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

HII MISSION TECHNOLOGIES CORP., **Interpleader Plaintiff** **v.** **CYBERLUX CORPORATION, *et al.*,** **Interpleader Defendants/Claimants**	**Civil Action No: 3:25-cv-483-JAG**

FAIRWINDS TECHNOLOGIES, LLC'S
MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Pursuant to the Court's Orders dated February 11, 2026 and March 31, 2026 (Dkt. Entries 145, 158) and Federal Rule of Civil Procedure 56, Fairwinds Technologies LLC ("Fairwinds"), through its undersigned counsel, hereby respectfully submits this memorandum in support of its motion for summary judgment in the above-captioned action.

STATEMENT OF UNDISPUTED FACTS

Fairwinds intervened in the case as an Interpleader Defendant asserting a claim to funds that HII Mission Technologies Corp. ("HII") has deposited with the Court on March 6, 2026, as an unsecured creditor of Cyberlux Corporation ("Cyberlux").

Fairwinds became an unsecured creditor of Cyberlux initially through an October 3, 2022, Teaming Agreement (the "TA") entered into by the parties by which Fairwinds assisted Cyberlux in securing a contract vehicle award for the shipment of Cyberlux's Model K8 Aircraft ("Drones"). Declaration of Thomas O. Wirth, ¶ 2, Exhibit 1.

The TA provided Fairwinds, in consideration for its services, either: (i) the opportunity to serve as prime contractor for any subsequent award; or, (ii) in the event that a party other than

Fairwinds was chosen to serve as the prime contractor for the subsequent award, Fairwinds would receive eight percent (8%) of the contract value associated with the first one thousand (1,000) Drones delivered. *Id.*

The U.S. government ultimately awarded the prime contract to HII. *Id.* ¶ 3. As a result, Cyberlux and Fairwinds entered into a valid and enforceable Strategic Business Development, Service and Supply Teaming contract (the "Contract") on June 7, 2023. *Id.* ¶ 4, Exhibit 2. Under the Contract, Cyberlux and Fairwinds agreed that Cyberlux was to pay Fairwinds a fee of eight percent (8%) of the value of the first one thousand (1,000) Drones delivered in connection with the services provided by Fairwinds described in the Contract. *Id.*, Exhibit 2 ¶5.1; Appendix A.

On July 8, 2025, Cyberlux's CEO, Mark Schmidt, sent Fairwinds a spreadsheet detailing the accounting breakdown of the value of the amount in commission owed to Fairwinds in connection with Cyberlux's sale of the Drones and valued the amount owed to Fairwinds as $2,348,542.40. *Id.* ¶ 5, Exhibit 3. This was based upon amounts that Cyberlux had invoiced HII for the sale of the Drones, which Mr. Schmidt attached to his spreadsheet as support for his calculations. *Id.* ¶ 6, Exhibit 4. That amount due to Cyberlux from HII listed on that spreadsheet, $25,769,369.03, was the same amount HII sought to deposit with the Court in its motion for interpleader deposit. [Dkt. No. 144]. On July 9, 2025, Fairwinds submitted an invoice for $2,348,542.40 to Cyberlux reflecting the amount listed in the spreadsheet. *Id.* ¶ 7, Exhibit 5. Mr. Schmidt confirmed that the funds due to Cyberlux from HII referenced in the spreadsheet were from the sale of the Drones referenced in the Contract and that Cyberlux would pay Fairwinds that amount from funds HII was to pay Cyberlux that ultimately were deposited with the Court. *Id.* ¶ 5, Exhibit 3.

LAW AND ARGUMENT

Summary judgment is required when a "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). No triable issue exists where "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party[.]" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). "Once the movant meets its burden, the opposing party, to defeat the motion, must set forth specific facts showing a genuine issue for trial." *Nifong v. SOC, LLC*, 234 F. Supp. 3d 739, 750 (E.D. Va. 2017) (Ellis, J.). The non-moving party "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc.*, 53 F.3d 55, 62 (4th Cir. 1995). Rather, to survive summary judgment, the party opposing the motion must prove there is sufficient evidence to support a jury verdict in its favor. *Anderson*, 477 U.S. at 249. In doing so, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586.

"Summary judgment is appropriate '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). '[A] scintilla of evidence' in support of the nonmoving party's position is insufficient to defeat summary judgment. *Anderson*, 477 U.S. at 252. Rather, '[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.' *Matsushita*, 475 U.S. at 587 (internal quotation marks omitted)." *United States ex rel Gugenheim v. Meridian Senior Living, LLC*, 36 F.4th 173, 178 (4th Cir. 2022).

I. THERE IS NO DISPUTE THAT FAIRWINDS IS ENTITLED TO A PORTION OF THE FUNDS DEPOSITED WITH THE COURT

There can be no dispute that Fairwinds has a valid and enforceable interest, equaling $2,348,542.40 in the funds deposited with the Court by HII.

Fairwinds entered into a valid and enforceable TA with Cyberlux whereby Fairwinds would provide Cyberlux with certain services and assist Cyberlux in securing a contract with the U.S. government for Cyberlux to provide to the government the Drones. Wirth Decl. Ex. 1. In exchange, Fairwinds would receive the opportunity to serve as prime contractor or, if the government chose some other entity to serve as prime contractor, Cyberlux would pay Fairwinds a commission of 8% of the amount it received for the first 1,000 Drones sold. *Id*. Cyberlux does not dispute the validity of the TA.

When the government chose HII as prime contractor, Fairwinds entered into the Contract with Cyberlux that guaranteed, in exchange for services already provided and services provided going forward, Fairwinds would receive the 8% commission on the sale of the first 1,000 Drones. *Id*. ¶ 4, Ex. 2. Cyberlux does not dispute the validity of this contract.

When it was time for Cyberlux to fulfill its obligations to Fairwinds, Mr. Schmidt contacted Fairwinds and provided a calculation as to what Cyberlux owed Fairwinds. Mr. Schmidt based that calculation on a series of invoices connected to Cyberlux's transactions with HII. *Id*. Ex. 3. The total amount Cyberlux charged HII in those invoices is the same amount HII ultimately deposited with the Court (minus fees and expenses), meaning the sale of Drones referenced in the Contract is the sale of Drones Cyberlux made to HII. [Dkt No. 144]. Based upon the representations made by Cyberlux, and the fact that none of the discovery exchanged by the parties to this case references another transaction between Cyberlux and HII, it is beyond dispute that Cyberlux contracted to pay Fairwinds 8% of what it received from HII in the transaction at issue

in this case. Accordingly, the Court should grant summary judgment in favor of Fairwinds that it is an unsecured creditor of Cyberlux's owed $2,348,542.40 by Cyberlux in connection with the HII transaction.

II. THE LAW RECOGNIZES NO PRIORITY AMONG UNSECURED CLAIMANTS, AND ONLY TWO PARTIES HAVE CLAIMED TO HOLD PERFECTED INTERESTS IN THE INTERPLEADED FUNDS

Secured creditors take priority over unsecured creditors when creditors seek to have their debts satisfied by the same source of funds. In order to possess a valid security interest in the HII funds deposited with the Court, a creditor must hold a perfected lien or perfected security interest in the property that has been interpleaded. Only creditors with a perfected interest in the interpleaded funds are entitled to priority over claimants whose rights amount only to general, unsecured claims.

Virginia recognizes priority rules for perfected interests. As a general matter, priority among perfected interests turns on perfection and timing—Virginia follows a first-in-time principle for interests that are properly perfected, and, in the real-property context, it is a "race notice jurisdiction" in which the interests perfected first in time take priority. *Lewandowski v. F. & M. Mortg. Servs., Inc.*, 50 Va. Cir. 394, 397 (Cir. Ct. 1999). By contrast, where a claimant cannot demonstrate a perfected interest in the interpleaded property, that claimant stands as an unsecured creditor as to that property, and unsecured claimants share on equal footing absent a proven basis for priority. *See generally*, 11 USCS § 507 (certain unsecured claims are given priority, such as domestic support obligations or wages, salaries, or commissions); *see also Union Bank & Trust Co. v. Haley*, 15 Va. Cir. 507, 508 (Cir. Ct. 1989) (Va. Code Ann § 64.1-157 "creates eight classes of debt or claims and provides 'no preference shall be given in the payment of any claim over any other claim of the same class'").

Judgment liens, however, in and of themselves are not perfected interests. A judgment lien arises when a party obtains a money judgment in a federal or state court. Va. Code Ann § 8.01-458. In order to convert that judgment lien into a perfected interest in property, a judgment creditor must record the lien in the judgment lien docket book in the office of the county or city where the property is situated. Va. Code Ann § 8.01-458. The recorded lien though may only attach to real property located in the county or city where the lien was recorded - any intangible, moveable property is excluded. Va. Code Ann § 8.01-458. The act of docketing the lien is a necessary prerequisite to perfect the judgment lien into the real property over which the judgment creditor seeks to assert a secured interest. *Turshen v. Bennett Heating & Air Conditioning, Inc. (In re Brisbane)*, 2 B.R. 636, 1980 Bankr. LEXIS 5596 (Bankr. E.D. Va. 1980); *Bartl v. G. Weinberger & Co. (In re Claxton)*, 32 B.R. 215, 1983 Bankr. LEXIS 5662 (Bankr. E.D. Va.), aff'd, *In re Claxton*, 30 B.R. 199, 1983 Bankr. LEXIS 6230 (Bankr. E.D. Va. 1983).

Here, only two parties, Legalist and the United States government, assert facts that, if true, could constitute them having a perfected security interest in the funds interpleaded with the Court. Whether those facts are true, Fairwinds does not comment on at this time. Rather, Fairwinds will address the sufficiency of those claims in its response to the motions for summary judgment filed by the parties to this action.

By contrast, the remaining claimants—including Advanced Navigation & Positioning Corporation, Thin Air Gear, LLC, Robert W. Berleth (as Receiver), The ARG Group, LLC, Atlantic Wave Holdings, LLC, and Bilal Maadarani—have not demonstrated a perfected security interest or perfected lien that attaches to the funds deposited with the Court and are all unsecured

creditors with the same priority.[1] 11 U.S.C. § 726(a)(2) (providing that under the Bankruptcy Code all unsecured creditors' claims are treated with the same priority); *Fairchild Dornier GmbH v. Unofficial Comm. Of Unsecured Creditors*, 453 F.3d 225, 231 (4th Cir. 2006)(citing the order of priorities in the bankruptcy code and noting that only a bankruptcy court may prioritize unsecured creditors through such means as equitable subordination).

Advanced Navigation, Thin Air Gear, and Atlantic Wave Holdings claim only to have judgment liens against Cyberlux property. Those liens, however, cannot be converted to perfected interests in the funds deposited with the Court by operation of law. ARG, the Receiver, and Mr. Maadarani make no claim to have a judgment lien but rather assert that they have general unsecured claims. Accordingly, those parties, including Fairwinds, are unsecured creditors standing in *pari passu* with one another with respect to the funds deposited with the Court and take no priority over each other.[2]

III. THE DISTRICT COURT SHOULD CONSIDER USING ITS EQUITABLE POWERS TO APPOINT A FEDERAL RECEIVER

In this complex multi-party dispute, the District Court has the discretion to appoint a federal receiver over the assets of Cyberlux. *See*, *generally* Fed. R. Civ. P. 66. "[T[he district court has within its equity power the authority to appoint receivers and to administer receiverships." *Gilchrist v. GE Capital Corp.*, 262 F.3d 295, 302 (4th Cir. 2001). When receivers are appointed by a federal court, they may sue and be sued as provided by federal law. *Id*. (*citing* 28 U.S.C. §§ 754, 959)). And receivers appointed by a federal court are directed to "manage and operate" the

[1] Fairwinds has never claimed to have a perfected security interest in the funds deposited with the Court.

[2] Fairwinds will address whether those unsecured claimants have asserted valid claims in its response to the motions for summary judgment filed by all of the claimants.

receivership estate "according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." *Id*. (*quoting* 28 U.S.C. §959(b))(quotation marks removed). Fairwinds recognizes that the appointment of a receiver "is an extraordinary remedy that should be employed with the utmost caution,"[3] but suggests that this is the extraordinary case that calls for such appointment.

Neither the Supreme Court nor the Fourth Circuit has provided a concrete list of factors for courts to weigh in considering whether to appoint a receiver. *LNV Corp. v. Harrison Family Business, LLC*, 132 F. Supp. 3d 683, 689 (D. Md. 2015)(*citing Manuel v. Gembala*, No. 10-4, 2010 U.S. Dist. LEXIS 105167. At *6 (E.D.N.C. Sept. 30, 2010)). The *LNV* court considered the following considerations from Wright & Miller, § 2983:

> fraudulent conduct on the part of defendant; the imminent danger of the property being lost, concealed, injured, diminished in value, or squandered; the inadequacy of the available legal remedies; the probability that harm to plaintiff by denial of the appointment would be greater than the injury to the parties opposing appointment; and, in more general terms, plaintiff's probable success in the action and the possibility of irreparable injury to his interests in the property.

This formulation is similar to approaches taken by the Fifth Circuit and the Eighth Circuit. *See Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 316-17 (8th Cir. 1993); *Santibanez v. Wier McMahon & Co.*, 105 F.3d 234, 241-42 (5th Cir. 1997).

Here, there remain facts that are unknown about Cyberlux, but what has been learned is that there are serious allegations of fraud and criminal activity surrounding Cyberlux. On January

[3] *Wilmington Trust v. Homes4families, LLC*, No. 19-1896, 2019 U.S. Dist. LEXIS 192492, at *7 (D. Md. Nov. 6, 2019)(*quoting First United Bank & Trust v. Square at Falling Run, LLC*, No. 11-31, 2011 U.S. Dist. LEXIS 44409, at *3 (N.D. W. Va. April 25, 2011))

21, 2026, "Brett Rosen and Deborah Rosen were indicted by a federal grand jury on charges that they, through their joint investment business, RB Capital Partners, Inc., engaged in a years-long securities fraud and money laundering scheme." Declaration of Alexander N. Breckinridge V, ¶ 2, Ex. 1. The indictment alleges that the Rosens "engaged in a market manipulation scheme through financing, promoting, and selling the stock of . . . Cyberlux Corp." *Id.* Cyberlux remains in litigation regarding its stock transactions against RB Capital Partners, Atlantic Wave, and Secured Community. Finally, recent UCC-1 filings in Nevada suggest that Fraudulent Transfers have occurred.

Indeed, the fact that so many claimants and creditors of Cyberlux have intervened in this Interpleader suggests that the assets of the company will be siphoned away from legitimate creditors for other purposes. Cyberlux maintains active litigation by creditors, hiring attorneys in multiple jurisdictions, and is facing financial hardships. The most recent financial report showed the company reported a net loss from operations in excess of $3.1 million. Breckinridge Decl. ¶ 3, Ex. 2. Its most recent balance sheet showed a "deficiency in stockholders' equity" in excess of $16 million against only $37 million in current assets. *Id.* Cyberlux is not a healthy company.

A federally appointed receiver may decide that the competing claims against Cyberlux's limited pot of assets necessitates the filing of a federal bankruptcy petition. *See, e.g. In re Statepark Bldg. Group, Ltd.*, 316 B.R. 466, 472 (Bankr. N.D. Tex. 2004); *JY Creative Holdings, Inc. v. McHale*, No. 14-2899, 2015 U.S. Dist. LEXIS 15970 (M.D. Fla. Feb. 10, 2015). As this Court recognized in its first status conference with the parties, bankruptcy court may be the appropriate federal forum to adjudicate, rank, and prioritize the competing claims against Cyberlux.

> Courts have reiterated the reasoning expressed in the **Bankruptcy** Commission Report. "The central policy behind involuntary petitions," one court explained, is "to protect the threatened depletion of assets or to **prevent** the unequal treatment of similarly situated creditors." *In re Manhattan Indus., Inc.*, 224 B.R. 195, 200 (Bankr. M.D. Fla. 1997); *see also In re Letourneau*, 422 B.R. 132, 138 (Bankr. N.D. Ill. 2010) (same). "Creditors are justified in filing an involuntary **bankruptcy** against a debtor where exclusive **bankruptcy** powers and remedies may be usefully invoked to recover transferred assets, to 'insur[e] an orderly ranking of creditors' claims' and 'to protect against other creditors obtaining a disproportionate share of a debtor's assets.' "*In re Hentges*, 351 B.R. 758, 772 (Bankr. N.D. Okla. 2006) (quoting *In re Better Care, Ltd.*, 97 B.R. 405, 411 (Bankr. N.D. Ill. 1989)); *see also In re Tichy Elect. Co. Inc.*, 332 B.R. 364, 372 (Bankr. N.D. Iowa 2005) ("The goal or **purpose** of an involuntary filing should be the equal distribution of assets among creditors.").

In re Datacom Sys., No. 14-11096-abl, 2015 Bankr. LEXIS 4579, at *41 (Bankr. D. Nev. June 25, 2015).

Yet, this is precisely the position that creditor defendants are in right now. The appointment of a federal receiver with the authority to file a bankruptcy petition will allow these parties to be fairly ranked inside the only federal system designed to protect creditors from the debtor and from other creditors.

While not properly before the Court at this juncture, Fairwinds suggests that a federal receiver with the power to file bankruptcy may be the only solution that protects all parties' rights and moves this adjudication to the forum most-equipped to handle it.

CONCLUSION

For all the foregoing reasons, the Court should grant this Motion, enter summary judgment in favor of Fairwinds Technologies, LLC in the amount of $2,348,542.40 and post-judgment compound interest at 8% from the date of judgment until the judgment is fully satisfied, and order that all creditors without perfected security interest in those funds be treated equally.

Furthermore, Fairwinds respectfully requests that the Court appoint a Receiver pursuant to Federal Rule of Civil Procedure 66 to resolve this matter.

April 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following was electronically filed using the court's CM/ECF system, which will automatically send email notification to counsel of record.

This, the 15th day of April, 2026.

/s/ Alexander N. Breckinridge V
ALEXANDER N. BRECKINRIDGE V