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 Superior Court of California
 County of Alameda

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Clerk of the Court, Executive Officer / Clerk of the Court

By: Cheryl Clark Deputy
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Attorneys for Plaintiffs and the Putative Classes

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiffs,

v.

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

Defendant.

CASE NO. 21CV001245

**SECOND 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 Plaintiffs Mari Carr and Seyed Alavi (“Plaintiffs”), on behalf of themselves and all others similarly
2 situated, complain and allege 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. Plaintiffs bring this class action on behalf of themselves and other individuals currently
11 and 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 Plaintiffs 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
24

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, Plaintiffs and Class Members are entitled to statutory penalties and reasonable
2 attorney's fees and costs pursuant to Labor Code § 226(e).

3 4. Plaintiffs also bring this class action on behalf of themselves and a subclass of Class
4 Members who in any pay period earned 50% or more of their total compensation in earnings other than
5 commissions ("Overtime Subclass Members") during the period of March 18, 2020 through to the trial
6 date ("Overtime Class Period"). As stated above, Defendant maintained a practice and/or policy of
7 misclassifying Class Members as exempt from overtime, pursuant to the outside sales exemption
8 contained in Wage Order 4, § 1(C). Overtime Subclass Members routinely worked more than eight hours
9 in a day, and 40 hours in a workweek and were therefore entitled to overtime pay. However, as a result
10 of misclassifying them as exempt, Defendant did not pay Overtime Subclass Members overtime, in
11 violation of Labor Code §§ 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 Plaintiffs 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. Plaintiffs and formerly employed
15 Overtime Subclass Members are therefore entitled to waiting time penalties pursuant to Labor Code §
16 203.

17 6. Plaintiffs also bring this action on behalf of themselves and other employees of Defendant
18 ("Expense Reimbursement Class Members" or "ER Class Members") in California employed at any time
19 from March 18, 2020 through the date of trial ("Expense Reimbursement Class Period" or "ER Class
20 Period") for unreimbursed business expenses incurred by them during that period. During the ER Class
21 Period, Defendant maintained a policy and/or practice of requiring Plaintiffs and ER Class Members to
22 work remotely due to the Covid-19 pandemic. In order to carry out and perform their assigned work-
23 related duties remotely, Plaintiffs and ER Class Members incurred expenses including but not limited to
24 the cost of internet service. However, Defendant maintains a policy and/or practice of denying
25 reimbursement to Plaintiffs and ER Class Members for these necessarily incurred business expenses, in
26 violation of Labor Code § 2802.
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7. In consequence of the violations of Labor Code §§ 510, 1194, and 2802, and IWC Wage Order No. 4-2001, § 3 Defendant also committed unfair, unlawful, and fraudulent business practices, in violation of California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200 et seq. Plaintiffs, on behalf of themselves, and members of the Overtime Subclass and ER Class, seeks restitution and other relief as prayed for below.

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

PARTIES

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

10. Plaintiff Alavi is a resident of Woodland Hills, California and was employed by Konica as a Sales Representative at its Los Angeles location from 2017 until the beginning of 2022. During his employment, Plaintiff Alavi was subject to Defendant's unlawful conduct described herein.

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

JURISDICTION

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

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

14. This Court has jurisdiction over Plaintiffs’ and formerly employed Overtime Subclass Members’ claims for failure to pay compensation due upon discharge from employment pursuant to Labor Code §§ 201-203.

15. This Court has jurisdiction over Plaintiffs' and ER Class Members' claims for failure to reimburse business expenses pursuant to Labor Code § 2802.

16. 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.

17. This Court has jurisdiction over Plaintiff Carr’s claims for civil penalties under Labor Code § 2698 et seq. On October 25, 2021, Plaintiff Carr 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.

18. 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

19. Venue is proper in the County of Alameda pursuant to California Code of Civil Procedure §§ 395(a) and 395.5. Defendant has not designated a principal place of business anywhere in California. Venue is therefore proper in any county, including County of Alameda. The unlawful acts alleged herein have a direct effect on members of the Classes within the State of California and within Alameda County.

FACTUAL ALLEGATIONS COMMON TO ALL CLASS MEMBERS

20. Konica develops and sells printers, copiers, facsimile machines, microfilm systems and related supplies. Konica employees Sales Representatives who sell products to Konica customers.

1 ***A. Defendant Misclassified Plaintiffs and Class Members as Outside Sales Representatives***

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

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

11 23. Because Plaintiffs and Class Members did not spend 50% or more of their time away from
12 Defendant’s place of business, the California Outside Sales Exemption does not apply, and Class
13 Members were and are entitled to the protections of the California minimum wage laws, including the
14 right to be provided with itemized wage statements that include entries for their total hours worked and
15 applicable hourly rate pursuant to Labor Code § 226.

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

17 24. During the Wage Statement Class Period, Defendant did not require Plaintiffs and Class
18 Members to record their hours worked, and Defendant did not maintain other policies and/or practices to
19 track Plaintiffs and Class Members’ hours worked for payroll and wage statement purposes.

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

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

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

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

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

14 29. In addition, Overtime Subclass Members earned 50% or more of their total compensation
15 in earnings other than commissions. As a result, Plaintiffs and Overtime Subclass Members could not be
16 properly classified as "inside salespersons", and were entitled to overtime for all hours worked in excess
17 of eight hours in a day, and 40 hours in a workweek.

