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 THE ARG GROUP, LLC'S MOTION FOR SUMMARY JUDGMENT

In accordance with Fed. R. Civ. P. 56, Local Civil Rule 56, and the Court's March 31, 2026 Order (ECF 158), The ARG Group, LLC ("ARG"), by counsel, 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, ARG was primarily responsible for obtaining the Subcontract that is the basis of this interpleader. Without ARG, there would be no Subcontract, there would have been no drones produced/deliverables, there would have been no completion, there would have been no payments, there would have been no collateral for the lenders to make 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, ARG should have priority over all other claimants. Even if the Court applied Article 9, ARG's equitable lien and constructive trust have a priority date of February 28, 2022, which predates all others. Thus, the Court should enter summary judgment in the amount of $14,118,618.61, plus applicable

post-judgment interest, and order that ARG be paid first 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 the Prime Contract (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"). *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. HII received a total of $25,769,369.03, which became payable to Cyberlux under the Subcontract. *Id*. at ¶ 30.

II. ARG's Contract With Cyberlux

ARG is a Service-Disabled Veteran-Owned Small Business and is a leading provider of sales and tactical distribution services of advanced technology equipment to the Department of Defense, Federal Law Enforcement Agencies, and US Allies. Decl. at ¶ 5. ARG has a global reach across North and South America and Europe and is focused on delivering advanced technology solutions to the warfighter, including drone capabilities and advanced technology products for special operators. *Id*. at ¶ 6. ARG serves the Special Operations Command, the U.S. Air Force, the National Guard Bureau, Homeland Security/Customs and Border Protection, and Federal Law Enforcement. *Id*. at ¶ 7. Defendant Cyberlux develops, manufactures, and sells Advanced Lighting Solutions ("ALS") for portable and fixed use, certain solar power solutions, and Unmanned Aircraft Systems ("UAS") products including UAS hardware and software solutions. *Id*. at ¶ 10. Cyberlux's products include, but are not limited to, the BrightEye and Watchdog Tactical Illumination Systems, other various LED and solar products, and the FlightEye UAS products including FlightEye drone hardware and the Flight GDN software operating platform and related product offerings (all collectively, the "Products"). *Id*.

In February 2022, ARG initiated discussions with Cyberlux about ways it could support the advancement and commercialization of Cyberlux's Products, including the sale of drones. *Id*. at ¶¶ 11-12. On February 28, 2022, ARG and Cyberlux entered into a valid and binding "Cyberlux Corporation and The ARG Group, LLC Distributor Partner Agreement" (the "Contract"). *Id*. at ¶ 13, Ex. 1. Mr. Gonzalez negotiated the terms of the Contract with Mark Schmidt, Cyberlux's CEO. *Id*. at ¶ 14, Ex. 2. Pursuant to the Contract, ARG agreed to secure customer orders and facilitate the sale of Cyberlux's Products and Cyberlux agreed to provide ARG with a 20% discount off the GSA pricing for the Products. *Id*. at ¶ 15. In accordance with paragraph 4A of

the Contract, ARG and Cyberlux also agreed that the proceeds from sales of the Products would be allocated with 80% payable to Cyberlux and 20% payable to ARG. *Id*. ARG played an integral role in the growth and success of Cyberlux's enterprise and functioned, in effect, as a business partner. *Id*. at ¶ 16. As a result of ARG's substantial assistance, and as confirmed by Cyberlux and ARG's course of performance and written communications, Cyberlux agreed to share profits with ARG on sales of the Products regardless of whether ARG or Cyberlux originated the transaction. *Id*. at ¶ 17. Indeed, on multiple occasions, Mr. Schmidt expressly acknowledged that ARG was entitled to 20% of the proceeds from sales of the Products (including drones) regardless of who the prime was on the contract. *Id*. Mr. Schmidt also confirmed that if Cyberlux sold the Products directly without a prime, ARG and Cyberlux would split the 20%, so ARG would receive 30% of the proceeds, acknowledging ARG's role in enabling Cyberlux's access to those business opportunities. *Id*. at ¶ 17, Ex. 3.

