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

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

15 ATLANTIC WAVE HOLDINGS, LLC,
16 a Virginia limited liability company, and
17 SECURE COMMUNITY, LLC, a
18 Virginia limited Liability company,

19 Plaintiffs,

20 vs.

21 CYBERLUX CORPORATION, a
22 Nevada Corporation; MARK D.
23 SCHMIDT, an individual; and DOES 1
24 to 50, inclusive.

25 Defendants.

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

**DECLARATION OF FEDERICO J.
ZABLAH IN SUPPORT OF
PLAINTIFFS ATLANTIC WAVE
HOLDINGS, LLC AND
STRIKEPOINT CONSULTING,
LLC’S UPDATE RE:
DEFENDANTS’ MOTION TO
VACATE DOMESTICATED
JUDGMENT**

DECLARATION OF FEDERICO J. ZABLAH

I, Federico J. Zablah, declare as follows:

1. My name is Federico Zablah, and I am a Virginia-Licensed Attorney working as a senior associate attorney at Chap Petersen & Associates, PLC, located at 3970 Chain Bridge Rd, Fairfax, VA 22030. I represent the plaintiffs, Atlantic Wave Holdings, LLC, and Secure Community, LLC (collectively, “Plaintiffs”), in connection with the actions filed in Virginia by or against Cyberlux Corporation. I am submitting this declaration in support of the Plaintiffs' update regarding Cyberlux’ s motion to vacate Plaintiffs’ domesticated judgment.

2. The purpose of this affidavit is to provide the requested updates as to the current status of the various Virginia litigation, as per the Court's previous Order.

3. Currently, there are four active cases pending in Virginia in the Circuit Court for the City of Richmond:

- **CL22003882-00:** This is a contract action where Atlantic Wave Holdings LLC and Secure Community LLC were plaintiffs against Cyberlux Corporation and Mark D. Schmidt. On June 28, 2023, the Court entered its Amended Final Judgment and Order that is the subject of Defendants’ Motion to Vacate.
- **CL24002919-00:** Filed on July 8, 2024, Cyberlux Corporation and Mark D. Schmidt filed an injunction against Atlantic Wave Holdings LLC and Secure Community LLC. An answer was filed on August 1, 2024.
- **CL24002960-00:** Also filed on July 8, 2024, this is an action for declaratory judgment for breach of contract on the Settlement Agreement by Cyberlux Corporation and Mark D. Schmidt against Atlantic Wave Holdings LLC and Secure Community LLC. A timely demurrer was filed.
- **CL24003910-00:** This case involves Atlantic Wave Holdings, LLC, and Secure Community, LLC as plaintiffs against Cyberlux Corporation for breach of provisions of the parties' Settlement Agreement that were not

1 included in the June 28, 2024 Order, specifically the failure to make the
2 stock marketable. Cyberlux has failed to respond timely and a motion for
3 default judgment has been filed.

4 4. Significantly, I was advised on Tuesday October 29, 2024 that on
5 Monday, October 28, 2024, at the hearing in Texas on Cyberlux's Motion to Vacate
6 Plaintiff's domesticated judgment, Counsel for Defendant Cyberlux Corporation
7 ("Cyberlux") represented to the Court that a stay had been entered in the Virginia
8 litigation.

9 5. This is incorrect. No order staying any litigation or collection has been
10 entered in any proceeding in Virginia.

11 6. As a matter of fact, the Virginia Court ordered garnished funds to be
12 turned over to my clients in August 2024. Attached hereto as **Exhibits A and B** are
13 true and correct copies of two orders entered by the court on August 9, 2024,
14 disbursing funds garnished by plaintiffs to satisfy Plaintiffs' June 28, 2023, Virginia
15 Judgment against defendants as well as garnishment actions continue.

16 7. The Virginia Court would not release garnished funds or allow
17 garnishment actions to proceed if that Court were contemplating a stay, or such an
18 order was pending.

19 8. The Counsel for Defendant Cyberlux also misrepresented that the
20 Virginia litigation regards the validity of the Virginia Judgment. This is also incorrect.
21 The cases filed by Cyberlux (CL24002919-00 and CL24002960-00) are premised on
22 Cyberlux's compliance with the judgment order and settlement agreement. The
23 validity of the judgment is not challenged but rather seeks a declaration and injunction
24 to stay the collection on the judgment. Since these cases were filed, Cyberlux has
25 taken no action to litigate either matter, failed to respond to discovery or appear for
26 deposition in the injunction case and Atlantic Wave has moved for summary
27 judgment.

