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15 Attorneys for Defendant CYBERLUX
16 CORPORATION

17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 ATLANTIC WAVE HOLDINGS,
20 LLC, a Virginia limited liability
company; and SECURE
21 COMMUNITY, LLC, a Virginia
22 limited Liability company,

23 Plaintiffs,

24 v.

25 CYBERLUX CORPORATION, a
26 Nevada Corporation;

27 Defendant.

Case No. 3:24-cv-00482-RBM-VET

**DECLARATION OF CHARLES
WATTS IN SUPPORT OF
DEFENDANT CYBERLUX
CORPORATION'S OPPOSITION TO
PLAINTIFFS' EX PARTE
APPLICATION FOR ORDER TO
POST A BOND**

Dist. Judge: Ruth Bermudez Montenegro

28 ///

1 I, Charles Watts, declare:

2 1. I am the special counsel for Defendant Cyberlux Corporation
3 (“Cyberlux”). I am an attorney licensed to practice and in good standing in North
4 Carolina and am located in North Carolina. If called as a witness, I would
5 competently testify as to the following facts based on my personal knowledge.

6 2. I have been personally involved in Cyberlux’s making of payments to
7 Atlantic Wave Holdings, LLC and Secure Community, LLC (collectively,
8 “Plaintiffs”) pursuant to the terms of the Settlement Agreement between the parties
9 for payment of the amounts reflected in the Stipulated Judgment between the parties.

10 3. Following Cyberlux filing its Motion to Vacate in this case, Plaintiffs
11 attempted to freeze Cyberlux’s bank accounts through ministerial garnishment orders
12 in Virginia. Cyberlux was able to get some of those garnishment orders lifted.

13 4. As of May 31, 2024, Cyberlux was up to date on all payments to
14 Plaintiffs.

15 5. On or about the week of May 31, 2024, Plaintiffs obtained a Writ of Fieri
16 Facias in Virginia State Court. As a result of this Writ of Fieri Facias, Cyberlux’s
17 bank accounts were sequestered.

18 6. On May 31, 2024, the Court authorized the release of some of the money
19 in the sequestered bank accounts to allow for payments to vendors and employees.
20 However, the Court left sequestered the remaining funds for the purpose of making
21 payments to Plaintiffs. Attached hereto as Exhibit A is a true and correct copy of the
22 Virginia Court’s May 31, 2024 Order.

23 7. Cyberlux requested that Plaintiffs agree to the release of some of those
24 sequestered funds so that Cyberlux could make its payments to Plaintiffs. Plaintiffs
25 refused Cyberlux’s request.

26 8. Plaintiffs have since used their own refusal to release the funds that have
27 been specifically sequestered for payment under the Settlement Agreement to take the
28 position that Cyberlux has “missed” its June and July payments. In reality, all

1 Plaintiffs need to do is allow release of the sequestered settlement funds and they
2 would be paid for June and July.

3 9. Based upon a hearing that occurred in Virginia Circuit Court, Cyberlux
4 understood from the Virginia Court that to seek a release of the Writ of Fieri Facias,
5 Cyberlux would have to institute a new action in Virginia as opposed to seeking to
6 quash the Writ of Fieri Facias in the original lawsuit brought by Atlantic Wave that
7 has since been dismissed.

8 10. Based on Cyberlux’s understanding of the Virginia Court’s instructions,
9 as well as this Court’s instructions in *Atlantic Wave Holdings, LLC, et al. v. Cyberlux*
10 *Corporation, et al.*, United States District Court for the Southern District of
11 California, Case Number 3:24-cv-00196-RBM-VET, in connection with forum non
12 conveniens, Cyberlux initiated legal action against Atlantic Wave Holdings, LLC, and
13 Secure Community, LLC in Virginia. True and correct copies of the file-stamped
14 Complaints filed by Cyberlux on July 8, 2024 are attached hereto as Exhibits B and
15 C.

16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct.

18 Executed this 18th day of July, 2024, at Greensboro, North Carolina.

19
20 
21 Charles Watts

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EXHIBIT A

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

ATLANTIC WAVE HOLDINGS, LLC,

AND

SECURE COMMUNITY, LLC,

Plaintiffs,

v.

