

CAUSE NO. 202448085

ATLANTIC WAVE HOLDINGS, LLC § IN THE DISTRICT COURT
and SECURE COMMUNITY, LLC., §
Plaintiffs, Judgment-Creditors, §
v. § 129TH JUDICIAL COURT §
CYBERLUX CORPORATION and §
MARK D. SCHMIDT, individually, § IN AND FOR
Defendants, Judgment-Debtors. § HARRIS COUNTY, TEXAS

ORDER APPOINTING RECEIVER

On the date of entry below, this Court considered Judgment Creditors post-judgment Application for Turnover relief and to Appoint a Receiver, reviewed the documents on file, relevant statutory and case law, admissible evidence, all arguments of the parties and counsel, and finds the Judgment Creditors may aid from this action.

The Court DEFINES that:

1) “Plaintiff(s)” or “Judgment Creditor” refers to ATLANTIC WAVE HOLDINGS, LLC and SECURE COMMUNITY, LLC, and may be reached at the counsel of record:

David Walton, BELL NUNNALLY, 2323 Ross Avenue, Suite 1900, Dallas, TX 75201. Telephone: 214-740-1445. Email: dwalton@bellnunnally.com

David Keithly, MORTENSON TAGGART ADAMS LLP, 300 Spectrum Center Drive, Suite 1200, Irvine, CA. Telephone: 949-774-8107. Email: dkeithly@mortensontaggart.com

Shawn Grady, LAW FIRM OF SHAWN GRADY, 2100 W Loop S #805, Houston, TX 77027. Telephone: 832-692-4542. Email: shawn@gradycollectionlaw.com

James Sadigh, Law Office of James Sadigh, 9777 Wilshire Blvd Suite 400, Beverly Hills, CA 90212. Telephone: 310-747-5919. Email: JamesSadigh@aol.com

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

a. CYBERLUX CORPORATION (CORPORATION)

4625 Creekstone Dr
Durham, NC 27703-8478

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

TIN: [REDACTED] 8978

ACCURINT (LEXIS) ID: 0000-3811-1939

b. MARK D. SCHMIDT (INDIVIDUAL)

1134 Fearington Post Apt 12
Pittsboro, NC 27312-5014

SSN: [REDACTED]-0622

D.O.B. February [REDACTED] 1965

ACCURINT (LEXIS) ID: 0022-6993-6159

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

BERLETH & ASSOCIATES

Robert W. Berleth

Texas Bar # 24091860

SDOT #: 3062288

E-mail: rberleth@berlethlaw.com

Tristian Harris

Texas Bar # 24134449

E-mail: tharris@berlethlaw.com

9950 Cypresswood Dr. Suite 200

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

Tele: 713-588-6900

4) “Judgment” refers to the Order domesticated by this court dated June 23, 2023. Applicant is owed a judgment amount of **\$1,572,500**, with attorney’s fees of \$177,126.19, plus sanctions of \$3,895.00 and \$6,842.50 plus court costs with post-judgment interest accruing at the rate of 12% per annum. As of 02/18/2025 **\$2,111,086.01** remains owed and due from the Debtors to the Plaintiff, and subject to the Receiver’s actions.

The Court FINDS that:

- 5) Judgment Creditors own unsatisfied final judgments against Judgment Debtors.
- 6) Upon evidence admitted to this court, during the hearing for appointment of Receiver the court finds the requirements for chapter 31 turnover have been met. The court takes judicial notice of the evidence and testimony presented during the appointment hearing.
- 7) Judgment Creditors have good faith reasons to believe that Debtor owns non-exempt rights to present or future property that cannot be readily attached or levied on by ordinary legal process as required by the standard set forth in *Tanner*². Such property includes, but is not limited to, real property, tangible and intangible assets, other property, professional corporations which have accounts receivable, bank accounts that are easily moved and constantly changing in balance, and community property held jointly. The appointment of a Receiver to locate, marshal, and administer assets is justified because the Court believes that non-exempt assets exist which Judgment Creditors are justified in believing Debtor will hide.
- 8) A Receiver is necessary to carry out this Court’s prior orders, and that the Receivership is necessary not to harass, but to serve justice. A Receiver is necessary in this case pursuant to the Texas Turnover Statute, TEX. PRAC. & REM. CODE § 31.002 and the Texas

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

Fraudulent Transfer Act §24.009, with the power and authority to take possession of all leviable property of Debtors. This Order shall also serve as a Turnover Order, and the Judgment Creditor is entitled to collect post-judgment attorney's fees under TEX. PRAC. & REM. CODE § 31.002(e).

