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 Defendants  
 ATLANTIC WAVE HOLDINGS, LLC  
 and STRIKEPOINT, LLC

10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

13 ATLANTIC WAVE HOLDINGS, LLC,  
 14 a Virginia limited liability company and  
 15 STRIKEPOINT CONSULTING, LLC, a  
 16 Virginia limited liability company,  
 Plaintiffs,  
 17 vs.  
 18 CYBERLUX CORPORATION, a  
 19 Nevada Corporation; MARK D.  
 20 SCHMIDT, an individual; and DOES 1  
 to 50, Inclusive,  
 Defendants.

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

**DECLARATION OF WILLIAM  
 WELTER IN SUPPORT OF  
 PLAINTIFFS ATLANTIC WAVE  
 HOLDINGS, LLC AND  
 STRIKEPOINT CONSULTING,  
 LLC’S UPDATE RE: MOTION TO  
 VACATE**

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**DECLARATION OF WILLIAM WELTER**

I, William Welter, declare as follows:

1. I am the Managing Director of Atlantic Wave Holdings, LLC, Secure Community, LLC, and Strikepoint, LLC (collectively, “Plaintiffs”) in the above-captioned matter. I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would competently testify thereto. This declaration is submitted in support of Plaintiffs’ supplemental briefing on Defendant Cyberlux Corporation's Motion to Vacate the domesticated judgment (Dkt. No. 9) and to provide updates on the litigation, disputes, and payments surrounding the Settlement Agreement.

2. Plaintiffs initiated a straightforward collection action in California to enforce the Virginia Judgment against Cyberlux’s wholly-owned subsidiary, Datron, Inc., located in Vista, California. This action was necessary due to Defendants' consistent breaches of the settlement agreement and failure to comply with their payment obligations.

3. The original action in Virginia resulted in the Settlement Agreement (Dkt. No. 24-1) and the Amended Final Order and Judgment (“Virginia Judgment”) (Dkt. No. 9-2 at p. 29) which form the basis of Plaintiffs' collection efforts.

4. After Plaintiffs garnished Defendants’ funds held in PNC and Towne Bank accounts, Defendants filed an emergency motion seeking access to the garnished funds. Defendants sought declarations regarding the validity and enforceability of the settlement agreement. Attached as **Exhibit A** is a true and correct copy of Defendants’ filing.

5. The court initially allowed Cyberlux to access up to \$317,000 for payroll purposes and \$230,000 to pay Plaintiffs. This initial relief was granted to address alleged urgent payroll needs and partial payment obligations. Attached hereto as **Exhibit B** is a true and correct copy of the Court’s May 31, 2024 Order.

1           6.       Bank records obtained in discovery show that the same day the Court  
2 issued the temporary order, Cyberlux requested a check for \$198,798.37 to pay its  
3 attorneys' fees.

4           7.       However, the same judge who signed the original order later found that  
5 Defendants' request for declaratory relief was improperly filed. In the June 7, 2024,  
6 Opinion and Order, the court dismissed Defendants' declaratory relief complaint and  
7 awarded Plaintiffs their attorneys' fees for defending against the improperly brought  
8 action. Attached hereto as **Exhibit C** is a true and correct copy of the Virginia Court's  
9 June 7, 2024 Order.

10          8.       Subsequently, on August 9, 2024, the court released \$183,798.34 from  
11 PNC Bank and \$4,862.86 from Towne Bank to Plaintiffs. **Exhibits D** and **E** are true  
12 and correct copies of the Orders releasing the remaining garnished funds to Plaintiffs.

13          9.       On July 8, 2024, Cyberlux filed a Declaratory Relief action and a  
14 Complaint for Temporary Preliminary Injunction in Virginia. Attached hereto as  
15 **Exhibit F** is a true and correct copy of Defendants' July 8, 2024 filings.

16          10.       Despite these filings claiming the need for emergency relief, Defendants  
17 have done nothing to schedule a hearing or submit further briefing regarding their  
18 emergency.

19          11.       Additionally, Defendants have ignored several letters from Plaintiffs'  
20 counsel regarding deposition scheduling, demonstrating their refusal to engage in the  
21 legal process. For instance, letters sent by Plaintiffs' counsel on August 6, 2024,  
22 August 9, 2024, and August 23, 2024, went unanswered. Attached hereto as **Exhibits**  
23 **G, H,** and **I** are true and correct copies of the letters Plaintiffs' counsel sent to  
24 Defendants' counsel that remain unanswered.

25          12.       Defendants have also failed to respond to discovery requests and did not  
26 appear for a deposition scheduled for August 27, 2024, resulting in a non-appearance.  
27 Attached hereto as **Exhibit J** is a true and correct copy of the non-appearance  
28 documents related to Defendants' failure to produce a witness on August 27, 2024.

1           13. In Texas, the Virginia judgment was domesticated, and garnishment  
2 proceedings were initiated to obtain assets related to Cyberlux's subsidiary, Catalyst  
3 Machine Works. However, Defendants filed a motion to vacate the domesticated  
4 judgment, which automatically stayed the proceedings. Depositions of Cyberlux's  
5 PMK and other personnel were scheduled for August 27, 2024, but did not occur due  
6 to the motion to vacate.

7           14. When attempting to serve the PMK subpoena, the process server noted  
8 that there were no vehicles parked at the address, and there was no answer at the door.  
9 Employees in the leasing office confirmed that Catalyst / Cyberlux employees Neil  
10 Whiteley and Phillip Tucker work at this address but are not currently in possession  
11 of their office as they are negotiating the terms of their lease.

12           15. Defendants do not deny making late payments under the settlement  
13 agreement. The agreement explicitly states that Defendants shall transmit thirty-six  
14 (36) non-defeasible monthly payments of \$21,459.00 payable on the first day of each  
15 month, beginning in July 2023. Time being of the essence, these monthly payments  
16 were to continue on the first of each month until the total Settlement Consideration  
17 due to Plaintiffs was paid. Defendants also agreed to accelerate and pay the full  
18 outstanding balance of all sums owed under the Consent Judgment within twenty-one  
19 (21) days of receiving payment for any contract to purchase drone aircraft (Dkt No.  
20 24-1 at pp. 5-6).

21           16. The settlement agreement defines a late payment as any payment not  
22 received by the first of each month, and states that any breach not cured within three  
23 (3) calendar days will be considered a breach of the agreement (Dkt No. 24-1 at p.  
24 10). Specifically, Section 21 of the Settlement Agreement (Dkt. No. 24-1 at p. 11)  
25 states: "For the avoidance of doubt, any payment not received by the first of each  
26 month shall be deemed late, any information requested shall be due in ten (10)  
27 calendar days and, unless cured within 3 calendar days, will be considered a breach  
28 of this Agreement."

1           17. Despite these clear terms, Defendants have made several late payments  
2 and ceased payments due in June, July, and August 2024. This failure to make timely  
3 payments constitutes a breach of the settlement agreement.

4           18. Defendants have claimed that Plaintiffs agreed to amend the terms of the  
5 settlement agreement or payment terms. This claim is categorically false. Plaintiffs  
6 never agreed to any modifications or amendments to the settlement agreement. The  
7 terms of the agreement were clear and unambiguous, and Plaintiffs have consistently  
8 sought compliance with these terms.

9           19. Plaintiffs' requests for information and payments were made in  
10 accordance with the original terms of the settlement agreement. At no point did  
11 Plaintiffs agree to alter or amend the payment schedule or any other terms of the  
12 agreement. Defendants' assertions are unsupported and appear to be an attempt to  
13 justify their continued non-compliance and breaches of the settlement agreement.

14           20. The settlement agreement explicitly states that any modification or  
15 amendment must be in writing and signed by both parties. No such written  
16 amendment exists. Plaintiffs have fulfilled their obligations under the agreement and  
17 have made multiple attempts to secure compliance from Defendants, who have  
18 continually failed to meet their contractual responsibilities.

19           21. On July 31, 2023, I requested information from Defendants regarding  
20 the number of drones included in Cyberlux's contract with the Department of Defense  
21 (Dkt. No. 9-3 at p. 22). Cyberlux never responded to this request.

22           22. On September 8, 2023, I again asked whether an extra payment made by  
23 Defendants was "related to the \$5k per drone sold" provision in the Settlement  
24 Agreement (Dkt. No. 9-3 at p. 38). Cyberlux never responded to this request.

25           23. I renewed my request on October 2, 2023, emphasizing the significance  
26 of the information by stating, "Also, the agreement calls for accelerated payments  
27 (\$5,000 per drone sold). Can you please let us know how many drones were sold?  
28

1 Would be nice to conclude these matters. Thanks" (Dkt. No. 9-3 at p. 55). Again,  
2 Cyberlux did not respond.

3 24. On October 9, 2023, I made another request for basic information: "Can  
4 you advise how many drones were sold?" (Dkt. No. 9-3 at p. 62). Once more,  
5 Cyberlux ignored this request for information they agreed to promptly provide under  
6 the settlement agreement.

7 25. On November 2, 2023, I again asked for information related to drone  
8 sales: "Also, the initial drone transaction was mid-September. If the transaction has  
9 proceeded and if they pay the \$5k per drone, that would conclude matters (beside the  
10 stock issues). As mentioned to you before, our goal has been to make a clean cut  
11 between the two companies. The proposed / new SA appears to prolong that by  
12 another 3 years. Lastly, any documents relevant to the drone transaction will be  
13 helpful. I've held back on requests for same thus far, however, I think reviewing the  
14 documents on the drone transaction will now be very helpful" (Dkt. No. 9-3 at p. 75).  
15 Cyberlux ignored this request as well.

16 26. Finally, on December 5, 2023, I once again requested information about  
17 drone sales: "We are still concerned about the Drone sales and the necessity to fulfill  
18 all the terms of and under the settlement agreement (\$5k per Drone) upon the sale. As  
19 mentioned we have been dealing with this matter since fall 2021 and are ready to  
20 conclude. To that end, I ask again can you please send documentation relevant to the  
21 Drone sales" (Dkt. No. 9-3 at p. 80). Cyberlux also ignored this request.

22 27. The settlement agreement defines requested information as being late if  
23 not received within ten (10) calendar days and states that any breach not cured within  
24 three (3) calendar days will be considered a breach of the agreement (Dkt. No. 24-1  
25 at p. 11, § 21).

26 28. Defendants' last regular payment was made in May 2024. Since then,  
27 Defendants have not made any further payments. This cessation of payments, coupled  
28

1 with Defendants' refusal to provide any information on the number of drones sold,  
2 further complicates the accurate determination of the total amount owed.

3 29. Despite receiving \$38 million under a US Government contract to supply  
4 drones to Ukraine, Defendants have consistently failed to provide the required  
5 information and payments as stipulated in the settlement agreement.

6 30. Following the garnishment of Defendants' funds held in PNC and Towne  
7 Bank accounts in Virginia and subsequent court orders, Plaintiffs applied the  
8 remaining garnished funds to reduce the total amount Defendants owe. Specifically,  
9 \$183,798.34 from PNC Bank and \$4,862.86 from Towne Bank were released to  
10 Plaintiffs on August 9, 2024. These amounts were applied to partially satisfy  
11 Defendants' outstanding obligations under the settlement agreement.

12 31. As of August 2024, the outstanding amounts due under the Settlement  
13 Agreement are as follows:

14 ○ Atlantic Wave Holdings, LLC and Secure Community, LLC (AWH/SC):  
15 Principal: \$430,295.59, Interest Due: \$95,000.62, Total Owed: \$525,296.21

16 ○ StrikePoint, LLC: Principal: \$372,669.40, Interest Due: \$79,916.69,  
17 Total Owed: \$452,586.09

18 ○ Grand Total Owed: \$977,882.31

19 32. Despite these received payments, Defendants have failed to make timely  
20 and complete payments as required under the Settlement Agreement. The cessation  
21 of payments since May 2024, coupled with Defendants' refusal to provide necessary  
22 information on drone sales, complicates the accurate determination of the total  
23 amount owed. This persistent non-compliance underscores the need for immediate  
24 court intervention to ensure that Plaintiffs can enforce their rightful claims under the  
25 settlement agreement and secure the assets needed to satisfy the judgment.

26 33. There is a remaining dispute over the Caveat Emptor status of Cyberlux's  
27 stock. According to the settlement agreement, Defendants promised that the Caveat  
28 Emptor status would be removed from their stock on or before December 31, 2023.

1 As of the date of this filing, the Caveat Emptor status has not been removed. On  
2 September 1, 2024, I accessed OTCMarkets.com and searched for CYBL stock.  
3 Attached hereto as **Exhibit K** is a true and correct copy of the information I obtained  
4 from OTCMarkets.com regarding CYBL stock. While this dispute remains  
5 unresolved, it is not a subject of Plaintiffs' collection action, which deals solely with  
6 the enforcement of the amended final judgment and order.

7 34. I reviewed Defendants' bank records obtained in discovery. These  
8 records confirmed that Defendants received a payment of \$38.7 million from a US  
9 Government contract to supply drones to Ukraine on September 8, 2023. Due to  
10 extensive third-party financial information contained in the bank records, Plaintiffs  
11 are not filing the bank records publicly, but Plaintiffs will submit these records for the  
12 Court to review in camera upon the Court's request.

13 35. Despite receiving a substantial \$38 million payment from a US  
14 Government contract in September 2023, Defendants misused these funds for  
15 personal expenses and transfers instead of fulfilling their obligations under the  
16 settlement agreement.

17 36. Bank records obtained in discovery reveal that Defendants transferred  
18 significant sums of money to personal accounts, friends, and family members,  
19 beginning on the same day the \$38 million was transferred into Cyberlux's account.  
20 Instead of making the required payments to Plaintiffs, Defendant Mark D. Schmidt  
21 and his associates diverted these funds for personal use. Specific transfers include:

- 22 • **September 8, 2023:** \$250,000 phone transfer authorized by Mark  
23 Schmidt
- 24 • **September 11, 2023:** \$213,000 wire to Fletcher Jones Motorcars for a  
25 vehicle purchase
- 26 • **September 14, 2023:** \$187,500 phone transfer authorized by Mark  
27 Schmidt
- 28 • **September 19, 2023:** \$55,000 transfer to Schwab account

- 1 • **September 20, 2023:** \$600,000 phone transfer authorized by Mark
- 2 Schmidt
- 3 • **September 26, 2023:** \$692,689.64 member debit memo
- 4 • **October 16, 2023:** \$850,000 transfer to Schmidt's Edward Jones account
- 5 • **October 16, 2023:** \$994,460 transfer to G2G Global LTD
- 6 • **October 23, 2023:** \$6,000 transfer to Schwab account
- 7 • **November 7, 2023:** \$25,000 transfer to Schmidt
- 8 • **January 4, 2024:** \$108,555.42 transfer to Schmidt
- 9 • **January 29, 2024:** \$25,000 transfer to Schmidt
- 10 • **February 7, 2024:** \$20,000 transfer to Schmidt
- 11 • **March 6, 2024:** \$290,000 transfer to Schmidt
- 12 • **April 11, 2024:** \$50,000 transfer to Schmidt
- 13 • **April 11, 2024:** \$25,000 transfer to Holly Schmidt
- 14 • **April 11, 2024:** \$25,000 transfer to Schmidt

15 37. The total amount of these transfers is \$4,417,205.06. These unauthorized  
16 transfers are a clear violation of the settlement agreement, which required Defendants  
17 to make timely payments to Plaintiffs and provided for accelerated payments upon  
18 receipt of substantial funds from drone contracts (Dkt. No. 24-1 at pp. 5-6, §§ 4.a-  
19 4.c).

20 38. Additionally, on August 12, 2024, Brett Rosen, on behalf of RB Capital  
21 Partners, Inc., filed a case against Cyberlux Corporation for breach of contract and  
22 declaratory relief in the United States District Court for the Southern District of  
23 California. This complaint alleges that Cyberlux has defaulted on several promissory  
24 notes amounting to \$5,686,960. Attached hereto as **Exhibit L** is a true and correct  
25 copy of the complaint filed by RB Capital Partners, Inc.

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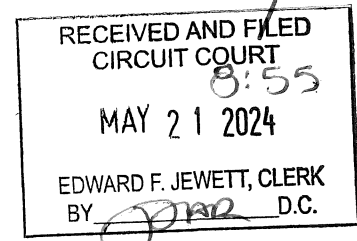
1 I declare under penalty of perjury under the laws of California that the  
2 foregoing is true and correct.

3 Executed this 3rd day of September, 2024, in Tappahannock, VA.  
4

5 */s/ William Welter*

6 WILLIAM WELTER  
7 Managing Director of Atlantic Wave  
8 Holdings, LLC, Secure Community,  
9 LLC, and Strikepoint, LLC  
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# **Exhibit A**



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

ATLANTIC WAVE HOLDINGS, LLC  
AND SECURE COMMUNITY, LLC

Plaintiffs

v.

Case No. CL22-3882-00

CYBERLUX CORPORATION and  
MARK D. SCHMIDT, individually

Defendants

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**Memorandum in Support of Defendants’  
Emergency Motion for Declaratory Relief**

Defendants Cyberlux Corporation and Mark D. Schmidt, (hereinafter, collectively, “Defendants”), entered into a Settlement Agreement (hereinafter the “Agreement”) with Plaintiffs Atlantic Wave Holdings, LLC and Secure Community, LLC (hereinafter “Plaintiffs”). In the face of discovery sanctions, Defendants entered into a Settlement Agreement with Plaintiffs on June 13, 2023 that called for a total amount of \$1,572,500 to be paid in scheduled monthly installments.<sup>1</sup> Section 21 of the Settlement Agreement proscribes the remedies available to Plaintiffs should there be a breach of the Agreement.

**Defendants have not breached the Agreement and continue to timely make the agreed upon payments.**<sup>2</sup> Knowing this, instead of following the terms of the

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<sup>1</sup> See *Settlement Agreement* attached hereto as Exhibit 1. The Settlement Agreement incorporated the Court’s Order. The Order was ultimately Amended and entered by this Court on June 30, 2023. See *Attached Amended Final Order and Judgment* attached hereto as Exhibit 2. The Final Amended Order was entered pursuant to the Settlement Agreement and operates in collaboration with that Agreement **not** alone.

<sup>2</sup> If there had been a breach of the Agreement, Plaintiffs would have had to Petition this court for relief. They did not because they are fully aware that there has not been a breach. Instead they acted in contrary to the Rules of Ethics of the Commonwealth – they purposefully ignored the Agreement and this Court and in bad faith initiated administrative processes erroneously representing to third party banks that this Court’s Amended Final Order gave

Settlement Agreement, Plaintiffs attempt to side-step Section 21 and improperly initiated garnishments, writ of fieri facias, and notices of judgment lien processes, improperly relying on this Court's Amended Final Order and Judgment. Defendants therefore ask this Court to enter an order enjoining Plaintiffs from violating the Agreement.

### **I. Relevant Factual Background**

This Court is well aware of most of the relevant factual background of this matter so this brief overview provides this Court with an update of Plaintiffs' nefarious actions.

1. Plaintiffs sued Defendants in Virginia State Circuit Court in 2023 for alleged breaches of 2021 agreements entered between the parties.
2. Plaintiffs obtained discovery sanctions against Defendants, including liability sanctions. The Virginia court thereafter ordered a trial limited to damages.
3. In the face of these sanctions, Defendants entered into a Settlement Agreement with Plaintiffs that called for a total amount of \$1,572,500 to be paid in scheduled monthly installments.
4. At the request of Plaintiffs, Defendants agreed to a Stipulated Judgment memorializing the total amount due; the Judgment Order was incorporated in the Settlement Agreement which contained the payment schedule.
5. This Stipulated Judgment was not on the merits nor did it recite any finding of legal liability by Defendants and resulted in a dismissal of Plaintiffs' Complaint.
6. Soon after executing the Confidential Settlement Agreement, the parties renegotiated the settlement terms, including payment deadlines.
7. Pursuant to the Settlement provisions, Defendants timely made all payments and continue to make payments to date. Both before and after the terms of the Settlement Agreement was renegotiated, Defendants made and continue to make timely payments and Plaintiffs continue to accept such payments.<sup>3</sup>
8. Despite the parties' agreements on payments and Defendants' performance pursuant to the agreements, Plaintiffs initiated a lawsuit in California, seeking to enforce the Agreement.<sup>4</sup>

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them such authority. This behavior is unbecoming of corporations operating in the Commonwealth of Virginia and should not be countenance by this Court.

<sup>3</sup> See Exhibit 3 - Affidavit of Mark Schmidt

<sup>4</sup> 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.

9. Plaintiffs, 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** <sup>5</sup>against Defendants, petitioning that court to enter a stipulated judgment, using the Virginia Amended Final Order. **Again, without disclosing the Settlement Agreement.**
10. Both California actions are in violation of the Settlement Agreement's jurisdictional directive which clearly states that "venue for any future disputes hereunder, including any carved-out claims reserved in Section 2(c) above, shall lie in either the Circuitry Court of the City of Richmond, Virginia, or the United States District Court for the Eastern District of Virginia in the Richmond Division." The Agreement goes on to state that "Defendants hereby agree and submit to the Jurisdiction of the foregoing Courts, including personal jurisdiction, for all such future action."<sup>6</sup>
11. Finding little success with their improper actions in California, Plaintiffs initiated even more improper administrative actions in Virginia. Attempting to side-step the Agreement and this Court, Plaintiff initiated administrative actions in Virginia using the garnishment system. Plaintiffs engaged garnishment attorneys and were well aware that Virginia's garnishment system is completely administrative with no Court involvement.<sup>7</sup>
12. Plaintiffs violated the Agreement and through its actions have expressed their intention to continue such violations. Relief from this Court is necessary.

