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Kern County Superior Court
By Sophia Munoz Alvarez, Deputy

Attorneys for Plaintiffs, JOSE MANUEL ALAMO and BLAS NOE LICANO MUNOZ, on behalf of themselves and for all similarly situated persons

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

BCV-20-102932

JOSE MANUEL ALAMO and BLAS NOE
LICANO MUNOZ, on behalf of themselves and
for all similarly situated persons, and the general
public;

Plaintiffs,

vs.

LEHR BROTHERS, INC., a California
Corporation; and DOES 1 through 50, inclusive;

Defendants.

Case No.: Dept:

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

1. **PAGA, Civil Penalties Pursuant to Labor Code section 2699;**
2. **Unpaid Missed Meal Breaks (*Labor Code Sections 226.7, 1198 and 512*);**
3. **Unpaid Missed Rest Breaks (*Labor Code Sections 226.7 and 1198*);**
4. **Failure to Pay All Overtime Wages (*Violation of Labor Code §§ 510 and 1198*)**
5. **Failure to Pay All Wages Earned (*Violation of Labor Code Sections 204*);**
6. **Failure to Maintain Accurate Payroll Records (*Labor Code Sections 226 and 1174*);**
7. **Wages Not Paid Upon Separation (*Violation of Labor Code sections 201-203*);**
8. **Failure to Pay Minimum Wages (*Violation of Labor Code Sections 1194 & 1197*);**
9. **Failure to Pay For Sick Days (*Lab Code §246(a)*);**
10. **California *Business and Professions Code* §17200, et seq.;**
11. **Wrongful Termination; Discrimination and Retaliation; Govt. Code § 12940;**
12. **Wrongful Termination in Violation of Public Policy;**
13. **Wrongful Termination/Constructive Discharge**
14. **Violation of California Labor Code §98.6, §1102.5;**

1)
2) **15. Failure to Reimburse Business Expenses**
3) **(Labor Code § 2802)**

4) **DEMAND FOR JURY TRIAL**
5)

6 COME NOW PLAINTIFFS, JOSE MANUEL ALAMO and BLAS NOE LICANO MUNOZ,
7 individually on behalf of themselves and on behalf of all similarly situated individuals, and the general
8 public, and alleges as follows:

9 The allegations in this Complaint, stated on information and belief, have evidentiary support
10 and/or are likely to have evidentiary support after reasonable opportunity for further investigation and
11 discovery.

12 **NATURE OF THE ACTION**

- 13 1. Defendant, LEHR BROTHERS, INC., is a food processing company in Kern County.
14 2. During the relevant timeframe, Plaintiffs and Class members were employed by
15 Defendant, LEHR BROTHERS, INC., in various capacities, including as forklift
16 drivers, loaders/unloaders, and forklift repairmen.
17 3. This class action for relief arises from Defendant's failure to provide off-duty rest break
18 and meal periods as required by law; failure to compensate at the required rate for each
19 occasion in which Defendants failed to provide rest and meal periods; failure to pay for
20 all the hours worked and all wages earned; failure to pay for all overtime hours worked;
21 failure to keep accurate payroll records, such that Plaintiffs and Class members were
22 given wage statements that did not accurately reflect all the hours worked and wages
23 earned; failure to pay the minimum wage; failure to pay for sick days, and failure to pay
24 wages due upon separation. In addition, as an individual cause of action, Plaintiff
25 Munoz alleges that he was discriminated against and wrongfully terminated, and
26 Plaintiff Alamo alleges that he was constructively discharged from his employment.

27 **THE PARTIES**
28

- 1 4. JOSE MANUEL ALAMO and BLAS NOE LICANO MUNOZ (*hereinafter*
2 “Plaintiffs”) are and were residents of the State of California.
- 3 5. Defendant, LEHR BROTHERS, INC., was and is, upon information and belief, a
4 California corporation, which at all times hereinafter mentioned, had employees in
5 California.
- 6 6. The true names and capacities, whether individual, corporate, associate or otherwise of
7 each of the Defendants designated herein as a DOE are unknown to Plaintiffs at this
8 time, who therefore, sue said Defendants by fictitious names, and will ask leave of this
9 Court for permission to amend this Complaint to show their names and capacities when
10 the same have been ascertained. Plaintiffs are informed and believe and thereon allege
11 that each of the Defendants designated as a DOE is legally responsible in some manner
12 for the events and happenings herein referred to, and caused injuries and damages
13 thereby to Plaintiffs and Class members as herein alleged.
- 14 7. Unless otherwise individually referred to, whenever, in this Complaint, reference is
15 made to “Defendant” such reference shall refer to all Defendants, to include LEHR
16 BROTHERS, INC., and all Doe Defendants, collectively.
- 17 8. Plaintiffs, on information and belief and based upon such basis, allege that at all times
18 herein mentioned, each of the Defendants were acting as the agent, servant, employee
19 of each of the other Defendants, within the scope of said agency and employment.
- 20 9. During the times and places of the incident in question, Defendants, and each of them,
21 their agents, servants and employees, became liable to Plaintiffs and Class members for
22 the reasons described in the complaint herein, and thereby proximately caused Plaintiffs
23 and Class members to sustain damages as set forth herein.
- 24 10. Plaintiffs, on information and belief and based upon such basis, allege that all
25 Defendants carried out a joint scheme, business plan or policy in all respects pertinent
26 hereto and all acts and omissions herein complained of were performed within the
27 course and scope of said employment, service, agency, common scheme, plan and/or
28 policy.

- 1 11. Plaintiffs, on information and belief and based upon such basis, allege that Defendants’
2 founders, owners, shareholders, executive officers, managers, and supervisors directed,
3 authorized, ratified and/or participated in the conduct that gives rise to the claims
4 asserted herein and derived personal financial benefit from such conduct at the expense
5 of Plaintiffs and the Class members.

6 **JURISDICTION AND VENUE**

- 7 12. This Court has jurisdiction over this action pursuant to California *Code of Civil*
8 *Procedure* §410.10. In the aggregate, Class damages exceed the jurisdictional minimum
9 of this Court.
10 13. Venue is proper in this Court, pursuant to California *Code of Civil Procedure* § 395.5
11 because Defendants’ principal place of business is situated in Kern County, California.

12 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS**

- 13 14. Defendant, LEHR BROTHERS, INC., is a food processing company operating in Kern
14 County, California.
15 15. During the relevant timeframe, Defendants employed Plaintiffs and Class members as
16 forklift drivers, loaders/unloaders, and forklift repairmen, and in other capacities.
17 Plaintiff Blas Munoz worked 5 days a week, between 7 a.m. to 3:30 p.m. and earned
18 \$13.50/hour by driving operating forklifts and loading boxes. His supervisor was
19 Donama. Plaintiff Manuel Alamo worked 6 days a week, between 7 a.m. to 3:30 p.m.
20 and earned \$13.75/hour, mostly fixing forklifts but also he had to drive trucks to pick
21 up, transporting potatoes. His supervisor was Erick.
22 16. During the relevant timeframe, Plaintiff Alamo and Class members were not provided
23 uninterrupted rest breaks for every 4-hour shift. Furthermore, Defendants created
24 schedules that made it difficult or impossible for Plaintiff Alamo and Class members to
25 take their rest breaks, without any interruption.
26 17. During the relevant timeframe, Plaintiff Alamo and Class members were not provided
27 uninterrupted meal breaks. Moreover, Plaintiff Alamo and the Class members did not
28 receive a second uninterrupted thirty-minute meal break for instances in which they

1 worked over ten hours. Furthermore, Defendants created schedules that made it
2 difficult or impossible for Plaintiff Alamo and Class members to take their meal breaks
3 without interruption.

