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INEZ RENE GILMORE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE**

INEZ RENE GILMORE, an individual, on
her own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

FONTANA FRESH, LLC dba SUBWAY,
a California limited liability company;
SHIPRA SUD, an individual; ANCHAL
SUD; an individual; ASHISH SUD, an
individual; ONKAR SUD, an individual;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: CVRI2401750

[Assigned for All Purposes to Hon. Harold
W. Hopp, in Dept. 1]

FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 5);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 119; IWC Wage Order No. 5);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5)**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 5);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 5);**

- 1 6. FAILURE TO PAY WAGES DUE UPON
2 TERMINATION (Cal. *Labor Code* §§201-
3 203);
4 7. FAILURE TO REIMBURSE BUSINESS
5 EXPENSES (Cal. *Labor Code* §2802);
6 8. FAILURE TO PAY FOR UNIFORM
7 MAINTENANCE (Cal. *Labor Code* §
8 2802);
9 9. FAILURE TO ALLOW INSPECTION OF
10 EMPLOYMENT RECORDS (Cal. *Labor*
11 *Code* §1198.5);
12 10. UNFAIR COMPETITION (Cal. *Bus. & Pro*
13 *Code* §§17200 *et seq.*, and
14 11. PRIVATE ATTORNEY GENERAL ACT
15 (PAGA)

16 **DEMAND FOR JURY TRIAL**

17 Action Filed: April 2, 2024

18 Trial Date: Not Set

19 All allegations in this Amended Complaint are based upon information and belief except
20 for those allegations which pertain to the Plaintiff named herein and her counsel. Each allegation
21 has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for
22 further investigation and discovery.

23 Inez Rene Gilmore (“Plaintiff”) alleges the following:

24 1. This is a class action brought under California law by an individual who was
25 employed by Fontana Fresh, dba Subway (“Subway”), Shipra Sud (“Shipra”), Anchal Sud
26 (“Anchal”), Ashish Sud (“Ashish”) and Onkar Sud (“Onkar”) (along with DOES 1 through 100,
27 collectively “Defendants”). Plaintiff brings this action on behalf of herself and others similarly
28 situated to recover wages from Defendants due to Defendants’ systematic failure to pay overtime
wages, failure to pay minimum wages, failure to provide meal and rest breaks (or pay the statutory
compensation due), failure to issue accurate wage statements, failure to pay wages due on
termination, failure to reimburse business expenses, failure to provide a uniform maintenance
allowance and failure to allow inspection of employment records.

1 2. Plaintiff has worked as an employee in Defendants' sandwich shop in Hemet,
2 California. While working, Plaintiff and members of the Class have been forced to endure
3 stressful and illegal workplace conditions created by Defendants' efforts to maximize profits and
4 tightly control labor costs.

5 3. Plaintiff, like her co-workers whom Defendants also employed during the
6 applicable limitations period, spent their workdays at Defendants' sandwich shop as sandwich
7 artists/cashiers and other restaurant workers under illegal and highly regimented circumstances.
8 That regimen results from Defendants' insistence to strictly monitor and curtail labor costs, which
9 Defendants accomplish by not paying for all labor costs, refusing to provide meal periods,
10 refusing to provide rest breaks, not paying the required extra hour for missed meal and rest breaks,
11 failing to reimburse business expenses, failing to pay a uniform maintenance allowance and by
12 using other unlawful stratagems to ensure that labor costs remain artificially low.

13 4. Plaintiff brings this class action to recover, among other things, wages and
14 penalties from unpaid wages earned and due, including but not limited to, premium overtime
15 wages, minimum wages, missed meal/rest break wages, wages due to discharged or quitting
16 employees, penalties for failure to maintain required records, to provide accurate itemized wage
17 statements, unreimbursed business expenses, uniform maintenance allowance and interest,
18 attorneys' fees, costs.

19 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
20 herself and all members of the class, to compensate these workers for the unpaid wages and to
21 protect current and future workers of Defendants from being subjected to similar wage theft and
22 otherwise unlawful working conditions.

23 6. Plaintiff also brings an action seeking relief for Defendants' violations of
24 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
25 disgorgement of all compensation retained by Defendants as a result of its unlawful and unfair
26 business practices, as well as injunctive relief.

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- 1 (i) Not provided a uniform maintenance allowance as required by *Labor Code*
2 §2802;
3 (j) Not allowed to inspect her employment records as required by *Labor Code*
4 §1198.5; and
5 (k) When terminated from her employment, she did not receive her final
6 paycheck as prescribed by *Labor Code* §201.

7 **DEFENDANT**

8 10. Plaintiff is informed and believes, and based on that information and belief, alleges
9 Defendant Subway is, and at all times mentioned herein was:

- 10 (a) A California limited liability company with a principal place of business
11 at 33950 Angels Lane, Suite F, Wildomar, California. Defendant has been
12 authorized to do business and has been doing business in the County of
13 Riverside;
14 (b) The former employer of Plaintiff and the current and former employer of
15 the putative Class members;
16 (c) Paid Plaintiff and all Class Members on an hourly basis;
17 (d) Failed to pay Plaintiff and all putative Class members premium overtime
18 wages;
19 (e) Failed to provide Plaintiff and all putative Class members with meal and
20 rest periods;
21 (f) Failed to provide Plaintiff and all putative Class Members with accurate
22 itemized wage statements;
23 (g) Failed to issue final paychecks timely to Plaintiff and all putative Class
24 Members;
25 (h) Failed to reimburse business expenses; and
26 (i) Failed to provide a uniform maintenance allowance for Plaintiff and all
27 putative Class Members; and
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(j) Failed to allow Plaintiff to inspect her employment records. Each of these was a violation of the *Labor Code*.

11. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant Shipra is, and at all times mentioned herein was:

(a) An individual who at all times relevant herein, was a resident of Riverside County. Shipra is the owner of numerous Subway locations, including the Hemet location where Plaintiff worked;

(b) The former employer of Plaintiff and the current and former employer of the putative Class members;

(c) Paid Plaintiff and all Class Members on an hourly basis;

(d) Failed to pay Plaintiff and all putative Class members premium overtime wages;

(e) Failed to provide Plaintiff and all putative Class members with meal and rest periods;

(f) Failed to provide Plaintiff and all putative Class Members with accurate itemized wage statements;

(g) Failed to issue final paychecks timely to Plaintiff and all putative Class Members;

(h) Failed to reimburse business expenses; and

(i) Failed to provide a uniform maintenance allowance for Plaintiff and all putative Class Members; and

(j) Failed to allow Plaintiff to inspect her employment records. Each of these was a violation of the *Labor Code*.

12. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant Anchal is, and at all times mentioned herein was:

(a) An individual who at all times relevant herein, was a resident of Riverside County. Anchal is the owner of numerous Subway locations, including the Hemet location where Plaintiff worked;

- 1 (b) The former employer of Plaintiff and the current and former employer of
2 the putative Class members;
- 3 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 4 (d) Failed to pay Plaintiff and all putative Class members premium overtime
5 wages;
- 6 (e) Failed to provide Plaintiff and all putative Class members with meal and
7 rest periods;
- 8 (f) Failed to provide Plaintiff and all putative Class Members with accurate
9 itemized wage statements;
- 10 (g) Failed to issue final paychecks timely to Plaintiff and all putative Class
11 Members;
- 12 (h) Failed to reimburse business expenses; and
- 13 (i) Failed to provide a uniform maintenance allowance for Plaintiff and all
14 putative Class Members; and
- 15 (j) Failed to allow Plaintiff to inspect her employment records. Each of these
16 was a violation of the *Labor Code*.

17 13. Plaintiff is informed and believes, and based on that information and belief, alleges
18 Defendant Ashish is, and at all times mentioned herein was:

- 19 (a) An individual who at all times relevant herein, was a resident of Riverside
20 County. Ashish is the owner of numerous Subway locations, including the
21 Hemet location where Plaintiff worked;
- 22 (b) The former employer of Plaintiff and the current and former employer of
23 the putative Class members;
- 24 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 25 (d) Failed to pay Plaintiff and all putative Class members premium overtime
26 wages;
- 27 (e) Failed to provide Plaintiff and all putative Class members with meal and
28 rest periods;

- 1 (f) Failed to provide Plaintiff and all putative Class Members with accurate
2 itemized wage statements;
- 3 (g) Failed to issue final paychecks timely to Plaintiff and all putative Class
4 Members;
- 5 (h) Failed to reimburse business expenses; and
- 6 (i) Failed to provide a uniform maintenance allowance for Plaintiff and all
7 putative Class Members; and
- 8 (j) Failed to allow Plaintiff to inspect her employment records. Each of these
9 was a violation of the *Labor Code*.

10 14. Plaintiff is informed and believes, and based on that information and belief, alleges
11 Defendant Onkar is, and at all times mentioned herein was:

- 12 (a) An individual who at all times relevant herein, was a resident of Riverside
13 County. Onkar is the owner of numerous Subway locations, including the
14 one where Plaintiff worked;
- 15 (b) The former employer of Plaintiff and the current and former employer of
16 the putative Class members;
- 17 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 18 (d) Failed to pay Plaintiff and all putative Class members premium overtime
19 wages;
- 20 (e) Failed to provide Plaintiff and all putative Class members with meal and
21 rest periods;
- 22 (f) Failed to provide Plaintiff and all putative Class Members with accurate
23 itemized wage statements;
- 24 (g) Failed to issue final paychecks timely to Plaintiff and all putative Class
25 Members;
- 26 (h) Failed to reimburse business expenses; and
- 27 (i) Failed to provide a uniform maintenance allowance for Plaintiff and all
28 putative Class Members; and

(j) Failed to allow Plaintiff to inspect her employment records. Each of these was a violation of the *Labor Code*.

15. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

16. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or are authorized to do, or are otherwise doing, business in the State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business in the County of Orange. Each of the Defendants DOES 1 through 100 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or representative of one or more of the other Defendants named herein, and acting with permission, authorization, and/or ratification and consent of the other Defendants.

17. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this Amended Complaint, including DOES 1 through 100, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

18. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendants named in this Amended Complaint, including DOES 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants and that each Defendant was acting within the course and scope of his, hers or its authority as the agent, servant and/or employee of each of the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

19. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this Amended Complaint, including DOES 1 through 100,

1 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
2 themselves and entered into a combination and systemized campaign of activity to *inter alia*
3 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation
4 of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of
5 the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and
6 Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all
7 appearances, Defendants, and each of them, represented a unified body so that the actions of one
8 Defendant were accomplished in concert with, and with the knowledge, ratification, authorization
9 and approval of each of the other Defendants.

