

May 15, 2025

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Honorable Michael Gomez
129th Judicial District Court
Harris County Civil Courthouse
201 Caroline, 10th Floor
Houston Texas 77002

RE: Cause No. 2024-48085, *Atlantic Wave Holdings, LLC, et al. v. Cyberlux Corporation, et al.*, 129th Judicial District Court, Harris County, Texas.

Dear Judge Gomez:

I represent Plaintiffs Atlantic Wave Holdings, LLC, and Secure Community, LLC (Atlantic Wave) in the above-referenced action and write to briefly address the two failed attempts to remove this enforcement action by Judgment Debtors Cyberlux Corporation and Mark D. Schmidt (Cyberlux). Atlantic Wave contends that Cyberlux's jurisdictional challenges were deliberately calculated to delay or interfere with any efforts to collect on Atlantic Wave's judgment, as well as other creditors' claims or judgments, long enough for Cyberlux to hide or dissipate assets out of the reach of those creditors. Upon information and belief, Cyberlux is in position to receive a substantial sum of money (in excess of \$20 million) any day now, from Huntington Ingalls Industries (HII), based on a settlement agreement, effective February 26, 2025, by and between Cyberlux and HII.¹ Thus, it is imperative that this Court take all appropriate actions to protect non-exempt assets of Cyberlux, including funds held (or to be paid) by HII on behalf of or for the benefit of Cyberlux, as soon as jurisdiction is formally revested in the Court. There is legitimate risk that Cyberlux is taking active measures to place any such non-exempt assets out of the reach of Atlantic Wave and other creditors, e.g., factoring a large amount of the assets (\$7,313,627.17 with fees accruing at a daily rate of \$4,364.46).

¹ Judgment Debtors conceded to the Federal Court that "Cyberlux and HII are concluding their obligations under the subcontract, by which Cyberlux will deliver the Federal Government Property (the drones), and HII will pay Cyberlux pursuant to the subcontract." (Case No. 4:25-cv-01689, S.D.Tex., Doc. 9, p. 11 of 17.)

Atlantic Wave asserts it is an interested stakeholder in any payment due and owed to Cyberlux by HII because Cyberlux has not satisfied debts due and owed to Atlantic Wave, in whole or in part, under a valid and enforceable judgment, writs of garnishment, or liens:

1. On June 28, 2023, a Virginia state court signed the *Amended Final Order and Judgment* against Cyberlux (and Mark D. Schmidt) in Case No. CL22-3882, in the Circuit Court of the City of Richmond, Virginia. The *Amended Final Order and Judgment* has since been domesticated in California state court in January of 2024 and in Texas state court in July of 2024. The outstanding balance due and owed under the *Amended Final Order and Judgment* is, at minimum, \$912,000, after accounting for any prior payments, credits, or offsets.
2. The *Amended Final Order and Judgment*, as agreed to by Cyberlux, also provides that “the parties have agreed to a security interest and lien interest in all property of Defendants [Cyberlux and Mark D. Schmidt] in favor of Plaintiffs [Atlantic Wave and Secure Community, LLC] 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.”
3. On July 6, 2023, Atlantic Wave filed a *UCC Financing Statement (Form UCC1)* with the Virginia State Corporation Commission, Office of the Clerk, to perfect Atlantic Wave’s security interest in certain collateral of Cyberlux, including but not limited to “money ... [and] accounts receivable and other rights to payment and performance.”
4. On July 6, 2023, Atlantic Wave filed a *UCC Financing Statement (Form UCC1)* with the Texas Secretary of State to perfect Atlantic Wave’s security interest in certain collateral of Cyberlux, including but not limited to “money ... [and] accounts receivable and other rights to payment and performance.”
5. On June 15, 2023, Atlantic Wave and Cyberlux entered into a *Settlement Agreement* in Case No. CL22-3882, in the Circuit Court of the City of Richmond, Virginia, wherein Cyberlux agreed to be “responsible for the payment of [Atlantic Wave’s] attorneys’ fees and costs in any action caused by the breach of this [Settlement] Agreement.” As of April 24, 2025, the attorneys’ fees and costs incurred by Atlantic Wave caused by Cyberlux’s breach of the *Settlement Agreement* is well in excess of \$592,000, and

attorneys' fees and costs continue to accrue as a result of Cyberlux's wrongful conduct.

