

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION
Case No. 3:25-cv-00483-JAG

HII MISSION TECHNOLOGIES CORP.,

Plaintiff,

v.

CYBERLUX CORPORATION, et al.,

Defendants.

**ADVANCED NAVIGATION &
POSITIONING CORPORATION'S
BRIEF IN SUPPORT OF ITS MOTION
FOR PARTIAL SUMMARY
JUDGMENT AS TO ANPC'S CLAIM
AND PRIORITY OF ANPC'S CLAIM**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Rule 56 of the Local Rules for the United States District Court for the Eastern District of Virginia, and the Court's March 31, 2026 Order (ECF No. 158), Interpleader Defendant Advanced Navigation & Positioning Corporation ("ANPC"), by and through counsel, submits this Partial Motion for Summary Judgment as to ANPC's claim and its priority relative to the other asserted claims (the "Motion").

PROCEDURAL HISTORY

HII Mission Technologies Corporation ("HII") filed a Complaint for Interpleader on June 24, 2025, and amended the Complaint for Interpleader on August 4, 2025 (the "Interpleader Complaint"). (ECF No. 41). HII named ANPC and six other parties as defendants and sought interpleader relief with respect to funds that HII held and owed or might have owed to Cyberlux (the "Disputed Funds"). (*Id.* ¶ 1).

ANPC filed its Answer and Crossclaim against Defendant Cyberlux on August 25, 2025. (ECF No. 76). ANPC sought approval to supplement its Answer to provide information concerning a garnishment initiated by ANPC in Virginia state court (ECF No. 120), which the Court approved. (ECF No. 134). ANPC's Supplemental Answer and Crossclaim was filed on January 23, 2026. (ECF No. 136). Cyberlux did not file an answer to ANPC's Crossclaim.

Defendants Atlantic Wave Holding LLC and Security Community (ECF No. 82 & 83), Legalist SPV III, L.P. (“Legalist”) (ECF No. 89), and the United States of America (the “United States”) (ECF No. 109) also filed answers.

On August 29, 2025, Cyberlux filed a Motion to Dismiss for Failure to State a Claim (ECF No. 85), which the Court denied on January 9, 2026. (ECF No. 126). In the January 9, 2026 Order, the Court found that HII “properly invoked the statutory interpleader jurisdiction of the federal courts,” (ECF No. 126, at 11) and allowed HII to move to deposit the Disputed Funds with the Court. (ECF No. 126, at 12).

A series of interventions then took place from August through January. The following parties filed motions to intervene, each of which the Court granted: Assure Global LLC d/b/a WeShield (“WeShield”) (ECF No. 54), Roman Investments PR LLC (“Roman Investments”), MAS USA MGT LLC (“MAS”) (as assignee of Rosewood Theater LLC), and Michael Sinensky (“Sinensky”) (ECF No. 58), and Fairwinds Technologies LLC (“Fairwinds”) (ECF No. 70), Thin Air Gear, LLC (“TAG”) (ECF No. 114), and the ARG Group, LLC (“ARG”) (ECF No. 151). The Court granted all of these motions. (ECF Nos. 126, 132 & 154). Intervenor Complaints followed from these parties.¹

On February 3, 2026, HII filed a Motion for Interpleader Deposit (ECF No. 143) (the “Motion for Interpleader Deposit”), which the Court granted on February 20, 2026, and ordered HII to deposit with the Court the Disputed Funds in the amount of \$23,736,937.56. (*See* ECF No. 150 ¶¶ 7–14).

On March 6, 2026, HII deposited the Disputed Funds with the Court. (ECF No. 153). An additional purported claimant has filed a motion to intervene. (*See* ECF 162).

¹ WeShield (ECF No. 129); Roman Investments, MAS, and Michael Sinensky (ECF No. 130); Fairwinds (ECF No. 131); TAG (ECF No. 133); and ARG (ECF No. 155).

STATEMENT OF THE UNDISPUTED FACTS²

Cyberlux is a Nevada corporation with its business located in North Carolina. (ECF No. 41 ¶ 4; ECF No. 136 ¶ 4). Cyberlux performed work for HII, and HII was to pay Cyberlux for that work pursuant to an agreement between the parties, which is generally referred to as the Subcontract. (ECF No. 41 ¶ 17; ECF 136, at 13 ¶ 10). From the date that the Complaint in Interpleader was first filed until March 6, 2026, HII was holding funds that were payable or would become payable to Cyberlux pursuant to the Subcontract. (ECF No. 41 ¶¶ 26-30; ECF No. 136, at 9 ¶ 66, & at 10 ¶ 72).

