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11 **UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF NEVADA**

13 In re:

14 CYBERLUX CORPORATION

15 Alleged Debtor

Case No.: 26-50721-hlb
Involuntary Chapter 7

Judge; Hon. Hilary L. Barnes

Hearing Date: August 18, 2026
Hearing Time: 1:30 PM (PDT)

18
19 **OPPOSITION TO MOTION TO CONFIRM INAPPLICABILITY**
20 **OF THE AUTOMATIC STAY OR, IN THE ALTERNATIVE,**
MOTION TO ABSTAIN PURSUANT TO 11 U.S.C. § 305

21 COMES NOW, Bilal Maadarani, (“Mr. Maadarani”), joined by Christopher Spangler, Phillip R.
22 Tucker, and Neill Whiteley (the “Petitioning Creditors”), and by the undersigned counsels, and
23 respectfully files this opposition to the “Interpleader Parties” Motion to Confirm Inapplicability
24 of the Automatic Stay or, in the Alternative, Motion to Abstain Pursuant to 11 U.S.C. § 305 [ECF
25 No. 18] (the “Motion”), and states as follows:

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1 **I. PRELIMINARY STATEMENT**

2 The Motion asks this Court to permit distribution of \$23,736,937.56 derived from Cyberlux
3 Corporation’s contract receivable and held in the registry of the United States District Court for
4 the Eastern District of Virginia. The proposed distribution arises from a settlement negotiated
5 among only a portion of the claimants to the fund. Mr. Maadarani and other wage claimants were
6 not permitted to participate in that settlement, and the Motion does not establish that their claims—
7 or the interests of Cyberlux’s complete creditor body—will be protected if the fund is distributed.

8 The stakes are concrete. In the Texas receivership, Cyberlux’s President and Chief
9 Executive Officer, Mark D. Schmidt, stated under penalty of perjury that Cyberlux “will be unable
10 to meet payroll by the end of March,” which would “directly impact more than 60 families who
11 depend on Cyberlux for their income.” Ex. 2 (Schmidt Decl. ¶ 4.a) (a true and correct copy of
12 Cyberlux’s March 18, 2026 emergency motion and the supporting Schmidt Declaration is attached
13 hereto as Exhibit 2). Ten wage claimants are now before this Court. The Motion does not establish
14 that those employees have been paid or identify a mechanism by which the Virginia settlement
15 will pay them.

16 The district court has already characterized the conduct underlying these claims. At the
17 May 27, 2026 hearing, Judge Gibney likened Cyberlux’s business practices to the cartoon
18 character Wimpy: “What Wimpy would always say, ‘For a hamburger today I will pay you on
19 Tuesday.’ So Wimpy would get the hamburger, but he never had the money on Tuesday. And
20 that is essentially what you want.” Tr. 26:16–20. Asked what becomes of the unpaid counterparty,
21 the court supplied the answer: “isn’t the hamburger salesman just a general creditor?” Tr. 27:6–7.
22 Claims of \$47,172,175.50 are asserted against a fund of \$23.7 million, Mot. at 14–15; the order of
23 distribution therefore determines which creditors are paid at all, and the Bankruptcy Code — not
24 a settlement among a portion of the claimants — supplies that order. 11 U.S.C. §§ 507, 726.

25 Cyberlux’s Answer to Involuntary Petition and All Joinders Thereto [ECF No. 34] (the
26 “Answer”) now denies that Cyberlux is generally not paying its debts as they become due and
27 asserts that every petitioning and joining creditor’s claim is subject to a bona fide dispute. Answer
28 ¶¶ 3–4, 6. Those denials do not erase Cyberlux’s earlier sworn statements concerning its inability

1 to make payroll, near-100% financing, and withheld government orders. Nor does the Answer
2 identify which debts Cyberlux is paying, when the wage claimants were paid, or the factual basis
3 for treating every claim as disputed.

4 The Answer also admits that Cyberlux has more than twelve creditors. Answer ¶ 5. That
5 admission materially undermines reliance on the Virginia settlement as a comprehensive substitute
6 for bankruptcy. The interpleader concerns a single res and excludes creditors who attempted to
7 participate; Cyberlux itself now confirms that its creditor body extends beyond the limited
8 participants in the settlement.

