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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

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

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

Plaintiff,

vs.

PLASTIC EXPRESS; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00032827-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT

1. Failure to Pay All Minimum Wages
2. Untimely Payment of Wages
3. Underpaid Paid Sick Leave
4. Failure to Reimburse Business Expenses
5. Wage Statement Violations
6. Failure to Pay All Wages Upon Separation
7. Recordkeeping Violations

1 Plaintiff JUAN WEASON (“Plaintiff”), individually as the State of California’s designated
2 proxy under the Private Attorneys General Act (“PAGA”), and on behalf of other current and former
3 aggrieved employees, brings this representative action against Defendant PLASTIC EXPRESS; and
4 DOES 1 through 50 (collectively, “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This case is filed by Plaintiff, an aggrieved employee, seeking civil penalties against
7 Defendants for violations of the California Labor Code.

8 2. In connection with Plaintiff’s employment and the employment of others within the
9 State of California, Defendants committed numerous systemic Labor Code violations for which
10 Plaintiff now seeks to receive civil penalties pursuant to Labor Code § 2698 *et seq.*

11 **JURISDICTION & VENUE**

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

14 4. Plaintiff is informed and believes that his *individual* PAGA claims do not arise to the
15 necessary amount in controversy to implicate traditional jurisdiction under 28 U.S.C. section 1332(a)
16 or jurisdiction under the Class Action Fairness Act.

17 5. Venue as to each defendant is proper in this judicial district because Defendants
18 employed Plaintiff and aggrieved employees in this county, and committed some of the alleged
19 Labor Code violations in this county.

20 **PARTIES**

21 6. Plaintiff worked for Defendants from May 2021 to December 30, 2021 as an hourly,
22 non-exempt employee.

23 7. Defendant PLASTIC EXPRESS does business and employs aggrieved employees
24 throughout California, including in San Diego County.

25 8. The true names and capacities, whether individual, corporate, or otherwise, of the
26 parties sued as DOES 1 through 50, are presently uncertain to Plaintiff, who sues them by such
27 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
28

1 alleges that each of the fictitiously-named defendants is responsible in some manner for the acts and
2 omissions alleged herein.

3 9. Plaintiff is informed, believes, and alleges that all defendants in this action are
4 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
5 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
6 employees, suffers and permits them to work, and engages the workforce creating a common law
7 employment relationship. Additionally, all defendants have common ownership, common
8 management, interrelationship of operations, and centralized control over labor relations and are
9 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
10 omissions alleged herein.

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

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

20 **PAGA ALLEGATIONS**

21 12. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on
22 behalf of the State of California and the “aggrieved employees,” defined as follows:

23 All current and former non-exempt hourly employees who worked for Defendants in
24 the State of California at any time during the period of one year preceding the date of
25 Plaintiff’s initial PAGA Notice, through the date of final judgment (the
26 “PAGA Period”)

27 13. The State of California, via the Labor and Workforce Development Agency
28 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins*

1 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”])

3 14. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
4 and personally experienced one or more of the alleged violations. Therefore, Plaintiff is properly
5 suited to act on behalf of the State of California and collect civil penalties for violations committed
6 against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas*
7 *Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved
8 employee”—a person affected by one Labor Code violation committed by an employer—to pursue
9 penalties for all the Labor Code violations committed by that employer.”])

10 15. “Notwithstanding any other provision of law, any provision of this code that provides
11 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or
12 any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of
13 this code, may, as an alternative, be recovered through a civil action brought by an aggrieved
14 employee on behalf of himself or herself and other current or former employees pursuant to the
15 procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

16 16. On **June 1, 2022**, Plaintiff gave written notice by online filing with the LWDA and
17 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
18 violated, including the facts and theories to support the alleged violations (the “PAGA Notice”).
19 Plaintiff amended his notice on June 8, 2022. Plaintiff paid the requisite filing fee to the LWDA. A
20 copy of the amended PAGA Notice is attached hereto as **Exhibit 1** and incorporated by reference.

21 17. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
22 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
23 actions taken to cure the alleged violations.