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

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

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

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

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

⁶ *First S. Props.*, at 341.

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

11) The Judgment is not considered a “consumer debt” as defined by the 15 U.S. Code § 1692, the Fair Debt Collection Practices Act (FDCPA).

12) This Order specifically serves as the Court order required by 47 USC Sec. 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

13) The disclosure of information pursuant to this Order is not a violation of PUC Substantive Rule 25.272. This Order satisfies the law, regulation, or legal process exception to the Proprietary Customer Information Safeguards found in PUC Substantive Rule 25.272 (g)(1).

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

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

15) Appointment. After considering the propriety of receivers whom the Court has appointed in other cases and the plaintiff’s recommendations, the Court appoints Robert W. Berleth as Receiver over each Debtor’s non-exempt assets, under TEX. CIV. PRAC. & REM. CODE § 31.002, to serve as Receiver after taking the oath of office.

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

17) Immunity. Except for acts of intentional misconduct, Receiver and persons engaged or employed by him are not liable for loss or damage incurred by any person or entity by

reason of any for any act performed or omitted to be performed by Receiver or those engaged or employed by Receiver for the discharge of their duties and responsibilities for the Receivership, including exercising control over Receivership assets.

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

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

- a. All third parties who hold a Debtor's property or records are ordered to immediately notify Receiver and to deliver the property within ten working days of Receiver's demand.
- b. All third parties knowing of this order are ordered to immediately notify Receiver if they discover the existence of a Debtor's property, or of facts that might lead to the discovery of property in which any Debtor has any interest.
- c. Anyone resisting Receiver's order or request, based on legal or other advice, is ordered to give the full name, address, fax number, e-mail address, cell phone

number, and direct telephone number for each person giving that advice and to instruct those persons to immediately contact Receiver. Doing so waives no attorney-client communication privilege.

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

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

- a. Deliver to Receiver, at the address of the Receiver, the items described in Exhibit A, attached hereto as part of this Order, and all documents and records requested by Receiver, within ten days, then occasionally, in the time periods, manners, and formats requested;
- b. Turnover to Receiver all non-exempt funds to the extent required to satisfy the Judgment. No Debtor may spend non-exempt funds, or sell, transfer, or encumber non-exempt assets without Receiver's prior written consent;
- c. Disclose to Receiver all assets of each Debtor, and directly nor indirectly interfere with or impede Receiver to perform his duties. Debtor must disclose all exempt and non-exempt assets so the exempt status of every asset can be determined. Debtor's disclosure must provide sufficient specificity to permit a constable to identify and levy on the assets;
- d. Supplement all disclosures, in writing, within five days of knowledge of information required to be disclosed, without being prompted;

- e. Organize and collate the disclosed information and documents in the formats and manners required by Receiver. The disclosures must be indexed and refer to the request to which it is responding. Responses like, “See response number so and so.” are prohibited;
- f. Deliver to Receiver all passwords, user identification, login and other credentials used to access websites, owned, controlled, or managed by each Debtor and on-line accounts that allow the control of assets (e.g. financial accounts, webhosting accounts, and other accounts used to control assets).
- g. Debtor may not dispute a check that Receiver seizes and deposits, without first obtaining the Court’s permission.
- h. If Debtor believes that the Receiver's demands are inappropriate, the Debtor must first comply, then seek protection from the Court. Debtors seeking protection must set the matter for the earliest possible hearing date, after giving full notice to the Receiver and attempting to resolve the issues.

22) Conduct and Disposition of Entities. If Debtor is an individual, all legal right, title and ownership of any limited partnership interest, partnership interest, stock, or membership interest it has in any entity and business entity of that Debtor is divested from the individual and placed in *custodia legis* with the Receiver.⁸ If the debtor is the sole owner of that entity or business, all management authority is vested in the Receiver as if Receiver were the Receiver over that entity. If the Respondent is a business entity, all authority and power of the Debtor in the management of the entity is vested in the Receiver and no decision may be made or carried out

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

without the express approval of the Receiver.⁹ This order supersedes the authority of any officers, directors or managers of the business entity debtor.

