IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

HII MISSION TECHNOLOGIES CORP.,	)	
Plaintiff,	)	**Case No. 3:25-cv-483**
v.	)	
CYBERLUX CORP., *et al.*,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF THIN AIR GEAR, LLC'S MOTION FOR SUMMARY JUDGMENT

In accordance with Federal Rule of Civil Procedure 56, Local Civil Rule 56, and the Court's March 31, 2026 Order (ECF 158), Thin Air Gear, LLC ("TAG"), by and through its undersigned counsel of record, respectfully submits this Memorandum of Law and Declaration of Anthony R. Gonzalez ("Decl.") with attached Exhibits (Exhibit A) in support of its Motion for Summary Judgment, and states as follows:

INTRODUCTION

As set forth below, TAG's drone kit bags were manufactured and sold to Cyberlux pursuant to the Subcontract that is the subject of this interpleader action and they were used to package the drones that were sold pursuant to the Subcontract. ***Importantly, TAG is the only claimant to this action that manufactured and sold anything that is related to the Subcontract.*** Without TAG, there would have been no deliverables, there would have been no completion, there would have been no payments, there would have been no collateral for the lenders to make their loans, and there would be no interpleaded funds. Based on its equitable lien, constructive trust, other equitable considerations, and governing government contracting

and other law, TAG should have priority over all other legitimate claimants with the possible exception of The ARG Group, LLC ("ARG"). Even were the Court to apply Article 9, TAG's equitable lien and constructive trust have a priority date of September 5, 2023, which places TAG before all other legitimate claimants except for possibly ARG. Accordingly, the Court should enter summary judgment in favor of TAG in the amount of $1,385,489.46, plus all attorneys' fees and costs incurred in this action and post-judgment compound interest at 8% from the date of judgment until the judgment is fully satisfied, and order that TAG be paid first or second from the interpleaded funds.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE ("Undisputed Facts")

I. The Prime And Subcontract That Are The Subject Of This Interpleader Action

Effective August 29, 2023, Plaintiff HII Mission Technologies Corp.'s ("HII") predecessor in interest and Defendant Cyberlux Corporation ("Cyberlux") entered into Subcontract No. P000043846 (the "Subcontract"). ECF 41, ¶ 17. The Subcontract is a firm fixed price contract for work by Cyberlux to support HII's work under Prime Contract No. GS00Q14OADU109/Task/Delivery Order No. 47QFCA22F0039/Technical Direction Letter 1-023 (the "Prime Contract"). *Id*. at ¶ 18. The period of performance for the Subcontract was to be from August 29, 2023 through July 24, 2024. *Id*. at ¶ 19. 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. *Id*. at ¶ 20. On May 17, 2024, HII terminated for convenience the Subcontract. Section 32.1 of the Subcontract provides, *inter alia*, that HII'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." *Id*. at ¶ 22. HII and Cyberlux executed Modification 4 to the Subcontract to Effectuate a Termination Settlement ("Mod. 4"), effective February 26, 2025. *Id*. at ¶ 23. In Mod. 4, Cyberlux and HII agreed upon amounts payable to Cyberlux under the Subcontract in connection with the termination for convenience of the Subcontract and prior stop work orders. *Id*. at ¶ 25. On May 28, 2025, HII received a partial payment from the Government in the amount of $2,757,254.39. *Id*. at ¶ 26. On July 15, 2025, HII received final payment from the Government on the Prime Contract in the amount of $23,012,114.64 (the "Final Payment"). *Id*. at ¶ 29. In total, HII was in receipt of $25,769,369.03, which became payable to Cyberlux under the Subcontract. *Id*. at ¶ 30.

II. TAG's Contract With Cyberlux

On September 5, 2023, Cyberlux d/b/a Catalyst Machineworks, LLC, a wholly owned subsidiary of Cyberlux, entered into a contract (the "Contract") with TAG to produce 2,100 wheeled drone kit bags (the "drone kit bags"). Decl. at ¶ 3, Ex. 1. These drone kit bags were manufactured and sold to Cyberlux pursuant to the Subcontract between Cyberlux and HII that is the subject of HII's Amended Complaint. ECF 41 at ¶¶ 17-30. Indeed, the drone kit bags were used to package the drones that were manufactured and sold pursuant to the Subcontract. Decl. at ¶ 4, Ex. 2. Importantly, TAG is the only claimant to this action that manufactured and sold anything that is related to the Subcontract. *Id*. at ¶ 5.

