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individually, and on behalf of all other similarly situated employees

**SUPERIOR COURT OF STATE OF CALIFORNIA
FOR THE COUNTY 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 Wilson
Dept. CX 102

**DECLARATION OF ARMOND M.
JACKSON IN SUPPORT OF MARTINEZ
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: August 9, 2022
Hearing Time: 8:30 a.m.
Department: CX 102

Complaint Filed: June 4, 2021
Trial Date: None Set

1 1. I am an attorney licensed to practice law before all courts of the State of California. I am
2 an attorney for Jackson Law, A Professional Law Corporation, attorney of record for Plaintiff
3 Celia Martinez (referred to herein as “Plaintiff”). I have personal knowledge of everything
4 stated below and could and would competently testify thereto if sworn.

5 2. I submit this Declaration in support of Plaintiff’s motion for preliminary approval of class
6 action settlement. A true and correct copy of the fully executed Stipulation for Class Action
7 Settlement is attached to this declaration as **Exhibit A**. A true and correct copy of the Class
8 Notice is attached to this declaration as **Exhibit B**. A true and correct copy of the Exclusion
9 Form is attached to this declaration as **Exhibit C**.

10 3. During the litigation, I interviewed Celia Martinez (“Martinez”) and determined she was
11 a suitable plaintiff based upon her experience of being subjected to Defendant’s purported Labor
12 Code violations and her concern to hold the Defendants accountable for any alleged liability for
13 such violations. By initiating this lawsuit against a former employer, Martinez has subjected
14 herself to reputational risk. Throughout the course of this litigation, Martinez assisted this
15 office in preparing the complaint. Martinez also made herself available on an “on call” basis to
16 answer any questions regarding the case and approve any settlement. Martinez also continuously
17 provided my office with updated information concerning the Defendants’ business operations.

18 4. During the litigation, I interviewed Celia Martinez (“C. Martinez”) and determined she
19 was a suitable plaintiff based upon their experience of being subjected to Defendant’s purported
20 Labor Code violations and her concern to hold the Defendants accountable for any alleged
21 liability for such violations. By initiating this lawsuit against a former employer, C. Martinez
22 also subjected herself to reputational risk. Throughout the course of this litigation, C. Martinez
23 assisted this office in preparing the complaint. C. Martinez also made herself available on an “on
24 call” basis to answer any questions regarding the case and approve any settlement. C. Martinez
25 also continuously provided my office with updated information concerning the Defendants’
26 business operations.
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**DECLARATION OF ARMOND M. JACKSON IN SUPPORT OF FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

1 5. On June 4, 2021, Daniel Carillo filed claims alleging violations regarding (1) meal
2 breaks; (2) rest breaks; (3) claim for failure to pay timely wages upon termination; (4) accurate
3 wage statements; (5) claim for necessary business expenses; (6) unlawful business practices. On
4 December 14, 2021, Plaintiff amended its Complaint to add a violation of the California Private
5 Attorney General Act.

6 6. During each phase of discovery, Plaintiff's counsel engaged in detailed case analysis
7 based on the information revealed. Calculations were performed, as well as an analysis of the
8 risks and rewards of continued litigation.

9 7. In August 2021, Plaintiff served formal discovery on Defendants. The parties continued
10 to engage in discovery and ultimately agreed to exchange informal discovery in preparation for a
11 mediation. After the parties negotiated the scope of informal discovery, the parties agreed to
12 engage a mediator Hon. Carl J. West (Ret.). Before mediation, it was agreed that Defendant
13 produce a 15% sampling of the payroll records for the class, handbooks, relevant wage and hour
14 policies and pay data for the class. After Defendant produced the requested sampling and
15 documentation, Plaintiff retained an expert to analyze these records. I reviewed the wage and
16 hour policies and payroll data and worked with the expert to perform a report that allowed the
17 party to analyze the purported violations of the Defendant, shift counts, pay periods, number of
18 aggrieved employees and policies and procedures and how they apply to the data. This
19 information allowed Plaintiff to evaluate the claims in preparation for mediation. The parties
20 engaged in a full day mediation on April 18, 2022 with Hon. Carl J. West (Ret.) that ultimately
21 resulted in a settlement through a mediator's proposal. Thereafter, the parties executed a long
22 form settlement agreement. Plaintiff also took into account the uncertainty and risk of the
23 outcome of further litigation, and the difficulty and delays inherent in such litigation. Plaintiff
24 and Counsel also considered the burdens of proof necessary to establish liability of the claims
25 asserted in the case, both generally and in response to Defendants' defenses, and the difficulties
26 in establishing penalties, and other relief sought in the case, particularly where, as here, Plaintiff
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**DECLARATION OF ARMOND M. JACKSON IN SUPPORT OF FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

1 may face difficulty obtaining the cooperation of PAGA Members who are current employees,
2 given their likely reluctance to aid in the prosecution of a lawsuit against their employer. Based
3 on the foregoing, Plaintiff and PAGA Counsel determined that the Settlement set forth in the
4 Agreement is fair, adequate, and reasonable and is in the best interests of the PAGA Members.

