

STATE OF NEW YORK: DEPARTMENT OF LABOR  
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In the Matter of

BOB BRUNO EXCAVATING, INC.; and  
ROBERT BRUNO, as a shareholder  
of BOB BRUNO EXCAVATING, INC.;

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law  
as to whether prevailing wages and supplements were paid  
to or provided for the laborers, workers and mechanics  
employed on a public work project for the  
City of Auburn, New York.

STIPULATION AND  
DETERMINATION  
AND ORDER

Prevailing Wage Rate  
PRC No. 2013003173  
Case ID: PW07 2014000393  
Cayuga County

-----X  
In the Matter of

BOB BRUNO EXCAVATING, INC.; and  
ROBERT BRUNO, as a shareholder  
of BOB BRUNO EXCAVATING, INC.;

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law  
as to whether prevailing wages and supplements were paid  
to or provided for the laborers, workers and mechanics  
employed on a public work project for the  
City of Auburn, New York.

Prevailing Wage Rate  
PRC No. 2012003015  
Case ID: PW07 2014006930  
Cayuga County

-----X  
In the Matter of

BOB BRUNO EXCAVATING, INC.; and  
ROBERT BRUNO, as a shareholder  
of BOB BRUNO EXCAVATING, INC.;

Prime Contractor

for a determination pursuant to Article 8 of the Labor Law  
as to whether prevailing wages and supplements were paid  
to or provided for the laborers, workers and mechanics  
employed on a public work project for the  
City of Auburn, New York.

-----X  
Prevailing Wage Rate  
PRC No. 2012003014  
Case ID: PW07 2014006932  
Cayuga County

-----X  
In the Matter of

BOB BRUNO EXCAVATING, INC.; and  
ROBERT BRUNO, as a shareholder  
of BOB BRUNO EXCAVATING, INC.;

Prime Contractor

for a determination pursuant to Article 8 of the Labor Law  
as to whether prevailing wages and supplements were paid  
to or provided for the laborers, workers and mechanics  
employed on a public work project for the  
City of Auburn, New York.

Prevailing Wage Rate  
PRC No. 2010004664  
Case ID: PW07 2014006933  
Cayuga County

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WHEREAS, the New York State Department of Labor (Department), Bureau of Public Work  
("Bureau"), conducted an investigation of the four above-named public work projects performed by  
BOB BRUNO EXCAVATING, INC. and ROBERT BRUNO, individually, and as an officer and/or  
shareholder of BOB BRUNO EXCAVATING, INC., (collectively referred to herein as "BRUNO");

WHEREAS, the Department's investigation disclosed that BRUNO failed to pay or provide  
supplements to their workers employed in the performance of the seven above-named public work  
projects;

WHEREAS, the Department and BRUNO have agreed to settle the matter;

NOW, THEREFORE, it is stipulated and agreed between the Department and BRUNO,  
pursuant to Sections 220(7), 220(8), and 220(b)(2) of the New York State Labor Law, as follows:

1. That BRUNO is entitled to a hearing prior to the issuance of an Order and Determination  
by the Commissioner of Labor in the above entitled matter as to all issues set forth in the Notice of  
Hearing dated August 9, 2016.

2. That BRUNO waives its right to said hearing and judicial review thereof, and consent and  
agree that this Stipulation shall constitute an Order and Determination to be filed by the Commissioner  
of Labor that provides the following:

A. With respect to PRC No. 2013003173:

1. BRUNO agrees to make restitution of wages and supplements in the amount of \$16,045.92. This amount represents the total wages and supplements owed to the workers identified in the audit summary, PW-27 attached hereto as Exhibit 1.
2. BRUNO agrees to pay interest to said workers at a rate of ten (10) percent per annum in the amount of \$4,710.57 as set forth in Exhibit 1.
3. BRUNO agrees to pay a civil penalty in the amount of \$4,151.30, said sum constituting a twenty (20) percent civil penalty.
4. Total wages, supplements, interest and civil penalty payable by BRUNO for Project 1 is \$24,907.79.
5. BRUNO consents to the release of funds currently withheld against Prevailing Rate Case No. 2013003173 by the Department of Jurisdiction to satisfy \$9,294.75 of the underpayment, interest, and civil penalty due for this project, and agrees to execute the Notice to the Department of Jurisdiction to Transfer Payment, Part Three, attached hereto as Exhibit 1a, and return the same to the Department of Labor along with this executed stipulation on or before April 23, 2019.
6. BRUNO agrees and acknowledges that it is liable to turn over the funds held by the Department of Jurisdiction to the Department of Labor if those funds are released to BRUNO in error, to satisfy the claims of the workers herein.