## II. Analysis

### a. Equitable Relief is Available

"A court of equity...has the power to issue an injunction to prevent the future commission of a tort or to restrain an on-going wrong." William Hamilton Bryson, Bryson on Virginia Civil Procedure 12-9 (2010). In order to receive equitable relief, the petitioner must first demonstrate that there is not an adequate remedy at law. *See Ewing v. Dutrow*, 128 Va. 416, 104 S.E. 791 (1920).

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<sup>5</sup> *See Atlantic Wave Holdings, LLC, et al. v. Cyberlux Corporation*, USDC Southern District of California Case No. 3:24-cv-00482-RMB-VET.

<sup>6</sup> *See Exhibit 1 Section 22*

<sup>7</sup> *See supra note 2.*

In the present matter, legal relief is inadequate to remedy the ongoing and immediate harm being visited upon Defendants. The only rational explanation for why Plaintiffs are acting in the manner they are is a desire to injure the Defendants. That desire, too, is inexplicable. Plaintiffs own shares in Cyberlux. Schmidt was the former business partner of Plaintiffs. Plaintiffs must realize that their own actions are devaluing their shares in Cyberlux and that they are harming their former partner. Regardless of Plaintiffs' motives or goals, Cyberlux is a viable business with improving prospects. Moreover, the violations to which Defendants have been subjected are ongoing and risk imminent and irreparable harm. If Plaintiffs are permitted to persist in their course of conduct, Defendants' injuries, and in particular the damage to their business and ability to operate will be permanent and irreparable to such an extent that an award of damages or the like will not make them whole.

b. Standard for Preliminary Injunctions

While the Supreme Court of Virginia has not yet decided a case that conclusively states the standards to be applied in granting or denying a preliminary injunction, Virginia circuit courts have traditionally utilized the standards used by the federal courts. Pursuant to these standards, to obtain a preliminary injunction, a petitioner must “establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). The Fourth Circuit adopted this test in 2009, concluding that the “balance-of-hardship test” in *Blackwelder Furniture Co. of Statesville v. Seilig Manufacturing Co.*, 550 F.2d 189 (4th Cir. 1977), “stands in fatal tension” with *Winter*. *Real Truth About Obama, Inc. v. Fed. Election Comm’n*, 575 F.3d 342, 346 (4th Cir. 2009).

### **III. Defendants' Motion for Preliminary Injunction Should Be Granted**

Under the *Winter* test, Defendant's petition for a preliminary injunction should be granted. First, Defendants are likely to succeed on the merits given the clear and unambiguous language contained in the Agreement, and Plaintiffs' conduct, which directly violates those provisions and walks if not crosses the line of ethics. Second, Defendants are likely to suffer irreparable harm in the absence of immediate preliminary injunctive relief and a return to the status quo. If Defendants accounts are allowed to be garnished and they are barred access to payroll funds, they will be unable to adequately operate and unable to meet their contractual obligations to their clients, thereby damaging their position in the marketplace and ability to meet their financial obligations under the Agreement.<sup>8</sup> Also, if Plaintiffs persists in its behavior, Defendants will be irreparably harmed. Injunctive relief ordering Plaintiffs to immediately cease and desist any such violations of the Agreement, releasing all improperly ceased funds gained pursuant to the misuse of a Notice of Judgment Lien and Writ of Fieri Facias, will strongly assist in remediating harm to Defendants.

Regarding the balance of equities, it is without question that they favor Defendants. Granting a preliminary injunction mandating that Plaintiffs comply with their contractual obligations would cause no harm to Plaintiffs whatsoever; indeed, it asks them to do only that which they are obligated to do. On the other hand, not granting a

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<sup>8</sup> Irreparably damaging Defendants is certainly one of Plaintiffs' objectives. The plan is to improperly sequester Defendants' funds such that they are unable to operate and timely make the scheduled payments under the Agreement, and then claim that Defendants are in breach of the Agreement in order to accelerate payments. To date, despite Plaintiffs' improper actions, Defendants continue to make all scheduled payments and are in compliance with the Agreement. Amazingly, Plaintiffs' argument to the California Court is **not** that Defendants have or are in breach of the Agreement, but that Plaintiffs' "think" Cyberlux is going to have financial trouble, so Plaintiffs are trying to accelerate the Agreement to ensure that they receive all outstanding payments. Such reckless behavior based solely on speculation was met with great disdain in California and cannot be allowed to persist in Virginia.

preliminary injunction would visit immense harm on Defendants. This would be wholly unacceptable.

Finally, an injunction is in the public interest. Indeed, the public interest is best served when contracts (settlement agreements) are upheld and strictly complied with. Conversely, the public interest is greatly harmed by permitting individuals and businesses to flout their contractual obligations and disregard those they no longer wish to fulfill. Such would be unacceptable in a society of laws.

#### **IV. Conclusion**

For the foregoing reasons, Defendants request that this Court grant Defendants' Emergency Motion for Declaratory Relief and enter a preliminary injunction order that requires Plaintiffs to (1) dismiss any and all garnishments, writs of fieri facias, and notice of judgment liens improperly issued by using this Court's Amended Final Order entered pursuant to a Settlement Agreement that Plaintiffs have purposefully failed to disclose to the banks receiving the garnishment documents; (2) refrain from issuing any new garnishments, writs of fieri facias and notice of judgment liens; (3) reimburse Defendants for its attorneys' fees and costs associated with the unauthorized litigation initiated against Defendants including all attorneys' fees necessitated by the bringing of this motion, court costs, and any other and further relief as the Court deems appropriate.

Dated May 21, 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](mailto:jimmy.robinson@ogletreedeakins.com)

*Counsel for Defendants*

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901 East Byrd Street, Suite 1300

Richmond, VA 23219

Tel.: (804) 663-2336

Fax: (855) 843-1809

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on May 21, 2024, a copy of the foregoing document was served via electronic means upon the following

Robert Keith Caudle, III

Caudle and Caudle, P.C.

1910 Byrd Avenue, Suite 118

Richmond, VA 23230

p: 804-358-4961

f: 804-353-1036

[robcaudle@caudleandcaudle.com](mailto:robcaudle@caudleandcaudle.com)

*Counsel for Plaintiffs*

**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](mailto:jimmy.robinson@ogletreedeakins.com)

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## EXHIBIT 1

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “**Agreement**”) is made as of this 15th day of June 2023, by and between ATLANTIC WAVE HOLDINGS, LLC, SECURE COMMUNITY, LLC (collectively, “**Plaintiffs**”), CYBERLUX CORPORATION AND MARK D. SCHMIDT (collectively, “**Defendants**”), and STRIKEPOINT CONSULTING, LLC (“Strikepoint”) a separate party with some common interest holders to the Plaintiffs. Plaintiffs, Defendants, and Strikepoint shall collectively be referred to as the “**Parties to this Agreement**” and Plaintiffs and Defendants shall collectively be referred to as “**Parties to the Litigation.**”

**RECITALS**

WHEREAS, Plaintiffs and Defendants entered into an agreement on October 8, 2021, which compensated Plaintiffs for the reacquisition by Defendant Cyberlux of certain intellectual property in exchange for certain installment payments of fixed liquidated sums by Defendants to Plaintiffs and “Freely Trading” stock, which had fallen into arrears (“the IP Agreement”);

WHEREAS, on September 24, 2021, an agreement was executed between an entity described as “Strikepoints Consulting, LLC” and Defendant Cyberlux Corporation for certain consulting services (the “Strikepoint Consulting Agreement”), which called for, *inter alia*, installment payments of fixed liquidated sums owed by Defendants to Plaintiff, which also fell into arrears;

WHEREAS, Plaintiffs filed its Complaint for breach of said agreements in the Circuit Court of the City of Richmond, Virginia (the “**Court**”), against Defendants in the civil action titled, *Atlantic Wave Holdings, LLC and Secure Community, LLC v. Cyberlux Corporation and Mark D. Schmidt* (Case No. CL22-3882) (the “**Litigation**”), which remains pending;

WHEREAS, the Parties to this Agreement desire to resolve and settle any and all existing disputes between the Plaintiffs and Defendants and between Strikepoint and Defendants to eliminate uncertainty and facilitate final resolution of their respective relationships between the parties; and

WHEREAS, the Parties to this Agreement have been told by Cyberlux for more than six (6) months that Cyberlux anticipates a significant cash inflow connected with the sales of certain drone products.

NOW, THEREFORE, in consideration of the promises, and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, and intending to be legally bound, the Parties to this Agreement agree as follows:

**AGREEMENT**

**1. Recitals.** The recitals set forth above are incorporated herein.

**2. Settlement Consideration and Consent to Final Judgment.** To avoid the substantial cost and uncertainty in prosecuting the Litigation, Defendants agree to the join and simultaneously endorse for immediate entry a consent order awarding a FINAL JUDGEMENT to Plaintiffs in the form attached to this Agreement as Exhibit A (the “Consent Judgment”), which will jointly and severally bind Defendants for payment of the following liquidated sums in resolution of certain discreet claims at issue in the Litigation, as well as resolving and terminating any potential dispute that Strikepoint may have against Defendants arising out of the Strikepoint Consulting Agreement:

**a. IP Agreement:** ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000) minus payments made of TWO HUNDRED SEVENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$277,500) for a total due of NINE HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$922,500), as the balance due and owing for installment payments under the IP Agreement between the parties, as that term is defined in the Complaint initiating the Litigation; and

**b. Balance of Consulting Agreement:** The parties agree to terminate and resolve any disputes arising out of the Strikepoint Consulting Agreement for consideration of: SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000), as the balance due and owing for installment payments under the Consulting Agreement between the parties.

**c. Total Value of the Consent Judgment:** The total liquidated sum that shall be due and owing to Plaintiffs under the parties' Consent Judgment shall be **ONE MILLION FIVE HUNDRED SEVENTY-TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$1,572,500), plus Plaintiffs' costs as defined in 4(d)** (the "Settlement Consideration"), which is the sum of the outstanding installment payments owing in the IP Agreement, the Strikepoint Consulting Agreement, and Plaintiffs' costs as appropriately allocated between Plaintiffs and Strikepoint below.

**d. Effect of Consent Judgment:** The Consent Judgment shall be promptly entered jointly and severally against Defendants and in favor of Plaintiffs in exchange for payment of the full Settlement Consideration, which shall resolve the above styled matter. The parties agree that the Consent Judgment shall not be dischargeable, including by appeal or bankruptcy, in any manner other than by agreement of the parties, to the fullest extent permissible under the law.

**e. Stock.** Notwithstanding the foregoing, the parties agree that entry of the Consent Judgment awarding FINAL judgment in favor of Plaintiffs and against Defendants shall resolve the pending Litigation. Notwithstanding entry of a Final Order, the parties hereby agree that if the Cyberlux stock is not brought to current "Pink Status" and the Caveat Emptor legend and restriction is not remedied and removed on or before December 31, 2023, Plaintiffs shall have the option, at their

sole discretion, to re-file a new complaint related to the breach by Defendants to create “Negotiable Shares”, as that breach is alleged and defined in the Complaint, without Defendants asserting a defense of res judicata or collateral estoppel. Plaintiffs recognize that matters can be delayed at no fault of a party and to that end shall consider an extension of the aforementioned deadline (December 31, 2023) upon the showing of credible evidence to do so, for an extension period to be decided at the reasonable discretion of Plaintiffs.

**3. Compliance with Court Orders dated December 13, 2022 & April 7, 2023.**

Within twenty-one (21) days of execution of this Agreement, Defendants shall pay the sanctions of \$3,895.00 and \$6,842.50, as provided by the Court’s Orders in the Litigation.

**4. How the Settlement Consideration Shall be Paid.** The Settlement Consideration shall be paid by Defendant to Plaintiff as follows:

**a. First Settlement Payment:** Within thirty (30) days after the simultaneous execution of this Agreement, and entry of the Consent Judgment, and the receipt by Cyberlux of its first installment payment for the anticipated sale of drones or other revenue whichever occurs last, but in no event more than forty-five (45) days from the execution of this Agreement, Defendants shall transmit to Plaintiffs, by wire transmission, the non-defeasible sum of One Hundred Fifty Thousand Dollars (\$150,000) (the “First Settlement Payment”). The delivery of the First Settlement Payment shall require the actual receipt of the Settlement Payment by Plaintiffs as set forth herein. Time being of the essence.

**b. Monthly Installments Thereafter to Plaintiffs:** Defendants shall transmit to Plaintiffs, by wire transmission, thirty-Six (36) non-defeasible monthly payments of TWENTY-ONE THOUSAND FOUR HUNDRED AND FIFTY-NINE DOLLARS (\$21,459.00) payable on the first day of each month, beginning

in July 2023. Monthly payments shall continue on the first of each month, time being of the essence, until the total Settlement Consideration due to Plaintiffs is paid. Defendants agree to accelerate and pay the full outstanding balance of all sums owed under the Consent Judgment up to a total of FIVE THOUSAND DOLLARS (\$5,000) per drone sold within twenty-one (21) days of Defendants, or any parent's, subsidiary's, affiliate's, or assign's first receipt of payment for any contract to purchase drone aircraft.

**c. Monthly Installments Thereafter to Strikepoint:** Defendants shall transmit to Strikepoint, by wire transmission, thirty-Six non-defeasible monthly payments of EIGHTEEN THOUSAND FIFTY-FIVE DOLLARS AND FIFTY-SIX CENTS (\$18,055.56) payable on the first day of each month, beginning in July of 2023. Monthly payments shall continue on the first of each month, time being of the essence, until the total Settlement Consideration due to Strikepoint is paid. Defendants agree to accelerate and pay the full outstanding balance of all sums owed under the Consent Judgment up to a total of FIVE THOUSAND DOLLARS (\$5,000) per drone sold within twenty-one (21) days of Defendants, or any parent's, subsidiary's, affiliate's, or assign's first receipt of payment for any contract to purchase drone aircraft.

**d. Costs, including Legal Fees:** In addition to the sums above, Defendants agree to pay all Plaintiffs' costs, including but not limited to, attorney's fees and expert witness fees, accrued in and with this Litigation within 60 (sixty) days of the full execution of this Agreement or upon terms agreed to by the parties. Subject to the following CAP. Plaintiffs agree to CAP costs and attorney's fees, for cost and attorney's fees relevant the matters dealt with in this settlement agreement, at 12% of the value of the total settlement or ONE HUNDRED EIGHTY-EIGHT

THOUSAND SEVEN HUNDRED DOLLARS (\$188,700). The CAP does not apply to restrict or limit Plaintiffs ability to pursue costs and attorney's fees should Defendants breach this Agreement. This obligation shall be added to the total balance due specified in section 2(b) above and paid to Strikepoint.

**e. Manner of Payment:** All payments shall be wired to Plaintiffs and to Strikepoint. Information and Instructions for completing the wire transfer shall be provided to Defendants' Counsel upon execution of this agreement. Plaintiff may change its payment instructions from time to time by providing written notice.

**f. Effect of Full Payment:** Upon payment of all sums due and owing herein, the Judgment entered herein shall be marked "Satisfied."

**g. No Other Beneficiary:** The payment of funds herein shall not operate to release any other party, other than the Parties to this Agreement, as set forth below. Nor shall the dismissal of any claim herein inure to the benefit of any party who is not a Party to this Agreement.

**5. Notice of Satisfaction.** Within ten (10) business days of Plaintiff receiving the complete Settlement Consideration and satisfactions of all terms herein, Plaintiff shall file a Notice of Satisfaction, pursuant to Va. Code Ann. § 16.1-94.01.

**6. Mutual Release of All Claims.** Immediately upon endorsement of this Agreement, except for the obligations expressly set forth herein and any claims or actions for breach or enforcement of this Agreement, Defendants Cyberlux Corporation and Mark D. Schmidt, individually, hereby release any and all causes of action, claims, counterclaims, or demands, present or future, known or unknown, asserted or unasserted, against Plaintiffs or any of Plaintiffs' members, officers, agents, counsel, employees, and affiliates arising or accruing from the beginning of time and up to and including the date of this Agreement, including all claims based upon or in any way relating to the IP Agreement, the Strikepoint Consulting Agreement, Plaintiffs'

ownership of stock in Cyberlux Corporation, Plaintiff's prosecution of the Litigation, or the negotiation and entry into this Agreement. Upon receipt of the First Settlement Payment, Plaintiff Secure Community, LLC, Plaintiff Atlantic Wave Holdings, LLC, and Strikepoint Consulting, LLC, release any and all known or unknown causes of action, claims, counterclaims, or demands, present or future, asserted or unasserted, against Defendants or any of Defendant Cyberlux's members, officers, agents, counsel, employees, and affiliates arising or accruing from the beginning of time and up to and including the date of this Agreement, including all claims based upon or in any way relating to the IP Agreement, the Strikepoint Consulting Agreement, Plaintiffs' prosecution of the Litigation, or the negotiation and entry into this Agreement.

**7. Security Interest and Lien Interest.** Defendants agree and grant to Plaintiff a full security interest and lien interest in all of Defendants' assets, including but not limited to IP, subsidiaries, contractual rights, accounts receivable, drone sales, etc., which may, in Plaintiff's sole discretion, be memorialized through the filing of UCC-1 forms and Liens.

**8. Updates and Continued Cooperation:** Defendants, upon demand of Plaintiffs, shall keep Plaintiffs fully updated as to any and all progress on contract negotiations and provide documentation about payments received for the sale of drones, including providing copies of relevant documents requested by Plaintiffs, subject to the confidentiality provisions set forth in Paragraph 12 below, and to the extent such documents or information are not classified or restricted. Defendant Cyberlux shall also in good faith provide any assistance that it can reasonably provide and required by Plaintiffs in their effort to bring their CYBL stock shares into compliance so that the shares will be accepted by a reputable brokerage firm in order to permit the trading of such shares on the OTC Market .

**9. Compliance:** Defendants represent to Plaintiff Secure Community, LLC that Defendants have used reasonable efforts to comply with all State, Federal and OTC Markets rules and regulations (subject to the fact that Cyberlux shares are currently subject to the "Caveat

Emptor” restriction) and will continue to use any and all reasonable efforts to maintain compliance at all times.

**10. Financial Statements:** Defendants hereby represent that any Financial Statements published or produced hereunder or publicly filed which Plaintiff has relied upon in entering into this Agreement, have been prepared in good faith and in accordance with OTC standards and are materially true and accurate.

**11. OTC Markets:** Defendants hereby represent that Defendants are using any and all reasonable efforts to resolve all issues with OTC Markets that is causing the OTC Markets to issue its caveat emptor restriction and will continue to use any and all reasonable efforts to have the Caveat Emptor restriction currently imposed by OTC Markets removed so that the stock will be returned to “Pink Current” as soon as reasonably possible.

**12. Stockholders’ Rights:** The parties agree that this agreement shall not affect Plaintiff’s rights as stockholders in any manner going forward.

**13. Confidentiality of Settlement Terms and Discovery Information.** The terms and circumstances of this Agreement, and all documents and information disclosed in the Litigation, are completely confidential between the Parties and shall not be disclosed to anybody else. Any disclosure or violation shall be deemed a breach of this Agreement. If a Party discloses confidential information in material violation of this paragraph, then, following written notice to such Party summarizing such violation and such Party’s failure to cure such material violation within fourteen (14) days of receiving such notice, then such Party may be deemed to have breached this Agreement. If a breach is to occur, notwithstanding the foregoing, Plaintiffs shall be entitled to use any information received in the Litigation if necessary to collect sums owing under this Agreement and/or to defend against any claims of breach, and Defendants shall be entitled to use such information to defend against any claims of breach, though reasonable efforts will be made to keep such information private.

**14. Non-Disparagement.** The Parties to this Agreement further agree that, in order to facilitate the transactions and obligations set forth herein, during the period from the date of this Agreement through December 31, 2023, no Party shall communicate, publish, or caused to be published any comments, statements, or information that could reasonably be expected to adversely affect the business interests or reputation of any other Party. If it is alleged a party materially disparaged the other party in violation of this paragraph, then, following written notice to such Party summarizing such violation and such Party's failure to cure such material violation within fourteen (14) days of receiving such notice, then such Party may be deemed to have breached this Agreement.

**15. Advice of Counsel:** The Parties to this Agreement represent and warrant that they have chosen to execute this Agreement of their own volition and free will after fully reviewing the Agreement and having the opportunity to seek the advice of counsel. Accordingly, the rule of contract interpretation to the effect that any ambiguities are to be resolved against the drafting party will not be employed in any interpretation of this Agreement.

**16. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the matters with which it deals, and it supersedes all prior agreements pertaining to those matters. This Agreement may only be modified by written consent of the parties.

**17. Severability of Provisions.** If any clause or provision, or any part of any clause or provision, of this Agreement is found by the court to be illegal, invalid, or unenforceable under present or future laws, then the remainder of this Agreement shall not be affected thereby, and it shall be construed as if the unenforceable clause or provision, or the offending part of any clause or provision, were deleted.

**18. Successorship.** It is the intention of the Parties to this Agreement that the provisions hereof are binding upon the Parties, their employees, affiliates, agents, heirs, successors, and assigns forever.

**19. Attorneys' Fees and Costs.** In addition, as provided for herein, Defendants shall be responsible for the payment of Plaintiffs' attorneys' fees and costs in any action caused by the breach of this Agreement. The CAP referenced in paragraph 4(d) does not apply to this paragraph for costs and attorney's fees resulting from a breach of this Agreement.

