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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

MARI CARR, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

KONICA MINOLTA BUSINESS SOLUTIONS
U.S.A., INC., a New York Corporation,

Defendant.

CASE NO. 21CV001245

**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);
- (5) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and
- (6) Civil Penalties under Private Attorneys General Act (Cal. Labor Code § 2699).

DEMAND FOR JURY TRIAL

1 Plaintiff Mari Carr (“Plaintiff”), on behalf of herself and all others similarly situated, complains
2 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 herself and other individuals currently and
11 formerly employed by Defendant Konica Minolta Business Solutions U.S.A., Inc., (“Konica” or
12 “Defendant”) in California as Sales Representatives or similar capacity (“Class Members”) from one year
13 and six months prior to the filing of this Complaint through to the trial date (“Wage Statement Class
14 Period”).¹ During the Wage Statement Class Period, Defendant maintained a policy and/or practice of
15 misclassifying Class Members as outside sales representatives, yet Konica directed Class Members to
16 work from home and, as a result, they spent at least 50% or more of their working time at their employer’s
17 place of business.

18 3. As a result of misclassifying Class Members as exempt throughout the Wage Statement
19 Class Period, Defendant did not require Class Members to track their hours worked, and thus did not list
20 the total hours worked and/or their applicable hourly rate on the wage statements it furnished to the Class
21 Members, in violation of Labor Code § 226(a). Defendant’s violation of Labor Code § 226(a) was
22 knowing and intentional, and Plaintiff and Class Members suffered injury as a result in that they could
23 not ascertain from the wage statement alone the number of hours worked, or the applicable hourly rate
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25 ¹ The Wage Statement Class Period goes back one year and six months for the following reasons. On May
26 29, 2020, in response to COVID-19, the Judicial Council of California adopted Emergency Rule 9, under
27 which the statutes of limitations “for civil causes of action that exceed 180 days [were] tolled from April
28 6, 2020, until October 1, 2020.” As such, for any claims that were accruing throughout this tolling period,
the statute of limitations is extended by 178 days. Thus, the Wage Statement Class Period is one year and
178 days (or approximately six months) prior to the filing of this action through to trial in this matter.

1 earned. As a result, Plaintiff and Class Members are entitled to statutory penalties and reasonable
2 attorney's fees and costs pursuant to Labor Code § 226(e).

3 4. Plaintiff also brings this class action on behalf of herself and a subclass of Class Members
4 who in any pay period earned 50% or more of their total compensation in earnings other than commissions
5 ("Overtime Subclass Members") during the period of March 18, 2020 through to the trial date ("Overtime
6 Class Period"). As stated above, Defendant maintained a practice and/or policy of misclassifying Class
7 Members as exempt from overtime, pursuant to the outside sales exemption contained in Wage Order 4,
8 § 1(C). Overtime Subclass Members routinely worked more than eight hours in a day, and 40 hours in a
9 workweek and were therefore entitled to overtime pay. However, as a result of misclassifying them as
10 exempt, Defendant did not pay Overtime Subclass Members overtime, in violation of Labor Code §§
11 1194, 510, and Wage Order No. 4-2001, § 3.

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

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

26 7. In consequence of the violations of Labor Code §§ 510, 1194, and 2802, and IWC Wage
27 Order No. 4-2001, § 3 Defendant also committed unfair, unlawful, and fraudulent business practices, in
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1 violation of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq. Plaintiff,
2 on behalf of herself, and members of the Overtime Subclass and ER Class, seeks restitution and other
3 relief as prayed for below.

4 8. Finally, Plaintiff brings this action as a representative action under the California Labor
5 Code's Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 *et seq.*, for civil penalties on
6 behalf of herself and others employed as Sales Representatives or in a similar capacity by Konica
7 ("Aggrieved Employees") from April 30, 2020 through to trial ("PAGA Period") for failure to issue
8 accurate itemized wage statements in violation of Labor Code § 226(a)(2) and (a)(9); on behalf of herself
9 and all other Aggrieved Employees who earned 50% or more of their total compensation through earnings
10 other than commissions ("Overtime Aggrieved Employees") during the PAGA Period for the violation of
11 Labor Code §§ 1194, 510, and 201-202; and on behalf of herself and all other individuals employed by
12 Konica during the PAGA Period ("Expense Reimbursement Aggrieved Employees") for failure to
13 reimburse business expenses in violation of Labor Code § 2802.

14 **PARTIES**

15 9. Plaintiff is a resident of Folsom, California and was employed by Konica as a Sales
16 Representative at its Sacramento location from 2018 until October 2021. During her employment, Plaintiff
17 was subject to Defendant's unlawful conduct described herein.

18 10. Defendant Konica Corporation of America, Inc. is a New York corporation with its
19 principal place of business located at 100 Williams Drive, Ramsey, NJ, 07446.

20 **JURISDICTION**

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

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

25 13. This Court has jurisdiction over Plaintiff's and formerly employed Overtime Subclass
26 Members' claims for failure to pay compensation due upon discharge from employment pursuant to Labor
27 Code §§ 201-203.
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1 practices that led Class Members to work almost exclusively from their own home office, i.e. the
2 employer's place of business.