B. With respect to PRC No. 2012003015:

1. BRUNO agrees to make restitution of wages and supplements in the amount of \$24,187.15. This amount represents the total wages and supplements owed to the workers identified in the audit summary, PW-27 attached hereto as Exhibit 2.
2. BRUNO agrees to pay interest to said workers at a rate of ten (10) percent per annum in the amount of \$7,682.42 as set forth in Exhibit 2.

3. BRUNO agrees to pay a civil penalty in the amount of \$6,373.91, said sum constituting a twenty (20) percent civil penalty.
4. Total wages, supplements, interest and civil penalty payable by BRUNO for Project 2 is \$38,243.48.

C. With respect to PRC No. 2012003014:

1. BRUNO agrees to make restitution of wages and supplements in the amount of \$25,319.51. This amount represents the total wages and supplements owed to the workers identified in the audit summary, PW-27 attached hereto as Exhibit 3.
2. BRUNO agrees to pay interest to said workers at a rate of ten (10) percent per annum in the amount of \$9,620.94 as set forth in Exhibit 3.
3. BRUNO agrees to pay a civil penalty in the amount of \$6,988.09, said sum constituting a twenty (20) percent civil penalty.
4. Total wages, supplements, interest and civil penalty payable by BRUNO for Project 3 is \$41,928.54.

D. With respect to PRC No. 2010004664:

1. BRUNO agrees to make restitution of wages and supplements in the amount of \$4,569.15. This amount represents the total wages and supplements owed to the workers identified in the audit summary, PW-27 attached hereto as Exhibit 4.
2. BRUNO agrees to pay interest to said workers at a rate of ten (10) percent per annum in the amount of \$1,900.42 as set forth in Exhibit 4.
3. BRUNO agrees to pay a civil penalty in the amount of \$1,293.92, said sum constituting a twenty (20) percent civil penalty.
4. Total wages, supplements, interest and civil penalty payable by BRUNO for Project 4 is \$7,763.50.

E. Total wages, supplements, interest and civil penalty payable by BRUNO for its non-compliance for the four projects is \$112,843.31.

F. BRUNO agrees to execute and return this stipulation to the New York State Department of Labor, Counsel's Office, Attention: Larissa C. Bates, State Office Campus, Building 12, Room 509, Albany, New York 12240, on or before April 23, 2019.

G. BRUNO agrees to issue a certified check in the amount of seventeen thousand two hundred fifty-eight dollars and eleven cents (\$17,258.11) made payable to the Commissioner of Labor, and mailed to the New York State Department of Labor, Attn: Larissa C. Bates -- Senior Attorney, Counsel's Office, State Office Campus, Building 12, Room 509, Albany, New York 12240, on or before May 30, 2019.

H. BRUNO agrees to remit payment for the balance of the amount due of eighty-six thousand two hundred ninety dollars and forty-five cents (\$86,290.45), which is to be paid in 5 consecutive monthly installments of \$17,258.09, due on or before June 30, 2019, July 30, 2019, August 30, 2019, September 30, 2019, and October 30, 2019. Each amount shall be paid by certified check or money order made payable to the Commissioner of Labor, and mailed to the New York State Department of Labor, Attention: Larissa C. Bates -- Senior Attorney, Counsel's Office, State Office Campus, Building 12, Room 509, Albany, New York 12240.

3. That the failure of BRUNO to pay prevailing wages and supplements on each of the above-named four projects constitutes an individual **WILLFUL** violation (**FOUR WILLFUL VIOLATIONS TOTAL**) for purposes of subdivision 3(b) of Section 220-b and subdivision 7-a of Section 220 of the Labor Law, which will result in BOB BRUNO EXCAVATING, INC. and ROBERT BRUNO being debarred from submitting bids on or being awarded any public work contracts with the State of New York, any municipal corporation, or public body for a period of five (5) years in accordance with paragraph 5 of this Stipulation and Order and Determination.

4. BRUNO further agrees and acknowledges that it knowingly participated in the

falsification of payroll records within the meaning of Section 220-b(3)(b) of the Labor Law on the above-named four projects, and as a result is ineligible to submit a bid, on or be awarded any public work contract with the state, any municipal corporation, or public body for a period of five (5) years in accordance with paragraph 5 of this Stipulation and Order and Determination.