III. ARG's Performance Under The Contract

Following execution of the Contract, ARG quickly became a critical driver of Cyberlux's growth, actively contributing to business development, expanding market reach, and accelerating the deployment of key product lines. *Id*. at ¶ 19. ARG's efforts were critical to Cyberlux's success by introducing Cyberlux to key business contacts and purchasers of the Products and to individuals who could further support Cyberlux's business interests, providing comprehensive operational support, establishing test sites, facilitating the integration of complex firing mechanisms, generating valuable business leads, and advising on technical specifications and cost data, each of which was essential to the effective functioning and growth of Cyberlux's operations. *Id*. at ¶ 21. One of the primary Products Cyberlux and ARG planned to market and sell was the K8 Drone, which was manufactured and sold pursuant to the Subcontract between

Cyberlux and HII. *Id*. at ¶ 22; ECF 41, ¶¶ 17-30. To enhance the K8 Drone's appeal and functionality, ARG assembled a specialized team, including members of the U.S. Army, to help redesign its firing mechanism, with the goal of boosting both sales and marketability for Cyberlux. Decl. at ¶ 23. To launch the K8 Drone into the marketplace, ARG facilitated Cyberlux's participation in key trade shows, creating valuable opportunities to generate exposure and drive sales. *Id*. at ¶ 24. At one particular trade show that ARG Group advised Cyberlux to attend (SOFIC in Tampa), ARG brought its key contacts, including representatives from USASOC, Global Ordnance, the Ukrainian Army, PRG, as well as Air Force and Navy EOD units. *Id*. This strategic introduction enabled Cyberlux to connect with critical military and defense stakeholders and ultimately led to a meeting with Fairwinds. *Id*. at ¶ 25. Through this connection, Cyberlux was introduced to Ferd Irizarry, who would join Cyberlux's Board of Advisors. *Id*. The creation of this Board was directly initiated by ARG's recommendation. *Id*.

ARG also brought in Major General Cameron Holt to assist with developing a pathway to secure a Foreign Military Sales ("FMS") or Foreign Military Financing ("FMF") deal. *Id*. at ¶ 26. On August 7, 2022, General Holt provided ARG with an eight-page roadmap titled "Accelerating FlightEye K8 FMS to Ukraine", which outlined the necessary steps, requirements, and government offices involved in advancing the sale of the K8 drones. *Id*. at ¶ 27. By November 2022, Cyberlux added retired Army Sergeant Major Marty Moore to its Board of Advisors. *Id*. at ¶ 28. Sergeant Major Moore was a contact of Jeremy Shrock, whom ARG had brought in specifically to assist with lead development and the design of the K8 Drone's firing mechanism. *Id*. At that point, Cyberlux's Board of Advisors included Major General Holt, Sergeant Major Moore, and Brigadier General Irizarry, all of whom were introduced to Cyberlux through ARG. *Id*. at ¶ 29. ARG possesses hundreds of pages of Signal app communications

between itself and Cyberlux, as well as separate group conversations including Larry Isely, which demonstrate ARG's involvement in guiding Cyberlux through key technical and operational matters. *Id*. at ¶ 30. These communications show that ARG played a central role in navigating the integration of the K8 drone firing mechanism, developing specification sheets, and compiling cost data necessary to advance the K8 drone project. *Id*. at ¶ 31. As a result of ARG's substantial assistance, including establishing key business contacts and facilitating operations, Cyberlux agreed to share profits with ARG on sales regardless of which party originated the transaction. *Id*. at ¶ 32.

As a direct result of ARG's efforts pursuant to the Contract, ARG was instrumental in securing for Cyberlux the Subcontract between Cyberlux and HII for Cyberlux to supply K8 Unmanned Aircraft Systems, resulting in Cyberlux receiving the $38,700,600 Initial Payment on September 8, 2023 (*Id*. at ¶ 33, Ex. 5), and $25,769,369.03 Final Payment. *Id*. at ¶ 33. To be clear, the K8 Drone was manufactured and sold pursuant to the Subcontract that is the subject of HII's Amended Complaint. *Id.*; ECF 41, ¶¶ 17-30. Mr. Schmidt has admitted to Anthony Gonzalez that Cyberlux owes ARG pursuant to the Contract, but Cyberlux has failed to pay ARG all amounts owed. Decl. at ¶ 34. At Mr. Schmidt's direction, Cyberlux made three partial payments to ARG totaling $375,000, admitting that amounts were owed by Cyberlux. *Id*.

