

1 Mark P. Meuser, SBN 231335  
2 Meuser Law Group, Inc  
3 PO Box 5412  
4 Walnut Creek, CA 94596  
5 Telephone: (415) 577-2850  
6 Facsimile: (925) 262-4656  
7 mark@meuser-law.com

8 Attorney for Gary Lefkowitz

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

11 GARY LEFKOWITZ, an individual

12 Plaintiff,

13 vs.

14 SCYTL USA, a Corporation, SCYTL , a  
15 Spanish Corporation, NAUTA USA CORP, a  
16 Massachusetts Corporation, NAUTA  
17 CAPITAL, a Spanish Corporation, and DOES  
18 1 through 10, inclusive,  
19 Defendants.

Case No.:

**COMPLAINT FOR DAMAGES FOR:**

**1. SUCCESSOR LIABILITY**

20 GARY LEFKOWITZ, Plaintiff, alleges as follows:

21 **INTRODUCTION AND PARTIES**

- 22 1. Plaintiff GARY LEFKOWITZ is a natural person domiciled in the state of California.
- 23 2. This Complaint is to enforce a state court judgment for Plaintiff’s unpaid wages from a  
24 dissolved company, Kinamik Data Integrity, Inc (hereinafter “Kinamik”) against the  
25 companies who took Kinamik’s assets, assumed some of Kinamik’s former clients, and  
26 hired some of Kinamik’s former employees.
- 27 3. Defendant SCYTL USA has offices in both Florida and Oklahoma. Plaintiff is unable to  
28 ascertain where it is registered to do business but has checked with the Secretaries of

1 State in California, Florida, Oklahoma, and Delaware and SCYTL USA is not registered  
2 to do business in any of these states. SCYTL USA claims on its website that some of its  
3 customers are as follows: Department of Defense, State of Alaska, Arkansas, Arizona,  
4 Florida, Kentucky, Mississippi, New York, Virginia, Washington D.C., and West  
5 Virginia. On information and belief, SCYTL USA is a subsidiary of defendant SCYTL.

- 6 4. Defendant SCYTL has its headquarters in Barcelona Spain. It appears to be the parent  
7 company of SCYTL USA based upon the information that can be gathered on its website  
8 [www.scytl.com](http://www.scytl.com). SCYTL developed the Kinamik's proprietary software, and took the  
9 software system back on Kinamik's dissolution.
- 10 5. Defendant NAUTA USA CORP, has an office in Boston, Massachusetts. It is also  
11 registered to do business in the state of Massachusetts. NAUTA USA CORP is not  
12 registered to do business with the California Secretary of State. On information and  
13 belief, NAUTA USA CORP is a subsidiary of defendant NAUTA CAPITAL.
- 14 6. Defendant NAUTA CAPITAL has its headquarters in Barcelona Spain. It appears to be  
15 the parent company of NAUTA USA CORP based upon information that can be gathered  
16 on its website [www.nautacapital.com](http://www.nautacapital.com). NAUTA CAPITAL was the majority shareholder  
17 of Kinamik before it dissolved, and it still is a major shareholder of SCYTL.
- 18 7. DOES 1 – 10 are individuals and business entities whose identities are not yet known to  
19 plaintiff.  
20

## 21 JURISDICTION

- 22 8. This Court has jurisdiction over the claims under U.S.C. §1332 (diversity of citizenship).  
23 9. LEFKOWITZ alleges that based upon the forgoing causes of action, the amount in  
24 controversy exceeds the sum or value of \$100,000 exclusive of interest and costs.  
25

26 ///

27 ///

28 ///

**INTRADISTRICT ASSIGNMENT**

10. Pursuant to Civil L.R. 3-2(c) this case should be assigned to San Francisco or Oakland because the nature of this action is to enforce a judgment of the Labor Commissioner that was filed in the Superior Court of San Mateo County.

**GENERAL ALLEGATIONS**

11. LEFKOWITZ was an employee of Kinamik Data Integrity, Inc. (hereinafter Kinamik).

12. LEFKOWITZ started working for Kinamik on August 1, 2010. His position with Kinamik was Vice President of Marketing.

13. Kinamik was based in Redwood City.

14. On or about December 27, 2011, Venture Lending & Leasing VI, Inc. (hereinafter “Venture”) entered into a Loan Agreement with Kinamik.

15. Kinamik did not abide by the terms of the Loan Agreement.

16. In the meantime, on or about October 15, 2012, Kinamik stopped paying wages to LEFKOWITZ.

17. On or about March 21, 2013, Venture repossessed collateral that belonged to Kinamik due to the default on the Loan Agreement. In particular, Venture repossessed proprietary software and IP owned by Kinamik.

18. On or about March 31, 2013, LEFKOWITZ’s employment was terminated at Kinamik.

19. On or about April 17, 2013, LEFKOWITZ received a letter from Kinamik stating that the company was closed and that it did not have any assets to pay its creditors. This letter specifically told LEFKOWITZ that “it is not necessary to send or file a claim to it [Kinamik] or file a claim against the Company for amounts you are owed.”

20. On or about July 2, 2013, Kinamik filed a Certificate of Dissolution in the State of Delaware (Attached as Exhibit 1).

21. On or about May 14, 2014, the Labor Commissioner of the State of California entered an Order, Decision or Award against Kinamik in favor of LEFKOWITZ in the amount of \$114,330.25 (Attached as Exhibit 2).

1 22. On or about July 16, 2014, the Superior Court of the County of San Mateo entered a  
2 Judgment against Kinamik in the amount of \$116,298.61 (Attached as Exhibit 3).

3 23. Based upon information and belief, Venture transferred the Kinamik proprietary  
4 software and IP to SCYTL in exchange for stock in SCYTL.

5 24. Based upon information and belief, Kinamik's proprietary software was originally  
6 developed and utilized by the corporation SCYTL. SCYTL subsequently transferred this  
7 proprietary software to Kinamik. While Kinamik was a viable company, it dealt with  
8 SCYTL on a regular basis and it would be considered a sister company.

9 25. Based upon information and belief, Kinamik and NAUTA CAPITAL had two of the  
10 same board members in Jordi Vinas and Carles Ferrer. Jordi Vinas also used to be a  
11 board member of SCYTL while Carles Ferrer is still a board member of SCYTL.

12 26. NAUTA CAPITAL owned 59% of Kinamik and according to NAUTA CAPITAL's  
13 website, it has some ownership in SCYTL. SCYTL's website also confirms that NAUTA  
14 CAPITAL is a major investor of SCYTL.

15 27. Based upon information and belief, SCYTL hired Kinamik R&D and sales employees  
16 including but not limited to the software engineer and sales support engineer.

17 28. Based upon information and belief, one of Kinamik's major clients was Telefonica.  
18 SCYTL is providing support for the Kinamik Secure Audit Vault software product that is  
19 installed at Telefonica. SCYTL is, thus, servicing a client that formerly belonged to  
20 Kinamik and providing the same or similar software maintenance and enhancement  
21 services to that client.

22  
23 **FIRST CAUSE OF ACTION**

24 *SUCCESSOR LIABILITY*

25 29. LEFKOWITZ realleges, and incorporates by reference, paragraphs 1 through \* of this  
26 Complaint.

27 30. On or about May 14, 2014, LEFKOWITZ obtained an Order, Decision or Award of the  
28 Labor Commissioner against Kinamik Data Integrity, Inc., a Delaware Corporation.

1 31. This Order was for unpaid wages that Kinamik owed to LEFKOWITZ prior to Kinamik  
2 shutting down its operations.

3 32. On or about July 16, 2014, the Superior Court of San Mateo County entered a judgment  
4 against Kinamik Data Integrity, Inc. in the amount of \$116,298.61.

5 33. The July 16, 2014 Judgment is entitled to post judgment interest pursuant to Labor Code  
6 Section(s) 98.1(c), 1194.2 and/or 2802(b). Post judgment interest accrues at the rate of  
7 10% pursuant to Cal. Code Civ. P. § 685.010.

8 34. As of July 2, 2013, Kinamik filed a Certificate of Dissolution and is no longer doing  
9 business in the United States.

10 35. On March 21, 2013, Kinamik transferred its only major assets, proprietary software and  
11 IP, to Venture Lending & Leasing VI, Inc.

12 36. Venture Lending & Leasing VI, Inc. transferred the Kinamik proprietary software to  
13 defendant SCYTL.

14 37. Defendant SCYTL's majority owner was defendant NAUTA CAPITAL.

15 38. Defendant NAUTA CAPITAL was a 59% owner of Kinamik.

16 39. Defendant NAUTA CAPITAL and defendant SCYTL shared two board members with  
17 Kinamik.

18 40. While Kinamik was operating, it was considered a sister company to defendant SCYTL.

19 41. LEFKOWITZ seeks an order from this COURT that defendants SCYTL, SCYTL USA,  
20 NAUTA CAPITAL, and NAUTA USA CORP are jointly and severally liable to him for  
21 unpaid wages by Kinamik under the theory of successor liability.

22 42. Pursuant to California Labor Code § 218.5, LEFKOWITZ is entitled to his reasonable  
23 attorney fees since the underlying judgment is for unpaid wages.

24 43. Pursuant to Cal. Code Civ. P. § 685.040, LEFKOWITZ is entitled to the reasonable and  
25 necessary costs of enforcing a judgment, including the costs of bringing this lawsuit for  
26 successor liability.

27  
28 ///

1 WHEREFORE, LEFKOWITZ prays for judgment as follows:

- 2 1. For \$116,298.61, the amount of the San Mateo Superior Court Judgment;
- 3 2. For the payment of LEFKOWITZ's attorney fees, costs, and expenses incurred pursuant
- 4 to all applicable provisions of California Law;
- 5 3. For such other and further relief as the court may deem proper.
- 6
- 7

8 Respectfully submitted this 27<sup>th</sup> day of October, 2015.

9 Meuser L. Group, Inc.

10

11 /s/ Mark P. Meuser

12 Mark P. Meuser, SBN 231335

13 Attorney for Gary Lefkowitz

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28