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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN JOAQUIN
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11 SAUL TAMAYO DIAZ, an individual, on
12 behalf of himself and all others similarly
situated,

13 Plaintiff,

14 vs.

15 ANTONINI BROS., INC., a California
16 corporation; and DOES 1 through 100,

17 Defendants.
18

Case No.: STK-CV-UOE-2020-0000823

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

19 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

20 This Joint Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement
21 Agreement") is made and entered into by and between Plaintiff Saul Tamayo Diaz ("Plaintiff" or "Class
22 Representative"), as an individual and on behalf of all others similarly situated, and Defendant Antonini
23 Bros., Inc. ("Defendant") (collectively with Plaintiff, the "Parties").

24 **DEFINITIONS**

25 The following definitions are applicable to this Settlement Agreement. Definitions contained
26 elsewhere in this Settlement Agreement will also be effective:

27 1. "Action" means *Saul Tamayo Diaz v. Antonini Bros., Inc.*, Superior Court, County of San
28 Joaquin, Case No. STK-CV-UOE-2020-0000823.

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

2. "Attorneys' Fees and Costs" means attorneys' fees agreed upon by the Parties and approved by the Court for Class Counsel's litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court's approval of the Settlement, administering the Settlement, obtaining entry of a Judgment terminating the Action, and expenses for any experts. Class Counsel will request attorneys' fees not in excess of one-third or 33.33% of the Class Settlement Amount, which is One Hundred Twenty-Nine Thousand One Hundred Fifty-Three Dollars and Seventy-Five Cents (\$129,153.75) unless the Settlement Amount is increased pursuant to Paragraph 45 below. The Attorneys' Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel's litigation and settlement of the Action, up to Ten Thousand Dollars (\$10,000.00), subject to the Court's approval. Any costs incurred by Class Counsel that are not approved by the Court will revert to the participating Class Members. Defendant has agreed not to oppose Class Counsel's request for fees and reimbursement of costs as set forth above.

3. "Class Counsel" means STANSBURY BROWN LAW.

4. "Class List" means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator and to Class Counsel within twenty (20) days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member's full name; most recent mailing address and telephone number; Social Security number; dates of employment; the respective number of Workweeks that each Class Member worked during the Class Period; and any other relevant information needed to calculate settlement payments.

5. "Class Member(s)" or "Settlement Class" means all persons who were employed in positions as non-exempt seasonal truck drivers by Defendant at any time during the period from January 16, 2016 through December 10, 2020 and who are exempt from overtime because their hours of service are governed by the provisions of Title 13 of the California Code of Regulations regulating hours of drivers.

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1 6. “Class Period” means the period from January 16, 2016 through December 10, 2020.

2 7. “Class Representative Service Award Payment” means the amount to be paid to Plaintiff
3 in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his
4 general release of claims. Subject to the Court granting final approval of this Settlement Agreement
5 and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class
6 Representative Service Award Payment of Five Thousand Dollars (\$5,000.00).

7 8. “Class Settlement Amount” means the Class Settlement Amount of Three Hundred
8 Eighty-Seven Thousand Five Hundred Dollars (\$387,500.00), to be paid by Defendant in full
9 satisfaction of all Released Claims arising from the Action, which includes all Individual Settlement
10 Payments to Participating Class Members, employer portion of payroll federal and state taxes,
11 employer portion of FICA, FUTA, SUI, Social Security, and any other contributions as required by law,
12 Attorneys’ Fees and Costs to Class Counsel, Class Representative Service Award Payment to Plaintiff,
13 Labor and Workforce Development Agency Payment, and Settlement Administration Costs to the
14 Settlement Administrator. This Class Settlement Amount has been agreed to by Plaintiff and Defendant
15 based on the aggregation of the agreed-upon settlement value of individual claims. In no event will
16 Defendant be liable for more than the Class Settlement Amount except as otherwise explicitly set forth
17 herein. There will be no reversion of the Class Settlement Amount to Defendant.

18 9. “Court” means the San Joaquin County Superior Court or any other court taking
19 jurisdiction of the Settlement.

20 10. “Defendant” means Defendant Antonini Bros., Inc.

21 11. “Effective Date” means the latter of: (i) if no timely objections are filed, or are withdrawn
22 prior to final approval, the date upon which the Court enters an order granting final approval of the Joint
23 Stipulation of Class Action Settlement and Release; or (ii) if timely objections are filed and not
24 withdrawn, then either the final resolution of any appeals timely filed, or the expiration date of the time
25 for filing or noticing any such appeals.

