." *Id.* at 434. It concluded that the district court did not abuse its discretion in entering a preliminary injunction. *Id.* at 436. Turning to the district court's appointment of a receiver, it cited a Seventh Circuit case for the following proposition:

> The prima facie showing of fraud and mismanagement, absent insolvency, is enough to call into play the equitable powers of the court. It is hardly conceivable that the trial court should have permitted those who were enjoined from fraudulent misconduct to continue in control of (the corporate defendant's) affairs for the benefit of those shown to have been defrauded. In such cases the appointment of a trustee-receiver becomes a necessary implementation of injunctive relief.

Id. at 438 (quoting *SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir. 1963)). To protect the public welfare and the interests of those who invested with First Financial, this court concluded that the "appointment of a receiver was a necessary relief measure within the discretion of the court, as an ancillary to preliminary injunctive relief during the continuing civil enforcement proceeding." *Id.* at 439.

The SEC relied upon *First Financial* in both its briefing before the district court and this court, but there is a crucial distinction between that case and the receivership order here. There, the SEC already obtained injunctive relief, so the receivership was "proper as an adjunct to injunctive relief for a securities fraud." *Netsphere*, 703 F.3d at 306 (citing *Keller*, 323 F.2d at 402); *see also Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985) ("Courts possess the inherent authority to enforce their own injunctive decrees.") (citation omitted). Here, the SEC did not obtain a preliminary injunction before seeking a receivership, so *First Financial* is inapposite.

That brings us back to *Netsphere*. In that case, a defendant was involved in disputes over the ownership of domain names. *Netsphere*, 703 F.3d at 302. After settling those domain name disputes in related bankruptcy proceedings, the bankruptcy court recommended the appointment of a special master to mediate unpaid legal fees since the defendant kept hiring and firing lawyers without paying them. *Id.* at 303. The district court appointed a special master, but the defendant went on to fire another attorney. *Id.* at 304. The bankruptcy trustee then filed an emergency motion to appoint a receiver, which the district court granted. *Id.*

Before discussing the propriety of the receivership, this court began by noting that a "[r]eceivership is 'an extraordinary remedy that should be employed with the utmost caution' and is justified only where there is a clear necessity to protect a party's interest in property, legal and less drastic equitable remedies are inadequate, and the benefits of receivership outweigh the burdens on the affected parties." *Id.* at 305 (citing 12 C. Wright & A.

Miller, Federal Practice and Procedure § 2983 (3d ed. 2012)). It 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." *Id.* at 306. Turning to the facts of the case at hand, it found that none of the purported justifications supported the imposition of a receivership. *Id.* at 307-11.

Since the SEC had not already obtained an injunction against Barton when the SEC moved for a receivership, *First Financial* does not control and instead, the *Netsphere* factors must be met for a receivership to be justified: 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. *See id.* at 305.

b. The Propriety of the Receivership

Having concluded that *Netsphere* applies, we consider whether the district court abused its discretion. In its order, the district court justified appointing a receiver by stating it "is necessary and appropriate for the purposes of marshaling and preserving all assets of the Receivership Entities" and would be "in the public interest by preserving illicit proceeds of fraudulent conduct, [and] penalizing past unlawful conduct and deterring future wrongdoing." Even assuming that these findings could satisfy the first *Netsphere* factor, the order does not address whether legal and less drastic equitable remedies are inadequate or whether the benefits of the receivership out-

weigh the burdens on the affected parties. *Netsphere*, 703 F.3d at 305.

For the latter two factors, the SEC asks us to consider the district court's reasoning in its order denying Barton's motion for a stay that was filed after this appeal was lodged. In its brief, it provided no authority for the proposition that we can look to a subsequent order denying a separate motion when reviewing an earlier order. However, at oral argument, SEC's counsel claimed we can do so under the exception for actions in aid of an appeal in *Silverthorne v. Laird*, 460 F.2d 1175, 1178 (5th Cir. 1972). "This circuit follows the general rule that the filing of a valid notice of appeal from a final order of the district court divests that court of jurisdiction to act on the matters involved in the appeal, except to aid the appeal, correct clerical errors, or enforce its judgment so long as the judgment has not been stayed or superseded." *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897, 928 (5th Cir. 1983). In *Silverthorne*, the district court denied habeas relief, and the petitioner appealed. 460 F.2d at 1178. During the pendency of the appeal, the district court issued a written opinion "in which he thoroughly discussed the rationale in support of his earlier order denying habeas corpus relief." *Id.* This court found that the written opinion's amplified views aided the appeal, so it fell under that exception. *Id.* at 1178–79. Unlike *Silverthorne*, the order the SEC asks us to consider is not a fuller explanation of the earlier order granting a receivership—it is a denial of a separate motion. Further, as Barton points out, the district court's order denying the stay discussed events and actions that took place *after* the receivership was already in place. "'Meaningful appellate review of the