The total agreed contract price for the Contract was $887,900.00. *Id*. at ¶ 6, Ex. 1. Cyberlux paid a deposit of $150,000 on September 14, 2023. *Id*. TAG produced and assembled all 2,100 drone kit bags in full performance of its obligations under the Contract. *Id*. TAG then delivered 1,722 of the drone kit bags to Cyberlux's warehouse in Spring, Texas. *Id*. The remaining 378 drone kit bags are stored at TAG pending final payment on the Contract. *Id*. As of November

18, 2024, the balance due, including a 1.5% late fee per month on past due amounts, was $365,049.42. *Id*. at ¶ 7. TAG sent multiple demands to Cyberlux for payment of the remaining balance, but received no response to any of these demands. *Id*.

III. The Colorado Action, The Final Judgment, And The Certified Final Judgment

Because Cyberlux was in material breach of the Contract as of at least December 3, 2024, on March 12, 2025, TAG filed a diversity action against Cyberlux in the U.S. District Court for the District of Colorado, Case No. 1:25-cv-00805 (the "Colorado Action"), alleging breach of contract, unjust enrichment, and civil theft under Colorado law, which provides for treble damages, attorneys' fees, and costs if TAG prevailed in the Colorado Action. *Id*. at ¶ 8, Ex. 3.

Although Cyberlux was properly served with the complaint in the Colorado Action on March 14, 2025, Cyberlux failed or refused to file an answer or otherwise respond to the complaint. *Id*. at ¶ 9. Accordingly, TAG moved for entry of default judgment against Cyberlux. *Id*. at ¶ 10. On August 29, 2025, that motion was granted and Final Judgment was entered against Cyberlux in the total amount of $1,224,275.14 (the "Final Judgment"), which consisted of treble damages in the amount of $1,220,838.54, attorneys' fees in the amount of $2,765.00, and costs in the amount of $671.60. *Id*. at ¶ 11, Ex. 4. The Final Judgment was Certified on December 19, 2025 (the "Certified Final Judgment"). *Id*. at ¶ 12, Ex. 5. As of the date of this filing, HII and Cyberlux have not paid TAG the amounts owed pursuant to the Contract, the Judgments, or otherwise. *Id*. at ¶ 13.

ARGUMENT

I. TAG IS ENTITLED TO SUMMARY JUDGMENT

A. ARG Is Entitled To Summary Judgment Based Upon Its Final Judgments[1]

As set forth in the Undisputed Facts, TAG has a Final Judgment and Certified Final Judgment from the U.S. District Court for the District of Colorado in the Colorado Action, which are sufficient to establish summary judgment as to liability in this case. Indeed, 28 U.S.C. § 1738 requires the Court to give full faith and credit to these Judgments:

> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the court of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738; *Villoldo v. Republic of Cuba*, No. 21-cv-02497, 2023 U.S. Dist. LEXIS 155728, at *6 (Colo. Sept. 1, 2023).

In addition, TAG's Final Judgment and Certified Final Judgment should be recognized in this

[1] Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "The relevant inquiry on summary judgment is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *United States v. 8.929 Acres of Land in Arlington Cnty.*, 36 F.4th 240, 252 (4th Cir. 2022) (internal quotation marks omitted). In opposing summary judgment, "the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." *Id.* (internal quotation marks omitted).

action by principles of res judicata. To establish res judicata, the Fourth Circuit has held that "a party must establish: '(1) a final judgment on the merits in a prior suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits.'" *Jones v. S.E.C.*, 115 F.3d 1173, 1178 (4th Cir. 1997) (quoting *Meekins v. United Transp. Union*, 946 F.2d 1054, 1057 (4th Cir. 1991)). In this case, TAG obtained the Final Judgment and Certified Final Judgment based on the same claims between the same parties – TAG and Cyberlux. As such, TAG is entitled to summary judgment.