28

1 9. Attached hereto as **Exhibit C** is a true and correct copy of the Requests
2 for Admission that Plaintiffs served on Cyberlux on September 6, 2024. As of the date
3 of this declaration, Cyberlux has not yet provided any response to these RFAs, even
4 though the response was due on September 27, 2024. Under Virginia law, RFAs are
5 deemed admitted if not timely responded to, pursuant to Rule 4:11 of the Rules of the
6 Supreme Court of Virginia. Consequently, Cyberlux has admitted to, among other
7 things:

- 8 • Shipping approximately \$15,000,000 worth of Drones prior to December
9 31, 2023.
- 10 • Failing to provide requested documentation relevant to Drone sales.
- 11 • Failing to make the payment due under the Settlement Agreement to
12 Atlantic Wave Holdings, LLC.
- 13 • Providing inaccurate financials to Atlantic Wave Holdings, LLC, to induce
14 settlement.
- 15 • Lacking a security clearance from the U.S. Government for both Cyberlux
16 Corporation and Mark Schmidt.
- 17 • Attempting to sell its business or merge Cyberlux Corporation and/or part
18 of its assets in the last 24 months.

19 10. Plaintiffs served a Garnishment Summons on September 27, 2024,
20 seeking to garnish any monies owed to Cyberlux Corporation by HII Mission
21 Technologies Corp. The Garnishment Summons was returnable on October 28, 2024.

22 11. Attached hereto as **Exhibit D** is a true and correct copy of the
23 Garnishment Answer filed by HII Mission Technologies Corp. on October 24, 2024.
24 This answer informs the Court and Plaintiffs that (1) Cyberlux's contract was
25 terminated on May 17, 2024, and (2) Cyberlux assigned its interest in the Contract to
26 a factoring company, Legalist SVP III.

27
28

1 12. Although the Contract was terminated on May 17, 2024, Defendants
2 failed to disclose this material fact to Defendants’ shareholders, to Plaintiffs or to the
3 Court. To the contrary, Defendants maintained that the Contract was still in force.

4 13. On October 30, 2024, I reached out to Counsel for Cyberlux and Schmidt
5 in Virginia, prior to filing this update and seeking judicial intervention, in another
6 attempt to set a timely hearing for our Motion for Summary Judgment on the
7 Complaint filed by Cyberlux and Schmidt in Virginia seeking a Temporary
8 Injunction, which is a time sensitive matter.

9 14. Counsel for Defendants advised they were not available until March 27,
10 2024 roughly five months from now and nine months since they filed the complaint,
11 for a very short hearing on a dispositive motion on this time sensitive matter they filed
12 four months ago on July 8, 2024. On this date, Mr. Petersen and I are set for trial in
13 another jurisdiction and cannot accommodate this hearing date.

14 15. Upon prompting for an earlier hearing, the Court suggested and offered to
15 accommodate Defendants and have the Motion heard on November 19, 2024 at
16 12:30. Defendants responded they are not available on that date, that they would not
17 have time to prepare and asked the court for dates at the end of April 2025—six
18 months from now and ten months from when they filed their preliminary
19 injunction. This would set the first hearing on a preliminary injunction almost a year
20 after the request was filed (on a Motion for Summary Judgment to dismiss their case).

21 16. To summarize Plaintiffs Cyberlux and Schmidt's litigation in Virginia:

- 22 • Cyberlux and Schmidt filed actions for preliminary injunction and
23 declaratory relief on July 9, 2024. (CL24002919-00 and CL24002960-00)
- 24 • To date, Cyberlux and Schmidt have taken absolutely no affirmative
25 actions, or any actions whatsoever, to prosecute these meritless claims.
- 26 • Cyberlux and Schmidt have not attempted to set any hearings.
- 27 • Cyberlux and Schmidt have ignored all discovery.

28

- 1 • Cyberlux and Schmidt have not appeared for a noticed deposition and have
- 2 refused to schedule a deposition.
- 3 • Cyberlux and Schmidt refuse to meet and confer on any pending issues or
- 4 motions.
- 5 • Cyberlux and Schmidt refuse to schedule timely hearings and insist that they
- 6 are not available until next year.