10 **CLASS ALLEGATIONS**

11 **A. The Definition of the Class**

12 20. The Class ("the Class") is defined as follows:

13 (a) "All current and former employees who were hourly paid employees of
14 Defendants in California at any time during the period commencing on the
15 date that is four (4) years prior to the filing of this Amended Complaint and
16 continuing through the present date (the "Class Period")."

17 (b) "All persons who were hourly paid employees of Defendants in California and
18 left the employ of Defendants at any time during the period commencing on
19 the date that is within one (1) year prior to the filing of this Amended
20 Complaint and continuing through the present date (the "Class Period")"

21 21. Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to
22 amend or modify the Class description with greater specificity or further division into subclasses
23 or limitation to particular issues.

24 22. Pursuant to the California Labor Code, Plaintiff intends to file a notice with the
25 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
26 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
27 amend this Complaint once she completes and complies with the provisions under the law.

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1 **B. Maintenance of the Action**

2 23. Plaintiff brings this action individually and on behalf of herself and as
3 representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and
4 17204 and *Code of Civil Procedure* § 382.

5 **C. The Class Requisites**

6 24. At all material times, Plaintiff was a member of the Class.

7 25. The Class action meets the statutory prerequisites for maintaining a class action
8 under Code of Civil Procedure § 382 in that:

9 (a) The persons who comprise the Class are so numerous that the joinder of all
10 those persons is impracticable and the disposition of their claims as a Class
11 will benefit the parties and the Court;

12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
13 that are raised in this Amended Complaint are common to the Class and will
14 apply uniformly to every Class member;

15 (c) The claims of the representative Plaintiff are typical of the claims of each
16 Class member. Plaintiff, like all Class members, has sustained damages
17 arising from Defendants' violations of the laws of the State of California.
18 Plaintiff, and the Class members, were and are similarly or identically
19 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
20 pattern of misconduct engaged in by the Defendants;

21 (d) The representative Plaintiff has, and will continue to, fairly and adequately
22 represent and protect the interests of the Class and has retained counsel who
23 are competent and experienced in class action litigation. There are no
24 material conflicts between the claims of the representative Plaintiff and the
25 Class members that would make class certification inappropriate. Counsel
26 for the Class will vigorously assert the claims of all Class members.

27 26. The persons who comprise the Class are so numerous that joining all of them is
28 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.

1 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
2 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
3 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
4 Plaintiff are experienced, qualified and generally able to conduct complex class action litigation.

5 27. The Court should permit the action to be maintained as a class action under *Code*
6 *of Civil Procedure* § 382 because:

- 7 (a) The questions of law and fact common to the Class predominate over any
8 question affecting only individual members;
- 9 (b) A class action is superior to any other available method for fairly and
10 efficiently adjudicating the claims of the Class;
- 11 (c) The Class members are so numerous that it is impractical to bring all of
12 them before the Court;
- 13 (d) Plaintiff and other Class members will not be able to obtain effective and
14 economic legal redress unless the action is maintained as a class action;
- 15 (e) There is a community of interest in obtaining appropriate legal and
16 equitable relief for the statutory violations, and in obtaining adequate
17 compensation for the damages and injuries for which Defendant is
18 responsible in an amount sufficient to adequately compensate the Class
19 members;
- 20 (f) Without Class certification, the prosecution of separate actions by
21 individual Class members would create a risk of:
- 22 i. Inconsistent or varying adjudications for individual Class members
23 that would establish incompatible standards of conduct for
24 Defendants; and/or,

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ii. Adjudication for individual Class members that would, as a practical matter, dispose of other non-party members' interests, or that would substantially impair or impede the non-parties' ability to protect their interests, by, for example, potentially exhausting the funds available from Defendants, and

(g) Defendant has acted or refused to act on grounds generally applicable to the Classes, making final injunctive relief appropriate for the Class, as a whole.

28. Plaintiff contemplates eventually issuing notice to the proposed Class Members that would set forth the subject and nature of the action. The Defendants' own business records may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any further notice may be required, Plaintiff would contemplate using additional media and/or mailing.

GENERAL ALLEGATIONS

29. At all times material hereto, Defendant Subway has been and is a sandwich shop.

30. Plaintiff and members of the Class were employed as sandwich artists/cashiers and restaurant employees at Subway in California by Defendants at various times during the Class Period.

THE CONDUCT

31. Plaintiff seeks relief from Defendants' uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

32. Starting on or about January 9, 2021, and continuing through February 28, 2021, Defendants employed Plaintiff as a sandwich artist/cashier at their sandwich shop in Hemet, California. Plaintiff made sandwiches, operated the cash register and cleaned the restaurant.

33. While employed by Defendants, Plaintiff was paid \$14.00 per hour.

34. The employment by Defendants of the Class Members, and each of them, is governed by Industrial Welfare Commission Wage Order 5, which covers those persons employed in the public housekeeping industry.

/ / /

1 **FAILURE TO PAY OVERTIME/MINIMUM WAGES**

2 35. Under California law, non-exempt employees, as defined by Wage Order 5, are
3 entitled to premium wages for overtime and minimum wages.

4 36. Under California law, an hourly paid employee is entitled to overtime pay when
5 they exceed eight hours of work in a single day, exceed 40 hours of work in a week or work seven
6 days in a row.