B. TAG Is Entitled To Judgment In The Amount Of $1,385,489.46, Plus Post-Judgment Interest And All Attorneys' Fees And Costs Incurred

Under governing Colorado law, TAG is entitled to summary judgment in the amount of $1,385,489.46, plus all attorneys' fees and costs incurred in this action and post-judgment compound interest at 8% from the date of judgment until the judgment is fully satisfied. This sum is calculated as follows: (1) $1,224,275.14 for the Final Judgment/Certified Final Judgment; and (2) under C.R.S. § 5-12-102, TAG is entitled to $97,941.93 in pre-judgment simple interest at 8% from the December 3, 2024, the date of breach of the Contract until the Final Judgment was entered on August 29, 2025 and $63,272.39 in post-judgment compound interest at 8% from August 29, 2025 through April 15, 2026, for total interest of $161,214.32 owed to date. Under C.R.S. § 5-12-102, TAG also is entitled to post-judgment compound interest at 8% until the Final Judgment/Certified Final Judgment is fully satisfied. In addition, in accordance with C.R.S. § 18-4-405, TAG is entitled to all attorneys' fees and costs incurred in this action. TAG will submit Declaration(s) and supporting evidence to prove-up its attorneys' fees and costs at the appropriate time and in accordance with the governing Rules and/or Court Orders.

C. TAG Is Entitled To The "Disputed Funds Specifically" And Other Parties Are Not

In the Court's March 31, 2026 Order, the Court Ordered each party to "address the party's entitlement to the Disputed Funds specifically", which means that each party must prove that its claims are directly related to the Subcontract and Disputed/Interpleaded funds. ECF 158 at 1. This requirement is consistent with the governing law. Federal courts have long held that parties with only general claims to a company's assets or general creditors with no specific rights to the interpleaded funds are not a proper party to an interpleader action. Federal interpleader jurisdiction depends on identifiable property, or a limited fund or pecuniary obligation – as opposed to an inchoate, uncertain claim against the general assets of a party. *Murphy v. Travelers Ins. Co.*, 534 F.2d 1155, 1159, n.2 (5th Cir. 1976). "[I]t is not proper to predicate [federal interpleader] jurisdiction on the mere potential to recover damages for pecuniary injury." *Id.* at 1159, n.2.; *ReneG Corp. v. JPMorgan Chase Bank, N.A,* 2025 WL 3640375 *5 (SD. Fla Dec. 16, 2025) (citing *Murphy* with approval) (holding that without facts showing a legitimate right to the specific res of the interpleaded funds, a purported interpleader defendant is "not a valid interpleader but a non-party who has a generalized liability claim for damages"); *Coopers & Lybrand, L.L.P. v. Michaels*, 1995 WL 860760 *7 (E.D. N.Y. 1995) (citing *Murphy* with approval) (holding that "open-ended claims made against the general assets of a party cannot constitute a res for the purposes of interpleader because a plaintiff's unlimited potential liability on legally distinct damage claims is simply not a single, specific, or identifiable fund.").

As set forth in the Undisputed Facts, TAG's claim is directly related to the specific Disputed/Interpleaded Funds. Indeed, TAG's drone kit bags were manufactured and sold to Cyberlux pursuant to the Subcontract and were used to package the drones that were sold pursuant to the Subcontract. In fact, TAG is the only claimant to this action that manufactured

and sold anything that is related to the Subcontract. However, as set forth below, because Atlantic Wave/Secure Community, ANPC, Legalist, and perhaps others' claims are not directly related to the Subcontract and the specific Disputed/Interpleaded funds, they are not entitled to ***any*** portion of these funds.

II. THE COURT MUST CONSIDER EQUITABLE ARGUMENTS AND GOVERNMENT CONTRACTING AND OTHER LAWS IN DETERMINING PRIORITY, ENTITLEMENT AND PAYMENT DUE

In its March 31, 2026 Order, the Court ordered all claimants to address "the priority of the party's claim to the Disputed Funds as compared to other parties' claims" and "the effect, if any, of government contracting statutes or regulations on priority, entitlement, or payment due." ECF 158 at 1. The lenders in this action who claim to have secured, perfected interests assert that all these issues must be determined under a strict secured transactions analysis under Article 9 of the UCC. Such an analysis would be entirely improper in this case. As set forth below, in determining priority, entitlement, and/or payment due, the Court must consider equitable considerations, governing government contracting statutes and regulations, and other laws.