4 18. Defendant failed to compensate Plaintiff Alamo and Class members at the required rate
5 for each occasion in which Defendant failed to provide uninterrupted rest periods. As
6 such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff
7 Alamo and the Class Members.

8 19. Defendant failed to compensate Plaintiff Alamo and Class members at the required rate
9 for each occasion in which Defendant failed to provide uninterrupted meal periods. As
10 such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff
11 Alamo and the Class Members.

12 20. Defendant failed to compensate Plaintiff Alamo and Class members at the required rate
13 for all the hours worked. The wage statements were inaccurate and did not accurately
14 reflect the number of hours worked by Plaintiff Alamo and Class members. As such,
15 Defendant failed to pay for all the hours worked and all wages earned by Plaintiff
16 Alamo and the Class members.

17 21. Defendant failed to compensate Plaintiff Alamo and Class members at the required rate
18 for each occasion in which employees worked overtime. As such, Defendant failed to
19 pay for all the hours worked and all wages earned by Plaintiff Alamo and the Class
20 members.

21 22. Defendant failed to maintain accurate payroll records, such that Plaintiffs and Class
22 members were given wage statements that did not accurately reflect their true
23 compensation and all the hours worked.

24 23. Defendant failed to give a timely final paycheck to Plaintiffs and Class members upon
25 separation, as required by statute. In addition, the final paychecks were not accurate
26 since it did not include payment for all the hours worked and compensation earned,
27 inclusive of all premium payment for missed breaks.
28

1 24. Defendant failed to pay Plaintiff Alamo and Class members at least the minimum wage
2 for all the hours worked.

3 25. Defendant failed to provide Plaintiff Munoz and Class members with statutory pay for
4 sick days.

5 26. Plaintiffs and Class members have been damaged in sums to be proven.

6 **CLASS ACTION ALLEGATIONS**

7 27. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all
8 other persons similarly situated, and thus, seek class certification. The class shall be
9 defined as follows:

10 “All persons who were non exempt employees, employed at LEHR BROTHERS, INC.,
11 in the State of California during the period commencing four years from the date of
12 PAGA filing, August 25, 2020, through the entry of final judgment in this action.”

13 28. Plaintiffs propose that the following sub-classes be created:

14 a. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All
15 individuals who have been employed and are currently employed at LEHR
16 BROTHERS, INC., within the relevant time periods prior to the filing of this
17 Complaint until resolution of this lawsuit who did not receive their required
18 uninterrupted meal breaks pursuant to the California *Labor Code* and/or applicable
19 orders of the IWC.

20 b. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All
21 individuals who have been employed and are currently employed at LEHR
22 BROTHERS, INC., within the relevant time periods prior to the filing of this
23 Complaint until resolution of this lawsuit who did not receive their required
24 uninterrupted rest breaks pursuant to the California *Labor Code* and/or applicable
25 orders of the IWC.

26 c. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All individuals
27 who have been and are currently employed at LEHR BROTHERS, INC., within the
28 relevant time periods prior to the filing of this Complaint until resolution of this

lawsuit who were not paid full complete and accurate compensation for all hours worked.

d. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All individuals who have been and are currently employed at LEHR BROTHERS, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who were not paid full, complete and accurate compensation for all overtime worked.

e. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All individuals who have been and are currently employed at LEHR BROTHERS, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit whose wage statements did not accurately reflect gross wages earned. Specifically, all the hours worked, the overtime and additional hours of pay employees earn for each workday they did not receive a meal and/or rest break. This subclass includes the class members whose final paycheck did not accurately reflect gross wages earned. Specifically, all the hours worked, the overtime and additional hours of pay employees earn for each workday they did not receive uninterrupted meal and/or rest break.

f. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All individuals who were employed at LEHR BROTHERS, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive their final paycheck within 72 hours after the final day of work or at the time of their termination.

g. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All individuals who have been and are currently employed at LEHR BROTHERS, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive at least the minimum wage for all the hours worked.

- h. A proposed sub-class (*hereinafter* “Sick Pay Class”) is defined as: All individuals who have been and are currently employed at LEHR BROTHERS, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who legally accrued, but did not receive, their sick days or payment thereof.
- i. A proposed sub-class (*hereinafter* “Reimbursement Class”) is defined as: All individuals who have been and are currently employed at LEHR BROTHERS, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who legally accrued, but did not receive, reimbursement for their expenses.
29. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class, Overtime Class, Wage Statement Class, Final Paycheck Class, Minimum Wage Class, Sick Pay Class, Reimbursement Class.
30. All claims alleged herein arise under California law for which Plaintiffs and Class members seek relief authorized by California law.
31. Excluded from the Class are Defendant(s) in this action, any entity in which Defendant(s) have a controlling interest, any officers, directors, and shareholders of Defendant, and legal representatives, heirs, successors, and assigns of Defendant.
32. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:
- j. Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the Class is unknown to Plaintiffs at this time. However, the Class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendant’s employment records.
- k. Typicality: Plaintiffs are qualified to and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of

1 interest, and Plaintiffs' claims (or defenses, if any), are typical of all Class Members
2 as demonstrated herein.

- 3 l. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect the
4 interests of each Class Member with whom they have a well-defined community of
5 interest and typicality of claims, as alleged herein. Plaintiffs acknowledge that they
6 have an obligation to the Court to make known any relationship, conflict, or
7 differences with any Class Member. Plaintiffs' attorneys and proposed Class
8 counsel are versed in the rules governing class action discovery, certification, and
9 settlement. Plaintiffs have incurred, and, throughout the duration of this action, will
10 continue to incur costs and attorneys' fees that have been, are, and will be
11 necessarily expended for the prosecution of this action for the substantial benefit of
12 each Class Member.
- 13 m. Superiority: The nature of this action makes the use of class action adjudication
14 superior to other methods. Class action will achieve economies of time, effort, and
15 expense as compared with separate lawsuits, and will avoid inconsistent outcomes
16 because the same issues can be adjudicated in the same manner and at the same
17 time for the entire class.
- 18 n. There are common questions of law and fact as to the Class (and each subclass, if
19 any), that predominate over questions affecting only individual members, including
20 but not limited to:
- 21 o. Whether Defendant had a policy of not providing uninterrupted statutory mandated
22 rest periods to Plaintiff Alamo and Class members or compensation for rest periods;
- 23 p. Whether Defendant had a policy of not providing uninterrupted statutory mandated
24 meal periods to Plaintiff Alamo and Class members or compensation for meal
25 periods;
- 26 q. Whether Defendant created schedules in such a manner that made it difficult or
27 impossible for Plaintiff Alamo, and similarly situated class members, to take
28 uninterrupted rest periods;

