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**SUPERIOR COURT OF STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

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

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, F RUBY PARTNERS,
LLC, a California corporation, and DOES 1-50,
inclusive,

Defendant.

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

Assigned for all purposes to:

Judge Peter Wilson

CLASS ACTION CLAIMS

COMPLAINT FOR:

- 1. CLAIM FOR FAILURE TO
PROVIDE MEAL BREAKS (IWC
WAGE ORDERS 5, SECTION 11)**
- 2. CLAIM FOR FAILURE TO
PROVIDE REST PERIODS (IWC
WAGE ORDERS 5, SECTION 12)**
- 3. CLAIM FOR FAILURE TO PAY
TIMELY WAGES UPON
TERMINATION (LAB. CODE §
203)**
- 4. CLAIM FOR FAILURE TO
PROVIDE AND MAINTAIN
ACCURATE ITEMIZED WAGE
STATEMENTS AND MAINTAIN
RECORDS (LAB. CODE § 226(a))**
- 5. CLAIM FOR FAILURE TO PAY
FOR NECESSARY EXPENSES**
- 6. UNLAWFUL BUSINESS
PRACTICES UNDER (BUS. AND
PROF. CODE, § 17200, ET SEQ.)**

[JURY DEMAND]

1 Plaintiff Celia Martinez (“Plaintiff” or “Ms. Martinez”) makes the following allegations
2 against Defendants Ruby Brothers III, Ruby Corp, MCRU, Inc., F. Ruby Partners, LLC, Ruby
3 Brothers, Ruby Brothers Too (collectively referred to throughout herein as “Defendant” or
4 “Defendants”):

5 **INTRODUCTION**

6 1. Plaintiff brings this class action on behalf of all non-exempt employees (collectively
7 referred to herein as “Class Members”) employed by Defendants that worked and, DOES 1-50
8 in California from the date four years prior to the filing of this Complaint through the date of
9 trial in this action.

10 2. Defendants violated California law by preventing Class Members and Subclass
11 Members from taking their entitled rest breaks, meal breaks, wages upon termination, and
12 waiting time penalties upon termination and for failing to reimburse for necessary business
13 expenses.

14 3. In this action, Plaintiff, on behalf of herself and all Class Members and Subclass
15 Members, premium wages for missed meal breaks, rest breaks, wages upon termination,
16 reimbursement for necessary business expenses. Statutory penalties, restitution, declaratory
17 and injunctive relief, attorneys’ fees and costs, prejudgment interest and other relief under
18 California Industrial Welfare Commission (I.W.C.) Wage Order 5-2001, 8 Cal. Code of Reg.
19 section 11050 (“Wage Order 5-2001”), California Labor Code (Labor Code”) sections 203,
20 226(a) 1-2, 5, 9, 226.3, 226.7, 512, 515, 558, 1774, 1194, 1198, 2802, 2699.5, California Code
21 of Civil Procedure section 1021.5, California Business and Professions Code sections 17200 et
22 seq. (“UCL”), and California common law.

23 4. The “Class Period” is designated as the time from four years prior to the filing of this
24 Complaint through the trial of this action based upon the allegation that the violations of the
25 Labor Code and UCL, as described more fully below, have been ongoing since at least four
26 years prior to the date of the instant Complaint in this action and are continuing.

27 5. During the Class Period, Defendants had a consistent policy and/or practice of; (1)
28 failing to provide Class Members and Subclass Members with adequate off-duty meal periods

1 at least one half hour every five hours worked; (2) failing to provide Class Members and
2 Subclass Members with adequate on-duty rest periods of ten minutes every four hours worked
3 or a majority fraction thereof; (3) willfully failing to pay compensation owed (including meal
4 and rest period compensation) in a prompt and timely manner to Plaintiff and other Class
5 Members and Subclass Members whose employment with Defendants terminated; (4) willfully
6 withholding wages owed to employees; (5) knowingly and intentionally failing to furnish
7 timely itemized statements accurately showing the total hours worked by or hourly rate paid to
8 Plaintiff, Class Members and Subclass Members; (6) failing to reimburse employees for
9 necessary business expenses including the use of personal phones.

10 6. During the Class Period, Defendants failed to reimburse Class Members and Subclass
11 Members for being required to use their cell phones for work purposes without being
12 compensated as required by Labor Code section 2802.

13 7. During the Class Period, Defendants failed to provide Class Members and Subclass
14 Members with an uninterrupted off-duty thirty (30) minute meal break for each five hours a
15 day worked as required by Labor Code sections section 226.7, Wage Order No. 5-2001.

16 8. During the Class Period, Defendants have failed to provide Class Members and
17 Subclass Members with an uninterrupted paid ten (10) minute rest break for each four (4)
18 hours or major fraction thereof worked per day as required by Labor Code section 226.7, Wage
19 Order No. 5-2001.