7 37. Under California law, an hourly paid employee is entitled to be paid a minimum
8 wage. Labor Code Section 1197 states the California requirement that employees must be paid at
9 least the minimum wage fixed by the Commission or by any applicable state or local law, and
10 any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194
11 states, "Any employee receiving less than the legal minimum wage...is entitled to recover in a
12 civil action the unpaid balance of the full amount of this minimum wage." The applicable IWC
13 Wage Order(s), including IWC Wage Order No. 5-2001, obligates employers to pay each
14 employee minimum wages for all hours worked.

15 38. These minimum wage standards apply to each hour employees worked or were
16 subject to control by the employer for which they were not paid. Therefore, an employer's failure
17 to pay for any particular hour of time worked by an employee or subject to the employer's control
18 is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results
19 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
20 314, 324 (2005).

21 39. At all times during the relevant time period, it was the practice and policy of
22 Defendants to pay employees less than minimum wage rates due to off-the-clock work. Monies
23 for these underpaid amounts remain due and owing.

24 40. Defendants required Plaintiff and the Class to regularly perform compensable
25 tasks pre- and post-shift off-the-clock for which they did not receive any compensation.
26 Specifically, Plaintiff and Class members would arrive early and spend approximately 10 minutes
27 speaking with their supervisors prior to clocking in. Further, Plaintiff and Class members had to
28 wait in line while off the clock for clocks to become available to both clock in and out for shifts

1 and breaks. Further, Plaintiff and Class members were required to stay and speak with their
2 supervisors after clocking out at the end of their shifts. As a result, and because Defendants treated
3 such pre- and post-shift time as non-compensable, Defendants failed to compensate Plaintiff and
4 the Class for such time.

5 41. At all times during the relevant time period, Plaintiff and the Class routinely
6 worked schedules such that they were due pay at overtime and minimum wage rates. During this
7 period, it was the practice and policy of Defendants to not pay employees overtime and minimum
8 wages. Monies for unpaid overtime and minimum wages remain due and owing.

9 **INTERRUPTED MEAL BREAKS**

10 42. Under California law, non-exempt employees, as defined by Wage Order 5, are
11 entitled to a 30-minute lunch period for each 5 hours worked, a 10-minute paid rest break for
12 every four hours worked, or major fraction thereof. Non-exempt employees are entitled to one
13 hour of pay at their regular pay rate for each day the requisite rest and/or meal periods are not
14 provided.

15 43. Plaintiff and Class members' meal breaks were at times interrupted. Plaintiff and
16 Class members would clock out for their meal breaks, but then they would be asked to continue
17 working during that time.

18 **REST BREAKS NOT AFFORDED**

19 44. Plaintiff and Class members were never afforded any rest breaks. Plaintiff and
20 Class members worked 8 hours per day and were entitled to 2 rest breaks.

21 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

22 45. As a result of Defendants' failure to pay employees at required overtime and
23 minimum wage rates and to afford meal/rest breaks, the wage statements issued to the employees
24 did not comply with *Labor Code* §226 and California Industrial Welfare Commission ("IWC")
25 Wage Order 5 in that they did not accurately reflect all wages earned and due and owing.

26 **FAILURE TO PAY WAGES ON TERMINATION**

27 46. As a further result of Defendants' failure to pay employees at required overtime
28 rates, when the employees left their employ, they were not timely paid all wages due them, as

required by *Labor Code* §§ 201, 202 and Wage Order 5. Further, it was the practice of Defendants to not pay employees the final paychecks within the time periods mandated by *Labor Code* §§201, 202 and Wage Order 5.

LACK OF EXPENSE REIMBURSEMENT

47. Defendants required Plaintiff to use her personal cell phone for work-related purposes to communicate with management employees of Defendants.

48. Defendants failed to reimburse Plaintiff and Class members for business-related expenses such as personal cell phone use.

LACK OF UNIFORM MAINTENANCE ALLOWANCE

49. Defendants required Plaintiff and Class members to wear uniforms, such as a shirt with a Subway logo. Defendants failed to pay Plaintiff and members of the Class a uniform maintenance allowance. Plaintiff and Class members were required to purchase the uniforms themselves and to clean them. Defendants failed to reimburse Plaintiff and Class members for the uniforms and cleaning and maintenance of the uniforms.

FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS

50. Defendants failed to allow Plaintiff and Class members to timely inspect their personnel records and payroll files.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime in Violation of Labor Code §§510, 558, 1194.3 and Wage Order 5 By Plaintiff Against All Defendants and Does 1-100)

51. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

52. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab. Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 5, Defendants were required to compensate Plaintiff with premium pay for all overtime work performed, for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours on the seventh (7th) consecutive day of any work week.

1 53. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
2 who had not been paid overtime compensation could recover the unpaid balance of the full
3 amount of overtime wages due, including interest thereon, together with reasonable attorneys’
4 fees and costs of suit.

5 54. Pursuant to IWC Wage Order No 5-2001, § 3, “Employment beyond eight (8)
6 hours in any workday is permissible provided the employee is compensated for such overtime at
7 not less than (a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours
8 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday...

9 55. California Labor Code section 558 provides in pertinent part:

10 (a) Any employer or other person acting on behalf of an employer who
11 violates, or causes to be violated, a section of this chapter or any provision
12 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

13 (1) For any initial violation, fifty dollars (\$50) for each underpaid
14 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

15 (2) For each subsequent violation, one hundred dollars (\$100) for each
16 underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages.