- 1 r. Whether Defendant created schedules in such a manner that made it difficult or
2 impossible for Plaintiff Alamo, and similarly situated class members, to take
3 uninterrupted meal periods;
- 4 s. Whether Defendant failed to pay Plaintiff Alamo and Class members for the
5 overtime hours worked during the relevant timeframe;
- 6 t. Whether Defendant failed to pay Plaintiff Alamo and Class members for the total
7 hours worked during the relevant timeframe;
- 8 u. Whether Defendant failed to keep accurate payroll records, such that inaccurate
9 wage statements were issued to Plaintiffs and Class members;
- 10 v. Whether Defendant failed to pay Plaintiffs and Class members an accurate and
11 timely final paycheck;
- 12 w. Whether Defendant failed to pay Plaintiff Alamo and Class members at least
13 minimum wage for all the hours worked;
- 14 x. Whether Defendant failed to pay Plaintiff Munoz and Class members for accrued
15 sick days;
- 16 y. Whether Defendant failed to reimburse Plaintiff Alamo and Class members for
17 accrued expenses;
- 18 z. Whether Defendant improperly retained, converted, appropriated, or deprived
19 Plaintiffs and other Class Members of the use of monies or sums, which Plaintiffs
20 and Class Members were legally entitled to;
- 21 aa. Whether Defendant engaged in unfair business practices in violation of California
22 *Business and Professions Code* §§ 17200, et seq.; and
- 23 bb. The appropriate amount of damages, restitution, or monetary penalties resulting
24 from Defendant's violations of California law.

25 **FIRST CAUSE OF ACTION**

26 ***Civil Penalties Pursuant to Labor Code section 2699***

27 *(By Plaintiffs, individually and on behalf of all similarly situated Class Members,*

28 *Against all Defendants)*

- 1 33. Plaintiffs and Class members incorporate by reference and re-allege, as if fully stated
2 herein, the material allegations set out in paragraphs 1 through 32 of this Complaint.
- 3 34. As a result of the actions alleged herein, Plaintiffs seek penalties under Labor Code
4 sections 2698 and 2699 because of Defendant's violation of Labor Code sections **98.6,**
5 **201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 510-512,**
6 **551-552, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5 and 2698-2699,**
7 **2699.5, 2802,** which call for civil penalties.
- 8 35. For each such violation, Plaintiffs and the Class members are entitled to penalties in an
9 amount to be proven at trial subject to the following formula:
- 10 (a) For \$100 for the initial violation per employee per pay period
- 11 (b) For \$200 for each subsequent violation per employee per pay period
- 12 36. Labor Code Section 2699.3 provides that "The aggrieved employee or representative
13 shall give written notice by certified mail to the Labor and Workforce Development
14 Agency and the employer of the specific provisions of this code alleged to have been
15 violated, including the facts and theories to support the alleged violation."
- 16 37. Plaintiffs complied with Labor Code Section 2699.3. Written notice was served on
17 Defendant in accordance with the provision of Section 2699.3 on August 25, 2020. To
18 date, the California Labor and Workforce Development Agency has not provided
19 Plaintiffs with a notice of intent to investigate these violations, and more than 65 days
20 have since passed from the postmark date of the notice provided by Plaintiffs. Attached
21 to this complaint as **Exhibit A**, is a copy of the PAGA NOTICE and proof of mailing.
22 Moreover, Defendant have failed to provide Plaintiffs with notice that it has cured the
23 violations, will cure the violations now, or will cure the violations in the future.
24 Consequently, pursuant to Labor Code Section 2699.3(a)(2)(A), Plaintiffs may proceed
25 and file a complaint for penalties pursuant to Labor Code section 2699.

26 **SECOND CAUSE OF ACTION**

27 **Violation of Labor Code §§ 226.7 and 512(a) – Unpaid Missed Meal Breaks**

28 *(By Plaintiff Alamo, individually, and on behalf of all similarly situated Class Members,*

Against all Defendants)

38. Plaintiff Alamo and class members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in paragraphs 1 through 37 of this Complaint.
39. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly for any wages or penalty due to them under this article of the California Labor Code.
40. At all times herein set forth, Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.
41. At all times herein set forth, Labor Code section 512(a) provides that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.
42. At all times herein set forth, Labor Code section 512(a) further provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee, only if the first meal period was not waived.
43. The language of IWC Order No. 1-2001 and 9-2001 section 11 relating to meal period's tracks the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090, subd. 11.)
44. During the relevant time period, Plaintiff Alamo and Class members were required to work in excess of ten (10) hours without receiving a second "uninterrupted" meal period of not less than thirty (30) minutes.

- 1 45. Defendant fostered a work environment where the taking of uninterrupted thirty (30)
2 minute meal breaks by its employees was essentially prohibited because Defendant
3 were more concerned about their profit margin, than its own employees' welfare. As
4 such, Plaintiff Alamo and Class members could not take any thirty (30) minute
5 uninterrupted meal breaks without the risk of being reprimanded or terminated.
- 6 46. Because Defendant failed to afford proper meal periods, they are liable to Plaintiff
7 Alamo and Class members for one hour of additional pay at the regular rate of
8 compensation for each workday that the proper meal periods were not provided,
9 pursuant to Cal. Labor Code Section 226.7(b) and IWC wage order No. 1, Section
10 11(B).
- 11 47. By violating Cal. Labor Code Section 226.7 and 512, and wage order No. 1, Section 11,
12 Defendant is also liable to Plaintiff Alamo and Class members for reasonable attorneys'
13 fees and costs under Cal. Labor Code Section 218.5.

14 **THIRD CAUSE OF ACTION**

15 **Violation of *Labor Code* §§ 226.7 and 1198 – Unpaid Missed Rest Breaks**

16 *(By Plaintiff Alamo, individually, and on behalf of all similarly situated Class Members,*
17 *Against all Defendants)*

- 18 48. Plaintiff Alamo and Class members incorporate by reference and re-allege, as if fully
19 stated herein, the material allegations set out in paragraphs 1 through 47 of this
20 Complaint.
- 21 49. At all times herein set forth, Labor Code section 218 authorizes employees to sue
22 directly for any wages or penalty due to them under this article of the California Labor
23 Code.
- 24 50. At all times herein set forth, Labor Code section 226.7 provides that no employer shall
25 require an employee to work during any rest period mandated by an applicable order of
26 the IWC.
27
28

51. The language of IWC Order No. 1-2001, and 9-2001 section 12 relating to rest periods tracks the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090, subd. 11.)

52. During the relevant time period, Plaintiff Alamo and Class members were required to work in excess of eight (8) hours up to twelve (12) hours and more, without receiving a third rest period of not less than ten (10) minutes.

53. Defendants fostered a work environment where the taking of rest breaks by its employees was essentially prohibited because Defendants were more concerned about their profit margin, than its own employees' welfare. As such, Plaintiff Alamo and Class members could not take any full and complete uninterrupted rest breaks without the risk of being reprimanded or terminated.

54. Because Defendants failed to afford proper rest periods, they are liable to Plaintiff Alamo and Class members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Cal. Labor Code Section 226.7(b) and IWC wage order No. 1, Section 12(B).