IV. Cyberlux's Material Breach Of The Contract And The North Carolina Action

As set forth above, ARG fully performed its obligations under the Contract. *Id*. at ¶ 35. Although Cyberlux received the $38,700,600 Initial Payment from HII on September 8, 2023, Cyberlux did not remit the 20% of the Initial Payment to ARG. *Id*. ARG also has not received any portion of the Final Payment. *Id*. ARG has repeatedly demanded that Cyberlux pay all amounts owed ARG pursuant to the Contract, but in material breach of Contract Cyberlux has

failed to do so. *Id*. Because Cyberlux was in material breach of the Contract, on April 24, 2025, ARG brought a Complaint in the Superior Court for the County of Durham, North Carolina, Case No. 25CV004246-310 (the "North Carolina Action"), alleging claims for breach of contract, unjust enrichment/quantum meruit (in the alternative to the breach of contract claim), breach of contract implied in fact, and other claims. *Id*. at ¶ 36, Ex. 6. ***In this Motion, ARG is only seeking summary judgment on the breach of contract claim or, if necessary, alternative contract theories, and only seeks damages and interest with respect to this claim***.

ARGUMENT

I. ARG IS ENTITLED TO SUMMARY JUDGMENT

A. ARG Is Entitled To Summary Judgment For Breach Of Contract[1]

Under governing North Carolina law (Decl., Ex. 6 at ¶ 17), the elements for a breach of contract claim are the existence of a valid contract and the material breach of that contract. *See Bob Timberlake Collection, Inc. v. Edwards*, 176 N.C. App. 33, 43, 626 S.E.2d 315, 323 (2006) (citing *Becker v. Graber Builders, Inc.,* 149 N.C.App. 787, 792, 561 S.E.2d 905, 909 (2002)). A contract is formed by offer and acceptance (*Dodds v. St. Louis Union Tr. Co.,* 205 N.C. 153, 170 S.E. 652, 653 (1933)), and supported by consideration. *See Elliott v. Enka-Candler Fire & Rescue Dep't, Inc.,* 213 N.C. App. 160, 163, 713 S.E.2d 132, 135 (2011). A contract is breached by a failure to comply with the obligations of the contract. *See Sale v. State Highway & Pub.*

[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).

Works Comm'n, 242 N.C. 612, 619, 89 S.E.2d 290, 296 (1955). For a material breach to be actionable, it "substantially defeats the purpose of the agreement or goes to the very heart of the agreement, or can be characterized as a substantial failure to perform." *Supplee v. Miller-Motte Bus. Coll., Inc.,* 239 N.C. App. 208, 220, 768 S.E.2d 582, 593 (2015) (quoting *Long v. Long*, 160 N.C. App. 664, 668, 588 S.E.2d 1, 4 (2003). Plaintiff has established the existence of a valid written Contract.[2] Plaintiff has established offer and acceptance as evidenced by Messrs. Schmidt and Gonzalez's signatures on the Contract and the conduct and correspondence of the parties. ARG has established its consideration by its performance under the Contract and Cyberlux's consideration is that it agreed to pay ARG 20% of the Initial and Final Payments in exchange for ARG's performance. Finally, ARG has established Cyberlux's material breach of the Contract on September 8, 2023, by its failure to pay ARG 20% of the Initial Payment and later the Final Payment. [3] As such, ARG is entitled to summary judgment.

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[2] For a number of reasons, ARG's Contract is not in conflict with FAR 225.7303-4, which imposes certain restrictions on contingent fees in foreign military sales. *See* FAR 225.7303-4(b)(2). First, the Contract applies to sales to ***any*** customer, whether foreign or domestic. Thus, the Contract is not contingent on a particular contract for foreign military sales. Second, the Contract represents a standard distributorship/sales agreement to facilitate the sales of products where ARG would get 20% on each drone sold no matter to whom or how many were sold.