6. Pursuant to the *Settlement Agreement*, Cyberlux was contractually obligated, among other obligations, to bring its stock to Pink Current status, make the stock marketable, and to remedy the caveat emptor classification on such stock by December 31, 2023, or be subject to additional liability and damages to Atlantic Wave. Cyberlux did not comply with its contractual obligation, which is now the subject of Case No. CL24-3910, in the Circuit Court of the City of Richmond, Virginia. The damages caused by Cyberlux's wrongful conduct is in excess of \$6,017,250 (calculated based on a 20-day rolling average share price of \$.0308577 for 195,000,000 shares).
7. On September 10, 2024, the Virginia state court entered an order awarding attorney fees in the amount of \$9,392.50 to be paid on or before December 27, 2024, which were not paid.
8. On May 14, 2025, the Texas federal court entered a memorandum and opinion granting "Atlantic Wave's request for an award of the attorney's fees and costs incurred in responding to the second removal." (Notice of Second Remand Order, dated May 14, 2025, Ex. 2.)

Based on the foregoing judgment, security interest, liens, and claims, among others, Atlantic Wave contends it is currently owed in excess of \$7,774,000, and further contends that it is entitled to satisfy the amount with non-exempt assets of Cyberlux, including funds held (or to be paid) by HII on behalf of or for the benefit of Cyberlux.

Not only does Cyberlux owe Atlantic Wave a substantial amount of money, Cyberlux is the subject of several other claims for monies due and owed by Cyberlux:

1. In Case No. 1:25-cv-00805-GPG-MDB, *Thin Air Gear, LLC, v. Cyberlux Corporation* (D.Colo.), filed on March 12, 2025, Thin Air Gear, LLC, alleges that Cyberlux is indebted to Thin Air Gear in the amount of \$365,049.42 as of November 18, 2024, including a 1.5% late fee per month on past due amounts. (Doc. 1-3, pp. 8-13.) On April 30, 2025, the court clerk entered default against Cyberlux.
2. In Cause No. 2024-48085, *Atlantic Wave Holdings, LLC, et al. v. Cyberlux Corporation, et al.*, 129th Judicial District Court, Harris County, Texas, Legalist SPV III, LP filed a Petition in Intervention on February 7, 2025,

alleging that Cyberlux is “indebted to Legalist in the amount of \$7,313,627.17 with fees accruing at a daily rate of \$4,364.46 by virtue of their failure to satisfy their obligations under the Loan Agreement.” (Doc. 1-3, pp. 16-19.)

3. In Case No. 24CV034906-910, *Aerotek, Inc. v. Cyberlux Corporation et al.*, In the General Court of Justice, Superior Court Division, State of North Carolina, filed on October 29, 2024, Aerotek alleges that Cyberlux is indebted to Aerotek for payroll expenses in the amount of \$204,705.45, plus interest and attorney fees. (Doc. 1-3, pp. 22-29.) On April 11, 2025, in Wake County Superior Court, an order was entered against Cyberlux Corporation et al. in favor of Aerotek, Inc., in the amount of \$235,411.27.
4. In Case No. 3:24-cv-01434-AJB-DTF, *RB Capital Partners v. Cyberlux Corporation et al.* (S.D.Cal.), filed on August 12, 2024, RB Capital Partners alleges that Cyberlux is indebted to RB Capital in the amount of \$5,686,960, plus interest and attorney fees. (Doc. 1-3, pp. 32-37.) Case 4:25-cv-01689 Document 6 Filed on 04/29/25 in TXSD Page 5 of 11
5. In Case No. 25CV004246-310, *The ARG Group, LLC v. Cyberlux Corporation*, In the General Court of Justice, Superior Court Division, State of North Carolina, filed on April 24, 2025, ARG Group alleges that Cyberlux is indebted to ARG Group for amounts due and owed under a distributor partner agreement.
6. Upon information and belief, Cyberlux is considerably delinquent in paying rent under its lease for the warehouse facility in Spring, Texas, which caused the landlord to lock out Cyberlux from the facility, after Cyberlux removed a material portion of the drones located at the facility.

On the face of those pleadings, Cyberlux is allegedly indebted to other creditors in an amount in excess of \$13,500,000, not including the amount due and owed to Atlantic Wave.

