

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY**

LORI WALTERS, in her individual capacity and on behalf of all others similarly situated,  <p style="text-align: center;">Plaintiff,</p> vs.  GILL INDUSTRIES, INC.  <p style="text-align: center;">Defendant.</p>	) ) ) ) ) ) ) ) ) ) ) )	Case No.  Complaint filed: January 22, 2021  (Complaint filed in Madison County Circuit Court, Case No. 21-CI-00037)
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**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332(a) AND 1446**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF KENTUCKY:

Pursuant to 28 U.S.C. § 1332(a) and 1446, PLEASE TAKE NOTICE that defendant GILL INDUSTRIES, INC. (“Gill”)<sup>1</sup> hereby removes Docket 21-CI-00037 filed in Division 2 of the Circuit Court, in Madison County, Commonwealth of Kentucky, to the United States District Court for the Eastern District of Kentucky. As grounds for removal, Defendant states as follows:

**PLEADINGS, PROCESS AND ORDERS**

1. On or about January 22, 2021, Plaintiff Lori Walters, on behalf of herself and all others similarly situated, filed the action entitled *Lori Walters, in her individual capacity and on behalf of all others similarly situated v. Gill Industries, Inc.*, Case No. 21-CI-00037 (“Complaint” or “State Court Action”) in Division 2 of the Circuit Court, in Madison County, Commonwealth of Kentucky.

2. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process and pleadings

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<sup>1</sup> Pamela Bagley Webb, counsel for Gill, has submitted a motion to appear *pro hac vice* before this Court.

served upon Gill in the State Court Action are attached to this notice collectively as Exhibit A.

3. Plaintiff alleges she and the members of the putative class she purports to represent “entered in a Retention Agreement with Gill Industries, Inc.” and “were and are citizens of the Commonwealth of Kentucky.” Compl. ¶ 6, Ex. A.

4. On February 8, 2021, Plaintiff served Gill with a copy of the Summons and Complaint.

5. A notice of removal must generally be filed with the Federal Court within thirty days after receipt by the defendant of a copy of the initial pleading. See 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999). Gill filed this notice within thirty days after Plaintiff’s Complaint was served. This notice is therefore timely.

6. Gill may remove to the appropriate district court “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). Division 2 of the Circuit Court, in Madison County, Kentucky, is located within the Eastern District of Kentucky. 28 U.S.C. § 97. This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

### **ALLEGATIONS IN THE COMPLAINT**

7. The claims which are the subject of the State Court Action arise out of Retention Agreements signed by Gill employees in March 2020. Plaintiff alleges the Retention Agreements “induced [employees]] to continue working at the Richmond [Kentucky] facility providing labor in exchange for bonus payments and payment of unused PTO,” but “Defendant Gill Industries, Inc. did not pay the amount due in the Retention Agreement[.]” Compl. ¶ 9, 13-14, Ex. A.

8. As alleged in the Complaint, Plaintiff seeks to represent a class consisting of former

employees who “were provided the exact same Retention Agreement contractual terms and relied upon the terms contained therein in entering the Retention Agreement” and “exchanged their labor for the payments proposed therein.” Compl. ¶ 10-11, Ex. A.

9. Plaintiff seeks attorneys’ fees, costs, actual, incidental, consequential, compensatory, and foreseeable damages, pre-judgment interest, and post-judgment interest. Compl., Wherefore Section ¶ 3, Ex. A.

10. Gill disputes Plaintiff’s allegations, believes the Complaint lacks merit, denies that Plaintiff or the putative class have been harmed in any way, and denies that Plaintiff or the putative class are entitled to any relief.

### **BASIS FOR REMOVAL**

#### **I. Diversity of Citizenship**

11. This Court has subject matter jurisdiction because Plaintiff and the putative class are Kentucky citizens and Gill is a corporation registered under Michigan law with its principal place of business located in Michigan.

12. For purposes of diversity jurisdiction, a corporation is “a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

13. Gill is a corporation registered under Michigan law with its principal place of business located in Michigan. Compl. ¶ 2.

14. For purposes of determining diversity jurisdiction, the citizenship of the named plaintiff is determinative. *See Snyder v. Harris*, 394 U.S. 332, 340 (1969).

15. Plaintiff Lori Walters is a citizen of Kentucky. Compl. ¶ 1.

16. Additionally, Plaintiff alleges all members of the putative class are Kentucky citizens. Compl. ¶ 6.

## **II. The Amount in Controversy Exceeds \$75,000**

17. “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Id.* at 553.

