

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

HII MISSION TECHNOLOGIES CORP.	)	
	)	Case No. 3:25-cv-00483-JAG
Interpleader Plaintiff,	)	
	)	
v.	)	
	)	
CYBERLUX CORPORATION, et al.,	)	
	)	
Defendants.	)	
_____	)	

**UNITED STATES’ MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT**

The United States of America submits this memorandum of law in support of its motion for summary judgment.

**I. INTRODUCTION**

There is no dispute that the United States’ tax liens have priority to all other creditors in this lawsuit, except one, Legalist SPV III, L.P., as to which the United States has partial priority. Because the claims of the United States’ (just over \$1.1 million) and Legalist (just over \$13 million) can be fully paid from the interpleaded funds (over \$23 million), and because there is no genuine dispute of material fact that the United States has priority as to all other creditors, the United States is entitled to judgment as a matter of law.

**II. UNDISPUTED MATERIAL FACTS**

1. Plaintiff HII Mission Technologies Corp.’s (“HII”) predecessor entered into a subcontract with Cyberlux, which is incorporated in Nevada and has its principal place of business in North Carolina. ECF 41, ¶¶ 4, 17, 18 . Under the subcontract, Cyberlux would

support HII's work under a prime contract with the Department of the Navy and General Services Administration. ECF 41, ¶ 18.

2. On May 17, 2024, HII terminated the subcontract with Cyberlux and, pursuant to the subcontract, became obligated 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 certain expenses. *Id.*, ¶¶ 21-22.

3. HII commenced this action in interpleader, naming defendant Cyberlux Corporation and Cyberlux's creditors. *Id.*, ¶ 1. HII sought to deposit certain sums owed to Cyberlux and to which various Cyberlux creditors had made claims. *Id.*, ¶ 2.

4. On February 20, 2026, this Court granted HII's Motion for Interpleader Deposit and directed HII to deposit \$23,736,937.56 (the "Disputed Funds") into the Court's Registry Investment System. ECF 150.

5. On March 6, 2026, HII interpleaded the Disputed Funds as directed and was dismissed from this lawsuit. March 6, 2026, Docket Entry reflecting deposit; *see also* ECF 153 (order acknowledging the deposit and dismissing HII).

**a. Facts relevant to the United States' claim.**

6. Cyberlux did not pay its taxes and, as a result, the United States has liens on Cyberlux's property, including the Disputed Funds, in the amount of \$1,153,457, plus accruing interest. *See generally* Declaration of IRS Revenue Officer Carol Davis (**Ex. 1**).

7. Specifically, a delegate of the Secretary of the Treasury assessed the following unpaid tax liabilities (IRS Forms 940 and 941) and penalties (26 USC § 6721) against Cyberlux Corporation:

Assessment Type	Tax Period Ending	Assessment Date	NFTL Filing Date	Balance <sup>1</sup> (as of April 13, 2026)
IRS Form 941 <sup>2</sup>	6/30/2010	5/13/2013	4/30/2024	\$87,454
IRS Form 941	12/31/2010	4/11/2011	4/30/2024	\$149,003
IRS Form 941	12/31/2012	4/01/2013	4/30/2024	\$872,811
IRS Form 941	12/31/2021	9/5/2022	10/10/2023	\$2,625
IRS Form 940	12/31/2022	2/27/2023	10/10/2023	\$321
IRS Form 940	12/31/2023	2/26/2024	4/30/2024	\$361
26 USC § 6721 <sup>3</sup>	12/31/2013	10/24/2016	8/21/2017	\$40,882
<b>TOTAL BALANCE</b>				<b>\$1,153,457.00</b>

*Id.*, ¶ 5.

8. True and correct copies of account transcripts memorializing these liabilities are attached to Revenue Officer Davis’s Declaration as Attachment A thereto.

9. A delegate of the Secretary of the Treasury gave notice of these assessments to Cyberlux Corporation and made demand upon it for payment of those assessments. Despite notice and demand for payment, Cyberlux Corporation has failed or refused to pay the full amounts due and owing for these assessments. As a result, under 26 U.S.C. § 6321, the unpaid assessment amounts are a lien in favor of the United States upon all property and rights to property belonging to Cyberlux Corporation, including upon the interpleaded proceeds. *Id.*, ¶ 7.