Case No. CL22-3882

CYBERLUX CORPORATION,

AND

MARK D. SCHMIDT,

Defendants.

ORDER

On May 31, 2024 came the parties, by counsel, to be heard on the Defendants' "Emergency Motion for Declaratory Relief," filed on May 21, 2024. Upon consideration of the filings, evidence, and arguments included in the record in the above-styled matter, the Court grants Defendants' temporary injunction only.

IT IS HEREBY ORDERED:

- (1) All judgment liens, garnishments, writs of fieri facias, and notice of judgment liens against Defendants' accounts at any third party bank (s) and/or entity(s), including but not limited to funds sequestered in accounts with Towne Bank and PNC Bank are hereby lifted up to \$550,000.00 effective immediately. This lift will stay in effect until June 11, 2024 at 5:00 p.m.
- (2) Defendants may use up to \$317,000.00 for the purpose of making payroll and shall provide in-camera proof of payments to the Court within forty-eight (48) hours of any such payments. For the purposes of this Order, payroll is defined as the distribution of payments to company employees and consultants who are entitled to receive compensation as well as other work benefits.¹
- (3) Defendants may use up to \$230,000 for the purpose of making regularly scheduled settlement payments to Plaintiffs and provide in-camera proof of payments to the Court.

¹ The Defendants shall provide a spreadsheet of all payments made pursuant to this Order with information noting how it complies with this Order.

(4) Plaintiffs will refrain from issuing any new garnishments, writs of fieri facias and notice of judgment liens to any and all third party bank(s) and/or entity(s) until close of business² on June 11, 2024.

(5) This Order expires by close of business on June 11, 2024.

The Court **NOTES** the Defendants' objection to the Court's ruling, including the Court's ruling on jurisdiction. The Court further **NOTES** that it will accept, *in camera*, documentation of the payment of payroll and payments on the judgment owed. The Court hereby **ORDERS** the remainder of this matter be **TAKEN UNDER ADVISEMENT** pending the issuance of a written ruling.

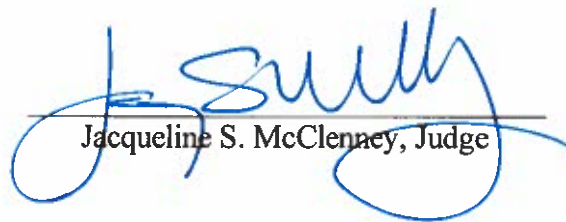
The Clerk is **DIRECTED** to forward a certified copy of this Order to the parties.

The Court **DISPENSES** with the parties' endorsements pursuant to Rule 1:13.

It is so **ORDERED**.

ENTER:

5/31/2024


Jacqueline S. McClenney, Judge

² For purposes of this Order close of business shall be 5:00 p.m.

EXHIBIT B

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CYBERLUX CORPORATION and
MARK D. SCHMIDT, individually
Plaintiffs,

v.

Case No.

ATLANTIC WAVE HOLDINGS, LLC
AND SECURE COMMUNITY, LLC

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs Cyberlux Corporation and Mark D. Schmidt, (hereinafter, collectively, “Plaintiffs”), by counsel, state as follows for its Complaint against Defendants Atlantic Wave Holdings, LLC and Secure Community, LLC (hereinafter “Defendants”).

PARTIES

1. Plaintiff, Cyberlux is a corporation, formed under the laws of the State of Nevada.
2. Plaintiff, Schmidt is an individual residing in the state of North Carolina and is the president of Cyberlux.
3. Defendant Atlantic Wave Holdings (“AWH”) is a Virginia limited liability company, with principle place of businesses in Richmond, Virginia.
4. Defendant Secure Community, LLC (“Secure”) is a Virginia limited liability company.
5. Cyberlux Corporation is a corporation organized under the laws of Nevada. Defendant Mark D. Schmidt is Cyberlux’s CEO.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction, and this Court has personal jurisdiction over Plaintiffs under Va. Code § 8.01-328.1.
7. This Court is a proper venue pursuant to Va. Code § 8.01-262.

