

**ELECTRONICALLY
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

Oct 23 2007

ALAN SLATER, Clerk of the Court
by J. HAINES

1 Michael J. Procopio, Esq. - Bar No. 137318
2 Jill S. Kramer, Esq. - Bar No. 172229
3 **LAW OFFICES OF MICHAEL J. PROCOPIO**
4 2677 N. Main Street, Suite 860
5 Santa Ana, CA 92705
6 Tel.: (714) 541-1550
7 Fax: (714) 541-1770

8 Attorneys for Plaintiffs DAVID HANSON and
9 JONATHAN PETER KRENEK individually and
10 on behalf of all other similarly situated current
11 and former employees in the State of California

12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF ORANGE - COMPLEX CIVIL CENTER**

14 DAVID HANSON and JONATHAN PETER
15 KRENEK individually and on behalf of all
16 others similarly situated current and former
17 employees in the State of California,

18 Plaintiffs,

19 vs.

20 KONICA MINOLTA BUSINESS
21 SOLUTIONS, USA, INC., a New York
22 corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

CASE NUMBER: 07CC01320

ASSIGNED FOR ALL PURPOSES TO:
JUDGE DAVID C. VELASQUEZ
DEPT. CX101

CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

1. UNPAID OVERTIME WAGES
(California Labor Code §§ 510 and 1198)
2. UNREIMBURSED BUSINESS EXPENSES
(California Labor Code § 2802 and IWC Wage Order 4, Section 9)
3. MEAL PERIOD VIOLATIONS
(California Labor Code §§ 226.7(a) and 512(a))
4. FAILURE TO PROPERLY ITEMIZE WAGE STATEMENTS
(California Labor Code § 226(a))
5. UNFAIR BUSINESS PRACTICES
(California Bus. & Prof. Code § 17200 et seq.)

DEMAND FOR JURY TRIAL

Date Action Filed: July 12, 2007
Trial Date: None Set

1 Plaintiffs DAVID HANSON and JONATHAN PETER KRENEK, individually and on
2 behalf of all others similarly situated current and former employees in the State of California
3 (hereinafter collectively referred to as "Plaintiffs"), complains and hereby alleges as follows:

4 1. This is a class action brought on behalf of Plaintiffs and all persons who, at any
5 time within the four (4) years preceding the filing of this lawsuit or at any time since the filing of
6 this lawsuit up to and including the time class certification is granted, are or were employed in a
7 technical support position on an hourly basis to service customer equipment at customer locations
8 including, but not limited to, Customer Technicians, Customer Specialists, Customer Imaging
9 Technicians, Customer Service Technicians, Customer Imaging Specialists, Black and White
10 Production Print Specialists, and Color Production Print Specialist (or other job titles/positions
11 with similar job duties and responsibilities) in the State of California by Defendant Konica
12 Minolta Business Solutions, USA, Inc. (hereinafter "Defendant" or "KMBS"). These technical
13 support employees are all classified by KMBS as hourly, non-exempt employees, are all typically
14 perform certain work beyond 8 hours in a day and/or 40 hours in a week without overtime
15 compensation and are all required to make similar trips between customer locations on a daily
16 basis. As a result these current and former employees are similarly situated under California
17 Code of Civil Procedure § 382.

18 **DEMAND FOR JURY TRIAL**

19 2. Plaintiffs hereby make a demand for a jury trial.

20 **JURISDICTION AND VENUE**

21 3. This class action is brought pursuant to California Code of Civil Procedure § 382.
22 The monetary damages sought by Plaintiffs exceed the minimum jurisdictional limits of the
23 Superior Court and will be established according to proof at time of trial.

24 4. Venue is proper in the Orange County Superior Court because Defendant is an
25 New York corporation that conducts business and has offices throughout the State of California
26 and the County of Orange and because many of the wrongful acts complained of herein, including
27 unfair business practices, have occurred in Orange County. Additionally, Named Plaintiffs David
28 Hanson and Jonathan Peter Krenek have performed worked for KMBS throughout Orange

1 County in such cities as Santa Ana, Orange, Tustin and Anaheim.

2 THE PARTIES

3 5. Defendant Konica Minolta Business Solutions, USA, Inc. is a New York
4 corporation that does business and employs individuals throughout the State of California and is
5 registered with the California Secretary of State to do business in California. Defendant employs
6 technical support employees within Orange County and such employees service customers
7 throughout Orange County. Defendant maintains a physical office in Anaheim, California.

8 6. The true names and capacities, whether individual, corporate, associate, or
9 otherwise, of Does 1 through 50, inclusive, are unknown to Plaintiffs who therefore sue such
10 Defendants under fictitious names pursuant to California Code of Civil Procedure § 474.
11 Plaintiffs are informed and believe and thereon allege that these Defendants, Does 1 through 50,
12 are in some manner or capacity, and to some degree, legally responsible and liable for the wrongs
13 of which Plaintiffs complain. Plaintiffs will amend this complaint to allege the true names and
14 capacities of these Doe Defendants once they are ascertained. On information and belief,
15 Plaintiffs make all allegations contained in this complaint against all Defendants, including Does
16 1 through 50, inclusive.

