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individually, and on behalf of all other similarly situated employees

**SUPERIOR COURT OF STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE—CIVIL COMPLEX CENTER**

CELIA MARTINEZ, as an individual and on
behalf of other similarly situated employees,

Plaintiff,

vs.

RUBY BROTHERS III, a California
corporation; RUBY CORP., a California
corporation, MCRU, INC., a California
corporation, RUBY BROTHERS, a
California corporation, RUBY BROTHERS
TOO, a California corporation, E RUBY
PARTNERS, LLC, a California corporation,
and DOES 1-50, inclusive,

Defendants.

Case No.: 30-2021-01204252-CU-OE-CXC

Assigned for all purposes to:
Hon. Peter J. Wilson
Dept. CX101

**[PROPOSED] ORDER AND JUDGMENT
GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 6, 2023
Time: 2:00 p.m.
Place: Department CX101

Action Filed: June 4, 2021
Trial Date: None

**[PROPOSED] ORDER AND JUDGMENT GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

1 THIS MATTER is before the Court on Plaintiff's Motion for Final Approval of Class
2 Action Settlement and his Motion for an Order Awarding Attorneys' Fees and Costs to
3 Plaintiff's Counsel and Enhancement Fee to the Class Representative. In accordance with the
4 Final Approval Order, Class Members have been given notice of the terms of the Settlement,
5 including had an opportunity to object to it, comment on it, participate in it, and/or exclude
6 themselves from it. Having considered the proposed Settlement, the award of attorneys' fees and
7 costs and the service award to the class representative, and the argument at the final approval
8 hearing held on April 6, 2023, the Court pursuant to Code of Civil Procedure § 382, hereby
9 grants Plaintiff's motion.

10 **I. FACTUAL BACKGROUND**

11 On June 4, 2021, I filed a Class Action Complaint in the Orange County Superior Court
12 alleging violations of the California Labor Code and applicable wage orders for the following
13 claims: (1) claim for failure to provide meal periods; (2) failure to provide rest breaks; (3) failure
14 to pay timely wages upon termination; (4) failure to provide and maintain accurate itemized
15 wage statements; (5) Claims for failure to reimburse for necessary business expenses; and (6)
16 unlawful business practices under Business and Professions Code section 17200 et. seq. On
17 December 14, 2021, Ms. Martinez submitted a First Amended Complaint to add claims under the
18 Private Attorney General Act.
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20 After Plaintiff served formal discovery and evaluated Defendants' documents and
21 positions, the parties engaged a mediator and participated in a mediation on April 18, 2022.
22 Thereafter, the Parties entered into a signed Stipulation of Class Action Settlement setting forth
23 the terms of the proposed Settlement, which is before the Court. In reaching the proposed
24 Settlement, Defendants did not (and does not) concede that it has violated the California Labor
25 Code or the Business and Professions Code, and Defendants continues to deny the allegations
26 contained in Plaintiff's complaint.
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1 Plaintiff has moved this Court for final approval of the Settlement and has submitted
2 documents in support thereof. No opposition was filed to Plaintiff's motion, and no Class
3 Member objected to the Settlement. Plaintiff's motion came on for hearing before this Court on
4 April 6, 2023 at 2:00 p.m.

5 The Court, having fully considered Plaintiff's notice of motion and motion, the
6 memorandum of points and authorities in support thereof, the declarations in support thereof, the
7 Settlement Agreement and Amendment to Settlement Agreement itself, and the oral argument
8 presented to the Court, HEREBY ORDERS AND MAKES DETERMINATIONS AS
9 FOLLOWS:

10 **II. ORDER GRANTING FINAL APPROVAL TO CLASS ACTION**
11 **SETTLEMENT**

12 The Court finds that certification of the following Class, for settlement purposes only, is
13 appropriate under the California Code of Civil Procedure:

14 The "Class" or "Class Members" is defined as:

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16 Nonexempt Class: All current and former non-exempt employees who or were
17 employed by Defendants in California at any time during the class period [June 4,
18 2017, through June 17, 2022].

19 The Court finds that the Class defined above meets ascertainability, numerosity,
20 commonality, and predominance requirements that justify certification, and that resolution of this
21 matter through a class action settlement is superior to other available methods.