FACTUAL ALLEGATIONS

8. Defendants sued Plaintiffs in Virginia State Circuit Court in 2023 for alleged breaches of 2021 agreements entered between the parties.
9. Defendants obtained discovery sanctions against Plaintiffs, including liability sanctions. The Virginia court thereafter ordered a trial limited to damages.
10. In the face of these sanctions, Plaintiffs entered into a Settlement Agreement (hereinafter "Agreement") with Defendants that called for a total amount of \$1,572,500 to be paid in scheduled monthly installments.
11. At the request of Defendants, Plaintiffs agreed to a Stipulated Judgment memorializing the total amount due, which Judgment incorporated the Settlement Agreement containing the payment schedule.
12. This Stipulated Judgment was not on the merits nor did it recite any finding of legal liability by Plaintiffs and resulted in a dismissal of Defendants' Complaint.
13. Soon after executing the confidential Settlement Agreement, the parties renegotiated terms, including payment deadlines.¹
14. Pursuant to the Settlement provisions and the renegotiated terms, Plaintiffs timely made all payments and continue to make payments to date. Both before and after the Settlement Agreement was renegotiated, Plaintiffs continue to timely make payments in accordance with the written and oral agreements made with Defendants who continue to accept such payments.
15. Plaintiffs performed or substantially performed all of the material duties that the Settlement Agreement and the subsequent agreements and amendments reached required except for those things for which Plaintiffs were excused from performing.²

¹ On or about June 30, 2023, the parties reached an agreement that Plaintiffs would pay 25% of the scheduled July monthly payments to Defendants on July 3, 2023 and would pay an additional \$10,737 to Defendants on July 6, 2023. Thereafter, all remaining payments would be back on the payment schedule referenced in the Settlement Agreement, beginning August 1, 2023. This agreement was confirmed in emails between the parties. Representatives of the parties communicated regularly and Defendants orally agreed upon the schedule of the payments described in this footnote upon which Plaintiffs relied and upon which the parties performed. On July 3rd and July 6, 2023, Plaintiffs made the agreed-upon payments bringing all amounts due under the Settlement Agreement current immediately upon making the July payments.

² On or about September 5, 2023, Plaintiffs and William Welter on behalf of Defendants conferred and mutually agreed that, as of September 2023, the total remaining amounts due to Defendants, collectively, was \$386,138.44 and the remaining amount due to Strikepoint Consulting, a Virginia Liability Company, under the Settlement Agreement was \$49,652.70. On or about September 8, 2023, Plaintiffs wired payments to Defendants in excess of the amounts then-due pursuant to the Settlement Agreement. The parties agreed that those amounts paid by Plaintiffs in excess of the amounts then due under the Settlement Agreement would be credited to future monthly payments due under the Settlement Agreement.

16. Despite the parties' agreements on payments and Plaintiffs' performance pursuant to the agreements, Defendants initiated a lawsuit in California, seeking to enforce the Agreement.³
17. Defendants, being fully aware of the above referenced federal case, without notice, and without disclosing the Settlement Agreement, initiated a second state court action in California against Defendants, petitioning that court to enter a stipulated judgment, using the Virginia Amended Order. Again, without disclosing the Settlement Agreement.
18. Finding little success with their improper actions in California, Defendants initiated even more improper actions, attempting to side-step the Agreement and this Court by initiating Administrative actions in Virginia using the garnishment system. Defendants engaged garnishment attorneys and were well aware that Virginia's garnishment system is administrative with little to no judicial involvement.
19. Defendants acted in bad faith and against usual and prudent business practices by ignoring the terms of the written and oral contracts and initiating garnishment proceedings, writs of fieri facias and judgment liens with several banks including Towne Bank and PNC Bank, successfully seeking to sequester Plaintiffs' operational funds in excess of \$500,000, while dishonestly using this Court's judgment order to justify its unfair performance of its obligations under the settlement agreement.
20. Defendants violated the written and oral agreements and through their actions acted in bad faith against usual and prudent business practices, breaching the implied covenant of good faith and fair dealing and have expressed their intention to continue such violations.

**COUNT I – DECLARATORY JUDGMENT
FOR BREACH OF CONTRACT**

21. Plaintiffs adopt and incorporate by reference paragraphs 1-20 of its Declaratory Judgment Action as if set forth fully herein.
22. The parties executed the written Agreement, a valid, binding, and enforceable contract.
23. As set forth above, Plaintiffs and Defendants entered into an oral contract, the terms of which were to modify the timing and amounts of payments required under

³ See Case No. 3:24-cv-00196-RBM-VET, *Atlantic Wave Holdings, LLC, et. al. v. Cyberlux Corporation, et.al*, in the United States District Court Southern District of California.

the Settlement Agreement and to credit Plaintiffs' overpayments toward payments to be scheduled to be made in the following months.

24. The parties' oral agreement is a valid, binding, and enforceable contract.
25. In Virginia, every contract contains an implied covenant of good faith and fair dealing and Defendants breached their implied duty of good faith and fair dealing of both the written and oral agreements.
26. There is an actual controversy of a justiciable nature that exists between the Plaintiffs on the one hand and the Defendants on the other.
27. A judicial declaration on whether the written and oral agreements are enforceable and have been breached is appropriate. Such a declaration is not premature, would serve a useful purpose of clarifying and settling the legal relations at issue, and will afford relief from the uncertainty, insecurity and controversy giving rise to this proceeding.
28. Plaintiffs are entitled to declaratory relief that:
 - a. The parties entered into an oral contract modifying the payment schedule set forth in the written settlement agreement.
 - b. Both the written and oral agreements are enforceable, valid and binding contracts.
 - c. The parties agreed that the September 8, 2023 wired payments paid by Plaintiffs in excess of the amounts then due under the Settlement Agreement would be credited to future monthly payments due under the Settlement Agreement.
 - d. After the September 8, 2023 wired payments, Plaintiffs made timely payments pursuant to the terms of the Settlement Agreement which were unconditionally accepted by Defendants.
 - e. Defendants improperly initiated garnishments, writ of fieri facias, and notices of judgment lien processes, improperly relying on this Court's Amended Final Order and in breach of the written and oral agreements.
 - f. Defendants' actions breached both the written and oral settlement agreements.
 - g. Defendants breached their implied duty of good faith and fair dealing by acting in bad faith and against usual and prudent business practices by ignoring the terms of the written and oral contracts and breaching the implied covenant by acting dishonestly in its contractual rights and acting arbitrarily and unfairly in the performance of its obligations under the settlement agreement.

Wherefore for the reasons stated above, Plaintiffs pray that this Court enter an Order declaring (i) the parties entered into an oral contract modifying the payment schedule set forth in the written settlement agreement; (ii) both the written and oral agreements are enforceable, binding contracts; (iii) the parties agreed that the September 8, 2023 wired payments paid by Plaintiffs in excess of the amounts then due under the

Settlement Agreement would be credited to future monthly payments due under the Settlement Agreement; (iv) after the September 8, 2023 wired payments, Plaintiffs made timely payments pursuant to the terms of the Settlement Agreement which were unconditionally accepted by Defendants; (v) Defendants acts of issuing garnishments, judgment liens and writs of fieri facias were improper and breached both the written and oral settlement agreements; (vi) Defendants breached their implied duty of good faith and fair dealing by acting in bad faith and against usual and prudent business practices by ignoring the terms of the written and oral contracts and breaching the implied covenant by acting dishonestly in its contractual rights. (vii) Defendants must release all sequestered funds from Plaintiffs' bank accounts and reimburse Plaintiffs for its attorneys' fees and costs associated with the unauthorized litigation initiated against Plaintiffs including all attorneys' fees necessitated by the bringing of this Complaint, court costs, and any other and further relief as the Court deems appropriate.

Dated July 8, 2024

Respectfully Submitted,

**CYBERLUX CORPORATION LLC AND
MARK D. SCHMIDT**

By /s/ Jimmy F. Robinson, Jr.