17 7. Plaintiff David Hanson ("Hanson") is a current KMBS employee. Plaintiff Hanson
18 has worked as a technical support employee of KMBS since approximately 1997 with a one-year
19 break in service in or around 2002. He currently holds the job title of Customer Imaging
20 Technician, a position previously known as Customer Service Technician. Plaintiff Hanson's
21 customer territory has primarily included Orange County with responsibility generally for
22 customers within Santa Ana, Orange, Tustin and Anaheim during his tenure. As a technical
23 support employee, Plaintiff Hanson has been classified by KMBS as an hourly, non-exempt
24 employee. He has regularly and customarily worked more than eight (8) hours a day and more
25 than forty (40) hours a week without proper overtime compensation. Plaintiff Hanson was also
26 customarily and regularly required to perform work in such a manner that he was not able to take
27 a full thirty minute meal period each day as required under California law. He was under-
28 reimbursed for mileage and required to bear other expenses as a result of his job pursuant to

1 company-wide policies of KMBS.

2 8. Plaintiff Jonathan Peter Krenek ("Krenek") is a former KMBS employee. Plaintiff
3 Krenek worked as a technical support employee of KMBS from in or about June of 1998 to in or
4 about April of 1999 and then again in or about May of 2000 to in or about September of 2007. He
5 held the job titles of Customer Technician, Customer Specialist and Black and White Production
6 Print Specialist during his employment and was a Black and White Production Print Specialist
7 when his employment ended. Plaintiff Krenek's customer territory primarily consisted of
8 locations within Orange County during his tenure. As a technical support employee, Plaintiff
9 Krenek was classified by KMBS as an hourly, non-exempt employee. He regularly and
10 customarily worked more than eight (8) hours a day and more than forty (40) hours a week
11 without proper overtime compensation. Plaintiff Krenek was also customarily and regularly
12 required to perform work in such a manner that he was not able to take a full thirty minute meal
13 period each day as required under California law. He was under-reimbursed for mileage and
14 required to bear other expenses as a result of his job pursuant to company-wide policies of
15 KMBS.

16 9. Plaintiffs Hanson and Krenek bring this action on their own behalf and on
17 behalf of the all other such similarly situated current and former California employees. With
18 respect to the causes of action asserted under the Unfair Competition Law (California Business &
19 Professions Code § 17200), Plaintiffs also bring this action on behalf of the public.

20 GENERAL FACTUAL ALLEGATIONS

21 10. Pursuant to KMBS's uniform employment policies and practices, all technical
22 support employees are classified as hourly, non-exempt employees.

23 11. The applicable Industrial Welfare Commission ("IWC") Wage Order for the
24 KMBS technical support employees is Wage Order 4. Pursuant to Section 3 of IWC Wage Order
25 4-2001, originally and as amended, KMBS is, and has been, required to compensate its non-
26 exempt, technical support employees with overtime compensation for all hours worked beyond 8
27 hours in a day and/or beyond 40 hours in a week. IWC Wage Order 4-2001, originally and as
28 amended, have required that KMBS compensate its employees, including the technical support
employees, for all hours worked including overtime hours.

1 Specialists, and Color Production Print Specialist (or other job titles/positions with similar job
2 duties and responsibilities) at any time from four (4) years prior to the filing of this lawsuit up to
3 and including the time class certification is granted.

4 18. The claims of Plaintiffs Hanson and Krenek are typical of the claims of the class
5 because they have been subject to the same uniform policies and practices and compensated in the
6 same manner as the other technical support employees.

7 19. Plaintiffs Hanson and Krenek are representative parties who will fully and
8 adequately protect the interests of the class members because it is in their best interests to
9 effectively prosecute the claims alleged herein to obtain the unpaid wages and penalties required
10 under California law. They have retained counsel who are competent in both class action and
11 wage & hour employment litigation. Plaintiffs Hanson and Krenek do not have an interest which
12 is contrary to or in conflict with those of the class members which they seeks to represent.

13 20. The number of class members is believed to include hundreds of people which
14 makes it impracticable to bring all members of the class individually before the court, or to join
15 hundreds of individual class members as parties. Furthermore, the identity of the members of the
16 classes are determinable from the records of KMBS as are the hours worked by and the
17 compensation paid to each class member so that a class action is reasonable and practical means
18 of resolving these claims.

19 21. A class action is superior to other available means for the fair and efficient
20 adjudication of this lawsuit. Even if any class member could afford individual litigation against a
21 large company like KMBS, it would be unduly burdensome to the court system. Individual
22 litigation would magnify the delay and expense to all parties. By contrast, a class action presents
23 far fewer management difficulties and affords the benefits of uniform adjudication of the claims,
24 financial economy for the parties, and comprehensive supervision by a single court. Concentrating
25 this litigation in one forum will promote judicial economy and parity among the claims of
26 individual class members and judicial consistency. Notice of the pendency and any resolution of
27 this action can be provided to class members by mail, print, broadcast, internet and/or multimedia
28 publication.

1 22. This type of case is well-suited for class action treatment because (1) the
2 employer's practices were uniform; (2) the burden is on the employer to prove it properly
3 compensated its employees; (3) the burden is on the employer to accurately record hours worked
4 by employees and meal periods taken; and (4) the burden is on the employer to disprove the hours
5 of work claimed by the employees.