55. By violating Cal. Labor Code Section 226.7 and 1198, and wage order No. 1, Section 12, Defendants are also liable to Plaintiff Alamo and Class members for reasonable attorneys' fees and costs under Cal. Labor Code Section 218.5.

FOURTH CAUSE OF ACTION

Violation of Labor Code §§ 510 and 1198 - Failure to Pay All Overtime Wages

(By Plaintiff Alamo, individually, and on behalf of all similarly situated Class

Members, Against all Defendants)

56. Plaintiff Alamo and Class members incorporate by reference and re-allege, as if fully stated herein, the material allegations set forth in paragraphs 1 through 55 of this Complaint.

57. At all times herein set forth, Labor Code section 218 authorizes an employee to sue Directly for any wages or penalty due to him or her under this article of the Labor Code.

- 1 58. At all times herein set forth, *Labor Code* § 1198 provides that it is unlawful to
2 employ persons for longer than the hours set by the Industrial Welfare Commission
3 (*hereinafter* "IWC").
- 4 59. Pursuant to California Labor Code § 510 and IWC Wage Order No. 1-2001, and 9-2001
5 section (3), Defendants were required to pay Plaintiff Alamo and Class members at the
6 rate of one and one half (1½) times regular rate of pay if the Plaintiffs worked more
7 than eight (8) hours in a workday or more than forty (40) hours in a workweek.
8 Further, Defendants were required to pay Plaintiffs at the rate of two times ("double
9 time") their regular rate of pay if the Plaintiffs worked more than twelve (12) hours in a
10 workday.
- 11 60. Plaintiff Alamo and Class members allege that during their work shifts, they worked
12 shifts in excess of eight (8) and twelve (12) hours per workday. Plaintiff Alamo and
13 Class members allege that Defendants failed to pay their accurate "over-time" wages
14 for hours worked in excess of 8 hours per work day in violation of Labor Code § 510.
15 Plaintiff Alamo and Class members allege that Defendants failed to pay their accurate
16 "over-time" wages for hours worked in excess of 12 hours per work day in violation of
17 Labor Code § 510. Accordingly, Plaintiff Alamo and Class members are entitled to
18 recover the amount of unpaid one and half time and double time wages.
- 19 61. Pursuant to *California Labor Code* § 558, Plaintiff Alamo and Class members are
20 entitled to fifty dollars (\$50) for each pay period for which they were underpaid in
21 addition to an amount sufficient to recover underpaid wages and for each subsequent
22 violation, one hundred dollars (\$100) for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid wages.

24 **FIFTH CAUSE OF ACTION**

25 **Violation of Labor Code Sections 204 - Failure to Pay All Wages Earned**

26 *(By Plaintiff Alamo, individually, and on behalf of all similarly situated Class*
27 *Members, Against all Defendants)*
28

1 62. Plaintiff Alamo and Class members incorporate by reference and re-allege, as if fully
2 stated herein, the material allegations set forth in paragraphs 1 through 61 of this
3 Complaint.

4 63. Cal. Labor Code Section 204 requires California employers to pay employees for all
5 wages earned.

6 64. Defendants failed to compensate Plaintiff Alamo and Class members for all hours
7 worked. This included, but was not limited to: (1) the hours Plaintiff Alamo and Class
8 members worked during their meal and rest breaks, and for which they did not receive
9 the proper compensation under the law; and (2) over-time pay for all hours worked
10 overtime.

11 65. Plaintiff Alamo and Class members have been damaged in a sum to be proven and
12 request relief as described below.

13 **SIXTH CAUSE OF ACTION**

14 **Violation of California Labor Code Sections 226 and 1174 - Failure to maintain**
15 **accurate payroll records**

16 *(By Plaintiffs, individually, and on behalf of all similarly situated Class Members,*
17 *Against all Defendants)*

18 66. Plaintiffs and class members incorporate by reference and re-allege, as if fully stated
19 herein, the material allegations set out in paragraphs 1 through 65 of this Complaint.

20 67. Cal. Labor Code Section 226, IWC wage order No. 1, Section 7, and Cal. Labor Code
21 Section 1174 require employers to maintain accurate payroll records and to provide
22 semi-monthly or at the time of each payment of wages to furnish each employee with a
23 statement itemizing, among other things, the total hours worked by the employee.

24 68. Plaintiffs demanded his personnel records, payroll records and time sheets. Defendants'
25 attorney did not produce the records in a timely manner. Only Plaintiff BLAS NOE
26 LICANO MUNOZ, personnel records were produced but the records are incomplete
27 since letters are missing and there is no documentation as to the reason he was
28 terminated. There are no payroll records and no time records as to start and stop time of

1 each shift Plaintiffs worked for the Defendants and none as to the timing of any breaks
2 to indicate that Plaintiffs could not take any or if they were interrupted. Defendants
3 have violated Cal. Labor Code Sections 226(a) and 1174, and IWC wage order No. 1-
4 2001 and 9-2001, Section 7, by willfully failing to keep required payroll records
5 showing the start and stop time and the actual hours worked each day by Plaintiffs and
6 Class members. Also the time sheets are intentionally defective for not recording the
7 fact that Plaintiffs could not take any of the rest and meal breaks. As a direct and
8 proximate result of Defendant's failure to maintain payroll records, Plaintiffs and Class
9 members have suffered economic harm as they have been precluded from accurately
10 monitoring the number of hours worked and thus seeking payment for all missed meal
11 periods and rest breaks and all hours worked.

- 12 69. Plaintiffs and Class members have been damaged in a sum to be proven and request
13 relief as described below.

14 **SEVENTH CAUSE OF ACTION**

15 **Violation of Labor Code sections 201-203 – Wages Not Paid Upon**
16 **Separation**

17 *(By Plaintiffs, individually, and on behalf of all similarly situated Class Members,*
18 *Against all Defendants)*

- 19 70. Plaintiffs and Class members incorporate by reference and re-allege, as if fully
20 stated herein, the material allegations set forth in paragraphs 1 through 69 of this
21 Complaint.
- 22 71. At all times herein set forth, Labor Code section 218 authorizes employees to sue
23 directly for any wages or penalties due to them under this article of the Labor
24 Code.
- 25 72. At all times herein set forth, Labor Code sections 201–203 provides that if an
26 employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily
28 leaves his or her employment, his or her wages shall become due and payable not

1 later than seventy-two (72) hours thereafter; unless the employee has given
2 seventy-two (72) hours previous notice of his or her intention to quit, in which
3 case the employee is entitled to his or her wages at the time of quitting.

4 73. During the relevant time period, Defendants failed to pay Plaintiffs and Class
5 members, who are no longer working at Defendant's location, all their wages,
6 earned and unpaid within seventy-two (72) hours of their leaving Defendant's
7 employ. This would include, but not be limited to, wages for: all hours worked
8 (including overtime), compensation for missed breaks, and hours worked during
9 rest and meal breaks.

10 74. Plaintiffs and Class members allege that the wages earned and unpaid within
11 seventy-two (72) hours of their leaving Defendant's employ, is in violation of
12 Labor Code sections 201-203.