**20. Counterparts.** This Agreement may be executed in any number of counterparts, including electronic signatures, each of which will be deemed an original.

**21. Remedies for Breach.** As noted above, in the event of a breach of this Agreement by Plaintiffs, Defendants shall be entitled to file an action for said breach and seek all remedies available under law, including injunctive relief. In the event of a breach of this Agreement by Defendants, Plaintiffs may seek relief, including damages, restitution, and/or injunctive relief. Defendants agree that Plaintiff shall be entitled to injunctive, ex-parte and/or any other relief available either in the present matter or subsequent court matters needed to enforce this Agreement. A breach shall be defined as, among other things, the breach of any material term of this agreement not being fulfilled including, but not limited to, failure to make timely payments and failure to timely provide requested information. For the avoidance of doubt, any payment not received by the first of each month shall be deemed late, any information requested shall be due in ten (10) calendar days and, unless cured within 3 calendar days, will be considered a breach of this Agreement.

**22. Governing Law.** This Agreement is governed by the laws of the Commonwealth of Virginia without giving effect to conflict of law principles. Venue for any future disputes hereunder, including any carved-out claims reserved in Section 2(e) above, shall solely lie in either the Circuit Court of the City of Richmond, Virginia, or the United States District Court for the

Eastern District of Virginia in the Richmond Division. Defendants hereby agree and submit to the Jurisdiction of the foregoing Courts, including personal jurisdiction, for any such future action.

**23. Headings.** The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

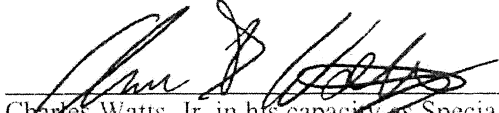
**24. Authority.** The undersigned warrant and represent that they have actual authority to execute this Agreement on behalf of the Parties.

*Mont. D.* **25. Electronic Signatures Permitted.** The Parties to this Agreement will accept electronic signatures as being effective signatures for the purposes of endorsing this Agreement, and any counterparts or amendments to this Agreement.

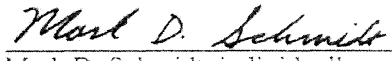
**26. Construction.** In the event of an ambiguity or if a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties.

**THE PARTIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES OR REPRESENTATIONS MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT ARE CONTAINED HEREIN. THE PARTIES ARE VOLUNTARILY AND KNOWINGLY SIGNING THIS AGREEMENT.**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto set their hands and seals.

  
\_\_\_\_\_  
Charles Watts, Jr, in his capacity as Special Counsel  
for Cyberlux Corporation and Mark D. Schmidt

Date: 06/15/2023


  
\_\_\_\_\_  
Mark D. Schmidt, individually and on behalf of  
Cyberlux Corporation, as its President

Date: 06/15/2023

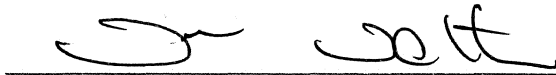
  
\_\_\_\_\_  
William Welter, as a Managing Director of  
Atlantic Wave Holdings, LLC and Secure Community, LLC

Date: June 15, 2023

**STRIKEPOINT CONSULTING, LLC**

  
\_\_\_\_\_  
Cheri Nolan, CEO and President of Strikepoint Consulting, LLC

Date: 6/15/2023

  
\_\_\_\_\_  
William Welter, Managing Director of Strikepoint Consulting, LLC

Date: June 15, 2023

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND**

_____ )	
ATLANTIC WAVE HOLDINGS, LLC )	
AND SECURE COMMUNITY, LLC )	
)	
<i>Plaintiffs,</i> )	
)	
v. )	<b>Case No</b>
)	
CYBERLUX CORPORATION and )	
MARK D. SCHMIDT, individually )	
)	
<i>Defendants.</i> )	
_____ )	

**ORDER OF FINAL JUDGEMENT**

BEFORE THE COURT is a Motion for Entry of Partial Summary Judgment by Plaintiffs ATLANTIC WAVE HOLDINGS, LLC AND SECURE COMMUNITY, LLC, and agreed to by Defendants CYBERLUX CORPORATION and MARK D. SCHMIDT, individually, and as the authorized representative for CYBERLUX CORPORATION, and

IT APPEARING to the Court that the parties hereto have reached a settlement agreement that resolves the current need for continuing litigation.

UPON CONSIDERATION of the pleadings, the evidence, argument of counsel, the consent of the parties, and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED that judgement is GRANTED in favor of Plaintiffs ATLANTIC WAVE HOLDINGS, LLC and SECURE COMMUNITY, LLC, and against Defendants CYBERLUX CORPORATION and MARK D. SCHMIDT, jointly and severally, as follows:

- a. The Court awards Plaintiffs the sum of **ONE MILLION FIVE HUNDRED SEVENTY TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$1,572,500)** in compensatory damages, jointly and severally, against Defendants CYBERLUX CORPORATION

and MARK D. SCHMIDT, to resolve the claims alleged in Plaintiffs' Complaint and certain other claims as agreed to by the parties pursuant to the parties' separate agreement.

b. The parties agree that this Final Judgement shall not be dischargeable in bankruptcy to the fullest extent permissible at law, and Defendants hereby waive all rights of reconsideration or appeal. Nor shall it be subject to any contribution or reduced through the payment(s) of any other parties in this matter. Rather it shall be the sole obligation of Defendants.

c. That the Plaintiffs be awarded all of their costs, including reasonable attorney's fees as per the Parties' settlement agreement, sanctions of \$3,895.00 and \$6,842.50, as provided by the Court's previous Orders, and post judgment interest at the rate of 12% per annum, as provided in the parties' agreement, from the date of entry of this order on the damages incurred in this matter.

d. That the parties have agreed to a security interest and lien interest in all property of Defendants in favor of Plaintiffs until all sums are paid, and such security interest may be further memorialized through the filing of appropriate UCC-1 forms and the filing of appropriate Liens.

e. Plaintiffs' Complaint is hereby dismissed without prejudice. THIS CAUSE IS ENDED.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Hon. Jacqueline S. McClenney, Presiding Judge  
Circuit Court for the City of Richmond

*[Endorsement of Parties on Next Page]*

WE ASK FOR THIS:

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W. Benjamin Pace (VSB No. 48633)  
Justin S. Feinman (VSB No. 87511)  
WILLIAMS MULLEN, PC  
200 South 10th Street, 16th Floor  
Richmond, Virginia 23219  
804.420.6442  
wpace@williamsmullen.com  
jfeinman@williamsmullen.com  
*Counsel for Plaintiffs*

SEEN and AGREED:

*Mark D. Schmidt*

---

Mark D. Schmidt and Cyberlux Corporation  
800 Park Offices Drive, Suite 3209  
Research Triangle Park, NC 27709 By  
Mark D. Schmidt, *Individually and as  
President of Cyberlux Corporation*



---

Charles Watts, Jr, in his capacity as Special Counsel  
for Cyberlux Corporation and Mark D. Schmidt

EXHIBIT 2

PG0002 JUN 30 23

23-07422

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

\_\_\_\_\_  
ATLANTIC WAVE HOLDINGS, LLC )  
AND SECURE COMMUNITY, LLC )

*Plaintiffs,* )

v. )

Case No: CL22-3882 - 4

CYBERLUX CORPORATION and )  
MARK D. SCHMIDT, individually )

*Defendants.* )  
\_\_\_\_\_ )

**AMENDED FINAL ORDER AND JUDGEMENT**

BEFORE THE COURT is a Motion for Entry of an Amended Final Order and Judgment by Plaintiffs ATLANTIC WAVE HOLDINGS, LLC AND SECURE COMMUNITY, LLC, and agreed to by Defendants CYBERLUX CORPORATION and MARK D. SCHMIDT, individually, and as the authorized representative for CYBERLUX CORPORATION, and

IT APPEARING to the Court that the parties hereto have reached a settlement agreement that resolves the current need for continuing litigation.

UPON CONSIDERATION of the pleadings, the evidence, argument of counsel, the consent of the parties, and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED that judgement is GRANTED in favor of Plaintiffs ATLANTIC WAVE HOLDINGS, LLC and SECURE COMMUNITY, LLC, and against Defendants CYBERLUX CORPORATION and MARK D. SCHMIDT, jointly and severally, as follows:

- a. The Court awards Plaintiffs the sum of **ONE MILLION FIVE HUNDRED SEVENTY-TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$1,572,500)** in compensatory damages, jointly and severally, against Defendants CYBERLUX CORPORATION

⋮  
⋮  
⋮

PG0003 JUN 30 23

and MARK D. SCHMIDT, to resolve the claims alleged in Plaintiffs' Complaint and certain other claims as agreed to by the parties pursuant to the parties' separate agreement.

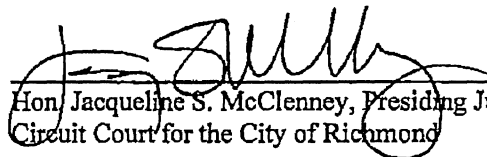
b. The parties agree that this Final Judgement shall not be dischargeable in bankruptcy to the fullest extent permissible at law, and Defendants hereby waive all rights of reconsideration or appeal. Nor shall it be subject to any contribution or reduced through the payment(s) of any other parties in this matter. Rather it shall be the sole obligation of Defendants.

c. That the Plaintiffs be awarded all of their costs, including reasonable attorney's fees of \$177,126.19 per the parties' settlement agreement, evidenced by affidavits, and consented to by defendants, plus sanctions of \$3,895.00 and \$6,842.50, as provided by the Court's previous Orders, and post judgment interest at the rate of 12% per annum, as provided in the parties' agreement, from the date of entry of this order on the damages incurred in this matter.

d. That the parties have agreed to a security interest and lien interest in all property of Defendants in favor of Plaintiffs until all sums are paid, and such security interest may be further memorialized through the filing of appropriate UCC-1 forms and the filing of appropriate Liens.

e. Plaintiffs' Complaint is hereby dismissed without prejudice. THIS CAUSE IS ENDED.

ENTERED this <sup>JA</sup> 22 day of June, 2023.

  
Hon. Jacqueline S. McClenney, Presiding Judge  
Circuit Court for the City of Richmond

PG 0004 JUN 30 23

WE ASK FOR THIS:



W. Benjamin Pace (VSB No. 48633)  
Justin S. Feinman (VSB No. 83511)  
WILLIAMS MULLEN, PC  
200 South 10th Street, 16th Floor  
Richmond, Virginia 23219  
804.420.6442  
wpace@williamsmullen.com  
jfeinman@williamsmullen.com  
*Counsel for Plaintiffs*

SEEN and AGREED:



Mark D. Schmidt and Cyberlux Corporation  
800 Park Offices Drive, Suite 3209  
Research Triangle Park, NC 27709 By  
Mark D. Schmidt, *Individually and as  
President of Cyberlux Corporation*



Charles Watts, Jr, in his capacity as Special Counsel  
for Cyberlux Corporation and Mark D. Schmidt

DOCKETED IN THE CIRCUIT COURT OF  
THE CITY OF RICHMOND ON

JUN 30 2023

AT: 3:30 pm

DocuSign Envelope ID: D741C8C4-A675-4EF1-BE7F-A4435D9C5383

EXHIBIT 3

1 CYBERLUX CORPORATION; and  
2 MARK D. SCHMIDT,

3 Counterclaimants,

4 v.

5 ATLANTIC WAVE HOLDINGS,  
6 LLC; SECURE COMMUNITY, LLC,  
7 and STRIKEPOINT CONSULTING,  
8 LLC,

9 Counterclaim Defendants.

10 I, Mark D. Schmidt, declare:

11 1. I am the President and Chief Executive Office of Defendant and  
12 Counterclaimant Cyberlux Corporation (“Cyberlux”). I am also individually a  
13 Defendant and Counterclaimant. I have personal knowledge of the facts contained  
14 within this Declaration based upon me being involved with the transactions that are  
15 the subject of this lawsuit and this Declaration. If called as a witness, I would  
16 competently testify as to the following facts based on my personal knowledge.

17 2. On or about June 15, 2023, Cyberlux, Schmidt, Atlantic Wave Holdings,  
18 LLC (“Atlantic Wave”), Secure Community, LLC (“Secure”), and Strikepoint  
19 Consulting, LLC (“Strikepoint”) entered into a settlement agreement (“Settlement  
20 Agreement”) arising from the lawsuit entitled *Atlantic Wave Holdings, LLC; and  
21 Secure Community, LLC v. Cyberlux Corporation and Mark D. Schmidt*, Circuit  
22 Court of the City of Richmond, Virginia, Case No. CL22-3882 (the “Virginia  
23 Action”), in which Plaintiffs sued to enforce certain contracts to be performed in  
24 Virginia through overreaching and economic duress. A true and correct copy of the  
25 Settlement Agreement is attached hereto as **Exhibit A**.

26 3. Pursuant to the terms of the Settlement Agreement, an Amended Final  
27 Order and Judgement [sic] (“Settlement Judgement”) memorializing the monetary  
28 component of the settlement was filed in the Virginia Action on June 28, 2023, a true  
and correct copy of which is attached hereto as **Exhibit B**. In fact, the Settlement

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1 Judgment provides, in part, that “the parties hereto have reached a settlement  
 2 agreement that resolves the current need for continuing litigation.” Settlement  
 3 Judgment at Page 1. Further, in Plaintiffs’ state court action filed in San Diego County  
 4 Superior Court and removed to this Court, Plaintiffs alleged: “In connection with the  
 5 Settlement Agreement, on June 28, 2023, the Court in the Underlying Lawsuit entered  
 6 an Amended Final Order and Judgment...” Complaint, at Paragraph 18 [Dckt. 1, Ex.  
 7 A].

8 4. As conceded by Plaintiffs in their underlying state court complaint,  
 9 provided that with respect to the settlement payment to be made by Cyberlux, “Under  
 10 the terms of the Settlement Agreement in paragraph 4(a) Defendants agreed to  
 11 specific payment terms.” Complaint, at Paragraph 19 [Dckt. 1, Ex. A].

12 5. Following the Settlement Agreement reached in the Virginia Action,  
 13 Cyberlux made payments to Atlantic Wave as follows:

14	Date	Payee	Amount
15	7/3/2023	Atlantic Wave Holdings, LLC	\$10,737.50
16	7/3/2023	Atlantic Wave Holdings, LLC	\$5,364.75
17	7/3/2023	Atlantic Wave Holdings, LLC	\$4,513.89
18	9/8/2023	Atlantic Wave Holdings, LLC	\$575,000.00
19	9/8/2023	Strikepoint Consulting, LLC	\$50,000.00
20	10/4/2023	Strikepoint Consulting, LLC	\$20,000.00
21	11/2/2023	Strikepoint Consulting, LLC	\$19,000.00
22	12/4/2023	Strikepoint Consulting, LLC	\$19,000.00
23	1/2/2024	Strikepoint Consulting, LLC	\$19,000.00
	2/1/2024	Strikepoint Consulting, LLC	\$19,000.00
	3/1/2024	Strikepoint Consulting, LLC	\$19,000.00
	4/1/2024	Strikepoint Consulting, LLC	\$19,000.00
	TOTAL		\$779,616.14

24 True and correct copies of the wire payment confirmations are attached hereto as  
 25 **Exhibit C**. As more fully set forth in the concurrently filed Declaration of Douglas  
 26 Grimes, Cyberlux’s payments were either made by the deadlines provided in the  
 27 Settlement Agreement (including the 3-day cure period), or were timely based upon  
 28 the Plaintiffs’ oral modification of the Settlement Agreement, upon which Cyberlux

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1 relied.

2 6. In fact, as more fully explained in the concurrently filed Declaration of  
3 Douglas Grimes, the parties agreed to a different payment plan post-settlement.  
4 Further, as confirmed by William Welter, Atlantic Wave’s principal and legal  
5 counsel, following Cyberlux’s overpayment of September 8, 2023, equal to \$575,000,  
6 Cyberlux had an “overage” of \$167,402.56 to apply to future payments.

7 7. Under the Settlement Agreement, the combined principal amount owed  
8 to Strikepoint was \$650,000, and the combined principal amount owed to Atlantic  
9 Wave was \$1,110,363.89. To date, \$254,000 has been paid to Strikepoint, leaving a  
10 principal balance of \$396,000, and \$595,616.14 has been paid to Atlantic Wave,  
11 leaving a principal balance of \$591,102.45.

12 8. [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED].

21 9. Plaintiffs and I and Cyberlux also have a dispute regarding whether  
22 Cyberlux continues to owe Atlantic Wave payments pursuant to a patent license  
23 agreement which was procured through misrepresentations, undue influence, and  
24 overreaching by Plaintiffs in the Virginia litigation. Cyberlux contends that this  
25 patent license agreement and the resultant settlement of that agreement was procured  
26 through misrepresentation, undue influence and overreaching because Mr. Welter, a  
27 Florida licensed lawyer, did not advise me to obtain separate counsel in accordance  
28 with Florida Rule of Professional Responsibility 4-4.3.



# **Exhibit B**

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.<sup>1</sup>
- (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.

---

<sup>1</sup> 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 business<sup>2</sup> 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.

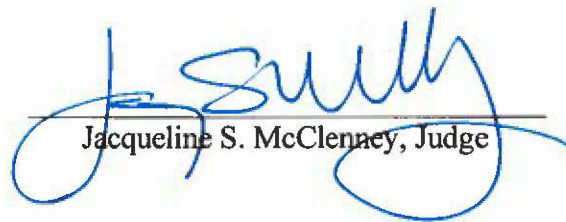
The Clerk is **DIRECTED** to forward a certified copy of this Order to the parties.

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

It is so **ORDERED**.

ENTER:

5/31/2024

  
Jacqueline S. McClenney, Judge

---

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

# **Exhibit C**

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.*

### OPINION AND ORDER

On May 31, 2024 came the parties, in person and by counsel, to be heard on the Defendants' "Emergency Motion for Declaratory Relief," filed on May 21, 2024. The Court, having considered the filings of the parties and having heard their arguments thereon, took the Defendants' Emergency Motion for Declaratory Relief under advisement.<sup>1</sup> After due consideration, the Court **DECIDES** as follows.

### RELEVANT BACKGROUND

On August 24, 2022 the Plaintiffs filed their "Complaint" against the Defendants, alleging two claims of Breach of Contract,<sup>2</sup> Contractual/Equitable Audit, and *Quantum Meruit*. The parties subsequently entered into a Settlement Agreement, dated June 15, 2023,<sup>3</sup> wherein the Defendants agreed to pay a total amount of \$1,572,500.00 to the Defendants in scheduled monthly payments.<sup>4</sup> The Court entered an agreed "Order of Final Judgment" on June 21, 2023 and then an agreed "Amended Final Order and Judgment" on

---

<sup>1</sup> See page 2 of the "Order," entered by this Court on May 31, 2024. The Court **NOTES** that it received correspondence from counsel for PNC Bank via electronic mail in response to its May 31, 2024 Order. Counsel indicated that the Defendants were required to post a bond pursuant to §8.01-477 of the Code of Virginia, 1950, as amended. However, §8.01-477 is inapplicable because a motion to quash an execution was not brought before the Court.

<sup>2</sup> According to the Complaint, the parties entered into a patent license agreement on July 15, 2019 and a second agreement on October 8, 2021. Compl. ¶¶ 7, 10. The Plaintiff alleges that the Defendants breached both contracts. *See id.* ¶¶ 35-43.

<sup>3</sup> Although the Amended Final Order and Judgment includes language referencing the Settlement Agreement, the Settlement Agreement was neither filed nor attached to the Amended Final Order and Judgment. A copy of the Settlement Agreement is attached as Exhibit 1 to the Defendants' "Memorandum in Support of Defendants' Emergency Motion for Declaratory Relief."

<sup>4</sup> See paragraph 2(c) of the Settlement Agreement.

June 28, 2023. The Amended Final Order and Judgment provides that the Settlement Agreement “resolves the current need for continuing litigation.”

The Plaintiffs initiated garnishment proceedings on April 2, 2024.<sup>5</sup> Then, on April 18, 2024, the Plaintiffs requested that the Clerk of this Court issue a writ of *feri facias* against the Defendants. On April 19, 2024 the Clerk of this Court issued the writ of *feri facias* and the Defendants filed a “Certificate” wherein the Plaintiffs certified that a “Notice of Judgment Lien” was served on Towne Bank that same day. The Plaintiffs initiated additional garnishment proceedings on April 22, 2024.<sup>6</sup>

On May 21, 2024 the Defendants filed their Emergency Motion for Declaratory Relief, as well as a “Memorandum in Support of Defendants’ Emergency Motion for Declaratory Relief.”<sup>7</sup> The Plaintiffs filed an “Opposition to Defendants’ Emergency Motion for Declaratory Relief and Motion for Sanctions” on May 29, 2024. The Defendants later filed a “Reply to Plaintiffs’ Response to Defendants’ Emergency Motion for Declaratory Relief” on May 31, 2024. The Defendants requested attorney’s fees and costs incurred in bringing forth their Motion, and the Plaintiffs requested attorney’s fees and costs incurred in defending against the Defendants’ Motion.<sup>8</sup>

#### LAW AND ANALYSIS

In its Emergency Motion for Declaratory Relief, filed under the case number assigned to the underlying breach of contract action, the Defendants seek declaratory relief against the Plaintiffs. Specifically, the Defendants seek a declaratory judgment that:

1. The Settlement Agreement remains in effect;
2. The Settlement Agreement is a valid, enforceable, and binding contract;
3. The terms of the Settlement Agreement are clear, complete, and certain; and

---

<sup>5</sup> On April 2, 2024 the Plaintiffs filed a “Suggestion for Summons in Garnishment” in each of the following case numbers: CL22-3882-01, CL22-3882-02, and CL22-3882-03. The garnishment summons in CL22-3882-01 and CL22-3882-02 were dismissed on April 19, 2024. The garnishment summons in CL22-3882-03 was dismissed on April 26, 2024. The garnishment summons in all three cases were dismissed because they listed the “Date of Judgment” as June 28, 2024, which had not yet occurred.