23) No Serial Receiverships. The first receivership order signed controls. The Court, as of the date of signing this order, has no knowledge or belief of any other controlling receivership. The assets are in the control of the court for the first receivership. Thus, they are not available to the court ordering a later receivership. The Receiver may obtain permission from this and other courts to satisfy several judgments against the same debtor.¹⁰ The Receiver may notice other subsequent receiverships or their controlling court of this receivership and may take legal actions necessary to quash subsequent receiverships.

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

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

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

Powers GRANTED unto the Receiver by this Court:

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

- a. All patents, trademarks, service marks, copyrights, websites, and domain names;
- b. All documents or records, including financial records, related to such property that is in actual or constructive possession of the Debtors;
- c. All financial accounts (bank accounts), certificates of deposit, money-market accounts, and accounts held by any third party;
- d. All federal and state tax returns filed or prepared by or on behalf of the Debtors for the past five (5) years;
- e. All non-exempt vehicles, to include boats, motor vehicles, cars, trucks, utility vehicles, recreation vehicles, aircraft, trailers, or other wheeled vehicles;
- f. All real property owned or rented by any Debtor or Debtor's agent or assigns in part or whole;
- g. All securities;
- h. All gifts, inheritances, or divisions of property;
- i. All safety deposit boxes, safes, lock boxes, or vaults;
- j. All cash;
- k. All negotiable instruments, including promissory notes, drafts, and checks;

- l. All causes of action;
- m. All contract rights, whether present or future;
- n. All accounts receivable;
- o. Any and all leases or leaseholds;
- p. All collections, including but not limited to artwork, stamps, coins, guns, crystal, sports memorabilia, records, and trains;
- q. Accounts receivable for and all other entities controlled by Debtors;
- r. All Debtors' ownership interests;
- s. All personal bank accounts upon which Debtors are signatories;
- t. All business bank accounts upon which Debtors are signatories;
- u. All bank accounts owned, possessed, controlled by, or in the name of any Debtor individually;
- v. All bank accounts owned, possessed, controlled by, or in the name of and Debtor by corporate affiliation;
- w. All diamonds, gems, and other precious stones, gold, silver, platinum, and all other precious metals, watches, and jewelry;

26) Access to Property. The Receiver may take all actions to gain access to and enter all real property, leased premises, storage facilities, and safe deposit boxes where non-exempt property, or records of a Debtor may be situated, and to seize the contents. The Receiver may employ reasonable destructive means to bypass or gain access to lockboxes, safes, security systems, or any other area he reasonably believes contains non-exempt assets within any real property or associated curtilage owned or controlled by any Debtor. The Receiver may change locks to all premises at which any property is situated. The Receiver may operate an unmanned

aircraft to conduct surveillance of the Debtor's property held in *custodia legis*, and such operations are deemed essential for the safety of the Receiver in his official duties under Tex. Gov. Code § 423.002(a);

27) Disable or remove non-exempt property. The Receiver may disable or remove non-exempt property belonging to a Debtor or place the property into storage; insure any property taken into his possession; obtain such writs as Receiver deems necessary to obtain possession; and change the locks to premises belonging to the Debtor. Receiver has no duty to take these actions, or to maintain, guard, or insure property taken into *custodia legis*, or to maintain or pay any lease, nor shall Receiver be required to pay any mortgage, lien or assessment, defend against any lawsuit, pay any tax or fee, file tax returns, maintain any insurance coverage, or have any obligation except as specifically ordered.

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

29) Personal Property Rights of Judgment Debtor. Receiver must comply with Texas Rule of Civil Procedure 679b.

30) Receiver to Hold Property. Receiver must not disburse funds to Judgment Creditor or sell property within 14 days after serving Judgment Debtor with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the

Protected Property Claim Form approved by the Supreme Court, or within 17 days if service was by mail. If the Judgment Debtor asserts an exemption, Receiver may only disburse funds to Judgment Creditor or sell property with Judgment Debtor's written consent or a court order.

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

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

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

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

35) Obtain credit reports. The Receiver may obtain credit reports, financial institution statements, and other reports to aid in locating assets. Receiver may order Consumer Reporting Agencies, as defined by the Fair Credit Reporting Act ("FCRA") 16 USC §1681b(f) to provide consumer reports on Debtors and witnesses as allowed under FCRA 16 USC §1681b(a)(1).

36) Utilities. The Receiver may order providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, email hosts, iCANN providers, satellite television services, and similar services (including ComCast, AT&T, Verizon, Sprint, and Direct TV), and financial institutions to turnover information that Receiver believes may prove or lead to the discovery of the existence or location of a Debtor's whereabouts or non-exempt assets, including account information, telephone numbers, names, service addresses, telephone numbers, payment records, and bank and credit card information.

- a. The orders must be directed to the entity from which the information is sought and specifically describe the information requested with the dates for which the information is required, which may not be more than one year before issuing Receiver's request, unless specifically stated in the request or attachments.
- b. This order specifically defines Receiver as a state official, acting in an official capacity, as defined in section 182.054(1) of the Texas Utility Code.
- c. This order specifically serves as the court order required by 47 U.S.C. § 551, and TEX. FIN. CODE §59.001, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing before contained personally identifiable information of the subscriber or customer;
- d. Disclosing information under this order does not violate PUC Substantive Rule 25.272. This order satisfies the law, regulation, or legal process exception to the Proprietary Customer Information Safeguards found in PUC Substantive Rule 25.272 (g)(1).

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

38) Support and Assistance. The Receiver may hire any person, firm or company to further remedies available to Receiver, including hiring persons to: change locks to premises belonging to Debtor; exclude persons from interfering with Receiver's custody of the premises; moving or storing Debtor's property; collect accounts receivable; or sell Debtor's non-exempt property;

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

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

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

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

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

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

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

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

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

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

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

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

- a. At least ten days before any abandonment, Receiver must file a notice of the intended sale or abandonment that describes the property to be abandoned, its sale price, and how it will be sold or abandoned;

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

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

a. If no objection is timely filed, Receiver may abandon the property as described in the notice, without further order.

b. If an objection is timely filed, the proposed abandonment or sale must not be completed until the Court has decided the objection.

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

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

53) Receivers Fees. The Receiver's fees and expenses are considered costs of court. Competent and experienced receivers are rare and the time and effort required by a receiver to keep time, apply for fees and the lag between filing for fees and being paid and that the fees earned would be at an ordinary rate. Not being paid at the time of or shortly after rendering of services would inhibit the recruitment of experienced receivers. Given the chances of no recovery, contingent fees are the most economical fee schedule. The costs of proving an hourly fee could easily exceed the original judgment. A contingency fee is the only way that plaintiff can afford a receiver. Debtor has not tried to pay the judgment. The costs of proving an hourly fee are prohibitive. Therefore, the Receiver is entitled to a fee equal to 25% of all sales of assets that come into his actual, constructive, or legal possession, and all recoveries and credits against the judgment. Upon hearing, and once the *Rohrmoos Ventures*¹² elements have been proven, the Court

¹² *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 490 (Tex. 2019) "To assist district courts in awarding attorney's fees, the Fifth Circuit in *Johnson v. Georgia Highway*

finds 25% is a fair, reasonable, customary, and necessary fee for Receiver. A Receiver's fee exceeding 25% of all funds coming into Receiver's possession may be awarded after notice and opportunity for hearing to all parties. Specifically, the Court may award the Receiver 33% of collected funds should the Receiver collect the full amount of the judgment. If the Debtor files bankruptcy, Receiver's fee shall be equal to 25 percent of the debt owed when the bankruptcy is filed, and may be filed as a secured claim should a valid abstract of judgment be on file at the time of bankruptcy filing. Receiver is directed to pay plaintiff's attorney as plaintiff's trustee, the remainder of all funds coming into Receiver's possession, after deducting Receiver's costs and payment of liens or set offs as Receiver deems reasonable within a reasonable time.

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

Express, Inc., 488 F.2d 714 (5th Cir. 1974), set out twelve factors that a court should consider in determining a reasonable fee."

¹³ *Id.*

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

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

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

Signed and Dated: _____

Hon. Michael Gomez
JUDGE PRESIDING

Approved as to form and substance:



Berleth & Associates
Robert W. Berleth
Texas Bar # 24091860
SDOT #: 3062288
E-mail: rberleth@berlethlaw.com
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PROPOSED RECEIVER

Exhibit A
**Documents Ordered to be Delivered to Receiver, at His Office,
Within Ten Days of Receipt of the Order Appointing Receiver**

Definitions and instructions.