A. The Court Should Not Apply A Strict UCC Article 9 Analysis To The Claims, But Instead Must Consider Equitable Considerations And Other Governing Law

While this is an interpleader action to resolve completing claims to the same funds, at the heart of this case is the provision and performance of a contract with the federal government. As such, the laws and regulations of federal government contracting, other laws, and the Court's equitable powers must be taken into consideration and a strict Article 9 analysis would be improper. There are numerous statutory and regulatory requirements imposed on government contractors and contracts which do not exist in other contexts. For example, FAR 52.232-25 requires the government to promptly pay its contractors, like TAG. FAR 52.242-5 further requires timely payments to small business subcontractors, like TAG, and, if payment is

untimely, the contractor must notify the Contracting Officer of the untimely payment and the reasons for it. Most importantly, however, are the strict restrictions on the assignment of claims or monies relating to government contracts which prohibit Legalist's alleged security interest (discussed below). Moreover, in other contexts, federal courts also do not strictly apply an Article 9 analysis where the result would be unjust. For instance, in *In re Inca Materials, Inc.*, 880 F.2d 1307, 1310-11 (11th Cir. 1989), the Eleventh Circuit held that a creditor with a perfected security interest in a subcontractor's accounts receivable was ***not entitled*** to priority over the claim by the lower-tier supplier, which is the same argument the lenders are making here. Importantly, federal courts in Virginia also have shown a willingness to analyze interpleader actions as equitable claims beyond a strict Article 9 lens. Courts will impose equitable liens and constructive trusts independently of Article 9 when circumstances call for it - interpleader is an "equitable remedy, and a statutory interpleader action is still governed by equitable principles of interpleader." *MFA Mut. Ins. Co. v. Lusby*, 295 F. Supp. 660, 664 (W.D. Va. 1969) (citing *Holcomb v. Aetna Life Ins. Co*., 228 F.2d 75, 81-82 (10th Cir. 1955). The Supreme Court of Virginia has noted that "[b]ecause interpleader has its roots in equity, it is subject to certain equitable doctrines." *Day v. MCC Acquisition, LC,* 299 Va. 199, 215, 848 S.E.2d 800, 808 n.12 (2020) (quoting *Matter of Bohart*, 743 F.2d 313, 325 (5th Cir. 1984). Thus, where, as here, if a contractual relationship exists between the parties, equitable considerations like an equitable lien or constructive trust may take priority, Article 9 notwithstanding, if a court deems it appropriate under the circumstances since interpleader is still rooted in equity.

B. <u>TAG Has An Equitable Lien And Constructive Trust As Of September 5, 2023</u>

Under Virginia law, equitable liens either arise from written contracts or are "declared by a court of equity out of general considerations of right and justice as applied to the relations of the

parties and the circumstances of their dealings." *Hoffman v. First Nat. Bank of Bos.,* 205 Va. 232, 237, 135 S.E.2d 818, 822 (1964) (quoting *Noremac, Inc. v. Ctr. Hill Ct.,* 164 Va. 151, 162, 178 S.E. 877, 879-80 (1935)); *In re Carpenter*, 245 B.R. 39, 48 n.3 (Bankr. E.D. Va.), *aff'd*, 252 B.R. 905 (E.D. Va. 2000), *aff'd*, 36 F. App'x 80 (4th Cir. 2002) (same). According to one federal court in Virginia, for an equitable lien to be imposed, a plaintiff must establish: (1) "a specific piece of property which can be attached"; (2). "a debt, duty or obligation between the parties; and (3) "either implied or express intent that the property would serve as collateral for the debt." *In re Wellington Apartment, LLC*, 350 B.R. 213, 252 (Bankr. E.D. Va. 2006) (citing *In re Carpenter*, 252 B.R. at 910-11). Equitable liens grant plaintiffs a security interest in specific property, and they are generally imposed to prevent unjust enrichment. *Id.* at 252. An equitable lien is created on the date of the underlying contract. *Kidwell v. Henderson*, 150 Va. 829, 837, 143 S.E. 336, 339 (1928); *see also Hoffman,* 205 Va. at 236, 135 S.E.2d at 821 ("every express executory agreement in writing, whereby the contracting party sufficiently indicates an intention to make some particular property, real or personal, or fund, therein described or identified, a security for a debt or other obligation, creates an equitable lien upon the property so indicated which is enforceable against the property."). As set forth in the Undisputed Facts, TAG's claim identifies a specific piece of property which can be attached in the interpleaded funds, arises from an obligation between the parties as a result of the Contract, and the Contract creates an either implied or express intent that the interpleaded funds would serve as collateral for the debt/money owed under the Contract. TAG thus has an equitable lien as of September 5, 2023, the date the Contract was entered into.[2]

