

Hearing  
October 28, 2024

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REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUMES  
TRIAL COURT CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, ) IN THE DISTRICT COURT  
LLC AND SECURE COMMUNITY, )  
LLC )  
vs. ) HARRIS COUNTY, TEXAS  
CYBERLUX CORPORATION AND )  
MARK SCHMIDT, INDIVIDUALLY) )  
129TH JUDICIAL DISTRICT

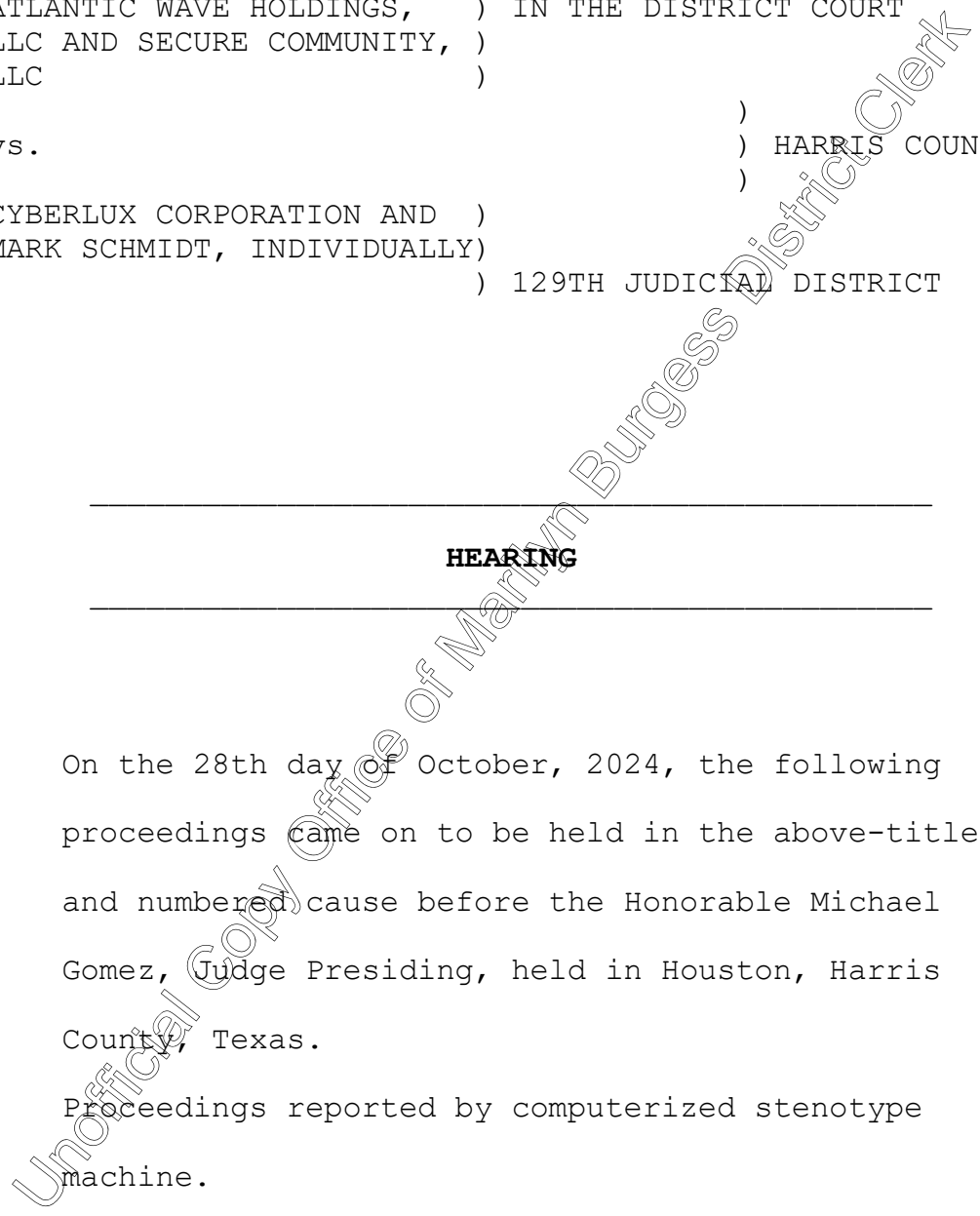
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**HEARING**

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On the 28th day of October, 2024, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Michael Gomez, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.



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**APPEARANCES**

Mr. Shawn Grady  
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Dallas, Texas 75201  
Counsel for Defendants

Unofficial Copy Office of Marilyn Burgess District Clerk

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1 THE COURT: Court is on the record, Cause  
2 No. 2024-48085.

3 Will everyone, please, introduce  
4 themselves for the record.

5 MR. GRADY: Shawn Grady for the Plaintiff.

6 MR. PENNETI: Alex Penneti for the  
7 Defendants.

8 THE COURT: One second. I'm trying to --  
9 this is Defendant's Motion to Vacate and Motion to Stay  
10 the foreign judgment; is that right?

11 MR. PENNETI: That's right.

12 THE COURT: You may proceed.

13 MR. PENNETI: Judge, this action was  
14 brought following a settlement agreement entered by the  
15 parties that was entered last summer, so June of 2023,  
16 the settlement agreement was entered in Virginia. I  
17 would like to touch on that before I get into some of  
18 the other issues here. The settlement agreement itself  
19 was entered in June. As a part of that, the parties  
20 included a venue and choice of law provision to dictate  
21 any disputes arising from the settlement agreement will  
22 be litigated in Virginia pursuant to Virginia law.

23 THE COURT: Can I -- so this is a little  
24 bit confusing but I want to make sure I kind of figure  
25 out where -- what we're talking about because --

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1 MR. PENNETI: I think it makes more sense  
2 --

3 THE COURT: -- because a judgment was  
4 entered in Virginia; is that right?

5 MR. PENNETI: That's right, Judge. I  
6 think I should have started with this. As part of the  
7 settlement agreement was a consent judgment. And that  
8 was incorporated into the settlement agreement in part  
9 because there's another party who's not -- there is  
10 another entity that was part of that agreement that is  
11 not a party to this case. It's called Stripe Point  
12 Consulting. So that consent judgment in part was to  
13 ensure that Strike Points claims were resolved. So that  
14 consent judgment really is a part of the settlement  
15 agreement itself. So that's why really this is kind of  
16 a breach of contract action disguised as a judgment  
17 because this is not a judgment on the merits.

18 THE COURT: Well, so, but -- so I don't  
19 really get to go underneath the merits of whatever  
20 judgment is entered, right. So there was a final  
21 judgment that was entered in Virginia that they're  
22 seeking to enforce here in Texas, right?

23 MR. PENNETI: Yes, that's correct, Judge.  
24 That's right. You can't undermine that Virginia  
25 judgment and that's not what we're here asking you to

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1 do. What essentially happened is my client ended up  
2 granting a security interest in all of its property at  
3 the time of the settlement agreement, so June 2023. It  
4 also, again, began making payments on the settlement.  
5 It made payments from July 3 all the way through  
6 May 31st. And I know there are a couple different  
7 breach theories. The May 31st breach theory is  
8 essentially part of Plaintiff's complaint is we stopped  
9 making payments on the settlement May 31. That's  
10 because in some Virginia litigation -- on a higher  
11 level, Judge -- there are currently, as I understand,  
12 five other proceedings in addition to this one. So  
13 ignoring the specifics of the alleged breach by  
14 Plaintiffs, really what happened is Plaintiffs contend  
15 that we breached the settlement agreement. And so, they  
16 hauled off and instead of filing an action in Virginia,  
17 they hauled off to California state court, filed a suit  
18 there. We removed it to federal court at which time  
19 Plaintiffs filed a second suit in California. That  
20 ended up in federal court, as well. The first  
21 California lawsuits is the same posture. There's a  
22 motion to vacate pending by my client there. Same  
23 posture as here. Second lawsuit was litigated for  
24 several months. My client filed counterclaims in that  
25 action. The Court ultimately looked at the settlement

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1 agreement and ordered the parties to show cause as to  
2 why this would be litigated in California and not  
3 Virginia which we agreed with the Court. And so, the  
4 Court dismissed that second California action so that we  
5 could go litigate this in Virginia where it belongs. So  
6 this was in July. And right after, that my client filed  
7 a temporary injunctive relief in Virginia, also a  
8 declaratory relief action in Virginia, and, I think,  
9 procedurally they were required to do that in two  
10 separate actions rather than one. Since that point,  
11 Plaintiffs have filed another breach of contract action  
12 regarding this exact settlement agreement in Virginia.  
13 So you have the collection action in Virginia, the two  
14 actions filed by my client in Virginia, this action,  
15 another action in California, all about the same facts  
16 and circumstances. And so, that's kind of the high  
17 level.

18 THE COURT: So what does that matter?  
19 Like why do I -- why should that have any -- why is  
20 this any part of the discussion when I have a final  
21 judgment here out of Virginia that they have  
22 domesticated, as long as it's final, doesn't that end  
23 the conversation?

