

# EXHIBIT 3

Unofficial Copy Office of Marilyn Burgess District Clerk

REPORTER'S RECORD  
VOLUME 1 OF 3 VOLUMES

TRIAL COURT CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, LLC  
and SECURE COMMUNITY, LLC

Plaintiff/Judgment  
Creditor

VS.

CYBERLUX CORPORATION and  
MARK D. SCHMIDT,  
Individually

Defendant/Judgment Debtors

) IN THE DISTRICT COURT  
) OF HARRIS COUNTY, TEXAS  
) 55th JUDICIAL DISTRICT

MOTION TO STAY

On the 9th day of June, 2025, the following  
proceedings came on to be heard in the above-entitled  
and numbered cause before the Honorable Latosha Lewis  
Payne, Judge presiding, held in Houston, Harris County,  
Texas.

Proceedings reported by machine shorthand.

Tamika T. Bartee, B.C.R., RPR, CSR #12593  
Official Court Reporter  
Harris County, Texas

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I N D E X  
VOLUME 1 of 3 VOLUMES  
(MOTION TO STAY)

	Page	Vol.
Appearances.....	3	1
Proceedings.....	4	1
Court Reporter's Certificate.....	40	1

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1 A P P E A R A N C E S

2

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24 Also Present: Mr. Chuck Watts, Special Counsel,  
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25 Mr. Jimmy Robinson, Counsel, Virginia  
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1 A P P E A R A N C E S

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## P R O C E E D I N G S

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3 THE COURT: The Court calls Cause  
4 No. 2024-48085, *Atlantic Wave Holdings v. Cyberlux*  
5 *Corporation*.

6 Counsel, please make your appearance.

7 MR. BERLETH: Your Honor Robert Berleth.  
8 I am the court-appointed receiver. This is my associate  
9 and Mr. Derek Loetzerich.

10 THE COURT: Okay.

11 MR. LOETZERICH: As his counsel, but  
12 Mr. Berleth is handling today.

13 THE COURT: What did you just say?

14 MR. LOETZERICH: As the receiver's counsel,  
15 but Mr. Berleth is handling today.

16 THE COURT: Oh, okay. Thank you.

17 MR. LOETZERICH: There is no need to add  
18 more input and make it worse.

19 THE COURT: Yes. No, it's okay. All  
20 right.

21 And then is the other side not here? Who  
22 am I looking for?

23 MR. BERLETH: Probably Alexander Pennetti  
24 on Zoom.

25 THE COURT: Oh, is he on Zoom?

1 MR. BERLETH: I assume he's here for his  
2 own hearing, Judge.

3 THE COURT: Okay. I assume so, but it  
4 happens that sometimes they're not.

5 MR. BERLETH: No. Has Your Honor had a  
6 chance to read the receiver's response?

7 THE COURT: Yes.

8 Okay. Good morning, everyone. I did call  
9 the case, but let me call it again.

10 Cause No. 2024-48085, *Atlantic Wave*  
11 *Holdings, LLC v. Cyberlux Corporation*.

12 I've had an appearance from the receiver  
13 and the receiver's counsel and associate.

14 Okay. Is there counsel for the plaintiff  
15 on the line, Atlantic Wave Holdings? I think we're  
16 looking for --

17 MR. WALTON: Here we go.

18 I'm David Walton on behalf of the  
19 plaintiffs, Atlantic Wave and Secure Community.

20 THE COURT: Okay. All right. Let me do  
21 this.

22 Okay. Let me hear argument on your motion.  
23 Can you hear me?

24 MR. PENNETTI: Yes, Judge, I can. This is  
25 Alex Pennetti. I am counsel for the judgment debtors.

1 This is actually our motion.

2 THE COURT: Okay.

3 MR. PENNETTI: And I have several  
4 counterparts with me and they are in different parts of  
5 the country. Is it okay if I allow them to introduce  
6 themselves?

7 THE COURT: Yes. Go ahead.

8 MR. LANG: Good morning, Your Honor. I am  
9 Douglas Lang. I'm an associate of Mr. Pennetti at  
10 Thompson Coburn, and I also represent Cyberlux.

11 THE COURT: Okay.

12 MR. WATTS: Your Honor, I am Chuck Watts.  
13 I am special counsel to Cyberlux Corporation and I  
14 represent Mark Schmidt as well.

15 MR. ROBINSON: Good morning, Your Honor. I  
16 am Jimmy Robinson and I represent Cyberlux in the  
17 Virginia litigations here in Virginia.

18 THE COURT: Okay.

19 MR. PENNETTI: And, Judge, I know sometimes  
20 these Zoom meetings aren't transcribed. Will this  
21 hearing be transcribed and may we have a transcription  
22 of this hearing?

23 THE COURT: Yes.

24 MR. PENNETTI: Okay. Thank you.

25 As I stated, Judge, this is an emergency

1 hearing on judgment debtor's motion to stay and motion  
2 to modify and correct. I'll address the motion to stay  
3 first.

4           Essentially, in terms of background, this  
5 is a foreign judgment domestication action brought by  
6 Mr. Walton's clients, the judgment creditors. This  
7 arose from a settlement agreement in Virginia. As part  
8 of that settlement, there is a consent judgment entered  
9 that's being enforced here. Cyberlux continues to  
10 operate as a going concern as a defense contractor as a  
11 wholly-owned subsidiary. It's my understanding there  
12 are several active contracts. I'll talk about one  
13 contract that's recently completed a little bit. But I  
14 just wanted to let you know that Cyberlux is not winding  
15 up business or anything like that; it's continuing to  
16 operate as a going concern.

17           And that's particularly important because  
18 this is a receivership under Chapter 31, so a  
19 post-judgment receivership under 31.002(b)(3).

20           And, Judge, do you mind if I share my  
21 screen?

22           THE COURT: Sure.

23           MR. PENNETTI: And so, I'll share the  
24 statute with you here, 31.002(b)(3), and the highlighted  
25 portion is what I'm looking at. And the Court's

1 authority to appoint a receiver is limited in two  
2 important regards. First, as you can see there, the  
3 receiver, of course, can act as a normal receiver would,  
4 but he is limited to act on behalf to seize and sell  
5 property to pay the judgment creditors and the judgment  
6 creditors alone, as the plain language indicates.

7           So here that's the point I point at to  
8 Secure Community, Mr. Walton's clients.

9           The second important limitation is that the  
10 receiver only has authority to act up the extent that's  
11 necessary to satisfy the judgment. So once the  
12 judgment -- there's money available to pay the judgment,  
13 that's the extent of his authority. He can't continue  
14 to act. He can't continue to seize and sell property  
15 under Chapter 31 -- under 31.002(b)(3).

16           So those are both at issue here. I've had  
17 several calls with the receiver since he's been  
18 appointed, a couple of those were Wednesday and Thursday  
19 last week.

20           During the Thursday call I had with the  
21 receiver, we discussed the judgment amount that's due.  
22 He was appointed on a -- under a May 22nd order in this  
23 case, a turnover order. The turnover identifies that  
24 \$2.11 million is outstanding on the judgment.

25           So on Thursday during our call -- and

1 counsel for Legalist, he was on that call; he's present  
2 here today. And I won't speak for him, but Legalist is  
3 a lending partner of Cyberlux Corporation; it has an  
4 existing credit agreement with Cyberlux. And under that  
5 credit agreement, it's my understanding -- Legalist's  
6 counsel may correct me -- Legalist is allowed to make  
7 protective advances under the credit agreement. In  
8 other words, Legalist can pay money on the judgment  
9 without our consent. So they don't need my permission  
10 or anything like that. They can just pay these funds to  
11 protect their collateral. And that's what Legalist  
12 attempted to do in this case.

13               So on Thursday, the call I mentioned I had  
14 with the receiver, Legalist's counsel and myself,  
15 Legalist's counsel and I, on behalf of Cyberlux,  
16 tendered funds sufficient to satisfy the judgment,  
17 sufficient to pay an award of attorneys' fees to  
18 Atlantic Wave, and sufficient to pay the receiver's fee  
19 in this case.

20               So we tendered \$2.755 million. The 2.1 for  
21 the judgment, interest on the judgment; \$546,000 to  
22 cover the receiver's fee. Now the receiver's fee, of  
23 course, Judge, has to be determined by the Court after  
24 reviewing the receiver's accounting. But out of an  
25 abundance of caution, we tendered 25 percent on the

1 judgment amount to make sure the receiver's fee would be  
2 fully covered. We also tendered \$21,677 representing  
3 the attorney's fees award Mr. Walton won on a remand  
4 issue, which was discussed in the receiver's response.  
5 So it's our position it's not germane to this hearing.

6 But essentially, during that call, it was  
7 about a half hour long. And at the end of the call with  
8 the receiver, we asked for and the receiver agreed to  
9 provide his wiring instructions. The turnover order  
10 requires us to pay the receiver directly. There is no  
11 language about depositing funds to the court registry,  
12 which I spoke with the court's accounting personnel  
13 myself and they told me that if we paid funds to the  
14 court's registry, it would be rejected without express  
15 language in the order allowing us to do so.

16 So the receiver hasn't given us any payment  
17 instructions. And after our Thursday call, it's my  
18 understanding, what I've learned is the receiver is  
19 currently engaging with third parties, and I understand  
20 soliciting bids to try to sell Cyberlux, the subsidiary.  
21 The receiver is currently coordinating with HII Mission  
22 Technologies to try to obtain and collect \$25 million  
23 receivable that is going to be paid to Cyberlux.

24 And so, essentially, we're offering payment  
25 for the full amount of the judgment and the receiver's

1 fee, and he's still coordinating with a third party,  
2 HII, to try to obtain an additional \$25 million. And  
3 the receiver has taken the position several times in  
4 this case that he's entitled to 33 cents on every dollar  
5 that goes into his trust account.

6           So in total, it creates a huge problem for  
7 the company. I expect Mr. Berleth will get up here and  
8 tell you about all the creditors that are pursuing  
9 Cyberlux. HII is particularly important. HII is not a  
10 creditor. It -- what I mentioned in the beginning of  
11 this hearing, it is a completed contract. So HII is a  
12 prime defense contractor. It had a subcontract with  
13 Cyberlux. Cyberlux was unable to pay this judgment for  
14 some time because the HII contract is a significant  
15 amount of funds that had not yet been paid. The  
16 contract itself was terminated for convenience by the  
17 government. But essentially, what that means is that  
18 HII and Cyberlux had to work together to negotiate a  
19 final payment term, which they did reach at the end of  
20 February of this year. And then they have to wait for  
21 the government's final delivery instructions, which is  
22 up until May of this year. And I think it was the week  
23 after the receiver was appointed in this case -- in  
24 fact, the receiver's personnel went and watched this  
25 occur -- there was an inspection by the U.S.

1 Government, HII, and Cyberlux personnel. All these  
2 goods that Cyberlux was contractually operated to  
3 deliver, the goods were shipped to the U.S. government.  
4 And now that delivery is complete, that receivable I  
5 mentioned, the \$25 million, will be paid to Cyberlux.  
6 Now there are some credits and offsets in there, and I  
7 don't have the exact figures of what those are. But the  
8 large amount of that contract will be paid to Cyberlux.

9           However, the receiver is not entitled, and  
10 he doesn't have authority to collect any of that because  
11 we've tendered funds under the judgment amount, 31.002.  
12 Once those funds were tendered -- so on Thursday, when  
13 that occurred the receiver no longer has authority to go  
14 out and try to collect additional funds. And so, that's  
15 the first issue under 31.002. The other issue, I think,  
16 we're agreed in principal. That's on the motion to  
17 correct.

18           The turnover order in this case -- we had a  
19 hearing back in January. Plaintiffs conceded they  
20 presented no evidence about Mr. Schmidt's assets. The  
21 Court directed them to submit an order that didn't  
22 include Mr. Schmidt. I think inadvertently, Mr. Schmidt  
23 got included on the turnover order; that order was  
24 entered, and the receiver ended up sending notices to  
25 various banks. And so Mr. Schmidt's accounts have been

1 restricted.

2           Now the receiver agrees -- I can show you  
3 the transcript, Judge, and I can show you the portion of  
4 the transcript from January where everyone agreed, and  
5 the Court granted that Mr. Schmidt be left off the  
6 order. The only issue here is that the receiver wants  
7 the agreed order for this motion to modify to only  
8 affect future actions against Mr. Schmidt. And since  
9 this order shouldn't have been entered in the first  
10 place, it's voidable. So its our position that  
11 Mr. Schmidt should be removed. And because we have  
12 tendered funds sufficient to satisfy the judgment, the  
13 order should be retroactive as well, and the receiver  
14 should be allowed and required to submit notices to all  
15 financial institutions so that Mr. Schmidt's assets or  
16 bank accounts can be unrestricted.

17           And so, those are the two overarching  
18 requests and issues here. I do want to address briefly  
19 the receiver's response which was filed last night. The  
20 receiver seems to take issue with the fact that Legalist  
21 is technically paying the money directly to him.  
22 They're contractually able to do that. It makes no  
23 difference. The receiver can't pick and choose where  
24 the money comes from. If an angel investor approaches  
25 the receiver and says, "I want to satisfy this judgment

1 because I believe in Cyberlux," the receivers can't say,  
2 Whoa, whoa, whoa, we're not going to do that. I am  
3 going to chase around other debts of Cyberlux and  
4 continue to pursue the company.

5 The receiver calls this motion and our  
6 motions interference with the turnover order. That's  
7 not the case. Section -- Paragraph 21(h) and  
8 Paragraph 24 allow us to seek protective motions just  
9 like this, especially complying with the order, which  
10 we've done, because we're trying to make full judgment  
11 down. And we were allowed to sue them under the order  
12 in the 129th District Court. The receiver claims that  
13 because you're hearing this motion, it's improper  
14 because it's not technically before Judge Gomez. Judge  
15 Gomez is out for two weeks. The emergent nature of this  
16 case is, one, of course, the huge receivable that  
17 Cyberlux will be paid. And Cyberlux needs those funds  
18 to operate to pay the creditors outstanding in the order  
19 that they're due, not necessarily according to what the  
20 receiver with no authority determines.

21 And also, Cyberlux needs its wholly-owned  
22 subsidiary. Most of those -- excuse me. Many, if not  
23 all of those contracts -- I don't understand which ones  
24 are the subsidiaries' contracts and which ones are  
25 Cyberlux. But many of those contracts are being handled

1 by HII. And so the receiver's solicitation of bids has  
2 concerned a variety of business stakeholders in the  
3 company and business partners outside the company. So  
4 there is a significant risk if the receiver continues to  
5 act, it's going to destroy the business. I am not sure  
6 how urgent that is at this point, but if the receiver  
7 continues to take these actions that are outside it's  
8 authority, it will destroy the business.

