IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

HII MISSION TEHNOLOGIES CORP., Interpleader Plaintiff,

v. Case Number: 3:25cv483

ATLANTIC WAVE HOLDINGS, LLC, et al., Interpleader Defendants/Claimants

RESPONSE TO MOTIONS FOR SUMMARY JUDGEMENT

A Cyberlux (" CYBL").

CYBL seeks a summary judgment although it has not filed an answer. CYBL's assertions are also false. AWH had two claims against CYBL. The first was a consent judgment on June 28, 2023 for $1,572,500 (CL22-3882). The second was a judgment under the Stock Claim entered December 18, 2025 (CL24-3910) and reaffirmed on February 5, 2026. The judgment awarded $6,000,000 against CYBL, plus $25,250.50 in fees and 6% interest. In its MSJ, it does not dispute that CYBL was in default under both claims, or that CYBL entered a consensual judgment and granted a security interests in both claims. All collection efforts were legal. Per CYBL, AWH should have just waited for CYBL to pay off AWH's judgment. Instead, CYBL contested every collection attempt, causing AWH to expend another 1 million + in legal fees in numerous frivolous and unsuccessful removal attempts and appeals. CYBL represents that an appeal of CL24-3910 is being "adjudicated" even though CYBL has not posted the appeal bond required by the Rules, or filed any record in violation of the appellate rules, and CYBL's appellate argument is based on ghost cites in its papers. CYBL files nothing in support of its alleged advance of $4,786,814.62, alleged backlog of business, or financial status, all of which are disputed. See MSJ, Section II, 4,8,9.

B Legalist SPV III

Per AWH's MSJ, AWH does not dispute that Legalist's documents were executed documents, that funds were advanced to Cyberlux as claimed, or that it filed a UCC claim in Nevada on April 1, 2024. The factual dispute with Legalist concerns whether Legalist's security agreement attached and whether it should be entitled to enforce its claim. Specifically, HII's contract with CYBL had a specific duration, August 29, 2023 through

July 24, 2024. No work was required of either party before or after. The government issued a Stop Work order on December 22, 2023. HII terminated the CYBL contract May 17, 2024. Mod No 4 settled the claim between HII and CYBL on February 26, 2025.

Legalist originally approved 3 million in credit to CYBL on March 24, 2024, then increased that approval to 7 million as of July 13, 2024. The Stop Work Order was issued 166 days prior to the first loan commitment. All assets were frozen. No receivables were being generated. By the time the first amended line of credit was increased to 7 million (July 13,2024) the Government had terminated the HII contract and HII had terminated the CYBL contract. By the time the second amended credit line was increased to 12.5m (April 29, 2025), Legalist cited two prior defaults on November 4, 2024 and March 31, 2025. Legalist then imposed 4.75% interest on each event of default increasing the default rate interest to 9.5% compounded and capitalized monthly, in ADDITION to the prime + .0164% daily interest. It then tacked on a forbearance fee of $53,000 and another generation fee of $112,500 for good measure.

By the time the first credit line was granted, all of CYBL's representations about its financial fitness under Paragraph 3, and elsewhere, about their claim being bona fide, not subject to set-off and not under investigation, were false and the falsity was known to Legalist. Legalist had access to all of CYBL's records. Legalist essentially loaned money to a company whose records would have established insolvency, and then created a profit center with exorbitant interest and fees knowing that CYBL, more than likely, would never get out of default.

Additionally, under all of Legalists' loan documents at paragraph 9.1, funds were not to be provided to CYBL unless the funds were based on "Eligible Purchase Orders". All three loan documents had a dedicated "Schedule 1" to identify the eligible purchase orders. Based on the documents produced, no Eligible Purchase Orders were identified. Moreover, pursuant to 9.1, funds were not to be advanced if the Eligible Purchase Order was disputed by the Government. The government in this case created a dispute by stopping work in December of 2023 and terminating the contract in May of 2024. That dispute was not resolved until February 26, 2025. That being the case, based on Legalist's expertise, Legalist had to know that the government and HII would be in a dispute well before they extended credit, despite the fact that CYBL was terminated for convenience. From

an equitable perspective, all three transactions are inconsistent with commercial reasonableness and good faith. A lender that knowingly originates a government receivables line of credit against a frozen contract cannot claim priority in the termination settlement of that contract, as though they were secured by active performance receivables.

