

COPY

FILED
Superior Court Of California,
Sacramento

11/05/2021

tsantmlgual

By _____, Deputy

Case Number:

34-2020-00281858

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 MAYA CHEAITANI (SBN 335777)

maya@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 16530 Ventura Blvd., Suite 203

Encino, CA 91436

5 Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff,

8 ONTE BURNS-ROBINSON

(Additional Counsel on Following Page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SACRAMENTO**

12 **(UNLIMITED JURISDICTION)**

13 ONTE BURNS-ROBINSON, as an "aggrieved
14 employee" on behalf of other similarly situated
15 "aggrieved employees" under the Labor Code
Private Attorney General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 SACCANI DISTRIBUTING COMPANY, a
19 California corporation; ~~REYES HOLDINGS,~~
20 ~~LLC, a California limited liability company;~~
and DOES 1 through 50, inclusive,

21 *Defendant(s).*

Case No.: 34-2020-00281858

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§, ET SEQ.**

1.

JURY TRIAL DEMANDED

BY FAX



28
SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 203
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1
*Burns-Robinson v. Saccani Distributing Company, et
al.*

[Proposed] Second Amended Complaint

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave, Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 203
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff ONTE BURNS-ROBINSON (hereafter "Plaintiff"), on behalf of himself and
2 all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 9-2001 (hereafter the
6 "Wage Order"), against Defendants SACCANI DISTRIBUTING COMPANY, a California
7 corporation; and DOES 1-50, inclusive (collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and other similarly situated aggrieved current and former employees
10 who worked in California as hourly, non-exempt employees, including, but not limited to, truck
11 drivers and persons in similar positions, at any time during the period beginning May 1, 2019 to
12 the present (the "Aggrieved Employees"), for civil penalties, and other related relief. These claims
13 are based on Defendants' (1) failure to pay all wages earned for all hours worked at the correct
14 rates of pay; (2) failure to provide accurate written wage statements; and (3) failure to timely pay
15 wages during and upon termination of employment. Accordingly, Plaintiff now seeks to recover
16 civil penalties and related relief through this representative action.

17 **II. JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
19 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.
21 Specifically, Plaintiff asserts claims on behalf of himself, the State of California, and Aggrieved
22 Employees that solely arise under California law, rather than federal law.

23 5. There is also no basis for federal diversity jurisdiction in this case.

24 6. Venue is proper in Sacramento County pursuant to California Code of Civil
25 Procedure § 395(a) and § 395.5 in that liability arose in Sacramento County because at least some
26 of the transactions that are the subject matter of this Complaint occurred therein and/or because
27 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

28 **III. THE PARTIES**

7. Plaintiff, an individual and resident of California, began working for Defendants
as an hourly, nonexempt truck driver on or about April 22, 2019. Plaintiff continuously worked
for Defendants from that date until approximately April 27, 2020, when his employment ended.



At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

8. Defendant SACCANI DISTRIBUTING COMPANY is a corporation organized and existing under the laws of California based on Plaintiff’s information and belief.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

10. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

11. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

12. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

IV. FACTUAL ALLEGATIONS

13. On approximately April 22, 2019, Defendants first employed Plaintiff to work in California as an hourly, nonexempt truck driver in California. Defendants continuously employed Plaintiff from that date until approximately April 27, 2020, when his employment ended. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on a weekly basis. At all relevant times, Plaintiff and the Aggrieved Employees were non-exempt employees entitled to

1 the protections of both the Labor Code and Wage Order. At relevant times, Plaintiff and the
2 Aggrieved Employees worked shifts in excess of 12 hours, worked between five and seven days
3 in a workweek, and also worked over 40 hours in a workweek.

4 14. At all relevant times, Plaintiff and the Aggrieved Employees have engaged in
5 interstate commerce in that Defendants engaged them to transport goods that are shipped across
6 state lines.

