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ATLANTIC WAVE HOLDINGS, LLC
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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

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

17 Plaintiffs,

18 vs.

19 CYBERLUX CORPORATION, a
Nevada Corporation; MARK D.
SCHMIDT, an individual,

20 Defendants.

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

**PLAINTIFFS ATLANTIC WAVE
HOLDINGS, LLC AND SECURE
COMMUNITY, LLC’S FURTHER
SUPPLEMENTAL UPDATE RE:
DEFENDANTS’ MOTION TO
VACATE**

*Filed concurrently with Declaration of
David M. Keithly, Declaration of
William Welter and Declaration of
Federico J. Zablah*

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Atlantic Wave Holdings, LLC and Secure Community, LLC
4 (collectively, “Plaintiffs”) submit this supplemental update to highlight new and
5 critical developments underscoring the urgency for immediate judicial intervention.

6 Plaintiffs domesticated their Virginia judgment in California in February 2024.
7 Plaintiffs filed this action in San Diego because Defendants' only remaining
8 significant asset is Datron, a company located in Vista, California, making local court
9 involvement essential. Shortly after Plaintiffs domesticated their judgment, on March
10 11, 2024, Defendants removed this action to federal court and filed a motion to vacate
11 and stay the judgment. During this period, Plaintiffs learned that Defendants received
12 over \$38 million in early September 2023 from a U.S. Government contract, which
13 should have been used to satisfy Defendants’ Judgment debt. However, Defendants
14 falsely stated in October that there had been "no drone sales," contradicting evidence
15 of their revenue, and refused to pay.

16 Plaintiffs also recently learned that in April 2024, amidst ongoing litigation,
17 Defendants assigned all revenue from the drone contract to Legalist SVP III—a
18 factoring company—effectively selling the drone contract without informing
19 Plaintiffs, stockholders, or the Court. This covert action deprived Plaintiffs of critical
20 revenue that should have been used to satisfy the Judgment—and violated the
21 Settlement Agreement, which mandates disclosure of all material information related
22 to drone sales and status. Despite their financial obligations, Defendants have engaged
23 in a troubling pattern of deceit and strategic delay aimed at evading their obligations
24 and dissipating assets intended to satisfy the Judgment.

25 On August 9, 2024, the same Virginia court that issued the Judgment released
26 garnished funds to Plaintiffs totaling approximately \$183,798.34 from PNC Bank and
27 \$4,862.86 from Towne Bank. This release reaffirms the validity and immediate
28 enforceability of the June 28, 2023 Amended Final Order and Judgment. Despite this

1 judicial endorsement, Defendants have used litigation in Virginia and misleading
2 representations in Texas to delay enforcement. Specifically, Defendants’ counsel
3 falsely claimed that a stay of enforcement was entered in Virginia, misleading the
4 Texas court into further delaying enforcement of the Judgment. This mirrors
5 Defendants' arguments in favor of their Motion to Vacate, suggesting that Virginia
6 actions need resolution before enforcement can proceed. In fact, **the Virginia actions**
7 **do not question the Judgment's validity or enforceability** and do not bar immediate
8 enforcement of the Judgment. Adding to these concerns, Defendants' counsel in the
9 Virginia litigation has stated unavailability for hearings until April 2025, despite
10 seeking urgent injunctive relief.

11 Further complicating matters, Plaintiffs recently discovered that Defendants
12 failed to disclose the termination of their crucial U.S. Government drone contract in
13 May 2024—a contract repeatedly cited as a primary source of funds to satisfy the
14 Judgment. The secret assignment of future payments from this contract to Legalist
15 SVP III further shields these assets from Plaintiffs.

16 This persistent pattern of non-compliance, misrepresentation, and strategic delay
17 underscores the urgent need for the Court to deny Defendants’ Motion to Vacate and
18 lift the stay on enforcement actions. Immediate Court intervention is essential not only
19 to prevent further asset dissipation but also to ensure that Defendants do not continue
20 to misuse the judicial process to delay enforcement of the Judgment debt.

21 **II. BACKGROUND AND TIMELINE OF EVENTS**

22 Plaintiffs obtained the final Judgment in Virginia on June 28, 2023, which was
23 subsequently domesticated in California to facilitate enforcement against Defendants’
24 assets in San Diego (Docket (“Dkt.”) No. 1-5). On March 11, 2024, Defendants
25 removed the action to federal court (Dkt. No. 1). Shortly thereafter, on April 5, 2024,
26 Cyberlux assigned all revenue from its drone contract to a factoring company, Legalist
27 SVP III, effectively diverting funds that could have satisfied the judgment
28

1 (Declaration of Federico J. Zablah (“Zablah Decl.”), ¶ 11, Ex. D at ¶¶ 12-14;
2 Declaration of William Welter (“Welter Decl.”), ¶¶ 2, 5.)