9 The receiver -- the last thing I'll  
10 address. The receiver claims I didn't provide notice to  
11 him of this hearing, so I'll share a couple of  
12 notifications, as well as the e-mail I sent him. He  
13 says he didn't get notice of this hearing through the  
14 e-filing service and I didn't provide him a courtesy  
15 e-mail. Both of those are untrue. And I will share  
16 the -- my computer is freezing, I'm sorry. I'll show  
17 you the verification of service, first.

18 Can you see this, Judge?

19 THE COURT: Yes.

20 MR. PENNETTI: Okay. Here's the notice of  
21 hearing. I don't know why, but Mr. Berleth doesn't  
22 appear to be on this. But he's got four employees;  
23 there's one lawyer, three paralegals. All four of them  
24 are here. Tristian Harris is the lawyer; Martin, Davis  
25 and Jackson are the paralegals, at least based on my

1 review of the website. This is the motion to stay  
2 enforcement. Again, you have all four Berleth employees  
3 there. And then, the e-mail that I sent him is right  
4 here. Mr. Berleth, Mr. Walton, Mr. Lang. I've got  
5 notice of hearing, the two motions, and then agreed  
6 order on motion to modify.

7 I also, for what it's worth, I had  
8 discussed with Mr. Berleth, to the extent he suggests we  
9 haven't tried to resolve these issues, I told him in our  
10 Wednesday call that we were filing written objections.  
11 Our written objections also address the limitations on  
12 his authority, so he's aware of those too. So I don't  
13 know where this lack of notice is coming from.

14 So, essentially, what we're asking you to  
15 do is enter an order allowing us, one, to pay funds into  
16 the court's registry since Mr. Berleth hasn't provided  
17 those payment instructions. Two, to make plain  
18 limitations on the receiver's authority under 31.002;  
19 find that the judgment be marked satisfied upon the  
20 Court's receipt of payment; order the receiver to  
21 suspend all activities to take possession or sell  
22 Cyberlux's property, or take possession or cash; order  
23 the receiver to contact all parties and notify them of  
24 this order, of your impending order, we hope; Order that  
25 all further actions by the receiver be stayed and order

1 that a satisfaction of judgment be entered and any  
2 credits or offsets be applied after the receiver is  
3 paid, be relinquished to Cyberlux.

4 And the only thing I'll address is this  
5 judgment amount of 2.1 million in the turnover order.  
6 We addressed this in our objections, I think, and I've  
7 addressed this with Mr. Berleth on the phone. I'll let  
8 Mr. Walton speak to this. But the judgment amount is  
9 wrong. So Mr. Walton submitted a letter to the Court on  
10 May 15th, and he identifies that there is a balance of  
11 \$912,000 outstanding. The turnover order has an order  
12 of \$2.1 million. So it's somewhere between -- I guess  
13 the ultimate number is somewhere between those two. So  
14 that's the remaining issue. Again, we've raised that in  
15 our objections.

16 And Mr. Walton will probably tell you this.  
17 There's a lot of litigation between these two, which are  
18 effectually former business partners, Atlantic Wave and  
19 Cyberlux. So really, Mr. Walton is the managing  
20 director of Atlantic Wave, and Mr. Schmidt, CEO of  
21 Cyberlux. So there's a lot of pending litigation in  
22 Virginia. I understand there's a breach of contract,  
23 breach of settlement agreement matters that's pending  
24 there. Mr. Roberts is here to address those two.

25 I'll stop there, Judge, unless you have

1 questions.

2 THE COURT: Okay. Thank you.

3 Response -- I think response. Do you have  
4 more argument? You said the other counsel was going to  
5 address.

6 MR. PENNETTI: Oh, no, Judge. I was just  
7 pointing out who could address certain issues. I don't  
8 have any further argument at this time.

9 THE COURT: Okay. Thank you.

10 Response?

11 MR. BERLETH: Your Honor, if the plaintiff  
12 would like to go first, they can. But I think there are  
13 some serious calculations, errors, in Mr. Pennetti's  
14 math. May I approach, Your Honor, with a demonstrative?

15 THE COURT: Yes, you may.

16 Who's counsel for plaintiffs?

17 MR. BERLETH: David Walton, Your Honor.

18 MR. WALTON: Your Honor, it's me. And I'm  
19 fine with Mr. Berleth going first and I'll come in after  
20 him.

21 THE COURT: Okay. That's fine.

22 MR. BERLETH: So as Your Honor knows that  
23 Mr. Pennetti just said, Cyberlux is a defense contractor  
24 that had a termination in their contract for convenience  
25 for the federal government, and they have basically a

1 final payment on that contract of about \$25 million.  
2 That should be coming in in the next 10 to 14 days,  
3 somewhere in that timeframe, from HII.

4           The receiver's problem is, is while it's  
5 certainly the \$2.1 million collection that was initially  
6 started on, there are at least four other federal and  
7 state final judgments, formal UCCs out there against  
8 Cyberlux, and at least another seven more pending  
9 litigations. And what Cyberlux is trying to do is get a  
10 little bit of money, get out from under the  
11 receivership, take the \$25 million and abscond. They  
12 haven't made payroll yet, Judge. And so, if nobody else  
13 needs to be protected, it's the employees of Cyberlux,  
14 who weren't paid even before the receivership and  
15 weren't paid by payroll during the receivership. We  
16 must protect -- I mean, obviously, these litigations are  
17 not from a debtor that likes to pay their bills. These  
18 are litigations that are ongoing because they don't pay  
19 their bills. And if we give Cyberlux the \$25 million,  
20 they have a history of not paying their bills, and we  
21 must pay those.

22           The Court can -- as you said, you've read  
23 these, the arguments and authorities. The Court must  
24 give credence to other court orders, specifically, the  
25 U.S. Constitution.

1 THE COURT: So I have a couple of  
2 questions.

3 MR. BERLETH: I'm sorry?

4 THE COURT: I have a couple of questions.

5 MR. BERLETH: Certainly, Your Honor.

6 THE COURT: First, have those orders,  
7 judgments been filed for enforcement here in Texas? And  
8 are they within -- second, are they within the  
9 jurisdiction of the 129th?

10 MR. BERLETH: I believe they are, Your  
11 Honor.

12 THE COURT: Have they been filed for  
13 enforcement?

14 MR. BERLETH: They are -- I believe Todd  
15 Jones is on there -- on the Zoom, and he can speak to  
16 the position that they're taking. There are filings  
17 that are going to happen today.

18 THE COURT: Going to happen, so they  
19 haven't happened yet?

20 MR. BERLETH: They have not, Your Honor.

21 THE COURT: Okay. So the number of  
22 judgments -- so how many -- so we have this one,  
23 right --

24 MR. BERLETH: Correct.

25 THE COURT: -- that was filed in December of

1 2024, right?

2 MR. BERLETH: I believe it was October of  
3 2024, Your Honor.

4 THE COURT: Is it October? Okay.

5 MR. BERLETH: It may be even before that.  
6 It may have been in July.

7 THE COURT: And -- July 30th. At least it  
8 started the case. And the others that you're referring  
9 to are not yet pending before any court in Harris  
10 County?

11 MR. BERLETH: Not yet, Your Honor. That's  
12 why they're trying to do this as an emergency. It's to  
13 do it before the others can get their filings on file  
14 and let the 129th sort it all out. That's the exact  
15 point of this emergency, which it's not an emergency.  
16 There is no prejudice here.

17 THE COURT: For the matter in this case,  
18 let's talk about that. How much is owed?

19 MR. BERLETH: I have \$3,094,660.81, which  
20 is at the top line of the demonstrative I've handed you  
21 up there.

22 THE COURT: And have you been paid or  
23 offered to be paid that three million?

24 MR. BERLETH: I have not.

25 THE COURT: So what is the disconnect

1 between their argument that they tendered funds to you  
2 on Thursday and you refused to give them the manner in  
3 which they were to deliver the funds. And so,  
4 therefore, they want the Court to accept the money on  
5 your behalf and conclude that the matter is paid for.

6 MR. BERLETH: Your Honor, I will argue that  
7 it's the same disconnect that Mr. Pennetti argued when  
8 he argued to Judge Gomez that the receivership -- that  
9 the Virginia court stayed the judgment.

10 Exhibit 10, on the transcript of October 8,  
11 2024, on page 8 at line 8:

12 "The Court: Has it been stayed? I mean,  
13 has it been stayed in Virginia?

14 "Mr. Pennetti: Those -- all those  
15 litigations, yes, the stay has occurred in Virginia.  
16 There's no -- the collection -- there's no activity in  
17 the collection suit. Then you've got the three other  
18 lawsuits.

19 "The Court: So the enforcement of this  
20 judgment that they domesticated has been stayed in  
21 Virginia?

22 "Mr. Pennetti: That's correct."

23 And what Mr. Pennetti did not tell the  
24 Court on that day was he knew on September 10th,  
25 almost -- over 30 days before that hearing, he knew that

1 they had lost their emergency stay and, in fact, had  
2 been ordered almost \$10,000 in attorneys' fees to the  
3 defense against that emergency stay.

4 THE COURT: Okay. I appreciate that.  
5 However, let's get back to my question, which is, what  
6 is the disconnect in this instance when they say --  
7 basically you're saying he's incorrect in that he had --  
8 I don't want to say --

9 MR. BERLETH: I don't have the money,  
10 Judge.

11 THE COURT: You don't have the money? He  
12 didn't offer you the money?

13 MR. BERLETH: They've asked me for the  
14 wiring instructions and I've sent them to Scott Prostop, the  
15 counsel for Legalist. Legalist has to pay me  
16 directly; it can't go through Cyberlux. I've offered  
17 them my wiring instructions. My wiring instructions are  
18 printed on my website, so...

19 THE COURT: So you have wiring  
20 instructions. You've given them wiring instructions.  
21 You've received no funds?

22 MR. BERLETH: Correct.

23 THE COURT: Okay.

24 MR. BERLETH: It's not an emergency.

25 THE COURT: And there's an

1 agreement that -- it is not an agreement. It's  
2 undisputed that the amount that you just stated in the  
3 record that you say is owed would pay the judgment, your  
4 fees, whatever, in full?

5 MR. BERLETH: If \$3,094,660.81 were to  
6 magically appear here in front of me, I would file a  
7 motion to terminate receivership and distribute the  
8 funds.

9 THE COURT: That part, okay.

10 MR. BERLETH: But that still takes time and  
11 Judge Gomez still has to, as we've said, award my fees.  
12 He has to order the distribution of funds. None of that  
13 is an emergency.

14 THE COURT: Understood. Okay. I'll  
15 let you make a little bit -- do you want to make more  
16 argument?

17 MR. BERLETH: Unless Your Honor has more  
18 questions, I think --

19 THE COURT: No, I mean, you've answered my  
20 question about these other judgments. I've read your  
21 briefing on that. I've read that Gomez did not want to  
22 terminate the receivership with vague allegations about  
23 what will happen outside of the Court without actually  
24 seeing that, yes, the judgment is paid in full.  
25 Because, I agree with you, if the judgment was paid in

1 full, they sent you the money, you had the money, I  
2 would terminate it, right? That's how this works.  
3 But --

4 So let me pivot back to Mr. Pennetti. So  
5 why haven't you wired the \$3.9 million?

6 MR. PENNETTI: Well, Judge, let me show  
7 you. This is what I received from Mr. Berleth on  
8 Thursday. It is not 3.1, it is 2.9. And again, he  
9 doesn't apply any credits or offsets that Mr. Walton's  
10 May 15th letter identifies are necessary.

11 THE COURT: So y'all are in dispute about  
12 the amount that's owed?

13 MR. PENNETTI: I am sorry?

14 THE COURT: So you're in dispute -- the  
15 amount that he says, if you pay this, you pay the  
16 receiver, you pay attorneys' fees, you pay the judgment.  
17 I can turn those judgment fees to the plaintiff, the  
18 plaintiff is made whole, everybody gets to walk away.  
19 You are disputing -- Mr. Berleth?

20 MR. BERLETH: Correct, Your Honor.

21 THE COURT: You're disputing counsel's  
22 number. Is that correct?

23 MR. PENNETTI: Judge, I am simply saying,  
24 we have to work off of what the judgment says, what the  
25 turnover order says, not Mr. Berleth's number, what the

1 turnover order says. And those are the funds we have  
2 tendered. And I didn't realize Mr. Berleth has wiring  
3 instructions on his website. I would speak to  
4 Mr. Priddy whether -- I would ask Mr. Priddy and discuss  
5 when those funds would be wired, and if his client is  
6 still wanting to make a protective event --

7 THE COURT: Okay. So -- but that's the  
8 kind of information, if you want the Court to act on you  
9 having paid the judgment for which the receiver was  
10 established, is to make that happen before today's  
11 hearing.

12 MR. PENNETTI: I understand.

13 THE COURT: I mean, that's whether it's in  
14 front of me sitting as Gomez, or in front of Gomez. I  
15 anticipate he would expect the same thing. So to tell  
16 me that you tendered something on Thursday and that I  
17 should take your tender as a fact of full payment, and  
18 yet we're here on Monday, and you have yet to -- you  
19 don't even know what Mr. Berleth has said is true, which  
20 is he sent the wiring instructions to whoever that  
21 person is. I guess that's the point person, I don't  
22 know.

23 MR. BERLETH: That's the director of  
24 Legalist. And, Your Honor, I've spoken --

25 THE COURT: That's the director of Legal --

1 MR. BERLETH: I sent it directly to  
2 Legalist, and they're not interested in --

3 THE COURT: Okay. So he sent it directly  
4 to Legalist. You said Legalist -- he doesn't have an  
5 issue, it sounds like, with Legalist paying your bill,  
6 or probably anybody off the street who wants to drop  
7 3.9 --

8 MR. PENNETTI: Counsel for Legalist is on  
9 this call. I see he took himself off mute. I don't  
10 know if he wants to --

11 THE COURT: Okay. Sir, go ahead.

12 MR. PRIDY: Good morning, Judge. I will  
13 just say very quickly. If the wiring instructions had  
14 been sent by Mr. Berleth, I am not aware of it. Whether  
15 they were sent directly to Mr. Prostop or to Legalist, I  
16 have not seen it. I would be happy for him to show me  
17 where those wiring instructions were sent.

18 As far as the wiring instructions being on  
19 his website, I am on his website right now,  
20 berlethlaw.com, and what I see on his website is a Frost  
21 Bank account number and a routing number that has a  
22 parenthetical stating to contact Berleth and Associates  
23 to get that information. I certainly checked the  
24 website for the routing number. I didn't see it.

25 And, again, if he has sent those wiring

1 instructions, I will simply ask that he present that to  
2 the Court because I personally have not seen it. I am  
3 not saying he hasn't sent it, but I personally have not  
4 seen it. And, Judge --

5 THE COURT: Have you talked

6 MR. PRIDDY: We asked for them on Thursday  
7 and we said we would pay if we received the wiring  
8 instructions. So that's all I can speak to.

