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Attorneys for Plaintiff, Mark Gill

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE**

MARK GILL,	)	CASE NO.: CVME2400111
	)	
Plaintiff,	)	COMPLAINT FOR DAMAGES FOR:
	)	
vs.	)	1. FAILURE TO PAY WAGES AT
	)	SEPARATION;
SKORPIOS TECHNOLOGIES, INC., and	)	2. WAITING TIME PENALTIES (CA.
DOES 1 through 30,	)	LABOR CODE §203);
	)	3. PRIVATE ATTORNEY GENERAL
Defendants.	)	ACT
	)	
	)	[JURY TRIAL REQUESTED]

Plaintiff, Mark Gill, alleges as follows:

JURISDICTION, VENUE AND PARTIES

1. Plaintiff, Mark Gill (herein and after referred to as PLAINTIFF) is and at all times relevant to this complaint was a California resident, residing in Riverside County, California and formally was an employee of Defendant Skorprios Technologies, Inc.

2. Defendant Skorprios Technologies, Inc. (herein and after referred to as SKORPIOS) holds itself out to be a California Corporation doing business in and throughout the state of

1 California with its principal office located at the time of Plaintiff's employment in Riverside
2 County California.

3 3. The true names and capacities of the defendants named herein as Does 1 through
4 30, inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF,
5 who therefore sues such defendants by fictitious names pursuant to Code of Civil Procedure § 474.

6 4. PLAINTIFF is informed and believes, and thereon alleges, that each of the
7 fictitiously named defendants is responsible in the manner set forth herein, or some other manner,
8 for the occurrences alleged herein, and that the damages as alleged herein were proximately caused
9 by their conduct.

10 5. PLAINTIFF is informed and believes, and thereon alleges, that each of the
11 fictitiously named defendants is a California resident. PLAINTIFF will amend this complaint to
12 show the true names and capacities of each of the fictitiously named defendants when such names
13 and capacities have been determined. PLAINTIFF, therefore, designates such defendants as
14 DOES 1 – 30, inclusive, and sues them under those fictitious names.

15 6. To the extent that such corporate entities are responsible for all acts of their
16 employees, agents, representatives, and principals as all alleged actions were done within the
17 course and scope of their employment.

18 7. To the extent that such DOE defendants are individuals, PLAINTIFF sues them in
19 that capacity and alleges that they took the actions for the benefit of themselves. PLAINTIFF will
20 amend this complaint to state the manner in which each fictitious defendant is so responsible and
21 will ask leave of Court to amend this complaint to show their respective true names and capacities
22 when ascertained.

23 8. PLAINTIFF alleges that each and every DEFENDANT, including all
24 DEFENDANTS designated as DOE were responsible directly or indirectly responsible for the
25 events referred to therein and, in some manner, caused injuries to him as hereinafter alleged.

26 9. PLAINTIFFF alleges that each DEFENDANT at all times relevant to the complaint
27 acted as authorized agents, representatives, and/or employees of the other DEFENDANTS and are
28 therefore responsible for the harms alleged herein.

10. In violating state and federal laws, and acting contrary to fundamental public policies set forth therein, DEFENDANT and each of them did so with an intent to cause PLAINTIFF substantial emotional harm and/or with a complete reckless disregard for PLAINTIFF'S right so as to justify punitive damages pursuant to California Civil Code §3294.

11. PLAINTIFF further shall seek to recover reasonable attorney fees pursuant to any and all applicable laws and/or regulations.

EXHAUSTION

12. On or about March 29, 2024, PLAINTIFF did submit to the Labor and Workforce Development Agency (LWDA) a claim for damages pursuant to California's private attorney general act, Labor Code Section 2633 at sec. As of sixty-five days after the mailing of the claim to the LWDA, PLAINTIFF has not been advised that the LWDA intends to pursue the claim. As such, PLAINTIFF brings these claims on behalf of himself, and all similarly situated employees and former employees of DEFENDANTS who were denied their wages at separation, pursuant to Ca. Labor Code §2633;

BACKGROUND

13. PLAINTIFF previously worked for SKORPIOS from March 6, 2023, through his indefinite furlough which occurred on July 31, 2023.

14. During Plaintiff's employment with SKORPIOS before he was placed on an "indefinite furlough" PLAINTIFF had accrued, pursuant to SKORPIOS' policies and procedures, .06 per hour worked. As of July 31, 2023, PLAINTIFF had accrued not used a total of at least fifty hours' worth of vacation.

