1 2 3 4 5 6 7	Nicholas J. Ferraro (State Bar No. 306528) Lauren N. Vega (State Bar No. 306525) Ferraro Vega Employment Lawyers, Inc. 3160 Camino del Rio South, Suite 308 San Diego, California 92108 (619) 693-7727 main / (619) 350-6855 facsimile lauren@ferrarovega.com / nick@ferrarovega.com  Attorneys for Plaintiff Juan Weason	<u>m</u>			
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA				
9	COUNTY OF SAN DIEGO 37-2022-00022203-CU-OE-CTL				
10	JUAN WEASON, as an individual and on	CLASS ACTION			
11	behalf of all others similarly situated,	CLASS ACTION COMPLAINT			
12	Plaintiff,				
13	VS.	<ol> <li>Failure to Pay Minimum Wage</li> <li>Untimely Payment of Wages</li> </ol>			
14	PLASTIC EXPRESS; and DOES 1 through 50,	<ul><li>3. Underpaid Paid Sick Leave</li><li>4. Failure to Reimburse Business Expenses</li></ul>			
15	inclusive,	<ul><li>5. Wage Statement Violations</li><li>6. Waiting Time Penalties</li></ul>			
16	Defendants.	7. Unfair Competition			
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Plaintiff JUAN WEASON ("Plaintiff"), as an individual and on behalf of all others similarly situated, brings this CLASS ACTION COMPLAINT against Defendants PLASTIC EXPRESS; and DOES 1 through 50 (collectively, "Defendants"), and on information and belief alleges as follows: INTRODUCTION 1. This is a class action brought under California Code of Civil Procedure § 382 for

Defendants' violations of the California Labor Code and Business and Professions Code.

2. Defendants' employment policies and practices and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

# **JURISDICTION & VENUE**

- 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution.
- 4. Venue as to each defendant is proper in this judicial district under Code of Civil Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, employed Plaintiff in this county, and committed some of the alleged violations in this county.

## **PARTIES**

#### **Plaintiff Juan Weason** A.

5. Plaintiff JUAN WEASON is an individual over 18 years of age who worked for Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until DECEMBER 2021.

#### **Class Members** В.

- 6. Plaintiff brings this action as an individual and on behalf of the following class under Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the State of California as hourly non-exempt employees at any time from four years preceding the filing of this action through the time of trial (the "Class" or "Class Members" and the "Class Period").
  - 7. Further, Plaintiff proposes the following subclasses:
    - a. <u>Unpaid Minimum or Regular Wages Subclass</u>: All Class Members who were not compensated for all hours worked each pay period (including for time spent performing work off the clock).

- b. <u>Paid Sick Leave Subclass</u>: All Class Members who were paid paid sick leave wages in the same pay period in which they were also paid additional forms of non-excludable renumeration, including, but not limited to break pay and P/Load pay.
- c. <u>Untimely Payment of Wages Subclass</u>: All individuals who are members of the Unpaid Wages Subclass and the Paid Sick Leave Subclass.
- d. <u>Wage Statement Subclass</u>: All individuals who: [1] are members of the Unpaid Minimum or Regular Wages Subclass and/or Paid Sick Leave Subclass, and [2] who received a wage statement from Defendants at any time during the one-year period preceding the filing of this action through the present.
- e. <u>Waiting Time Penalty Subclass</u>: All individuals who are/were members of the Unpaid Minimum and Regular Wages Subclass and/or Paid Sick Leave Subclass at any time during the three-year period preceding the filing of this action through the present, excluding current employees who have never previously separated from employment with Defendants.
- f. Reimbursement Subclass: All Class Members who used their personal cell phone for work-related purposes and were not fully reimbursed for the use of their personal devices.

#### C. Defendants

- 8. Plaintiff is informed, believes, and alleges that Defendant PLASTIC EXPRESS is registered to do business in the State of California, does business and employs labor throughout the State of California.
- 9. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of the fictious defendants is responsible in some manner for the acts and omissions

alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and capacities when they become known.

