CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, LLC	**§**	**IN THE DISTRICT**
COURT OF	**§**	
and SECURE COMMUNITY, LLC,	**§**	
	§	
Plaintiff/Judgment-Creditor	**§**	
	§	
v.	**§**	**HARRIS COUNTY,**
TEXAS		
	§	
CYBERLUX CORPORATION and	**§**	
MARK D. SCHMIDT, Individually,	**§**	
	§	
Defendant/Judgment Debtors.	**§**	**129TH JUDICIAL DISTRICT**

CYBERLUX CORPORATION AND MARK D. SCHMIDT'S OBJECTIONS TO RECEIVER'S REPORT AND ORDER TO DISTRIBUTE FUNDS

COME NOW, Cyberlux Corporation and Mark D. Schmidt ("Cyberlux"), and file their Objections Berleth's Report and Order to Distribute Funds. In support thereof, Cyberlux respectfully shows:

1. **Berleth Confirmed Receipt of the Wire Payment.**

On June 11, 2025, Receiver Robert Berleth confirmed receipt of funds in the amount of $3,083,639.75.[1]

2. **Berleth Now Holds Funds in Excess of the Judgment Balance.**

The payment of $3,083,639.75 is an overpayment because no credits or offsets have been applied. Cyberlux has made numerous payments on the parties' underlying settlement agreement. Even Atlantic Wave, in its May 15, 2025 letter correspondence to the Court, acknowledged that credits and offsets should be applied. Despite being informed about his

[1] Exhibit A.

error, Berleth continues to intentionally use the total overstated amount in the Turnover Order to try and recover a windfall.[2]

Cyberlux has made hundreds of thousands of payments on the judgment. Indeed, Judgment Creditors acknowledged this in Mr. Walton's letter dated May 15, 2025 letter correspondence to the Court, in which he stated:

"The outstanding balance due and owed under the *Amended Final Order and Judgment* is, at minimum, $912,000, after accounting for any prior payments, credits, or offsets."[3]

Mr. Walton is wrong. Cyberlux's payments under the judgment to date have reduced the total payoff to $747,027.73.[4] Judgment Creditors bear the burden to prove this is the incorrect amount due, and they have provided no such documentation to refute that amount. *See Cadle Co. v. Int'l Bank of Commerce*, No. 04-06-00456-CV, 2007 WL 752260, at *2 (Tex. App.—San Antonio Mar. 14, 2007, pet. denied). Credits and offsets must be applied to determine the amount of the sister-state judgment that is actually due and owing and before Berleth's fee is determined. Any amounts received by Berleth in excess of the actual amount due and owing must be returned to Legalist, who advanced the now-acknowledged payment to Berleth.

[2] Berleth's position is that the Turnover Order permits him to recover a 33% fee if he recovers the total judgment. Berleth cannot collect the total judgment because of the significant payments Cyberlux made on the judgment before Berleth's appointment.

[3] Exhibit B.

[4] Declaration of Schmidt with Payoff Ledger, attached as Exhibit C and C-1.

3. Berleth's Report is Deficient and the Court May Not Approve Berleth's Fee Without Documentation.

a. Berleth's Report Contains No Documentation.

Berleth's "final report" is nothing of the kind. It is simply a list of amounts without any evidence to support those amounts. There is no calculation or support with respect to the amount due and owing on the sister-state judgment, no support for the various amounts of expenses he supposedly incurred, and no evidence at all with respect to time entries for work he allegedly did over the course of a period of less than three weeks. This latter aspect is concerning because Berleth spent much more time focusing on his marketing efforts to create new work beyond the sole subject of this case, Plaintiffs' sister-state judgment, in which he marketed himself as the individual who should, alone, be in charge of coordinating the collection of all potential claims against Cyberlux. The latter deficiency makes his fee request meritless.

"There must be some evidence in the record to establish the reasonableness of the fee at the time a fee is awarded." *Moyer v. Moyer*, 183 S.W.3d 48, 57 (Tex. App.—Austin 2005, no pet.); *Congleton v. Shoemaker*, Nos. 09-11-00453-CV, 09-11-00654-CV, 2012 WL 1249406, at *5 (Tex. App.—Beaumont Apr. 12, 2012, pet. denied) (mem. op.).

A receiver cannot simply make a request for fees to obtain approval. *Klinek v. LuxeYard, Inc.*, 672 S.W.3d 830, 842 (Tex. App.—Houston [14th Dist.] 2023, no pet.) ("LuxeYard presented no other evidence on the relevant factors . . . the record contains no evidence establishing what percentage or amount constitutes a fair, reasonable, or necessary receiver's fee, such as the complexity and difficulty of the work the receiver performed, the time spent, the diligence or thoroughness displayed, or the results accomplished.").

Here, Berleth submitted nothing more than an amount for his fee and expenses. He provided no documentation to support his work. Without documentation supporting his work, including but not limited to hours spent, a description of the complexity and necessity of the work, Berleth cannot be awarded the fee he demands. The "wish list" of Berleth should be rejected out of hand, and it goes without saying this is also true for the ~$83k in accrued expenses that Berleth claims mounted in ***less than three weeks***.

Like with his own fees, Berleth must provide documentation to support the claims for post-judgment attorneys' fees for the Bell Nunnally firm and the Vargo Law Firm. Berleth has not submitted invoices supporting the reasonableness and necessity of these fees. They cannot be awarded without those firms (or Berleth) providing documentation to support the requests, and, even if the Court were to give Berleth a second chance, Cyberlux must have the opportunity to object.[5] In any event, the Court ***cannot*** award fees of the Caudle Law Firm, which Berleth states are from CL22-3882-4, without taking into account the necessary credits and offsets described herein.

b. Even with Documentation, Berleth Cannot Recover Compensation or Expenses for Work Performed that is Unrelated to Collecting This Judgment.

Berleth conceded at the June 9, 2025 hearing that much of his time spent was corralling third parties and creditors that are not parties to this judgment domestication action. As such, all of these acts by Berleth are outside the scope of his appointment under Texas Civil Practice & Remedies Code § 31.002(b)(3).[6] Berleth was ***not*** appointed under

[5] Cyberlux does not dispute that the Bell Nunnally firm is owed $21,677.50, representing an attorneys' fees award rendered by the Southern District of Texas.

[6] Turnover Order, at ¶ 8 ("A Receiver is necessary in this case pursuant to the Texas Turnover Statute . . .).

the General Receivership Statute,[7] as a bankruptcy trustee, or to act as a rehabilitative receiver. Thus, Berleth's authority under 31.002 is limited to ***satisfying a judgment*** for judgment creditor(s), and ***only*** the judgment creditor(s) that are parties to the action.[8] That said, Berleth cannot recover ***any*** of the fees or expenses that represent efforts Berleth undertook to join other creditors or perform work for parties that are not judgment debtors. In fact, Berleth cannot even recover amounts representing time spent on Atlantic Wave's ***pending*** claims for damages.[9] Allowing Berleth to recover any of these fees would be akin to allowing a law firm to charge one client for doing work for a different client.

4. The Outstanding Total Payoff Amount is $747,027.73.

The Judgment arises from a June 2023 settlement agreement between the parties. Since that settlement agreement was executed in 2023, Cyberlux has made extensive payments towards the settlement agreement and, therefore, towards this judgment. Cyberlux maintains a payment ledger that tracks payments made pursuant to the settlement agreement.[10] As of June 11, 2025, the total outstanding balance due on the judgment, after credits and offsets, is $747,027.73. The Judgment Creditors—not Cyberlux—bear the burden to show that a different amount, rather than $747,027.73, is outstanding on the judgment.

[7] Texas Civil Practice and Remedies Code section 64.001(a)(2).

[8] A trial court's authority to appoint a receiver is limited to appointing a receiver "with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor **to the extent required to satisfy the judgment.**" TEX. CIV. PRAC. & REM. CODE. § 31.002(b)(3).

[9] Some of these claims are already the subject of pending litigation in Virginia.

[10] Exhibit C.

Judgment Creditors have made representations to courts across the country about the balance due. As discussed herein, Mr. Walton's May 15, 2025 letter states that "at minimum, $912,000, after accounting for any prior payments, credits, or offsets."[11] On September 3, 2024, Atlantic Wave's Managing Director, Will Welter, submitted a declaration to the Southern District of California, that the "Grand Total Owed" by Cyberlux to Judgment Creditors was $977,882.31.[12] Indeed, Mr. Welter's declaration states:

> 31. As of August 2024, the outstanding amounts due under the Settlement Agreement are as follows:
>
> - Atlantic Wave Holdings, LLC and Secure Community, LLC (AWH/SC): Principal: $430,295.59, Interest Due: $95,000.62, Total Owed: $525,296.21
> - StrikePoint, LLC: Principal: $372,669.40, Interest Due: $79,916.69, Total Owed: $452,586.09
> - Grand Total Owed: $977,882.31

Exhibit D.

5. Berleth Previously Agreed to Reduce His Fee.

Curiously, Berleth demands over $800k for less than three weeks of being appointed. He has conducted little to no work related to collecting ***this judgment***. Because the time and effort spent on his creditor round-up crusades fall outside the scope of his appointment under section 31.002, he cannot recover those fees.

[11] Exhibit B.

[12] Declaration of W. Welter, at 6:

Atlantic Wave Holdings, LLC and Secure Community, LLC (AWH/SC):

- Principal: $430,295.59, Interest Due: $95,000.62, Total Owed: $525,296.21

StrikePoint, LLC:

- Principal: $372,669.40, Interest Due: $79,916.69, Total Owed: $452,586.09

Grand Total Owed: $977,882.31.

Notably, when vying to get appointed in this matter, Berleth indicated he would reduce his fee if little work was required. He stated, in open Court:

> *My fee is assigned by the Court. If I can solve it very quickly -- I had a case just a few weeks ago where I literally sent two letters; and the fee pro-posed at 25 percent would have been, like, $350,000. And I greatly, greatly reduced that. The court would have reduced it if I hadn't.*

January 16, 2025 Hearing Transcript, at p. 121.