26 12. “Individual Settlement Payment” means each Participating Class Member’s respective
27 share of the Net Settlement Amount. Each Participating Class Member’s share of the Net Settlement
28 Amount will be attributed to twenty percent (20%) for alleged unpaid wages (IRS W-2 reporting) and

eighty percent (80%) for alleged non-wage claims, including penalties and interest (IRS 1099 reporting).

13. "Labor and Workforce Development Agency Payment" means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency ("LWDA") in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The Parties have agreed that Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Class Settlement Amount will be allocated to the resolution of Class Members' claims arising under PAGA. Pursuant to PAGA, Seventy-Five Percent (75%) or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency and Twenty-Five Percent (25%) or Two Thousand Five Hundred and Dollars and Zero Cents (\$2,500.00) of the PAGA Settlement Amount will be included in the Net Settlement Amount.

14. "Net Settlement Amount" means the portion of the Class Settlement Amount remaining after deducting Attorneys' Fees and Costs, Class Representative Service Award Payment, Settlement Administration Costs, and Labor and Workforce Development Agency Payment. The Net Settlement Amount will be distributed to Participating Class Members. There will be no reversion of the Net Settlement Amount to Defendant.

15. "Notice of Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other documents upon which the objection is based; and (iv) a statement whether the objector intends to appear at the Fairness Hearing. Any Class Member who does not submit a timely written objection to the Settlement, or who fails to otherwise comply with the specific and technical requirements of this section, will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise. Class Members who submit Notices of Objection must make themselves available for deposition.

16. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1 17. “Parties” means Plaintiff and Defendant collectively.

2 18. “Participating Class Members” means all Class Members who do not submit timely and
3 valid Requests for Exclusion.

4 19. “Plaintiff” means Saul Tamayo Diaz.

5 20. “Preliminary Approval” means the Court order granting preliminary approval of the
6 Settlement Agreement.

7 21. “Released Class Claims” means all claims, rights, demands, liabilities, and causes of
8 action, arising from, or related to, the same set of operative facts as those set forth in the operative
9 complaint, including but not limited to: (i) all claims for minimum wage violations; (ii) all claims for meal
10 period violations; (iii) all claims for rest period violations; (iv) all claims for wage statement violations; (v)
11 all claims for waiting time penalties; (vi) all claims for unfair competition through Business and
12 Professions Code sections 17200, et seq.; and (vii) all claims for civil penalties under the Private
13 Attorneys General Act pursuant to Labor Code sections 2698, et seq. based on the preceding claims.

14 22. “Released Individual Plaintiff’s Claims” means all claims, rights, demands, liabilities, and
15 causes of action, arising from, or related to Plaintiff Saul Tamayo Diaz as against Defendant Antonini
16 Bros., Inc. up to the date of the execution of this Joint Stipulation of Settlement by Plaintiff, including a
17 California Civil Code Section 1542 waiver, and non-disparagement clause with liquidated damages of
18 One Thousand Five Hundred and No Cents (\$1,500.00).

19 23. “Released Parties” means Defendant Antonini Bros., Inc.; its past or present officers,
20 directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
21 consultants, insurers and reinsurers, and its respective successors and predecessors in interest,
22 subsidiaries, affiliates, parents and attorneys, if any.

23 24. “Request for Opt-Out/Exclusion” means a timely letter submitted by a Class Member
24 indicating a request to opt-out or be excluded from the Settlement. The Request for Opt-Out/Exclusion
25 must: (i) set forth the name, address, telephone number and last four digits of the Social Security
26 Number of the Class Member requesting opt-out/exclusion; (ii) be signed by the Class Member; (iii) be
27 returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be
28 included in the Settlement; and (v) be faxed or postmarked on or before the Response Deadline.

25. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator Requests for Opt-Out/Exclusion, or postmark Notices of Objection to the Settlement Administrator. The Response Deadline will be thirty (30) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 30th day falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

26. "Settlement Administration Costs" means the costs payable from the Class Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of approximately Six Hundred Forty-Seven (647) Class Members, the Settlement Administration Costs are currently estimated to be Fifteen Thousand Dollars (\$15,000.00).

27. “Settlement Administrator” means ILYM Group, Inc. or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

28. "Workweeks" means the number of days of employment for each Class Member during the Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek.

TERMS OF AGREEMENT

Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

29. Funding of the Class Settlement Amount. Defendant will make a deposit comprising the total Class Settlement Amount of Three Hundred Eighty-Seven Thousand Five Hundred Dollars (\$387,500.00) into a Qualified Settlement Account to be established by the Settlement Administrator.

After the Effective Date, the Class Settlement Amount will be used for: (i) Individual Settlement Payments; (ii) Individual payroll taxes and deductions as required by law; (iii) Labor and Workforce Development Agency Payment; (iv) Class Representative Service Award Payment; (v) Attorneys' Fees and Costs; and (vi) Settlement Administration Costs. Defendant will make the deposit into the Qualified Settlement Account by wire transfer within 15 days of Final Approval granted by the Court.

30. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for Attorneys' Fees and Costs of not more than thirty three percent (33%) of the total Class Settlement Amount, which is One Hundred Twenty-Nine Thousand One Hundred Fifty-Three Dollars and Seventy-Five Cents (\$129,253.75), unless the Settlement Amount is increased pursuant to Paragraph 45 below, plus the reimbursement of costs and expenses associated with Class Counsel's litigation and settlement of the Action, not to exceed Ten Thousand Dollars (\$10,000.00), both of which will be paid from the Class Settlement Amount.

31. Class Representative Service Award Payment. In exchange for a general release, and in recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendant agrees not to oppose or impede any application or motion for a Class Representative Service Award Payment of Five Thousand Dollars (\$5,000.00), to Plaintiff Saul Tamayo Diaz. The Class Representative Service Award Payment will be paid from the Class Settlement Amount and will be in addition to Plaintiff's Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes and deductions on the Class Representative Service Award Payment.

32. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Class Settlement Amount, which is currently estimated to be Fifteen Thousand Dollars (\$15,000.00). These costs, which will be paid from the Class Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice Packets, calculating and distributing the Class Settlement Amount, and providing necessary reports and declarations.

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1 33. Labor and Workforce Development Agency Payment. Subject to Court approval, the
2 Parties agree that the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) from the Class
3 Settlement Amount will be designated for satisfaction of Plaintiff's and Class Members' PAGA claims.
4 Pursuant to PAGA, Seventy-Five Percent (75%) or Seven Thousand Five Hundred Dollars and Zero
5 Cents (\$7,500.00) of this sum will be paid to the LWDA and Twenty-Five Percent (25%) or Two
6 Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) will become part of the Net Settlement
7 Amount.

8 34. Net Settlement Amount. The entire Net Settlement Amount will be distributed to
9 Participating Class Members. No portion of the Net Settlement Amount will revert or be retained by
10 Defendant.

11 35. Individual Settlement Payment Calculations. Individual Settlement Payments will be
12 calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a
13 Class Member worked during the Class Period. Specific calculations of Individual Settlement
14 Payments will be made as follows:

15 35(a) Defendant will calculate the total number of Workweeks worked by each
16 Class Member during the Class Period and the aggregate total number of
17 Workweeks worked by all Class Members during the Class Period.

18 35(b) To determine each Class Member's estimated "Individual Settlement
19 Payment," the Settlement Administrator will use the following formula: The
20 Net Settlement Amount will be divided by the aggregate total number of
21 Workweeks, resulting in the "Workweek Value." Each Class Member's
22 "Individual Settlement Payment" will be calculated by multiplying each
23 individual Class Member's total number of Workweeks by the Workweek
24 Value.

25 35(c) The Individual Settlement Payment will be reduced by any required
26 deductions for each Participating Class Members as specifically set forth
27 herein, including employer required tax withholdings or deductions and
28 employee required tax withholdings or deductions.

1 35(d) The entire Net Settlement Amount will be disbursed to all Class Members
2 who do not submit timely and valid Requests for Opt-Out/ Exclusion. If there
3 are any valid and timely Requests for Opt-Out/Exclusion, the Settlement
4 Administrator shall proportionately increase the Individual Settlement
5 Payment for each Participating Class Member according to the number of
6 Workweeks worked, so that the amount actually distributed to the Settlement
7 Class equals 100% of the Net Settlement Amount.

8 36. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
9 Participating Class Members under this Settlement, as well as any other payments made pursuant to
10 this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which
11 any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans,
12 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
13 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
14 contributions, or amounts to which any Class Members may be entitled under any benefit plans.

15 37. Administration Process. The Parties agree to cooperate in the administration of the
16 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred
17 in administration of the Settlement.

18 38. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
19 Defendant will provide the Class List to the Settlement Administrator and to Class Counsel.

20 39. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class List from
21 Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular
22 First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

23 40. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
24 Administrator will perform a search based on the National Change of Address Database for information
25 to update and correct for any known or identifiable address changes. Any Notice Packets returned to
26 the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent
27 promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
28 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is

provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing.

41. Notice Packets. All Class Members will be mailed a Notice Packet, the contents of which will be mutually approved by class counsel and Defendant's counsel. Each Notice Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective Class Member worked for Defendant during the Class Period; (v) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax Request for Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be released.

42. Disputed Information on Notice Packets. Class Members will have an opportunity to dispute the information provided in their Notice Packets. To the extent Class Members dispute their employment dates or the number of Workweeks on record, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement Administrator will decide the dispute. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the final decision as to the merits of the dispute. All disputes will be decided within ten (10) business days of the Response Deadline.

43. Defective Submissions. If a Class Member's Request for Opt-Out/Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Opt-Out/Exclusion valid. The Class Member will have until the later of (i) Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised Request for Opt-Out/Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within

1 that period, it will be deemed untimely.

2 44. Request for Opt-Out/Exclusion Procedures. Any Class Member wishing to opt-out from
3 the Settlement Agreement must sign and fax or postmark a written Request for Opt-Out/Exclusion to
4 the Settlement Administrator within the Response Deadline. In the case of Requests for Opt-
5 Out/Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive
6 means to determine whether a Request for Opt-Out/Exclusion has been timely submitted. At no time
7 will Class Counsel or anyone acting on its behalf seek to solicit or encourage Class Members to opt-
8 out or exclude themselves or others.

9 45. Proportional Increase to Net Settlement Amount. The Class Settlement Amount was
10 calculated with, and is premised on, the understanding that there are approximately Six Hundred Forty-
11 Seven (647) individuals eligible to participate in the Settlement. If the actual number of putative class
12 members as of the date of preliminary approval is larger than ten percent (10%), or more than Seven
13 Hundred Twelve (712) putative class members, Defendant shall increase the Maximum Settlement
14 Amount on a pro-rata basis equal to the increase in the number of putative class members (e.g., if the
15 number of putative class members increases by 20%, Defendant will increase the Maximum
16 Settlement Amount by 20%.)

17 46. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
18 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
19 Request for Opt-Out/Exclusion will be bound by all of its terms, including those pertaining to the
20 Released Claims, as well as any Judgment that may be entered by the Court upon granting Final
21 Approval to the Settlement.

22 47. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to void
23 and withdraw from the Settlement if, at any time prior to Final Approval, Ten Percent (10%) or more of
24 Class Members opt out of the settlement. Defendant must exercise this right of rescission in writing to
25 Class Counsel within fourteen (14) calendar days after the Response Deadline. If the option to rescind
26 is exercised, then Defendant will be solely responsible for all costs of the claims administration incurred
27 to that point.

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1 48. Objection Procedures. To object to the Settlement Agreement, a Class Member must
2 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
3 Deadline. The Notice of Objection must be signed by the Class Member and contain all information
4 required by this Settlement Agreement. The postmark will be deemed the exclusive means for
5 determining that the Notice of Objection is timely. Class Members who fail to object in the manner
6 specified above will be deemed to have waived all objections to the Settlement and will be foreclosed
7 from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Class
8 Members who postmark timely Notices of Objection will have a right to appear at the Final Approval
9 Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their
10 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
11 Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any
12 Class Members with respect to any such objections to this Settlement.

13 49. Certification Reports Regarding Individual Settlement Payment Calculations. The
14 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that
15 certifies the number of Class Members who have submitted valid Requests for Opt-Out/Exclusion,
16 objections to the Settlement, and whether any Class Member has submitted a challenge to any
17 information contained in their Notice Packet. Additionally, the Settlement Administrator will provide to
18 counsel for both Parties any updated reports regarding the administration of the Settlement Agreement
19 as needed or requested.

20 50. Distribution Timing of Individual Settlement Payments. Within 20 days of the Effective
21 Date, the Settlement Administrator will issue payments to: (i) Participating Class Members; (ii) the Labor
22 and Workforce Development Agency; (iii) Plaintiff; and (iv) Class Counsel. The Settlement
23 Administrator will also issue a payment to itself for Court-approved services performed in connection
24 with the Settlement.

25 51. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
26 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
27 more than One Hundred Eighty (180) days after mailing to a putative class member will be tendered to
28 the State of California Department of Industrial Relations Unclaimed Wages Department.

1 52. Certification of Completion. Upon completion of administration of the Settlement, the
2 Settlement Administrator will provide a written declaration under oath to certify such completion to the
3 Court and counsel for all Parties.

4 53. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
5 be allocated as follows: (i) Twenty Percent (20%) of each Individual Settlement Payment will be
6 allocated as wages for which IRS Forms W-2 will be issued; and (ii) Eighty Percent (80%) will be
7 allocated as non-wages, penalties, and interest for which IRS Forms 1099-MISC will be issued.

8 54. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
9 will be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-2,
10 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.
11 The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to
12 the appropriate government authorities.

13 55. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect
14 of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on
15 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this
16 regard.

17 56. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
18 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
19 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
20 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
21 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
22 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
23 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
24 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
25 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
26 RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
27 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
28 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF

1 ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
2 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY
3 OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED
4 ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
5 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY
6 SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
7 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
8 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
9 TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

10 57. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
11 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
12 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
13 of action or right herein released and discharged.

14 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
15 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
16 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be
17 null and void. Upon the foregoing occurring, any order or judgment entered by the Court in furtherance
18 of this Settlement Agreement will likewise be treated as void from the beginning.

19 59. Preliminary Approval Hearing. The Parties will obtain a hearing before the Court to
20 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
21 Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii) preliminary
22 approval of the proposed Settlement Agreement, (iii) setting a date for a Final Approval/Settlement
23 Fairness Hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all
24 Class Members as specified herein. In conjunction with the Preliminary Approval hearing, the Parties
25 will submit this Joint Stipulation of Settlement, which sets forth the terms of this Settlement, and will
26 include the proposed Notice Packet, which will include both the proposed Notice of Class Action
27 Settlement document, attached as Exhibit A.

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1 60. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
2 deadlines to postmark Requests for Opt-Out/Exclusion or objections to the Settlement Agreement, and
3 with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to
4 determine the Final Approval of the Settlement Agreement along with the amounts properly payable
5 for: (i) Individual Settlement Payments; (ii) Labor and Workforce Development Agency Payment; (ii)
6 Class Representative Service Award Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement
7 Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than
8 thirty (30) days after the Response Deadline. The Parties will request the Court to issue an Order to
9 include all Class Members releasing all claims for wage violations under the Fair Labor Standards Act,
10 California Labor Code, California Business and Professions Code, and all federal, state, county, and
11 local laws, regulations and wage orders against Antonini Bros., Inc. (Class Claim Release).

12 61. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the
13 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to
14 the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely
15 for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii)
16 Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under
17 court rules or as set forth in this Settlement Agreement.

18 62. Released Individual Plaintiff's Claims. Upon the Effective Date, in addition to the claims
19 being released by all Participating Class Members, Plaintiff Saul Tamayo Diaz releases and forever
20 discharges the Released Parties, to the fullest extent permitted by law, of and from any and all claims,
21 known and unknown, asserted and not asserted, which Plaintiff has or may have against the Released
22 Parties as of the date of execution of this Joint Stipulation for Settlement. Because Plaintiff releases all
23 claims against Antonini Bros, Inc., Plaintiff is informed by Class Counsel of the provisions of Section
24 1542 of California Civil Code and Plaintiff expressly waives any and all rights and benefits conferred
25 upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of
26 applicable law, which are as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
28 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR

1 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN
2 BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
3 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

4 63. Non-Disparagement. Plaintiff Saul Tamayo Diaz will not make any defamatory,
5 slanderous, libelous, or disparaging statements about Defendant Antonini Bros, Inc.; a proven violation
6 of this non-disparagement clause will result in liquidated damages in the amount of One Thousand Five
7 Hundred Dollars and Zero Cents (\$1,500.00) for each violation.

8 64. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
9 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set
10 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

11 65. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
12 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
13 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
14 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement
15 is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence,
16 and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
17 contradict the terms of this Settlement Agreement.

18 66. Amendment or Modification. No amendment, change, or modification to this Settlement
19 Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

20 67. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
21 represent they are expressly authorized by the Parties whom they represent to negotiate this
22 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
23 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
24 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
25 counsel will cooperate with each other and use their best efforts to affect the implementation of the
26 Settlement. If the Parties are unable to reach agreement on the form or content of any document
27 needed to implement the Settlement, or on any supplemental provisions that may become necessary
28 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve

1 such disagreement.