exercise of discretion requires consideration of the basis on which the trial court acted.'" *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310 n.4 (5th Cir. 2008) (en banc) (quoting *Gurmankin v. Costanzo*, 626 F.2d 1115, 1119–20 (3d Cir. 1980)). The reasoning in the subsequent order goes beyond the basis on which the district court originally acted, and *Silverthorne* does not give us license to consider it.

Constraining our review to the district court's limited reasoning in its original order, we cannot say whether it abused its discretion. *See Gonzalez v. Assocs. Health & Welfare Plan*, 55 F. App'x 717 (5th Cir. 2002) ("Although we cannot say the court abused its discretion by denying prejudgment interest, the district court's failure to explain its reasoning frustrates meaningful appellate review."). Accordingly, we will vacate the appointment of the receiver and remand so that the district court may consider whether to appoint a new receivership under the *Netsphere* factors. When faced with a similar situation, the Third Circuit opted to delay vacatur of the receivership instead of vacating it immediately. *See KeyBank Nat'l Ass'n v. Fleetway Leasing Co.*, 781 F. App'x 119, 123 (3d Cir. 2019). We find the Third Circuit's approach prudent here given the breadth of the receivership and the possibility that a new receivership would cover some of the same entities. Thus, we will vacate the current receivership order effective 90 days from the issuance of this court's mandate.

c. The Receivership's Jurisdiction

Barton next argues that the district court erred by placing multiple entities he controls in the receivership without any showing that they received or benefitted from

ill-gotten investor funds. The SEC responds that the district court acted within its discretion by including all Barton-controlled entities in the receivership. Because it alleges that Barton has engaged in extensive commingling of funds, it claims that Barton's control is an effective proxy for placing an entity in the receivership even if it had not yet traced the funds to that entity.

In *Netsphere*, this court rejected the district court's determination that a receivership was necessary for the defendant to pay his debts to former attorneys because "the jurisdictional principle that a court's equitable powers do not extend to property unrelated to the underlying litigation applies with equal force to receiverships. A court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy." 703 F.3d at 310. In support, it cited *Cochrane v. W.F. Potts Son & Co.* where this court held that a receivership was proper only over the series of bonds subject to litigation, not the other series of bonds that were not subject to the complaint and over which the bondholder did not claim an interest. *Id.* (citing *Cochrane v. W.F. Potts Son & Co.*, 47 F.2d 1026, 1027–29 (5th Cir. 1931)). Accordingly, *Netsphere* held that the district court could not impose a receivership over the plaintiff's personal property or assets owned by certain entities because those assets were not sought in or the subject of the underlying litigation. *Id.*

The SEC relies on *FDIC v. Faulkner* to support the district court's inclusion of all Barton-controlled entities in the receivership regardless of whether they received or benefitted from ill-gotten funds. 991 F.2d 262, 267–68 (5th Cir. 1993). In *Faulkner*, the defendants allegedly engaged

in fraudulent real estate speculation schemes. *Id.* at 264. The FDIC sought a preliminary injunction against the defendants to limit their ability to transfer assets, and the district court granted it. *Id.* On appeal, the defendants argued that the injunction was too broad since it froze assets that were not obtained through alleged fraudulent activities. *Id.* at 267. Since the defendants refused to aid the district court in determining which of the assets were traceable to the alleged fraud, this court held that the district court "did not err in freezing all of the [defendant's] assets, pending a determination through limited discovery of which assets are traceable to [defendant's] alleged fraudulent activities." *Id.* at 268.

