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April 5, 2025

VIA ELECTRONIC MAIL
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The Honorable Michael Gomez
129th Judicial District of Harris County, Texas
Harris County Civil Courthouse
201 Caroline St 10th floor
Houston, TX 77002

Re: Cause No. 2024-48085; *Atlantic Wave Holdings, LLC and Secure Community, LLC v. Cyberlux Corporation and Mark D. Schmidt*, Individually; In the 129th Judicial District Court, Harris County, Texas

Dear Judge Gomez:

I write on behalf of Cyberlux Corporation and Mark D. Schmidt (collectively "Defendants" or "Cyberlux") concerning the letter and corresponding order (the "Proposed Order")[1] filed by Plaintiffs, Atlantic Wave Holdings, LLC and Secure Community, LLC (collectively "Plaintiffs") on April 1, 2025,[2] in the above-referenced action. In short, the Proposed Order exceeds the scope of this Court's ruling, is excessively broad and ambiguous, would appoint a non-neutral receiver without any responsibility to anyone other than Plaintiffs and his own self-interests, and submits a balance due far in excess of an amount that could be due under the Virginia Consent Judgment ("Judgment") that Plaintiffs have brought to this Court.

Accordingly, Cyberlux respectfully contends the most reasonable means to get to the bottom of these issues is for the Court to set an emergency hearing. Defendants would like to post a supersedeas bond but need this Court's assistance regarding the amount to be posted. In the alternative, Defendants seek the Court's assistance to narrow and clarify the powers of any turnover or receivership order the Court may enter to comport with the record and applicable law.

[1] *See* **Exhibit 1**, April 1, 2025 Letter from David A. Walton to The Honorable Michael Gomez and corresponding Proposed Order Granting Receiver.

[2] Plaintiffs give no explanation as to why this Proposed Order is being submitted in comparison to the one Plaintiffs proposed in January, and Plaintiffs did not confer with Defendants prior to submitting the Proposed Order.

I. Plaintiffs' Proposed Order exceeds the record and statutory authority.

Plaintiffs' Proposed Order greatly exceeds what is shown in the record and statutory authority. It defines "Judgment Debtors" as the Defendants and then purports to appoint a receiver as to "Debtor," which is not defined, making the Proposed Order impermissibly ambiguous on its face, especially because this Court expressly declined to appoint a receiver as to Defendant Mark Schmidt.

The Proposed Order further states as a conclusion not based in "fact":

> "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."

Proposed Order ¶ 6.

Nothing of the kind happened, and this Court made no such ruling. Not even the balance due pursuant to the judgment has been proved as required by TEX. CIV. PRAC. & REM. CODE § 31.002. That provision requires Plaintiffs to identify the amount of money "required to satisfy the judgment." And, as Defendants demonstrated at the hearing on Plaintiffs' application, Plaintiffs have failed to meet the requirements that would show turnover and receivership is otherwise appropriate.[3] Defendants will not repeat the deficiencies previously demonstrated to the Court but rather will emphasize the additional concerns this latest Proposed Order raises.

A. The amount due to satisfy the Judgment has not been proven by Plaintiffs.

Plaintiffs have repeatedly misstated the balance due to Plaintiffs pursuant to the Judgment, despite the amount being fundamental to the relief sought in the first instance. Texas Civil Practice & Remedies Code section 31.002 requires that Plaintiffs (as judgment creditors) identify the amount of money "required to satisfy the judgment." They have not done so.

The inconsistencies and misstatement by Plaintiffs respecting the sums due stated below are palpable.

First, on July 30, 2024, Plaintiffs sought to enforce the Judgment in the amount of $1,572,500. On December 2, 2024, Plaintiffs sought a writ of execution in the amount of $1,760,363.69. Then, on January 9, 2025, Plaintiffs filed their Application for Turnover After Judgment and for

[3] *See, e.g.*, Defendants' January 21, 2025 and January 23, 2025 letter briefs and Defendants' January 27 Motion to Stay, or in the alternative, to Set Amount of Security to Suspend, Turnover and Appointment of Receiver.

Appointment of Receiver ("Application"), which states $1,430,551.30[4] is due. And now, Plaintiffs present an altogether different (and much higher) amount in the Proposed Order.

The Proposed Order states that the Judgment was originally "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." And then states without any evidence or support, that "as of February 18, 2025 **$2,111,086.01** remains owed and due from the Debtors to the Plaintiff."

Plaintiffs have not presented any evidence to show how the judgment amount escalated from $1,430,551.30 to the extraordinary number stated in the proposed order of **$2,111,086.01, which is nearly 1 and 1/2 times what they represented to the Court in the Application.**

There is more. At the hearing of January 16, 2025, Plaintiffs presented their Application. Their sole witness, William Welter, admitted (1) the actual balance due under the Virginia judgment, per a December 2, 2024 letter sent to Defendants, was $848,363.47, and (2) additional amounts for attorney's fees claimed not as part of the Virginia Judgment (but rather as a demand pursuant to the parties' Settlement Agreement).[5]

Finally, on January 28, 2025, Counsel for Plaintiffs in this case sent counsel for Cyberlux a spreadsheet claiming the balance due to pay the Judgment was actually $949,469.50.[6]

The sum alleged of **$2,111,086.01 is over 2.2 times greater than the** $949, 469.50 sum presented as of January 28 to Defendants' counsel.

Accordingly: what is the actual sum remaining due pursuant to the Virginia Judgment?

Plaintiffs cannot be allowed to proceed without meeting their burden to prove the balance due and owing. TEX. CIV. PRAC. & REM. CODE § 31.002. (Proof of the sum "required to satisfy the judgment."). Moreover, Defendants are prejudiced in their efforts to file a supersedeas bond because of Plaintiffs' refusal to provide clarity on the amount actually due to satisfy the Judgment.

[4] Application at p. 2, "As of December 31, 2024, there remains a total amount due and owing of $1,430,551.30 on the Judgment. Said judgment is in all respects, final, valid, and subsisting. Applicants are the owners and holders of said judgment."

[5] *See* Reporter's Record of January 16, 2025 (Plaintiffs' witness William Welter acknowledged the "Application" attached a letter dated December 2, 2024. That letter, from another counsel for Plaintiffs to a counsel for Defendants, claimed a total due pursuant to the Judgment of $1,219,671.97. However, that sum purports to include $371,307.60 in legal fees not awarded by any court. When those attorney's fees of $371,307.60 are subtracted from the purported total, the real balance due as of December 31, 2024 is $848,363.47.)

[6] **Exhibit 2**, January 28 and 31, 2025 e-mails between Travis Vargo and Alex Pennetti.

B. The scope of property subject to the Receivership is ambiguous and excessive and violates due process of law.

Cyberlux has repeatedly notified the Plaintiffs, their counsel, and this Court that a material portion of the person property located at Cyberlux's Spring, Texas warehouse includes military drones built to the Government's specifications, pursuant to contracts providing for the tasks to be performed by Cyberlux. The drones have been assembled at the direction of the Government and under federal and state law, the drones and related equipment and materials are owned by the Government.[7]

In fact, at a hearing before the United States District Court, Southern District of Texas, on March 26, 2025, counsel for Plaintiffs represented to United States District Judge Rosenthal that they have no intention of attaching the Government's property.[8] The presentation of the Proposed Order to this Court is in direct contradiction with that representation. To render a receivership order which purports to include seizure of the drones would violate not only Defendants' rights, but also those of the Government, without due process of law.

The law directs and holds that the Government has title to the drone property. It is uncontested that the United States Government contracted with HII Mission Technologies Corp (HII) who in turn contracted with Cyberlux to build the drones. The drones and related equipment have been inventoried by the Government and are ready for delivery. As such, the drones and related equipment are the Government's property to which it holds title.[9] Not only does the Proposed Order give the receiver power to seize the Government's property, it also purports to give the receiver the power to dispose of and sell the property in which "third parties" have an interest. Proposed Order ¶ 19. ("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." *Id.*). These powers would arm the receiver with purported authority to violate the property rights of others, and even sell the property, without due process of law. The entire order is excessive and beyond the law.

[7] *See e.g.,* 48 CFR 45.402 Title to contractor-acquired property.(Federal Acquisition Regulations); "(a)Title vests in the Government for all property acquired or fabricated by the contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed-price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the contractor retains title to all property acquired by the contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property." *See also American Ordinance LLC v. United States*, 83 Fed. Cl. 559, 573 (2008), explaining the context of the regulation and "contractor acquired property.") and Declaration of Cameron G. Holt filed with Defendants' January 27, 2025 Motion.

[8] *See* **Exhibit 3**, Transcript of March 26, 2025 hearing, pg. 20, ll. 17-23; pg. 22, ll. 18-23.

[9] *See* n. 7, *supra*.

The Proposed Order further fails to define the "Debtor" over which the proposed receiver would be granted power, which makes the Proposed Order unreasonably ambiguous on its face, and expressly violates this Court's ruling at the January 16, 2025 hearing wherein Mark D. Schmidt was to be expressly excluded from the Order.

C. The Proposed Order is excessive, unreasonable, not supported by law, and not supported by evidence.

There is insufficient evidence of the property that is to be the subject of the order. At the hearing on January 16, 2025 relating to Plaintiffs' Application for Turnover After Judgment and for Appointment of Receiver, Plaintiffs provided only one document as their evidence. This document identified two (2) leasehold interests of subsidiaries and Cyberlux's stated ownership of the subsidiaries themselves as of a date certain. However, the Proposed Order, unsupported by evidentiary support, includes a vague list of property Plaintiffs now claim Cyberlux owns – including but 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." Exhibit 1 at ¶ 7. This purported definition would give the Receiver unfettered power to swoop into the Cyberlux warehouse in Spring, Texas and scoop up, indiscriminately, whatever the receiver "thinks" might be property of Defendants.

Further, Plaintiffs have included in the Proposed Order that Defendants deliver certain documents to the Proposed Receiver[10] within ten (10) days of the receipt of an Order of appointment. Exhibit A of Ex. 1 at pg. 21. However, this list of documents is 43 paragraphs long, consists of multiple overarching documents not previously presented to the Court, and authorizes the Receiver to essentially have the ability to receive any document of Defendants or Defendant Schmidt's spouse that could at any point relate to any potential assets for the last three (3) years. Therefore, in addition to the defective vagueness of the topics previously mentioned, the Proposed Order would unreasonably and invasively obligate Cyberlux and Schmidt's spouse to turn over virtually all of Defendants' books and records (this list ultimately allows the receiver to hold those assets until it is determined whether they are appropriate and without the receiver or Plaintiffs posting any bond[11]) relating to:

- For each defendant, Entity, and owner, Shareholder, or Manager of the Entity in the last three years, turn over all Items, data, and records:
    - A letter for each defendant authorizing the Receiver to obtain all records and assets to which defendant is entitled (Ex. A of Proposed Order at ¶ 5);

[10] "Receiver" is defined as Robert Berleth which Plaintiffs have indicated as the Proposed Receiver. Defendants have great concern about Mr. Berleth's ability to be a fair, neutral, and trustworthy receiver in this matter and as such are not in agreement with his appointment.
[11] *See* Proposed Order at ¶ 25, 28, and 31.

- 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, and (c) the contact information for the accountants and bookkeepers for each Entity and every owner, Shareholder, or Manager for the last three years (Ex. A of Proposed Order at ¶ 8);

- 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 (Ex. A of Proposed Order at ¶ 10);

- 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 (Ex. A of Proposed Order at ¶ 21);

- 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 (Ex. A of Proposed Order at ¶ 22);

- 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 (Ex. A of Proposed Order at ¶ 27);

- Appraisals for assets owned in the past three years (Ex. A of Proposed Order at ¶ 29);

- 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 (Ex. A of Proposed Order at ¶ 30);

- 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 (Ex. A of Proposed Order at ¶ 35);

- 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 (Ex. A of Proposed Order at ¶ 36);

- 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 (Ex. A of Proposed Order at ¶ 37);

- 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 (Ex. A of Proposed Order at ¶ 38); and

- 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 (Ex. A of Proposed Order at ¶ 39).