7 17. In short, Cyberlux and Schmidt continue to stonewall and stall, engaging
 8 in dilatory tactics throughout the Virginia Litigation.

9
 10 I declare under penalty of perjury under the laws of the State of California that
 11 the foregoing is true and correct. This declaration was executed on November 1,
 12 2024, at Fairfax, Virginia.

13 Federico J. Zablah
 14 Chap Petersen & Associates, PLC
 15 3970 Chain Bridge Rd,
 16 Fairfax, VA 22030
 17 Email: fzf@petersenfirm.com
 18 Phone: (571) 459-2520
 19 *Attorney for Atlantic Wave Holdings, LLC,*
 20 *Secure Community, LLC, and Strikepoint,*
 21 *LLC*

Exhibit A

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 B

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 C

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

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

Plaintiffs,

v.

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

Defendants.

Case No.: CL24002919-00

**DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSIONS
TO PLAINTIFF CYBERLUX CORPORATION**

COMES NOW, Defendants, ATLANTIC WAVE HOLDINGS, LLC (“AWH”) and SECURE COMMUNITY, LLC (“SC”) (or collectively, “Defendants”), hereby serve upon Defendant CYBERLUX CORPORATION (“Plaintiff”) the following Requests for Admission, each of which must be answered fully, separately, and pursuant to Rule 4:11.

INSTRUCTIONS

Each request for admission must be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection must be stated. If you deny any request, please set forth in detail the reason for the denial. These requests are continuing in nature, and if additional information comes into your possession, custody, or control after the date of your response, you are required to supplement your response promptly.

DEFINITIONS

1. “CYBERLUX” means Cyberlux Corporation, including its subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, and any person or entity acting on its behalf.
2. “MARK SCHMIDT” refers to the individual Mark D. Schmidt, including his representatives, agents, and any person or entity acting on his behalf.
3. “DOCUMENT(S)” shall have the broadest meaning possible under the Federal Rules of Civil Procedure and include all written, printed, recorded, or graphic material, however produced or reproduced, including electronically stored information (ESI).
4. “CHUCK WATTS” refers to the individual Chuck Watts, including his representatives, agents, and any person or entity acting on his behalf.
5. “OTC MARKETS PROHIBITED PROVIDER’S LIST” refers to the list maintained by OTC Markets Group Inc. that identifies individuals and entities prohibited from providing services to OTC Markets issuers.
6. “HII DEFENSE” or “HUNTINGTON INGALL INDUSTRIES” refers to Huntington Ingalls Industries, Inc., including its subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, and any person or entity acting on its behalf.
7. “FOREIGN MILITARY FINANCING (FMF)” refers to the U.S. Government program that provides grants and loans to foreign countries for the purchase of defense equipment, services, and training.
8. “ADS or “ATLANTIC DIVING SUPPLY” refers to Atlantic Diving Supply, Inc., including its subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, and any person or entity acting on its behalf.

9. "GSA CONTRACT" refers to a contract with the General Services Administration (GSA) of the U.S. Government, specifically contract GS-07F-9409S.

10. "UCC FILINGS" refers to Uniform Commercial Code filings, which are public records of financial obligations, typically filed with a state's Secretary of State office.

11. "SPECIAL ACTIVITIES" refers to the group or department within Cyberlux Corporation designated as "Special Activities."

12. "CMTC LLC" refers to CMTC LLC, including its subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, and any person or entity acting on its behalf.

13. "CATALYST MACHINE WORKS LLC" refers to Catalyst Machine Works LLC, including its subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, and any person or entity acting on its behalf.

14. "SAM.gov" refers to the System for Award Management, the official U.S. Government system that consolidates the capabilities of multiple federal procurement systems and the Catalog of Federal Domestic Assistance.

15. "FEDERAL FIREARMS LICENSES (FFL)" refers to licenses issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorizing individuals or entities to engage in the business of manufacturing, importing, and/or dealing in firearms.

16. "FEDERAL EXPLOSIVES LICENSES (FEL)" refers to licenses issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorizing individuals or entities to engage in the business of manufacturing, importing, and/or dealing in explosives.

