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Aggrieved Employees*

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

KYLE CASSIDY, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

KEYENCE CORPORATION OF AMERICA, a
California Corporation,

Defendant.

CASE NO. 21CV382350

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) Failure to Issue Accurate Itemized Wage Statements (Cal. Labor Code § 226(a), (e));**
- (2) Failure to Pay Overtime Wages (Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3).**
- (3) Failure to Pay Compensation Due Upon Discharge from Employment (Cal. Labor Code §§ 201-203);**
- (4) Failure to Reimburse Business Expenses (Cal. Labor Code § 2802); and**
- (5) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 et seq.);**
- (6) Civil Penalties under Private Attorneys General Act (Cal. Labor Code § 2699).**

DEMAND FOR JURY TRIAL

1 Plaintiff Kyle Cassidy (“Plaintiff”), on behalf of himself and all others similarly situated,
2 complains and alleges the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages for
5 unreimbursed expenses and unpaid overtime, statutory penalties, interest, and reasonable attorneys’ fees
6 and costs under California Labor Code (“Labor Code”) §§ 226, 510, 1194, 201, 202, 203, 2802, IWC
7 Wage Order (“Wage Order”) No. 4-2001 § 3, California Civil Procedure Code § 1021.5, and restitution
8 under California’s Unfair Competition Law (“UCL”), Business & Professions Code §§ 17200 *et seq.* on
9 behalf of the members of the classes, as defined below.

10 2. Plaintiff brings this class action on behalf of himself and other individuals currently and
11 formerly employed by Defendant Keyence Corporation of America (“Keyence” or “Defendant”) in
12 California as Sales Engineers, Sales Representatives or in a similar capacity (“Class Members”) from one
13 year prior to the filing of this Complaint through to the trial date (“Wage Statement Class Period”). During
14 the Wage Statement Class Period, Defendant maintained a policy and/or practice of misclassifying Class
15 Members as outside sales representatives, yet Keyence directed Class Members to work from home and,
16 as a result, they spent at least 50% or more of their working time at their employer’s place of business.

17 3. As a result of misclassifying Class Members as exempt throughout the Wage Statement
18 Class Period, Defendant did not require Class Members to track their hours worked, and thus did not list
19 the total hours worked and/or their applicable hourly rate on the wage statements it furnished to the Class
20 Members, in violation of Labor Code § 226(a). Defendant’s violation of Labor Code § 226(a) was
21 knowing and intentional, and Plaintiff and Class Members suffered injury as a result in that they could
22 not ascertain from the wage statement alone the number of hours worked, or the applicable hourly rate
23 earned. As a result, Plaintiff and Class Members are entitled to statutory penalties and reasonable
24 attorney’s fees and costs pursuant to Labor Code § 226(e).

25 4. Plaintiff also brings this class action on behalf of himself and a subclass of Class Members
26 who in any pay period earned 50% or more of their total compensation in earnings other than commissions
27 (“Overtime Subclass Members”) during the period of March 18, 2020 through to the trial date (“Overtime
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1 Class Period”). As stated above, Defendant maintained a practice and/or policy of misclassifying Class
2 Members as exempt from overtime, pursuant to the outside sales exemption contained in Wage Order 4,
3 § 1(C). Overtime Subclass Members routinely worked more than eight hours in a days, and 40 hours in a
4 workweek and were therefore entitled to overtime pay. However, as a result of misclassifying them as
5 exempt Defendant did not pay Overtime Subclass Members overtime, in violation of Labor Code §§ 1194,
6 510, and Wage Order No. 4-2001, § 3.

7 5. As a result of failing to pay overtime during the Overtime Class Period, Defendant failed
8 to pay Plaintiff and formerly employed Overtime Subclass Members all wages due and owing to them at
9 the time of their termination, in violation of Labor Code § 201. Plaintiff and formerly employed Overtime
10 Subclass Members are therefore entitled to waiting time penalties pursuant to Labor Code § 203.

11 6. Plaintiff also brings this action on behalf of himself and other employees of Defendant
12 (“Expense Reimbursement Class Members” or “ER Class Members”) in California employed at any time
13 from March 18, 2020 through the date of trial (“Expense Reimbursement Class Period” or “ER Class
14 Period”) for unreimbursed business expenses incurred by them during that period. During the ER Class
15 Period, Defendant maintained a policy and/or practice of requiring Plaintiff and ER Class Members to
16 work remotely due to the Covid-19 pandemic. In order to carry out and perform their assigned work
17 related duties remotely, Plaintiff and ER Class Members incurred expenses including but not limited to
18 the cost of internet service. However, Defendant maintains a policy and/or practice of denying
19 reimbursement to Plaintiff and ER Class Members for these necessarily incurred business expenses, in
20 violation of Labor Code § 2802.

21 7. In consequence of the violations of Labor Code §§ 510, 1194, and 2802, and IWC Wage
22 Order No. 4-2001, § 3 Defendant also committed unfair, unlawful, and fraudulent business practices, in
23 violation of California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200 et seq. Plaintiff,
24 on behalf of himself, and members of the Overtime Subclass and ER Class, seeks restitution and other
25 relief as prayed for below.

26 8. Finally, Plaintiff brings this action as a representative action under the California Labor
27 Code’s Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.*, for civil penalties on
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1 behalf of himself and others employed as Sales Engineers, Sales Representatives or in a similar capacity
2 by Keyence (“Aggrieved Employees”) from May 25, 2020 through to trial (“PAGA Period”) for failure
3 to issue accurate itemized wage statements in violation of Labor Code § 226(a)(2) and (a)(9); and on
4 behalf of himself and all other Aggrieved Employees who earned 50% or more of their total compensation
5 through earnings other than commissions (“Overtime Aggrieved Employees”) during the PAGA Period
6 for the violation of Labor Code §§ 1194, 510, and 201-202; and on behalf of himself and all other
7 individuals employed by Keyence during the PAGA Period (“Expense Reimbursement Aggrieved
8 Employees”) for failure to reimburse business expenses in violation of Labor Code § 2802.

9 **PARTIES**

10 9. Plaintiff Cassidy is a resident of Santa Clara, California and was employed by Keyence as
11 a Sales Engineer at its San Jose location from approximately June 2019 through March 2021. During his
12 employment, Plaintiff Cassidy was subject to Defendant’s unlawful conduct described herein.

13 10. Defendant Keyence Corporation of America, Inc. is a California corporation with its
14 principal place of business and mailing address at 669 River Drive, Suite 403 Elmwood Park, New Jersey
15 07407.

16 **JURISDICTION**

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18 11. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for the failure to
19 issue accurate itemized wage statements pursuant to Labor Code § 226(a), (e).

20 12. This Court has jurisdiction over Plaintiff’s and Overtime Subclass Members’ claims for
21 failure to pay overtime wages pursuant to Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3.

22 13. This Court has jurisdiction over Plaintiff’s and formerly employed Overtime Subclass
23 Members’ claims for failure to pay compensation due upon discharge from employment pursuant to Labor
24 Code §§ 201-203.

25 14. This Court has jurisdiction over Plaintiff’s and ER Class Members’ claims for failure to
26 reimburse business expenses pursuant to Labor Code § 2802.

15. This Court has jurisdiction over the claims for restitution arising from Defendant's violations of Labor Code §§ 510, 1194, 2802 and Wage Order No. 4-2001, § 3, and under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

16. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code § 2698 et seq. On May 25, 2021, Plaintiff provided PAGA Notice pursuant to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and Defendant. The LWDA has provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intention to investigate or not investigate any of the claims alleged in the PAGA Notice. Plaintiff has therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code §§ 2699-2699.3.

17. This Court has jurisdiction over claims for reasonable attorneys' fees and costs pursuant to Labor Code §§ 226(e), 1194, 2802, 2699 and Cal. Civ. Proc. Code § 1021.5.

