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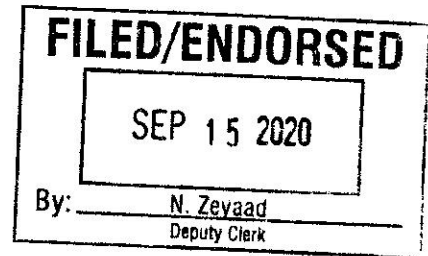
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ONTE BURNS-ROBINSON

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO
(UNLIMITED JURISDICTION)

ONTE BURNS-ROBINSON, on behalf of
himself and all others similarly situated, and as
an "aggrieved employee" on behalf of other
similarly situated "aggrieved employees" under
the Labor Code Private Attorney General Act
of 2004,

Plaintiff(s),

vs.

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

Defendant(s).

Case No.: 34-2020-00281858

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages for All Hours
Worked at the Correct Rates of Pay (Lab.
Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Accurate Written Wage
Statements (Lab. Code § 226);
3. Waiting Time Penalties (Lab. Code §§
201-203);
4. Unfair Competition (Bus. & Prof. Code
§§ 17200, *et seq.*); and
5. Civil Penalties (Lab. Code §§ 2698, *et*
seq.)

JURY TRIAL DEMANDED



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

First Amended Complaint

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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 class and representative action based on alleged violations of
5 the 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
10 employees who worked in California as hourly, non-exempt employees, including, but not
11 limited to, truck drivers and persons in similar positions, at any time during the period
12 beginning four years prior to the filing of this action to the present, for unpaid wages,
13 restitution, statutory wages, civil penalties, and other related relief. These claims are based on
14 Defendants' (1) failure to pay all wages earned for all hours worked at the correct rates of pay;
15 (2) failure to provide accurate written wage statements; and (3) failure to timely pay wages
16 during and upon termination of employment. Accordingly, Plaintiff now seeks to recover
17 unpaid wages, restitution, statutory penalties, civil penalties, and related relief through this
18 representative action.

19 **II. JURISDICTION AND VENUE**

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

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

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

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



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.

CLASS ALLEGATIONS

10. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

11. **Class Definition:** The Class is defined as follows: all individuals Defendants employed in California as hourly, non-exempt employees, including, but not limited to, truck drivers and persons in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is rendered in this action.

12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses and/or by limitation to particular issues.

13. **Numerosity:** The Class is so numerous that the joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of the Class,



1 Plaintiff is informed and believes that the actual number exceeds the minimum required for
2 numerosity under California law.

3 14. **Commonality and Predominance:** Common questions of law and fact exist as
4 to all class members and predominate over any questions which affect only individual class
5 members. These questions include, but are not limited to:

6 A. Whether Defendants failed to pay all wages earned to Class Members
7 for all hours worked at the correct rates of pay;

8 B. Whether Defendants knowingly and intentionally failed to provide the
9 Class Members with accurate wage statements;

10 C. Whether Defendants failed to timely pay final wages upon termination
11 of the Class Members' employment;

12 D. Whether Defendants engaged in unfair competition within the meaning
13 of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class;

14 E. Whether the Class Members are entitled to restitution of money or
15 property that Defendants may have acquired from them through alleged Labor Code violations;

16 F. Whether the Class Members are entitled to prejudgment interest; and

17 G. Are the Class Members entitled to attorneys' fees?

18 15. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
19 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or
20 a lack of a policy which resulted in Defendants failing to comply with the California Labor
21 Code and the Business and Professions Code as alleged herein.

22 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
23 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of the
24 absent Class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class.
25 Plaintiff will fairly and adequately represent and protect the interests of the Class.

26 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
27 that they have no known conflicts of interest with Plaintiff or absent Class Members, are
28 experienced in class action litigation, and are dedicated to vigorously prosecuting this action on
behalf of Plaintiff and the absent Class.

18. **Superiority:** A class action is vastly superior to other available means for fair
and efficient adjudication of the Class' claims and would be beneficial to the parties and the



1 Court. Class action treatment will allow a number of similarly situated persons to
2 simultaneously and efficiently prosecute their common claims in a single forum without the
3 unnecessary duplication of effort and expense that numerous individual actions would entail. In
4 addition, the monetary amounts due to many individual class members are likely to be relatively
5 small and would thus make it difficult, if not impossible, for individual class members to both
6 seek and obtain relief. Moreover, a class action will serve an important public interest by
7 permitting class members to effectively pursue the recovery of monies owed to them. Further, a
8 class action will prevent the potential for inconsistent or contradictory judgments inherent in
individual litigation.