7 15. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
8 to perform work while signed out from work. Defendants instructed Plaintiff and the Aggrieved
9 Employees to work no more than ten hours in a given workday. Plaintiff's supervisors would
10 leave notes in the office instructing Plaintiff and the Aggrieved Employees to complete their shifts
11 within ten hours. In fact, Defendants at all relevant times knew that the Plaintiff and the Aggrieved
12 Employees would be unable to complete within ten hours all the daily tasks the Defendants
13 assigned to them and Defendant expected Plaintiff and the Aggrieved Employees to work all
14 necessary hours without recording any above ten. If Plaintiff or the Aggrieved Employees
15 recorded more than ten hours in a workday, Defendants would verbally discipline them and
16 threaten to cut their hours. Defendants further disciplined their employees who consistently
17 recorded more than ten hours in a workday by removing them from their assigned routes, thereby
18 reducing their working hours. As described below, Plaintiff and the Aggrieved Employees
19 frequently worked in excess of the ten hours. As a result of Defendants' policy restricting Plaintiff
20 and the Aggrieved Employees to a record of a maximum of ten hours of work per day, Plaintiff
21 and the Aggrieved Employees worked approximately one to two additional hours of unrecorded
22 work time per day in order to complete their assigned workloads.

23 16. Due to the volume of work that Defendants assigned, Plaintiff and the Aggrieved
24 Employees were frequently unable to complete their daily tasks within the ten hours. Defendants'
25 management was aware of this and permitted Plaintiff and the Aggrieved Employees to work
26 while signed out from work without pay to complete their work. In order to avoid Defendants'
27 disciplinary actions, as detailed above, Plaintiff and the Aggrieved Employees would sign out
28 from work after ten hours of work and continue to work while signed out from work. Such
activities performed while signed out from work consisted primarily of unloading vehicles,
storing unsold product in Defendants' warehouse, removing and stacking pallets used to store
product, cleaning the vehicles, and performing safety checks thereon. Plaintiff and the Aggrieved



1 Employees regularly spent ten or more hours per week performing these tasks after signing out
2 from work.

3 17. At all relevant times, upon resignation or termination, Defendants failed to pay
4 unpaid wages in a timely manner. Defendants willfully failed and refused to pay timely
5 compensation and wages for, among other things, postliminary work performed while signed out
6 from work by Plaintiff and the Aggrieved Employees, as described above.

7 18. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
8 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

9 A. Not paid all wages earned, including, but not limited to, regular, overtime,
10 and double time wages for work performed while signed out from work;

11 B. Not provided with accurate and complete wage statements; and

12 C. Not timely paid all earned and unpaid wages during their employment with
13 Defendants and at the time such employment ended.

14 **FIRST (AND ONLY) CAUSE OF ACTION**

15 **CIVIL PENALTIES**

16 **(Lab. Code §§ 2698, et seq.)**

17 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

18 19. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 20. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
20 exempt employees entitled to the protections of both the Labor Code and Wage Order.

21 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

22 21. Section 2 of the Wage Order defines "hours worked" as "the time during which
23 an employees is subject to the control of an employer and includes all the time the employee is
24 suffered or permitted to work, whether or not required to do so[.]"

25 22. Section 4 of the Wage order requires an employer to pay non-exempt employees
26 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
27 an employer has actual or constructive knowledge that employees are working.

28 23. Employers must compensate non-exempt employees for "off-the-clock" work
(before punching in or after punching out on a time clock) if the employers knew or should have
known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.



1 24. In relevant part, California Labor Code § 510 states,

2 Any work in excess of eight hours in one workday and any work in excess of 40
3 hours in any one workweek and the first eight hours worked on the seventh day
4 of work in any one workweek shall be compensated at the rate of no less than one
5 and one-half times the regular rate of pay for an employee. Any work in excess of
6 12 hours in one day shall be compensated at the rate of no less than twice the
7 regular rate of pay for an employee. In addition, any work in excess of eight hours
8 on any seventh day of a workweek shall be compensated at the rate of no less than
9 twice the regular rate of pay of an employee.

10 25. Section 3 of the applicable Wage Order states:

11 (A) Daily Overtime - General Provisions

12 (1) The following overtime provisions are applicable to employees 18
13 years of age or over and to employees 16 or 17 years of age who are not
14 required by law to attend school and are not otherwise prohibited by law
15 from engaging in the subject work. Such employees shall not be employed
16 more than eight (8) hours in any workday or more than 40 hours in any
17 workweek unless the employee receives one and one-half (1 1/2) times
18 such employee's regular rate of pay for all hours worked over 40 hours in
19 the workweek. Eight (8) hours of labor constitutes a day's work.
20 Employment beyond eight (8) hours in any workday or more than six (6)
21 days in any workweek is permissible provided the employee is
22 compensated for such overtime at not less than:

23 (a) One and one-half (1 1/2) times the employee's
24 regular rate of pay for all hours worked in excess of
25 eight (8) hours up to and including 12 hours in any
26 workday, and for the first eight (8) hours worked on
27 the seventh (7th) consecutive day of work in a
28 workweek; and

 (b) Double the employee's regular rate of pay for all
 hours worked in excess of 12 hours in any workday
 and for all hours worked in excess of eight (8) hours
 on the seventh (7th) consecutive day of work in a
 workweek.