[2]While TAG believes that Virginia law should apply under the *Erie* Doctrine, the conclusion would be the same under Colorado law. "In Colorado, an equitable lien may be created either by a written contract showing an intention to charge property with a debt or obligation, or "'by a

TAG also is entitled to a constructive trust in the interpleaded funds, which also can exist independently of Article 9. Under Virginia law, a constructive trust is an equitable remedy that is imposed by operation of law "to prevent a fraud or injustice." *Bank of Hampton Roads v. Powell,* 292 Va. 10, 15, 785 S.E.2d 788, 790 (2016) (citing *Leonard v. Counts*, 221 Va. 582, 588, 272 S.E.2d 190, 195 (1980)). Fraud is not a prerequisite to the imposition of a constructive trust; if property is acquired fairly, but it is "contrary to the principles of equity that it should be retained," then a constructive trust may be created. *Leonard,* 221 Va. at 589. For a claimant seeking the imposition of a constructive trust, the funds at issue "must be 'distinctly traced' into the chose in action, fund, or other property which is to be made the subject of the trust." *Crestar Bank v. Williams*, 250 Va. 198, 204, 462 S.E.2d 333, 335 (1995) (quoting *Watts v. Newberry,* 107 Va. 233, 240, 57 S.E. 657, 659 (1907)); *In re Dameron*, 206 B.R. 394, 403 (Bankr. E.D. Va. 1997), *aff'd*, 155 F.3d 718 (4th Cir. 1998). As set forth in the Undisputed Facts, TAG's claim is distinctly traced into interpleaded funds which is to be made the subject of the constructive trust, and the priority date of TAG's constructive trust also should be September 5, 2023.[3]

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court of equity, out of general considerations of right and justice, as applied to the relations of the parties and the circumstances of their dealings.'" *Valley State Bank v. Dean*, 97 Colo. 151, 156, 47 P.2d 924, 927 (1935)." *Leyden v. Citicorp Indus. Bank,* 782 P.2d 6, 12 (Colo. 1989). Like Virginia, Colorado law is also clear that the equitable lien is created at the time the written contract is executed. "A party may, by manifest intent and agreement, create a security, charge or claim in the nature of a lien . . . on personal property whereof he is the owner or in possession, which a court of equity will enforce against him, and volunteers or claimants under him with notice of the agreement. *Valley State Bank v. Dean*, 97 Colo. 151, 156, 47 P.2d 924 (Colo. 1935). "In fact, if a transaction resolve itself into a security, whatever may be its form, and whatever name the parties may choose to give it, it is in equity a lien." *Id.* Thus, for the reasons set forth above, under Colorado law, TAG would have an equitable lien as of September 5, 2023, the date the Contract was entered into.

[3]Colorado also recognizes the equitable doctrine of constructive trust. Under Colorado law, a constructive trust is a "remedial device designed to prevent unjust enrichment." *Mancuso v. United Bank of Pueblo,* 818 P.2d 732, 737 (Colo. 1991). Constructive trusts "are raised by equity in respect of property which has been acquired by fraud, or where, though acquired originally without fraud, it is against equity that it should be retained by him who holds it." *Page*, 592 P.2d

C. TAG Should Be Paid Before/Has Priority Over Other Claimants

TAG should have priority over all other claimants with the possible exception of ARG. As set forth in the Undisputed Facts, TAG's drone kit bags were manufactured and sold to Cyberlux pursuant to the Subcontract and were used to package the drones that were sold pursuant to the Subcontract. ***Importantly, TAG is the only claimant to this action that manufactured and sold anything that is related to the Subcontract.*** Without TAG, there would have been no deliverables, there would have been no completion, there would have been no payments, there would have been no collateral for the lenders to make their loans, and there would be no interpleaded funds. Based on its equitable lien, constructive trust, other equitable considerations, and governing government contracting and other law, TAG should have priority over all other legitimate claimants with the possible exception of ARG. Even were the Court to apply Article 9, TAG's equitable lien and constructive trust have a priority date of September 5, 2023, which places TAG before all other legitimate claimants except for possibly ARG. At worst, its priority date would be December 3, 2024, when Cyberlux materially breached the Contract (Decl. at ¶ 8), or August 29, 2025, the date that the Final Judgment was entered (*id*. at ¶ 11, Ex. 4).

