

CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, LLC
and SECURE COMMUNITY, LLC,

Plaintiff/Judgment-Creditor

v.

CYBERLUX CORPORATION and
MARK D. SCHMIDT, Individually,

Defendant/Judgment Debtors.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129TH JUDICIAL DISTRICT

**DEFENDANTS' OBJECTIONS TO DEMAND FOR DOCUMENT DISCLOSURE
AND MOTION FOR PROTECTION**

COME NOW, Defendants Cyberlux Corporation and Mark D. Schmidt (collectively, "Cyberlux" or "Defendants"), and file their Objections to Demand for Document Disclosure and Motion for Protection ("Motion"). In support thereof, Defendants respectfully show:

INTRODUCTION

Robert Berleth ("Berleth") was appointed pursuant to the Court's TCPRC section 31.002 Turnover Order entered on May 22, 2025. Therefore, his appointment in the case, as outlined in section 31.002, is limited 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). Although the initial judgment in that action was approximately \$1.572 million, the Court's Turnover Order identified the judgment amount to be approximately \$2.1 million. The Turnover Order did not credit Cyberlux for several hundreds of thousands of dollars in prior payments that Cyberlux had made to judgment creditors Atlantic Wave and Secure Community.

Even though Cyberlux objected to the incorrect judgment amount in the Court's Turnover Order, in hopes of streamlining a resolution of the matter, on June 10, 2025, the sum of \$3,083,639.75 was tendered and delivered via wire transfer to the Receiver. The amount had been calculated by **Berleth** as the amount owed on the judgment.¹ In fact, on June 9, 2025, Berleth represented to the Court during a hearing that this was the amount of the judgment owed, inclusive of fees. Berleth's "judgment calculation" included amounts allegedly owed for Plaintiffs attorneys' fees, as well as over \$800,000 of fees and expenses Berleth claims to have incurred despite his three-week appointment during which Berleth did not seize or sell a single asset; he merely changed the locks on Cyberlux's facility and observed an inspection by Cyberlux, HII, and the United States Government.

Despite being appointed as a 'neutral' extension of this Court, Berleth had previously refused to accept payment on the judgment on June 5, 2025 in his initial improper effort to extend the receivership. In fact, during the June 9, 2025 hearing, the Court ordered Berleth to provide his wiring instructions so the judgment could be satisfied.² During that hearing, Cyberlux expressed concern Berleth would continue to act in his own interest to try and rack up more fees. In response, Berleth disagreed, stating "there's nothing to do . . . [but] await payment . . ." In fact, Berleth represented to the Court that awaiting payment was "all I'm doing." The transcript of that exchange reflects:

¹ Notably, on June 5, 2025, Berleth represented that \$2,975,774.98 was owed by Cyberlux. *See* Exhibit 1. On that date, when Cyberlux contacted Berleth to try and pay that amount, Berleth refused to provide his wiring instructions. Over the weekend, Berleth concocted an increase in that amount by over \$100,000, to \$3,083,639.75, the figure in his June 9, 2025 "Judgment Calculation." *See* Exhibit 2. Berleth provided his wiring instructions after the trial court directed him to do so. *See* the trial court's June 9, 2025 hearing transcript, attached as Exhibit 3.

² Judge Payne of the 55th Judicial District Court for Harris County presided over this hearing while the Honorable Judge of this Court was away

21 MR. PENNETTI: And, Judge, with that in
 22 mind, can we have a stay until Wednesday morning at
 23 8:30?

24 THE COURT: I am going to trust counsel's
 25 representations that this is where -- that he's not

Tamika T. Bartee, Official Court Reporter, CSR #12593
 55th Judicial District Court, Harris County, Texas

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1 going to do anything. He's going to await your payment
 2 until Wednesday.

3 MR. BERLETH: There's nothing to do, Judge.

4 THE COURT: Yeah.

5 MR. BERLETH: I mean, the facility is --
 6 all the stuff has been shipped. Really, the only thing
 7 to do is to either await payment from Legalist or await
 8 payment from HII. That's all I am doing. So their idea
 9 that I am somehow going out and, you know, flipping
 10 mattress cushions, there's nothing to do at this point.

Transcript from June 9, 2025 hearing, at p. 36: 3, 5-10.

On June 11, 2025, Berleth confirmed he received the \$3,083,639.75, the amount he had calculated and demanded.³ After receiving what Berleth knew was an overpayment, Berleth filed his Final Report, Final Accounting, Verified Motion for Disbursement of Funds and Motion to Terminate Receivership (“Final Report”).⁴ In Berleth’s Final Report, Berleth indicated, among other things, that

³ Despite the undersigned advising Berleth on several occasions that hundreds of thousands of dollars of prior payments were made towards this judgment, Berleth has done nothing to investigate or to credit those payments – likely because he is vying for a contingent fee and is concerned it will result in a reduced fee paid to him.