5 8. Throughout the litigation, my office performed a thorough investigation into the claims at
6 issue, which included: (1) determining Plaintiff's suitability as a class representative, private
7 attorney general through interviews, background investigations, and analyses of his employment
8 files and related records; (2) evaluating all of Plaintiff's potential representative claims; (3)
9 researching similar class claims and PAGA actions as to the claims brought, the nature of the
10 positions, and the type of employer; (4) analyzing a sample of employees' time and wage
11 records; (5) reviewing Defendant's employment policies and practices; (6) researching
12 settlements in similar cases; (7) evaluating Plaintiff's claims and estimating Defendant's liability
13 for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
14 mediation.
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16 9. By engaging in such a thorough investigation and evaluation of Plaintiff's claims, I can
17 opine that the Settlement, for the consideration and on the terms set forth in the Settlement
18 Agreement, is fair, reasonable, an adequate, and is in the best interests of the LWDA in light of
19 all known facts and circumstances, including the risk of significant delay and uncertainty
20 associated with litigation, and various defenses asserted by Defendant. Based upon review of the
21 payroll documents, below is the analysis of the alleged Labor Code violations segmented byway
22 of factual predicates to support Labor Code violations.

23 10. Counsel for both Plaintiff and Defendant (collectively referred to herein as the "Parties")
24 engaged in significant discovery. Counsel for Plaintiff obtain thousands of excel data points
25 and/or documents reflecting the class members time data records, pay records, wage and hour
26 policies, wage statements, clock-in and clock-out data, payroll records and payroll data. Through
27 this discovery, it was determined that there were approximately 135,733 workweeks through the
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1 class period. As part of this analysis, the method of calculation for the damages for class
2 members comprised of creating a data rubric, retaining an expert, developing an expert report,
3 reviewing the data and reviewing the time records and extrapolating the records to the class
4 members.

5 **Meal Break Claims**

6 11. Plaintiff's premise based upon this claim was that class members would get meal breaks
7 after the fifth hour or short meal breaks in violation of California Labor Code section 226.7.
8 Based upon analyzing thousands of-time data cells, and through extrapolation, we determined a
9 violation rate of 4.1%. Moreover, Defendant deployed meal break waivers that may diminish the
10 violation rate that may lower the daages exposure for premium wages. Based upon the data and
11 analysis, it was determined that approximately 16,598 meal break violations occurred with an
12 average hourly rate of \$15.70 estimated to be \$260,588.

13 **Rest Break Claims**

14 12. Plaintiff alleged itself, aggrieved employees and class members were not able to take
15 all entitled 10-minute duty-free rest breaks pursuant to California Labor Code sections 226.7.
16 (See Cal. Lab. Code sections 226.7.) Defendant recorded rest breaks up to June 19, 2018. Based
17 upon this analysis, it was determined that there was a 6.5% violation rate that was extrapolated
18 for the entire class period amounting to 33,001 violations amounting to \$657,419 in damages
19 when applying an average hourly rate of \$15.70.

20 **Unpaid Wages Upon Termination Claims**

21 13. Plaintiff alleged itself, aggrieved employees and class members were not compensated all
22 wages due upon termination pursuant to California Labor Code sections 203. (See Cal. Lab.
23 Code sections 203.) Defendants would owe 30 days of average daily wages (inclusive of
24 overtime) at the time of separation if employees did not receive all wages owed at the time
25 pursuant to Labor Code sec. 201-203, and if defendant's failure to pay wages was willful. It was
26 analyzed that approximately 89 employees were terminated during the class period that could
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1 potentially be entitled to wages upon termination that were subjected to meal and rest period
2 violations which amounting to \$335,352 (89 * 8 hours* 15.7 *30 days).