Were the order to be signed by the Court, the requirement of Defendants to turn over the myriad documents would not advance the purported goal of the process Plaintiffs have initiated, that being to satisfy the Judgment.

The case law demonstrates orders similar to that proposed by Plaintiffs are overbroad and erroneous.[12] Moreover, the breadth of this Proposed Order, without regard to an amount allegedly due pursuant to an existing judgment, operates as a liquidation of any and all of Cyberlux's "non-exempt" assets. Were the Proposed Order to be imposed, Cyberlux would necessarily cease operations, as all cash, accounts receivable, and cash equivalents could be impacted. There is no

[12] *Stanley v Reef Securities Inc*., 314 S.W.3d 659 (Tex.App.—Dallas 2016, no pet.) (reviewing court concluded that because the applicant "did not solicit testimony or offer evidence that [judgment debtor] owns any of the generally described property other than the $20,000 monthly payments he receives from R.H.S. … the trial court abused its discretion by ordering Stanley to turn over property other than the $20,000 monthly payments from R.H.S); *see also Roebuck v. Horn,* 74 S.W.3d 160 (Tex. App.—Beaumont 2002, no pet.) (reviewing court held that the turnover order was not sufficiently specific nor was it sufficiently limited to seizure of judgment debtor's interest in the law firm and leasing company property); *Bran v. Spectrum MH, LLC*, No. 14-22-00479-CV, 2023 WL 5487421 (Tex.App.—Houston [14th Dist.] August 24, 2023, no pet.) ("the trial court abused its discretion in signing the [receivership] Order to the extent the Order applies to property other than the [judgment debtors'] respective ownership interests in [certain] Bank Accounts.").

evidence that such drastic and damaging action must take place in order to satisfy any judgment amount that might finally be proved to be owing.[13]

II. Plaintiffs' Proposed Order provides exceedingly broad powers to Plaintiffs' proposed receiver, Mr. Robert Berleth, to Whom Defendants Object.

Plaintiffs' Proposed Order injects Mr. Berleth as agreeing to its contents, when at this point in time, Mr. Berleth holds no power in this case and instead has presented himself in a position which shows his *bias* toward Plaintiffs, and disregard for the rule of law. As more fully set forth in section IV below, Mr. Berleth is an inappropriate selection as receiver in this matter.

Plaintiffs' Proposed Order sets forth sweeping obligations for turnover on the part of Cyberlux and wide-ranging powers of the Receiver that far exceed Texas Civil Practice and Remedies Code Section 31.002, and the record in this action. 31.002(b)(3) states "T[t]e court may: … appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor **to the extent required to satisfy the judgment**." TEX. CIV. PRAC. & REM. CODE § 31.002(b)(3) (emphasis added).

As stated above at length, there is no evidence in the record to show what is actually due pursuant to the Judgment, to support the Proposed Order, nor to demonstrate the need for such a destructive dismantling of Cyberlux.

Finally, the Proposed Order prematurely adjudicates a determined fee for the Receiver of equal to 25% of all sales of assets that come into his actual, constructive, or legal possessions, and all recoveries and credits against the judgment. Ex. 1 ¶ 53. Defendants have previously objected to this fee structure.[14] A receiver's fee must be evaluated by the Court after a receiver's services have been performed and the reasonableness of a proposed fee should be determined based on the work the receiver does and results he or she actually accomplishes. A pre-determined fee is error since it improperly skips over the necessary proof the receiver must show to recover a fee.[15]

III. Plaintiffs' Proposed Order, as it stands, would irreparably harm Defendants.

The Proposed Order grants the Receiver such broad-ranging powers that he will be enabled to act, in sum and substance, as a Master in Chancery because the Receiver will necessarily be evaluating the rights of Cyberlux, its subsidiaries, and third parties in any asset discovered, turned over, or seized. *See Five Star Glob., LLC v. Hulme*, No. 05-20-00940-CV, 2021 WL 3159792, at *2 (Tex. App.—Dallas July 26, 2021, no pet.); *see also Simpson v. Canales*, 806 S.W.2d 802, 805–12 (Tex. 1991). The Turnover Statute directs that a receiver's job is to "take possession of the nonexempt

[13] And while this Court indicated its view that giving expansive powers to a receiver can be a "just in case" they are needed approach (which approach Defendants objected to), for reasons demonstrated below, at least one federal court has reprimanded this very proposed receiver for his blatant disregard for the rights of other parties.
[14] *See* Defendants' January 23, 2025 letter brief.
[15] *Hartwell v. Fundworks,* LLC, No. 02-23-00100-CV, 2024 WL 46053, at *8 (Tex. App.—Fort Worth, Jan. 4, 2024, pet denied).

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). If the Receiver acts pursuant to the Proposed Oder, the Receiver will be supplanting the Court's authority and would do so without having posted any bond.

Where, as here, the Proposed Order empowers the Receiver (and not this Court) to assess Cyberlux's property interests and sell such assets without further order of this Court, the turnover receivership is conflated with that of a Master in Chancery, despite the strict standard for the appointment of a master in chancery having not been met. *See Simpson*, 806 S.W.2d at 811.

IV. The Proposed Receiver, Robert Berleth, Must Not Serve.

Plaintiffs have proposed that an attorney, Robert Berleth, serve as receiver, Mr, Berleth presented himself to this court at the January 16, 2025 hearing respecting the Plaintiffs' Application. At that hearing, Mr. Berleth represented to the Court he was in "good standing" as a receiver and had been appointed previously by other Texas state courts and federal courts in Houston.[16] What neither Plaintiffs' counsel nor Mr. Berleth advised the Court is that in 2020 Mr. Berleth was cited for unethical conduct by the United States District Court for the Southern District of Texas, Houston Division.[17] In that case, Senior United States District Judge Sim Lake concluded in part as follows:

> This is a troubling case. An inexperienced lawyer violated several Guidelines for Professional Conduct, and his conduct could have resulted in much more serious violations had the court found fraudulent intent. Having considered all of the relevant factors, the court concludes that Berleth should be privately reprimanded. A private reprimand is not a viable remedy, however, because the records in the underlying bankruptcy cases and in this action, which will include the court's Memorandum Opinion and Order, are publicly available. The court's Memorandum Opinion and Order will serve as a reprimand since the court has reproved Berleth for his conduct. No further sanction is necessary. The court cautions Berleth, however, to give careful attention to all of the ethical standards that govern his conduct as an attorney admitted to practice before the court and to guard against any violations of those standards.[18]

Another difficulty in which Mr. Berleth found himself is very recent, in late 2024. Neither Mr. Berleth nor Plaintiffs' counsel brought to the court's attention a 2024 Fifth Circuit decision, *In re Preferred Ready-Mix, L.L.C.*, .2024 WL 525249874, Case No. 24-20158 (5th Cir. Dec. 31, 2024). The Fifth Circuit opinion specifically recounted Mr. Berleth's activities as follows:

> In 2019, the owners of Preferred Ready-Mix were sued by a plaintiff for breach of contract [] the state court entered a default judgment against them in the amount of $173,120.68. Following the entry of a default judgment, the state court appointed

[16] *See* **Exhibit 4**, Reporter's Record of January 16, 2025 hearing at p.118-123.
[17] *See In re Berleth*, No. MC H-19-2011, 2020 WL 522710, at *25 (S.D. Tex. Jan. 31, 2020). A copy of this opinion is attached to this letter as **Exhibit 5**.
[18] *Id.* at * 25. (emphasis added).

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

While the District Court found the bankruptcy court lacked jurisdiction under the Barton Doctrine, the Fifth Circuit reversed and found jurisdiction because Mr. Berleth did not have authority over property of the bankruptcy estate. Rather, the bankruptcy estate was created automatically on the filing of bankruptcy and thus encompassed the property Mr. Berleth was sued in the bankruptcy court for having initially failed to return. *Id.*

The Bankruptcy Court had imposed an award of $35,000 in actual damages against Mr. Berleth and punitive damages of $10,000. The Bankruptcy Court further denied Mr. Berleth's $7,000 administrative claim. In so holding, the Bankruptcy Court's words were not minced:

> Here, the Court finds Berleth's actions were with *actual knowledge of the bankruptcy filing and intentional, with the intent to deprive the debtor of his assets*. Additionally, his *actions were not in good faith and in contravention of the provisions of the automatic stay*. Furthermore, the Court finds that Berleth did more than just passive retention of estate property, as demand was made. Consequences for violations of the automatic stay can be severe. Parties that willfully violate the automatic stay may be liable to debtors for actual damages, including costs, attorneys' fees, and, in appropriate circumstances, punitive damages. Here, actual damages would be duplicative of the damage award from violation of sections 543 and 542 of the Bankruptcy Code. However, to the extent the prior award of damages is inappropriate, it is awarded here as actual damages on the same calculation noted above. *Additionally, given the finding of bad faith and intentional actions by Berleth, the Court awards punitive damages of $10,000.00.* Accordingly, total damages for violation of the automatic stay are awarded in the amount of $45,000.00 for the plaintiff against Berleth.[19]

[19] *In re Preferred Ready-Mix LLC*, No. 21-33369, 2022 WL 16952650, at *3 (Bankr. S.D. Tex. Nov. 14, 2022), vacated and remanded sub nom. *In re Preferred Ready-Mix, LLC*, 660 B.R. 214 (S.D. Tex. 2024), rev'd and remanded sub nom. *Matter of Preferred Ready-Mix, L.L.C.,* No. 24-20158, 2024 WL 5252498 (5th Cir. Dec. 31, 2024) (footnotes omitted) (emphasis added).

Mr. Berleth has already demonstrated by his past actions that he should not be appointed in this case. Mr. Berleth, before any order had been signed by the Court, inspected Cyberlux's warehouse in Spring, Texas, as if he already were a court-appointed receiver with authority, advised third parties that he was acting for Cyberlux, and then presented a declaration to this Court, not as a neutral, but as Plaintiffs' representative.

In addition, the Proposed Order is unlawfully broad, invasive, violative of the constitutional due process rights of both the Defendants and third parties, and the powers with which a receiver would be invested are too broad and vague to entrust to anyone. No receiver, especially Mr. Berleth, should not be given such unfettered powers.

V. Cyberlux's Proposed Order.

Defendants previously proposed a form of Order (attached hereto for ease of reference at **Exhibit 6**) that defines the "Receivership Property" to comport with the evidence Plaintiffs relied on at the January 16, 2025 hearing that has previously been provided to this Court. Also, Defendants' form of Order better comports with the Turnover Statute and, more practically, is an order Cyberlux and the Receiver can more readily understand.[20]

Further, Defendants continue to object more generally to a grant of any relief under the Texas Turnover Statute given the ongoing nature of the dispute of the parties in Virginia, and the fact that Plaintiffs have not met their burden to identify the amount of money "required to satisfy the judgment." TEX. CIV. PRAC. & REM. CODE § 31.002.

VI. Conclusion.

Defendants respectfully request that the Court not render the error-riddled order proposed by Plaintiffs. Rather, Defendants respectfully request that the Court set an emergency hearing to address the issues raised above, and, as a preliminary matter, require Plaintiffs to satisfy their legal burden pursuant to TEX. CIV. PRAC. & REM. CODE § 31.002 to prove the amount of money "required to satisfy the judgment." Establishing such amount will further aid Defendants in posting a supersedeas bond.

[20] *See also* Defendants' January 21, 2025 and January 23, 2025 letter briefs and Defendants' January 27 Motion to Stay, or in the alternative, to Set Amount of Security to Suspend, Turnover and Appointment of Receiver.

Sincerely,

Thompson Coburn LLP

By /s/ *Katharine Battaia Clark*
Katharine Battaia Clark,
Partner

Enclosures

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