- 10. Plaintiff is informed, believes, and alleges that all defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the other aggrieved employees, suffers and permits them to work, and/or otherwise engages the workforce creating a common law employment relationship.
- 11. Plaintiff is informed, believes, and alleges that at least some of the defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein.
- 12. Plaintiff is informed, believes, and alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.
- 13. Plaintiff is informed, believes and alleges that the above-mentioned defendants violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the Class of aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

# **GENERAL ALLEGATIONS**

- 14. Plaintiff worked for Defendants as a Driver until December 2021. Throughout his employment, Plaintiff was a non-exempt employee who was paid hourly wages as well as "break" payments and other forms of compensation.
- 15. Defendants failed to pay Plaintiff and the Class Members for all hours suffered or permitted to work, resulting in unpaid wages and also failed to pay sick leave wages at the correct rate.

- 16. Defendants failed to pay for all hours worked as a result of their practice of requiring Plaintiff and other Class Members to work off the clock during times when they were not actively driving, resulting in unpaid minimum and regular wages.
- 17. As a driver, Plaintiff was required by Defendants to perform pre and post trip non-driving work without compensation, including but not limited to, loading and unloading the truck, performing pre-and post-trip inspections, completing documentation, weighing the truck, etc.
- 18. Defendants prevented Plaintiff and the Class Members from being able to seek compensation for non-driving pre-and post-trip work. Specifically, Defendants implemented a system that automatically clocked Plaintiff and Class Members in and out when they started and stopped driving the truck (disregarding all pre- and post-trip work performed by Plaintiff and Class Members).
- 19. However, Defendants' records own records show that Plaintiff and the Class Members were performing work outside of the time depicted in Defendants' timekeeping records.
- 20. An illustrative example of this can be seen comparing Plaintiff's "Bill of Lading" and timesheet from October 14, 2022. Plaintiff's timesheet for the day states that Plaintiff only worked a total of 7.25 hours, from 7:52 a.m. to 3:08 p.m. However, Defendants' Bill of Lading with BOL #0362503 shows that Plaintiff actually started working (*e.g.*, pre-driving tasks) at approximately 5:30 a.m. Likewise, the BOL shows that Plaintiff finished his pre-driving tasks at 7:30 a.m.
- 21. It is Defendants' policy and practice not to compensate employees for their pre- and post-driving tasks. Plaintiff alleges that Defendants' system and practice of failing to compensate for non-driving pre- and post-trip tasks was a common policy and practice that impacted Plaintiff and the Class Members.
- 22. Furthermore, in pay periods where Defendants provided Plaintiff and other Class Members with remuneration in addition to their respective base hourly rate for hours worked (e.g., break payments and P/Load payments—excluding any forms of pay subject to any applicable statutory exclusions from the "regular rate"—Defendants failed to properly calculate and pay paid sick leave at rate of pay required by Labor Code § 246. Defendants paid such sick leave at

employees' base hourly rate instead of one of the methods authorized by statute, which required Defendants to factor in employees' additional remuneration into the sick leave wage rate.

- 23. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff and Class Members.
- 24. As one illustrative example of Defendants' sick leave wage underpayments appears in the pay period beginning on 09/01/2021 and ending on 09/15/2021. During this pay period, Plaintiff used paid sick leave, but was paid sick leave wages at his base hourly rate of \$25.00 rather than at a rate required section 246, which should have included the remuneration attributed to Break pay and P/Load pay.
- 25. Additionally, Defendants required Plaintiff and the Class Members to incur costs for work-related purposes without full reimbursement, including but not limited to, expenses associated with the use of their personal cell phones, data, and internet, to perform many functions of their job as truck drivers.
- 26. Defendants required Plaintiff and the Class Members to use their personal cell phones to communicate with Defendants regarding how and when certain tasks were to be performed and to research information about their driving routes, as necessary. Defendants also required Plaintiff and the Class Members their personal cell phones to take pictures of and submit paperwork.
- 27. In direct consequence of their job duties, Plaintiff and the Class Members unavoidably and necessarily incurred losses, expenditures, costs, and expenses that Defendants did not fully and compliantly reimburse as a matter of policy and practice.
  - 28. To the extent Defendants reimbursed Class Members, those amounts were underpaid.
- 29. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code sections 2800 and 2802.
- 30. Because Defendants did not pay Plaintiff and the Class Members all wages and paid sick leave wages owed each pay period of their employment, Defendants failed to timely pay all wages owed each pay day or upon separation of employment (or within 72 hours thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

