EXHIBIT 15

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CAUSE NO. 2024-48085

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

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DEFENDANTS' RESPONSE TO PLAINTIFFS' SECOND AMENDED MOTION FOR DISTRIBUTION OF FUNDS, AND MOTION TO ABATE

Plaintiffs Atlantic Wave Holdings, LLC and Secure Community, LLC's Second Amended Motion for Distribution of Funds ("Motion") should be denied because (1) Plaintiffs failed to comply with this Court's order to mediate the issue of attorneys' fees, which is the only issue set out in their Second Amended Motion for Distribution of Funds; and (2) Plaintiffs have not provided any evidence to support the $857,734.19 attorneys' fees and costs[1] they seek to recover.

Plaintiffs cannot recover any of their attorneys' fees without documentary evidence of those fees, which Plaintiffs have not provided to either Defendants or this Court. Even if Plaintiffs adduce documentation to support their fee demand, Texas Civil Practice & Remedies Code § 31.002(e) limits Plaintiffs' recovery of attorneys' fees to the attorneys' fees incurred *in the pursuit of turnover relief*, and under no circumstance may Plaintiffs

[1] By Plaintiffs' own admission, this figure is a gross overstatement of the fees Plaintiffs' actually incurred in this matter. Plaintiffs informed the Circuit Court of Fairfax County, Virginia, only a few weeks ago that their Texas attorneys' fees totaled $173,763.59.

recover their attorneys' fees for other Texas matters or matters pending in other jurisdictions.

INTRODUCTION

On December 8, 2025, this Court ordered the Parties and Receiver Robert W. Berleth to conduct mediation of the remaining issues in this matter no later than January 15, 2026, which includes the amount of reasonable and necessary attorneys' fees, if any, that Plaintiffs may recover under § 31.002.

On December 23, 2025, Defendants' counsel contacted Plaintiffs' counsel and counsel for the Receiver regarding their availability for mediation. Plaintiffs' counsel and Receiver's counsel did not respond. Exhibit B.[2]

On December 30, 2025, Defendants' counsel followed up with Plaintiffs' counsel and Receiver's counsel regarding their availability for mediation. Plaintiffs' counsel and Receiver's counsel did not respond. *Id.*

On January 6, 2026, Defendants' counsel followed up with Plaintiffs' counsel and Receiver's counsel regarding their availability for mediation. Plaintiffs' counsel did not respond. Receiver's counsel responded and asked to schedule a call to discuss Defendants' counsel's motions to withdraw, filed on January 5, 2026. *Id.*

Defendants' counsel and Receiver's counsel held a teleconference on January 9, 2026. *See* Exhibit A. During that call, Receiver's counsel indicated he and Receiver would not participate in mediation until Thompson Coburn LLP's Motion to Withdraw was decided. *Id.* Defendants' counsel responded that: (1) compliance with the Court's mediation order was mandatory; (2) the motions to withdraw had no bearing on the Court's

[2] The Declaration of Alexander J. Pennetti is attached as Exhibit A.

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mediation order; (3) Thompson Coburn LLP remained counsel of record for Defendants until the Court grants the firm's request to withdraw; and (5) the Court's earliest availability provided to Defendants' counsel to hear the motion to withdraw was March 2, 2026. *Id.*

Although the Parties and Receiver have agreed that Hon. Russell Lloyd is a suitable mediator for this matter, neither Plaintiffs nor the Receiver have provided their availability for mediation for any of the dates provided by Judge Lloyd's case manager. *Id.*

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ARGUMENT

A. The Motion should be denied because Plaintiffs have refused to schedule the court-ordered mediation of the issues identified in the Motion.

At the hearing on December 8, 2025, the Receiver indicated he did not wish to proceed on his own motion to supplement his powers. Receiver's counsel asserted that the Receiver had improperly been denied the opportunity to attend the Parties' mediation that was limited by the Court of Appeals to only the parties and that mediation occurred on December 5, 2025.[3]

The Parties discussed this issue with the Court, and Plaintiffs and Defendants indicated they were not opposed to conducting a second mediation. Based on that discussion, the Court ordered the Parties and the Receiver to mediate all outstanding issues in this matter—including the issues of Plaintiffs' attorneys' fees—on or before January 15, 2026.