9 **IV. FACTUAL ALLEGATIONS**

10 19. On approximately April 22, 2019, Defendants first employed Plaintiff to work in
11 California as an hourly, nonexempt truck driver in California. Defendants continuously
12 employed Plaintiff from that date until approximately April 27, 2020, when his employment
13 ended. At all relevant times, Defendants paid Plaintiff and the Class on a weekly basis. At all
14 relevant times, Plaintiff and the Class Members were non-exempt employees entitled to the
15 protections of both the Labor Code and Wage Order. At relevant times, Plaintiff and the Class
16 Members worked shifts in excess of 12 hours, worked between five and seven days in a
workweek, and also worked over 40 hours in a workweek.

17 20. At all relevant times, Plaintiff and the Class Members have engaged in interstate
18 commerce in that Defendants engaged them to transport goods that are shipped across state
19 lines.

20 21. At all relevant times, Defendants required Plaintiff and the Class Members to
21 perform work while signed out from work. Defendants instructed Plaintiff and the Class
22 Members to work no more than ten hours in a given workday. Plaintiff's supervisors would
23 leave notes in the office instructing Plaintiff and the Class Members to complete their shifts
24 within ten hours. In fact, Defendants at all relevant times knew that the Plaintiff and the Class
25 Members would be unable to complete within ten hours all the daily tasks the Defendants
26 assigned to them and Defendant expected Plaintiff and the Class Members to work all necessary
27 hours without recording any above ten. If Plaintiff or the Class Members recorded more than ten
28 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



1 in a workday by removing them from their assigned routes, thereby reducing their working
2 hours. As described below, Plaintiff and the Class frequently worked in excess of the ten hours.
3 As a result of Defendants' policy restricting Plaintiff and the Class to a record of a maximum of
4 ten hours of work per day, Plaintiff and the Class worked approximately one to two additional
hours of unrecorded work time per day in order to complete their assigned workloads.

5 22. Due to the volume of work that Defendants assigned, Plaintiff and the Class were
6 frequently unable to complete their daily tasks within the ten hours. Defendants' management
7 was aware of this and permitted Plaintiff and the Class to work while signed out from work
8 without pay to complete their work. In order to avoid Defendants' disciplinary actions, as
9 detailed above, Plaintiff and the Class would sign out from work after ten hours of work and
10 continue to work while signed out from work. Such activities performed while signed out from
11 work consisted primarily of unloading vehicles, storing unsold product in Defendants'
12 warehouse, removing and stacking pallets used to store product, cleaning the vehicles, and
13 performing safety checks thereon. Plaintiff and the Class regularly spent ten or more hours per
week performing these tasks after signing out from work.

14 23. At all relevant times, upon resignation or termination, Defendants failed to pay
15 unpaid wages in a timely manner. Defendants willfully failed and refused to pay timely
16 compensation and wages for, among other things, postliminary work performed while signed
17 out from work by Plaintiff and the Class, as described above.

18 24. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
19 unlawful practice and policies, Plaintiff and the Class were:

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

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

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

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

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

25 25. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

26 26. At all relevant times, Plaintiff and the Class Members have been non-exempt
27
28



employees of Defendants and entitled to the benefits and protections of California Labor Code § 510, 1194, 1197, 1198, and the Wage Order.

27. Section 2 of the Wage Order defines “hours worked” as “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.”

28. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(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.

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

30. Labor Code section 510 states:



1 Eight hours of labor constitutes a day's work. Any work in excess
2 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
4 the seventh day of work in any one workweek shall be
5 compensated at the rate of no less than one and one-half times the
6 regular rate of pay for an employee. Any work in excess of 12
7 hours in one day shall be compensated at the rate of no less than
8 twice the regular rate of pay for an employee. In addition, any
9 work in excess of eight hours on any seventh day of a workweek
10 shall be compensated at the rate of no less than twice the regular
11 rate of pay of an employee. Nothing in this section requires an
12 employer to combine more than one rate of overtime
13 compensation in order to calculate the amount to be paid to an
14 employee for any hour of overtime work.

15 31. California Labor Code § 1194 invalidates any agreement between an employer
16 and an employee to work for less than the minimum wage required under the applicable Wage
17 Order.

18 32. California Labor Code § 1197 makes it unlawful for an employer to pay an
19 employee less than the minimum wage required under the applicable Wage Order for all hours
20 worked during a payroll period.

21 33. California Labor Code § 1198 makes it unlawful for an employer to employ an
22 employee under conditions that violate the Wage Order.