17 (3) Wages recovered pursuant to this section shall be paid to the affected
18 employee...

19 (c) The civil penalties provided for in this section are in addition to any
20 other civil or criminal penalty provided by law.

21 56. Pursuant to Cal. Labor Code §558.1:

22 (a) Any employer or other person acting on behalf of an employer, who
23 violates, or causes to be violated, any provision regulating...hours and
24 days of work in any order of the Industrial Welfare Commission, or
25 violates, or causes to be violated Sections 203, 226, 226.7...may be held
liable as the employer for such violation.

26 (b) For purposes of this section, the term “other person acting on behalf of an
27 employer” is limited to a natural person who is an owner, director, officer,
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1 or managing agent of the employer, and the term “managing agent” has
2 the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

3 (c) Nothing in this section shall be construed to limit the definition of employer
4 under existing law.

5 57. Shipra, Anchal, Ashish and Onkar are the owners of Subway and are therefore
6 liable to Plaintiff as an employer. Defendants caused the laws relating to overtime pay to be
7 violated.

8 58. Plaintiff and the Class engaged in off-the-clock activities. Defendants required
9 Plaintiff and the Class to regularly perform compensable tasks pre- and post-shift off-the-clock
10 for which they did not receive any compensation. Specifically, Plaintiff and Class members
11 would arrive early and spend approximately 10 minutes speaking with their supervisors, prior to
12 clocking in. Further, Plaintiff and Class members had to wait in line while off the clock for clocks
13 to become available to both clock in and out for shifts and breaks. Further, Plaintiff and Class
14 members were required to stay and speak with their supervisors after clocking out at the end of
15 their shifts. Defendants failed to pay Plaintiff and the Class for these off-the-clock activities, and
16 as a result thereof, Plaintiff and the Class were not paid overtime that was due to them.

17 59. This practice resulted in Plaintiff and Class members working in excess of 40
18 hours a week and Defendant paying them less overtime than they had earned.

19 60. Throughout Plaintiff’s employment, Defendants failed and refused to pay and
20 properly calculate overtime compensation to Plaintiff and members of the class as required by
21 law.

22 61. The foregoing overtime compensation is owed and unpaid. As a direct and
23 proximate result of Defendants’ failure and refusal to pay overtime, Plaintiff and Class members
24 suffered damages in an amount to be proven at trial.

25 62. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
26 counsel in order to enforce Plaintiff’s rights to overtime pay, is entitled to recover Plaintiff’s
27 attorneys’ fees, costs and interest.

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1 **SECOND CAUSE OF ACTION**

2 **FOR FAILURE TO PAY MINIMUM WAGES**

3 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 5 By Plaintiff Against All**
4 **Defendants and Does 1 through 100)**

5 63. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Amended Complaint.

7 64. *Labor Code* § 1197 states the California requirement that employees must be paid
8 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
9 wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the
10 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
11 of this minimum wage.” IWC Wage Order 5-2001 also obligates employers to pay each employee
12 minimum wages for all hours worked. These minimum wage standards apply to each hour
13 employees worked for which they were not paid. Therefore, an employer’s failure to pay for any
14 particular hour of time worked by an employee is unlawful, even if averaging an employee’s total
15 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
16 *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

17 65. Here, Plaintiff and Class members were required to engage in off-the-clock
18 activities both pre and post-shift, and they were not paid for this off-the-clock time. Defendants
19 failed to pay Plaintiff and the Class for these off-the-clock activities, and as a result thereof,
20 Plaintiff and the Class were not paid minimum wages that were due to them.

21 66. California Labor Code section 558 provides in pertinent part:

22 (a) Any employer or other person acting on behalf of an employer who
23 violates, or causes to be violated, a section of this chapter or any provision
24 regulating hours and days of work in any order of the Industrial Welfare
25 Commission shall be subject to a civil penalty as follows:

26 (1) For any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid in
28 addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee...

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

67. Pursuant to Cal. Labor Code §558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating...hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203, 226, 226.7...may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

68. Shipra, Anchal, Ashish and Onkar are the owners of Subway and are therefore liable to Plaintiff as an employer. Defendants caused the laws relating to minimum wages to be violated.

69. *Labor Code* § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney’s fees, and costs of suit.

70. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for

all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

71. Plaintiff and the other Class Members suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

72. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

THIRD CAUSE OF ACTION

FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS

(IWC Wage Order No. 5; Labor Code §§ 226.7, 512 By Plaintiff Against All Defendants and Does 1 through 100)

73. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

74. California Labor Code §226.7(a) prohibits an employer from requiring an employee to work during any meal period mandated by an applicable Industrial Wage Order. Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an employee to work during a meal or rest break or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

75. California Labor Code §1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

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1 76. IWC Order No. 5-2001(11)(A) provides, in relevant part: "No employer shall
2 employ any person for a work period of more than five (5) hours without a meal period of not
3 less than 30-minutes, except that when a work period of not more than six (6) hours will complete
4 the day's work the meal period may be waived by mutual consent of the employer and the
5 employee."

6 77. IWC Order No. 5-2001 (11)(c) further provides, in relevant part: "Unless the
7 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
8 considered an 'on duty' meal period and counted as time worked."