9 THE COURT: And are you the person he sent  
10 it to?

11 MR. PRIDDY: I believe he said he sent it  
12 to Jeff Prostok who is the partner in charge of this  
13 case that I work with.

14 THE COURT: Have you talked to Prostok?

15 MR. PRIDDY: I was in contact with Jeff  
16 yesterday evening and as of that time, he did not inform  
17 me that he had received wiring instructions.

18 THE COURT: Okay. Did you ask him  
19 specifically whether he received wiring instructions?

20 MR. PRIDDY: Not yesterday. As of Friday  
21 when I spoke with him, we had not received any wiring  
22 instructions.

23 THE COURT: You had asked him directly on  
24 Friday whether he had received it.

25 MR. PRIDDY: Yes. Because we talked to our

1 client and they asked if we were paying, and we told  
2 them at that time we did not receive wiring  
3 instructions.

4 THE COURT: Okay. And then, when did you  
5 send it?

6 MR. BERLETH: I'll just make this real easy  
7 for the Court. I'll represent to the Court here on the  
8 record that they will have wiring instructions to all  
9 counsel by noon today.

10 THE COURT: Did you send -- when did you  
11 send it?

12 MR. BERLETH: I sent it, I believe,  
13 Thursday afternoon or Friday morning last week. And  
14 then, over the weekend, I spoke with Legalist, and it's  
15 my understanding from my director --

16 THE COURT: To whom did you speak at  
17 Legalist?

18 MR. BERLETH: I spoke with their director  
19 of investments and they are -- they want their money and  
20 they want to be paid out of this 25 million. And so,  
21 that's where -- that's where we left it. They're going  
22 to contact again, today. This case has been very  
23 rapidly evolving over the past week and I think  
24 everybody needs to take a deep breath, stop with the  
25 emergency motions. If they want to wire me the money by

1 the end of the day, I will then file a motion to  
2 terminate receivership and Judge Gomez can hear that  
3 motion to terminate receivership. And once he signs it  
4 and distributes those funds, then the receivership is  
5 over. And that's my plan of action.

6 THE COURT: Okay.

7 MR. BERLETH: And I will represent again to  
8 the Court that I will have my wiring instructions both  
9 to Mr. Pennetti, and I will resend it to Mr. Prostok  
10 with a return receipt requested e-mail by noon today.

11 THE COURT: Okay.

12 MR. PENNETTI: Judge, can we have a ruling  
13 on the 31.002(b)(3) argument?

14 THE COURT: Which is what? I mean, because  
15 you dispute the amount that's owed.

16 Let's step back. If he sent you the wiring  
17 instructions of the 3.9 -- 3.1.

18 MR. BERLETH: It's 3.094.

19 THE COURT: 3.094, almost 3.1. If he sent  
20 you wiring instructions of 3.094, and he resends them  
21 again today at noon, 3.094, are you disputing those  
22 amounts, and is that amount going to be paid?

23 MR. PENNETTI: If that amount -- what I'm  
24 asking for, Judge, if that amount is paid, the 3.094, I  
25 am simply asking for a ruling --

1 THE COURT: I'm not asking -- I am asking  
2 you a different question. I am not asking you what  
3 you're asking me. I'm asking you, if the 3.094 is sent  
4 over and that's the amount, are you paying that amount?  
5 Because before, a few minutes ago, you were sort of  
6 disputing what the amount was.

7 MR. PENNETTI: So what I was trying to  
8 point out, Judge, is that the amount is in dispute now  
9 that that amount will not be paid. So unless Legalist  
10 has changed their position, and they no longer want to  
11 issue a protective advance, and Mr. Berleth can speak to  
12 that. That amount -- the amount that Mr. Berleth just  
13 stated on the record, what I believe that would be paid  
14 today, and I'm just simply asking that the Court rule,  
15 once that's paid, that Mr. Berleth doesn't have  
16 authority to go out and sell the Cyberlux subsidiary, he  
17 doesn't have authority to go seize the \$25 million  
18 payment or try to get HII to wire him money instead of  
19 wiring it to Cyberlux. That's what I am asking.

20 THE COURT: Well, I think Mr. Berleth has  
21 made the representation on the record to the Court that  
22 should that amount be paid, the next action he will take  
23 will not be to go and scour the Earth for this extra  
24 \$25 million or for other judgments that neither -- no  
25 court in Harris County has jurisdiction over at this

1 point, nor has as a receiver been appointed for those  
2 other judgments at this point. And so, he's represented  
3 to the Court that should that amount be paid today, the  
4 next motion will be the motion to terminate the  
5 receiver. And he's absolutely correct. The Court has  
6 to approve the payment of the receiver. So I can't do  
7 that before you actually have paid the money.

8 MR. PENNETTI: I understand. This is  
9 difficult to do without wiring instructions. That's all  
10 I'm saying. We'll be sure when we receive that -- it's  
11 hard to -- Legalist's counsel can call and confirm that  
12 amount be paid, and if it's not paid, Mr. Berleth can  
13 scour the Earth. But if it's paid, and the  
14 representations today that he's made were different from  
15 the representations last week. So with this  
16 clarification, that if the money is paid, he will do  
17 nothing further, I think my clients are fine with that.  
18 It's just the representation he's made continuous  
19 efforts with the subsidiary and the \$25 million  
20 receivable. So if that's not going to happen, then  
21 we're on the same page.

22 THE COURT: Well, I think, certainly from  
23 my reading of the briefing, he certainly intended to do  
24 that. And intended to bring those matters into the  
25 Court's 129th jurisdiction. That hasn't happened yet.

1 None of that has happened. The Court hasn't -- it  
2 hasn't been attracted back to the 129th. Nobody knows  
3 even if they are filed, whether they're going to come to  
4 the 129th. There might be a whole different Court that  
5 has jurisdiction over those enforcement matters and over  
6 those judgments.

7 So I think that's not anything that I can  
8 make a ruling on in terms of those other judgments that  
9 may or may not be filed for enforcement here. You can  
10 certainly take care of those other judgments before an  
11 enforcement action is even filed here. So I am not  
12 going to make a ruling on what he can do about these  
13 other things that many things can happen differently,  
14 okay.

15 MR. PRIDDY: Judge Payne, this is Austin  
16 Priddy for Legalist. I just want to very quickly say  
17 for the record, we have in my law firm's trust account  
18 about 2.755 million that Legalist previously transferred  
19 to us based on the understanding that amount was needed  
20 to satisfy the judgment. Based on the representations  
21 made today, I understand that number is now a little  
22 south of 3.1 million. We will relay that to our client  
23 today. I have every reason to think they're going to be  
24 interested in tendering that full amount. I would ask,  
25 because of the nature of trying to coordinate payments

1 and multiple wires, a wire from Legalist to my firm, and  
2 then a wire from my firm to Mr. Berleth, we would intend  
3 to make that payment today, if you can. It may need to  
4 be tomorrow, just to give us that extra day to get the  
5 funds in from Legalist and then transferred to Mr.  
6 Berleth.

7                   And again, from my perspective, like  
8 Mr. Penentti said, this doesn't change anything because  
9 if the amount is ultimately not tendered, Mr. Berleth  
10 can carry on. All I am asking for is an additional  
11 24 hours to tender that payment so that we have time to  
12 coordinate with our client.

13                   THE COURT: Okay. So, what I will do is, I  
14 will leave this matter open. We will continue it to  
15 Wednesday -- I don't know. I don't know if Gomez will  
16 be back. We will continue it to Wednesday at 8:30 and  
17 then the parties will give a report to the Court on  
18 where we are, what the status is of the payment and then  
19 what the Court would need to do about the termination of  
20 the receiver.

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

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.

11 THE COURT: Okay. So I'm going to --

12 MR. WALTON: And, Your Honor, David Walton  
13 for Atlantic Wave. If I can just touch on one point  
14 briefly, understanding that the Court's instructions on  
15 this matter -- in Cyberlux' motions, they misrepresent  
16 that Atlantic Wave has stipulated to the amount due and  
17 owed to Atlantic Wave under the judgment by  
18 mischaracterizing statements in our letter of May 15th.  
19 Simply put, there's been no such stipulation. That is a  
20 complete misrepresentation of that letter, and Atlantic  
21 Wave objects to any conclusory statement to the contrary  
22 made by Cyberlux.

23 I just put that out there on the record  
24 because we are talking about in these motions an amount  
25 that are to be paid through this wire payment, and the

1 misrepresentation made by Cyberlux needs to be  
2 addressed, so we made those stipulations to the effect.

3 MR. PENNETTI: Mr. Walton, can you pull up  
4 your letter from May 15th so we can show Judge what  
5 we're talking about, or I can pull it up.

6 MR. WALTON: You can pull it up if you have  
7 it available.

8 THE COURT: Mr. Walton, you don't have any  
9 issue with the 3.094 million that should it be paid,  
10 that you will be paid in full?

11 MR. WALTON: No, Your Honor. Based off of  
12 what I've heard, and certainly we will rely on  
13 Mr. Berleth's calculations, I think that would be  
14 sufficient to address the Virginia judgment. I will  
15 say, as I think you've heard, there are many other  
16 claims and judgments out there, one of which is another  
17 claim of Atlantic Wave that is closer to 6.7 million.  
18 So I put that out there for the record that, yes, I  
19 think that 3.1 will certainly cover the Virginia  
20 judgment that is being enforced in this proceeding. But  
21 there's more out there that Atlantic Wave seeks.

22 THE COURT: Okay.

23 MR. PENNETTI: Judge, may I share my screen  
24 one more time?

25 THE COURT: Yes.

1 MR. PENNETTI: I am at a loss as to how  
2 else to interpret the amount that's due of 912,000.

3 MR. WALTON: Your Honor, if you can see  
4 there, there are multiple points 1, 2, 3, 4, 5, that  
5 continues on down the page, listing all the various  
6 damages that Atlantic Wave seeks, certainly, in this  
7 proceeding. And I think the language says, "at  
8 minimum." That's the bottom dollar, that there's going  
9 to be more. So there is no such stipulation that  
10 Atlantic Wave said it's only due and owed 912,000.

11 If you scroll down and you took a  
12 presentation here, but if you looked at No. 5, it says  
13 that Atlantic Wave is due and owed in excess of 592,000  
14 in attorneys' fees. And all of that is -- Atlantic Wave  
15 is entitled to recover all of that under the Virginia  
16 judgment. So to suggest otherwise is disingenuous.

17 MR. PENNETTI: Well, it's also a \$6 million  
18 claim that's currently being litigated in Virginia.  
19 There are a variety of other actions. So our point to  
20 that is, we are entitled to judgment, to credits and  
21 offsets for the amounts paid under the settlement  
22 agreement, and that's what Mr. Walton is -- what I  
23 perceive to be what Mr. Walton is representing, was  
24 about payments under this settlement agreement and,  
25 therefore, this judgment.

1 MR. WALTON: Counsel's perception is not a  
2 stipulation and that's my point. He is misrepresenting  
3 to this Court that a stipulation was made and there has  
4 been no such stipulation.

5 THE COURT: Okay. We are all at that point  
6 to where --

7 Go ahead.

8 MR. BERLETH: Your Honor, just real quick,  
9 I want to admit Exhibits 1 through 12 for the receiver.

10 THE COURT: Exhibits 1 through 12?

11 MR. BERLETH: Yes. They were attached to  
12 my response.

13 THE COURT: Okay. I am going to take under  
14 consideration any exhibits attached to either the motion  
15 or the response.

16 MR. BERLETH: We'll continue to Wednesday.

17 THE COURT: Okay. All right.

18 So we'll continue to Wednesday at 8:30 by  
19 Zoom, and then we'll see if the amount that's owed has  
20 been paid.

21 Okay. Thank you. You are excused. Have a  
22 wonderful week.

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS )  
COUNTY OF HARRIS )

I, Tamika T. Bartee, Official Court Reporter in and for the 55th District Court, Harris County State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, Volume 1, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record, Volume 1 of the proceedings truly and correctly references the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \$\_\_\_\_\_ and was paid by \_\_\_\_\_.

WITNESS MY OFFICIAL HAND this the 14th day of June, 2025.

/s/Tamika T. Bartee  
Tamika T. Bartee, Texas CSR 12593  
Expiration Date: 01/31/26  
Official Court Reporter  
55th Judicial District Court  
Harris County, Texas