3 On April 10, 2024, Defendants filed a motion to vacate the judgment, which is
4 now fully briefed and awaiting decision. (Dkt. Nos. 9, 12, 13). As Plaintiffs sought to
5 enforce the judgment, they filed an application for a writ of execution on June 12,
6 2024 (Dkt. No. 16). However, Defendants filed an ex parte application to quash the
7 writ just two days later, on June 14, 2024 (Dkt. No. 18), and the Court subsequently
8 granted this motion on June 25, 2024, further stalling Plaintiffs' enforcement efforts
9 (Dkt. No. 20).

10 Despite ongoing litigation, on July 12, 2024, Cyberlux filed a written notice
11 requesting HII Mission Technologies Corp. to pay Legalist, reinforcing the
12 assignment of revenue initially made in April (Zablah Decl., ¶ 11, Ex. D at ¶ 15;
13 Welter Decl., ¶ 6). Then, on July 15, 2024, Plaintiffs filed an ex parte motion for
14 Defendants to post a bond, which was subsequently denied by the Court, leading to
15 additional delays in enforcement (Dkt. Nos. 22, 26).

16 Below is a timeline of events leading up to the present:

- 17 • **September 8, 2023:** Defendants received over \$38 million from a U.S.
18 Government contract. (Welter Decl., ¶ 3, Ex. A).
- 19 • **October 10, 2023:** Defendants falsely claimed there had been "no drone sales."
20 (Welter Decl., ¶ 7, Ex. B).
- 21 • **February 2024:** Plaintiffs domesticated their Virginia judgment in California.
22 (Dkt. No. 1-5)
- 23 • **March 2024:** Defendants removed the case to federal court and filed a motion
24 to vacate. (Dkt. Nos. 1, 9)
- 25 • **April 5, 2024:** Defendants assigned all drone sales to Legalist in return for
26 consideration, effectively selling the drone contract. (Zablah Decl., ¶ 11, Ex.
27 D). The Settlement Agreement states that all material information must be
28 disclosed to Plaintiffs regarding drone sales and status. (Dkt No. 24-1, § 8).

1 Defendants did not inform Plaintiffs, stockholders, or the Court of the
2 assignment. (Welter Decl., ¶ 5; *see* Zablah Decl., ¶ 12).

- 3 • **June 2024:** Plaintiffs applied for a writ of execution (Dkt. No. 16) and
4 Defendants filed an ex parte application to quash the writ of execution, which
5 the Court granted (Dkt. Nos. 18-20).
- 6 • **Asset Sale Attempts:** During this time, Defendants also attempted to sell
7 company assets. (Zablah Decl., ¶ 9, Ex. C at RFA No. 24; *See* Declaration of
8 David M. Keithly (“Keithly Decl.”), ¶ 5, Ex. B).
- 9 • **July 8, 2024:** Defendants filed lawsuits in Virginia and then used those
10 lawsuits to mislead courts here and in Texas, claiming these were dispositive
11 of the Judgment's validity to stall enforcement. (Zablah Decl., ¶¶ 4-5, 8; Keithly
12 Decl., ¶¶ 2-3, Ex. A; Welter Decl., ¶¶ 10-11).
- 13 • **Post-July 8, 2024:** Despite filing lawsuits, Defendants have taken no action,
14 but continue to delay the proceedings through dilatory tactics. (Zablah Decl.,
15 ¶¶ 13-17; Dkt. No. 31 at ¶¶ 2-13).
- 16 • **July 15, 2024:** Plaintiffs filed an ex parte motion for Defendants to post a bond
17 (Dkt. No. 22), which the Court denied (Dkt. Nos. 25-26).
- 18 • **Dissipation of Assets:** Plaintiffs' judgment is quickly losing collateral due to
19 Defendants' actions. (Welter Decl., ¶¶ 2-6, 8-9).

20 Throughout this period, Defendants engaged in a series of nefarious maneuvers
21 designed to complicate enforcement and mislead Plaintiffs and Courts here, in Texas
22 and in Virginia. Notably, the drone contract, which Defendants had long cited as a
23 forthcoming asset capable of satisfying the Judgment, was **terminated on May 17,**
24 **2024**—a fact Defendants failed to disclose, instead perpetuating the false narrative
25 that the contract remained active (Welter Decl., ¶ 4; *see* Zablah Decl., ¶ 12). This non-
26 disclosure misled Plaintiffs and the Court, obstructing rightful enforcement efforts.