- 31. Defendants equally failed in their affirmative obligation to provide accurate itemized wage statements each pay period to Plaintiff and Class Members. Defendants issued wage statements to Plaintiff and, on information and belief, other Class Members, which contain at least four distinct types of violations.
- 32. <u>First</u>, on each wage statement furnished, Defendants failed to accurately state the "gross wages earned" in violation of Labor Code section 226(a)(1) by not listing the correct "gross wages earned," as the employees were not paid for off the clock work performed and at the correct paid sick leave wage rate, resulting in an inaccurate reflection and recording of "gross wages earned" on those wage statements.
- 33. <u>Second</u>, Defendants violated Labor Code section 226(a)(5) with respect to "net wages earned" for the same reasons as above, as the "net wages earned" are depreciated and underpaid resulting in an inaccurate reflection on the wage statement.
- 34. Third, Defendants violated Labor Code section 226(a)(2) by failing to list employees' total hours worked," as Plaintiff and Class Members worked off-the-clock while performing pre- or post-driving tasks, rendering the hours listed on the wage statement an inaccurate reflection of hours worked.
- 35. Fourth, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are not accurately listed on Plaintiff and Class Members' wage statements. The hourly rates with respect to paid sick leave are inaccurate because Defendants paid sick leave wages at a deflated rate. Further, Defendants paid Plaintiff and Class Members lump sums each pay period under the categories of "P/Load" and "Break," but failed to include on employee wage statements the corresponding hourly rate at which those sums were earned or the total number of hours worked at the particular rate. As a result, Plaintiff and the Class Members cannot ascertain the method or computation (using hourly rates and hours worked at each rate) for these earnings categories, in violation of California law.
- 36. Defendants' wage statement issues described above rendered the wage statements inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and

presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class Members as the sole documentary evidence of their respective earnings.

- 37. Plaintiff and Class Members suffered injury in the form of confusion regarding amounts paid for hours worked, and in the form of concealment of the common payroll practices causing the violations and underpayment of wages and wage statement deficiencies as addressed in this Complaint.
- 38. Indeed, Plaintiff and, on information and belief, Class Members were misinformed and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies on the wage statements, Plaintiff and, on information and belief, Class Members were led to believe that the hourly rates and net and gross wages reflected were a complete and accurate reflection of the wages actually earned under California law.
- 39. Defendants' wage statement violations were knowing and intentional as a matter of law with respect to Plaintiff and California Class Members given that the legal obligation was not disputed, the wage statement and wage laws are clear and unambiguous as written, and because Defendants nevertheless failed to comply despite the means and ability to do so.
- 40. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have knowingly and intentionally caused harm to Plaintiff and the Class Members.
- 41. Plaintiff is informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent with their obligations under California law.

# **CLASS ALLEGATIONS**

42. *Numerosity*. The members of the Class are so numerous that joinder of all individuals would be impracticable. The identity of the Class Members is readily ascertainable by inspection of employment and payroll records Defendants maintain and are required to maintain by under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff is informed, believes, and alleges there are more than 40 Class Members.