Based on Cyberlux’s conduct to date, there is a legitimate and severe risk that if Cyberlux receives money held on behalf of or for the benefit of Cyberlux, which is likely soon pursuant to the agreements between Cyberlux and HII, the money will be dissipated before Atlantic Wave and other creditors are paid or can take any further action to prevent such dissipation by Cyberlux. It is imperative that the status quo is preserved

and Cyberlux's deliberate tactics to avoid paying valid and enforceable judgments, writ of garnishment, or liens be brought to an end.

Thus, as soon as jurisdiction is formally revested in this Court, Atlantic Wave respectfully requests that the receivership order previously submitted to the Court on April 1, 2025, be signed instantan to preserve the status quo and minimize any further delay implemented by Cyberlux. Again, to be clear, the focus of Atlantic Wave's collection efforts is not to seize personal property on which the United States (or anyone else) has or claims a mortgage or other lien as established by competent evidence, but rather to seize personal property of Cyberlux as set forth in the proposed receivership order. As aptly noted by the Honorable Judge Lee H. Rosenthal: "the proposed [receivership] order does not state, or even suggest, that Atlantic Wave or [the receiver Robert] Berleth intend to seize U.S. government property." (Notice of Second Remand Order, dated May 14, 2025, Ex. 2, pp. 5-6.) Indeed, Cyberlux's objections to the language in the proposed order are without merit.

At the court's convenience, Atlantic Wave is available for a telephonic (or other remote) status conference to further discuss the foregoing matters. We appreciate your prompt attention to this important matter.

Very truly yours,



David A. Walton

CERTIFICATE OF SERVICE

I certify that on May 15, 2025, a true and correct copy of this document was served on all parties of record via electronic service from the court's ECF system for registered users, in accordance with Rule 21a of the Texas Rules of Civil Procedure.

By: /s/ David A. Walton

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Jemisha Gandhi on behalf of David Walton

Bar No. 24042120

jgandhi@bellnunnally.com

Envelope ID: 100874891

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Filing Description: Letter to Court re Second Remand Order

Status as of 5/15/2025 11:32 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
David A.Walton		dwalton@bellnunnally.com	5/15/2025 11:26:00 AM	SENT
LaDonna Arey		LArey@bellnunnally.com	5/15/2025 11:26:00 AM	SENT
Sandra Meiners		smeiners@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Travis Vargo		tvargo@vargolawfirm.com	5/15/2025 11:26:00 AM	SENT
Roxanna Lock		rlock@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Shawn Grady		shawn@gradycollectionlaw.com	5/15/2025 11:26:00 AM	SENT
Jeff Brown		jbrown@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Bernadette Martin		bernadette@gradycollectionlaw.com	5/15/2025 11:26:00 AM	SENT
Records Department		Records@bellnunnally.com	5/15/2025 11:26:00 AM	SENT
Hannah Petrea		hpetrea@bellnunnally.com	5/15/2025 11:26:00 AM	SENT
Michael Poynter		mpoynter@vargolawfirm.com	5/15/2025 11:26:00 AM	SENT
Laurie DeBardeleben		ldebardeleben@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Micah Jackson		mjackson@berlethlaw.com	5/15/2025 11:26:00 AM	SENT
Sheli Davis		sdavis@berlethlaw.com	5/15/2025 11:26:00 AM	SENT
Katharine Clark		kclark@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Lena Brasher		lbrasher@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Frankie Huff		fhuff@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Alex Pennetti		apennetti@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Edward W.Gray, Jr.		EGray@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Tristian Harris		tharris@berlethlaw.com	5/15/2025 11:26:00 AM	SENT
Corinne Martin		cmartin@berlethlaw.com	5/15/2025 11:26:00 AM	SENT
Hannah Fischer		hfischer@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT

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Case Contacts

Hannah Fischer		hfischer@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Jocelin A.Tapia		jtapia@thompsoncoburn.com	5/15/2025 11:26:00 AM	SENT
Greg Nieman		gnieman@bellnunnally.com	5/15/2025 11:26:00 AM	SENT
Jemisha Gandhi		jgandhi@bellnunnally.com	5/15/2025 11:26:00 AM	SENT
David M.Keithly		dkeithly@mortensonlaggart.com	5/15/2025 11:26:00 AM	SENT