2 68. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
3 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

4 69. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will
5 be governed by and interpreted according to the laws of the State of California.

6 70. Execution and Counterparts. This Settlement Agreement is subject only to the execution
7 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
8 executed counterparts and each of them, including facsimile and scanned copies of the signature page,
9 will be deemed to be one and the same instrument provided that counsel for the Parties will exchange
10 among themselves original signed counterparts.

11 71. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
12 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at
13 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
14 account all relevant factors, present and potential. The Parties further acknowledge that they are each
15 represented by competent counsel and that they have had an opportunity to consult with their counsel
16 regarding the fairness and reasonableness of this Settlement.

17 72. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement
18 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
19 consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid
20 and enforceable.

21 73. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
22 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
23 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
24 and either party may appeal any court order that materially alters the Settlement Agreement's terms.

25 74. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate
26 to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
27 approved fully and finally, the stipulation to certification will be void. The Parties further agree that
28 certification for purposes of the Settlement is not an admission that class action certification is proper

1 under the standards applied to contested certification motions and that this Settlement Agreement will
2 not be admissible in this or any other proceeding as evidence that either (i) a class action should be
3 certified or (ii) Defendant is liable to Plaintiff or any Class Member, other than according to the
4 Settlement's terms.

5 75. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
6 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
7 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any
8 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute
9 or any other applicable laws, regulations or legal requirements; breached any contract; violated or
10 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
11 conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or
12 provisions, nor any of the negotiations connected with it, will be construed as an admission or
13 concession by Defendant of any such violations or failures to comply with any applicable law. Except
14 as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and
15 its terms and provisions will not be offered or received as evidence in any action or proceeding to
16 establish any liability or admission on the part of Defendant or to establish the existence of any condition
17 constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

18 76. No Publicity: The Parties and their counsel agree that they will not issue any press
19 releases or publish the settlement on counsels' website, brochures, or advertisement, initiate any
20 contact with the press, respond to any press inquiry, or have any communication with the press about
21 the fact, amount or terms of the Settlement except that Class Counsel may disclose this case and the
22 causes of action alleged in the operative complaint for the purpose of establishing his adequacy in other
23 class or representative action litigation.

24 77. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
25 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
26 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

27 78. Enforcement Actions. In the event that one or more of the Parties institutes any legal
28 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement

1 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
2 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs,
3 including expert witness fees incurred in connection with any enforcement actions.

4 79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
5 conditions of this Joint Stipulation of Settlement/Settlement Agreement. Accordingly, this Settlement
6 Agreement will not be construed more strictly against one party than another merely by virtue of the
7 fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because
8 of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of
9 this Settlement Agreement.

10 80. Representation By Counsel. The Parties acknowledge that they have been represented
11 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
12 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
13 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

14 81. All Terms Subject to Final Court Approval. All amounts and procedures described in this
15 Settlement Agreement herein will be subject to final Court approval.

16 82. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
17 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
18 Settlement Agreement.

19 83. Binding Agreement. The Parties warrant that they understand and have full authority to
20 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
21 enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in
22 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
23 otherwise might apply under federal or state law.

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25 [Signatures follow on next page.]
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PLAINTIFF

Dated: 12/30/2020

Saul Tamayo Diaz
Saul Tamayo Diaz

DEFENDANT ANTONINI BROS., INC.

Dated: _____

By: _____

Its: _____

APPROVED AS TO FORM:

STANSBURY BROWN LAW

Dated: 12/31/20


By: _____
Daniel J. Brown
Attorneys for Plaintiff Saul Tamayo Diaz

**KROLOFF, BELCHER, SMART, PERRY &
CHRISTOPHERSON
A PROFESSIONAL LAW CORPORATION**

Dated: _____

By: _____
Jamie M. Bossuat
Attorneys for Defendant Antonini Bros., Inc.

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PLAINTIFF

Dated: _____

Saul Tamayo Diaz

DEFENDANT ANTONINI BROS., INC.

Dated: 01-05-2021

By: _____

[Signature]
Its: President

APPROVED AS TO FORM:

STANSBURY BROWN LAW

Dated: _____

By: _____

Daniel J. Brown
Attorneys for Plaintiff Saul Tamayo Diaz

KROLOFF, BELCHER, SMART, PERRY &
CHRISTOPHERSON
A PROFESSIONAL LAW CORPORATION

Dated: 01/05/2021

By: _____

[Signature]
Jamie M. Bossuat
Attorneys for Defendant Antonini Bros., Inc.