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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

SAUL TAMAYO DIAZ, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

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

Defendants.

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

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 516);**
- (4) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226, *et seq.*);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*); and**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Saul Tamayo Diaz (hereinafter "Plaintiff"), on behalf of himself and all others
2 similarly situated, hereby brings this Second Amended Class and Representative Action
3 Complaint ("SAC") against Antonini Bros, Inc., a California corporation; and DOES 1 through
4 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:
5

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 class action for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200, *et. seq.*; Labor Code §§ 201-204, 226, 226.7, 512, 516, 558, 1182.12, 1194, 1194.2,
10 1197, and 2698 *et seq.*; and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"),
11 in addition to seeking declaratory relief and restitution. This class action is brought pursuant to
12 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations
13 of the California Labor Code because the amount in controversy exceeds this Court's
14 jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in the County of San Joaquin. Defendants own, maintain offices, transact business, have
19 an agent or agents within the County of San Joaquin, and/or otherwise are found within the
20 County of San Joaquin, and Defendants are within the jurisdiction of this Court for purposes of
21 service of process.

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is a resident of California. During the four years immediately
25 preceding the filing of the Complaint in this action and within the statute of limitations periods
26 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
27 exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
28 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
by California Labor Code §§ 201-204, 226, 226.7, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,

1 and 2698 *et seq.*; California Business and Professions Code § 17200, *et seq.* (Unfair
2 Competition), and Wage Order 9, which sets employment standards for the Transportation
3 Industry.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
6 do) business by operating an agricultural and freight hauling business, and employed Plaintiff and
7 other similarly situated non-exempt employees within San Joaquin County and the state of
8 California and, therefore, were (and are) doing business in San Joaquin County and the State of
9 California.

10 5. Plaintiff does not know the true names or capacities, whether individual, partner,
11 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
12 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
13 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
14 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
15 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
16 and proximately caused Plaintiff and the Classes (as defined below) to be subject to the unlawful
17 employment practices, wrongs, injuries, and damages complained of herein.

18 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
19 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
20 Classes.

21 7. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each and every one of
24 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
25 were acting within the course and scope of said agency and employment. Defendants, and each
26 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
27 omissions complained of herein.

28 8. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
4 members of the Classes.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Plaintiff was employed by Defendants as a “driver” on a seasonal basis from
7 approximately 2002 to approximately October 2019. The typical season Plaintiff worked began
8 in early July to the end of October. Plaintiff worked seven days a week from approximately 6:00
9 a.m. to approximately 6:00 p.m. per shift for an average of 84 hours of work per week. Plaintiff’s
10 primary duties as a driver were to transport tomatoes, almonds, pistachios, and other agricultural
11 crops from farms to processing centers and packing plants throughout the Central Valley of
12 California. At no point during Plaintiff’s employment was he required to make interstate trips,
13 and on information and believe, none of Defendants’ other drivers were required to make
14 interstate trips.

15 10. Plaintiff typically made between 4 to 5 round trips per shift between farms and
16 processing centers/packing plants. At the beginning of each shift, Plaintiff would arrive at the
17 main facility in Huron, California, go to office and tell the office manager his name and employee
18 identification number. The office manager would input Plaintiff’s information into the tablet and
19 give it to Plaintiff. Plaintiff then would walk to his designated truck, inspect it, and hook up a
20 trailer to the truck. After that, he would communicate with Defendants’ dispatcher who would tell
21 him where to go. When he completed the last trip of his shift, he would return the truck to the
22 Huron facility, fill up the truck with diesel gas, and wash the truck before returning the truck keys
23 and tablet to Defendants’ office.

24 11. During Plaintiff’s employment with Defendants, Plaintiff would clock in by
25 logging in to a computer on the truck assigned to him and log out at the end of the shift by logging
26 out of the truck computer when he arrived back at the Huron facility. However, as stated above,
27 Plaintiff was required to perform several daily tasks before he could log into his truck computer,
28 including, but not limited to, walking to the main office to receive the keys to the truck and the