22 The Court finds further that:

- 23 (1) Plaintiff is an adequate and typical Class Representative and appoints them as Class
24 Representative; and
25 (2) Plaintiff's Counsel has adequately represented the Class and its appointment as Class
26 Counsel is confirmed.

27 Accordingly, the Court certifies the Class described above for settlement purposes only.

28 **[PROPOSED] ORDER AND JUDGMENT GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

1 The Court has reviewed the terms of the Settlement and finds that the Settlement is fair,
2 adequate, and reasonable when balanced against the possible outcome of further litigation
3 relating to class certification, liability, and damages. The Court finds further that settlement at
4 this time will avoid substantial additional costs and will avoid the delay and risks presented by
5 continued prosecution of the litigation. The Court also finds that the settlement has been reached
6 after arm's length negotiations between the parties. The terms of the operative settlement
7 agreement and amendment to settlement agreement shall be incorporated herein and consistent
8 with this Order and Judgment.

9 Following notice that was sent to the Class Member by first class mail, no Class member
10 objected to any of the terms of the Settlement and eleven Class Members opted out. Such non-
11 opposition to the settlement is evidence of the settlement's fairness, adequacy, and
12 reasonableness. Taking into account (1) the value of the \$1,290,000.00 cash settlement, (2) the
13 risks inherent in continued litigation, (3) the complexity, expense, and likely duration of the
14 litigation in the absence of settlement, (4) the experience and views of Class Counsel, and (5) the
15 positive reaction of Class Members, the Court finds that the settlement is fair, adequate,
16 reasonable, and deserves this Court's final approval.

17 **III. CLASS RELEASE**

18 Upon the Date of Finality, Plaintiff and Participating Class Members who do not opt out
19 of the Settlement, release the Released Parties from, and will be forever barred from pursuing
20 against the Released Parties, any and all claims, demands, rights, liabilities and causes of action
21 alleged in Plaintiff's Operative Complaints, or which could have been alleged in Plaintiff's
22 Operative Complaints based on the factual allegations therein, that arose during the Class Period,
23 including but not limited to causes of action for failure to provide meal periods, and applicable
24 provisions of the relevant Industrial Wage Order; failure to permit rest breaks, and applicable
25 provisions of the relevant Industrial Wage Order; failure to provide accurate itemized wage
26 statements, and applicable provisions of the relevant Industrial Wage Order; failure to pay all
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1 wages due upon separation of employment, and applicable provisions of the relevant Industrial
2 Wage Order; failure to pay for unreimbursed business expenses, and applicable provisions of the
3 relevant Industrial Wage Order; violation of California Business and Professions Code §§17200,
4 et seq., based on the preceding claims (“Released Claims”); and all claims for attorneys’ fees and
5 costs relating to the Released Claims by Class Members, that could have been premised on the
6 facts, claims, causes of action or legal theories described above or that could have been premised
7 on the facts, claims, causes of action or legal theories described above.

8 **IV. PAGA RELEASE**

9 Upon the Date of Finality, the State of California and PAGA Group Members release the
10 Released Parties from all claims, demands, rights, liabilities and causes of action for penalties
11 under California Labor Code Private Attorneys General Act of 2004 based on the letter to the
12 Labor & Workforce Development Agency on May 21, 2021, that arose during the PAGA Period,
13 including but not limited to claims for civil penalties for violations of Labor Code 201, 202, 203,
14 204, 226(a), 226.7, 510, 512, 558, 2802, and applicable Wage Orders of the Industrial Welfare
15 Commission, including but not limited to Industrial Welfare Commission Wage Order No. 5-2001,
16 and all related claims for attorneys’ fees and costs.