20 9. During the Class Period, Defendants have willfully withheld wages from current and
21 former Class Members and Subclass Members during their employment, in violation of Labor
22 Code sections 201-203.

23 10. Accordingly, Defendants violated UCL, with the violations of the California wage and
24 hour laws described above.

25 **GENERAL ALLEGATIONS**

26 **Parties and Venue.**

27 11. Plaintiff is, and at all relevant times was, a citizen and resident in the County of Orange
28 in the State of California.

1 12. Plaintiff is informed and believes and on that basis alleges that at all relevant times
2 Defendant Ruby Brothers III (hereinafter referred to as “RBIII”) is a California corporation
3 doing business in the State of California with a principal place of business located at 3198
4 Airport Loop D1, Costa Mesa, California 92626.

5 13. Plaintiff is informed and believes and on that basis alleges that at all relevant times
6 Defendant Ruby Corp. (hereinafter referred to as “RC”) is a California corporation doing
7 business in the State of California with a principal place of business located at 3198 Airport
8 Loop D1, Costa Mesa, California 92626.

9 14. Plaintiff is informed and believes and on that basis alleges that at all relevant times
10 Defendant MCRU, Inc. (hereinafter referred to as “MCRU”) is a California corporation doing
11 business in the State of California with a principal place of business located at 3198 Airport
12 Loop D1, Costa Mesa, California 92626.

13 15. Plaintiff is informed and believes and on that basis alleges that at all relevant times
14 Defendant E. Ruby Partners, LLC (hereinafter referred to as “ERP”) is a California corporation
15 doing business in the State of California with a principal place of business located at 3198
16 Airport Loop D1, Costa Mesa, California 92626.

17 16. Plaintiff is informed and believes and on that basis alleges that at all relevant times
18 Defendant Ruby Brothers (hereinafter referred to as “RB”) is a California corporation doing
19 business in the State of California with a principal place of business located at 3198 Airport
20 Loop D1, Costa Mesa, California 92626.

21 17. Plaintiff is informed and believes and on that basis alleges that at all relevant times
22 Defendant Ruby Brothers Too (hereinafter referred to as “RBT”) is a California corporation
23 doing business in the State of California with a principal place of business located at 3198
24 Airport Loop D1, Costa Mesa, California 92626.

25 18. In light of the facts that the wrongful acts of this defendants occurred and the causes
26 against them arose in Orange County, State of California, jurisdiction and venue is proper in
27 Orange County Superior Court.
28

1 **Doe Allegations.**

2 19. Plaintiff does not presently know the true names and capacities of defendants named as
3 Doe 1 through Doe 50, inclusive. Plaintiff will amend this complaint, setting forth the true
4 names and capacities of these fictitious defendants, when they are ascertained. Plaintiff is
5 informed and believes and on that basis alleges that each of the fictitious defendants have
6 participated in the acts alleged in this complaint to have been done by the named defendants.

7 **Vicarious Liability.**

8 20. Unless otherwise indicated, each defendant herein sued is the agent, co-conspirator, joint
9 venturer, partner, and/or employee of every other defendant and, as alleged, has been acting
10 within the course and scope of said agency, conspiracy, joint venture, partnership, and/or
11 employment, with the knowledge and/or consent of co-defendants, and each of them. Plaintiff is
12 informed and believes and thereon alleges that each defendant has authorized and/or ratified the
13 wrongful activities of each of the remaining defendants.

14 **Common Enterprise/Single Enterprise/Joint Employer.**

15 21. Defendants run a common enterprise exercising control and other employer
16 responsibilities over Plaintiff, Class Members, Subclass Members, and California aggrieved
17 current and aggrieved former similarly situated employees are a single enterprise and/or joint
18 employer of Plaintiff, Class Members, Subclass Members, and California aggrieved current and
19 aggrieved former similarly situated employees.

20 **COMMON ALLEGATIONS TO ALL CAUSES OF ACTION**

21 22. Plaintiff worked for Defendants as a nonexempt employee associated with working at the
22 restaurant and servicing guest at Defendants restaurants.

23 23. During Plaintiff's employment at Defendants, Plaintiff would be subjected to a high
24 volume of work duties and assignments.

25 **Defendants Failed to Reimburse for Business Expenses**

26 24. Plaintiff, Class Members and Subclass Members were regularly required to purchase face
27 masks to use for work purposes and not reimbursed for this expense incurred in order to perform
28

1 their job duties in violation of California Labor Code section 2802 and the applicable California
2 Industrial Welfare Commission wage order(s).