VENUE

18. Venue is proper in the County of Santa Clara pursuant to California Code of Civil Procedure §§ 395(a) and 395.5. Defendant Keyence Corporation of America's principal place of business is in New Jersey. Defendant has not designated a principal place of business anywhere in California. Venue is therefore proper in any county, including County of Santa Clara. The unlawful acts alleged herein have a direct effect on members of the Classes within the State of California and within Santa Clara County.

FACTUAL ALLEGATIONS COMMON TO ALL CLASS MEMBERS

19. Keyence Corporation of America is a corporation organized and existing under the laws of the State of California, with its principal place of business in Elmwood, New Jersey. Keyence Corporation of America is a subsidiary of Keyence Corporation, a public corporation headquartered in Osaka, Japan. Keyence Corporation is a direct sales company that develops and manufactures a broad range of products that are used in manufacturing and research processes in a variety of industries. Its products include automation sensors, vision systems, barcode readers, laser markers, measuring instruments, and high precision microscopes used in research institutes.

1 20. Defendant employs sales engineers/sales representatives to sell Keyence Corporation's
2 products directly to Keyence customers.

3 ***A. Defendant Misclassified Plaintiff and Class Members as Outside Sales Representatives***

4 21. During the Overtime Class Period and the Wage Statement Class Period, Defendant
5 maintained a policy and/or practice of classifying Plaintiff and Class Members, which includes the
6 Overtime Subclass Members, as outside sales representatives. However, beginning on or approximately
7 March 18, 2020, following Governor Newsom's stay-at-home order, Defendant instituted policies and/or
8 practices that led Class Members to work almost exclusively from their own home office, i.e. the
9 employer's place of business.

10 22. Thus, during the Overtime Class Period and Wage Statement Class Period, Plaintiff and
11 Class Members regularly spent more than 50% of their working time performing work for Defendant from
12 the Defendant's place of business, that being Plaintiff's and Class Members' home offices.

13 23. Defendant maintained control over Plaintiff and Overtime Class Members and Class
14 Members by requiring them to log into a call reporting system Avaya, which allowed Defendant to track
15 the number of sales calls made by its Sales Representatives, including Plaintiff and Class Members and
16 Overtime Class Members, the date, time, and duration of each call. Additionally, Defendant required
17 Plaintiff and Class Members to participate in participate in daily or weekly meetings via video
18 conferencing software.

19 24. Because Plaintiff and Class Members did not spend 50% or more away from the
20 Defendant's place of business, the California Outside Sales Exemption does not apply, and Class
21 Members were and are entitled to the protections of the California minimum wage laws, including the
22 right to be provided with itemized wage statements that include entries for their total hours worked and
23 applicable hourly rate pursuant to Labor Code § 226.

24 ***B. Defendant Failed to Issue Accurate Itemized Wage Statements to Class Members***

25 25. During the Wage Statement Class Period, Defendant did not require Plaintiff and Class
26 Members to record their hours worked, and Defendant did not maintain other policies and/or practices to
27 track Plaintiff and Class Members' hours worked for payroll and wage statement purposes.
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1 26. As a result of Defendant's failure to track Class Members' hours worked and, separately,
2 as a result of failing to pay overtime wages, Defendant failed to furnish them with wage statements
3 containing entries for the total hours worked by the employee, all applicable hourly rates in effect during
4 the pay period, and the corresponding number of hours worked at each hourly rate by the employee in
5 violation of Labor Code § 226(a).

6 27. Defendant's practice of furnishing Plaintiff and Class Members incomplete and/or
7 inaccurate wage statements in violation of Labor Code § 226(a) was not an isolated and unintentional
8 payroll error due to a clerical or inadvertent mistake, but rather was willful and intentional and the result
9 of Defendant's regular compensation and classification policies. As a result, Defendants actions were
10 knowing and intentional pursuant to Labor Code § 226(e).

11 28. Plaintiff and Class Members could not promptly and easily determine from the wage
12 statements alone, without reference to other documents or information, including wage statements from
13 previous pay periods, their regular hourly rate, the total hours worked at that rate, and the total hours
14 worked during a pay period. As a result, Plaintiff and Class Members suffered injury for the purposes of
15 Labor Code § 226(e).