 (c) The overtime rate of compensation required to be
 paid to a nonexempt full-time salaried employee
 shall be computed by using the employee's regular
 hourly salary as one-fortieth (1/40) of the
 employee's weekly salary.

 26. California Labor Code § 510(a) and the Wage Order require employers to
compensate employees at one and one-half times their regular rates of pay for:

1 A. All hours worked in excess of eight hours in one workday;
2 B. All hours worked in excess of forty hours in one workweek; and,
3 C. The first eight hours worked on a seventh consecutive workday during a
4 workweek.

5 27. Labor Code § 1194 invalidates any agreement between an employer and an
6 employee to work for less than the minimum or overtime wage required under the applicable
7 Wage Order.

8 28. Under Labor Code § 1197, “The minimum wage for employees fixed by the
9 commission is the minimum wage to be paid to employees, and the payment of a less wage than
10 the minimum so fixed is unlawful.”

11 29. Labor Code § 1198 makes it unlawful for an employer to employ an employee
12 under conditions that violate the Wage Order.

13 30. Plaintiff is informed and believes that, at all relevant times, Defendants have
14 applied centrally devised policies and practices to him and the Aggrieved Employees with respect
15 to working conditions and compensation arrangements.

16 31. At all relevant times during the applicable limitations period, Defendants failed
17 to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of
18 pay by failing to pay them for all work performed after clocking out at the end of their shifts.

19 32. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’
21 failure to compensate the Aggrieved Employees for all hours worked, including, but not limited
22 to, regular hours at the correct rates of pay.

23 **B. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

24 33. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
25 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
26 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all
27 applicable hourly rates in effect during the pay period; and d) the corresponding number of hours
28 worked at each hourly rate by the employee.

 34. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury
if the employer fails to provide accurate and complete information as required by California

1 Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage
2 statement alone one or more of the following:

3 A. The amount of the gross wages or net wages paid to the employee during
4 the pay period or any of the other information required to be provided on the
5 itemized wage statement pursuant to California Labor Code § 226(a);

6 B. Which deductions the employer made from gross wages to determine the
7 net wages paid to the employee during the pay period;

8 C. The name and address of the employer and, if the employer is a farm labor
9 contractor, as defined in subdivision (b) of Section 1682 of the California Labor
10 Code, the name and address of the legal entity that secured the services of the
11 employer during the pay period;

12 D. The name of the employee and only the last four digits of his or her social
13 security number or an employee identification number other than a social security
14 number; and

15 E. The number of piece-rate units earned and the piece rate.

16 35. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
17 means a reasonable person would be able to readily ascertain the information without reference
18 to other documents or information.

19 36. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
20 Employees all wages owed, including, but not limited to, all regular wages owed at the correct
21 rates for work performed off-the-clock. As a result, Defendants have failed to properly and
22 accurately itemize each employee’s gross wages earned, net wages earned, the total hour worked,
23 the corresponding number of hours worked by employees, and other requirements of California
24 Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

25 37. Defendants’ failure to provide Plaintiff and the Aggrieved Employees with
26 accurate wage statements was knowing and intentional. Defendants had the ability to provide
27 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided
28 wage statements that Defendants knew were not accurate.

38. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
accurate wage statements were violated and they were misled about the amount of wages they



1 had actually earned and were owed. In addition, the absence of accurate information on their
2 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has
3 required discovery and mathematical computations to determine the amounts of wages owed, has
4 caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to
5 the submission of inaccurate information about wages to state and federal government agencies.
6 Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage
7 statements whether Defendants complied with their obligations under California Labor Code §
226(a).

