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ATLANTIC WAVE HOLDINGS, LLC
9 and SECURE COMMUNITY, LLC

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

13 ATLANTIC WAVE HOLDINGS, LLC,
14 a Virginia limited liability company and
SECURE COMMUNITY, LLC, a
15 Virginia limited Liability company,

16 Plaintiffs,

17 vs.

18 CYBERLUX CORPORATION, a
Nevada Corporation and MARK D.
19 SCHMIDT,

20 Defendants.

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

**DECLARATION OF DAVID M.
KEITHLY IN SUPPORT OF
PLAINTIFFS ATLANTIC WAVE
HOLDINGS, LLC’S AND SECURE
COMMUNITY, LLC’S FURTHER
SUPPLEMENTAL UPDATE RE:
DEFENDANTS’ MOTION TO
VACATE**

*Filed concurrently with Further
Supplemental Update, Declaration of
William Welter and Declaration of
Federico J. Zablah*

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

DECLARATION OF DAVID M. KEITHLY

I, David M. Keithly, declare and state as follows:

1. I am an attorney duly licensed to practice law in the State of California and before this Court. I am a partner at Mortenson Taggart Adams LLP, counsel of record for Plaintiffs Atlantic Wave Holdings, LLC and Secure Community, LLC (collectively, "Plaintiffs"). I have personal knowledge of the facts set forth herein and, if called to testify, I could and would competently testify to the following facts.

2. On October 28, 2024, I attended the hearing via Zoom on Cyberlux's motion to vacate Plaintiffs' domesticated Judgment in Texas. During this hearing, I observed Defendants' counsel falsely represent to the court that a stay of enforcement was entered in the Virginia proceedings.

3. The representation made by Defendants' counsel was entirely false, as no stay has been granted or even considered in Virginia. (Declaration of Federico J. Zablah in Support of Plaintiffs' Further Supplemental Update ("Zablah Decl."), ¶¶ 4-5.) This misrepresentation misled the Texas court into temporarily staying enforcement of the Judgment for 30 days to allow Defendants the opportunity to present evidence of the supposed stay, although it did not halt discovery. A true and correct unofficial copy of the Texas Court's order on Defendants' Motion to Vacate dated 10/31/2024 is attached hereto as **Exhibit A**.

4. This misrepresentation exemplifies Defendants' broader strategy to create jurisdictional confusion and delay Plaintiffs' enforcement efforts, thereby obstructing the legitimate collection of the Judgment.

5. Additionally, I received an email from an anonymous sender on April 13, 2024, which provided information about questionable activities at Cyberlux. The sender, claiming to be an advisor for a significant defense company, indicated that Cyberlux approached them for a potential partnership or acquisition. During a preliminary due diligence, several issues were discovered, including dual litigation involving Cyberlux and the Plaintiffs, which undermined the credibility of Mr.

1 Schmidt, the CEO of Cyberlux. The email detailed various concerns such as the
2 cessation of direct contracts with the U.S. Department of Defense since 2015,
3 significant unpaid debts, and questionable legal and financial practices. It also
4 included claims that Cyberlux's purported classified work was suspect and not
5 supported by required government clearances or facilities. This email raises
6 significant doubts about Cyberlux's financial stability and its ability to fulfill its
7 contractual obligations, further highlighting the credibility issues surrounding the
8 Defendants. Attached hereto as **Exhibit B** is a true and correct copy of the anonymous
9 email I received.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed on November 7, 2024, at Irvine, California.



David M. Keithly

Exhibit A

CAUSE NO. 2024-48085

**ATLANTIC WAVE HOLDINGS, LLC
and SECURE COMMUNITY, LLC,**

Plaintiff/Judgment-Creditor

v.

**CYBERLUX CORPORATION and
MARK D. SCHMIDT, Individually,**

Defendant/Judgment Debtors.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129TH JUDICIAL DISTRICT

STPRX
SPJUY

ORDER GRANTING DEFENDANTS’ MOTION TO STAY AND MOTION TO VACATE

Before the Court is the Motion to Stay and Motion to Vacate Plaintiffs’ Petition for Enforcement of Foreign Judgment filed by Defendants Cyberlux Corporation and Mark D. Schmidt (collectively, “Defendants”). The Court has considered the Motion, responses, replies, and arguments of counsel and finds that the Motion is **GRANTED IN PART AND DENIED IN PART.**

NOW THEREFORE IT IS ORDERED:

ORDERED, Defendants’ Motion to Vacate is **DENIED.**

ORDERED, Defendants’ Motion to Stay is **GRANTED** for a period of thirty days, only to stay execution on the judgment, until November 28, 2024. Plaintiffs may proceed with post-judgment discovery in this matter, which is not stayed.

ORDERED, Plaintiffs or Defendants may seek to extend the stay of this matter by appropriate motion.

SO ORDERED.

Signed:
10/31/2024



AGREED AS TO FORM AND SUBSTANCE:

By: /s/ Shawn M. Grady

Shawn M. Grady

SBN 24076411

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By: /s/ Katharine Battaia Clark

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COUNSEL FOR

CYBERLUX CORPORATION

Unofficial Copy Office of Marilyn Burgess District Clerk

Exhibit B

Wednesday, November 6, 2024 at 20:21:37 Pacific Standard Time

Subject: Cyberlux
Date: Friday, April 26, 2024 at 3:37:27 PM Pacific Daylight Time
From: 49121719
To: David M. Keithly, Sara Ross
Attachments: PrimeTransactionsAndSubawards_2024-04-13_H14M34S55768219.zip

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

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

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

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

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

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

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

Conclusions we reached based on these factual elements

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