5. That BRUNO further agrees and acknowledges that BOB BRUNO EXCAVATING, INC. and ROBERT BRUNO are debarred from submitting bids on or being awarded any public work contracts with New York State, any municipal corporation or public body for a period of five (5) years from the signing of this Stipulation and Order and Determination by the Commissioner of Labor.

6. That upon default by BRUNO of any of its obligations set forth in this Stipulation and Order and Determination, including but not limited to, the payments of all sums herein on or before the dates that such payments are to be made, the Commissioner of Labor is authorized to enter judgment against BRUNO, without further notice, in the amounts set forth herein with respect to all underpayment of wages and supplements owed for each public work project except that interest shall be recalculated to reflect sixteen percent (16%) per annum from the date of underpayment to the date of payment, and the civil penalty shall be assessed at twenty five percent (25%) of the underpayment and interest due, minus any payments already received.

7. That this document will be signed in counterparts to accommodate the parties located at various locations, and an electronic or fax signature if used will sufficiently bind the parties to this agreement.

8. The foregoing constitutes the complete and full agreement as between the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures hereto.

Dated: April 22, 2019



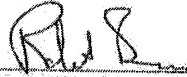
Pico Ben-Amotz, General Counsel  
By: Larissa C. Bates, Senior Attorney,  
of Counsel  
New York State Department of Labor  
State Office Building Campus  
Building 12, Room 509  
Albany, New York 12240-0005

Dated: April 22, 2019



ROBERT BRUNO, individually

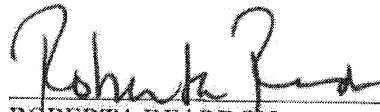
Dated: April 22, 2019



ROBERT BRUNO, as a shareholder of  
BOB BRUNO EXCAVATING, INC.

SO ORDERED AND DETERMINED:

Dated: May 28, 2019  
Albany, New York



ROBERTA REARDON  
Commissioner of Labor

# **Exhibit 1**

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NYS Department of Labor - Bureau of Public Work

Summary of Underpayments for Week Ending 10/12/2013 thru Week Ending 12/07/2013

<b>Case ID:</b> PW07 2014000393	<b>Interest Date:</b> 10/13/2016	<b>Firm:</b> Bob Bruno Excavating, Inc.
<b>PRC:</b> 2013003173	<b>Interest Rate:</b> 10.0	5 Morningside Drive
<b>Case Date:</b> 01/17/2014		Auburn NY 13021
<b>Investigator:</b> Deborah Wells	<b>FEIN:</b> 16-1414512	
<b>Case Name:</b> Counsel's Office 04/2015		

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	Wage Due	Supp Due	Sub-Total	Interest	Total Due
<b>Claimant Total</b>	2,659.20	2,314.88	4,974.08	1,460.37	6,434.45

<b>Claimant Total</b>	1,928.20	2,955.64	4,883.84	1,433.43	6,317.27
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<b>Claimant Total</b>	3,383.20	2,804.80	6,188.00	1,816.77	8,004.77
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Case Summary

	Wages Due	Supps Due	Sub-Total	Interest	Total Due
<b>Case Total:</b>	7,970.60	8,075.32	16,045.92	4,710.57	20,756.49

# **Exhibit 1a**

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Andrew M. Cuomo, Governor

Roberta Reardon, Commissioner

Date: April 17, 2019

City of Auburn  
24 South Street Auburn, NY 13021

Article 8  Article 9  
PRC # 2013003173  
CASE ID # PW07 2014000393

**NOTICE TO DEPARTMENT OF JURISDICTION TO TRANSFER PAYMENT**  
**PART ONE:**

An investigation under the provisions of the Article of the Labor Law checked above has been commenced by the Commissioner of Labor to determine whether wages and/or supplements are due and unpaid to laborers, workers, or mechanics employed on the contract identified below. The Commissioner of Labor has directed me to notify you to withhold from any payments due, or to become due to the prime contractor named below, the sum shown below to cover payments which may be due employees. This sum is to be held pending a final determination; it may include an assessment of interest at the current rate of yearly interest as prescribed by the superintendent of banking and an additional 25% for the possible imposition of a civil penalty.

