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10 Attorneys for Plaintiffs  
 11 ATLANTIC WAVE HOLDINGS, LLC  
 12 and SECURE COMMUNITY, LLC

13 **UNITED STATES DISTRICT COURT**  
 14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 ATLANTIC WAVE HOLDINGS, LLC,  
 16 a Virginia limited liability company, and  
 17 SECURE COMMUNITY, LLC, a  
 18 Virginia limited Liability company,  
 19 Plaintiffs,  
 20 vs.  
 21 CYBERLUX CORPORATION, a  
 22 Nevada Corporation,  
 23 Defendant.

CASE NO. 3:24-cv-00482-RBM-VET  
 Honorable Ruth Bermudez Montenegro

**DECLARATION OF DAVID  
 KEITHLY IN SUPPORT OF  
 OPPOSITION OF PLAINTIFFS’  
 OPPOSITION TO DEFENDANTS’  
 MOTION TO VACATE SISTER-  
 STATE JUDGMENT**

*[Filed concurrently with Opposition to  
 Motion to Vacate Sister-State Judgment,  
 Declaration of William Welter and  
 Declaration of James Sadigh]*

DATE: June 3, 2024

**NO ORAL ARGUMENT UNLESS  
 ORDERED BY THE COURT**

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**DECLARATION OF DAVID M. KEITHLY**

I, David M. Keithly, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm Mortenson Taggart Adams LLP. I am one of the attorneys representing Plaintiffs Atlantic Wave Holdings, LLC and Secure Community, LLC (collectively, "Plaintiffs") in this action. I have personal knowledge of the facts set forth herein and, if called upon as a witness, I could and would competently testify thereto.

2. On February 15, 2024, I contacted Defendants' counsel to request that Defendants stipulate to allow Plaintiffs to dismiss the Complaint that had been incorrectly filed by Plaintiffs' previous counsel in action currently pending before this court. (Case No: 3:24-cv-00196-RBM-VET.). Defendants refused to stipulate to the dismissal of the Complaint, thereby compelling Plaintiffs to incur unnecessary expenses and delays.

3. As a result of Defendants' refusal to stipulate to the dismissal of the incorrect Complaint, Plaintiffs were forced to file a motion to dismiss their own Complaint under Rule 41. This motion is now fully briefed and awaiting a decision.

4. Plaintiffs have filed a special motion to strike Defendants' amended counterclaims pursuant to California's anti-SLAPP statute. This motion is fully briefed and awaiting a decision that should dispose of Defendants' counterclaims.

5. Defendants' bad faith litigation tactics, including their refusal to allow the dismissal of the incorrect Complaint and their attempts to delay enforcement of the judgment, have significantly increased the complexity and cost of this litigation for Plaintiffs. These tactics not only impede Plaintiffs' rightful collection efforts but also threaten the integrity of judicial proceedings.

6. On April 26, 2024, I received an anonymous email purporting to be from "an advisor to a significant defense company which was recently approached by Cyberlux . . . to discuss the potential of partnership (acquisition by, or merging into)

1 with the company I advise.” A true and correct copy of this email is attached hereto  
2 as **Exhibit A**. The email shared information that it claimed was verifiable through  
3 public records, including, but not limited to:

- 4 a. “a Dun and Bradstreet credit report revealed significant unpaid debts,  
5 judgments, and UCC’s including to the IRS, NC Tax Authority and  
6 the Texas Tax Authority as well as private lenders”
- 7 b. “CYBERLUX is not currently a DIRECT supplier to the US DOD.  
8 The alleged ‘secret’ contract for drones can be found through a  
9 recipient search at USASPENDING.GOV. The contract is for 2000  
10 K8 drones with a per unit price of \$39.4k including training. The  
11 contract is in fact a SUBCONTRACT with HII Defense (Huntington  
12 Ingall Industries).”
- 13 c. Neither Cyberlux, nor any of its subsidiaries hold FFL or FEL  
14 licenses with the ATF (atf.gov). The claims that the ‘special  
15 activities’ group deals in munitions and weapons is impossible given  
16 the lack of ATF licenses. The concern extends to the fusing,  
17 detonators, and explosive payloads used on the X8 drone.”
- 18 d. “We suspect that the 78.8m award was ‘factored’ in order to provide  
19 working capital as the company appears to have inadequate banking  
20 relationships. This gives us the impression of impending insolvency  
21 and poor cash management.”

22 I declare under penalty of perjury under the laws of the State of California that  
23 the foregoing is true and correct. This declaration was executed on May 20, 2024, at  
24 Irvine, California.



David M. Keithly

# **Exhibit A**

Monday, May 20, 2024 at 11:43:55 Pacific Daylight Time

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**Subject:** Cyberlux  
**Date:** Friday, April 26, 2024 at 3:37:27 PM Pacific Daylight Time  
**From:** 49121719  
**To:** David M. Keithly, Sara Ross  
**Attachments:** PrimeTransactionsAndSubawards\_2024-04-13\_H14M34S55768219.zip

**CAUTION: This email originated from outside Mortenson Taggart Adams LLP. Exercise caution when opening attachments or clicking links, especially from unknown senders.**

I am an advisor to a significant defense company which was recently approached by Cyberlux.