1 tablet, and inspecting the truck's oil and tire pressure, then turning on the truck and booting up
2 the computer. Only after these tasks were completed, and the computer was fully booted up, could
3 Plaintiff log in to the computer and clock in. Similarly, as stated above, once Plaintiff returned
4 the truck to the Huron facility at the end of his shift, he was required to turn the truck and computer
5 off, thereby "clocking out" for the day, but to continue to work by, among other things, filling up
6 the truck with diesel gas, washing the truck, then returning the truck keys and the tablet to the
7 main office. These pre-clock-in and post-clock-out tasks took Plaintiff between approximately 20
8 to 30 minutes each day. Further, at the beginning of each season, Plaintiff was required to attend
9 a meeting, without compensation, with Defendants and their other non-exempt drivers, at which
10 all non-exempt drivers would be required to sign a waiver to agree to work seven days a week.
11 Although Defendants required Plaintiff and other non-exempt drivers to perform these pre-clock-
12 in and post-clock-out duties, Defendants only paid Plaintiff and other non-exempt drivers
13 beginning at their clock-in time after the computer in the truck booted up until they turned the
14 truck and computer off when they returned to the Huron facility, and not from the time they started
15 to work until the time they stopped working. Due to Defendants' timekeeping policies and
16 practices that fail to compensate for this off-the-clock work, Plaintiff and other non-exempt
17 drivers were not compensated for all hours worked.

18 12. Defendants have also failed to provide Plaintiff and other non-exempt drivers
19 with all statutorily-mandated meal periods due to Defendants' meal period policies/practices
20 which fail to provide legally compliant meal periods. Specifically, due to work demands, it was
21 often not possible for Plaintiff to take an off-duty meal period prior to the conclusion of the fifth
22 hour of work (or at all). Defendants also did not provide a second meal period to Plaintiff when
23 he worked shifts in excess of 10.0 hours. For example, Plaintiff was required to meet a tight
24 delivery schedule and was only permitted to take a meal period while his truck was being loaded
25 or unloaded, which often would not occur until after 5.0 hours of work for first meal periods and
26 10.0 hours of work for second meal periods. However, even when Plaintiff could take a meal
27 period when his truck was being loaded and off loaded, it was not a legally compliant off-duty
28 meal period, because he was required to stay with his truck and respond to radio calls from

1 Defendants, thereby constituting a compensable on-duty meal period. On information and belief,
2 for at least a portion of Plaintiff's employment, Defendants also failed to keep any records of the
3 start and stop time of Plaintiff's or other non-exempt drivers' meal periods. In those instances
4 that Defendants failed to provide Plaintiff with a legally compliant meal period, Defendants did
5 not pay Plaintiff the meal period premiums required by Labor Code § 226.7. Moreover, during
6 at least a portion of the putative class period, Defendants maintained no payroll code or other
7 mechanism for paying meal period premiums when Defendants failed to provide legally
8 compliant meal periods.

9 13. Defendants have also failed to authorize and permit Plaintiff to take all statutorily
10 mandated rest periods. Specifically, throughout Plaintiff's employment he was prohibited from
11 taking a paid rest period for every 4-hour period worked, or major fraction thereof, because, as
12 alleged above, the nature of Plaintiff's work prevented him from taking all rest periods to which
13 he was entitled due to him having to meet a tight delivery schedule and the requirement that he
14 stay with his truck at all times during his shift, which prevented him from having an off-duty rest
15 period. In those instances that Defendants failed to authorize and permit Plaintiff to take a legally
16 compliant rest period, Defendants did not pay Plaintiff the rest period premium required by
17 Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class
18 period, Defendants maintained no payroll code or other mechanism for paying rest period
19 premiums when Defendants failed to provide legally compliant rest periods.

20 14. As a result of Defendants' failure to pay all minimum wages, and meal and rest
21 period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate
22 wage statements to Plaintiff, and failed to pay all wages owed to Plaintiff upon his separation of
23 employment with Defendants.

24 **CLASS ACTION ALLEGATIONS**

25 15. Class Definitions: Plaintiff brings this action on behalf of himself and the
26 following Classes pursuant to Section 382 of the Code of Civil Procedure:

27 a. The Minimum Wage Class consists of all of Defendants' current and
28 former non-exempt drivers in California who were subject to Defendants' timekeeping

1 policies and practices, during the four years immediately preceding the filing of the
2 Complaint through the present.

3 b. The Meal Period Class consists of all of Defendants' current and former
4 non-exempt drivers in California who: (i) worked at least one shift in excess of 5.0 hours
5 without a 30-minute meal period beginning prior to the end of the fifth hour of work;
6 and/or (ii) worked at least one shift in excess of 10 hours without a second 30-minute meal
7 period beginning prior to the end of the tenth hour of work; and/or (ii) whose time records
8 do not indicate the start and stop time of at least one meal period, during the four years
9 immediately preceding the filing of the Complaint through the present.

