

CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, LLC and	§	IN THE DISTRICT COURT
SECURE COMMUNITY, LLC,	§	
	§	
<i>Plaintiffs/Judgment-Creditors,</i>	§	
	§	
v.	§	129 <sup>TH</sup> JUDICIAL DISTRICT
	§	
CYBERLUX CORPORATION and	§	
MARK D. SCHMIDT, Individually,	§	
	§	
<i>Defendants/Judgment Debtors.</i>	§	OF HARRIS COUNTY, TEXAS

**DEFENDANTS' MOTION FOR EMERGENCY EVIDENTIARY HEARING ON  
MOTION FOR ADJUDICATION OF THE RECEIVER'S FEES AND EXPENSES  
AND RETURN OF RECEIVERSHIP ASSETS**

Defendants and Judgment Debtors Cyberlux Corporation (“*Cyberlux*”) and Mark D. Schmidt (“*Schmidt*”) (collectively, “*Judgment Debtors*”), file this Motion for Emergency Evidentiary Hearing and respectfully request that this Court set Judgment Debtors’ Motion for Adjudication of the Receiver’s Fees and Expenses and Return of Receivership Assets (“*Motion for Closure*”) for emergency evidentiary hearing on or before March 26, 2026. In support thereof, the Judgment Debtors respectfully show unto the Court as follows:

**I. INTRODUCTION**

1. On May 22, 2025, this Court signed an order appointing receiver over the assets of Judgment Debtors pursuant to Section 31.002(b)(3) of the Texas Civil Practice and Remedies Code for the purposes of collecting assets to satisfy a judgment held by Plaintiffs.

2. This case is over. The Judgment Debtors and Judgment Creditors have settled. The underlying judgment has been satisfied. The Judgment Creditors have nonsuited their claims. And the Court has denied Receiver Robert W. Berleth’s (“*Receiver*”) request to expand his authority.

3. As a result of the continuing receivership over Judgment Debtors assets, Cyberlux has been significantly hindered in its daily operations and ability to conduct business. Indeed, Cyberlux has been unable to obtain financing, has experienced a steep decline in share price value, and will soon be unable to make payroll to its employees.

4. As detailed in the Motion for Closure, the only matter remaining before this Court is the Receiver's fees and expenses and the attendant return of receivership assets. Judgment Debtors' request that the Motion for Closure be heard on an emergency basis given the significant and ongoing harm inflicted by the continuation of a receivership that has terminated as a matter of law.

## II. ARGUMENTS & AUTHORITIES

5. It is explicitly within the court's discretion to set a hearing on an expedited basis or shortened notice period. Tex. R. Civ. P. 21(b); *see also Retzlaff v. GoAmerica Communications Corp.*, 356 S.W.3d 689, 698 (Tex. App.—El Paso 2011, no pet.) (“The court’s decision to conduct a hearing before the notice period has expired will not be disturbed on appeal absent an abuse of discretion”). In doing so, the court is free to consider and make determinations based on the “exigent circumstances” presented. *Petitt v. Laware*, 715 S.W.2d 688, 691 (Tex. App.—Houston [1st Dist.] 1986, writ ref’d n.r.e.).

6. It is necessary for the Motion for Closure to be considered on an emergency basis because Cyberlux is facing significant, ongoing, and wholly unnecessary harm each day the receivership continues, in at least the following ways:<sup>1</sup>

- a. Cyberlux will be unable to meet payroll by the end of March. Failure to meet payroll will directly impact more than 60 families who depend on Cyberlux for their income and will irreparably harm Cyberlux's relationship with its workforce.

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<sup>1</sup> See Exhibit A, Declaration of Mark D. Schmidt.

- b. Cyberlux is unable to secure capital through traditional financing methods as a direct result of the Receiver's representations (in several forums) that his authority is that of a general receiver and not one appointed to collect on a specific debt. Since the receivership has been in place, Cyberlux has only been able to access "payday loan"-type financing, with interest rates approaching 100% as compared to the normal commercial rates in the 10%–15% range. For example, Cyberlux was negotiating a \$3 million financing facility with financier, J.J. Astor. Negotiations for that financing were postponed due to the receivership as Mr. Astor wanted to confirm whether Cyberlux could continue operations in light of the receivership. As a result of the receivership, Mr. Astor rescinded the original financing terms and converted the arrangement into a far less favorable "payday loan" structure, reducing the available financing from \$3 million to a mere \$500,000 and dramatically increasing the cost to Cyberlux.
  - c. Cyberlux currently has an order backlog of approximately \$17 million and a pending U.S. CECOM order for \$8.8 million that Cyberlux is unable to manufacture and ship because of the restriction on capital caused by the receivership. If Cyberlux is not able to fulfill these orders, it will inevitably result in cancellations by the U.S. government, allied foreign customers, and major defense customers such as General Dynamics and BAE Systems, including time sensitive U.S. government rated orders that are designated as the highest manufacturing priority under the Defense Priorities and Allocations System (DPAS).
  - d. Cyberlux is a publicly traded company with approximately 11,000 shareholders. The continued existence of the receivership will further depress shareholder value and irreparably harm investors, as Cyberlux remains unable to fund and finance core operations. Since the receiver was appointed on May 22, 2025, CYBL's share price has declined by approximately 52%. Potential investors who were interested in purchasing stock in Cyberlux have since refused to invest while the receivership is ongoing.
  - e. Finally, Cyberlux's reputation has been, and will continue to be, irreparably harmed by its inability to deliver existing orders and the forced cessation of operations. To date, Cyberlux has lost a pending \$8.8 million order from U.S. CECOM, which is being withheld until the receivership is cleared and Cyberlux can demonstrate financial stability to the U.S. government. The continued existence of the receivership is obstructing the fulfillment of approximately \$26 million in orders in total that would generate more than \$15 million in cash flow for Cyberlux.
7. The significant interference with Cyberlux's operations, even after satisfaction of the Underlying Judgment and the termination of the receivership as matter of law, presents exigent circumstances which require emergency consideration of Judgment Debtors' Motion for Closure.

**PRAYER**

WHEREFORE, Defendants and Judgment Debtors Cyberlux Corporation and Mark D.

Schmidt respectfully pray that this Court:

- (a) set Judgment Debtors' Motion for Adjudication of the Receiver's Fees and Expenses and Return of Receivership Assets for evidentiary hearing on or before March 26, 2026; and
- (b) order the Receiver produce copies of all exhibits he intends to offer, and a list of all witnesses he intends to call at the hearing, to the Judgment Debtors counsel, Evan A. Moeller, via email, at least three days prior to the hearing.

Respectfully submitted,

**ADAMS & REESE, LLP**

By: /s/ Evan A. Moeller

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*Attorneys for Cyberlux Corporation and  
Mark D. Schmidt*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was served pursuant to the Texas Rules of Civil Procedure upon all parties on this 18<sup>th</sup> day of March, 2026.

/s/ Evan A. Moeller  
Evan A. Moeller

ATLANTIC WAVE HOLDINGS, LLC and  
SECURE COMMUNITY, LLC,

*Plaintiffs/Judgment-Creditors,*

v.

CYBERLUX CORPORATION and  
MARK D. SCHMIDT, Individually,

*Defendants/Judgment Debtors.*

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IN THE DISTRICT COURT

129<sup>TH</sup> JUDICIAL DISTRICT

OF HARRIS COUNTY, TEXAS

**DECLARATION OF MARK D. SCHMIDT**

1. My name is Mark D. Schmidt. My date of birth is February 27, 1965, and my business address is 800 Park Offices Drive, Suite 3209, Durham, North Carolina 27713.
2. I am fully competent to execute this declaration.
3. I am the President and CEO of Cyberlux Corporation (“Cyberlux”) and a defendant in this lawsuit, and as such, the facts stated herein are within my personal knowledge.
4. The continuing existence of the receivership in the above-captioned cause is inflicting ongoing harm to Cyberlux in at least the following ways:
  - a. Cyberlux will be unable to meet payroll by the end of March. Failure to meet payroll will directly impact more than 60 families who depend on Cyberlux for their income and will irreparably harm Cyberlux’s relationship with its workforce.
  - b. Cyberlux is unable to secure capital through traditional financing methods as a direct result of the Receiver’s representations (in several forums) that his authority is that of a general receiver and not one appointed to collect on a specific debt. With the receivership in place, Cyberlux has only been able to access “payday loan”-type financing, with interest rates approaching 100% as compared to the normal commercial rates in the 10%–15% range. For example, Cyberlux was negotiating a \$3 million financing facility with financier, J.J. Astor & Co., a Utah corporation (“J.J. Astor”). Negotiations for that financing were postponed due to the receivership, as J.J. Astor was concerned about Cyberlux’s ability to maintain operations in light of the receivership. After the receivership continued for months, J.J. Astor rescinded the original financing terms and converted the arrangement into a far less favorable “payday loan” structure, reducing the available financing from \$3 million to a mere \$500,000 and dramatically increasing the cost to Cyberlux.
  - c. Cyberlux currently has an order backlog of approximately \$17 million and a pending U.S. CECOM order for \$8.8 million that Cyberlux is unable to

manufacture and ship because of the restriction on capital caused by the receivership. If Cyberlux is not able to fulfill these orders, it will inevitably result in cancellations by the U.S. government, allied foreign customers, and major defense customers such as General Dynamics and BAE Systems, including time sensitive U.S. government rated orders that are designated as the highest manufacturing priority under the Defense Priorities and Allocations System (DPAS). The following rated customer orders require immediate manufacturing that Cyberlux cannot perform without access to its typical funds and financing which existed prior to the receivership:

- i. General Dynamics Mission Systems, Inc. (USA), DPAS rating DX A7, four purchase orders totaling \$1,530,411;
  - ii. BAE Systems (USA), DPAS rating DO A7, three purchase orders totaling \$132,800; and
  - iii. Advanced Engineering Solutions & Services (Poland, Dominican Republic, Ecuador), DPAS rating DOC9, three purchase orders totaling \$1,612,744.
- d. Cyberlux is a publicly traded company with approximately 11,000 shareholders. The continued existence of the receivership will further depress shareholder value and irreparably harm investors, as Cyberlux remains unable to fund and finance core operations. Since the receiver was appointed on May 22, 2025, CYBL's share price has declined by approximately 52%. Potential investors who were interested in purchasing stock in Cyberlux have since refused to invest while the receivership is ongoing.
- e. Finally, Cyberlux's reputation has been, and will continue to be, irreparably harmed by its inability to deliver existing orders and the forced cessation of operations. To date, Cyberlux has lost a pending \$8.8 million order from U.S. CECOM, which is being withheld until the receivership is cleared and Cyberlux can demonstrate financial stability to the U.S. government. The continued existence of the receivership is obstructing the fulfillment of approximately \$26 million in orders in total that would generate more than \$15 million in cash flow for Cyberlux.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Diego County, California on the 18<sup>th</sup> day of March, 2026.

DocuSigned by:  
*Mark Schmidt*  
CB9EE73498DE446...  
MARK D. SCHMIDT, DECLARANT

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Envelope ID: 112599722

Filing Code Description: Motion (No Fee)

Filing Description: Defendants' Motion for Adjudication of the Receiver's Fees and Expenses and Return of Receivership Assets

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