III. TAG'S POSITION ON ITS PRIORTY TO THE DISPUTED FUNDS AS COMPARED TO OTHER PARTIES' CLAIMS AND WHERE EACH PARTY FALLS IN ORDER OF PRIORITY OR ENTITLEMENT

In its March 31, 2026 Order, the Court Ordered the parties to address the "priority of the party's claim to the Disputed Funds as compared to other parties' claims" and "where each party

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at 798 (quoting *Botkin v. Pyle*, 91 Colo. 221, 14 P.2d 187, 191 (1932)). "The doctrine of constructive trusts is extremely flexible." *Mancuso*, 818 P.2d at 737. *Sandstead-Corona v. Sandstead*, 415 P.3d 310, 321 (Colo. 2018). "A constructive trust is an equitable device used to compel one who unfairly holds a property interest to convey that interest to another to whom it justly belongs." *In re Est. of Feldman*, 2019 CO 62, 443 P.3d 66, 70 (Colo. 2019). For the reasons set forth above, TAG also is entitled to a constructive trust under Colorado law and the priority date should be September 5, 2023.

falls in order of priority or entitlement." ECF 158 at 1-2. This is a very unusual burden to place on moving parties on summary judgment. This burden is even more unusual given that, other than uncorroborated responses to a singe interrogatory and two document requests, there has been ***no*** discovery in this action and TAG has not seen all the other parties' motions for summary judgment. TAG bases the following on the limited discovery produced by the other parties to date and will supplement these arguments in its 10 page Opposition. *Id*. at 2.

Thin Air Gear, LLC. As set forth immediately above, TAG should have priority over all other parties other than possibly ARG. Even were the Court to apply Article 9, TAG's equitable lien/constructive trust has a priority date of September 5, 2023, which places TAG before all the other legitimate claimants except possibly ARG.

ARG. As set forth in its Motion for Summary Judgment, ARG should have priority over all other parties with the possible exception of TAG. Even were the Court to apply Article 9, ARG has claimed an equitable lien and constructive trust with a priority date of February 28, 2022, which predates all others.

Legalist. Legalist claims to have the highest priority based upon its alleged perfected, security interest derived from its status as an assignee of funds. However, based upon the interrogatory response and documents it has submitted, ***Legalist has not established that it has a security interest at all.*** The Assignment of Claims Act of 1940, 41 U.S.C. § 6305(b) (formerly 41 U.S.C. § 15)[4] protects "the Government from voluntary assignments of contracts or claims to parties where it has not consented to or recognized the assignment." *Delmarva Power & Light Co. v.*

[4]A separate statutory provision, 31 U.S.C. § 3727(c), addresses assignment of claims and, together, the two provisions are referred to as the "Assignment of Claims Act" and they have been applied coterminously. *See Merchants' Funding Group*, 33 Fed. Cl. at 454 (applying together the "Assignment of Claims Act, 31 U.S.C. § 3727, 41 U.S.C. § 15"). FAR 32.802, FAR 52.232-23, and DFARS 232.805 also incorporate these statutory requirements.

United States, 79 Fed. Cl. 205, 216, *aff'd*, 542 F.3d 889 (Fed. Cir. 2008). "[T]o prove the existence of a valid statutory assignment, [a] plaintiff must show compliance with each of three criteria - that (1) it is a qualified financial institution; (2) it loaned money or at least made money available for the performance of the [government] contract; and (3) true and correct copies of the documents of assignment were provided to both the contracting and disbursing officers." *Am. Nat. Bank & Tr. Co. of Chicago v. United States*, 22 Cl. Ct. 7, 16 (1990); *Manufacturers Hanover Trust Co. v. United States*, 590 F.2d 893, 897 (Ct. Cl. 1978) (emphasizing requirements of second element).[5] Legalist's Instrument of Assignment expressly applies the Assignment of Claims Act and its accompanying regulations, stating that the "parties confirm that this instrument is intended to function as an "***instrument of assignment***" within the meaning of 48 CFR § 32.805." Decl. at ¶ 14, Ex. 6 at 13. However, based on what it has submitted, Legalist has not alleged, much less proven, that the purported assignment of the accounts receivable was valid. First, Legalist has not produced any evidence sufficient to establish that it loaned any funds or made any funds available for the performance of the Prime Contract. Indeed, on December 22, 2023, the Government issued a Stop-Work Order regarding the Prime Contract and HII in turn issued a Stop-Work Order on the Subcontract. Decl. at ¶ 22, Ex. 14 at 1. ***Since all work had stopped on the Prime Contract and Subcontract 3 months before Legalist made its loan, the loan could not have been used towards the Prime Contract or Subcontract***. Moreover, the Instrument of Assignment was executed on March 27, 2024. *Id*. at ¶ 14, Ex. 6 at 13. ***Just two months later***, on May 13, 2024, the Contracting Officer terminated for

