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May 20, 2025

VIA ELECTRONIC MAIL
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The Honorable Michael Gomez
129th Judicial District of Harris County, Texas
Harris County Civil Courthouse
201 Caroline St 10th floor
Houston, TX 77002

Re: Cause No. 2024-48085; *Atlantic Wave Holdings, LLC and Secure Community, LLC v. Cyberlux Corporation and Mark D. Schmidt*, Individually; In the 129th Judicial District Court, Harris County, Texas

Dear Judge Gomez:

I write on behalf of Defendants Cyberlux Corporation and Mark D. Schmidt in response to letters submitted by Mr. Walton (on May 15) and Mr. Grady (on May 19) on behalf of Atlantic Wave and Secure Community. Defendants request that the Court schedule a hearing to resolve the issues raised in this letter.

There is no legitimate dispute that Defendants have made and continue to make payments to Plaintiffs pursuant to the parties' settlement agreement. Through Mr. Walton's letter, Plaintiffs concede that the balance outstanding on the judgment over which this Court has jurisdiction is \$912,000, after accounting for prior payments, credits, and offsets. This balance is \$518,551.30 lower than the balance Plaintiffs claim was outstanding as of January 6, 2025. (See Plaintiffs' Application for Turnover After Judgment and For Appointment of Receiver, submitted by Shawn Grady). The substantial payments Defendants have made and continue to make demonstrates that any suggestion by Plaintiffs that Defendants will "hide or dissipate assets" out of the reach of Plaintiffs is untrue. Additionally, considering that Cyberlux is planning to pay monies into the registry of the Virginia court, in an amount in excess of \$1 million, Plaintiffs have no real concern whatsoever.

As this Court is aware, a focal issue of this matter is whether or not certain property stored at Cyberlux's Spring, Texas facility is property of Cyberlux or of the United States Government. Mr. Walton asserts that Cyberlux is to receive more than \$20 million from Huntington Ingalls Industries (HII) "any day now." This claim relates to a recent modification to Cyberlux's government subcontract with HII, under which Cyberlux will be paid ***after delivery to the United***

States Government of all the drones and drone equipment located at Cyberlux's Spring, Texas facility.

Plaintiffs are aware of this requirement. However, although Plaintiffs have represented to this Court and to the Southern District of Texas that they will not take custody of property that belongs to the United States Government, Plaintiffs **actively dispute** that the drone equipment is government property. Defendants removed this action to the Southern District of Texas so that the federal district court could resolve this federal question. However, the federal court declined to exercise jurisdiction.

Defendants respectfully ask that the Court hold a hearing, at which the parties may adduce competent evidence, to address and decide whether the drones and drone equipment (including unassembled component parts) are property of Cyberlux that may be subject to a turnover or receivership order, or property of the United States Government that Plaintiffs concede may not be seized. It is imperative that the Court decide this issue before entering any order requiring turnover or appointing a receiver. If Plaintiffs are permitted to proceed and they seize the drones and drone equipment based on their incorrect claim that the drones and drone equipment are property of Cyberlux, **Cyberlux will face liability in excess of \$20 million**, and this Court will be forced to resolve additional substantial litigation involving Plaintiffs, the U.S. Government, Cyberlux's contractor, and Cyberlux concerning the improper levying of the drones.

Plaintiffs cannot be allowed to transform the underlying judgment in this proceeding (of which \$912,000 is outstanding) into a judgment for \$7,774,000, as Mr. Walton suggests. This proposal not only defies Texas law, but also undercuts the sovereignty of the Virginia courts. Given Plaintiffs concede \$912,000 of the judgment is outstanding, this Court may not appoint a receiver to seize and sell Defendants' assets **beyond what is owed under the judgment**. *Davis v. West*, 317 S.W.3d 301, 309 (Tex. App.—Houston [1st Dist.] 2009, no pet.).

This Court may not award the \$6,017,250 in alleged damages Plaintiffs assert resulted from Cyberlux's **breach of the settlement agreement**. As this Court is aware, the parties' settlement agreement contains an exclusive forum-selection clause that dictates that the settlement agreement "is governed by the laws of the Commonwealth of Virginia . . . [and] [v]enue for any future disputes hereunder . . . shall solely lie in either the Circuit Court of the City of Richmond, Virginia, or the United States [sic] District Court for the Eastern District of Virginia in the Richmond Division." The forum-selection clause prohibits this Court from awarding the relief sought. *In re AIG Ins. Co.*, 148 S.W.3d 109, 118 (Tex. 2004) ("When a trial court denies a motion to enforce a valid, enforceable forum-selection clause that specifies another state or country as the chosen forum, the trial court's final judgment is subject to automatic reversal."). Notwithstanding, upon information and belief, Plaintiffs already have a breach of contract action pending in Virginia.

The same is true regarding Plaintiffs' request to recover \$592,000 in attorneys' fees. Mr. Walton states: "Cyberlux agreed to be 'responsible for the payment of Atlantic Wave's attorneys' fees and costs in any action caused by the breach of this Settlement Agreement.'" Again, the parties dispute whether their respective opposition has breached the settlement agreement; both sides have breach

of contract actions pending in Virginia, the exclusive forum where all such disputes may be brought. Unless and until it is decided that Cyberlux breached the settlement agreement in a Virginia court, Plaintiffs may not recover the stated \$592,000 in attorneys' fees and costs. *In re AIU Ins. Co.*, 148 S.W.3d at 118.

Mr. Walton asserts that a Virginia state court ordered Cyberlux to pay \$9,392.50 to Plaintiffs, and that Cyberlux has failed to pay that amount. ***This request also fails because this Court has authority only to enforce the domesticated judgment and the amounts identified therein.*** Courts are not permitted to step into the shoes of their sister-state courts to enforce sanctions orders issued in unrelated proceedings. Plaintiffs offer no support for this position, certainly because none exists.

This Court may not enforce the Southern District of Texas's award of attorneys' fees and costs at this juncture. The Southern District of Texas's order awarding fees and costs pertains to the second removal of this matter. Of note, Atlantic Wave submitted documentation of its costs and attorneys' fees on Monday, May 19, 2025. The Court directed Cyberlux to respond and object by May 26, 2025. The Court may not enforce the Southern District of Texas's award until the Southern District determines the amount of fees and costs awarded.

The additional claims against Cyberlux cited in Mr. Walton's letter are not relevant to this proceeding. However, even if they were, there is no risk that Cyberlux could not satisfy these liabilities and this judgment. As Mr. Walton identified, the sum to be paid to Cyberlux following delivery of the drones and drone equipment to the United States Government well exceeds the total of the outstanding balance of the judgment plus the unrelated liabilities pp. 3-4 of Mr. Walton's letter identifies. There is no risk that the judgment underlying this proceeding will not be fully satisfied (unless Plaintiffs are permitted to wrongfully seize the drones and drone equipment).

Cyberlux is planning to pay monies into the registry of the Virginia court in excess of \$1.4 million. This amount is sufficient to cover the \$912,000 balance on the domesticated judgment, plus ~\$500,000, which represents nearly the entire amount of attorneys' fees Plaintiffs claim to have incurred – which Cyberlux disputes. Cyberlux will provide documentation of this deposit as soon as it is made.

In sum, Cyberlux respectfully asks that the Court hold a hearing to decide the status of ownership or property interest that the United States Government has in the drones and drone equipment prior to entering any turnover order or order appointing a receiver. Additionally, Cyberlux asks the Court to reject Plaintiffs' remaining claims for recovery, which are unfounded and exceed the balance of the judgment.

Cyberlux appreciates the Court's consideration of its position in this matter.

Sincerely,

Thompson Coburn LLP

By /s/ Alex Pennetti
Alexander J. Pennetti

cc: Counsel to Plaintiffs

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