9 At the May 27, 2026 summary-judgment hearing in the Virginia interpleader (a certified
10 copy of the transcript of which is attached hereto as Exhibit 1 and cited as “Tr.”), Senior United
11 States District Judge John A. Gibney, Jr. repeatedly questioned why the dispute was not in
12 bankruptcy. Tr. 35:21–22; 35:25–36:1; 36:20–22. Counsel for Fairwinds Technologies LLC
13 likewise told that court that a receiver could “put it into the bankruptcy court where everybody
14 agrees it should be,” that bankruptcy is “a federal forum that does this every single day,” and that
15 bankruptcy “cuts through” the parties’ priority dispute. Tr. 46:3–6; 47:25–48:1; 51:23–25. Those
16 statements materially undermine the Motion’s assertion that this case serves no valid bankruptcy
17 purpose.

18 The automatic stay is self-executing and applies to acts to obtain possession of or exercise
19 control over property of the estate. 11 U.S.C. § 362(a)(3). Mr. Maadarani does not ask this Court
20 to accept as established Cyberlux’s asserted entitlement to the residual fund. Cyberlux opposes the
21 involuntary petition, but that opposition does not determine whether Cyberlux held a legal or
22 equitable interest in the res on the petition date. The relevant point is narrower: the fund derives
23 from Cyberlux’s subcontract rights; HII allegedly held the receipts with the intent to pay Cyberlux,
24 subject to disputed contractual conditions; Cyberlux asserted a claim to the res before the petition;
25 and no final judgment has extinguished that asserted interest.

26 The Court need not resolve Cyberlux’s ultimate entitlement in order to resolve this Motion.
27 Whatever the eventual extent of the estate’s interest, no portion of the res may be transferred before
28 that interest is adjudicated, and the requested “comfort order” would permit exactly that. As set

1 forth below, the forum in which the Movants propose to complete the remaining determinations is
 2 itself weeks from losing its presiding judge. The disputed funds should remain in the registry,
 3 undisturbed, absent further order of this Court or relief from stay under 11 U.S.C. § 362(d).

4 Dismissal under § 305 is an extraordinary remedy available only when the interests of both
 5 the debtor and the creditor body would be better served. Cyberlux’s request for abstention in its
 6 Answer is relevant, but management’s preference is not dispositive of Cyberlux’s objective
 7 interests or those of all creditors. The Virginia interpleader does not administer all Cyberlux assets
 8 and liabilities and cannot provide the investigation, avoidance, claims-administration, priority, and
 9 collective-distribution mechanisms available in bankruptcy. If temporary deference is warranted,
 10 suspension—not dismissal, and certainly not dismissal “with prejudice”—is the appropriate
 11 alternative.

12 **II. JURISDICTION**

13 This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334. This is a core proceeding
 14 under 28 U.S.C. § 157(b)(2)(A), (B), (G), and (O). Venue is proper under 28 U.S.C. § 1408. The
 15 relevant statutory predicates include 11 U.S.C. §§ 105(a), 303, 305, 362, 501, 502, 507, 541, 542,
 16 543, and 726, and Federal Rules of Bankruptcy Procedure 1003, 1013, and 9014. Pursuant to LR
 17 7008, the Petitioning Creditors and Mr. Maadarani consent to entry of final orders and judgment
 18 by this Court on the Motion and this Opposition.

19 **III. FACTUAL AND PROCEDURAL BACKGROUND**

20 **A. The Unpaid Employees and the Involuntary Petition**

21 On July 17, 2026, Christopher Spangler, Phillip R. Tucker, and Neill Whiteley commenced
 22 this case by filing an involuntary petition under chapter 7 [ECF No. 1]. Their asserted claims
 23 aggregate \$1,425,417.67 for unpaid wages and employment-contract compensation and are alleged
 24 to be noncontingent and not subject to a bona fide dispute as to liability or amount. 11 U.S.C. §
 25 303(b)(1).

26 Seven additional creditors joined the petition under 11 U.S.C. § 303(c) and Federal Rule
 27 of Bankruptcy Procedure 1003(b): Mr. Maadarani [ECF No. 9], Wael Ali [ECF No. 10], Leila Ali
 28 [ECF No. 11], Yaroslav Yakymov [ECF No. 13], Nghiem Ba Hoang [ECF No. 23], Hau Sze Poon

[ECF No. 24], and Don Robert Hall [ECF No. 36]. Mr. Maadarani asserts a claim of not less than \$522,927.63 for unpaid wages, salary, commissions, and expenses. [ECF No. 9]. Ten wage claimants therefore stand before this Court.