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28 ///

1 **III. UPDATES ON LITIGATION SURROUNDING THE SETTLEMENT**
2 **AGREEMENT**

3 **A. California Proceedings**

4 In California, Plaintiffs' efforts to enforce the Virginia Judgment have been
5 temporarily halted due to the pending Motion to Vacate the domesticated judgment
6 and the Court's Order staying enforcement of the sister-state Judgment pending the
7 Court's decision on the motion. (Docket ("Dkt.") Nos. 9, 12, 13 and 20). This motion
8 has been fully briefed and awaiting a decision for more than five months and all
9 related enforcement actions and discovery efforts have been stayed during that time.
10 The delay has impacted Plaintiffs' ability to conduct discovery on whether or not
11 assets exist within this Court's jurisdiction that could be used to satisfy the Judgment.
12 Plaintiffs acknowledge the Court's careful consideration of the issues at hand and
13 respectfully anticipate a resolution that will enable them to continue their enforcement
14 efforts and secure the judgment owed.

15 **B. Virginia Proceedings**

16 Since the last update, significant developments have unfolded in Virginia that
17 further underscore the immediate enforceability of the judgment and the urgency for
18 court intervention.

19 **1. Plaintiffs' Garnishment Actions**

20 Plaintiffs successfully garnished funds through the Virginia court, resulting in
21 the release of approximately \$183,798.34 from PNC Bank and \$4,862.86 from Towne
22 Bank to Plaintiffs. (Zablah Decl., ¶¶ 6-7, Exs. A-B.) This action reinforces the validity
23 and enforceability of the Virginia judgment and demonstrates the court's support for
24 Plaintiffs' efforts to collect the amounts owed. The Virginia Court would not have
25 released garnished funds to Plaintiffs if there were any doubt as to the immediate
26 enforceability of the Judgment. (*Id.*)

27 Additionally, Plaintiffs sought to garnish future payments owed to Cyberlux by
28 its contractor, HII Mission Technologies Corp ("HII"). (Zablah Decl., ¶¶ 10-12, Ex.

1 D.) However, HII's October 24, 2024 Answer and Plea of Nonjoinder revealed that
2 Cyberlux's subcontract was terminated for convenience in May 2024—over five
3 months ago. (*Id.*, Ex. D at ¶¶ 7-11.) This termination—which Defendants never
4 disclosed to Plaintiffs—critically undermines Cyberlux's financial capacity to satisfy
5 the judgment. (Welter Decl., ¶ 4; *see* Zablah Decl., ¶ 12.) These assets appear to have
6 been dissipated by Defendants, making recovery in San Diego even more important.

7 The cancellation of the contract is particularly significant because, for more than
8 a year now, Defendants had repeatedly asked Plaintiffs to delay enforcement of the
9 judgment, claiming they were about to receive an imminent payment under the
10 contract sufficient to satisfy their judgment debt to Plaintiffs. (Welter Decl., ¶ 4.)
11 Despite these assurances, the contract was canceled in May, and Cyberlux failed to
12 inform Plaintiffs, its shareholders, or the Court. (Welter Decl., ¶ 4; *see* Zablah Decl.,
13 ¶ 12.)

14 Compounding this issue, even if the contract had not been canceled, Cyberlux
15 already assigned its interests in any future payments to Legalist SVP III, LP, a
16 factoring company¹ before the contract cancelation. (Zablah Decl., ¶ 11; Ex. D at ¶¶
17 12-21; Welter Decl., ¶¶ 2, 5.) This assignment means that Legalist would have priority
18 over any additional monies received under the contract, effectively blocking Plaintiffs
19 from recovering funds. (*Id.*)

20 Moreover, Cyberlux received a \$38 million payment, via wire from “HII
21 Technical” on September 8, 2023, which was linked to drone sales and should have
22 been used to satisfy the Judgment in full (Welter Decl., ¶ 3, Ex A). However, in
23 October 2023, when Plaintiffs inquired about the number of drones sold, Cyberlux's
24 attorney stated there had been none (Welter Decl., ¶ 7, Ex. B). This contradiction
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26 _____
27 ¹ A factoring company purchases accounts receivable from businesses at a discount,
28 providing them with immediate cash flow. (Welter Decl., ¶ 2.) The factoring company
then collects the payments directly from the customers as they become due. (*Id.*)

1 raises serious concerns about the veracity of Defendants’ disclosures and the
2 management of these funds.