15. At the time of the indefinite furlough, PLAINTIFF was not paid any other vacation that was accrued but unused.

16. As of July 31, 2024, for a period of no less than six weeks, PLAINTIFF was unemployed, receiving no wages whatsoever and performing no work for SKORPIOS.

17. At the time of the separation of PLAINTIFF'S employment on July 31, 2023, he was not paid the wages he was owed pursuant to California Labor Code §227.3.

1 18. As of the preparation of this complaint, PLAINTIFF has not received wages and
2 did not receive those wages for a period of no less than thirty (30) days following the separation
3 of his employment on July 31, 2023.

4 19. As a direct and proximate result of the failure to pay those vacation wages,
5 PLAINTIFF was injured in that he was denied wages that should have been paid to him at the time
6 of separation.

7 20. PLAINTIFF alleges that there were numerous other employees placed on
8 “indefinite furloughs” who remained out of work for more than six months without receiving any
9 of their vacation wages or any penalties pursuant to California Labor Code §203, failure to pay all
10 wages at separation.

11 21. PLAINTIFF further has submitted a claim to the LWDA and shall seek recovery
12 on behalf of himself and the other similarly situated employees who were improperly denied their
13 wages at separation pursuant to California Labor Code §203.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY ALL WAGES AT SEPARATION**

16 **(AGAINST ALL DEFENDANTS)**

17 22. PLAINTIFF incorporates by reference paragraphs 1 through 21 above, as though
18 fully set forth herein.

19 23. On July 31, 2023, PLAINTIFF was discharged as defined under Labor Code
20 §227.3, more specifically as stated by the Division of Labor Standard and Enforcement.

21 24. On July 31, 2023, PLAINTIFF’s employment was terminated with no guarantee of
22 any return.

23 26. PLAINTIFF did not return to work within the same pay period of his separation
24 date of July 31, 2023.

25 27. At the time of the separation, PLAINTIFF was entitled to no less than fifty hours
26 of accrued but unused vacation wages.

27 28. At the time of separation of PLAINTIFF’S employment on July 31, 2023,
28 PLAINTIFF had accrued at least fifty hours of vacation at a rate of \$32.00 per hour.

1 29. As a direct and proximate result of SKORPIOS' failure to pay those wages,
2 PLAINTIFF was deprived at separation, in violation of California Labor Code §227.3, all wages
3 due and owing including his vacation wages in the amount of \$1,600.00.

4 30. In having to bring forward this action, PLAINTIFF has retained counsel and shall
5 seek to recover all reasonable attorney fees and costs pursuant to California Labor Code §1192,
6 1194, et. seq.

7 **SECOND CAUSE OF ACTION**

8 **WAITING TIME PENALTIES (CA. LABOR CODE §203)**

9 **(AGAINST ALL DEFENDANTS)**

10 31. PLAINTIFF incorporates herein by reference paragraphs 1 through 21, above as
11 though fully set forth herein below.

12 32. On July 31, 2023, PLAINTIFF was separated from his employment for an
13 indefinite period of time.

14 33. At the time of separation of PLAINTIFF's employment, PLAINTIFF was owed
15 vacation wages in an amount equal to or greater than \$1,600.00.

16 34. SKORPIOS knew that PLAINTIFF'S employment was being separated for an
17 indefinite period of time and, therefore, knew or should have known that PLAINTIFF was owed
18 all wages including any vacation wages at that time.

19 35. SKORPIOS, therefore, with the necessary malice withheld wages due and owing
20 to PLAINTIFF at the separation of his employment in violation of California Labor Code §203.

21 36. For a period of no less than thirty (30) days, PLAINTIFF was not paid the wages
22 due and owing and as such, PLAINTIFF seeks by way of this cause of action, waiting time
23 penalties in the amount equal to eight hours per day up to a total of 240 hours pursuant to California
24 Labor Code §203.

25 37. PLAINTIFF shall, therefore, seek pursuant to this case of action, waiting time
26 penalties equal to \$7,680.00.

1 38. In bringing this cause of action, PLAINTIFF has been forced to hire an attorney
2 and has incurred costs and shall incur fees, and PLAINTIFF shall seek to recover reasonable
3 attorney fees pursuant to California Labor Code §1192, 1194, et. seq.

4 **THIRD CAUSE OF ACTION**
5 **PRIVATE ATTORNEY GENERAL ACT**
6 **(Ca. Labor Code §2633 et. seq.)**
7 **(AGAINST ALL DEFENDANTS)**

8 39. PLAINTIFF incorporates herein by reference paragraphs 1 through 21, above as
9 though fully set forth herein below.

10 40. In or about July of 2023 and thereafter, DEFENDANTS had a policy and practice
11 of “indefinitely furloughing” employees as a mechanism to avoid having to pay those employees
12 accrued but unused vacation benefits as of the separation of employment, as required under Ca.
13 Labor Code § 227.3;

14 41. On March 29, 2024, PLAINTIFF submitted a claim to the LWDA seeking
15 permission to pursue claims on behalf of himself and the other similarly situated employees, as
16 more fully set forth in exhibit A to this complaint;

17 42. As of the sixty-fifth day following the submission of the Exhibit A to the LWDA,
18 there has been no election by the LWDA to pursue the claims therefore PLAINTIFF has been
19 given authority to pursue the claims on behalf of all other similarly situated employees;

20 43. As a direct and proximate result of DEFENDANTS failure to pay its employees
21 their accrued but unused vacation wages at separation as required by Ca. Labor Code §227.3,
22 PLAINTIFFS and each of them were deprived of their wages for an appreciable amount of time.
23 Employees were separated for more than six weeks with no payment of wages owed. As such
24 each of those EMPLOYEES was harmed in their loss of wages, and entitled to recover waiting
25 time penalties pursuant to Ca. Labor Code §203;

26 44. For each employee PLAINTIFF shall seek to recover any and all other penalties
27 permitted pursuant to Ca. Labor Code §2633 et. seq.

1 45. In bringing this action, PLAINTIFF has incurred costs and fees, and PLAINTIFF
2 shall seek to recover reasonable fees incurred in bringing this action on behalf of himself and all
3 other similarly situated employees pursuant to Ca. Labor Code §§1194, 2633 *et. seq.*

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1 **PRAYER FOR RELIEF**

2 Wherefore, as to each of PLAINTIFF's causes of action, PLAINTIFF prays that judgment
3 be entered in his favor and against DEFENDANTS, and each of them, jointly and severally as
4 follows:

- 5 1. For PLAINTIFF and all similarly situated employee, for unpaid wages
6 pursuant to Ca. Labor Code §227.3;
7 2. Waiting time penalties, for PLAINTIFF and each similarly situated
8 employee pursuant to California Labor Code §203;
9 3. For Reasonable Attorney fees and costs;
10 4. For interest on any judgment;
11 5. For all other penalties as permitted by law; and
12 6. Any and all other relief permitted by Statute or otherwise determined to be
13 proper by this court.

14
15 Dated: July 5, 2024

The Law Offices of Charles P. Boylston, APC

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17 
18 Charles P. Boylston, Esq.,
19 Amber S. Jones, Esq.
Attorneys for PLAINTIFF, Mark Gill

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Dated: July 5, 2024

The Law Offices of Charles P. Boylston, APC

Charles P. Boylston, Esq.,
Amber S. Jones, Esq.
Attorneys for PLAINTIFF, Mark Gill

EXHIBIT A

March 29, 2024

FILED ONLINE

California Labor and Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814
PAGAfiling@dir.ca.gov

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Skorprios Technologies, Inc.
7401 Snaproll St NE
Albuquerque, NM 87109.

Re: Gill v. Skorpio Technologies, Inc.

Dear Mr. Recipient:

Mr. Mark Gill has retained my firm for the purpose of representing him and others similarly situated against his employer Skorprios Technologies, Inc. Mr. Gill began working for Skorprios Technologies, Inc., (hereinafter “Skorprios”) on March 6, 2023. Mr. Gill’s rate of pay at the time was thirty-two dollars (\$32.00) per hour.

It is our position that Skorprios has wage and hour practices that have denied employees such as Mr. Gill of wages at the time of termination, specifically Skorprios has placed employees on “indefinite furloughs” without paying them accrued but unused vacation time.

From date of hire, Mr. Gill accrued paid time off at a rate of approximately .06 hours per hour worked (120 hours per calendar year total). It is our understanding that Mr. Gill is one of numerous employees who were placed on indefinite furloughs on or about July 31, 2023. As of that separate date, we allege that Mr. Gill accrued, at least, 50 hours of vacation that had not been used.

Skorprios not only placed Mr. Gill on an indefinite furlough, but it also placed approximately forty to fifty employees on an indefinite furlough as of July 31, 2023. It is our understanding and representation that none of these employees placed on furloughs were given any accrued but unused vacation wages. Skorprios intended to deem the separation of employment as a “furlough” to avoid having to pay out the vacation wages. While some of these employees were eventually brought back, all of them, including Mr. Gill, were out of work for periods of at least six weeks without having received their vacation wages.

Based on the foregoing, it is our position that Mr. Gill is entitled to the vacation wages that should have been paid when he was originally furloughed (even he now is working sporadically for the company again), and he also is entitled to waiting time penalties for the failure to pay all wages due and owing at separation. Mr. Gill shall seek to recover these amounts not only for himself but as well on behalf of all other similarly situated employees pursuant to California's Labor Code §2698. Mr. Gill intends to seek penalties on behalf of himself and others to the fullest extent permitted under the law including all penalties that may be available under Labor Code §2699.3. This letter sets forth below the specific provisions of the labor code alleged to have been violated and the facts and theories to support the alleged violation.

Skorpios has violated California's wage and hour laws by failing to pay vacation wages accrued but unused at the time of separation. Ca. Labor Code §227.3

California Labor Code §227.3 requires all accrued vacation to be paid at separation of employment. California Labor Code §227.3 specifies that an employee is entitled to recover all accrued but unused vacation wages. Ca. Labor Code §201 specifies when those wages become due and payable namely that they are immediately due upon "discharge". Although discharge is not defined under §201, the Division of Labor Standards and Enforcement has explicitly stated that if an employee is laid off without a specified return date within the normal pay period, the wages earned too and including the layoff date are due and payable in accordance with §201. Opinion letter 1996.05.30. See also Campos v. Employment Development Department 183 Cal.Rptr. 637 (ct.) App. (1982) wherein it states that employees have no contractual right to recall within a specified period of time, the better approach is to treat such layoffs as indefinite thereby terminating any employment relationship.

In Mr. Gill's case, as well as the other similarly situated former employees, the "furlough" was in fact a lay off with an indefinite end date. Further, neither Mr. Gill, nor any of his co-workers had an contractual rights to return to work. Many of the 40 to 50 employees "furloughed" have been separated from their jobs for more than six months.

Under Labor Code §203, once the furlough became final, which under the DLSE analysis, occurred when Mr. Gill and his co-workers were not returned to work within the same period that they were furloughed, Mr. Gill and his co-workers became entitled to receive payment of all accrued but unused vacation wages. Failure to do so under Labor Code §203 meant that each of these individuals are further entitled to recover waiting time penalties equivalent to eight hours pay for each day that has passed since the separation of employment. In Mr. Gill's case, there were more than thirty days from the separation of employment and, therefore, he is entitled to recover two hundred and forty hours of additional pay which he shall seek to recover on behalf of himself as well as any other employee who has been discharged from employment without having been paid their vacation wages for more than thirty (30) days.

In seeking to recover these unpaid wages, Mr. Gill, as well as the other unnamed similarly situated employees, shall be incurring attorney fees which they shall seek to recover by way of a civil action. California Labor Code §§1192, 1194.

Request for advisement with regard to investigation by LWDA.

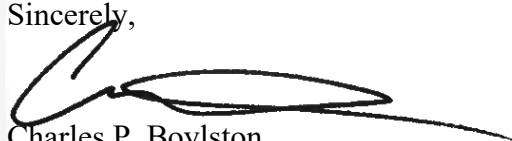
It is our intention to move forward with litigation on behalf of Mr. Gill shortly to seek to recover the waiting time penalties and attorney fees he is entitled to as well as his vacation pay for the time period he was discharged. We will be amending the complaint to include claims under the Private Attorney General Act upon notice from the LWDA on whether it will be investigating these matters. Accordingly, please notify my office within the sixty-day statutory period to let us know if the LWDA intends to investigate this claim or not.

Skorpios may be contacted at the following address:

Skorpios Technology, Inc.
7401 Snaproll St NE,
Albuquerque, NM 87109.

We appreciate your attention to these matters.

Sincerely,



Charles P. Boylston
The Law Offices of Charles P. Boylston, APC
cboylston@boylstonlaw.com