- 1) Time Periods. All time periods are for the three years before this order was signed, unless otherwise stated.
- 2) Continuing duty to supplement. The turnover order is continuing and must be supplemented. Should a defendant or witness come into possession, custody, or control of anything that was ordered turned over or produced, that person must turn over the item within ten days.
- 3) Definitions:
 - a. "Order" means the turnover order in this case order.
 - b. "Account Information" means the login, username or other account identifier with all passwords associated with accessing the accounts.
 - c. "Contact Information," "telephone number," and "address," mean that person's full name, nick names, d/b/a's, and all addresses (including work and residence), all telephone numbers (including home, office, fax, pager, and cell numbers), and e-mail, Facebook, social networking, and web site addresses. If any of the information is lacking, provide the Contact Information for every person believed to be able to provide the missing information.
 - d. "Defendant" includes every judgment defendant and every spouse or ex-spouse of the judgment defendant within three years of signing the order.
 - e. "Copies" means complete, legible copies. Illegible copies are to be provided, with a notation showing where legible copies can be found.
 - f. "Entity" includes all business organizations, whatever their form, including public or private corporations, limited liability companies, partnerships, joint ventures, unincorporated associations, and individual proprietorships.
 - g. "Manager" refers collectively to anyone who is an officer, director, manager, or supervisor of an Entity, or who makes business decisions for an Entity.

- h. "Produce," means to deliver. If an item is not listed in this exhibit, the defendant or witness must turn over the item in the time specified by the demand.
 - i. "Records" and "Documents" are mutually inclusive, and include the records, documents, and items formally ordered turned over, or requested by the Receiver. Requests regarding property or Documents owned or possessed by a defendant also apply to defendant's spouse, ex-spouse, brother sister, child, step-child, mother, father, sister, brother, partner, or co-owner of a small business, if the requests involve documents that a defendant would be required to turnover had defendant possessed or controlled the item.
 - j. "Shareholder" includes the owners, members, partners and others who have ownership rights any Entity.
 - k. "Turnover" includes creating a list or report, if no list or report exists. "Turnover" also means to convey the information that is available to you, not merely the information of your present knowledge, including providing information, Documents or Records known by you, or that is in your possession, or the possession of your family, employees, co-workers, co-owners or agents, including your attorney or any agent or investigator of your attorney.
 - l. "Witness" means any person who is not a defendant but who may have information, Records or Documents relating to defendant.
- 4) Document labeling and identification.
- a. "All" is presumed to apply to every item. If a type of item is listed, this Order means all similar items.
 - b. Each turned over Document, file, or photograph must be given a consecutive identification number and produced in the condition and order of arrangement in which it existed when the application for this Order was filed, including all file labels, dividers, or associated identifying markers. An index must be provided, if the documents are large, or if the Receiver requests.
 - c. Creating lists and compilations. If the Order or this exhibit requires a defendant to compile or create a list or document, each defendant is ordered to do so.
 - d. Lost Document, Records, or tangible things. If a defendant, or a defendant's attorneys, agents or representatives, had possession or

control of a Document, Record, or tangible thing ordered turned over that has been lost, destroyed, purged, or is not in their possession or control, identify the item and describe the circumstances surrounding the loss, destruction, purging, or separation from your possession or control, indicating the dates that the circumstances occurred.

- e. No Document, file or photograph requested may be altered, changed, modified, disposed of or destroyed.
- f. Indicate to which paragraph of the Order the Document, Record or tangible thing applies. When producing data or information in electronic or magnetic form, make a paper copy. If it is not reasonably possible to make a hard copy print-out of the data or information, copy the data or information and provide it in WordPerfect, Microsoft Word, Microsoft Excel, Rich Text Format, JPEG, Adobe, or other format acceptable to the Receiver.