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

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

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

12 23. During the Wage Statement Class Period, Defendant did not require Plaintiff and Class
13 Members to record their hours worked, and Defendant did not maintain other policies and/or practices to
14 track Plaintiff and Class Members' hours worked for payroll and wage statement purposes.

15 24. As a result of Defendant's failure to track Class Members' hours worked and, separately,
16 as a result of failing to pay overtime wages, Defendant failed to furnish them with wage statements
17 containing entries for the total hours worked by the employee, all applicable hourly rates in effect during
18 the pay period, and the corresponding number of hours worked at each hourly rate by the employee in
19 violation of Labor Code § 226(a).

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

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

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

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

9 28. In addition, Overtime Subclass Members earned 50% or more of their total compensation
10 in earnings other than commissions. As a result, Plaintiff and Overtime Subclass Members could not be
11 properly classified as "inside salespersons", and were entitled to overtime for all hours worked in excess
12 of eight hours in a day, and 40 hours in a workweek.

13 29. During the Overtime Class Period, Plaintiff and Overtime Subclass Members routinely
14 worked more than 8 hours in a workday and/or more than forty hours in workweek. Because Overtime
15 Subclass Members were non-exempt employees throughout the Overtime Class Period, Defendant was
16 required to pay them overtime pay pursuant to Labor Code §§ 510, 1194 and Wage Order No. 4-2001, §
17 3. However, during the Overtime Class Period, Defendant failed to pay overtime wages owed to Plaintiff
18 and Overtime Subclass Members because Defendant misclassified them as exempt from the overtime
19 laws.

20 ***D. Defendant Failed to Pay All Compensation Owed to Overtime Subclass Members Upon***
21 ***Discharge***

22 30. Plaintiff's employment with Konica ended in approximately the end of September 2021.

23 31. During the Overtime Class Period as a consequence of Defendant's failure to pay overtime
24 wages, Plaintiff and formerly employed Overtime Subclass Members did not receive all compensation
25 due to them upon separation from employment as required under Labor Code §§ 201-203.
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1 32. As a result, Defendant is liable to Plaintiff and Overtime Subclass Members for waiting
2 time penalties amounting to thirty (30) days wages for each formerly employed Overtime Subclass
3 Member pursuant to Labor Code § 203.

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

5 33. Beginning in March 2020, Defendant instituted policies and/or practices that required
6 Expense Reimbursement Class Members to perform work-related duties from home.

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

10 35. Defendant knew or should have known that Expense Reimbursement Class Members
11 incurred the cost of home internet service.

12 36. However, during the Expense Reimbursement Class Period, Defendant maintained a
13 policies and/or practices that denied full reimbursement for these expenses.

14 37. As a result, Defendant's policies and/or practices required and/or with Defendant's
15 knowledge thereof permit, ER Class Members to pay for their office business expenses including but not
16 limited to internet and phone service in direct discharge of their job duties on behalf of Defendant, without
17 reimbursement by Defendant in full or at all, for such expenses.

18 38. Defendant was aware that Plaintiff and ER Class Members routinely incurred business
19 expenses in the discharge of their duties, as employees, without any reimbursement. Defendant
20 nevertheless has, through the ER Class Period, failed and refused to reimburse Plaintiff and ER Class
21 Members for such expenses incurred by them in their work as they carry out their work duties for
22 Defendant.

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

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

4 41. As a result, Defendant violated Labor Code § 2802, and Plaintiff and Expense
5 Reimbursement Class Members are entitled to reimbursement for these home office expenses, and their
6 reasonable attorney's fees and costs.

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

8 42. Throughout the Overtime Class Period and ER Class Period, Defendant has adopted and
9 used unfair business practices to reduce Overtime Subclass Members' and ER Class Members'
10 compensation and increase profits. These unfair business practices by Defendant with respect to Overtime
11 Subclass Members and ER Class Members include failing to reimburse for necessarily incurred business
12 expenses and failing to pay overtime wages.

13 **CLASS ACTION ALLEGATIONS**

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

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

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

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

- 4 a. Is a home office considered the employer's place of business;
- 5 b. Did Defendant maintain policies and/or practices that led to Class Members working 50% or
6 more from their employers' place of business;
- 7 c. Are Class Members outside salespersons;
- 8 d. Did Overtime Subclass Members earn 50% or less of their total compensation from
9 commissions, in any given pay period;
- 10 e. Are Class Members inside salespersons;
- 11 f. Whether Defendant violated Labor Code § 226(a) by failing to issue accurate and itemized
12 wage statements to Plaintiff and Class Members;
- 13 g. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;
- 14 h. Whether Plaintiff and Class Members suffered injury for the purposes of Labor Code
15 § 226(e);
- 16 i. Whether Defendant failed to pay Plaintiff and Overtime Subclass Members overtime
17 wages;
- 18 j. Whether Defendant violated Labor Code §§ 201-203 by failing to pay Plaintiff and
19 Overtime Subclass Members overtime pay due to them upon separation from employment;
- 20 k. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff and ER
21 Class Members for necessarily incurred business expenses when they worked from home;
- 22 l. Whether Defendant's violations constitute unfair, unlawful, and fraudulent business
23 practices, in violation of UCL;
- 24 m. Whether Plaintiff and members of the Overtime Subclass and ER Class Members are
25 entitled to restitution under Bus. & Prof. Code §§ 17200 *et seq.* for unreimbursed expenses,
26 and uncompensated wages; and
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1 n. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff,
2 Overtime Subclass, and ER Class Members.