[3] In the event that the Court determines that the Contract is void or otherwise invalid, as in the North Carolina Action, ARG alternative alleges claims for unjust enrichment/quantum meruit and breach of contract implied in fact. Under North Carolina law, establishing a claim for unjust enrichment requires that: (1) one party has conferred a benefit on the other; (2) the benefit was not conferred officiously (meaning it was not "conferred by an interference in the affairs of the other party in a manner that is not justified in the circumstances"); (3) the benefit was not gratuitous; (4) the benefit was measurable; and (5) the benefit was consciously accepted by the other party. *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 556 (1988) (citing *Wells v. Foreman*, 236 N.C. 351, 354, 72 S.E.2d 765, 767 (1952)). These claims are neither tort nor contract claims; rather, they are "quasi contract" or "contract implied in law" claims and are imposed by law to prevent unjust enrichment. *Id.*. The calculation of damages for unjust enrichment is "the reasonable value of the goods and services to the defendant." *Id.* As set forth in the Undisputed Facts, ARG conferred its benefit by its performance and was primarily responsible for obtaining the Subcontract for Cyberlux, this benefit was not officious or gratuitous as the parties agreed that ARG would be paid 20% of the Initial and Final Payments, it

B. ARG Is Entitled To $14,118,618.61 In Damages Plus Post-Judgment Interest

Under North Carolina law, the general rule for damages is that the non-breaching party is to be placed in the position they would be in had the contract been performed. *See Crescent Univ. City Venture, LLC v. AP Atl., Inc.,* No. 15 CVS 14745, 2019 WL 3765313 (N.C. Super. Aug. 8, 2019) (quoting *Pleasant Valley Promenade v. Lechmere, Inc*., 120 N.C. App. 650, 665, 464 S.E.2d 47, 59 (1995)). This "expectation interest" is calculated by (a) the loss in value of the breaching party's performance caused by its failure to perform, (b) plus any other losses caused by the breaching party's performance, (c) less any costs that the non-breaching party has avoided by not having to perform the contract. *Id.* In accordance with the Contract, the loss in value to ARG as a result of Cyberlux's failure to perform is 20% of the Initial and Final Payments plus pre and post-judgment. Thus, ARG is entitled to 20% of the $38,700,600 Initial Payment, which is $7,740,120. ARG has not been paid its 20% of the Initial Payment for over 31 months (as of

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was measurable in that Cyberlux knew exactly what performance from ARG it requested and ARG was providing, ARG's benefit/performance was consciously accepted by Cyberlux so it could have all the substantial benefits of the Subcontract, and the reasonable value of the goods and services to Cyberlux is the same 20% of the Initial and Final Payments alleged herein. Under North Carolina law, a contract implied in fact is one that is created "where the intention of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed from their acts, or… where there are circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intent to contract. *Snyder v. Freeman*, 300 N.C. 204, 217, 266 S.E.2d 593, 602 (1980) (quoting 17 C.J.S. Contracts s 4b (1963)). Such a contract is just as valid and enforceable as an express or written one. *Id.* A contract implied in fact requires "the mutual assent of both parties to the terms of the agreement so as to establish a meeting of the minds." *Id.* This mutual assent is usually demonstrated by offer and acceptance; however, with a contract implied in fact, offer and acceptance is implied by the actions of the parties. *Id.* As set for the in the Undisputed Facts, ARG and Cyberlux's communications, their actions, Cyberlux's $375,000 partial payments to ARG, and ARG's performance to obtain the Subcontract clearly demonstrated a mutual intent to contract, a mutual assent of both parties to the terms of the agreement, and a clear meeting of the minds that ARG would take the actions Cyberlux requested to obtain the Subcontract in return for 20% of the Initial and Final Payments. Since this implied in fact contract is just as valid as a written contract, ARG is entitled to the same 20% of the Initial and Final Payments alleged herein.

April 15, 2026). In accordance with N.C. Gen. Stat. §§ 24-1 and 24-5(a), prejudgment interest at 8% for 31 months on the $7,740,120 Initial Payment is $1,599,624.80 ($51,600.80/month). Therefore, through April 15, 2026, ARG is owed $9,339,744.80 from the Initial Payment. ARG also is entitled to 20% of the $25,769,369.03 Final Payment, which is $5,153,873.81, plus prejudgment interest. After subtracting the $375,000 in partial payments made by Cyberlux, through April 15, 2026, in total, ARG is entitled to $14,118,618.61 from the Initial Payment and Final Payment, including additional prejudgment interest on the Initial Payment and Final Payment. For purposes of this Motion, and to provide a liquidated damages amount, ARG solely seeks a Judgment of $14,118,618.61 plus applicable post-judgment interest.