13 75. Labor Code section 203 provides that if an employer willfully fails to pay wages
14 owed, in accordance with sections 201 and 202, then the wages of the employee
15 shall continue as a penalty from the due date, and at the same rate until paid or
16 until an action is commenced; but the wages shall not continue for more than
17 thirty (30) days.

18 76. Plaintiffs and Class members are entitled to recover from Defendants the
19 statutory penalty for each day they were not paid at their regular day's rate of
20 pay, up to a thirty (30) day maximum, pursuant to Labor Code section 203.

21 **EIGHTH CAUSE OF ACTION**

22 **Violation of Labor Code Sections 1194 & 1197 - Failure to Pay Minimum Wages**

23 *(By Plaintiff Alamo, individually, and on behalf of all similarly situated Class*
24 *Members, Against all Defendants)*

25 77. Plaintiffs Alamo incorporates by reference and re-allege, as if fully stated herein,
26 the material allegations set forth in paragraphs 1 through 76 of this Complaint.
27
28

1 78. Pursuant to Labor Code Section 1197, “the minimum wage for employees fixed
2 by the commission is the minimum wage to be paid to all employees, and the
3 payment of a less wage than the minimum so fixed is unlawful.”

4 79. Defendants failed to pay Plaintiff Alamo and Class members at least the
5 minimum wage for all hours worked. The wage statements failed to account for
6 all hours worked by Plaintiff Alamo and Class members. As such, Plaintiff
7 Alamo and Class members were not paid the minimum wage for all hours work.

8 80. Plaintiff Alamo and Class members have been damaged in a sum to be proven
9 and request relief as described below.

10 **NINTH CAUSE OF ACTION**

11 **Failure to Pay for Sick Days (*Violation of Labor Code §246(a)*)**

12 *(By Plaintiff Munoz, individually, and on behalf of all similarly situated Class*
13 *Members, Against all Defendants)*

14 81. Plaintiff Munoz incorporates by reference and re-alleges, as if fully stated herein, the
15 material allegations set out in paragraphs 1 through 80 of this Complaint.

16 82. Cal. Labor Code Section 246(a) provides: (a) (1) An employee who, on or after July 1,
17 2015, works in California for the same employer for 30 or more days within a year
18 from the commencement of employment is entitled to paid sick days as specified in this
19 section.

20 83. Defendants failed and refused to pay Plaintiff Munoz and Class members for their sick
21 days. Plaintiff Munoz and Class members have been damaged in a sum to be proven
22 and request relief as described below.

23 **TENTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code § 17200, et seq.**

25 *(By Plaintiffs, individually, and on behalf of all similarly situated Class*
26 *Members, Against all Defendants)*

1 84. Plaintiffs and Class members incorporate by reference and re-allege, as if fully
2 stated herein, the material allegations set forth in paragraphs 1 through 83 of this
3 Complaint.

4 85. California Business & Professions Code Section 17200 prohibits unfair
5 competition in the form of any unlawful, unfair, or fraudulent business act or
6 practice.

7 86. California Business & Professions Code Section 17204 allows “any person
8 acting for the interest of itself, its members or the general public” to prosecute a
9 civil action for violation of the UCL.

10 87. Beginning at an exact date unknown to Plaintiffs, but at least four years prior to
11 the filing of this action, Defendant has interrupted its employees meal and rest
12 breaks, has improperly, fraudulently, and unlawfully failed to provide their
13 employees with second meal breaks, third rest break, failed to provide
14 compensation for the missed rest and meal breaks, failed to provide
15 compensation for all hours worked and all wages earned, failed to pay overtime,
16 provided the employees with inaccurate wage statements, failed to pay wages
17 owed upon separation, failed to pay for accrued sick days, and have thereby
18 committed unlawful, unfair, and/or fraudulent business acts and practices as
19 defined by California Business & Professions Code Section 17200, by engaging
20 in the following:

- 21 i. Failing and refusing to provide meal periods to Plaintiff Alamo and similarly situated
22 employees;
- 23 ii. Failing to pay all accrued meal period break compensation to the employees;
- 24 iii. Failing and refusing to provide rest periods to Plaintiff Alamo and similarly situated
25 employees;
- 26 iv. Failing to pay all accrued rest period break compensation to the employees;
- 27 v. Failing to pay all accrued overtime compensation to the employees;
- 28 vi. Failing to pay to the employees for all hours worked;

- 1 vii. Failing to maintain accurate payroll record and provide accurate itemized wage statement
2 to Plaintiffs and similarly situated employees;
3 viii. Failing to pay accurate wages for its employees' final paycheck;
4 ix. Failing to pay at least minimum wage for all hours worked;
5 x. Failure to pay for accrued sick days;
6 xi. Failure to reimburse for accrued expenses.

7 88. The violation of these laws serve as unlawful, unfair, and/or fraudulent predicate acts
8 and practices for purposes of California Business and Professions Code Section 17200.

9 89. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent acts
10 and practices described herein, Defendant has received and continue to hold ill-gotten
11 gains belonging to Plaintiffs and Class members. As a direct and proximate result of
12 Defendant's unlawful business practices, Plaintiffs and Class members have suffered
13 economic injuries including, but not limited to, compensation for missed rest and meal
14 periods, overtime pay, compensation for all hours worked and accrued sick days and
15 expenses and accurate final paycheck upon separation, and inaccurate wage statements.
16 Defendant has profited from these unlawful, unfair, and/or fraudulent acts and
17 practices.

18 90. Plaintiffs and similarly situated employees are entitled to restitution pursuant to
19 California Business & Professions Code Sections 17203 and 17208 for all rest and meal
20 period compensation, accrued sick days, and overtime and all hours worked
21 compensation and interest, since four years prior to the filing of this action.

22 91. Plaintiffs and similarly situated employees are entitled to enforce all applicable penalty
23 provisions of the California Labor Code pursuant to California Business & Professions
24 Code Section 17202.

25 92. Plaintiffs' success in this action will enforce important rights affecting the public
26 interest. In this regard, Plaintiffs, JOSE MANUEL ALAMO and BLAS NOE LICANO
27 MUNOZ, sue on behalf of the public as well as on behalf of themselves and others
28

1 similarly situated. Plaintiffs seek and are entitled to unpaid compensation, declaratory
2 and injunctive relief, civil penalties, and any other appropriate remedy.

3 93. Injunctive relief is necessary and appropriate to prevent Defendant from continuing and
4 repeating their unlawful, unfair and fraudulent business acts and practices alleged
5 above.

6 94. In order to prevent Defendant from profiting and benefitting from their wrongful and
7 illegal acts and continuing those acts, an order requiring Defendant to disgorge all the
8 profits and gains they have reaped and restore such profits and gains to the employees,
9 from whom they were unlawfully taken.

10 95. Plaintiffs have assumed the responsibility of enforcement of the laws and lawful claims
11 specified herein. There is a financial burden incurred in pursuing this action which is in
12 the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to
13 Cal. Code of Civil Procedure Section 1021.5

14 96. By all of the said foregoing alleged conduct Defendant has committed, and are
15 continuing to commit, ongoing unlawful, unfair and fraudulent business practices
16 within the meaning of Cal. Business & Professions Code Section 17200, et seq.