24 MR. PENNETI: No, it doesn't because it's  
25 a final judgment in title, sure, but the reality is

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1 given the litigation in Virginia is over this settlement  
2 agreement, which that consent judgment arose from, that  
3 litigation in Virginia, whether it's through any of the  
4 four original actions, and really it would be through  
5 the latter three, so my clients' two actions or this new  
6 breach of contract action, any one of those could modify  
7 the underlying settlement agreement which would then  
8 modify the consent judgment, the Virginia judgment, that  
9 this action is based on. And so, that's why it's not a  
10 final judgment. It would be an interlocutory judgment  
11 subject to modification. We can't enforce this judgment  
12 on that grounds but practically speaking, my clients  
13 made 779,000 dollars in payments in Virginia on this  
14 particular judgment. So if we allow Plaintiffs to  
15 enforce this under the false pretense that my client has  
16 1.5 million dollar judgment against it, what's to say  
17 that the Plaintiffs won't go and try to collect the full  
18 one and a half million.

19 THE COURT: But that's every case. Every  
20 case you may collect part of it. Part of collection  
21 efforts, you collect until you're satisfied. And this  
22 case hasn't been modified and hasn't been appealed and  
23 hasn't been superseded. Nothing has happened with this  
24 order, right?

25 MR. PENNETI: Well, it hasn't been

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1 appealed, that's correct. And that was part of the  
2 language of the consent judgment. But part of it is we  
3 sought a stay of execution through injunctive relief  
4 there because we have done that and because we granted  
5 the security interest at minimum, Judge, you have to  
6 stay the action. You have to either vacate it or stay  
7 it here. So while we --

8 THE COURT: Has it been stayed? I mean  
9 has it been stayed in Virginia?

10 MR. PENNETI: Those -- all those  
11 litigations, yes, the stay has occurred in Virginia.  
12 There's no -- the collection, there's no activity in  
13 the collection suit. Then you've got the three other  
14 lawsuits.

15 THE COURT: So the enforcement of this  
16 judgment that they domesticated has been stayed in  
17 Virginia?

18 MR. PENNETI: That's correct. And it's  
19 also --

20 THE COURT: Hold on. Mr. Grady?

21 MR. GRADY: Yes, Your Honor.

22 THE COURT: Is that right?

23 MR. GRADY: -- that shows the Virginia  
24 judgment has been stayed. I know they filed a complaint  
25 for an injunction seeking a stay. According to my

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1 client, and the Virginia attorneys, that -- they have  
2 not prosecuted that complaint and certainly there's not  
3 been an order on the complaint and the Defendants did  
4 not present that order in the file.

5 THE COURT: Do you have a copy of the  
6 order staying it?

7 MR. PENNETI: I don't have a copy of it,  
8 Judge, my firm is not handling that.

9 THE COURT: Well, I mean, that's part and  
10 parcel of what you're asking. I mean, if your argument  
11 has been stayed then, yeah, of course, I won't enforce  
12 it. But if it's -- I don't really see -- Mr. Penneti,  
13 it's a final judgment. Unless you say it was  
14 fraudulently -- unless there's some fraud associated  
15 with it, it's enforceable. And there's not much else I  
16 can do about it. If you have a stay, an order to stay  
17 out of -- I can't go behind and undermine or figure out  
18 what's going on and whatever pieces of litigation may be  
19 associated with you folks and perhaps this judgment.  
20 But if you have -- if this has been superseded, if it's  
21 been enjoined in some way out of Virginia, then, yes, I  
22 will stay it. But I just need to see a copy of the  
23 stay. If you file a copy of the stay or the enjoining  
24 or the superseding or some other action otherwise  
25 precluding the enforcement of this final judgment, I

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1 will stay it. Absent that, I don't think there's  
2 anything else to discuss.

3 MR. PENNETI: Judge, there is a basis. As  
4 long as we requested the stay under 35.006, the  
5 particular language is that a stay of execution has been  
6 granted, has been requested, or will be requested. So  
7 we don't even have to request it at this point because  
8 we have posted the bond. As long as we have requested  
9 it, which we have, or we would request it and have  
10 posted bond, which we have and we have also granted a  
11 security interest, you still have to stay the action.  
12 So --

13 THE COURT: You're saying under Virginia  
14 law it's stayed?

15 MR. PENNETI: No, Judge, what I'm saying  
16 is that under Texas law you're required to stay the  
17 action because we have requested the stay. That's what  
18 35.006 says. I can share my screen with you if you  
19 would like.

