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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EMANUELE STEVENS, <i>individually and</i>)	CASE NO.
<i>on behalf of all others similarly situated,</i>)	
)	<u>PLAINTIFF’S ORIGINAL FED. R.</u>
Plaintiff,)	<u>CIV. P. 23 CLASS AND FLSA</u>
)	<u>COLLECTIVE ACTION</u>
v.)	<u>COMPLAINT</u>
)	
PEPSICO INC., BOTTLING GROUP, LLC,)	Jury Trial Demanded
and CB MANUFACTURING COMPANY,)	
INC.)	
)	
Defendants.)	

Plaintiff Emanuele Stevens, by and through counsel, for his Class and Collective Action Complaint against Defendants PepsiCo Inc., Bottling Group, LLC, and CB Manufacturing Company, Inc. (hereinafter also collectively referred to as “Defendants”), states and alleges the following:

INTRODUCTION

1. The Fair Labor Standards Act of 1938, as amended (the “FLSA”), 29 U.S.C. § 201, *et seq.* is a broadly remedial and humanitarian statute designed to correct “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health,

efficiency, and general well-being of workers[,]” 29 U.S.C. § 202(a), as well as “to protect all covered workers from substandard wages and oppressive working hours.” *Barrentine v. Ark Best Freight Sys. Inc.*, 450 U.S. 728, 739 (1981). The FLSA required Defendants to pay all non-exempt employees at least one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours each workweek. 29 U.S.C. § 207. Ohio law, O.R.C. Chapter 4111, and other state laws further required the payment of overtime compensation.

2. Upon information and belief, in or about mid-December 2021, Defendants’ payroll provider, Ultimate Kronos Group (“Kronos”), was subject to a purported cybersecurity incident.¹

3. The FLSA and Ohio law required Defendants to maintain accurate and complete records of employees’ time worked and amounts paid. 29 U.S.C. § 211(c); 29 C.F.R. §§ 516.2, 516.5, 516.6, 516.7 (“[e]ach employer shall keep the records required by this part **safe and accessible** at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained”) (emphasis added); O.R.C §§ 4111.08, 4111.14(F); Ohio Const. Art. II, § 34a. For example, federal regulations require employers to make and keep payroll records showing information and data such as the employee’s name, occupation, time of day and day of week which the workweek begins, regular hourly rate of pay for any week in which overtime compensation is due, hours worked each workday and total hours worked each workweek, total daily or weekly straight time earnings, total premium pay for overtime hours, total wages paid each pay period and date of payment and pay period covered by the payment. 29 C.F.R. § 516.2. To the extent that Defendants maintained

¹ See <https://www.usatoday.com/story/tech/2021/12/13/kronos-ransomware-attack-2021/6501274001/> (last accessed Jan. 28, 2022).

the records at a central recordkeeping office, other than in the place or places of employment, these records were required to be available within 72 hours. *See* 29 C.F.R. § 516.7

4. By failing to keep accurate records of hours worked, notwithstanding Defendants' enumerated obligations under the FLSA, Ohio law, and other state laws, Defendants have not recorded or paid all overtime hours worked to their hourly non-exempt employees, including Plaintiff and other members of the FLSA Collective and Ohio Class, in violation of the FLSA and Ohio law since approximately mid-December, 2021, after the outset of the Kronos cybersecurity incident.

5. Plaintiff brings this case to challenge the policies and practices of Defendants that violate the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219, as well as the statutes of the State of Ohio.

6. Plaintiff brings this case as a nationwide FLSA "collective action" pursuant to 29 U.S.C. § 216(b), which provides that "[a]n action to recover the liability" prescribed by the FLSA "may be maintained against any employer ... by any one or more employees for and in behalf of himself or themselves and other employees similarly situated" (the "FLSA Collective").

7. Plaintiff also brings this case as a class action under Fed. R. Civ. P. 23 on behalf of himself and other members of a class of persons who assert factually-related claims under the wage-and-hour statutes of the State of Ohio (the "Ohio Class").

8. Plaintiff and other members of the FLSA Collective and Ohio Class now seek to exercise their rights to unlawfully unpaid overtime wages and additional statutory liquidated damages in this matter, in addition to prejudgment interest, costs and attorneys' fees incurred in prosecuting this action, and such further relief as the Court deems equitable and just.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

10. This Court has supplemental jurisdiction over Plaintiff's claims under the statutes of the State of Ohio because those claims are so related to the FLSA claims as to form part of the same case or controversy.

11. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) because one or more of the Defendants reside in this district and division.

PARTIES

12. Plaintiff Emanuele Stevens is an individual and a resident of Lake County, Ohio.

13. Defendant PepsiCo Inc. is a North Carolina for-profit corporation with its principal executive office address at 700 Anderson Hill Road, Purchase, New York, 10577. According to records maintained by the New York Department of State, Division of Corporations, Defendant PepsiCo Inc.'s agent for service of process is C T Corporation System, 28 Liberty St., New York, NY, 10005.

14. Defendant Bottling Group, LLC is a Delaware for-profit limited liability company. According to records maintained by the New York Department of State, Division of Corporations, Defendant Bottling Group, LLC's agent for service of process is C T Corporation System, 28 Liberty St., New York, NY, 10005.

15. Defendant CB Manufacturing Company, Inc. is a Delaware for-profit corporation. According to records maintained by the New York Department of State, Division of Corporations, Defendant CB Manufacturing Company, Inc.'s agent for service of process is C T Corporation System, 28 Liberty St., New York, NY, 10005.

FACTUAL ALLEGATIONS

Defendants' Business and Defendants' Statuses as Employers

16. Defendant PepsiCo Inc. is a multinational firm whose “products are [used] by consumers more than one billion times a day in more than 200 countries and territories around the world.”² PepsiCo generated \$70 billion in net revenue in 2020, and owns and distributes brands such as “Lays, Doritos, Cheetos, Gatorade, Pepsi-Cola, Mountain Dew, Quaker, and SodaStream... including many iconic brands that generate more than \$1 billion each in estimated annual retail sales.”³ PepsiCo Inc. is made up of several divisions, including PepsiCo Beverages North America, Frito-Lay North America, and Quaker Foods North America.

17. Defendant PepsiCo Inc. is an “employer” of Plaintiff and other members of the FLSA Collective and Ohio Class within the meaning of the FLSA, 29 U.S.C. § 203(d), and Ohio law.

18. Defendant Bottling Group, LLC, “doing business as Pepsi Beverages Company, manufactures, distributes, and sells non alcoholic beverages. The Company offers soft drink, bottled water, energy drink, and fruit juices. Pepsi Beverages serves clients globally.”⁴ Upon information and belief, Defendant Bottling Group, LLC is a wholly owned subsidiary or affiliated company of Defendant PepsiCo Inc. Defendant Bottling Group, LLC has issued payroll to non-exempt hourly employees, including Plaintiff and other members of the FLSA Collective and Ohio Class, during the relevant time period.

19. Defendant Bottling Group, LLC is an “employer” of Plaintiff and other members of the FLSA Collective and Ohio Class within the meaning of the FLSA, 29 U.S.C. § 203(d), and Ohio law.

² <https://www.pepsico.com/about/about-the-company> (last accessed Jan. 28, 2022.)

³ *Id.*

⁴ <https://www.bloomberg.com/profile/company/3687397Z:US> (last accessed Jan. 28, 2022.)

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