6 23. Many issues of law and/or fact are common to Plaintiff and the class members
7 and they predominate over any individual questions. These common issues and/or facts include:

- 8 a. Whether KMBS's technical support employees worked more than eight hours in a
9 day and/or forty hours in a week without appropriate overtime compensation;
- 10 b. Whether KMBS has a customary practice of not compensating hours worked by
11 technical support employees at the beginning of their work shifts;
- 12 c. Whether KMBS required its technical support employees to perform work in a
13 manner which prevented them from taking the required meal breaks;
- 14 d. Whether KMBS has a customary practice of under-reimbursing its technical
15 support employees for mileage;
- 16 e. Whether KMBS requires the technical support employees to use their personally
17 insured vehicles for traveling to KMBS customer locations thereby causing the
18 technical support employees to incur additional insurance expenses;
- 19 f. Whether KMBS requires the technical support employees to pay KMBS to have
20 company logos embroidered on their shirts;
- 21 g. Whether KMBS had a customary practice of not recording all hours worked on the
22 paystubs of the technical support employees;
- 23 h. The correct statute of limitations for the claims of Plaintiffs;
- 24 i. Whether KMBS's conduct constitutes unfair business practices within the meaning
25 of California Business & Professions Code §§ 17200 and 17203;
- 26 j. Whether Plaintiffs are entitled to compensatory damages, and if so, the means of
27 measuring such damages;
- 28 k. Whether Plaintiffs are entitled to restitution;

1 l. Whether KMBS is liable for pre-judgment interest;

2 m. Whether KMBS is liable for attorney's fees and costs;

3 **GENERAL ALLEGATIONS AS TO CLASS REPRESENTATIVES**

4 24. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs Hanson and
5 Krenek have both been employed by KMBS as technical support employees paid on an hourly
6 basis. As technical support employees, Plaintiffs Hanson and Krenek have been required to log
7 into the KMBS computer network from home at the beginning each work day but KMBS has not
8 treated this time as hours worked until they arrived at the first customer location. Plaintiffs
9 Hanson and Krenek have not been compensated for such hours worked between their log-in time
10 and arrival at the first customer location. Plaintiffs Hanson and Krenek were also required to
11 perform training and other work from home on a regular basis which was not treated by KMBS as
12 hours worked and was not compensated. Plaintiffs Hanson and Krenek have regularly worked 8
13 or more hours per day and regularly worked 40 or more hours per week for KMBS. Therefore,
14 such uncompensated hours worked by Plaintiffs Hanson and Krenek should have been
15 compensated at their overtime rates.

16 25. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs Hanson and
17 Krenek have been regularly and customarily under-reimbursed for mileage incurred in his
18 personal vehicle on behalf of KMBS. In addition, Plaintiffs Hanson and Krenek have not been
19 compensated for the additional insurance costs incurred due to being required to drive their
20 personally insured vehicles to KMBS customer locations. Furthermore, Plaintiffs Hanson and
21 Krenek have been required to pay KMBS for having a company logo affixed to their clothing,
22 thereby making such clothing unsuitable for any uses other than work.

23 26. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs Hanson
24 and Krenek have been regularly and customarily required to work in such a manner that prevented
25 him from being able to take all of the 30 minute meal periods required by California law.

26 **FIRST CAUSE OF ACTION**

27 **UNPAID OVERTIME WAGES**

28 (California Labor Code §§ 510 and 1198)

SECOND AMENDED COMPLAINT

1 27. As a first, separate and distinct cause of action, Plaintiffs complain against
2 Defendant KMBS and Does 1 through 50, and each of them, and for a cause of action allege:

3 28. Plaintiffs hereby re-alleges and incorporates by reference, as though fully set forth
4 herein, the allegations contained in paragraphs 1 through 26.

5 29. At all times material, Plaintiffs have been paid by Defendants on an hourly, non-
6 exempt basis. As such, Plaintiffs are all non-exempt employees within the meaning of IWC Wage
7 Order 4-2001, originally and as amended, and thereby entitled to receive one and a half times
8 their regular rate of pay (overtime compensation) for all hours worked beyond 8 in a day and/or
9 beyond 40 in a week pursuant to IWC Wage Order 4 and Labor Code § 510. In addition, Labor
10 Code
11 § 1198 provides that it is unlawful to employ persons under conditions prohibited by the
12 applicable wage orders.

13 30. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs have been
14 regularly and customarily required to work in excess of eight hours per day and/or forty hours per
15 week without being compensated for all overtime hours worked. Specifically, the technical
16 support employees are required to log into the KMBS network from home each morning to check
17 and confirm their schedule of trips to customer locations for the day and other pertinent
18 information. However, the technical support employees are not considered "on the clock" by
19 Defendants until they reach the first customer location and are therefore not paid by Defendants
20 for such time before reaching the first customer location. Plaintiffs are informed and believe and
21 thereon allege that all time between logging into the KMBS network and reaching the first
22 customer location is compensable time as they are subject to the control of Defendants during
23 such time. KMBS has also required Plaintiffs to perform training and other work from home on a
24 regular basis which was not treated by KMBS as hours worked and was not compensated.