10 c. The Rest Period Class consists of all of Defendants' current and former
11 non-exempt drivers in California who worked at least one shift in excess of 3.5 hours
12 during the four years immediately preceding the filing of the Complaint through the
13 present;

14 d. The Wage Statement Class consists of all members of the Minimum Wage
15 Class, Meal Period Class, and Rest Period Class who received a wage statement during
16 the one year immediately preceding the filing of the Complaint through the present.

17 e. The Waiting Time Class consists of Defendants' formerly employed
18 members of the Minimum Wage Class, Meal Period Class, and Rest Period Class who
19 separated from employment during the three years immediately preceding the filing of the
20 Complaint through the present.

21 16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
22 joinder of all members would be unfeasible and not practicable. The membership of the classes
23 and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes
24 number greater than three hundred (300) individuals as to each Class. The identity of such
25 membership is readily ascertainable via inspection of Defendants' employment records.

26 17. **Common Questions of Law and Fact Predominate/Well Defined Community**
27 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
28 situated employees, which predominate over questions affecting only individual members

1 including, without limitation to:

2 i. Whether Defendants failed to pay members of the Minimum Wage Class
3 for all hours worked as a result of Defendants' timekeeping practices;

4 ii. Whether Defendants provided legally compliant meal periods to members
5 of the Meal Period Class;

6 iii. Whether Defendants authorized and permitted legally compliant rest
7 periods to members of the Rest Period Class;

8 iv. Whether Defendants furnished legally compliant wage statements to
9 members of the Wage Statement Class pursuant to Labor Code § 226; and

10 v. Whether Defendants' policies and/or practices for the timing and amount
11 of payment of final wages to members of the Waiting Time Class at the time of separation
12 from employment were unlawful.

13 18. **Predominance of Common Questions:** Common questions of law and fact
14 predominate over questions that affect only individual members of the Classes. The common
15 questions of law set forth above are numerous and substantial and stem from Defendants' policies
16 and/or practices applicable to each individual class member, such as Defendants' timekeeping,
17 wage statement, meal and rest period, and payment of final wages policies/practices. As such,
18 the common questions predominate over individual questions concerning each individual class
19 member's showing as to his or her eligibility for recovery or as to the amount of his or her
20 damages.

21 19. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
22 Plaintiff was employed by Defendants as a non-exempt driver in California during the statute(s)
23 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged
24 herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum wages,
25 was subject to Defendants' uniform meal and rest period policies/practices, was furnished with
26 inaccurate and incomplete wage statements, and was not paid all wages owed at time of separation
27 of employment.

28 20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary

1 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
2 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
3 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
4 and-hour class actions in state and federal courts in the past and are committed to vigorously
5 prosecuting this action on behalf of the members of the Classes.

6 21. **Superiority:** The California Labor Code is broadly remedial in nature and serves
7 an important public interest in establishing minimum working conditions and standards in
8 California. These laws and labor standards protect the average working employee from
9 exploitation by employers who have the responsibility to follow the laws and who may seek to
10 take advantage of superior economic and bargaining power in setting onerous terms and
11 conditions of employment. The nature of this action and the format of laws available to Plaintiff
12 and members of the Classes make the class action format a particularly efficient and appropriate
13 procedure to redress the violations alleged herein. If each employee were required to file an
14 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
15 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
16 their vastly superior financial and legal resources. Moreover, requiring each member of the
17 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
18 employees who would be disinclined to file an action against their former and/or current employer
19 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
20 employment. Further, the prosecution of separate actions by the individual class members, even
21 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
22 with respect to the individual class members against Defendants herein; and which would
23 establish potentially incompatible standards of conduct for Defendants; and/or legal
24 determinations with respect to individual class members which would, as a practical matter, be
25 dispositive of the interest of the other class members not parties to adjudications or which would
26 substantially impair or impede the ability of the class members to protect their interests. Further,
27 the claims of the individual members of the classes are not sufficiently large to warrant vigorous
28 individual prosecution considering all of the concomitant costs and expenses attending thereto.

1 As such, the Classes identified below are maintainable under Section 382 of the Code of Civil
2 Procedure.

3 **FIRST CAUSE OF ACTION**
4 **MINIMUM WAGE VIOLATIONS**
5 **(AGAINST ALL DEFENDANTS)**

6 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 23. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
8 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
9 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
10 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
11 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
12 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
13 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
14 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
15 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
16 and Wage Order 9.