ANPC's Claim

Cyberlux owes ANPC money for ANPC's performance on a purchase agreement (the "Purchase Agreement"). (ECF No. 136-3 ¶ ¶ 6-16). ANPC filed a verified complaint against Cyberlux in North Carolina state court as a result of Cyberlux's breach of the Purchase Agreement.³ (ECF No. 136 ¶ 72, ECF 136-3 ¶ 6). In the Purchase Agreement, ANPC agreed to provide services to Cyberlux that Cyberlux would use to produce products that Cyberlux then sold to its customer. (ECF No. 136-3 ¶¶ 6-8). ANPC performed under the Purchase Agreement, but Cyberlux failed to pay in full in accordance with the Purchase Agreement. (ECF No. 136-3 ¶¶ 24-25). The Purchase Agreement included the following payment terms: "payment by BUYER to the

² Rule 56 of the Local Rules for the United States District Court for the Eastern District of Virginia and the Court's March 31, 2026 Order (ECF 158) require a statement of facts that are not in dispute. In an interpleader action, each claimant must prove it is entitled to the funds at issue. Unless otherwise stated, ANPC disputes any claim a party makes to the Disputed Funds, and at trial, each defendant must prove its claim by a preponderance of the evidence. *See § 1714 Practice in Interpleader Actions—In General*, 7 Fed. Prac. & Proc. Civ. § 1714 (3d ed.); *see also Rhoades v. Casey*, 196 F.3d 592, 600 (5th Cir. 1999) ("When there is no genuine issue of material fact the second stage may be adjudicated at summary judgment, and if there is a trial each claimant must prove their right to the fund by a preponderance of the evidence.").

³ A verified complaint "is the equivalent of an affidavit for summary judgment purposes, when the allegations contained therein are based on personal knowledge." *Volkswagen, AG v. Volkswagentalk.Com*, 584 F. Supp. 2d 879, 881–82 (E.D. Va. 2008) (internal citations omitted).

Supplier shall be made within ten (10) Business Days following the date of BUYER's receipt of payment from BUYER's customer." (ECF No. 136, at 12 ¶ 7).⁴ Cyberlux had received payment sufficient to pay ANPC by December 30, 2024 and did not. (ECF No. 136-3 ¶ 15). On July 21, 2025, ANPC obtained a judgment in the amount of \$2,926,814.39 plus interest (the "ANPC Judgment"). (ECF No. 136-1). ANPC domesticated the ANPC Judgment in Virginia and initiated a garnishment proceeding against HII to enforce the ANPC Judgment. (ECF No. 136-2).

By letter dated July 21, 2025, ANPC informed HII that it had an interest to the Disputed Funds, specifically through a judgment against Cyberlux entered July 21, 2025, which judgment it was domesticating in Virginia to pursue a garnishment against HII. (ECF No. 41 ¶¶ 71-72). ANPC also informed HII that it has an equitable lien in the Disputed Funds. (ECF No. 41 ¶ 73).

ANPC obtained a lien on the Disputed Funds pursuant to a Writ of *Fieri Facias* filed on September 24, 2025 in Richmond County, Virginia (the "ANPC Writ"), which was delivered to the Fairfax County Sherriff on October 24, 2025. (ECF No. 136-2).⁵ The garnishment proceeding, including the date of return, was stayed by consent of ANPC pending deposit of the Disputed Funds with this Court and HII's discharge from the interpleader action. (*See* Exhibit 1).

Other Complainants in the Interpleader

The United States Internal Revenue Service (IRS) informed HII that it has a lien on Cyberlux's personal property as a result of unpaid federal tax assessments. (ECF No. 41 ¶ 67-70;

⁴ The payment terms of the Purchase Agreement were provided in ANPC's Answer and Crossclaim and Supplemental Answer. Cyberlux has not responded to either filing, and thus the Court may consider those facts admitted. *See* Fed. R. Civ. P. 8(b)(6).

⁵ The Court may take judicial notice of State court filings as evidence of a proceeding. *Mills v. City of Norfolk*, 2020 WL 7630647 (E.D. Va. 2020). ANPC asks that the Court take judicial notice of the documents filed in the Circuit Court for Fairfax County, Virginia, Case No. CL 2025-16055, in the 129th Judicial Court of Harris County, Texas, in Cause No. 202448085, and the Circuit Court for Richmond, Virginia, Case No. CL 24-3910, specific documents in which are attached here as exhibits.

ECF No. 109 ¶ 70). The federal tax assessments were filed with the North Carolina Secretary of State from August 2017 to April 2024. (ECF No. 41 ¶¶ 67-70; ECF No. 109, at 5 ¶ 1).

Legalist informed HII that Legalist and Cyberlux entered into a finance agreement and Cyberlux assigned to Legalist accounts receivable from HII and granted a security interest in the accounts receivable. (ECF No. 41 ¶ 44; ECF No. 89, Ex. 1). Legalist avers the security interest arises from a letter agreement dated March 27, 2024. *Id.* Legalist has an accompanying UCC filing statement on “all assets” filed in North Carolina and Nevada dated April 1, 2024. (*See* ECF No. 89-2 & -3).

Robert Berleth claims “costs and fees in this Interpleader action associated with his role as Receiver in resolving certain claims in this Interpleader action.” (ECF No. 73 ¶ 87(b)). Mr. Berleth was appointed as receiver of Cyberlux property in a Texas Court, Cause No. 2024-48085 with respect to collection of a judgment held by Atlantic Wave. (ECF No. 41 ¶ 10; ECF No. 73 ¶ 58). Details of Mr. Berleth’s authority in the receivership action that are not contested are as follows. In May of 2025, Mr. Berleth took the position that the receivership could be dissolved and filed with the court Harris County TX in Cause No. 202448085. *See* Exhibit 2. In July of 2025, however, Atlantic Wave and Secure Community filed a joint motion with Mr. Berleth to expand the receivership and include additional claims. *See* Exhibit 3. ANPC has been unable to find in the public record any order from the Texas state court indicating the motion to expand Mr. Berleth’s receivership was granted. Instead, the Honorable Michael Gomez of the 129th District Court in Harris County, Texas, found on March 14, 2026 that, “[a]s previously discussed, the request to expand the Receiver’s authority under equitable grounds was unlikely to prevail. The Motion to Expand Receiver’s Authority is DENIED.” (ECF No. 161-1). ANPC disputes that Mr. Berleth has authority as receiver in this action and a claim to the Disputed Funds.

Atlantic Wave and Secure Community, jointly have one remaining claim against Cyberlux. The claim depends on Mr. Berleth's authority as receiver. In December of 2025, Robert Berleth, purporting to act on behalf of Cyberlux and Mark Schmidt, entered into the Consent Final Order in Richmond Circuit Court case CL 24-3910 (the "Atlantic Wave Consent Judgment") (ECF No. 82, at 14 ¶ 25), to provide Atlantic Wave and Secure Community a judgment against Cyberlux and allow those entities to seek to assert a claim to the Disputed Funds. *See* Exhibit 4. That Consent Final Order appears to not have become effective until an order entered February 5, 2026. *See* Exhibit 5. Based on the Consent Final Order, Atlantic Wave and Secure Community claim that Cyberlux owes Atlantic Wave and Secure Community freely trading stock. ANPC disputes that Mr. Berleth had authority at the time of the entry of the Atlantic Wave Consent Judgment to act on behalf of Cyberlux and Mark Schmidt.

In their Answer and Crossclaim, Atlantic Wave and Secure Community claimed to have perfected their claim through UCC filing statements filed in Virginia (*See* ECF No. 82-3). ANPC disputes that Atlantic Wave's and Secure Community's UCC filing statements in effect as of the date HII deposited the Disputed Funds with the Court, March 6, 2026, were sufficient to give Atlantic Wave and Secure Community a security interest in the Disputed Funds as accounts receivable.

WeShield avers in its Complaint for Interpleader that it helped Cyberlux source and win its subcontract with HII, and that Cyberlux agreed through a letter agreement in 2022 to pay the WeShield a portion of the value of that subcontract as commission. (*See* ECF No. 129 ¶ 5). As of the date of this Motion, WeShield has not provided the letter agreement, and ANPC disputes WeShield claim to the funds.

WeShield further alleged that it "briefly disputed the payment owed pursuant to the Letter Agreement" but resolved their differences in a confidential settlement agreement. (ECF No. 129 ¶

8). As of the date of this Motion, WeShield has not produced any settlement agreement with Cyberlux settling a dispute over payment and has not provided any evidence that there was a dispute concerning the payment in the form of litigation or arbitration.

Roman Investments, MAS, and Michael Sinensky Roman Investments, MAS, and Michael Sinensky aver in their Complaint for Interpleader that they funded Cyberlux's activity and entered into stock purchase agreements and promissory notes. (*See* ECF No. 130 ¶¶ 6-14). As of the date of this Motion, Roman Investments, MAS, and Michael Sinensky have not produced the stock purchase agreement or promissory notes concerning payment, and ANPC disputes their claims to the fund.

In October, 2025, the WeShield, Roman Investments, MAS, and Michael Sinensky filed with the Court a notice that they had recently received a security interest in the Disputed Funds. (*See* ECF No. 110). Despite having no evidence of a debt owed or immediately payable to the WeShield Defendants by Cyberlux, the WeShield Defendants reported that they had entered into a security agreement with Cyberlux which granted a security interest in the Disputed Funds specifically. (*See id.*) Accompanying this notice to the Court, the WeShield Defendants attached UCC filing statements filed in North Carolina and Nevada dated October 23, 2025. (*See id.*, Ex. 2 & 3). First Corporate Solution, as Representative, is named as the secured party, and no evidence has been provided to determine which of the WeShield Defendants First Corporate Solution was representing. (*See id.*).

Fairwinds claims to have an agreement with Cyberlux whereby Cyberlux agreed to pay Fairwinds eight percent of the contract value with HII. As of the date of this Motion, Fairwinds does not claim a security interest in the Disputed Funds. (*See* ECF No. 131).

TAG claims to have provided goods to Cyberlux pursuant to a written agreement in order to fulfill the contract with HII, which contract TAG claims was breached and which resulted in a judgment against Cyberlux in Colorado. (*See* ECF No. 133).

ARG claims to have been Cyberlux’s partner for the purposes of performing on various contracts that Cyberlux had to provide goods and services, and that it is owed twenty percent of the sale of products, including those that were provided to HII. (*See* ECF 155 ¶ 12).

Determining the Disputed Funds

HII explained to the Court that, according to the terms of the Subcontract, the amount of payment that HII was to pay Cyberlux depended on Cyberlux’s successful completion of its obligations under the Subcontract, and that the amount that HII would deposit with the Court for an interpleader further might change. (*See* ECF No. 41 ¶ 37). As a result, the specific amount of Disputed Funds was to be determined at the time this Court entered an order directing deposit of the Disputed Funds. (*See* ECF No. 41 ¶ 38).

HII’s Motion for Interpleader Deposit on February 3, 2026 determined the amount of Disputed Funds to be \$23,736,937.56. (*See* ECF No. 143).

ARGUMENT

I. Standard for Summary Judgment in a Interpleader Action

a. Summary judgment standard

The Court already has completed the first stage in this interpleader and concluded that HII “properly invoked the statutory interpleader jurisdiction of the federal courts,” (ECF No. 126, at 11). Accordingly, the Court allowed HII to move to deposit the Disputed Funds with the Court. (ECF No. 126, at 12). At this second stage, the Court determines the respective rights of the parties to the Disputed Funds.

Respective rights of the parties to the funds in an interpleader action may be resolved by summary judgment if there is no genuine issue of material fact. *See Rapid Settlements, Ltd. v. U.S. Fid. & Guar. Co.*, 672 F. Supp. 2d 714, 717 (D. Md. 2009) (citing *Rhoades v. Casey*, 196 F.3d 592, 600 (5th Cir.1999)). In determining whether to grant summary judgment, the Court views the facts in the light most favorable to the parties opposing the motion, and the movant bears the burden of showing the absence of any genuine issue of material fact. *Id.* (citing *Pulliam Inv. Co. v. Cameo Properties*, 810 F.2d 1282, 1286 (4th Cir.1987)). Each party to an interpleader must prove its claim to the funds by a preponderance of the evidence. *Metro. Life Ins. Co. v. Jacques*, 396 F. App'x 709, 710 (2d Cir. 2010).

b. Standard for determining priority of claims to funds in an interpleader action

A security interest encompassing the specific property that comprises the interpleader fund entitles the secured party to claim proceeds of an interpleader fund. *See, e.g., Gannon v. Am. Airlines, Inc.*, 251 F.2d 476, 484 (10th Cir. 1957) (lien initiated pursuant to state court garnishment reached funds that were later deposited with the court and gave the lienholder a right to interpleaded funds); *Indus. Bank of Washington v. Techmatics Techs., Inc.*, 763 F. Supp. 629, 635–36 (D.D.C. 1991), *aff'd*, 955 F.2d 764 (D.C. Cir. 1992) (lender's security interest in rights to payment under government contracts and tax liens were the basis for specific claim to interpleaded funds).

After claimants asserting a specific claim to the interpleaded funds have received a distribution, equitable principles allow a court to distribute any funds that might remain instead of returning them to the plaintiff. *See Nationwide Mut. Fire Ins. Co. v. Eason*, 736 F.2d 130, 133 (4th Cir. 1984) (“Equity dictates that an interpleader plaintiff who is in fact a disinterested

stakeholder is not entitled to a return of the deposited fund” where “another party is properly allowed to intervene.”).

The priority of claims to the interpleaded funds is normally determined at the time the action is initiated. *See Texaco, Inc. v. Ponsoldt*, 118 F.3d 1367, 1371 (9th Cir. 1997). Though in “extraordinary circumstances,” the Court has broad authority to determine a different date for establishing priority, the action is generally considered initiated at the time the funds are deposited with the court. *See id.*, 118 F.3d at 1369-1371 (9th Cir. 1997); *Avant Petroleum, Inc. v. Banque Paribas*, 853 F.2d 140, 143–44 (2d Cir. 1988); 44B Am. Jur. 2d Interpleader § 67.

When determining priority among the claimants to the disputed funds, the common law rule of “the first in time, the first in right,” applies, subject to any statutory requirements. *See, e.g., United States v. New Britain*, 347 U.S. 81, 85, 74 S.Ct. 367, 370, 98 L.Ed. 520 (1954). A court may need to take into account federal tax law, uniform commercial code, federal common law, and state law when determining the respective rights of each claimant to the interpleaded funds. *See, e.g., Avant Petroleum, Inc. v. Banque Paribas*, 853 F.2d 140, 145 (2d Cir. 1988) (analyzing Uniform Commercial Code); *United States v. Benitez*, 779 F.2d 135, 139 (2d Cir. 1985) (discussing federal common law); *Mantovani v. Fast Fuel Corp.*, 494 F. Supp. 72, 76 (S.D.N.Y. 1980) (considering common law, federal tax code, state law regarding judgment lien creditor status).

Security interests that are established through state law remain in force once a federal interpleader is established. For example, the Tenth Circuit and Fifth Circuit Courts of Appeals have found that a lien or garnishment imposed by a separate court prior to deposit with a federal interpleader court remains in force after such deposit. *See Gannon*, 251 at 484-85 (final garnishment lien obtained against settlement funds prior to deposit of settlement funds *res* with the interpleader court could be enforced against the *res* by the federal interpleader court); *Armour Fertilizer Works v. Sanders*, 63 F.2d 902, 906-07 (5th Cir. 1933), *aff'd*, 292 U.S. 190 (1934)

(insurers interplead insurance proceeds for funds related to fire damage on Texas homestead, which *res* was then found to be subject to an Illinois state court garnishment earlier secured by a creditor named as one of the interpleader defendants).

Similarly, changes that would otherwise impact a party's security status after the time the action is initiated are not material. *See, e.g., Avant Petroleum, Inc. v. Banque Paribas*, 853 F.2d at 143–44 (failure thereafter to file continuation statements was not material); *Texaco, Inc. v. Ponsoldt*, 118 F.3d 1367, 1369 (9th Cir. 1997) (“filing of a lien in the interpleader action itself had no effect upon the determination of who had the right to the interpled funds”).

II. ANPC has a specific claim to the Disputed Funds, as opposed to a general claim against Cyberlux, and is entitled to a distribution in this interpleader action.

a. ANPC has a specific claim to the Disputed Funds

ANPC's specific claim to the Disputed Funds comes from the goods and services that ANPC provided to Cyberlux pursuant to the Purchase Agreement and ANPC's security interest in the Disputed Funds arising from ANPC's initiation of a garnishment action.

In return for goods and services provided by ANPC under the Purchase Agreement, Cyberlux assigned certain funds to ANPC. The assignment is contained in the payment terms of the Purchase Agreement, which are in part as follows: “payment by BUYER to the Supplier shall be made within ten (10) Business Days following the date of BUYER's receipt of payment from BUYER's customer.” (ECF No. 136, at 12 ¶ 7). ANPC fulfilled the work and services request from Cyberlux's customer that was the subject of the Purchase Agreement. (ECF No. 136-3 ¶ 6). Cyberlux promised to pay ANPC for its work out of the funds received from Cyberlux's customer in the Purchase Agreement. (ECF No. 136-3 ¶ 7). However, Cyberlux retained those funds instead. (ECF 136-3 ¶¶ 15-16). Cyberlux was unjustly enriched in such a manner as to support a finding

that there should be an equitable assignment in favor of ANPC over the funds received not only from Cyberlux's customer in the Purchase Agreement, but over funds received from HII as well.⁶

ANPC additionally holds a security interest in the Disputed Funds through a Writ of *Fieri Facias*, which is sufficient to show a specific claim to the Disputed Funds. *See, e.g., Gannon*, 251 F.2d at 484; *Indus. Bank of Washington*, 763 F. Supp. at 635–36. This security interest arises from a lien on the Disputed Funds created by the ANPC Writ filed on September 24, 2025 in Richmond County, Virginia, which initiated the garnishment action against HII and Cyberlux on October 8, 2025 in Fairfax County, Virginia. (*See* ECF No. 136-2).

Specifically, a *fieri facias* becomes “a lien from the time it goes into the hands of the officer to be executed, upon all the personal estate of the debtor, including debts due to him.” *Puryear v. Taylor*, 53 Va. 401, 401 (1855); *see also* Va. Stat. § 8.01-501; *In re Lamm*, 47 B.R. 364, 367 (E.D. Va. 1984). That happened on October 24, 2025, when the Fairfax County Sheriff received the ANPC Writ. (*See* ECF No. 136-2). The lien attaches to intangible assets, such as accounts receivable. Va. Stat. § 8.01-501 (*fieri facias* lien “execut[able], on all the personal estate of or to which the judgment debtor is, or may afterwards ... become, possessed or entitled, in which, from its nature is not capable of being levied on under such sections[.]”)

In this case, the Fairfax County Sheriff received the ANPC Writ on October 24, 2025. (ECF 136-2). The debt owed to Cyberlux from HII was an intangible asset as of October 24, 2025, and the ANPC Writ became a lien on those funds accordingly. To the extent Cyberlux did not have an

⁶ Under North Carolina law, equitable assignment will be allowed, even if the contract provides only a mere promise to pay from a specific fund, if considerations of unjust enrichment are implicated. *See Embree Const. Grp., Inc. v. Rafcor, Inc.*, 330 N.C. 487, 497, 411 S.E.2d 916, 923 (1992). Where the assignee works to create a thing of value, and the sale of that thing of value allows the assignor to receive funds from which the assignee was to be paid, courts in North Carolina will impose an equitable assignment over the funds paid to the assignor so as to not allow the assignor to be unjustly enriched by the work of the assignee. *See Three Mountaineers, Inc. v. Ramsey*, 143 F. Supp. 888, 889 (W.D.N.C. 1956).

interest in the Disputed Funds that ANPC could garnish until they became accounts receivable when the Court granted HII's discharge on February 20, 2026 upon HII's deposit of the Disputed Funds with the Court, (ECF No. 150), the ANPC Writ was still in effect and attached as of that date.⁷

b. ANPC had a security interest in the Disputed Funds at the time they were deposited with the Court.

The *fiery facias* on intangibles like accounts receivable becomes a lien from the time it goes into the hands of the officer charged with its execution. *Puryear*, 53 Va. at 401. A lien acquired on intangibles under Va. Stat. § 8.01-501 remains in place until: (1) the judgment creditor's right to enforce the judgment by execution or by action, or to extend the right by motion, ceases or is suspended by a forthcoming bond being given and forfeited or by other legal process; or (2) the expiration of one year from the return day of the execution—or, for debts due from or claims upon third persons, one year from the final determination of the amount owed to the judgment debtor, whichever is longer. The lien attaches to property that comes into possession of the garnishee, including future accounts receivable, through the garnishment return date. *In re Lamm*, 47 B.R. at 367.

The Fairfax County Sheriff received the ANPC Writ on October 24, 2025, (ECF No. 136-2), which remained in force and effect at the time HII deposited the Disputed Funds in the Court. *See Gannon*, 251 F.2d at 484-85; *Armour Fertilizer Works*, 63 F.2d at 906-07.

⁷ ANPC also has equitable lien over the Disputed Funds, as stated in ANPC's Crossclaim (ECF No. 136 ¶ 7). An equitable lien based on a theory of implied contract or unjust enrichment, as is the case here, arises when the breach of an implied contract or unjust enrichment occurs—*i.e.*, upon the breach. *See Fulp v. Fulp*, 264 N.C. 20, 140 S.E.2d 708 (1965) (discussing equitable liens as a remedy to situations analogous to breach of contract). In this case, Cyberlux breached the Purchase Agreement by failing to pay ANPC the assigned funds pursuant to the final invoice dated as of December 20, 2024, payment for which was due under the Purchase Agreement by December 30, 2024.

HII pleaded that HII's obligation to pay Cyberlux was: (a) subject to any setoff and recoupment (ECF No. 41 ¶ 30); (b) contingent upon HII's receipt of funds from the United States government (*Id.* ¶ 31); and (c) not required unless and until HII received from Cyberlux releases from Cyberlux's creditors, which release was also effective if HII interpleaded the funds. (*Id.* ¶ 33). Once HII filed the Complaint for Interpleader, HII was obligated to pay the Disputed Funds such that they became future accounts receivable and not a contingent debt because (b) had been satisfied (*See id.* ¶¶ 26-29) and (a) and (c) were to be satisfied once the Court allowed the funds to be deposited at a future date. *Boisseau v. Bass' Adm'r*, 100 Va. 207, 210, 40 S.E. 647, 649 (1902) (“[w]hen a debt has a present existence, although payable at some future day, it is subject to the lien of a fi. fa., and may be reached by garnishment or other appropriate proceeding; but the rule is otherwise where the debt rests upon a contingency that may or may not happen, and over which the court has no control.”). To the extent this Court finds that HII did not become obligated to pay the Disputed Funds until the Court granted HII's motion to deposit the funds and obtain a discharge in the case, such obligation occurred on February 20, 2026. (ECF No. 150).

c. As of the date the funds were deposited in the interpleader, ANPC had established its security interest and, in viewing all facts in the light most favorable to the other parties, is in at least third priority of secured creditors.

ANPC is entitled to a distribution from the Disputed Funds subject only to the Court upholding the assertions of the United States and Legalist, having a pre-dating security interest. ANPC's claim is ahead of and superior to all other defendants' claims. ANPC assumes for the purposes of this Motion that the United States and Legalist are able to prove their claims and security interests in the Disputed Funds and does not contest their priority to the Disputed Funds.⁸ The other claimants asserting a security interest in the Disputed Funds that arose by explicit

⁸ To the extent Legalist recovers any money from Texas Court, Cause No. 2024-48085, its claim in this Interpleader should be reduced.

agreement or judgment—Mr. Robert Berleth, Atlantic Wave and Secure Community, and WeShield Defendants—cannot provide facts that demonstrate that they have a valid security interest arising prior to October 24, 2025, the date on which the ANPC Writ attached to the Disputed Funds.⁹ The remaining claimants cannot prove they have a claim that entitles them to payment prior to ANPC’s security interest in the Disputed Funds.

Robert Berleth requests an amount to be determined in this Interpleader action sufficient to satisfy the his obligations as “Receiver” and “costs and fees” in this Interpleader action. (ECF No. 73, at 13 ¶ 87(a) & (b)). Mr. Berleth does not have authority to expand his receivership beyond Texas, and therefore, he has no claim to the funds. (ECF No. 161-1).

Atlantic Wave and Secure Community

Atlantic Wave and Secure Community, to the extent they are able to prove their underlying claim—which point ANPC does not concede and reserves the right to dispute—did not have a claim to the Disputed Funds, much less a security interest in the Disputed Funds held by HII as accounts receivable to Cyberlux.

Specifically, under the Uniform Commercial Code (UCC) and respective state statutes adopting the UCC, the law of the state in which a debtor is located will apply to perfection, and a registered corporation is deemed to be located in the state in which it is organized. § 9-301. Law Governing Perfection and Priority of Security Interests., Unif.Commercial Code § 9-301(e). Because Cyberlux is a Nevada Corporation, Atlantic Wave and Secure Community were required to file a UCC filing statement in Nevada to have a lien on accounts receivable. *See Nev. Rev. Stat.* §§ 104.9501 & 104.9301.

⁹ ANPC maintains this priority even if its lien did not attach until February 20, 2025 due to deficiencies in other defendants’ claimed security interests.

Under Nevada Revised Statute § 104.9501(1)(b) in order, to perfect a security interest in intangibles such as accounts receivable, a creditor must file a financing statement with the Nevada Office of the Secretary of State. Atlantic Wave and Secure Community did not have a UCC filing statement in Nevada at the time HII deposited the Disputed Funds with the Court. Therefore, Atlantic Wave and Secure Community are unable to have a security interest in the Disputed Funds and could not change their security or priority status after March 6, 2026, when the Disputed Funds were deposited with the Court. *See White v. F.D.I.C.*, 19 F.3d 249, 252 (5th Cir. 1994); *Avant Petro., Inc.*, 853 F.2d at 143.

WeShield, Roman Investments, MAS, and Michael Sinensky

WeShield, Roman Investments, MAS, and Michael Sinensky cannot show that they have an enforceable security agreement necessary to claim a security interest in Disputed Funds as of October 24, 2026. In order for a security agreement to be enforceable under North Carolina law,¹⁰ value must have been given. N.C. Gen. Stat. § 25-9-203(b)(1).

A person gives value for rights if the person acquires them, in relevant part, in return for any consideration sufficient to support a simple contract. N.C. Gen. Stat. § 25-1-204(4). A party's promise to delay or refrain from taking an act which the party cannot legally do, such as immediately collecting on a debt, is not valid consideration. *Zorba's Inn, Inc. v. Nationwide Mut. Fire Ins. Co.*, 93 N.C.App. 332 (1989) (“forbearance of a right which does not exist, or a promise to refrain from doing that which the promisee cannot legally do, cannot constitute consideration”).

According to the purported security agreement that WeShield filed with the Court, which serves as the basis for its security interest, WeShield Defendants “defer[red] immediate collection of the [o]bligations in exchange for the security interest.” (ECF No. 110, Exhibit 1). But, as of the

¹⁰ The purported security agreement states that North Carolina law applies to the security agreement. (ECF No. 110, Exhibit 1).

date written on the purported security agreement—September 24, 2025—WeShield, Roman Investments, MAS, and Michael Sinensky had not identified any basis for a legal right of immediate collection of a debt—neither a court judgment nor a preexisting security agreement.

Therefore, there is no enforceable security agreement on which the security interest could be based because WeShield, Roman Investments, MAS, and Michael Sinensky will be unable to show that Cyberlux received any value in return for granting a security interest in the Disputed Funds. *See Mozingo v. North Carolina Nat. Bank*, 31 N.C.App. 157 (1976) (finding lack of consideration was a defense properly raised where the security agreement was “merely a vehicle to permit the defendant to show the loan on its books as a secured loan.”).

Fairwinds

Intervenor Fairwinds, in its Complaint for Interpleader, asserts a general, unsecured claim against Cyberlux. (*See* ECF No. 131).

ARG

Intervenor ARG, in its Complaint for Interpleader, claims to have functioned “in effect, as a business partner,” (ECF 155 ¶ 11), and is not equitably entitled to a distribution of funds over those who provided goods and services to complete work for Cyberlux.

Thin Air Gear

Intervenor Thin Air Gear, in its Complaint for Interpleader, asserts that, as of December 19, 2025, it holds a certified final judgment in Colorado and a security interest that results. (*See* ECF No. 133). However, such a certified final judgment would only act as a lien, if any, on real estate in that county. *See* Colo. Stat. § 13-52-102.

III. The Implication of the Federal Acquisition Regulations on ANPC's Claim.

In the March 31, 2026 Order, this Court requested the parties address the implication, if any, of government contracting statutes or regulations on priority, entitlement, or payment due. (See ECF No. 157).

ANPC's claim is not impacted by federal government contracting statutes. Generally, government contracting statutes like the Federal Acquisition Regulations do not impact ANPC's claim, because they are in place for protection of the government, and once the government paid HII, the funds were able to become subject to liens, assignments, and security interests as among private parties. See e.g., *Martin v. Nat'l Sur. Co.*, 300 U.S. 588, 595, 57 S. Ct. 531, 534, 81 L. Ed. 822 (1937) (statute concerning government contract was in place for the protection of the government and did not dictate what a contractor should do with the money received after the contract was performed); *United States v. Kim*, 806 F.3d 1161, 1176 (9th Cir. 2015) (federal Anti-Assignment Act reaches only the initial payment from the Treasury). The Miller Act, 40 U.S.C. §§ 3131–3134, which serves to protect subcontractors who may have claims for nonpayment, applies in construction contract situations in which a performance bond has been provided. ANPC has not identified and is not aware of any other government contracting statutes or regulations that impact, let alone impair, the validity or security status of ANPC's claim.

ANPC reserves the right to bring any arguments that may become relevant on a response in opposition to another party's motion for summary judgment.

CONCLUSION

ANPC respectfully requests that this Court grant the Motion and allow ANPC distribution from the Disputed Funds in the amount of \$3,080,645.04 plus interest accruing at 8% daily from July 21, 2025 through the date of judgment.

Respectfully submitted this 15th day of April, 2026.

/s/ Joel D. Schwartz

Joel D. Schwartz
Virginia Bar No. 97979
PARKER POE ADAMS & BERNSTEIN LLP
1400 K Street NW, Suite 1000
Washington, DC 20005-2403
Telephone: (202) 434-9100
Fax: (202) 217-2771
Email: joelschwartz@parkerpoe.com

Catherine G. Clodfelter
NC Bar No. 47653 (admitted *pro hac vice*)
Charles E. Raynal IV
NC Bar No. 32310 (admitted *pro hac vice*)
PARKER POE ADAMS & BERNSTEIN LLP
301 Fayetteville Street, Suite 1400
Raleigh, NC 27601
Telephone: (919) 828-0564
Fax: (919) 834-4564
Email: catherineclodfelter@parkerpoe.com
charlesraynal@parkerpoe.com
Counsel for ANPC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the ANPC's **Brief in Support of Motion for Summary Judgment** was electronically filed using the court's CM/ECF system, which will automatically send e-mail notification to counsel of record.

This the 15th day of April, 2026.

/s/ Joel D. Schwartz

Joel D. Schwartz

Virginia Bar No. 97979

Parker Poe Adams & Bernstein LLP

1400 K Street NW, Suite 1000

Washington, DC 20005-2403

Telephone: (202) 434-9100

Fax: (202) 217-2771

Email: joelschwartz@parkerpoe.com

Counsel for ANPC