17 97. As a direct and proximate result of the unfair business practices described above,
18 Plaintiffs, other employees, and members of the general public have all suffered
19 significant losses and Defendant has been unjustly enriched.

20 98. Pursuant to Cal. Business & Professions Code Section 17203, Plaintiffs, other
21 employees, and members of the general public are entitled to: (a) restitution of money
22 acquired by Defendant by means of their unfair business practices, in amounts not yet
23 ascertained but to be ascertained at trial; (b) injunctive relief against Defendant's
24 continuation of their unfair business practices, and (c) a declaration that Defendant's
25 business practices are unfair within the meaning of the statute.

26 **ELEVENTH CAUSE OF ACTION**

27 **WRONGFUL TERMINATION (DISCRIMINATION AND RETALIATION)**

28 *(By Plaintiff Munoz, individually, Against all Defendants)*

- 1 99. Plaintiff Munoz incorporates herein as though set forth in full the allegations of
2 paragraphs 1-98.
- 3 100. During his employment, Plaintiff Munoz developed an injury to his lower
4 extremity, which ultimately resulted in an amputation on January 22, 2019.
5 Following the surgery, Plaintiff Munoz went on medical leave for a period of 4-5
6 months in order to recuperate. He then returned to work for Defendant with
7 restrictions as per his primary treating physician. After a few months, on
8 February 12, 2020, Defendant suddenly and inexplicably terminated Plaintiff's
9 employment. Plaintiff believes and contends that Defendant terminated his
10 employment due to his disability, medical leave, need for work accommodations
11 and his age of 50 (after working for Defendant for over 20 years). Defendant
12 violated Cal. Gov. Code § 12940.
- 13 101. Defendants discriminated against Plaintiff. As a result of Defendant's acts,
14 Plaintiff has suffered and will continue to suffer damages, including lost wages,
15 lost benefits, as well as other pecuniary and physical and emotional injuries. The
16 amount of Plaintiff's damages will be ascertained at trial. Plaintiff is legally
17 protected from disability discrimination.
- 18 102. Defendants retaliated against Plaintiff in the terms, conditions and existence of
19 Plaintiff's employment after Plaintiff opposed practices of Defendant forbidden by
20 FEHA, Govt. Code §§ 12900-12996, including but not limited to Govt. Code §§ 12940,
21 12945.2 (employment discrimination). Defendant's retaliation violated Govt. Code §
22 12940, including subsection (h).
- 23 103. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including
24 reinstatement and reimbursement of lost wages, and benefits.
- 25 104. Plaintiff has been required to hire The Law Offices of Farrah Mirabel, and is entitled to
26 recover reasonable attorney fees.
- 27 105. Plaintiff Munoz has been damaged in a sum to be proven and requests relief as
28 described below. Plaintiffs Munoz has filed a Right to Sue Letter with the Department

of Fair Employment and Housing on December 14, 2020, which is attached hereto as **Exhibit “B”**.

TWELFTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By Plaintiff Munoz and Alamo, Individually, Against All Defendants)

106. Plaintiffs Munoz and Alamo incorporate by references and re-allege, as if fully stated herein, the material allegations set out in paragraphs 1 through 105 of this Complaint.
107. "Public policy" has been defined broadly to mean "that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good" [*Petermann v. International Brotherhood of Teamsters* (1959) 174 Cal. App. 2d 184, 188, 344 P.2d 25]. An employer discharging an employee's employment based on the employee's medical condition is a violation of Public Policy because "disability discrimination" and "medical leave" is supported by either constitutional or statutory provisions; it inures to the benefit of the public at large rather than serving merely the interests of the individual; is articulated at the time of the discharge; and California's policy against disability discrimination and medical leave is "substantial and fundamental."
108. During his employment, Plaintiff Munoz sustained an injury to his lower extremity, requiring amputation. Following the surgery, Plaintiff Munoz went on medical leave for a period of 4-5 months. He then returned to work with restrictions. After a few months, Defendants suddenly terminated his employment. Plaintiff believes and contends Defendants wrongfully terminated his employment on February 12, 2020, due to his disability, medical leave, need for ongoing medical treatment and time off and work accommodations. He also was 50 years old and after 20 years of work he got terminated and replaced by a younger employee.
109. Defendants constructively discharged Plaintiff Alamo, on February 16, 2020, because Alamo expressed his concerns about batteries of forklifts.

1 110. Therefore, Plaintiffs allege that Defendants have terminated their employment in
2 violation of Public Policy. Plaintiffs allege that as a direct and proximate result of
3 Defendant' wrongful conduct (Plaintiffs' employment being terminated on the above
4 described basis), Plaintiffs have now sustained monetary damages and severe emotional
5 distress in an amount to be proven at trial.

6 111. Each of the wrongful and deliberated acts committed by Defendant, as herein alleged,
7 were acts that constitute oppression and malice because they were committed with the
8 sole intent to discharge Plaintiffs from their employment.

9 112. Plaintiffs are informed and believe and thereon allege that each of the oppressive and
10 malicious acts committed by Defendant, as herein above alleged, were committed
11 and/or ratified by Defendants and their directors, officers, managing employees, and
12 therefore, Plaintiffs are entitled to an award of punitive damages against Defendants
13 and each of them.

14 **THIRTEENTH CAUSE OF ACTION**

15 **WRONGFUL TERMINATION/CONSTRUCTIVE DISCHARGE**

16 *(By Plaintiff Alamo, individually, Against all Defendants)*

17 113. Plaintiff Alamo incorporates herein as though set forth in full the allegations of
18 paragraphs 1-112.

19 114. Defendants constructively discharged Plaintiff on February 16, 2020 because Alamo
20 expressed his concerns about batteries of forklifts.

21 115. Defendants forced and demanded Plaintiff to work many hours without providing him
22 with the required rest breaks and meal breaks. In addition, Plaintiff often worked over
23 eight hours and did not receive overtime pay. He was also not reimbursed for his
24 expenses.

25 116. Plaintiff's having to work such long hours without breaks and without receiving
26 overtime payment, as well as not receiving compensation for all hours worked, not
27 getting reimbursed for his expenses created a hostile work environment, so intolerable,
28 which even if Defendants would allow Plaintiff to return to his job by Defendant, it

1 would be impossible and unconscionable for a reasonable person to be able to perform
2 work without receiving breaks and compensation.

3 117. Plaintiff Alamo has been damaged in a sum to be proven and requests relief as
4 described below.

5 **FOURTEENTH CAUSE OF ACTION**

6 **(Violation of Labor Code §98.6 and §1102.5)**

7 *(By Plaintiff Alamo, Individually, Against All Defendants)*

8 118. Plaintiff Alamo incorporates by references and re-alleges, as if fully stated herein,
9 the material allegations set forth in paragraphs 1 through 117 of this Complaint.

10 119. Labor Code section 1102.5 states: (a) An employer, or any person acting on
11 behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or
12 policy preventing an employee from disclosing information to a government or
13 law enforcement agency, to a person with authority over the employee, or to
14 another employee who has authority to investigate, discover, or correct the
15 violation or noncompliance, or from providing information to, or testifying
16 before, any public body conducting an investigation, hearing, or inquiry, if the
17 employee has reasonable cause to believe that the information discloses a
18 violation of state or federal statute, or a violation of or noncompliance with a
19 local, state, or federal rule or regulation, regardless of whether disclosing the
20 information is part of the employee's job duties.