17 **V. OPT OUTS**

18 Following notice that was sent to the Class Member by first class mail, no Class member
19 objected to any of the terms of the Settlement and two Class Members submitted requests for
20 exclusion.
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22 **VI. PLAINTIFF’S REQUEST FOR ATTORNEYS’ FEES AND COSTS**

23 Plaintiff’s Counsel has moved for awards of (1) attorneys’ fees and costs to Plaintiff’s
24 Counsel; and (2) a service award to the Class Representatives, notice of which were given to all
25 Class Members pursuant to the Court’s Preliminary Approval Order. The Court read argument
26 regarding Plaintiff’s request for fees and service payments.
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1 Based upon all papers filed with the Court, oral argument at the hearing, the Court's
2 observation and assessment of the performance of Plaintiff's Counsel throughout this litigation,
3 the resulting settlement recovery, and good cause appearing therefor, the Court finds that
4 payment of attorneys' fees in the amount of \$429,957.00 of the GSA and costs in the amount of
5 \$12,465.10 for all past and remaining work and costs until the completion of this matter, in
6 accordance with the terms of the Settlement, is fair and reasonable under the circumstances.

7 This amount shall be paid by Defendants according to the terms of the Joint Stipulation
8 of Settlement and Release of Class Action Settlement attached as Exhibit A to the Declaration of
9 Armond M. Jackson in Support of Motion for Final Approval of Class Action Settlement filed on
10 March 14, 2023.

11 **VII. SERVICE AWARD TO THE CLASS REPRESENTATIVE**

12 Plaintiff seeks service awards to the class representative, Celia Martinez, in the
13 amount of \$5,000.00 and seeks this payment as compensation for the time, effort, and risk she
14 spent to enable the Class Members to receive this recovery.

15 The Court notes that California and federal courts regularly approve service awards to
16 compensate the class representative for the services they provide to the class, the time and effort
17 they invest on behalf of others, and the risks that they incur during the course of class action
18 litigation.

19 Class Representative Celia Martinez performed a service to Class members, including
20 bringing this action, producing relevant documents, and making herself available to and working
21 with Plaintiff's Counsel throughout the action. In light of these services, the service award to the
22 class representative is appropriate. Although the proposed service award was disclosed to the
23 Class in the Notice, no class member objected to it.

24 For the foregoing reasons, the Court finds that the service award of \$5,000.00 to Plaintiff
25 Celia Martinez is fair and reasonable considering her service to Class Members.

26 **VIII. CLAIMS ADMINISTRATION COSTS**

27 **[PROPOSED] ORDER AND JUDGMENT GRANTING MOTION FOR FINAL**
28 **APPROVAL OF CLASS ACTION SETTLEMENT**

1 Plaintiff seeks costs for the claims administrator in the amount of \$20,000.00 for all work
2 regarding distribution to the class members, LWDA and counsel for Plaintiff. This amount shall
3 be paid by Defendants according to the terms of the Joint Stipulation of Settlement and Release
4 of Class Action Settlement attached as Exhibit A to the Declaration of Armond M. Jackson in
5 Support of Motion for Final Approval of Class Action Settlement filed on March 14, 2023. For
6 the foregoing reasons, the Court finds that the administration costs of \$20,000.00 is fair and
7 reasonable considering its service to Class Members.

8 **IX. PAYMENT TO LABOR AND WORKFORCE DEVELOPMENT AGENCY**

9 The Claims Administrator shall pay the LWDA \$37,500.00 (representing 75% of the
10 \$50,00.00 PAGA component of the Settlement Agreement).

11 **X. JUDGMENT FINALITY**

12 Without affecting the finality of this Judgment in any way, the Court shall retain
13 jurisdiction with respect to the implementation and enforcement of the terms of the Settlement
14 Agreement and Amendment to Settlement Agreement, and the Court shall retain jurisdiction
15 over the Parties and the members of the Class to enforce the terms, conditions and obligations of
16 the Settlement Agreement and Amendment to Settlement Agreement.
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18 This judgment is intended to be a final disposition of the above-captioned action in its
19 entirety with prejudice, and is intended to be immediately appealable. The court shall have and
20 retain continuing jurisdiction over this action and the parties and Class members, including after
21 entry of this Order, to the fullest extent necessary to interpret, enforce and effectuate the terms
22 and intent of the Settlement Agreement, Amendment to Settlement Agreement and this Order.

23 The Court orders class counsel to file a final report summarizing all distributions made
24 pursuant to the approved settlement, supported by declaration. The Court sets a hearing for a
25 final report for January 11, 2024.

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2 Dated:

JUDGE OF THE SUPERIOR COURT

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4 By: _____
The Honorable Judge Peter J. Wilson
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**[PROPOSED] ORDER AND JUDGMENT GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**