**By this Notice the Department of Labor is notifying you of its intent to collect on a debt incurred by the underpayment of wages and/or supplements on a public work project.**

NAME AND ADDRESS OF PRIME CONTRACTOR AGAINST WHICH TO WITHHOLD/RELEASE Bob Bruno Excavating, Inc. Bob Bruno 5 Morningside Drive Auburn NY 13021		CONTRACTOR FEIN 16-1414512	
NAME AND ADDRESS OF SUBCONTRACTOR (IF ACTUAL EMPLOYER)		SUBCONTRACTOR FEIN	
DEPARTMENT OF JURISDICTION City of Auburn	CONTRACT NO.	LOCATION OF PROJECT City of Auburn, various streets	COUNTY Cayuga

**WITHHOLDING AND RELEASE DATA**

\$0.00	+	\$0.00	\$0.00	+	\$0.00	\$0.00
AMOUNT		<u>0.0</u> % INTEREST PER YEAR <u>0</u> YEARS	SUBTOTAL		PENALTY	TOTAL

CURRENT/ ADDITIONAL AMOUNT TO WITHHOLD on this Case ID		\$0.00
PREVIOUS AMOUNT WITHHELD on this Case ID	+	\$9,294.75
AMOUNT TO BE RELEASED (SEE PART 3 ON PAGE 2 OF NOTICE)	-	\$9,294.75
TOTAL TO BE RETAINED (SEE PART 2 ON PAGE 2 OF NOTICE)	=	\$0.00

**DEPARTMENT OF JURISDICTION**

**PLEASE COMPLETE PART TWO ON PAGE 2 AND RETURN ONE COPY OF ENTIRE DOCUMENT IN THE ENCLOSED POSTAGE PAID ENVELOPE**

**PART TWO: ACKNOWLEDGMENT FROM THE DEPARTMENT OF JURISDICTION**

Complete and return the entire document to: Department of Labor, Bureau of Public Work, Bureau of Public Work 207 Genesee Street Room 603B Utica, NY 13501

Amount currently withheld as a result of this Notice: \$ \_\_\_\_\_

Amount remaining on contract for this Prime Contractor: \$ \_\_\_\_\_

If funds other than the REQUESTED AMOUNT have been withheld, state reason(s): \_\_\_\_\_

SIGNATURE OF AUTHORIZED OFFICIAL

TITLE

DATE SIGNED

This notice is issued pursuant to the appropriate provisions of Articles 8 and 9 of the Labor Law

Labor Law Section 220-b(2) of the NYS Labor Law provides that the fiscal officer, upon receipt of a written complaint alleging underpayment of wages and/or supplements due for the labor performed on a public improvement project within two years immediately preceding the date of filing of the complaint, shall notify the financial officer of the civil division interested, to withhold from any payment account due the contractor, sufficient moneys to satisfy said underpayment, including interest at the rate provided by law plus any civil penalty that may be assessed, pending final determination.

Labor Law Section 220-(3-a)(a) of the NYS Labor Law provides that the contractor and every sub-contractor and every sub-contractor shall keep original payrolls or transcripts thereof, showing the hours, days worked, occupation, hourly wage paid and the supplements paid or provided each employee, on the work site if the contractor or sub-contractor has no regular place of business in New York State and where the amount on the contract is in excess of \$25,000. All other contractors or sub-contractors shall, upon request, within five days produce at the work site such original payrolls or transcripts deemed necessary to enforce the provisions of this article. Section 220-(3-a)(c) provides that in event of failure to provide the requested information within ten days, the fiscal officer shall within fifteen days order the department of jurisdiction to immediately withhold up to twenty-five percent of the amount, not to exceed \$100,000 to be paid under the contract.

Labor Law Section 235.(2) of the NYS Labor Law provides that the financial officer of the public agency interested may withhold from any payment due to the contractor sufficient moneys to safeguard the rights of the service employee and to cover the civil penalty that may be assessed. The money shall be held in trust pending completion of the investigation.

**PART THREE: RELEASE INSTRUCTIONS TO THE DEPARTMENT OF JURISDICTION**

Release requested amount as follows and retain balance (if applicable):

- (RE) Release the amount of \$ \_\_\_\_\_ to the contractor unless these funds are needed to satisfy additional withholdings, or cross- withholdings and or for the underpayment of wages and supplements on other cases involving this contractor.
- (TR) Prepare ONE check made payable to the COMMISSIONER OF LABOR in the amount of \$ 9,294.75.

YOU ARE AUTHORIZED TO RELEASE FUNDS TO THE DEPARTMENT OF LABOR BY THE ITEM CHECKED BELOW

- Commissioner's Final Order and Determination. Copy is attached.
- Stipulation of Agreement. Copy is attached.
- Stipulation of Assignment of money. (Prime Contractor ONLY). Contractor's authorization follows:  
You have withheld monies from the Contract indicated on the front of this form, in order to satisfy underpayment due employees. We hereby stipulate and authorize the contracting agency to prepare one check made payable to the Commissioner of Labor, for the benefit of these employees.