#	2100 [1] - 3:21 22nd [1] - 9:22	8	agreement [9] - 8:7, 10:4, 10:5, 10:7, 18:23, 25:1, 38:22, 38:24	19:4, 19:8, 23:1, 25:16, 31:13
#12593 [1] - 1:23	2323 [1] - 3:14 24 [2] - 15:8, 35:11	8 [3] - 23:10, 23:11 8:30 [3] - 35:16, 35:23, 39:18	18:23, 25:1, 38:22, 38:24	arguments [1] - 20:23 arose [1] - 8:7
\$	24042120 [1] - 3:13 24091860 [1] - 3:4	9	agrees [1] - 14:2 ahead [3] - 7:7, 28:11, 39:7	assets [2] - 13:20, 14:15
\$10,000 [1] - 24:2 \$2.11 [1] - 9:24 \$2.755 [1] - 10:20 \$21,677 [1] - 11:2 \$25 [9] - 11:22, 12:2, 13:5, 20:1, 20:11, 20:19, 32:17, 32:24, 33:19	24098284 [1] - 4:4 24102105 [1] - 3:8 24110208 [1] - 3:19 25 [2] - 10:25, 30:20	912,000 [2] - 38:2, 38:10 9950 [1] - 3:5 9th [1] - 1:16	Alex [1] - 6:25 Alexander [2] - 3:18, 5:23 allegations [1] - 25:22 allow [2] - 7:5, 15:8 allowed [3] - 10:6, 14:14, 15:11	associate [3] - 5:8, 6:13, 7:9 associates [1] - 28:22 ASSOCIATES [1] - 3:4 assume [2] - 6:1, 6:3 ATLANTIC [2] - 1:4, 3:11
\$3,094,660.81 [2] - 22:19, 25:5 \$546,000 [1] - 10:21 \$912,000 [1] - 18:11	3	A	allowing [2] - 11:15, 17:15 almost [3] - 23:25, 24:2, 31:19 alone [1] - 9:6 amount [2] - 9:21, 11:1, 11:25, 12:15, 13:8, 13:11, 18:5, 18:8, 25:2, 26:12, 26:15, 31:15, 31:22, 31:23, 31:24, 32:4, 32:6, 32:8, 32:9, 32:12, 32:22, 33:3, 33:12, 34:19, 34:24, 35:9, 36:16, 36:24, 38:2, 39:19	atlantic [2] - 38:6, 38:14 Atlantic [15] - 5:4, 6:10, 6:15, 6:19, 10:18, 18:18, 18:20, 36:13, 36:16, 36:17, 36:20, 37:17, 37:21, 38:10, 38:13 attached [2] - 39:11, 39:14
/	3 [4] - 1:1, 2:2, 2:5, 38:4	able [1] - 14:22	amounts [2] - 31:22, 38:21	attempted [1] - 10:12 attorney's [1] - 11:3 attorneys' [4] - 10:17, 24:2, 26:16, 38:14 attracted [1] - 34:2
/s/Tamika [1] - 40:23	3.094 [7] - 31:18, 31:19, 31:20, 31:21, 31:24, 32:3, 37:9	above-entitled [1] - 1:17	AND [2] - 3:12, 3:17 angel [1] - 14:24 answered [1] - 25:19 anticipate [1] - 27:15 apennetti@ thompsoncoburn. com [1] - 3:22 appear [2] - 16:22, 25:6 appearance [2] - 5:6, 6:12	authority [11] - 9:1, 9:10, 9:13, 13:10, 13:13, 15:20, 16:8, 17:12, 17:18, 32:16, 32:17
0	3.1 [5] - 26:8, 31:17, 31:19, 34:22, 37:19	above-styled [1] - 40:11	appearances..... ..... [1] - 2:5 applied [1] - 18:2 apply [1] - 26:9 appoint [1] - 9:1 appointed [5] - 5:8, 9:18, 9:22, 12:23, 33:1	available [2] - 9:12, 37:7 Avenue [2] - 3:14, 3:21
/s/Tamika [1] - 40:23	3.9 [3] - 26:5, 28:7, 31:17	abscond [1] - 20:11	APPOINTED [1] - 3:2 appreciate [1] - 24:4 approach [1] - 19:14 approaches [1] - 14:24	await [3] - 36:1, 36:7 award [3] - 10:17, 11:3, 25:11
0	30 [1] - 23:25	absolutely [1] - 33:5	approve [1] - 33:6 argue [1] - 23:6 argued [2] - 23:7, 23:8 argument [6] - 6:22,	aware [2] - 17:12, 28:14
01/31/26 [1] - 40:24	301 [1] - 4:5	abundance [1] - 10:25	argued [2] - 23:7, 23:8 argument [6] - 6:22,	B
1	30th [1] - 22:7	accept [1] - 23:4	argued [2] - 23:7, 23:8 argument [6] - 6:22,	B.C.R.,RPR [1] - 1:23
1	31 [2] - 8:18, 9:15	accounting [1] - 15:19	argued [2] - 23:7, 23:8 argument [6] - 6:22,	background [1] - 8:4
1	31.002 [3] - 13:11, 13:15, 17:18	account [3] - 12:5, 28:21, 34:17	argued [2] - 23:7, 23:8 argument [6] - 6:22,	balance [1] - 18:10
1	31.002(b)(3) [2] - 8:24, 31:13	actions [4] - 14:8, 16:7, 17:25, 38:19	argued [2] - 23:7, 23:8 argument [6] - 6:22,	bank [2] - 14:16, 28:21
1	31.002(b)(3) [2] - 8:19, 9:15	active [1] - 8:12	argued [2] - 23:7, 23:8 argument [6] - 6:22,	banks [1] - 13:25
1	3200 [1] - 3:21	activities [1] - 17:21	argued [2] - 23:7, 23:8 argument [6] - 6:22,	Bar [6] - 3:4, 3:8, 3:13, 3:19, 3:20, 4:4
1	33 [1] - 12:4	activity [1] - 23:16	argued [2] - 23:7, 23:8 argument [6] - 6:22,	Bartee [3] - 40:4, 40:23, 40:23
1	3635 [1] - 4:5	add [1] - 5:17	argued [2] - 23:7, 23:8 argument [6] - 6:22,	bartee [1] - 1:23
1	4	additional [3] - 12:2, 13:14, 35:10	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	4 [2] - 2:6, 38:4	address [9] - 8:2, 14:18, 16:10, 17:11, 18:4, 18:24, 19:5, 19:7, 37:14	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	40 [1] - 2:7	addressed [3] - 18:6, 18:7, 37:2	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	5	admit [1] - 39:9	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	5 [2] - 38:4, 38:12	admitted [1] - 40:15	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	542069 [1] - 3:9	advance [1] - 32:11	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	55th [2] - 1:6, 40:5	advances [1] - 10:7	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	592,000 [1] - 38:13	afternoon [1] - 30:13	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	6	ago [1] - 32:5	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	6 [1] - 38:17	agree [1] - 25:25	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	6.7 [1] - 37:17	agreed [5] - 11:8, 13:16, 14:4, 14:7, 17:5	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	7	agreed [5] - 11:8, 13:16, 14:4, 14:7, 17:5	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	75201 [2] - 3:15, 3:21	agree [1] - 25:25	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	76102-4143 [1] - 4:5	agreed [5] - 11:8, 13:16, 14:4, 14:7, 17:5	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	77070 [1] - 3:5	agreed [5] - 11:8, 13:16, 14:4, 14:7, 17:5	argued [2] - 23:7, 23:8 argument [6] - 6:22,	
1	77254 [1] - 3:10	agreed [5] - 11:8, 13:16, 14:4, 14:7, 17:5	argued [2] - 23:7, 23:8 argument [6] - 6:22,	

<p><b>based</b> [4] - 16:25, 34:19, 34:20, 37:11</p> <p><b>beginning</b> [1] - 12:10</p> <p><b>behalf</b> [4] - 6:18, 9:4, 10:15, 23:5</p> <p><b>BELL</b> [1] - 3:14</p> <p><b>berleth</b> [9] - 5:15, 16:21, 17:2, 17:8, 26:7, 26:19, 27:19, 32:20, 35:9</p> <p><b>Berleth</b> [17] - 3:3, 5:7, 5:12, 12:7, 17:4, 17:16, 18:7, 19:19, 27:2, 28:14, 28:22, 32:11, 32:12, 32:15, 33:12, 35:2, 35:6</p> <p><b>BERLETH</b> [40] - 3:4, 5:7, 5:23, 6:1, 6:5, 19:11, 19:17, 19:22, 21:3, 21:5, 21:10, 21:14, 21:20, 21:24, 22:2, 22:5, 22:11, 22:19, 22:24, 23:6, 24:9, 24:13, 24:22, 24:24, 25:5, 25:10, 25:17, 26:20, 27:23, 28:1, 30:6, 30:12, 30:18, 31:7, 31:18, 36:3, 36:5, 39:8, 39:11, 39:16</p> <p><b>Berleth's</b> [2] - 26:25, 37:13</p> <p><b>berlethlaw.com</b> [1] - 28:20</p> <p><b>between</b> [4] - 18:12, 18:13, 18:17, 23:1</p> <p><b>bids</b> [2] - 11:20, 16:1</p> <p><b>bill</b> [1] - 28:5</p> <p><b>bills</b> [3] - 20:17, 20:19, 20:20</p> <p><b>bit</b> [3] - 8:13, 20:10, 25:15</p> <p><b>bottom</b> [1] - 38:8</p> <p><b>Box</b> [1] - 3:9</p> <p><b>breach</b> [2] - 18:22, 18:23</p> <p><b>breath</b> [1] - 30:24</p> <p><b>briefing</b> [2] - 25:21, 33:23</p> <p><b>briefly</b> [2] - 14:18, 36:14</p> <p><b>bring</b> [1] - 33:24</p> <p><b>brought</b> [1] - 8:5</p> <p><b>business</b> [6] - 8:15, 16:2, 16:3, 16:5, 16:8, 18:18</p>	<p>19:13, 37:13</p> <p><b>care</b> [1] - 34:10</p> <p><b>carry</b> [1] - 35:10</p> <p><b>case</b> [13] - 6:9, 9:23, 10:12, 10:19, 12:4, 12:23, 13:18, 15:7, 15:16, 22:8, 22:17, 29:13, 30:22</p> <p><b>cash</b> [1] - 17:22</p> <p><b>CAUSE</b> [1] - 1:2</p> <p><b>caution</b> [1] - 10:25</p> <p><b>cents</b> [1] - 12:4</p> <p><b>CEO</b> [1] - 18:20</p> <p><b>certain</b> [1] - 19:7</p> <p><b>certainly</b> [9] - 20:5, 21:5, 28:23, 33:22, 33:23, 34:10, 37:12, 37:19, 38:6</p> <p><b>CERTIFICATE</b> [1] - 40:1</p> <p><b>Certificate.....</b> [1] - 2:7</p> <p><b>certify</b> [3] - 40:6, 40:13, 40:17</p> <p><b>chambers</b> [1] - 40:12</p> <p><b>chance</b> [1] - 6:6</p> <p><b>change</b> [1] - 35:8</p> <p><b>changed</b> [1] - 32:10</p> <p><b>Chapter</b> [2] - 8:18, 9:15</p> <p><b>charge</b> [1] - 29:12</p> <p><b>chase</b> [1] - 15:3</p> <p><b>checked</b> [1] - 28:23</p> <p><b>choose</b> [1] - 14:23</p> <p><b>chuck</b> [2] - 3:24, 7:12</p> <p><b>claim</b> [2] - 37:17, 38:18</p> <p><b>claims</b> [3] - 15:12, 16:10, 37:16</p> <p><b>clarification</b> [1] - 33:16</p> <p><b>client</b> [4] - 27:5, 30:1, 34:22, 35:12</p> <p><b>clients</b> [3] - 8:6, 9:8, 33:17</p> <p><b>closer</b> [1] - 37:17</p> <p><b>Coburn</b> [1] - 7:10</p> <p><b>COBURN</b> [1] - 3:20</p> <p><b>collateral</b> [1] - 10:11</p> <p><b>collect</b> [3] - 11:22, 13:10, 13:14</p> <p><b>collection</b> [3] - 20:5, 23:16, 23:17</p> <p><b>coming</b> [2] - 17:13, 20:2</p> <p><b>Commerce</b> [1] - 4:5</p> <p><b>COMMUNITY</b> [2] - 1:4, 3:12</p> <p><b>community</b> [1] - 6:19</p> <p><b>Community</b> [1] - 9:8</p>	<p><b>company</b> [4] - 12:7, 15:4, 16:3</p> <p><b>complete</b> [2] - 13:4, 36:20</p> <p><b>completed</b> [2] - 8:13, 12:11</p> <p><b>complying</b> [1] - 15:9</p> <p><b>computer</b> [1] - 16:16</p> <p><b>conceded</b> [1] - 13:19</p> <p><b>concern</b> [2] - 8:10, 8:16</p> <p><b>concerned</b> [1] - 16:2</p> <p><b>conclude</b> [1] - 23:5</p> <p><b>conclusory</b> [1] - 36:21</p> <p><b>confirm</b> [1] - 33:11</p> <p><b>consent</b> [2] - 8:8, 10:9</p> <p><b>consideration</b> [1] - 39:14</p> <p><b>constitution</b> [1] - 20:25</p> <p><b>contact</b> [4] - 17:23, 28:22, 29:15, 30:22</p> <p><b>contains</b> [1] - 40:7</p> <p><b>continue</b> [7] - 9:13, 9:14, 15:4, 35:14, 35:16, 39:16, 39:18</p> <p><b>continues</b> [4] - 8:9, 16:4, 16:7, 38:5</p> <p><b>continuing</b> [1] - 8:15</p> <p><b>continuous</b> [1] - 33:18</p> <p><b>contract</b> [8] - 8:13, 12:11, 12:14, 12:16, 13:8, 18:22, 19:24, 20:1</p> <p><b>contractor</b> [3] - 8:10, 12:12, 19:23</p> <p><b>contracts</b> [4] - 8:12, 15:23, 15:24, 15:25</p> <p><b>contractually</b> [2] - 13:2, 14:22</p> <p><b>contrary</b> [1] - 36:21</p> <p><b>convenience</b> [2] - 12:16, 19:24</p> <p><b>coordinate</b> [2] - 34:25, 35:12</p> <p><b>coordinating</b> [2] - 11:21, 12:1</p> <p><b>CORPORATION</b> [2] - 1:8, 3:17</p> <p><b>Corporation</b> [1] - 10:3</p> <p><b>corporation</b> [3] - 5:5, 6:11, 7:13</p> <p><b>correct</b> [10] - 8:2, 10:6, 13:17, 21:24, 23:22, 24:22, 26:20, 26:22, 33:5, 40:7</p> <p><b>correctly</b> [1] - 40:14</p> <p><b>cost</b> [1] - 40:17</p> <p><b>COUNSEL</b> [3] - 3:7, 3:11, 4:2</p>	<p><b>Counsel</b> [2] - 3:24, 3:25</p> <p><b>counsel</b> [18] - 5:6, 5:11, 5:14, 6:13, 6:14, 6:25, 7:13, 10:1, 10:6, 10:14, 10:15, 19:4, 19:16, 24:15, 28:8, 30:9, 33:11, 40:9</p> <p><b>counsel's</b> [3] - 26:21, 35:24, 39:1</p> <p><b>counterparts</b> [1] - 7:4</p> <p><b>country</b> [1] - 7:5</p> <p><b>COUNTY</b> [2] - 1:5, 40:2</p> <p><b>County</b> [5] - 1:19, 1:24, 22:10, 32:25, 40:5</p> <p><b>couple</b> [4] - 9:18, 16:11, 21:1, 21:4</p> <p><b>course</b> [3] - 9:3, 10:23, 15:16</p> <p><b>Court</b> [25] - 1:23, 2:7, 10:23, 14:5, 20:22, 20:23, 23:4, 23:12, 23:19, 23:24, 25:23, 27:8, 29:2, 30:7, 31:8, 32:14, 32:21, 33:3, 34:1, 34:4, 35:17, 35:19, 40:4, 40:5, 40:24</p> <p><b>COURT</b> [76] - 1:2, 1:4, 5:3, 5:10, 5:13, 5:16, 5:19, 5:25, 6:3, 6:7, 6:20, 7:2, 7:7, 7:11, 7:18, 7:23, 8:22, 16:19, 19:2, 19:9, 19:15, 19:21, 21:1, 21:4, 21:6, 21:12, 21:18, 21:21, 21:25, 22:4, 22:7, 22:17, 22:22, 22:25, 24:4, 24:11, 24:19, 24:23, 24:25, 25:9, 25:14, 25:19, 26:11, 26:14, 26:21, 27:7, 27:13, 27:25, 28:3, 28:11, 29:5, 29:9, 29:14, 29:18, 29:23, 30:4, 30:10, 30:16, 31:6, 31:11, 31:14, 31:19, 32:1, 32:20, 33:22, 35:13, 35:24, 36:4, 36:11, 37:8, 37:22, 37:25, 39:5, 39:10, 39:13, 39:17</p> <p><b>court</b> [14] - 5:3, 5:8, 11:11, 13:21, 15:12, 18:9, 20:24, 22:9, 23:9, 30:7, 32:25,</p>	<p>33:5, 39:3, 40:12</p> <p><b>court's</b> [4] - 11:12, 11:14, 17:16, 36:14</p> <p><b>Court's</b> [3] - 8:25, 17:20, 33:25</p> <p><b>court-appointed</b> [1] - 5:8</p> <p><b>courtesy</b> [1] - 16:14</p> <p><b>cover</b> [2] - 10:22, 37:19</p> <p><b>covered</b> [1] - 11:2</p> <p><b>creates</b> [1] - 12:6</p> <p><b>credence</b> [1] - 20:24</p> <p><b>credit</b> [3] - 10:4, 10:5, 10:7</p> <p><b>Creditor</b> [1] - 1:6</p> <p><b>creditor</b> [1] - 12:10</p> <p><b>creditors</b> [5] - 8:6, 9:5, 9:6, 12:8, 15:18</p> <p><b>credits</b> [4] - 13:6, 18:2, 26:9, 38:20</p> <p><b>CSR</b> [2] - 1:23, 40:23</p> <p><b>cushions</b> [1] - 36:10</p> <p><b>Cyberlux</b> [16] - 3:24, 7:10, 7:13, 10:3, 10:15, 11:20, 13:1, 15:1, 15:21, 15:25, 18:19, 18:21, 19:23, 24:16, 32:19, 36:22</p> <p><b>CYBERLUX</b> [1] - 3:17</p> <p><b>cyberlux</b> [25] - 1:8, 5:4, 6:11, 7:16, 8:9, 8:14, 10:4, 11:23, 12:9, 12:13, 12:18, 13:2, 13:5, 13:8, 15:3, 15:17, 18:3, 20:8, 20:9, 20:13, 20:19, 32:16, 37:1</p> <p><b>cyberlux'</b> [1] - 36:15</p> <p><b>cyberlux's</b> [1] - 17:22</p> <p><b>Cypresswood</b> [1] - 3:5</p>
<b>C</b>				<b>D</b>
<p><b>calculations</b> [2] -</p>				<p><b>Dallas</b> [2] - 3:15, 3:21</p> <p><b>damages</b> [1] - 38:6</p> <p><b>Date</b> [1] - 40:24</p> <p><b>David</b> [4] - 3:13, 6:18, 19:17, 36:12</p> <p><b>Davis</b> [1] - 16:24</p> <p><b>days</b> [2] - 20:2, 23:25</p> <p><b>debtor</b> [1] - 20:17</p> <p><b>debtor's</b> [1] - 8:1</p> <p><b>Debtors</b> [1] - 1:10</p> <p><b>debtors</b> [1] - 6:25</p> <p><b>debts</b> [1] - 15:3</p> <p><b>December</b> [1] - 21:25</p> <p><b>deep</b> [1] - 30:24</p> <p><b>Defendant/</b></p>