Jimmy F. Robinson, Jr., Esquire

Virginia States Bar Number 43622

jimmy.robinson@ogletreedeakins.com

Counsel for Plaintiffs

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EXHIBIT C

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CYBERLUX CORPORATION and
MARK D. SCHMIDT, individually
Plaintiffs,

v.

Case No.

ATLANTIC WAVE HOLDINGS, LLC
AND SECURE COMMUNITY, LLC

Defendants.

VERIFIED COMPLAINT FOR TEMPORARY PRELIMINARY INJUNCTION

Plaintiffs Cyberlux Corporation and Mark D. Schmidt, (hereinafter, collectively, “Defendants”), by counsel, state as follows for its Verified Complaint for Preliminary Injunction against Defendants Atlantic Wave Holdings, LLC and Secure Community, LLC (hereinafter “Defendants”).

INTRODUCTION

Plaintiffs bring this Emergency Application to seek immediate relief from Defendants’ practice of violating written and oral settlement agreements and acting in bad faith against usual and prudent business practices by breaching the implied covenant of good faith and fair dealing and sequestering Plaintiffs’ business operation funds, while dishonestly using this Court’s judgment order to justify its unfair performance of its obligations under the settlement agreements.

Without an immediate injunction from this Court, Defendants will continue to use the pretext of this Court’s judgment order to injure and harass Plaintiffs.

PARTIES

1. Plaintiff, Cyberlux is a corporation, formed under the laws of the State of Nevada.
2. Plaintiff, Schmidt is an individual residing in the state of North Carolina and is the president of Cyberlux.

3. Defendant Atlantic Wave Holdings (“AWH”) is a Virginia limited liability company, with principle place of businesses in Richmond, Virginia.
4. Defendant Secure Community, LLC (“Secure”) is a Virginia limited liability company.
5. Cyberlux Corporation is a corporation organized under the laws of Nevada. Defendant Mark D. Schmidt is Cyberlux’s CEO.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction, and this Court has personal jurisdiction over Plaintiffs under Va. Code § 8.01-328.1.
7. This Court is a proper venue pursuant to Va. Code § 8.01-620.

FACTUAL ALLEGATIONS

8. Defendants sued Plaintiffs in Virginia State Circuit Court in 2023 for alleged breaches of 2021 agreements entered between the parties.
9. Defendants obtained discovery sanctions against Plaintiffs, including liability sanctions. The Virginia court thereafter ordered a trial limited to damages.
10. In the face of these sanctions, Plaintiffs entered into a Settlement Agreement (hereinafter “Agreement”) with Defendants that called for a total amount of \$1,572,500 to be paid in scheduled monthly installments.
11. At the request of Defendants, Plaintiffs agreed to a Stipulated Judgment memorializing the total amount due, which Judgment incorporated the Settlement Agreement containing the payment schedule.
12. This Stipulated Judgment was not on the merits nor did it recite any finding of legal liability by Plaintiffs and resulted in a dismissal of Defendants’ Complaint.
13. Soon after executing the confidential Settlement Agreement, the parties renegotiated terms, including payment deadlines.¹

¹ On or about June 30, 2023, the parties reached an agreement that Plaintiffs would pay 25% of the scheduled July monthly payments to Defendants on July 3, 2023 and would pay an additional \$10,737 to Defendants on July 6, 2023. Thereafter, all remaining payments would be back on the payment schedule referenced in the Settlement Agreement, beginning August 1, 2023. This agreement was confirmed in emails between the parties. Representatives of the parties communicated regularly and Defendants orally agreed upon the schedule of the payments described in this footnote upon which Plaintiffs relied and upon which the parties performed. On July 3rd and July 6, 2023, Plaintiffs made the agreed-upon payments bringing all amounts due under the Settlement Agreement current immediately upon making the July payments.