<sup>6</sup> On April 22, 2024 the Plaintiffs filed a “Suggestion for Summons in Garnishment” in each of the following case numbers: CL22-3882-04, CL22-3882-05, and CL22-3882-06. The garnishment summons in these cases remain outstanding.

<sup>7</sup> The Defendants argued a request for injunctive relief at the hearing *and* included it in its Memorandum but did not style its Motion to request injunctive relief nor include injunctive relief in its prayer for relief.

<sup>8</sup> Defs.’ Emergency Mot. for Declaratory Relief 4; Pls.’ Opp’n to Defs.’ Emergency Mot. for Declaratory Relief & Mot. for Sanctions 5.

4. During the term of the Settlement Agreement, the Plaintiffs may not issue garnishments, writs of *feri facias*, or notice of judgment liens by improperly relying on this Court’s “Amended Final Order and Judgment,” entered on June 28, 2023.<sup>9</sup>

The Plaintiffs argue that the Amended Final Order and Judgment is final.

Accordingly, the Plaintiffs contend that—by filing a Motion, as opposed to a separate declaratory judgment action—the Defendants failed to properly file an action for declaratory relief. In response, the Defendants argue that the Amended Final Order and Judgment is not final, as it dismisses the Plaintiffs’ Complaint *without prejudice*.<sup>10</sup> Therefore, the Defendants assert that the Court has the authority to address their Motion. In the present case, there is no dispute that the plain language of the Amended Final Order and Judgment dismissed the underlying breach of contract action without prejudice. At issue is whether the dismissal of the underlying breach of contract action “without prejudice” allows the Court to award the requested declaratory relief to the Defendants.

In *Primov v. Serco*, the Supreme Court of Virginia distinguished dismissal of a suit “without prejudice” from dismissal of a suit “with prejudice.”<sup>11</sup> “A dismissal without prejudice terminates the action and concludes the rights of the parties *in that particular action*.”<sup>12</sup> Although the Defendants argue that the Amended Final Order and Judgment cannot be final because the Settlement Agreement, referenced therein, contemplates the need for support by this Court to address disputes or future challenges with the settlement, a dismissal without prejudice “does not prohibit the *refiling of the action*.”<sup>13</sup> The Amended Final Order and Judgment, dismissing the present case without prejudice, effectively terminated the underlying breach of contract action and concluded the rights of the parties in *this particular case*. Therefore, the Defendants request for declaratory relief, brought forth as a motion in the underlying breach of contract action, was improperly filed and must be denied.

<sup>9</sup> Def.’s Emergency Mot. for Declaratory Relief 4.

<sup>10</sup> See paragraph (e) of the Amended Final Order and Judgment.

<sup>11</sup> 296 Va. 59, 69 (2018).

<sup>12</sup> *Id.* (quoting *United States v. California*, 507 U.S. 746, 756 (1993)).

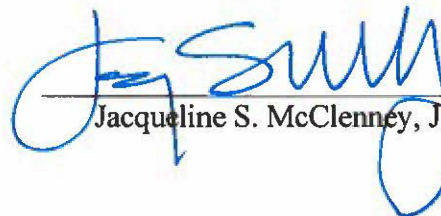
<sup>13</sup> *Id.* (emphasis added). A dismissal of a suit “with prejudice,” by contrast, “is defined as an adjudication on the merits, and final disposition, barring the right to bring or maintain an action on the same claim or cause.” *Id.* (quoting *Reed v. Liverman*, 250 Va. 97, 99 (1995)).

RULING

For the foregoing reasons, the Court **RULES** that the Defendants' Emergency Motion for Declaratory Relief is **DENIED**. The temporary injunction awarded to the Defendants by the May 31, 2024 Order of this Court is hereby **DISSOLVED**.<sup>14</sup> It is the **ORDER** of this Court that the Plaintiffs' Motion for Sanctions is **DENIED**. It is the further **ORDER** of this Court that the Defendants' request for attorney's fees is **DENIED**. The Court **FINDS** that the Plaintiffs are entitled to reasonable attorney's fees incurred in defending against the Defendants' Emergency Motion for Declaratory Relief. Accordingly, counsel for the Plaintiff is **DIRECTED** to file an "Affidavit of Attorney's Fees" with the Clerk's Office of this Court within seven (7) days of the entry of this Order. Counsel for the Plaintiffs **SHALL** send a courtesy copy of the Affidavit for Attorney's Fees to court staff via electronic mail, copying opposing counsel. The Plaintiffs' request for attorney's fees is hereby **TAKEN UNDER ADVISEMENT** pending receipt of the Affidavit of Attorney's Fees.<sup>15</sup>

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: 6/7/2024

  
\_\_\_\_\_  
Jacqueline S. McClenney, Judge

<sup>14</sup> Pursuant to the Court's May 31, 2024 Order, the temporary injunction was set to expire on June 11, 2024 at 5:00 p.m. on June 11, 2024.

<sup>15</sup> The Court will consider the amount of the attorney's fees award based on the Affidavit of Attorney's Fees to be submitted by counsel for the Plaintiffs.

# **Exhibit D**

VIRGINIA:

IN THE CITY OF RICHMOND CIRCUIT COURT

ATLANTIC WAVE HOLDINGS, LLC,

Plaintiff/Judgment Creditor,

and

SECURE COMMUNITY LLC,

Plaintiff/Judgment Creditor,

v.

Case No: CL22-3882-05 *JSM*

CYBERLUX CORPORATION,

Defendant/Judgment Debtor,

and

PNC BANK,

Co-Defendant/Garnishee.

**ORDER**

THIS DAY came the plaintiffs/judgment creditors, Atlantic Wave Holdings, LLC and Secure Community, LLC, by counsel, and the co-defendant/garnishee, PNC Bank, upon the Writ of Fieri Facias issued on April 19, 2024, the Notice of Judgment Lien served on PNC Bank and Cyberlux Corporation, plaintiff's Suggestion in Garnishment, the Garnishment Summons with a return date of June 18, 2024, and the Garnishee's Answer to said Garnishment Summons that it has withheld \$183,798.34 pursuant to the garnishment.

WHEREUPON the Court finds that the co-defendant/garnishee withheld the sum of \$183,798.34 pursuant to the Writ of Fieri Facias and the garnishment and the judgment creditors are entitled to the funds. It is

ORDERED that the plaintiff recover from the garnishee the sum of \$183,798.34. The garnishee is directed to forward a check in the amount of \$183,798.34 to Caudle and Caudle, P.C., 1910 Byrd Avenue, Suite 118, Richmond, VA 23230 with in the time required by §8.01-516.1 of the Code of Virginia (1950). In addition, the Clerk directed to forward an attested copy of this order to all parties in this matter.

Endorsement of the defendant and garnishee are waived pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.

ENTER: 8/9/2024

  
JUDGE

I ask for this:



---

Robert Keith Caudle, III, (VSB No. 43450)  
Counsel for Plaintiff/Judgment Creditor  
Caudle and Caudle, P.C.  
1910 Byrd Avenue, Suite 118  
Richmond, Virginia 23230  
P: 804-358-4961  
F: 804-353-1036  
robcaudle@caudleandcaudle.com

# **Exhibit E**

VIRGINIA:

IN THE CITY OF RICHMOND CIRCUIT COURT

ATLANTIC WAVE HOLDINGS, LLC,

Plaintiff/Judgment Creditor,

and

SECURE COMMUNITY LLC,

Plaintiff/Judgment Creditor,

v.

Case No: CL22-3882-04 JSm

MARK D. SCHMIDT,

Defendant/Judgment Debtor,

and

TOWNE BANK,

Co-Defendant/Garnishee.

**ORDER**

THIS DAY came the plaintiffs/judgment creditors, Atlantic Wave Holdings, LLC and Secure Community, LLC, by counsel, and the co-defendant/garnishee, Towne Bank, upon the Writ of Fieri Facias issued on April 19, 2024, the Notice of Judgment Lien served on Towne Bank and Mark D. Schmidt, plaintiff's Suggestion in Garnishment, the Garnishment Summons with a return date of June 18, 2024, and the Garnishee's Answer to said Garnishment Summons that it has tendered a check to the Court in the amount of \$4,862.86 pursuant to the garnishment.

WHEREUPON the Court finds that the co-defendant/garnishee withheld the sum of \$4862.86 and tendered the funds to the Court pursuant to the Writ of Fieri Facias and the garnishment and the judgment creditors are entitled to the funds, it is

ORDERED that the plaintiff recover from the garnishee the sum of \$4,862.86. The Clerk is directed to forward the funds paid into the Court to Caudle and Caudle, P.C., 1910 Byrd Avenue, Suite 118, Richmond, VA 23230. In addition, the Clerk directed to forward an attested copy of this order to all parties in this matter.

Endorsement of the defendant and garnishee are waived pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.

ENTER: 8/9/2024

  
JUDGE

I ask for this:



---

Robert Keith Caudle, III, (VSB No. 43450)  
Counsel for Plaintiff/Judgment Creditor  
Caudle and Caudle, P.C.  
1910 Byrd Avenue, Suite 118  
Richmond, Virginia 23230  
P: 804-358-4961  
F: 804-353-1036  
robcaudle@caudleandcaudle.com

# **Exhibit F**

**COMMONWEALTH OF VIRGINIA**



**RICHMOND CITY CIRCUIT COURT**

Civil Division

400 NORTH 9TH STREET

RICHMOND VA 23219

(804) 646-6506

Summons

To: SECURE COMMUNITY LLC  
RYAN BROWN, PLLC  
1739 CLARENDON BLVD  
ARLINGTON VA 22209

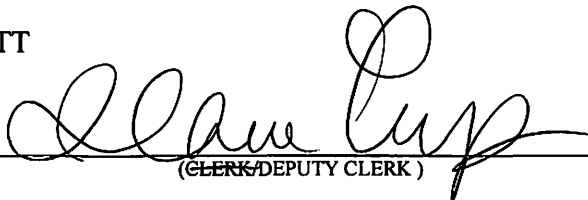
Case No. 760CL24002960-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Thursday, August 01, 2024

Clerk of Court: EDWARD F JEWETT

by   
(CLERK/DEPUTY CLERK)

Instructions:

Hearing Official:

Attorney's name:

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.<sup>1</sup>

---

<sup>1</sup> 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.<sup>2</sup>
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.<sup>3</sup>
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.

---

<sup>2</sup> 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.

<sup>3</sup> 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

[jimmy.robinson@ogletreedeakins.com](mailto:jimmy.robinson@ogletreedeakins.com)

*Counsel for Plaintiffs*

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

901 East Byrd Street, Suite 1300

Riverfront Plaza, West Tower

Richmond, VA 23219

Tel.: (804) 663-2336

Fax: (855) 843-1809

Service: RICHMOND CITY CC ILIPSCOMB at 2024JUL11 09:11 CL24002919-00

**SERVICE OTHER THAN BY VIRGINIA SHERIFF**

Case No. CL24002919-00

COMMONWEALTH OF VIRGINIA  
VA. CODE §§ 8.01-293, 8.01-320, 8.01-325

Service No. 2 (Clerk's use only)

RICHMOND CITY

Circuit Court

CYBERLUX CORPORATION

v.

ATLANTIC WAVE HOLDINGS, LLC

SECURE COMMUNITY, LLC, RYAN BROWN, PLLC, 1739 CLARENDON BLVD, ARLINGTON, VA 22209-

is the name and address of the person upon whom service of the following is to be made:

Summons and Complaint

COMPLAINT

I, the undersigned, swear/affirm that

1.  I am an official or an employee of an official who is authorized to serve process of the type described in the attached Proof of Service and my title and bailiwick are as follows:

or,

I am a private process server (list name, address and telephone number below).

A. S. Fewright 1011 E main st Richmond, VA 804 775-2100

or,

I am an investigator employed by an attorney for the Commonwealth or the Indigent Defense Commission and have retired or resigned from my prior position as a law-enforcement officer in good standing. I affirm that the sheriff for the jurisdiction where process was served has agreed that such investigators may serve process. (List name, title and agency below.)

2. I am not a party to, or otherwise interested in, the subject matter in controversy in this case.

3. I am 18 years of age or older.

4. I served, as shown below, the above-named person upon whom service of process was to be made with copies described above.

- Date and time of service: 7/19/24 4:00pm

- Place of service: 1739 Clarendon Blvd, Arlington, VA  
STREET ADDRESS, CITY AND STATE

- Method of service:

RECEIVED AND FILED  
CIRCUIT COURT  
2:25  
JUL 25 2024  
EDWARD F. JEWETT, CLERK  
BY [Signature] D.C.

<input checked="" type="checkbox"/> Personal Service	<input type="checkbox"/> Not Found
<input checked="" type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivery to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of person to be served after giving information of its purport. List name, age of recipient, and relation of recipient to party	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode (other authorized recipient not found).	
<input type="checkbox"/> (Garnishment Summons Only, § 8.01-511) Copy mailed to judgment debtor after serving the garnishee on date of service below unless a different date of mailing is shown.	
DATE OF MAILING	

7/19/24  
DATE

State/Commonwealth of VA

A. S. Fewright  
SIGNATURE

City  County of Richmond

Subscribed and sworn to/affirmed before me this

day of July, 2024

by Albert S. Fewright  
PRINT NAME OF SIGNATORY

Process Server  
TITLE

7/19/2024  
DATE



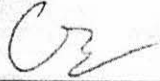
NOTARY PUBLIC (My commission expires May 2025)  
Registration No. 7108473

**RYAN A. BROWN, PLLC d/b/a ARLINGTON LAW GROUP**  
**DESIGNATION OF NATURAL PERSONS TO ACCEPT SERVICE OF PROCESS**

In accordance with Virginia Code §13.1-1015 (2)(b)(ii), Ryan A. Brown, Esq., the sole member of Ryan A. Brown, PLLC d/b/a Arlington Law Group, a Virginia professional limited liability company (the "Corporate Registered Agent"), executes the following written instrument to designate natural persons at the office of the Corporate Registered Agent upon whom any process, notice, or demand directed to the Corporate Registered Agent may be served and in support thereof states:

1. I, Ryan A. Brown, Esq., am the sole member of the Corporate Registered Agent.
2. The Corporate Registered Agent maintains an office in the Commonwealth of Virginia located at 1739 Clarendon Blvd., Arlington, Virginia, 22209.
3. The Corporate Registered Agent provides a registered agent service for customers in the Commonwealth of Virginia.
4. The Corporate Registered Agent therefore will from time to time accept service of process, notice, or demand for entities and individuals in the Commonwealth of Virginia.
5. The Corporate Registered Agent has seven (7) staff members who may be potentially on site whose names are: Ryan A. Brown, Esq., Eric M. Lemmer, Esq., James F. Anderson, Esq., Bridget A. Alzheimer, Esq., Anthony N. Hernandez-Villanueva, Anna S. Goldberg and Marissa N. Whitaker.
6. All employees of the Corporate Registered Agent are considered agents of the Corporate Registered Agent for the purposes of performing the duties required of the Corporate Registered Agent as a registered agent in the Commonwealth of Virginia.
7. As such, any service of process, notice, or demand directed to the Corporate Registered Agent may be accepted by: Ryan A. Brown, Esq., Eric M. Lemmer, Esq., James F. Anderson, Esq., Bridget A. Alzheimer, Esq., Anthony N. Hernandez-Villanueva, Anna S. Goldberg and Marissa N. Whitaker.
8. In accordance with Virginia Code §13.1-1015 (2)(b)(ii) presentation of this written instrument or a copy thereof to the individual attempting service of process shall constitute sufficient proof that any of the above-named individuals may accept service as an agent of the Corporate Registered Agent.


**Ryan A. Brown, PLLC d/b/a Arlington Law Group**

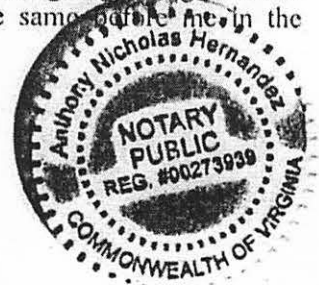
  
\_\_\_\_\_  
By: Ryan A. Brown, Esq.  
Title: Member

6/28/2024  
\_\_\_\_\_  
Date

COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON } TO-WIT:

I, the undersigned Notary Public in and for the Commonwealth and County aforesaid, do hereby certify that Ryan A. Brown, Esq., whose name is signed to the foregoing Designation of Natural Persons to Accept Service of Process, has ACKNOWLEDGED the same before me in the Commonwealth and County aforesaid on this day, June 28, 2024.

  
\_\_\_\_\_  
ANTHONY NICHOLAS HERNANDEZ, REG. NO. 00273939, NOTARY PUBLIC  
MY COMMISSION EXPIRES: JUNE 30, 2028



# COMMONWEALTH OF VIRGINIA



RICHMOND CITY CIRCUIT COURT

Civil Division

400 NORTH 9TH STREET

RICHMOND VA 23219

(804) 646-6506

Summons

To: ATLANTIC WAVE HOLDINGS LLC  
RYAN BROWN, PLLC  
1739 CLARENDON BLVD  
ARLINGTON VA 22209

Case No. 760CL24002960-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Thursday, August 01, 2024

Clerk of Court: EDWARD F JEWETT

by

A handwritten signature in black ink, appearing to read "Edward F. Jewett", written over a horizontal line.

(CLERK/DEPUTY CLERK)

Instructions:

Hearing Official:

Attorney's name:

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.<sup>1</sup>
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.<sup>2</sup>

---

<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup>
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

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<sup>3</sup> 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*

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

901 East Byrd Street, Suite 1300

Riverfront Plaza, West Tower

Richmond, VA 23219

Tel.: (804) 663-2336

Fax: (855) 843-1809

**SERVICE OTHER THAN BY VIRGINIA SHERIFF**

Case No. CL24002960-00

COMMONWEALTH OF VIRGINIA  
VA. CODE §§ 8.01-293, 8.01-320, 8.01-325

Service No. 2 (Clerk's use only)

RICHMOND CITY Circuit Court

CYBERLUX CORPORATION v. ATLANTIC WAVE HOLDINGS LLC

ATLANTIC WAVE HOLDINGS LLC, RYAN BROWN, PLLC, 1739 CLARENDON BLVD, ARLINGTON, VA 22209-

is the name and address of the person upon whom service of the following is to be made:

Summons and Complaint

COMPLAINT

I, the undersigned, swear/affirm that

1.  I am an official or an employee of an official who is authorized to serve process of the type described in the attached Proof of Service and my title and bailiwick are as follows:

or,

I am a private process server (list name, address and telephone number below).

or,

I am an investigator employed by an attorney for the Commonwealth or the Indigent Defense Commission and have retired or resigned from my prior position as a law-enforcement officer in good standing. I affirm that the sheriff for the jurisdiction where process was served has agreed that such investigators may serve process. (List name, title and agency below.)

2. I am not a party to, or otherwise interested in, the subject matter in controversy in this case.

3. I am 18 years of age or older.

4. I served, as shown below, the above-named person upon whom service of process was to be made with copies described above.

— Date and time of service: .....

— Place of service: .....

STREET ADDRESS, CITY AND STATE

— Method of service: .....

<input type="checkbox"/> Personal Service	<input type="checkbox"/> Not Found
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivery to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of person to be served after giving information of its purport. List name, age of recipient, and relation of recipient to party .....	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode (other authorized recipient not found).	
<input type="checkbox"/> (Garnishment Summons Only, § 8.01-511) Copy mailed to judgment debtor after serving the garnishee on date of service below unless a different date of mailing is shown. ..... DATE OF MAILING	

DATE

SIGNATURE

State/Commonwealth of .....,  City  County of .....

Subscribed and sworn to/affirmed before me this ..... day of ....., 20 .....

by .....

PRINT NAME OF SIGNATORY

TITLE

DATE

NOTARY PUBLIC (My commission expires .....

Registration No. ....

# COMMONWEALTH OF VIRGINIA



**SUMMONS – CIVIL ACTION**  
RULE 3:5; VA. CODE § 8.01-2

Case No. CL24002960-00

RICHMOND CITY ..... Circuit Court  
400 NORTH 9TH STREET, RICHMOND 23219- .....  
ADDRESS

TO:

ATLANTIC WAVE HOLDINGS LLC, RYAN BROWN, PLLC  
1739 CLARENDON BLVD  
.....  
ARLINGTON, VA 22209-.....

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk’s office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia.

JULY 11, 2024 ..... JEWETT, EDWARD F ..... Clerk  
DATE

by /S/ LIPSCOMB, ILLENE .....  
DEPUTY CLERK

Instructions:

Hearing Official: .....