3 **2. Defendants’ Complaints for Injunctive and Declaratory Relief**

4 Since filing complaints for immediate injunctive relief and declaratory relief in
5 Virginia on July 8, 2024, Defendants have not meaningfully engaged in legal
6 proceedings in Virginia. (Zablah Decl., ¶¶ 13-17; Dkt. No. 31 at ¶¶ 2-13.) Despite
7 Defendants' assertions elsewhere, no stay has been issued—or even considered—in
8 the Virginia proceedings. (Zablah Decl. ¶¶ 4-5; Keithly Decl., ¶¶ 2-3; Welter Decl.,
9 ¶¶ 10-11).

10 Defendants have not agreed to reasonable hearing dates or complied with
11 discovery obligations, including responding to Requests for Admissions (RFAs)
12 served on September 6, 2024, which were due by September 27, 2024. (Zablah Decl.,
13 ¶ 9, Ex. C; ¶¶ 13-17). Under Rule 4:11 of the Rules of the Supreme Court of Virginia,
14 RFAs not answered within 21 days are deemed admitted. Cyberlux's failure to
15 respond has led to several critical admissions, including:

- 16 • Cyberlux shipped approximately \$15,000,000 worth of drones prior to
17 December 31, 2023 (Zablah Decl., ¶ 9, Ex. C at RFA No. 25), in breach of the
18 requirement to disclose such sales and provide \$5,000 per drone sold as
19 stipulated in the Settlement Agreement (Dkt No. 24-1 (Settlement Agreement)
20 at §§ 4.b, 4.c).
- 21 • Cyberlux failed to provide requested documentation relevant to drone sales
22 (Zablah Decl., ¶ 9, Ex. C at RFA No. 28), violating their obligation to provide
23 updates and documentation as required (Dkt. No. 24-1 at § 8).
- 24 • Cyberlux provided inaccurate financials to induce settlement (Zablah Decl., ¶
25 9, Ex. C at RFA No. 32), breaching the representation that financial statements
26 are materially true and accurate. (Dkt. No. 24-1 at § 10).
- 27 • Cyberlux attempted to sell or merge its business or assets in the last 24 months
28 (Zablah Decl., ¶ 9, Ex. C at RFA No. 24), contrary to its obligations under the

1 Settlement Agreement to inform Plaintiffs of any significant changes impacting
2 their financial standing (*see* Dkt. No. 24-1, §§ 7-8).

3 These admissions represent clear breaches of the Settlement Agreement, further
4 justifying the immediate enforcement of the Judgment. By failing to disclose material
5 facts and provide accurate financials, Cyberlux has violated the agreement's
6 transparency requirements, undermining the basis for any ongoing or future
7 negotiation regarding the Judgment debt.

8 Plaintiffs' counsel's experiences in Virginia illustrate the extent of Defendants'
9 non-compliance and obstruction. Defendants refuse to cooperate on scheduling
10 reasonable hearing dates, with their counsel unreasonably delaying proceedings by
11 claiming unavailability for months, despite the urgency of the matters at hand. (Zablah
12 Decl. ¶¶ 13-17; Dkt. No. 31 at ¶¶ 2-13). This tactic of delay allows Cyberlux to
13 continue to use the Virginia litigation as a shield against Plaintiffs' collection actions.

14 Crucially, **Defendants' Virginia actions do not challenge the validity of the**
15 **underlying Judgment.** (Zablah Decl., ¶ 8.) However, the mere filing of these
16 complaints, coupled with Defendants refusal to advance the litigation, has caused
17 confusion and led courts in both this jurisdiction and Texas to delay enforcement of
18 Plaintiffs' Judgment. This misuse of the legal process emphasizes the need for
19 immediate court intervention. Plaintiffs must be allowed to enforce their rightful
20 claims and secure the assets needed to satisfy the Judgment.

21 C. Texas Proceedings

22 Recent proceedings in Texas have highlighted the persistent obstruction tactics
23 employed by Defendants. On October 28, 2024, during a hearing on Cyberlux's
24 motion to vacate Plaintiffs' domesticated Judgment, Defendants' counsel
25 misrepresented to the Texas court that the Virginia court had issued a stay of
26 execution of the Judgment. (Keithly Decl., ¶ 2; Welter Decl., ¶¶ 10-11; *see* Zablah
27 Decl., ¶¶ 4-5.) This assertion was entirely false; no stay has been granted or even
28 considered in Virginia. (Zablah Decl. ¶ 5; Keithly Decl., ¶ 3; Welter Decl., ¶ 11).