⁴ Cyberlux agrees that the receivership should be terminated and that Berleth should be discharged. However, the judgment amount must be corrected and Berleth must provide documentation to support his fees and expenses (which this Court must review and approve) before funds can be disbursed.

The Receivership has completed with no further remaining issues pending the final distribution of funds as detailed above. The Receiver has fulfilled his obligations required by law. The Receiver moves the Court order the judgment satisfied and Receivership terminated. The Receiver as that effective on the of entry of the Termination Order, the Receivership has been terminated, the Receiver has been discharged, and the Receivership has ceased to exist as a legal entity.

Final Report, at 4.

Indeed, on June 12, 2025, Berleth confirmed on the record that he had received the funds.⁵ During that hearing, Cyberlux reiterated that no credits or offsets had been applied and, because of that, funds could not be distributed until the trial court determined the correct amount of credits that should be applied to the judgment based on Cyberlux's prior payments. Although Cyberlux disagreed that the Receiver was entitled to his proposed contingent fee, Cyberlux pointed out that *even if* an undocumented contingent fee could be awarded to the Receiver, the amount of that fee needed to be adjusted after the judgment amount was corrected.

Apparently dissatisfied with the June 12 hearing (i.e., that Cyberlux had not caved to Berleth's unreasonable fee and that Berleth would not immediately secure the \$800,000 windfall), Berleth decided to continue his efforts to collect funds under the guise that he still had authority to act even though he had already filed his Receiver's Report, in which he represented, among other things, that: "[1] The Receivership has completed with no further remaining issues pending the final distribution . . . [2] The Receiver has fulfilled his obligations required by law . . . [3] The Receiver moves the Court order the judgment satisfied and Receivership terminated. . .",⁶ Berleth

⁵ Also, during that hearing, Berleth claimed that he had been appointed as receiver over Cyberlux in a Cause No. 2025-41073 pursuant to an *ex parte* TRO order signed by Judge Miller. That order expired and Berleth has no ongoing authority. Further, that new, separate case, styled *Phillip Rick Tucker a/k/a Rick Tucker and Neill Whiteley, Individually v. Cyberlux Corporation and Mark D. Schmidt*, is now pending before the Southern District of Texas, Civil Action No. 4:25-cv-02770, before the Honorable Sim Lake (the "*Tucker Action*").

⁶ Receiver's Report, at 4, attached as Exhibit 4.

is now falsely claiming that the judgment has not been paid and misrepresenting to third parties that he still has statutory authority to act as receiver.

For example, nearly two weeks after the June 12 hearing, on June 25, 2025, the Receiver contacted Advanced Navigation and Positioning Corporation (“ANPC”), stating:

I’m seeking to get an agreed final order to distribute funds in the Cyberlux matter entered promptly. Unfortunately, Cyberlux has ~\$65M in debt, with less than half that available to pay creditors. Will your clients accept \$1,200,000 lump sum payment to completely release the Cyberlux matter, which would include all your legal fees, expenses, and other incurred amounts to date? Please call to confer.⁷

The next day, Berleth contacted Legalist, asking “[i]s Legalist simply going to skip participating in settlement conference, and seek remedy for collecting on Cyberlux outside the receivership?”⁸ In response, counsel for Legalist stated they had not been made aware of a settlement conference, asking “[w]hat’s the status on that?”⁹ Rather than conceding there is no “settlement conference” outside of something orchestrated entirely by Berleth himself, Berleth responded: “But you also haven’t asked me to collect the funds for [L]egalist or even told me how much is owed. I’ll take your lack of action and communication as a ‘no’.” Legalist’s counsel then pressed Berleth, stating:

. . . [o]ur understanding based on the last hearing we attended on June 12 is that the judgment has been satisfied in full based on Legalist wiring you the attached judgment amount. Cyberlux indicated at the hearing that they plan to challenge the judgment and fee amount, which is their prerogative. . . If the landscape has changed and additional funds are in play to pay other creditors, please let us know. Legalist reserves all rights to seek funds to which it is legally entitled.¹⁰

⁷ Exhibit 5. The redacted portion of Exhibit 5 is an attorney-client communication.

⁸ Exhibit 6.

⁹ *Id.* Legalist’s counsel also contacted the undersigned regarding the supposed settlement conference. The undersigned has never been informed about a settlement conference.

¹⁰ *Id.*

Even though it was Legalist that had wired over \$3 million based upon **Berleth's** own "judgment calculation, Berleth falsely claimed that "Cyberlux has not 'paid in full' and they've objected to the disbursement of funds anyways. . ." ¹¹ Berleth then misrepresented that the "trial court can't even set a hearing to terminate the receivership . . ." ¹² This representation is directly contrary to the court of appeals' directive that the trial court was **not** prohibited from taking further action to conclude the matter. ¹³

Upon information and belief, even despite filing his Receiver's Report and Motion to Terminate and despite that the *ex parte* TRO in the *Tucker Action* has **expired** by its own terms, Berleth continues to contact various creditors regarding Cyberlux, making attempts to settle claims, and trying to seize property of Cyberlux, most notably an approximately \$25 million payment under a subcontract with HII Mission Technologies Corp., Berleth has made repeated efforts to contact HII and persuade it to pay the full receivable to his trust account.

Then, on June 27, 2025, Berleth contacted the undersigned, demanding that Cyberlux produce documents pursuant to the Turnover Order. ¹⁴ Berleth has no basis for this demand, which amounts to nothing more than a blatant attempt to drive up Cyberlux's litigation costs and spite Cyberlux for refusing to capitulate. Berleth's demand and all of his ongoing actions fall well outside any judicial immunity he may have been afforded before the judgment was paid. Berleth's unlawful actions must be stopped to avoid irreparable harm to Cyberlux, its subsidiaries, and business interests. The Court should grant Cyberlux's motion for protection and immediately reprimand Berleth for his wrongful conduct.

¹¹ *Id.*

¹² *Id.*

¹³ Exhibit 7.

¹⁴ Exhibit 8.

ARGUMENT AND AUTHORITIES

1. **On June 11, 2025, the Judgment was paid in full so all of Berleth's actions in this case plainly exceed the statutory authority conferred under TCPRC 31.002.**

The appointment of a receiver pursuant to § 31.002(b)(3) is expressly limited by statute. In fact, 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). In other words, Berleth cannot act for other creditors (i.e., his duty under § 31.002 is to judgment creditors Atlantic Wave and Secure Community), and he may only act until the judgment is satisfied.

Under Texas law, a turnover order becomes "immediately moot when the judgment which it was issued to enforce was satisfied." *Bennett/Nguyen Joint Venture v. Coghlan*, No. 01-10-00575-CV, 2011 WL 2732435, at *1 (Tex. App.—Houston [1st Dist.] July 14, 2011, no pet.); *Pandozy v. Beaty*, 254 S.W.3d 613, 617 (Tex. App.—Texarkana 2008, no pet.) ("once the judgment was paid, the turnover order lost its teeth and was of no further force and effect.").

Cyberlux paid the full amount *calculated by Berleth on June 9*, so Berleth has no further authority as a matter of law. This does not even account for the fact that Berleth himself filed his Report and Motion to Terminate the Receivership, in which ***Berleth*** contended:

The Receivership has completed with no further remaining issues pending the final distribution of funds as detailed above. The Receiver has fulfilled his obligations required by law. The Receiver moves the Court order the judgment satisfied and Receivership terminated. The Receiver as that effective on the of entry of the Termination Order, the Receivership has been terminated, the Receiver has been discharged, and the Receivership has ceased to exist as a legal entity.

There is no legitimate purpose behind Berleth's demand that Cyberlux produce documents other than to harass Cyberlux and drive up Cyberlux's legal fees. It is indisputable that the judgment was satisfied on June 10, 2025.¹⁵ The exact amount of Berleth's "judgment calculation" was paid despite the objections to the amount remain pending. Berleth confirmed receipt and filed his Final Report, which included a Motion to Terminate the Receivership. Because the judgment amount and all fees and expenses were paid in the overpayment to Berleth, and because even Berleth acknowledged his job is done, Berleth's continued actions, including the demand for documents, plainly exceed his statutory authority and Cyberlux is not obligated to comply with Berleth's unlawful demands. Berleth has no authority to act and Cyberlux's Motion should be granted.

2. Berleth's demand for documents, which is nothing more than a means of intimidation and a deliberate attempt to drive up Cyberlux's litigation costs, comes straight out of Berleth's standard playbook of misconduct.

Berleth has no authority to act yet continues to falsely represent the nature of his involvement regarding Cyberlux. This sort of misconduct is nothing new to Berleth. Indeed, the Honorable Judge Sim Lake for the Southern District of Texas previously redressed Berleth's actions. *In re Berleth*, No. MC H-19-2011, 2020 WL 522710, at *25 (S.D. Tex. Jan. 31, 2020). Indeed, Judge Lake found, among other things:

This is a troubling case. An inexperienced lawyer violated several Guidelines for Professional Conduct, and his conduct could have resulted in much more serious violations had the court found fraudulent intent. Having considered all of the relevant factors, the court concludes that Berleth should be privately reprimanded. A private reprimand is not a viable remedy, however, because the records in the underlying bankruptcy cases and in this action, which will include the court's Memorandum Opinion and Order, are publicly available. The court's Memorandum Opinion and Order will serve as a reprimand since the court has reprovved Berleth for

¹⁵ Funds were tendered the afternoon of June 10, 2025, via wire transfer. On June 11, 2025, the Receiver confirmed he received the payment. On June 12, 2025, the Receiver informed the Court the entire judgment amount was in his trust account.

his conduct. No further sanction is necessary. The court cautions Berleth, however, to give careful attention to all of the ethical standards that govern his conduct as an attorney admitted to practice before the court and to guard against any violations of those standards.

Id.

This is not the only instance. Only a few months after Judge Lake reprimanded Berleth, the Montana Supreme Court issued a memorandum opinion in which it held against Berleth in that landlord-tenant dispute. Notably, the Montana Supreme Court took issue with Berleth's lack of candor, stating:

Upon our review of the record, we are troubled by the inaccuracy of many of Robert's factual and legal representations here and below as a self-represented litigant but licensed member of the Montana Bar. While we generally give wide latitude to self-represented litigants, we caution Robert to be more cognizant of his professional duties before the courts of this State. See M. R. Pro. Cond. 1.1, 1.3, and 3.3 (competence, diligence, and candor to the tribunal).

Rideg v. Berleth, CV 21-21-M-DLC, 2021 WL 3500815, at * 1 (D. Mont. Aug. 9, 2021).

In 2022, the Bankruptcy Court for the Southern District of Texas found Berleth intentionally deprived a debtor of his assets. *In re Preferred Ready-Mix LLC*, No. 21-33369, 2022 WL 16952650, at *3 (Bankr. S.D. Tex. Nov. 14, 2022). The Southern District of Texas found, among other things, that Berleth had acted intentionally and with bad faith, to wit:

the Court finds Berleth's actions were with actual knowledge of the bankruptcy filing and intentional, with the intent to deprive the debtor of his assets. Additionally, his actions were not in good faith and in contravention of the provisions of the automatic stay. Furthermore, the Court finds that Berleth did more than just passive retention of estate property, as demand was made. Consequences for violations of the automatic stay can be severe. Parties that willfully violate the automatic stay may be liable to debtors for actual damages, including costs, attorneys' fees, and, in appropriate circumstances, punitive damages. Here, actual damages would be duplicative of the damage award from violation of sections 543 and 542 of the Bankruptcy Code. However, to the extent the prior award

of damages is inappropriate, it is awarded here as actual damages on the same calculation noted above. Additionally, given the finding of bad faith and intentional actions by Berleth, the Court awards punitive damages of \$10,000.00. Accordingly, total damages for violation of the automatic stay are awarded in the amount of \$45,000.00 for the plaintiff against Berleth.

Id.

The Fifth Circuit upheld this opinion on appeal, recounting Berleth's actions as follows:

... the state court appointed Robert Berleth as a receiver and ordered him to seize and maintain various assets of Preferred Ready-Mix to satisfy the judgment. [] Preferred Ready-Mix filed for Chapter 11 bankruptcy in federal bankruptcy court and demanded its property be released. Berleth agreed to do so, but only in exchange for an administrative fee. **Preferred Ready-Mix paid the fee and Berleth released the property ten days later. Preferred Ready-Mix then brought the instant adversary action in the bankruptcy court asserting four claims against Berleth: (1) turnover; (2) stay violation; (3) conversion; and (4) disallowance of claim. The bankruptcy court found in favor of Preferred Ready-Mix on every claim except the conversion claim and, concluding that Berleth had "effectively held the major assets of the debtor hostage.**

In re Preferred Ready-Mix, L.L.C., .2024 WL 525249874, Case No. 24-20158 (5th Cir. Dec. 31, 2024).

Like in *Preferred Ready-Mix*, Berleth is outside his authority. Berleth's acts illustrate his ulterior motive of trying to expand the receivership in this case beyond its statutory authority so that he may seek additional fees. The Court should intervene and stop Berleth's wrongful conduct. Further, because Berleth's conduct is intentional and in bad faith, the Court should award Cyberlux its attorneys' fees for defending against Berleth's unlawful acts.