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.<sup>1</sup>
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.<sup>2</sup>

---

<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup>
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

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<sup>3</sup> 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.
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  - a. The parties entered into an oral contract modifying the payment schedule set forth in the written settlement agreement.
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  - 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*

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

901 East Byrd Street, Suite 1300

Riverfront Plaza, West Tower

Richmond, VA 23219

Tel.: (804) 663-2336

Fax: (855) 843-1809

# **Exhibit G**



J. Chapman Petersen+\*  
Sharon Kim Petersen  
*+also admitted in DC*  
*\*also admitted in MD*  
*^admitted in NY*

J. Chapman Petersen  
jcp@petersenfirm.com  
Direct: 571-459-2510

Won Yung Uh  
Federico J. Zablah  
Christopher T. Robertson+  
Dylan M. Phillips  
Patrick R. Corish+  
Janice M. Jang^+

August 6, 2024

**VIA ELECTRONIC MAIL**

Jimmy F. Robinson, Jr., Esq.  
901 East Byrd Street  
Suite 1300  
Richmond, VA 23219  
[Jimmy.robinson@ogletreedeakins.com](mailto:Jimmy.robinson@ogletreedeakins.com)

Re: Cyberlux Corporation v. Atlantic Wave Holding, LLC, Case No. 240002919-0,  
In the Circuit Court of the City of Richmond

Dear Mr. Robinson:

Attached please find a proposed corporate designee notice for taking your client's deposition in the above matter. You will note that we name both Mr. Schmidt and Cyberlux as deponents. If you designate Mr. Schmidt as the corporate representative, then that would likely cover both requests.

I've tentatively set this for Friday, August 23. If that date is unavailable, please let me know a date we can do this, preferably before the end of August. I've also set this tentatively for my office in Northern Virginia, assuming that may be more convenient for Mr. Schmidt. If not, then I will find a place in Richmond to do it, pursuant to Rule 4:5 of the Rules of the Supreme Court.

I look forward to working with you and thanks,

Very sincerely yours,

J. Chapman Petersen, Esq

JCP  
Enclosure

Copy: Client

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND**

**CYBERLUX CORPORATION and  
MARK D. SCHMIDT, individually** )

**Plaintiffs,** )

**v.** )

**Case No: CL24002919-00**

**ATLANTIC WAVE HOLDINGS, LLC  
AND SECURE COMMUNITY, LLC** )

**Defendants.** )

**NOTICE OF DEPOSITION CORPORATE DESIGNEE OF  
PLAINTIFF'S CYBERLUX CORPORATION**

To: **CYBERLUX CORPORATION and MARK D. SCHMIDT**  
**c/o Jimmy F. Robinson, Jr., Esq.**  
**901 East Byrd Street**  
**Suite 1300**  
**Richmond, VA 23219**  
**Jimmy.robinson@ogletreedeakins.com**  
*Counsel for Plaintiffs*

PLEASE TAKE NOTICE on **Friday, August 23, 2024 at 10:00 AM (Eastern Time)**, pursuant to Virginia Supreme Court Rule 4:5(b)(6), Defendants Atlantic Wave Holdings, LLC (“Atlantic Wave”) and Secure Community, LLC (“Secure Community”) (collectively “Defendants”), by Counsel, will proceed to take the deposition of a designated representative for Plaintiffs, Cyberlux Corporation (“Cyberlux” or “the Company”) and Mark D. Schmidt (“Schmidt”) (collectively, the “Plaintiffs”), at the law office of Chap Petersen and Associates, PLC, 3970 Chain Bridge Road, Fairfax, Virginia, 22030, for all purposes allowed under the Rules

of the Supreme Court of Virginia. Plaintiffs shall designate a representative(s) who can address the following matters:

1. Day-to-Day operation of the company January 1, 2023, to present.
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  - a) CMTC Drone Solutions (Acquisition date: 8/31/2021).
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Respectfully Submitted,

ATLANTIC WAVE HOLDINGS, LLC  
AND SECURE COMMUNITY, LLC  
*By Counsel*

---

J. Chapman Petersen, Esq. (VSB #37225)  
Chap Petersen & Associates, PLC  
3970 Chain Bridge Road  
Fairfax, Virginia 22030  
(571) 459-2512 (telephone)  
(571) 459-2307 (facsimile)  
jcp@petersenfirm.com  
*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, a true and accurate copy of the foregoing was served *via* first-class and electronic mail to:

**Jimmy F. Robinson, Jr., Esq.**  
901 East Byrd Street  
Suite 1300  
Richmond, VA 23219  
Jimmy.robinson@ogletreedeakins.com  
*Counsel for Plaintiff*

---

J. Chapman Petersen

# **Exhibit H**



J. Chapman Petersen+\*  
Sharon Kim Petersen  
+also admitted in DC  
\*also admitted in MD  
^admitted in NY

J. Chapman Petersen  
jcp@petersenfirm.com  
Direct: 571-459-2510

---

Won Yung Uh  
Federico J. Zablah  
Christopher T. Robertson+  
Dylan M. Phillips  
Patrick R. Corish+  
Janice M. Jang^+

August 9, 2024

*Via first-class and electronic mail*

Jimmy F. Robinson, Jr., Esq.  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
901 East Byrd Street, Suite 1300  
Riverfront Plaza, West Tower  
Richmond, VA 23219  
jimmy.robinson@ogletreedeakins.com

Re: *Cyberlux Corporation, et al. v. Atlantic Wave Holding, LLC, et al.*,  
Case No. CL240002919-00, in the Circuit Court of the City of Richmond

Dear Mr. Robinson:

I sent you a letter on August 6<sup>th</sup>, attaching a draft notice for a corporate designee deposition in the above case. I also called and left you a message. To date, I've had no response. As your complaint seeks injunctive relief, it is imperative that this deposition occur as soon as possible. Therefore, I am noticing Cyberlux Corporation's corporate designee's deposition for **Tuesday, August 27, 2024, commencing at 10:00 a.m.** Pursuant to Rule 4:5, I am setting it for a location in the City of Richmond, i.e. the offices of Spotts Fain P.S., 411 E. Franklin Street, Suite 600, Richmond, VA 23219.

If you would like to set an alternative date, time, or location, please contact me and I'll be happy to work with you on that.

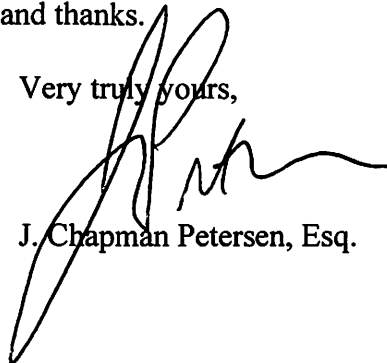
On a separate note, my firm has entered an appearance on behalf of the judgment creditor in Case No. CL22003882-00 ("the Judgment Case"), also pending in the Circuit Court of the City of Richmond. We will be replacing the current counsel, The Executive Law Group. Attached is a Motion for Substitution of Counsel and Agreed Order. I would appreciate if you could sign the Order and return it to me.

Finally, I will be present before Judge McKenney for the hearing on August 21<sup>st</sup> in the Judgment Case. It is my intention to withdraw the "Motion to Reverse" that was filed by my predecessor, while proceeding forward with Orders of Payment on the pending garnishment, as well as entry of Orders to reflect the Court's attorney fee awards. I will file Praecipes with the Court to reflect these anticipated actions.

Letter to Jimmy F. Robinson, Jr., Esq.  
August 9, 2024  
Page 2 of 2

I look forward to working with you and thanks.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Chapman Petersen', written over the typed name below.

J. Chapman Petersen, Esq.

JCP  
Enclosures

cc: client  
Robert Keith Caudle, III, Esq.  
Milton Johns, Esq.

# **Exhibit I**



J. Chapman Petersen+\*  
Sharon Kim Petersen  
+also admitted in DC  
\*also admitted in MD  
^admitted in NY

J. Chapman Petersen  
jcp@petersenfirm.com  
Direct: 571-459-2510

---

Won Yung Uh  
Federico J. Zablah  
Christopher T. Robertson+  
Dylan M. Phillips  
Patrick R. Corish+  
Janice M. Jang^+

August 23, 2024

*Via first-class and electronic mail*

Jimmy F. Robinson, Jr., Esq.  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
901 East Byrd Street, Suite 1300  
Riverfront Plaza, West Tower  
Richmond, VA 23219  
jimmy.robinson@ogletreedeakins.com

Re: *Cyberlux Corporation, et al. v. Atlantic Wave Holding, LLC, et al.*,  
Case No. CL240002919-00, in the Circuit Court of the City of Richmond

Dear Mr. Robinson:

I sent you a letter on August 6<sup>th</sup>, attaching a draft notice for a corporate designee deposition in the above case and asking for dates. See attached copy of August 6<sup>th</sup> letter. I also called and left you a voice mail message on August 7<sup>th</sup> to that effect.

I never received a response.

In the absence of receiving a response, I served a notice on you for Cyberlux Corporation's corporate designee deposition for **Tuesday, August 27, 2024, commencing at 10:00 a.m.** at the offices of Spotts Fain P.S., 411 E. Franklin Street, Suite 600, Richmond, VA 23219. As I said in previous letters, it is imperative that we obtain this discovery based upon your clients' allegations and your request for emergency injunctive relief.

In the August 9<sup>th</sup> cover letter which accompanied the corporate notice, I offered an alternative date, time, or location, if you or your client would prefer for the deposition. See attached copy of August 9<sup>th</sup> letter and designee notice.

Again, I received no response.

It is now Friday, August 23<sup>rd</sup>. We have reserved a court reporter and will be present at the offices of Spotts Fain on Tuesday, August 27<sup>th</sup> in order to take the noticed deposition.

Letter to Jimmy F. Robinson, Jr., Esq.  
August 23, 2024  
Page 2 of 2

I look forward to seeing you and your client there.

Very truly yours,

  
J. Chapman Petersen, Esq.

JCP  
Enclosures

cc: client



J. Chapman Petersen+\*  
Sharon Kim Petersen  
*+also admitted in DC*  
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Won Yung Uh  
Federico J. Zablah  
Christopher T. Robertson+  
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Janice M. Jang^+

August 6, 2024

**VIA ELECTRONIC MAIL**

Jimmy F. Robinson, Jr., Esq.  
901 East Byrd Street  
Suite 1300  
Richmond, VA 23219  
[Jimmy.robinson@ogletreedeakins.com](mailto:Jimmy.robinson@ogletreedeakins.com)

Re: Cyberlux Corporation v. Atlantic Wave Holding, LLC, Case No. 240002919-0,  
In the Circuit Court of the City of Richmond

Dear Mr. Robinson:

Attached please find a proposed corporate designee notice for taking your client's deposition in the above matter. You will note that we name both Mr. Schmidt and Cyberlux as deponents. If you designate Mr. Schmidt as the corporate representative, then that would likely cover both requests.

I've tentatively set this for Friday, August 23. If that date is unavailable, please let me know a date we can do this, preferably before the end of August. I've also set this tentatively for my office in Northern Virginia, assuming that may be more convenient for Mr. Schmidt. If not, then I will find a place in Richmond to do it, pursuant to Rule 4:5 of the Rules of the Supreme Court.

I look forward to working with you and thanks,

Very sincerely yours,

J. Chapman Petersen, Esq

JCP  
Enclosure

Copy: Client

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND**

**CYBERLUX CORPORATION and  
MARK D. SCHMIDT, individually** )

**Plaintiffs,** )

**v.** )

**Case No: CL24002919-00**

**ATLANTIC WAVE HOLDINGS, LLC  
AND SECURE COMMUNITY, LLC** )

**Defendants.** )

**NOTICE OF DEPOSITION CORPORATE DESIGNEE OF  
PLAINTIFF'S CYBERLUX CORPORATION**

**To: CYBERLUX CORPORATION and MARK D. SCHMIDT  
c/o Jimmy F. Robinson, Jr., Esq.  
901 East Byrd Street  
Suite 1300  
Richmond, VA 23219  
Jimmy.robinson@ogletreedeakins.com  
Counsel for Plaintiffs**

**PLEASE TAKE NOTICE on Friday, August 23, 2024 at 10:00 AM (Eastern Time), pursuant to Virginia Supreme Court Rule 4:5(b)(6), Defendants Atlantic Wave Holdings, LLC ("Atlantic Wave") and Secure Community, LLC ("Secure Community") (collectively "Defendants"), by Counsel, will proceed to take the deposition of a designated representative for Plaintiffs, Cyberlux Corporation ("Cyberlux" or "the Company") and Mark D. Schmidt ("Schmidt") (collectively, the "Plaintiffs"), at the law office of Chap Petersen and Associates, PLC, 3970 Chain Bridge Road, Fairfax, Virginia, 22030, for all purposes allowed under the Rules**

**of the Supreme Court of Virginia. Plaintiffs shall designate a representative(s) who can address the following matters:**

- 1. Day-to-Day operation of the company January 1, 2023, to present.**
- 2. Past and current ownership of Cyberlux.**
- 3. Any actions taken by Cyberlux, including board actions, to market and sell the Company over the past two years.**
- 4. Any appraisals or valuations requested by the Board of Cyberlux over the past two years.**
- 5. Any current financial accounts being held by the Company and amounts available.**
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17. **The current status of the following lines of business:**
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18. **Your “pink current” and “Caveat Emptor” status with OTC Markets.**
19. **Any loans received from Mark Schmidt or “Mark Schmidt and Family.”**
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**IT IS FURTHER NOTICED that such testimony will be taken stenographically before a Notary Public and may be videotaped. If for any reason the taking of the deposition is not commenced on that day, or if commenced and is not concluded on that day, the taking of the deposition will be continued from day-to-day until the same shall be completed.**

**Respectfully Submitted,**

**ATLANTIC WAVE HOLDINGS, LLC  
AND SECURE COMMUNITY, LLC  
*By Counsel***

---

**J. Chapman Petersen, Esq. (VSB #37225)**  
**Chap Petersen & Associates, PLC**  
**3970 Chain Bridge Road**  
**Fairfax, Virginia 22030**  
**(571) 459-2512 (telephone)**  
**(571) 459-2307 (facsimile)**  
**jcp@petersenfirm.com**  
***Counsel for Defendants***

**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, a true and accurate copy of the foregoing was served via first-class and electronic mail to:

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**Jimmy.robinson@ogletreedeakins.com**  
***Counsel for Plaintiff***

---

**J. Chapman Petersen**

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND**

**CYBERLUX CORPORATION and  
MARK D. SCHMIDT, individually** )

**Plaintiffs,** )

**v.** )

**Case No: CL24002919-00**

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AND SECURE COMMUNITY, LLC** )

**Defendants.** )

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PLAINTIFF'S CYBERLUX CORPORATION**

To: **CYBERLUX CORPORATION and MARK D. SCHMIDT**  
**c/o Jimmy F. Robinson, Jr., Esq.**  
**901 East Byrd Street**  
**Suite 1300**  
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***Counsel for Plaintiffs***

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**"Defendants"), by Counsel, will proceed to take the deposition of a designated representative for**  
**Plaintiffs, Cyberlux Corporation ("Cyberlux" or "the Company") and/or Mark D. Schmidt**  
**("Schmidt") (collectively, the "Plaintiffs"), at the law office of Spotts Fain, P.C., 411 E Franklin**  
**St # 600, Richmond, VA 23219, for all purposes allowed under the Rules of the Supreme Court of**  
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Respectfully Submitted,

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AND SECURE COMMUNITY, LLC  
*By Counsel*



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(571) 459-2512 (telephone)  
(571) 459-2307 (facsimile)  
jcp@petersenfirm.com  
*Counsel for Defendants*

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Jimmy.robinson@ogletreedeakins.com  
*Counsel for Plaintiff*



---

J. Chapman Petersen



J. Chapman Petersen+\*  
Sharon Kim Petersen  
+also admitted in DC  
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Won Yung Uh  
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Janice M. Jang^+

August 9, 2024

*Via first-class and electronic mail*

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OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
901 East Byrd Street, Suite 1300  
Riverfront Plaza, West Tower  
Richmond, VA 23219  
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Re: *Cyberlux Corporation, et al. v. Atlantic Wave Holding, LLC, et al.*,  
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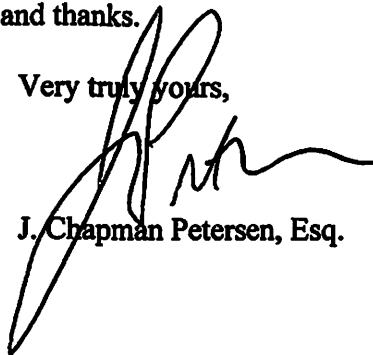
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Letter to Jimmy F. Robinson, Jr., Esq.  
August 9, 2024  
Page 2 of 2

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J. Chapman Petersen, Esq.

JCP  
Enclosures

cc: client  
Robert Keith Caudle, III, Esq.  
Milton Johns, Esq.

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND**

**CYBERLUX CORPORATION and )  
MARK D. SCHMIDT, individually )**

**Plaintiffs, )**

**v. )**

**Case No: CL24002919-00**

**ATLANTIC WAVE HOLDINGS, LLC )  
AND SECURE COMMUNITY, LLC )**

**Defendants. )**

---

**NOTICE OF DEPOSITION CORPORATE DESIGNEE OF  
PLAINTIFF'S CYBERLUX CORPORATION**

To: **CYBERLUX CORPORATION and MARK D. SCHMIDT  
c/o Jimmy F. Robinson, Jr., Esq.  
901 East Byrd Street  
Suite 1300  
Richmond, VA 23219  
Jimmy.robinson@ogletreedeakins.com  
Counsel for Plaintiffs**

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Respectfully Submitted,

ATLANTIC WAVE HOLDINGS, LLC  
AND SECURE COMMUNITY, LLC  
*By Counsel*



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J. Chapman Petersen, Esq. (VSB #37225)  
Chap Petersen & Associates, PLC  
3970 Chain Bridge Road  
Fairfax, Virginia 22030  
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jcp@petersenfirm.com  
*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

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**Jimmy F. Robinson, Jr., Esq.**  
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Suite 1300  
Richmond, VA 23219  
Jimmy.robinson@ogletreedeakins.com  
*Counsel for Plaintiff*



---

J. Chapman Petersen

# **Exhibit J**



**Planet Depos**<sup>®</sup>  
We Make It *Happen*<sup>™</sup>

---

# Transcript of Corporate Designee of Plaintiff's Cyberlux Corporation - SOTR

**Date:** August 27, 2024

**Case:** Cyberlux Corporation, et al. -v- Atlantic Wave Holdings, LLC, et al.

**Planet Depos**

**Phone:** 888.433.3767 | **Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

[www.planetdepos.com](http://www.planetdepos.com)

Michigan #8598 | Nevada #089F | New Mexico #566

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VIRGINIA:  
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
  
CYBERLUX CORPORATION )  
and MARK D. SCHMIDT, )  
Individually, ) Case No. CL24002019-00  
Plaintiffs, )  
V )  
ATLANTIC WAVE HOLDINGS, LLC, )  
and SECURE COMMUNITY, LCC, )  
Defendants. )

STATEMENT OF NONAPPEARANCE

Richmond, Virginia

August 27, 2024

10:00 a.m.

Job No. 549531

Pages 1-8

Reported by: Carol M. Tayloe, RMR, CMRS, CRR

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A P P E A R A N C E S  
ON BEHALF OF THE DEFENDANTS, ATLANTIC WAVE  
HOLDINGS, LLC, AND SECURE COMMUNITY, LLC:

J. CHAPMAN PETERSEN, ESQUIRE  
CHAP PETERSEN & ASSOCIATES, PLC  
3970 Chain Bridge Road  
Fairfax, VA 22030  
571-459-2512  
jcp@petersenfirm.com

Also present: William Welter

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C O N T E N T S

I N D E X

DEPOSITION EXHIBIT	PAGE
Exhibit 1 - Letter dated August 6, 2024	4
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Exhibit 3 - Letter dated August 23, 2024	5

1 MR. PETERSEN: Good morning, everybody.  
2 This is Chap Petersen. I represent the defendant  
3 in the case which is pending in the Circuit Court  
4 of the City of Richmond, which is Cyberlux  
5 Corporation and Mark Schmidt v Atlantic Wave  
6 Holdings, LLC, and Secured Community, LLC. The  
7 Case Number is CL24002919. And we're here today  
8 on a notice of deposition of Cyberlux Corporation  
9 and Mark Schmidt. It is a corporate designee  
10 deposition which was served on August 9.

11 I have three letters that I want to put  
12 into evidence, and I'm going to address them as  
13 Exhibit 1, which is a letter dated August 6, and  
14 I'm handing that to the court reporter so she can  
15 mark it.

16 (Deposition Exhibit 1 was marked for  
17 identification and retained by the court  
18 reporter.)

19 MR. PETERSEN: And the letter speaks for  
20 itself but it will represent that we were seeking  
21 a corporate designee deposition and we're  
22 proposing dates and the letter was sent by

1 first-class and electronic mail to Jimmy Robinson,  
2 who is the attorney for the plaintiff.

3 I'm next going to hand the court reporter  
4 Exhibit 2. The court reporter can identify that.

5 (Deposition Exhibit 2 was marked for  
6 identification and retained by the court  
7 reporter.)

8 MR. PETERSEN: And Exhibit 2, again, the  
9 cover letter addresses our request for a corporate  
10 designee deposition and it actually attaches the  
11 corporate designee notice which has been sent --  
12 served on opposing counsel and why we're here  
13 today. That was served by electronic mail and  
14 first-class mail on August 9th.

15 And then finally I have Exhibit 3. And  
16 Exhibit 3, I'm attaching a letter which was sent  
17 out by first-class mail and electronic mail, and  
18 this was sent out on August 23rd. So if the court  
19 reporter could mark Exhibit 3.

20 (Deposition Exhibit 3 was marked for  
21 identification and retained by the court  
22 reporter.)

1 MR. PETERSEN: So it is now 10:09 on  
2 Tuesday afternoon, the date that we noticed the  
3 deposition. We are at the offices of Spotts Fain,  
4 LLC, on Franklin Street in Downtown Richmond. I  
5 am here with my client. I have three books of  
6 exhibits so I can go through those exhibits with  
7 the witness, and there's no witness.