17. “SENSITIVE COMPARTMENTED INFORMATION FACILITIES (SCIFS)” refers to secure facilities used to process, store, and discuss classified information of a sensitive nature.

18. “BRETT ROSEN” refers to the individual Brett Rosen, including his representatives, agents, and any person or entity acting on his behalf.

19. “DEBT PURCHASE AGREEMENT” refers to an agreement under which a party purchases the debt obligations of another party.

20. “DENIS KALENJA” refers to the individual Denis Kalenja, including his representatives, agents, and any person or entity acting on his behalf.

21. “COMMON SHARES” refers to shares of common stock issued by Cyberlux Corporation.

22. “SERIES B SHARES” refers to Series B preferred stock issued by Cyberlux Corporation.

REQUESTS FOR ADMISSIONS

1. Admit that Cyberlux Corporation was not issued a security clearance from the U.S. Government.

ANSWER:

2. Admit that Mark Schmidt was not issued a security clearance from the U.S. Government.

ANSWER:

3. Admit that Chuck Watts is still advising Cyberlux Corporation.

ANSWER:

4. Admit that Chuck Watts was placed on the OTC Markets Prohibited Providers List.

ANSWER:

5. Admit that the drone contract referenced by Cyberlux is a subcontract with HII Defense (Huntington Ingall Industries).

ANSWER:

6. Admit that the drone contract referenced by Cyberlux is part of a Foreign Military Financing (FMF) case for Ukraine.

ANSWER:

7. Admit that Cyberlux has a contract and / agreement with ADS (Atlantic Diving Supply) for commercial variants of drones.

ANSWER:

8. Admit that Cyberlux has not been awarded any direct contracts with the U.S. Government since 2015.

ANSWER:

9. Admit that the GSA contract (contract GS-07F-9409S) advertised on Cyberlux's website was canceled by the U.S. Government on November 2, 2020.

ANSWER:

10. Admit that Cyberlux has significant unpaid debts, judgments, and / or UCC filings, including those to the IRS, North Carolina Tax Authority, and Texas Tax Authority.

ANSWER:

11. Admit that Cyberlux has unpaid debts to private lenders as of September 2023.

ANSWER:

12. Admit that the address for Cyberlux's "Special Activities" group is in fact an address used by a real estate agent in Miami.

ANSWER:

13. Admit that CMTC LLC is not registered with the U.S. Government (sam.gov) and has never been awarded contracts.

ANSWER:

14. Admit that Chuck Watts prepared incorporation documents or LLC documents, in any fashion that established or to establish CMTC, LLC.

ANSWER:

15. Admit that CMTC LLC is a shell LLC owned by Larry ISley.

ANSWER:

16. Admit that Catalyst Machine Works LLC is not registered with the U.S. Government (sam.gov) and has never been awarded contracts.

ANSWER:

17. Admit that Cyberlux nor any of its subsidiaries hold Federal Firearms Licenses (FFL) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

ANSWER:

18. Admit that Cyberlux does not have any facilities containing Sensitive Compartmented Information Facilities (SCIFs).

ANSWER:

19. Admit that Cyberlux transferred without payment the following shares of stock to Brett Rosen:

- a. On or about October 21, 2021 - 125 million shares for "Debt Purchase Agreement."
- b. On or about November 10, 2021 – 125 million shares for "Debt Purchase Agreement."
- c. On or about August 15, 2022 – 200 million shares for "Debt Purchase Agreement."

ANSWER:

20. Admit that Brett Rosen liquidated the gifted stock and then lent Cyberlux an amount substantially less than the market value of the stock back to Cyberlux.

ANSWER:

21. Admit that the loans from Brett Rosen occurred days after he was gifted stock.

ANSWER:

22. Admit that Denis Kalenja is a Cyberlux insider.

ANSWER:

23. Admit that Denis Kalenja was sold approximately 6 billion common shares / 300 million Series "B" shares for only \$30,000 when the fair market value at the time was substantially greater.

ANSWER:

24. Admit Cyberlux has attempted to sell its business or merge the Cyberlux Corporation and or part of its assets in the last 24 months.

ANSWER:

25. Admit that Cyberlux shipped approximately \$15,000,000 worth of Drones prior to December 31, 2023.

ANSWER:

26. Admit that Defendant Atlantic Wave Holdings, LLC, through its officers, requested documentation numerous times relevant to any Drone sales.