3 **Wage Statements Claims**

4 14. Plaintiff alleged itself, aggrieved employees and class members were not provided with
5 accurate, itemized wages statements pursuant to California Labor Code sections 226(a). (See
6 Cal. Lab. Code sections 226(a).) Labor Code section 226(a) requires that each payment of wages
7 be accompanied by a wage statement, a paystub, that contains, among other things, in other
8 words of the statute, “accurate” statement of the “gross wages earned” and “total hours worked.”
9 Given bi-weekly pay periods, and assuming that each employee experienced at least one
10 violation per pay period (during the relevant six month time period of the purported minimum
11 wage and overtime violations) each pay period during the year prior to the filing of the case. This
12 claim is derivative as Plaintiff would have to prevail on the underlying claims and establish that
13 wages are owed in order to trigger wage statement penalties under Lab. Code. Sec. 226.
14 Significantly, Lab Code sec. 226 requires that any omissions from wage statements be “knowing
15 and intentional” to trigger penalties and even if Plaintiff can establish that missing information
16 should have been included, the disputed nature of the claims will potentially be a hurdle in
17 establishing intent. It was analyzed that 2,192 pay periods were subjected to potential wage
18 statement violations based upon meal break or rest break violations that could potentially be
19 entitled to wage statement violations amounting to \$219,200.

20 **California Labor Code 2802 Violations**

21 15. Plaintiff alleged itself, aggrieved employees and class members were subjected to
22 California Labor Code section 2802 violations for failure to reimburse class members and
23 aggrieved employees when purchasing masks. (See Cal. Lab. Code section 2802.) It was
24 estimated that 44,976 (24 months * 1874 pay periods per month* \$5 per mask) pay periods were
25 subjected to potential face mask violations amounting to \$224,880.

1 **Unlawful Business Practices Claims**

2 16. Plaintiff alleged itself, aggrieved employees and class members were subjected to
3 unlawful business practices for the alleged labor code violations of Defendant. (See Cal. Bus.
4 and Prof. Code section 17200.) This claim is derivative and the purpose of this claim was to
5 extend any statute of limitations claims for the wage and hour claims and the value of this claim
6 is incorporated into the value of the wage and hour claims.

7 **Private Attorney General Act Claims**

8 17. PAGA adds penalties of at least \$100 for each aggrieved employee per pay period in
9 which a Labor Code violation exists. Despite a shorter limitations period than for the asserted
10 class claims, PAGA penalties can be significant. To be able to collect PAGA penalties, Plaintiff
11 would have to prevail on the merits of the underlying claims and weaknesses there, as elaborated
12 above, would limit recovery under PAGA. Moreover, the trial court has discretion in reducing
13 civil penalty “amount based on facts and circumstances of a particular case, to do otherwise,
14 would result in an award that is unjust, arbitrary or oppressive, or confiscatory.” Cal. Lab. Code
15 Sec. 2699(e)(2). In light of the foregoing, and even factoring in the potential advantage for
16 Plaintiff of not having to seek certification of PAGA claims, the value of this claim is not
17 expected to exceed \$400,000 75% of which would be payable to the State.

18 18. On April 18, 2022, the Parties participated in a full-day mediation with Hon. Carl J. West
19 (Ret.) whom is a premier wage and hour class action mediator. After several rounds of
20 negotiations, the parties were not able to resolve this case into the afternoon. As a result of the
21 impasse, Hon. Carl J. West (Ret.) configured a mediator’s proposal that was ultimately accepted
22 by all parties. Plaintiff made herself available for the entire duration of the mediation providing
23 necessary information in order to engage in effective negotiations.

24 19. I have been a California licensed attorney since November 2011. I began my career in
25 law while still in law school when in I served as a law clerk for the Pedersen Law & Dispute and
26 Resolution Corporation (“PLDRC”) handling employment related litigation matters. While
27 clerking for PLDRC I analyzed and organized discovery documents and researched employment
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1 litigation issues such as Sexual Harassment, Race Discrimination and Wrongful Termination. I
2 worked as an associate attorney at Pedersen McQueen between March 2013 through January
3 2017 almost exclusively engaging in employment matters representing employees. I have
4 litigated several wage and hour case to trial and currently litigating or have litigated cases valued
5 in the six and seven figure dollar range, including representative actions. I had primary
6 responsibility for approximately 20 litigation matters on average throughout my employment at
7 PLDRC and Pedersen McQueen and Pedersen Law. I regularly practiced in state court and
8 sometimes federal court. As an associate, my responsibilities included carrying primary case
9 responsibility which includes tasks like taking depositions, conducting damages analysis,
10 analyzing discovery documents, conducting client intake, developing discovery and litigation
11 strategies, participating in mediations and arbitrations, engaging in settlement negotiations, trial
12 preparation and trial work, as well as other responsibilities that commonly coincide with
13 managing cases from start to finish. I have been a member of local bar associations, including
14 the Orange County Bar Association, as well as the State Bar of California and American Bar
15 Association and served in a number of leadership roles at all levels. Most notably, I served as a
16 Committee Member of the Orange County Bar Association Young Lawyers' Education
17 Committee and Social Committee.