For each defendant, Entity, and owner, Shareholder, or Manager of the Entity in the last three years, turn over all Items, data, and records:

- 5) A letter authorizing the Receiver to obtain all records and assets to which defendant is entitled;
- 6) Contact information for each defendant and witness controlling or knowing of relevant documents or information;
- 7) All royalty payments, rights to receive payment, websites, url, domain names,
- 8) For every Entity in which a defendant is an owner, Shareholder, or Manager, or has authority over accounts in financial institutions:
 - a. The Entity's Contact Information;
 - b. The Contact Information for every owner, Shareholder, or Manager of each Entity for the last three years;
 - c. The Contact Information for the accountants and bookkeepers for each Entity and every owner, Shareholder, or Manager for the last three years;
- 9) Copies of all personal and business federal income tax returns filed by or prepared for defendant for the current year and for the last three years prior to the current year, with all schedules, attachments, W-2 forms, 1099 forms and all similar federal income summary forms for the same years;

- 10) Statements, canceled checks and deposit slips for all checking accounts, savings accounts, merchant service agreements, credit union accounts or other depository accounts, held either separately or jointly, for the current calendar year and for the last three years prior to the current calendar year for all accounts in which defendant's name is on the printed checks, in defendant has an interest or on which defendant has signatory authority;
- 11) All checks, cash, securities (stocks and bonds), promissory notes, deeds, deeds of trust, documents of title, contracts, accounts receivable, escrow agreements, retainage agreements, records and all documents that identify all property in which defendant has an interest and that is collateral or security for any obligation or contingent obligation of defendant, with all documents indicating any interest of the defendant in rental agreements, royalty agreements, licenses, bailment agreements, filings under the Uniform Commercial Code, security agreements, assignments, all filed or recorded liens, lis pendens, lawsuits, recorded mechanic's and materialman's lien affidavits, judgments, abstracts, partnership agreements, employment agreements, and all documents indicating each defendant's present and prospective heirship, beneficial interest in trusts, beneficial interest in insurance policies and insurance coverage and right to any insurance policy's cash surrender value or ownership in which defendant or defendant's spouse has any interest;
- 12) A copy of defendant's driver's license, social security card, and other items used to identify the witness, like an identification card issued by the Texas Department of Public Service or Department of Public Safety, corporate franchise certificate, or other licensing authority (ex: city health department);
- 13) Copies of all financial statements prepared on defendant's behalf, including statements presented to financial institutions or other parties to guarantee, secure or attempt to secure a loan or financial assistance;
- 14) All booklets, annual statements and other documents evidencing the nature and extent of defendant's rights under any stock option plan, retirement plan, pension or profit sharing plan, employee stock ownership plan, company savings plan, thrift fund matching plan and all other similar plans prepared or received during the last three years;

- 15) The Contact Information of everyone knowing the status of assets and income in which defendant has an interest, whether being community or separate property, defendant's liabilities or the location and value of defendant's assets, including banks, savings and loan associations, mortgagees, merchants, credit providers, brokers, credit unions, financial institutions, security dealers, people and organizations dealing with mineral interests who have received information from defendant regarding defendant's assets, income, liabilities, employers, employees, partners, co-shareholders and members of corporations and LLC's, bookkeepers and CPA's, agents, ex-spouses, girl friends, boy –friends (current or past), family members, advisors, and attorneys;
- 16) All records that would indicate the cost basis of defendant's assets;
- 17) The most recent statements, deposit confirmation slips, and documents evidencing the balance, term and interest rates for money and assets in which defendant has any interest, whether separately or jointly, invested by or for defendant in any cash management funds, certificates of deposit, money market funds, treasury bills, bonds, debentures or any other type investment and acquisition paying or promising to pay a return on defendant's monies invested during the past three years;
- 18) All certificates of stock and brokerage house statements evidencing ownership and the purchase, sale, assignment or transfer of stocks, bonds, debentures or other securities (whether in privately held or publicly traded companies or institutions) owned by defendant or in which defendant has an interest;
- 19) Documents and records showing all business holdings, partnerships (general, limited or otherwise), sole proprietorships, trusts, corporations, joint ventures and any other business organizations in which defendant is a manager, shareholder or defendant has an interest;
- 20) Assumed name certificates under which defendant has done or is doing business;
- 21) Insurance policies, active or terminated, including life, health, auto, disability, homeowners, or chattel of defendant is the owner, beneficiary, insured, heir to the proceeds, beneficiary of an existing or identified trust funded by insurance proceeds. This includes policies sought, but not obtained;

- 22) All time and billing records, beginning ninety days before this order was signed, for attorneys who have represented a defendant or entities that a defendant owns, manages, or controls;
- 23) All deeds, deeds of trust, land installment contracts, contracts for deeds, syndications, real estate investment trusts, partnership agreements, easements, rights of way, leases, rental agreements, documents involving mineral interests, mortgages, notes and closing statements relating to all real property in defendant has had an interest;
- 24) The leases for, and addresses for all storage facilities, or places where defendant's assets are stored, including the contact information for the facility;
- 25) Certificates of title, current licenses, receipts, bills of sale and loan documents for all motor vehicles and farm equipment, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, boats, trailers, airplanes and other motorized vehicles and equipment owned by defendant or in defendant has and had any interest;
- 26) For every trust of which defendant is a trustee, joint trustee, beneficiary, settlor or trustor that conveyed, transferred, assigned, created any options to purchase, or disposed of any interest in real property or personal property, turnover documents evidencing the manner of disposition and the consideration. Documents showing all evaluations of defendant's interest, share of principal and income, and showing the principal and income allocated to defendant;
- 27) All documents and records of safe deposit boxes maintained by defendant (including the spouse) or to which defendant (including the spouse) has had access, or has a claim, right or interest in, including all lists of all contents in the last three years. Identify the location of all the safe deposit boxes, the contents, and deliver the keys to the Receiver;
- 28) Documents constituting or describing defendant's accounts receivable, for the past three years, including documents identifying the accounts receivable of the ongoing businesses that defendant owns or has had an interest, and copies of all collected, offset, credited, uncollected, discounted, assigned, pledged and exchanged accounts receivable;
- 29) Appraisals for assets owned in the past three years;

- 30) All documents, notes, bills, statements and invoices evidencing all current indebtedness payable by defendant or paid off by defendant, and all assignments of promissory notes made by defendant;
- 31) A current inventory and all past inventories, accounts receivable of all ongoing businesses that defendant owns and had an interest and copies of all collected, offset, credited, uncollected, discounted, assigned, pledged and exchanged accounts receivable of all businesses owned by defendant and in defendant has and had an interest;
- 32) Lease agreements for personal and real property, whether as lessee, lessor, sublessee, sublessor, assignee or assignor, including mineral interest leases;
- 33) All lease agreements for personal or real property executed or signed by defendant, whether as lessee, lessor, sublessee, sublessor, assignee or assignor, including any mineral interest leases or places where defendant resides or works;
- 34) Records of all travelers checks, cashier's checks, money orders, draft and draws purchased or cashed;
- 35) All deeds, deeds of trust, land installment contracts, contracts for deeds, syndications, real estate investment trusts, partnership agreements, easements, rights of way, leases, rental agreements, documents involving mineral interests, mortgages, notes and closing statements relating to all real property in any defendant has or in which defendant (including the spouse) had an interest during the last three years;
- 36) All certificates of title, firearms, deer stands, atv's, boats, trailers, and motors, documentation regarding hunting or fishing leases or rights or the rights to time share units or the use of property, tickets to events, like ballet or sporting events, proof of spa or club memberships, current licenses, receipts, bills of sale and loan documents for all motor vehicles and farm equipment, including automobiles, trucks, motorcycles, recreational vehicles, boats, trailers, airplanes and other motorized vehicles and equipment owned by defendant (including spouse) or in defendant (including spouse) has and had any interest;
- 37) All contracts in which defendant is a party or has or had a beneficial interest, including earnest money contracts, construction contracts and sales agreements for which defendant is due a commission or other remuneration for the last three years. If defendant is under the

terms of any written employment contract or agreement or is due any remuneration under any past contract or agreement, furnish a copy of the contract or agreement;

- 38) All documents identifying or explaining every gift, bailment, loan, gratuitous holding, assignment, sale, hypothecation, discounted transfer, transfer into lock box payment, or transfer of defendant's property;
- 39) All employment records or pay records to indicate every business for which defendant was employed, provided services, was an independent contractor, general contractor, superintendent, agent or subcontractor during the last three years;
- 40) A listing of all air miles and rewards programs, with the last year's statements;
- 41) Regarding entities in which a defendant has an interest, turnover:
 - a. Articles of Incorporation.
 - b. Bylaws and all amendments.
 - c. Shareholders Agreement and amendments.
 - d. A specimen of the corporation's Share Holder Certificate including stock transfer restrictions noted on the face of the certificate or referred to thereon.
 - e. All records of the original issuance of shares issued by the corporation and a record of each transfer of those shares presented to the corporation for registration of transfer.
 - f. The names and current addresses of all past and current shareholders of the corporation and the number and class or series of shares issued by the corporation held by each.
 - g. A copy of the current share transfer ledger of the corporation showing the certificate number, date of issuance, shareholder name and number of shares represented to be held by the shareholders.
 - h. Any financial statements of the corporation prepared for or issued by the corporation in the previous two years.
 - i. The books and records of accounts of the corporation for the last fiscal year.
 - j. The corporation's annual statements for its last fiscal year showing in reasonable detail its assets and liabilities and the results of its operations and the most recent interim statements that have been filed in a public record or otherwise published.

- k. The minutes of the proceedings of the owners or members or governing authority of the corporation and committees of the owners or members or governing authority of the corporation.
 - l. The corporation's federal, state, and local information or income tax returns and franchise tax returns for each of the corporation's six most recent tax years.
- 42) Provide all of the following documents for any limited liability company ("Company") in which defendant has an interest.
- a. The Articles of Organization.
 - b. The Operating Agreement or Company Agreement and all amendments and modifications.
 - c. The Regulations and all amendments and restatements.
 - d. The Company's books and records of accounts for the last three years.
 - e. The Company's minutes of the proceedings of the owners or members or governing authority of the Company and committees of the owners or members or governing authority of the Company.
 - f. The current list of each member's name, mailing address, percentage or other interest in the Company owned by each member, and if one or more classes or groups are established in or under the articles of organization or regulations, the names of the members who are members of each specified class or group.
 - g. Copies of the federal, state and local information or income tax returns and franchise tax returns for each of the Company's six most recent tax years.
 - h. Copies of any document that creates, in the manner provided by the articles of organization or regulations, classes or groups of members.
 - i. Unless contained in the Articles of Organization or regulation, a written statement of:
 - i. the amount of a cash contribution and a description and statement of the agreed value of any other contribution made or agreed to be made by each member;
 - ii. the dates any additional contributions are to be made by a member;
 - iii. any event the occurrence of which requires a member to make additional contributions;

- iv. any event the occurrence of which requires the winding up of the Company; and
 - v. the date each member became a member of the Company.
 - j. A specimen of the Company's Member Unit or Share Certificate including any transfer restrictions noted on the face of the certificate or referred to thereon.
 - k. The current unit or share transfer ledger of the Company showing the certificate number, date of issuance, unit holder or shareholder name and number of shares represented to be held by any owner of the Company.
 - l. The income and expense statement for the Company for the past three years.
 - m. Any financial statements of the Company prepared for or issued by the Company in the previous two years.
- 43) Provide all documents for any limited partnership in which defendant has an interest:
- a. A current list that states:
 - i. the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners;
 - ii. the last known street address of the business or residence of each general partner;
 - iii. the percentage or other interest in the partnership owned by each partner; and
 - iv. if one or more classes or groups are established under the partnership agreement, the names of the partners who are members of each specified class or group.
 - b. A copy of:
 - i. the limited partnership's federal, state, and local information or income tax returns and franchise tax returns for each of the partnership's six most recent tax years;
 - ii. the partnership agreement and certificate of formation; and
 - iii. all amendments or restatements.
 - c. Copies of any document that creates, in the manner provided by the partnership agreement, classes or groups of partners.
 - d. An executed copy of any powers of attorney under which the partnership agreement, certificate of formation, and all

amendments or restatements to the agreement and certificate have been executed.

- e. Unless contained in the written partnership agreement, a written statement of:
 - i. the cash contribution and a description and statement of the agreed value of any other contribution made by each partner;
 - ii. the cash contribution and a description and statement of the agreed value of any other contribution that the partner has agreed to make as an additional contribution;
 - iii. the date on which additional contributions are to be made or the date of events requiring additional contributions to be made;
 - iv. events requiring the limited partnership to be dissolved and its affairs wound up; and
 - v. the date on which each partner in the limited partnership became a partner.
- f. The records of the accounts of the limited partnership.
- g. The income and expense statement for the limited partnership for the past three years if they are not contemplated under No. 6 above.
- h. Any financial statements of the limited partnership prepared for or issued by the limited partnership in the previous two years.

END OF DOCUMENT