16 ***C. Defendant's Compensation Practices Applicable to Overtime Subclass Members Violated***
17 ***California's Overtime Laws***

18 29. As discussed above, during the Overtime Class Period, Defendant maintained a policy
19 and/or practice of misclassifying Overtime Subclass Members as exempt from overtime pursuant to the
20 outside sales exemption, despite the fact that they customarily and regularly spent 50% or more of their
21 working hours from their employers' place of business, which included working from their home office.

22 30. In addition, Overtime Subclass Members earned 50% or more of their total compensation
23 in earnings other than commissions. As a result, Plaintiff and Overtime Subclass Members were entitled
24 to overtime for all hours worked in excess of eight hours in a day, and 40 hours in a workweek.

25 31. During the Overtime Class Period, Plaintiff and Overtime Subclass Members routinely
26 worked more than 8 hours in a workday and/or more than forty hours in workweek. Defendant required
27 and/or expected Plaintiff and Overtime Subclass Members to work five day a week, from 7:30 a.m. until
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1 5:00 p.m. each day. Additionally, Plaintiff and Overtime Subclass Members routinely worked after 5:00
2 p.m. to including but not limited to read emails from customers that were sent/received after 5:00 p.m.
3 and to promptly respond to those customers.

4 32. Because Overtime Subclass Members were non-exempt employees throughout the
5 Overtime Class Period, Defendant was required to pay them overtime pay pursuant to Labor Code §§ 510,
6 1194 and Wage Order No. 4-2001, § 3. However, during the Overtime Class Period, Defendant failed to
7 pay overtime wages owed to Plaintiff and Overtime Subclass Members because Defendant misclassified
8 them as exempt from the overtime laws.

9 ***D. Defendant Failed to Pay All Compensation Owed to Overtime Subclass Members Upon***
10 ***Discharge***

11 33. Plaintiff's employment with Keyence ended in approximately the end of March 2021.

12 34. During the Overtime Class Period as a consequence of Defendant's failure to pay overtime
13 wages, Plaintiff and formerly employed Overtime Subclass Members did not receive all compensation
14 due to them upon separation from employment as required under Labor Code §§ 201-203.

15 35. As a result, Defendant is liable to Plaintiff and Overtime Subclass Members for waiting
16 time penalties amounting to thirty (30) days wages for each formerly employed Overtime Subclass
17 Member pursuant to Labor Code § 203.

18 ***E. Defendant's Failure to Reimburse Class Members for their Business Expenses***

19 36. Beginning in mid-to-late March 2020, Defendant instituted policies and/or practices that
20 required Expense Reimbursement Class Members to perform work-related duties from home.

21 37. As a result of working remotely, in direct consequence of carrying out their duties, or their
22 obedience to the directions of the Defendant, Expense Reimbursement Class Members incurred home
23 office expenses, including but not limited to charges for internet service.

24 38. Defendant knew or should have known that Expense Reimbursement Class Members
25 incurred the cost of home internet service.

26 39. However, during the Expense Reimbursement Class Period, Defendant maintained a
27 policies and/or practices that denied full reimbursement for these expenses.
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1 40. As a result, Defendant's policies and/or practices required and/or with Defendant's
2 knowledge thereof permit, ER Class Members to pay for their office business expenses including but not
3 limited to internet and phone service in direct discharge of their job duties on behalf of Defendant, without
4 reimbursement by Defendant in full or at all, for such expenses.

5 41. Defendant was aware that Plaintiff and ER Class Members routinely incurred business
6 expenses in the discharge of their duties, as employees, without any reimbursement. Defendant
7 nevertheless has, through the ER Class Period, failed and refused to reimburse Plaintiff and ER Class
8 Members for such expenses incurred by them in their work as they carry out their work duties for
9 Defendant.

10 42. Defendant failed to implement and maintain a policy of reimbursing ER Class Members'
11 necessarily-incurred business expenses, or substantially similar policies.