18. “To satisfy the amount-in-controversy requirement at least one plaintiff’s claim must independently meet the amount-in-controversy specification.” *Everett v. Verizon Wireless, Inc.*, 460 F. 3d 818, 822 (6th Cir. 2006). In this matter, Lori Walters is the only named plaintiff.

19. The Retention Agreement signed by Plaintiff Lori Walters contemplated payments of \$22,884.00 in total. *See* Exhibit B.

20. Plaintiff seeks liquidated damages under KRS 337.385 in “an equal amount.” Compl. ¶ 38.

21. Plaintiff seeks punitive damages. Compl. ¶ 49-50.

22. “When determining the jurisdictional amount in controversy in diversity cases, punitive damages must be considered . . . unless it is apparent to a legal certainty that such cannot be recovered.” *Heyman v. Lincoln Nat’l Life Ins. Co.*, 781 F. App’x 463, 471 (6th Cir. 2019) (quoting *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 572 (6th Cir. 2001)).

23. “Most courts find a legal certainty that damages could not be recovered only where the applicable state law barred the *type* of damages sought, such as a statutory prohibition against

punitive damages or mental anguish.” *Frankenmuth Mut. Ins. Co. v. Balis Campbell, Inc., et al.*, Civil Action No. 6:18-CV-291-CHB (E.D. Ky. Jan. 23, 2020) (citing *Kovacs v. Chesley*, 406 F.3d 393, 397 (6th Cir. 2005)).

24. “Although the statute and the case law are clear that punitive damages are not recoverable for mere breach of contract, it has been held that if the breach included separately tortious conduct, punitive damages may be awarded.” *Faulkner Drilling Co. v. Gross*, 943 S.W.2d 634, 638-39 (Ky. Ct. App. 1997) (citing KRS 411.184(4)).

25. Plaintiff seeks attorneys’ fees and costs under KRS 337.385. Compl. ¶ 38.

26. Kentucky Revised Statute 337.385 provides an employer in violation of the statute “shall be liable to such employee affected for the full amount of such wages and overtime compensation, less any amount actually paid to such employee by the employer, for an additional equal amount as liquidated damages, and for costs and such reasonable attorney’s fees as may be allowed by the court.” (KRS 337.385).

27. “As a general rule, attorneys’ fees are excludable in determining the amount in controversy for purposes of diversity, unless the fees are provided for by contract or where a statute mandates or expressly allows the payment of such fees.” *Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376 (6th Cir. 2007).

28. Because attorneys’ fees are allowable by statute, such fees should be counted in determining the amount in controversy. *See Blocker v. PPG Industries, Inc.*, Civil Action No. 3:17-cv-29-DJH (W.D. Ky. Aug. 9, 2017).

29. Plaintiff seeks damages, liquidated damages, punitive damages, and attorneys’ fees which, when totaled, equal an amount in excess of \$75,000, exclusive of interests and costs.

**CONCLUSION**

WHEREFORE, Gill hereby removes this action from the Madison County Circuit Court to the United States District Court for the Eastern District of Kentucky.

DATED this the 10th day of March, 2021.

Respectfully Submitted,

By: /s/ Rheanne Dodson Falkner  
Rheanne Dodson Falkner, KY Bar 86909  
GORDON REES SCULLY MANSUKHANI  
325 West Main Street  
Waterfront Plaza-West Tower  
Suite 2300  
Louisville, KY 40202  
Tel: (502) 371-1255  
rfalkner@grsm.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served via first class mail this 10th day of March 2021, on the following:

**Counsel for Plaintiff**  
GOLDEN LAW OFFICE, PLLC  
Justin S. Peterson  
Kellie M. Collins  
Taylor M. Shepherd  
771 Corporate Drive, Suite 800  
Lexington, Kentucky 40503

/s/ Rheanne Dodson Falkner  
Rheanne Dodson Falkner

## EXHIBIT A



Michael G. Adams  
Secretary of State

**Commonwealth of Kentucky  
Office of the Secretary of State**

Summons Division  
PO BOX 718  
FRANKFORT, KY 40602-0718

February 3, 2021

RITA WOODRUFF  
GILL INDUSTRIES, INC.  
REGISTERED AGENT  
5271 PLAINFIELD AVENUE NE  
GRAND RAPIDS, MI 49525

FROM: SUMMONS DIVISION  
SECRETARY OF STATE

RE: CASE NO: 21-CI-00037

COURT: Circuit Court Clerk  
Madison County  
P.O. Box 813  
Richmond, KY 40476-0813  
Phone: (859) 624-4793

Legal action has been filed against you in the captioned case. As provided under Kentucky law, the legal documents are enclosed.

**Questions regarding this action should be addressed to:**

- (1) Your attorney, or**
- (2) The attorney filing this suit whose name should appear on the last page of the complaint, or**
- (3) The court or administrative agency in which the suit is filed at the clerk's number printed above.**

The Kentucky Secretary of State has NO POWER to make a legal disposition of this case. Your responsive pleadings should be filed with the clerk of the court or agency where the suit is filed and served directly on your opposing party.

No copy of future pleadings need be sent to this office unless you wish us to serve the pleading under a particular statute or rule and pay for said service.

**RECEIVED FEB 08 2021**



AOC-E-105 Sum Code: CI  
Rev. 9-14

Commonwealth of Kentucky  
Court of Justice Courts.ky.gov

CR 4.02; Cr Official Form 1



Case #: 21-CI-00037

Court: CIRCUIT

County: MADISON

**CIVIL SUMMONS**

*Plaintiff, LORI WALTERS, IN HER INDIVIDUAL CAPACITY, VS. GILL INDUSTRIE, Defendant*

**TO: RITA WOODRUFF  
REGISTERED AGENT  
5271 PLAINFIELD AVENUE NE  
GRAND RAPIDS, MI 49525**

Memo: Related party is GILL INDUSTRIES, INC.

The Commonwealth of Kentucky to Defendant:  
**GILL INDUSTRIES, INC.**

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ David M. Fernandez,  
Madison Circuit Clerk  
Date: 1/22/2021

**Proof of Service**

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Served By

\_\_\_\_\_  
Title

Summons ID: 311747121420328@00000136209  
CIRCUIT: 21-CI-00037 Long Arm Statute – Secretary of State  
LORI WALTERS, IN HER INDIVIDUAL CAPACITY, VS. GILL INDUSTRIE



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Presiding Judge: HON. JEAN C. LOGUE (625304)

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01/22/2021

David M. Fernandez, Madison Circuit Clerk

COMMONWEALTH OF KENTUCKY  
MADISON CIRCUIT COURT  
DIVISION \_\_\_\_\_  
CIVIL ACTION NO. \_\_\_\_\_

**ELECTRONICALLY FILED**

LORI WALTERS, IN HER INDIVIDUAL CAPACITY,  
AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED PLAINTIFF

VS. **COMPLAINT**

GILL INDUSTRIES, INC. DEFENDANT

**SERVE: VIA CERTIFIED MAIL**  
**Registered Agent**  
**Serve via Secretary of State**  
Rita Woodruff  
5271 Plainfield Avenue NE  
Grand Rapids, MI 49525

\*\*\*\* \* \* \* \* \*

Comes the Plaintiff, Lori Walters, Individually, and on behalf of all others similarly situated, by counsel, and for her Complaint (the "Complaint") against Defendant, Gill Industries, Inc., hereby states the following:

**INTRODUCTION**

1. Plaintiff, Lori Walters, is and was at all times pertinent to this Complaint a resident and citizen of Lexington, Fayette County, Kentucky.
2. At all times pertinent to this Complaint, the corporate Defendant, Gill Industries, Inc., was and is a Michigan corporation with principal places of business located in Grand Rapids, Michigan. Gill Industries, Inc.'s agent for service of process is Rita Woodruff, located at 5271 Plainfield Avenue NE, Grand Rapids, Michigan 49525.

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David M. Fernandez, Madison Circuit Clerk

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Presiding Judge: HON. JEAN C. LOGUE (625304)

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3. Venue is proper under KRS 452.460 as the acts and omissions giving rise to these causes of action occurred in Madison County, Kentucky.

4. The Court has jurisdiction over the Defendant herein either because the Defendant operated a business in Madison County, or caused a tortious injury to the Plaintiff in Madison County.

5. Lori Walters and all others similarly situated damages are in excess of the amount necessary to establish the jurisdiction of the Court.

**CLASS DEFINITION**

6. Lori Walters (“Class Representative”) hereby brings this class action on behalf of any and all current and former employees of the Defendant who entered in a Retention Agreement with Gill Industries, Inc., and who were and are citizens of the Commonwealth of Kentucky (“Proposed Class Plaintiffs”).

**CLASS FACTS AND AVERMENTS**

7. Defendant created the Retention Agreement and drafted the terms therein to exchange incentive payments for the Proposed Class Plaintiffs’ continued employment with Gill Industries, Inc while Defendant sought to sell its Richmond Facility located in Madison County, Kentucky.

8. In order to effectuate the sale, Defendant needed the Proposed Class Plaintiffs to remain employed and provide labor at the Richmond Facility.

9. To that end, Defendant provided the Retention Agreement and induced the Proposed Class Plaintiffs to continue working at the Richmond facility providing labor in exchange for bonus payments and payment of unused PTO.

10. The Proposed Class Plaintiffs were provided the exact same Retention Agreement contractual terms and relied upon the terms contained therein in entering the

Retention Agreement including “to encourage the recipient to remain employed with the Company, and to address any concerns about job security.”

11. The Proposed Class Plaintiffs signed the Retention Agreement and exchanged their labor for the payments proposed therein.

12. According to the plain language of the Retention Agreement, the payments were to be made in three installments, with the first installment of 15% of the “Retention Bonus” due to be paid on May 31, 2020, the second installment of 15% of the “Retention Bonus” by August 31, 2020, and the remainder of the “Retention Bonus” plus unused PTO owed after the expiration of waiver period of the Waiver and Release Agreement.

13. When the first retention payment became due, on May 31, 2020, Defendant Gill Industries, Inc., did not pay the amount due in the Retention Agreement executed by the Proposed Class Plaintiffs and Gill Industries, Inc.

14. When the second retention payment became due, on August 31, 2020, Defendant Gill Industries, Inc., did not pay the amount due in the Retention Agreement executed by the Proposed Class Plaintiffs and Gill Industries, Inc.

15. The remainder of the “Retention Bonus” plus unused PTO owed after the expiration of waiver period of the Waiver and Release Agreement was never paid after it became due.

16. The Class is so numerous that joinder of all members is impractical.

17. There are questions of law or fact common to the Class.

18. The claims or defenses of the Class Representative are typical of the claims or defenses of the Class.

19. The Class Representative is a representative party and will fairly and adequately protect the interests of the Class.

20. The prosecution of separate action by or against individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for any part opposing the Class.

21. Adjudications with respect to the individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest if this matter is not brought as a Class Action.

22. The Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate, final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

23. The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy.

**COUNT I**  
**FRAUD AND FRAUD IN THE INDUCEMENT**

24. The Proposed Class Plaintiffs adopt and incorporate herein by reference each and every preceding paragraph of this Complaint as though set forth fully herein.

25. The Proposed Class Plaintiffs signed Retention Agreement “to encourage the recipient to remain employed with the Company, and to address and concerns about job security” and exchanged their labor in exchange for the payments proposed therein.

26. The only reason to sign the Retention Agreement was to obtain the Retention Bonuses and PTO payout promised therein.

27. The Retention Agreement contains material representations which were false and known to be false by the Defendant, or recklessly made by the Defendant, and made with the inducement to be acted upon and in reliance thereon by the Class, thereby causing injury to the Proposed Class Plaintiffs.

28. The material representations included, but were not limited to, the representation that if the Proposed Class Plaintiffs remained continuously and actively employed until the earlier of the Proposed Class Plaintiffs' involuntary termination of employment for any reason other than for Cause; or December 31, 2020, then the Proposed Class Plaintiffs would be paid the Retention Bonus and PTO as outlined in the Retention Agreement.

29. As a result of the fraudulent misrepresentations made by the Defendant Gill Industries, Inc., the Proposed Class Plaintiffs were induced to enter into the Retention Agreement, and received no compensation that was promised under the Agreement.

30. As a result of these misrepresentations, the Proposed Class Plaintiffs have suffered damages more fully outlined in the prayer for relief.

**COUNT II  
BREACH OF CONTRACT**

31. The Proposed Class Plaintiffs adopt and incorporate herein by reference each and every preceding paragraph of this Complaint as though set forth fully herein.

32. Gill Industries, Inc., agreed to pay the amounts due under the Retention Agreement including Retention Bonuses and unused PTO to Proposed Class Plaintiffs, "to encourage the recipient to remain employed with the Company, and to address and concerns about job security."

33. Proposed Class Plaintiffs signed the Retention Agreements and exchanged their labor in consideration for the payments proposed therein.

34. Gill Industries, Inc., breached the agreed upon Retention Agreement with Proposed Class Plaintiffs by failing to pay the agreed upon Retention Bonus and unused PTO on the dates laid out in the Agreement.

35. Proposed Class Plaintiffs have suffered damages as a result of Gill Industries, Inc., breach of contract.

**COUNT III**  
**VIOLATION OF 337.385**

36. The Proposed Class Plaintiffs adopt and incorporate herein by reference each and every preceding paragraph of this Complaint as though set forth fully herein.

37. Gill Industries, Inc., violated KRS 337.385 by failing to pay Proposed Class Plaintiffs an amount less than the wages to which they were entitled by virtue of KRS Chapter 337, *et seq*, including the Retention Bonuses and PTO promised in the Retention Agreement.

38. As a direct and proximate result of this violation, the Proposed Class Plaintiffs are entitled to all amounts wrongfully withheld and for an additional equal amount as liquidated damages, is entitled to costs, penalties, and reasonable attorneys' fees, as set forth in KRS 337.385(1).

**COUNT IV**  
**UNJUST ENRICHMENT**

39. The Proposed Class Plaintiffs adopt and incorporate herein by reference each and every preceding paragraph of this Complaint as though set forth fully herein.

40. A benefit was conferred upon the Defendant at the Proposed Class Plaintiffs' expense, resulting in the appreciation of benefits by the Defendant, and there has been an inequitable retention of benefit by the Defendant without payment for its value.

41. Therefore, the Proposed Class Plaintiffs are entitled to recover all damages incurred under the equitable theory of unjust enrichment.

**COUNT V**  
**NEGLIGENT MISREPRESENTATION**

42. The Proposed Class Plaintiffs repeat, reallege, and reassert each and every allegation contained within the preceding paragraphs, as though set forth fully herein.

43. Defendant in the course of their business, their employment, and their contractual relationship with Proposed Class Plaintiffs, supplied false information to the Proposed Class Plaintiffs that they would receive the amounts proposed by the Retention Agreement.

44. The only reason to sign the Retention Agreement was to obtain the Retention Bonuses and PTO payout promised therein.

45. The false information regarding the payment of the Retention Bonus induced the Proposed Class Plaintiffs to remain employed with Gill Industries, Inc because the agreement was entered into "to encourage the recipient to remain employed with the Company, and to address and concerns about job security".

46. The Proposed Class Plaintiffs reasonably and justifiably relied upon this false information.

47. In providing this false information to Proposed Class Plaintiffs, Defendant failed to exercise reasonable care or competence in obtaining or communicating the information.



48. As a direct and proximate result of the Defendant's negligent misrepresentation, the Proposed Class Plaintiffs have been caused to suffer damages.

**COUNT VI**  
**PUNITIVE DAMAGES**

49. The Proposed Class Plaintiffs adopts and incorporates herein by reference each and every preceding paragraph of this Complaint as though set forth fully herein.

50. The conduct of the Defendant was so willful, wanton and grossly negligent that the Proposed Class Plaintiffs are entitled to punitive damages.

**COUNT VII**  
**ATTORNEYS' FEES**

51. The Proposed Class Plaintiffs adopt and incorporate herein by reference each and every preceding paragraph of this Complaint as though set forth fully herein.

52. The Proposed Class Plaintiffs request an award of all attorneys' fees expended in this matter pursuant to *Mo-Jack Distrib., LLC v. Tamarak Snacks, LLC*, 476 S.W.3d 900 (Ky. App. 2015), under the equitable rule that an award of counsel fees is within the discretion of the court, depending on the circumstances of each particular case.

WHEREFORE, Class Representative, Lori Walters, individually and on behalf of others similarly situated, the Proposed Class Plaintiffs, prays the Court as follows:

1. For a judgment against the Defendant with the Proposed Class Plaintiffs reserving the right to advise the trier of fact as to what amounts are fair and reasonable as shown by the evidence;
2. For a trial of this cause by a jury;
3. That Proposed Class Plaintiffs be awarded all of the damages enumerated above, including attorneys' fees, costs herein expended, actual, incidental, consequential, compensatory, and foreseeable damages, pre-judgment

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interest, post-judgment interest, and any and all other damages and equitable relief to which the Proposed Class may be entitled, including but not limited to, unjust enrichment;

4. Any and all other relief to which this Court may deem Proposed Class Plaintiffs entitled.

Respectfully submitted,

GOLDEN LAW OFFICE, PLLC

/s/ Justin S. Peterson

Justin S. Peterson

Kellie M. Collins

Taylor M. Shepherd

771 Corporate Drive, Suite 800

Lexington, Kentucky 40503

Telephone: (859) 469-5000

Facsimile: (859) 469-5001

[jpeterson@goldenlawoffice.com](mailto:jpeterson@goldenlawoffice.com)

[kcollins@goldenlawoffice.com](mailto:kcollins@goldenlawoffice.com)

[taylor@goldenlawoffice.com](mailto:taylor@goldenlawoffice.com)

COUNSEL FOR PLAINTIFF

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Presiding Judge: HON. JEAN C. LOGUE (625304)

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**EXHIBIT B**



## RETENTION AGREEMENT

This Retention Agreement (as amended, modified or supplemented in accordance with its terms, this "Agreement") is made by and between Gill Industries, Inc., a Michigan corporation (the "Company"), and the undersigned individual (the "Recipient"). This Agreement is effective as of the date it is signed by both parties (the "Effective Date").

### RECITALS

A. The Recipient is an employee of the Company; and

B. To encourage the Recipient to remain employed with the Company, and to address any concerns about job security, the Company has agreed to offer a retention bonus to the Recipient, subject to the terms and conditions described in this Agreement;

### AGREEMENT

1. **Retention Bonus.** The Recipient will be eligible to receive a bonus in the amount of \$16,346 (sixteen thousand and three hundred and forty-six dollars), less applicable withholdings and deductions and subject to the payment conditions of Section 2 below (the "Retention Bonus"), if the Recipient remains continuously and actively employed until the earlier of the following ( "Payment Event"):

- a. The Recipient's involuntary termination of employment for any reason other than for Cause (as defined below); or
- b. December 31, 2020.

The term "involuntary termination" means termination of employment initiated by the Company. The term "Cause" means (i) fraud, embezzlement, or other misappropriation of the Company's property, (ii) failure to make good faith efforts to fulfill assigned duties, (iii) intentional or negligent refusal to perform assigned duties, (iv) material violation of Company policy, (v) breach of the terms of this Agreement or any other agreement with the Company, or (vi) disclosure of confidential information or trade secrets of the Company that causes or reasonably could cause harm to the Company.

2. **Unpaid PTO.** During the normal course of employment, the Recipient is entitled to receive Paid Time Off ("PTO"). To the extent the Recipient has not taken PTO because of job responsibilities, the unused PTO will be added to the Final Retention Bonus Payment (defined below).

For purposes of clarification only, and subject to the payment conditions of Section 3 below, Recipient will not be eligible to receive the Retention Bonus if Recipient terminates his or her employment for any reason before December 31, 2020, or the Company terminates Recipient's employment for Cause. For the avoidance of doubt, in the event Recipient is terminated for Cause, Recipient is not eligible for any payment from the Company in connection with unused PTO.

3. As a condition of receiving the Retention Bonus following the applicable Payment Event, the Recipient must timely sign (and not revoke) an effective waiver and release of all claims against the Company, and its affiliates, directors, officers, and employees, as provided in a waiver and release agreement presented to the Recipient by the Company ( "Waiver and Release Agreement"). Recipient agrees that any Retention Bonus is to be held in escrow by the Company pending an applicable Payment Event.



**4. Payment of the Retention Bonus.** If the Recipient is entitled to receive the Retention Bonus, it will be paid as follows:

- a. fifteen percent (15%) of the Retention Bonus shall be paid on the next scheduled payroll after May 31, 2020;
- b. fifteen percent (15%) of the Retention Bonus shall be paid on the next scheduled payroll after August 31, 2020;
- c. the remainder of the Retention Bonus (the "Final Retention Bonus Payment") plus any unused PTO shall be paid upon a Payment Event on the next scheduled payroll after expiration of the waiver period of the Waiver and Release Agreement.

**5. Governing Law.** This Agreement is governed by Michigan law (excluding any Michigan law that would require a Court to apply the law of any other jurisdiction to the Agreement).

**6. Severability.** If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, such provision will immediately become null and void, leaving the remainder of the Agreement in full force and effect.

**7. Amendment and Waiver.** This Agreement may not be amended, modified, waived, or terminated except in a writing signed by the Company and the Recipient.

**8. Complete Agreement.** This Agreement sets forth the entire agreement between the parties regarding the subject matter hereof. This Agreement supersedes and preempts any prior understandings, agreements, policies, or representations by or among the parties, written or oral, regarding the subject matter of this Agreement. However, nothing in this Agreement affects Recipient's right to severance benefits, if any, under the terms of the Gill Industries, Inc. Severance Plan.

**9. Confidential Information.** During the Recipient's employment and always thereafter, except as ordered by a Court, the Recipient shall not disclose, disseminate, divulge, discuss, copy or otherwise use or permit to be used, any Confidential Information (as hereinafter defined). For the purposes of this Agreement, "Confidential Information" includes, without limitation, whether in tangible or intangible form, all business plans and strategies, marketing plans and strategies, customer lists, customer purchasing information, customer contact information, customer requirements and specifications, vendor identities, distribution methods, quality control programs and information, business management systems and procedures, computer programs, pricing information, know-how, trade secrets, processes and techniques, creations, innovations, this Agreement, and any other information which the Company may designate or treat as confidential from time to time. However, Recipient may reveal the terms of this Agreement to Recipient's immediate family, financial advisor, attorneys, and federal and state taxing agencies.

**10. Return of Company Property.** Upon termination of employment, or at any other time as demanded by the Company, the Recipient shall return to the Company any and all property of the Company and other materials and information in tangible or electronic form which the Recipient may have concerning the business and affairs of the Company.

**11. Compliance with Section 409A of the Internal Revenue Code ("Section 409A").** Any reference to termination of employment shall be interpreted to require a "Separation from Service" as defined under Treasury Regulation § 1.409A-1(h), including the presumptions provided in that section. This Agreement is intended to either be exempt from or comply with Section 409A and the regulations and guidance promulgated thereunder and will be interpreted and operated consistently with those intentions. The times and schedules of payment under this Agreement may not be accelerated or delayed for any reason



except as permitted by Section 409A. In addition to any other restriction in this Agreement, the Agreement may not be amended or terminated except in compliance with Section 409A.

The parties hereto confirm their agreement by the signatures shown below.

**COMPANY-GILL:**

Signed:

Handwritten signature of David W. DeGraaf in black ink over a horizontal line.

Name: **David W. DeGraaf, President**

Date: **March 10, 2020**

Signed:

Handwritten signature of Alicia Masse in black ink over a horizontal line.

Name: **Alicia Masse, CRO**

Date: **March 10, 2020**

**RECIPIENT:**

Signed:

Handwritten signature of Lori Walters in black ink over a horizontal line.

Name: **Lori Walters**

Date: **March 10, 2020**



**FIRST ADDENDUM TO RETENTION AGREEMENT**

This First Addendum to Retention Agreement (as amended, modified or supplemented in accordance with its terms, this "Addendum") is made by and between Gill Industries, Inc., a Michigan corporation (the "Company"), and the undersigned individual (the "Recipient"). This Agreement is effective as of the date it is signed by both parties and is part of the Retention Agreement entered into by and between the Company and Recipient as of March 10, 2020 (the "Retention Agreement"), which is specifically incorporated by reference. All terms and conditions of the Retention Agreement apply to this Addendum.

**AGREEMENT**

**1. Supplemental Retention Bonus.** The Recipient will be eligible to receive a supplemental bonus in the amount of \$6,538 (six thousand and five hundred and thirty-eight dollars), less applicable withholdings and deductions (the "Supplemental Retention Bonus"), if the Recipient remains continuously and actively employed per the terms of the Retention Agreement.

**2. Conditions and Payment.** Sections 3 and 4 of the Retention Agreement apply to the payment of the Supplemental Retention Bonus. The Recipient must comply with the conditions of Section 3 of the Retention Agreement as a condition of receiving the Supplemental Retention Bonus. If the Recipient is entitled to receive the Supplemental Retention Bonus, it will be paid according to the terms and schedule of Section 4 of the Retention Agreement.

The parties hereto confirm their agreement by the signatures shown below.

**COMPANY-GILL:**

**RECIPIENT:**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: **David W. DeGraaf, President**

Name: **Lori Walters**

Date: **March 12, 2020**

Date: **March 12, 2020**

Signed:  \_\_\_\_\_

Name: **Alicia Masse, CRO**

Date: **March 12, 2020**

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Gill Industries Backed Out of Incentive Payments Promised in Employee Retention Deal, Lawsuit Alleges](#)

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