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

25 ***D. Defendant Failed to Pay All Compensation Owed to Overtime Subclass Members Upon***
26 ***Discharge***

1 31. Plaintiff Carr's employment with Konica ended in approximately the end of September
2 2021.

3 32. Plaintiff Alavi's employment with Konica ended in approximately the beginning of 2022.

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

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

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

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

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

16 37. Defendant knew or should have known that Expense Reimbursement Class Members
17 incurred the cost of home internet service.

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

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

24 40. Defendant was aware that Plaintiffs and ER Class Members routinely incurred business
25 expenses in the discharge of their duties, as employees, without any reimbursement. Defendant
26 nevertheless has, through the ER Class Period, failed and refused to reimburse Plaintiffs and ER Class
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Members for such expenses incurred by them in their work as they carry out their work duties for Defendant.

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

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

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

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

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

CLASS ACTION ALLEGATIONS

45. Plaintiffs bring 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.

46. Plaintiffs' claims are typical of the claims of the members of the Classes and members of the Subclass they seeks to represent because they were 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.

1 47. Plaintiffs will fairly and adequately represent the interests of the Classes and the Overtime
2 Subclass. Plaintiffs have no conflict of interest with any member of the Classes or any member of the
3 Subclass. Plaintiffs have retained competent and experienced counsel in complex class action litigation.
4 Plaintiffs' counsel has the expertise and financial resources to adequately represent the interests of the
5 Classes and Overtime Subclass.

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

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

49. 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.

50. 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.

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

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

52. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

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

54. Defendant's failure to furnish accurate itemized wage statements to Plaintiffs and Class Members was knowing and intentional.

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

56. As a result, Plaintiffs 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).

57. Plaintiffs, on behalf of themselves and all other Class Members, also request relief as described below.

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

58. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

59. 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.

60. 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.

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

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

63. Accordingly, pursuant to § 3 of the Wage Order and Labor Code §§ 510, 1194, Plaintiffs 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.

64. Plaintiffs, on behalf of themselves and all other Overtime Subclass Members, also request relief as described below.

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

65. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

66. 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.

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

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

69. Plaintiffs, on behalf of themselves and all other formerly employed Overtime Subclass Members, also request relief as described below.

FOURTH CAUSE OF ACTION

Failure to Reimburse Business Expenses
[Cal. Labor Code § 2802]

70. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

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

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

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

74. Plaintiffs, on behalf of themselves and all other ER Class Members also request relief as described below.

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

75. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

76. 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

1 herein, Defendant has engaged in unfair competition within the meaning of the UCL because Defendant's
2 conduct has violated state wage and hour laws as herein described.

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

8 78. By its actions and omissions, Defendant has substantially injured Plaintiffs and ER Class
9 Members and Overtime Subclass Members. Defendant's conduct as herein alleged has damaged Plaintiffs
10 and ER Class Members and Overtime Subclass Members, and was substantially injurious to them.

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

15 80. Plaintiffs, on behalf of themselves and all other Overtime Subclass Members and ER Class
16 Members, also request relief as described below.

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

20 81. Plaintiff Carr re-alleges and incorporates by reference each and every allegation set forth
21 in the preceding paragraphs.

22 82. Plaintiff is an "aggrieved employee" under PAGA because she was employed by
23 Defendant during the applicable statutory period and suffered one or more of the Labor Code violations
24 alleged herein. As such, Plaintiff seeks to recover, on behalf of herself and all other currently and formerly
25 employed aggrieved employees of Defendant, civil penalties under PAGA, plus reasonable attorneys' fees
26 and costs.

27 83. Plaintiff seeks to recover the PAGA penalties through a representative action as permitted
28 by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

1 Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek
2 certification of the PAGA claims.

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

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

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

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

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

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

20 88. During the PAGA Period, Overtime Aggrieved Employees spent more than half of their
21 working time at their home office and less than half of their compensation represented commissions and
22 they were therefore not exempt from California overtime pay laws. However, Defendant's requirements
23 and/or expectations were such that Overtime Aggrieved Employees routinely worked more than 8 hours
24 in a day and/or more than 40 hours in a week. Yet, Defendant did not pay them overtime pay in violation
25 of Labor Code §§ 1194, 510 and Wage Order No. 4-2001, § 3.
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1 89. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Overtime Aggrieved Employees are
2 entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars
3 (\$200) per pay period for each subsequent violation.

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

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

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

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

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

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

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs, on behalf of themselves and other members of the Classes and
23 members Overtime Subclass, pray for the following relief:

24 A. An Order that this action may proceed and be maintained as a class action, with the Class
25 as designated and defined in this Complaint, and that Plaintiffs and their counsel be certified as
26 representatives and Counsel for the Class, respectively.

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

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

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

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

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

24 G. On the Sixth Cause of Action: That the Court award PAGA civil penalties, as well as
25 attorneys' fees and costs, as provided for under Labor Code § 2699.
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1 H. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
2 including, but not limited to, California Labor Code §§ 226(e), 1194, 2802, 2699 and California Code of
3 Civil Procedure § 1021.5.

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

5 **JURY DEMAND**

6 Plaintiffs hereby demand trial by jury of all claims against Defendant alleged herein.

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9 Dated August 9, 2022

Respectfully submitted,

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13 By: Julian Hammond
HAMMONDLAW, P.C.

14 *Attorneys for Plaintiffs and the Putative Classes*
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