

1 Phil S. Flemming (014778)
YEN PILCH ROBAINA & KRESIN PLC
2 6017 North 15th Street
Phoenix, Arizona 85014-2481
3 Telephone: (602) 682-6450
Facsimile: (602) 682-6455
4 psf@yprklaw.com

5 Attorneys for Plaintiff

6 IN THE UNITED STATES DISTRICT COURT

7 DISTRICT OF ARIZONA

8 Michael Hoyt, an individual,
9 Plaintiff,

No.

10 v.

COMPLAINT

11 WeLink Communications, Inc., a
Delaware corporation;

(Jury Trial Demanded)

12 Defendant.
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14
15 Plaintiff, Michael Hoyt (“Plaintiff”), by undersigned counsel, for this Complaint
16 against WeLink Communications, Inc. (“Defendant”) alleges as follows:

17 **NATURE OF ACTION**

18 1. This action seeks remedies for Plaintiff against Defendant for: breach of the
19 employment contract and the duty of good faith and fair dealing; violation of the Arizona
20 Employment Protection Act, A.R.S. § 23-1501; violation of the Arizona Paid Sick Leave
21 Act, A.R.S. §§ 23-374 and 23-364; and violation of Arizona Wage Act, A.R.S. § 23-350,
22 *et seq.*

23 **PARTIES, JURISDICTION AND VENUE**

24 2. Plaintiff is a citizen and resident of Maricopa County, Arizona.

25 3. Defendant WeLink Communications, Inc. is a Delaware corporation,
26 formerly known as WeLink Communications, LLC.

27 4. Defendant’s headquarters is located in Lehi, Utah. Defendant does business
28 in the State of Arizona.

1 17. In spring of 2022, Defendant converted its organization status from that of a
2 Delaware limited liability company to incorporate as a Delaware corporation.

3 18. Management acknowledged more than once that Plaintiff had achieved cost
4 savings of substantial funds for the company.

5 19. During September and October 2022, Defendant purchased electronic
6 components equipment manufactured by another technology company.

7 20. Plaintiff learned that developers working for Defendant had discovered and
8 exploited a security flaw in the other technology company's equipment that was referred
9 to as the MOCA adaptor.

10 21. Defendant shipped the other technology company's equipment to developers
11 located in Lithuania to examine and reverse engineer, to gain access to another technology
12 company's proprietary code through a "backdoor" in the device.

13 22. Defendant's Lithuanian developers gained the "backdoor" access and were
14 directed to modify the software, to apply Defendant's patch for use in the New York City
15 market.

16 23. On or about September 8, 2022, Plaintiff used paid sick leave for outpatient
17 heart surgery, which was input into Defendant's HR software. On or about May 6, 2022,
18 he had used his paid sick leave when he had knee surgery.

19 24. Plaintiff learned of Defendant's reverse engineering and the patch on the
20 other technology company's software in mid-October 2022 when management assigned
21 his team to apply the patches to that company's electronic components.

22 25. Plaintiff disclosed to the management team that use of the unauthorized
23 "backdoor" and modification of the other technology company's component was
24 unauthorized and unlawful and would violate that company's proprietary interests.

25 26. Plaintiff recognized that Defendant had sent the MOCA adaptors to
26 Lithuania because those developers' actions were unlawful in the United States.

27 27. Plaintiff is aware that such electronic components are regularly accompanied
28 by statements and restrictions on use due to the manufacturer's proprietary interests.

1 28. Based on Defendant’s actions, that other technology company had not given
2 Defendant permission to use its security flaw, the “backdoor,” to modify the component,
3 or Defendant’s management team would have so informed Plaintiff when he reported his
4 concerns.

5 29. Defendant had not involved Plaintiff in the executive decisions to use
6 Lithuanian developers and to alter the other company’s code and component, or he would
7 have disclosed earlier his knowledge that such action would be unlawful and unethical
8 based on his knowledge of the law.

9 30. Plaintiff’s disclosed concerns to the management team established he would
10 not violate the law by modifying another company’s proprietary rights in its software
11 through an unauthorized “backdoor.”

12 31. After Plaintiff reported the concerns to the management team, no corrective
13 action was taken.

14 32. Shortly thereafter, Plaintiff was called to a teleconference with his supervisor
15 and a representative from the Human Resources Office, on October 27, 2022. Plaintiff was
16 immediately terminated, effective November 1, 2022.

17 33. Plaintiff’s supervisor said his position was eliminated due to company
18 performance and cash flow problems.

19 34. Plaintiff knows the reasons are untrue and pretextual. Based on the timing,
20 right after his reported concerns and his history of finding methods to save Defendant
21 money.

22 35. During the teleconference on October 27, 2022, Plaintiff asked for his earned
23 equity share value, which the representative said would be provided but never was.
24 Plaintiff’s wife heard Defendant’s representations.

25 36. But for Defendant’s termination of Plaintiff effective November 1, 2022,
26 Plaintiff had earned and was entitled to vesting of a second 20% equity interest/units on
27 the anniversary date of November 19, 2022.

28 37. Defendant proposed a contract for separation which would have Plaintiff

1 release his equity interest in the company without payment.

2 38. As a result of Plaintiff's abrupt termination, he has suffered and continues to
3 suffer lost wages and benefits.

4 39. As a result of Defendant's actions, Plaintiff has suffered humiliation, garden
5 variety emotional distress, and damage to his profession and future earnings.

6 40. Plaintiff will seek to recover the attorneys' fees and expenses incurred in
7 connection with this action, upon becoming the prevailing party.

8 **CLAIM ONE**

9 **Breach of Contract, Including Breach of Good Faith and Fair Dealing**

10 41. Plaintiff incorporates all previous paragraphs as though fully set forth herein.

11 42. Plaintiff and Defendant entered into a written contract when Plaintiff
12 accepted Defendant's offer of employment under the terms set forth in writing prepared by
13 Defendant.

14 43. In Arizona, a duty of good faith and fair dealing is implied in every contract.

15 44. Plaintiff reasonably relied on the conditions and terms for his employment
16 with Defendant as set forth in the parties' contract when he accepted the position.

17 45. Defendant represented in the contract that Plaintiff would earn an equity
18 interest in Profit Interest Units as part of his compensation.

19 46. When Defendant converted from a limited liability company to a corporation,
20 Defendant represented that the equity interests would be converted into corporate shares in
21 the new entity, WeLink Communications, Inc. and its affiliated "sister company" referred
22 to as TechCO.

23 47. Plaintiff earned 38,000 units/shares vested in WeLink Communications, Inc.
24 and another 38,000 unit/shares in TechCo, after the entity converted from an LLC.

25 48. Plaintiff's equity interest units had vested on the one-year anniversary of his
26 November 19, 2020 executed "Senior Management Agreement."

27 49. An additional 20% of Plaintiff's equity units/shares was to vest November
28 19, 202 but Defendant materially breached its duty of good faith and fair dealing by

1 terminating Plaintiff effective November 1, just days before the vesting of 20%.

2 50. Defendant materially breached obligations under the Contract by terminating
3 Plaintiff only two weeks before the anniversary vesting date, to impair his rights under the
4 contract to receive additional vested equity interests on November 19, 2022.

5 51. Defendant materially breached the contract and its duty to act in good faith
6 and fair dealing by terminating Plaintiff's employment contrary to public policy in
7 retaliation after he reported violations of state law and after he used paid sick leave.

8 52. As a result of Defendant's breach, Plaintiff has suffered actual and
9 consequential damages, including lost earnings and benefits.

10 53. Plaintiff seeks specific performance to recover the vested equity units and
11 shares he should possess but for Defendant's breaches.

12 54. Defendant's breach of the covenant of good faith and fair dealing, Plaintiff
13 has suffered compensatory damages, including emotional distress and harms to his
14 professional reputation and opportunities, in amounts to be proven at trial.

15 55. Plaintiff's breach of contract claim will enable him to recover attorneys' fees
16 and costs incurred as the prevailing party, pursuant to A.R.S. §§ 12-341 and 341.01 and
17 the contract terms at Paragraph 20.

18 CLAIM TWO

19 Violation of Arizona Employment Protection Act

20 56. Plaintiff incorporates all previous paragraphs as though fully set forth herein.

21 57. The Arizona Employment Protection Act (AEPA) gives rise to a claim where
22 an employer has wrongfully terminated an employee in violation of A.R.S. § 23-1501.

23 58. Arizona prohibits an employer from terminating an employee in retaliation
24 for: "The refusal by the employee to commit an act or omission that would violate the
25 Constitution of Arizona or the statutes of this state. A.R.S. § 23-1501(A)(3)(c)(i).

26 59. Subsection (ii) of that statute further prohibits an employer from terminating
27 an employee in retaliation for the disclosure "that the employee has information or a
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1 reasonable belief that the employer, or an employee of the employer, has violated, is
2 violating or will violate the Constitution of Arizona or the statutes of this state”

3 60. Plaintiff made himself clear to the management team that he would not
4 violate the proprietary interests of the other technology company by accessing its software
5 through a “backdoor” without authorization.

6 61. Defendant’s actions would violate the Arizona Criminal Code. *See* A.R.S. §
7 13-2316 (proscribes tampering with or altering computer system, software without
8 authorization).

9 62. Defendant’s actions also would constitute theft or conversion of property
10 rights belonging to that other technology company, which is prohibited by A.R.S. §§ 13-
11 1802(A) and 13-2316.02.

12 63. After Plaintiff’s disclosure to management with authority, no corrective
13 action was taken.

14 64. Shortly after Plaintiff’s protected actions under AEPA, Defendant retaliated
15 and terminated him.

16 65. Defendant’s unlawful retaliation has caused Plaintiff damages.

17 66. Plaintiff seeks to recover compensatory remedies, including but not limited
18 to lost income and benefits, benefits, garden variety emotional distress, and damages to his
19 professional reputation and future earnings potential.

20 67. Plaintiff seeks recovery of his attorneys’ fees and costs in this action,
21 pursuant to the parties’ contract.

22 **CLAIM THREE**

23 **Violation of Arizona Paid Sick Leave Act**

24 68. Plaintiff incorporates all previous paragraphs as though fully set forth herein.

25 69. Arizona law protects employees who request or use paid sick time for a
26 qualifying reason from retaliation. A.R.S. § 23-373; A.R.S. §§ 23-364 and 371 to 375.

27 70. Section 23-374 provides, “An employer shall not engage in retaliation or
28 discriminate against an employee or former employee because the person has exercised

1 rights protected under this article.”

2 71. Section 23-364(G) provides that the employer found liable under the Paid
3 Sick Leave Act “shall” pay “not less than one hundred fifty dollars for each day that the
4 violation continued or until legal judgment is final.”

5 72. A rebuttable presumption arises where an employer takes adverse action
6 against an employee within ninety (90) days of the employee’s exercise of rights under the
7 law which requires the employer to prove by “clear and convincing evidence” the
8 permissible reason for its adverse action. *Id.* § 23-364(B).

9 73. Section 23-364(G), imposes the \$150 per day liquidated damage remedy, in
10 addition to remedies “sufficient to compensate the employee and deter future violations.”

11 74. Defendant retaliated by terminating Plaintiff less than 90 days after the
12 exercise of rights to paid sick leave.

13 75. Defendant is liable to Plaintiff for compensatory damages and the liquidated
14 damages of at least \$150 per day from the date of the retaliatory termination through entry
15 of final judgment.

16 76. Plaintiff seeks recovery of compensation for lost income and benefits, lost
17 future income and benefits, professional harms, and garden variety emotional distress
18 damages.

19 77. Plaintiff seeks recovery of reasonable attorneys’ fees and costs, pursuant to
20 A.R.S. § 23-364(G) and other applicable authorities.

21 **CLAIM FOUR**

22 **Violation of Arizona Wage Act and Claim for Treble Damages**

23 78. Plaintiff incorporates all previous paragraphs as though fully set forth herein.

24 79. Defendant is an employer, subject to Arizona laws governing payment of
25 employee wages, pursuant to A.R.S. §§ 23-350(3) and 23-362(B).

26 80. Plaintiff was an employee, pursuant to A.R.S. §§ 23-350(2) and 23-362(A).

27 81. Arizona law requires employers to pay wages timely to employees. A.R.S.
28 § 23-351.

1 82. Defendant agreed in the parties’ written contract to compensate Plaintiff in
2 part with a vested equity interest in the company. Senior Management Agreement,
3 Paragraph 6 (“shall become vested in five equal installments on each of the first five
4 anniversaries of the Effective Date,” i.e. Nov. 19, 2020).

5 83. Plaintiff’s first earned equity interest vested 20% of the units/ shares as of
6 November 19, 2021.

7 84. Plaintiff’s second earned equity interest of 20% of the units/ shares was due
8 to vest on November 19, 2022.

9 85. Defendant has failed to timely pay and distribute to Plaintiff the earned
10 vested equity interests due under the parties’ contract.

11 86. Defendant’s violations of the Arizona wage laws caused Plaintiff to suffer
12 damages by not receiving timely compensation when due.

13 87. Defendant willfully failed and refused to pay Plaintiff’s earned wages/
14 compensation due.

15 88. Defendant had no good faith basis for withholding Plaintiff’s earned wages/
16 compensation.

17 89. Plaintiff is entitled to treble damages for the unpaid and untimely paid wages,
18 pursuant to A.R.S. §§ 23-355, 23-360, and 23-364(G).

19 90. Upon prevailing, Plaintiff is entitled to recover attorneys’ fees and costs
20 incurred, pursuant to A.R.S. §§ 12-341, 341.01, and 23-364(G), and other applicable
21 authorities.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff Michael Hoyt prays that judgment be entered in his favor
24 on each claim and against Defendant WeLink Communications, Inc., including, but not
25 limited to:

26 A. For an award of contract and consequential damages caused by Defendant’s
27 breach;

28 B. For an award of damages caused by Defendant’s breach of the duty of good

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- faith and fair dealing;
- C. For equitable relief or specific performance under the parties’ contract to order Defendant to transfer to Plaintiff his vested equity interest/units/shares in the company and its affiliate(s);
- D. For award to of compensatory damages available under the AEPA as proved at trial;
- E. For an award of damages and liquidated damages of \$150 per day for violation of the Arizona Paid Sick Leave Act, part of the Fair Wages and Healthy Families Act, “for each day that the violation continued or until legal judgment is final,” A.R.S. §23-364(G);
- F. For award of unpaid and untimely paid wages and compensation at treble damages, pursuant to A.R.S. § 23-364(G);
- G. For award of attorneys’ fees and costs, pursuant to A.R.S. §§ 12-341, 12-341.01, 23-364(G), the parties’ contract at Paragraph 20, and other applicable authority;
- H. For award of prejudgment and post-judgment interest against Defendant;
- I. For award of taxable costs against Defendant;
- J. For such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial in this matter as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED this 15th day of February 2023.

YEN PILCH ROBAINA & KRESIN PLC

By /s/ Phil S. Flemming
Phil S. Flemming
Attorneys for Plaintiff