From a UCC perspective, all, or a portion of this money was not given for value. The only value received by Legalist, at the time these extensions of credit were made, was a gamble that it might receive substantial fees and interest if it worked out. If not given for value, the security interest never attached to the collateral, regardless of the UCC-1. Whether that argument applied to all, or just a portion, of the advances, would be a factual determination. Additionally, if the Legalist claim is specific to these funds as Eligible Purchase Orders, none were identified on the schedules. Therefore, the collateral was also not properly described. With regard to the $3,083,000 protective advance paid to the Receiver, those funds were clearly not for eligible purchase orders.

Next, the loan documents required, as a condition precedent to any advance, that Legalist obtain, by satisfactory counterpart, an executed Instrument of Assignment in a form attached to each document as Exhibit C. [1] Exhibit C expressly states that it was intended as an assignment under 48 CFR 32.805. The assignment covers all rights to payment. Legalist argues that FAR and 32.805 are irrelevant to the analysis and that the regulations only apply between the Government and the Contractor. Legalist ignores, however, that the **parties specifically agreed** in the document, at Exhibit C, paragraph 2, that the assignment intended **was** covered under 48 CFR 32.805, regardless of typical application. This was a substantive term that went to the heart of the deal. Legalist never secured any consent from the government, or the Prime. Accordingly, the condition precedent for an advance under paragraph 8 of all three advances was never met and nothing of value, for UCC purposes, was given preventing the attachment to the right of payment.

Next, the last advance of $3,083,639 on June 11, 2025, was made ***after*** the Receiver had been appointed by Order entered, May 22, 2025. It was not advanced for any collateral, but to "protect' the collateral already

[1] The HII contract at paragraph 27 prevents assignment.

under the control of the Receiver. Accordingly, no value was given. It was also void per the Receivership Order.

Last, Legalist has already inserted itself into AWH's priority by intervening in AWH's garnishment claim in Fairfax. After intervening in AWH Fairfax garnishment (Case No. CL25-3413), Legalist raised the same argument it does now that its lien was secured and perfected ahead of AWH. Legalist, not AWH, put that issue before the court, but it was properly before the court. After a lengthy *ore tenus* hearing and argument, the Fairfax judge ruled that: "Intervenor (Legalist) has not proven a claim to the Funds that is of higher priority than that of Judgment Creditors (Atlantic Wave) and has, in fact, **not proven a claim to the Funds in any amount**". (emphasis added)(proper names inserted). See Dec. B.

C. ANPC

ANPC domesticated a North Carolina judgment in the City of Richmond on August 31, 2025. On September 23, 2025, ANPC, by counsel, mailed a pre-prepared Writ of *Fieri Facias* and asked the clerk is issue the prepared writ. See Dec A. The writ, however, was not forwarded or served on the Richmond sheriff. ANPC's cover letter confirmed that no service was requested. Dec. A. Accordingly, the Writ of *Fieri Facias* was placed by the clerk in a miscellaneous file (CM25-361), but it never attached to anything.

ANPC then docketed its judgment in Fairfax and requested a garnishment against CYBL with HII as the Garnishee. ANPC and HII agreed that, upon the deposit of the disputed funds held by HII into this court, that HII would be discharged without further liability. A final order has been entered discharging HII, with prejudice. Accordingly, under 8.01-511A, HII no longer holds a sum of money to which the judgment debtor is or may be entitled rendering the garnishment lien moot.

Lastly, ANPC falls back on its Writ of *Fieri Facias* generated for the garnishment by the clerk in Fairfax A Writ of *Fieri Facias* is different than a garnishment, but the writ has to be issued by the clerk in order to proceed with a garnishment. A garnishment is a separate execution based on specific funds, not intangibles. Per 8.01-511(A), on a suggestion by the judgment creditor that, *by reason of the lien of his writ of fieri facias*, there is a liability on any person other than the judgment debtor . . . In this case the clerk issued the Writ of *Fieri Facias,* and then issued the garnishment to the Fairfax sheriff for service on HII for those funds. Based on information from the Sheriff's office, ANPC did not

serve or forward the Writ of Fieri Facias issued by the Clerk to the Fairfax Sheriff, only the garnishment. See Dec A. The Suggestion does not provide a execution delivery date. The docket sheet does not reflect a return. Accordingly, the Writ of Fieri Facias in Fairfax never attached to anything under 8.01-501 or 511 because it was not placed in the hands of the sheriff.