9 78. Section 512(a) of the California Labor Code provides, in relevant part, that:

10 An employer may not employ an employee for a work period of more than five
11 hours per day without providing the employee with a meal period of not less than
12 30-minutes, except that if the total work period per day of the employee is no
13 more than six hours, the meal period may be waived by mutual consent of both
14 the employer and employee. An employer may not employ an employee for a
15 work period of more than 10 hours per day without providing the employee with
16 a second meal period of not less than 30-minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal period
was not waived.

17
18 79. The Labor Code and Wage Order provisions cited above require California
19 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
20 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
21 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2) ensure
22 that employees are actually free of job duties for thirty minutes per day on or before the fifth hour
23 of their shifts.

24 80. California Labor Code section 558 provides in pertinent part:

25 (a) Any employer or other person acting on behalf of an employer who
26 violates, or causes to be violated, a section of this chapter or any provision
27 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee...

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

81. Pursuant to Cal. Labor Code §558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating...hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203, 226, 226.7...may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

82. Shipra, Anchal, Ashish and Onkar are the owners of Subway and are therefore liable to Plaintiff as an employer. Defendants caused the laws relating to meal periods to be violated.

83. As alleged herein, Plaintiff and the members of the Class’s meal periods were routinely interrupted at the direction of Defendants and/or with their endorsement, encouragement, knowledge and acquiescence.

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1 84. Under California law, employers must also record their employees' meal periods:
2 "Every employer shall keep accurate information with respect to each employee, including the
3 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
4 ... need not be recorded." IWC Order No. 5, § (7)(A)(3). Where the employer has failed to keep
5 records required by statute, the consequences of such failure should fall on the employer, not the
6 employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis
7 for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendants
8 had an obligation under the record-keeping requirements of the Wage Order to track meal periods
9 unless "all work ceases," Defendants knew or should have known its employees were regularly
10 having their meal periods interrupted during the Class Period.

11 85. Defendants have a policy or practice of failing to ensure that Plaintiff and
12 members of the Class take uninterrupted meal periods required by California Labor Code §226.7
13 and IWC Wage Order No. 5-2001 §11.

14 86. By their actions in not affording Plaintiff and Class Members uninterrupted meal
15 periods, Defendants violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the
16 amount of one additional hour of pay at the employee's regular rate of compensation for each
17 work period during each day in which Defendants failed to provide employees with statutory
18 timely off-duty meal periods.

19 87. Defendants also have a policy or practice of failing to pay each of their employees
20 who were not provided with a meal period as required an additional one hour of compensation at
21 each employee's regular rate of pay.

22 88. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring
23 a private right of action to recover wages due based on the deprivation of timely meal periods
24 under Cal. Labor Code § 226.7(b).

25 89. As a direct and proximate result of Defendants' unlawful conduct as alleged
26 herein, Plaintiff and members of the Class have sustained economic damages, including but not
27 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
28 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate

1 relief due to Defendants' violations of the California Labor Code and the applicable IWC Wage
2 Orders.

3 **FOURTH CAUSE OF ACTION**

4 **FOR FAILURE TO PROVIDE REST PERIODS**

5 **(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiff Against All Defendants and**
6 **Does 1 through 100)**

7 90. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this Amended Complaint.

9 91. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
10 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per
11 four hours of work, or major fraction thereof.

12 92. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
13 fails to provide an employee with rest periods in accordance with those provisions, the employer
14 shall pay the employee one hour of pay at the employee's regular rate of compensation for each
15 workday that the rest periods were not so provided.

16 93. California Labor Code section 558 provides in pertinent part:

17 (a) Any employer or other person acting on behalf of an employer who
18 violates, or causes to be violated, a section of this chapter or any provision
19 regulating hours and days of work in any order of the Industrial Welfare
20 Commission shall be subject to a civil penalty as follows:

21 (1) For any initial violation, fifty dollars (\$50) for each underpaid
22 employee for each pay period for which the employee was underpaid in
23 addition to an amount sufficient to recover underpaid wages.

24 (2) For each subsequent violation, one hundred dollars (\$100) for each
25 underpaid employee for each pay period for which the employee was
26 underpaid in addition to an amount sufficient to recover underpaid wages.

27 (3) Wages recovered pursuant to this section shall be paid to the affected
28 employee...

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

94. Pursuant to Cal. Labor Code §558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating...hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203, 226, 226.7...may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

95. Shipra, Anchal, Ashish and Onkar are the owners of Subway and are therefore liable to Plaintiff as an employer. Defendants caused the laws relating to rest breaks to be violated.

96. Defendants have intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

97. Plaintiff and members of the Class were required to work during their rest breaks.

98. At all times relevant hereto, Defendants failed to provide rest periods as required by Labor Code § 226.7 and the applicable Wage Order.

99. By virtue of Defendants’ unlawful failure to provide rest periods to Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court, and which will be ascertained according to proof at trial.

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FIFTH CAUSE OF ACTION
FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE
ITEMIZED STATEMENTS

(Labor Code §226 By Plaintiff Against All Defendants and Does 1 through 100)

100. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

101. Pursuant to the applicable IWC Wage Orders, Defendants were the employer of Plaintiff and the Class.

102. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 5-2001 section 7, Defendant is required to maintain and provide accurate records relating to employee compensation, including all formulas and production records used to calculate wages due.

103. California Labor Code section 226(a) provides (*inter alia*) that, upon paying an employee his or her wages, the employer must:

Furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

104. Plaintiff and Class members worked overtime and were entitled to minimum wages and meal/rest breaks. To the extent that Plaintiff worked off the clock and was not afforded uninterrupted meal breaks and rest breaks, Defendants failed to provide Plaintiff and Class members with accurate itemized pay stubs.

105. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,

not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

106. Notwithstanding these provisions, Defendants have engaged in a uniform practice of refusing to maintain and provide the accurate records and wage statements required by California law.

107. Throughout the Class Period, Defendants intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in that the payments owed to Plaintiff and the members of the Class for overtime compensation, minimum wages, and untimely or missed meal and rest periods, were not included in gross wages earned by Plaintiff and members of the Class. Further, Defendants failed to furnish Plaintiff and the Class, upon payment of wages, itemized statements accurately showing the number of hours worked and the rates paid.

108. As a result, Plaintiff and members of the Class have been injured by having been deprived of the true facts pertaining to their compensation and employment.

109. Plaintiff and members of the Class were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to overtime compensation, minimum wage compensation, and to be paid for meal and rest periods not provided, even though they were so entitled and these failures hindered them from determining the amounts of wages owed to them.

110. Plaintiff and members of the Class are entitled to the amounts provided in Labor Code §226(e), plus attorneys' fees and costs.

111. As a result, Plaintiff seeks recovery of the penalties authorized by Labor Code sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided by law for Defendants' improper conduct.

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SIXTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION
(Labor Code §§201-203 By Plaintiff Against All Defendants and Does 1 through 100)

112. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

113. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

114. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

115. Plaintiff and the Class were discharged and/or resigned from Defendants' employ, and Defendants willfully failed to pay Plaintiff and the Class wages due them.

116. Defendant terminated Plaintiff on February 28, 2021, yet failed to pay her the last pay due to her.

117. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not timely paid, not to exceed 30 days' wages.

SEVENTH CAUSE OF ACTION
REIMBURSEMENT OF BUSINESS EXPENSES
(Cal. Labor Code §2802 By Plaintiff Against All Defendants and Does 1 through 100)

118. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

119. Labor Code §2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

120. At all times relevant herein, Defendants were aware that Plaintiff was using her personal cell phone for business but failed to indemnify Plaintiff for all her business-related expenses, including wear and tear expenses, in accordance with Labor Code §2802.

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1 121. Plaintiff is informed and believes and thereon alleges that at all relevant times,
2 Defendants maintained a practice of not reimbursing Plaintiff and Class Members for their work-
3 related expenses that they incurred in using their cell phones for work-related purposes.

4 122. As a result of Defendants' conduct, Plaintiff and Class Members suffered damages
5 in an amount, subject to proof, to the extent they were not reimbursed for all of their business-
6 related expenses incurred in the discharge of their duties.

7 123. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to recover
8 the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of
9 suit.

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE**

12 **(Cal. Labor Code §2802 By Plaintiff Against All Defendants and Does 1 through 100)**

13 124. Plaintiff and the Class reallege and incorporate by reference all of the allegations
14 set forth in this Amended Complaint.

15 125. Labor Code §2802 requires employers to indemnify employees for all necessary
16 expenditures incurred by employees in the discharge of their duties.

17 126. In addition to the cost of the uniform, the employer must provide non-exempt
18 employees with reasonable maintenance of the uniforms. The employer can either maintain the
19 uniform itself or pay the employee a weekly maintenance allowance.

20 127. An employer may never impose a financial burden on employees with respect to
21 purchasing or maintaining clothing, which would reduce the employees' wage rate below the
22 minimum wage.

23 128. Here, Defendants failed to provide Plaintiff and members of the Class with
24 uniforms, but required that Plaintiff and Class members wear uniforms, such as a shirt with the
25 Subway logo. Further, Defendants did not maintain the uniforms. Plaintiff and members of the
26 Class paid for the maintenance and cleaning themselves.

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129. Defendants failed to reimburse Plaintiff and Class members for their uniforms and to maintain the uniforms, nor pay Plaintiff and members of the Class a weekly maintenance allowance.

130. As a proximate result of the aforementioned violations of § 2802, Plaintiff and members of the Class are entitled to recovery from Defendants for reimbursement of necessary expenditures, including interest and attorneys' fees.

131. As a proximate result of the aforementioned violations of Labor Code § 2802, Plaintiff and members of the Class have been damaged in an amount according to proof at the time of trial.

NINTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Cal. Labor Code §1198.5 By Plaintiff Against All Defendants and Does 1 through 100)

132. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

133. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel

records,..... later than 30 calendar days from the date the employer receives the request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section... the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(1) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

134. Additionally, pursuant to Wage Order 5, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

135. On or about October 16, 2023, through her former counsel, Plaintiff issued a written request to Defendants for copies of her personnel records. Further, Plaintiff's former counsel followed up multiple times with Defendants to obtain her personnel records, to no avail.

136. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for Defendant's compliance, and Defendants have failed and refused to permit Plaintiff copies of her records.

137. As a direct result and consequence of Defendants' failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendants' violation of § 1198.5.

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1 **TENTH CAUSE OF ACTION**

2 **FOR UNFAIR COMPETITION**

3 **(Business & Professions Code §§ 17200 et seq. By Plaintiff Against All Defendants and**
4 **Does 1 through 100)**

5 138. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Amended Complaint.

7 139. Pursuant to applicable IWC Wage Orders, Defendants were the employers of
8 Plaintiff and the Class. Defendants are also "person(s)" as that term is defined in Business &
9 Professions Code §17021.