<p><b>Judgment</b> [1] - 1:10  <b>DEFENDANTS</b> [1] - 3:17  <b>defense</b> [4] - 8:10, 12:12, 19:23, 24:3  <b>delivery</b> [2] - 13:3, 23:3  <b>delivered</b> [2] - 12:21, 13:4  <b>demonstrative</b> [2] - 19:14, 22:20  <b>depositing</b> [1] - 11:11  <b>Derek</b> [2] - 3:8, 5:9  <b>DEREK</b> [1] - 3:9  <b>derek@loetzerichlaw.com</b> [1] - 3:10  <b>destroy</b> [2] - 16:5, 16:8  <b>determined</b> [1] - 10:23  <b>determines</b> [1] - 15:20  <b>difference</b> [1] - 14:23  <b>different</b> [4] - 7:4, 32:2, 33:14, 34:4  <b>differently</b> [1] - 34:13  <b>difficult</b> [1] - 33:9  <b>directed</b> [1] - 13:21  <b>directly</b> [7] - 11:10, 14:21, 24:16, 28:1, 28:3, 28:15, 29:23  <b>director</b> [5] - 18:20, 27:23, 27:25, 30:15, 30:18  <b>disconnect</b> [3] - 22:25, 23:7, 24:6  <b>discuss</b> [1] - 27:4  <b>discussed</b> [3] - 9:21, 11:4, 17:8  <b>disingenuous</b> [1] - 38:16  <b>dispute</b> [4] - 26:11, 26:14, 31:15, 32:8  <b>disputing</b> [4] - 26:19, 26:21, 31:21, 32:6  <b>distribute</b> [1] - 25:7  <b>distributes</b> [1] - 31:4  <b>distribution</b> [1] - 25:12  <b>DISTRICT</b> [2] - 1:4, 1:6  <b>District</b> [2] - 15:12, 40:5  <b>dlang@thompsoncoburn.com</b> [1] - 3:22  <b>dollar</b> [2] - 12:4, 38:8  <b>domesticated</b> [1] - 23:20  <b>domestication</b> [1] - 8:5  <b>done</b> [1] - 15:10  <b>Douglas</b> [2] - 3:19, 7:9</p>	<p><b>down</b> [3] - 15:11, 38:5, 38:11  <b>drop</b> [1] - 28:6  <b>due</b> [6] - 9:21, 15:19, 36:16, 38:2, 38:10, 38:13  <b>during</b> [4] - 9:20, 9:25, 11:6, 20:15  <b>dwalton@bellnunnally.com</b> [1] - 3:15</p> <p style="text-align: center;"><b>E</b></p> <p><b>e-filing</b> [1] - 16:14  <b>E-mail</b> [6] - 3:6, 3:10, 3:15, 3:22, 3:22, 4:6  <b>e-mail</b> [4] - 16:12, 16:15, 17:3, 31:10  <b>earth</b> [2] - 32:23, 33:13  <b>easy</b> [1] - 30:6  <b>effect</b> [1] - 37:2  <b>effectually</b> [1] - 18:18  <b>efforts</b> [1] - 33:19  <b>either</b> [2] - 36:7, 39:14  <b>emergency</b> [9] - 7:25, 22:12, 22:15, 24:1, 24:3, 24:24, 25:13, 30:25  <b>emergent</b> [1] - 15:15  <b>employees</b> [3] - 16:22, 17:2, 20:13  <b>end</b> [3] - 11:7, 12:19, 31:1  <b>ended</b> [1] - 13:24  <b>enforced</b> [2] - 8:9, 37:20  <b>enforcement</b> [7] - 17:2, 21:7, 21:13, 23:19, 34:5, 34:9, 34:11  <b>engaging</b> [1] - 11:19  <b>enter</b> [1] - 17:15  <b>entered</b> [4] - 8:8, 13:24, 14:9, 18:1  <b>entitled</b> [5] - 1:17, 12:4, 13:9, 38:15, 38:20  <b>errors</b> [1] - 19:13  <b>especially</b> [1] - 15:9  <b>essentially</b> [5] - 8:4, 11:6, 11:24, 12:17, 17:14  <b>established</b> [1] - 27:10  <b>evening</b> [1] - 29:16  <b>event</b> [1] - 27:6  <b>evidence</b> [2] - 13:20, 40:8</p>	<p><b>evolving</b> [1] - 30:23  <b>exact</b> [2] - 13:7, 22:14  <b>excess</b> [1] - 38:13  <b>excuse</b> [1] - 15:22  <b>excused</b> [1] - 39:21  <b>Exhibit</b> [1] - 23:10  <b>exhibits</b> [4] - 39:9, 39:10, 39:14, 40:15  <b>existing</b> [1] - 10:4  <b>expect</b> [2] - 12:7, 27:15  <b>Expiration</b> [1] - 40:24  <b>express</b> [1] - 11:14  <b>extent</b> [3] - 9:10, 9:13, 17:8  <b>extra</b> [2] - 32:23, 35:4</p> <p style="text-align: center;"><b>F</b></p> <p><b>facility</b> [1] - 36:5  <b>fact</b> [4] - 12:24, 14:20, 24:1, 27:17  <b>far</b> [1] - 28:18  <b>February</b> [1] - 12:20  <b>federal</b> [2] - 19:25, 20:6  <b>fee</b> [5] - 10:18, 10:22, 11:1, 12:1  <b>fees</b> [8] - 10:17, 11:3, 24:2, 25:4, 25:11, 26:16, 26:17, 38:14  <b>few</b> [1] - 32:5  <b>figures</b> [1] - 13:7  <b>file</b> [3] - 22:13, 25:6, 31:1  <b>filed</b> [7] - 14:19, 21:7, 21:12, 21:25, 34:3, 34:9, 34:11  <b>filing</b> [2] - 16:14, 17:10  <b>filings</b> [2] - 21:16, 22:13  <b>final</b> [4] - 12:19, 12:21, 20:1, 20:7  <b>financial</b> [1] - 14:15  <b>fine</b> [3] - 19:19, 19:21, 33:17  <b>firm</b> [2] - 35:1, 35:2  <b>firm's</b> [1] - 34:17  <b>first</b> [8] - 8:3, 9:2, 13:15, 14:9, 16:17, 19:12, 19:19, 21:6  <b>flipping</b> [1] - 36:9  <b>following</b> [1] - 1:16  <b>FOR</b> [4] - 3:7, 3:11, 3:17, 4:2  <b>foregoing</b> [1] - 40:6  <b>foreign</b> [1] - 8:5  <b>formal</b> [1] - 20:7  <b>former</b> [1] - 18:18</p>	<p><b>Fort</b> [1] - 4:5  <b>four</b> [4] - 16:22, 16:23, 17:2, 20:6  <b>freezing</b> [1] - 16:16  <b>Friday</b> [3] - 29:20, 29:24, 30:13  <b>front</b> [3] - 25:6, 27:14  <b>frost</b> [1] - 28:20  <b>full</b> [8] - 11:25, 15:10, 25:4, 25:24, 26:1, 27:17, 34:24, 37:10  <b>fully</b> [1] - 11:2  <b>funds</b> [20] - 10:10, 10:16, 11:11, 11:13, 12:15, 13:11, 13:12, 13:14, 14:12, 15:17, 17:15, 23:1, 23:3, 24:21, 25:8, 25:12, 27:1, 27:5, 31:4, 35:5  <b>future</b> [1] - 14:8</p> <p style="text-align: center;"><b>G</b></p> <p><b>germane</b> [1] - 11:5  <b>given</b> [2] - 11:16, 24:20  <b>Gomez</b> [9] - 15:14, 15:15, 23:8, 25:11, 25:21, 27:14, 31:2, 35:15  <b>goods</b> [2] - 13:2, 13:3  <b>government</b> [3] - 12:17, 13:3, 19:25  <b>Government</b> [1] - 13:1  <b>government's</b> [1] - 12:21  <b>granted</b> [1] - 14:5  <b>guess</b> [2] - 18:12, 27:21</p> <p style="text-align: center;"><b>H</b></p> <p><b>half</b> [1] - 11:7  <b>HAND</b> [1] - 40:20  <b>handed</b> [1] - 22:20  <b>handled</b> [1] - 15:25  <b>handling</b> [2] - 5:12, 5:15  <b>happy</b> [1] - 28:16  <b>hard</b> [1] - 33:11  <b>HARRIS</b> [2] - 1:5, 40:2  <b>Harris</b> [6] - 1:19, 1:24, 16:24, 22:9, 32:25, 40:5  <b>HAYNES</b> [1] - 4:4  <b>hear</b> [3] - 6:22, 6:23, 31:2  <b>heard</b> [3] - 1:17, 37:12, 37:15</p>	<p><b>hearing</b> [14] - 6:2, 7:21, 7:22, 8:1, 11:5, 12:11, 13:19, 15:13, 16:11, 16:13, 16:21, 17:5, 23:25, 27:11  <b>held</b> [1] - 1:19  <b>hereby</b> [1] - 40:6  <b>HESTER</b> [1] - 4:4  <b>highlighted</b> [1] - 8:24  <b>Hill</b> [12] - 11:21, 12:2, 12:9, 12:11, 12:14, 12:18, 13:1, 16:1, 20:3, 32:18, 36:8  <b>himself</b> [1] - 28:9  <b>history</b> [1] - 20:20  <b>holdings</b> [3] - 5:4, 6:11, 6:15  <b>HOLDINGS,LLC</b> [1] - 1:4  <b>Honor</b> [23] - 5:7, 6:5, 7:8, 7:12, 7:15, 19:11, 19:14, 19:17, 19:18, 19:22, 21:5, 21:11, 21:20, 22:3, 22:11, 23:6, 25:17, 26:20, 27:24, 36:12, 37:11, 38:3, 39:8  <b>Honorable</b> [1] - 1:18  <b>hope</b> [1] - 17:24  <b>hour</b> [1] - 11:7  <b>hours</b> [1] - 35:11  <b>Houston</b> [3] - 1:19, 3:5, 3:10  <b>huge</b> [2] - 12:6, 15:16</p> <p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [1] - 36:8  <b>identifies</b> [3] - 9:23, 18:10, 26:10  <b>impending</b> [1] - 17:24  <b>important</b> [4] - 8:17, 9:2, 9:9, 12:9  <b>improper</b> [1] - 15:13  <b>IN</b> [1] - 1:4  <b>inadvertently</b> [1] - 13:22  <b>include</b> [1] - 13:22  <b>included</b> [2] - 13:23, 40:9  <b>incorrect</b> [1] - 24:7  <b>indicates</b> [1] - 9:6  <b>Individually</b> [1] - 1:9  <b>inform</b> [1] - 29:16  <b>information</b> [2] - 27:8, 28:23  <b>input</b> [1] - 5:18  <b>inspection</b> [1] - 12:25  <b>instance</b> [1] - 24:6  <b>instead</b> [1] - 32:18</p>
--	---	--	---	--