D. ARG

In its MSJ, ARG makes the same allegations it did in its case in North Carolina in The ARG Group LLC v. Cyberlux Corporation (25 CV004246-210). Those allegations are mirrored in Anthony Gonzalez's Declaration (ECF 167-1). That case began April 24, 2025, and is still pending. In that case, CYBL denied every material allegation made by ARG and denied owing ARG any sum. It also denied the existence of the contract as alleged. Yet, ARG asks this court to accept, as undisputed, facts which are obviously disputed. AWH also disputes ARG's "undisputed" facts and further argues as set forth below.

First, the ARG contract does not provide for a 20% commission upon sales made by CYBL to others, it provides a 20% discount on sales made by ARG to others. It goes further to limit those ARG sales to units detailed on Exhibit A, yet Exhibit A fails to identify any particular drone, much less the K8 drone, which had not even been created at the time. Accordingly, any contract was not applicable to the K8 drones under the HII subcontract.

Second**,** The HII subcontract was a Foreign Military Sales contract and there were procedures required for CYBL to maintain compliance with HII's Prime contract. See 48 CFR 225.7300; DoD 5105.38-M. FAR. FAR225.7303-4 disallows contingent fees unless authorized and approved by the Contractor, not the subcontractor, and accepted by the foreign entity. FAR 52.203-5, Subpart 3.4 also prevents contingent fees with limited exceptions. The stated purpose in Subpart 3.402 is to prevent the risk of improper influence created by contingency arrangements as against public policy. These provisions flow through the Prime Contract because HII was required to provide warranty to the government that all regulations were followed. The government could, per 3.402, nullify the Prime Contract and recover the full amount of the contingency fee. The public policy concern is clear with ARG's claim wherein Gonzalez touts his decades long experience in military contracting. Gonzalez "built relationships across multiple federal agencies" and became aware of

Cyberlux through "industry channels" See 167-1,paras. 8,9.

HII, in order to protect itself and the government, included provisions in the subcontract to ensure its own compliance. For example, Seller'a (CYBL) warranties shall run to the Buyer (HII) and the government. See HII Subcontract, 10. Indemnification for HII and the government extends to agents of Seller (CYBL) for failure to follow regulations. Id at 12. Compliance with all federal regulations is required. Id. 17. Seller's agents must comply with Anti-Corruption Laws. Id. At 19.1. Any third-party agent of HII, for any aspect of the Project, has to be approved by HII, in writing. Id. At 19.7. Failure to identify under 19.7 can result in automatic termination without compensation. Id. No assignment allowed. Id at 27. These terms are vital and integral to the entire deal insofar as, if HII were to misrepresent something to the government, HII would be submitting a false claim.

Having said that, ARG cites nothing in the record that it was entitled to contingency, was a bona fide commercial selling agency, or that their deal was reviewed and approved by either HII, the government, or the foreign entity. ARG claims that it is exempted from these provisions because its contract was not specific as to government contracts. Regardless, the contract in issue was a government contract under its own set of regulations, not ARG's. In other words, there was no money owed to ARG for their "services" by CYBL, because no money could have been provided to CYBL from HII for these same services. Accordingly, insofar as CYBL was not entitled, ARG is not entitled. Accordingly, AWH disputes that ARG's contract was legal, or enforceable, even if applicable.

Next, the equitable liens relied upon by ARG do not support equitable relief. The HII subcontract provides: "The Seller may not use a third party to fulfill its responsibilities under the Agreement without the written authorization of Buyer." See HII Subcontract, para 19.7. If Mr. Gonzalez is to be believed in his Declaration, Mr. Gonzales would have been intimately knowledgeable of these contractual terms and the applicable law. ARG cannot claim equitable relief when it has unclean hands. AWH disputes that the facts stated in Gonzalez Declaration justify any type of equitable relief. [2]

[2] Anthony Gonzalez owns 100% of The ARG Group, LLC and 65% of Thin Air Gear, LLC. Both entities are represented by Stine Law Firm. ARG's SJ brief nominates TAG for second distribution priority and ARG as first. The combined Gonzalez claim is