Faulkner does not support the district court's actions here. Under *Faulkner*, the SEC could have sought an injunction freezing asset transfers while it traced the funds and determined which entities should be placed in the receivership. But it did not. Since a receivership's jurisdiction extends only over property subject to the underlying claims, the district court abused its discretion by including all Barton-controlled entities in the receivership without first finding that they had received or benefited from the ill-gotten funds. *Netsphere*, 703 F.3d at 310. Should the district court decide that a new receivership is justified on remand, it can only extend over entities that received or benefitted from assets traceable to Barton's alleged fraudulent activities that are the subject of this litigation.

d. Stay Pending Appeal

After oral argument, Barton moved for a partial stay of certain receivership activities pending appeal. He asked this court to: 1) order the receiver to retain possession of all corporations and corporate property pending a

final decision on the merits, 2) suspend the receiver's power to sell or dispose of assets belonging to receivership entities until 60 days after a final opinion on the merits from this court, and 3) stay the receiver's ability to undertake receivership activities that go beyond caring for the seized assets pending a final decision on the merits. Barton also sought emergency relief from the transfer of one of the receivership entity's possessory interests in a particular property. We denied his emergency request as moot but carried the remainder of his motion with the case.

At the outset, the SEC challenges whether Barton's motion complies with Federal Rule of Appellate Procedure 8. Under Rule 8, stay motions ordinarily must first be presented to the district court "unless it clearly appears that further arguments in support of the stay would be pointless in the district court." *Ruiz v. Estelle*, 650 F.2d 555, 567 (5th Cir. 1981). The district court denied Barton's initial motion for a stay pending appeal. When Barton sought to preliminarily enjoin the receiver's auction of contents of a particular receivership property, the district court denied his request explaining that "[Barton's motion] requests the same relief, and on the same grounds, that the Court has already denied multiple times, and the Fifth Circuit has already denied once: a stay of the Receiver's activities pending appeal or final judgment." Given the clear indication that the district court would have denied this motion, we find that Barton's motion satisfies Rule 8 because moving first in the district court would have been pointless. *Id.*

Barton's first and third requests are now moot since we have reached a final decision on the merits. However,

his second request is not moot because it seeks relief that extends 60 days beyond the issuance of a final decision. For his second request, we consider four factors in deciding whether to grant a stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal quotation marks and citation omitted). In light of our vacatur of the receivership order, we conclude that Barton has made the proper showing under the factors and is entitled to a partial stay.

IV. CONCLUSION

For the foregoing reasons, we VACATE the district court's order appointing a receiver effective 90 days from the issuance of this court's mandate and REMAND for further proceedings consistent with this opinion. We also GRANT in part Barton's motion for a partial stay pending appeal: the receiver's power to sell or dispose of property belonging to receivership entities, including the power to complete sales or disposals of property already approved by the district court, is immediately suspended, and this suspension will remain in effect until the receivership order is vacated 90 days from the issuance of this court's mandate. This suspension does not apply to activities in furtherance of sales or dispositions of property that have already occurred or been approved by the district court. "Activities in furtherance" do not include the completion of the sale of any property. Should the district court enter a new receivership order before the present order is

vacated, this partial stay has no bearing on any actions a receiver may take under the new order.

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*.	§ §	CIVIL ACTION NO. 3:22-CV-2118-X

ORDER APPOINTING RECEIVER

WHEREAS this matter has come before this Court upon motion of Plaintiff Securities and Exchange

Commission ("SEC") to appoint a receiver in the above-captioned action; and,

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 this 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, penalizing past unlawful conduct and deterring future wrongdoing, 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. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, including all tangible and intangible property, of Wall007, LLC, Wall009, LLC, Wall010, LLC, Wall011, LLC, Wall012, LLC, Wall016, LLC, Wall017, LLC, Wall018, LLC, Wall019, LLC, Carnegie Development, LLC, DJD Land Partners, LLC, LDG001, LLC, and any other entities that Defendant Timothy Barton directly or indirectly controls, including, but not limited to, the following Barton-controlled entities that received investor

funds, real property interests purchased with investor funds, or own property interests that were improved with or otherwise have benefited from the use of investor funds: BM318 LLC; D4DS LLC; D4FR LLC; D4KL LLC; Enoch Investments LLC; FHC Acquisition LLC; Goldmark Hospitality LLC; JMJ Acquisitions LLC; JMJ Development LLC; JMJAV LLC; JMR100 LLC; Lajolla Construction Management LLC; Mansions Apartment Homes at Marine Creek LLC; MO 2999TC, LLC; Orchard Farms Village LLC; Villita Towers LLC; and 126 Villita LLC (collectively, "Receivership Entities"). The assets of these Receivership Entities are referenced below as "Receivership Assets."