12 43. Plaintiff and ER Class Members have been harmed by Defendant's unlawful lack
13 of a reimbursement policy and/or practice in that they have not been paid for any of their expenses incurred
14 in carrying out their job duties for Defendant, thereby diminishing their agreed-upon compensation, in
15 substantial amounts to be proved at trial.

16 44. As a result, Defendant violated Labor Code § 2802, and Plaintiff and Expense
17 Reimbursement Class Members are entitled to reimbursement for these home expenses, and their
18 reasonable attorney's fees and costs.

19 ***F. Defendant's Labor Code Violations Were Unfair Business Practices***

20 45. Throughout the Overtime Class Period and ER Class Period, Defendant has adopted and
21 used unfair business practices to reduce Overtime Subclass Members' and ER Class Members'
22 compensation and increase profits. These unfair business practices by Defendant with respect to Overtime
23 Subclass Members and ER Class Members include failing to reimburse for necessarily incurred business
24 expenses and failing to pay overtime wages.

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CLASS ACTION ALLEGATIONS

46. Plaintiff brings this class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of the Classes and Overtime Subclass. Upon information and belief, there are more than 75 members in each Class. The members of each Class are so numerous that joinder of all members is impractical.

47. Plaintiff's claims are typical of the claims of the members of the Classes and members of the Subclass he seeks to represent because he was employed by Defendant and subject to its unlawful policies and/or practices, including misclassification and resulting failure to issue accurate itemized wage statements, failure to pay overtime wages, failure to pay all wages due at the time of discharge, and failure to reimbursing business expenses incurred as a result of working from home during the relevant period.

48. Plaintiff will fairly and adequately represent the interests of the Classes and the Overtime Subclass. Plaintiff has no conflict of interest with any member of the Classes or any member of the Subclass. Plaintiff has retained competent and experienced counsel in complex class action litigation. Plaintiff's counsel has the expertise and financial resources to adequately represent the interests of the Classes and Overtime Subclass.

49. Common questions of law and fact exist as to all members of the Classes and Subclass and predominate over any questions solely affecting individual members of the Classes and Subclass. Among the questions of law and fact common to Plaintiff and each Class and Plaintiff and the Subclass are the following:

- a. Whether a home office considered the employer's place of business;
- b. Whether Defendant maintain policies and/or practices that led to Class Members working 50% or more from their employers' place of business;
- c. Whether Class Members outside salespersons;
- d. Whether Overtime Subclass Members earn 50% or less of their total compensation from commissions, in any given pay period;
- e. Whether Defendant violated Labor Code § 226(a) by failing to issue accurate and itemized wage statements to Plaintiff and Class Members;
- f. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;

- g. Whether Plaintiff and Class Members suffered injury for the purposes of Labor Code § 226(e);
- h. Whether Defendant failed to pay Plaintiff and Overtime Subclass Members overtime wages;
- i. Whether Defendant violated Labor Code §§ 201-203 by failing to pay Plaintiff and Overtime Subclass Members overtime pay due to them upon separation from employment;
- j. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff and ER Class Members for necessarily incurred business expenses when they worked from home;
- k. Whether Defendant's violations constitute unfair, unlawful, and fraudulent business practices, in violation of UCL;
- l. Whether Plaintiff and members of the Overtime Subclass and ER Class Members are entitled to restitution under Bus. & Prof. Code §§ 17200 *et seq.* for unreimbursed expenses, and uncompensated wages; and
- m. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff, Overtime Subclass, and ER Class Members.

50. Class action treatment is superior to any alternative to ensure the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Members of the Classes and members of the Subclass are readily identifiable from Defendant's employee rosters and/or payroll records.

51. Defendant's actions are generally applicable to the entire Classes. Prosecution of separate actions by individual members of the Classes creates the risk of inconsistent or varying adjudications of the issues presented herein, which, in turn, would establish incompatible standards of conduct for Defendant.

