

**CAUSE NO. 2024-48085**

**ATLANTIC WAVE HOLDINGS, LLC AND  
SECURE COMMUNITY, LLC,**

**PLAINTIFFS/JUDGMENT-CREDITORS,**

**v.**

**CYBERLUX CORPORATION AND MARK  
SCHMIDT, INDIVIDUALLY,**

**DEFENDANTS/JUDGMENT-DEBTORS.**

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**IN THE DISTRICT COURT OF**

**129<sup>TH</sup> JUDICIAL DISTRICT**

**HARRIS COUNTY, TEXAS**

**PLAINTIFF-INTERVENOR LEGALIST SPV III, LP'S RESPONSE TO RECEIVER'S  
FIFTH AND FINAL REPORT, FINAL ACCOUNTING, VERIFIED MOTION FOR  
DISBURSEMENT OF FUNDS, AND MOTION TO TERMINATE RECEIVERSHIP**

Plaintiff-Intervenor Legalist SPV III, LP hereby files its response to Receiver's Fifth and Final Report, Final Accounting, Verified Motion for Disbursement of Funds, and Motion to Terminate Receivership, and in support thereof shows the Court as follows:

**INTRODUCTION**

The receivership in this case has run its course. The underlying judgment has been satisfied. The Judgment Creditors have nontsuted their claims. The Court denied the Receiver's request to expand the receivership. The sole remaining issue is the disposition of funds held in the Receiver's trust account. Those funds—every dollar of them—were wired by Legalist to the Receiver on June 10, 2025, in the amount of \$3,083,639.75, on behalf of the Judgment Debtors, for the express purpose of satisfying the underlying judgment and terminating the receivership. Once the Court adjudicates the Receiver's reasonable fees and expenses, any remaining funds should be disbursed to Legalist. Legalist is entitled to those funds for three independent reasons: (1) Legalist provided the funds to the Receiver and is entitled to the return of any surplus; (2) the Judgment Debtors agreed in writing that any surplus remaining at the conclusion of the enforcement proceedings would be returned directly to Legalist; and (3) Legalist is a secured priority creditor that holds

UCC liens securing all assets of Cyberlux as collateral, and is owed in excess of \$13,000,000 by the Judgment Debtors.

## **FACTUAL BACKGROUND**

### **A. The Underlying Judgment and Receivership**

On June 23, 2023, the Circuit Court of the City of Richmond, Virginia entered a consent judgment in favor of the Judgment Creditors and against the Judgment Debtors in the amount of \$1,572,500, plus attorney's fees and sanctions totaling \$187,863.69 and interest at 12% per annum (the "Underlying Judgment"). On July 30, 2024, the Judgment Creditors filed a Petition to Enforce the Underlying Judgment in this Court, initiating this enforcement action. On May 22, 2025, this Court signed a turnover order appointing Robert W. Berleth as Receiver pursuant to Section 31.002(b)(3) of the Texas Civil Practice and Remedies Code.

### **B. Legalist's Wire Transfer to the Receiver**

Less than three weeks after the Receiver was appointed, Legalist wired \$3,083,639.75 to the Receiver's trust account on behalf of the Judgment Debtors to satisfy the Underlying Judgment and terminate the receivership. The amount wired was calculated pursuant to a judgment calculation prepared by the Receiver as of June 9, 2025, which accounted for the principal judgment amount, post-judgment interest, attorney's fees, the Receiver's fee, and expenses. *See Exhibit A-1.* Legalist made this payment as a creditor of Cyberlux, pursuant to a Government Purchase Order Financing Agreement (the "Financing Agreement") under which Cyberlux became indebted to Legalist, and which was personally guaranteed by Mark Schmidt. *See Exhibit B, ¶ 3-4.*

### **C. Cyberlux's Agreement to Return Surplus Funds to Legalist**

Before the foregoing wire was sent, counsel for Legalist requested written confirmation from Cyberlux's counsel that "any surplus leftover at the end of the enforcement proceeding will be returned directly to Legalist." Cyberlux's counsel, Alex Pennetti of Thompson Coburn LLP, confirmed via email: "Cyberlux is agreed." See **Exhibit A-2**. This agreement was made contemporaneously with, and as a condition of, Legalist's willingness to fund the wire transfer to the Receiver.

### **D. Satisfaction of the Underlying Judgment and Settlement**

On November 14, 2025, the Circuit Court of Fairfax County, Virginia entered a final order disbursing \$952,601.71 (the principal balance owed on the Underlying Judgment) and \$187,399.95 (attorney's fees and costs incurred in the Virginia proceedings) to the Judgment Creditors. On February 26, 2026, the Judgment Creditors and Judgment Debtors filed a Joint Notice of Settlement and Joint Motion for Release of Funds, for Satisfaction of Judgment, and to Dissolve Receivership in the instant matter (the "Joint Motion"). The Joint Motion stipulated that the Judgment Creditors' reasonable attorney's fees and expenses in this Texas enforcement action totaled \$873,849.02, the payment of which would fully satisfy the Underlying Judgment. On March 2, 2026, the Court ordered the Receiver to disburse \$873,849.02 to the Judgment Creditors, and the Receiver did so.

### **E. Nonsuit, Denial of Receivership Expansion, and Termination**

On March 9, 2026, the Judgment Creditors filed a Notice of Nonsuit, nonsuiting this action and their claims against the Judgment Debtors. On March 13, 2026, the Court signed an Order of Nonsuit, dismissing the Judgment Creditors' claims. On March 14, 2026, the Court signed an order

denying the Receiver's request to expand the receivership into a general receivership under Section 64.001 of the Texas Civil Practice and Remedies Code.

#### **F. Legalist's Intervention**

On February 27, 2026, Legalist intervened in this action as a matter of right to protect its substantial secured interests. Legalist holds UCC liens on all assets of the Judgment Debtors, and as of May 26, 2026, the Judgment Debtors are indebted to Legalist in the amount of \$13,997,282.46. *See Exhibits B, B-1 and A-5.*

#### **G. The Receiver's Final Report and Proposed Disbursements**

On May 27, 2026, the Receiver filed his Fifth and Final Report, Final Accounting, Verified Motion for Disbursement of Funds, and Motion to Terminate Receivership. In his Final Report, the Receiver represents that he has already disbursed \$873,639.75 to Plaintiff's counsel and proposes the following additional disbursements from the trust account: (a) \$722,728.68 to the Receiver as reasonable and incurred expenses; (b) \$1,017,601.11 as the Receiver's fee; and (c) the remaining \$469,670.21 to the next receivership (if present) or to the previous unpaid employees of Cyberlux. The Receiver claims entitlement to a 33% contingency fee, asserting that he "collected the full amount of the judgment." Legalist disputes the reasonableness of the Receiver's claimed fees and expenses, but the adjudication of the Receiver's fees is not the subject of this response. Regardless of the amount ultimately awarded to the Receiver, any remaining funds must be disbursed to Legalist.

### **ARGUMENT AND AUTHORITIES**

#### **A. The Receivership Has Terminated as a Matter of Law**

When the judgment underlying a turnover order is satisfied, the turnover order and the receivership it established terminate as a matter of law. *Pandozy v. Beaty*, 254 S.W.3d 613, 617

(Tex. App.—Texarkana 2008, no pet.) (“once the judgment was paid, the turnover order lost its teeth and was of no further force and effect”). A turnover order becomes “immediately moot when the judgment which it was issued to enforce was satisfied.” *Bennett/Nguyen Joint Venture v. Coghlan*, No. 01-10-00575-CV, 2011 WL 2732435, at \*1 (Tex. App.—Houston [1st Dist.] July 14, 2011, no pet.) (quoting *Pandozy*). The Turnover Statute authorizes a receiver only “to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.” Tex. Civ. Prac. & Rem. Code § 31.002(b)(3). Once that judgment is satisfied, the statutory basis for the receivership ceases to exist.

Here, the Underlying Judgment has been satisfied—the parties have jointly stipulated to that fact, the Judgment Creditors have nonsuited their claims, and the Court has dismissed the Judgment Creditors’ action. The only remaining issues are the adjudication of the Receiver’s reasonable fees and expenses and the distribution of remaining receivership assets.

### **B. Remaining Funds Must Be Returned to the Judgment Debtors**

Upon satisfaction of the underlying judgment and termination of the receivership, any remaining assets held by the Receiver must be returned to the Judgment Debtors. The Turnover Statute authorizes the Receiver to take possession of a judgment debtor’s property and pay the proceeds to the judgment creditor only “to the extent required to satisfy the judgment.” Tex. Civ. Prac. & Rem. Code § 31.002(b)(3). The Receiver has no authority to retain funds beyond what is necessary to satisfy the judgment and pay his court-approved fees and expenses.

### **C. Cyberlux Agreed That Surplus Funds Would Be Returned Directly to Legalist**

Cyberlux Corporation, through its counsel at Thompson Coburn LLP, agreed on June 10, 2025—the same day Legalist wired the \$3,083,639.75 to the Receiver—that “any surplus leftover at the end of the enforcement proceeding will be returned directly to Legalist.” Cyberlux’s counsel

confirmed this agreement in writing: “Cyberlux is agreed.” See **Exhibit A-2**. This agreement was made as a material inducement for Legalist’s decision to wire over \$3 million to the Receiver to satisfy the judgment and terminate the receivership. Legalist would not have funded the wire without this assurance.

Because the Judgment Debtors are the parties entitled to the return of surplus receivership assets, and because Cyberlux has agreed that those surplus funds should be returned directly to Legalist, this Court should order that any funds remaining in the Receiver’s trust account be disbursed directly to Legalist.

#### **D. Legalist Is a Secured Creditor With Priority Liens on All Cyberlux Assets**

Even apart from Cyberlux’s express agreement, Legalist is entitled to the remaining funds as a priority senior secured creditor. Legalist holds UCC liens securing all assets of the Judgment Debtors as collateral. See **Exhibit A-5**. As of May 26, 2026, the Judgment Debtors are indebted to Legalist in the amount of \$13,997,282.46 by virtue of their failure to satisfy their obligations under the Financing Agreement. Any surplus funds would therefore immediately be subject to Legalist’s senior lien interest. Disbursing funds to Legalist directly would be the most equitable and efficient resolution. In fact, the Receiver acknowledged Legalist’s status as a senior secured creditor and the fact that Legalist should be paid in his Memorandum of Law in Support of Motion for Summary Judgment filed in the interpleader matter currently pending in the Eastern District of Virginia styled *HII Mission Technologies Corp. v. Cyberlux Corporation et al.*, Civil Action No. 3:25-cv-483-JAG (the “Virginia Interpleader”). See **Exhibit A-4**.

#### **E. The Joint Motion Previously Recognized Legalist’s Entitlement**

The Joint Motion filed by the Judgment Creditors and Judgment Debtors on February 26, 2026, requested that the Court “release \$1,991,328.43 to Legalist SPV III, LP within two business

days of entry of the Court's order." The proposed order attached to the Joint Motion likewise stated that "\$3,083,639.75 was previously transferred by Legalist SPV III, LP on behalf of Defendants to the Receiver, and that amount exceeds recoveries and credits against the Underlying Judgment, and the remaining balance should be disbursed to Legalist SPV III, LP." Both the Judgment Creditors and the Judgment Debtors thus recognized and agreed that remaining funds should be disbursed to Legalist.

**CONCLUSION AND PRAYER**

Based on the foregoing, any funds that remain once the Court adjudicates the Receiver's reasonable fees and expenses should be transferred to Legalist.

Respectfully submitted,

**VARTABEDIAN KATZ HESTER & HAYNES LLP**

*s/ Austin N. Priddy*

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**ATTORNEYS FOR LEGALIST**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served by the court's efile system on all counsel of record in accordance with the Texas Rules of Civil Procedure on May 29, 2026.

/s/ Austin N. Priddy  
Austin N. Priddy

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