ANSWER:

27. Admit that Cyberlux Corporation has failed to make the payment due under the Settlement Agreement to Atlantic Wave Holdings, LLC.

ANSWER:

28. Admit that Cyberlux Corporation never provided any information relevant to Drone sales to Atlantic Wave Holdings, LLC.

ANSWER:

29. Admit that Cyberlux Corporation stock remains designated “Caveat Emptor” by OTC Markets.

ANSWER:

30. Admit that Cyberlux was informed by OTC Markets the reason(s) OTC Markets designated Cyberlux stock “Caveat Emptor.”

ANSWER:

31. Admit that Cyberlux through its officers, employees, representatives and/or legal counsel, used approximately \$317,000.00 of the funds released from PNC Bank, upon entry of an Order by the Richmond City Circuit Court of Virginia after the hearing held on May 31, 2024, to pay legal expenses.

ANSWER:

32. Admit that the financials you provided to Atlantic Wave Holdings, LLC, to induce settlement, were not accurate at the time.

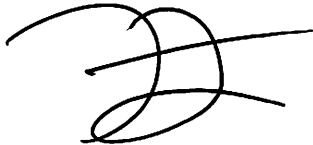
ANSWER:

Dated: September 6, 2024

Respectfully Submitted,

ATLANTIC WAVE HOLDINGS, LLC
and SECURE COMMUNITY, LLC

By Counsel

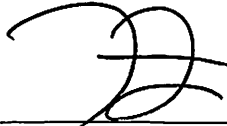
A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line crossing through them.

J. Chapman Petersen, Esq., VSB 37225
Federico J. Zablah, Esq., VSB 96031
Chap Petersen & Associates, PLC
3970 Chain Bridge Road
Fairfax, Virginia 22030
(571) 459-2512 (telephone)
(571) 459-2307 (facsimile)
jcp@petersenfirm.com
fjz@petersenfirm.com
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on Friday, September 6, 2024, a true and accurate copy of the foregoing instrument was served *via* federal express and electronic mail to:

Jimmy F. Robinson, Jr., Esq., VSB 43622
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
901 East Byrd Street, Suite 1300
Riverfront Plaza, West Tower
Richmond, VA 23219
Telephone: (804) 663-2336
Fax: (855) 843-1809
jimmy.robinson@ogletreedeakins.com
Counsel for Plaintiffs



Federico J. Zablah, Esq.

Exhibit D

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

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

Judgment Creditors,

v.

Case No. CL22-3882-15

CYBERLUX CORPORATION,

Judgment Debtor,

and

HII MISSION TECHNOLOGIES CORP.,

Garnishee.

GARNISHEE'S ANSWER AND PLEA OF NONJOINDER

Garnishee, HII Mission Technologies Corp. ("MT"), by counsel, pursuant to Virginia Code § 8.01-515, states as follows for its Answer to the Garnishment Summons issued on behalf of judgment creditors, Atlantic Wave Holdings, LLC and Secure Community, LLC (collectively, the "Judgment Creditors") and its Plea of Nonjoinder:

Background

1. On September 27, 2024, MT was served with the Garnishment Summons in this action seeking to garnish "[a]ny monies owed to the judgment debtor," Cyberlux Corporation ("Cyberlux").

2. The Garnishment Summons is returnable on October 28, 2024.

3. In lieu of appearing on the return date, a garnishee may file a statement. Va. Code Ann. § 8.01-515. "Such statement shall show the amount the garnishee is indebted to the

judgment debtor, if any, or what property or effects, if any, the garnishee has or holds which belongs to the judgment debtor, or in which he has an interest.”

4. Effective August 29, 2023, MT’s predecessor in interest and Cyberlux entered into Subcontract No. P000043846 (the “Subcontract”).

5. The Subcontract was a firm fixed price contract for work by Cyberlux to support MT’s work under Prime Contract No. GS00Q14OADU109; Task/Delivery Order No. 47QFCA22F0039 (the “Prime Contract”) that had been issued by the Federal Systems Integration and Management Center.

6. The period of performance for the Subcontract was from August 29, 2023 through July 24, 2024.

MT’s Obligations, If Any, to Cyberlux or Its Assignees or Other Creditors

7. On May 13, 2024, the contracting officer for the Prime Contract terminated for convenience the portion of the Prime Contract scope of work relevant to the Subcontract.