8 **C. UNTIMELY WAGES DURING EMPLOYMENT**

9 39. Labor Code § 204 states

10 (a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or
11 204.2, earned by any person in any employment are due and payable twice during
12 each calendar month, on days designated in advance by the employer as the
13 regular paydays. Labor performed between the 1st and 15th days, inclusive, of
14 any calendar month shall be paid for between the 16th and 26th day of the month
during which the labor was performed, and labor performed between the 16th and
last day, inclusive, of any calendar month, shall be paid between the 1st and 10th
day of the following month. . . .

15 (b) (1) Notwithstanding any other provision of this section, all wages
16 earned for labor in excess of the normal work period shall be paid no later than
17 the payday for the next regular payroll period.

18 (2) An employer is in compliance with the requirements of subdivision (a) of
19 Section 226 relating to total hours worked by the employee, if hours worked in
20 excess of the normal work period during the current pay period are itemized as
21 corrections on the paystub for the next regular pay period. Any corrections set out
in a subsequently issued paystub shall state the inclusive dates of the pay period
for which the employer is correcting its initial report of hours worked.

22 (c) However, when employees are covered by a collective bargaining
23 agreement that provides different pay arrangements, those arrangements shall
24 apply to the covered employees.

25 (d) The requirements of this section shall be deemed satisfied by the payment
26 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
more than seven calendar days following the close of the payroll period.

27 40. Defendants paid wages to employees on weekly intervals. Defendants failed to
28 pay Plaintiff on such intervals for all wages earned and all hours worked. On information and

1 belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
2 intervals for all wages earned and all hours worked.

3 **D. UNTIMELY FINAL WAGES**

4 41. Labor Code § 201 provides that all earned and unpaid wages of an employee who
5 is discharged are due and payable immediately at the time of discharge.

6 42. Labor Code § 202 provides that all earned and unpaid wages of an employee who
7 quits after providing at least 72-hours notice before quitting are due and payable at the time of
8 quitting and that all earned and unpaid wages of an employee who quits without providing at
9 least 72-hours notice before quitting are due and payable within 72 hours.

10 43. By failing to pay Plaintiff and the Aggrieved Employees all earned wages at the
11 correct rates, Defendants failed to timely pay them all earned and unpaid wages in violation of
12 Labor Code § 201 or § 202.

13 44. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
14 and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at
15 all relevant times, Defendants have deliberately maintained policies and practices that violate the
16 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
17 had the ability to comply with those legal requirements.

18 **E. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

19 45. Labor Code § 1174 states:

20 Every person employing labor in this state shall:

21 ...

22 (c) Keep a record showing the names and addresses of all employees
23 employed and the ages of all minors.

24 (d) Keep, at a central location in the state or at the plants or
25 establishments at which employees are employed, payroll records showing
26 the hours worked daily by and the wages paid to, and the number of piece-
27 rate units earned by and any applicable piece rate paid to, employees
28 employed at the respective plants or establishments. These records shall be
kept in accordance with rules established for this purpose by the
commission, but in any case shall be kept on file for not less than three
years. An employer shall not prohibit an employee from maintaining a
personal record of hours worked, or, if paid on a piece-rate basis, piece-
rate units earned.

46. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records



required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

47. Section 7 of the Wage Order states:

- (a) Every employer shall keep accurate information with respect to each employee including the following:
1. Full name, home address, occupation, and social security number.
 2. Birth date, if under 18 years, and designation as a minor.
 3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

48. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

49. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

F. CIVIL PENALTIES SOUGHT

50. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 510, 512, 1174, 1194, 1197, and 1198.

51. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

52. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of



1 California Labor Code §§ 201, 202, 203, 204, 226, 510, 512, 1174, 1194, 1197, and 1198 during
2 the applicable limitations period in the following amounts:

3 A. For violations of California Labor Code § 204, one hundred dollars
4 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
5 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
6 (penalty amounts established by California Labor Code § 210).

7 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
8 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
9 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

10 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
11 (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars (\$100)
12 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
13 California Labor Code § 558).

14 D. For violations of California Labor Code § 1174, five hundred dollars
15 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
16 California Labor Code § 1174.5).

17 E. For violations of California Labor Code § 1197, one hundred dollars
18 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
19 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
20 (regardless of whether the initial violations were intentionally committed) (penalty amounts
21 established by California Labor Code § 1197.1).