E. WeShield Claimants

For the same reasons argued herein with respect to ARG, the WeShield parties were also unauthorized third-party representatives, if they were representatives at all. The Vintfeld Declaration (ECF No. 186-2) admits that and confirms that the WeShield parties arranged meetings with Ukrainian Ministry of Defense officials in connection with the FMF procurement. They were unknown to HII, or the government. There was no assertion by these parties they were otherwise entitled to their commission, or that CYBL had the ability to factor a commission into their project. Like ARG, there was no money owed to the WeShield parties for their "services" by CYBL, because no money could have been provided by HII to CYBL for these same services. Accordingly, AWH disputes the legality of the underlying claim.

Additionally, these parties still refuse to produce the underlying documents upon which they rely to prove forbearance, which is the premise of their "security". Without those documents, the issue of "value" given for the security agreement is in dispute. The dispute is whether the security agreement is enforceable at all, versus a manufactured claim based on unsupported underlying claims, using a confessed judgment note, and then "perfected". Interestingly, in response to HII's request for creditor certification from CYBL when this started, CYBL, through its COO, issued a list of creditors to HII on May 30, 2025 with identified admitted claims. None of the WeShield parties were listed as creditors. See Dec A. Additionally, none were designated in any CYBL required OTC filings as being debt holders during any relevant time.

Lastly, CYBL had no authority to pledge assets or confess judgments without court approval while in Receivership. The Receivership Order was effective at all relevant times and not only makes these transactions voidable, but VOID. See Receivership Order, para. 10

F. Thin Air Group. ("TAG')

TAG's underlying Colorado judgment appears regular on its face, but may be subject to challenge. Specifically, the Colorado claim was styled as the "Thin Air Group LLC v. Cyberlux Corporation d/b/a Catalyst Machineworks LLC". Paragraph 6 of the Complaint alleges "On or about September 5, 2023,

$15,504,108.07, representing 65.3% of the $23.7 million fund.

Catalyst Machineworks LLC entered into a contract with Thin Air to produce 2,100 wheeled drone kit bags." See Dec A. CYBL never registered Catalyst Machineworks LLC as a fictitious name. These were two separate entities and TAG's contract was with Catalyst, per their own Complaint. Catalyst Machineworks LLC was terminated on March 21, 2024. Catalyst was never served and the judgment was based on default.

G. Fairwinds

For the same reasons argued herein with respect to ARG, and WeShield, Fairwinds was also an unauthorized third-party representative. They were unknown to HII, the government, or the foreign entity. There was no money owed to Fairwinds for its "services" by CYBL, because no money could have been provided to CYBL by HII for these services. CYBL's certification to HII also fails to include Fairwinds as a creditor.

H. Receiver

AWH obtained a judgment in CL22-3882 in the principal amount of $1,572,500, domesticated that judgment in Texas, and instituted an enforcement action against CYBL wherein Berleth was appointed Receiver. It is not disputed that Mr. Berleth made effort in securing the physical plant in Texas. Berleth still controls an estimated 1.8 as the corpus in Texas. AWH takes no position on what Berleth's fees and costs should be in the Receivership, which AWH considers to be a Texas issue. Berleth, however, then extends his accomplishments to the deposit of the HII funds claiming an additional fee of $5,934,234.39. That is disputed. The existence of the HII funds were discovered by AWH, not the Receiver. AWH triggered HII to then seek claims from all potential creditors, which brought in the some of the remaining parties and the Receiver. Per his Receivership order, Berleth was only entitled to fees on amounts actually, constructively, or legally under his control. Berleth has no control over these disputed funds. Berleth's only role in the disputed funds was to send HII a letter demanding that HII turn over the HII funds to the Receiver, which HII denied.[3] [4] Atlantic

[3] It is also disputed that AWH is still owed sums under the Harris County receivership enforcement action. All remaining principal and fees accumulated in Virginia have been paid, and the balance of legal fees in Texas have been paid. AWH has non-suited the enforcement action. AWH takes no position on whether the Receivership is still in existence, but represents that its judgment has been completely satisfied, and to AWH's knowledge the court in Harris County did not expand.

[4] It is also disputed that Mark D Schmidt has any interest in AWH. Schmidt's very brief role with AWH was terminated entirely in 2021.