The purpose of the approach was to discuss the potential of partnership (acquisition by, or merging into) with the company I advise.

We therefore conducted preliminary "lite" due diligence on Cyberlux. During the course of that investigation several issues became known to us, including the dual litigation between AWH and Cyberlux. This action is perhaps the most troubling discovery as it damaged Mr Schmidt's credibility (misuse of funds, withholding information).

There are elements which I wish to share with you. These elements are verifiable through public records.

- 1) CYBERLUX is not currently a DIRECT supplier to the US DOD. The alleged "secret" contract for drones can be found through a recipient search at USASPENDING.GOV. The contract is for 2000 K8 drones with a per unit price of \$39.4k including training. The contract is in fact a SUBCONTRACT with HII Defense (Huntington Ingall Industries). This is an FMF case for Ukraine.
- 2) An additional SUB contract was issued to Cyberlux by ADS (Atlantic Diving Supply) for approximately \$400k for commercial variants of drones.
- 3) I have attached a series of files which show the all transactions between the US Government and Cyberlux. you will note that DIRECT contracts with Cyberlux ceased in 2015. The US government is required to make public all DOD contracts within 90 days of award.
- 4) the GSA contract (contract GS-07F-9409S) which Cyberlux, to this day, advertises on their website was cancelled by the government on 11/2/2020. This can be verified in the files attached. search term "legal contract cancellation"
- 5) a Dun and Bradstreet credit report revealed significant unpaid debts, judgements, and UCC's including to the IRS, NC Tax Authority and the Texas Tax Authority as well as private lenders (Sep 2023)
- 6) An address check of the "Special Activities" group (3rd qtr 2023 report) revealed that this address is in fact an address used by a real estate agent in Miami.
- 7) CMTC LLC is not registered with the US Government ([sam.gov](https://sam.gov)) and therefore has never been awarded contracts (verifiable at [usaspending.gov](https://usaspending.gov))
- 8) Catalyst Machine Works LLC s not registered with the US Government ([sam.gov](https://sam.gov))

- and therefore has never been awarded contracts (verifiable at [usaspending.gov](https://usaspending.gov))
- 9) Neither Cyberlux, nor any of its subsidiaries hold FFL or FEL licenses with the ATF ([atf.gov](https://atf.gov)) The claims that the "special activities" group deals in munitions and weapons is impossible given the lack of ATF licenses. This concern extends to the fusing, detonators, and explosive payloads used on the X8 drone.

Conclusions we reached based on these factual elements

- 1) Given the significant legal and financial issues we find that it is highly improbable that the US DOD has granted Mr Schmidt, or Mr Kalenja personal security clearances.
- 2) Given the significant legal and financial issues we find that it is highly improbable that the US DOD has granted Cyberlux or any of its subsidiaries Facility Clearances to execute "classified" contracts. We have been unable to verify that any facilities held by Cyberlux contain SCIFs.
- 3) Given the past performance history and significant legal, credibility and financial issues we find that it is highly unlikely the DOD would do any DIRECT business with Cyberlux.
- 4) We suspect that the 78.8m award was "factored" in order to provide working capital as the company appears to have inadequate banking relationships. This gives us the impression of impending insolvency and poor cash management.
- 5) FMF (foreign military funding) cases are highly regulated from a financial perspective. Most notably the use of funds awarded is auditable by the USG and restricts payments to third parties for commissions etc. Contracts may also include limitations on profits under both FAR and DFAR regulation. As such, we do not understand how Cyberlux could legally commit to paying AWH a \$5k commission per drone sold to settle the debt.
- 6) The manner in which this contract was developed and awarded is suspicious to us. Further feedback from a customer served to, at a minimum, support our concerns. This particular award is part of a highly publicized aid package to Ukraine.
- 7) It is not within the normal behavior of the government to classify contract documents (purchase orders, performance contracts etc). Generally the WORK/PRODUCT is classified.
- 8) We have been unable to confidently determine where Cyberlux has been acquiring its funding to execute the purchase of Datron or Catalyst.
- 9) CMTC appears to have been a shell company started by Mr Watts
- 10) The strong assertions in legal and financial documents that the company is engaged in highly classified work was suspect. This open claim is contrary to the very nature of how companies who DO execute classified work behave.
- 11) The inconsistencies identified after finer review of the legal narrative seems to imply that Cyberlux's legal team is not being told the truth.
- 12) One legal filing by Mr Ozols asserted that Cyberlux was attempting to shield datron by "transferring, pledging, hypothecating, encumbering" the asset. A merger or acquisition between cyberlux and the company I advise would have made us party to this effort. This would have a negative effect on our company's reputation and standing.