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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

BENSON PAI, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE ODP CORPORATION, a Delaware  
Corporation; VEYER, LLC, a Delaware  
Limited Liability Company; and DOES 1-  
100, inclusive,

Defendants.

Case No.: 3:23-cv-03279-EMC

**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR:**

- 1. Recovery of Unpaid Minimum Wages  
and Liquidated Damages**
- 2. Recovery of Unpaid Overtime Wages**
- 3. Failure to Provide Meal Periods or  
Compensation in Lieu Thereof**
- 4. Failure to Provide Rest Periods or  
Compensation in Lieu Thereof**
- 5. Violations of Labor Code Section 226**
- 6. Failure to Timely Pay All Wages Due  
Upon Separation of Employment  
*and***
- 7. Unfair Competition**

**DEMAND FOR JURY TRIAL**

Complaint filed: May 26, 2023  
Removed: June 30, 2023  
FAC filed: October 10, 2023  
Trial date: None set

1 Plaintiff BENSON PAI (“PLAINTIFF”), as an individual and on behalf of all other  
2 similarly situated Class Members (as defined below), hereby files this Complaint against  
3 Defendants THE ODP CORPORATION, a Delaware Corporation; VEYER, LLC, a Delaware  
4 Limited Liability Company; and DOES 1-100, inclusive, (collectively referred to herein as  
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is  
8 proper in this district because DEFENDANTS transact business within this judicial district,  
9 DEFENDANTS employed PLAINTIFF to work in this judicial district and some of the acts,  
10 omissions, and conduct alleged by PLAINTIFF herein occurred in this this judicial district. 12  
11 U.S.C. § 5564(f).

12 **INTRADISTRICT ASSIGNMENT**

13 2. Under the Local Rules for the United States District Court for the Northern District  
14 of California, this action, which arose in the county of Alameda, shall be assigned to the San  
15 Francisco Division or the Oakland Division. Civil L.R. 3-2(d)

16 **THE PARTIES**

17 3. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of  
18 California and a citizen of the State of California.

19 4. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for  
20 DEFENDANTS as a non-exempt employee with a job title of warehouse associate and/or similar  
21 title(s) and/or position(s) from around January 2021 through in July 31, 2022. PLAINTIFF worked  
22 at DEFENDANTS’ Fremont, California location. PLAINTIFF regularly worked at least eight (8)  
23 hours per day, at least five (5) days per week.

24 5. DEFENDANTS are either a Delaware corporation and/or a Delaware limited liability  
25 company that, at all relevant times, were authorized to do business within the State of California  
26 and are doing business in the State of California.

27 6. DEFENDANTS own, operate, manage and/or staff its employees to work at  
28 warehouses, facilities and/or distribution centers and/or other locations in California, including in

1 Fremont. DEFENDANTS, through their locations, serve the manufacturing and/or logistics  
2 industry.

3         7.         The true names and capacities of the DOE Defendants sued herein as DOES 1  
4 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such  
5 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally  
6 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this  
7 Complaint to reflect the true names and capacities of the Doe Defendants when such identities  
8 become known.

9         8.         PLAINTIFF is further informed and believes that, at all relevant times, each  
10 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,  
11 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
12 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of  
13 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all  
14 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this  
15 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant  
16 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant  
17 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,  
18 controlled, aided and abetted the conduct of all other Defendants.

19                                 **JOINT LIABILITY**

20         9.         Under California law, the definition of the terms “to employ” are broadly construed  
21 under the applicable Wage Order(s) to have three alternative definitions: (1) to exercise control over  
22 the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby  
23 creating a common law employment relationship. *See Martinez v. Combs* (2010) 49 Cal.4th 35, 64.  
24 One reason that the IWC defined “employer” in terms of exercising control was to reach situations  
25 in which multiple entities control different aspects of the employment relationship. Supervision of  
26 the work, in the specific sense of exercising control over how services are properly performed, is  
27 properly viewed as one of the “working conditions” mentioned in the wage order. *Id.* at 76. A joint  
28 employer relationship exists, for example, when one entity (such as a temporary employment

1 agency) hires and pays a worker, and the other entity supervises the work. *Id.* Moreover, the  
 2 California Court of Appeal recently broadened the test for joint employment in California, applying  
 3 a less stringent standard to what constitutes sufficient control by a business over its vendor's  
 4 employees' wages and working conditions to render that business liable as a joint employer. *See*  
 5 *Medina v. Equilon Enterprises, LLC* (2021) 68 Cal. App. 5th 868, 875 (“[I]f the putative joint  
 6 employer instead exercises enough control over the intermediary entity to *indirectly* dictate the  
 7 wages, hours, or working conditions of the employee, that is a sufficient showing of joint  
 8 employment.”) (emphasis added).

9       10. During PLAINTIFF's employment by DEFENDANTS, PLAINTIFF and Class  
 10 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage  
 11 Orders, under the alternative definitions of “to employ” adopted in *Martinez, supra*. As discussed  
 12 below, these DEFENDANTS (1) exercised control over wages, hours and working conditions of  
 13 PLAINTIFF and Class Members; (2) suffered or permitted PLAINTIFF and Class Members to work  
 14 for them; and (3) engaged PLAINTIFF and Class Members to work for them.

15       11. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times  
 16 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized  
 17 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices  
 18 across all their locations/facilities and subjected all Class Members to these same policies and  
 19 practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is  
 20 informed and believes that: (1) there is common ownership in, and financial control, in  
 21 DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control  
 22 over the day-to-day operations and employment matters, including the power to hire and fire, set  
 23 schedules, issue employee policies, and determine rates of compensation across its locations in  
 24 California; (3) DEFENDANTS utilize the same policies and procedures for all California  
 25 employees, including issuing the same employee handbooks and other form agreements; (4)  
 26 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee  
 27 employment matters; and, (5) DEFENDANTS share employees.

28       12. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times,

1 DEFENDANTS were the joint employers of PLAINTIFF and Class Members upon whose behalf  
2 PLAINTIFF brings these allegations and causes of action, in that DEFENDANTS exercised  
3 sufficient control over PLAINTIFF and Class Members' wages, hours and working conditions,  
4 and/or suffered or permitted PLAINTIFF and Class Members to work so as to be considered the  
5 joint employers of PLAINTIFF and Class Members. For example, DEFENDANTS' wage  
6 statements issued to PLAINTIFF identify both "The ODP Corporation" and "Veyer, LLC" as  
7 PLAINTIFF'S employer. Also, on information and belief, DEFENDANTS, and each of them,  
8 maintain the same principal place of business and agent for service of process as provided to the  
9 California Secretary of State and utilize some of the same attorneys and human resources personnel  
10 to oversee employment-related matters.

11 13. On information and belief, PLAINTIFF alleges that DEFENDANTS created a  
12 uniform set of policies, practices, and/or procedures concerning, *inter alia*, hourly and overtime pay,  
13 time-keeping practices, meal and rest periods, reimbursement of business expenses, and other  
14 working conditions that were distributed and/or applied to PLAINTIFF and Class Members and  
15 further that DEFENDANTS compensated and controlled the wages of PLAINTIFF and Class  
16 Members in a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and Class  
17 Members that each was an "at-will" employee of DEFENDANTS and that DEFENDANTS  
18 collectively retained the right to terminate PLAINTIFF and Class Members' employment with or  
19 without cause. Upon information and belief, DEFENDANTS further collectively represented to  
20 PLAINTIFF and Class Members in writing the details of their compensation and the manner in  
21 which they were to take meal and rest periods, the procedures required by DEFENDANTS  
22 collectively for recording hours worked, and the policies applicable to PLAINTIFF and Class  
23 Members by which DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and  
24 Class Members.

25 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours,  
26 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively  
27 held the right to control virtually every aspect of PLAINTIFF and Class Members' employment,  
28 including the instrumentality that resulted in the illegal conduct for which PLAINTIFF seeks relief

1 in this Complaint.

2 15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same  
3 control over, applied the same policies and practices, and engaged in the same acts and omissions  
4 with regard to other Class Members.

### 5 **CLASS ALLEGATIONS**

6 16. PLAINTIFF brings this action, on behalf of himself and all others similarly situated,  
7 as a class action pursuant to Code of Civil Procedure section 382 and Rule 23(b)(3) of the Federal  
8 Rules of Civil Procedure. The class PLAINTIFF seeks to represent is defined as follows and referred  
9 to as the “Class” or “Class Members”:

10 All current and former non-exempt employees who worked either  
11 directly or via a staffing agency for any one or more of the  
12 DEFENDANTS at any location in California at any time within the  
13 four years prior to the filing of the initial Complaint (“Class Period”).

14 a. Numerosity. While the exact number of Class Members is unknown to  
15 PLAINTIFF at this time, the Class is so numerous that the individual joinder of  
16 all members is impractical under the circumstances of this case. PLAINTIFF is  
17 informed and believes the Class consists of at least 100 individuals.

18 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment  
19 because common questions of law and fact predominate over individual issues.  
20 Common questions include the following: (1) whether DEFENDANTS  
21 understated hours worked and failed to pay all amounts due to PLAINTIFF and  
22 Class Members for wages earned, including minimum and overtime wages,  
23 under California law; (2) whether DEFENDANTS provided PLAINTIFF and  
24 Class Members with all meal periods or premium payments in lieu thereof in  
25 compliance with California law; (3) whether DEFENDANTS provided  
26 PLAINTIFF and Class Members with all rest periods or premium payments in  
27 lieu thereof, in compliance with California law; (4) whether DEFENDANTS  
28 provided PLAINTIFF and Class Members with accurate, itemized wage

1 statements in compliance with California law that display, *inter alia*, the total  
2 hours worked during the pay period; (5) whether DEFENDANTS timely paid  
3 PLAINTIFF and Class Members all wages due upon separation of employment;  
4 (6) whether DEFENDANTS failed to reimburse PLAINTIFF and Class  
5 Members for all business expenses; and (7) whether DEFENDANTS violated  
6 the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*

7 c. Ascertainable Class. The proposed Class is ascertainable, as members can be  
8 identified and located using information in DEFENDANTS’ business, payroll,  
9 and personnel records.

10 d. Typicality. PLAINTIFF’S claims are typical of Class Members’ claims.  
11 PLAINTIFF suffered a similar injury as members of the Class as a result of  
12 DEFENDANTS’ common practices regarding, *inter-alia*, failure to calculate  
13 and pay all owed minimum and overtime wages, failure to provide proper meal  
14 periods and rest periods or premium compensation in lieu thereof, failure to  
15 provide accurate wage statements, failure to reimburse business expenses, and  
16 failure to timely pay all wages due upon separation of employment.

17 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the  
18 Class. PLAINTIFF has no interests adverse to the interests of other Class  
19 Members. Counsel who represent PLAINTIFF are competent and experienced  
20 in litigating similar class action cases and are California lawyers in good  
21 standing. Counsel for PLAINTIFF have the experience and resources to  
22 vigorously prosecute this case.

23 f. Superiority. A class action is superior to other available means for the fair and  
24 efficient adjudication of this controversy since individual joinder of all members  
25 of the class is impractical. Class action treatment will permit a large number of  
26 similarly situated persons to prosecute their common claims in a single forum  
27 simultaneously, efficiently, and without the unnecessary duplication of effort  
28 and expense that numerous individual actions would engender. Furthermore, as

1 the damages suffered by each individual member of the Class may be relatively  
2 small, the expenses and burden of individual litigation would make it difficult  
3 or impossible for individual members of the Class to redress the wrongs done to  
4 them, while an important public interest will be served by addressing the matter  
5 as a class action. The cost to the court system of adjudication of such  
6 individualized litigation would be substantial. Individualized litigation would  
7 also present the potential for inconsistent or contradictory judgments. Finally,  
8 the alternative of filing a claim with the California Labor Commissioner is not  
9 superior, given the lack of discovery in such proceedings, the fact that there are  
10 fewer available remedies, and the losing party has the right to a trial de novo in  
11 the Superior Court.

#### 12 **FACTUAL AND LEGAL ALLEGATIONS**

13 17. At all relevant times, PLAINTIFF and each Class Member worked for  
14 DEFENDANTS in the State of California, and DEFENDANTS exercised control over PLAINTIFF  
15 and Class Members and suffered and/or permitted them to work.

16 18. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for  
17 DEFENDANTS as a warehouse associate from around January 2021 through July 31, 2022, at  
18 DEFENDANTS' Fremont, California location. PLAINTIFF regularly worked eight (8) to twelve  
19 (12) hours per day, at least five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate  
20 for time counted by DEFENDANTS as hours worked. On information and belief, at times during  
21 the relevant period, DEFENDANTS also compensated PLAINTIFF and other Class Members with  
22 non-discretionary bonuses (e.g., performance-based) and/or other non-discretionary compensation.

23 19. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate  
24 PLAINTIFF and Class Members for all hours worked, resulting in the underpayment of minimum  
25 and overtime wages, including by virtue of DEFENDANTS' policy of manually altering time  
26 punches for meal periods and failing to relieve employees of all duties/employer control during meal  
27 periods, as explained below.

28 20. On information and belief, DEFENDANTS implemented a policy and/or practice of

1 altering or editing meal period punches to show one (1) timely 30-minute meal period per shift of  
2 no more than ten (10) hours and/or to show a second timely 30-minute meal period per shift of ten  
3 (10) to twelve (12) hours, despite having actual and/or constructive knowledge that PLAINTIFF  
4 and other Class Members were subject to DEFENDANTS' control during such meal periods,  
5 thereby depriving PLAINTIFF and Class Members of all wages owed.

6 21. On information and belief, Class Members were not paid for all hours worked due to  
7 DEFENDANTS' permitting and/or suffering Class Members to work off-the-clock.

8 22. For example, on information and belief, DEFENDANTS failed to pay Class  
9 Members for time they were required to spend completing orientation, policy questionnaires, and/or  
10 time spent completing the onboarding process including reviewing various documents and policies  
11 provided by DEFEDANTS. On information and belief, this work was completed off-the-clock and  
12 not compensated.

13 23. DEFENDANTS' failure to pay for all time worked by virtue of their off-the-clock  
14 work practices and policies resulted in the underpayment of minimum wages owed to PLAINTIFF  
15 and Class Members, as well as unpaid overtime wages for those Class Members who worked more  
16 than eight (8) hours in a day and/or more than forty (40) hours in a week.

17 24. On information and belief, DEFENDANTS had actual and/or constructive  
18 knowledge that their suffering and/or permitting PLAINTIFF and Class Members to work off-the-  
19 clock work resulted in the underpayment of wages owed to PLAINTIFF and other Class Members,  
20 in violation of California's minimum and overtime wage laws.

21 25. On information and belief, DEFENDANTS failed, and continue to fail, to pay Class  
22 Members two (2) times the employee's regular rate of pay for time worked beyond twelve (12)  
23 hours per workday, in violation of California's overtime laws.

24 26. On information and belief, DEFENDANTS failed to incorporate all non-  
25 discretionary remuneration, including shift differential and bonus pay, in the regular rate calculation  
26 for overtime rates, resulting in the underpayment of overtime wages owed to PLAINTIFF and other  
27 Class Members.

28 27. **Meal Period Violations.** PLAINTIFF and other Class Members consistently worked

1 shifts of over five and one-half hours, entitling them to at least one (1) meal period. However,  
2 PLAINTIFF and other Class Members would not receive all timely, duty-free 30-minute first and  
3 second meal periods to which they are entitled. On information and belief, Class Members were  
4 consistently unable to take timely, off duty, 30-minute, uninterrupted meal periods, often being  
5 forced to take meal periods late and/or perform work while clocked out for meal periods due to  
6 understaffing, the nature and constraints of their job duties, and/or pressure to keep working.

7 28. For example, on information and belief, Class Members were forced to take late meal  
8 periods in order to complete assigned job duties due to chronic understaffing. On information and  
9 belief, Class Members were at times interrupted during meal periods and/or had meal periods cut  
10 short due to productivity expectations and/or goals.

11 29. On information and belief, other Class Members were consistently suffered and  
12 permitted to start meal periods after the fifth hour of work and/or had their meal periods interrupted,  
13 cut short, and/or otherwise on-duty due to understaffing, the nature and constraints of their job  
14 duties, and/or the need to meet DEFENDANTS' goals and expectations.

15 30. On information and belief, DEFENDANTS implemented policies and/or practices  
16 that failed to relieve Class Members of all duties and DEFENDANTS' control during unpaid meal  
17 periods.

18 31. On information and belief, DEFENDANTS implemented a policy and/or practice of  
19 altering and/or editing time punches to show a full thirty (30) minutes per shift of no more than ten  
20 (10) hours, despite having actual and/or constructive knowledge that PLAINTIFF and other Class  
21 Members did not receive all lawful meal periods to which they were entitled.

22 32. Moreover, Class Members who worked shifts of more than ten hours did not receive  
23 all second legally compliant thirty (30) minute meal periods to which they were entitled due to  
24 understaffing and/or performance goals and expectations.

25 33. On information and belief, DEFENDANTS failed to instruct PLAINTIFF and other  
26 Class Members adequately as to the timing and duty-free nature of meal periods. On further  
27 information and belief, DEFENDANTS' written meal period policy is incomplete and fails to  
28 comply with relevant law in practice. For example, DEFENDANTS' written policy does not inform

1 Class Members that they may choose to waive their meal periods under certain circumstances if  
2 such waiver is in writing and revocable. Moreover, while DEFENDANTS' written policy also states  
3 that Class Members will receive "one additional hour of pay" for missed or short meal periods, the  
4 policy fails to inform Class Members that the payments are also required for late meal periods and  
5 misstates the rate of pay for meal period premiums.

6 34. As a result of such unlawful practices, DEFENDANTS failed to keep accurate  
7 records of the true start and end times of PLAINTIFF and Class Members' meal periods, resulting  
8 in PLAINTIFF and other Class Members not being paid all compensation to which they are entitled.  
9 *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

10 35. On information and belief, DEFENDANTS had actual and/or constructive  
11 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods free of  
12 DEFENDANTS' control, in violation of California's meal period laws.

13 36. DEFENDANTS failed to pay PLAINTIFF and other Class Members an additional  
14 hour of wages at their respective regular rates of compensation for each workday a lawful meal  
15 period was not provided. DEFENDANTS either failed to pay a meal period premium at all or failed  
16 to pay the correct meal period premium by failing to incorporate all non-discretionary remuneration,  
17 including bonuses and shift differentials, in the regular rate calculation.

18 37. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide  
19 PLAINTIFF and other Class Members with all duty-free rest periods of at least ten (10) minutes at  
20 a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are  
21 provided in the middle of the work period, to which they are entitled.

22 38. PLAINTIFF and other Class Members were not adequately informed, authorized,  
23 instructed about, or permitted an opportunity to take all rest periods to which they are entitled under  
24 California law. On information and belief, DEFENDANTS' written rest period policy is incomplete  
25 and, at least in part, non-compliant on its face. For example, DEFENDANTS' written policy states  
26 in pertinent part that Retail Associates must clock out for their rest breaks, despite the entitlement  
27 to paid rest periods.

28 39. On information and belief, DEFENDANTS did not have a have a compliant rest

1 period policy in practice.

2 40. For example, on information and belief, Class Members were at times unable to take  
3 compliant rest periods due to chronic understaffing. PLAINTIFF does not recall having the  
4 opportunity to take a third rest break when he worked shifts of more than ten (10) hours.

5 41. On information and belief, Class Members' rest periods were interrupted, cut short,  
6 on duty, and/or missed due to understaffing, the nature and constraints of their job duties, and/or  
7 pressure to keep working.

8 42. Moreover, on information and belief, DEFENDANTS failed to provide a third rest  
9 period on shifts longer than ten (10) hours.

10 43. On information and belief, DEFENDANTS implemented policies and/or practices  
11 that failed to relieve PLAINTIFF and other Class Members of all duties and DEFENDANTS'  
12 control during rest periods.

13 44. On information and belief, Class Members were pressured to complete their work  
14 duties according to a schedule such that rest periods were only taken as time permitted.

15 45. Furthermore, DEFENDANTS failed to pay PLAINTIFF and Class Members a rest  
16 period premium for each day that rest periods were missed or short, in violation of California law.  
17 DEFENDANTS either failed to pay a rest period premium at all for each workday a proper rest  
18 period was not provided and/or failed to pay the proper rest period premium by failing to incorporate  
19 all non-discretionary remuneration, including bonuses and shift differential pay, in the regular rate  
20 calculation.

21 46. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to  
22 provide PLAINTIFF and other Class Members with accurate wage statements that complied with  
23 Labor Code section 226. Because DEFENDANTS failed to provide PLAINTIFF and Class  
24 Members with Labor Code-compliant meal and rest periods, the wage statements DEFENDANTS  
25 issued to PLAINTIFF and Class Members failed, and continue to fail, to set forth correctly, *inter*  
26 *alia*, the gross wages earned, the total hours worked, the net wages earned, and all applicable hourly  
27 rates in effect during the pay period and the corresponding number of hours worked at each hourly  
28 rate by the employee, in violation of Labor Code section 226(a).

47. Separately, and independent of the above allegations, DEFENDANTS' wage statements fail to list the total hours worked, in violation of Labor Code section 226(a)(2). For example, DEFENDANTS' wage statement for PLAINTIFF for pay period beginning on July 31, 2022, and ending on August 13, 2022, lists "Total Hours Worked" for PLAINTIFF as 0.00. However, the same wage statement also identifies a category for "Reg Hours" which lists 45.38 hours/units worked and lists categories for overtime hours/units worked. Also, even if PLAINTIFF were to add up the total hours/units worked as listed on DEFENDANTS' wage statement(s), PLAINTIFF would be unable to determine his total hours worked because, for example, DEFENDANTS' wage statement(s) list two separate overtime categories resulting in a double counting and/or listing of the number of hours worked twice thus reflecting an inaccurate accounting of the total number of hours as listed on the wage statement(s), in violation of Labor Code section 226(a)(2):

|                     |             |                         |                        |
|---------------------|-------------|-------------------------|------------------------|
| Total Hours Worked: | 0.00        |                         |                        |
| Basis of Pay:       | Hourly      |                         |                        |
| Pay Rate:           | 20.50       |                         |                        |
| <b>Earnings</b>     | <b>Rate</b> | <b>Hours/<br/>Units</b> | <b>This<br/>Period</b> |
| DBL Pay Prem        | 10.6883     | 2.63                    | 28.11                  |
| DBL Pay             | 20.5000     | 2.63                    | 53.92                  |
| Final PTO           | 20.5000     | 24.88                   | 510.08                 |
| Holid Pay           |             |                         | 0.00                   |
| Meal Prem Py        |             |                         | 0.00                   |
| ODP-Shift Di        | 1.5000      | 36.14                   | 54.21                  |
| OT Pay              | 20.5000     | 19.22                   | 394.01                 |
| OT Prem Pay         | 10.6883     | 19.22                   | 205.43                 |
| PTO Accrual         |             |                         | 0.00                   |
| Reg Hours           | 20.5000     | 45.38                   | 930.29                 |
| Retro PTOACL        |             |                         | 0.00                   |
| SC Hrly Bon         |             |                         | 0.00                   |
| Sick FrntLd         |             |                         | 0.00                   |
| Gross Pay           |             |                         | 2176.05                |

48. Also, wage statements issued by DEFENDANTS to Class Members fail accurately to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, not only does the wage statement shown above fail to provide an accurate line item for total hours worked, it also lists the rates of overtime premiums ("DBL Pay Prem" and "OT Prem Pay") as separate line items such that PLAINTIFF cannot easily ascertain the sum of hours for which DEFENDANTS compensated him simply by adding the column of numbers together. In addition,

the rate of pay for “DBL Pay Prem” is approximately half of PLAINTIFF’S hourly rate, making the “double time” rate paid to PLAINTIFF only one-and-a-half times his hourly rate, and the rate of pay for “Final PTO” is PLAINTIFF’S hourly rate, not his final rate for the pay period, as required by Labor Code § 227.3.

49. As described herein, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned during the pay period, including non-discretionary bonus/incentive pay and/or shift differential pay, and/or multiple base rates of pay in the overtime pay rate calculation and, as such, failed to display the proper overtime rate(s) for each Class Member. For example, PLAINTIFF’S wage statement for the pay period April 24 through May 7, 2022, lists a shift differential of \$1.50 per hour and a total hourly bonus of \$444.17, in addition to “OT Pay” at PLAINTIFF’S hourly rate of \$20.50, “OT Prem Pay” at an hourly rate of \$10.6112, and “OT Prem Pay” at an hourly rate of \$10.5742:

|                                          |             |                         |                        |
|------------------------------------------|-------------|-------------------------|------------------------|
| Title 100009 - Operator, Equipment - USW |             |                         |                        |
| For inquiries please call 1-888-954-4636 |             |                         |                        |
| Total Hours Worked:                      |             | 0.00                    |                        |
| Basis of Pay:                            |             | Hourly                  |                        |
| Pay Rate:                                |             | 20.50                   |                        |
| <u>Earnings</u>                          | <u>Rate</u> | <u>Hours/<br/>Units</u> | <u>This<br/>Period</u> |
| Holid Pay                                |             |                         | 0.00                   |
| Meal Prem Py                             |             |                         | 0.00                   |
| ODP-Shift Di                             | 1.5000      | 41.85                   | 62.78                  |
| OT Pay                                   | 20.5000     | 16.65                   | 341.33                 |
| OT Prem Pay                              | 10.6112     | 7.51                    | 79.69                  |
| OT Prem Pay                              | 10.5742     | 9.14                    | 96.65                  |
| PTO Accrual                              |             |                         | 0.00                   |
| Reg Hours                                | 20.5000     | 75.30                   | 1543.65                |
| SC Hrly Bon                              |             |                         | 444.17                 |
| Sick FrntLd                              |             |                         | 0.00                   |
| Gross Pay                                |             |                         | 2568.27                |

It is impossible to tell from the wage statement whether the regular rate calculation is correct for the pay period.

50. On information and belief, DEFENDANTS also issued wage statements containing a category for retroactive pay without listing the accurate inclusive dates of the pay period during which the retroactive pay was earned.

51. On information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of including Labor Code section 226(a)(9).

For example, PLAINTIFF’S wage statement for the pay period September 26 through October 9, 2021, lists a shift differential total of \$107.84 but does not list the hourly rate, making it difficult from the wage statement alone to determine whether the rates of pay listed for premium payments (“Meal Prem” and “OT Prem”) are calculated correctly:

|                                                 |                |                         |                        |
|-------------------------------------------------|----------------|-------------------------|------------------------|
| <b>Title 100001 - Associate, Warehouse - US</b> |                |                         |                        |
| For inquiries please call 1-888-954-4636        |                |                         |                        |
| Total Hours Worked:                             |                | 85.53                   |                        |
| Basis of Pay:                                   |                | Hourly                  |                        |
| Pay Rate:                                       |                | 17.48                   |                        |
| <b>Earnings</b>                                 | <b>Rate</b>    | <b>Hours/<br/>Units</b> | <b>This<br/>Period</b> |
| Meal Prem Py                                    | 18.7088        | 1.00                    | 18.71                  |
| OD-Shift Dif                                    |                |                         | 107.84                 |
| OT Pay                                          | 17.4800        | 5.53                    | 96.67                  |
| OT Prem Pay                                     | 9.3882         | 0.64                    | 6.01                   |
| OT Prem Pay                                     | 9.3544         | 4.89                    | 45.74                  |
| <u>Reg Hours</u>                                | <u>17.4800</u> | <u>80.00</u>            | <u>1398.40</u>         |
| <u>Gross Pay</u>                                |                | <u>92.06</u>            | <u>1673.37</u>         |

52. In addition, the total for hours/units compensated is different from the total for hours worked because the number of overtime hours is listed twice. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class Members that were not accurate and did not include all information required, in violation of Labor Code § 226.

53. **Failure to Timely Pay All Wages Upon Separation of Employment.** On information and belief, DEFENDANTS failed timely to pay Class Members all wages that were due and owing upon termination or resignation. On information and belief, DEFENDANTS paid final wages to Class Members without regard to the timing requirements of Labor Code sections 201-202.

54. Upon separation of employment, Class Members’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, PLAINTIFF and Class Members’ final paychecks, once provided, did not include all wages owed, including all owed minimum wages, overtime and other premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the correct rates of pay. For example, as shown above, PLAINTIFF’s final pay for the period ending August 13, 2022, did not include all owed minimum wages, overtime and other premium wages, and vacation pay and/or other paid time off wages at the correct rates.



1 duties and employer control during unpaid meal periods, and/or other mandated off-the-clock work  
 2 resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class Members.

3 63. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and Class Members  
 4 are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus attorneys'  
 5 fees and costs, in an amount to be proved at trial.

## 6 **SECOND CAUSE OF ACTION**

### 7 **Recovery of Unpaid Overtime Wages** 8 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

9 64. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 65. Non-exempt employees in California must be paid overtime, equal to one and one-  
 11 half times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, up to  
 12 and including twelve (12) hours in any workday, and they must be paid double the regular rate of  
 13 pay for all hours worked in excess of twelve (12) hours in any workday.

14 66. PLAINTIFF and Class Members worked overtime hours for which they were not  
 15 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' altering and/or  
 16 editing time punches for meal periods and/or other unlawful policies and/or practices described  
 17 above, which resulted in the failure to account for all hours worked and thus the denial of all owed  
 18 minimum and overtime wages.

19 67. On information and belief, DEFENDANTS failed to pay twice Class Members'  
 20 regular rate(s) of pay for time worked beyond twelve (12) hours per workday, in violation of  
 21 California's overtime laws.

22 68. On information and belief, DEFENDANTS further violated California's overtime  
 23 wage laws by failing to incorporate all non-discretionary remuneration, including bonuses and shift  
 24 differentials, in the calculation of the overtime rate(s) of pay. Failing to include non-discretionary  
 25 remuneration resulted in a miscalculation of the overtime wage rates, resulting in the underpayment  
 26 of overtime wages owed to PLAINTIFF and other Class Members.

27 69. DEFENDANTS' conduct described above is in violation of California Labor Code  
 28 sections 510 and 1194 and all applicable Wage Orders.

70. PLAINTIFF and Class Members are entitled to recover all unpaid overtime wages,

1 plus attorneys' fees and costs, in an amount to be proved.

### 2 **THIRD CAUSE OF ACTION**

#### 3 **Failure to Provide Meal Periods or Compensation in Lieu Thereof** 4 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

5 71. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 72. Pursuant to Labor Code section 512 and all applicable Wage Orders, DEFENDANTS  
 7 were required to provide PLAINTIFF and the Class Members with one (1) timely, duty-free 30-  
 8 minute meal break for all shifts longer than five (5) hours, and a second 30-minute meal break free  
 9 from employer control for all shifts longer than ten (10) hours. If an employee's total work period  
 10 in a day is no more than six (6) hours, the required meal period may be waived by mutual consent  
 11 of the employer and employee. If the employee's total work period in a day is no more than twelve  
 12 (12) hours, the required second meal period may be waived by mutual consent if the first meal period  
 13 was not waived. Employers covered by the Wage Orders have an obligation not only to relieve their  
 14 non-exempt employees for at least one meal period for shifts over five hours (see above), but also  
 15 to record having done so.

16 73. Employers must pay employees an additional hour of pay at the employee's regular  
 17 rate of pay for each missed or otherwise unlawful meal period. Lab. Code § 226.7.

18 74. California employers are also required to make copies of the applicable Wage  
 19 Order(s) available to affected employees, such that they  
 20 "may be easily read during the workday." *See, e.g.*, Wage Order 4 § 22.

21 75. On information and belief, DEFENDANTS had, and continue to have, a policy of  
 22 altering and/or editing meal period time punches to show timely 30-minute meal periods each shift,  
 23 despite having actual and/or constructive knowledge when PLAINTIFF and Class Members do not  
 24 receive all meal periods to which they are entitled. For example, PLAINTIFF'S timekeeping records  
 25 show that he was clocked out for exactly thirty (30) minutes every meal period for the duration of  
 26 his employment, giving rise to a reasonable inference that at least some of the time punches were  
 27 either entered automatically or altered.

28 76. Moreover, on information and belief, Class Members did not always receive a lawful

1 second meal period when working shifts over ten (10) hours in a workday.

2 77. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had  
3 actual and/or constructive knowledge that their unlawful policies and practices resulted in the denial  
4 of Labor Code-compliant meal periods.

5 78. DEFENDANTS also failed to pay premiums for missed or otherwise unlawful meal  
6 periods in violation of California law and/or failed to pay the proper meal period premiums by  
7 failing to incorporate all non-discretionary remuneration, including bonuses and shift differential  
8 pay, in the regular rate calculation.

9 79. As a result, under Labor Code section 226.7, PLAINTIFF and Class Members are  
10 entitled to one additional hour's pay at the employee's regular rate of compensation for each day a  
11 meal period was missed, interrupted, or otherwise unlawful, plus attorneys' fees and costs, all in an  
12 amount to be proved at trial.

#### 13 **FOURTH CAUSE OF ACTION**

##### 14 **Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFF and Class Members Against all DEFENDANTS)**

15 80. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 81. Labor Code section 226.7 and all applicable Wage Orders require an employer to  
17 authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours  
18 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period  
19 "insofar as practicable." *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,  
20 1029 (holding that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6  
21 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three  
22 10-minute rest periods for shifts of more than 10 hours up to 14 hours). The rest period requirement  
23 obligates employers to relieve employees of all duties and relinquish control over how employees  
24 spend the time. *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal.5th 257.

25 82. If the employer fails to provide any required rest period, the employer must pay the  
26 employee one (1) hour of pay at the employee's regular rate of compensation for each workday the  
27 rest period was not provided, pursuant to Labor Code section 226.7.  
28

1           83.     Moreover, California law mandates that rest periods must be a “net” ten (10) minutes  
2 in a suitable rest area and cannot include time it takes to get to and from the rest area. *Id.* at 268  
3 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards Enforcement  
4 (DLSE) Letters). The employer must also clearly communicate what “net” ten minutes means. *Id.*;  
5 *see also Bufil v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the  
6 employer to clearly communicate the authorization and permission [to take rest periods] to its  
7 employees.”).

8           84.     PLAINTIFF and Class Members did not receive all 10-minute rest periods to which  
9 they are entitled. As explained above, purported rest periods were regularly interrupted, cut short,  
10 on duty, and/or otherwise subject to DEFENDANTS’ control due to the nature and constraints of  
11 Class Members’ job duties, understaffing, and/or performance goals and expectations.

12           85.     On information and belief, DEFENDANTS implemented policies and/or practices  
13 that failed to relieve PLAINTIFF and other Class Members of all duties and employer control during  
14 rest periods. On further information and belief, Class Members were pressured to complete their  
15 work duties according to a designated schedule such that rest periods were only taken as time  
16 permitted.

17           86.     As a result, PLAINTIFF and Class Members did not receive all first, second, and/or  
18 third rest periods to which they are entitled under California law.

19           87.     Moreover, on information and belief, DEFENDANTS failed to pay a rest period  
20 premium to PLAINTIFF and other Class Members for each workday a rest period was missed or  
21 otherwise unlawful. On further information and belief, when a rest premium was paid,  
22 DEFENDANTS failed to include non-discretionary remuneration, including bonuses and shift  
23 differential pay, in the regular rate calculation.

24           88.     DEFENDANTS are therefore liable to PLAINTIFF and Class Members for one (1)  
25 hour of additional pay at the employee’s regular rate of compensation for each workday that a  
26 required rest period was not provided, pursuant to California Labor Code section 226.7 and the  
27 applicable Wage Order(s), plus pre-judgment interest, plus attorneys’ fees and costs, all in an  
28 amount to be proved at trial.

**FIFTH CAUSE OF ACTION**  
**Violations of Labor Code Section 226**  
**(By PLAINTIFF and Class Members Against all DEFENDANTS)**

89. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

90. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

91. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and other Class Members failed, and continue to fail, to set forth correctly (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

92. Moreover, due to violations detailed above, including DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide meal and rest break premiums, and failure to pay all sick leave wages at the correct rates, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross and net wages earned and the correct

1 applicable rates of pay for all hours worked. On information and belief, DEFENDANTS failed to  
2 incorporate all forms of non-discretionary remuneration earned during the pay period in the regular  
3 rate calculation, and as such, failed to list the correct overtime rate(s) for each hour of overtime  
4 worked by PLAINTIFF and other Class Members.

5 93. As explained above, wage statements issued by DEFENDANTS sometimes failed to  
6 list the “total hours worked” by PLAINTIFF and Class Members, which results in a violation of  
7 Labor Code section 226(a). Failure to list all hours worked on a wage statement gives rise to an  
8 inference of injury under Labor Code section 226. *See Maldonado v. Epsilon Plastics, Inc.* (2018)  
9 22 Cal.App.5th 1308, 1337.

10 94. DEFENDANTS’ failure to list all hours worked accurately on all wage statements  
11 caused confusion to PLAINTIFF and caused, and continues to cause, confusion to other Class  
12 Members over whether they received all wages owed to them.

13 95. On information and belief, wage statements issued by DEFENDANTS failed to list  
14 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
15 worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

16 96. As a result, PLAINTIFF and other Class Members have suffered injury as they could  
17 not determine whether they received all wages owed to them and whether they were paid for all  
18 hours worked without additional information from DEFENDANTS.

19 97. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and  
20 Class Members with accurate, itemized wage statements.

21 98. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Class Members  
22 have suffered injury. The absence of accurate information on their wage statements has prevented  
23 earlier challenges to DEFENDANTS’ unlawful pay practices, will require discovery and  
24 mathematical computations to determine the amount of wages owed, and will cause difficulty and  
25 expense in attempting to reconstruct time and pay records. DEFENDANTS’ conduct led to the  
26 submission of inaccurate information about wages and amounts deducted from wages to state and  
27 federal government agencies. As a result, PLAINTIFF and Class Members are required to  
28 participate in this lawsuit and create more difficulty and expense from having to reconstruct time

1 and pay records than if DEFENDANT had complied with their legal obligations.

2 99. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members  
3 are entitled to recover fifty dollars (\$50) per employee for the initial pay period in which a Section  
4 226 violation occurred and one hundred dollars (\$100) per employee per violation for each  
5 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per  
6 employee.

7 100. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are  
8 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with Labor  
9 Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to provide currently  
10 employed Class Members with inaccurate wage statements in violation of Labor Code § 226(a).  
11 Currently employed Class Members have no adequate legal remedy for the continuing injuries that  
12 will be suffered as a result of DEFENDANTS' ongoing unlawful conduct. Injunctive relief is the  
13 only remedy available for ensuring DEFENDANTS' compliance with Labor Code § 226(a).

14 101. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class  
15 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable  
16 attorneys' fees, and costs of suit.

#### 17 **SIXTH CAUSE OF ACTION**

#### 18 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 19 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

20 102. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

21 103. California Labor Code section 201(a) provides, in relevant part, that "[i]f an  
22 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and  
23 payable immediately."

24 104. California Labor Code section 202(a) provides, in relevant part, that "[i]f an  
25 employee not having a written contract for a definite period quits his or her employment, his or her  
26 wages shall become due and payable not later than 72 hours thereafter, unless the employee has  
27 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled  
28 to his or her wages at the time of quitting."



each of the unfair and unlawful practices and policies set forth herein.

**PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and Class Members, as follows:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed as class representative;
3. For an order that counsel for PLAINTIFF be appointed as class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of the UCL, Bus. & Prof. Code, § 17200, *et seq.*;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorneys' fees and costs reasonably incurred; and
12. For such other and further relief that the Court deems just and proper.

Dated: November 28, 2023

**CROSNER LEGAL, PC**

By: /s/ Zachary M. Crosner  
Zachary M. Crosner, Esq.  
Attorneys for Plaintiff  
BENSON PAI

**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: November 28, 2023

**CROSNER LEGAL, PC**

By: /s/ Zachary M. Crosner  
Zachary M. Crosner  
Attorneys for Plaintiff  
BENSON PAI