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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 DRINKPAK, LLC, a California limited
12 liability company,

13 Plaintiff,

14 vs.

15 PAYLOCITY CORP., an Illinois corporation
16 and DOES 1 through 10, inclusive,

17 Defendant.

Case No. **24CHCV02154**

**COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF**

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19 Plaintiff DrinkPAK, LLC (“DrinkPAK”) brings this complaint against Defendant
20 Paylocity Corp. (“Paylocity”) and alleges as follows:

21 **I. INTRODUCTION**

22 1. This is an action arising out of Paylocity’s grossly negligent provision of critical
23 payroll services to DrinkPAK and other businesses.

24 2. As addressed further below, under the Paylocity Corporation Full Bundle
25 Subscription Agreement entered into between DrinkPAK and Paylocity (the “DrinkPAK
26 Agreement”), Paylocity contractually obligated itself to provide DrinkPAK with payroll
27 processing software and associated services and exercise “due care” in doing so. Paylocity,
28 however, failed to provide the software and render its payroll services, in the agreed-upon

1 manner. In fact, Paylocity’s payroll software and services were provided in such a grossly
2 deficient manner that DrinkPAK’s compliance with applicable California and federal wage and
3 hour laws was rendered impossible.

4 3. As a result of Paylocity’s reckless failure under the DrinkPAK Agreement to
5 render payroll software and services, DrinkPAK has suffered substantial liability, including the
6 litigation—and settlement—of two wage and hour class actions against DrinkPAK.

7 4. In DrinkPAK’s correspondence with Paylocity, Paylocity’s employees have—on
8 multiple occasions—confessed that they were responsible for the faults inherent in Paylocity’s
9 payroll processing software that were leading to the issues. Despite these admissions, Paylocity
10 has refused to provide appropriate recompense for its breach of the DrinkPAK agreement and
11 refused to acknowledge the harm caused by its willful and wanton conduct. As a result,
12 DrinkPAK is now compelled to bring this lawsuit.

13 II. PARTIES

14 5. DrinkPAK at all times herein mentioned was and is a limited liability corporation
15 duly organized and existing under and by virtue of the laws of the State of Delaware and is
16 qualified to do business and is doing business in the State of California. DrinkPAK has its
17 principle office in Santa Clarita, California, from which it has carried on substantial business at all
18 times mentioned herein. DrinkPAK seeks a money judgment in its favor for the full
19 reimbursement Defendant Paylocity owes DrinkPAK, including interest, fees, and costs, in an
20 amount that exceeds \$25,000.

21 6. DrinkPAK is informed and believes and based thereon alleges that defendant
22 Paylocity is a corporation duly organized and existing under and by virtue of the laws of the State
23 of Illinois with its principle office in Schaumburg, Illinois, from which it has carried on
24 substantial business at all times mentioned herein. Paylocity has registered with the Secretary of
25 State of California and purposefully availed itself of the laws and protections of the State of
26 California.

27 7. DrinkPAK is ignorant of the true names and capacities of Defendants sued herein
28 as DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.

1 DrinkPAK will amend this Complaint to allege their true names and capacities when ascertained.
2 DrinkPAK is informed and believes and based thereon alleges that each of the fictitiously named
3 Defendants is responsible in some manner for the occurrences herein alleged and that
4 DrinkPAK's damages as herein alleged were proximately caused by their conduct. At all times
5 mentioned herein, Defendants DOES 1 through 10, inclusive, and each of them, were the agents,
6 servants, joint venturers, and employees of each of their co-defendants and of each other and were
7 at all times mentioned herein acting within the course and scope of such agency and employment.
8 Each allegation asserted herein against any named Defendant is hereby incorporated and alleged
9 against each fictitiously named Defendant.

10 8. Venue is appropriate in Los Angeles County because the contract alleged herein
11 was entered into in this County, and DrinkPAK maintains its principle office in this County.

12 9. Based on the foregoing, venue is proper in Los Angeles County, and this Court has
13 jurisdiction over the Parties and the action.

14 10. This Court has jurisdiction over DrinkPAK's claims because the amount in
15 controversy exceeds this Court's jurisdictional minimum.

16 III. STATEMENT OF FACTS

17 11. DrinkPAK is contract manufacturer of large-volume premium alcoholic and non-
18 alcoholic canned beverages and employs hundreds of employees at its headquarters in Santa
19 Clarita, California.

20 12. Paylocity is a company that provides cloud-based payroll and human capacity
21 management software to businesses. Seeking to utilize Paylocity's services and products in
22 streamlining its payroll and timekeeping processes, DrinkPAK and Paylocity entered into the
23 DrinkPAK Agreement whereby Paylocity agreed to provide DrinkPAK with payroll processing
24 timekeeping software, hardware, and technical support services to ensure that DrinkPAK would
25 properly track its employees' hours, including meal, rest and overtime periods, and accurately
26 calculate its employees' wages and benefits owed in compliance with all relevant state and federal
27 laws and regulations.

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1 13. Under the DrinkPAK Agreement, Paylocity specifically covenanted that while
2 supplying DrinkPAK with bundled payroll and related services, it would “*use due care in*
3 *processing* [DrinkPak’s] work” and that Paylocity “*shall be responsible for correcting errors*
4 *which are caused by Paylocity equipment, process, or employees in the course of their work.*”
5 (Emphasis added.)

6 14. After entering into the DrinkPAK agreement, DrinkPAK relied on Paylocity to
7 configure the payroll processing software with the necessary programming rules that would
8 correctly calculate the earnings and benefits of each DrinkPAK employee based on the relevant
9 state and federal labor laws and regulations. In this regard, DrinkPAK frequently received
10 assurances that Paylocity was properly advising and assisting DrinkPAK in all areas of its
11 expertise. Paylocity also provided DrinkPAK with technical support services. Any changes to
12 the software or the resolution of technical problems identified by DrinkPAK were referred to
13 Paylocity technical support.

14 15. Despite Paylocity’s explicit assurances to use “due care,” Paylocity was grossly
15 negligent in its provision of its software and associated payroll services to DrinkPAK. After
16 initially providing its software to DrinkPAK, Paylocity failed to properly program the
17 timekeeping software to properly calculate the “regular rate of pay” overtime compensation and
18 the meal and rest period premium payments payable to DrinkPAK’s employees under California
19 law. As a result, the Paylocity software was not accurately calculating or reporting to DrinkPAK
20 through its provision of payroll reports the wages payable to DrinkPAK’s employees.

21 16. By way of example, in August 2021, DrinkPAK discovered that Paylocity had
22 failed to accurately program the “regular rate of pay” in its software. Under California law,
23 regular rate of pay is an employee’s total earnings divided by the total number of hours worked in
24 a workweek. The “regular rate” used to calculate non-exempt workers’ overtime pay is one-and-
25 a-half times a workers’ regular rate of pay.

26 17. As a result of the errors in Paylocity’s software, Paylocity’s software was
27 erroneously calculating and reporting to DrinkPAK the wages earned by DrinkPAK’s employees.
28 Eventually, DrinkPAK became aware of the errors contained in Paylocity’s software, and

1 DrinkPAK made multiple requests to Paylocity to correct the errors inherent in its software. By
2 way of example, on August 5, 2021, DrinkPAK’s general counsel, Jer Monson, emailed Ana
3 Espinoza at Paylocity and asked for a call to “address several outstanding issues about which we
4 have previously contacted customer service.” One of the issues that Mr. Monson identified was
5 the “[m]ethodology for calculating ‘regular rate of pay’ overtime compensation and meal/rest
6 period premium payments.” Indeed, Mr. Monson and DrinkPAK’s Chief Financial Officer,
7 Christina Kim, called Paylocity on August 9, 2021, to try to have Paylocity correct the issue with
8 its software. However, despite multiple assurances by Paylocity to DrinkPAK that the problems
9 would be rectified, the issues with Paylocity’s software and services continued to persist, and the
10 software continued to improperly calculate the wages owed to DrinkPAK’s employees.

11 18. As a direct result of Paylocity’s failure to properly set up and correct identified
12 deficiencies in its software and the regular rate of pay payable to DrinkPAK’s employees, in late
13 2022 and early 2023, DrinkPAK was named in two class action lawsuits directly stemming from
14 the failures with Paylocity’s software and Paylocity’s failure to accurately track and calculate the
15 wages earned by DrinkPAK’s employees (“the lawsuits”). *See Veliz v. DrinkPAK LLC*, LASC
16 Case No. 22STCV37884 (filed Nov. 29, 2022); *Bazzy v. DrinkPAK LLC*, LASC Case No.
17 23STCV00766 (filed Jan. 13, 2023). The lawsuits alleged failure to pay various wages, including
18 improper calculations of overtime, rest periods, and meal periods, and failure to supply accurate
19 wage statements.

20 19. In investigating and responding to the lawsuits, DrinkPAK was presented with
21 evidence that demonstrated that DrinkPAK, in reliance on the expertise, advice, and services
22 provided by Paylocity, had committed acts and omissions that left DrinkPAK exposed to a
23 significant money judgment, plus possible fines and punitive damages, for improperly calculating
24 and paying employee wages as related to overtime, rest periods, meal breaks and associated
25 premiums.

26 20. Despite DrinkPAK’s best efforts to have Paylocity correct the problems, the issues
27 with Paylocity’s software persisted—even after the lawsuits were initiated against DrinkPAK.
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1 21. When DrinkPAK attempted to have Paylocity fix the errors with its software,
2 Paylocity’s own employees admitted that they had caused the errors. By way of example, in late
3 2022, DrinkPAK, again, discovered that Paylocity was failing to accurately configure the
4 applicable rates payable to its employees. On January 8, 2023—in the midst of litigation of the
5 lawsuits—DrinkPAK’s counsel emailed Derek Altman at Paylocity and informed him that
6 Paylocity’s software continued to erroneously calculate the wages of DrinkPAK’s employees
7 based on the hours they worked. The next day, via email, Mr. Altman responded stating that he
8 had fixed the “issue” and that it was the result of a “missed setting on [his] part.” However, the
9 issue was not fixed. Just three days later, on January 12, 2023, DrinkPAK’s counsel again
10 emailed Mr. Altman noting that there were, again, issues with the rates being used to calculate
11 employees’ wages, with Mr. Altman responding the same day “[s]orry that was my fault” and that
12 the error was because he, again, “missed one of the settings.” Again, however, the errors inherent
13 in Paylocity’s software were not fixed. The next day, on January 13, 2023, DrinkPAK raised
14 another issue with Mr. Altman and, for the third time, Mr. Altman admitted that it was “just
15 another setting [he] missed” that had caused the error.

16 22. Frustrated with Paylocity’s repeated failures to correct the defects inherent in its
17 software, on January 23, 2023, Mr. Monson emailed Mr. Altman and said “[w]e need to get this
18 done immediately. I have been pushing Paylocity on these issues since early October [2022]. We
19 three have been working on it for almost two months now. Every single day, DrinkPAK’s
20 exposure increases.”

21 23. In April 2023, DrinkPAK was compelled to enter into a settlement agreement of
22 the lawsuits requiring payment to the claimants to settle the lawsuits. DrinkPAK also expended
23 significant attorneys’ fees and costs in defending against the actions.

24 24. On information and belief, DrinkPAK understands that numerous other businesses
25 who have entered into agreements with Paylocity for the provision of payroll processing services
26 and software have encountered similar issues, namely Paylocity erroneously calculating and
27 reporting the wages earned by those businesses’ employees.

1 34. As a direct result of the breach of the agreement by Paylocity, DrinkPAK has been
2 damaged in an amount to be proven at trial.

3 **THIRD CAUSE OF ACTION**

4 **(Implied Indemnity Against All Defendants)**

5 35. DrinkPAK repeats and realleges each and every allegation contained in Paragraphs
6 1 through 34, inclusive, as if set forth herein in full.

7 36. The Complaints in the lawsuits alleged damages arising out of the calculation by
8 Paylocity of wages that DrinkPAK owed to the class claimants in the lawsuits. Those erroneous
9 calculations were based on the deficient software that Paylocity provided to DrinkPAK.

10 37. DrinkPAK was compelled to settle the lawsuits directly due to the improper
11 conduct of Paylocity, as alleged above. Therefore, DrinkPAK is entitled to be indemnified by
12 Paylocity for such liabilities, costs, and expenses.

13 **FOURTH CAUSE OF ACTION**

14 **(Equitable Indemnity Against All Defendants)**

15 38. DrinkPAK repeats and realleges each and every allegation contained in Paragraphs
16 1 through 34, inclusive, as if set forth herein in full.

17 39. DrinkPAK contends that its potential liability to the class claimants in the lawsuits
18 was based entirely on the improper conduct of Paylocity, as alleged above.

19 40. DrinkPAK was compelled to settle the lawsuits directly due to the improper
20 conduct of Paylocity, as alleged above. Therefore, DrinkPAK is entitled to be indemnified by
21 Paylocity for such liabilities, costs, and expenses.

22 **FIFTH CAUSE OF ACTION**

23 **(Contribution Against All Defendants)**

24 41. DrinkPAK repeats and realleges each and every allegation contained in Paragraphs
25 1 through 34, inclusive, as if set forth herein in full.

26 42. DrinkPAK contends that it was in no way legally responsible for the damages
27 alleged in the lawsuits, and that Paylocity is obligated to reimburse DrinkPAK and is liable to
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1 DrinkPAK for the amounts paid under the settlement amounts paid in the lawsuits by way of
2 contribution and asserts such a right to contribution herein.

3 **SIXTH CAUSE OF ACTION**

4 **(Declaratory Relief Against all Defendants)**

5 43. DrinkPAK repeats and realleges each and every allegation contained in Paragraphs
6 1 through 34, inclusive, as if set forth herein in full.

7 44. An actual controversy has arisen between DrinkPAK and Paylocity with respect to
8 their rights and duties under the DrinkPAK Agreement and the performance of Paylocity under
9 the DrinkPAK Agreement in that DrinkPAK contends that Paylocity is responsible for the
10 damages which the class claimants in the lawsuits sought against DrinkPAK. DrinkPAK is
11 informed and believes and thereon alleges that Paylocity disputes this contention.

12 45. DrinkPAK therefore is entitled to a declaratory judgment finding the proportional
13 amount of financial responsibility as between DrinkPAK and Paylocity for the moneys expended
14 by DrinkPAK in defending and settling the lawsuits.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, DrinkPAK prays for judgment as follows:

- 17 1. For compensatory damages in an amount subject to proof;
18 2. For interest as provided by law;
19 3. For costs of suit herein incurred;
20 4. For a declaration of the parties' rights and duties;
21 5. For attorney's fees, court costs, investigative costs and other expenses incurred in
22 the defense of the lawsuits according to proof;
23 6. For such other and further relief as the court may deem just and proper;
24 7. For an order of the court declaring the percentage of fault, if any, between DrinkPAK
25 and Defendants, and each of them, for damages and losses allegedly caused to DrinkPAK;
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8. For an order of the court awarding judgment in favor of DrinkPAK against Defendants, and each of them, based upon the relative percentage of fault of each party for the damages claimed in the lawsuits; and

9. For an order of this court that DrinkPAK is entitled to be fully indemnified by Defendants, and each of them, for all costs, expenses, attorney fees and settlement payments incurred by DrinkPAK in connection with the lawsuits.

DATED: June 11, 2024

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By:  _____
James H. Moon

Attorneys for Plaintiff DRINKPAK, LLC