3 **Defendants Did Not Provide All Meal Breaks and Rest Breaks**

4 15. Typically, Plaintiff would work above 6-hour work shifts at Defendants. During these
5 work shifts, Plaintiff would be required to do many work duty tasks revolving around servicing
6 restaurant guests. During these shifts it would be very busy where they would not be authorized
7 or permitted to take all of their legally compliant entitled uninterrupted 10-minute rest breaks
8 each four hours or majority fraction thereof or a 30 minute uninterrupted meal break every five
9 hours at a reasonably practicable time during their shifts when they worked more than a six, ten
10 and twelve hour shifts. Moreover, Defendants had a policy, pattern or practice of requiring or
11 pressuring its employees to take late, short, on-premises, on-call, interrupted, or no 10-minute
12 rest breaks and/or 30-minute meal breaks at a reasonably practicable time. Defendants would
13 not compensate Plaintiff for all of their missed, short, late, on-premises or interrupted meal
14 breaks or rest periods throughout their employment nor were they paid all of premium wages for
15 the missed, short, late, on-call, on-premises or interrupted meal breaks and rest periods that
16 should have been paid.

17 16. Plaintiff is informed and on that basis believes that all other similarly situated employees
18 of Defendants were under the same circumstances and conditions of employment as them.
19 Specifically, all other similarly situated employees were not authorized or permitted to take all of
20 their legally compliant entitled uninterrupted 10-minute rest breaks each four hours or a 30-
21 minute uninterrupted meal break every five hours at a reasonably practicable time during their
22 shifts when they worked more than a six hour shifts. Moreover, Defendants had a policy, pattern
23 or practice of requiring or pressuring its employees to take late, short, on-premises, on-call,
24 interrupted or no 10-minute rest breaks or 30-minute meal breaks at a reasonably practicable
25 time. Defendants would not compensate the other employees for all of their missed, on-
26 premises, short, late or interrupted meal breaks or rest periods throughout their employment nor
27 were they paid all of her premium wages for the missed, short, on-premises, on-call, late or
28 interrupted meal breaks and rest periods that should have been paid. Defendants would not

1 compensate the other employees for all of their missed, short, on-premises, on-call, late or
2 interrupted meal breaks or rest periods throughout their employment nor were they paid all of
3 their premium wages for the missed, on-premises, short, late or interrupted meal breaks and rest
4 periods that should have been paid.

5 **Defendants Provided Inaccurate Wage Statements**

6 25. Furthermore, throughout Plaintiff's employment, her paystubs did not accurately reflect
7 her applicable total hours worked, net wages earned, gross wages earned and actual applicable
8 wage rate all in violation of California Labor Code Section 226(a), specifically sections 1-2, 4-5
9 and 9. Due to the fact that Defendants excluded the hours' worth of work that should have been
10 reflected on the paystubs for the correct gross wages, net wages, applicable hourly rate with
11 corresponding number of hours worked. Therefore, the paystubs did not accurately reflect the net
12 wages earned, gross wages earned, accurately depict deductions that should have been taken out
13 and actual applicable wage rate corresponding with the total hours worked.

14 26. Plaintiff is informed and on that basis believes that all other similarly situated employees
15 of Defendants were under the same circumstances and conditions of employment as her.
16 Specifically all other similarly situated employees were not provided with accurate itemized
17 wages statements and received paystubs that did not reflect their applicable total hours worked,
18 gross wages earned, net wages earned, and actual applicable wage rates corresponding with the
19 total hours worked by virtue of excluding hourly rate and hours worth of work on their paystubs
20 including applicable wage rates and hours for premium wage payments for meal break and rest
21 break violations.

22 **Defendants Failed to Provide Adequate Seating**

23 27. Furthermore, throughout Plaintiff, Class members and Subclass Members and Aggrieved
24 Employees employment, Defendants refused to provide adequate seating to its employees
25 although the nature of their work would have reasonably permitted the use of seats, especially
26 when working as a cashier and performing other tasks. Furthermore, there were not an adequate
27 number of suitable seats placed in reasonable proximity to Plaintiff and the work area of the
28

1 Aggrieved Employees that would have allowed the employees to use any seats if ever permitted
2 to do so. Instead, Plaintiff and other aggrieved employees were required to stand at all times.

3 26. Plaintiff is informed and on that basis believes that all other similarly situated
4 employees of Defendants were under the same circumstances and conditions of employment as
5 her. Specifically all other similarly situated employees were not provided with suitable seats
6 especially when performing cashier duties or an adequate number of suitable seats placed in
7 reasonable proximity to their work area or that would have allowed the employees to use any
8 seats if ever permitted to do so.

9 **Defendants Failed to Pay Wages Upon Termination to Class Members**

10 27. During Plaintiff's employment, Defendants had a policy where it did not pay wages that
11 should have been paid. These monies were supposed to be paid out to Plaintiff and the other
12 employees at the time the wages were earned or upon termination.