21 (b) An employer, or any person acting on behalf of the employer, shall not
22 retaliate against an employee for disclosing information, or because the employer
23 believe that the employee disclosed or may disclose information, to a government
24 or law enforcement agency, to a person with authority over the employee or
25 another employee who has the authority to investigate, discover, or correct the
26 violation or noncompliance, or for providing information to, or testifying before,
27 any public body conducting an investigation, hearing, or inquiry, if the employee
28 has reasonable cause to believe that the information discloses a violation of state
or federal statute, or a violation of or noncompliance with a local, state, or federal

1 rule or regulation, regardless of whether disclosing the information is part of the
2 employee's job duties.

3 (c) An employer, or any person acting on behalf of the employer, shall not
4 retaliate against an employee for refusing to participate in an activity that would
5 result in a violation of state or federal statute, or a violation of or noncompliance
6 with a local, state, or federal rule or regulation.

7 120. Labor Code section 98.6 states: (a) A person shall not discharge an employee or
8 in any manner discriminate, retaliate, or take any adverse action against any
9 employee or applicant for employment because the employee or applicant
10 engaged in any conduct delineated in this chapter.

11 121. Plaintiff Alamo complained to Defendants, regarding safety issues concerning
12 some of the batteries of the forklifts. Then the owner, Mr. Lehr, asked Alamo
13 what was his complaint about the batteries and when Alamo expressed his safety
14 concern, Defendants suspended Plaintiff's employment and constructively
15 discharged him, because they believed that Plaintiff disclosed or may disclose
16 information, to a government or law enforcement agency, to a person with
17 authority over the employee or another employee who has the authority to
18 investigate, discover, or correct the violation or noncompliance, or for providing
19 information to, or testifying before, any public body conducting an investigation,
20 hearing, or inquiry.

21 122. Plaintiff Alamo has been damaged in a sum to be proven and requests relief as
22 described below.

23 **FIFTEENTH CAUSE OF ACTION**

24 ***Violation of Labor Code sections 2802 – Failure To Reimburse Required***
25 ***Business Expenses***

26 *(By Plaintiff Alamo, individually, Against all Defendants)*

27 123. Plaintiff Alamo incorporates by reference and re-alleges, as if fully stated herein,
28 the material allegations set out in each and all previous paragraphs of this
Complaint.

1 124. Labor Code section 2802 requires an employer to “indemnify his or her employee
2 for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties”

4 125. As part of his job duties, Plaintiff Alamo incurred necessary business expenses
5 including the following: Plaintiff Alamo had to purchase tools in order to
6 complete his duties.

7 126. Plaintiff Alamo was required to spend his own money to purchase tools, and was
8 not reimbursed by the Defendant.

9 127. All said expenses were necessary for Plaintiff Alamo to fulfill his job function for
10 the Defendants.

11 128. Plaintiff Alamo sought reimbursement of these necessary expenses incurred at
12 Defendants’ direction and with assurance of payment, but Defendants have
13 consistently refused to reimburse and indemnify Plaintiff Alamo for these
14 expenses.

15 129. Accordingly, Plaintiff Alamo has been deprived of legally required
16 reimbursement, and Defendants should be liable to Plaintiff Alamo for these
17 sums, plus attorney's fees, plus interest.

18 130. The monies retained by Defendants should be deemed Plaintiff Alamo’s monies,
19 held in trust for Plaintiff Alamo and subject to a proper claim for reimbursement
20 and disgorgement.

21 **PRAYER FOR RELIEF**

22 1. That this action be certified as a class action;

23 2. That Plaintiffs be appointed as the representative of the Class; and

24 3. That counsel for Plaintiffs is appointed as Class counsel.

25 4. For general and special compensatory damages, according to proof;

26 5. For statutory damages;

27 6. For payments pursuant to *California Labor Code* § 226.7 and § 2802;

28 7. For payments pursuant to *California Code of Civil Procedure* § 338;

8. For reasonable attorney's fees and for costs of suit incurred herein pursuant to *Labor Code* §§ 218.5, 226(e);

1 9. For pre-judgment interest on any unpaid wages from the date such amounts were due
2 pursuant to *California Labor Code* § 218.6;

3 10. For civil penalties pursuant to *Labor Code* § 558; penalties under Labor Code sections
4 2698 and 2699.

5 11. For the disgorgement of any and all “unpaid wages” and incidental losses, according to
6 proof;

7 12. For restitution of "unpaid wages" and pre-judgment interest from the day such amounts
8 were due and payable;

9 13. For reasonable attorney's fees pursuant to *Code of Civil Procedure* § 1021.5;

10 14. For exemplary and punitive damages; damages and penalties pursuant to all applicable
11 *California Labor Code*;

12 15. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;

13 16. For such other and further relief as the court deems just and proper.
14

15 DATED: December 14, 2020

LAW OFFICES OF FARRAH MIRABEL

16 BY: /s/ Farrah Mirabel
Farrah Mirabel, Esq.

17 ATTORNEYS FOR PLAINTIFFS
18 JOSE MANUEL ALAMO AND BLAS NOE LICANO
19 MUNOZ

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs and class members demand a trial by jury of all issues in this action triable by a
22 jury, including but not limited to issues of liability and damages.
23

24 DATED: December 14, 2020

LAW OFFICES OF FARRAH MIRABEL

25 /s/ Farrah Mirabel
26 FARRAH MIRABEL, Attorneys for Plaintiffs
27
28

Exhibit “A”

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR. R. LEHR
Lehr Brothers Inc.
12901 Packing House Rd.
Bakersfield, CA 93307



9590 9402 5124 9092 3328 79

2. Article Number (Transfer from service label)

7019 0700 0002 1521 3523

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

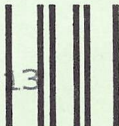
- ☐ Priority Mail Express®
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☐ Signature Confirmation™
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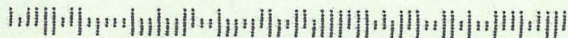
United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Law Offices of Farrah Mirabel
1070 Stradella Rd.
Los Angeles, CA 90077.

Re: Jose Alamo and Blas N. Licano Muñoz v.
Lehr Brothers, Inc.

7-260870



Law Offices of
Farrah Mirabel
Attorney At Law
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

August 25, 2020

- VIA CERTIFIED U.S. MAIL -

Attn. PAGA Administrator
California Labor and Workforce Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Mr. RON LEHR
Lehr Brothers, Inc.
12901 PACKING HOUSE RD
BAKERSFIELD CA 93307

In Re: Jose Manuel Alamo and Blas N Licano Munoz v. Lehr Brothers, Inc.

Dear PAGA Administrator:

Our firm represents the interests of **Jose Manuel Alamo and Blas N Licano Munoz** (Plaintiffs), against **Lehr Brothers, Inc.** (referred to as the "Defendant"). Plaintiff Jose Alamo worked as a forklift mechanic and driver laborer, for more than 17 years but was constructively discharged on February 16, 2020. Plaintiff Blas Munoz worked as a forklift operate/loader/laborer, for Defendant, for more than 20 years but was constructively discharged on February 12, 2020.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

During the relevant timeframe, Defendant has employed Plaintiffs as non-exempt hourly employees. Plaintiffs were hired as laborers.