20 THE COURT: Sure.

21 MR. PENNETI: Okay. The language I'm  
22 referring to is right here.

23 THE COURT: Right. I mean, so we're  
24 talking about a situation where, you know, you  
25 superseded a judgment and you're putting up the

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1 security, right? And so, if you're in the process of  
2 doing that -- and so you're saying you have put up  
3 security for that, you have bond?

4 MR. PENNETI: We don't have a bond, no,  
5 but under 52.006 we have granted a security interest and  
6 all of Cyberlux's property at the time --

7 THE COURT: Mr. Grady, your response?

8 MR. GRADY: Your Honor, that's not the  
9 same as a bond. That doesn't offer any security. It's  
10 just a UCC lien. And the security is defined by 52.006.  
11 It doesn't say that you -- just grant UCC lien or that's  
12 not the same as putting up a supersedeas bond by any  
13 means.

14 THE COURT: This is --

15 MR. GRADY: I would note, Your Honor, in  
16 that statute, they do need to show a ground for stay of  
17 enforcement. They are not allowed to appeal. They have  
18 already waived their right to appeal. And so, I don't  
19 think 35.006(a) which Mr. Penneti was directing the  
20 Court to applies. I think it's (b) and that they do  
21 have a burden to show ground for a stay. Which then  
22 also does -- and if they do show that ground, then they  
23 need to post the bond as they would be required to under  
24 52.006 for appellate bonds. So he's trying to sidestep  
25 the need to have -- to show any ground for a stay which

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1 I cited a case in our response in which the Austin Court  
2 of Appeals determined that to show -- to show grounds  
3 for stay you have to show irreparable harm and no legal  
4 adequate remedy.

5 THE COURT: So, hold on. Under 35.006 if  
6 the judgment debtor shows the Court that an appeal from  
7 the foreign judgment is pending or will be taken that  
8 the time for taking an appeal is not -- the stay of  
9 execution has been granted -- has been requested or will  
10 be requested and proves that the judgment debtor has  
11 furnished or will furnish the security for satisfaction  
12 of the judgment required by the state of which it was  
13 rendered. The Court shall stay enforcement of the  
14 foreign judgment until the appeal is concluded, the time  
15 for appeal expires, or the stay of execution expires or  
16 is vacated. So I don't -- this is in contemplation of  
17 an appeal, Mr. Penneti, it's not you filing -- it's not  
18 just going in and filing a motion for stay. This is  
19 shall stay enforcement of the foreign judgment until the  
20 appeal is concluded, the time for appeal expired, or the  
21 stay of execution expires or is vacated. I don't -- I  
22 don't think this is in contemplation of, hey, I made a  
23 motion for stay or will make a motion for stay and I get  
24 to stay your judgment.

25 MR. PENNETI: You are permitted to do that

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1 when the judgment itself is subject to the modification.  
2 That's precisely the situation with this judgment  
3 because of the Virginia litigation that's pending. And  
4 so, it's really the statute.

5 THE COURT: So here's -- so what exactly  
6 do you have the Virginia court vis-a-vis the stay?

7 MR. PENNETI: I think we have got four  
8 active lawsuits. I think our requests are pending and  
9 that's in terms of Your Honor's request for an order.  
10 We do not have an order.

11 THE COURT: When you say it's pending,  
12 what does that mean?

13 MR. PENNETI: Our actions' been filed.  
14 Frankly, we filed request for injunctive relief and  
15 declaratory relief.

16 THE COURT: So here's -- so let's assume  
17 for a moment that I'm willing to go on this -- follow  
18 this line of logic. I don't believe that this is, in  
19 essence, a self executing stay where you can file  
20 something and say, hey, it's pending and I'm not going  
21 to do anything with it. If you, in fact, have something  
22 that you are actually prosecuting, that you have pending  
23 before a Judge, that's been heard, that you filed the --  
24 furnished the security to satisfy the judgment required  
25 in the state. You have done all of those things, then,

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1 yes, I would be willing to say, hey, look. I know you  
2 haven't gotten the order now. You have done what you  
3 need to get this teed up. It's currently pending before  
4 the Court or maybe you have an oral hearing set for next  
5 week or something of that nature. I would be willing to  
6 consider something like that but not sort of this  
7 ambiguous you have this stuff out there. I don't really  
8 know what's going on and we filed this. So if you truly  
9 have something that's currently set, you have security  
10 that's been filed, and, you know, it's going to get  
11 heard in the near term, I can appreciate -- I don't mind  
12 bridging until that's resolved, one way or the other but  
13 what I'm not willing to do is stay enforcement of the  
14 judgment simply because something has been filed  
15 somewhere that says, hey, please don't enforce the  
16 judgment. I just kind of need to know where we're at  
17 and really if this is a good faith prosecution of  
18 something or is this something you have on file  
19 somewhere.