C. ARG 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, ARG's claim is directly related to the specific interpleaded funds. 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 interpleaded funds, they are not entitled to ***any*** portion of them.

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 application of 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 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. FAR 52.242-5 further requires timely payments to small business subcontractors. Most importantly, however, are the strict restrictions on the assignment of claims or monies relating to government contracts which entirely prohibit Legalist's alleged security interest. 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. Federal courts in Virginia also 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, 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 rooted in equity.

B. <u>ARG Has An Equitable Lien And Constructive Trust As Of February 28, 2022</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. As set forth in the Undisputed Facts, ARG'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. ARG thus has an equitable lien as of February 28, 2022, the date the Contract was entered into.[4]

[4]While TAG believes that Virginia law should apply under the *Erie* Doctrine, the conclusion would be the same under North Carolina law. The North Carolina Supreme Court has affirmed that, "[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other." *Embree Const. Grp., Inc. v. Rafcor, Inc*., 330 N.C. 487, 496, 411 S.E.2d 916, 923 (1992) (quoting *Booe v. Shadrick,* 322 N.C. 567, 570, 369 S.E.2d 554, 556 (1988)). Those who are entitled to restitution may be entitled to equitable remedies. *Id.* One such equitable remedy is an equitable lien, which, like in Virginia, can be derived (1) "either from a

ARG 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, ARG's claim is distinctly traced into interpleaded funds which is to be made the subject of the constructive trust, and the priority date of ARG's constructive trust also should be February 28, 2022.[5]

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written contract which shows an intention to charge some particular property with a debt or obligation," or (2) can be "declared by a court of equity out of the general considerations of right and justice, as applied to the relations of the parties and the circumstances of their dealings." *Fulp v. Fulp*, 264 N.C. 20, 24, 140 S.E.2d 708. 712 (1965). Like Virginia, the equitable lien arises from the date of the contract. *Winborne v. Guy,* 222 N.C. 128, 22 S.E.2d 220, 222 (1942) (the agreement creates the equitable lien); *Garrison v. Vermont Mills,* 154 N.C. 1, 69 S.E. 743, 745 (1910) ("when it appears that the parties intended to charge or pledge property as security for a debt and the property can be identified, the lien follows."). For the reasons set forth above, under North Carolina law, ARG also would have an equitable lien as of February 28, 2022.

[5]The Supreme Court of North Carolina has defined a constructive trust as "a duty, or relationship, imposed by courts of equity to prevent the unjust enrichment of the holder of title to, or of an interest in, property which such holder acquired through… some circumstance making it inequitable for him to retain it against the claim of the beneficiary of the constructive trust." *Wilson v. Crab Orchard Dev. Co.,* 276 N.C. 198, 211 171 S.E.2d 873, 882 (1970) (citing *Teachey v. Gurley,* 214 N.C. 288, 199 S.E. 83, 87 (1938)). Proof of fraud or wrongdoing is not required for the imposition of a constructive trust, so long as it can be shown either that (1) there are circumstances making it inequitable for the funds to be retained, or (2) that the funds were

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

ARG should have priority over all other claimants. As set forth in the Undisputed Facts, ARG was primarily responsible for obtaining the Subcontract. Without ARG, there would be no Subcontract, there would have been no drones produced/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, ARG should have priority over all other claimants and should be paid in full before them. Even were the Court to apply Article 9, ARG's equitable lien and constructive trust have a priority date of February 28, 2022, which predates all others. At worst, its priority date would be September 8, 2023, when Cyberlux materially breached the Contract.

III. ARG'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 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 ARG has not seen all the other parties' motions for

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acquired in an "unconscientious" manner. *Houston v. Tillman*, 234 N.C. App. 691, 760 S.E.2d 18 (2014) (citing *Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 530-31, 723 S.E.2d 744, 751-52 (2012)). Courts will impose a constructive trust if equity demands it. *See United Carolina Bank v. Brogan,* 155 N.C. App. 633, 636, 574 S.E.2d 112, 115 (2002). For the reasons set forth above, ARG is entitled to a constructive trust under North Carolina law and the priority date should be February 28, 2022.

summary judgment. ARG 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.

ARG. As set forth above, ARG should have priority over all other parties and should be paid in full before all of them. Even were the Court to apply Article 9, ARG's equitable lien/constructive trust have a priority date of February 28, 2022, which predates all others.

TAG. TAG is the only claimant that actually produced anything related to the Subcontract. TAG along with ARG should be paid before any other claimant.

Legalist. Legalist claims the highest priority based upon its alleged perfected, security interest 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) 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. 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).[6] Legalist's Instrument of Assignment expressly applies the Assignment of Claims Act and its

[6]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.").

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 ¶ 40, Ex. 8 at 13. However, Legalist has not established that the purported assignment accounts receivable was valid. First, Legalist has not produced any evidence to establish that it loaned any funds or made any funds available for the performance of the Prime Contract. Nor could it. 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 ¶ 48, Ex. 16 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.* ***Just two months later***, on May 13, 2024, the Contracting Officer terminated for convenience the performance of the Prime Contract relevant to the Subcontract. ECF 41 at ¶ 20. It is not plausible that any lending from Legalist could have been used towards the Prime Contract. Indeed, the Second Amended and Restated Government Purchase Order Financing Agreement (Decl. at ¶ 40, Ex. 8 at 1-7), makes no reference to funds being made available for the performance of the Prime Contract,[7] and the Instrument of Assignment merely states that it "covers all unpaid amounts" without referencing ***any*** use towards the Prime Contract. *Id*. at 13. As a result, the purported assignment is invalid. *See Am. Nat. Bank & Tr. Co. of Chicago*, 22 Cl. Ct. at 16 (holding that 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]

[7]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 ¶ 40, Ex. 8 at 2.

contract whether initially or during subsequent debt restructuring efforts"); *Manufacturers Hanover Trust Co.,* 590 F.2d at 897 (similar holding).

Second, the purported assignment also is 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 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 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.[8] Because Legalist has failed to show that this strict notice requirement was met, the assignment is invalid. *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"). 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). Cyberlux's assignment to Legalist is invalid and Legalist does not have a valid security interest.

[8] 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 authorizing the signing representative to execute the assignment, as required by FAR 32.805(a)(iii). Decl. at ¶ 40, Ex. 8 at 13.

Moreover, because Legalist has not established that its lending could have been used towards the Prime Contract, its claim is not related to the Subcontract and interpleaded funds and it is not entitled to any portion of those funds. *See* Section I(C), *supra*. And, ARG's February 28, 2022 priority date predates Legalist's alleged April 1, 2024 priority date. Decl. at ¶ 41, Ex. 9 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 and, thus, they are not entitled to any portion of those funds. Decl. at ¶ 41, Ex. 10 at 1-5; *see* Section I(C), *supra*. Moreover, even if it were, ARG's February 28, 2022 priority date predates their alleged July 6, 2023 priority date. *Id*. at 5.

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 ¶ 43, Ex. 11 at 8. Because this contract was entered into after the May 13, 2024 termination of the Prime Contract, and because 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, ARG's February 28, 2022 priority date predates ANPC's alleged December 30, 2024 priority date. *Id*. at ¶ 44, Ex. 12 at 3.

The WeShield Group. ARG's February 28, 2022 priority date predates the WeShield Group's alleged October 23, 2025 priority date. *Id*. at ¶ 45, Ex. 13 at 9.

Fairwinds. 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 and provides no priority date. *Id*. at ¶ 46, Ex. 14 at 2-3. ARG's February 28, 2022 priority date predates any security interest Fairwinds may claim and it 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 any claims and, because it is in default for failing to submit an Answer, it cannot make a claim or oppose any motion. The Receiver's claim is not related to the interpleaded funds, ARG's February 28, 2022 priority date predates the Receiver's alleged "security interest by judicial lien as of January 16, 2025" (*id*. at ¶ 47, Ex. 15 at 4), and the Court has raised a question as to whether the Receiver is a party. ECF 161.[9]

CONCLUSION

The Court should grant this Motion and enter summary judgment in favor of ARG in the amount of $14,118,618.61, plus applicable post-judgment interest, and order that ARG be paid first from the interpleaded funds.

Dated: April 15, 2026

Respectfully submitted,

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[9]ARG did not receive any interrogatory response from the U.S./IRS and, thus, cannot evaluate this claim at this time.

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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