24 18. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
25 violations, without any notice of cure from Defendants or notice from the LWDA of its intent to
26 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
27 exhausted all prerequisites and commences this civil action under Labor Code § 2699.
28

1 19. Any allegations regarding violations of the IWC Wage Orders are enforceable as
2 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
3 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

4 **GENERAL ALLEGATIONS**

5 20. The facts and theories as set forth in the PAGA Notice (Exhibit 1) are incorporated
6 herein by reference as though fully set forth herein.

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

10 22. Defendants failed to pay Plaintiff and the aggrieved employees for all hours suffered
11 or permitted to work, resulting in unpaid wages and also failed to pay sick leave wages at the correct
12 rate.

13 23. Defendants failed to pay for all hours worked as a result of their practice of requiring
14 Plaintiff and other aggrieved employees to work off the clock during times when they were not
15 actively driving, resulting in unpaid minimum and regular wages.

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

19 25. Defendants prevented Plaintiff and the aggrieved employees from being able to seek
20 compensation for non-driving pre-and post-trip work. Specifically, Defendants implemented a
21 system that automatically clocked Plaintiff and aggrieved employees in and out when they started
22 and stopped driving the truck (disregarding all pre- and post-trip work performed by Plaintiff and
23 aggrieved employees).

24 26. However, Defendants’ records own records show that Plaintiff and the aggrieved
25 employees were performing work outside of the time depicted in Defendants’ timekeeping records.

26 27. An illustrative example of this can be seen comparing Plaintiff’s “Bill of Lading” and
27 timesheet from October 14, 2022. Plaintiff’s timesheet for the day states that Plaintiff only worked a
28 total of 7.25 hours, from 7:52 a.m. to 3:08 p.m. However, Defendants’ Bill of Lading with BOL

1 #0362503 shows that Plaintiff actually started working (*e.g.*, pre-driving tasks) at approximately
2 5:30 a.m. Likewise, the BOL shows that Plaintiff finished his pre-driving tasks at 7:30 a.m.

3 28. It is Defendants' policy and practice not to compensate employees for their pre- and
4 post-driving tasks. Plaintiff alleges that Defendants' system and practice of failing to compensate
5 for non-driving pre-and post-trip tasks was a common policy and practice that impacted Plaintiff and
6 the aggrieved employees.

7 29. Furthermore, in pay periods where Defendants provided Plaintiff and other aggrieved
8 employees with remuneration in addition to their respective base hourly rate for hours worked (*e.g.*,
9 break payments and P/Load payments—excluding any forms of pay subject to any applicable
10 statutory exclusions from the “regular rate”—Defendants failed to properly calculate and pay paid
11 sick leave at rate of pay required by Labor Code § 246 et seq. Defendants paid such sick leave at
12 employees' base hourly rate instead of one of the methods authorized by statute, which required
13 Defendants to factor in employees' additional remuneration into the sick leave wage rate.

14 30. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
15 and aggrieved employees.

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

21 32. Additionally, Defendants required Plaintiff and the aggrieved employees to incur
22 costs for work-related purposes without full reimbursement, including but not limited to, expenses
23 associated with the use of their personal cell phones, data, and internet, to perform many functions of
24 their job as truck drivers.

25 33. Defendants required Plaintiff and the aggrieved employees to use their personal cell
26 phones to communicate with Defendants regarding how and when certain tasks were to be
27 performed and to research information about their driving routes, as necessary. Defendants also
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1 required Plaintiff and the aggrieved employees their personal cell phones to take pictures of and
2 submit paperwork.

3 34. In direct consequence of their job duties, Plaintiff and the aggrieved employees
4 unavoidably and necessarily incurred losses, expenditures, costs, and expenses that Defendants did
5 not fully and compliantly reimburse as a matter of policy and practice.

6 35. To the extent Defendants reimbursed aggrieved employees, those amounts were
7 underpaid.

8 36. At all relevant times, Defendants were required to comply with the reimbursement
9 mandate of Labor Code sections 2800 and 2802.

10 37. Because Defendants did not pay Plaintiff and the aggrieved employees all wages and
11 paid sick leave wages owed each pay period of their employment, Defendants failed to timely pay all
12 wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
13 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

14 38. Defendants equally failed in their affirmative obligation to provide accurate itemized
15 wage statements each pay period to Plaintiff and aggrieved employees. Defendants issued wage
16 statements to Plaintiff and, on information and belief, other aggrieved employees, which contain at
17 least four distinct types of violations.

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

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

26 41. Third, Defendants violated Labor Code section 226(a)(2) by failing to list employees’
27 total hours worked,” as Plaintiff and aggrieved employees worked off-the-clock while performing
28

pre- or post-driving tasks, rendering the hours listed on the wage statement an inaccurate reflection of hours worked.

42. 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 aggrieved employees' 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 aggrieved employees 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 aggrieved employees cannot ascertain the method or computation (using hourly rates and hours worked at each rate) for these earnings categories, in violation of California law.

43. Defendants' wage statement issues described above rendered the wage statements inaccurate and confusing to Plaintiff and aggrieved employees, concealing the underpayments and presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and aggrieved employees as the sole documentary evidence of their respective earnings.

44. Plaintiff and aggrieved employees 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.

45. Indeed, Plaintiff and, on information and belief, aggrieved employees 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, aggrieved employees 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.

46. Defendants' wage statement violations were knowing and intentional as a matter of law with respect to Plaintiff and aggrieved employees 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.

47. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have knowingly and intentionally caused harm to Plaintiff and the aggrieved employees.

48. Because of the violations set forth in this Complaint, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay (i.e., unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain records showing accurate daily hours worked at the corresponding wage rate, and the wages paid to each employee.

49. 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.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM AND REGULAR WAGES

Labor Code §§ 1182.12, 1194, 1197

(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)

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

51. Labor Code section 2699(f) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

52. Labor Code section 558(a) provides: “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred

1 dollars (\$100) for each underpaid employee for each pay period for which the employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages.”

3 53. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
4 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
5 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
6 of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
7 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
8 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
9 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent
10 violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid
11 employee for each pay period for which the employee is underpaid regardless of whether the initial
12 violation is intentionally committed.”

13 54. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
14 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
15 Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and
16 Days of Work,” “Rest Periods,” and “Minimum Wages” sections of the applicable orders).

17 55. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
18 to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by
19 Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and
20 costs to the extent permitted by law, including under Labor Code section 2699(g).

21 **SECOND CAUSE OF ACTION**

22 **UNTIMELY PAYMENT OF WAGES**

23 **Labor Code §§ 204, *et seq.***

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

25 57. Defendants willfully failed in their affirmative obligation to timely pay all wages and
26 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
27 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
28 basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in

violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

58. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

THIRD CAUSE OF ACTION

PAID SICK LEAVE VIOLATIONS

Labor Code §§ 246 *et seq.*

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

60. On information and belief, Defendants knowingly and intentionally failed in their affirmative obligation provide and pay paid sick leave wages to Plaintiff and the aggrieved employees in violation of Labor Code section 246.

61. Labor Code section 246(b)(1) requires that employees accrue sick leave at the commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any accrued sick leave beginning on their 90th day of employment.

62. Labor Code section 246(l) 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.

63. Defendants also failed to provide sick leave to employees at the accrual rate required by statute (*i.e.*, 1 hour for every 30 hours worked).

64. Defendants also failed to pay Plaintiff and aggrieved employees paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their calculation the additional remuneration received by Plaintiff and the aggrieved employees, including but not limited to, bonuses and commissions. Defendants instead paid to Plaintiff and the aggrieved employees at their base hourly rate, resulting in wage underpayments to Plaintiff and the aggrieved employees.

65. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g). Plaintiff may also be entitled to penalties under Labor Code section 248.5.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Labor Code § 2802

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

67. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and aggrieved employees 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.

68. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Labor Code §§ 226 and 226.3

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

1 70. Labor Code section 226.3 provides: “Any employer who violates subdivision (a) of
2 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
3 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
4 each violation in a subsequent citation, for which the employer fails to provide the employee a
5 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
6 The civil penalties provided for in this section are in addition to any other penalty provided by
7 law.”

8 71. Defendants knowingly and intentionally failed in their affirmative obligation provide
9 accurate itemized wage statements to Plaintiff and Aggrieved Employees in violation of Labor
10 Code section 226(a). Specifically, the wage statements issued to Plaintiff and the aggrieved
11 employees did not accurately state each pay period all of the information required by Labor Code
12 section 226(a)-(9).