25 31. In violation of state law, Defendants have refused to perform their obligations to
26 properly compensate Plaintiffs for all overtime hours worked, i.e., more than eight (8) hours per
27 day and/or forty (40) hours per week. As a direct and proximate result, Plaintiffs have suffered,
28 and continue to suffer, substantial losses related to the use and enjoyment of such monies, lost

1 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully
2 perform their obligation under state law, all to their respective damage in amounts according to
3 proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court. As
4 Defendants' conduct described herein violates the provisions of the IWC Wage Order 4-2001,
5 originally and as amended, and the California Labor Code regarding the payment of overtime
6 wages to employees, Plaintiffs are thus entitled to recover all amounts for all such overtime hours
7 worked, interest, attorneys' fees, and court costs and expenses of suit, pursuant to Labor Code
8 § 1194, according to proof at time of trial, but in amounts in excess of the minimum jurisdiction
9 of this Court. Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such
10 wages and benefits, nominal, actual and compensatory damages in amounts according to proof at
11 time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

12 32. Defendants' failure to properly compensate Plaintiffs for all overtime hours
13 worked, i.e., more than eight (8) hours per day and/or forty (40) hours per week in violation of
14 California law, was knowing and intentional. Defendants have refused to properly pay the
15 overtime wages properly due each Plaintiff for false and fraudulent reasons. Richard Dablin,
16 current Branch Manager of the Orange County office, Gary Spindler, the former Branch Manager
17 of the Orange County office, Orange County field supervisors Jorge Yzaguirre, Eric Degenhart,
18 Jim Pierce, John Serafin and all of the other Branch Managers and field supervisors for the
19 California branches of Defendant from four (4) years preceding the filing of the original
20 Complaint through the present date have required Named Plaintiffs David Hanson and Jonathan
21 Peter Krenck and the other California technical support employees to store their tools and
22 equipment at home, check in with their branch office in the morning of each work day remotely
23 from their computers on Defendant's company intranet and then drive from their homes to their
24 first customer service call location of the day without coming into their branch office to clock in
25 first. This has been the required practice for Plaintiffs at all branch offices on every single
26 workday from four (4) years prior to the filing of the original Complaint through the present date.
27 The Branch Managers and supervisors require Plaintiffs to effectively "clock-in" from home to
28 intentionally deceive Plaintiffs into thinking that time spent traveling to the first customer location

1 of the day is "off-the-clock" time so that Defendants do not have to compensate Plaintiffs for such
2 time and can save money on labor costs. The practice of treating this drive time as "non-
3 compensable" time has been carried out by Carol, Defendant's head of Human Resources for the
4 Western Region, despite knowledge that drive time under the control of and for the benefit of the
5 employer is compensable time as Defendant compensates Plaintiffs for the drive time between
6 customer locations. The payroll practice of not paying Plaintiffs for such drive time has been
7 carried out by Gina, who is employed in Defendant's corporate office and responsible for payroll
8 for the California technical support employees. These individuals have combined to create a
9 policy and practice whereby Plaintiffs are required to drive to their first customer location each
10 work day directly from their homes after checking in remotely with their branch office, are
11 intentionally deceived into believing that such time is not compensable and then are not paid for
12 such time. This policy and practice has been ratified and approved by the officers and directors of
13 Defendant as well as other managing agents such as the individuals responsible for setting
14 scheduling and compensation policies for technical support employees in Defendant's branch
15 offices in California. The failure to properly pay Plaintiffs for drive time to the first customer
16 location has happened on each and every pay day for the California technical support employees
17 from four (4) preceding the filing of the original Complaint in this action through the present date.
18 Plaintiffs have relied on the misrepresentation that such drive time to the first customer location
19 each work day is not compensable time and such reliance has been to their detriment in the form
20 of lost wages, lost interest on such wages and lost use and enjoyment of such wages from four (4)
21 years preceding the filing of the original Complaint in this action through the present date.
22 Therefore, in addition to other types of relief requested herein, Plaintiffs are entitled to recover
23 punitive and exemplary damages in amounts according to proof at time of trial, but in amounts in
24 excess of the minimum jurisdiction of this Court.

25 33. Defendants have applied, are applying, and will apply the foregoing policies and
26 practices, including their failure to properly compensate Plaintiffs for all overtime hours worked,
27 i.e., more than eight (8) hours per day and/or forty (40) hours per week in accordance with
28 California law, to certain Plaintiffs who are still employed by Defendants, and to certain

1 individuals who will in the future become employed by Defendants. Such employees have been
2 injured and damaged, and are threatened with further injury and damage, by Defendants' unlawful
3 actions as alleged, and are thus threatened with immediate irreparable harm by the continuation of
4 Defendants' unlawful actions as heretofore alleged, and have no complete adequate remedy at
5 law. Therefore, Plaintiffs request the Court enter an order reflecting appropriate injunctive relief
6 to prevent Defendants from committing such acts in the future.

7 34. WHEREFORE, Plaintiffs request relief as herein provided.

8 SECOND CAUSE OF ACTION

9 UNREIMBURSED BUSINESS EXPENSES

10 (California Labor Code § 2802 and IWC Wage Order 4, Section 9)

11 35. As a second, separate and distinct cause of action, Plaintiffs complain against
12 Defendant KMBS and Does 1 through 50, and each of them, and for a cause of action allege:

13 36. Plaintiffs hereby re-alleges and incorporates by reference, as though fully set forth
14 herein, the allegations contained in paragraphs 1 through 34.