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19 20. In January 2017, I officially started my own practice Jackson Law, APC. Throughout my
20 career, I have currently litigated approximately 100 Private Attorney General Act cases and/or
21 class action cases to resolution byway of settlement or trial. Over the course of my career, I have
22 litigated above 150 employment cases, including wage and hour representative actions to
23 resolution byway of settlement, default or trial. Based upon my experience, I believe the benefit
24 conferred by the proposed Settlement is eminently fair and reasonable, and is in the best interests
25 of the Class Members because (1) of the monetary benefits to the Class Members and (2)
26 avoiding the risk, delay, and uncertainty of continued litigation.
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**DECLARATION OF ARMOND M. JACKSON IN SUPPORT OF FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

21. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff's Private Attorney General Act notice sent to Defendant on May 21, 2021.

22. On August 4, 2022, my office submitted a true and correct copy of the operative fully executed Stipulation for Class Action Settlement for this matter to the California Labor and Workforce Development Agency. A true and correct copy of the confirmation of the submission of the operative fully executed Stipulation for Class Action Settlement submitted to the California Labor and Workforce Development Agency is attached hereto as **Exhibit E**.

23. To date, the California Labor and Workforce Development Agency has not responded.

24. Jackson Law, APC advanced 100% of all costs for this matter.

25. Below is a list of prior wage and hour representative actions on which I have served as lead or co-counsel.

1. *Kim v. FNS, Inc.*, Los Angeles Superior Court, Case No. BC 578015

2. *Demery v. Pacific Rim Capital Alliance Corporation et al.*, San Diego Superior Court, Case No. 37-2017-00003415-CU-OE-CTL

3. *Goldbaum v. Dollarsmart et al.*, San Diego Superior Court, 30-2015-000077437-CU-WT-CLT

4. *Hernandez v. Personnel Staffing Group, LLC et al.*, Orange County Superior Court, Case No. 30-2017-00899277-CU-OE-CXC

5. *Sanchez, et al v. Pueblo Restaurant, Inc. dba Casa Torres*, Los Angeles Superior Court, Case No. BC697241

6. *Augusto v. HIOG Management Services, LLC, et al.*, San Bernardino Superior Court, Case No. CIVDS1610431

7. *Mendoza v. McNeal, Duckworth and McNeal, Inc.*, Orange County Superior Court, Case No. 30-2017-00899290-CU-OE-CXC

8. *Ortiz v. Bayside Insurance Associates, Inc. et al*, Orange County Superior Court, Case No. 30-2016-00895669-CU-OE-CXC