[5]The Eastern District of Virginia also applies a strict interpretation of the statute's requirements. *See Hornbeck Offshore Operators, Inc.*, 849 F. Supp. at 442 ("If the lien is an assignment within the meaning of that statute, then it is null and void as against the United States unless the procedural requirements of the statute were met.").

convenience the performance of the Prime Contract relevant to the Subcontract. ECF 41 at ¶ 20. Under these circumstances, it is not plausible that any lending from Legalist was intended for or could have been used towards the Prime Contract. Indeed, the Second Amended and Restated Government Purchase Order Financing Agreement (Decl. at ¶ 14, Ex. 6 at 1-7), makes no reference to funds being made available for the performance of the Prime Contract,[6] and the Instrument of Assignment merely states that it "covers all unpaid amounts" without referencing ***any*** use towards the Prime Contract. *Id*. at 13. Accordingly, Legalist has not alleged, much less proven, that any of Legalist's funds went towards the Prime Contract, and thus the purported assignment is invalid. *See Am. Nat. Bank & Tr. Co. of Chicago*, 22 Cl. Ct. at 16 (holding that the assignment was invalid because "not one penny of Mercantile's, Mercantile Holdings' or American's funds actually went toward the purchase of raw materials for the [government] contract whether initially or during subsequent debt restructuring efforts"); *Manufacturers Hanover Trust Co.,* 590 F.2d at 897 (similar holding). At a minimum, this creates a material factual dispute as to the validity of the assignment that precludes summary judgment in Legalist's favor.

Second, even if Legalist could make this showing, the purported assignment is nonetheless invalid for failure to comply with the statute's strict notice requirements. For the assignment to be valid, the "assignee . . . ***shall file written notice*** of the assignment and a true copy of the instrument of assignment with . . . **(A)** the ***contracting officer or head of the officer's department or agency***; . . . and **(C)** the ***disbursing officer***, if any, designated in the contract to

[6]The agreement merely provides for a general payment arrangement involving "each eligible purchase order, task order, delivery order, or statement of work related to existing government contracts that (x) has not been disqualified by Lender for credit or other reasons and (y) is not disputed by the Government Account Debtor[.]" Decl. at ¶ 14, Ex. 6 at 2.

make payment." 41 U.S.C. § 6305(b)(6) (emphasis added). This notice requirement must be strictly construed and an assignment that fails to comply with these requirements is null and void. *See Ham Investments, LLC v. United States*, 89 Fed. Cl. 53, 5527 (2009), *aff'd*, 388 Fed. App'x 958 (Fed. Cir. 2010); *Hornbeck Offshore Operators, Inc. v. Ocean Line of Bermuda, Inc.*, 849 F. Supp. 434, 442 (E.D. Va. 1994). Nowhere in Legalist's document production in response to the document requests (ECF 149) is there any evidence that notice was provided to either the Contracting Officer or the disbursing officer for the Prime Contract, nor that this Notice was acknowledged and/or approved.[7] Because Legalist has failed to allege, much less prove, that this strict notice requirement was met, the assignment is invalid and it is not entitled to recover from the interpleaded funds. *See Merchants' Funding Group v. United States*, 33 Fed. Cl. 445 (1995) (holding that the assignee had "failed to comply with the requirement of the" act and, "[a]s a result, [it] is not entitled to recover the Rogers' contract proceeds as an assignee of the contractor, Rogers").[8] Indeed, one purpose of the Assignment of Claims Act is to "allow the government to deal solely with the original claimant" and prevent the current situation of multiple competing interests. *Nat'l Australia Bank v. United States*, 54 Fed. Cl. 238, 240 (2002). For these reasons, Cyberlux's assignment of the accounts receivable to Legalist is invalid and Legalist does not have a valid security interest.