15 37. Labor Code § 2802 requires employers to bear expenses incurred by employees,
16 such as Plaintiffs, in direct consequence of the discharge of their duties. Pursuant to California
17 Labor Code § 2804, Defendants cannot ask or require Plaintiffs to waive the benefits of such
18 requirements as stated in California Labor Code § 2802. According, to Section 9(A) of IWC
19 Wage Order 4-2001, originally and as amended, when uniforms are required by the employer to
20 be worn by the employee as a condition of employment, such uniforms shall be provided and
21 maintained by the employer.

22 38. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs have been
23 regularly and customarily paid less than the legally required rate of mileage reimbursement for all
24 mileage incurred on behalf of Defendants.

25 39. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs have been
26 regularly and customarily been required to use their personally insured vehicles for work purposes
27 to travel to KMBS customer locations which has caused Plaintiffs additional insurance costs for
28 the benefit of Defendants.

1 40. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs have been
2 regularly and customarily been required to wear uniforms consisting of white button-down shirts
3 with Defendants' logo embroidered on the shirts. Plaintiffs are required to bear the expense of the
4 embroidery as well as the expense of the maintenance of such uniforms. In addition, once
5 embroidered with the company logo, these uniforms are no longer suitable for normal, non-work
6 usage thereby costing Plaintiffs the expense of the original shirts as well. All such uniform
7 expenses are incurred by Plaintiffs for the benefit of Defendants.

8 41. In violation of state law, Defendants have refused to perform their obligations to
9 properly and fully reimburse and indemnify Plaintiffs for business expenditures and losses
10 incurred in discharge of their duties for Defendants including, but not limited to, full
11 reimbursement for mileage incurred on the personal vehicles of Plaintiffs, additional insurance
12 costs for Plaintiffs as a result of being required to use their personally insured vehicles for
13 business purposes to travel to KMBS customer locations and the expenses associated with the
14 creation and maintenance of uniforms required by Defendants. As a direct and proximate result,
15 Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment
16 of such wages and expenses, lost interest on such compensation, and expenses and attorneys' fees
17 in seeking to compel Defendants to fully perform their obligation under state law, all to their
18 respective damage in amounts according to proof at time of trial, but in amounts in excess of the
19 minimum jurisdiction of this Court.

20 42. As Defendants' conduct described herein violates the provisions of the California
21 Labor Code and IWC Wage Order 4-2001, originally and as amended, with regard to
22 reimbursement of, and indemnification for, business expenditures and losses incurred in discharge
23 of their duties for Defendants, Plaintiffs are thus entitled to recover all amounts for all such wages
24 and expenses, interest, attorneys' fees, and court costs and expenses of suit according to proof at
25 time of trial, but in amounts in excess of the minimum jurisdiction of this Court. Plaintiffs are
26 also entitled to recover, in addition to or in lieu of some or all such compensation and benefits,
27 nominal, actual and compensatory damages in amounts according to proof at time of trial, but in
28 amounts in excess of the minimum jurisdiction of this Court.

1 43. Defendants' failure to properly reimburse Plaintiffs at the legally required rate for
2 all mileage incurred on behalf of Defendants was knowing and intentional. Defendants have
3 refused to properly reimburse such mileage to Plaintiffs for false and fraudulent reasons. Richard
4 Dablin, current Branch Manager of the Orange County office, Gary Spindler, the former Branch
5 Manager of the Orange County office, Orange County field supervisors Jorge Yzaguirre, Eric
6 Degenhart, Jim Pierce, John Serafin and all of the other Branch Managers and field supervisors
7 for the California branches of Defendant from four (4) years preceding the filing of the original
8 Complaint through the present date have required Named Plaintiffs David Hanson and Jonathan
9 Krenek and the other California technical support employees to drive their personal vehicles to
10 customer locations to make service calls throughout each day. This has been the required practice
11 for Plaintiffs at all branch offices on every single workday from four (4) years prior to the filing
12 of the original Complaint through the present date. In conjunction with Carol, Defendant's head
13 of Human Resources for the Western Region, this practice leads to a mileage reimbursement to
14 Plaintiffs for the miles driven on their personal vehicles at a rate which is lower than the legally
15 required IRS reimbursement rate. These individuals are aware of the IRS reimbursement rates
16 and aware of Defendant's requirement to reimburse for mileage but intentionally have chosen to
17 reimburse Plaintiffs at a rate less than the legally required rate in order to reduce Defendant's
18 labor costs. The payroll practice of not paying Plaintiffs the legally required rate for all such
19 mileage reimbursement has been carried out by Gina, who is employed in Defendant's corporate
20 office and responsible for payroll for the California technical support employees. This policy and
21 practice has been ratified and approved by the officers and directors of Defendant as well as other
22 managing agents such as Carol, Defendant's head of Human Resources for the Western Region,
23 and other individuals responsible for setting compensation policies for technical support
24 employees in Defendant's branch offices in California. The failure to properly reimburse
25 Plaintiffs at the legally required mileage reimbursement rate has happened on each and every pay
26 day and each and every date upon which mileage reimbursement checks have been issued for the
27 California technical support employees from four (4) preceding the filing of the original
28 Complaint in this action through the present date. This intentionally deceitful conduct has

1 damaged Plaintiffs in the form of lost expense reimbursement for mileage incurred, lost interest
2 on such monies and the lost use and enjoyment of such monies from four (4) years preceding the
3 filing of the original Complaint in this action through the present date. Therefore, in addition to
4 other types of relief requested herein, Plaintiffs are entitled to recover punitive and exemplary
5 damages in amounts according to proof at time of trial, but in amounts in excess of the minimum
6 jurisdiction of this Court.