- 1 9. *Paramo v. Quest Nutrition LLC et al.*, Los Angeles County Superior Court, Case No.
2 BC609306
- 3 10. *Luis v. Second Street Corporation dba Huntley House Hotel*, Los Angeles County
4 Superior Court, Case No. BC691018
- 5 11. *Venegas, at al. v. Bergen Shippers Corp, et al*, Los Angeles County Superior Court,
6 Case No. BC715217
- 7 12. *Bernal v. Bristol Equity Partners LP et al*, Orange County Superior Court, Case No.
8 30-2016-00854699-CU-OE-CXC
- 9 13. *Rowe v. Rasier-CA, LLC*, Orange County Superior Court,
10 Case No. 30-2018-00989673-CU-OE-CXC
- 11 14. *Martinez v. Habit Restaurants, LLC, The et al*, Orange County Superior Court, Case
12 No. 30-2016-00840385-CU-OE-CJC
- 13 15. *Radilla v. States Logistics Services, Inc.*, Orange County Superior Court,
14 Case No. 30-2018-00978231-CU-WT-CJC
- 15 16. *Rodriguez v. Lampson Sewing Incorporated et al*, Orange County Superior Court,
16 Case No. 30-2017-00900653-CU-OE-CJC
- 17 17. *January v. Discovery Management Inc. et al*, Los Angeles Superior Court,
18 Case No. BC635918
- 19 18. *Angel Hernandez v. Merchants Landscape Services, Inc. et al.*, Los Angeles Superior
20 Court, Case No. BC674131
- 21 19. *Quezada v. Garden Fresh Restaurant Corp. et al*, Orange County Superior Court,
22 Case No. 30-2016-00840321-CU-OE-CJC
- 23 20. *Munoz v. Batten Down, Inc. et al*, Los Angeles County Superior Court, Case No.
24 BC617880
- 25 21. *Salgado v. Resort at Pelican Hill, LLC et al*, Orange County Superior Court, Case
26 No. 30-2016-00840386-CU-OE-CJC
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- 1 22. *Darmawati v. Westview Services Inc.*, Orange County Superior Court, Case No. 30-
2 2015-00795449-CU-OE-CJC
- 3 23. *Escobar v. Westcoast Textiles, Inc. et al*, Orange County Superior Court,
4 Case No. 30-2018-00979111-CU-OE-CXC
- 5 24. *Chacon v. Express Fashion Operations, LLC*, Orange County Superior Court, Case
6 No. 30-2017-00900648-CU-OE-CXC
- 7 25. *Chacon v. Express Fashion Operations, LLC*, Orange County Superior Court, Case
8 No. 8:19-cv-00564
- 9 26. *Plascencia v. RM HQ, LLC, dba Real Mex Restaurants*, Orange County Superior
10 Court, Case No. 30-2017-00926015-CU-OE-CXC
- 11 27. *Casas v. PC Hospitality et al.*, Orange County Superior Court,
12 Case No. 30-2016-00877489-CU-OE-CXC
- 13 28. *Leon v. SWH Mimi's Café, LLC*, Orange County Superior Court,
14 Case No. 30-2018-00978815-CU-OE-CXC
- 15 29. *Quintanilla v. Southwest Wine & Spirits, LLC*, Los Angeles Superior Court, Case No.
16 BC653817
- 17 30. *Fabiola Rodriguez v. Second Floor Food, Drinks and Art, LLC*, Orange County
18 Superior Court, Case No. 30-2018-00981362-CU-WT-CXC
- 19 31. *Santisteban v. Rod Fraser Enterprises, Inc. et al*, Orange County Superior Court,
20 Case No. 30-2017-00904202-CU-OE-CXC
- 21 32. *Milano v. Lev Tambor dba Distractions Lounge*, Orange County Superior Court,
22 Case No. 30-2018-00966582-CU-WT-CXC
- 23 33. *Ajin v. Lymi, Inc*, Los Angeles County Superior Court, Case No. BC696168
- 24 34. *Recinos v. Pacific American Fish Co., et al*, Los Angeles Superior Court,
25 Case No. BC710735
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35. *Valle-Valdez v. St. Jude Hospital Yorba Linda, et al*, Orange County Superior Court,
Case No. 30-2015-00795457-CU-OE-CJC

36. *Juarez v. Arakelian Enterprises, Inc., et al*, Los Angeles Superior Court,
Case No. BC710736

37. *Solarzano v. T&J Fresh Co. dba Chomp Sushi*, Orange County Superior Court,
Case No. 30-2018-00981299-CU-OE-CXC

38. *Taylor v. G.I. Trucking Company dba Estes West et al*, Los Angeles Superior Court,
Case No. BC722778

39. *Rendon v. L & L Foods Holdings, LLC, et al*, Orange County Superior Court, Case
No. 30-2018-00982745-CU-OE-CXC

40. *Magana v. Zara USA, Inc., et al*, Orange County Superior Court,
Case No. 8:18-cv-02249-AG (ADSx)

41. *Flores v. ABM Industry Groups, LLC et al*, Orange County Superior Court,
Case No. 30-2018-00971152-CU-WT-CJC

42. *Diaz v. Macy's West Stores, Inc. dba Macy's*, Central District of California,
Case No. SACV19-00303 ODW (MAAx)

43. *Aguirre v. Shelfmaster el al*, Orange County Superior Court, 30-2015-00787557-CU-
OE-CJC

44. *Goldman v. Encore Energy, Inc.*, Los Angeles County Superior Court, BC606773

45. *Munoz v. 8947 Sunset Pizza, LLC et al.*, Los Angeles Superior Court,
Case No. BC646999

46. *Gonzalez v. ADSI*

I declare under the penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on this 4th day of August 2022 in Irvine, California.

**DECLARATION OF ARMOND M. JACKSON IN SUPPORT OF FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

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/s/ Armond M. Jackson
Armond M. Jackson, Declarant

**DECLARATION OF ARMOND M. JACKSON IN SUPPORT OF FOR PRELIMINARY
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