10. The IRS filed Notices of Federal Tax Lien (“NFTLs”) memorializing the liens with the North Carolina Secretary of State. *Id.*, ¶ 8. The NFTLs were filed on the dates set forth

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<sup>1</sup> This includes assessment amount plus accruals (interest and penalties) accruing through April 13, 2026.

<sup>2</sup> IRS Forms 941 are used to report withheld employee income tax and withheld employee and employer Social Security and Medicare tax. IRS Forms 940 are used to report an employer’s Federal Unemployment Tax Act taxes.

<sup>3</sup> These are penalties for failure to file returns.

in the fourth column of paragraph 7. True and correct copies of those NFTLs are attached to Revenue Officer Davis's Declaration as Attachment B thereto.

11. By virtue of the unpaid assessments described in paragraph 7, above, as of April 13, 2026, Cyberlux Corporation is indebted to the United States in the amount of \$1,153,457, plus interest that will continue to accrue according to statute. *Id.*, ¶ 9.

**b. Facts relevant to Legalist's claim**

12. On March 27, 2024, Legalist and Cyberlux entered into a Government Purchase Order Financing Agreement. Legalist Ans. to Interrogatory B (**Ex. 2**); Gov. Purchase Ord. Financing Agr., **Ex. 3** at LEGALIST000021.<sup>4</sup>

13. In that agreement, Legalist agreed to provide Cyberlux a \$3,000,000 line of credit. **Ex. 3** at LEGALIST000021. In exchange, Cyberlux conveyed to Legalist a "continuing lien on and security interest in all assets of Borrower, including" contract rights and accounts receivable. *Id.* at LEGALIST000022.

14. On April 1, 2024, Legalist perfected this security interest by filing a UCC Filing Statement in Nevada, where Cyberlux is incorporated. **Ex. 3**, at LEGALIST000017. Legalist did not provide the \$3,000,000 at the time it signed the contract. Rather, Legalist disbursed the following amounts on the following dates:

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<sup>4</sup> Legalist and Cyberlux amended the Government Purchase Order Financing Agreement on July 13, 2024, *see* **Ex. 3** at LEGALIST000039, and on April 29, 2025. *See* **Ex. 3** at LEGALIST000007. Because both amendments occurred after all NFTLs, they are not relevant to any priority dispute between Legalist and the United States.

- 4/9/2024: \$1,800,000.00
- 4/19/2024: \$500,000.00
- 4/30/2024: This is the date the final IRS NFTL was filed.
- 5/2/2024: \$500,000.00
- 6/15/2024: This date is 46 days after the filing of all NFTLs. As explained below, advances after this date are subordinate to the IRS tax liens.
- 6/26/2024: \$142,000.00
- 7/5/2024: \$53,000.00
- 7/16/2024: \$2,500,000.00
- 8/2/2024: \$650,000.00
- 8/27/2024: \$535,000.00
- 10/3/2024: \$150,000.00
- 10/3/2024: \$120,000.00
- 6/3/2025: \$2,755,100.10
- 6/9/2025: \$345,000.001

Legalist Ans. to Interrogatory G (**Ex. 2**). Legalist asserts that, as of March 9, 2026, Cyberlux owes it \$13,204,742.88, plus interest accruing from that date. *Id.* at A.

**c. Facts relevant to other Cyberlux creditor claims.**

15. Aside from Legalist, no other creditor claims a secured interest or lien that rivals the United States' liens.

16. The Receiver claims a judicial lien as a result of an April 1, 2025, order appointing a receiver. **Ex. 4** at p. EX4000002, ¶ d & EX4000006, ¶ 10.

17. Thin Air Gear, LLC asserts a perfected lien as of August 29, 2025 or, “at worst,” December 19, 2025. **Ex. 4** at p. EX4000024.

18. Advanced Navigation & Positioning Corporation claims a security interest through its filing of a *Writ of Fieri Facias* on September 24, 2025 and an equitable lien arising on December 30, 2024. **Ex. 4** at p. EX4000026-27.

19. Assure Global LLC d/b/a WeShield, Roman Investments PR LLC, MAS USA MGT LLC, and Michael Sinensky claim a perfected security interest as of October 23, 2025. **Ex. 4** at p. EX4000030.

20. Atlantic Waive Holdings, LLC and Secure Community, LLC, which has advised undersigned counsel that it does not contest the United States' priority, claims they perfected a security interest through the filing of UCC Financing Statements, but the statement filed in Nevada (the state of Cyberlux's incorporation) was not filed until March 20, 2026. **Ex. 4** at p. EX4000031.

21. Fairwinds Technologies, LLC does not claim a security interest. **Ex. 4** at p. EX4000034, ¶ d.

22. The ARG Group, LLC "does not believe it has a perfected, secured security interest in all or any portion of the proceeds." **Ex. 4** at p. EX4000036, ¶ d.<sup>5</sup>

### **III. LEGAL STANDARDS**

#### **Summary Judgment Standard**

"Under Rule 56(a), 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.' The relevant inquiry in a summary judgment analysis 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.'" *Moore-King v. Cnty. of Chesterfield, Va.*, 819 F. Supp. 2d 604, 610 (E.D. Va. 2011), *aff'd*, 708 F.3d 560 (4th Cir. 2013) (quoting Fed.R.Civ.P. 56(a) and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986)).

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<sup>5</sup> On April 14, 2026, over five weeks after the deadline to serve interrogatory answers (ECF 149), ARG served new, inconsistent answers to this interrogatory, claiming a secured interest in the Disputed Funds with a "priority date" of February 28, 2022 or, "at worst," September 8, 2023. ARG does not allege it recorded any security interest, nor has it produced a UCC Filing Statement that predates the NFTLs. Absent such perfection, ARG's interest, if any, is subordinate to the United States'. 26 U.S.C. § 6323.

### **Interpleader Standard**

"An interpleader action typically involves two stages. First, the court must determine whether the plaintiff "has properly invoked interpleader...." *Allstate Life Ins. Co. v. Ellett*, No. 2:14CV372, 2015 WL 500171, at \*2 (E.D. Va. Feb. 4, 2015) (internal citations and quotations omitted). "In the second stage, a scheduling order is issued and the case continues between the claimants to determine their respective rights." *Id.* (internal quotation omitted). This motion concerns the second stage of an interpleader, *i.e.*, the respective rights of the United States and other Cyberlux creditors.

### **Government Contracting Law**

As ordered by the Court (ECF 158), undersigned counsel has reviewed statutes pertaining to government contracting in connection with this dispute and believes the resolution of the priority of the United States tax liens is governed by the Internal Revenue Code and specifically, as discussed in greater detail below, 26 U.S.C. §§ 6321-6323.

## **IV. ARGUMENT**

This Court should disburse \$1,153,457, as of April 13, 2026, plus interest accruing after that date, from the Disputed Funds to the United States. The United States has perfected tax liens on the Disputed Funds in that amount, and the liens have priority as to all other creditors, with the exception of certain of Legalist's claims.

### **A. The United States has perfected liens on the Disputed Fund.**

Under 26 U.S.C. § 6321, if a person liable to pay tax neglects to do so after demand, the amount (including interest and statutory additions) "shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." This language "is broad and reveals on its face that Congress meant to reach every interest in

property that a taxpayer might have.” *Drye v. United States*, 528 U.S. 49, 56 (1999). This lien “shall arise at the time the assessment is made....” 26 U.S.C. § 6322.

Here, after notice and demand for payment, Cyberlux failed to pay the tax owed, and a lien arose in favor of the United States. Davis Decl. (**Ex. 1**), ¶ 7.

The lien is not valid against other creditors, however, unless notice of the lien is filed. 26 U.S.C. § 6323(a). To ensure a lien on personal property is valid as to such other creditors, the IRS must file the notice in the office within the state in which the personal property is situated, as designated by the laws of that state. § 6323(f)(1)(A)(ii). The personal property of a corporation is deemed to be situated in the state of the principal executive office of the business. 26 U.S.C. § 6323(f)(2)(B).

Here, Cyberlux’s principal place of business is in North Carolina. Am. Compl. ECF 41, ¶ 4. Under North Carolina law, notices of federal tax lien upon a corporation’s personal property must be filed with the North Carolina Secretary of State. N.C. Gen. Stat. Ann. § 44-68.12(c)(1). Here, the Notices of Federal Tax Lien were indeed filed with the North Carolina Secretary of State. Davis Decl. (**Ex. 1**), ¶ 8 & Attachment B thereto. As a result, as of the dates set forth in column four of paragraph II.7, the United States held perfected liens on all of Cyberlux’s “property and rights to property,” including Cyberlux’s rights to the Disputed Funds.

**B. The United States’ liens have partial priority as to Legalist’s claims.**

1. *There is no genuine dispute that the Disputed Funds can fully pay the United States and Legalist.*

“Absent provision to the contrary, [federal tax lien] priority for purposes of federal law is governed by the common-law principle that ‘the first in time is the first in right.’” *U.S. By & Through I.R.S. v. McDermott*, 507 U.S. 447, 449 (1993) (quoting *United States v. New Britain*, 347 U.S. 81, 85 (1954)).

Here, aside from Legalist, no claimant holds a security interest or lien in the Disputed Funds that was perfected prior to the NFTLs set forth in paragraph II.7, above. The Disputed Funds total \$23,736,937.56. As of March 9, 2026, Legalist claims it is owed \$13,204,742.88, plus interest. Legalist Ans. to Interrogatory G (**Ex. 2**). The United States is owed \$1,153,457, as of April 13, 2026, plus interest. Davis Decl. (**Ex. 1**), ¶ **5**. The priority dispute between Legalist and the United States is immaterial because there are sufficient interpleaded funds to pay both creditors in full.

2. *Should the priority of the United States' and Legalist's claim be put at issue, the United States should be fully paid after Legalist is paid \$2.8 million.*

Should the priority of the United States' and Legalist's interests be put at issue, the United States asserts, for the reasons that follow, the following order of priority:

<b>Priority</b>	<b>Creditor</b>	<b>Claim Amount</b>
1	USA	\$40,882
2	USA	\$2,937.49
3	Legalist	\$2,800,000
4	USA	\$1,106,083.54

Section 6323 of the Internal Revenue Code governs the relative priority of the United States and Legalist's claims. Under 26 U.S.C. § 6323(a), a federal tax lien "shall not be valid as against any purchaser, *holder of a security interest*, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary." (emphasis added). The term "security interest" means, in pertinent part, "any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time ... [only] to the extent that, at such time, the holder *has parted with money or money's worth.*" 26

U.S.C. § 6323(h)(1) (emphasis added). Under this general rule, Legalist must have “parted with money” for its security interest to prevail over the tax liens.

Paragraph d of § 6323, however, creates a limited exception to the rule that a secured lender must “part[] with money” to prevail over a NFTL, providing for a 45-day window, after the filing of the NFTL, within which the secured creditor may disburse money to the taxpayer and still retain priority. 26 U.S.C. § 6323(d).

Because the IRS filed three different Notices of Federal Tax Lien for different Cyberlux liabilities at three different times, the United States has three different priority dates: August 21, 2017, October 10, 2023, and April 30, 2024.

On August 21, 2017, the IRS perfected its lien on Cyberlux’s \$40,882 debt for 26 U.S.C. § 6721 penalties, and this lien has first priority as to all other claims, as neither Legalist nor any other creditor were yet “holders of a security interest” or otherwise perfected as of this date. Davis Decl. (**Ex. 1**), ¶ 5.

On October 10, 2023, the IRS perfected its lien on Cyberlux’s \$2,937.49 debts for certain Form 940 (\$321) and Form 941 (\$2,625) taxes, and this lien has second priority as to all other claims, as neither Legalist nor any other creditor were yet “holders of a security interest” or otherwise perfected as of this date. *Id.*

On March 27, 2024, Legalist and Cyberlux entered into the Government Purchase Order Financing Agreement, under which Legalist agreed to advance \$3,000,000 to Cyberlux. Legalist Ans. to Interrogatory B (**Ex. 2**); **Ex. 3** at LEGALIST000021. On April 1, 2024, Legalist perfected this security interest by filing UCC Filing Statements in Nevada, where Cyberlux is incorporated. **Ex. 3** at LEGALIST000017.

On April 30, 2024, as noted, the IRS filed its third and final NFTL, perfecting its lien on \$1,109,629 in liabilities. Davis Decl. (Ex. 1), ¶ 5.

Under the financing agreement, Legalist disbursed the following funds on the following dates:

- 4/9/2024: \$1,800,000.00
- 4/19/2024: \$500,000.00
- 4/30/2024: This is the date the final IRS NFTL was filed.
- 5/2/2024: \$500,000.00
- 6/15/2024: This date is 46 days after the filing of the final NFTL.
- 6/26/2024: \$142,000.00
- 7/5/2024: \$53,000.00
- 7/16/2024: \$2,500,000.00
- 8/2/2024: \$650,000.00
- 8/27/2024: \$535,000.00
- 10/3/2024: \$150,000.00
- 10/3/2024: \$120,000.00
- 6/3/2025: \$2,755,100.10
- 6/9/2025: \$345,000.001

Legalist Ans. to Interrogatory G (Ex. 2).

As shown here, \$2,800,000 of disbursements were made within 45 days of the April 30, 2024, NFTL. As a result, under § 6323(d), Legalist's claim for that \$2,800,000 has priority to the tax liens memorialized in the United States' April 30, 2024, NFTL. Following disbursement of those sums to Legalist, however, the liens memorialized in the April 30, 2024 NFTL, in the amount of \$1,109,629, should be fully paid from the Disputed Funds.

**C. The United States' lien has priority as to all other claims.**

As the facts set forth in section II.c, above, make clear, no other creditor has a claim that rivals those of the United States. As a result, the United States should be fully paid.

V. **CONCLUSION**

For these reasons, the United States requests that \$1,153,457, as of April 13, 2026, plus interest accruing until the date of disbursement, be paid to the United States from the Disputed Funds.

Date: April 15, 2026

Respectfully submitted,

BRETT A. SHUMATE  
Assistant Attorney General

JOSHUA WU  
Deputy Assistant Attorney General, Tax  
Litigation Branch

/s/ William J. Harrington  
WILLIAM J. HARRINGTON  
ELIZABETH PRUITT  
Trial Attorneys, Civil Division  
Tax Litigation Branch  
U.S. Department of Justice  
Post Office Box 227  
Washington, DC 20044  
Tel: (202) 353-1882  
Fax: (202) 514-6866  
William.J.Harrington@usdoj.gov  
Elizabeth.Pruitt@usdoj.gov

-and-

TODD BLANCHE  
Acting Attorney General

/s/ Jonathan H. Hambrick  
JONATHAN H. HAMBRICK  
VSB NO. 37590  
Assistant United States Attorney  
Eastern District of Virginia  
919 E. Main Street, Suite 1900  
Richmond, VA 23219  
Phone: (804) 819-5400  
Fax: (804) 771-2316  
E-mail: [jay.h.hambrick@usdoj.gov](mailto:jay.h.hambrick@usdoj.gov)  
*Counsel to the United States*

**CERTIFICATE OF SERVICE**

I certify that on April 15, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ William J. Harrington  
WILLIAM J. HARRINGTON  
ELIZABETH PRUITT  
Trial Attorneys, Civil Division  
Tax Litigation Branch  
U.S. Department of Justice  
Post Office Box 227  
Washington, DC 20044  
Tel: (202) 353-1882  
Fax: (202) 514-6866  
William.J.Harrington@usdoj.gov  
Elizabeth.Pruitt@usdoj.gov