13 72. Defendants’ unlawful acts and omissions deprived Plaintiff and aggrieved employees
14 of accurate itemized wage statements, causing confusion and concealing wage and premium
15 underpayments.

16 73. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
17 to Plaintiff, the aggrieved employees, and the State of California for civil penalties as required by
18 Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
19 to the extent permitted by law, including under Labor Code section 2699(g).

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PAY ALL WAGES UPON SEPARATION**

22 **Labor Code §§ 201 through 203**

23 74. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 75. Defendants willfully failed in their affirmative obligation to pay all wages (including
25 sick leave and meal and rest premiums) earned and unpaid to Plaintiff and aggrieved employees
26 immediately upon termination of employment or within 72 hours thereafter for employees who did
27 not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay
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1 those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC
2 Wage Orders.

3 76. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
4 to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by
5 Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to
6 the extent permitted by law, including under Labor Code section 2699(g).

7 **SEVENTH CAUSE OF ACTION**

8 **RECORDKEEPING VIOLATIONS**

9 **Labor Code § 1174**

10 77. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 78. Labor Code section 1174 provides: "Every person employing labor in this state shall:
12 ...(d) Keep, at a central location in the state or at the plants or establishments at which employees
13 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
14 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
15 the respective plants or establishments. These records shall be kept in accordance with rules
16 established for this purpose by the commission, but in any case shall be kept on file for not less than
17 three years."

18 79. Labor Code section 1174.5 provides: "Any person employing labor who willfully
19 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
20 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
21 hundred dollars (\$500)."

22 80. Defendants willfully failed in their affirmative obligation to maintain accurate records
23 showing the hours worked daily and wages paid to the aggrieved employees, in violation of Labor
24 Code sections 1174, 1198 and the IWC Wage Orders (the "Records" sections of the applicable
25 orders).

26 81. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
27 aggrieved employees, and the State of California for civil penalties as required by Labor Code
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1 section 1174.5, in addition to attorneys' fees, costs, and interest to the extent permitted by law,
2 including under Labor Code section 2699(g).

3 **PRAYER FOR RELIEF**

4 Plaintiff prays for judgment as follows:

- 5 a. For an award of all civil penalties under the Labor Code section 2698 *et seq.*;
- 6 b. For an award of reasonable attorneys' fees and costs of suit, including expert fees, to
7 the extent permitted by law, including under Labor Code section 2699(g);
- 8 c. For any recoverable pre- and post-judgment interest; and
- 9 d. For such other relief the Court deems just and proper.

10
11 Dated: August 16, 2022

Ferraro Vega Employment Lawyers, Inc.

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14 Nicholas J. Ferraro

15 Attorney for Plaintiff Juan Weason

Exhibit 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 8, 2022

**NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.***

AMENDED VIA EMAIL & CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Plastic Express
Attn: Teresa Hudson
Human Resources
15450 Salt Lake Avenue
Industry, CA 91745
teresa.hudson@plasticexpress.com

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency

Dear Labor Enforcement Officer and Company Representatives:

This letter, as amended, serves as written notice on behalf of JUAN WEASON (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against PLASTIC EXPRESS, along with any other related employer entities, including those who may be later added upon further investigation (collectively, “Defendants”).

Claimant’s notice is amended to include additional facts and allegations that have been identified through subsequent investigation, along with additional claims that have developed since the filing of the original notice.

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendants comprise a logistical enterprise with 200+ employees. Plastic Express offers bulk trucking, bulk terminal, packaging, and warehousing services to its customers. Plastic Express employs aggrieved employees like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times were an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and the aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendants and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant JUAN WEASON worked for Defendants from May 12, 2021 to December 30, 2021. Claimant worked in the positions of Driver, Bulk. Throughout his employment, Claimant worked as an hourly, non-exempt employee.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Unpaid Wage Violations

Violation of Labor Code §§ 200, 201-204, 210, 558, 1182.12, 1194, 1197, 1197.1, 1199; IWC Wage Orders

Defendants failed to pay for all hours worked in violation of Labor Code sections 201-204, 210, 558, 1182.12, 1194, 1197, 1197.1, 1199, applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including section 4 and the standing Minimum Wage Order. Claimant and the aggrieved employees were not paid at least minimum wage *for all hours* worked.