1 52. Because joinder of all members is impractical, a class action is superior to other available
2 methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at stake for
3 many members of the Classes, while substantial, may not be sufficient to enable them to maintain separate
4 suits against Defendant.

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6 **FIRST CAUSE OF ACTION**
7 **Failure to Issue Accurate Itemized Wage Statements**
8 **[Cal. Labor Code § 226(a), (e)]**

9 53. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
10 preceding paragraphs.

11 54. During the Wage Statement Class Period, Defendant failed to furnish Plaintiff and Class
12 Members with accurate itemized wage statements containing total hours worked by the employee, and all
13 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at
14 each hourly rate by the employee, in violation of Labor Code § 226(a)(2) and (a)(9).

15 55. Defendant's failure to furnish accurate itemized wage statements to Plaintiff and Class
16 Members was knowing and intentional.

17 56. Plaintiff and Class Members suffered injury as a result of Defendant's knowing and
18 intentional failure to comply with Labor Code § 226(a).

19 57. As a result, Plaintiff and Class Members are entitled to recover \$50 for each initial pay
20 period with a violation, and \$100 for each subsequent pay period with a violation, up to an amount not
21 exceeding an aggregate penalty of \$4,000 for each Class Member, pursuant to Labor Code § 226(e).

22 58. Plaintiff, on behalf of himself and all other Class Members, also requests relief as described
23 below.

24 **SECOND CAUSE OF ACTION**
25 **Failure to Pay Overtime**
26 **[Cal. Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3]**

27 59. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
28 preceding paragraphs.

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60. Labor Code § 510 and the applicable Wage Order require that an employer compensate all work performed by an employee in excess of either (8) hours per workday and forty (40) hours per workweek, at one and one-half times the employee's regular rate.

61. Labor Code § 1194 states that any employee receiving less than the legal overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of his or her overtime compensation, including interest thereon, and reasonable attorneys' fees and costs.

62. During the Overtime Class Period, Plaintiff and Overtime Subclass Members routinely worked more than eight (8) hours per workday and more than forty (40) hours per workweek.

63. During all relevant times, however, Defendant knowingly and willfully failed to pay overtime earned and due to Plaintiff and Overtime Subclass Members. Defendant's conduct deprived Plaintiff and Overtime Subclass Members of full and timely payment for all overtime hours worked in violation of the Labor Code and applicable Wage Order.

64. Accordingly, pursuant to § 3 of the Wage Order and Labor Code §§ 510, 1194, Plaintiff and Overtime Subclass Members are entitled to recover, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully withheld during the Class Period.

65. Plaintiff, on behalf of himself and all other Overtime Subclass Members, also requests relief as described below.

THIRD CAUSE OF ACTION
Failure to Pay All Wages Due at the Time of Discharge
[Cal. Labor Code §§ 201-203]

66. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

67. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to formerly employed Overtime Subclass Members promptly after the termination of their employment. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation up to 30 workdays.

1 68. As alleged herein, Defendant failed to pay Plaintiff and Overtime Subclass Members
2 overtime pay. As a result, Defendant failed to pay all compensation due and owing to Plaintiff and
3 formerly employed Overtime Subclass Members upon their termination or separation from employment
4 with Defendant, as required by Labor Code §§ 201 and 202.

5 69. As a result, Defendant is liable to Plaintiff and formerly employed Overtime Subclass
6 Members for waiting time penalties amounting to thirty (30) days wages for each formerly employed
7 Subclass Member pursuant to Labor Code § 203.

8 70. Plaintiff, on behalf of himself and all other formerly employed Overtime Subclass
9 Members, also requests relief as described below.

10 **FOURTH CAUSE OF ACTION**
11 **Failure to Reimburse Business Expenses**
12 **[Cal. Labor Code § 2802]**

13 71. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
14 preceding paragraphs.

15 72. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for
16 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
17 his or her duties.”