[3] Plaintiffs and Defendants participated in mediation on that date for 12 hours, but the parties did not reach a settlement.

Since that hearing, Plaintiffs have refused to cooperate in scheduling the mediation. First, despite their December 8, 2025, agreement to mediate and this Court's order, Plaintiffs argued that they do not need to attend mediation. Plaintiffs' Motion for Expedited Hearing, at 2 (stating that the Court's order "really does not need to include [Plaintiffs] at this point . . ."). In essence, Plaintiffs asked the Court to rescind its mediation order only with respect to Plaintiffs so that they may "avoid further delay in making the [requested] distribution.). *Id.* at 1.

Second, Plaintiffs ignored Defendants' attempts to schedule mediation for weeks.

Third, after ignoring Defendants' attempts to schedule mediation, Plaintiffs' counsel then demanded to mediate on a day Judge Lloyd was not available. Specifically, on January 7, 2026, Plaintiffs' counsel demanded to conduct mediation on January 12, 2026. Exhibit B. Judge Lloyd's case manager had already informed Defendants' counsel that Judge Lloyd was only available on six dates in January, starting on January 21, 2026. Exhibit D. Even after Defendants' counsel indicated they—like Judge Lloyd—were not available on January 12, Plaintiffs' counsel doubled down, misrepresenting that Judge Lloyd was available and asserting that Defendants' counsel "must, as attorneys, follow the Court's Order." *Id.* Plaintiffs' counsel went on to say that he would "[s]ee [Defense counsel] at mediation on the 12th." *Id.* Defendants' counsel forwarded the case manager's email to counsel for Plaintiffs and counsel for the Receiver, asking which days they were available to mediate. Neither have responded to that inquiry or otherwise provided their availability for the days Judge Lloyd is available.[4]

[4] Plaintiffs' counsel has since suggested the Parties hold their own "settlement conference." Exhibit E. Even if this was more than just another attempt to sidestep the Court's order,

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In short, neither Plaintiffs nor the Receiver has complied with this Court's prior order that the Parties and the Receiver mediate the remaining issues in this matter, and it appears that they are unwilling to do so.

B. Plaintiffs' Motion should be denied because Plaintiffs –without any evidentiary support --grossly misrepresented the total amount of fees incurred in Texas.

Eight days after this Court issued its order to mediate from the bench after *all Parties* and the Receiver agreed to mediate all remaining issues (including the issue of whether—and how much—attorneys' fees Plaintiffs may recover), Plaintiffs filed their Motion for Distribution of Funds. The original Motion for Distribution of Funds asked this Court to distribute $806,400.96 to Plaintiffs, a figure Plaintiffs said represented their "reasonable attorneys' fees and cost [sic] in this Texas enforcement proceeding and the other related proceedings in Texas."[5] Plaintiffs' Motion for Distribution of Funds, at 2. Plaintiffs twice amended their Motion for Distribution to correct glaring misrepresentations.[6] Their Second Amended Motion for Distribution of Funds now claims that Plaintiffs "are owed at least $857,734.19 in reasonable attorneys' fees and cost [sic] in this Texas enforcement proceeding and the other related proceedings in Texas." Second Am. Mot., at 2.

All three of Plaintiffs' motions for distribution of funds omit that, in October 2025, Plaintiffs told the Circuit Court of Fairfax County, Virginia, that their Texas attorneys' fees

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this is not a suitable alternative because the Parties have been engaged in ongoing, settlement discussions, all of which have been unsuccessful.

[5] Section 31.002 does not allow Plaintiffs to recover attorneys' fees from "other" proceedings. *See* Defs' Response to Amended Motion for Expedited Hearing, at 4-6.

[6] Plaintiffs' Original Motion for Distribution of Funds falsely claimed that Defendants had stipulated to the fees and costs sought. The Amended Motion for Distribution falsely asserted that the Receiver had found the fees sought were reasonable.

totaled only $173,763.59. Exhibit C. Indeed, at a hearing on a motion for disbursement of funds in *Atlantic Wave Holdings, LLC and Secure Community, LLC v. Cyberlux Corporation,* Case No. CL-2025-3413, Plaintiffs attempted to recover $749,014.03, which Plaintiffs claimed represented the ***total*** amount of fees and costs incurred by ***all*** their attorneys in Texas, California, and Virginia (including fee and sanctions award from the underlying judgment). Exhibit C is a chart that Plaintiffs submitted, in which Plaintiffs identified that their Texas attorneys' fees totaled $173,763.59. *See id*. After hearing arguments of counsel and receiving that chart,[7] the Circuit Court of Fairfax County, Virginia entered its Final Order. The Final Order reflects numerous findings, including that the Plaintiffs' ***total claim*** was $1,140,004.66, and the total claim included Plaintiffs' "reasonable and necessary attorney's fees and costs . . . proven to be $187,399.95." Defendants' Amended Response to Receiver's Motion to Supplement, at 6.

The doctrine of judicial estoppel prohibits Plaintiffs from abandoning their representations to the Circuit Court of Fairfax County and taking a clearly inconsistent position before this Court. *Reed v. City of Arlington*, 650 F.3d 571, 576 (5th Cir. 2011) (citing *New Hampshire*, 532 U.S. at 750, 121 (S.Ct. 1808); *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 294 (5th Cir. 2004) (applying judicial estoppel where positions taken in litigation are "clearly inconsistent").

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[7] Plaintiffs' counsel has repeatedly suggested that additional information was adduced at the October hearing held in Fairfax County, Virginia. Despite several requests, Plaintiffs have not produced any of that information or other documentation to support their demand for attorneys' fees.

There is no proper purpose for Plaintiffs' reversal; they are simply trying to obtain relief in this Court that was already rejected by the Circuit Court of Fairfax County. Plaintiffs' Motion should be denied because Plaintiffs already obtained payment representing the outstanding balance on their *total claim*, including attorneys' fees. In any event, the Motion should be denied because Plaintiffs grossly overstated the amount of attorneys' fees they have incurred, and they are judicially estopped from changing the position they previously took in Virginia.

C. Plaintiffs have not provided any evidence of the attorneys' fees and costs that they seek to recover in this case.

Plaintiffs are seeking a disbursement of more than $850,000 but they have not provided any evidence to support this demand. Nor have they made any effort to show that the attorneys' fees and costs they seek to recover are actually within the scope of TCPRC § 31.002(b)(3).

Courts may not award attorneys' fees to a party unless and until the party proves that the fees incurred were reasonable and necessary. *Dilston House Condo. Ass'n v. White*, 230 S.W.3d 714, 718 (Tex. App.—Houston [14th Dist.] 2007, no pet.) (citing *Manon v. Tejas Toyota, Inc.,* 162 S.W.3d 743, 751 (Tex.App.—Houston [14th Dist.] 2005, no pet.).

This is true even when an award of attorneys' fees is mandatory. *Id.*; *see also Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 484 (Tex. 2019) ("When fee-shifting is authorized, the party seeking to recover those fees bears the burden of establishing the fees are reasonable and necessary.") (quoting *In re Nat'l Lloyds Ins. Co.*, 532 S.W.3d 794, 809 (Tex. 2017)). When a party seeks to recover attorneys' fees

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under § 31.002(e), the party must prove that the fees were incurred for turnover relief. *Feldman v. Watts*, 586 S.W.3d 591, 596 (Tex. App.—Houston [14th Dist.] 2019, no pet.) ("The Feldman Parties also sought fees for work that did not involve the pursuit of turnover relief, but they were not entitled to attorney's fees under section 31.002(e) for this work.").

Plaintiffs seem to believe that they are not required to billing statements to Defendants and that the Court may instead determine a reasonable amount of attorneys' fees based on the billing statements of *Defendants'* counsel. *See generally* Exhibit E. That position is wrong under Texas law for two reasons.

First, Plaintiffs have an evidentiary burden to prove the amount of reasonable and necessary attorneys' fees to which they are entitled. *Dilston House*, 230 S.W.3d at 718. As such, they must produce actual evidence, in the form of billing statements to Defendants and Defendants are entitled to cross-examine any sworn testimony related to the alleged fees incurred. *In re Scherer*, 684 S.W.3d 875, 893 (Tex. App.—Eastland 2024, no pet.) (discussing that billing statements of the party's counsel are discoverable when that party seeks to recover attorneys' fees); *see also El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 762 (Tex. 2012) ("A meaningful review of the hours claimed is particularly important because the usual incentive to charge only reasonable attorney's fees is absent when fees are paid by the opposing party.").

Second, the fees and costs incurred *by Defendants* are not relevant to the inquiry before the Court, which is the amount of reasonable and necessary attorney's fees, if any, that may be awarded to Plaintiffs. *See In re Nat'l Lloyds Ins. Co.*, 532 S.W.3d 794, 805 (Tex. 2017) (discussing that an opposing party's billing statements are only discoverable if the opposing party seeks to recover its fees or uses its fee statements to refute the

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reasonableness of the requesting party's fees); *Mora v. Allsup's Convenience Stores, Inc.*, No. 2:08-CV-100, 2011 WL 13286042, at *4 (N.D. Tex. Mar. 11, 2011) (comparing other federal circuits to the Fifth Circuit and finding that the "costs incurred by defense counsel, which may include trips to meet with clients and other expenses particular to the posture of the defense attorneys and their clients, **has no relevance to the reasonableness of the costs incurred by plaintiffs**.") (emphasis added) (quoting *Harkless v. Sweeny I.S.D.*, 608 F.2d 594 (5th Cir. 1979)).

Plaintiffs' Motion for Distribution of Funds should be denied and/or abated until Plaintiffs produce evidence to support their demand for attorneys' fees.[8] Defendants' request that the Court provide Plaintiffs a deadline to produce such evidence, including all billing statements upon which Plaintiffs rely, and if evidence is not produced by that deadline, the Court should deny Plaintiffs' request in its entirety.

CONCLUSION

There is no good-faith basis for Plaintiffs' refusal to mediate, and Plaintiffs cannot recover any attorneys' fees or costs without providing actual evidence to both the Court and Defendants. The Court should deny Plaintiffs' Second Motion for Distribution and compel Plaintiffs to mediate on or before February 13, 2026, in accordance with the Court's December 8, 2025 bench ruling.

The Court should also require Plaintiffs to produce, at least 48 hours prior to mediation, unredacted documentary evidence that supports the attorneys' fees they seek to

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[8] There is no dispute that the Receiver obtained $3,083,639.75 on or about June 11, 2025. Plaintiffs cannot recover attorneys' fees incurred after that date. *See Thomas v. Thomas*, 917 S.W.2d 425, 438 (Tex. App.—Waco 1996, no writ). Plaintiffs may only recover attorneys' fees incurred in the pursuit of turnover relief. *Feldman*, 586 S.W.3d at 596.

recover. The Court should separately require the Receiver to adduce, prior to mediation, evidence of the fees and expenses he alleges were incurred for this appointment.

If Plaintiffs fail to comply with the Court's order, the Court should bar Plaintiffs from recovering any fees and costs. In any event, the Court should bar Plaintiffs from recovering any fees incurred after June 11, 2025; any fees that were not incurred in the pursuit of turnover relief; and any fees exceeding a total of $173,763.59.

Alternatively, the Court should abate any hearing on the Second Amended Motion for Distribution of Funds until after the Parties and the Receiver conduct mediation. In the interim, because the only issues remaining concern recoverable fees, the Court should order the Receiver to deposit all funds into the Court's registry. The Court also should discharge the Receiver and terminate the receivership. Defendants respectfully ask that the Court grant Defendants the relief requested above and all other relief to which they are entitled.

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Respectfully submitted,

/s/ Alexander J. Pennetti
Elizabeth G. Myers
State Bar No. 24047767
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
emyers@thompsoncoburn.com
dlang@thompsoncoburn.com
apennetti@thompsoncoburn.com

Attorneys for Defendants Cyberlux Corporation and Mark D. Schmidt

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Civil Procedure on January 22, 2026.

/s/ Alexander J. Pennetti
Alexander J. Pennetti

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