8. On May 17, 2024, MT terminated for convenience the Subcontract, in accordance with the Subcontract’s applicable terms and conditions.

9. Section 32.1 of the Subcontract provides that MT’s “sole obligation to [Cyberlux] in the event of a termination for convenience shall be to pay [Cyberlux] a percentage of the Subcontract price corresponding with the percentage of the terminated work actually performed prior to the notice of termination, plus [Cyberlux’s] reasonable expenses incurred as a direct result of the termination. Under no circumstances shall [Cyberlux] be entitled to anticipatory or lost profits. Within twenty (20) days from such termination, [Cyberlux] may submit to [MT] its written claim for termination charges in the form prescribed by [MT]. Failure to submit such

claim within such time shall constitute a waiver of all claims and a release of [MT's] liability arising out of such termination.”

10. Since May of 2024, MT and Cyberlux have engaged in ongoing communications in an attempt to agree on the amount, if any, owed to Cyberlux as a result of the termination for convenience of the Subcontract. That matter remains unresolved as of this filing and is not anticipated to be resolved as of the return date of October 28, 2024.

11. As a result, MT is unable to state the amount, if any, that MT is indebted to Cyberlux.

Interests of Cyberlux's Other Creditor, Legalist

12. By letter dated April 5, 2024 from Legalist SPV III, LP (“Legalist”), MT was informed that Cyberlux has granted a security interest in, and assigned, its accounts receivable to Legalist pursuant to an Instrument of Assignment.

13. As a result, Legalist directed MT to pay to Legalist all “amounts ordinarily payable to [Cyberlux] under the [Subcontract].”

14. Therefore, it appears that Legalist has a superior interest in any amounts payable to Cyberlux based on its perfected security interest in Cyberlux's receivables, which was perfected earlier in time than the Judgment Creditors' writ of fieri facias or delivery of the same to the sheriff for execution.

15. On or about July 12, 2024, Cyberlux executed and delivered to MT a letter agreement in which Cyberlux “acknowledge[d] and expressly consent[ed] to HII Mission Technologies Corp. (‘HII’) paying to Legalist . . . all amounts that otherwise become due and owing to Cyberlux under . . . Subcontract . . . after the date of execution of this Exhibit. . . until

such time HII receives written notice from Cyberlux or Legalist to cease such payments to Legalist, in lieu of payment to Cyberlux under the Subcontract.”

16. To date, MT has received vague communications from Cyberlux regarding payment to Legalist.

17. To date, MT has made no payments to Legalist because no amounts have been determined to be due and owing to Cyberlux since July 12, 2024.

18. MT takes no position on to whom any amounts otherwise payable by MT to Cyberlux should be directed.

19. MT submits that Legalist is a necessary and indispensable party to this action pursuant to Rule 3:12 of the Rules of the Supreme Court of Virginia.

20. Pursuant to Virginia Code § 8.9A-406, MT can no longer discharge any obligations to Cyberlux by payment to Cyberlux, but only through payments to Legalist until such time that the debt secured by Legalist’s security interest is satisfied. The outstanding balance of the debt secured by Legalist’s security interest is unknown to MT.

21. As a result, any orders in in this action directing payment to the Judgment Creditors could expose MT to a “substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest” of Legalist. Va. Sup. Ct. R. 3:12(a).

22. MT is withholding any payment which is or may become due and owing to Cyberlux or Legalist pending further order and/or direction of the Court.

23. All allegations, if any, contained in the Garnishment Summons which have not been specifically admitted or otherwise addressed are denied.

WHEREFORE, HII Mission Technologies Corp., by counsel, respectfully requests that this Court enter an Order

- (1) dismissing the Garnishment Summons ; or in the alternative
- (2) joining Legalist SPV III, LP as a party; and
- (2) taking no action against the interests of HII Mission Technologies Corp.

HII MISSION TECHNOLOGIES CORP.

By: 
Counsel

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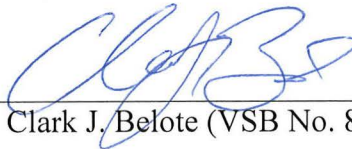
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2024, a true copy of the foregoing was sent via email (as indicated) and First-Class mail, postage prepaid, to the following:

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