On August 13, 2026, Cyberlux filed its Answer [ECF No. 34]. Cyberlux denies that the petitioning and joining creditors are eligible petitioners, denies every asserted claim, denies that it is generally not paying its debts as they become due, and alleges that all claims are subject to a bona fide dispute. Answer ¶¶ 2–4, 6. Cyberlux also asserts bad faith and improper purpose, requests abstention under § 305, and seeks relief under § 303(i). Answer, Affirmative Defenses ¶¶ 4, 8; Prayer ¶ 3.

B. Cyberlux’s Answer Conflicts with Its Earlier Sworn Financial Record

On March 18, 2026, Cyberlux filed an emergency motion in *Atlantic Wave Holdings, LLC v. Cyberlux Corp.*, No. 2024-48085 (129th Jud. Dist. Ct., Harris County, Texas), representing that it had been unable to obtain financing, had experienced a steep decline in share value, and would soon be unable to make payroll. Mr. Schmidt stated under penalty of perjury that Cyberlux would be unable to meet payroll by the end of March; that more than 60 families depended on Cyberlux for income; that Cyberlux could access only “payday loan”-type financing at rates approaching 100%; and that an \$8.8 million U.S. CECOM order was being withheld until Cyberlux could demonstrate financial stability. Ex. 2 (Schmidt Decl. ¶¶ 4.a, 4.b, 4.e).

The Answer’s blanket denial of general nonpayment is in substantial tension with those earlier sworn representations. The March declaration is not merely a creditor’s characterization; it is Cyberlux’s own evidence of an imminent inability to pay payroll and severe financing distress. The Answer does not explain what changed after March, identify financing that cured the stated crisis, allege that the affected payroll was made, or provide facts showing that Cyberlux is now paying its debts as they become due. Nor was the point disputed in open court: when Judge Gibney observed that Cyberlux “couldn’t afford to buy Mr. Robinson a new scarf,” counsel for Fairwinds answered, “I believe that is correct. Make no mistake about it.” Tr. 46:14–17.

HII deposited the interpleaded funds on March 6, 2026. Mr. Schmidt executed his declaration twelve days later. The Virginia interpleader was therefore pending, and the fund was

1 already in the federal registry, when Cyberlux stated that it could not meet payroll. That
 2 chronology is evidence that the interpleader alone did not protect employees or comprehensively
 3 remedy Cyberlux's financial distress.

4 The Answer also denies every petitioning and joining creditor's claim in a single
 5 categorical formulation. Answer ¶¶ 3–4, 6. It identifies no claim-specific factual or legal basis for
 6 those disputes. The Court need not resolve petition eligibility on this Motion, but the blanket denial
 7 does not establish that each claim is subject to a bona fide dispute and does not support releasing
 8 the finite fund before the petition and claims can be adjudicated.

9 **C. The Contractual Origin and Unresolved Status of the Interpleaded Funds**

10 The res consists of funds HII Mission Technologies Corp. received from the government
 11 in connection with Cyberlux's subcontract performance and allegedly held with the intent to pay
 12 Cyberlux, subject to disputed contractual conditions and procedures. Mot. at 6. On March 6, 2026,
 13 HII deposited \$23,736,937.56 into the registry of the Eastern District of Virginia in *HII Mission*
 14 *Technologies Corp. v. Cyberlux Corp., et al.*, No. 3:25-cv-483 (E.D. Va.). Mot. at 7. The
 15 contractual source of the fund does not establish Cyberlux's ultimate entitlement, but it prevents
 16 the res from being treated as indisputably unrelated to Cyberlux's property rights.

17 Before the involuntary petition, Cyberlux asserted an interest in the res. Its counsel told
 18 Judge Gibney that Cyberlux was the "number one person who should take from the res" and that,
 19 after payment of Legalist's secured interest, "the rest of the funds should come back to Cyberlux."
 20 Tr. 22:3–5; 23:13–14. Mr. Maadarani does not adopt that proposed allocation and does not contend
 21 that Cyberlux's advocacy proves ownership. Those statements show only that a genuine ownership
 22 dispute existed and that the fund cannot be deemed entirely non-estate property without
 23 adjudication.

24 Cyberlux's opposition to the involuntary petition does not negate or waive whatever
 25 contract or property rights it held on the petition date. Whether Cyberlux has an interest in the res
 26 and whether an order for relief should be entered over its opposition are distinct questions. The
 27 summary-judgment hearing did not finally resolve the first question. The district court questioned
 28 whether asserted interests were secured, expressed concern regarding undisclosed or unperfected

liens, acknowledged that claims remained to be resolved, and did not issue a final summary-judgment ruling. Tr. 22:16–18; 24:10–11; 58:12–15.

D. The Answer Confirms That the Virginia Settlement Does Not Encompass the Full Creditor Body

Cyberlux admits that it has more than twelve creditors. Answer ¶ 5. The admission is significant because § 305 requires consideration of creditors as a body, not merely the claimants who remained in the Virginia interpleader and negotiated the settlement.

Mr. Maadarani moved to intervene in the Virginia action on April 9, 2026. The district court denied intervention as untimely on April 20, 2026, rather than adjudicating the merits of his wage claim. Mot. at 8. The court similarly directed that materials submitted by Tucker and Whiteley be docketed to preserve and complete the record but ordered that they not be added as interpleader defendants. *Id.*

The remaining interpleader participants reached a settlement on June 24, 2026 and moved for distribution. Mot. at 9. The involuntary petition followed on July 17, 2026. The timing does not, standing alone, establish bad faith. It is consistent with an effort by excluded creditors to preserve a finite fund before distribution under a settlement to which they were not parties.

E. The Gap Period

On July 20, 2026, this Court denied the petitioning creditors’ motion for appointment of an interim trustee under 11 U.S.C. § 303(g) [ECF Nos. 4, 7]. Cyberlux’s incumbent management therefore retains the authority provided by § 303(f) during the gap period. The stay is presently the principal statutory protection against transfer or dissipation of any estate interest in the registry fund before adjudication of the petition.

IV. ARGUMENT AND AUTHORITIES

A. The Stay Applies to Distribution of Any Portion of the Fund Necessary to Protect an Interest Cyberlux May Hold

The automatic stay arose by operation of law upon filing of the petition. It is self-executing and “sweeps broadly.” *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081–82 (9th Cir. 2000) (en banc). The stay protects the debtor and creditors as a class by preventing

1 unilateral collection and is designed to effect an immediate freeze of the *status quo*. *Hillis Motors,*
2 *Inc. v. Hawaii Automobile Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993); *Chugach Timber*
3 *Corp. v. Northern Stevedoring & Handling Corp. (In re Chugach Forest Products, Inc.)*, 23 F.3d
4 241, 243 (9th Cir. 1994).

5 Section 541(a)(1) includes “all legal or equitable interests of the debtor in property as of
6 the commencement of the case.” Congress intended that definition to be broad. *United States v.*
7 *Whiting Pools, Inc.*, 462 U.S. 198, 204 (1983). Section 541 does not create ownership where none
8 existed, and Mr. Maadarani does not ask this Court to decide final title on the present record. But
9 the res arose from Cyberlux’s subcontract, HII allegedly intended to pay Cyberlux subject to
10 disputed conditions, Cyberlux asserted entitlement before the petition, and no final ruling
11 eliminated that assertion. Those circumstances establish a substantial unresolved question whether
12 Cyberlux held a legal, equitable, contingent, or disputed interest potentially protected by §§ 541(a)
13 and 362(a)(3). See, *Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi)*, 764 F.3d 1168 (9th Cir.
14 2014), see also, *In re Bialac*, 712 F. 2d 426, 431-32 (9th Cir. 1983)(stating that the term “property”
15 has been construed most generously and an interest is not outside its reach because it is novel or
16 contingent or enjoyment must be postponed).

17 Cyberlux’s ultimate entitlement is not the question presently before this Court, and
18 Cyberlux’s opposition to the involuntary petition does not answer it. The immediate question is
19 whether the res may be distributed before the extent of any estate interest is determined. Section
20 362(a)(3) stays “any act to obtain possession of property of the estate or of property from the estate
21 or to exercise control over property of the estate.” Transferring the disputed res risks eliminating
22 whatever interest the estate ultimately proves before that interest is adjudicated.

23 Multi-party litigation must be disaggregated when determining the stay’s scope. *Parker v.*
24 *Bain (In re Parker)*, 68 F.3d 1131, 1137 (9th Cir. 1995). Properly disaggregated, the Virginia
25 proceeding involves distinct acts: adjudicating contract rights, determining lien validity and
26 priority, calculating interest, approving a settlement, enforcing releases, and distributing the res.
27 Disaggregated, every claim that remains is a creditor’s demand to be paid from the debtor’s fund,
28

1 and the act that matters here — transfer of the res — is an act “to obtain possession of property of
2 the estate . . . or to exercise control over property of the estate” within the plain text of § 362(a)(3).

3 Even if certain aspects of the Virginia proceeding could continue without offending the
4 stay, it would not follow that the registry may distribute the disputed res. The Court should deny
5 the requested blanket comfort order and preserve the fund until Cyberlux’s interest and the rights
6 of any estate representative are determined.

7 The Movants’ reliance on *Liberty Mutual Insurance Co. v. Official Unsecured Creditors’*
8 *Committee of Spaulding Composites Co. (In re Spaulding Composites Co.)*, 207 B.R. 899 (9th Cir.
9 BAP 1997), does not support immediate distribution. *Spaulding* permitted litigation involving
10 independent non-debtor insurance rights because the action would not affect the debtor’s estate or
11 creditors. *Id.* at 907–08. Here, the fund derives from Cyberlux’s subcontract rights, Cyberlux
12 asserted entitlement before the petition, and ownership remains unresolved. Distribution may
13 therefore affect the estate and creditors excluded from the settlement, regardless of Cyberlux
14 management’s opposition to the involuntary case.

15 *Rett White Motor Sales Co. v. Wells Fargo Bank*, 99 B.R. 12, 14–15 (N.D. Cal. 1989),
16 likewise supports distinguishing adjudication from distribution: an interpleader court may
17 determine competing interests, while the debtor’s share may be distributed to the bankruptcy estate
18 or its representative. Disputed competing claims do not authorize transfer of the debtor’s possible
19 share before the bankruptcy court has protected the estate.

20 If the Movants seek immediate distribution notwithstanding the unresolved estate interest,
21 the proper procedure is a motion under § 362(d), supported by evidence identifying each claimant,
22 the basis and priority of each interest, the proposed allocation, the portion claimed by Cyberlux,
23 and any adequate protection offered to the estate. The present Motion does not supply that claim-
24 specific analysis.

25 Any order entered on the Motion should, at a minimum, direct that:

- 26 a) no disputed portion of the fund be distributed without further order of this Court;
27 b) any amount finally determined to belong to Cyberlux be transferred only to a
28 trustee or another authorized estate representative after entry of an order for relief;

- c) any unresolved allocation remain in the Virginia registry pending further order of this Court;
- d) no settlement release impair estate causes of action or the rights of nonparties; and
- e) all avoidance, subordination, claim-objection, and turnover rights remain preserved.

This approach respects the Virginia court's work while avoiding a potentially void transfer. See *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992); *40235 Washington Street Corp. v. Lusardi*, 329 F.3d 1076, 1080 (9th Cir. 2003).

B. Cyberlux's Answer Does Not Establish That § 305 Abstention Better Serves Cyberlux and All Creditors

Section 305(a)(1) permits dismissal or suspension only if "the interests of creditors and the debtor would be better served." The standard is conjunctive. Abstention in a properly filed case is an extraordinary remedy, and dismissal is appropriate only when both the debtor and creditors would affirmatively be better served. *Eastman v. Eastman (In re Eastman)*, 188 B.R. 621, 624–25 (9th Cir. BAP 1995). Because appellate review is restricted, dismissal under § 305 must remain narrow. *Wechsler v. Macke International Trade, Inc. (In re Macke International Trade, Inc.)*, 370 B.R. 236, 247 (9th Cir. BAP 2007).

Cyberlux asserts in its Answer that this Court should abstain. Answer, Affirmative Defense ¶ 8. The Answer, however, states only the conclusion; it does not explain how abstention better serves Cyberlux and every creditor, identify a comprehensive alternative insolvency proceeding, or reconcile abstention with Cyberlux's earlier sworn financial record.

Cyberlux's opposition is relevant, but management's preference does not by itself establish that dismissal objectively better serves Cyberlux under § 305. Cyberlux's own sworn record describes an enterprise facing an inability to meet payroll, inability to obtain ordinary financing, and inability to fulfill substantial customer orders because of financial instability. Mr. Maadarani does not purport to decide whether continued operations, sale, or liquidation is preferable. An independent fiduciary should evaluate those alternatives, investigate Cyberlux's financial affairs, and determine how value can be preserved for all creditors.

1 The Answer's admission that Cyberlux has more than twelve creditors reinforces the
 2 deficiency in the proposed alternative. Answer ¶ 5. The Virginia settlement includes only its
 3 participants. It does not adjudicate the excluded wage claims, provide notice and a bar date for all
 4 creditors, apply the Bankruptcy Code's priority structure, or preserve estate causes of action for a
 5 fiduciary accountable to the complete creditor body.

6 The paradigm for § 305 dismissal is an out-of-court arrangement supported by the debtor
 7 and substantially all creditors, without prejudice to creditor rights, that is disrupted by a few
 8 recalcitrant creditors seeking leverage. *Macke*, 370 B.R. at 247. This case is materially different.
 9 The alternative is contested federal litigation over one asset; the settlement excludes creditors who
 10 attempted to participate; and the Answer confirms that Cyberlux has a creditor body broader than
 11 the parties to that settlement.

12 The factors identified in *In re Orchards Village Investments, LLC*, 405 B.R. 341, 351
 13 (Bankr. D. Or. 2009), weigh against dismissal.

14 (1) **Economy and Efficiency**

15 The Virginia action has developed a substantial record, but no final summary-judgment
 16 ruling has resolved the competing claims. Bankruptcy supplies a single claims-allowance and
 17 distribution framework, including rules governing secured status, unmatured interest, wage
 18 priorities, and pro rata distribution. See 11 U.S.C. §§ 502(b)(2), 506, 507, and 726. The existing
 19 Virginia record may be used without allowing distribution before estate protections are addressed.

20 (2) **Availability of Another Forum Protecting All Parties**

21 The Virginia forum did not permit Mr. Maadarani, Tucker, or Whiteley to become
 22 interpleader defendants. Whatever the procedural basis, the alternative forum cannot presently
 23 adjudicate or protect their claims within the proposed settlement. Cyberlux's admission that it has
 24 more than twelve creditors further demonstrates that the Virginia participants do not necessarily
 25 represent the full creditor body.

26 (3) **Need for Bankruptcy Proceedings to Reach a Just and Equitable Solution**

27 Bankruptcy provides tools the interpleader does not: appointment of an independent
 28 trustee; investigation of financial affairs and insider transactions; avoidance and recovery powers;

claims filing, objection, classification, and priority; equitable subordination; administration of assets beyond the registry fund; and preservation or disposition of a going concern.

Judge Gibney's comments and Fairwinds' prior advocacy reinforce that conclusion. The Virginia court repeatedly questioned why the dispute was not in bankruptcy, and Fairwinds' counsel described bankruptcy as the federal forum that routinely resolves such priority disputes. Tr. 35:21–22; 36:20–22; 46:3–10; 47:25–48:1; 51:23–25.

Deference also confronts a practical limitation the Motion does not address. Judge Gibney informed the parties — twice — that he is “planning on retiring in September.” Tr. 8:20–21; 57:2–3. The alternative forum is therefore weeks from losing the judge most familiar with its record, with summary judgment undecided and claims remaining “to be resolved.” Tr. 58:12–15. Reassignment of a twenty-claimant priority contest to a new district judge who must master it from the beginning is not economy or efficiency; it is the additional cost and delay the Movants profess to avoid.

(4) **Alternative Means of Equitable Distribution**

Equality of distribution is a central bankruptcy policy. *Begier v. Internal Revenue Service*, 496 U.S. 53, 58 (1990). A settlement among participating claimants cannot establish equitable distribution for the complete creditor body, particularly where the fund is allegedly insufficient to pay all asserted claims. The Bankruptcy Code supplies wage priorities under § 507(a)(4)–(5), gap-period treatment under §§ 502(f) and 507(a)(3), secured-claim treatment under §§ 502 and 506, and pro rata distribution under § 726.

(5) **Less Expensive Out-of-Court Arrangement**

The proposed settlement is not an out-of-court workout involving Cyberlux and the complete creditor body. It is a settlement within contested litigation reached after wage claimants were denied participation. Neither the Motion nor Cyberlux's Answer demonstrates that the agreement better serves all interests.

(6) **Advancement of a Nonbankruptcy Insolvency Proceeding**

The Virginia interpleader is not a comprehensive insolvency proceeding. It determines claims to a particular res; it does not administer Cyberlux's estate. No final priority adjudication or distribution order has been entered, and the settlement does not bind absent creditors.

(7) **Purpose of the Bankruptcy Filing**

A central purpose of involuntary bankruptcy is to prevent depletion of assets and unequal treatment of similarly situated creditors. *Marciano v. Chapnick (In re Marciano)*, 708 F.3d 1123, 1127–28 (9th Cir. 2013). The petition was filed after wage claimants were denied participation in Virginia and after the remaining parties sought distribution. That sequence supports a legitimate purpose: preserving a finite fund for collective administration. Cyberlux's conclusory bad-faith defense does not, without supporting facts, establish otherwise.

C. Cyberlux's Current Denials and Prior Sworn Statement Require Adjudication, Not Immediate Distribution

Cyberlux's Answer denies general nonpayment and categorically disputes every petitioning and joining creditor's claim. Answer ¶¶ 3–4, 6. Those denials create issues for adjudication under § 303; they do not resolve them. They also do not justify distributing the principal disputed fund before the Court can assess credibility, claim-specific disputes, payment history, and Cyberlux's current financial condition.

Cyberlux's March sworn representations are materially more specific than the Answer's blanket denials. Cyberlux previously identified an imminent payroll failure, more than 60 affected families, near-100% financing, inability to fulfill rated orders, and a withheld \$8.8 million government order. The Answer offers no corresponding facts establishing that those conditions were cured.

The Court should therefore avoid treating the Answer's legal conclusions as proof that Cyberlux is generally paying its debts or that every wage claim is disputed. At minimum, the tension between the two records supports maintaining the status quo until the petition is adjudicated.

D. Fairwinds Is Judicially Estopped from Asserting That This Case Serves No Bankruptcy Purpose

At the May 27 hearing, counsel for Fairwinds, Mark A. Mintz, Esq. — the same attorney who signed the Motion now before this Court and appears pro hac vice to prosecute it [ECF Nos. 16, 25] — proposed appointment of a federal receiver with authority to operate Cyberlux and place it into bankruptcy, stating that the receiver could “put it into the bankruptcy court where everybody agrees it should be.” Tr. 45:21–25; 46:3–6.

Counsel further stated that bankruptcy supplies “a federal system” for priority disputes, is “a federal forum that does this every single day,” and would “cut[] through” the unsecured-creditor issues. Tr. 47:17–18; 47:25–48:1; 51:23–52:1. Counsel explained that the absence of an involuntary petition reflected the risks imposed on petitioning creditors, not the absence of a bankruptcy purpose. Tr. 45:8–18.

Judicial estoppel “precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position,” and protects “against a litigant playing fast and loose with the courts.” *Hamilton v. State Farm Fire & Casualty Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (citing *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990)). Each consideration identified in *New Hampshire v. Maine*, 532 U.S. 742, 750–51 (2001), is present. The positions are clearly inconsistent: “put it into the bankruptcy court where everybody agrees it should be” cannot be reconciled with a motion asserting that bankruptcy serves no valid purpose. The district court accepted the earlier position — as Fairwinds’ counsel himself announced: “Your Honor has expressed that it should be there.” Tr. 46:10. And the advantage sought is concrete: in bankruptcy, Fairwinds — an unsecured claimant asserting a \$2,348,542 teaming-fee claim [ECF No. 1, Attach. A] — stands behind the wage priorities of 11 U.S.C. § 507(a)(4)–(5) and takes no post-petition interest, 11 U.S.C. § 502(b)(2); under the settlement negotiated after the wage claimants were excluded, it stands to take more. Fairwinds is judicially estopped, and the Motion should be denied as to Fairwinds on that ground alone. The client is the same; the lawyer is the same; the case is the same. Mr. Mintz told Judge Gibney that this case belonged in bankruptcy, and Mr. Mintz signed the Motion telling this Court that it does not.

As to the remaining Movants, the Court need not determine that every element of judicial estoppel is satisfied. Fairwinds may contend that it advocated a receiver-authorized filing rather than this involuntary petition, or that the Virginia court did not formally adopt its position. Even if those distinctions were credited, the prior advocacy remains fatal to the Motion's credibility concerning creditor interests, the adequacy of the alternative forum, and the legitimacy of this case's purpose. The Movants told the district court that this case belonged in bankruptcy. It is here. They should be held to their word.

E. If Deference to Virginia Is Appropriate, Suspension and Preservation—not Dismissal—Are the Proper Alternatives

Section 305(a) authorizes suspension as well as dismissal. In *In re EB Holdings II, Inc.*, 589 B.R. 704, 727–28 (Bankr. D. Nev. 2017), this District suspended an involuntary case while prepetition litigation resolved underlying nonbankruptcy disputes rather than extinguishing the bankruptcy proceeding.

If the Court concludes that any temporary deference to the Virginia litigation is nonetheless warranted, suspension would preserve the bankruptcy forum and the rights of excluded creditors while avoiding inconsistent rulings. The Court could suspend further adjudication of the involuntary petition for a defined period, require status reports, and retain jurisdiction to protect the fund and determine whether an order for relief remains necessary.

Any suspension should be conditioned on preservation of the res. No disputed funds should be distributed absent further order of this Court or relief under § 362(d). Any amount determined to belong to Cyberlux should remain protected for transfer to a trustee or other authorized estate representative if an order for relief is entered. All avoidance, subordination, turnover, and claim-objection rights should remain expressly reserved.

F. Dismissal “With Prejudice” Is Unsupported

The Motion requests dismissal “with prejudice” under § 305(a)(1), but does not identify the statutory basis for a prospective filing bar, the proposed duration, the persons or claims it would bind, or the findings necessary to impose it. Section 305 authorizes dismissal or suspension; it does not automatically create a bar against future bankruptcy relief.

1 The Motion does not establish bad faith sufficient to support extraordinary prospective
 2 relief. Cyberlux's Answer alleges bad faith and improper purpose but pleads no supporting facts.
 3 Answer, Affirmative Defense ¶ 4. Filing after exclusion from the Virginia interpleader and shortly
 4 before distribution does not itself demonstrate bad faith where creditors seek a collective remedy
 5 unavailable to them in the interpleader. Nor do the Motion or Answer distinguish § 305's best-
 6 interests inquiry from the separate requirements governing relief under § 303(i).

7 If the Court dismisses under § 305, the order should be without prejudice, should make
 8 clear that it does not adjudicate the validity or priority of any creditor's claim, and should not
 9 impair future relief based on changed circumstances.

10 **G. The Orderly Path Forward**

11 The Court should deny the Motion, preserve the status quo, and confirm that the automatic
 12 stay prevents distribution of any portion of the interpleaded funds necessary to protect a legal or
 13 equitable interest Cyberlux may hold pending adjudication. The Court should then proceed
 14 promptly to adjudication of the involuntary petition. See Fed. R. Bankr. P. 1013(a).

15 Upon entry of an order for relief and an appropriate determination of the estate's interest,
 16 a trustee may seek turnover or transfer of property determined to belong to the estate under 11
 17 U.S.C. §§ 542, 543, and 105(a). The trustee and this Court can then determine claims and priorities
 18 under §§ 502, 506, 507, and 726.

19 If a temporary pause is necessary, the Court should suspend rather than dismiss this case,
 20 preserve the disputed res, retain jurisdiction, and require periodic status reports.

21 **PRAYER**

22 WHEREFORE, the petitioning creditors and Mr. Maadarani respectfully request that the
 23 Court:

- 24 1. Deny the Motion to the extent it seeks a blanket determination that the automatic
 25 stay does not apply to the interpleaded funds or their distribution;
- 26 2. Confirm that 11 U.S.C. § 362(a) applies to any act to obtain, distribute, or exercise
 27 control over any portion of the interpleaded funds necessary to protect a legal or equitable interest
 28 Cyberlux may hold pending adjudication;

1 3. Determine that no disputed portion of the interpleaded funds may be distributed
2 absent further order of this Court or relief under 11 U.S.C. § 362(d);

3 4. Deny dismissal under 11 U.S.C. § 305(a)(1), including the unsupported request for
4 dismissal “with prejudice”;

5 5. Proceed promptly to adjudication of the involuntary petition under 11 U.S.C. §
6 303(h) and Federal Rule of Bankruptcy Procedure 1013;

7 6. Upon entry of an order for relief and an appropriate determination of the estate’s
8 interest, authorize the trustee to seek turnover or transfer of property determined to belong to the
9 estate from the registry of the United States District Court for the Eastern District of Virginia;

10 7. If temporary deference to the Virginia litigation is warranted, suspend rather than
11 dismiss this case for a defined period, require periodic status reports, and retain jurisdiction over
12 the fund and the involuntary petition;

13 8. Direct that any amount finally determined to belong to Cyberlux or the estate be
14 paid only to a trustee or another estate representative authorized by this Court, if an order for relief
15 has been entered;

16 9. Preserve all rights concerning avoidance, turnover, equitable subordination, claim
17 objections, statutory priority, and recovery of estate property;

18 10. If dismissal is ordered, provide that dismissal is without prejudice and does not
19 adjudicate the validity, priority, or enforceability of any creditor’s claim or impose a prospective
20 filing bar; and

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5 11. Grant such other and further relief as the Court deems just and proper.

6 DATED: August 14, 2026

Respectfully Submitted.

7 SAXE LAW PLLC

8 /s/ Nathaniel E. Saxe

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20 Attorney for Creditor Bilal Maadarani

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of August a true copy of the foregoing was filed with the Clerk of the Court via the CM/ECF system which will send electronic notification to all counsel of record.



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