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

In this case, Defendants failed to pay Claimant and all the aggrieved employees for all hours suffered or permitted to work. Specifically, Defendants failed to compensate Claimant and the aggrieved employees for time spent loading and unloading the truck and/or for work performed before or after driving the truck. In between trips, Claimant and the aggrieved employees had the responsibility of loading and/or unloading the truck, weighing it, checking its proper functioning, maintaining it, and filling out trip and truck documentation. However, Claimant and the aggrieved employees were not allowed to clock in for these matters, as Defendants implemented a system that automatically them clocked-in and out when they started and stopped driving the truck (disregarding pre and post-trip work).

An illustrative example of this can be seen comparing Claimant’s “Bill of Lading” and timesheet from October 14, 2022. Claimant’s timesheet for the day states that Claimant worked a total of 7.25 hours, from 7:52 a.m. to 3:08 p.m. However, Claimant’s Bill of Lading with BOL #0362503 shows that Claimant started work by performing pre-driving tasks at 5:30 a.m. Likewise, the Bill of Lading shows that Claimant finished his pre-driving tasks at 7:30 a.m.. His time clock records then show that he worked only 7.25 hours (representing the 7:52 a.m. to 3:08 p.m. listed on the time records):

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/ / /

/ / /

Flinto Express
15450 SALT LAKE AVENUE
CITY OF INDUSTRY, CA 91745

Bill of Lading

BOL #: 0362503
Date #: 10/14/2021
DELIVERY

Shipper/Bill To: **AMCO POLYMERS, LLC.**
Address: **6900 COSOLIDATED WAY**
City: **SAN DIEGO**
State: **CA** Zip: **92121**
Shp Doc #: **10786522** Load #: **0301477**
Release #: **100389923** Driver: **JUAN WEASON**
PO #: **60022038** Truck: **816** Trailer: **659**

Ship to: **HAEMONETICS**
Address: **CALLE COLINAS NO 11731 SECC. COLINAS**
City: **TUJANA**
State: **BJ** Zip: **22244**

Dispatch Miles: **17**
Total Dispatch Weight: **47,320 LBS**

RECEIVED Subject to the classifications and tariffs in effect on the date of issue of this bill of lading, the property described herein is accepted in apparent good order, except as noted (contents and condition or contents of packages unknown), marked, consigned and destined as indicated below, which said carrier undertakes throughout this contract as meaning any person or corporation in possession of the property under the contract agrees to its usual place of delivery as said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier to all or any of said property over all or any portion of said route to destination, and in its entirety at any time intended in all or any said property that every service to be performed hereunder shall be subject to all the terms and conditions of the uniform domestic freight bill of lading set forth in the applicable motor carrier classification or tariffs which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Load Details:

Railcar: **CHVX896705** Comp: ☒ 66/B ☒ Is Empty Dispatch Weight: **47320**
Load From: **RC** Scale Ticket: **87545** Gross Weight: **76,180**
Part: **05-0056** Scale: **MIRAMAR** Tare Weight: **28,700**
Lot: **PNH720080** Location: **IN 5:30 OUT 7:30** Net Weight: **47,480**
Product: **MARLEX** Terminal: **HHM 5502**
BN
NATURAL

Extract from Claimant's Bill of Lading from 10/14/2021

1669	Juan Weason	CA - Mira Mar	10/14/2021	7.25
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7.15	07:52 AM	03:08 PM
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Extract from Defendant's Time Records Showing that on 10/14/2021 Claimant was Compensated for Work Performed from 7:52 a.m. to 3:08 p.m Only.

Thus, Defendants implemented a system and practice of failing to compensate Claimant and the aggrieved employees for non-driving work performed. Additionally, as discussed below with respect to Claimant's unpaid sick leave allegations, Defendants failed to compensate Claimant at the lawful paid sick leave rate.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Reimburse Necessary Expenses **Violation of Labor Code §§ 2800, 2802**

Defendants failed in their affirmative legal obligation to reimburse Claimant and other aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though

unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants required Claimant and the aggrieved employees to incur costs for work-related purposes, including expenses associated with the use of their personal cell phones, data, and internet, to perform many functions of their job as truck drivers. For example, Claimant and the aggrieved employees were required 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. Claimant and other aggrieved employees were also required to use their cell phones to take pictures and submit paperwork without reimbursement. Claimant and other aggrieved employees used a CamScanner app to facilitate these work related functions from their personal cellular devices.