8 And I will proffer to the Court that I got  
9 an e-mail at 5:48 p.m. last night. I actually  
10 didn't receive it. I was already in Richmond.  
11 But it was forwarded to me by my legal team just  
12 saying that the witness was not going to appear  
13 and did not agree to appear.

14 Prior to that time I had received no  
15 response to my letters or phone call and basically  
16 had received no objection, no motion to quash. I  
17 had no notice whatsoever that this deposition  
18 would not be going forward.

19 I have come down from Fairfax, I have a  
20 court reporter that has traveled from Virginia  
21 Beach, I have a client that's here. My team spent  
22 several hours pulling together exhibits which I

1 have to examine the witness. I've also spent  
2 several hours, completed an outline of questions,  
3 and there's no one here to question.

4 So what we will do is we will adjourn the  
5 deposition to another time and I will file a  
6 motion to compel the attendance of the witness and  
7 for any other remedies that we're entitled to  
8 under Virginia law.

9 It now being 10:11 a.m., I think that  
10 completes what I need to put on the record. And I  
11 thank everyone for their time and being here and I  
12 apologize for any wasted time. Thank you.

13 (Off the record at 10:11 a.m.)

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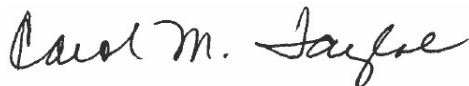
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COURT REPORTER'S CERTIFICATE

I, Carol M. Tayloe, RMR, CMRS, CCR,  
certify that I recorded verbatim by stenotype the  
proceedings in the captioned cause, Richmond,  
Virginia, on August 27, 2024.

I further certify that to the best of my  
knowledge and belief, the foregoing transcript  
constitutes a true and correct transcript of the  
said proceedings.

Given under my hand this 27th day of  
August, 2024, at Norfolk, Virginia.



---

Carol M. Tayloe

<b>A</b>	<p><b>actually</b> 5:10, 6:9</p> <p><b>address</b> 4:12</p> <p><b>addresses</b> 5:9</p> <p><b>adjourn</b> 7:4</p> <p><b>afternoon</b> 6:2</p> <p><b>again</b> 5:8</p> <p><b>agree</b> 6:13</p> <p><b>already</b> 6:10</p> <p><b>also</b> 2:12, 7:1</p> <p><b>another</b> 7:5</p> <p><b>any</b> 7:7, 7:12</p> <p><b>apologize</b> 7:12</p> <p><b>appear</b> 6:12, 6:13</p> <p><b>associates</b> 2:5</p> <p><b>atlantic</b> 1:9, 2:2, 4:5</p> <p><b>attaches</b> 5:10</p> <p><b>attaching</b> 5:16</p> <p><b>attendance</b> 7:6</p> <p><b>attorney</b> 5:2</p> <p><b>august</b> 1:15, 3:4, 3:5, 3:6, 4:10, 4:13, 5:14, 5:18, 8:6, 8:12</p>	<p><b>beach</b> 6:21</p> <p><b>been</b> 5:11</p> <p><b>behalf</b> 2:2</p> <p><b>being</b> 7:9, 7:11</p> <p><b>belief</b> 8:8</p> <p><b>best</b> 8:7</p> <p><b>books</b> 6:5</p> <p><b>bridge</b> 2:6</p>	<b>C</b>	<p><b>call</b> 6:15</p> <p><b>captioned</b> 8:5</p> <p><b>carol</b> 1:22, 8:3, 8:16</p> <p><b>case</b> 1:6, 4:3, 4:7</p> <p><b>cause</b> 8:5</p> <p><b>ccr</b> 8:3</p> <p><b>certificate</b> 8:1</p> <p><b>certify</b> 8:4, 8:7</p> <p><b>chain</b> 2:6</p> <p><b>chap</b> 2:5, 4:2</p> <p><b>chapman</b> 2:4</p> <p><b>circuit</b> 1:2, 4:3</p> <p><b>city</b> 1:2, 4:4</p> <p><b>cl</b> 1:6, 4:7</p> <p><b>client</b> 6:5, 6:21</p>	<p><b>cmrs</b> 1:22, 8:3</p> <p><b>com</b> 2:9</p> <p><b>come</b> 6:19</p> <p><b>community</b> 1:10, 2:3, 4:6</p> <p><b>compel</b> 7:6</p> <p><b>completed</b> 7:2</p> <p><b>completes</b> 7:10</p> <p><b>constitutes</b> 8:9</p> <p><b>corporate</b> 4:9, 4:21, 5:9, 5:11</p> <p><b>corporation</b> 1:4, 4:5, 4:8</p> <p><b>correct</b> 8:9</p> <p><b>could</b> 5:19</p> <p><b>counsel</b> 5:12</p> <p><b>court</b> 1:2, 4:3, 4:14, 4:17, 5:3, 5:4, 5:6, 5:18, 5:21, 6:8, 6:20, 8:1</p> <p><b>cover</b> 5:9</p> <p><b>crr</b> 1:22</p> <p><b>cyberlux</b> 1:4, 4:4, 4:8</p>	<b>D</b>	<p><b>date</b> 6:2</p> <p><b>dated</b> 3:4, 3:5, 3:6, 4:13</p> <p><b>dates</b> 4:22</p> <p><b>day</b> 8:11</p>	<p><b>defendant</b> 4:2</p> <p><b>defendants</b> 1:11, 2:2</p> <p><b>deposition</b> 3:3, 4:8, 4:10, 4:16, 4:21, 5:5, 5:10, 5:20, 6:3, 6:17, 7:5</p> <p><b>designee</b> 4:9, 4:21, 5:10, 5:11</p> <p><b>down</b> 6:19</p> <p><b>downtown</b> 6:4</p>	<b>E</b>	<p><b>e-mail</b> 6:9</p> <p><b>electronic</b> 5:1, 5:13, 5:17</p> <p><b>entitled</b> 7:7</p> <p><b>esquire</b> 2:4</p> <p><b>everybody</b> 4:1</p> <p><b>everyone</b> 7:11</p> <p><b>evidence</b> 4:12</p> <p><b>examine</b> 7:1</p> <p><b>exhibit</b> 3:3, 3:4, 3:5, 3:6, 4:13, 4:16, 5:4, 5:5, 5:8, 5:15, 5:16, 5:19, 5:20</p> <p><b>exhibits</b> 6:6, 6:22</p>	<b>F</b>	<p><b>fain</b> 6:3</p> <p><b>fairfax</b> 2:7, 6:19</p>
<b>B</b>	<p><b>basically</b> 6:15</p>											

<p><b>file</b> 7:5</p> <p><b>finally</b> 5:15</p> <p><b>first-class</b> 5:1, 5:14, 5:17</p> <p><b>foregoing</b> 8:8</p> <p><b>forward</b> 6:18</p> <p><b>forwarded</b> 6:11</p> <p><b>franklin</b> 6:4</p> <p><b>further</b> 8:7</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>given</b> 8:11</p> <p><b>go</b> 6:6</p> <p><b>going</b> 4:12, 5:3, 6:12, 6:18</p> <p><b>good</b> 4:1</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>hand</b> 5:3, 8:11</p> <p><b>handing</b> 4:14</p> <p><b>here</b> 4:7, 5:12, 6:5, 6:21, 7:3, 7:11</p> <p><b>holdings</b> 1:9, 2:3, 4:6</p> <p><b>hours</b> 6:22, 7:2</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>identification</b> 4:17, 5:6, 5:21</p> <p><b>identify</b> 5:4</p> <p><b>individually</b> 1:6</p>	<p><b>itself</b> 4:20</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>jcp@petersenfirm</b> 2:9</p> <p><b>jimmy</b> 5:1</p> <p><b>job</b> 1:20</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>knowledge</b> 8:8</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>last</b> 6:9</p> <p><b>law</b> 7:8</p> <p><b>lcc</b> 1:10</p> <p><b>legal</b> 6:11</p> <p><b>letter</b> 3:4, 3:5, 3:6, 4:13, 4:19, 4:22, 5:9, 5:16</p> <p><b>letters</b> 4:11, 6:15</p> <p><b>llc</b> 1:9, 2:3, 4:6, 6:4</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>mail</b> 5:1, 5:13, 5:14, 5:17</p> <p><b>mark</b> 1:5, 4:5, 4:9, 4:15, 5:19</p> <p><b>marked</b> 4:16, 5:5, 5:20</p> <p><b>morning</b> 4:1</p> <p><b>motion</b> 6:16, 7:6</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>need</b> 7:10</p>	<p><b>next</b> 5:3</p> <p><b>night</b> 6:9</p> <p><b>nonappearance</b> 1:13</p> <p><b>norfolk</b> 8:12</p> <p><b>notice</b> 4:8, 5:11, 6:17</p> <p><b>noticed</b> 6:2</p> <p><b>number</b> 4:7</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>objection</b> 6:16</p> <p><b>offices</b> 6:3</p> <p><b>one</b> 7:3</p> <p><b>opposing</b> 5:12</p> <p><b>other</b> 7:7</p> <p><b>out</b> 5:17, 5:18</p> <p><b>outline</b> 7:2</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>page</b> 3:3</p> <p><b>pages</b> 1:21</p> <p><b>pending</b> 4:3</p> <p><b>petersen</b> 2:4, 2:5, 4:1, 4:2, 4:19, 5:8, 6:1</p> <p><b>phone</b> 6:15</p> <p><b>plaintiff</b> 5:2</p> <p><b>plaintiffs</b> 1:7</p>	<p><b>plc</b> 2:5</p> <p><b>present</b> 2:12</p> <p><b>prior</b> 6:14</p> <p><b>proceedings</b> 8:5, 8:10</p> <p><b>proffer</b> 6:8</p> <p><b>proposing</b> 4:22</p> <p><b>pulling</b> 6:22</p> <p><b>put</b> 4:11, 7:10</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>quash</b> 6:16</p> <p><b>question</b> 7:3</p> <p><b>questions</b> 7:2</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>rd</b> 5:18</p> <p><b>receive</b> 6:10</p> <p><b>received</b> 6:14, 6:16</p> <p><b>record</b> 7:10, 7:13</p> <p><b>recorded</b> 8:4</p> <p><b>remedies</b> 7:7</p> <p><b>reported</b> 1:22</p> <p><b>reporter</b> 4:14, 4:18, 5:3, 5:4, 5:7, 5:19, 5:22, 6:20</p> <p><b>reporter's</b> 8:1</p> <p><b>represent</b> 4:2, 4:20</p>
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<p><b>request</b> 5:9</p> <p><b>response</b> 6:15</p> <p><b>retained</b> 4:17, 5:6, 5:21</p> <p><b>richmond</b> 1:2, 1:14, 4:4, 6:4, 6:10, 8:5</p> <p><b>rmr</b> 1:22, 8:3</p> <p><b>road</b> 2:6</p> <p><b>robinson</b> 5:1</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>said</b> 8:10</p> <p><b>saying</b> 6:12</p> <p><b>schmidt</b> 1:5, 4:5, 4:9</p> <p><b>secure</b> 1:10, 2:3</p> <p><b>secured</b> 4:6</p> <p><b>seeking</b> 4:20</p> <p><b>sent</b> 4:22, 5:11, 5:16, 5:18</p> <p><b>served</b> 4:10, 5:12, 5:13</p> <p><b>several</b> 6:22, 7:2</p> <p><b>signature-kcnbo</b> 8:13</p> <p><b>speaks</b> 4:19</p> <p><b>spent</b> 6:21, 7:1</p> <p><b>spotts</b> 6:3</p> <p><b>statement</b> 1:13</p> <p><b>stenotype</b> 8:4</p>	<p><b>street</b> 6:4</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>taylor</b> 1:22, 8:3, 8:16</p> <p><b>team</b> 6:11, 6:21</p> <p><b>th</b> 8:11</p> <p><b>thank</b> 7:11, 7:12</p> <p><b>think</b> 7:9</p> <p><b>three</b> 4:11, 6:5</p> <p><b>through</b> 6:6</p> <p><b>time</b> 6:14, 7:5, 7:11, 7:12</p> <p><b>today</b> 4:7, 5:13</p> <p><b>together</b> 6:22</p> <p><b>transcript</b> 8:8, 8:9</p> <p><b>traveled</b> 6:20</p> <p><b>true</b> 8:9</p> <p><b>tuesday</b> 6:2</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>under</b> 7:8, 8:11</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>va</b> 2:7</p> <p><b>verbatim</b> 8:4</p> <p><b>virginia</b> 1:1, 1:14, 6:20, 7:8, 8:6, 8:12</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>want</b> 4:11</p>	<p><b>wasted</b> 7:12</p> <p><b>wave</b> 1:9, 2:2, 4:5</p> <p><b>we're</b> 4:7, 4:21, 5:12, 7:7</p> <p><b>welter</b> 2:12</p> <p><b>whatsoever</b> 6:17</p> <p><b>william</b> 2:12</p> <p><b>witness</b> 6:7, 6:12, 7:1, 7:6</p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p><b>00</b> 1:6, 1:16</p> <p><b>09</b> 6:1</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1-8</b> 1:21</p> <p><b>10</b> 1:16, 6:1, 7:9, 7:13</p> <p><b>11</b> 7:9, 7:13</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>2024</b> 1:15, 3:4, 3:5, 3:6, 8:6, 8:12</p> <p><b>22030</b> 2:7</p> <p><b>23</b> 3:6, 5:18</p> <p><b>24002019</b> 1:6</p> <p><b>24002919</b> 4:7</p> <p><b>2512</b> 2:8</p> <p><b>27</b> 1:15, 8:6, 8:11</p>	<hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>3970</b> 2:6</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>459</b> 2:8</p> <p><b>48</b> 6:9</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>5</b> 6:9</p> <p><b>549531</b> 1:20</p> <p><b>571</b> 2:8</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>9th</b> 5:14</p>
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# **Exhibit K**

Market Activity

Corporate Services

OTC Link ATS

Market Data

Learn

About

Blog

Market Activity / Stock / CYBL / Overview

# CYBL Cyberlux Corp.

Common Stock

Overview Quote Company Security News Financials Disclosure Research Profile Details



Pink Limited Information



Caveat Emptor



Verified Profile

06/2024



Transfer Agent Verified

### Warning! Limited Information

OTC Markets Group has confirmed that this company has limited disclosure or financial information publicly available, but meets a minimum requirement for public quoting under Rule 15c2-11. The Pink Limited Information tier may include companies that are delinquent in their filing obligations with the SEC, a foreign exchange or regulator, or under the Pink Disclosure Guidelines, as well as non-U.S. companies listed on a foreign exchange that does not require English disclosure and do not certify their compliance with SEC Rule 12g3-2(b).

### Warning! Caveat Emptor

OTC Markets Group has discontinued the public display of quotes for this security because it has been labeled Caveat Emptor (Buyer Beware). OTC Markets Group designates certain securities as "Caveat Emptor" and places a skull and crossbones icon next to the stock symbol when there may be reason for investors to exercise additional caution and perform thorough due diligence before making an investment decision in that security. View our other [compliance designations](#) to learn more about how we use data to flag risks and inform investors.

The Caveat Emptor Designation may be assigned when OTC Markets Group becomes aware of one or more of the following:

- **Promotion** — The security is the subject of stock promotion that may be misleading or manipulative. Promotional activities may include news releases, spam email, and newsletters, whether they are

### DAILY ADVANCERS

QX	SBIG	35.07 %
QX	MRAI	27.91 %
QX	GALX	27.69 %
QX	DNM	27.16 %
QX	SALM	29.15 %

published by the issuer or a third party. See [OTC Markets Group's Policy on Stock Promotion](#).

- **Investigation of Fraud or Other Criminal Activities** — There is an investigation or other indication of fraudulent or other criminal activity involving the company, its securities or insiders.
- **Suspension/Halt** — A regulatory authority or an exchange has halted or suspended trading for public interest concerns (i.e. not a news or earnings halt).
- **Undisclosed Corporate Actions** — The security or company is the subject of a corporate action, such as a reverse merger, stock split, or name change, without adequate current information being publicly available.
- **Other Public Interest Concern** — OTC Markets Group has determined that there is a public interest concern regarding the security. Such concerns may include, but are not limited to, unusual or unexplained trading activity, spam or disruptive corporate actions, even when current information is publicly available.

OTC Markets Group will resume the public display quotes if we are able to confirm that the company is eligible to be designated as “Current Information” and believe that a public interest concern no longer exists. Investors are encouraged to use caution and due diligence in their investment decisions. Please read our [Investor Protection](#) page and [OTC Markets Policy Regarding Caveat Emptor](#) for more information.

QUOTE	SYMBOL	LAST	CHANGE	BID	ASK	VOLUME	TIME
	OTCM	47.30	-2.30 (-4.64%)	49.00	49.52	494	00:00



- Contact
- Careers
- Market Hours
- Glossary

# **Exhibit L**

1 Sean C. Coughlin, Esq. (SBN 167900)  
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2 Ethan T. Boyer, Esq. (SBN 173959)  
eboyer@noonanlance.com  
3 Sara K. Gediman, Esq. (SBN 337792)  
sgediman@noonanlance.com  
4 **NOONAN LANCE BOYER & BANACH LLP**  
701 Island Avenue, Suite 400  
5 San Diego, California 92101  
Telephone: (619) 780-0880  
6 Facsimile: (619) 780-0877

7 Attorneys for Plaintiff  
8 RB Capital Partners, Inc.

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 RB CAPITAL PARTNERS, INC., a California  
12 Corporation,

13 Plaintiff,

14 vs.

15 CYBERLUX CORPORATION, a Nevada  
16 Corporation; DOES 1 through 10,

17 Defendants.

Case No.: **'24CV1434 AJB BJC**

**COMPLAINT FOR BREACH OF  
CONTRACT AND DECLARATORY  
RELIEF**

**DEMAND FOR JURY TRIAL**

18 Plaintiff RB Capital Partners, Inc., by and through its attorneys, allege against Defendant  
19 Cyberlux Corporation, and Does 1-10, inclusive, as follows:

20 **THE PARTIES**

21 1. RB Capital Partners, Inc. (“RB CAPITAL”) is, and at all times mentioned in this  
22 complaint was, a California corporation with its principal place of business in San Diego, California.  
23 RB CAPITAL is a venture capital lender to various emerging and technology-based industries.

24 2. RB CAPTIAL is informed and believes that Defendant Cyberlux Corporation  
25 (“CYBERLUX”) is, and at all times mentioned in this complaint was, a Nevada corporation, with  
26 its business mailing address in 800 Park Offices Dr., Suite 3209, Research Triangle Park, North  
27 Carolina 27709, and that CYBERLUX also maintains offices in San Diego County at 995 Joshua  
28 Way Suite A, Vista, California, 92081. RB CAPITAL is informed and believes that CYBERLUX  
was founded in 2000 and is a defense industry technology solutions company.

**JURISDICTION AND VENUE**

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3. Subject matter jurisdiction is proper in this Court. There is a complete diversity of citizenship between the parties in that RB Capital is a citizen of the State of California, as it is a corporation incorporated under the laws of the State of California and has its principal place of business in the State of California, and CYBERLUX is a corporation incorporated under the laws of the State of Nevada having its principal place of business in the State of North Carolina. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. §1332.

4. Venue is proper in in this District pursuant ot 28 U.S.C. §1391(b). San Diego County was the place of performance for the agreements at issue in this matter in that payment was due in San Diego County. San Diego County was the place where the agreements at issue in this matter were entered. CYBERLUX has a place of business in San Diego County, 995 Joshua Way Suite A, Vista, California, 92081. The amount in controversy, exclusive of interest, costs and attorney’s fees, exceeds \$75,000.

5. CYBERLUX is subject to personal jurisdiction in the State of California. CYBERLUX has purposefully availed itself of California’s benefits. This case relates to or arises out of CYBERLUX’s contacts with California. The exercise of jurisdiction comports with fair play and substantial justice. CYBERLUX has intentionally taken advantage of benefits in California by borrowing money in California from a California Corporation, by operating a wholly owned subsidiary and business unit in California, and by utilizing the justice system in the State of California. This case is related to CYBERLUX’s contact with California in that it is an action to enforce agreements entered in the State of California, delivered to RB CAPITAL in the State of California, to be performed in the State of California, and breached in the State of California. CYBERLUX intentionally directed its activities in California such that, by virtue of the benefits the CYBERLUX received, CYBERLUX should reasonably expect to be subject to personal jurisdiction in California. Also, CYBERLUX operates one of its business units, Datron Word Communications, Inc. (“Datron”) at 995 Joshua Way Suite A, Vista, California, 92081. Through its business unit Datron, CYBERLUX has deliberately directed its activities in, or has a substantial connection with, the State of California. RB Capital is informed and believes that CYBERLUX’s CEO Mark D.

1 Schmidt also directs and controls the operations of CYBERLUX’s California business unit Datron.  
2 The promissory notes that are the subject of this action provide that “This Note is being delivered  
3 in and shall be construed in accordance with the laws of the State of California, without regard to  
4 the conflicts of law provisions thereof.” CYBERLUX’s agreement to be bound by the laws of the  
5 State of California further confirms its purposeful availment of the benefits and protections of the  
6 State of California and reinforce its deliberate affiliation with the State of California and the  
7 reasonable foreseeability of being subject to possible litigation in this state. Exercising jurisdiction  
8 would be fair and just.

9 6. The true names of defendants DOES 1 through 10, are unknown to RB CAPITAL  
10 who hereby sues said DOE defendants by such fictitious names. Any reference in this Complaint  
11 to the actions or inactions of any defendant, whether reference is made to such defendants by specific  
12 name or otherwise, is also reference to the actions or inactions of DOES 1 through 10, inclusive.

13 **FIRST CLAIM**

14 **BREACH OF CONTRACT**

15 7. RB CAPITAL incorporates by reference paragraphs 1 through 6 as though fully set  
16 forth herein.

17 8. RB CAPITAL loaned \$1,500,000 to CYBERLUX on or about October 22, 2021 (the  
18 “10/22/21 Loan”). The 10/22/21 Loan was evidenced by a Convertible Promissory Note, dated  
19 October 22, 2021, and executed by CYBERLUX in favor of RB CAPITAL, a true and correct copy  
20 of which is attached hereto as Exhibit 1 (the “10/22/21 Note”).

21 9. RB CAPITAL loaned \$1,500,000 to CYBERLUX on or about November 8, 2021  
22 (the “11/8/21 Loan”). The 11/8/21 Loan was evidenced by a Convertible Promissory Note, dated  
23 November 8, 2021, and executed by CYBERLUX in favor of RB CAPITAL, a true and correct copy  
24 of which is attached hereto as Exhibit 2 (the “11/8/21 Note”).

25 10. RB CAPITAL loaned \$1,500,000 to CYBERLUX on or about November 22, 2021  
26 (the “11/22/21 Loan”). The 11/22/21 Loan was evidenced by a Convertible Promissory Note, dated  
27 November 22, 2021, and executed by CYBERLUX in favor of RB CAPITAL, a true and correct  
28 copy of which is attached hereto as Exhibit 3 (the “11/22/21 Note”).

1           11.     RB CAPITAL loaned \$500,000 to CYBERLUX on or about May 23, 2022 (the  
 2     “5/23/22 Loan”). The 5/23/22 Loan was evidenced by a Convertible Promissory Note, dated May  
 3     23, 2022, and executed by CYBERLUX in favor of RB CAPITAL, a true and correct copy of which  
 4     is attached hereto as Exhibit 4 (the “5/23/22 Note”).

5           12.     RB CAPITAL loaned \$250,000 CYBERLUX on or about July 12, 2022 (the  
 6     “7/12/22 Loan”). The 7/12/22 Loan was evidenced by a Convertible Promissory Note, dated July  
 7     12, 2022, and executed by CYBERLUX in favor of RB CAPITAL, a true and correct copy of which  
 8     is attached hereto as Exhibit 5 (the “7/12/22 Note”).

9           13.     Each of the foregoing loans are referred to herein as a “Loan” and collectively as the  
 10    “Loans.” Each of the foregoing notes are referred to herein as a “Note” and collectively as the  
 11    “Notes.”

12          14.     When the Notes matured by their terms, CYBERLUX failed to make the required  
 13    payments under each Note on or before the maturity dates set forth therein. RB CAPITAL made  
 14    numerous requests to CYBERLUX to repay the Notes, but CYBERLUX has failed to cure the  
 15    breaches of the terms of the Notes.

16          15.     CYBERLUX breached the terms of the Notes by failing to make the payments to RB  
 17    CAPITAL when due under the Notes. RB CAPITAL has performed all obligations on its part under  
 18    the Notes or is excused from doing so. RB CAPITAL has been damaged as a result of the breaches  
 19    of the terms of the Notes. As July 15, 2024, the following amounts were owed by CYBERLUX to  
 20    RB CAPITAL on the Notes, and interest and other charges have continued to accrue since that date:

<b>Note Date:</b>	<b>Principal</b>	<b>Interest 5% (7/15/24)</b>	<b>Total (7/15/24)</b>
10/22/21	\$1,418,000 (includes credit for a \$250,000 payment made on 12/19/23)	\$40,175	\$1,458,175
11/8/21	\$1,500,000	\$201,560	\$1,701,560
11/22/21	\$1,500,000	\$198,435	\$1,698,435
5/23/22	\$500,000	\$ 53,640	\$553,640
7/12/22	\$250,000	\$ 25,150	\$275,150
<b>Totals</b>	<b>\$5,168,000</b>		<b>\$5,686,960</b>



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**PRAYER**

WHEREFORE, RB CAPITAL prays for judgment as follows:

1. For recovery of all losses caused by the breaches of the Notes, including, but not limited to, all principal amounts, accrued interest, and all other amounts owed by CYBERLUX to RB CAPITAL under the Notes.
2. For a declaratory judgment pursuant to 28 U.S.C. §2201.
3. For costs and attorneys’ fees incurred.
4. For all other amounts deemed to be just and proper.

Dated: August 12, 2024

NOONAN LANCE BOYER & BANACH LLP

By: 

Sean C. Coughlin  
Ethan T. Boyer  
Sara K. Gediman  
Attorneys for Plaintiff  
RB CAPITAL PARTNERS, INC.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
RB Capital Partners, Inc., a California Corporation
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number)
Sean C. Coughlin, Esq.
NOONAN LANCE BOYER & BANACH LLP
701 Island Ave., Suite 400, San Diego, CA 92101

DEFENDANTS
Cyberlux Corporation, a Nevada Corporation
County of Residence of First Listed Defendant Durham County
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) '24CV1434 AJB BJC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [ ] 1
Citizen of Another State [ ] 2 [ ] 2
Citizen or Subject of a Foreign Country [ ] 3 [ ] 3
Incorporated or Principal Place of Business In This State [ ] 4 [ ] 4
Incorporated and Principal Place of Business In Another State [ ] 5 [X] 5
Foreign Nation [ ] 6 [ ] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 625 Drug Related Seizure, etc.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding
[ ] 2 Removed from State Court
[ ] 3 Remanded from Appellate Court
[ ] 4 Reinstated or Reopened
[ ] 5 Transferred from Another District (specify)
[ ] 6 Multidistrict Litigation - Transfer
[ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §1332
Brief description of cause:
Breach of Promissory Notes

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. [ ]
DEMAND \$ 5,686,960
CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE August 12, 2024
SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY
RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
  
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
  
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
  
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
  
- V. **Origin.** Place an "X" in one of the seven boxes.
 

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
  
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
  
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
  
- VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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**INDEX TO EXHIBITS**

Exhibit No.	Description	Page(s)
1	True and correct copy of Convertible Promissory Note executed by Cyberlux in favor of RB Capital dated 10/22/21	8-14
2	True and correct copy of Convertible Promissory Note executed by Cyberlux in favor of RB Capital dated 11/8/21	15-21
3	True and correct copy of Convertible Promissory Note executed by Cyberlux in favor of RB Capital dated 11/22/21	22-28
4	True and correct copy of Convertible Promissory Note executed by Cyberlux in favor of RB Capital dated 5/23/22	29-35
5	True and correct copy of Convertible Promissory Note executed by Cyberlux in favor of RB Capital dated 7/12/22	36-42

# EXHIBIT 1

**THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.**

**CYBERLUX CORP.  
CONVERTIBLE PROMISSORY NOTE**

Principal Amount: **\$1,500,000.00 USD**

October 22, 2021

WHEREAS on October 22, 2021, RB Capital Partners, Inc., with its offices at 2856 Torrey Pines Road, La Jolla, California 92037 (the "Holder") loaned funds totaling, \$1,500,000.00 to Cyberlux Corp., a Nevada corporation with its office at 800 Park Offices Drive.; Suite 3209; Research Triangle Park, NC 27709 (the "Company"). Payment for the loan was made directly to the Company in the form of a Wire Transfer.

WHEREAS the Company and Holder further agreed that such services provided by the Holder to the Company would be evidenced in a convertible note, which convertible note would be convertible into shares of common stock of the Company at the rate of \$0.25 in accordance with Section 3 below;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the mutual premises and the mutual covenants and agreements contained herein, the parties covenant and agree each with the other as follows:

1. Principal and Interest.

1.1 The Company, for value received, hereby promises to pay to the order of the Holder the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), which amount represents the amount owed to Holder as of October 22, 2021.

1.2 This Convertible Promissory Note (the "Note") shall bear five percent (5%) interest per annum. The Note is for a period of (24) months and cannot be converted until (6) months from the date first written above has passed.

1.3 Upon payment in full of the principal, this Note shall be surrendered to the Company for cancellation.

1.4 The principal under this Note shall be payable at the principal office of the Company and shall be forwarded to the address of the Holder hereof as such Holder shall from time to time designate.

2. Attorney's Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by the Holder.

3. Conversion.

3.1 Voluntary Conversion. The Holder shall have the right, exercisable in whole or in part, to convert the outstanding principal into a number of fully paid and non-assessable whole shares of the Company's \$0.001 Par Value common stock ("Common Stock") determined in accordance with Section 3.2 below.

3.2 Shares Issuable. The number of whole shares of Common Stock into which this Note may be voluntarily converted (the "Conversion Shares") shall be determined by dividing the aggregate principal amount borrowed hereunder by \$0.25 (the "Note Conversion Price"); provided, however, that, in no event, shall Holder be entitled to convert any portion of this Note in excess of that portion of this Note upon conversion of which the sum of (1) the number of shares of Common stock beneficially owned by Holder and its affiliates (other than shares of Common Stock which may be deemed beneficially owned through the ownership of the unconverted portion of this Note or the unexercised or unconverted portion of any other security of Maker subject to a limitation on conversion or exercise analogous to the limitations contained herein) and (2) the number of shares of common stock issuable upon the conversion of the portion of this Note with respect to which the determination of this proviso is being made, would result in the beneficial ownership by Holder and its affiliates of more than 4.99% of the outstanding shares of common stock of the Company. For purposes of the proviso to the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934 and Regulation 13D-G thereunder, except as otherwise provided in clause (1) of such proviso. The number of shares of Common Stock to be issued upon each conversion of this Note shall be determined by dividing the Conversion Amount (as defined below) by the Note Conversion Price. The Term "Conversion Amount" means, with respect to any conversion of this Note, the sum of (1) the principal amount of this Note to be converted in such conversion plus, (2) at the Company's option, accrued and unpaid interest, if any, on such principal amount at the interest rate provided in this Note to the conversion date, provided; however, that the Company shall have the right to pay any or all interest in cash.

3.3 Notice and Conversion Procedures. After receipt of demand for repayment, the Company agrees to give the Holder notice at least five (5) business days prior to the time that the Company repays this Note. If the Holder elects to convert this Note, the Holder shall provide the Company with a written notice of conversion setting forth the amount to be converted. The notice must be delivered to the Company together with this Note. Within twenty (20) business days of receipt of such notice, the Company shall deliver to the Holder certificate(s) for the Common Stock

issuable upon such conversion and, if the entire principal amount was not so converted, a new note representing such balance.

### 3.4 Other Conversion Provisions.

(a) Adjustment of Note Conversion Price. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a reverse stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be affected. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a forward stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be affected.

(b) Common Stock Defined. Whenever reference is made in this Note to the shares of Common Stock, the term "Common Stock" shall mean the Common Stock of the Company authorized as of the date hereof, and any other class of stock ranking on a parity with such Common Stock. Shares issuable upon conversion hereof shall include only shares of Common Stock of the Company.

3.5 No Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion of this Note, the Company shall pay to the Holder the amount of outstanding principal hereunder that is not so converted.

4. Representations, Warranties and Covenants of the Company. The Company represents, warrants and covenants with the Holder as follows:

(a) Authorization; Enforceability. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Note and the performance of all obligations of the Company hereunder has been taken, and this Note constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Note except any notices required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), or such filings as may be required under applicable state securities laws, which, if applicable, will be timely filed within the applicable periods therefor.

(c) No Violation. The execution, delivery and performance by the Company of this Note and the consummation of the transactions contemplated hereby will not result in a violation of its

Certificate of Incorporation or Bylaws, in any material respect of any provision of any mortgage, agreement, instrument or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to the Company or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

5. Representations and Covenants of the Holder. The Company has entered into this Note in reliance upon the following representations and covenants of the Holder:

(a) Investment Purpose. This Note and the Common Stock issuable upon conversion of the Note are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Holder understands (i) that this Note and the Common Stock issuable upon conversion of this Note are not registered under the 1933 Act or qualified under applicable state securities laws, and (ii) that the Company is relying on an exemption from registration predicated on the representations set forth in this Section 8.

(c) Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell the Common Stock issuable upon conversion of the Note, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of the Note or the Common Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

6. Assignment. Subject to the restrictions on transfer described in Section 8 below, the rights and obligations of the Company and the Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

7. Waiver and Amendment. Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Holder.

8. Transfer of This Note or Securities Issuable on Conversion Hereof. With respect to any offer, sale or other disposition of this Note or securities into which this Note may be converted, the Holder will give written notice to the Company prior thereto, describing briefly the manner

thereof. Unless the Company reasonably determines that such transfer would violate applicable securities laws, or that such transfer would adversely affect the Company's ability to account for future transactions to which it is a party as a pooling of interests, and notifies the Holder thereof within five (5) business days after receiving notice of the transfer, the Holder may effect such transfer. The Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the 1933 Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the 1933 Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

9. Notices. Any notice, other communication or payment required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery if personally delivered or three (3) business days after deposit if deposited in the United States mail for mailing by certified mail, postage prepaid. Each of the above addressees may change its address for purposes of this Section by giving to the other addressee notice of such new address in conformance with this Section.

10. Governing Law. This Note is being delivered in and shall be construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions thereof.

11. Heading; References. All headings used herein are used for convenience only and shall not be used to construe or interpret this Note. Except as otherwise indicated, all references herein to Sections refer to Sections hereof.

12. Waiver by the Company. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

13. Delays. No delay by the Holder in exercising any power or right hereunder shall operate as a waiver of any power or right.

14. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

15. No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Note against impairment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Cyberlux Corp. has caused this Note to be executed in its corporate name and this Note to be dated, issued and delivered, all on the date first above written.

**CYBERLUX CORP.**

Date: October 22, 2021

By   
Mark Schmidt  
Its: CEO & Director

**RB CAPITAL PARTNERS, INC.**

Date: October 22, 2021

By   
Brett Rosen  
Its: Managing Member

# EXHIBIT 2

**THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.**

**CYBERLUX CORP.  
CONVERTIBLE PROMISSORY NOTE**

Principal Amount: **\$1,500,000.00 USD**

November 8, 2021

WHEREAS on November 8, 2021, RB Capital Partners, Inc., with its offices at 2856 Torrey Pines Road, La Jolla, California 92037 (the "Holder") loaned funds totaling, \$1,500,000.00 to Cyberlux Corp., a Nevada corporation with its office at 800 Park Offices Drive.; Suite 3209; Research Triangle Park, NC 27709 (the "Company"). Payment for the loan was made directly to the Company in the form of a Wire Transfer.

WHEREAS the Company and Holder further agreed that such services provided by the Holder to the Company would be evidenced in a convertible note, which convertible note would be convertible into shares of common stock of the Company at the rate of \$0.25 in accordance with Section 3 below;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the mutual premises and the mutual covenants and agreements contained herein, the parties covenant and agree each with the other as follows:

**1. Principal and Interest.**

1.1 The Company, for value received, hereby promises to pay to the order of the Holder the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), which amount represents the amount owed to Holder as of November 8, 2021.

1.2 This Convertible Promissory Note (the "Note") shall bear five percent (5%) interest per annum. The Note is for a period of (24) months and cannot be converted until (6) months from the date first written above has passed.

1.3 Upon payment in full of the principal, this Note shall be surrendered to the Company for cancellation.

1.4 The principal under this Note shall be payable at the principal office of the Company and shall be forwarded to the address of the Holder hereof as such Holder shall from time to time designate.

2. Attorney's Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by the Holder.

3. Conversion.

3.1 Voluntary Conversion. The Holder shall have the right, exercisable in whole or in part, to convert the outstanding principal into a number of fully paid and non-assessable whole shares of the Company's \$0.001 Par Value common stock ("Common Stock") determined in accordance with Section 3.2 below.

3.2 Shares Issuable. The number of whole shares of Common Stock into which this Note may be voluntarily converted (the "Conversion Shares") shall be determined by dividing the aggregate principal amount borrowed hereunder by \$0.25 (the "Note Conversion Price"); provided, however, that, in no event, shall Holder be entitled to convert any portion of this Note in excess of that portion of this Note upon conversion of which the sum of (1) the number of shares of Common stock beneficially owned by Holder and its affiliates (other than shares of Common Stock which may be deemed beneficially owned through the ownership of the unconverted portion of this Note or the unexercised or unconverted portion of any other security of Maker subject to a limitation on conversion or exercise analogous to the limitations contained herein) and (2) the number of shares of common stock issuable upon the conversion of the portion of this Note with respect to which the determination of this proviso is being made, would result in the beneficial ownership by Holder and its affiliates of more than 4.99% of the outstanding shares of common stock of the Company. For purposes of the proviso to the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934 and Regulation 13D-G thereunder, except as otherwise provided in clause (1) of such proviso. The number of shares of Common Stock to be issued upon each conversion of this Note shall be determined by dividing the Conversion Amount (as defined below) by the Note Conversion Price. The Term "Conversion Amount" means, with respect to any conversion of this Note, the sum of (1) the principal amount of this Note to be converted in such conversion plus, (2) at the Company's option, accrued and unpaid interest, if any, on such principal amount at the interest rate provided in this Note to the conversion date, provided; however, that the Company shall have the right to pay any or all interest in cash.

3.3 Notice and Conversion Procedures. After receipt of demand for repayment, the Company agrees to give the Holder notice at least five (5) business days prior to the time that the Company repays this Note. If the Holder elects to convert this Note, the Holder shall provide the Company with a written notice of conversion setting forth the amount to be converted. The notice must be delivered to the Company together with this Note. Within twenty (20) business days of receipt of such notice, the Company shall deliver to the Holder certificate(s) for the Common Stock

issuable upon such conversion and, if the entire principal amount was not so converted, a new note representing such balance.

### 3.4 Other Conversion Provisions.

(a) Adjustment of Note Conversion Price. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a reverse stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be affected. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a forward stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be affected.

(b) Common Stock Defined. Whenever reference is made in this Note to the shares of Common Stock, the term "Common Stock" shall mean the Common Stock of the Company authorized as of the date hereof, and any other class of stock ranking on a parity with such Common Stock. Shares issuable upon conversion hereof shall include only shares of Common Stock of the Company.

3.5 No Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion of this Note, the Company shall pay to the Holder the amount of outstanding principal hereunder that is not so converted.

4. Representations, Warranties and Covenants of the Company. The Company represents, warrants and covenants with the Holder as follows:

(a) Authorization; Enforceability. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Note and the performance of all obligations of the Company hereunder has been taken, and this Note constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Note except any notices required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), or such filings as may be required under applicable state securities laws, which, if applicable, will be timely filed within the applicable periods therefor.

(c) No Violation. The execution, delivery and performance by the Company of this Note and the consummation of the transactions contemplated hereby will not result in a violation of its

Certificate of Incorporation or Bylaws, in any material respect of any provision of any mortgage, agreement, instrument or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to the Company or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

5. Representations and Covenants of the Holder. The Company has entered into this Note in reliance upon the following representations and covenants of the Holder:

(a) Investment Purpose. This Note and the Common Stock issuable upon conversion of the Note are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Holder understands (i) that this Note and the Common Stock issuable upon conversion of this Note are not registered under the 1933 Act or qualified under applicable state securities laws, and (ii) that the Company is relying on an exemption from registration predicated on the representations set forth in this Section 8.

(c) Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell the Common Stock issuable upon conversion of the Note, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of the Note or the Common Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

6. Assignment. Subject to the restrictions on transfer described in Section 8 below, the rights and obligations of the Company and the Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

7. Waiver and Amendment. Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Holder.

8. Transfer of This Note or Securities Issuable on Conversion Hereof. With respect to any offer, sale or other disposition of this Note or securities into which this Note may be converted, the Holder will give written notice to the Company prior thereto, describing briefly the manner

thereof. Unless the Company reasonably determines that such transfer would violate applicable securities laws, or that such transfer would adversely affect the Company's ability to account for future transactions to which it is a party as a pooling of interests, and notifies the Holder thereof within five (5) business days after receiving notice of the transfer, the Holder may effect such transfer. The Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the 1933 Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the 1933 Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

9. Notices. Any notice, other communication or payment required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery if personally delivered or three (3) business days after deposit if deposited in the United States mail for mailing by certified mail, postage prepaid. Each of the above addressees may change its address for purposes of this Section by giving to the other addressee notice of such new address in conformance with this Section.

10. Governing Law. This Note is being delivered in and shall be construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions thereof.

11. Heading; References. All headings used herein are used for convenience only and shall not be used to construe or interpret this Note. Except as otherwise indicated, all references herein to Sections refer to Sections hereof.

12. Waiver by the Company. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

13. Delays. No delay by the Holder in exercising any power or right hereunder shall operate as a waiver of any power or right.

14. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

15. No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Note against impairment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Cyberlux Corp. has caused this Note to be executed in its corporate name and this Note to be dated, issued and delivered, all on the date first above written.

**CYBERLUX CORP.**

Date: November 8, 2021

By: *Mark Schmidt*  
Mark Schmidt  
Its: CEO & Director

**RB CAPITAL PARTNERS, INC.**

Date: November 8, 2021

By: *Brett Rosen*  
Brett Rosen  
Its: Managing Member

# EXHIBIT 3

**THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.**

**CYBERLUX CORP.  
CONVERTIBLE PROMISSORY NOTE**

Principal Amount: **\$1,500,000.00 USD**

November 22, 2021

WHEREAS on November 22, 2021, RB Capital Partners, Inc., with its offices at 2856 Torrey Pines Road, La Jolla, California 92037 (the "Holder") loaned funds totaling, \$1,500,000.00 to Cyberlux Corp., a Nevada corporation with its office at 800 Park Offices Drive.; Suite 3209; Research Triangle Park, NC 27709 (the "Company"). Payment for the loan was made directly to the Company in the form of a Wire Transfer.

WHEREAS the Company and Holder further agreed that such services provided by the Holder to the Company would be evidenced in a convertible note, which convertible note would be convertible into shares of common stock of the Company at the rate of \$0.25 in accordance with Section 3 below;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the mutual premises and the mutual covenants and agreements contained herein, the parties covenant and agree each with the other as follows:

1. Principal and Interest.

1.1 The Company, for value received, hereby promises to pay to the order of the Holder the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), which amount represents the amount owed to Holder as of November 22, 2021.

1.2 This Convertible Promissory Note (the "Note") shall bear five percent (5%) interest per annum. The Note is for a period of (24) months and cannot be converted until (6) months from the date first written above has passed.

1.3 Upon payment in full of the principal, this Note shall be surrendered to the Company for cancellation.

1.4 The principal under this Note shall be payable at the principal office of the Company and shall be forwarded to the address of the Holder hereof as such Holder shall from time to time designate.

2. Attorney's Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by the Holder.

3. Conversion.

3.1 Voluntary Conversion. The Holder shall have the right, exercisable in whole or in part, to convert the outstanding principal into a number of fully paid and non-assessable whole shares of the Company's \$0.001 Par Value common stock ("Common Stock") determined in accordance with Section 3.2 below.

3.2 Shares Issuable. The number of whole shares of Common Stock into which this Note may be voluntarily converted (the "Conversion Shares") shall be determined by dividing the aggregate principal amount borrowed hereunder by \$0.25 (the "Note Conversion Price"); provided, however, that, in no event, shall Holder be entitled to convert any portion of this Note in excess of that portion of this Note upon conversion of which the sum of (1) the number of shares of Common stock beneficially owned by Holder and its affiliates (other than shares of Common Stock which may be deemed beneficially owned through the ownership of the unconverted portion of this Note or the unexercised or unconverted portion of any other security of Maker subject to a limitation on conversion or exercise analogous to the limitations contained herein) and (2) the number of shares of common stock issuable upon the conversion of the portion of this Note with respect to which the determination of this proviso is being made, would result in the beneficial ownership by Holder and its affiliates of more than 4.99% of the outstanding shares of common stock of the Company. For purposes of the proviso to the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934 and Regulation 13D-G thereunder, except as otherwise provided in clause (1) of such proviso. The number of shares of Common Stock to be issued upon each conversion of this Note shall be determined by dividing the Conversion Amount (as defined below) by the Note Conversion Price. The Term "Conversion Amount" means, with respect to any conversion of this Note, the sum of (1) the principal amount of this Note to be converted in such conversion plus, (2) at the Company's option, accrued and unpaid interest, if any, on such principal amount at the interest rate provided in this Note to the conversion date, provided; however, that the Company shall have the right to pay any or all interest in cash.

3.3 Notice and Conversion Procedures. After receipt of demand for repayment, the Company agrees to give the Holder notice at least five (5) business days prior to the time that the Company repays this Note. If the Holder elects to convert this Note, the Holder shall provide the Company with a written notice of conversion setting forth the amount to be converted. The notice must be delivered to the Company together with this Note. Within twenty (20) business days of receipt of such notice, the Company shall deliver to the Holder certificate(s) for the Common Stock

issuable upon such conversion and, if the entire principal amount was not so converted, a new note representing such balance.

### 3.4 Other Conversion Provisions.

(a) Adjustment of Note Conversion Price. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a reverse stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be affected. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a forward stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be affected.

(b) Common Stock Defined. Whenever reference is made in this Note to the shares of Common Stock, the term "Common Stock" shall mean the Common Stock of the Company authorized as of the date hereof, and any other class of stock ranking on a parity with such Common Stock. Shares issuable upon conversion hereof shall include only shares of Common Stock of the Company.

3.5 No Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion of this Note, the Company shall pay to the Holder the amount of outstanding principal hereunder that is not so converted.

4. Representations, Warranties and Covenants of the Company. The Company represents, warrants and covenants with the Holder as follows:

(a) Authorization; Enforceability. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Note and the performance of all obligations of the Company hereunder has been taken, and this Note constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Note except any notices required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), or such filings as may be required under applicable state securities laws, which, if applicable, will be timely filed within the applicable periods therefor.

(c) No Violation. The execution, delivery and performance by the Company of this Note and the consummation of the transactions contemplated hereby will not result in a violation of its

Certificate of Incorporation or Bylaws, in any material respect of any provision of any mortgage, agreement, instrument or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to the Company or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

5. Representations and Covenants of the Holder. The Company has entered into this Note in reliance upon the following representations and covenants of the Holder:

(a) Investment Purpose. This Note and the Common Stock issuable upon conversion of the Note are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Holder understands (i) that this Note and the Common Stock issuable upon conversion of this Note are not registered under the 1933 Act or qualified under applicable state securities laws, and (ii) that the Company is relying on an exemption from registration predicated on the representations set forth in this Section 8.

(c) Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell the Common Stock issuable upon conversion of the Note, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of the Note or the Common Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

6. Assignment. Subject to the restrictions on transfer described in Section 8 below, the rights and obligations of the Company and the Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

7. Waiver and Amendment. Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Holder.

8. Transfer of This Note or Securities Issuable on Conversion Hereof. With respect to any offer, sale or other disposition of this Note or securities into which this Note may be converted, the Holder will give written notice to the Company prior thereto, describing briefly the manner

thereof. Unless the Company reasonably determines that such transfer would violate applicable securities laws, or that such transfer would adversely affect the Company's ability to account for future transactions to which it is a party as a pooling of interests, and notifies the Holder thereof within five (5) business days after receiving notice of the transfer, the Holder may effect such transfer. The Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the 1933 Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the 1933 Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

9. Notices. Any notice, other communication or payment required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery if personally delivered or three (3) business days after deposit if deposited in the United States mail for mailing by certified mail, postage prepaid. Each of the above addressees may change its address for purposes of this Section by giving to the other addressee notice of such new address in conformance with this Section.

10. Governing Law. This Note is being delivered in and shall be construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions thereof.

11. Heading; References. All headings used herein are used for convenience only and shall not be used to construe or interpret this Note. Except as otherwise indicated, all references herein to Sections refer to Sections hereof.

12. Waiver by the Company. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

13. Delays. No delay by the Holder in exercising any power or right hereunder shall operate as a waiver of any power or right.

14. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.


15. No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Note against impairment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Cyberlux Corp. has caused this Note to be executed in its corporate name and this Note to be dated, issued and delivered, all on the date first above written.

**CYBERLUX CORP.**

Date: November 22, 2021

By   
Mark Schmidt  
Its: CEO & Director

**RB CAPITAL PARTNERS, INC.**

Date: November 22, 2021

By: \_\_\_\_\_  
Brett Rosen  
Its: Managing Member

# EXHIBIT 4

**THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.**

**CYBERLUX CORP.  
CONVERTIBLE PROMISSORY NOTE**

Principal Amount: **\$500,000.00 USD**

May 23, 2022

WHEREAS on May 23, 2022, RB Capital Partners, Inc., with its offices at 2856 Torrey Pines Road, La Jolla, California 92037 (the "Holder") loaned funds totaling, \$500,000.00 to Cyberlux Corp., a Nevada corporation with its office at 800 Park Offices Drive., Suite 3209; Research Triangle Park, NC 27709 (the "Company"). Payment for the loan was made directly to the Company in the form of a Wire Transfer.

WHEREAS the Company and Holder further agreed that such services provided by the Holder to the Company would be evidenced in a convertible note, which convertible note would be convertible into shares of common stock of the Company at the rate of \$0.25 in accordance with Section 3 below;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the mutual premises and the mutual covenants and agreements contained herein, the parties covenant and agree each with the other as follows:

1. Principal and Interest.

1.1 The Company, for value received, hereby promises to pay to the order of the Holder the sum of Five Hundred Thousand Dollars (\$500,000.00), which amount represents the amount owed to Holder as of May 23, 2022.

1.2 This Convertible Promissory Note (the "Note") shall bear five percent (5%) interest per annum. The Note is for a period of (24) months and cannot be converted until (6) months from the date first written above has passed.

1.3 Upon payment in full of the principal, this Note shall be surrendered to the Company for cancellation.

1.4 The principal under this Note shall be payable at the principal office of the Company and shall be forwarded to the address of the Holder hereof as such Holder shall from time to time designate.

2. Attorney's Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by the Holder.

3. Conversion.

3.1 Voluntary Conversion. The Holder shall have the right, exercisable in whole or in part, to convert the outstanding principal into a number of fully paid and non-assessable whole shares of the Company's \$0.001 Par Value common stock ("Common Stock") determined in accordance with Section 3.2 below.

3.2 Shares Issuable. The number of whole shares of Common Stock into which this Note may be voluntarily converted (the "Conversion Shares") shall be determined by dividing the aggregate principal amount borrowed hereunder by \$0.25 (the "Note Conversion Price"); provided, however, that, in no event, shall Holder be entitled to convert any portion of this Note in excess of that portion of this Note upon conversion of which the sum of (1) the number of shares of Common stock beneficially owned by Holder and its affiliates (other than shares of Common Stock which may be deemed beneficially owned through the ownership of the unconverted portion of this Note or the unexercised or unconverted portion of any other security of Maker subject to a limitation on conversion or exercise analogous to the limitations contained herein) and (2) the number of shares of common stock issuable upon the conversion of the portion of this Note with respect to which the determination of this proviso is being made, would result in the beneficial ownership by Holder and its affiliates of more than 4.99% of the outstanding shares of common stock of the Company. For purposes of the proviso to the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934 and Regulation 13D-G thereunder, except as otherwise provided in clause (1) of such proviso. The number of shares of Common Stock to be issued upon each conversion of this Note shall be determined by dividing the Conversion Amount (as defined below) by the Note Conversion Price. The Term "Conversion Amount" means, with respect to any conversion of this Note, the sum of (1) the principal amount of this Note to be converted in such conversion plus, (2) at the Company's option, accrued and unpaid interest, if any, on such principal amount at the interest rate provided in this Note to the conversion date, provided; however, that the Company shall have the right to pay any or all interest in cash.

3.3 Notice and Conversion Procedures. After receipt of demand for repayment, the Company agrees to give the Holder notice at least five (5) business days prior to the time that the Company repays this Note. If the Holder elects to convert this Note, the Holder shall provide the Company with a written notice of conversion setting forth the amount to be converted. The notice must be delivered to the Company together with this Note. Within twenty (20) business days of receipt of such notice, the Company shall deliver to the Holder certificate(s) for the Common Stock

issuable upon such conversion and, if the entire principal amount was not so converted, a new note representing such balance.

### 3.4 Other Conversion Provisions.

(a) Adjustment of Note Conversion Price. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a reverse stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be affected. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a forward stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be affected.

(b) Common Stock Defined. Whenever reference is made in this Note to the shares of Common Stock, the term "Common Stock" shall mean the Common Stock of the Company authorized as of the date hereof, and any other class of stock ranking on a parity with such Common Stock. Shares issuable upon conversion hereof shall include only shares of Common Stock of the Company.

3.5 No Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion of this Note, the Company shall pay to the Holder the amount of outstanding principal hereunder that is not so converted.

4. Representations, Warranties and Covenants of the Company. The Company represents, warrants and covenants with the Holder as follows:

(a) Authorization; Enforceability. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Note and the performance of all obligations of the Company hereunder has been taken, and this Note constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Note except any notices required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), or such filings as may be required under applicable state securities laws, which, if applicable, will be timely filed within the applicable periods therefor.

(c) No Violation. The execution, delivery and performance by the Company of this Note and the consummation of the transactions contemplated hereby will not result in a violation of its

Certificate of Incorporation or Bylaws, in any material respect of any provision of any mortgage, agreement, instrument or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to the Company or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

5. Representations and Covenants of the Holder. The Company has entered into this Note in reliance upon the following representations and covenants of the Holder:

(a) Investment Purpose. This Note and the Common Stock issuable upon conversion of the Note are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Holder understands (i) that this Note and the Common Stock issuable upon conversion of this Note are not registered under the 1933 Act or qualified under applicable state securities laws, and (ii) that the Company is relying on an exemption from registration predicated on the representations set forth in this Section 8.

(c) Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell the Common Stock issuable upon conversion of the Note, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of the Note or the Common Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

6. Assignment. Subject to the restrictions on transfer described in Section 8 below, the rights and obligations of the Company and the Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

7. Waiver and Amendment. Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Holder.

8. Transfer of This Note or Securities Issuable on Conversion Hereof. With respect to any offer, sale or other disposition of this Note or securities into which this Note may be converted, the Holder will give written notice to the Company prior thereto, describing briefly the manner

thereof. Unless the Company reasonably determines that such transfer would violate applicable securities laws, or that such transfer would adversely affect the Company's ability to account for future transactions to which it is a party as a pooling of interests, and notifies the Holder thereof within five (5) business days after receiving notice of the transfer, the Holder may effect such transfer. The Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the 1933 Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the 1933 Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

9. Notices. Any notice, other communication or payment required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery if personally delivered or three (3) business days after deposit if deposited in the United States mail for mailing by certified mail, postage prepaid. Each of the above addressees may change its address for purposes of this Section by giving to the other addressee notice of such new address in conformance with this Section.

10. Governing Law. This Note is being delivered in and shall be construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions thereof.

11. Heading; References. All headings used herein are used for convenience only and shall not be used to construe or interpret this Note. Except as otherwise indicated, all references herein to Sections refer to Sections hereof.

12. Waiver by the Company. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

13. Delays. No delay by the Holder in exercising any power or right hereunder shall operate as a waiver of any power or right.

14. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

15. No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Note against impairment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Cyberlux Corp. has caused this Note to be executed in its corporate name and this Note to be dated, issued and delivered, all on the date first above written.

**CYBERLUX CORP.**

Date: May 23, 2022

By Mark D. Schmidt  
Mark Schmidt  
Its: CEO & Director

**RB CAPITAL PARTNERS, INC.**

Date: May 23, 2022

By Brett Rosen  
Brett Rosen  
Its: Managing Member

# EXHIBIT 5

**THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.**

**CYBERLUX CORP.  
CONVERTIBLE PROMISSORY NOTE**

Principal Amount: **\$250,000.00 USD**

July 12, 2022

WHEREAS on July 12, 2022, RB Capital Partners, Inc., with its offices at 2856 Torrey Pines Road, La Jolla, California 92037 (the "Holder") loaned funds totaling, \$250,000.00 to Cyberlux Corp., a Nevada corporation with its office at 800 Park Offices Drive.; Suite 3209; Research Triangle Park, NC 27709 (the "Company"). Payment for the loan was made directly to the Company in the form of a Wire Transfer.

WHEREAS the Company and Holder further agreed that such services provided by the Holder to the Company would be evidenced in a convertible note, which convertible note would be convertible into shares of common stock of the Company at the rate of \$0.10 in accordance with Section 3 below;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the mutual premises and the mutual covenants and agreements contained herein, the parties covenant and agree each with the other as follows:

1. Principal and Interest.

1.1 The Company, for value received, hereby promises to pay to the order of the Holder the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), which amount represents the amount owed to Holder as of July 12, 2022.

1.2 This Convertible Promissory Note (the "Note") shall bear five percent (5%) interest per annum. The Note is for a period of (24) months and cannot be converted until (6) months from the date first written above has passed.

1.3 Upon payment in full of the principal, this Note shall be surrendered to the Company for cancellation.

1.4 The principal under this Note shall be payable at the principal office of the Company and shall be forwarded to the address of the Holder hereof as such Holder shall from time to time designate.

2. Attorney's Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by the Holder.

3. Conversion.

3.1 Voluntary Conversion. The Holder shall have the right, exercisable in whole or in part, to convert the outstanding principal into a number of fully paid and non-assessable whole shares of the Company's \$0.001 Par Value common stock ("Common Stock") determined in accordance with Section 3.2 below.

3.2 Shares Issuable. The number of whole shares of Common Stock into which this Note may be voluntarily converted (the "Conversion Shares") shall be determined by dividing the aggregate principal amount borrowed hereunder by \$0.10 (the "Note Conversion Price"); provided, however, that, in no event, shall Holder be entitled to convert any portion of this Note in excess of that portion of this Note upon conversion of which the sum of (1) the number of shares of Common stock beneficially owned by Holder and its affiliates (other than shares of Common Stock which may be deemed beneficially owned through the ownership of the unconverted portion of this Note or the unexercised or unconverted portion of any other security of Maker subject to a limitation on conversion or exercise analogous to the limitations contained herein) and (2) the number of shares of common stock issuable upon the conversion of the portion of this Note with respect to which the determination of this proviso is being made, would result in the beneficial ownership by Holder and its affiliates of more than 4.99% of the outstanding shares of common stock of the Company. For purposes of the proviso to the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934 and Regulation 13D-G thereunder, except as otherwise provided in clause (1) of such proviso. The number of shares of Common Stock to be issued upon each conversion of this Note shall be determined by dividing the Conversion Amount (as defined below) by the Note Conversion Price. The Term "Conversion Amount" means, with respect to any conversion of this Note, the sum of (1) the principal amount of this Note to be converted in such conversion plus, (2) at the Company's option, accrued and unpaid interest, if any, on such principal amount at the interest rate provided in this Note to the conversion date, provided; however, that the Company shall have the right to pay any or all interest in cash.

3.3 Notice and Conversion Procedures. After receipt of demand for repayment, the Company agrees to give the Holder notice at least five (5) business days prior to the time that the Company repays this Note. If the Holder elects to convert this Note, the Holder shall provide the Company with a written notice of conversion setting forth the amount to be converted. The notice must be delivered to the Company together with this Note. Within twenty (20) business days of receipt of such notice, the Company shall deliver to the Holder certificate(s) for the Common Stock

issuable upon such conversion and, if the entire principal amount was not so converted, a new note representing such balance.

### 3.4 Other Conversion Provisions.

(a) Adjustment of Note Conversion Price. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a reverse stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be unaffected. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a forward stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be unaffected.

(b) Common Stock Defined. Whenever reference is made in this Note to the shares of Common Stock, the term "Common Stock" shall mean the Common Stock of the Company authorized as of the date hereof, and any other class of stock ranking on a parity with such Common Stock. Shares issuable upon conversion hereof shall include only shares of Common Stock of the Company.

3.5 No Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion of this Note, the Company shall pay to the Holder the amount of outstanding principal hereunder that is not so converted.

4. Representations, Warranties and Covenants of the Company. The Company represents, warrants and covenants with the Holder as follows:

(a) Authorization; Enforceability. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Note and the performance of all obligations of the Company hereunder has been taken, and this Note constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Note except any notices required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), or such filings as may be required under applicable state securities laws, which, if applicable, will be timely filed within the applicable periods therefor.

(c) No Violation. The execution, delivery and performance by the Company of this Note and the consummation of the transactions contemplated hereby will not result in a violation of its

Certificate of Incorporation or Bylaws, in any material respect of any provision of any mortgage, agreement, instrument or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to the Company or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

5. Representations and Covenants of the Holder. The Company has entered into this Note in reliance upon the following representations and covenants of the Holder:

(a) Investment Purpose. This Note and the Common Stock issuable upon conversion of the Note are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Holder understands (i) that this Note and the Common Stock issuable upon conversion of this Note are not registered under the 1933 Act or qualified under applicable state securities laws, and (ii) that the Company is relying on an exemption from registration predicated on the representations set forth in this Section 8.

(c) Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell the Common Stock issuable upon conversion of the Note, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of the Note or the Common Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

6. Assignment. Subject to the restrictions on transfer described in Section 8 below, the rights and obligations of the Company and the Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

7. Waiver and Amendment. Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Holder.

8. Transfer of This Note or Securities Issuable on Conversion Hereof. With respect to any offer, sale or other disposition of this Note or securities into which this Note may be converted, the Holder will give written notice to the Company prior thereto, describing briefly the manner

thereof. Unless the Company reasonably determines that such transfer would violate applicable securities laws, or that such transfer would adversely affect the Company's ability to account for future transactions to which it is a party as a pooling of interests, and notifies the Holder thereof within five (5) business days after receiving notice of the transfer, the Holder may effect such transfer. The Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the 1933 Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the 1933 Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

9. Notices. Any notice, other communication or payment required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery if personally delivered or three (3) business days after deposit if deposited in the United States mail for mailing by certified mail, postage prepaid. Each of the above addressees may change its address for purposes of this Section by giving to the other addressee notice of such new address in conformance with this Section.

10. Governing Law. This Note is being delivered in and shall be construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions thereof.

11. Heading; References. All headings used herein are used for convenience only and shall not be used to construe or interpret this Note. Except as otherwise indicated, all references herein to Sections refer to Sections hereof.

12. Waiver by the Company. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

13. Delays. No delay by the Holder in exercising any power or right hereunder shall operate as a waiver of any power or right.

14. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

15. No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Note against impairment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Cyberlux Corp. has caused this Note to be executed in its corporate name and this Note to be dated, issued and delivered, all on the date first above written.

**CYBERLUX CORP.**

Date: July 12, 2022

By Mark D. Schmidt

Mark Schmidt

Its: CEO & Director

**RB CAPITAL PARTNERS, INC.**

Date: July 12, 2022

By Brett Rosen

Brett Rosen

Its: Managing Member