7 44. Defendants have applied, are applying, and will apply the foregoing policies and
8 practices, including their failure to properly reimburse and indemnify Plaintiffs for business
9 expenditures and losses incurred in discharge of their duties for Defendants, to certain Plaintiffs
10 who are still employed by Defendants, and to certain individuals who will in the future become
11 employed by Defendants. Such employees have been injured and damaged, and are threatened
12 with further injury and damage, by Defendants' unlawful actions as alleged, and are thus
13 threatened with immediate irreparable harm by the continuation of Defendants' unlawful actions
14 as heretofore alleged, and have no complete adequate remedy at law. Therefore, Plaintiffs request
15 the Court enter an order reflecting appropriate injunctive relief to prevent Defendants from
16 committing such acts in the future.

17 45. WHEREFORE, Plaintiffs request relief as herein provided.

18 THIRD CAUSE OF ACTION

19 MEAL PERIOD VIOLATIONS

20 (California Labor Code §§ 226.7(a) and 512(a))

21 46. As a third, separate and distinct cause of action, Plaintiffs complain against
22 Defendant KMBS and Does 1 through 50, and each of them, and for a cause of action allege:

23 47. Plaintiffs hereby re-alleges and incorporates by reference, as though fully set forth
24 herein, the allegations contained in paragraphs 1 through 45.

25 48. Labor Code § 512 and Section 11 of Wage Order 4-2001, originally and as
26 amended, require that non-exempt employees who work five (5) or more hours per day be
27 provided with one continuous thirty (30) minute meal period completely uninterrupted from work
28 or compensation in lieu thereof.

1 49. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs have
2 been regularly and customarily required to work daily shifts of more than five (5) hours in a day
3 without being able to their requisite meal periods and without receiving compensation in lieu
4 thereof.

5 50. In violation of state law, Defendants have refused to perform their obligations to
6 provide Plaintiffs adequate time off for meal periods or compensation in lieu thereof during each
7 Plaintiffs' period of employment. As a direct and proximate result, Plaintiffs have suffered, and
8 continue to suffer, substantial losses related to the use and enjoyment of such time off or
9 compensation, lost interest on such compensation, and expenses and attorneys' fees in seeking to
10 compel Defendants to fully perform their obligation under state law, all to their respective damage
11 in amounts according to proof at time of trial, but in amounts in excess of the minimum
12 jurisdiction of this Court.

13 51. As Defendants' conduct described herein violates the provisions of the California
14 Labor Code, and IWC Wage Order 4-2001, originally and as amended, with regard to providing
15 adequate time off for meal periods or compensation in lieu thereof, Plaintiffs are thus entitled to
16 recover all amounts for all such meal period violations, interest, attorneys' fees, and court costs
17 and expenses of suit according to proof at time of trial, but in amounts in excess of the minimum
18 jurisdiction of this Court. Plaintiffs are also entitled to recover, in addition to or in lieu of some or
19 all such compensation and benefits, nominal, actual and compensatory damages in amounts
20 according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
21 Court.

22 52. Defendants' failure to properly provide Plaintiffs adequate time off for meal
23 periods or compensation in lieu thereof in violation of California law, was knowing and
24 intentional. Defendants have refused to properly provide adequate time off for meal periods or
25 compensation in lieu thereof due each Plaintiff for false and fraudulent reasons. Richard Dablin,
26 current Branch Manager of the Orange County office, Gary Spindler, the former Branch Manager
27 of the Orange County office, Orange County field supervisors Jorge Yzaguirre, Eric Degenhart,
28

1 Jim Pierce, John Serafin and all of the other Branch Managers and field supervisors for the
2 California branches of Defendant from four (4) years preceding the filing of the original
3 Complaint through the present date have required Named Plaintiffs David Hanson and Jonathan
4 Krenek and the other California technical support employees to maintain a daily workload of
5 customer service calls that, based upon the volume of service calls and distance of travel required
6 to such service calls, often does not permit Plaintiffs time to take a full, continuous thirty (30)
7 minute meal period completely uninterrupted from work. This has been the required practice for
8 Plaintiffs at all branch offices each workweek from four (4) years prior to the filing of the original
9 Complaint through the present date. The Branch Managers and supervisors at the California
10 offices are responsible for assigning service calls to the technical support employees so they are
11 aware of the workload carried by Plaintiffs. Plaintiffs are required to record the times that they
12 leave for service calls, that they arrive at the customer's location and that they finish the service
13 call. Plaintiffs are also required by Defendants and by California law to record their time in and
14 out for meal periods. All of this time is submitted electronically to the Branch Managers and
15 supervisors throughout the day. Therefore, the Branch Managers and supervisors are fully aware
16 that Plaintiffs are not receiving their legally required meal periods each day. Furthermore,
17 statutorily required compensation is not paid for such missed meal periods. The payroll practice
18 of not paying such compensation to Plaintiffs for such missed meal periods has been carried out
19 by Gina, who is employed in Defendant's corporate office and responsible for payroll for the
20 California technical support employees, as well as all other payroll personnel responsible for
21 reviewing the employee time records for the California employees. These individuals have
22 intentionally ignored the inability of Plaintiffs to take all of their legally required meal periods
23 and have intentionally ignored the statutory obligation to pay compensation for such missed meal
24 periods in order to improve Defendant's response time to customer service calls and in order to
25 reduce Defendant's labor costs. This policy and practice has been ratified and approved by the
26 officers and directors of Defendant as well as Carol, Defendant's head of Human Resources for
27 the Western Region, and other managing agents such as the individuals responsible for setting
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1 scheduling and compensation policies for technical support employees in Defendant's branch
2 offices in California. The failure to properly provide Plaintiffs with all legally required meal
3 periods has happened on each and every workweek for the California technical support employees
4 from four (4) preceding the filing of the original Complaint in this action through the present date.
5 The failure to properly compensate Plaintiffs for all missed meal periods has happened on each
6 and every payday for the California technical support employees from four (4) preceding the
7 filing of the original Complaint in this action through the present date. This intentionally
8 deceitful conduct has damaged Plaintiffs in the form of lost compensation for missed meal
9 periods, lost interest on such compensation and the lost use and enjoyment of such monies from
10 four (4) years preceding the filing of the original Complaint in this action through the present
11 date. Therefore, in addition to other types of relief requested herein, Plaintiffs are entitled to
12 recover punitive and exemplary damages in amounts according to proof at time of trial, but in
13 amounts in excess of the minimum jurisdiction of this Court.

14 53. Defendants have applied, are applying, and will apply the foregoing policies and
15 practices, including their failure to properly classify Plaintiffs as non-exempt employees and
16 provide adequate time off for meal periods or compensation in lieu thereof, to certain Plaintiffs
17 who are still employed by Defendants, and to certain individuals who will in the future become
18 employed by Defendants. Such employees have been injured and damaged, and are threatened
19 with further injury and damage, by Defendants' unlawful actions as alleged, and are thus
20 threatened with immediate irreparable harm by the continuation of Defendants' unlawful actions
21 as heretofore alleged, and have no complete adequate remedy at law. Therefore, Plaintiffs request
22 the Court enter an order reflecting appropriate injunctive relief to prevent Defendants from
23 committing such acts in the future.

24 54. WHEREFORE, Plaintiffs request relief as herein provided.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PROPERLY ITEMIZE WAGE STATEMENTS**

27 (California Labor Code § 226(a))

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SECOND AMENDED COMPLAINT

1 55. As a fourth, separate and distinct cause of action, Plaintiffs complain against
2 Defendant KMBS and Does 1 through 50, and each of them, and for a cause of action allege:

3 56. Plaintiffs hereby re-alleges and incorporates by reference, as though fully set forth
4 herein, the allegations contained in paragraphs 1 through 54.

5 57. Labor Code § 226 requires employers to provide employees with correctly
6 itemized wage statements at each pay period, but in no event fewer than twice monthly, including
7 an accurate accounting of all hours worked, proper payment of wages, compensation, and
8 expenses, and proper withholding of payroll taxes, among other items.

9 58. Within the four (4) years preceding the filing of this lawsuit, Plaintiffs have
10 regularly and customarily been provided inaccurate wage statements which do not reflect all
11 hours worked and which do not properly reflect all wages earned by Plaintiffs.

12 59. In violation of state law, Defendants have refused to perform their obligations to
13 provide Plaintiffs with properly itemized wage statements. As a direct and proximate result,
14 Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment
15 of such wages, compensation, and expenses, lost interest, and expenses and attorneys' fees in
16 seeking to compel Defendants to fully perform their obligation under state law, all to their
17 respective damage in amounts according to proof at time of trial, but in amounts in excess of the
18 minimum jurisdiction of this Court.

19 60. As Defendants' conduct described herein violates the provisions of the California
20 Labor Code with regard to providing Plaintiffs with properly itemized wage statements, Plaintiffs
21 are thus entitled to recover all amounts for all such wages, compensation, and expenses, or
22 penalties provided by Labor Code § 226, interest, attorneys' fees, and court costs and expenses of
23 suit according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of
24 this Court. Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such
25 compensation and benefits, nominal, actual and compensatory damages in amounts according to
26 proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

27 61. Defendants have applied, are applying, and will apply the foregoing policies and
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1 practices, including their failure to provide Plaintiffs with properly itemized wage statements, to
2 certain Plaintiffs who are still employed by Defendants, and to certain individuals who will in the
3 future become employed by Defendants. Such employees have been injured and damaged, and
4 are threatened with further injury and damage, by Defendants' unlawful actions as alleged, and
5 are thus threatened with immediate irreparable harm by the continuation of Defendants' unlawful
6 actions as heretofore alleged, and have no complete adequate remedy at law. Therefore, Plaintiffs
7 request the Court enter an order reflecting appropriate injunctive relief to prevent Defendants
8 from committing such acts in the future.

9 62. WHEREFORE, Plaintiffs request relief as herein provided.

10 FIFTH CAUSE OF ACTION

11 UNFAIR BUSINESS PRACTICES

12 (California Bus. & Prof. Code § 17200 et seq.)

13 63. As a fifth, separate and distinct cause of action, Plaintiffs complain against
14 Defendant KMBS and Does 1 through 50, and each of them, and for a cause of action allege:

15 64. Plaintiffs hereby re-alleges and incorporates by reference, as though fully set forth
16 herein, the allegations contained in paragraphs 1 through 62.

17 65. Defendants engage in business practices, offer their goods and services for sale,
18 and advertise their goods and services within the jurisdiction of the State of California. As such,
19 Defendants have a duty to comply with the provisions of the Unfair Business Practices Act as set
20 forth in California Business & Professions Code §§ 17200, et seq., which Act prohibits, *inter alia*,
21 unlawful, unfair, and/or fraudulent business acts or practices and unfair, deceptive, untrue, or
22 misleading advertising by any person, firm, corporation, or association within the jurisdiction of
23 the State of California.

24 66. By violating the foregoing provisions of California's labor and employment laws,
25 and by failing to take immediate and appropriate measures to address these violations,
26 Defendants' acts constitute unfair business practices under Business and Professions Code §§
27 17200, et seq. Defendants' violations of California's labor and employment laws constitute a
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1 business practice because they have been done repeatedly over a significant period of time
2 throughout the State of California, and in a systematic manner to the detriment of scores of
3 Plaintiffs.

4 67. As a direct, foreseeable, and proximate result of Defendants' acts and omissions
5 alleged herein, for the four (4) years preceding the filing of this action Plaintiffs have suffered
6 damages, and Defendants have also been unjustly enriched as a result of unfair competition.
7 Plaintiffs, therefore request damages and/or restitution of all monies and profits to be disgorged
8 from Defendants for the four (4) years preceding the filing of this action in an amount according
9 to proof at time of trial, in lieu of or in addition to other types of relief requested herein, but in
10 excess of the minimum jurisdiction of this Court.

11 68. Defendants have applied, are applying, and will apply the foregoing unfair
12 business policies and practices, in violation of California law, to certain Plaintiffs who are still
13 employed by Defendants, and to certain individuals who will in the future become employed by
14 Defendants. Such employees have been injured and damaged, and are threatened with further
15 injury and damage, by Defendants' unlawful actions as alleged, and are thus threatened with
16 immediate irreparable harm by the continuation of Defendants' unlawful actions as heretofore
17 alleged, and have no complete adequate remedy at law. Therefore, Plaintiffs request the Court
18 enter an order reflecting appropriate injunctive relief to prevent Defendants from committing such
19 acts in the future.

20 69. WHEREFORE, Plaintiffs request relief as herein provided.

21 **PRAYER FOR RELIEF**


22 WHEREFORE, Plaintiffs pray for judgment as follows:

- 23 1. For nominal damages;
- 24 2. For actual damages;
- 25 3. For compensatory damages;
- 26 4. For restitution of all monies, wages, compensation, expenses and wage benefits
27 due to Plaintiffs pursuant to Business and Professions Code §§ 17200, *et seq.*;

- 1 9. For punitive and exemplary damages;
- 2 10. For costs of suit and expenses incurred herein pursuant to Labor Code §§ 218.5, 226,
- 3 1194, and 2802;
- 4 11. For reasonable attorneys' fees pursuant to Labor Code §§ 218.5, 226, 1194, and
- 5 2802, and Code of Civil Procedure § 1021.5;
- 6 12. For appropriate injunctive relief;
- 7 13. For appropriate equitable relief;
- 8 14. For appropriate declaratory relief; and
- 9 15. For all such other and further relief that the Court may deem just and proper.

10 DATED: October 19, 2007

LAW OFFICES OF MICHAEL J. PROCOPIO

11
12 By: 
13 Michael J. Procopio, Esq.
14 Jill S. Kramer, Esq.
Attorneys for Plaintiffs

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1 PROOF OF SERVICE BY MAIL
2 (C.C.P. Section 1013(a), 2015.5)

3 STATE OF CALIFORNIA, COUNTY OF ORANGE

4 I am employed in the county aforesaid; I am over the age of eighteen and not a party to the within
5 action; my business address is 2677 North Main Street, Suite 860, Santa Ana, CA 92705.

6 On October 23, 2007, I served the foregoing document described as:

7 **SECOND AMENDED COMPLAINT**

8 in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

9 Ernest W. Klatte, Esq. Attorneys for Defendant
10 Rutan & Tucker LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626

11 Loren Gesinsky, Esq. Attorneys for Defendant
12 GIBBONS P.C.
One Pennsylvania Plaza, 37th Floor
13 New York, NY 10119-3701

14
15 ● I am "readily familiar" with the firm's practice of collection and processing correspondence for
16 mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with
17 postage thereon fully prepaid at Santa Ana, California, in the ordinary course of business. I am aware that
on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date
is more than one day after date of deposit for mailing in affidavit.

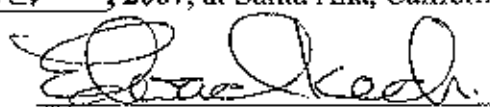
18 ○ The document was transmitted by FACSIMILE to the facsimile numbers indicated for the
19 addressee(s), and such transmission was reported as complete and without error. The transmission report
was properly issued by the transmitting facsimile machine.

20 ○ I caused such envelope to be **HAND DELIVERED BY COURIER** to the offices of the
addressee(s) indicated.

21 ○ I caused such envelope to be delivered by _____ **EXPRESS** to the offices of the
22 addressee(s) indicated.

23 I declare under penalty of perjury under the laws of the State of California, that the foregoing is true
24 and correct.

25 Executed this 23 day of October, 2007, at Santa Ana, California.

26 
27 Edward Keck
28