17 24. California Labor Code § 1198 makes unlawful the employment of an employee
18 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
19 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
20 those employees the balance of the unpaid wages as well as liquidated damages in an amount
21 equal to the wages due and interest thereon.

22 25. As a direct and proximate result of Defendants' unlawful conduct as alleged
23 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
24 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
25 entitled to recover economic and statutory damages and penalties and other appropriate relief as
26 a result of Defendants' violations of the California Labor Code and Wage Order 9.

27 26. Defendants' practice and uniform administration of corporate policy regarding
28 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and

1 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
2 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
3 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
4 Civil Procedure § 1021.5.

5 **SECOND CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 failed in their affirmative obligation to provide all of their hourly non-exempt employees,
11 including Plaintiff and members of the Meal Period Class, with all required meal periods in
12 accordance with the mandates of the California Labor Code and Wage Order 9, for the reasons
13 set forth in the factual allegations and class definitions sections of this Complaint.

14 29. As a result, Defendants are responsible for paying premium compensation for meal
15 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to
16 Wage Order 9, Labor Code §§ 226.7 and 512, and Civil Code §§ 3287(b) and 3289.

17 **THIRD CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 31. Wage Order 9, § 11 and California Labor Code §§ 226.7 and 516 establish the
22 right of employees to be provided with a rest period of at least ten (10) minutes for each four (4)
23 hour period worked, or major fraction thereof.

24 32. Due to their unlawful rest period policy and practice, Defendants did not authorize
25 and permit members of the Rest Period Class to take all rest periods to which they were legally
26 entitled for the reasons set forth in the factual allegations and class definitions sections of this
27 Complaint.

28 33. The foregoing violations create an entitlement to recovery by Plaintiff and

1 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
2 owing, including interest thereon, statutory penalties, and costs of suit pursuant to Wage Order 9,
3 California Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

4 **FOURTH CAUSE OF ACTION**
5 **WAGE STATEMENT VIOLATIONS**
6 **(AGAINST ALL DEFENDANTS)**

7 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
10 and the Wage Statement Class with accurate and complete itemized wage statements that
11 included, among other requirements, all minimum wages earned, and meal and rest period
12 premium wages earned, in violation of Labor Code § 226.

13 36. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
14 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
15 to, among other things, the non-payment of all their minimum wages, meal and rest period
16 premium wages, and deprived them of the information necessary to identify the discrepancies in
17 Defendants' reported data.

18 37. Defendants' failures create an entitlement to recovery by Plaintiff and members of
19 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
20 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
21 of suit according to Labor Code §§ 226 and 226.3.

22 **FIFTH CAUSE OF ACTION**
23 **WAITING TIME PENALTIES**
24 **(AGAINST ALL DEFENDANTS)**

25 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 39. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
27 an employer to pay all wages immediately at the time of termination of employment in the event
28 the employer discharges the employee or the employee provides at least 72 hours of notice of

1 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
2 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
3 employee's last date of employment.

4 40. Defendants failed to timely pay Plaintiff all of his final wages at the time of
5 termination, which include, among other things, underpaid minimum wages, and meal and rest
6 period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that
7 as a matter of uniform policy and practice, Defendants continue to fail to pay members of the
8 Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to
9 the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was
10 willful within the meaning of Labor Code § 203.

11 41. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
12 Time Class their earned wages upon separation from employment results in a continued payment
13 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
14 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
15 plus reasonable attorneys' fees and costs of suit.

16 **SIXTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **(AGAINST ALL DEFENDANTS)**

19 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 43. Defendants have engaged and continue to engage in unfair and/or unlawful
21 business practices in California in violation of California Business and Professions Code § 17200,
22 *et seq.*, by failing to pay Plaintiff and the Classes all minimum wages, and meal and rest period
23 premium wages, knowingly failing to furnish accurate and complete itemized wage statements in
24 violation of Labor Code § 226, and willfully failing to timely pay Plaintiff and members of the
25 waiting time class all final wages upon separation of employment.

26 44. Defendants' utilization of these unfair and/or unlawful business practices deprived
27 Plaintiff, and continues to deprive members of the Classes, of compensation to which they are
28 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage

1 over Defendants' competitors who have been and/or are currently employing workers and
2 attempting to do so in honest compliance with applicable wage and hour laws.

3 45. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
4 herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of
5 monies as necessary and according to proof, to restore any and all monies withheld, acquired,
6 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

7 46. The acts complained of herein occurred within the four years immediately
8 preceding the filing of the Complaint in this action.

