

May 22, 2025

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Honorable Michael Gomez
129th Judicial District Court
Harris County Civil Courthouse
201 Caroline, 10th Floor
Houston Texas 77002

RE: Cause No. 2024-48085, *Atlantic Wave Holdings, LLC, et al. v. Cyberlux Corporation, et al.*, 129th Judicial District Court, Harris County, Texas.

Dear Judge Gomez:

I represent Plaintiffs Atlantic Wave Holdings, LLC, and Secure Community, LLC (Atlantic Wave) in the above-referenced action and write to address the letter dated May 20, 2025, filed by Judgment Debtors Cyberlux Corporation and Mark D. Schmidt (Cyberlux). As shown throughout this case and further confirmed by Cyberlux's May 20 letter, Cyberlux does not let factual accuracy get in the way of its narrative.

Amended Final Order and Judgment. In October of 2024, Cyberlux represented to this Court that a stay of execution of the Amended Final Order and Judgment (Judgment) had been granted:

THE COURT: Has it been stayed? I mean has it been stayed in Virginia?

MR. PENNETI: Those -- all those litigations, yes, the stay has occurred in Virginia. There's no -- the collection -- there's no activity in the collection suit. Then you've got the three other lawsuits.

THE COURT: So the enforcement of this judgment that they domesticated has been stayed in Virginia?

MR. PENNETI: That's correct.

(October 28, 2024, Hearing Transcript at 8:8-18.)

But that was a misrepresentation because no such stay of execution was requested or has been granted. Then, in April of 2025, Cyberlux represented to the Texas federal court it

intended to “pay into the appropriate court an amount that is a supersedeas bond.” (Case No. 4:25-cv-01689, Doc. 5, filed April 25, 2025, pp. 11-12.) Indeed, another misleading statement because Cyberlux has made no effort to file a motion for supersedeas bond whether under Texas supersedeas law, federal supersedeas law, or any other law of a competent jurisdiction. Now, in May of 2025, Cyberlux represents to this Court that it is “planning” to pay \$1.4 million into the registry of the Virginia court. Yet again Cyberlux misleads this Court because, as of May 21, 2025, Cyberlux has not filed a motion to interplead any funds into the Virginia court’s registry, much less filed a notice of appearance in the action pending in Fairfax County, Virginia. (Affidavit of J. Chapman Petersen, signed May 21, 2025, attached as **Exhibit 1**, ¶¶ 7-9.) Cyberlux’s smoke screen tactics should not divert attention from the actual issues—that is, Cyberlux is in default under the settlement agreement for lack of payment (Ex. 1, ¶¶ 4-6), among other reasons, and Cyberlux owes several creditors, including Atlantic Wave, many millions of dollars.

Receivership Order. Cyberlux continues to raise the government property issue that has already been discussed *ad nauseum* and resolved. Again, Atlantic Wave is not attempting to seize government property, but rather it is focused on freezing non-exempt assets of Cyberlux, for example, the substantial sum of money (in excess of \$20 million) Cyberlux is in position to receive any day now, from Huntington Ingalls Industries (HII). And the proposed receivership order is consistent with that focus. (Notice of Second Remand Order, dated May 14, 2025, Ex. 2, pp. 5-6) (finding that “the proposed [receivership] order does not state, or even suggest, that Atlantic Wave or [the receiver Robert] Berleth intend to seize U.S. government property.”) Indeed, Cyberlux’s blindly obsessive repetition of the same argument does not change the facts.

Dissipation of Assets. Cyberlux contends that Atlantic Wave should “have no real concern whatsoever” about Cyberlux’s conduct because it is “planning” to pay \$1.4 million into the registry of the Virginia court. The Judgment was entered against Cyberlux in June of 2023 (and domesticated in Texas in July of 2024), so Cyberlux had over 22 months to interplead any disputed monies into the Virginia court registry (or over 9 months to interplead such monies into the Texas court registry). And Cyberlux still has not interpleaded any monies into any court registry. (Ex. 1, ¶¶ 1-3.) Thus, Cyberlux’s purported *plan* to interplead funds is merely a hollow distraction.

The other concern that elevates the risk of unjustified dissipation of assets by Cyberlux are the number of other creditor claims against Cyberlux, e.g., as discussed in Atlantic Wave’s letters, filed April 9 and May 15, 2025. Since those letters, a \$1,631,221.32 judgment in favor of Thin Air Gear, LLC, is now pending entry by the Colorado federal court in *Thin Air Gear, LLC, v. Cyberlux Corporation*. (Case No. 1:25-cv-00805, Doc. 18, filed

May 16, 2025, attached as **Exhibit 2.**) Considering the prior dissipation of \$38 million in September of 2023 by Cyberlux, among other questionable actions, there is a good faith basis to believe that Cyberlux will continue to take active steps to frustrate the recovery of monies due to its creditors, including Atlantic Wave. One such step was Cyberlux “amend[ing] its line of credit increasing the limit under the agreement [from \$7 million] to \$12.3 million” in April 2025 after defaulting on the agreement which is “collateralized by the accounts receivable, inventory and other assets related to the specific purchase orders [from government customers].” (Atlantic Wave Letter to Court, filed May 19, 2025, at Ex. A, pp. 44-46.) These other creditors’ claims show the necessity of a receivership to preserve the status quo and minimize any risk of dissipation of assets by Cyberlux.

Cyberlux’s deliberate conduct is not only frustrating efforts to recover monies due and owed to Atlantic Wave, but also needlessly increasing attorney fees and costs and taking up valuable time of the courts. Atlantic Wave respectfully requests the Court’s prompt intervention, including but not limited to the appointment of a receiver.

Very truly yours,



David A. Walton

CERTIFICATE OF SERVICE

I certify that on May 22, 2025, a true and correct copy of this document was served on all parties of record via electronic service from the court’s ECF system for registered users, in accordance with Rule 21a of the Texas Rules of Civil Procedure.

By: /s/ David A. Walton

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