18 73. As set forth above, Plaintiff and ER Class Members worked remotely from home during
19 the ER Class Period. As a result, in order to discharge their duties for Defendant, Plaintiff and ER Class
20 Members incurred expenses, including but not limited to the cost of home internet service, in order to
21 carry out their job duties for Defendant. However, Defendant did not pay for nor reimburse Plaintiff and
22 ER Class Members for those expenses incurred as a result of their use for business purposes.

23 74. Defendant’s failure to pay for or reimburse the business expenses of Plaintiff and ER Class
24 Members violated non-waivable rights secured to them by Labor Code § 2802. As a result, Plaintiff and
25 ER Class Members are entitled to recover all unreimbursed business expenses, and interest thereon, and
26 reasonable attorneys’ fees and costs.

27 75. Plaintiff, on behalf of himself and all other ER Class Members also requests relief as
28 described below.

FIFTH CAUSE OF ACTION
Unfair, Unlawful, or Fraudulent Business Practices
[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]

76. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

77. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards. Through its actions alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL because Defendant's conduct has violated state wage and hour laws as herein described.

78. During the Overtime Class Period and ER Class Period, Defendant committed, and continues to commit, acts of unfair competition, as defined in the UCL by wrongfully denying overtime pay to Overtime Subclass Members and wrongfully failing to reimburse ER Class Members for necessarily incurred business expenses, in violation of Labor Code §§ 510, 1194, 2802 and Wage Order No. 4-2001, § 3.

79. By its actions and omissions, Defendant has substantially injured Plaintiff and ER Class Members and Overtime Subclass Members. Defendant's conduct as herein alleged has damaged Plaintiff and ER Class Members and Overtime Subclass Members, and was substantially injurious to them.

80. The harm to Plaintiff and ER Class Members and Overtime Subclass Members resulting from Defendant's labor code violations outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions described herein constitute an unfair business practice or act within the meaning of the UCL.

81. Plaintiff, on behalf of himself and all other Overtime Subclass Members and ER Class Members, also requests relief as described below.

SIXTH CAUSE OF ACTION
Civil Penalties
[Cal. Lab. Code §§ 2698 *et seq.*]

82. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

83. Plaintiff is an “aggrieved employee” under PAGA because he was employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff seeks to recover, on behalf of himself and all other currently and formerly employed aggrieved employees of Defendant, civil penalties under PAGA, plus reasonable attorneys’ fees and costs.

84. Plaintiff seeks to recover the PAGA penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

85. Plaintiff seeks PAGA penalties on behalf of herself, Aggrieved Employees, Overtime Aggrieved Employees, and Expense Reimbursement Aggrieved Employees against Defendant for the following violations:

a. Violation of Labor Code § 226(a)

86. During the PAGA Period, as a result of misclassifying Aggrieved Employees as exempt, Keyence did not require them to record their working hours, and did not maintain policies and/or practices of recording Aggrieved Employees’ working hours for payroll and wage statement purposes. As a result, Defendant failed to issue accurate itemized wage statements that included total hours worked and all applicable hourly rates violation of Labor Code § 226(a)(2) and (a)(9).

87. Under Labor Code § 226.3, Plaintiff and Aggrieved Employees are entitled to two hundred fifty dollars (\$250) for each initial violation, and one thousand dollars (\$1,000) for each subsequent violation.

88. Alternatively, under Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) per pay period per Aggrieved Employee for each initial violation

1 of Labor Code § 226(a)(2) and (a)(9), and two hundred dollars (\$200) per pay period for each subsequent
2 violation.

3 ***b. Violation of Labor Code §§ 1194, 510***

4 89. During the PAGA Period, Overtime Aggrieved Employees spent more than half of their
5 working time at their home office and less than half of their compensation represented commissions and
6 they were therefore not exempt from California overtime pay laws. However, Defendant's requirements
7 and/or expectations were such that Overtime Aggrieved Employees routinely worked more than 8 hours
8 in a day and/or more than 40 hours in a week. Yet, Defendant did not pay them overtime pay in violation
9 of Labor Code §§ 1194, 510 and Wage Order No. 4-2001, § 3.