9 47. Plaintiff was compelled to retain the services of counsel to file this court action to
10 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
11 of Defendants' current hourly non-exempt employees, and to enforce important rights affecting
12 the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
13 which he is entitled to recover under Code of Civil Procedure § 1021.5.

14 **SEVENTH CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

16 **(AGAINST ALL DEFENDANTS)**

17 48. Defendants have committed several Labor Code violations against Plaintiff,
18 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
19 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
20 employees, brings this representative action against Defendants to recover the civil penalties due
21 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
22 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
23 to \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay
24 period for the following Labor Code violations: (1) \$100.00 for each initial violation for each
25 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
26 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
27 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
28 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial

1 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
2 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
3 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
4 each initial violation and \$200 for each subsequent violation per employee per pay period for
5 those violations of the Labor Code for which no civil penalty is specifically provided, based on
6 the following Labor Code violations:

- 7 a. Failing to pay at least the minimum wage for all hours worked to Plaintiff, the
8 Minimum Wage Class, and other aggrieved employees in violation of Labor
9 Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 10 b. Failing to provide all legally required meal periods, and failure to pay meal
11 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
12 employees at the regular rate of compensation in violation of Labor Code §§
13 226.7, 512, 558, and 1198;
- 14 c. Failing to authorize and permit all legally required rest periods, and failure to
15 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
16 aggrieved employees at the regular rate of compensation in violation of Labor
17 Code §§ 226.7, 512, 558, and 1198;
- 18 d. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
19 employees with complete, accurate, itemized wage statements in violation of
20 Labor Code § 226;
- 21 e. Failing to timely pay all final wages and compensation earned by Plaintiff, the
22 Waiting Time Penalty Class, and other aggrieved employees at the time of
23 separation in violation of Labor Code §§ 201-203;
- 24 f. Failing to pay non-exempt employees all earned wages at least twice during
25 each calendar month in violation of Labor Code § 204; and
- 26 g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
27 employees in violation of Labor Code §§ 558 and 1174.

28 49. On January 15, 2020, Plaintiff notified Defendants via certified mail, and notified

1 the California Labor and Workforce Development Agency ("LWDA") via its website, of
2 Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for
3 civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the
4 California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff
5 notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements
6 for bringing a claim under the Private Attorneys General Act with respect to these violations.

7 50. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect his interests and the interests of other aggrieved employees, and to assess and collect the
9 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
10 he is entitled to receive under California Labor Code § 2699.

11 PRAYER

12 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
13 this suit is brought against Defendants, as follows:

- 14 1. For an order certifying the proposed Classes;
- 15 2. For an order appointing Plaintiff as representative of the Classes;
- 16 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 17 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
18 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
19 1197;
- 20 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
21 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 22 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
23 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 24 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code §
25 226, *et seq.*;
- 26 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
27 Labor Code § 201-203;
- 28 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the

1 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
2 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
3 *seq.*;

4 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
5 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
6 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
7 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
8 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
9 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
10 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial
11 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
12 employee per pay period; and/or (4) \$100.00 for each initial violation and \$200 for each
13 subsequent violation per employee per pay period for those violations of the Labor Code for
14 which no civil penalty is specifically provided, based on the violations of Labor Code sections in
15 Paragraph 48 (a) – (g) above.

16 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
17 § 218.6 and Civil Code §§ 3287 and 3289;

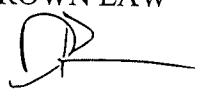
18 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
19 218.5, 221, 226, 1194, *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

20 13. For such other and further relief the Court may deem just and proper.

21
22 Dated: May 9, 2020

Respectfully submitted,
STANSBURY BROWN LAW

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24 By:



Daniel J. Brown
Attorney for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: May 9, 2020

Respectfully submitted,
STANSBURY BROWN LAW

By:



Daniel J. Brown
Attorney for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

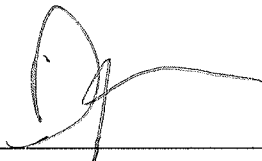
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 1/2 Abbot Kinney Blvd. Venice, CA 90212

On June 30, 2020 I served the document listed below on the parties in this action as follows:

- **PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

- X (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- ☐ (BY EMAIL) I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 20, 2020 at Venice, California.



Daniel J. Brown

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SERVICE LIST

Velma K. Lim, Esq.
KROLOFF, BELCHER, SMART,
PERRY & CHRISTOPHERSON
7540 Shoreline Drive
Stockton, CA 95219

Attorneys for Defendant Antonini Bros, Inc.