1 Relying on this misrepresentation, the Texas court temporarily stayed
2 enforcement of the Judgment for 30 days to provide Defendants the opportunity to
3 present evidence of the supposed stay, although it did not halt discovery. (Keithly
4 Decl. ¶ 3, Ex. A; Welter Decl., ¶ 11.) This maneuver exemplifies Defendants' broader
5 strategy of leveraging the Virginia litigation to obstruct and delay Plaintiffs' legitimate
6 collection efforts while sowing jurisdictional confusion across the courts involved.
7 (Keithly Decl., ¶ 4.)

8 By exploiting procedural ambiguities and creating jurisdictional confusion,
9 Defendants aim to prolong the enforcement process and dissipate assets that should
10 rightfully satisfy the Judgment debt. This misuse of the legal system underscores the
11 urgent need for court intervention to prevent further obstruction and ensure that
12 Plaintiffs can secure the assets needed to satisfy the Judgment.

13 Plaintiffs urge the Court to recognize the severity of Defendants' conduct and
14 deny the Motion to Vacate the domesticated Judgment. Moreover, lifting the stay on
15 enforcement actions is essential to prevent further asset dissipation and to uphold the
16 integrity of the judicial process, allowing Plaintiffs to proceed with their rightful
17 claims without further hindrance.

18 **IV. BROADER IMPLICATIONS OF DEFENDANTS' ACTIONS AND**
19 **THE NEED FOR JUDICIAL INTERVENTION**

20 The actions taken by Defendants extend beyond mere procedural delays; they
21 represent a strategic pattern designed to undermine the enforcement of a valid
22 judgment and to obfuscate their financial obligations. This pattern is evidenced by a
23 series of calculated maneuvers that have systematically impeded Plaintiffs' efforts to
24 collect the amounts owed under the Amended Final Order and Judgment. Defendants'
25 decision to assign all revenue from the drone contract to Legalist SVP III, a factoring
26 company, effectively diverts potential funds from Plaintiffs, undermining the
27 enforcement of the judgment (Zablah Decl., ¶ 11, Ex. D at ¶¶ 12-14; Welter Decl., ¶¶
28 2, 5). This transaction, which was neither disclosed to Plaintiffs nor the court,

1 represents a deliberate attempt to shield assets and avoid financial liabilities. (Zablah
2 Decl., ¶ 12; Welter Decl., ¶¶ 2, 5). The concealment of the assignment, coupled with
3 the undisclosed termination of the drone contract in May 2024, illustrates Defendants’
4 intent to mislead Plaintiffs and continue their pattern of non-compliance.

5 Throughout these proceedings, Defendants have engaged in a campaign of
6 misinformation, falsely representing to various courts that stays had been issued in
7 Virginia, thereby sowing jurisdictional confusion. Such tactics have not only delayed
8 enforcement actions but have also strained judicial resources as courts are misled into
9 unnecessary deliberations based on false premises (Keithly Decl., ¶¶ 2-3; Welter
10 Decl., ¶¶ 10-11). The cumulative effect of Defendants’ actions necessitates immediate
11 judicial intervention to prevent further asset dissipation and to uphold the integrity of
12 the judicial process. Plaintiffs have been systematically blocked from enforcing their
13 judgment due to Defendants’ strategic delays and financial machinations. The release
14 of garnished funds by the Virginia court serves as a clear judicial endorsement of the
15 judgment’s validity, further reinforcing the need for this Court to deny the Motion to
16 Vacate and lift the stay on enforcement proceedings.

17 Plaintiffs respectfully request that this Court acknowledge the urgency of the
18 situation and take decisive action to prevent further evasion by Defendants. By
19 denying the Motion to Vacate and lifting the stay, the Court would enable Plaintiffs
20 to pursue their rightful claims and ensure that justice is not only served but seen to be
21 served.

22 V. CONCLUSION

23 Defendants Cyberlux Corporation and Mark D. Schmidt have consistently
24 evaded enforcement of the valid judgment secured by Plaintiffs through strategic
25 delays and misleading representations, creating jurisdictional confusion and
26 dissipating assets intended to satisfy the Judgment. Their undisclosed termination of
27 a critical U.S. Government contract in May 2024, coupled with the secret assignment
28 of payment interests to Legalist SVP III, underscores their intent to shield assets and

1 avoid financial obligations. These actions necessitate immediate judicial intervention
2 to prevent further asset dissipation. Plaintiffs respectfully request that the Court deny
3 Defendants' Motion to Vacate and lift the stay on enforcement actions to uphold the
4 integrity of the judicial process and ensure Defendants are held accountable.

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6 DATED: November 7, 2024

MORTENSON TAGGART ADAMS LLP

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By:



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David M. Keithly

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Attorney for Plaintiffs

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ATLANTIC WAVE HOLDINGS, LLC

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and

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SECURE COMMUNITY, LLC

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