In direct consequence of their job duties, Claimant and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs, and expenses that Defendants did not fully and compliantly reimburse as a matter of policy and practice. To the extent Defendants reimbursed aggrieved employees, those amounts were underpaid. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code sections 2800 and 2802.

To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive knowledge "does not appear in the statute" and written policies or handbooks do not "affect the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver." *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." In other words, if—as here—employees incur "necessary expenses" or "losses" for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses. Labor Code § 2804 prohibits waiver of these rights.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney's fees and costs of suit.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants failed to compensate Claimant and aggrieved employees for all hours suffered or permitted to work. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b. This was a result of Defendants practice of not fully paying for off-the-clock work attributed to pre-work, non-driving time.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer terminates an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages, premiums, and other amounts, such as paid sick leave at the lawful rate, owed to Claimant and aggrieved employees during their employment, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203. Claimant tried to explain to management for Defendants how he was loading the truck and doing pre- and post-driving work without compensation, off-the-clock. However, upon separation of employment he was not paid for these hours.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular wages and underpaid paid sick leave—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages but were underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); see also *Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’”) (rejecting *Maldonado* defense for class claims).

226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Defendants also violated Labor Code section 226(a)(2) by failing to list employees’ “total hours worked,” as aggrieved employees worked off-the-clock during while performing pre- or post-driving tasks, rendering the total hours listed as an inaccurate reflection of hours worked.

Furthermore, Defendants violated Labor Code section 226(a)(9) because Defendants included forms of remuneration such as P/Load and Break, but did not include the corresponding hourly rate at which those sums were earned or the total number of hours worked at the particular rate. As a result, Claimant and other aggrieved employees cannot ascertain the method or computation (using hourly rates and hours worked at each rate) for these earnings categories, in violation of California law.

Earnings	rate	hours	this period	year to date
Regular	25.0000	92.07	2,301.75	30,389.25
Break			111.24	1,310.72
P/Load			370.04	3,206.10
Bonus				450.00
Holiday				200.00
Sick				400.00
Gross Pay			\$2,783.03	35,956.07

Extract from Claimant’s Wage Statement with Pay Date of 11/02/2021

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.5**

Defendants violated Labor Code section 246 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at an hourly rate using one of the three permissible methods of calculation set forth in Labor Code sections 246(l)(1) to (3). Under Labor Code section 246 *et seq.*, employers are required to provide paid sick leave to all employees. Employers have the option of providing 24 hours of paid sick leave to employees or to allow

employees to accrue paid sick leave each pay period. Cal. Lab. Code § 246. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1) hour for every thirty (30) hours worked in a given pay period. Cal. Lab. Code § 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment. Cal. Lab. Code § 246(b)(1).

Additionally, employers are required to pay sick leave in accordance with one of the permissible methods provided in Labor Code § 246(l)(1)-(3):

(l) For the purposes of this section, an 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.

The third option is not applicable because this case involves non-exempt employees. Defendants were required to pay paid sick time under the method set forth in options one or two.

As an initial matter, on information and belief, Claimant is informed, believes, and alleges that Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period. As one illustrative example, in the pay period beginning 09/01/2021 and ending 09/15/2021, Plaintiff earned paid sick leave, but was paid at his base hourly rate of \$25.00 (rather than his regular hourly rate or other lawful rate), which should have included the remuneration attributed to Break pay and P/Load pay:

Earnings	rate	hours	this period	year to date
Regular	25.0000	68.99	1,724.75	23,392.75
Break			94.67	957.14
Holiday	25.0000	8.00	200.00	200.00
P/Load			452.23	2,185.60
Sick	25.0000	16.00	400.00	400.00
Gross Pay			\$2,871.65	27,135.49

Extract from Claimant's Wage Statement with Pay Date of 09/17/2021

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation

per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employees pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Claimant is compelled to retain the services of counsel to file this court action to protect his interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) their lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees)).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Claimant
 Lauren N. Vega, Esq.