14. Pursuant to the Settlement provisions and the renegotiated terms, Plaintiffs timely made all payments and continue to make payments to date. Both before and after the Settlement Agreement was renegotiated, Plaintiffs continue to timely make payments in accordance with the written and oral agreements made with Defendants who continue to accept such payments.
15. Plaintiffs performed or substantially performed all of the material duties that the Settlement Agreement and the subsequent agreements and amendments reached required except for those things for which Plaintiffs were excused from performing.²
16. Despite the parties' agreements on payments and Plaintiffs' performance pursuant to the agreements, Defendants initiated a lawsuit in California, seeking to enforce the Agreement.³
17. Defendants, being fully aware of the above referenced federal case, without notice, and without disclosing the Settlement Agreement, initiated a second state court action in California against Defendants, petitioning that court to enter a stipulated judgment, using the Virginia Amended Order. Again, without disclosing the Settlement Agreement.
18. Finding little success with their improper actions in California, Defendants initiated even more improper actions, attempting to side-step the Agreement and this Court by initiating Administrative actions in Virginia using the garnishment system. Defendants engaged garnishment attorneys and were well aware that Virginia's garnishment system is administrative with little to no judicial involvement.
19. Defendants acted in bad faith and against usual and prudent business practices by ignoring the terms of the written and oral contracts and initiating garnishment proceedings, writs of fieri facias and judgment liens with several banks including Towne Bank and PNC Bank, successfully seeking to sequester Plaintiffs' operational funds in excess of \$500,000, while dishonestly using this Court's judgment order to justify its unfair performance of its obligations under the settlement agreement.

² On or about September 5, 2023, Plaintiffs and William Welter on behalf of Defendants conferred and mutually agreed that, as of September 2023, the total remaining amounts due to Defendants, collectively, was \$386,138.44 and the remaining amount due to Strikepoint Consulting, a Virginia Liability Company, under the Settlement Agreement was \$49,652.70. On or about September 8, 2023, Plaintiffs wired payments to Defendants in excess of the amounts then-due pursuant to the Settlement Agreement. The parties agreed that those amounts paid by Plaintiffs in excess of the amounts then due under the Settlement Agreement would be credited to future monthly payments due under the Settlement Agreement.

³ See Case No. 3:24-cv-00196-RBM-VET, *Atlantic Wave Holdings, LLC, et. al. v. Cyberlux Corporation, et.al*, in the United States District Court Southern District of California.

20. Defendants violated the written and oral agreements and through their actions acted in bad faith against usual and prudent business practices, breaching the implied covenant of good faith and fair dealing and have expressed their intention to continue such violations.

COUNT I – TEMPORARY INJUNCTION

21. Plaintiffs adopt and incorporate by reference paragraphs 1-20 of its Temporary, Preliminary Injunction, as if set forth fully herein.
22. Plaintiffs have a substantial likelihood of success on the merits and will be irreparably harmed in a manner which cannot be adequately compensated by money damages if a temporary, preliminary injunction is not granted.
23. The irreparable harm to be suffered by the Plaintiffs if the injunction is not granted outweighs the harm that the Defendants would suffer if the injunction is granted.
24. The public interest will be served by granting the temporary, preliminary injunction.
25. Plaintiffs are therefore entitled to a preliminary injunction against Defendants prohibiting the continuation of their unlawful actions.

WHEREFORE, Plaintiffs request that this Court issue a temporary injunction awarding Plaintiffs the following relief:

Finding that Defendants Atlantic Wave Holdings, LLC and Secure Community, LLC, and their agents, servants, employees, directors, officers, attorneys and representatives, and all persons acting in concert or participating with them, are hereby enjoined and restrained during the pendency of this action from engaging in, committing, or performing, directly or indirectly, any and all of the following acts: Attempting to enforce the Amended Final Order and Judgment entered on June 28, 2023, in the Circuit Court of the City of Richmond, Case No. CL22-3882-4 by any means, including, but not limited to, garnishment, writ of execution, writ of fieri facias, writ of possession, judgment lien or judgment debtor exam, in any manner and in any state, including, but not limited to, the State of California, where Defendants have attempted to domesticate the Amended Final Order and Judgment.

Dated July 8, 2024

Respectfully Submitted,

**CYBERLUX CORPORATION LLC AND
MARK D. SCHMIDT**

By /s/ Jimmy F. Robinson, Jr.

Jimmy F. Robinson, Jr., Esquire

Virginia States Bar Number 43622

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Counsel for Plaintiffs

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