[7] Legalist also did not impress the Instrument of Assignment with the corporate seal or provide a true copy of the resolution of the corporation's board of directors authorizing the signing representative to execute the assignment, as required by FAR 32.805(a)(iii). Decl. at ¶ 14, Ex. 6 at 13.

[8] Under limited circumstances, the government may waive the assignment act's requirements if it provides "recognition and acceptance of" the assignment. *Delmarva Power & Light Co.*, 79 Fed. Cl. at 216. This case does not contain any evidence that such recognition and acceptance has occurred. To the contrary, Legalist has not alleged, much less proven, that the government had ***any*** knowledge of this assignment, and this "lack of knowledge effectively disposes of any possible waiver of the Act's requirements by the government." *Merchants' Funding Group*, 33 Fed. Cl. at 454; *see also Am. Nat. Bank & Tr. Co. of Chicago*, 22 Cl. Ct. at 17-18.

Moreover, as set forth above, because Legalist has not alleged, must less proven, that its lending was intended for or could have been used towards the Prime Contract, its claim is not directly related to the Subcontract and Disputed/Interpleaded funds and it is not entitled to any portion of the interpleaded funds. *See* Section I(C), *supra*. And, TAG's September 5, 2023 priority date predates Legalist's alleged April 1, 2024 priority date. Decl. at ¶ 15, Ex. 7 at 2-3.

Atlantic Wave/Secure Community. Atlantic Wave/Secure Community's claim is based upon the breach of an acquisition agreement and settlement agreement which are not related to the Subcontract and interpleaded funds (Decl. at ¶ 16, Ex. 8 at 1-5) and, thus, they are not entitled to any portion of those funds. *See* Section I(C), *supra*.

ANPC. On October 11, 2024, ANPC allegedly entered into a Purchase Agreement with Cyberlux for the purchase of "Transportable Transponder Landing Systems" and related products and services. Decl. at ¶ 17, Ex. 9 at 8. Because this contract was entered into after the May 13, 2024 termination of the Prime Contract, and these products and services are not related to the Subcontract, ANPC is not entitled to any portion of the interpleaded funds. *See* Section I(C), *supra*. Moreover, even if it were, TAG's September 5, 2023 priority date predates ANPC's alleged December 30, 2024 priority date. Decl. at ¶ 18, Ex. 10 at 3.

The WeShield Group. TAG's September 5, 2023 priority date predates the WeShield Group's alleged October 23, 2025 priority date. Decl. at ¶ 19, Ex. 11 at 9.

Fairwinds. In its Interrogatory response, Fairwinds bases its claim on an October 3, 2022 teaming agreement and a later June 7, 2023 agreement, but does not claim a security interest, lien, etc. and provides no priority date. Decl. at ¶ 20, Ex. 12 at 2-3. TAG's September 5, 2023 priority date prevails over any security interest Fairwinds may attempt to claim and Fairwinds cannot rely upon its teaming agreement since it is unenforceable. *See CGI Federal Inc. v. FCI*

Federal, Inc., 295 Va. 506, 515, 814 S.E.2d 183, 188 (Va. 2018).

Cyberlux/Receiver. Cyberlux has not made a claim against the interpleaded funds and, because it is in default for failing to submit an Answer, it cannot make a claim or oppose any motion for summary judgment. The Receiver's claim is not related to the interpleaded funds, TAG's September 5, 2023 priority date predates the Receiver's alleged "security interest by judicial lien as of January 16, 2025" (Decl. at ¶ 21, Ex. 13 at 4), and the Court has raised a question as to whether the Receiver is a party. ECF 161.

The U.S./IRS. TAG did not receive any interrogatory response from the U.S./IRS and, thus, cannot evaluate this claim at this time.

CONCLUSION

For all the foregoing reasons, the Court should grant this Motion, enter summary judgment in favor of TAG in the amount of $1,385,489.46, plus all attorneys' fees and costs incurred in this action and post-judgment compound interest at 8% from the date of judgment until the judgment is fully satisfied, and order that TAG be paid first or second from the interpleaded funds.

Dated: April 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2026, a true and correct copy of the foregoing was served via CM/ECF, upon all counsel of record.

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