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

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

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

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

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

24 51. During the Wage Statement Class Period, Defendant failed to furnish Plaintiff and Class
25 Members with accurate itemized wage statements containing total hours worked by the employee, and all
26 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at
27 each hourly rate by the employee, in violation of Labor Code § 226(a)(2) and (a)(9).
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52. Defendant's failure to furnish accurate itemized wage statements to Plaintiff and Class Members was knowing and intentional.

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

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

55. Plaintiff, on behalf of herself and all other Class Members, also requests relief as described below.

SECOND CAUSE OF ACTION

Failure to Pay Overtime

[Cal. Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3]

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

57. 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.

58. 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.

59. 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.

60. 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.

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

4 62. Plaintiff, on behalf of herself and all other Overtime Subclass Members, also requests relief
5 as described below.

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

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

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

16 65. As alleged herein, Defendant failed to pay Plaintiff and Overtime Subclass Members
17 overtime pay. As a result, Defendant failed to pay all compensation due and owing to Plaintiff and
18 formerly employed Overtime Subclass Members upon their termination or separation from employment
19 with Defendant, as required by Labor Code §§ 201 and 202.

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

23 67. Plaintiff, on behalf of herself and all other formerly employed Overtime Subclass
24 Members, also requests relief as described below.

25 **FOURTH CAUSE OF ACTION**
26 **Failure to Reimburse Business Expenses**
27 **[Cal. Labor Code § 2802]**

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

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

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

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

13 72. Plaintiff, on behalf of herself and all other ER Class Members also requests relief as
14 described below.

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

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

20 74. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code
21 § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in
22 order to ensure employees are not required to work under substandard and unlawful conditions, and to
23 protect employers who comply with the law from those who attempt to gain competitive advantage at the
24 expense of their workers by failing to comply with minimum labor standards. Through its actions alleged
25 herein, Defendant has engaged in unfair competition within the meaning of the UCL because Defendant’s
26 conduct has violated state wage and hour laws as herein described.

75. 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.

76. 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.

77. 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.

78. Plaintiff, on behalf of herself 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.*]

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

80. Plaintiff is an “aggrieved employee” under PAGA because she 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 herself and all other currently and formerly employed aggrieved employees of Defendant, civil penalties under PAGA, plus reasonable attorneys’ fees and costs.

81. 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.

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

4 ***a. Violation of Labor Code § 226(a)***

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

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

13 85. Alternatively, under Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are
14 entitled to one hundred dollars (\$100) per pay period per Aggrieved Employee for each initial violation
15 of Labor Code § 226(a)(2) and (a)(9), and two hundred dollars (\$200) per pay period for each subsequent
16 violation.

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

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

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

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

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

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

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

9 90. During the PAGA Period, Defendant required and/or expected Expense Reimbursement
10 Aggrieved Employees to work remotely from their home offices. As a result, Defendant required and/or
11 expected Expense Reimbursement Aggrieved Employees to use their home internet and home office
12 supplies to conduct their basic job duties for Defendant. However, Defendant did not reimburse Expense
13 Reimbursement Aggrieved Employees for their necessarily incurred business expenses in violation of
14 Labor Code § 2802.

15 91. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Expense Reimbursement Aggrieved
16 Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation and two
17 hundred dollars (\$200) per pay period for each subsequent violation.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff, on behalf of herself and other members of the Classes and members
20 Overtime Subclass, prays for the following relief:

21 A. An Order that this action may proceed and be maintained as a class action, with the Class
22 as designated and defined in this Complaint, and that Plaintiff and her counsel be certified as
23 representatives and Counsel for the Class, respectively.

24 B. On the First Cause of Action: That the Court find and declare that Defendant has violated
25 California Labor Code § 226(a) by failing to issue accurate itemized wage statements; award Plaintiff and
26 Class Members statutory penalties under California Labor Code § 226(e); and award reasonable attorneys'
27 fees and costs.
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1 C. On the Second Cause of Action: That the Court find and declare that Defendant has
2 violated California Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3 by failing to pay
3 Plaintiff and Overtime Subclass Members overtime pay, and award Plaintiff and Overtime Subclass
4 Members, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully
5 withheld during the Class Period, and interest thereon, and reasonable attorneys' fees and costs.

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

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

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

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

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

25 I. All other relief as this Court deems proper.
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Dated: July 15, 2022

By: 
HAMMONDLAW, P.C.

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT