

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

37-2022-00022203-CU-OE-CTL

JUAN WEASON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PLASTIC EXPRESS; and DOES 1 through 50,
inclusive,

Defendants.

CLASS ACTION

CLASS ACTION COMPLAINT

1. Failure to Pay Minimum Wage
2. Untimely Payment of Wages
3. Underpaid Paid Sick Leave
4. Failure to Reimburse Business Expenses
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition

1 Plaintiff JUAN WEASON (“Plaintiff”), as an individual and on behalf of all others similarly
2 situated, brings this CLASS ACTION COMPLAINT against Defendants PLASTIC EXPRESS; and
3 DOES 1 through 50 (collectively, “Defendants”), and on information and belief alleges as follows:

4 **INTRODUCTION**

5 1. This is a class action brought under California Code of Civil Procedure § 382 for
6 Defendants’ violations of the California Labor Code and Business and Professions Code.

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

9 **JURISDICTION & VENUE**

10 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
11 California Constitution.

12 4. Venue as to each defendant is proper in this judicial district under Code of Civil
13 Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, employed
14 Plaintiff in this county, and committed some of the alleged violations in this county.

15 **PARTIES**

16 **A. Plaintiff Juan Weason**

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

19 **B. Class Members**

20 6. Plaintiff brings this action as an individual and on behalf of the following class under
21 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
22 State of California as hourly non-exempt employees at any time from four years preceding the filing
23 of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

24 7. Further, Plaintiff proposes the following subclasses:

- 25 a. Unpaid Minimum or Regular Wages Subclass: All Class Members who were
26 not compensated for all hours worked each pay period (including for time
27 spent performing work off the clock).

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

20 **C. Defendants**

21 8. Plaintiff is informed, believes, and alleges that Defendant PLASTIC EXPRESS is
22 registered to do business in the State of California, does business and employs labor throughout the
23 State of California.

24 9. The true names and capacities, whether individual, corporate, or otherwise, of the
25 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
26 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
27 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
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1 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
2 capacities when they become known.

3 10. Plaintiff is informed, believes, and alleges that all defendants in this action are
4 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
5 defendant exercises control over the wages, hours, and working conditions of Plaintiff and the other
6 aggrieved employees, suffers and permits them to work, and/or otherwise engages the workforce
7 creating a common law employment relationship.

8 11. Plaintiff is informed, believes, and alleges that at least some of the defendants have
9 common ownership, common management, interrelationship of operations, and centralized control
10 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
11 responsible for the acts and omissions alleged herein.

12 12. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
13 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
14 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
15 such that the acts and omissions of each defendant may be legally attributable to all others.

16 13. Plaintiff is informed, believes and alleges that the above-mentioned defendants
17 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
18 minimum wages and days of work and other provisions of the Labor Code with respect to the Class
19 of aggrieved employees. As a result, they may be held personally liable under Labor Code sections
20 558, 558.1, and 1197.1. *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

21 **GENERAL ALLEGATIONS**

22 14. Plaintiff worked for Defendants as a Driver until December 2021. Throughout his
23 employment, Plaintiff was a non-exempt employee who was paid hourly wages as well as "break"
24 payments and other forms of compensation.

25 15. Defendants failed to pay Plaintiff and the Class Members for all hours suffered or
26 permitted to work, resulting in unpaid wages and also failed to pay sick leave wages at the correct
27 rate.

1 16. Defendants failed to pay for all hours worked as a result of their practice of requiring
2 Plaintiff and other Class Members to work off the clock during times when they were not actively
3 driving, resulting in unpaid minimum and regular wages.

4 17. As a driver, Plaintiff was required by Defendants to perform pre and post trip non-
5 driving work without compensation, including but not limited to, loading and unloading the truck,
6 performing pre-and post-trip inspections, completing documentation, weighing the truck, etc.

7 18. Defendants prevented Plaintiff and the Class Members from being able to seek
8 compensation for non-driving pre-and post-trip work. Specifically, Defendants implemented a
9 system that automatically clocked Plaintiff and Class Members in and out when they started and
10 stopped driving the truck (disregarding all pre- and post-trip work performed by Plaintiff and Class
11 Members).

12 19. However, Defendants' records own records show that Plaintiff and the Class
13 Members were performing work outside of the time depicted in Defendants' timekeeping records.

14 20. An illustrative example of this can be seen comparing Plaintiff's "Bill of Lading" and
15 timesheet from October 14, 2022. Plaintiff's timesheet for the day states that Plaintiff only worked a
16 total of 7.25 hours, from 7:52 a.m. to 3:08 p.m. However, Defendants' Bill of Lading with BOL
17 #0362503 shows that Plaintiff actually started working (*e.g.*, pre-driving tasks) at approximately
18 5:30 a.m. Likewise, the BOL shows that Plaintiff finished his pre-driving tasks at 7:30 a.m.

19 21. It is Defendants' policy and practice not to compensate employees for their pre- and
20 post-driving tasks. Plaintiff alleges that Defendants' system and practice of failing to compensate
21 for non-driving pre-and post-trip tasks was a common policy and practice that impacted Plaintiff and
22 the Class Members.

23 22. Furthermore, in pay periods where Defendants provided Plaintiff and other Class
24 Members with remuneration in addition to their respective base hourly rate for hours worked (*e.g.*,
25 break payments and P/Load payments—excluding any forms of pay subject to any applicable
26 statutory exclusions from the "regular rate"—Defendants failed to properly calculate and pay paid
27 sick leave at rate of pay required by Labor Code § 246. Defendants paid such sick leave at
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1 employees' base hourly rate instead of one of the methods authorized by statute, which required
2 Defendants to factor in employees' additional remuneration into the sick leave wage rate.

3 23. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
4 and Class Members.

5 24. As one illustrative example of Defendants' sick leave wage underpayments appears in
6 the pay period beginning on 09/01/2021 and ending on 09/15/2021. During this pay period, Plaintiff
7 used paid sick leave, but was paid sick leave wages at his base hourly rate of \$25.00 rather than at a
8 rate required section 246, which should have included the remuneration attributed to Break pay and
9 P/Load pay.

10 25. Additionally, Defendants required Plaintiff and the Class Members to incur costs for
11 work-related purposes without full reimbursement, including but not limited to, expenses associated
12 with the use of their personal cell phones, data, and internet, to perform many functions of their job
13 as truck drivers.

14 26. Defendants required Plaintiff and the Class Members to use their personal cell phones
15 to communicate with Defendants regarding how and when certain tasks were to be performed and to
16 research information about their driving routes, as necessary. Defendants also required Plaintiff and
17 the Class Members their personal cell phones to take pictures of and submit paperwork.

18 27. In direct consequence of their job duties, Plaintiff and the Class Members
19 unavoidably and necessarily incurred losses, expenditures, costs, and expenses that Defendants did
20 not fully and compliantly reimburse as a matter of policy and practice.

21 28. To the extent Defendants reimbursed Class Members, those amounts were underpaid.

22 29. At all relevant times, Defendants were required to comply with the reimbursement
23 mandate of Labor Code sections 2800 and 2802.

24 30. Because Defendants did not pay Plaintiff and the Class Members all wages and paid
25 sick leave wages owed each pay period of their employment, Defendants failed to timely pay all
26 wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
27 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

1 31. Defendants equally failed in their affirmative obligation to provide accurate itemized
2 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
3 statements to Plaintiff and, on information and belief, other Class Members, which contain at least
4 four distinct types of violations.

5 32. First, on each wage statement furnished, Defendants failed to accurately state the
6 “gross wages earned” in violation of Labor Code section 226(a)(1) by not listing the correct “gross
7 wages earned,” as the employees were not paid for off the clock work performed and at the correct
8 paid sick leave wage rate, resulting in an inaccurate reflection and recording of “gross wages earned”
9 on those wage statements.

10 33. Second, Defendants violated Labor Code section 226(a)(5) with respect to “net wages
11 earned” for the same reasons as above, as the “net wages earned” are depreciated and underpaid
12 resulting in an inaccurate reflection on the wage statement.

13 34. Third, Defendants violated Labor Code section 226(a)(2) by failing to list employees’
14 total hours worked,” as Plaintiff and Class Members worked off-the-clock while performing pre- or
15 post-driving tasks, rendering the hours listed on the wage statement an inaccurate reflection of hours
16 worked.

17 35. Fourth, in violation of Labor Code section 226(a)(9), the hourly rates and
18 corresponding hours worked at those rates are not accurately listed on Plaintiff and Class Members’
19 wage statements. The hourly rates with respect to paid sick leave are inaccurate because Defendants
20 paid sick leave wages at a deflated rate. Further, Defendants paid Plaintiff and Class Members lump
21 sums each pay period under the categories of “P/Load” and “Break,” but failed to include on
22 employee wage statements the corresponding hourly rate at which those sums were earned or the
23 total number of hours worked at the particular rate. As a result, Plaintiff and the Class Members
24 cannot ascertain the method or computation (using hourly rates and hours worked at each rate) for
25 these earnings categories, in violation of California law.

26 36. Defendants’ wage statement issues described above rendered the wage statements
27 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
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1 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
2 Members as the sole documentary evidence of their respective earnings.

3 37. Plaintiff and Class Members suffered injury in the form of confusion regarding
4 amounts paid for hours worked, and in the form of concealment of the common payroll practices
5 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
6 this Complaint.

7 38. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
8 and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies
9 on the wage statements, Plaintiff and, on information and belief, Class Members were led to believe
10 that the hourly rates and net and gross wages reflected were a complete and accurate reflection of the
11 wages actually earned under California law.

12 39. Defendants' wage statement violations were knowing and intentional as a matter of
13 law with respect to Plaintiff and California Class Members given that the legal obligation was not
14 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
15 Defendants nevertheless failed to comply despite the means and ability to do so.

16 40. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
17 knowingly and intentionally caused harm to Plaintiff and the Class Members.

18 41. Plaintiff is informed, believes, and alleges that Defendants have engaged in systemic
19 violations of the Labor Code and IWC Wage Orders by maintaining practices, policies, and customs
20 that are inconsistent with their obligations under California law.

21 **CLASS ALLEGATIONS**

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

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1 **THIRD CAUSE OF ACTION**

2 **UNDERPAID PAID SICK LEAVE WAGES**

3 56. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

4 57. Plaintiff brings this cause of action on behalf of the Paid Sick Leave Subclass.

5 58. Defendants knowingly and intentionally failed in their affirmative obligation to pay
6 sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246 *et*
7 *seq.*

8 59. Labor Code section 246(l) governs how Defendants were required to calculate paid
9 sick leave:

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

12 (1) Paid sick time for nonexempt employees shall be calculated in the
13 same manner as the regular rate of pay for the workweek in which the
14 employee uses paid sick time, whether or not the employee actually works
15 overtime in that workweek.

16 (2) Paid sick time for nonexempt employees shall be calculated by
17 dividing the employee's total wages, not including overtime premium
18 pay, by the employee's total hours worked in the full pay periods of the
19 prior 90 days of employment.

20 (3) Paid sick time for exempt employees shall be calculated in the same
21 manner as the employer calculates wages for other forms of paid leave
22 time.

23 60. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave
24 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
25 sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave
26 Class.

- 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, 2022

Ferraro Vega Employment Lawyers, Inc.

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9 Nicholas J. Ferraro
10 *Attorneys for Plaintiff*