23 34. In conjunction, these provisions of the California Labor Code require employers
24 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
25 for all hours worked, including unrecorded hours when the employer knew or reasonably should
26 have known that employees were working during those hours. (See *Morillion v. Royal Packing*
27 *Co.* (2000) 22 Cal.4th 575, 585.)

28 35. At relevant times, Plaintiff and the Class Members worked shifts in excess of 12
hours, worked between five and seven days in a workweek, and also worked over 40 hours in a
workweek.

36. At all relevant times during the applicable limitations period, Defendants failed
to compensate Plaintiff and the Class for all hours worked at the correct rates of pay, including
but not limited to all regular, overtime, and double time wages for work they performed after
signing out at the end of their shifts.

37. Plaintiff is informed and believes and thereon alleges that, at all relevant times,

Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate the Class for all hours worked at the correct rate of pay as required by California law.

38. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent that they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum, overtime, and double-time wages.

39. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

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

41. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing, among other items, 1) gross wages earned; 2) total hours worked, 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) net wages earned; and 4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

42. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage



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statement pursuant to California Labor Code § 226(a);

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

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

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

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

44. At all relevant times during the applicable limitations period, Defendants violated Labor Code § 226 because they did not properly and accurately itemize each Class Member’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. Defendants failed to state in the wage statements they issued to Plaintiff and the Class all their hours worked and wages earned, including but not limited to minimum, regular, and overtime wages for work they performed at the beginning and end of their shifts while signed out from work.

45. As alleged herein, Defendants failed to provide Plaintiff and the Class Members all wages owed, including but not limited to, all regular, overtime, and double time wages. Defendants wholly failed to provide Plaintiff and the Class Members with any written wage statements at all.

46. As a result, Defendants have failed to properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees, and other requirements of California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

47. Defendants’ failure to provide Plaintiff and the Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff



1 and the Class with accurate wage statements but intentionally provided wage statements that
2 Defendants knew were not accurate.

3 48. As a result of being provided with inaccurate wage statements by Defendants,
4 Plaintiff and the Class have suffered injury. Their legal rights to receive accurate wage
5 statements were violated and they were misled about the amount of wages they had actually
6 earned and were owed. In addition, the absence of accurate information on their wage
7 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
8 discovery and mathematical computations to determine the amounts of wages owed, has caused
9 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
10 submission of inaccurate information about wages to state and federal government agencies.
11 Further, Plaintiff and the Class Members were not able to ascertain from the wage statements
12 whether Defendants complied with their obligations under California Labor Code § 226(a).

13 **THIRD CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(Lab. Code §§ 201-203)**

16 **(By Plaintiff and the Class against all Defendants)**

17 49. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 50. At all relevant times during the applicable limitations period, Plaintiff and the
19 Class Members have been non-exempt employees of Defendants and entitled to the benefits
20 and protections of California Labor Code §§ 201-203 and the Wage Order.

21 51. California Labor Code § 201 provides that all earned and unpaid wages of an
22 employee who is discharged are due and payable immediately at the time of discharge.

23 52. California Labor Code § 202 provides that all earned and unpaid wages of an
24 employee who quits after providing at least 72-hours notice before quitting are due and payable
25 at the time of quitting and that all earned and unpaid wages of an employee who quits without
26 providing at least 72-hours notice before quitting are due and payable within 72 hours.

27 53. By failing to pay earned regular, overtime, and double time wages to Plaintiff
28 and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in
violation of California Labor Code § 201 or § 202.

54. Plaintiff is informed and believes that Defendants' failures to timely pay all final
wages to him and the Class Members have been willful in that Defendants have the ability to

1 pay final wages in accordance with California Labor Code §§ 201 and 202 but have
2 intentionally adopted policies or practice that are incompatible with those requirements.

3 55. California Labor Code § 203 provides that the wages of an employee continue
4 on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay
5 earned and unpaid wages to the employee in accordance with California Labor Code § 201 or §
6 202.

7 56. Plaintiffs is informed and believes that Defendants' failures to timely pay
8 Plaintiff and the Class Members all of their earned and unpaid wages have been willful in that,
9 at all relevant times, Defendants have deliberately maintained policies and practices that violate
10 the requirements of the Labor Code and the Wage Order even though, at all relevant times, they
11 have had the ability to comply with those legal requirements.

12 57. Pursuant to California Labor Code § 203, Plaintiff seeks waiting time penalties
13 on behalf of the Class, in amounts subject to proof not to exceed 30 days of waiting time
14 penalties for each Class Member.

15 **FOURTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(Bus. & Prof. Code §§ 17299, *et seq.*)**

18 **(By Plaintiff and the Class against all Defendants)**

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

20 59. At all relevant times, Plaintiff and the Class Members have been employees of
21 Defendants and entitled to the benefits and protections of the Business and Professions Code §§
22 17200, *et seq.*

23 60. The unlawful conduct of Defendants alleged herein amounts to and constitutes
24 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
25 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
26 unfairly gained a competitive advantage over other comparable companies doing business in
27 California that comply with their legal obligations to, among other things, pay their employees
28 all wages earned for all hours worked at the correct rates of pay.

61. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
Class Members have suffered injuries in fact and have lost money or property. Defendants
deprived Plaintiffs and the Class Members of regular wages, overtime wages, and double time



wages.

62. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

63. Plaintiff and the Class are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

64. Accordingly, with respect to this cause of action, on behalf of themselves and the Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

FIFTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff and the Class against all Defendants)

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

66. The "Aggrieved Employees" are all members of the above-defined Class whom Defendants employed during the period beginning May 1, 2019 and ending on the date that final judgment is entered in this action.

67. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or 204.2, 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 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. . . .

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

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized



as 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.

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

(d) The requirements of this section shall be deemed satisfied by the payment 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.

68. Defendants paid wages to employees on weekly intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

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

70. 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.

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

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

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

C. For violations of California Labor Code §§ 510 and 512, fifty dollars

1 (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars (\$100)
2 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
3 California Labor Code § 558).

4 D. For violations of California Labor Code § 1174, five hundred dollars
5 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
6 California Labor Code § 1174.5).

7 E. For violations of California Labor Code § 1197, one hundred dollars
8 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
9 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
10 pay period (regardless of whether the initial violations were intentionally committed) (penalty
11 amounts established by California Labor Code § 1197.1).

12 F. For violations of California Labor Code §§ 201, 202, 203, 1194, and
13 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial
14 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
15 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

16 72. Plaintiff has complied with the procedures for bringing suit specified in
17 California Labor Code § 2699.3. By letters dated May 1, 2020 and July 8, 2020, Plaintiff gave
18 written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”)
19 and Defendants of the specific provisions of the California Labor Code alleged to have been
20 violated, including the facts and theories to support the alleged violations. A true and correct
21 copy of Plaintiff’s letter to the LWDA dated May 1, 2020 is attached hereto as **Exhibit A**.
22 Plaintiff’s letter to the LWDA dated July 8, 2020 is attached hereto as **Exhibit B**. The LWDA
23 has not responded to Plaintiff’s letters.

24 73. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
25 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
26 connection with their claims for civil penalties.

27 **V. PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for relief and
judgment against Defendants as follows:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;



- 1 C. An order that counsel for Plaintiff be appointed class counsel;
2 D. Unpaid wages;
3 E. Actual damages;
4 F. Statutory damages;
5 G. Liquidated damages;
6 H. Restitution;
7 I. Declaratory relief;
8 J. Equitable relief;
9 K. Statutory penalties;
10 L. Civil Penalties;
11 M. Pre-judgment and post-judgment interest;
12 N. Costs of suit;
13 O. Interest;
14 P. Reasonable attorneys' fees; and
15 Q. Such other relief as the Court deems just and proper.

16 **VI. DEMAND FOR JURY TRIAL**

17 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury
18 trial on all issues so triable.

19 Respectfully submitted,

THE SPIVAK LAW FIRM

20 Dated: 9/14/2020

21 By: 

22 DAVID SPIVAK
23 CARL KAPLAN, Attorneys for Plaintiff,
24 ONTE BURNS-ROBINSON, and all others
25 similarly situated



26 SPIVAK LAW

27 Employee Rights Attorneys
16530 Ventura Bl. Ste 203
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

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)).

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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



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)).

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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.

David Spind

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

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 Tuesday, September 15, 2020, I served the foregoing document
11 described as **CLASS ACTION FIRST AMENDED COMPLAINT** on interested parties with
the email listed below:

12 **Jennifer Randlett Madden, Esq.**
13 **Delfino, Madden, O'Malley, Coyle, Koewler, LLP**
14 **500 Capitol Mall, Suite 1550**
Sacramento, CA 95814
jmadden@delfinomadden.com

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

17 EXECUTED on Tuesday, September 15, 2020, at Los Angeles, California.

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

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

22 
23 _____
24 CHRISTOPHER KINNEY
25
26
27
28