22 F. For violations of California Labor Code §§ 201, 202, 203, 1194, and 1198,
23 one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial
24 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
25 subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

26 53. Plaintiff has complied with the procedures for bringing suit specified in California
27 Labor Code § 2699.3. By letters dated May 1, 2020 and July 8, 2020, Plaintiff gave written notice
28 by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants
of the specific provisions of the California Labor Code alleged to have been violated, including
the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter
to the LWDA dated May 1, 2020 is attached hereto as **Exhibit A**. A true and correct copy of



1 Plaintiff's letter to the LWDA dated July 8, 2020 is attached hereto as **Exhibit B**. The LWDA
2 has not responded to Plaintiff's letters.

3 54. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
4 Employees are entitled to an award of civil penalties, reasonable attorney's fees, and costs in
5 connection with their claims for civil penalties.

6 **V. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for
8 relief and judgment against Defendants as follows:

- 9 A. Civil penalties;
10 B. Costs of suit;
11 C. Reasonable attorneys' fees; and
12 D. Such other relief as the Court deems just and proper.

13 **VI. DEMAND FOR JURY TRIAL**

14 Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury
15 trial on all issues so triable.

16 Respectfully submitted,

THE SPIVAK LAW FIRM

17 November 5, 2021

18 Dated: ~~May 25, 2021~~

By: 

19 DAVID SPIVAK
20 MAYA CHEAITANI, Attorneys for
21 Plaintiff,
22 ONTE BURNS-ROBINSON, and all others
23 similarly situated
24
25
26
27
28

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

May 1, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Onte Burns-Robinson / Saccani*

To Whom It May Concern:

This notice concerns the following employers:

1. Saccani Distributing Company, a California corporation; and
2. Reyes Holdings, LLC, a California limited liability company

Collectively, the aforementioned employers are herein referred to as "Saccani."

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Onte Burns-Robinson (hereafter "Burns-Robinson") provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt, hourly employees, including, but not limited to, truck drivers and workers employed in comparable positions (hereafter "Aggrieved Employees") by Saccani of violations of Labor Code §§ 201, 202, 203, 204, 226, 1174, 1194, 1197, and 1198.

At all relevant times, Saccani has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Burns-Robinson and the Aggrieved Employees are "employees" within the meaning of Wage Order 9-2001 (hereafter "the Wage Order") § 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

Statement of Facts

On approximately April 22, 2019, Saccani first employed Burns-Robinson to work in California as a non-exempt, hourly truck driver. Burns-Robinson continuously worked for Saccani in this position until on or about April 27, 2020, when his employment ended. At all relevant times, Burns-Robinson resided in California.

At all relevant times, Saccani employed Burns-Robinson and the other Aggrieved Employees at an hourly rate of pay on a weekly basis. At all relevant times, Saccani classified Burns-Robinson and the other Aggrieved Employees as non-exempt hourly employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Saccani required Burns-Robinson and the Aggrieved Employees to perform work while clocked out. Saccani instructed Burns-Robinson and the Aggrieved Employees to work no more than ten hours in a given workday. Burns-Robinson's supervisor, Lupe (last name unknown) and manager, Steve Fishman would leave notes in the office instructing Burns-Robinson and the Aggrieved Employees to complete their shifts within ten hours. If Burns-Robinson or the Aggrieved Employees recorded more than ten hours in a workday, Saccani, through Lupe and Mr. Fishman, would verbally discipline them and threaten to cut their hours. Saccani would further discipline employees who consistently recorded more than ten hours in a workday by removing them from their assigned routes, thereby reducing their working hours.

However, due to the volume of work that Saccani assigned, Burns-Robinson and the Aggrieved Employees were frequently unable to complete their daily tasks within the ten hours allotted. Saccani management was aware of this and permitted Burns-Robinson and the Aggrieved Employees to work off the clock without pay to complete their work. In order to avoid Saccani's disciplinary actions, as detailed above, Burns-Robinson and the Aggrieved Employees would clock out after ten hours of work and continue to work while off-the-clock. Such off-the-clock work consisted primarily of unloading vehicles, storing unsold

product in Saccani's warehouse, removing and stacking palettes used to store product, cleaning the vehicles and performing safety checks thereon. Burns-Robinson and the Aggrieved Employees regularly spent ten or more hours per week performing these tasks after clocking out for work.