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- 43. Adequacy of Representation. Plaintiff is an adequate class representative. Plaintiff will take all necessary steps to adequately and fairly represent and protect the interest of the Class. Plaintiff is represented by attorneys who have substantial experience prosecuting, defending, resolving and litigating wage and hour class actions in California state and federal courts.
- 44. Superiority. A class action is superior to other means for adjudication of the claims of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow for the common issues to be resolved in a single forum, simultaneously and without duplication of effort and expense.
- 45. Commonality. Common questions of law and fact and a community of interest exists amongst Plaintiff and the Class. These common issues arise from the employment relationship with Defendants and predominate over any individual issues.
- 46. Typicality. Plaintiff's claims are typical of the claims of the other Class Members. Plaintiff and Class Members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices, which Plaintiff experienced and is representative of, will establish the right of the Class to recover on the causes of action alleged herein.

# **FIRST CAUSE OF ACTION**

# FAILURE TO PAY ALL MINIMUM WAGES

#### (ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)

- 47. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
- 48. Plaintiff brings this cause of action on behalf of the Unpaid Minimum and Regular Wages Subclass.
- 49. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class Members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect.

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- 50. Defendants knew or should have known that they were failing to pay Plaintiff and the Class Members for all hours that they worked.
- 51. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of minimum and regular wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

# **SECOND CAUSE OF ACTION**

### **UNTIMELY PAYMENT OF WAGES**

- 52. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
- 53. This cause of action is brought by the Untimely Payment of Wages Subclass pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.
- 54. Defendants willfully failed in their affirmative obligation to timely pay all wages and premiums earned by Plaintiff and Class Members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).
- 55. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

## THIRD CAUSE OF ACTION

#### UNDERPAID PAID SICK LEAVE WAGES

- 56. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
- 57. Plaintiff brings this cause of action on behalf of the Paid Sick Leave Subclass.
- 58. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246 *et seq.*
- 59. Labor Code section 246(1) governs how Defendants were required to calculate paid sick leave:

[A]n employer shall calculate paid sick leave using any of the following calculations:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
- (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.
- 60. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave Class.

61. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Paid Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

# **FOURTH CAUSE OF ACTION**

#### FAILURE TO REIMBURSE BUSINESS EXPENSES

- 62. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
- 63. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and Class Members for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.
- 64. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to amount of the unreimbursed expenses of Plaintiff and Class Members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

# FIFTH CAUSE OF ACTION

#### WAGE STATEMENT VIOLATIONS

- 65. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
- 66. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code §§ 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.
- 67. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).
- 68. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

69. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

# **SIXTH CAUSE OF ACTION**

#### WAITING TIME PENALTIES

- 70. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
- 71. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages (including sick leave wages) earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.
- 72. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and members of the Waiting Time Penalty Subclass immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.
- 73. Plaintiff and the Waiting Time Penalty Subclass are entitled to recover to a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

#### **SEVENTH CAUSE OF ACTION**

#### **UNFAIR COMPETITION**

- 74. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
- 75. Plaintiff brings this cause of action on behalf of all Classes.

76.	•	Defendants have engaged and continue to engage in unfair and/or unlawful busines
practices i	n the	State of California in violation of California Business and Professions Code § 17200
by failing	comi	nitting the foregoing wage and hour violations alleged throughout this Complaint.

- 77. Defendants' dependance on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other Class Members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200, et seq.
- 78. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.
- 79. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and the Class have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200, et seq. Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

#### **PRAYER**

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the representative of the Class;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For recovery of damages in amount according to proof;
- e. For all recoverable pre- and post-judgment interest;
- f. For disgorgement of all amounts wrongfully obtained;
- g. For restitution and injunctive relief;

1	h.	For reasonable attorneys' fees and costs of suit, including expert fees, to the
2		extent permitted by law, including (without limitation) under Labor Code
3		§§ 218.5, 226, 1194, 2802, and Code of Civil Procedure section 1021.5; and
4	i.	For such other relief the Court deems just and proper.
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6	Dated: June 9, 202	Ferraro Vega Employment Lawyers, Inc.
7		Mi.A. p. T
8		Nicholas J. Ferraro
9		Attorneys for Plaintiff
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