13 **CLASS ACTION ALLEGATIONS**

14 28. This action is maintainable as a representative action pursuant to California Code of Civil
15 Procedure section 382 as to violations of Wage Order 5-2001 and UCL for meal and rest break
16 violations, interest for owed wages, owed wages, waiting time penalties, failure to furnish timely,
17 itemized wage statements, and attorneys' fees and costs. Plaintiff is a representative of other
18 Class Members and Subclass Members and is acting on behalf of their interests. The similarly
19 situated employees are known to Defendants and are readily identifiable and locatable through
20 Defendants' own employment records. The Class that Plaintiff seeks to represent is defined as
21 follows:

22 The Class the Plaintiff seeks to represent is defined as follows:

23
24 All persons who were employed by Defendant as nonexempt employees, in
25 California at any time from four years prior to the date of filing of this action
through the date of trial (referred to herein as "Class Members").

26
27 The Subclass 1 that Plaintiff seek to represent is defined as follows:

28 All individuals in California whom worked as non-exempt employees for
Defendants as nonexempt employees whom were issued wage statements that

1 failed to comply with California Labor Code section 226(a) at any time from one
2 year of the date of the filing of this Complaint through the date of signed order
3 certifying the class.

4 The Subclass 2 that Plaintiff seek to represent is defined as follows:

5 All individuals in California whom worked as non-exempt employees for
6 Defendants at any time from four years of the date of the filing of this Complaint
7 through the date of signed order certifying the class that worked any shift more
8 than 5 hours but less than 6 hours and did not receive a legally compliant thirty-
9 minute uninterrupted first meal break and not paid a premium wage.

10 The Subclass 3 that Plaintiff seek to represent is defined as follows:

11 All individuals in California whom worked as non-exempt employees for
12 Defendants at any time from four years of the date of the filing of this Complaint
13 through the date of signed order certifying the class that worked any shift more
14 than 6 hours and did not receive a legally compliant thirty-minute uninterrupted
15 first meal break and not paid a premium wage.

16 The Subclass 4 that Plaintiff seek to represent is defined as follows:

17 All individuals in California whom worked as non-exempt employees for
18 Defendants at any time from four years of the date of the filing of this Complaint
19 through the date of signed order certifying the class that worked any shift more
20 than 10 hours and did not receive all legally compliant thirty-minute uninterrupted
21 second meal break and not paid a premium wage.

22 The Subclass 5 that Plaintiff seek to represent is defined as follows:

23 All individuals in California whom worked as non-exempt employees for
24 Defendants at any time from four years of the date of the filing of this Complaint
25 through the date of signed order certifying the class that worked any shift more
26 than 3 and a half hours and did not receive a legally compliant ten-minute
27 uninterrupted first rest break and not paid a premium wage.

28 The Subclass 6 that Plaintiff seek to represent is defined as follows:

All individuals in California whom worked as non-exempt employees for
Defendants at any time from four years of the date of the filing of this Complaint
through the date of signed order certifying the class that worked any shift more
than 6 hours and did not receive a legally compliant second ten-minute
uninterrupted second rest break and not paid a premium wage.

1 The Subclass 7 the Plaintiff seeks to represent is defined as follows:

2 All persons who were employed by Defendant in California as nonexempt
3 employees at any time from four years year prior to the date of filing of this action
4 through the date of signed order certifying the class and subjected to policies.
5 procedures or practices of having to purchase face masks for work purposes
6 without reimbursement.

7 The Subclass 8 the Plaintiff seeks to represent is defined as follows:

8 All persons who were employed by Defendant in California as nonexempt
9 employees at any time from three years year prior to the date of filing of this
10 action through the date of signed order certifying the class and subjected to
11 policies. procedures or practices of having to purchase face masks for work
12 purposes without reimbursement.

13 29. The individuals included within the alleged Class is over one hundred (100) and is so
14 numerous that joinder of each of them would be impracticable, and the disposition of their claims
15 in a class action, rather than in numerous individual actions, will benefits the parties, the Court,
16 and the interests of justice. The Subclass 1 through Subclass 8, shall be collectively referred to
17 herein as “Subclass”.

18 30. Among the proposed Class there is a well-defined community of interest in the questions
19 of law and/or fact involved, affecting the Class Members, These common questions include, but
20 are not limited to:

- 21 a. Whether Defendants’ failure to provide meal periods to Class Members and
22 Subclass Members violates Labor Code sections 226.7, 512 and Wage Order 5-
23 2001;
- 24 b. Whether Defendants’ failure to provide rest periods to Class Members and
25 Subclass Members violates Labor Code section 226.7 and Wage Order 5-2001;
- 26 c. Whether Defendants’ failure to provide formerly employed Class Members and
27 Subclass Members with all wages due upon separation violates Labor Code
28 sections 201-203;

- d. Whether Defendants' failure to keep accurate payroll records of daily hours worked violates Labor Code section 1174;
- e. Whether Defendants' failure to provide Class Members and Subclass Members with itemized statements of wages and hours worked violates Labor Code section 226;
- f. Whether Defendants' failure to reimburse Class Members and Subclass Members for necessary business expenses violates Labor Code section 2802;
- g. Whether Defendants' various violations of the Labor Code serve as predicate violations of the UCL.