Send Check to: Department of Labor, Bureau of Public Work, at address checked below:  
NYS DOL Bureau of Public Work, 207 Genesee Street, Room 603B, Utica, NY 13501 (315) 793-2314

*[Handwritten Signature]*

*[Handwritten Signature]*

4/22/19

SIGNATURE OF OFFICER

TITLE

DATE SIGNED

For:

*Bob Brown*  
*Excavating Inc.*

Name of Contractor

PW07 2014000393

Case ID #

Name

Signature

Title

## **Exhibit 2**

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NYS Department of Labor - Bureau of Public Work

Summary of Underpayments for Week Ending 06/08/2013 thru Week Ending 10/05/2013

Case ID: PW072014006930 Interest Date: 10/13/2016 Firm: Bob Bruno Excavating, Inc.  
 PRC: 2012003015 Interest Rate: 10.0 5 Morningside Drive  
 Case Date: 09/25/2014 Auburn NY 13021  
 Investigator: Deborah Wolls FEIN: 16-1414512  
 Case Name: Counsel's Office 04/2015

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	Wage Due	Supp Due	Sub-Total	Interest	Total Due
<b>Claimant Total</b>	998.16	867.12	1,865.28	567.76	2,433.04

<b>Claimant Total</b>	3,390.59	5,468.02	8,858.61	2,828.37	11,686.98
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<b>Claimant Total</b>	7,479.86	5,983.40	13,463.26	4,286.29	17,749.55
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Case Summary

	Wages Due	Supps Due	Sub-Total	Interest	Total Due
<b>Case Total:</b>	11,868.61	12,318.54	24,187.15	7,682.42	31,869.57

## **Exhibit 3**

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NYS Department of Labor - Bureau of Public Work

Summary of Underpayments for Week Ending 09/29/2012 thru Week Ending 06/01/2013

<b>Case ID:</b> PW07 2014006932	<b>Interest Date:</b> 10/13/2016	<b>Firm:</b> Bob Bruno Excavating, Inc.
<b>PRC:</b> 2012003014	<b>Interest Rate:</b> 10.0	5 Morningside Drive
<b>Case Date:</b> 09/25/2014		Auburn NY 13021
<b>Investigator:</b> Deborah Wells	<b>FEIN:</b> 16-1414512	
<b>Case Name:</b> Counsel's Office 04/2015		

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	Wage Due	Supp Due	Sub-Total	Interest	Total Due
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<b>Claimant Total</b>	3,285.94	2,581.71	5,867.65	2,320.46	8,188.11
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<b>Claimant Total</b>	3,164.26	4,703.72	7,867.98	2,951.87	10,819.85
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<b>Claimant Total</b>	6,487.36	5,096.52	11,583.88	4,348.61	15,932.49
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Case Summary

	Wages Due	Supps Due	Sub-Total	Interest	Total Due
<b>Case Total:</b>	12,937.56	12,381.95	25,319.51	9,620.94	34,940.45



## **Exhibit 4**

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NYS Department of Labor - Bureau of Public Work

Summary of Underpayments for Week Ending 08/11/2012 thru Week Ending 08/25/2012

<b>Case ID:</b> PW07 2014006933	<b>Interest Date:</b> 10/13/2016	<b>Firm:</b> Bob Bruno Excavating, Inc.
<b>PRC:</b> 2010004664	<b>Interest Rate:</b> 10.0	5 Morningside Drive
<b>Case Date:</b> 09/25/2014		Auburn NY 13021
<b>Investigator:</b> Deborah Wells	<b>FEIN:</b> 16-1414512	
<b>Case Name:</b> Counsel's Office 04/2015		

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	Wage Due	Supp Due	Sub-Total	Interest	Total Due
<b>Claimant Total</b>	966.96	790.32	1,757.28	730.36	2,487.64

<b>Claimant Total</b>	492.96	929.52	1,422.48	591.27	2,013.75
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<b>Claimant Total</b>	736.00	653.40	1,389.40	578.79	1,968.19
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Case Summary

	Wages Due	Supps Due	Sub-Total	Interest	Total Due
<b>Case Total:</b>	2,195.92	2,373.24	4,569.16	1,900.42	6,469.58