<p><b>institutions</b> [1] - 14:15</p> <p><b>instructions</b> [26] - 11:9, 11:17, 12:21, 17:17, 24:14, 24:17, 24:20, 27:3, 27:20, 28:13, 28:17, 28:18, 29:1, 29:8, 29:17, 29:19, 29:22, 30:3, 30:8, 31:8, 31:17, 31:20, 33:9, 36:14</p> <p><b>intend</b> [1] - 35:2</p> <p><b>intended</b> [2] - 33:23, 33:24</p> <p><b>interest</b> [1] - 10:21</p> <p><b>interested</b> [2] - 28:2, 34:24</p> <p><b>interference</b> [1] - 15:6</p> <p><b>interpret</b> [1] - 38:2</p> <p><b>introduce</b> [1] - 7:5</p> <p><b>investments</b> [1] - 30:19</p> <p><b>investor</b> [1] - 14:24</p> <p><b>issue</b> [10] - 9:16, 11:4, 13:15, 14:6, 14:20, 18:14, 28:5, 32:11, 37:9</p> <p><b>issues</b> [3] - 14:18, 17:9, 19:7</p> <p><b>itself</b> [1] - 12:16</p>	<p>26:16, 26:17, 26:24, 27:9, 34:20, 36:17, 37:14, 37:20, 38:16, 38:20, 38:25</p> <p><b>judgments</b> [10] - 20:7, 21:7, 21:22, 25:20, 32:24, 33:2, 34:6, 34:8, 34:10, 37:16</p> <p><b>JUDICIAL</b> [1] - 1:6</p> <p><b>July</b> [2] - 22:6, 22:7</p> <p><b>June</b> [2] - 1:16, 40:20</p> <p><b>jurisdiction</b> [4] - 21:9, 32:25, 33:25, 34:5</p>	<p>36:18, 36:20, 37:4</p> <p><b>Lewis</b> [1] - 1:18</p> <p><b>limitation</b> [1] - 9:9</p> <p><b>limitations</b> [2] - 17:11, 17:18</p> <p><b>limited</b> [2] - 9:1, 9:4</p> <p><b>line</b> [3] - 6:15, 22:20, 23:11</p> <p><b>listing</b> [1] - 38:5</p> <p><b>litigated</b> [1] - 38:18</p> <p><b>Litigation</b> [1] - 3:25</p> <p><b>litigation</b> [2] - 18:17, 18:21</p> <p><b>litigations</b> [5] - 7:17, 20:9, 20:16, 20:18, 23:15</p> <p><b>LLC</b> [2] - 1:4, 6:11</p> <p><b>LLP</b> [2] - 3:20, 4:4</p> <p><b>Loetzerich</b> [2] - 3:8, 5:9</p> <p><b>LOETZERICH</b> [4] - 3:9, 5:11, 5:14, 5:17</p> <p><b>looked</b> [1] - 38:12</p> <p><b>looking</b> [3] - 5:22, 6:16, 8:25</p> <p><b>loss</b> [1] - 38:1</p> <p><b>lost</b> [1] - 24:1</p>	<p>20:19, 22:23, 26:5, 30:20, 32:17, 32:24, 33:19, 34:18, 34:22, 37:9, 37:17, 38:17</p> <p><b>mind</b> [2] - 8:20, 35:22</p> <p><b>minimum</b> [1] - 38:8</p> <p><b>minutes</b> [1] - 32:5</p> <p><b>mischaracterizing</b> [1] - 36:18</p> <p><b>misrepresent</b> [1] - 36:15</p> <p><b>misrepresentation</b> [2] - 36:20, 37:1</p> <p><b>misrepresenting</b> [1] - 39:2</p> <p><b>mission</b> [1] - 11:21</p> <p><b>modify</b> [3] - 8:2, 14:7, 17:6</p> <p><b>Monday</b> [1] - 27:18</p> <p><b>money</b> [6] - 9:12, 10:8, 14:21, 14:24, 20:10, 23:4, 24:9, 24:11, 24:12, 26:1, 30:19, 30:25, 32:18, 33:7, 33:16</p> <p><b>morning</b> [6] - 6:8, 7:8, 7:15, 28:12, 30:13, 35:22</p> <p><b>most</b> [1] - 15:22</p> <p><b>MOTION</b> [2] - 1:14, 2:3</p> <p><b>motion</b> [17] - 6:22, 7:1, 8:1, 8:2, 13:16, 14:7, 15:5, 15:13, 17:1, 17:6, 25:7, 31:1, 31:3, 33:4, 39:14</p> <p><b>motions</b> [6] - 15:6, 15:8, 17:5, 30:25, 36:15, 36:24</p> <p><b>MR</b> [78] - 5:7, 5:11, 5:14, 5:17, 5:23, 6:1, 6:5, 6:17, 6:24, 7:3, 7:8, 7:12, 7:15, 7:19, 7:24, 8:23, 16:20, 19:6, 19:11, 19:17, 19:18, 19:22, 21:3, 21:5, 21:14, 21:20, 21:24, 22:2, 22:5, 22:11, 22:19, 22:24, 23:6, 24:9, 24:13, 24:22, 24:24, 25:5, 25:10, 25:17, 26:6, 26:13, 26:20, 26:23, 27:12, 27:23, 28:1, 28:8, 28:12, 29:6, 29:11, 29:15, 29:20, 29:25, 30:6, 30:12, 30:18, 31:7, 31:18, 31:23, 32:7, 33:8, 34:15, 35:21, 36:3,</p>	<p>36:5, 36:12, 37:3, 37:6, 37:11, 37:23, 38:1, 38:3, 38:17, 39:1, 39:8, 39:11, 39:16</p> <p><b>multiple</b> [2] - 35:1, 38:4</p> <p><b>must</b> [3] - 20:16, 20:21, 20:23</p> <p><b>mute</b> [1] - 28:9</p> <p><b>MY</b> [1] - 40:20</p>	
	<b>K</b>			<b>N</b>	
	<p><b>kind</b> [1] - 27:8</p> <p><b>knows</b> [2] - 19:22, 34:2</p>			<p><b>nature</b> [2] - 15:15, 34:25</p> <p><b>necessarily</b> [1] - 15:19</p> <p><b>necessary</b> [2] - 9:11, 26:10</p> <p><b>need</b> [4] - 5:17, 10:9, 35:3, 35:19</p> <p><b>needed</b> [1] - 34:19</p> <p><b>needs</b> [5] - 15:17, 15:21, 20:13, 30:24, 37:1</p> <p><b>negotiate</b> [1] - 12:18</p> <p><b>next</b> [3] - 20:2, 32:22, 33:4</p> <p><b>night</b> [1] - 14:19</p> <p><b>NO</b> [1] - 1:2</p> <p><b>nobody</b> [2] - 20:12, 34:2</p> <p><b>none</b> [2] - 25:12, 34:1</p> <p><b>noon</b> [3] - 30:9, 31:10, 31:21</p> <p><b>normal</b> [1] - 9:3</p> <p><b>nothing</b> [3] - 33:17, 36:3, 36:10</p> <p><b>notice</b> [5] - 16:10, 16:13, 16:20, 17:5, 17:13</p> <p><b>notices</b> [2] - 13:24, 14:14</p> <p><b>notifications</b> [1] - 16:12</p> <p><b>notify</b> [1] - 17:23</p> <p><b>number</b> [8] - 18:13, 21:21, 26:22, 26:25, 28:21, 28:24, 34:21</p> <p><b>numbered</b> [2] - 1:18, 40:11</p> <p><b>NUNNALLY</b> [1] - 3:14</p>	
<b>J</b>	<b>L</b>	<b>M</b>		<b>O</b>	
<p><b>Jackson</b> [1] - 16:25</p> <p><b>January</b> [2] - 13:19, 14:4</p> <p><b>Jeff</b> [2] - 29:12, 29:15</p> <p><b>Jimmy</b> [1] - 7:16</p> <p><b>Jimmy</b> [1] - 3:25</p> <p><b>Jones</b> [1] - 21:15</p> <p><b>Judge</b> [14] - 1:19, 6:2, 6:24, 7:19, 8:20, 10:23, 14:3, 16:18, 19:6, 20:12, 26:6, 31:24, 32:8, 36:3</p> <p><b>judge</b> [16] - 7:25, 15:14, 18:25, 23:8, 24:10, 25:11, 26:23, 28:12, 29:4, 31:2, 31:12, 34:15, 35:21, 37:4, 37:23</p> <p><b>judgment</b> [44] - 6:25, 8:1, 8:5, 8:6, 8:8, 8:19, 9:5, 9:11, 9:12, 9:21, 9:24, 10:8, 10:16, 10:21, 11:1, 11:25, 12:13, 13:11, 14:12, 14:25, 15:10, 17:19, 18:1, 18:5, 18:8, 23:9, 23:20, 25:3, 25:24, 25:25,</p>	<p><b>lack</b> [1] - 17:13</p> <p><b>LANG</b> [1] - 7:8</p> <p><b>Lang</b> [2] - 3:19, 17:4</p> <p><b>lang</b> [1] - 7:9</p> <p><b>language</b> [4] - 9:6, 11:11, 11:15, 38:7</p> <p><b>large</b> [1] - 13:8</p> <p><b>last</b> [5] - 9:19, 14:19, 16:9, 30:13, 33:15</p> <p><b>Latosha</b> [1] - 1:18</p> <p><b>law</b> [1] - 34:17</p> <p><b>LAW</b> [1] - 3:9</p> <p><b>lawsuits</b> [1] - 23:18</p> <p><b>lawyer</b> [2] - 16:23, 16:24</p> <p><b>learned</b> [1] - 11:18</p> <p><b>least</b> [4] - 16:25, 20:6, 20:8, 22:7</p> <p><b>leave</b> [1] - 35:14</p> <p><b>left</b> [2] - 14:5, 30:21</p> <p><b>Legal</b> [1] - 27:25</p> <p><b>legalist</b> [15] - 10:1, 10:2, 10:8, 10:11, 14:20, 24:15, 28:4, 28:5, 28:8, 30:14, 30:17, 32:9, 35:5, 36:7</p> <p><b>LEGALIST</b> [1] - 4:2</p> <p><b>Legalist</b> [8] - 10:6, 27:24, 28:2, 28:4, 28:15, 34:16, 34:18, 35:1</p> <p><b>legalist's</b> [2] - 10:5, 10:15</p> <p><b>Legalist's</b> [2] - 10:14, 33:11</p> <p><b>lending</b> [1] - 10:3</p> <p><b>letter</b> [5] - 18:9, 26:10,</p>	<p><b>machine</b> [1] - 1:21</p> <p><b>magically</b> [1] - 25:6</p> <p><b>mail</b> [10] - 3:6, 3:10, 3:15, 3:22, 3:22, 4:6, 16:12, 16:15, 17:3, 31:10</p> <p><b>managing</b> [1] - 18:19</p> <p><b>manner</b> [1] - 23:2</p> <p><b>Mark</b> [1] - 7:14</p> <p><b>MARK</b> [2] - 1:8, 3:17</p> <p><b>marked</b> [1] - 17:19</p> <p><b>Martin</b> [1] - 16:24</p> <p><b>math</b> [1] - 19:14</p> <p><b>matter</b> [4] - 22:17, 23:5, 35:14, 36:15</p> <p><b>matters</b> [3] - 18:23, 33:24, 34:5</p> <p><b>mattress</b> [1] - 36:10</p> <p><b>mean</b> [6] - 20:16, 23:12, 25:19, 27:13, 31:14, 36:5</p> <p><b>means</b> [1] - 12:17</p> <p><b>meetings</b> [1] - 7:20</p> <p><b>mentioned</b> [3] - 10:13, 12:10, 13:5</p> <p><b>might</b> [1] - 34:4</p> <p><b>million</b> [22] - 9:24, 10:20, 11:22, 12:2, 13:5, 18:5, 18:12, 20:1, 20:5, 20:11,</p>	<p>36:18, 36:20, 37:4</p> <p><b>machine</b> [1] - 1:21</p> <p><b>magically</b> [1] - 25:6</p> <p><b>mail</b> [10] - 3:6, 3:10, 3:15, 3:22, 3:22, 4:6, 16:12, 16:15, 17:3, 31:10</p> <p><b>managing</b> [1] - 18:19</p> <p><b>manner</b> [1] - 23:2</p> <p><b>Mark</b> [1] - 7:14</p> <p><b>MARK</b> [2] - 1:8, 3:17</p> <p><b>marked</b> [1] - 17:19</p> <p><b>Martin</b> [1] - 16:24</p> <p><b>math</b> [1] - 19:14</p> <p><b>matter</b> [4] - 22:17, 23:5, 35:14, 36:15</p> <p><b>matters</b> [3] - 18:23, 33:24, 34:5</p> <p><b>mattress</b> [1] - 36:10</p> <p><b>mean</b> [6] - 20:16, 23:12, 25:19, 27:13, 31:14, 36:5</p> <p><b>means</b> [1] - 12:17</p> <p><b>meetings</b> [1] - 7:20</p> <p><b>mentioned</b> [3] - 10:13, 12:10, 13:5</p> <p><b>might</b> [1] - 34:4</p> <p><b>million</b> [22] - 9:24, 10:20, 11:22, 12:2, 13:5, 18:5, 18:12, 20:1, 20:5, 20:11,</p>	<p>20:19, 22:23, 26:5, 30:20, 32:17, 32:24, 33:19, 34:18, 34:22, 37:9, 37:17, 38:17</p> <p><b>mind</b> [2] - 8:20, 35:22</p> <p><b>minimum</b> [1] - 38:8</p> <p><b>minutes</b> [1] - 32:5</p> <p><b>mischaracterizing</b> [1] - 36:18</p> <p><b>misrepresent</b> [1] - 36:15</p> <p><b>misrepresentation</b> [2] - 36:20, 37:1</p> <p><b>misrepresenting</b> [1] - 39:2</p> <p><b>mission</b> [1] - 11:21</p> <p><b>modify</b> [3] - 8:2, 14:7, 17:6</p> <p><b>Monday</b> [1] - 27:18</p> <p><b>money</b> [6] - 9:12, 10:8, 14:21, 14:24, 20:10, 23:4, 24:9, 24:11, 24:12, 26:1, 30:19, 30:25, 32:18, 33:7, 33:16</p> <p><b>morning</b> [6] - 6:8, 7:8, 7:15, 28:12, 30:13, 35:22</p> <p><b>most</b> [1] - 15:22</p> <p><b>MOTION</b> [2] - 1:14, 2:3</p> <p><b>motion</b> [17] - 6:22, 7:1, 8:1, 8:2, 13:16, 14:7, 15:5, 15:13, 17:1, 17:6, 25:7, 31:1, 31:3, 33:4, 39:14</p> <p><b>motions</b> [6] - 15:6, 15:8, 17:5, 30:25, 36:15, 36:24</p> <p><b>MR</b> [78] - 5:7, 5:11, 5:14, 5:17, 5:23, 6:1, 6:5, 6:17, 6:24, 7:3, 7:8, 7:12, 7:15, 7:19, 7:24, 8:23, 16:20, 19:6, 19:11, 19:17, 19:18, 19:22, 21:3, 21:5, 21:14, 21:20, 21:24, 22:2, 22:5, 22:11, 22:19, 22:24, 23:6, 24:9, 24:13, 24:22, 24:24, 25:5, 25:10, 25:17, 26:6, 26:13, 26:20, 26:23, 27:12, 27:23, 28:1, 28:8, 28:12, 29:6, 29:11, 29:15, 29:20, 29:25, 30:6, 30:12, 30:18, 31:7, 31:18, 31:23, 32:7, 33:8, 34:15, 35:21, 36:3,</p>	<p>36:5, 36:12, 37:3, 37:6, 37:11, 37:23, 38:1, 38:3, 38:17, 39:1, 39:8, 39:11, 39:16</p> <p><b>multiple</b> [2] - 35:1, 38:4</p> <p><b>must</b> [3] - 20:16, 20:21, 20:23</p> <p><b>mute</b> [1] - 28:9</p> <p><b>MY</b> [1] - 40:20</p>
				<p><b>objections</b> [4] - 17:10, 17:11, 18:6, 18:15</p> <p><b>objects</b> [1] - 36:21</p> <p><b>obtain</b> [2] - 11:22, 12:2</p>	

