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., Defendants.	)	Case No. 3:25-cv-00483-JAG

UNITED STATES' MEMORANDUM IN RESPONSE TO OTHER PARTIES' MOTIONS FOR SUMMARY JUDGMENT

The United States of America submits this memorandum in response to the other parties' motions for summary judgment.

I. INTRODUCTION

No party in this lawsuit has contested in their motions for summary judgment that the United States' liens have sufficient priority to be paid from the Disputed Funds.[1] In fact, most parties represent in their motions that the United States should indeed be fully paid, though Cyberlux Corporation incorrectly argues a reduction in interest is warranted. There is no genuine dispute of material fact that the United States' tax liens have sufficient priority to be fully paid, and the United States is entitled to judgment as a matter of law disbursing $1,153,457, plus interest and other statutory additions accruing on that sum from April 13, 2026, through the date of disbursement, from the Disputed Funds.

[1] Unless a term is defined in this memorandum, all defined terms here have the same meaning as in the United States' Memorandum of Law in Support of its Motion for Summary Judgment (ECF 183).

II. ARGUMENT

The United States addresses the motions for summary judgment filed by other parties in turn.

a. Legalist agrees the United States should be fully paid.

The United States and Legalist SPV III, L.P. agree that their claims to the Disputed Funds have priority over the claims of all other parties to this suit and, as a result, this Court may grant summary judgment disbursing funds to both of them without resolving the claims of the other creditors. *See* Legalist Memo in Supp. Mot. Sum Jdmt. (ECF 175), p. 1. For that reason, the difference in priority between the United States and Legalist is not a material dispute.

Should the relative priority between the United States and Legalist become an issue in this suit (if, for example, another large claim is found to have priority to their claims), the United States' and Legalist's claims should be paid in the following order:

Priority	Creditor	Claim Amount
1	USA	$40,882
2	USA	$2,937.49
3	Legalist	$2,800,000
4	USA	$1,106,083.54
5	Legalist	Balance of Legalist's claim

See United States' Memo in Supp. Mot Sum. Jdmt. (ECF 183), p. 9. The basis for this order of priority is set forth in the United States' Memorandum in Support of its Motion for Summary Judgment, ECF 183, at pages 8-11. The United States' first two claims (in the amounts of $40,882 and $2,937, plus interest) should be paid first because they were memorialized in NFTLs filed on August 21, 2017 and October 10, 2023, respectively. Davis Decl., ECF 183-1, ¶ 5. Legalist agrees with this. ECF 175, p. 15.

The United States and Legalist also agree that Legalist is next in priority, but they disagree on the amount. Legalist filed its UCC-1 Financing Statement on April 1, 2024. The United States filed its next NFTL on April 30, 2024. Davis Decl. (ECF 183-1), ¶ 5. As a result, Legalist contends that its full claim ($13,608,702.73) should be paid before the United States' claims memorialized in the April 30, 2024 NFTL ($1,106,083.54). ECF 175, p. 15.

But, while citing to state UCC Article 9 law, Legalist does not grapple with 26 U.S.C. § 6323, which controls here. *Thomas Indus., Inc. v. City of Bristol,* 336 F. Supp. 3d 28, 35 (D. Conn. 2018) ("It is well established that when the determination of lien priority involves a federal tax lien, it is 'federal law [that] determines the rights of priority among competing lienors.'" (quoting *Don King Prods., Inc. v. Thomas*, 945 F.2d 529, 534 (2d Cir. 1991))). Under 26 U.S.C. § 6323, Legalist only has priority over the tax lien to the extent that it has disbursed funds giving rise to its security interest before the 46th day after the IRS files its NFTL. Specifically, under that statute, a tax lien is not valid against a "holder of a security interest" unless a NFTL is filed first. § 6323(a). A "holder of a security interest" is generally defined to include a lender like Legalist so long as the lender "has parted with money or money's worth" giving rise to the secured claim. § 6323(h). Section 6323(d), however, creates a safe harbor, allowing the secured lender to prevail over an NFTL if it disbursed the money "before the 46th day after the date of the tax lien filing….". Read together, these provisions provide that Legalist's secured claim prevails over the NFTL to the extent that disbursements were made before June 15, 2024 (the 46th day after the April 30, 2024, NFTL). As discussed in greater detail in the United States' Memorandum of Law in Support of its Motion for Summary Judgment (ECF 183, p. 11), only $2.8 million had been disbursed by that date. As a result, after payment of the $2.8 million to Legalist, the United States' claim should be paid in full.

b. Cyberlux agrees the United States should be paid, but incorrectly contends a reduction of interest is warranted.

Cyberlux Corporation does not dispute it owes over $1 million in unpaid employment taxes and, remarkably, asks for $2.4 million for itself before paying these lawful debts in full.[2] Cyberlux asks that $250,000 in interest be reduced from the United States claim, asking that United States be paid $899,776.34. Cyberlux's Memo in Supp. Mot. Sum. Jdmt. (ECF 188), p. 16. In support of its request, Cyberlux makes three points relevant to the United States' claims to the Disputed Funds. Each is without merit.

First, Cyberlux asks this Court to use its "equitable authority" to stop the accrual of interest on the United States' claims. *Id.* at 5. This Court should deny that request because it contravenes federal statute. Under 26 U.S.C. §§ 6601 & 6621, interest accrues on underpayment of tax from the due date through the date of payment. Under 26 U.S.C. § 6321, the amount due, "including any interest," is a lien on all the taxpayer's "property and rights to property," including the Disputed Funds. Cyberlux cites to *Sanders v. Armour Fertilizer Works*, 292 U.S. 190, 194 (1934) and *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523 (1967) only for the general proposition that this Court has "equitable discretion" over the Disputed Funds. Cyberlux asks this Court to invoke such discretion to stop the accrual of interest. But neither the Court in *Sanders* nor in *Tashire* capped interest accruing on amounts due. And broad, undefined principles of equity do not nullify the Internal Revenue Code. *See Richardson v. Smith,* 301 F.2d 305, 306 (3d Cir. 1991) ("[T]axation is a game which must be played strictly in accordance with the rules." (quoted in *Ewing v. United States*, 914 F.2d 499, 501 (4th Cir. 1990)).

[2] Cyberlux is in default for failure to file an answer. Its motion should be denied on that ground alone.

Second, Cyberlux questions the United States' right to the Disputed Funds on the grounds that the United States' lien does not arise from Cyberlux's contract with Plaintiff HII Mission Technologies Corp. or from Cyberlux's production of drones. Cyberlux Memo in Supp. Mot. Sum. Jdmt. (ECF 188), p. 11. This is irrelevant. The United States' tax liens attach to all property and rights to property of Cyberlux, whether that would be Cyberlux's real estate, cash, or, as is the case here, accounts receivable. 26 U.S.C. § 6321; *Drye v. United States*, 528 U.S. 49, 56 (1999).

Third, as it did in its Motion to Dismiss (ECF 85), Cyberlux argues that the tax liens are ineffective because they are "blanket liens against Cyberlux's property generally and were not specifically perfected against the HII receivables." Cyberlux Memo. Supp. Mot. Sum. Jdmt. (ECF 188), p. 14. This is incorrect. A Notice of Federal Tax Lien need not identify specific property and, in fact, such notices rarely do. *United States v. Union Cent. Life Ins. Co.*, 368 U.S. 291, 296 (1961) (finding that state statute purporting to require that NFTLs describe specific property "placed obstacles to the enforcement of federal tax liens that Congress had not permitted"); *Shaw v. United States*, 331 F.2d 493, 497 (9th Cir. 1964) ("The notice of lien with respect to the husband's taxes did not, and need not, describe any specific property."); *In re May Reporting Servs., Inc.*, 115 B.R. 652, 656 (Bankr. D.S.D. 1990) ("The lien need not specifically describe any property."). The NFTLs properly perfected the United States' lien on all of Cyberlux's "property and rights to property," including its rights to the Disputed Funds. 26 U.S.C. §§ 6321, 6323.

c. The ARG Group, LLC's interest and Thin Air Gear, LLC's interest do not prevail over the United States' liens.[3]

Neither The ARG Group, LLC ("ARG") nor Thin Air Gear, LLC ("TAG")[4] have demonstrated that they have an interest superior to the United States' interest under 26 U.S.C. §§ 6321 & 6323(a). Furthermore, neither has demonstrated that that it has an "equitable lien" or "constructive trust" under applicable law. As a result, and as a matter of law, the United States' liens have priority over their claims.

As noted above, when federal tax liens are involved, "federal law determines the rights of priority among competing lienors." *Thomas Indus.,* 336 F. Supp. 3d at 35. The validity and priority of an IRS tax lien against other creditors – like ARG and TAG– is determined by 26 U.S.C. §§ 6321 & 6323. Section 6323 provides that tax liens "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." 26 U.S.C. § 6323(a). ARG and TAG contend that their "equitable liens" or "constructive trusts" arose on February 28, 2022 and September 5, 2023, respectively, before the filing of two of the three NFTLs. However, "*[e]ven before a notice of tax lien is filed*, a general tax lien [under § 6321] has

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[3] These parties argue that their claims have priority over all other creditors, but they do not specifically dispute the priority of the United States' tax liens. They claim they were unable to do so because, they allege, the United States failed to serve its discovery on them. This is incorrect. Undersigned counsel certifies that, on February 19, 2026, the United States' disclosures made under Fed. R. Civ. P. 26(a)(1)(A) were served by email on Stephen J. Stine, Esq. by emailing them to stine@stinelaw.com. Furthermore, on March 5, 2026, undersigned counsel served written responses to the single interrogatory and two document requests ordered at ECF 149 by email to stine@stinelaw.com. ECR 149 authorized service by email. In addition, these discovery papers were served on Stephen Neal, Esq. at sneal@dimuro.com, the email address for Mr. Neal that, as of today's date, is set forth on the Court's PACER docket.

[4] These parties have common ownership and are represented by the same counsel. Decl. of majority member Anthony R. Gonzalez (ECF 165-1); Decl. of sole member Anthony R. Gonzalez (ECF 167-1).

priority over all other claims except the claims of secured creditors, judgment lien creditors, purchasers, and mechanic's lienors." *Indus. Bank of Washington v. Techmatics Techs., Inc.*, 763 F. Supp. 629, 636 (D.D.C. 1991) (emphasis added); *United States v. Bond*, 279 F.2d 837, 841 (4th Cir. 1960) (Congress "require[ed] recordation of the federal tax lien to render it valid as against" only the four categories of interests set forth in § 6323(a)).

Here, neither ARG nor TAG have priority because their alleged pre-NFTL "equitable liens" and "constructive trusts" do not fall within any of the four exceptions under § 6323(a), and the tax liens that arose years earlier on the date of the IRS assessments against Cyberlux have priority even though notices of those liens were filed after the dates ARG and TAG say they obtained the "equitable liens" and "constructive trusts." ARG and TAG have not shown – nor have they attempted to show – that they were a "purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor" before the United States filed the NFTLs. 26 U.S.C. § 6323(a). To the contrary, each argues only that it had an "equitable lien" or "constructive trust" before the NFTLs. ECF 167, p. 15; ECF 165, p. 2; *see also* Distributor Partner Agreement, Ex. 1 to ARG's Memo. in Supp. of Mot. Sum. Jdmt. But such "equitable liens" and "constructive trusts" are not one of the four enumerated exceptions that would entitle these creditors to priority under the governing statute, 26 U.S.C. § 6323(a).

Even if an equitable lien or constructive trust could prevail over a federal tax lien under 26 U.S.C. §§ 6321 & 6323 – which they cannot for the reasons set forth above – ARG and TAG have failed to demonstrate that they are entitled to an "equitable lien" or "constructive trust" on the Disputed Funds.

To impose an equitable lien, one must prove there is "(1) a debt, duty or obligation between the parties; (2) specific property or res to which the debt or obligation attaches; and

(3) an intent, express or implied, that the property serve as security for the payment or obligation." *In re Carpenter*, 252 B.R. 905, 910–11 (E.D. Va. 2000); *Penn Lumber Co. v. Wilson*, 26 F.2d 893 (4th Cir. 1928) (imposing an equitable lien requires the creditor to show the parties intended to set aside certain property as security for a particular debt). Here, ARG has not shown that the Distributor Partner Agreement identified "specific property or res to which the debt or obligation attaches," nor has it shown that the parties thereto had an "intent" that any property serve as security. The Distributor Partner Agreement, ECF 167-1, entitles ARG to compensation for services to be rendered. At no point does it identify expected proceeds (like the Disputed Funds) nor purport to establish a lien. *Id.* Similarly, TAG submits a September 5, 2023, two-page invoice for its drone kit bags, ECF 165-1 at Ex. 1 thereto. This is hardly a demonstration of an intent to create an equitable lien in money HII would interplead with this Court over two years later. As a result, neither ARG nor TAG have established an "equitable lien" on the Disputed Funds.

Their allegations of "constructive trust" fare no better. "A constructive trust is an equitable remedy which is created 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). Constructive trusts may arise when one who acquires property does so under false pretenses or inequitable circumstances, like when a representative of a partnership purchases property for his benefit, and not the partnership's. *Leonard v. Counts*, 221 Va. 582, 589, 272 S.E.2d 190, 195 (1980). In such a case, the law may deem the purchaser to hold the property in a constructive trust for the benefit of the partnership. *Id.* (citing *Horne v. Holley*, 167 Va. 234, 188 S.E. 169 (1936)). Here, ARG and TAG characterize commonplace breach of contract claims as "constructive trusts" with a distant hope of establishing a senior lien. Because a constructive trust is not warranted under the law,

and because, even if it were, a constructive trust would not defeat the United States' tax liens, the United States should retain its first priority to the Disputed Funds.

d. Atlantic Waive Holdings and Secure Community concede the United States has priority.

Atlantic Wave Holdings and Secure Community (together "AWH") "asserts it is in 2nd position behind government, and ahead of all others." AWH Memo. Supp. Mot. Sum. Jdmt. (ECF 180), p. 13.

e. The WeShield Parties concede the United States has priority.

Assure Global LLC d/b/a WeShield, Roman Investments PR LLC, MAS USA MGT LLC, and Michael Sinensky (collectively, "the WeShield Parties") acknowledge that the United States "holds federal tax liens predating the WeShield Parties' [UCC-1 Financing Statements] filings" and, as a result, concede that these tax liens have priority to their claims. WeShield Parties' Memo. Supp. Mot. Sum. Jdmt. (ECF 186), p. 2.

f. The Receiver concedes the United States' liens have priority over its fee claims.

Robert Berleth, as Receiver, concedes that the United States has priority over its fee claim and should be paid first. Receiver Memo. Supp. Mot. Sum. Jdmt. (ECF 176), p. 16.

g. Advanced Navigation & Positioning Corporation appears to concede the United States' liens have priority.

Advanced Navigation & Positioning Corporation ("ANPC") does not appear to contest that the United States' claims have priority to its claims. ANPC Memo. Supp. Mot. Sum. Jdmt. (ECF 169), p. 14 (conceding that, provided the United States proves its claims, which it has done, ANPC "does not contest [its] priority to the Disputed Funds").

h. Fairwinds Technologies, LLC appears to concede the United States' liens have priority.

Fairwinds Technologies, LLC does not appear to contest that the United States' claims have priority to its claims. Fairwinds' Mot. Sum. Jdmt. (ECF 177), p. 2 (conceding that, provided that the United States' allegations are true, those allegations would qualify the United States as secured creditor); Fairwinds' Memo. Supp. Mot. Sum. Jdmt. (ECF 178), p. 5 ("Secured creditors take priority over unsecured creditors when creditors seek to have their debts satisfied by the same source of funds.").

III. CONCLUSION

This Court should grant summary judgment in favor of the United states and disburse $1,153,457, plus statutory interst and additions accruing on that sum from April 13, 2026 through the date of disbursement, because there is no genuine dispute of material fact—and because no non-defaulting party appears to contest—that the United States' tax liens have sufficient priority to be fully paid from the Disputed Funds.

Dated: April 22, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 22, 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.

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