Plaintiff Blas Munoz worked 5 days a week, between 7 a.m. to 3:30 p.m. and earned \$13.50/hour by driving operating forklifts and loading boxes. He was not paid for his sick days. Plaintiff Manuel Alamo worked 6 days a week, between 7 a.m. to 3:30 p.m. and earned \$13.75/hour, mostly fixing forklifts. He was not able to take his statutory breaks

because the owner would interrupt them daily, asking him to fix the forklifts and also he had to spend his own money to buy tools but was not reimbursed for the expenses.

Plaintiffs held two different positions but collectively claim that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest break and meal break on top of other violations as enumerated below, because Defendant is understaffed and cannot possibly provide its employees with their statutory breaks.

Plaintiffs, on their own behalf and also on behalf of past and present employees, allege that they have the following claims since Defendant has violated the following labor code sections:

1. Violation of Labor Code § 226 and 226.7(a) (Missed Rest Breaks);
2. Violation of Labor Code §226.7, 512, and 1198 (Missed Meal Breaks);
3. Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);
4. Violation of Labor Code § 204, 1194, 1197 and IWC 16-2001, § 4 (*Failure to Pay Minimum Wage, Pay for all Wages Earned*);
5. Violation of Labor Code § 226(a) and 1174 (Improper Wage Statements);
6. Violation of California Labor Code Sections 226, 1174, 1198.5 and IWC 5-2001 (Failure to maintain accurate personnel and payroll records);
7. Violation of Labor Code §246(a) (Failure to pay for sick days);
8. Violation of Labor Code sections 2802 (Failure To Reimburse Required Business Expenses);
9. Violation of Bus. & Prof. Code § 17200, et seq. (Unfair Competition)
10. Civil Penalties Pursuant to Labor Code section 2699 (PAGA penalties)

Defendant has also violated applicable California Industrial Welfare Commission wage order, any of IWC 1-2001 to 14-2001.

Plaintiffs claim on their own behalf and also on behalf of all past and present employees that they worked in excess of 8 hours work shift and 40 hours per week. Therefore, Plaintiffs were hired to work shifts of over four hours, but were not allowed to take a ten-minute, uninterrupted rest break for each 4 hours they worked. Plaintiffs worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Plaintiffs worked more than 8 hours and they never received accurate long enough rest periods every 4 hours to be

compliant with the law.

Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and other employees to take rest breaks.

Also during their employment, Plaintiffs did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift they worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs to take their uninterrupted meal breaks in middle of their shift close to the completion of 5 hours of work shift.

Plaintiffs received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to Plaintiffs for the missed rest and meal breaks, nor accounted for the interrupted or not taken meal breaks that Plaintiffs were forced to work. Therefore, Defendant failed to maintain accurate payroll records, such that Plaintiffs were given wage statements that did not accurately reflect the accurate hours worked and did not reflect the required and due compensation for all the hours worked and rest and meal breaks missed and interrupted.

Plaintiffs claim that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest break and/or meal break, and failed to pay them accurate rate of overtime for all hours worked in excess of 8 hours per day and 40 hours per week, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiffs claim that Defendant provided all its past and present employees with improper wage statements.

Also, Plaintiffs were not paid their final accurate paychecks after their final workday on February 12 and 16, 2020, respectively.

Plaintiffs claim that Defendant's conduct, as state herein, including not paying its employees all wages owed, including wages for all hours worked, overtime, missed meal and rest breaks, and not providing its employees with paid sick days and accurate wage statements, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiffs, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiffs can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Law Offices of Farrah Mirabel
1070 Stradella Rd., Los Angeles, CA 90077
Tel (714) 972-0707 • Fax (949) 417-1796

Plaintiffs and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiffs, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections 201-204, 210, 218.5, 225.5, 223, 226, 226.3, 226.7, 246, 558, 558.1, 1174, 1174.5, 1193.6, 1197, 1197.1, 1197.5, 1198, 1198.2, 1198.3, 1198.5, 1199, 1199.5 and 2698-2699, 2699.5, 2802 and applicable IWC.

Very truly yours,
LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel
Farrah Mirabel, Esq.

Exhibit “B”



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfefh.ca.gov

December 14, 2020

Farrah Mirabel
1070 Stradella Rd
Los Angeles, California 90077

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202012-12073114
Right to Sue: LICANO MUNOZ / LEHR BROTHERS, INC.

Dear Farrah Mirabel:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 14, 2020

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202012-12073114
Right to Sue: LICANO MUNOZ / LEHR BROTHERS, INC.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



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December 14, 2020

BLAS NOE LICANO MUNOZ
282 Walnut Drive
Arvin, California 93203

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202012-12073114
Right to Sue: LICANO MUNOZ / LEHR BROTHERS, INC.

Dear BLAS NOE LICANO MUNOZ:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective December 14, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

BLAS NOE LICANO MUNOZ

DFEH No. 202012-12073114

Complainant,

vs.

LEHR BROTHERS, INC.
12901 PACKING HOUSE RD BAKERSFIELD CA
93307
BAKERSFIELD, California 93307

Respondents

1. Respondent **LEHR BROTHERS, INC.** is an employer **LEHR BROTHERS, INC.** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2.

3. Complainant **BLAS NOE LICANO MUNOZ**, resides in the City of **Arvin**, State of **California**.

4. Complainant alleges that on or about **February 12, 2020**, respondent took the following adverse actions:

Complainant was harassed because of complainant's family care or medical leave (cfra) (employers of 50 or more people), disability (physical or mental), medical condition (cancer or genetic characteristic), age (40 and over), association with a member of a protected class.

Complainant was discriminated against because of complainant's family care or medical leave (cfra) (employers of 50 or more people), disability (physical or mental), medical condition (cancer or genetic characteristic), age (40 and over), association with a member of a protected class and as a result of the discrimination was terminated, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people).

Complainant experienced retaliation because complainant requested or used a disability-related accommodation, requested or used leave under the california family rights act or fmla (employers of 50 or more people) and as a result was terminated, denied any

1 employment benefit or privilege, denied reasonable accommodation for a disability, denied
2 family care or medical leave (cfra) (employers of 50 or more people).

3 **Additional Complaint Details:** During his employment, Plaintiff Munoz developed an injury
4 to his lower extremity, which ultimately resulted in an amputation on January 22, 2019.
5 Following the surgery, Plaintiff Munoz went on medical leave for a period of 4-5 months in
6 order to recuperate. He then returned to work for Defendant with restrictions as per his
7 primary treating physician. After a few months, on February 12, 2020, Defendant suddenly
8 and inexplicably terminated Plaintiff's employment. Plaintiff believes and contends that
9 Defendant terminated his employment due to his disability, medical leave, need for work
10 accommodations and his age of 50 (after working for Defendant for over 20 years).
11 Defendant violated Cal. Gov. Code § 12940.
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1 VERIFICATION

2 I, **Farrah Mirabel**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On December 14, 2020, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **Los Angeles, CA**
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