At all relevant times, upon resignation or termination, Saccani failed to pay unpaid wages in a timely manner. Saccani willfully failed and refused to pay timely compensation and wages for, among other things, postliminary work performed off-the-clock by Burns-Robinson and the Aggrieved Employees, as described above.

As set forth below, Burns-Robinson alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Saccani failed to pay Burns-Robinson and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and regular pay due to off-the-clock work;
- b) Saccani failed to provide Burns-Robinson and the Aggrieved Employees with accurate wage statements;
- c) Saccani failed to timely pay Burns-Robinson and the Aggrieved Employees all earned and unpaid wages during employment;
- d) Saccani failed to timely pay Burns-Robinson and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment; and
- e) Saccani willfully failed to maintain accurate employment records regarding Burns-Robinson and the Aggrieved Employees.

Accordingly, Burns-Robinson now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Saccani's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Transportation Industry" to include:

"any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles."

§ 2(P).

At all relevant times during the applicable limitations period, Burns-Robinson was employed by Saccani as a truck driver tasked with conveying property from one place to another. Accordingly, Burns-Robinson and the Aggrieved Employees are entitled to the protections afforded by the Wage Order.

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 1194, 1197, and 1198)

Under California Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Saccani knowingly failed to pay Burns-Robinson and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all wages for the work they performed after clocking out at the end of their shifts. Accordingly, Burns-Robinson seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each

subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and

3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed (penalties set by California Labor Code § 1197.1).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;
- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;

- 8) The name and address of the legal entity that is the employer; and
- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Saccani violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Saccani failed to state in the wage statements it issued to Burns-Robinson and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, all wages for work they performed off-the-clock.

Accordingly, Burns-Robinson now seeks civil penalties for the Labor Code violations that Saccani has committed against him and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Saccani's failure to pay Burns-Robinson and the Aggrieved Employees wages for off-the-clock work within the time periods set by California Labor Code § 204, Saccani failed to timely pay all wages due during employment. Accordingly, Burns-Robinson seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an

action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Saccani failed to provide Burns-Robinson and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, all wages they earned for work they performed off-the-clock. As a result, Saccani failed to pay Burns-Robinson and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Saccani has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Burns-Robinson seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees

employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 5 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Saccani has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, records pertaining to all unpaid hours worked by Burns-Robinson and the Aggrieved Employees. Accordingly, Burns-Robinson seeks civil penalties from Saccani on behalf of himself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

/

/

/

/

/

/

/

/

/

/

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Onte Burns-Robinson
 Walter Haines, Esq.

Saccani Distributing Company
c/o Jennifer Randlett Madden, Esq.

jmadden@delfinomadden.com

Delfino Madden O'Malley Coyle & Koewler, LLP
500 Capitol Mall Suite 1550
Sacramento, CA 95814

Reyes Holdings, LLC
c/o Agent for Service of Process
Ricardo E. Reyes
2181 Avenida Del Mexico #5
San Diego, California 92154

EXHIBIT B



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

July 8, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Onte Burns-Robinson/Saccani*

To whom it may concern:

This is a supplemental notice of Labor Code violations regarding the matter of *Onte-Burns-Robinson/Saccani*. The original notice dated May 1, 2020 is enclosed herewith. This notice concerns the following employers:

1. Saccani Distributing Company, a California corporation; and
2. Reyes Holdings, LLC, a California limited liability company

Collectively, the aforementioned employers are herein referred to as “Saccani.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Onte Burns-Robinson (hereafter “Burns-Robinson”) provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt, hourly employees, including, but not limited to, truck drivers and workers employed in comparable positions (hereafter the “Aggrieved Employees”) by Saccani of violations of California Labor Code §§ 510, 512, and 558.

At all relevant times, Saccani has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Burns-Robinson and the Aggrieved Employees are “employees” within the meaning of Wage Order 9-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to perform work while clocked out. Defendants instructed Plaintiff and the Aggrieved Employees to work no more than ten hours in a given workday. Plaintiff’s supervisors would leave notes in the office instructing Plaintiff and the Aggrieved Employees to complete their shifts within ten hours. If Plaintiff or the Aggrieved Employees recorded more than ten hours in a workday, Defendants would verbally discipline them and threaten to cut their hours. Defendants further disciplined their employees who consistently recorded more than ten hours in a workday by removing them from their assigned routes, thereby reducing their working hours. Plaintiff and the Aggrieved Employees frequently worked in excess of the ten hours allotted by Defendants. As a result of Defendants’ policy restricting Plaintiff and the Aggrieved Employees to a maximum of ten hours of work per day, Plaintiff and the Aggrieved Employees worked approximately one to two additional hours off-the-clock per day in order to complete their assigned workloads.

Due to the volume of work that Defendants assigned, Plaintiff and the Aggrieved Employees were frequently unable to complete their daily tasks within the ten hours allotted. Defendants’ management was aware of this and permitted Plaintiff and the Aggrieved Employees to work off-the-clock without pay to complete their work. In order to avoid Defendants’ disciplinary actions, as detailed above, Plaintiff and the Aggrieved Employees would clock out after ten hours of work and continue to work while off-the-clock. Such off-the-clock work consisted primarily of unloading vehicles, storing unsold product in Defendants’ warehouse, removing and stacking palettes used to store product, cleaning the vehicles, and performing safety checks thereon. Plaintiff and the

Aggrieved Employees regularly spent ten or more hours per week performing these tasks after clocking out for work.

Accordingly, Saccani failed to pay Burns-Robinson and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, overtime and double time wages for work performed off-the-clock.

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours.

Morillion v. Royal Packing Co. (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Saccani knowingly failed to pay Burns-Robinson and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular, overtime, and double time wages for the work they performed after clocking out at the end of their shifts. Accordingly, Burns-Robinson seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;
- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; and
- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Saccani violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Saccani failed to state in the wage statements it issued to Burns-Robinson and the other Aggrieved

Employees all their hours worked and wages earned, including, but not limited to, all regular, overtime, and double time wages for work they performed off-the-clock.

Accordingly, Burns-Robinson now seeks civil penalties for the Labor Code violations that Saccani has committed against him and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Saccani's failure to pay Burns-Robinson and the Aggrieved Employees all regular, overtime, and double time wages for work performed off-the-clock within the time periods set by California Labor Code § 204, Saccani failed to timely pay all wages due during employment. Accordingly, Burns-Robinson seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and

- (2) \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Saccani failed to provide Burns-Robinson and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, all regular, overtime, and double time wages they earned for work they performed off-the-clock. As a result, Saccani failed to pay Burns-Robinson and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Saccani has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Burns-Robinson seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 5 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Saccani has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, records pertaining to all unpaid regular, overtime, and double time wages for hours worked by Burns-Robinson and the Aggrieved Employees while off-the-clock. Accordingly, Burns-Robinson seeks civil penalties from Saccani on behalf of himself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Saccani Distributing Company
c/o Jennifer Randlett Madden, Esq.
jmadden@delfinomadden.com
Delfino Madden O'Malley Coyle & Koewler, LLP
500 Capitol Mall Suite 1550
Sacramento, CA 95814

Reyes Holdings, LLC
c/o Agent for Service of Process
Ricardo E. Reyes
2181 Avenida Del Mexico #5
San Diego, California 92154

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 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 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Friday, November 05, 2021, I served the foregoing document described
11 as **PLAINTIFF'S [PROPOSED] SECOND AMENDED COMPLAINT FOR VIOLATIONS OF THE LABOR**
12 **CODE AND CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF**
13 **2004, LABOR CODE §§, ET SEQ.** interested parties by placing a true and correct
copy thereof enclosed in a sealed envelope, with postage fully prepaid,
addressed as follows:

14 **Monica H. Folsom, Esq.**
15 **Delfino Madden O'Malley Coyle & Koewler, LLP**
16 **500 Capitol Mall Suite, 1550**
Sacramento, CA 95814
mfolsom@delfinomadden.com

17 ____ (BY MAIL) I caused such an envelope to be mailed by placing it for
18 collection and mailing, in the course of ordinary business practice, with
other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203,
Encino, California 91436.

19 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
20 electronic service addresses listed above from my electronic service address
jessica@spivaklaw.com.

21 EXECUTED on Friday, November 05, 2021, at Los Angeles, California.

22 XXXX (State) I declare under penalty of perjury under the laws of the State
23 of California that the above is true and correct.

24 ____ (Federal) I declare that I am employed in the office of a member of the
25 bar of this court at whose direction the service was made.

26 
27 JESSICA BENCOMO
28