AWH's Summary Position on Parties

a . CYBL. Does not dispute AWH's security agreement, the judgments entered, the security interest or the perfection of the lien. AWH asserts that CYBL is a general unsecured creditor.

b. **Legalist**. Does not dispute AWH's security agreement, the judgments entered, the security, or perfection. Its position is that the perfection date was March 20, 2026 versus July 6, 2023. AWH asserts that Legalist, if it has a valid security interest, has a valid perfected security interest as of April 1, 2024. AWH further assert that, if Legalist has a valid perfected security interest, a portion of their claim should be excluded as unsecured and inequitable. AWH further asserts that its July 6, 2023, UCC filings take priority because they were properly filed in the states where the collateral was located. AWH further asserts that, at worse, AWH's security attached on June 15, 2023 and became perfected on March 20, 2026.

c. **ANPC**. Disputes that the judgment entered in CL24-3910 was valid, and disputes the validity of the UCC filings. It does not dispute the Security Agreement. ANPC asserts that it has a lien via two writs and garnishment. ANPC argues that Berleth did not have authority to settle the Stock Claim, although the Richmond presiding judge expressly ruled that Berleth had the authority. AWH asserts that both writs were ineffective and that the garnishment lien is now moot. ANPC is a judgment creditor

d. ARG. Does not dispute the validity of the Settlement Agreement, the security interest, or UCC filings. It claims only that the claim is unrelated to the collateral which is inaccurate. ARG is a general unsecured creditor.

e. **Weshield**. Asserts that AWH has a judgment lien, but is silent as to AWH's security agreement, perfection, or whether the Settlement Agreement from June 15, 2023 was a valid security agreement, which attached on June 15, 2023 and was authorized by the presiding judge. It ignores the UCC filings completely and asserts it has priority over AWH. AWH asserts that WeShield's Security Agreement is voidable or void based on argument that no value was exchanged and that WeShield has failed to produce documents necessary for summary judgment to prove any claim at all. If that argument prevails, the WeShield parties are a general unsecured creditor.

f. Thin Air. Does not dispute the validity of the Settlement Agreement, the security interest, or UCC filings. It claims only that the claim is unrelated to the collateral which is inaccurate. TAG claims a valid judgment in Colorado, but does not assert any execution. It is a judgment creditor only.

g. Fairwinds. Disputes that AWH has a secured interest, perfection, and asserts that AWH only has a judgment lien. It ignores the security interest, or perfection. It agrees that it is a general unsecured creditor.

h. Receiver. The Receiver does not dispute AWH's security agreement, the judgments entered, the security agreement, or perfection. The Receiver fails to take a position on AWH's creditor status at all. AWH asserts that the Receiver is not a creditor.

AWH's Equitable Position.

In June of 2023, CYBL owed AWH substantially more than $6 million dollars. AWH gave CYBL an option to pay a certain amount down, and allow CYBL to pay the balance by making its stock valuable by a specific date roughly six months later. AWH's forbearance and agreement, essentially, allowed CYBL to stay in business. In order to secure those promises, CYBL granted a security interest in all of its assets, including anticipated drone sales with HII. AWH was the first legitimate creditor based on actual value. It does not claim exorbitant interest or fees. It was not an opportunist asserting a claim after HII filed the Interpleader, or an entity seeking to capitalize on a government contract. If there are equitable considerations to be made in the Interpleader, they should weigh heavily in AWH's favor.

AWH's Position on Priority.

1. United States- statutory
2. AWH or Legalist -secured and perfected, in whole or in part
3. AWH or Legalist- secured and perfected, in whole or in part
4. ANPC- judgment creditor- unsecured
5 Thin Air- judgment creditor **if lien valid**
5. Fairwinds-general unsecured creditor **if claim valid**
6. ARG-general unsecured creditor **if claim valid**
7. WeShield parties-general unsecured creditors
8. CYBL-general unsecured creditor
9. Receiver- not a creditor.

Respectfully Submitted

ATLANTIC WAVE HOLDINGS, LLC

BY:_____/s/_____

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CERTIFICATE

I hereby certify that I have electronically filed and sent a copy of the foregoing to counsel of record electronically through ECF this 22st day of April, 2026.

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