10 140. The Business & Professions Code defines unfair competition as any unlawful,
11 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
12 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1) pay
13 Plaintiff and the Class overtime compensation; (2) pay Plaintiff and the Class minimum wages;
14 (3) pay Plaintiff and the Class for meal periods not provided, (4) pay Plaintiff and the Class for
15 rest periods not provided, (5) furnish Plaintiff and the Class with accurate itemized wage
16 statements, as mandated by the applicable Labor Code and Industrial Welfare Commission
17 requirements, (6) pay Plaintiff and the Class wages due when leaving their employ, (7) reimburse
18 business expenses, (8) provide a uniform maintenance allowance; and (9) allow inspection of
19 employment records, all in violation of Business & Professions Code §§ 17200 et seq.

20 141. By and through the unfair and unlawful business practices described herein,
21 Defendants have obtained valuable property, money and services from the Plaintiff and the Class
22 and have deprived them of valuable rights and benefits guaranteed by law all to the detriment of
23 Plaintiff and the Class.

24 142. All the acts described herein are violations of, among other things, the Labor Code
25 and applicable Industrial Commission Wage Orders, are unlawful and in violation of public
26 policy; and in addition, are immoral, unethical, oppressive, and unscrupulous, and thereby
27 constitute unfair and unlawful business practices in violation of Business & Professions Code §§
28 17200 et seq.

1 143. Plaintiff and the Class are entitled to, and do, seek such relief as may be
2 necessary to restore to them the money and property which Defendants have acquired, or of
3 which Plaintiff and the Class have been deprived by means of the above-described unfair and
4 unlawful business practices.

5 144. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
6 above-described business practices are unfair and unlawful and that injunctive relief should be
7 issued restraining Defendants from engaging in any of the above described unfair and unlawful
8 business practices in the future.

9 145. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
10 redress the injuries which they have suffered as a consequence of the unfair and unlawful
11 business practices of Defendants. As a result of the unfair and unlawful business practices
12 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
13 harm unless Defendants are restrained from continuing to engage in these unfair and unlawful
14 business practices. In addition, Defendants should be required to disgorge the unpaid moneys to
15 Plaintiff and the Class.

16 **ELEVENTH CAUSE OF ACTION**

17 **(Damages Pursuant to Private Attorney General Act Against Employers)**

18 146. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this First Amended Complaint.

20 147. Plaintiff brings this action on her own behalf and on behalf of all current and
21 former employees of Defendants who were employed in California for the previous four years
22 seeking to recover unpaid wages, including but not limited to unpaid overtime, meal period
23 violations, and rest periods violations as set forth in this pleading.

24 148. On March 28, 2024, Plaintiff, pursuant to California Labor Code §§2699, et seq.,
25 by and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the
26 State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via
27 Certified Mail Return Receipt Requested to the defendant.

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149. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

150. Plaintiff has, therefore, complied with the administrative exhaustion requirements of PAGA.

151. Plaintiff seeks Labor Code penalties, attorney's fees, and costs in an amount according to proof at trial, as provided by the Labor Code Private Attorney General Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor and against Defendants, and each of them, as follows:

1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and Class Members, according to proof;

2. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff and Class Members, according to proof;

3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal and/or rest period was not provided;

4. For compensatory damages in the amount of Plaintiff and Class Members' out-of-pocket expenses for cell phone use incurred while performing Defendants' business-related duties plus interests, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);

5. For compensatory damages in the amount of Plaintiff and Class members' uniform and maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);

6. For payment of unpaid wages in accordance with California labor and employment law;

7. For an award of consequential damages in Plaintiff and Class Members' favor and against Defendants, in an amount to be proven at trial;

8. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

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1 9. For payment to Plaintiff and Class Members of waiting time penalties pursuant to
2 *Cal. Lab. Code* §203, in an amount equal to her respective daily rates of pay at the time of
3 termination or layoff, multiplied by the total amount of days elapsed between the date of the
4 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
5 maximum of 30 days' pay, according to proof;

6 10. For specific relief, enforcing waiting time penalties of 30 days of per diem wages
7 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

8 11. For prejudgment interest accrued on all due and unpaid overtime and minimum
9 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
10 1194(a), according to proof;

11 12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, according to
12 proof;

13 13. For reasonable costs, including attorneys' fees, in an amount according to proof
14 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5(1), 2802 and/or *Cal. Code of Civ.*
15 *Proc.* §1021.5;

16 14. For an award of restitution of wages to Plaintiff and Class Members in an amount
17 equal to the amount of wages owed and unpaid, according to proof;

18 15. For injunctive relief ordering the continuing unfair business acts and practices to
19 cease, as the Court deems just and proper;

20 16. For reasonable costs, including attorneys' fees, in an amount according to proof
21 pursuant to *Cal. Labor Code* §2699(g);

22 17. For other injunctive relief ordering Defendants to notify Plaintiff and Class
23 Members that they have not been paid the proper amounts in accordance with California law;

24 18. For injunctive relief requiring Defendants to comply with *Labor Code*
25 1198.5(b)(1);

26 19. For punitive and exemplary damages in a sum to be determined at trial; and

27 20. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff Inez Rene Gilmore hereby respectfully requests a trial by jury for all claims and issues raised in her Amended Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: June 14, 2024



By: _____
Jasmine J. Badawi
Attorneys for Plaintiff,
INEZ RENE GILMORE