

CAUSE NO. 2025-41073

PHILLIP RICK TUCKER, a/k/a RICK § IN THE DISTRICT COURT
TUCKER, and NEILL WHITELEY, §
Individually, §
Plaintiffs, §
§
v. § 129TH JUDICIAL COURT
§
CYBERLUX CORPORATION and §
MARK D. SCHMIDT, individually, § IN AND FOR
Defendants. § HARRIS COUNTY, TEXAS

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER AND
APPOINTING RECEIVER**

On the date of entry below, this Court considered Plaintiff's Original Petition and Emergency TRO/Injunction to Extend Receivership, reviewed the documents on file, relevant statutory and case law, admissible evidence, all arguments of the parties and counsel, and finds the Plaintiff's may aid from this action.

Specifically, the Court recognizes there is a current receivership in cause no. 2024-48085, styled *Atlantic Wave Holdings, LLC, et. al. v. Cyberlux Corporation, et. al.* The Court was advised during the Temporary Restraining Order hearing that due to payment of the single Plaintiff, Atlantic Wave Holdings, LLC, the existing receivership will terminate. To prevent the pilfering of assets, allow the other Plaintiffs to bring their claims to this court, and specifically to ensure the Plaintiff's in this case are protected from Cyberlux absconding with corporate assets, the Court finds it necessary to maintain the existing receivership in series with a pre-judgment receivership in the above-styled cause.

The Court finds the relief granted herein is not adverse to the public or Cyberlux's interest and the harm the Plaintiff's and other Plaintiffs may suffer without equitable relief greatly outweighs any hardship that may result to Cyberlux. Without this Temporary Restraining Order, the Plaintiff has no adequate remedy at law for the relief requested. There is no prejudice to Cyberlux by having a Receiver in place.

The Clerk of this Court shall issue this Temporary Restraining Order immediately for service upon Defendant.

For this Temporary Restraining Order to issue, Plaintiffs shall be required to post a bond in the amount of \$100.

For this Temporary Restraining Order to issue, ~~Plaintiffs~~ ^{Receiver} shall be required to post a bond in the amount of \$1000.

This Temporary Restraining Order shall continue in full force and effect until 1:30 p.m. on the 19th day of June 2025, at which time the Court will consider Plaintiff's Application for a Temporary Injunction, enjoining Defendant and their respective agents, employees, representatives, and attorneys from the same conduct until final hearing in this cause.

The Court DEFINES that:

1) "Plaintiff(s)" or "Judgment Plaintiff" refers to PHILLIP RICK TUCKER and NEILL WHITELEY, and may be reached at the counsel of record:

Daniel Ardmore

2) “Defendant(s)” or “Judgment Defendant(s)”, collectively and individually refers to the following Defendants:

a. CYBERLUX CORPORATION (CORPORATION)

4625 Creekstone Dr
Durham, NC 27703-8478

800 Park Offices Dr Suite 3209
Research Triangle Park, NC 27709

b. MARK D. SCHMIDT (INDIVIDUAL)

1134 Fearington Post Apt 12
Pittsboro, NC 27312-5014
SSN: 246-31-0622
D.O.B. February 27, 1965

3) “Receiver” refers to: ROBERT W. BERLETH. Receiver¹ is the agent of this Court (not the attorney for any party), and is to be treated with the same courtesy accorded to the Court.

BERLETH & ASSOCIATES

Robert W. Berleth
Texas Bar # 24091860
SDOT #: 3062288
E-mail: rberleth@berlethlaw.com
Tristian Harris
Texas Bar # 24134449
E-mail: tharris@berlethlaw.com
9950 Cypresswood Dr. Suite 200
Tele: 713-588-6900

¹ *Davis v. Radoff*, 317 S.W.3d 301, (Tex.App-Hou 1st 2009), (citing *Ramirez v. Burnside & Risherbarger, L.L.C.*, No. 04-04-00160-CV, 2005 WL 1812595 (Tex. App.-San Antonio Aug. 3, 2005, no pet.) (mem. op.)) “Once an individual is cloaked with derived judicial immunity because of a particular function being performed for a court, every action taken with regard to that function-whether good or bad, honest or dishonest, well-intentioned or not-is immune from suit. Once applied to the function, the cloak of immunity covers all acts, both good and bad.”

The Court FINDS that:

4) Upon evidence admitted to this court, during the hearing for Temporary Restraining Order and Application for Appointment of Receiver the court finds the requirements for chapter 64 pre-judgment receiver has been met. The court takes judicial notice of the evidence and testimony presented during the TRO hearing.

5) Plaintiff have good faith reasons to believe that Defendant owns non-exempt rights to present or future property that cannot be readily attached or levied on by ordinary legal process as required by the standard set forth in *Tanner*². Such property includes, but is not limited to, real property, tangible and intangible assets, other property, professional corporations which have accounts receivable, bank accounts that are easily moved and constantly changing in balance, and community property held jointly. The appointment of a Receiver to locate, marshal, and administer assets is justified because the Court believes that non-exempt assets exist which Judgment Plaintiffs are justified in believing Defendant will hide.

6) A Receiver is necessary to preserve corporate assets, and that the Receivership is necessary not to harass, but to serve justice. A Receiver is necessary in this case pursuant to, TEX. PRAC. & REM. CODE § 64.001-107, with the power and authority to take possession of all leviable property of Defendants.

² *Tanner v. McCarthy*, 274 S.W.3d 311 (Tex. App.-Houston [1st Dist.] 2009, no pet.)

7) The unique power of a Receivership derives from the doctrine of *custodia legis*. Once a turnover order containing an appointment of a Receiver is signed, all of the judgment Defendant's nonexempt property becomes property in *custodia legis*, or "in the custody of the law".³ In other words, the judgment Defendant's property is considered to be in the constructive possession of the court. During the pendency of a Receivership, the Receiver has exclusive possession and custody of the judgment Defendant's property.⁴

8) Pursuant to this order, the Receiver will have a judicial lien on all non-exempt assets of Defendant and on all non-exempt community assets of Defendant, regardless of whether the Receiver takes actual possession. No one—not even a lien holder with a prior filed deed of trust—can sell property held in *custodia legis* by a duly appointed Receiver without first obtaining approval from the Court in which the Receivership is pending.⁵ Any unauthorized transfer of property in the custody of a Receiver is *not merely voidable, it is void*.⁶ Thus, any attempt by a judgment Defendant to transfer any of his nonexempt property after the turnover order has been signed is void, and any conveyance of property in the custody of a Receiver without approval by the court has no effect upon the Receivership and the accomplishment of its purposes.⁷

³ *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d339, 343 (Tex. 1976).

⁴ *First S. Props.*, at 343; *Ellis v. Vernon Ice Co. & Water Co.*, 86 Tex. 109, S.W. 858 (1893).

⁵ *First S. Props.*, at 341; *Huffmeyer v. Mann*, 49 S.W.3d 554,560 (Tex.Civ.App.-Corpus Christi, 2001).

⁶ *First S. Props.*, at 341.

⁷ *T.H. Neel v. WL. Fuller*, 557 S.W2d 73, 76 (Tex. 1977).

THEREFORE, the Court ORDERS the relief as set out below:

9) The Court assumes jurisdiction over and takes possession of Defendant's non-exempt property (collectively, the "Receivership assets"). Defendant is enjoined from selling non-exempt property, and must report to Receiver all sales and transfers of exempt property, within 5 days. The Receivership owns all non-exempt assets of all Defendants, regardless of whether Receiver takes actual possession. This includes accounts in financial institutions and banks.

10) Appointment. After considering the propriety of receivers whom the Court has appointed in other cases and the plaintiff's recommendations, the Court appoints Robert W. Berleth as Receiver over each Defendant's non-exempt assets, under TEX. CIV. PRAC. & REM. CODE § 64, to serve as Receiver after taking the oath of office.

~~11) No Bond. No bond is required of the Receiver. After taking the oath of office, the Receiver shall be authorized, subject to the control of this Court, to do any and all acts necessary to the proper and lawful conduct of said Receivership.~~

12) Immunity. Except for acts of intentional misconduct, Receiver and persons engaged or employed by him are not liable for loss or damage incurred by any person or entity by reason of any for any act performed or omitted to be performed by Receiver or those engaged or employed by Receiver for the discharge of their duties and responsibilities for the Receivership, including exercising control over Receivership assets.

13) Peace Officers Responsibilities to Receiver and the Court. Every constable, deputy constable, sheriff, deputy sheriff, and other peace officer may accompany Receiver to locations designated by Receiver where Receiver believes that a Defendant's assets or records may be located. The peace officers are ordered to prevent interference with Receiver's carrying out any duty under this order or interference with property in Receiver's control or subject to this order.

14) Third Parties Responsibilities to Receiver and the Court. Every person with actual notice of this order is ordered not to interfere with property in Receiver's control or subject to this order, and is ordered not to interfere with Receiver in the performance of Receiver's duties. Third parties are notified that Receiver, not Defendant, is the party entitled to possess, sell, liquidate, and otherwise deal with Defendant's non-exempt property and once any third party receives notice of this order, the third party may be subject to liability if the third party releases property, unless directed by Receiver or the Court.

a. All third parties who hold a Defendant's property or records are ordered to immediately notify Receiver and to deliver the property within ten working days of Receiver's demand.

b. All third parties knowing of this order are ordered to immediately notify Receiver if they discover the existence of a Defendant's property, or of facts that might lead to the discovery of property in which any Defendant has any interest.

- c. Anyone resisting Receiver's order or request, based on legal or other advice, is ordered to give the full name, address, fax number, e-mail address, cell phone number, and direct telephone number for each person giving that advice and to instruct those persons to immediately contact Receiver. Doing so waives no attorney-client communication privilege.

15) Fraudulent Transfer. This Court shall maintain exclusive jurisdiction over any fraudulent transfer litigations brought by the Receiver or Plaintiff. The Court shall further maintain exclusive jurisdiction over any litigation pertaining to the ownership interests disputed during the Receiver's actions against a relevant third party.

16) Defendant's Responsibilities to Receiver and the Court. Each Defendant is ordered, within the time periods set out in this order and the attached Exhibit A, to:

- a. Deliver to Receiver, at the address of the Receiver, the items described in Exhibit A, attached hereto as part of this Order, and all documents and records requested by Receiver, within ten days, then occasionally, in the time periods, manners, and formats requested;
- b. Turnover to Receiver all non-exempt funds to the extent required to satisfy the Judgment. No Defendant may spend non-exempt

funds, or sell, transfer, or encumber non-exempt assets without Receiver's prior written consent;

- c. Disclose to Receiver all assets of each Defendant, and directly nor indirectly interfere with or impede Receiver to perform his duties. Defendant must disclose all exempt and non-exempt assets so the exempt status of every asset can be determined. Defendant's disclosure must provide sufficient specificity to permit a constable to identify and levy on the assets;
- d. Supplement all disclosures, in writing, within five days of knowledge of information required to be disclosed, without being prompted;
- e. Organize and collate the disclosed information and documents in the formats and manners required by Receiver. The disclosures must be indexed and refer to the request to which it is responding. Responses like, "See response number so and so." are prohibited;
- f. Deliver to Receiver all passwords, user identification, login and other credentials used to access websites, owned, controlled, or managed by each Defendant and on-line accounts that allow the control of assets (e.g. financial accounts, webhosting accounts, and other accounts used to control assets).
- g. Defendant may not dispute a check that Receiver seizes and deposits, without first obtaining the Court's permission.

h. If Defendant believes that the Receiver's demands are inappropriate, the Defendant must first comply, then seek protection from the Court. Defendants seeking protection must set the matter for the earliest possible hearing date, after giving full notice to the Receiver and attempting to resolve the issues.

17) Conduct and Disposition of Entities. If Defendant is an individual, all legal right, title and ownership of any limited partnership interest, partnership interest, stock, or membership interest it has in any entity and business entity of that Defendant is divested from the individual and placed in *custodia legis* with the Receiver.⁸ If the Defendant is the sole owner of that entity or business, all management authority is vested in the Receiver as if Receiver were the Receiver over that entity. If the Respondent is a business entity, all authority and power of the Defendant in the management of the entity is vested in the Receiver and no decision may be made or carried out without the express approval of the Receiver.⁹ This order supersedes the authority of any officers, directors or managers of the business entity Defendant.

18) No Serial Receiverships. The first receivership order signed controls. The Court, as of the date of signing this order, has knowledge of the existing receivership, and this receivership shall not become active until the existing

⁸ *Chitex Communication v. Kramer*, 168 B.R. 587, 590 (S.D. Tex. 1994) “the president of an insolvent corporation had no authority to affect the corporation’s property interests once a state court had placed it into receivership”.

⁹ *Id.* “Texas law asserts that Receiver has the full rights that the corporation had.”

receivership terminates. The assets are in the control of the court for the first receivership. Thus, they are not available to the court ordering a later receivership. The Receiver may obtain permission from this and other courts to satisfy several judgments against the same Defendant.¹⁰ The Receiver may notice other subsequent receiverships or their controlling court of this receivership and may take legal actions necessary to quash subsequent receiverships.

19) Claims against Receiver: This Order enjoins CYBERLUX CORPORATION and MARK D. SCHMIDT, individually and each and all of their past, present, and future parents, subsidiaries, affiliates, owners, members, partners, directors, officers, employees, agents, attorneys, predecessors, successors, transferees, assigns, and other representatives from filing, maintaining, prosecuting, or appealing any litigation against the Receiver or his law firm outside of this Court.

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¹⁰ *Barrera v. State*, 130 S.W.3d. 253 (Tex.App.--Houston [14th Dist.] 2004, no pet.)

Powers GRANTED unto the Receiver by this Court:

20) Possession. The Receiver may take possession of Defendant's non-exempt property in Defendant's actual or constructive possession, custody, or control, including but not limited to the items described in Exhibit "A". The Receiver may secure control over all non-exempt property and engage in presale activities, including appraisals, evaluations, listing and advertising agreements. Receiver may transfer title into the receivership or place a hold on the title of personal and intangible property, including but not limited to:

- a. All patents, trademarks, service marks, copyrights, websites, and domain names;
- b. All documents or records, including financial records, related to such property that is in actual or constructive possession of the Defendants;
- c. All financial accounts (bank accounts), certificates of deposit, money-market accounts, and accounts held by any third party;
- d. All federal and state tax returns filed or prepared by or on behalf of the Defendants for the past five (5) years;
- e. All non-exempt vehicles, to include boats, motor vehicles, cars, trucks, utility vehicles, recreation vehicles, aircraft, trailers, or other wheeled vehicles;
- f. All real property owned or rented by any Defendant or Defendant's agent or assigns in part or whole;

- g. All securities;
- h. All gifts, inheritances, or divisions of property;
- i. All safety deposit boxes, safes, lock boxes, or vaults;
- j. All cash;
- k. All negotiable instruments, including promissory notes, drafts, and checks;
- l. All causes of action;
- m. All contract rights, whether present or future;
- n. All accounts receivable;
- o. Any and all leases or leaseholds;
- p. All collections, including but not limited to artwork, stamps, coins, guns, crystal, sports memorabilia, records, and trains;
- q. Accounts receivable for and all other entities controlled by Defendants;
- r. All Defendants' ownership interests;
- s. All personal bank accounts upon which Defendants are signatories;
- t. All business bank accounts upon which Defendants are signatories;
- u. All bank accounts owned, possessed, controlled by, or in the name of any Defendant individually;

v. All bank accounts owned, possessed, controlled by, or in the name of and Defendant by corporate affiliation;

w. All diamonds, gems, and other precious stones, gold, silver, platinum, and all other precious metals, watches, and jewelry;

21) Access to Property. The Receiver may take all actions to gain access to and enter all real property, leased premises, storage facilities, and safe deposit boxes where non-exempt property, or records of a Defendant may be situated, and to seize the contents. The Receiver may employ reasonable destructive means to bypass or gain access to lockboxes, safes, security systems, or any other area he reasonably believes contains non-exempt assets within any real property or associated curtilage owned or controlled by any Defendant. The Receiver may change locks to all premises at which any property is situated. The Receiver may operate an unmanned aircraft to conduct surveillance of the Defendant's property held in *custodia legis*, and such operations are deemed essential for the safety of the Receiver in his official duties under Tex. Gov. Code § 423.002(a);

22) Disable or remove non-exempt property. The Receiver may disable or remove non-exempt property belonging to a Defendant or place the property into storage; insure any property taken into his possession; obtain such writs as Receiver deems necessary to obtain possession; and change the locks to premises belonging to the Defendant. Receiver has no duty to take these actions, or to maintain, guard, or insure property taken into *custodia legis*, or to maintain or pay any lease, nor shall Receiver be required to pay any mortgage, lien or assessment,

defend against any lawsuit, pay any tax or fee, file tax returns, maintain any insurance coverage, or have any obligation except as specifically ordered.

23) Assume property is not exempt. A Receiver may assume Defendant's property is not exempt, until the person claiming the exemption files a statement that claims the exemption, cites the legal and factual grounds for the exemption, and describes the property with sufficient specificity that a constable can levy upon it. If there be any dispute whether an asset is exempt or belongs to a Defendant, Receiver may take custody of the asset until the Court determines the rights of those claiming an interest in the asset. Objections to the Receiver's assumption must be made to this Court within 21 days of collection;

24) **Personal Property Rights of Judgment Defendant. Receiver must comply with Texas Rule of Civil Procedure 679b.**

25) **Receiver to Hold Property. Receiver must not disburse funds to Judgment Plaintiff or sell property within 14 days after serving Judgment Defendant with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the Protected Property Claim Form approved by the Supreme Court, or within 17 days if service was by mail. If the Judgment Defendant asserts an exemption, Receiver may only disburse funds to Judgment Plaintiff or sell property with Judgment Defendant's written consent or a court order.**

26) Disputes. If there be any dispute whether an asset is non-exempt, or property of a Defendant, the Receiver is authorized to take custody of the asset until the Court can determine the rights of those claiming interests in the asset. The Court may require a disputing party to post a bond to cover the Receiver's efforts in the dispute.

27) Real Property Sale. All real property sales must be individually ordered, after notice and hearing.

28) Objections. All objections to (i) this order, (ii) the bond amount, including its sufficiency, (iii) all affidavits that support or relate to this order, (iv) Receiver's qualifications, and (v) every issue relating to this order, are waived if they are not filed within twenty days of the service on or notice of this order to Defendant or his counsel.

29) Redirect Postal Mail. The Receiver may redirect, read, and copy Defendant's mail, whether electronic, paper, or facsimile, or otherwise, and whether sent to a street address, telephone line, post office box, or via the internet, before and exclusive of receipt. The Receiver may establish procedures for allowing Defendants to retrieve the mail, or copies, which includes making copies available to the Defendant electronically.

30) Obtain credit reports. The Receiver may obtain credit reports, financial institution statements, and other reports to aid in locating assets. Receiver may order Consumer Reporting Agencies, as defined by the Fair Credit

Reporting Act ("FCRA") 16 USC §1681b(f) to provide consumer reports on Defendants and witnesses as allowed under FCRA 16 USC §1681b(a)(1).

31) Compel Third Parties. The Receiver may require the attendance of third parties, issue and serve subpoenas and notices to appear to third parties and those who may possess knowledge or information about a Defendant's non-exempt assets. A subpoena does not have to compel attendance. Receiver may require the attendance of and issue subpoenas to any Defendant, third party, or witness, to deliver receivership assets and information about receivership assets, including employment records from the Texas Workforce Commission,¹¹ for the production of documents, things, and information, including matters about the employment or location of any Defendant or witness, the existence, location, or value of Defendant's assets. Receiver may schedule and issue notices for stenographic or non-stenographic examinations of anyone who may know of facts about a Defendant's exempt assets. The Receiver may issue subpoenas with the following language to third parties: "Please do not disclose or notify the user of the issuance of this subpoena. Disclosure to the user could impede an investigation or obstruct justice." The Receiver may not be charged fees for subpoena fulfillment expenses.

32) Support and Assistance. The Receiver may hire any person, firm or company to further remedies available to Receiver, including hiring persons to: change locks to premises belonging to Defendant; exclude persons from interfering

¹¹ The Receiver is considered a public employee in the performance of public duties, pursuant to § 301.081 of the Texas Labor Code, and may subpoena employment records from the Texas Workforce Commission.

with Receiver's custody of the premises; moving or storing Defendant's property; collect accounts receivable; or sell Defendant's non-exempt property;

33) Checks and Transactional Instruments. The Receiver may endorse and cash checks and negotiable instruments payable to Defendant, except paychecks for current wages;

34) Receiver's Writs. Writs of turnover issued under this order, must not be limited in time or have an expiration date. Those serving the writs must return them to Receiver, not the clerk, unless otherwise instructed. More than one writ of turnover may be issued and outstanding at the same time. The clerk is ordered to issue writs on an expedited basis, upon request.

35) Texas Unclaimed Property. Receiver may collect all unclaimed funds belonging to Defendant, including from the Texas Comptroller's Office, and may collect, sell, or assign Defendant's rights to air miles and rewards programs.

36) Certify copies. The Receiver may certify copies of this order as would a clerk of this Court, including but not limited to certifying copies for service upon a financial institution in the manner specified by Section 59.008, Finance Code, and Texas Civil Practice and Remedies Code § 31.002(g).

37) Service to Receiver. All parties must serve Receiver with copies of all motions, notices, discovery responses, correspondence, and communications between them at the Receiver's address provided above, unless the Receiver provides alternative instructions.

38) Service by Receiver. The Receiver may serve Defendants by placing the documents to be served in the Defendant's mailbox, taping them to the Defendant's door, or delivering them to any adult person at the Defendant's residence or place of business. The Receiver may serve non-natural entities by placing the documents to be served in the registered agents for the entities' mailbox, taping them to the registered agent for the entities' door, or delivering them to the receptionist of the registered agent for an entity's place of business.

39) Texas Driver's License. The Receiver may obtain Defendant's and witness' driver's license records from the Texas Department of Public Safety, and all similarly named entities. Those entities are ordered to release Defendant's records to Receiver, including Defendant's photograph.

40) Discovery. The Receiver may propound discovery to any party to this suit, under the rules of civil procedure. Receiver may shorten the time periods as required. He is not required to employ does not have to employ the discovery rules, and may obtain discovery by requesting the information or documents from Defendant and third parties. Upon request, Defendant must provide documents in WordPerfect, Microsoft Word, Microsoft Excel, Rich Text Format, JPEG, Adobe, or other format acceptable to Receiver, with indices. The Defendant is not entitled to serve the Receiver or Plaintiff with any type of discovery under this cause number.

41) File reports. The Receiver may occasionally file reports with this Court. Any party to this suit or subject to the Receiver's actions may file an

objection to the Receiver's report. Should no objections be timely received, reports by the Receiver will be considered facts and conclusions of law. Unopposed facts will be conclusively admitted. The Court, *sua sponte*, may confirm, modify, correct, reject, reverse or recommit the report, after it is filed, as the court may deem proper and necessary. Objections must be filed within 20 days, state each disputed ground, the reasons for each dispute, and attach the documents supporting each objection.

42) Whistleblower Claims. Should suspected taxation or other fraud against the government be discovered, the Receiver may file whistleblower complaints with the appropriate local, state, or federal authorities. Any whistleblower rewards to the Receiver may be accepted by the Receiver in addition to his fees, even after termination of the receivership.

43) Duty to maintain. The Receiver has no duty to maintain, guard, or insure property taken into *custodia legis*, or to maintain or pay any lease, nor shall Receiver be required to pay any mortgage, lien or assessment, defend against any lawsuit, pay any tax or fee, maintain any insurance coverage, or have obligation to preserve assets except as specifically ordered.

44) Notice of Intended Abandonment or Sale. Notice of abandonment of receivership assets must be provided:

- a. At least ten days before any abandonment, Receiver must file a notice of the intended sale or abandonment that describes the

property to be abandoned, its sale price, and how it will be sold or abandoned;

- b. By first class mail to Defendant and every person who has filed a request for notice;

45) Objection to Abandonment or Sale. Objections to the proposed abandonment or sale must state the grounds and be filed within five days after Receiver's service of the notice.

- a. If no objection is timely filed, Receiver may abandon the property as described in the notice, without further order.
- b. If an objection is timely filed, the proposed abandonment or sale must not be completed until the Court has decided the objection.

46) Retention of counsel. Receiver may employ counsel, at not more than \$300.00 per hour, for representation and assistance in the prosecution of this order.

47) Ancillary Litigations. Receiver does not have to defend or prosecute any litigation regarding the Defendant, but may intervene in any litigation for any party to this litigation.

48) Receivers Fees. The Receiver's fees and expenses are considered costs of court. Competent and experienced receivers are rare and the time and effort required by a receiver to keep time, apply for fees and the lag between filing for fees and being paid and that the fees earned would be at an ordinary rate. Not being paid at the time of or shortly after rendering of services would inhibit the

recruitment of experienced receivers. Given the chances of no recovery, contingent fees are the most economical fee schedule. The costs of proving an hourly fee could easily exceed the original judgment. A contingency fee is the only way that plaintiff can afford a receiver. Defendant has not tried to pay the judgment. The costs of proving an hourly fee are prohibitive. Therefore, the Receiver is entitled to a fee equal to 25% of all sales of assets that come into his actual, constructive, or legal possession, and all recoveries and credits against the judgment. Upon hearing, and once the *Rohrmoos Ventures*¹² elements have been proven, the Court finds 25% is a fair, reasonable, customary, and necessary fee for Receiver. A Receiver's fee exceeding 25% of all funds coming into Receiver's possession may be awarded after notice and opportunity for hearing to all parties. Specifically, the Court may award the Receiver 33% of collected funds should the Receiver collect the full amount of the judgment. If the Defendant files bankruptcy, Receiver's fee shall be equal to 25 percent of the debt owed when the bankruptcy is filed, and may be filed as a secured claim should a valid abstract of judgment be on file at the time of bankruptcy filing. Receiver is directed to pay plaintiff's attorney, as plaintiff's trustee, the remainder of all funds coming into Receiver's possession, after deducting Receiver's costs and payment of liens or set offs as Receiver deems reasonable within a reasonable time.

¹² *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 490 (Tex. 2019) "To assist district courts in awarding attorney's fees, the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), set out twelve factors that a court should consider in determining a reasonable fee."

49) Appeals. If Receiver has to defend against a motion to vacate, a motion to replace receiver, or any similar motion to this Court, upon proof and notice of the same, the Receiver shall be entitled to additional attorney's fees from Defendant or Defendant's counsel by fees or sanction. The Receiver will presumptively be awarded \$5,000.00 or attorney's fees as proven at the time under *Rohrmoos Ventures*¹³. If Receiver or Judgment Plaintiff has to defend against an appeal to this Order Appointing Receiver, the Defendant is required to post a bond in the amount of \$15,000 for an appeal to the intermediate Court of Appeals. If the Receiver or Judgment Plaintiff has to defend against an appeal to the Texas Supreme Court, the Defendant is ordered to post an additional \$25,000. These bonds will be held in the registry of the court pending the appellate ruling and awarded to the prevailing party as attorney's fees as proven at the time."

50) Attorney's fees. The Court takes judicial notice of the time that is reasonable and necessary for obtaining this order, and Defendant is ordered to pay Plaintiff \$1,750 in attorney's fees for obtaining this order. Additional fees may be awarded, after notice and hearing.

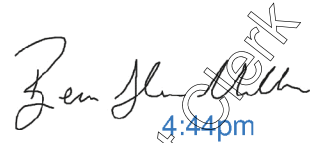
51) Receiver's Final Accounting. The Receiver shall promptly file a final accounting with a motion to close the receivership. Should no collection be made against the Defendant after reasonable attempts by the Receiver, the Plaintiff shall reimburse the Receiver a sum of \$1,500 plus reasonable and necessary expenses upon the Court granting the Receiver's motion to close the receivership.

¹³ *Id.*

BE IT SO ORDERED. Any and all further relief not expressly stated herein is denied.

Signed and Dated: _____

Signed:
6/11/2025


4:44pm

Hon. Beau Miller
ANCILLARY JUDGE PRESIDING

###END OF ORDER###

Unofficial Copy Office of Marilyn Burgess District Clerk