Berleth has made no effort to reduce his fee even though he has not sold a single asset. Instead, he "supervised" (i.e., left a staff member to watch) the U.S. Government, HII, and Cyberlux conduct a final inspection and complete delivery on the Cyberlux subcontract. Since then, Berleth has gone on a crusade to round up third-party creditors while waiting for a cash payment from HII on Cyberlux's subcontract.

Further, the Turnover Order references, at most, 25% of what Berleth obtains, not the 33% he now unilaterally claims. Here, he did little, if anything, to recover on Plaintiffs' sister-state judgment. In fact, Berleth did not apparently levy upon any assets. Instead, Legalist, under no court levy, advanced funds to overpay the amount listed in the Turnover Order.

6. Berleth is Trying to Use a Newly Filed Lawsuit, Obviously Prompted by Berleth, to Start Over With a New Receivership Not Involving These Plaintiffs' Claims, Despite that the Court Already Rejected this Attempt.

On June 11, 2025 at approximately 8:30 a.m., former Cyberlux employees Neil Whiteley and Phillip Tucker filed suit against Cyberlux. Their Petition, styled as a Petition in Intervention, sought a Temporary Restraining Order. The Petition asserts, among other things, that Whiteley and Tucker should be able to recover their ***alleged*** damages from the receivership. At the June 11 hearing, counsel for Whiteley and Tucker suggested that

Cyberlux could not stay or dissolve this action because of Whiteley and Tucker's newly-filed claims. The Court rejected this argument.

When he confirmed receipt of the wire instruction, Berleth stated "there is a TRO at 2:00 to extend the receivership for other creditors."[13] Neither Berleth nor counsel for the party(ies) seeking the TRO (presumably, Whiteley and Tucker) gave notice of the supposed TRO to Cyberlux's counsel. It is obvious this is a coordinated effort to improperly keep the receivership open.

In his Report, Berleth seems to suggest that the TRO was granted. Berleth's Report states "the receiver is aware of a TRO/serial receivership in cause no. 2025-41073, styled *Tucker v. Cyberlux,* in the 129th District Court that will take effect upon the termination of this receivership." Cyberlux has not received a copy of this supposed *ex parte* TRO. Nevertheless, Berleth's Order, at paragraph 6, includes:

> *The Court takes judicial notice that the termination of this receivership will animate the next serial receivership, in cause no. 2025-41073, styled Tucker v. Cyberlux Corporation, in the 129th Judicial District Court of Harris County, Texas. Cyberlux will remain under receivership without interruption pending further orders in that case.*

Receiver's Proposed Order to Distribute Funds and Terminate Receivership, at ¶ 6.

This provision is untenable for several reasons and, as the Court already ruled, a newly filed petition and TRO application cannot override Cyberlux's ability to satisfy the judgment. Moreover, Berleth is attempting to convert a new lawsuit into a post-judgment proceeding without giving Cyberlux an opportunity to respond. Berleth cannot eviscerate notions of due process for his own personal gain (i.e., a "serial receivership" through which

[13] Exhibit A.

Berleth will seek more excessive fees). Again, as this Court already held, Berleth's limited role was to seek to satisfy an already-existing sister-state judgment. The sister-state judgment has been satisfied, so Berleth's role must be terminated.

7. Berleth's Current Conduct and Past Sanctions Illustrate that the Court Should Direct Berleth to Pay Funds to the Court's Registry for the Protection of the Parties and Counsel Involved.

Berleth's actions from the date of his appointment to present raise grave concerns about his integrity and ability to act as a court-appointed neutral. While this matter was pending, the Fifth Circuit held that Berleth had exceeded his authority as Court-appointed receiver. *Matter of Preferred Ready-Mix, L.L.C.,* No. 24-20158, 2024 WL 5252498, at *1 (5th Cir. Dec. 31, 2024). Berleth lost that appeal, which arose after the Southern District of Texas concluded that he had "effectively held the major assets of the debtor hostage." If Berleth is willing to withhold tools and dump trucks (which he apparently did in *Preferred Ready-Mix),* there should be grave concerns that he will withhold the cash paid to his trust account. The Court should direct Berleth to deposit the entire wire payment to the Court's registry for the benefit and protection of all interested.

CONCLUSION

Judgment Debtors have satisfied the entire judgment due to the overpayment made to Berleth. Berleth's Report is deficient and cannot form the basis of an award of the fees sought by Berleth. The judgment amount is incorrect and must be corrected. The Court should dissolve the Receivership and mark the judgment satisfied. Then, the Court should set forth deadlines by which the documentation must be provided, allowing Cyberlux time to review and object to the documentation. Any order of the Court should require Berleth

to notify all parties that the Receivership is dissolved. Cyberlux prays for all further relief to which it is entitled.

Respectfully submitted,

/s/ Alexander J. Pennetti
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Civil Procedure on June 11, 2025.

/s/ Alexander J. Pennetti
Alexander J. Pennetti

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Filing Description: Cyberluxs Objections to Receivers Motion to Terminate
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Associated Case Party: Robert Berleth

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