2. Until further Order of this Court, Cortney C. Thomas 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

3. 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.

4. 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.

5. 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.

6. Subject to the specific provisions in Sections II through XII 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, concealment, or inequitable distribution of Receivership Property;

H. Enter into and cancel contracts and purchase insurance as the Receiver deems necessary or advisable;

G. 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, defend, compromise or otherwise dispose of all suits, actions, claims, and demands which may now be pending or which may be brought by or asserted against the Receivership Entities; and,

K. To take such other action as may be approved by this Court.

II. ACCESS TO INFORMATION

7. 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.

8. Within ten (10) days of the entry of this Order, the Receivership Entities shall 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.

9. Within twenty (20) days of the entry of this Order, the Receivership Entities 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 date and amount of their investments, and the current location of such funds;

F. Of all expenditures exceeding $1,000 made by any of them, including those made on their behalf by any person or entity; and

G. Of all transfers of assets made by any of them.

10. 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.

11. The individual Receivership Entities and the entity Receivership Entities' 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.

12. 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

13. 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.

14. 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.

15. 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

16. 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.

17. 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.

18. The Receivership Entities, all persons acting on behalf of any Receivership Defendant, and any person who receives actual or constructive notice of this Order who has or had possession or control over any Receivership Assets, is directed to:

A. Hold and retain any such Receivership Assets that are within his or her control and prohibit any person or entity from assigning, concealing, converting, disbursing, dissipating, encumbering, liquidating, loaning, pledging, selling, spending, transferring, or withdrawing any such Asset except:

1. As directed by further order of the Court; or

2. As directed in writing by the Receiver.

B. Within five (5) business days after being served a copy of this Order, provide the Receiver a sworn statement setting forth:

1. The account number and other identifying information for any such Receivership Asset belonging to, for the use or benefit of, under the control of, or subject to access by any Defendant or Receivership Defendant;

2. The balance of each such account, or a description of the nature and value of such Asset as of the close of business on the day on which this Order is received, and, if the account or other Asset has been closed or removed, or more than $5,000 withdrawn or transferred from it, on or after March 1, 2021, the date of the closure or removal of the funds, the total funds removed or transferred, and the name of the person or entity to whom such account or other Asset was remitted;

3. All keys, codes, and passwords, entry codes, combinations to locks, and information or devices required to open or gain access to any Asset or Document, including, but not limited to, access to the business premises, computer servers, networks, or databases, or telecommunications systems or devices;

4. The identification and location of any safe deposit box, commercial mailbox, or storage facility belonging to, for the use or benefit of, under the control of, or subject to access by any Defendant or Receivership Entity, and if the safe deposit box, storage facility, commercial mailbox, or storage facility has been closed or removed, the date closed or removed;

5. Within five (5) business days of a written request from the Receiver, provide the Receiver copies of all Documents relating to each Receivership Asset, including, but not limited to account applications, statements, corporate resolutions, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and

credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

19. 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.

20. 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.

21. 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. REPATRIATION OF ASSETS AND DOCUMENTS

22. Immediately upon service of this Order, any person or entity with possession or control over any Receivership Assets shall:

A. Take such steps as are necessary to transfer to the United States all Documents and Assets that are located outside the United States and belong to, are for the use or benefit of, under the control of, or

subject to access by any Defendant or Receivership Entity; and

B. Hold and retain all repatriated Assets and prevent the disposition, transfer, or dissipation of such Assets except as required by this Order.

23. Receivership Entities, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are preliminarily restrained and enjoined from taking any action that may result in the encumbrance or dissipation of foreign Assets, or in the hindrance of the repatriation required by this Order, including:

A. Sending any statement, letter, fax, email or wire transmission, telephoning, or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time as all Assets have been fully repatriated according to Section VIII of this Order; or

B. Notifying any trustee, protector, or other agent of any Defendant or Receivership Entity of the existence of this Order, or of the fact that repatriation is required under a court Order, until such time as all Assets have been fully repatriated according to Section VIII of this Order.