<p><b>obviously</b> [1] - 20:16  <b>occur</b> [1] - 12:25  <b>occurred</b> [3] - 13:13, 23:15, 40:11  <b>October</b> [3] - 22:2, 22:4, 23:10  <b>OF</b> [5] - 1:1, 1:5, 3:9, 40:2, 40:2  <b>offer</b> [1] - 24:12  <b>offered</b> [2] - 22:23, 24:16  <b>offering</b> [1] - 11:24  <b>OFFICE</b> [1] - 3:9  <b>OFFICIAL</b> [1] - 40:20  <b>Official</b> [3] - 1:23, 40:4, 40:24  <b>offsets</b> [4] - 13:6, 18:2, 26:9, 38:21  <b>once</b> [4] - 9:11, 13:12, 31:3, 32:15  <b>one</b> [8] - 8:12, 15:16, 16:23, 17:15, 21:22, 36:13, 37:16, 37:24  <b>ones</b> [2] - 15:23, 15:24  <b>ongoing</b> [1] - 20:18  <b>open</b> [2] - 35:14, 40:12  <b>operate</b> [3] - 8:10, 8:16, 15:18  <b>operated</b> [1] - 13:2  <b>order</b> [29] - 9:22, 9:23, 11:9, 11:15, 13:18, 13:21, 13:23, 14:6, 14:7, 14:9, 14:13, 15:6, 15:9, 15:11, 15:18, 17:6, 17:15, 17:20, 17:22, 17:24, 17:25, 18:5, 18:11, 25:12, 26:25, 27:1  <b>Order</b> [1] - 17:24  <b>ordered</b> [1] - 24:2  <b>orders</b> [2] - 20:24, 21:6  <b>otherwise</b> [1] - 38:16  <b>outside</b> [3] - 16:3, 16:7, 25:23  <b>outstanding</b> [3] - 9:24, 15:18, 18:11  <b>overarching</b> [1] - 14:17  <b>owed</b> [8] - 22:18, 25:3, 26:12, 31:15, 36:17, 38:10, 38:13, 39:19  <b>own</b> [1] - 6:2  <b>owned</b> [2] - 8:11, 15:21</p>	<p><b>page</b> [3] - 23:11, 33:21, 38:5  <b>Page</b> [1] - 2:4  <b>paid</b> [34] - 11:13, 11:23, 12:15, 13:5, 13:8, 15:17, 18:3, 20:14, 20:15, 22:22, 22:23, 23:5, 25:24, 25:25, 27:9, 30:20, 31:22, 31:24, 32:9, 32:13, 32:15, 32:22, 33:3, 33:7, 33:12, 33:13, 33:16, 36:25, 37:9, 37:10, 38:21, 39:20, 40:19  <b>Paragraph</b> [2] - 15:7, 15:8  <b>paralegals</b> [2] - 16:23, 16:25  <b>parenthetical</b> [1] - 28:22  <b>part</b> [2] - 8:7, 25:9  <b>particularly</b> [2] - 8:17, 12:9  <b>parties</b> [5] - 11:19, 17:23, 35:17, 40:9, 40:16  <b>partner</b> [2] - 10:3, 29:12  <b>partners</b> [2] - 16:3, 18:18  <b>parts</b> [1] - 7:4  <b>party</b> [1] - 12:1  <b>past</b> [1] - 30:23  <b>pay</b> [20] - 9:5, 9:12, 10:8, 10:10, 10:17, 10:18, 11:10, 12:19, 15:18, 17:15, 20:17, 20:18, 20:21, 24:15, 25:3, 26:15, 26:16, 29:7  <b>paying</b> [5] - 14:21, 20:20, 28:5, 30:1, 32:4  <b>payment</b> [16] - 11:16, 11:24, 12:19, 17:17, 17:20, 20:1, 27:17, 32:18, 33:6, 35:3, 35:11, 35:18, 36:1, 36:7, 36:8, 36:25  <b>payments</b> [2] - 34:25, 38:24  <b>Payne</b> [2] - 1:19, 34:15  <b>payroll</b> [2] - 20:12, 20:15  <b>pending</b> [4] - 18:21, 18:23, 20:8, 22:9  <b>penentti</b> [1] - 35:8  <b>PENNETTI</b> [21] - 6:24, 7:3, 7:19, 7:24, 8:23,</p>	<p>16:20, 19:6, 26:6, 26:13, 26:23, 27:12, 28:8, 31:12, 31:23, 32:7, 33:8, 35:21, 37:3, 37:23, 38:1, 38:17  <b>Pennetti</b> [7] - 3:18, 7:9, 19:23, 23:7, 23:14, 23:22, 23:23  <b>pennetti</b> [4] - 5:23, 6:25, 26:4, 31:9  <b>Pennetti's</b> [1] - 19:13  <b>perceive</b> [1] - 38:23  <b>percent</b> [1] - 10:25  <b>perception</b> [1] - 39:1  <b>permission</b> [1] - 10:9  <b>person</b> [3] - 27:21, 29:9  <b>personally</b> [2] - 29:2, 29:3  <b>personnel</b> [3] - 11:12, 12:24, 13:1  <b>perspective</b> [1] - 35:7  <b>phone</b> [1] - 18:7  <b>pick</b> [1] - 14:23  <b>pivot</b> [1] - 26:4  <b>place</b> [1] - 14:10  <b>plain</b> [2] - 9:6, 17:17  <b>plaintiff</b> [4] - 6:14, 19:11, 26:17, 26:18  <b>plaintiff Judgment</b> [1] - 1:5  <b>PLAINTIFFS</b> [1] - 3:11  <b>Plaintiffs</b> [1] - 13:19  <b>plaintiffs</b> [2] - 6:19, 19:16  <b>plan</b> [1] - 31:5  <b>point</b> [13] - 9:7, 16:6, 22:15, 27:21, 32:8, 33:1, 33:2, 36:10, 36:13, 38:19, 39:2, 39:5  <b>pointing</b> [1] - 19:7  <b>points</b> [1] - 38:4  <b>portion</b> [2] - 8:25, 14:3  <b>portions</b> [1] - 40:8  <b>position</b> [5] - 11:5, 12:3, 14:10, 21:16, 32:10  <b>possession</b> [2] - 17:21, 17:22  <b>post</b> [1] - 8:19  <b>post-judgment</b> [1] - 8:19  <b>prejudice</b> [1] - 22:16  <b>preparation</b> [1] - 40:18  <b>Present</b> [1] - 3:24  <b>present</b> [2] - 10:1, 29:1</p>	<p><b>presentation</b> [1] - 38:12  <b>presented</b> [1] - 13:20  <b>presiding</b> [1] - 1:19  <b>previously</b> [1] - 34:18  <b>PRIDDY</b> [7] - 28:12, 29:6, 29:11, 29:15, 29:20, 29:25, 34:15  <b>Priddy</b> [3] - 4:3, 27:4  <b>priddy</b> [1] - 34:16  <b>prime</b> [1] - 12:12  <b>principal</b> [1] - 13:16  <b>printed</b> [1] - 24:18  <b>problem</b> [2] - 12:6, 20:4  <b>proceeding</b> [2] - 37:20, 38:7  <b>proceedings</b> [3] - 1:17, 40:8, 40:14  <b>Proceedings</b> [1] - 1:21  <b>Proceedings.....</b>  ..... [1] - 2:6  <b>property</b> [3] - 9:5, 9:14, 17:22  <b>Prostok</b> [2] - 24:14, 28:15  <b>prostok</b> [1] - 29:12  <b>Prostok</b> [2] - 29:14, 31:9  <b>protect</b> [2] - 10:11, 20:16  <b>protected</b> [1] - 20:13  <b>protective</b> [4] - 10:7, 15:8, 27:6, 32:11  <b>provide</b> [3] - 11:9, 16:10, 16:14  <b>provided</b> [1] - 17:16  <b>pull</b> [3] - 37:3, 37:5, 37:6  <b>pursue</b> [1] - 15:4  <b>pursuing</b> [1] - 12:8  <b>put</b> [3] - 36:19, 36:23, 37:18</p>	<p><b>read</b> [4] - 6:6, 20:22, 25:20, 25:21  <b>reading</b> [1] - 33:23  <b>real</b> [2] - 30:6, 39:8  <b>realize</b> [1] - 27:2  <b>really</b> [2] - 18:19, 36:6  <b>reason</b> [1] - 34:23  <b>receipt</b> [2] - 17:20, 31:10  <b>receivable</b> [4] - 11:23, 13:4, 15:16, 33:20  <b>receive</b> [2] - 30:2, 33:10  <b>received</b> [7] - 24:21, 26:7, 29:7, 29:17, 29:19, 29:21, 29:24  <b>receiver</b> [44] - 5:8, 6:12, 9:1, 9:3, 9:10, 9:17, 9:21, 10:14, 11:8, 11:10, 11:16, 11:18, 11:21, 12:3, 12:23, 13:9, 13:13, 13:24, 14:2, 14:6, 14:13, 14:20, 14:23, 14:25, 15:5, 15:12, 15:20, 16:4, 16:6, 16:9, 16:10, 17:20, 17:23, 17:25, 18:2, 26:16, 27:9, 33:1, 33:5, 33:6, 35:20, 39:9  <b>RECEIVER</b> [2] - 3:2, 3:7  <b>receiver's</b> [15] - 5:14, 6:6, 6:13, 10:18, 10:22, 10:24, 11:1, 11:4, 11:25, 12:24, 14:19, 16:1, 17:18, 20:4  <b>receivers</b> [1] - 15:1  <b>receivership</b> [11] - 8:18, 8:19, 20:11, 20:14, 20:15, 23:8, 25:7, 25:22, 31:2, 31:3, 31:4  <b>recently</b> [1] - 8:13  <b>RECORD</b> [1] - 1:1  <b>Record</b> [3] - 40:10, 40:13, 40:18  <b>record</b> [7] - 25:3, 30:8, 32:13, 32:21, 34:17, 36:23, 37:18  <b>recover</b> [1] - 38:15  <b>references</b> [1] - 40:15  <b>referring</b> [1] - 22:8  <b>refused</b> [1] - 23:2  <b>regards</b> [1] - 9:2  <b>registry</b> [3] - 11:11, 11:14, 17:16  <b>rejected</b> [1] - 11:14</p>
<b>P</b>			<b>Q</b>	
P.O [1] - 3:9			<b>R</b>	
			<p><b>raised</b> [1] - 18:14  <b>rapidly</b> [1] - 30:23  <b>rberleth@berlethlaw.com</b> [1] - 3:6  <b>reach</b> [1] - 12:19</p>	

<p><b>relay</b> [1] - 34:22</p> <p><b>relinquished</b> [1] - 18:3</p> <p><b>rely</b> [1] - 37:12</p> <p><b>remaining</b> [1] - 18:14</p> <p><b>remand</b> [1] - 11:3</p> <p><b>removed</b> [1] - 14:11</p> <p><b>report</b> [1] - 35:17</p> <p><b>reported</b> [2] - 1:21, 40:12</p> <p><b>Reporter</b> [3] - 1:23, 40:4, 40:24</p> <p><b>REPORTER'S</b> [2] - 1:1, 40:1</p> <p><b>Reporter's</b> [4] - 2:7, 40:10, 40:13, 40:18</p> <p><b>represent</b> [5] - 7:10, 7:14, 7:16, 30:7, 31:7</p> <p><b>representation</b> [2] - 32:21, 33:18</p> <p><b>representations</b> [4] - 33:14, 33:15, 34:20, 35:25</p> <p><b>represented</b> [1] - 33:2</p> <p><b>representing</b> [2] - 11:2, 38:23</p> <p><b>requested</b> [2] - 31:10, 40:8</p> <p><b>requests</b> [1] - 14:18</p> <p><b>required</b> [1] - 14:14</p> <p><b>requires</b> [1] - 11:10</p> <p><b>resend</b> [1] - 31:9</p> <p><b>resends</b> [1] - 31:20</p> <p><b>resolve</b> [1] - 17:9</p> <p><b>respective</b> [1] - 40:16</p> <p><b>response</b> [8] - 6:6, 11:4, 14:19, 19:3, 19:10, 39:12, 39:15</p> <p><b>restricted</b> [1] - 14:1</p> <p><b>retroactive</b> [1] - 14:13</p> <p><b>return</b> [1] - 31:10</p> <p><b>review</b> [1] - 17:1</p> <p><b>reviewing</b> [1] - 10:24</p> <p><b>risk</b> [1] - 16:4</p> <p><b>Robert</b> [2] - 3:3, 5:7</p> <p><b>Roberts</b> [1] - 18:24</p> <p><b>Robinson</b> [2] - 3:25, 7:16</p> <p><b>ROBINSON</b> [1] - 7:15</p> <p><b>Ross</b> [2] - 3:14, 3:21</p> <p><b>routing</b> [2] - 28:21, 28:24</p> <p><b>rule</b> [1] - 32:14</p> <p><b>ruling</b> [4] - 31:12, 31:25, 34:8, 34:12</p>	<p><b>satisfy</b> [5] - 9:11, 10:16, 14:12, 14:25, 34:20</p> <p><b>SCHMIDT</b> [2] - 1:8, 3:17</p> <p><b>Schmidt</b> [7] - 7:14, 13:22, 14:5, 14:8, 14:11, 18:20</p> <p><b>Schmidt's</b> [3] - 13:20, 13:25, 14:15</p> <p><b>Scott</b> [1] - 24:14</p> <p><b>scour</b> [2] - 32:23, 33:13</p> <p><b>screen</b> [2] - 8:21, 37:23</p> <p><b>scroll</b> [1] - 38:11</p> <p><b>second</b> [2] - 9:9, 21:8</p> <p><b>section</b> [1] - 15:7</p> <p><b>secure</b> [1] - 6:19</p> <p><b>SECURE</b> [2] - 1:4, 3:12</p> <p><b>Secure</b> [1] - 9:8</p> <p><b>see</b> [7] - 9:2, 16:18, 28:9, 28:20, 28:24, 38:3, 39:19</p> <p><b>seeing</b> [1] - 25:24</p> <p><b>seek</b> [1] - 15:8</p> <p><b>seeks</b> [2] - 37:21, 38:6</p> <p><b>seize</b> [3] - 9:4, 9:14, 32:17</p> <p><b>sell</b> [5] - 9:4, 9:14, 11:20, 17:21, 32:16</p> <p><b>send</b> [3] - 30:5, 30:10, 30:11</p> <p><b>sending</b> [1] - 13:24</p> <p><b>sent</b> [18] - 16:12, 17:3, 24:14, 26:1, 27:20, 28:1, 28:3, 28:14, 28:15, 28:17, 28:25, 29:3, 29:9, 29:11, 30:12, 31:16, 31:19, 32:3</p> <p><b>September</b> [1] - 23:24</p> <p><b>serious</b> [1] - 19:13</p> <p><b>service</b> [2] - 16:14, 16:17</p> <p><b>settlement</b> [5] - 8:7, 8:8, 18:23, 38:21, 38:24</p> <p><b>seven</b> [1] - 20:8</p> <p><b>several</b> [4] - 7:3, 8:12, 9:17, 12:3</p> <p><b>share</b> [5] - 8:20, 8:23, 16:11, 16:15, 37:23</p> <p><b>shipped</b> [2] - 13:3, 36:6</p> <p><b>shorthand</b> [1] - 1:21</p> <p><b>show</b> [6] - 14:2, 14:3, 16:16, 26:6, 28:16, 37:4</p>	<p><b>side</b> [1] - 5:21</p> <p><b>significant</b> [2] - 12:14, 16:4</p> <p><b>signs</b> [1] - 31:3</p> <p><b>simply</b> [5] - 26:23, 29:1, 31:25, 32:14, 36:19</p> <p><b>sitting</b> [1] - 27:14</p> <p><b>so..</b> [1] - 24:18</p> <p><b>solicitation</b> [1] - 16:1</p> <p><b>soliciting</b> [1] - 11:20</p> <p><b>sometimes</b> [2] - 6:4, 7:19</p> <p><b>somewhere</b> [3] - 18:12, 18:13, 20:3</p> <p><b>sorry</b> [3] - 16:16, 21:3, 26:13</p> <p><b>sort</b> [2] - 22:14, 32:5</p> <p><b>sounds</b> [1] - 28:5</p> <p><b>south</b> [1] - 34:22</p> <p><b>Special</b> [1] - 3:24</p> <p><b>special</b> [1] - 7:13</p> <p><b>specifically</b> [2] - 20:24, 29:19</p> <p><b>spoken</b> [1] - 27:24</p> <p><b>stakeholders</b> [1] - 16:2</p> <p><b>started</b> [2] - 20:6, 22:8</p> <p><b>State</b> [7] - 3:4, 3:8, 3:13, 3:19, 3:20, 4:4, 40:5</p> <p><b>state</b> [1] - 20:7</p> <p><b>STATE</b> [1] - 40:2</p> <p><b>statement</b> [1] - 36:21</p> <p><b>statements</b> [1] - 36:18</p> <p><b>stating</b> [1] - 28:22</p> <p><b>status</b> [1] - 35:18</p> <p><b>statute</b> [1] - 8:24</p> <p><b>stay</b> [7] - 8:1, 8:2, 17:1, 23:15, 24:1, 24:3, 35:22</p> <p><b>STAY</b> [2] - 1:14, 2:3</p> <p><b>stayed</b> [5] - 17:25, 23:9, 23:12, 23:13, 23:20</p> <p><b>Ste</b> [1] - 4:5</p> <p><b>step</b> [1] - 31:16</p> <p><b>still</b> [4] - 12:1, 25:10, 25:11, 27:6</p> <p><b>stipulated</b> [1] - 36:16</p> <p><b>stipulation</b> [5] - 36:19, 38:9, 39:2, 39:3, 39:4</p> <p><b>stipulations</b> [1] - 37:2</p> <p><b>stop</b> [2] - 18:25, 30:24</p> <p><b>Street</b> [1] - 4:5</p> <p><b>street</b> [1] - 28:6</p> <p><b>stuff</b> [1] - 36:6</p> <p><b>styled</b> [1] - 40:11</p>	<p><b>subcontract</b> [1] - 12:12</p> <p><b>submit</b> [2] - 13:21, 14:14</p> <p><b>submitted</b> [1] - 18:9</p> <p><b>subsidiaries'</b> [1] - 15:24</p> <p><b>subsidiary</b> [5] - 8:11, 11:20, 15:22, 32:16, 33:19</p> <p><b>sue</b> [1] - 15:11</p> <p><b>sufficient</b> [5] - 10:16, 10:17, 10:18, 14:12, 37:14</p> <p><b>suggest</b> [1] - 38:16</p> <p><b>suggests</b> [1] - 17:8</p> <p><b>suit</b> [1] - 23:17</p> <p><b>Suite</b> [3] - 3:5, 3:14, 3:21</p> <p><b>suspend</b> [1] - 17:21</p>	<p>24:11, 24:19, 24:23, 24:25, 25:9, 25:14, 25:19, 26:11, 26:14, 26:21, 27:7, 27:13, 27:25, 28:3, 28:11, 29:5, 29:9, 29:14, 29:18, 29:23, 30:4, 30:10, 30:16, 31:6, 31:11, 31:14, 31:19, 32:1, 32:20, 33:22, 35:13, 35:24, 36:4, 36:11, 37:8, 37:22, 37:25, 39:5, 39:10, 39:13, 39:17, 40:2</p> <p><b>themselves</b> [1] - 7:6</p> <p><b>therefore</b> [2] - 23:4, 38:25</p> <p><b>they've</b> [1] - 24:13</p> <p><b>third</b> [2] - 11:19, 12:1</p> <p><b>THOMPSON</b> [1] - 3:20</p> <p><b>Thompson</b> [1] - 7:10</p> <p><b>three</b> [3] - 16:23, 22:23, 23:17</p> <p><b>Thursday</b> [11] - 9:18, 9:20, 9:25, 10:13, 11:17, 13:12, 23:2, 26:8, 27:16, 29:6, 30:13</p> <p><b>timeframe</b> [1] - 20:3</p> <p><b>TO</b> [2] - 1:14, 2:3</p> <p><b>today</b> [14] - 5:12, 5:15, 10:2, 21:17, 30:9, 30:22, 31:10, 31:21, 32:14, 33:3, 33:14, 34:21, 34:23, 35:3</p> <p><b>today's</b> [1] - 27:10</p> <p><b>todd</b> [1] - 21:14</p> <p><b>together</b> [1] - 12:18</p> <p><b>tomorrow</b> [1] - 35:4</p> <p><b>took</b> [2] - 28:9, 38:11</p> <p><b>top</b> [1] - 22:20</p> <p><b>total</b> [2] - 12:6, 40:17</p> <p><b>touch</b> [1] - 36:13</p> <p><b>transcribed</b> [2] - 7:20, 7:21</p> <p><b>transcript</b> [3] - 14:3, 14:4, 23:10</p> <p><b>transcription</b> [2] - 7:21, 40:7</p> <p><b>transferred</b> [2] - 34:18, 35:5</p> <p><b>TRIAL</b> [1] - 1:2</p> <p><b>tried</b> [1] - 17:9</p> <p><b>tristian</b> [1] - 16:24</p> <p><b>true</b> [2] - 27:19, 40:7</p> <p><b>truly</b> [1] - 40:14</p> <p><b>trust</b> [3] - 12:5, 34:17, 35:24</p> <p><b>try</b> [5] - 11:20, 11:22, 12:2, 13:14, 32:18</p>
<b>S</b>			<b>T</b>	
<p><b>satisfaction</b> [1] - 18:1</p> <p><b>satisfied</b> [1] - 17:19</p>			<p><b>Tamika</b> [3] - 1:23, 40:4, 40:23</p> <p><b>technically</b> [2] - 14:21, 15:14</p> <p><b>technologies</b> [1] - 11:22</p> <p><b>tender</b> [2] - 27:17, 35:11</p> <p><b>tendered</b> [11] - 10:16, 10:20, 10:25, 11:2, 13:11, 13:12, 14:12, 23:1, 27:2, 27:16, 35:9</p> <p><b>tendering</b> [1] - 34:24</p> <p><b>term</b> [1] - 12:19</p> <p><b>terminate</b> [6] - 25:7, 25:22, 26:2, 31:2, 31:3, 33:4</p> <p><b>terminated</b> [1] - 12:16</p> <p><b>termination</b> [2] - 19:24, 35:19</p> <p><b>terms</b> [2] - 8:4, 34:8</p> <p><b>TEXAS</b> [2] - 1:5, 40:2</p> <p><b>Texas</b> [5] - 1:20, 1:24, 21:7, 40:6, 40:23</p> <p><b>THE</b> [80] - 1:4, 3:7, 3:9, 3:11, 3:17, 5:3, 5:10, 5:13, 5:16, 5:19, 5:25, 6:3, 6:7, 6:20, 7:2, 7:7, 7:11, 7:18, 7:23, 8:22, 16:19, 19:2, 19:9, 19:15, 19:21, 21:1, 21:4, 21:6, 21:12, 21:18, 21:21, 21:25, 22:4, 22:7, 22:17, 22:22, 22:25, 24:4,</p>	

<p><b>trying</b> [5] - 15:10, 20:9, 22:12, 32:7, 34:25</p> <p><b>turn</b> [1] - 26:17</p> <p><b>turnover</b> [10] - 9:23, 11:9, 13:18, 13:23, 15:6, 18:5, 18:11, 26:25, 27:1</p> <p><b>two</b> [8] - 9:1, 14:17, 15:15, 17:5, 17:17, 18:13, 18:17, 18:24</p> <p><b>TX</b> [5] - 3:5, 3:10, 3:15, 3:21, 4:5</p>	<p><b>volume</b> [1] - 40:10</p> <p><b>VOLUME</b> [2] - 1:1, 2:2</p> <p><b>Volume</b> [2] - 40:10, 40:14</p> <p><b>VOLUMES</b> [2] - 1:1, 2:2</p> <p><b>VS</b> [1] - 1:7</p>	<p><b>wired</b> [2] - 26:5, 27:5</p> <p><b>wires</b> [1] - 35:1</p> <p><b>wiring</b> [23] - 11:9, 24:14, 24:17, 24:19, 24:20, 27:2, 27:20, 28:13, 28:17, 28:18, 28:25, 29:7, 29:17, 29:19, 29:21, 30:2, 30:8, 31:8, 31:16, 31:20, 32:19, 33:9</p> <p><b>WITNESS</b> [1] - 40:20</p> <p><b>won</b> [1] - 11:3</p> <p><b>wonderful</b> [1] - 39:22</p> <p><b>words</b> [1] - 10:8</p> <p><b>works</b> [1] - 26:2</p> <p><b>worse</b> [1] - 5:18</p> <p><b>worth</b> [1] - 17:7</p> <p><b>Worth</b> [1] - 4:5</p> <p><b>writing</b> [1] - 40:9</p> <p><b>written</b> [2] - 17:10, 17:11</p>
<b>U</b>	<b>W</b>	<b>Y</b>
<p><b>U.S</b> [3] - 12:25, 13:3, 20:25</p> <p><b>UCCs</b> [1] - 20:7</p> <p><b>ultimate</b> [1] - 18:13</p> <p><b>ultimately</b> [1] - 35:9</p> <p><b>unable</b> [1] - 12:13</p> <p><b>under</b> [17] - 8:18, 8:19, 9:15, 9:22, 10:4, 10:7, 13:11, 13:15, 15:11, 17:18, 20:10, 36:17, 38:15, 38:21, 38:24, 39:13</p> <p><b>understood</b> [1] - 25:14</p> <p><b>undisputed</b> [1] - 25:2</p> <p><b>unless</b> [3] - 18:25, 25:17, 32:9</p> <p><b>unrestricted</b> [1] - 14:16</p> <p><b>untrue</b> [1] - 16:15</p> <p><b>up</b> [9] - 8:15, 9:10, 12:7, 12:22, 13:24, 22:21, 37:3, 37:5, 37:6</p> <p><b>urgent</b> [1] - 16:6</p>	<p><b>wait</b> [1] - 12:20</p> <p><b>walk</b> [1] - 26:18</p> <p><b>WALTON</b> [7] - 6:17, 19:18, 36:12, 37:6, 37:11, 38:3, 39:1</p> <p><b>Walton</b> [14] - 3:13, 6:18, 11:3, 17:4, 18:8, 18:9, 18:16, 18:19, 19:17, 36:12, 37:3, 37:8, 38:22, 38:23</p> <p><b>Walton's</b> [3] - 8:6, 9:8, 26:9</p> <p><b>wants</b> [3] - 14:6, 28:6, 28:10</p> <p><b>watched</b> [1] - 12:24</p> <p><b>Watts</b> [1] - 3:24</p> <p><b>WATTS</b> [1] - 7:12</p> <p><b>watts</b> [1] - 7:12</p> <p><b>WAVE</b> [2] - 1:4, 3:11</p> <p><b>wave</b> [11] - 5:4, 6:10, 6:15, 36:16, 36:17, 37:17, 37:21, 38:6, 38:10, 38:13, 38:14</p> <p><b>Wave</b> [6] - 6:19, 10:18, 18:18, 18:20, 36:13, 36:21</p> <p><b>website</b> [7] - 17:1, 24:18, 27:3, 28:19, 28:20, 28:24</p> <p><b>Wednesday</b> [8] - 9:18, 17:10, 35:15, 35:16, 35:22, 36:2, 39:16, 39:18</p> <p><b>week</b> [6] - 9:19, 12:22, 30:13, 30:23, 33:15, 39:22</p> <p><b>weekend</b> [1] - 30:14</p> <p><b>weeks</b> [1] - 15:15</p> <p><b>whao</b> [1] - 15:2</p> <p><b>Whoa</b> [1] - 15:2</p> <p><b>whoa</b> [1] - 15:2</p> <p><b>whole</b> [2] - 26:18, 34:4</p> <p><b>wholly</b> [2] - 8:11, 15:21</p> <p><b>wholly-owned</b> [2] - 8:11, 15:21</p> <p><b>winding</b> [1] - 8:14</p> <p><b>wire</b> [5] - 30:25, 32:18, 35:1, 35:2, 36:25</p>	<p><b>y'all</b> [1] - 26:11</p> <p><b>year</b> [2] - 12:20, 12:22</p> <p><b>yesterday</b> [2] - 29:16, 29:20</p>
<b>V</b>	<b>Z</b>	<b>Z</b>
<p><b>vague</b> [1] - 25:22</p> <p><b>variety</b> [2] - 16:2, 38:19</p> <p><b>various</b> [2] - 13:25, 38:5</p> <p><b>VARTABEDIAN</b> [1] - 4:4</p> <p><b>verification</b> [1] - 16:17</p> <p><b>virginia</b> [1] - 23:13</p> <p><b>Virginia</b> [12] - 3:25, 7:17, 8:7, 18:22, 23:9, 23:15, 23:21, 37:14, 37:19, 38:15, 38:18</p> <p><b>voidable</b> [1] - 14:10</p> <p><b>Vol</b> [1] - 2:4</p>	<p><b>zoom</b> [2] - 21:15, 39:19</p> <p><b>Zoom</b> [3] - 5:24, 5:25, 7:20</p>	<p><b>zoom</b> [2] - 21:15, 39:19</p> <p><b>Zoom</b> [3] - 5:24, 5:25, 7:20</p>

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