10 90. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Overtime Aggrieved Employees are
11 entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars
12 (\$200) per pay period for each subsequent violation.

13 ***c. Violation of Labor Code §§ 201-202***

14 91. During the PAGA Period, as the result of failing to pay overtime pay, Defendant failed to
15 pay Plaintiff and other Overtime Aggrieved Employees all wages owed at the time of their discharge from
16 employment, in violation of Labor Code §§ 201-202.

17 92. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Overtime Aggrieved Employees are
18 entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars
19 (\$200) per pay period for each subsequent violation.

20 ***d. Violation of Labor Code § 2802***

21 93. During the PAGA Period, Defendant required and/or expected Expense Reimbursement
22 Aggrieved Employees to work remotely from their home offices. As a result, Defendant required and/or
23 expected Expense Reimbursement Aggrieved Employees to use their home internet to conduct their basic
24 job duties for Defendant. However, Defendant did not reimburse Expense Reimbursement Aggrieved
25 Employees for their necessarily incurred business expenses in violation of Labor Code § 2802.
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1 94. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Expense Reimbursement Aggrieved
2 Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation and two
3 hundred dollars (\$200) per pay period for each subsequent violation.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff, on behalf of himself and other members of the Classes and
6 members Overtime Subclass, prays for the following relief:

7 A. An Order that this action may proceed and be maintained as a class action, with the Class
8 as designated and defined in this Complaint, and that Plaintiff and his counsel be certified as
9 representatives and Counsel for the Class, respectively.

10 B. On the First Cause of Action: That the Court find and declare that Defendant has violated
11 California Labor Code § 226(a) by failing to issue accurate itemized wage statements; award Plaintiff and
12 Class Members statutory penalties under California Labor Code § 226(e); and award reasonable attorneys'
13 fees and costs.

14 C. On the Second Cause of Action: That the Court find and declare that Defendant has
15 violated California Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3 by failing to pay
16 Plaintiff and Overtime Subclass Members overtime pay, and award Plaintiff and Overtime Subclass
17 Members, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully
18 withheld during the Class Period, and interest thereon, and reasonable attorneys' fees and costs.

19 D. On the Third Cause of Action: That the Court find and declare that Defendant has violated
20 California Labor Code §§ 201-203 by failing to pay Plaintiff and formerly employed Overtime Subclass
21 Members promptly all compensation due upon separation from employment, and award Plaintiff and
22 formerly employed Overtime Subclass Members waiting time penalties in the amount of 30 days' wages
23 per Subclass Member.

24 E. On the Fourth Cause of Action: That the Court find and declare that Defendant has violated
25 California Labor Code § 2802 by failing to reimburse Plaintiff and ER Class Members for necessarily
26 incurred business expenses, and award Plaintiff and ER Class Members all unreimbursed business
27 expenses, and interest thereon, and reasonable attorneys' fees and costs.

1 F. On the Fifth Cause of Action: That the Court find and declare that Defendant has violated
2 the UCL by failing to reimburse necessarily incurred business expenses and by failing to pay overtime
3 pay; and award restitution to Plaintiff and Overtime Subclass Members in the amount of unpaid overtime
4 pay, and award restitution to Plaintiff and ER Class Members in the amount of their unreimbursed
5 expenses.

6 G. On the Sixth Cause of Action: That the Court award PAGA civil penalties, as well as
7 attorneys' fees and costs, as provided for under Labor Code § 2699.

8 H. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
9 including, but not limited to, California Labor Code §§ 226(e), 1194, 2802, 2699 and California Code of
10 Civil Procedure § 1021.5.

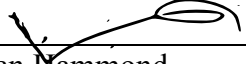
11 I. All other relief as this Court deems proper.

12 **JURY DEMAND**

13 Plaintiff hereby demands trial by jury of all claims against Defendant alleged herein.

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16 Dated: July 29, 2021

Respectfully submitted,

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20 By: Julian Hammond
HAMMONDLAW, P.C.

21 *Attorneys for Plaintiff and the Putative Classes*
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