31. Common questions of law and/or fact predominate over questions that affect only individual Class Members.

32. Plaintiff's claims are typical of those belonging to the members of the Class they seek to represent, and Plaintiff can adequately represent the Class he seeks to represent.

FIRST CAUSE OF ACTION

(Claim for Failure to Provide Meal Breaks – Lab. Code 226.7, 512 and Wage Order 5, Section 11 by Plaintiff and Class and Subclass Against All Defendants and DOES 1-50)

33. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs above and below by reference as though set forth in full in this cause of action.

34. Plaintiff brings this claim on behalf of herself, and the Class Members and Subclass.

35. Defendants were required to authorize and permit Plaintiff and Class and Subclass Members to take uninterrupted meal breaks pursuant to Industrial Welfare Commission Wage Order 5-2001 Section 11(A). Defendants failed to do so by not allowing such uninterrupted meal breaks. Plaintiff and Class Members are entitled to premium wages and civil penalties as a consequence of this failure.

36. Defendants were required to pay the Plaintiff and Class and Subclass Members employees one (1) hour of pay at their regular rate of compensation for each workday that the legally compliant meal breaks are not provided, pursuant to Industrial Welfare Commission Wage Order 5-2001 Section 11(B). It failed to do so. Plaintiff and Class and Subclass Members are entitled to civil penalties and owed wages as a consequence of this failure.

37. As a direct result of Defendants' violations alleged herein, Plaintiff and Class and Subclass Members have suffered and continues to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

38. As a result of the violations alleged herein, Plaintiff seeks all civil penalties and wages available pursuant to the Labor Code and Wage Order 5, and an award of reasonable attorney's fees and costs. The exact amount of the applicable penalties is an amount to be shown according to proof at trial.

SECOND CAUSE OF ACTION

(Claim for Failure to Provide Rest Periods – Lab. Code 226.7 and Wage Order 5, Section 12 by Plaintiff and Class and Subclass Against All Defendants and DOES 1-50)

39. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs above and below by reference as though set forth in full in this cause of action.

40. Plaintiff brings this claim on behalf of herself and the Class and Subclass Members.

41. Defendants were required to authorize and permit employees to take uninterrupted rest periods pursuant to Industrial Welfare Commission Wage Order 5-2001 Section 12(A). It failed to do so by not allowing such uninterrupted rest periods. Plaintiff and Class and Subclass Members are entitled to owed wages and civil penalties as a consequence of this failure.

42. Defendants were required to pay the employees one (1) hour of pay at their regular rate of compensation for each workday that the legally compliant rest period is not provided, pursuant to Industrial Welfare Commission Wage Order 5-2001 Section 12(B). Defendants failed to do so by not allowing such interrupted rest periods. Plaintiff is entitled to civil penalties as a consequence of this failure.

43. As a direct result of Defendants' violations alleged herein, Plaintiff and Class and Subclass Members have suffered and continues to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants' to fully perform its obligation under state law, all to their

1 respective damage in amounts according to proof at trial and within the jurisdictional limitations
2 of this Court. The exact amount of the applicable penalties is an amount to be shown according
3 to proof at trial.

4 44. As a result of the violations alleged herein, Plaintiff and Class and Subclass Members
5 seek all civil penalties and owed wages available pursuant to the Labor Code and Wage Orders
6 5, and an award of reasonable attorney's fees and costs.

7 **THIRD CAUSE OF ACTION**

8 **(Claim For Failure to Pay Wages Upon Termination in Violation of Labor Code § 203 by**
9 **Plaintiff on Behalf of Herself and Class and Subclass Against All Defendants and DOES 1-**
10 **50)**

11 45. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
12 above and below by reference as though set forth in full in this cause of action.

13 46. Pursuant to Labor Code section 203, an employer may not willfully fail to pay any wages
14 owed to an employee who is either discharged or quits.

15 47. Plaintiff brings this claim on behalf of herself and the Class and Subclass Members.

16 48. Defendants failed to pay Class Members who are no longer employed by Defendants
17 compensation due upon termination as required by California Labor Code section 201 and 202.
18 As a result, Defendants are liable to former employee Class and Subclass Members waiting time
19 penalties provided under California Labor Code section 203, plus reasonable attorney's fees and
20 costs of suit. At the time of Plaintiff's termination, Plaintiff was owed wages for Defendants'
21 failure to compensate her for wages in violation of Labor Code section 203.

22 49. Plaintiff, on behalf of itself and Class and Subclass Members, also request relief as
23 described below.

24 50. The exact amount of the applicable damages is an amount to be shown according to proof
25 at trial.

26 **FOURTH CAUSE OF ACTION**

27 **(Provide Accurate Wage Statements in Violation of Labor Code § 226(a) by Plaintiff, Class**
28 **and Subclass Against All Defendants and DOES 1-50)**

51. Plaintiff hereby incorporate all of the allegations set forth in each of the paragraphs above
and below by reference as though set forth in full in this cause of action.

1 52. Plaintiff bring this claim on behalf of themselves, and the Class Members and Subclass
2 Members.

3 53. Labor Code section 226(a) requires an employer, semimonthly or at the time of each
4 payment of wages, shall furnish to his or her employee, either as a detachable part of the check,
5 draft, or voucher paying the employee's wages, or separately if wages are paid by personal check
6 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total
7 hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-
8 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4)
9 all deductions, provided that all deductions made on written orders of the employee may be
10 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
11 which the employee is paid, (7) the name of the employee and only the last four digits of his or
12 her social security number or an employee identification number other than a social security
13 number, (8) the name and address of the legal entity that is the employer and, if the employer is a
14 farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
15 legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect
16 during the pay period and the corresponding number of hours worked at each hourly rate by the
17 employee and, beginning July 1, 2013, if the employer is a temporary services employer as
18 defined in Section 201.3, the rate of pay and the total hours worked for each temporary services
19 assignment. The applicable Wage Order provides: "Every employer shall semimonthly or at the
20 time of each payment of wages furnish each employee, either as a detachable part of the check,
21 draft, or voucher paying the employee's wages, or separately, an itemized statement in writing
22 showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid;
23 (3) the name of the employee or the employee's social security number; and (4) the name of the
24 employer, provided all deductions made on written orders of the employee may be aggregated
25 and shown as one item."

26 54. Defendants knowingly and intentionally failed to provide Plaintiff, Class and Subclass
27 Members and Subclass Members with timely and accurate wage and hour statements showing
28 gross wages earned, total hours worked, all deductions made, net wages earned, the name and

1 address of the legal entity employing them, all applicable hourly rates in effect during each pay
2 period, and the corresponding number of hours worked at each hourly rate by them and Class
3 Members and Subclass Members.

4 55. Plaintiff, Class and Subclass suffered injury as a result of Defendants knowing and
5 intentional failure to provide them with accurate the wage and hour statements required by law,
6 which injury shall exceed the jurisdictional minimums of the superior court but no less than
7 \$4,000.

8 **FIFTH CAUSE OF ACTION**

9 **(Claim For Failure to Reimburse Plaintiff for All Necessary Expenses Per Lab. Code §**
10 **2802 on Behalf of Plaintiff, Class Member and Subclass Members Against All Defendants**
11 **and DOES 1-50)**

12 56. Plaintiff hereby incorporates all of the allegations set for in each of the paragraphs
13 above and below by reference as though set forth in full in this cause of action.

14 57. Plaintiff brings this claim on behalf of herself and the Class Members and Subclass
15 Members.

16 58. Plaintiff, Class Members and Subclass Members were employees of Defendants, and
17 was not reimbursed for expenses arising in the course and scope of their employment such as the
18 purchase face masks and/or purchase boots. Employer required Plaintiff Class Members and
19 Subclass Members to purchase face masks and did not reimburse Plaintiff, Class Members and
20 Subclass Members for any of the necessary expenses related to the purchase of face masks as
21 required for completion of their employment duties for Defendants.

22 59. At all times herein mentioned Employer was subject to Labor Code § 2802 which
23 states that “an employer shall indemnify his or her employees for all necessary expenditures or
24 losses incurred by the employee indirect consequence of the discharge of his duties, or of his
25 obedience to the directions of the employer.”

26 60. As a proximate result of Employer’s policies in violation of Labor Code § 2802,
27 Plaintiff was damages in sums, which will be shown according to proof to be in excess of the
28 jurisdictional minimum of this Court.

61. Plaintiff is entitled to expenses, attorney’s fees. Interest, and costs of suit pursuant to

1 Labor Code § 2802(c) for bringing this action.

2 62. Pursuant to Labor Code § 2802(b), in any action brought for the reimbursement of
3 necessary expenditures under this section shall carry interest at the same rate as judgment in civil
4 actions. Interest shall accrue from the date on which the employee incurred the necessary
5 expenditure. Plaintiff is entitled to said interest.

6 63. Plaintiff is entitled to reimbursement for expenses including, but not limited to,
7 reimbursement for the purchase of face mask expenses when completing duties as required by
8 Employer, attorney's fees, interest, and costs of suit pursuant to Labor code § 2802 for bringing
9 this action.

10 **SIXTH CAUSE OF ACTION**

11 **(For Unlawful Business Practices-Bus. & Prof. Code § 17200 et seq.)**
12 **By Plaintiff and Class and Subclass Against All Defendants and DOES 1-50)**

13 64. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
14 above and below by reference as though set forth in full in this cause of action.

15 65. Business & Professions Code section 17200 states "As used in this chapter, unfair
16 competition shall mean and include any unlawful, unfair or fraudulent business act or practice
17 and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
18 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions
19 Code."

20 66. Through Defendants' conduct during the applicable statutory period including, but not
21 limited to, the conduct alleged herein, including that alleged on information and belief, the
22 defendants have engaged in business practices in California by practicing, employing, and
23 utilizing, the employment practices outlined in the preceding paragraphs all in violation of
24 California law and the applicable Industrial Welfare Commission Wage Order. Defendants use
25 of such practices constitutes an unfair business practice, unfair competition, and provides as
26 unfair advantage over Defendants competitors doing business in the State of California that
27 comply with their obligations to properly provide employment conditions in compliance with the
28 law and pay employees for all earned wages and compensation as required by law.

67. Defendants' violations of the California Civil Code, Labor Code and the applicable Wage Order and their scheme to lower payroll costs as alleged herein constitute unlawful business practices because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff. The acts complained of herein occurred within the last four (4) years preceding the filing of this complaint and include, but are not limited to, failure to (i) include the gross wages earned, total hours worked, net wages earned and applicable hourly rates into the employee paystubs to allow them to ascertain the hourly rate in which they could expect or should have been paid; (ii) provide proper rest breaks and meal breaks; (iii) maintain accurate records and provide and maintain accurate itemized wage statements reflecting the amount of hours worked and applicable hourly rates; (iv) pay wages upon termination (v) withholding wages properly due to employees. Plaintiff is informed and believes and on that basis alleges that, at all times herein mentioned (v) unreimbursed business expenses, Defendants engaged in the above-mentioned acts of unlawful, deceptive, and unfair business practices prohibited by California Business and Professions Code sections 17200 et seq., including those set forth in the preceding paragraph, thereby depriving Plaintiff of the minimum working condition standards and conditions due, including those under Labor Code and Wage Order.

68. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury in fact and lost money or property. Plaintiff has been deprived of the rights to accurate and itemized wage statements, wages and benefits due including those as alleged herein.

69. Pursuant to California Business & Professions Code section 17203, Plaintiff is entitled to seek restitution of all wages and other monies owed on behalf of themselves and Aggrieved Employees belonging to them, including interest thereon, which Defendants wrongfully withheld from them and retained for itself by means of its unlawful and unfair business practices.

70. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

71. Plaintiff is informed and believes, and on that basis alleges, that the illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such

1 activity into the future. Plaintiff alleges that if Defendants are not enjoined from the conduct set
2 forth in this Complaint, they will continue to fail to pay the wage and compensation required to
3 be paid and will fail to comply with other requirements of the Labor Code and Wage Order.

4 72. As a direct and proximate result of Defendants' conduct, Defendants have received and
5 will continue to receive monies that rightfully belong to members of the general public who have
6 been adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of any unpaid
7 wages and other monies or penalties associated therewith.

8 73. Plaintiff is entitled and seeks any and all available remedies including but not limited to
9 restitution and recovery of reasonable attorney's fees and costs pursuant to California Code of
10 Civil Procedure section 1021.5, Business and Professions Code section 17200 et seq., the
11 substantial benefit doctrine, and/or the common fund doctrine.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays individually and on behalf of the proposed Class, prays
14 for judgment against Defendants as follows:

15 A. Certification of Plaintiff's claims as a class action pursuant to Cal. Code of Civ. Pro.

16 Section 382, on behalf of the proposed class;

17 B. Class notice to all Class Members in California who worked for Defendants from four
18 years prior to the filing of the original Complaint through the trial of this action;

19 C. Plaintiff be appointed as the representative of the Class and Subclass;

20 D. Counsel for Plaintiff be appointed as counsel for the Class and Subclass;

21 E. The Court declare Defendants' policies and/or practices of failing to provide meal

22 periods violates California Labor Code section 226.7, and 512 and Wage Order 5-

23 2001 Section 11(A) by failing to provide the Class and Subclass Members and

24 Aggrieved Employees with meal periods of at least one-half hour in which they were

25 relieved of all duties for every five hours of work;

26 F. The Court declare Defendants' policies and/or practices of failing to provide rest

27 periods violates California Labor Code section 226.7 and Wage Order 5-2001 Section

28 12(A) by failing to provide the Class and Subclass Members and Aggrieved

1 Employees with rest periods of at least ten minutes in which they were relieved of all
2 duties for every four hours of work or major fraction thereof;

3 G. The Court declare Defendants' policies and/or practices of failing to furnish accurate
4 wage statement violates Labor Code section 226;

5 H. The Court declare Defendants' policies and/or practices of failing to keep accurate
6 payroll records of daily hours worked for Plaintiff and Class Members violates Labor
7 Code section 1174 and 1174.5;

8 I. The Court declare Defendants' policies and/or practices of failing to pay all wages
9 upon termination to Class Members, Subclass Members and Aggrieved employees
10 violates Labor Code sections 510 and 1194;

11 J. The Court declare Defendants' policies and/or practices of failing to reimburse for
12 business expenses violates Labor Code section 2802; and

13 K. The Court declare that, as to former employee Class and Subclass Members,
14 Defendants have violated California Labor Code section 201-203 for willful failure to
15 pay compensation at the time of termination of employment, resulting in unpaid
16 waiting time penalties.

17 **First Cause of Action:**

18 1. For an award of damages to Plaintiff and the Class Members pursuant to Labor
19 Code section 226.7 (c).

20 2. The exact amount of the applicable damages is an amount to be shown according to proof at
21 trial and within the jurisdictional limits of the Court.

22 3. An award to Class Representative Plaintiff, and the Class Members of reasonable
23 attorneys' fees and costs, pursuant to California Civil Procedure Code section 1021.5, California
24 226, 226.7 and/or other applicable law.

25
26 **Second Cause of Action:**

27 4. For an award of damages to Plaintiff and the Class Members pursuant to Labor
28 Code section 226.7 (c).

1 5. The exact amount of the applicable damages is an amount to be shown according to proof at
2 trial and within the jurisdictional limits of the Court.

3 6. An award to Class Representative Plaintiff, and the Class Members of reasonable
4 attorneys' fees and costs, pursuant to California Civil Procedure Code section 1021.5, California
5 226, 226.7 and/or other applicable law.

6
7 **Third Cause of Action:**

8 7. For an award for the Plaintiff and Class Members for owed wages and penalties,
9 plus interest pursuant to Labor Code section 203.

10 8. The exact amount of the applicable damages is an amount to be shown according to proof at
11 trial and within the jurisdictional limits of the Court.

12 9. For attorney's fees and costs to the extent permitted by Labor Code section 218.5 and
13 10. California Code of Civil Procedure 1021.5.

14
15 **Fourth Cause of Action:**

16 11. For an award for the Plaintiff, Class Members and Subclass Members for penalties pursuant
17 to Labor Code section 226.

18 12. For penalties to recover the greater of actual damages of fifty dollars (\$50) for the
19 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for
20 each subsequent violation pursuant to Labor Code section 226(e). The exact amount of the
21 applicable damages is an amount to be shown according to proof at trial and within the
22 jurisdictional limits of the Court.

23 13. For costs and reasonable attorney's fees pursuant to Labor Code section 226(e).

24
25 **Fifth Cause of Action:**

26 14. For general and special damages arising out of the violations of the Labor Code, including,
27 but not limited to Labor Code section 2802, such amount to be subject to proof at the time of
28 trial;

1 15. For attorney's fees Plaintiff, Class Members, Subclass Members have incurred to enforce his
2 rights pursuant to California Code of Civil Procedures sections 1021.5 and 226(g), and Labor
3 Code section 1194, subdivision (a) and other statutory bases for attorney's fees;

4 16. For prejudgment interest at the legal rate;

5 17. For costs of suit herein; and

6 18. For such other relief as the Court deems just and proper.

7
8 **Sixth Cause of Action:**

9 19. For a temporary restraining order, a preliminary injunction, and a permanent injunction
10 enjoining Defendants and its agents, servants and employees, and all persons acting under, in
11 concert with, or for Defendants from engaging in the unlawful, unfair, and fraudulent acts and
12 business practices described in Paragraphs 78 through 87 above;

13 20. For restitution, lost wages and penalties therewith;

14 21. For pre-judgment and post-judgment interest to the extent permitted by law;

15 22. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution
16 of this action pursuant to Code of Civil Procedure section 1021.5, Business and Professions Code
17 sections 17200, et seq., Labor Code section 1194 and any other applicable provision of law; and

18 23. For such other relief as the Court deems just and proper.

19
20 **As to All Causes of Action:**

21 24. For reasonable attorneys' fees and costs incurred

22 25. Interest accrued to date under the California Labor Code, including under Sections 226.7;

23 26. For such other and further relief as this Court may deem just and proper.

24
25 Dated: June 3, 2021

Jackson APC

26 By:/s/ Armond M. Jackson

Armond M. Jackson

27 Attorneys for Celia Martinez
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Dated: June 3, 2021

By: s/ Armond M. Jackson
Armond M. Jackson
Attorneys for Plaintiff Celia Martinez