CONCLUSION

Cyberlux prays that the Court grant its Motion, order Berleth to pay Cyberlux's attorneys' fees necessitated by this motion, and to grant all other relief to which it is entitled.

Dated: June 30, 2025

Respectfully submitted,

By: /s/ Alexander J. Pennetti

Douglas S. Lang

State Bar No. 11895500

Alexander J. Pennetti

State Bar No. 24110208

THOMPSON COBURN LLP

2100 Ross Avenue, Suite 3200

Dallas, Texas 75201

Tel Phone: (972) 629-7100

Fax: (972) 629-7171

dlang@thompsoncoburn.com

apennetti@thompsoncoburn.com

COUNSEL FOR

CYBERLUX CORPORATION AND

MARK D. SCHMIDT

CERTIFICATE OF SERVICE

I certify that on June 30, 2025, I had this document served on all counsel of record via electronic service.

/s/ Alexander J. Pennetti

Alexander J. Pennetti

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Linda Carranza on behalf of Alex Pennetti

Bar No. 24110208

lcarranza@thompsoncoburn.com

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Disclosure and Motion for Protection

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Associated Case Party: Robert Berleth

Name	BarNumber	Email	TimestampSubmitted	Status
Robert W. Berleth		rberleth@berlethlaw.com	6/30/2025 3:45:04 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert W. Berleth		rberleth@berlethlaw.com	6/30/2025 3:45:04 PM	SENT
David A. Walton		dwalton@bellnunnally.com	6/30/2025 3:45:04 PM	SENT
LaDonna Arey		LArey@bellnunnally.com	6/30/2025 3:45:04 PM	SENT
Sandra Meiners		smeiners@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Travis Vargo		tvargo@vargolawfirm.com	6/30/2025 3:45:04 PM	SENT
Laurie DeBardleben		ldebardeleben@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Roxanna Lock		rlock@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Shawn Grady		shawn@gradycollectionlaw.com	6/30/2025 3:45:04 PM	SENT
Paula Gentry		pgentry@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Records Department		Records@bellnunnally.com	6/30/2025 3:45:04 PM	SENT
Micah Jackson		mjackson@berlethlaw.com	6/30/2025 3:45:04 PM	SENT
Sheli Davis		sdavis@berlethlaw.com	6/30/2025 3:45:04 PM	SENT
Lena Brasher		lbrasher@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Frankie Huff		fhuff@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Hannah Petrea		hpetrea@bellnunnally.com	6/30/2025 3:45:04 PM	SENT
Michael Poynter		mpoynter@vargolawfirm.com	6/30/2025 3:45:04 PM	SENT
Daniel A Ardmore		ardmorelawfirm@gmail.com	6/30/2025 3:45:04 PM	SENT

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Linda Carranza on behalf of Alex Pennetti

Bar No. 24110208

lcarranza@thompsoncoburn.com

Envelope ID: 102603629

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Filing Description: Defendants' Objections to Demand for Document

Disclosure and Motion for Protection

Status as of 6/30/2025 3:54 PM CST

Case Contacts

Daniel A Ardmore		ardmorelawfirm@gmail.com	6/30/2025 3:45:04 PM	SENT
Tristian Harris		tharris@berlethlaw.com	6/30/2025 3:45:04 PM	SENT
Bernadette Martin		bernadette@gradycollectionlaw.com	6/30/2025 3:45:04 PM	SENT
Bernadette Martin		bernadette@gradycollectionlaw.com	6/30/2025 3:45:04 PM	SENT
Shawn Grady		shawn@gradycollectionlaw.com	6/30/2025 3:45:04 PM	SENT
Jeff Brown		jbrown@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Douglas S.Lang		dlang@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Katharine Clark		kclark@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Edward W.Gray, Jr.		EGray@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Alex Pennetti		apennetti@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Greg Nieman		gnieman@bellnunnally.com	6/30/2025 3:45:04 PM	SENT
Jemisha Gandhi		jgandhi@bellnunnally.com	6/30/2025 3:45:04 PM	SENT
David M.Keithly		dkeithly@mortensontaggart.com	6/30/2025 3:45:04 PM	SENT
Linda Carranza		lcarranza@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Corinne Martin		cmartin@berlethlaw.com	6/30/2025 3:45:04 PM	SENT
Hannah Fischer		hfischer@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT
Jocelin A.Tapia		jtapia@thompsoncoburn.com	6/30/2025 3:45:04 PM	SENT