VI. NOTICE TO THIRD PARTIES

24. Defendants and the Receivership Entities shall immediately provide a copy of this Order to each affiliate, sales entity, successor, assign, member, officer, director, employee, agent, independent contractor, client, servant,

attorney, subsidiary, division, and representative of any Defendant or Receivership Defendant. Within ten (10) business days following service of this Order, Defendants and Receivership Entities shall serve on the Receiver a declaration identifying the name, title, address, telephone number, date of service, and manner of service of each person Defendants or Receivership Entities served with a copy of this Order in compliance with this provision.

25. Copies of this Order may be served by the Receiver by any means, including U.S. first class mail, overnight delivery, facsimile, electronic mail, or personally by agents or employees of the Receiver, by any law enforcement agency, or by process server, upon any person, including financial institutions, that may have possession, custody, or control over any Asset or Document belonging to, for the use or benefit of, under the control of, or subject to access by any Receivership Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall constitute service upon the entire financial institution.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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, rent-

ed, 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.

31. 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.

VII. INJUNCTION AGAINST INTERFERENCE WITH RECEIVER

32. 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;

D. Create, operate, or exercise any control over any new business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Receiver with a written statement disclosing: (1) the name of the business entity; (2) the address, telephone number, e-mail address, and website address of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities; or,

E. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

VIII. COOPERATION WITH THE RECEIVER

33. Defendants and Receivership Entities, and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, whether acting directly or indirectly and all persons

who receive actual notice of this Order, shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the Assets and Documents of the Receivership Entities. This cooperation and assistance shall include, but is not limited to:

A. Providing information to the Receiver as directed above or that the Receiver deems necessary to exercise the authority and discharge the responsibilities delegated to the Receiver under this Order;

B. Advising all persons who owe money to the Receivership Entities that all debts should be paid directly to the Receiver; and

C. Transferring funds at the Receiver's direction and producing Documents related to the Assets and sales of the Receivership Entities. The entities obligated to cooperate with the Receiver under this provision include financial institutions and persons that have transacted business with the Receivership Entities. 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.

IX. STAY OF LITIGATION

34. 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, de-

fault 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").

35. 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.

36. 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 limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

X. MANAGING ASSETS

37. 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").

38. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of Barton Companies" together with the name of the action.

39. 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.

40. Subject to Paragraph 42 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.

41. 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.

42. 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 ven-

dors, investors, governmental and regulatory authorities, and others, as appropriate.

43. 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.

XI. INVESTIGATE AND PROSECUTE CLAIMS

44. The Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in 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.

45. 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.

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

47. 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.

XII. BANKRUPTCY FILING

48. 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.

49. Within thirty (30) days of the entry of this Order, the Receiver shall report to this Court as to whether the Bankruptcy Cases should continue in Chapter 11, or be converted to Chapter 7, dismissed or suspended during the course of the receivership. The Receiver shall file the appropriate pleadings with the Court and the Bankruptcy Court effectuating this Order.

50. 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 in bankruptcy proceedings, 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 entity Receivership Entities and may therefore file and manage a Chapter 11 petition.

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

XIII. LIABILITY OF RECEIVER

52. 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.

53. The Receiver and his agents, acting within scope of such agency ("Retained Personnel"), are entitled to rely on all 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.

54. 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.

55. In the event 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.

XIV. RECOMMENDATIONS AND REPORTS

56. 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").

57. 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.

58. Within thirty (30) days after the end of each subsequent calendar quarter following the date on which the Receiver files his Liquidation Plan, 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.

59. 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.

60. 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.

XV. FEES, EXPENSES, AND ACCOUNTINGS

61. 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.

62. 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.

63. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates. Such compensation shall require the prior approval of the Court.

64. 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.

65. 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 de-

tail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

66. 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.

67. Each Quarterly Fee Application shall:

A. Contain representations that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) unless previously disclosed to and approved by the Court, 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.

68. 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 18th day of October, 2022.

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE