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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REPLENIUM INC.,

Plaintiff,

v.

ALBERTSONS COMPANIES, INC.,

Defendant.

CASE NO. 2:24-cv-1281

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Plaintiff Replenium Inc. (“Replenium” or “Plaintiff”), by and through its undersigned attorneys, makes the following factual allegations applicable to each cause of action pled herein against Defendant Albertsons Companies, Inc. (“Albertsons” or “Defendant”).

**PRELIMINARY STATEMENT**

1. Replenium brings this action against Albertsons for misappropriation of trade secrets, breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and unjust enrichment, based on Albertsons’ systematic theft of Replenium’s trade secret and confidential information for the purpose of building a system to replace and compete with Replenium.

2. Replenium is a Seattle-based software-as-a-service (“SaaS”) company that provides groundbreaking auto-replenishment services to grocery retailers based on Replenium’s trade secret technology, know-how, and processes. Replenium’s auto-replenishment platform (the

1 “Replenium Platform”) provides grocery retailers with the unique ability to offer customers full  
2 grocery basket, auto-replenishment services that drive customer purchases and promote long-term  
3 customer retention for both retailers and brands.

4 3. In October 2020, Replenium entered a SaaS contract with Albertsons, the second  
5 largest supermarket chain in North America, to launch the Replenium Platform, a first-of-its-kind,  
6 auto-replenishment solution that would enable Albertsons’ customers to automatically replenish  
7 their grocery purchases across a full basket of grocery items. Under the agreement and  
8 accompanying Statement of Work (“SOW”) (referred to collectively as the “MSA”), Albertsons  
9 agreed to pay Replenium service fees based upon the net revenue generated through Albertsons’  
10 customers’ replenishment orders. The parties entered a mutual non-disclosure agreement (the  
11 “MNDA”) to protect confidential information shared in connection with the Replenium Platform.

12 4. The MSA anticipated Albertsons launching the Replenium Platform for Albertsons’  
13 customers in December 2020. From the inception of the MSA, Albertsons represented to  
14 Replenium that it intended to expand the Replenium Platform nationwide, across its twenty-two  
15 banners, including Safeway, and over 2,200 stores across approximately 34 states and the District  
16 of Columbia.

17 5. Albertsons internally and externally described the Replenium Platform as “industry  
18 revolutionizing” and proclaimed that “no other grocer is doing it yet.” Albertsons further stated  
19 that “the customer benefits, the financial benefits, and the ability to be first to market make this a  
20 top priority for the company.” It described the Replenium Platform’s value in terms of growing its  
21 customers’ purchases: “When customers can subscribe to their usuals, they inherently become  
22 more loyal, driving approximately one additional trip per quarter and a 15 percent spend increase.”

23 6. Despite Albertsons’ representations to Replenium and enthusiasm for the  
24 Replenium Platform, Albertsons delayed its launch and expansion for nearly three years. During  
25 that time, Albertsons made false promises and unscrupulously leveraged its market power to  
26 induce Replenium to (i) continue to invest in implementing the Replenium Platform, while

1 withstanding millions of dollars of losses directly attributable to its support for Albertsons, and (ii)  
2 share trade secret and confidential information, under the parties' MNDA and MSA, relating to the  
3 technology, know-how, and processes underlying the Replenium Platform.

4 7. Even as Albertsons repeatedly delayed launching the Replenium Platform,  
5 Albertsons induced Replenium's ongoing investment of resources and confidential information  
6 sharing based on its internal and external statements that it planned a launch and nationwide  
7 expansion of the Replenium Platform. For example, in December 2021, Albertsons issued a press  
8 release about its planned nationwide rollout of the Replenium Platform, stating that Schedule &  
9 Save was "developed in partnership with auto-replenishment and predictive shopping platform  
10 Replenium" and was part of "Albertsons Cos.' ongoing goal to revolutionize its digital offerings  
11 and enhance all aspects of the food experience to save customers time and money." It continued,  
12 "[i]n 2022, Albertsons Cos. plans to expand the program nationwide and include a continuous  
13 expanding list of items for members to add for auto-replenishment."

14 8. In a March 2022 call with Replenium and the Albertsons team, Albertsons' Senior  
15 Vice President of Digital Shopping Experiences, Jill Pavlovich, projected that the Replenium  
16 Platform represented a "massive opportunity," and further quantified that opportunity as a "\$[4]  
17 billion-dollar opportunity by fiscal year 2024."<sup>1</sup> Ms. Pavlovich challenged the Albertsons team to  
18 prioritize subscriber acquisition for the Replenium Platform, stating: "Vivek [Sankaran, Chief  
19 Executive Officer] himself has challenged all of us, this group here, to get to 100,000 subscribers  
20 by the end of the year, a goal I know we can blow out of the water."

21 9. Based on Albertsons' representations and inducements, under the protection of the  
22 MNDA and MSA, Replenium shared trade secret and confidential information for over three  
23 years, with hundreds of Albertsons' personnel, including its technical leads, solutions architects,  
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25 <sup>1</sup> Ms. Pavlovich's statement referred to a "\$40 billion-dollar opportunity", but based on her stated calculation  
26 methodology, it appears that she intended to reference a still-significant, "\$4 billion-dollar opportunity." This  
complaint accordingly refers to the corrected \$4 billion dollar calculation.

1 and senior managers. During these meetings, Albertsons requested and received specific, detailed  
2 information about recommended process flows and business logic for key features of the  
3 Replenium Platform.

4 10. Albertsons expanded its knowledge of the Replenium Platform by inducing  
5 Replenium to engage in a series of limited assortment pilots and small segment launches based on  
6 the promise of a nationwide expansion. Unbeknownst to Replenium, during Replenium's three  
7 years of confidential information sharing, Albertsons was misappropriating Replenium's trade  
8 secret and confidential information by building its own competing, full grocery basket auto-  
9 replenishment solution to replace the Replenium Platform.

10 11. Albertsons initially launched Schedule & Save with Replenium, with limited  
11 functionality, in Northern California in August 2022. For the next year, Albertsons requested and  
12 received trade secret and confidential information from Replenium for the purpose of adding  
13 enhancements to its initial small segment launch.

14 12. Even as Albertsons was building or planning to build its own replacement solution,  
15 it continued to induce Replenium to share more trade secret and confidential information and  
16 invest even further in support of Albertsons' incremental expansion of Schedule & Save. For  
17 example, in January 2023, in the face of Albertsons' continued delays, Pavlovich continued to  
18 induce Replenium to share trade secret and confidential information and invest in enhancements  
19 based on Albertsons' promise of expanding the Replenium Platform nationwide. As an added  
20 inducement, Pavlovich specifically pointed Replenium to Albertsons' recently-announced planned  
21 merger with The Kroger Company ("Kroger"), stating that Replenium stood to generate fees  
22 beyond Albertsons' replenishment volume because Replenium would "get Kroger out of this" too.

23 13. In August 2023, Albertsons squeezed Replenium to support a final, critical  
24 enhancement to Schedule & Save based on Albertsons' promised nationwide expansion of the  
25 Replenium Platform in the fall of 2023. Through the Replenium Platform, and based on  
26 Replenium's ongoing confidential information sharing, Albertsons added Replenium's Cart &

1 Checkout functionality to Schedule & Save in 240 stores in Northern California. At the same  
2 time, Albertsons disguised its true plans to launch its own platform by providing Replenium with  
3 misleading information.

4 14. The August 2023 launch was a success; however, Albertsons' nationwide  
5 expansion of Schedule & Save on the Replenium Platform never happened. On October 3, 2023,  
6 after three years of learning the technology, know-how, and logic behind the Replenium Platform,  
7 Albertsons abruptly terminated the MSA, astonishingly citing the Kroger merger as one of the  
8 reasons for terminating the MSA. Albertsons almost immediately launched its own, nearly  
9 identical, full-basket auto-replenishment solution that it had built with unfettered access to and use  
10 of Replenium's trade secret and confidential information.

11 15. As a result, Replenium, after investing over ten million dollars over three years of  
12 implementation and operation of its Replenium Platform with Albertsons, lost nearly the entirety  
13 of that investment on the eve of the planned, full-scale expansion, without realizing any of its  
14 service fee revenue under the MSA. Albertsons' calculated maneuver cost Replenium millions of  
15 dollars that it invested in implementation and operation, tens of millions of dollars in anticipated  
16 revenue under the MSA, and a massive loss in Replenium's enterprise value due to its investment  
17 in a flagship customer that acted in bad faith by repeatedly squeezing and ultimately discarding  
18 Replenium in violation of the parties' contracts.

19 16. Albertsons rolled out its competing platform in October 2023 and rapidly expanded  
20 Schedule & Save across the country to the vast majority of its large banners, such as Safeway,  
21 Vons, Albertsons, and Jewel-Osco, without paying for Replenium's technology and know-how  
22 that enabled Albertsons to launch an "industry-revolutionizing" auto-replenishment platform.

23 17. Replenium seeks to hold Albertsons accountable for acting in bad faith, breaching  
24 its agreements, making false promises, and misappropriating its trade secrets and confidential  
25 information, without paying Replenium a license for its ongoing use and profits from the  
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1 technology and know-how underlying Replenium’s first-of-its-kind full-basket, auto-  
2 replenishment platform for the grocery market.

3 **PARTIES**

4 18. Replenium Inc. is a Washington corporation with its principal place of business in  
5 Seattle, Washington.

6 19. Albertsons Companies, Inc. is a Delaware corporation with its principal place of  
7 business in Boise, Idaho.

8 **JURISDICTION AND VENUE**

9 20. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and  
10 18 U.S.C. § 1836(c).

11 21. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) because  
12 substantial acts and omissions giving rise to the claims alleged herein occurred in this Judicial  
13 District.

14 **FACTUAL ALLEGATIONS**

15 **I. Replenium Develops Trade Secret Technology for Full-Basket Auto-**  
16 **Replenishment**

17 22. Tom Furphy founded Replenium in 2015 to develop and launch a first-to-market  
18 auto-replenishment service for grocery retailers that would provide grocery customers and brands  
19 with an automated and efficient tool for replenishing their routine grocery purchases. Furphy  
20 previously served as Vice President of consumables and AmazonFresh at Amazon from 2005 to  
21 2009, where he was responsible for the underlying strategy, development and execution of  
22 Amazon’s grocery and health and beauty business. Replenium’s Chief Technology Officer, Umair  
23 Bashir, is also a former Amazon executive who served as a Manager of Software Development for  
24 Retail Customer Experience, where he helped build Subscribe & Save, and later as a Senior  
25 Manager, Vendor and Product Management.

1           23.     Replenium was the first company to successfully create a full-basket auto-  
2 replenishment system for grocery retailers that automatically schedules customers' product  
3 replenishments orders and organizes deliveries and pick-ups based on replenishment schedules  
4 and customer preferences. This goes far beyond traditional product subscription platforms to  
5 accommodate the high frequency, large product assortment, large shopping basket size and  
6 complexity of grocery shopping. To date, no other grocery retailer, outside of Albertsons, has  
7 launched a comparable auto-replenishment solution.

8           24.     Replenium's technology and business logic enable customers to automate large  
9 portions of their everyday purchases by making it simple for them to identify and add items to  
10 their auto-replenishment list, then automatically create orders, tender payment, and schedule  
11 orders for delivery or pick-up when products are due to be replenished. This is all done with little  
12 to no human intervention. The confidential and proprietary technology and business logic that  
13 supports this auto-replenishment platform constitutes Replenium's "Trade Secrets." Replenium's  
14 level of automation has never been available on large baskets of goods, like those in a regular trip  
15 to the grocery store. Unlocking this functionality helps ensure that customers do not run out of the  
16 products they need while providing a recurring revenue stream to retailers.

17           25.     Replenium created its Trade Secrets through years of research, development, and  
18 testing across many customer use cases such as handling large orders, making order changes,  
19 handling multiple temperature zones, accommodating products with shelf life and replenishment  
20 cycle variation, and changes in delivery timing or method. Replenium's solution addresses a retail  
21 market that is several times larger than that captured by traditional product subscription software,  
22 such as Amazon's Subscribe & Save.

23           26.     Replenium offers retailers the Replenium Platform through SaaS contracts that  
24 provide retailers with access to the Replenium Platform and ongoing operational and technology  
25 support, all under strict contractual protections for Replenium's Trade Secrets and other  
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1 confidential information. Replenium does not operate as a software development firm and does  
2 not perform development services for clients.

3 27. Retailers benefit from implementing the Replenium Platform by enabling them to  
4 drive larger and more frequent digital shopping cart orders and better forecast labor and inventory  
5 needs. Brands benefit from predictable revenue streams from replenishment orders, valuable data  
6 related to purchasing patterns, and an increase in shoppers' brand loyalty. And, finally, customers  
7 receive personalized automated digital shopping carts based on their preferences and historical  
8 shopping preferences while simultaneously saving time with automated fulfillment that fits  
9 seamlessly into their lives.

10 28. Many other retailers have attempted to create a system like the breakthrough  
11 Replenium Platform, but outside of Albertsons none have succeeded. Companies like Amazon  
12 and Chewy created product subscription systems that operate on a single item and small order  
13 level only. The Replenium Platform stands apart because it can automatically generate entire  
14 shopping carts—not just single items preselected by customers—as well as delivery schedules  
15 based on customer preferences without any input required by the customer after the initial order.

16 29. Other grocery retailers, such as Walmart, have publicly announced their intentions  
17 to launch a full-basket auto-replenishment solution but have yet to successfully do so. And  
18 Amazon, which only recently launched its Amazon Fresh replenishment solution in February  
19 2024, does not offer customers the ability to truly configure auto-replenishment for their grocery  
20 needs, still requiring the customer to make decisions and manually, not automatically, execute  
21 orders.

22 **II. Replenium Enters into MSA with Albertsons to Create a Full-Basket**  
23 **Auto-Replenishment System for Albertsons Stores**

24 30. Recognizing the immense value that could be derived from implementing the  
25 Replenium Platform, Albertsons sought to contract with Replenium to gain access to the  
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1 Replenium Platform and secure Replenium’s services and expertise to offer a full-basket auto-  
2 replenishment system to Albertsons’ customers.

3 31. On June 17, 2020, Replenium and Albertsons entered into the MNDA to enable  
4 Replenium and Albertsons to “share information for the purpose of evaluating the suitability of  
5 entering into a business relationship or in furtherance of an existing business relationship,”<sup>2</sup> and to  
6 “treat such information as confidential.” The terms of the MNDA applied to the parties’ “parent,  
7 affiliates and subsidiaries, and its and their officers, directors, employees, contractors, consultants,  
8 agents and representatives.” MNDA § 1.

9 32. The MNDA defined “Confidential Information” broadly to include:

10 any and all information of the Disclosing Party and each of its  
11 parent, affiliates and subsidiaries that is not available to the public,  
12 including, but not limited to: trade secrets; techniques; methods;  
13 methodologies; product and manufacturing specifications; purchase  
14 or sales volume, manufacturing, marketing, development, customer  
15 (personal and aggregate data, including household and alternative  
16 IDs and tracking cookies and tags), employee, supplier, financial or  
17 operations information; technical, scientific, laboratory,  
18 experimental, research or statistical data; tooling; machinery;  
19 diagrams; drawings; forecasting; business and new product and  
20 service plans; reports; procedures; designs; formulae; recipes;  
21 improvements; records; processes; any and all current and future  
22 product information; facilities tours; know-how; data or any third  
party information and contracts that Disclosing Party is obligated to  
treat as confidential that is disclosed or made accessible to the  
Receiving Party directly or indirectly, in any form, whether written,  
oral, photographic, electronic, magnetic, computer, by inspection of  
tangible objects, or otherwise (including materials, records, reports,  
documents, prototypes, samples, plant and equipment) and  
information that has been subject to confidential treatment under a  
terminated or expired agreement between the parties.

23 *Id.* § 2.

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26 <sup>2</sup> This was defined as the MNDA’s “Purpose.”

1           33.     The MNDA included thorough non-use and non-disclosure protections that  
2 prohibited the parties from, among other things, using the Confidential Information<sup>3</sup> for any  
3 purpose outside of the defined Purpose and from disclosing the Confidential Information to any of  
4 its representatives except those “who need to know the Confidential Information for the Purpose  
5 and who are bound to keep such Confidential Information confidential . . . .” *Id.* § 4. Moreover,  
6 the MNDA restricted either party from “export[ing], reverse engineer[ing], disassembl[ing], or  
7 decompil[ing]” any prototypes, software or other tangible objects that embody the other party’s  
8 Confidential Information. *Id.*

9           34.     The parties also agreed to “take commercially reasonable measures to protect the  
10 secrecy of, and to prevent unauthorized disclosure and/or use of, the Confidential Information of  
11 the Disclosing Party.” Those measures were required to be “at least those measures that [the  
12 Receiving Party] takes to protect its own confidential information of similar import.” *Id.* § 6.

13           35.     The MNDA enabled an open dialogue between Replenium and Albertsons  
14 regarding their potential business relationship, for the duration of that business relationship, and  
15 after the termination of that business relationship.<sup>4</sup> Replenium relied on the MNDA to share its  
16 valuable and novel Trade Secrets and other Confidential Information with Albertsons because of  
17 the strong and clear protections of the MNDA.

18           36.     On or about October 7, 2020, Replenium and Albertsons entered into the MSA.  
19 The parties used Albertsons’ template contract to draft the MSA, at Albertsons’ insistence.

20           37.     The MSA, Section 9.1, affirmed that all confidential and proprietary information  
21 disclosed by one party to the MSA to the other party “concerning or pertaining to the business of  
22 the disclosing party shall be subject to the terms of the [MNDA].” Further, Section 11.3(c) of the

23 \_\_\_\_\_  
24 <sup>3</sup> “Confidential Information” as used herein refers to the term as defined in the MNDA.

25 <sup>4</sup> The MNDA’s term continued until terminated by the parties in writing. § 11. In addition, the MNDA provided  
26 that “each party’s confidentiality obligations shall survive such termination until such time as the Confidential  
Information of the other party . . . becomes publicly known and made available through no breach of this [MNDA] . . .  
.” *Id.*

1 MSA provides that “Albertsons will use its reasonable efforts to protect Company’s Intellectual  
2 Property rights in the Services and will report promptly to Company any infringement or  
3 misappropriation of such rights of which Albertsons becomes aware.” Section 11.6 of the MSA  
4 also provides that “Albertsons will not . . . (b) copy, modify or create any derivative works based  
5 on the Services or (c) disassemble, decompile, or reverse engineer the Services or permit any third  
6 party to do so.”

7 38. Pursuant to the MSA, Replenium agreed to provide Albertsons with “automated  
8 replenishment SaaS Services,” MSA § 1, a full-basket auto-replenishment system based on  
9 Replenium’s Trade Secrets and other Confidential Information and integrated into Albertsons’  
10 digital storefronts as “Schedule & Save.”

11 39. In exchange, Albertsons would pay Replenium “Fees specified in [the] SOW.” *Id.* §  
12 6.1. “Fees” includes, among other things, “Service Fees” as set forth in Appendix B. SOW §  
13 1.1(e); *see id.* § 1.01(f).

14 40. Pursuant to Appendix A of the SOW, Albertsons agreed to “pay [Replenium] a  
15 percentage Service Fee based upon Net Revenue generated through Replenishment Orders” in  
16 accordance with a tiered payment structure. Under that schedule, Albertsons would pay  
17 Replenium a determined percentage of its auto-replenishment net revenue, with differing rates  
18 depending on whether the revenue was generated through Albertsons’ own brands or branded  
19 products.

20 41. Crucially, Albertsons would only pay Replenium the Service Fees anticipated by  
21 the MSA after Albertsons’ launch and expansion of the Replenium Platform.

22 42. The MSA was a service agreement and *not* a software development contract. It  
23 expressly provided that “[n]otwithstanding any other provision to the contrary in this Agreement,  
24 the parties acknowledge that [Replenium] is providing automated replenishment SaaS Services  
25 and that [Replenium] will not be producing any Deliverables except as expressly set forth in an  
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1 SOW. The SOW contains a table with an entry for deliverables and next to it, it states “N/A.”  
2 Similarly, the table in the SOW states “N/A” in lieu of a schedule for deliverables.

3 43. The MSA defined a “Commercial Launch” of the Replenium Platform as “the date  
4 mutually agreed to by the parties on which Customers are able to begin placing Replenishment  
5 Orders in one or more geographic or segmented markets” but expressly excludes any “friendly  
6 user trial of the Services.” SOW § 1.1(c).

7 44. Pursuant to the MSA, the Commercial Launch was initially set for December 31,  
8 2020. *Id.* at 1. Albertsons agreed to cooperate in good faith with Replenium to carry out all its  
9 obligations in the MSA. *Id.* § 1.3. Albertsons further agreed to “use commercially reasonable  
10 efforts to market and promote the ability of Customers to place and manage Replenishment  
11 Orders” through the Replenium Platform. *Id.* § 1.6.

12 45. The parties agreed to the terms of the MSA, and its payment structure, with the  
13 expectation that Albertsons would rapidly launch and expand its use of the Replenium Platform  
14 nationwide with a full set of service features. The parties never contemplated Replenium  
15 providing SaaS services for years without generating Service Fees from a nationwide expansion of  
16 the Replenium Platform. For the duration of the integration of the Replenium Platform,  
17 Replenium would be operating at a significant loss, which would only make sense if it received  
18 the Service Fees resulting from the launch and nationwide expansion of the Replenium Platform.

19 46. The financial potential for Replenium was massive in light of the number of  
20 Albertsons stores and its tens of billions of dollars of revenue, including billions of dollars of  
21 ecommerce revenue. Without the Service Fees, Replenium would not have entered into the MSA.

22 47. Replenium’s expectation that the volume of auto-replenishment orders would be  
23 significant, as well as the resulting fees, was based not only on Albertsons’ size and Albertsons’  
24 projections, but also based on its own market research and past experience at Amazon.

25 48. Albertsons was also aware that Replenium would be operating at a significant loss  
26 until Albertsons widely expanded the Replenium Platform to its customers. Replenium

1 periodically shared its financial information with Albertsons, demonstrating the monthly  
2 investment it was making to support Albertsons. With this information, Albertsons established the  
3 expectation that it would rapidly execute a national expansion of the Replenium Platform from the  
4 beginning of the parties' relationship, and consistently reaffirmed this expectation throughout the  
5 parties' relationship.

6 49. The SOW specifically provided that the "parties acknowledge that upon  
7 Commercial Launch it is in their mutual interest to maximize the number of Replenishment Orders  
8 placed by Customers." § 1.6.

9 **III. Replenium Shares Trade Secrets and other Confidential Information with a**  
10 **Significant Number of Albertsons' Representatives Under the Protections of**  
11 **the MNDA**

12 50. In July 2020, Replenium and Albertsons began collaborating and sharing Trade  
13 Secrets and other Confidential Information about the Replenium Platform, under the protections of  
14 the MNDA.

15 51. Replenium and the Albertsons team tasked with coordinating and working with  
16 Replenium corresponded regularly via email, Microsoft Teams, Slack, and video calls discussing  
17 the Replenium Platform and Replenium's underlying technology that supported the Replenium  
18 Platform. These frequent discussions included topics such as the underlying system architecture,  
19 integration details and processes, as well as strategic approaches to implementation and business  
20 logic.

21 52. By October 2020, the parties were holding weekly Tuesday meetings (sometimes  
22 twice weekly meetings) to discuss progress and implementation of the Replenium Platform.  
23 Replenium and Albertsons maintained this level and frequency of communication over nearly the  
24 entirety of their three years working together on the Replenium Platform. These communications  
25 regularly included discussions of Replenium's Trade Secrets and other Confidential Information.

26 53. On the Replenium side, Chief Technology Officer and engineer Umair Bashir led  
the discussions, along with a team of Replenium's top technology and implementation team. For

1 Albertsons, frequent attendees of the calls included Sowjanya Naidu, (Technical Architect and  
2 Technical Lead); Krishna Movva (Engineering Manager); Bipin Chaudhari (Technical Program  
3 Manager); Lavanya Kambampati (Technical Lead); Trimurthulu Bommireddy (Solutions  
4 Architect); Ramanjaneya Reddy Karnati (User Interface Developer); Asha Choudhary (Product  
5 Manager); Krishna Wudaru (Engineering Manager); Vijay Maddu (Technical Lead); Kevin  
6 DeKorte (User Interface Lead); and Ganga Ramankulam (Technical Program Manager), to name a  
7 small selection of the over two-hundred Albertsons employees and contractors with whom  
8 Replenium shared Trade Secrets and other Confidential Information.

9 54. In addition to the regular calls between the two teams, many of which were  
10 recorded by Albertsons, Replenium also shared in writing Trade Secrets and other Confidential  
11 Information about the logic, technology and business strategies underlying the Replenium  
12 Platform. This information was communicated through, among other means, messaging services,  
13 such as Slack, email, as well as through PowerPoint presentations created by Replenium and  
14 shared with Albertsons under the MNDA and MSA.

15 55. For example, on July 9, 2020, Replenium shared with Albertsons a confidential  
16 presentation that included a “Technology Overview” of the “Architecture & Integration” of the  
17 Replenium Platform. The presentation included detailed information concerning Replenium’s  
18 Microsoft Azure architecture, replenishment user and data flow explaining how customers and the  
19 Replenium Platform would respond and react to each other’s inputs, and auto-replenishment  
20 recurring order flow. The presentation also provided detailed user experience design, including  
21 core customer notification and auto-replenishment item and order management features.  
22 Replenium emailed this presentation to Richa Gupta (Senior Director, Head of Loyalty Platform  
23 Innovations and Partnerships) and Jonathan Nouri (Senior Vice President of Loyalty) and  
24 presented it to Albertsons’ internal team on June 23, 2020.

25 56. In a July 24, 2020 email, Replenium explained to Richa Gupta of Albertsons the  
26 auto-replenishment functionality and how it differed from subscription systems developed by

1 Amazon, Chewy, Ordergroove, and Zuora. Replenium further shared a confidential presentation  
2 detailing the same type of information.

3 57. On September 9, 2020, Replenium shared with a team of Albertsons employees a  
4 confidential presentation entitled “Rp Albertson Combined Customer Journey,” which laid out the  
5 step-by-step process through which a customer would engage with and navigate through the  
6 Replenium Platform, including how customers would subscribe to certain products, how the  
7 Replenium Platform would create what it referred to as auto-replenishment buckets and mixed  
8 bags, how customers would manage their product replenishments, and how the Replenium  
9 Platform would ensure that auto-replenishment orders placed through the Replenium Platform  
10 would be fulfilled. Replenium sent this presentation by email to Richa Gupta; Ganga  
11 Ramankulam (Technical Program Manager); Roopa Acharya (Vice President of Software  
12 Engineering); Nitin Saksena (Senior Director of Omnichannel Architecture); and Igor Tsigelnik  
13 (Solutions Architect for eCommerce).

14 58. On September 15, 2020, Replenium shared with over twenty Albertsons employees  
15 a confidential presentation entitled “Albertsons User Stories” which detailed the Replenium  
16 Platform’s customer journey, including detailed process flow charts explaining how customers and  
17 the Replenium Platform would respond to each other’s inputs to enable effective auto-  
18 replenishment and cart management. The presentation also painstakingly detailed the most  
19 effective and efficient methods of utilizing the Replenium Platform and how best to design  
20 customers’ experience to maximize user uptake and streamline ease of use in light of numerous  
21 interrelated systems. Replenium sent this presentation via email to Roopa Acharya (Vice  
22 President of Software Engineering); Ganga Ramankulam (Technical Program Manager); Richa  
23 Gupta; Nitin Saksena (Senior Director of Omnichannel Architecture); Igor Tsigelnik (Solutions  
24 Architect for eCommerce); Tharun Mittapalli (Contractor); Zachery Baker (Principal User  
25 Experience Designer); Victor Teleron; Ganesh Reddiar (Mobile App Solutions Architect); Neetu  
26 Sultan (Senior Engineer Manager); Alok Gupta (Director of Enterprise Architecture); Cameron



1 Craig (Vice President of User Experience); Alberto Attia (Principal User Experience Architect);  
2 Alicia Sanguinetti (Director of User Experience); Krishna Wudaru (Engineering Manager); Vikas  
3 Pathuri ( Director of eCommerce Engineering); Kristin Simao (Innovation Design Strategist) May  
4 Ou; Bobby Johnson; Lava Amba; and Trimurthulu Bommireddy (Solutions Architect).

5 59. In another confidential presentation, titled “Replenium System Architecture – High  
6 Level Overview – September 2020”, which Replenium shared with a large Albertsons team on  
7 September 17, 2020, Replenium provided a detailed overview of the product subscription  
8 processes enabling customers to subscribe to eligible products in the Replenium Platform. It also  
9 provided a detailed overview and process flowchart for the Cart & Checkout feature, which  
10 provides a way for customers to easily and quickly add items to auto-replenishment that are in  
11 their ecommerce cart while at ecommerce checkout. Cart & Checkout is a proven method to drive  
12 significant customer adoption of auto-replenishment. Accordingly, Replenium strongly  
13 encouraged at the outset of the parties’ contractual relationship that Cart & Checkout be developed  
14 and implemented as part of the Replenium Platform.

15 60. Replenium sent the email attaching this System Architecture presentation to Roopa  
16 Acharya (Vice President of Software Engineering); Ganga Ramankulam (Technical Program  
17 Manager); Nitin Saksena (Senior Director of Omnichannel Architecture); Igor Tsigelnik  
18 (Solutions Architect for eCommerce); Tharan Mittapalli; Zachery Baker (Principal User  
19 Experience Designer); Victor Teleron; Ganesh Reddiar (Mobile App Solutions Architect); Neetu  
20 Sultan (Senior Engineer Manager); and Alok Gupta (Director of Enterprise Architecture).

21 61. On October 21, 2020, Replenium provided Albertsons documentation concerning  
22 Replenium’s Application Programming Interface (“API”) and Software Development Kit  
23 (“SDK”), both unique to the Replenium Platform based on Replenium’s technology and not  
24 otherwise made publicly available by Replenium. Replenium shared these documents with  
25 multiple Albertsons employees, including Subha Burela (Business Analyst); Vijay Maddu  
26



1 (Technical Lead); Sowjanya Naidu (Technical Architect and Technical Lead); Kevin DeKorte  
2 (User Interface Lead); and Shekhar Kale.

3 62. Replenum also shared with Albertsons a document detailing its API endpoints,  
4 providing explanations and examples to Albertsons how to effectively utilize the Replenum  
5 Platform's API. Over the course of the parties' relationship, Replenum repeatedly updated these  
6 documents and provided up-to-date information concerning its API and SDK to Albertsons.

7 63. In addition, Albertsons required all of the API traffic to go directly through  
8 Albertsons' servers. With the service calls being exchanged through its own gateway rather than  
9 Replenum's, Albertsons was able to gain more information and insight into the nature of the calls  
10 and the logic behind the technology.

11 64. Replenum shared and gave Albertsons access to these Trade Secrets and other  
12 Confidential Information under the protections of the MNDA and MSA and continued to regularly  
13 share this type of information throughout the three years of the parties' relationship.

14 65. The documents identified herein represent merely a sample of the materials shared  
15 by Replenum with Albertsons throughout their three-year contract period. Replenum would not  
16 and has not shared this type of information with any outside party absent a non-disclosure  
17 agreement, such as the MNDA. In fact, Replenum has never shared this depth of information  
18 with prospective customers, even when an NDA is in place.

19 66. Albertsons consistently sought information about the Replenum Platform, under  
20 the MNDA and MSA, far beyond what was necessary for Albertsons to integrate the Replenum  
21 Platform into Schedule & Save. Albertsons sought information that went to the core of the  
22 operation of the Replenum Platform—highly confidential and vigorously protected Trade Secrets  
23 and other Confidential Information. Based on the protections in the MNDA and MSA and given  
24 Replenum's desire to ensure the success of the Replenum Platform, Replenum shared the  
25 requested information with Albertsons.  
26

1  
2 **IV. The Rollout of the Replenium Platform is Repeatedly Delayed while**  
3 **Albertsons Continues to Acquire Replenium’s Trade Secrets and other**  
4 **Confidential Information under the Guise of Moving Forward with a**  
5 **Nationwide Expansion**

6 67. After entering the MSA, Albertsons did not meet the December 31, 2020  
7 Commercial Launch date and requested an extension of the Commercial Launch date to March 31,  
8 2021. Despite the significant costs of Albertsons’ delay, Replenium agreed as a result of  
9 Albertsons’ enormous leverage and representations and inducements to Replenium to continue to  
10 provide service.

11 68. On or about January 26, 2021, Replenium and Albertsons executed Amendment  
12 Number One to Statement of Work (“SOW Amendment 1”), wherein the parties agreed to adjust  
13 the Commercial Launch date to March 15, 2021. SOW Amendment 1 § 1.

14 69. Replenium continued to diligently work with Albertsons so that it could achieve the  
15 March 15, 2021 Commercial Launch date; however, Albertsons also failed to meet the March 15,  
16 2021 Commercial Launch date.

17 70. After the second failed Commercial Launch date, Albertsons induced Replenium to  
18 continue to work toward a launch by making false promises that it was proceeding toward a  
19 national expansion of the Replenium Platform, and by agreeing to cover a portion of Replenium’s  
20 increasing monthly losses.

21 71. Albertsons did not follow through on its promise of a nationwide expansion.  
22 Rather, Albertsons required Replenium to conduct limited pilots that were never anticipated by the  
23 MSA or the parties’ discussions about launching and expanding the Replenium Platform.

24 72. For example, in or around September 2021, Albertsons conducted a pilot consisting  
25 of approximately 120 stores in Northern California and only included a small fraction of products  
26 eligible for Schedule & Save—approximately 250 stock keeping units (“SKU”), later increased to  
1,200 SKUs—through the Replenium Platform. This was well below Replenium’s 50,000 SKU  
recommendation, but the pilot still demonstrated the functionality and potential of the program.

1 73. Consistent with the expectations Albertsons set for Replenium, in a December 2021  
2 press release, Albertsons announced a limited trial of Schedule & Save “developed in partnership  
3 with auto-replenishment and predictive shopping platform Replenium,” with “plans to expand the  
4 program nationwide and include a continuous expanding list of items for members to add for auto-  
5 replenishment.” Albertsons proclaimed that Schedule & Save, along with new meal planning  
6 technology, would “revolutionize its digital offerings and enhance all aspects of the food  
7 experience to save customers time and money.”

8 74. After the initial pilot, in 2022, Albertsons continued to promise a nationwide  
9 expansion of the Replenium Platform and expressed incredible optimism for the industry  
10 “revolutionizing” opportunity, with Replenium, to be the first grocery chain to launch a full-basket  
11 auto-replenishment platform. Albertsons’ Senior Director of Omni Experiences, Alyse Wuson,  
12 expressed Albertsons’ goal of “exponentially increas[ing] eligible SKUs” for the Replenium  
13 Platform.

14 75. Albertsons also continued to reaffirm to Replenium that Albertsons intended to  
15 expand the Replenium Platform broadly across the country. For example, in a February 2022  
16 presentation, Albertsons stated that it intended to expand the Replenium Platform in  
17 approximately 2,147 stores and have an initial 100,000 customers enrolled via its website and  
18 phone application by the end of fiscal year 2022.

19 76. Albertsons’ Senior Vice President of Digital Shopping Experiences, Jill Pavlovich,  
20 lavishly praised Replenium and the opportunity the Replenium Platform offered Albertsons. She  
21 communicated Albertsons’ view that Replenium could drive billions of dollars in sales, and that  
22 the Replenium Platform had the full and vocal support of Albertsons’ C-suite members. In a  
23 March 14, 2022 video call with Albertsons and Replenium representatives, Pavlovich stated:

24 Apologies in advance because I can only stay just long enough to  
25 share how huge this program is and how important all the work you  
26 have done and will continue to do is to the goals of our company,  
both on our customer experience side and financially. So thank you,

1 thank you, thank you, thank you, thank you to all of you for the  
2 work you've done thus far and will continue to do to drive this  
3 program forward. I mean, I think we're talking about *industry-*  
4 *revolutionizing stuff* right here. Yes, there is Schedule & Save or  
5 Subscribe & Save out there in the market, but not with a grocer. Not  
6 on the things you buy most often. More often than anything,  
7 actually. . . . We do know this to be a massive opportunity for us.  
8 First, assuming our [ecommerce] business hits \$10 billion dollars,  
9 and [the Replenium Platform] grows to be about 40 percent of that,  
10 we're staring down the pipe at a *\$4 billion [sic] dollar opportunity*  
11 *by fiscal year 2024*. We also know that 60 percent of our  
12 customers' baskets, or their quote-unquote usuals, means they buy  
13 the same thing week over week, and the ability to subscribe to their  
14 usuals and save money is a huge benefit to our customers, especially  
15 to our convenience shoppers. When customers can subscribe to  
16 their usuals, they inherently become more loyal, driving  
17 approximately one additional trip per quarter and a 15 percent spend  
18 increase.

11 And just to put, like, a point on this opportunity, *no other grocer is*  
12 *doing it yet*. So the customer benefits, the financial benefits, and the  
13 ability to be first to market make this a top priority for the company.  
14 In fact, as Alyse will share, *Vivek [Sankaran, Chief Executive*  
15 *Officer,] himself has challenged all of us, this group here, to get to*  
16 *100,000 subscribers by the end of the year, a goal I know we can*  
17 *blow out of the water*. So with that, I just want to say thank you  
18 again—thank you thank you, thank you—reiterate how excited I am  
19 personally about this program, but more importantly, how excited  
20 the entire leadership is about the capability, as well as reinforce that  
21 we have the support of the entire organization to make this a  
22 success. I'm sure Alyse has on her agenda to talk about the meeting  
23 we just came out of with [Jennifer Saenz, Executive Vice President,  
24 Chief Merchandising Officer,] where she was like “yes yes yes yes  
25 yes” to everything Alyse was asking for from a topline view of the  
26 program.

20 77. In this way, amongst many other direct communications to Replenium, Albertsons  
21 induced Replenium's continued services and sharing of Trade Secrets and other Confidential  
22 Information by repeatedly assuring Replenium that it would reap significant Service Fees resulting  
23 from a broad, full-feature, nationwide expansion that could yield tens of millions of dollars in  
24 revenue for Replenium.

1 78. Albertsons represented to Replenium that Albertsons intended to launch Schedule  
2 & Save by mid-2022 and expand it nationally throughout the balance of the year. In a June 30,  
3 2022, email, Pavlovich stated “[h]ere’s to [July 22] sticking like glue. We cannot wait to get this  
4 running full speed ahead.”

5 79. Given Albertsons’ projections and praise for the Replenium Platform, Replenium  
6 continued to push Albertsons to broadly expand the Replenium Platform as the parties had agreed.  
7 Nevertheless, in August 2022, Albertsons demanded that Replenium commence another limited  
8 pilot—again in Northern California—consisting of 254 stores. Albertsons represented to  
9 Replenium that this limited pilot was to be followed by a national expansion, staggered through  
10 divisions, throughout the remainder of 2022.

11 80. Again, the Replenium Platform proved to be a success; however, Albertsons still  
12 did not follow through with the planned national expansion. Albertsons provided Replenium with  
13 a series of moving-target reasons to explain its delays, but every time Replenium worked with  
14 Albertsons to help it resolve the purported hurdles to a national expansion, Albertsons responded  
15 with a new explanation for its delays.

16 81. During these delays, Albertsons continued to request and receive Trade Secrets and  
17 other Confidential Information from Replenium under the protections of the MNDA and MSA.  
18 For example, on October 16, 2022, Replenium shared with Albertsons’ team its recommended  
19 customer journey enhancements, to which Albertsons responded by saying that there were “some  
20 really nice ideas in your document that we’d like to explore,” and further requesting additional  
21 information: “knowing that you have industry expertise and data, if you were to prioritize all the  
22 suggested enhancements in the document, what would the order be?”

23 82. Albertsons’ delays also took a significant financial toll on Replenium, who was still  
24 supporting Albertsons as a good faith business partner, relying on Albertsons’ representations and  
25 its belief that Albertsons was acting in good faith.  
26

1           83.     Replenum shared financial information with Albertsons demonstrating the  
2 economic impact of Albertsons' unwarranted delays on Replenum. Albertsons agreed to make  
3 interim payments to Replenum to cover a small portion of Replenum's losses, but it continued to  
4 delay the promised nationwide expansion while exercising its leverage to induce Replenum's  
5 continued performance. Even with Albertsons' interim payments, Replenum was incurring  
6 millions of dollars of losses annually to support implementation of the Replenum Platform. And,  
7 as Albertsons was aware, those losses would be immensely challenging for Replenum to sustain  
8 for a period of years.

9           84.     Again, in December 2022, Albertsons shared in writing with Replenum what it  
10 referred to as its "Banner Expansion Plan" to expand the Replenum Platform nationwide. The  
11 Banner Expansion Plan showed that the Replenum Platform would be live in 97% of the Northern  
12 California stores, 100% of the Southern California stores, 100% of the Mid-Atlantic stores, 95%  
13 of Seattle stores, and 100% of the Southwest stores by the end of September 2023, among others,  
14 comprising 94% of Albertsons' stores, or 1,968 stores across the country.

15           85.     On January 9, 2023, Replenum met with Pavlovich and Wuson to reiterate its  
16 concerns about Albertsons' continued delays of the program. Pavlovich responded that the delays  
17 were caused by Albertsons' prior business and product teams and that Pavlovich and the new team  
18 could not be held accountable for the prior team's performance. During this meeting, Pavlovich  
19 informed Replenum that she had not even read the MSA because it was executed before she  
20 joined Albertsons.

21           86.     At a January 12, 2023 meeting with Albertsons, Replenum again expressed  
22 concerns regarding Albertsons' continuous delays of a national expansion. Replenum explained  
23 that Albertsons' delays were taking a significant toll on Replenum given the fact that Albertsons  
24 was not paying Service Fees to Replenum to ameliorate its costs, as planned. In response,  
25 Pavlovich pointed to the recently announced merger with Kroger and stated that in addition to  
26 Albertsons' volume, Replenum would "get Kroger out of this" if Replenum continued its work.

1 87. At that time, Albertsons was in the process of negotiating a merger with Kroger.  
2 As of April 2, 2024, Kroger operated 2,722 grocery retail stores across the country under a variety  
3 of banner names, either directly or through its subsidiaries. Albertsons' invocation of Kroger and  
4 referencing that Replenum would "get Kroger out of this" was intended to induce Replenum to  
5 continue investing time and effort in the Replenum Platform with Albertsons because the  
6 potential merger would significantly increase the reach of the Replenum Platform, thereby  
7 significantly increasing Replenum's Service Fees.

8 88. Albertsons finally committed to an expansion in all Safeway stores by February 15,  
9 2023. Replenum spent countless hours and exhaustive resources leading up to this February 2023  
10 expansion. The teams from both parties were prepared for the rollout, but then just two days prior  
11 to the target date, Albertsons' corporate team abruptly canceled the expansion again.

12 89. Replenum expressed its shock and disappointment to Albertsons, particularly  
13 given that all of its functionality was performing to specification. In response, Albertsons' Omar  
14 Gajjal, Executive Vice President, Chief Digital & Health Officer at the time, offered to identify a  
15 subset of stores or divisions where Albertsons could expand the Replenum Platform. Albertsons  
16 ultimately never identified additional stores or divisions.

17 90. Throughout 2023, Albertsons and Replenum continued to work on an economic  
18 resolution to Albertsons' seemingly inexplicable delays, but Albertsons repeatedly used its market  
19 leverage and promises of a national expansion to insist that Replenum continue its support  
20 without additional financial consideration.

21 91. In an email from Albertsons in May 2023, after asking Replenum to increase its  
22 monthly investment in order to provide additional server capacity and labor, Albertsons reiterated  
23 that position: "Like you, we also remain big believers in this program's potential. *We are just an*  
24 *estimated 1 month away from launching the Cart & Checkout experience for customers*, which  
25 should be a big unlock for the program. If initial results are favorable, it will enable us to expand  
26



1 this program across the enterprise. *We look forward to crossing these milestones over the next few*  
2 *months!*" (emphasis added).

3 92. Through Albertsons' limited pilots and staged enhancement launches, it repeatedly  
4 squeezed Replenium for Trade Secrets and other Confidential Information and significant  
5 investment, while Albertsons reaped the benefits of the Replenium Platform through further  
6 education about Replenium's technology and validation of the business case for Schedule & Save.  
7 At the same time, Albertsons denied Replenium Service Fees, or ultimately any compensation for  
8 its Trade Secrets and other Confidential Information while forcing it into financial challenges that  
9 were never contemplated by the parties' relationship.

10 **V. With Continuing Access to and Use of Replenium's Trade Secrets and other**  
11 **Confidential Information, Albertsons Internally Develops a Competing System**  
**to Replace the Replenium Platform**

12 93. Unbeknownst to Replenium, while Replenium was working with Albertsons to  
13 implement the Replenium Platform, Albertsons covertly began to develop a near-identical system  
14 (the "Albertsons Platform") meant to supplant the Replenium Platform for Schedule & Save.

15 94. Albertsons did not inform Replenium that it had begun to develop the Albertsons  
16 Platform in parallel with its partnership with Replenium and took no apparent precautions to  
17 protect Replenium's Trade Secrets and other Confidential Information. Rather, Albertsons  
18 worked in secret while continuing to receive Replenium's Trade Secrets and other Confidential  
19 Information under the protections of the MNDA and MSA.

20 95. Indeed, throughout 2023, even as Albertsons was planning to terminate the MSA  
21 and launch the Albertsons Platform, Albertsons' team members sought more detailed and  
22 technical information concerning the inner workings of the Replenium Platform, including the  
23 business logic and rationale behind it.

24 96. Notably, in February 2023, Albertsons proposed amending the MNDA to include a  
25 never-before-discussed Residuals clause that would permit Albertsons to use residual work  
26 relating to the Confidential Information.



1 97. Specifically, on February 14, 2023, Jenny Liu of Albertsons sent an email to  
2 Replenium stating that Matt [Freeman] and I continue to work with the business team to look at  
3 the different options to our partnership with you.” She went on, “[a]s we were talking about  
4 shifting our relationship into something more strategic, we would need a basic provision to the  
5 MNDA before we move forward with further discussions.” She stated that this “basic provision”  
6 would “help ensure that we have the protection required as a public company in the long run as we  
7 think about what the strategic relationship can look like.”

8 98. The proposed amended MNDA included language that would have granted  
9 Albertsons the ability to use residuals of Replenium’s Confidential Information, including  
10 information retained in the memories of its representatives who had access to Replenium’s  
11 information. The proposed language provided:

12 **Residuals.** Notwithstanding any language to the contrary, nothing in  
13 this Agreement will limit the ability of either party or any of its  
14 Representatives to use residuals relating to the Confidential  
15 Information of the other party. The term “**residuals**” means  
16 information of any kind included in or relating to the Confidential  
17 Information which is retained in the unaided memories of  
18 Representatives of either party who have had access to the  
19 Confidential Information, but not as a result of any deliberate effort  
20 to memorize the information. Without limiting the foregoing, neither  
21 party will have any obligation to limit or restrict the assignment of  
22 its employees or to pay royalties to the other party in connection  
23 with any use of residuals.

24 99. Replenium rejected that proposal and made clear that it would not agree to  
25 Albertsons’ use of Replenium’s Confidential Information in that manner. Replenium was  
26 particularly puzzled by this exchange given that Albertsons’ request for the residuals language  
came approximately two and a half years into the parties’ commercial relationship.

100. As Albertsons developed its undisclosed Albertsons Platform, it continued to probe  
Replenium for answers to technical questions and questions about the business logic behind the  
Replenium Platform. For example, in May 2023, via Slack messages, Albertsons contractors and

1 employees Jeyarani Sonai and Mary Ann Warner sought detailed information from Replenium  
2 employees Richard Rector and Hasaan Maajid about how the ordering process would and should  
3 work for an existing user who enrolls in Cart & Checkout in the Replenium Platform, as well as  
4 for new users. Replenium responded in detail both about how the process works and *why* it was  
5 designed to work that way.

6 101. Replenium further shared additional Trade Secrets and other Confidential  
7 Information with Albertsons regarding Cart & Checkout through a series of emails in May 2023.  
8 In these emails, several Albertsons employees, including a Technology Program Manager,  
9 questioned Replenium regarding the business logic supporting the order date for existing  
10 customers signing up for Cart & Checkout. Replenium's CTO, Bashir, responded to a team of  
11 about six Albertsons employees, with details surrounding Replenium's suggested business logic to  
12 create the most efficient process for customers using Cart & Checkout. All such information was  
13 shared pursuant to the MNDA and MSA.

14 102. In the months leading up to Albertsons' termination of the MSA, Albertsons and  
15 Replenium continued to have bi-weekly meetings where the parties discussed expansion criteria  
16 and rollout timing. Albertsons also continued to express its enthusiasm for the Replenium  
17 Platform, the partnership and the imminent national expansion, while Replenium continued to  
18 invest resources and share Trade Secrets and other Confidential Information to support the  
19 forthcoming expansion.

20 103. Even in the month immediately prior to Albertsons terminating the MSA and  
21 launching the Albertsons Platform, Albertsons continued to work with Replenium toward a  
22 nationwide expansion that Albertsons knew would not happen, while collecting more information  
23 through a rollout of additional functionality for the Replenium Platform in the Northern California  
24 market.

25 104. In an August 10, 2023 meeting between Albertsons and Replenium, Albertsons  
26 presented a deck showing that it would launch Cart & Checkout with the Replenium Platform in

1 10 stores on August 10, 2023. Albertsons wrote that if it was successful, the experience would be  
2 expanded to the rest of the Northern California stores. The same presentation showed that Cart &  
3 Checkout would be launched in 240 stores on August 30, 2023, and Albertsons confirmed, “[i]f all  
4 success criteria is met, we will start gradually expanding the program nationwide.”

5 105. In late August 2023, Albertsons launched the Cart & Checkout functionality with  
6 the Replenium Platform in Northern California. This launch was confined to Safeway stores only  
7 in Northern California and no other Albertsons-owned banners. Through this launch, the  
8 Replenium Platform was made available with enhanced functionality in approximately 240 stores.  
9 Albertsons launched Cart & Checkout on a small-scale by design, prior to terminating its MSA  
10 with Replenium, to ensure that it had sufficient information to utilize that feature in the Albertsons  
11 Platform without Replenium.

12 106. As with prior limited launches, the Replenium Platform with Cart & Checkout  
13 proved successful, demonstrating the customer need and use for an auto-replenishment full-basket  
14 solution, and the commercial value of the Replenium Platform. In fact, on September 6, 2023,  
15 Albertsons presented the metrics to Replenium for the original 10 test stores and showed that post  
16 the launch of the Replenium Platform with Cart & Checkout, Albertsons saw a 130% increase in  
17 auto-replenishment sales and 97% increase in auto-replenishment orders.

18 **VI. Albertsons Terminates the MSA and Immediately Transitions from**  
19 **Replenium’s Platform to its Albertsons Platform Using Replenium’s Trade**  
20 **Secrets and other Confidential Information**

21 107. On October 3, 2023, without prior notice, Albertsons abruptly sent a letter to  
22 Replenium terminating the MSA. Albertsons stated in the letter that the effective termination date  
23 was November 15, 2023.

24 108. This termination came as a shock to Replenium. There had been no indication  
25 from Albertsons that there were any potential issues with the Replenium Platform. Indeed, just  
26 one day prior, on October 2, 2023, Albertsons and Replenium had scheduled code freeze dates in

1 anticipation of the upcoming November and December expansion dates for the Replenum  
2 Platform. Code freeze dates represent a point in time in the development process after which the  
3 rules for making changes to the source code or related resources become more strict, which is  
4 meant to help move a project forward towards a release.

5 109. During the same October 2, 2023 call between Albertsons and Replenum, which  
6 occurred the day prior to termination, Albertsons discussed the Banner Expansion Plan, which it  
7 said was planned to commence on November 7, 2023. In that call, Albertsons informed  
8 Replenum that the Replenum Platform’s expansion would occur so long as a “wallet project”  
9 was complete; however, Albertsons never explained the nature of the “wallet project” to  
10 Replenum, or why the wallet project was a hurdle to expansion.

11 110. On an October 3, 2023 call, where Pavlovich and Wuson verbally notified  
12 Replenum of Albertsons’ intent to terminate the MSA, Pavlovich cited “difficult times, budget  
13 constraints and an impending merger.” Thus, despite the announced Kroger merger being dangled  
14 in front of Replenum as a reason to continue its investment, it was later expressly cited to  
15 Replenum as a reason to terminate the entire contractual relationship.

16 111. When Replenum asked what would happen to Schedule & Save, Pavlovich  
17 stunningly declared that Albertsons was prepared to continue to operate Schedule & Save with  
18 “internal functionality.”

19 112. Shortly after the termination, while working with Albertsons’ transition team,  
20 Replenum learned that while Albertsons was receiving assistance from Replenum in preparation  
21 for the expansion of the Replenum Platform and regularly receiving Replenum’s Trade Secrets  
22 and other Confidential Information from its chief technology employees, Albertsons was  
23 simultaneously and surreptitiously developing the Albertsons Platform. Despite the  
24 confidentiality protections in the MNDA and MSA, and Albertsons’ published Code of Ethics,  
25 Albertsons took no apparent steps to protect Replenum’s Trade Secrets and other Confidential  
26 Information during its development of the Albertsons Platform.

1           113. Indeed, Albertsons’ Code of Business Conduct & Ethics emphasizes that  
2 “[p]rotecting information owned, licensed, or entrusted to the Company is not only vital to our  
3 success, but our *trustworthiness*.” (emphasis added). It goes on to provide that employees who  
4 have access to confidential information “[m]ust guard against the disclosure of that information,  
5 even to other associates unless authorized . . . .”

6           114. While Albertsons’ formal policies highlight integrity and trust, the Albertsons team  
7 working with Replenum apparently acted in stark contrast to these principles. In fact, during a  
8 meeting on October 4, 2023 to discuss the transition, an Albertsons employee informed Replenum  
9 that Albertsons instructed its employees not to discuss with or mention to Replenum that  
10 Albertsons was developing the Albertsons Platform.

11           115. On October 16, 2023, Replenum met with Gajjal, an EVP for Albertsons, to  
12 attempt to salvage the MSA. Replenum emphasized the success of the Replenum Platform up to  
13 that point and reminded Gajjal that the MNDA and MSA continued to protect Replenum’s  
14 Confidential Information from any type of use in connection with Albertsons’ internal  
15 development of a competing platform. Gajjal noted that Albertsons decided to build its own  
16 platform due to two specific challenges –the user signup experience and earlier development  
17 issues. Both of these issues, however, were entirely attributable to Albertsons, making clear that  
18 these reasons were provided merely as pretext.

19           116. On October 18, 2023, Albertsons launched the Albertsons Platform with a design  
20 and functionality that is strikingly similar to the Replenum Platform. Albertsons continued to  
21 refer to the platform as Schedule & Save.

22           117. Over the course of the parties’ relationship, Replenum worked in various  
23 capacities with no less than two hundred Albertsons employees and independent contractors. The  
24 parties’ business teams had meetings at least every two weeks from Q1 2021 to Q4 2023. The  
25 technology teams of Replenum and Albertsons met at least weekly, and often twice per week.  
26 Replenum would have never disclosed information to Albertsons’ large team over this lengthy

1 period without the protections provided by the MNDA and MSA, or, indeed, had it known that  
2 Albertsons was developing a competing platform.

3 **VII. Replenium Suffers Significant Harm as a Result of Albertsons' Conduct**

4 118. Replenium invested millions of dollars annually to support the integration and  
5 eventual launch of the Replenium Platform, causing close to ten million dollars of direct net losses  
6 from its investment in supporting Albertsons, even after factoring in payments Replenium  
7 received from Albertsons.

8 119. Replenium undertook this significant financial burden based on the parties'  
9 expectation that when the Replenium Platform was timely launched and expanded nationally,  
10 Replenium would receive Service Fees that would compensate it for its work. Over three years,  
11 Albertsons repeatedly encouraged Replenium to continue its work on the Replenium Platform—  
12 despite Albertsons' missed deadlines, countless delays, and millions in expenses incurred by  
13 Replenium—precisely because Replenium would earn back the amount of its expenses and more  
14 through Service Fees.

15 120. Albertsons made these statements knowing that they were untrue. Albertsons'  
16 development of the Albertsons Platform laid bare the true goal of Albertsons' insistence that  
17 Replenium continue to endure significant development costs. Albertsons wanted continued access  
18 to Replenium's Trade Secrets and other Confidential Information underlying the Replenium  
19 Platform so that it could reap the benefit of the MSA, and the information shared under the  
20 MNDA and MSA, without having to pay Replenium Service Fees or any compensation for its  
21 Trade Secrets and other Confidential Information.

22 121. Albertsons has now expanded Schedule & Save under the Albertsons Platform,  
23 developed using technology and know-how that it received from Replenium under the MNDA and  
24 MSA, across the vast majority of its stores, including some of its largest banners, such as Safeway,  
25 Vons, Albertsons, and Jewel-Osco.



1 129. Replenum also entered into the MSA with Albertsons, which reaffirmed  
2 Albertsons' confidentiality obligations.

3 130. Replenum shared its Trade Secrets with Albertsons pursuant to the protections of  
4 the MNDA and the MSA.

5 131. Albertsons' disclosure or use of Replenum's Trade Secrets has been without the  
6 express or implied consent of Replenum where, at the time of the disclosure or use, Albertsons  
7 knew or had reason to know—in light of the MNDA and MSA —that its knowledge of  
8 Replenum's Trade Secrets was acquired under circumstances giving rise to Albertsons' duty to  
9 maintain their secrecy or limit their use.

10 132. Albertsons has exploited Replenum's Trade Secrets to the benefit of Albertsons  
11 and the detriment of Replenum in order to develop a full-basket auto-replenishment system and  
12 unfairly compete with Replenum.

13 133. Albertsons' misappropriation of Replenum's Trade Secrets was with knowledge  
14 that such action was a breach of its obligations under the MNDA and MSA and its duty to limit its  
15 use of the Trade Secrets. Despite this, Albertsons continued to utilize Replenum's Trade Secrets  
16 for its own benefit and endeavors.

17 134. Albertsons' misappropriation of Replenum's Trade Secrets was and continues to  
18 be reckless and malicious.

19 135. As a direct and proximate result of Albertsons' misappropriation of Replenum's  
20 Trade Secrets, Replenum has suffered, and continues to suffer, significant damages.

21 136. There is no justification for Albertsons' wrongful conduct, which is improper and  
22 taken for commercial benefit. Albertsons' conduct has proximately and directly caused and will  
23 continue to cause irreparable harm to Replenum. Replenum has incurred additional harm in  
24 devoting time and resources to undo damage done by Albertsons and to prevent further harm.

25 137. Replenum has been damaged as a result of Albertsons' conduct and is entitled to  
26 damages in an amount to be proven at trial, as well as exemplary damages, injunctive relief or a



1 reasonable royalty, any unjust enrichment not encompassed in the computation of Replenium's  
2 losses, and an award of attorneys' fees pursuant to 18 U.S.C. § 1836(b)(3).

3 **COUNT II**

4 **Washington Uniform Trade Secrets Act, R.C.W. § 19.108.010, et seq.**

5 138. Replenium incorporates by reference the allegations in the preceding paragraphs as  
6 though fully set forth herein.

7 139. Replenium possessed confidential Trade Secrets relating to the Replenium  
8 Platform.

9 140. Replenium's Trade Secrets consist of information, including a formula, pattern,  
10 compilation, program, device, method, technique or process that derives independent economic  
11 value, actual or potential, from not being generally known to, and not being readily ascertainable  
12 by proper means by, other persons who can obtain economic value from their disclosure or use,  
13 and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

14 141. Replenium has expended considerable time, effort, and expense in compiling and  
15 developing the Trade Secrets.

16 142. Replenium has undertaken reasonable methods to maintain the secrecy of its Trade  
17 Secrets, including entering into non-disclosure agreements with any party with whom it shared the  
18 information.

19 143. Replenium entered into an MNDA with Albertsons, which required Albertsons to  
20 safeguard and maintain the confidentiality of Replenium's Trade Secrets.

21 144. Replenium also entered into the MSA with Albertsons, which reaffirmed  
22 Albertsons' confidentiality obligations.

23 145. Replenium shared its Trade Secrets with Albertsons pursuant to the protections of  
24 the MNDA and the MSA.

1           146. Albertsons has exploited Replenium’s Trade Secrets to the benefit of Albertsons  
2 and the detriment of Replenium in order to develop a full-basket auto-replenishment system,  
3 referred to herein as the Albertsons Platform, and unfairly compete with Replenium.

4           147. Albertsons’ disclosure or use of Replenium’s Trade Secrets has been without the  
5 express or implied consent of Replenium where, at the time of the disclosure or use, Albertsons  
6 knew or had reason to know—in light of the MNDA—that its knowledge of Replenium’s Trade  
7 Secrets was acquired under circumstances giving rise to Albertsons’ duty to maintain their secrecy  
8 or limit their use.

9           148. Albertsons’ misappropriation of Replenium’s Trade Secrets was with knowledge  
10 that such action was a breach of its obligations under the MNDA and its duty to limit its use of the  
11 Trade Secrets. Despite this, Albertsons continued to utilize Replenium’s Trade Secrets for its own  
12 benefit and endeavors.

13           149. Albertsons’ misappropriation of Replenium’s Trade Secrets was and continues to  
14 be willful and malicious.

15           150. As a direct and proximate result of Albertsons’ misappropriation of Replenium’s  
16 Trade Secrets, Replenium has suffered, and continues to suffer, significant damages.

17           151. Albertsons’ misappropriation of Replenium’s Trade Secrets has caused Replenium  
18 substantial injury, including, inter alia, actual damages, lost profits, harm to reputation,  
19 competitive harm, and diminution in value of its Trade Secrets.

20           152. Replenium has been damaged as a result of Albertsons’ conduct and is entitled to  
21 damages in an amount to be proven at trial, as well as exemplary damages, injunctive relief or a  
22 reasonably royalty, any unjust enrichment not encompassed in the computation of Replenium’s  
23 losses, and an award of attorneys’ fees pursuant to R.C.W. § 19.108.030-40.  
24  
25  
26

**COUNT III**

**Breach of the MNDA and the Confidentiality Provisions of the MSA**

1  
2  
3 153. Replenium incorporates by reference the allegations in the preceding paragraphs as  
4 though fully set forth herein.

5 154. Replenium and Albertsons are parties to the MNDA.

6 155. The MNDA is a valid and binding contract.

7 156. Pursuant to § 4 of the MNDA, Albertsons agreed to only “use Confidential  
8 Information solely for the Purpose, and for no other purpose” and to not “export, reverse engineer,  
9 disassemble or decompile any prototypes software or other tangible objects that embody the other  
10 party’s Confidential Information.”

11 157. “Purpose” pursuant to the MNDA was that “[t]he parties wish[ed] to share  
12 information for the purpose of evaluating the suitability of entering into a business relationship or  
13 in furtherance of an existing business relationship.” MNDA § 1.

14 158. Section 4 of the MNDA also prohibited Albertsons from disclosing the  
15 Confidential Information to any of its representatives outside of those who needed to know it for  
16 the MNDA’s defined Purpose.

17 159. Replenium and Albertsons are also parties to the MSA.

18 160. The MSA is a valid and binding contract.

19 161. The MSA affirms, at section 9.1, that all confidential and proprietary information  
20 disclosed by one party to the MSA to the other party “concerning or pertaining to the business of  
21 the disclosing party shall be subject to the terms of the [MNDA].”

22 162. Further, section 11.3(c) of the MSA provides that “Albertsons will use its  
23 reasonable efforts to protect Company’s Intellectual Property rights in the Services and will report  
24 promptly to Company any infringement or misappropriation of such rights of which Albertsons  
25 becomes aware.”  
26

1 163. Section 11.6 of the MSA further provides that “Albertsons will not . . . (b) copy,  
2 modify or create any derivative works based on the Services or (c) disassemble, decompile, or  
3 reverse engineer the Services or permit any third party to do so.”

4 164. Albertsons breached the MNDA and MSA by failing to protect Replenium’s  
5 Confidential Information and misusing Replenium’s Confidential Information to create the  
6 Albertsons Platform.

7 165. Replenium suffered and will continue to suffer substantial damages as a result of  
8 these breaches of contract.

9 **COUNT IV**

10 **Breach of the MSA**

11 166. Replenium incorporates by reference the allegations in the preceding paragraphs as  
12 though fully set forth herein.

13 167. Replenium and Albertsons are parties to the MSA.

14 168. The MSA is a valid and binding contract.

15 169. Under the MSA, and its incorporated SOWs as amended, Albertsons provided a  
16 target Commercial Launch date of March 15, 2021.

17 170. Commercial Launch was defined in the SOW as “the date mutually agreed to by  
18 the parties on which Customers are able to begin placing Replenishment Orders in one or more  
19 geographic or segmented markets. For the sake of clarity, the ability of Customers to place  
20 Replenishment Orders as part of a friendly user trial of the Services does not constitute  
21 Commercial Launch.” Commercial Launch was further defined in Appendix B to the SOW as  
22 “Open service to public, including selected features detailed in Appendix C.”

23 171. Further, Albertsons agreed to cooperate and assist Replenium in good faith to  
24 achieve a nationwide expansion of the Replenium Platform to the public. Specifically, SOW §1.3  
25 provides: “Cooperation and Assistance. In order to enable Company to provide the Services  
26 [Albertsons] will: (a) provide Company with good faith cooperation and access to such

1 information, facilities, and equipment as reasonably requested by Company from time to time,  
2 including, without limitation, providing Albertsons Content, personnel assistance, security access,  
3 and software interfaces to the Albertsons Sites; (b) cooperate with Company pursuant to the  
4 integration documents to be provided by Company; and (c) carry out in a timely manner all other  
5 Albertsons obligations set forth in this Agreement.”

6 172. SOW §1.6 also requires Albertsons to “maximize the number of Replenishment  
7 Orders placed by Customers.”

8 173. Replenium fulfilled its obligations under the MSA, devoting immense resources  
9 and investing significant man-hours and hundreds of thousands of dollars per month, including  
10 labor and technical infrastructure costs to provide Albertsons with the automated replenishment  
11 SaaS Services and the Replenium Platform.

12 174. Albertsons breached the MSA by failing to cooperate with Replenium in good faith  
13 to accomplish the purpose of the MSA, failing to timely launch the Replenium Platform, failing to  
14 timely carry out its obligations under the MSA, failing to maximize the number of Replenishment  
15 Orders placed by its customers, and by diverting its resources toward launching its own auto-  
16 replenishment solution while requiring Replenium to continue to invest in a nationwide expansion  
17 under the MSA.

18 175. Replenium suffered and will continue to suffer substantial damages as a result of  
19 this breach of the MSA by Albertsons.

20 **COUNT V**

21 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

22 176. Replenium incorporates by reference the allegations in the preceding paragraphs as  
23 though fully set forth herein.

24 177. Replenium and Albertsons entered into the MSA.

25 178. Every contract contains implied covenants of good faith and fair dealing, which is a  
26 presumption that the parties to the contract will deal with each other honestly, fairly, and in good

1 faith, so as to not destroy the rights of the other party or parties to receive the benefits of the  
2 contract. The implied covenants of good faith and fair dealing also prevent parties from  
3 unreasonably exercising discretion pursuant to a contract.

4 179. The MSA was agreed upon for the purpose of Albertsons and Replenium working  
5 together toward a nationwide expansion of the Replenium Platform, including the full set of  
6 service features described in the MSA.

7 180. Albertsons had a duty to act in good faith and work toward a nationwide expansion  
8 of the Replenium Platform, with a full set of service features, consistent with the purpose of the  
9 MSA.

10 181. Albertsons destroyed the purpose of the MSA by acting in bad faith to delay the  
11 national expansion of the Replenium Platform, failing to incorporate service features specified in  
12 the SOW, failing to disclose to Replenium that Albertsons was simultaneously developing its own  
13 auto-replenishment platform, failing to protect Replenium's Trade Secrets and other Confidential  
14 Information while developing its own auto-replenishment platform, using Replenium's Trade  
15 Secrets and other Confidential Information in connection with its development of the Albertsons  
16 Platform, and terminating the MSA on the eve of Albertsons' nationwide expansion of the  
17 Replenium Platform to deprive Replenium of the benefit of its bargained-for Services Fees.

18 182. Albertsons was aware that Replenium would not have entered into, or continued to  
19 perform services under the MSA for three years, or shared Trade Secrets and other Confidential  
20 Information, had it known that Albertsons would terminate the MSA prior to a nationwide  
21 expansion or that Albertsons was planning to launch an internally developed auto-replenishment  
22 platform to replace the Replenium Platform.

23 183. Albertsons repeatedly and intentionally delayed the launch and national expansion  
24 of the Replenium Platform while it used Replenium's Trade Secrets and other Confidential  
25 Information it obtained pursuant to the MNDA and MSA to create and launch the Albertsons  
26

1 Platform. In doing so, Albertsons intentionally deprived Replenium of the benefit of the bargain  
2 of the MSA.

3 184. Replenium suffered and will continue to suffer substantial damages as a result of  
4 Albertsons' breach of the implied covenants of good faith and fair dealing.

5 **COUNT VI**

6 **Promissory Estoppel**

7 185. Replenium incorporates by reference the allegations in the preceding paragraphs as  
8 though fully set forth herein.

9 186. Albertsons repeatedly represented to Replenium that Albertsons would engage in a  
10 nationwide expansion of the Replenium Platform in Albertsons' locations across the country and  
11 that Replenium would receive Service Fees based on that expansion to compensate it for its losses  
12 during Albertsons' contract delays.

13 187. Replenium relied on Albertsons' representations that Albertsons would conduct a  
14 nationwide expansion of the Replenium Platform.

15 188. Replenium's reliance on Albertsons' representations induced Replenium to  
16 continue its work on the Replenium Platform beyond its obligations under the MSA and to incur  
17 additional substantial costs in order to continue to support the Replenium Platform.

18 189. Albertsons specifically represented to Replenium that the Replenium Platform  
19 would nationally expand on specific dates, including July 22, 2022 and February 15, 2023,  
20 inducing Replenium to incur significant implementation costs in reliance on those representations.

21 190. Replenium has suffered significant financial hardship and damages as a result of  
22 Albertsons' failure to nationally expand the Replenium Platform.

23 **COUNT IV**

24 **Unjust Enrichment**

25 191. Replenium incorporates by reference the allegations in the preceding paragraphs as  
26 though fully set forth herein.

1 192. Albertsons obtained a benefit from Replenium in the form of services and  
2 confidential information that Replenium was not obligated to provide to Albertsons under any  
3 contract. Through three years of services and information sharing, Albertson received the know-  
4 how to build its own auto-replenishment platform.

5 193. Replenium invested millions of dollars and countless hours and resources in  
6 providing Albertsons with the services and information it required of Replenium, costing  
7 Replenium its investment and the opportunity to provides services to and profit from working with  
8 other retailers.

9 194. If Albertsons had not received the benefit of Replenium's knowledge, information,  
10 technology, business logic, and know-how, it would have had to spend significant resources in an  
11 attempt create this technology on its own or by paying another third party. Accordingly, it  
12 unjustly avoided costs through the creation of its Albertsons Platform.

13 195. Albertsons appreciated, accepted, and retained the benefit it obtained under  
14 inequitable and unjust circumstances arising from Albertsons' conduct toward Replenium,  
15 including during the time that Albertson was building its own auto-replenishment platform that it  
16 knew would deprive Replenium of the opportunity to be compensated for its services and  
17 information.

18 196. Albertsons profited, and continues to profit, from Replenium's services and  
19 information without providing Replenium with just compensation for the benefit received from  
20 Replenium.

21 197. Under the circumstances, it would be unjust and unfair for Albertsons to be  
22 permitted to retain any of the benefits obtained from Replenium without payment to Replenium.

23 **PRAYER FOR RELIEF**

24 Replenium prays that the Court:

25 A. Enter judgment that Albertsons violated the Defend Trade Secrets Act by  
26 misappropriating Replenium's Trade Secrets;



1 B. Enter judgment that Albertsons violated the Washington Uniform Trade Secret Act  
2 by misappropriating Replenium's Trade Secrets;

3 C. Enter judgment that the MNDA is valid and enforceable, and has been breached by  
4 Albertsons, and that Replenium has been damaged as a result of Albertsons' breach;

5 D. Enter judgment that the MSA is valid and enforceable, and has been breached by  
6 Albertsons, and that Replenium has been damaged as a result of Albertsons' breach;

7 E. Enter judgment that Albertsons breached the implied covenant of good faith and  
8 fair dealing implied in the MSA, and that Replenium has been damaged as a result of Albertsons'  
9 breach;

10 F. Enter judgment that Albertsons made promises to Replenium, upon which  
11 Replenium reasonably relied to its detriment;

12 G. Enter judgment that Albertsons has been unjustly enriched as a result of unjustly  
13 avoided costs to build the Albertsons Platform and by reaping the benefit of Replenium's services  
14 and information without just compensation;

15 H. Award Replenium a monetary judgment against Albertsons in an amount to be  
16 determined at trial;

17 I. Award Replenium exemplary double damages as authorized by law;

18 J. Award Replenium attorneys' fees in such other amounts as may be proven by trial  
19 or as otherwise provided by law;

20 K. Award Replenium pre- and post-judgment interest; and

21 L. Grant such other and further relief as this Court deems just and proper.  
22  
23  
24  
25  
26

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED this 19th day of August, 2024.

**SUMMIT LAW GROUP, PLLC**

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