20 MR. PENNETI: Understood, Judge.

21 THE COURT: So I need to know which one it  
22 is and it doesn't sound like you're clear on that.

23 MR. PENNETI: The firm in Virginia is  
24 handling this matter. So I have somewhat of an idea of  
25 what's occurred. I'm not involved in it.

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1 THE COURT: So Mr. Grady -- here's -- are  
2 you doing anything in terms of collection right now?

3 MR. GRADY: Your Honor, the only thing  
4 we're seeking to do is take the deposition of a couple  
5 of witnesses. We noticed them. They were quashed and  
6 nothing else. That's it.

7 THE COURT: But you haven't sought to  
8 execute on it? I don't know if they have anything. Or  
9 you may not know.

10 MR. GRADY: We haven't requested any writs  
11 or taken an actual enforcement action. Just discovery.

12 THE COURT: So Mr. Penneti, is there  
13 something you're concerned about besides some  
14 depositions?

15 MR. PENNETI: Judge, other than the  
16 depositions and discovery, all we have here is we have a  
17 lease here with some property on it. Again, that goes  
18 back to the notion that all this needs to be litigated  
19 in Virginia where all the parties and concerns are and  
20 really -- but, no, other than that I don't have concerns  
21 other than the fact that -- I'm concerned with  
22 inconsistent outcome with three different ongoing  
23 litigations. Irrespective of my clients litigation, the  
24 litigation brought by Defendants, if that were the  
25 result, unfavorably, for them and modified the

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1 settlement agreement, again, allowing collection at this  
2 stage would be inconsistent and that's why this is not  
3 at final judgment but interlocutory.

4 THE COURT: Okay. So -- if all they're  
5 doing right now is just discovery then I don't think  
6 there's any real -- I'm not going to stay the discovery.  
7 If they were doing some enforcement I would be -- and  
8 you were trying to prosecute this other stuff in  
9 Virginia, I could say, hey, let's hold on a minute  
10 before you, you know, sell something or garnish  
11 something or sequester something. That might have a  
12 more -- there might be more urgency there. So this  
13 is -- so why don't we do this. Mr. Grady, is the fact  
14 that you're not enforcing because you're not aware of  
15 any assets?

16 MR. GRADY: Well, they have a warehouse  
17 which they're leasing. They may have drones stored  
18 there. They manufacture drones. And so, there might be  
19 assets in Texas but we don't know for sure. And so, or  
20 contracts and receivables, things like that that could  
21 be recovered but we're not aware. That's why we're  
22 doing the discovery, of course.

23 THE COURT: Tell you what. If you want,  
24 you can -- I will go ahead and stay enforcement for two  
25 weeks but not any discovery. I'm not going to stay any

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1 discovery in this case. I will stay enforcement two  
2 weeks, Mr. Penneti. And then if you want to supplement  
3 your motion and set it for -- why don't I do this. I  
4 will stay enforcement for --

5 MR. PENNETI: Can we have 30 days, Judge,  
6 if not more?

7 THE COURT: I know we're getting into  
8 Thanksgiving. So let me -- I will -- is it okay if I  
9 stay enforcement for 30 days?

10 MR. GRADY: 30 days is fine, Your Honor.

11 THE COURT: I will stay enforcement for 30  
12 days.

13 MR. GRADY: That doesn't include  
14 discovery, right?

15 THE COURT: Correct. I'm not going to  
16 stop you from doing discovery. I can understand if --  
17 but I will let you supplement in the meantime with  
18 anything that seems to fit within 35.006 and then you  
19 can -- after 30 days the stay will expire. So between  
20 now and then you will need to update and then re-notice  
21 for hearing or set for submission anything the Court  
22 should consider continuing the stay of enforcement. Is  
23 there anything else?

24 MR. PENNETI: I think that's all, Judge.

25 THE COURT: Thank you. Have a good day.

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1 STATE OF TEXAS

2 COUNTY OF HARRIS

3

4 I, Jennifer Gajevsky, Official Court Reporter in and  
5 for the 129th District Court of Harris, State of  
6 Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription  
8 of all portions of evidence and other proceedings  
9 requested in writing by counsel for the parties to  
10 be included in this volume of the Reporter's Record  
11 in the above-styled and numbered cause, all of which  
12 occurred in open court or in chambers and were  
13 reported by me.

14 I further certify that this Reporter's Record of the  
15 proceedings truly and correctly reflects the  
16 exhibits, if any, offered by the respective parties.

17

/s/ Jennifer Gajevsky

18

Jennifer Gajevsky, CSR  
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Expiration: 2/2026

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