

RUBEN ESCOBEDO (SBN 277866)
WORKWORLD LAW CORP.
A Professional Corporation
731 S. Lincoln Street
Santa Maria, CA 93458
Telephone: (805) 335-2476
Facsimile: (805) 892-6213
Email: ruben@workworldlaw.com

Attorney for Plaintiff, STATE OF CALIFORNIA
ex rel. RYAN WAGNER, as Private Attorney General

**ELECTRONICALLY
FILED
5/19/2020 8:33 AM**

SAN LUIS OBISPO SUPERIOR COURT
BY: 

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO – PASO ROBLES BRANCH**

STATE OF CALIFORNIA ex rel. RYAN
WAGNER, as Private Attorney General,

Plaintiff,

v.

PACIFIC COAST TRANSPORTATION,
INC., a corporation; and DOES 1-25,
inclusive,

Defendants.

Case No. 20CVP-0156

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT**

[Unlimited Civil Case – Exceeds \$25,000]

Trial Date: None

Complaint filed:

COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. RYAN WAGNER, as Private Attorney General (“Plaintiff”), who asserts claims against Defendant PACIFIC COAST TRANSPORTATION, INC., a corporation, and DOES 1 through 25, inclusive (collectively “Defendants”) as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.* A PAGA action is a “type of *qui tam* action” in which the plaintiff proceeds on behalf of the State of California and shares in the recovery of civil penalties; it “is not a dispute between an employer and an employee arising out of their

1 contractual relationship. It is a dispute between an employer and the *state....*" *Iskanian v. CLS*
2 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381-382, 386. "[T]he State is the real
3 party in interest." *Id.*, at 387.

4 2. Accordingly, Mr. Wagner is not suing in his individual capacity; he is proceeding
5 herein solely under the PAGA on behalf of himself, approximately 200 similarly situated current
6 and former aggrieved employees employed by Defendant throughout the State of California from
7 March 23, 2019 through the conclusion of this action ("Statutory Period"), and the People of the
8 State of California (collectively "Employees").

9 3. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
10 permits an aggrieved employee to recover civil penalties set forth within the California Labor
11 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
12 penalties for violations of California Labor Code provisions that do not contain their own civil
13 penalties. Plaintiff brings this civil action to recover civil penalties for the violations identified
14 below. Those civil penalties are sought for violations committed against Employees of Defendant.

15 4. Plaintiff brings this action for violations of occupational health-and-safety
16 provisions of the California Labor Code. Defendants subjected Employees to these violations,
17 some of which caused injury while some of which did not necessarily cause injury. On or about
18 April 9, 2019, Mr. Wagner was struck by a forklift operated by an improperly trained worker on a
19 forklift which lacked a required back-up safety alarm. Defendants purposefully removed the safety
20 alarm in violation of the Division of Occupational Safety and Health's (Cal/OSHA) rules and
21 regulations.

22 5. This action does not seek compensation for any injury, however; again Mr. Wagner
23 is not the real party in interest in this action. The PAGA provides for civil penalties, not for
24 injuries to employees, but for violations of the California Labor Code. "The Legislature defined
25 PAGA standing in terms of violations, not injury." *Kim v. Reins International California, Inc.*
26 (March 12, 2020, S246911) __ Cal.5th __. "An employee has PAGA standing if 'one or more of
27 the alleged violations was committed" against him. (§ 2699(c), italics added.) This language
28 indicates that PAGA standing is not inextricably linked to the plaintiff's own injury. Employees

1 who were subjected to at least one unlawful practice have standing to serve as PAGA
2 representatives even if they did not personally experience each and every alleged violation. (§
3 2699(c).) This expansive approach to standing serves the state's interest in vigorous enforcement.”
4 *Id.*

5 6. “The state can deputize anyone it likes to pursue its claim, including a plaintiff who
6 has suffered no actual injury. [Citation.] Moreover, civil penalties recovered on the state's behalf
7 are intended to ‘remediate present violations and deter future ones,’ *not* to redress employees’
8 injuries.” *Kim v. Reins International California, Inc.* (March 12, 2020, S246911) __ Cal.5th __.
9 “Requiring the existence of an unredressed injury to support standing would be problematic for
10 PAGA suits to enforce the many Labor Code statutes that do not create a private right to sue.
11 Indeed, the very reason the Legislature enacted PAGA was to enhance enforcement of provisions
12 punishable only through government-initiated proceedings.” *Id.*

13 7. This is an action for civil penalties, not damages. “[I]njury is not a requirement for
14 civil penalties. ...[D]amages and civil penalties have different purposes. . . . Damages are
15 intended to be compensatory, to make one whole. [Citation.] Accordingly, there must be an injury
16 to compensate. On the other hand, ‘Civil penalties, like punitive damages, are intended to punish
17 the wrongdoer and to deter future misconduct.’ [Citation.] An act may be wrongful and subject to
18 civil penalties even if it does not result in injury.” *Kim v. Reins International California, Inc.*
19 (March 12, 2020, S246911) __ Cal.5th __.

20 8. Pursuant to Section 2699.3, subdivision (b)(1), Plaintiff gave proper notice to the
21 California Labor and Workforce Development Agency, the Division of Occupational Safety and
22 Health, and Defendant, of the specific provisions of the California Labor Code alleged to have
23 been violated, including the facts and theories to support the alleged violation. Neither the LWDA
24 nor the Division of Occupational Safety and Health inspected or investigated the violations within
25 the time provided by law. With respect to those violations that were curable under Subdivisions
26 (b)(1) and/or (c)(1), Defendant failed to cure the violations within the time provided under PAGA.
27 Plaintiff and Employees are, therefore, entitled to all available civil penalties, in addition to
28 Plaintiff’s costs and attorneys’ fees.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. Venue is proper in this Court because this action arises from Defendant's employment in Northern San Luis Obispo County, and both Plaintiff and Defendant reside in Northern San Luis Obispo County.

7

8
9
10
11

12
13
14

15

16

17

18

19
20
21
22
23

24
25
26
27

1 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
2 to the extent of the liability of Defendants as alleged herein.

3 16. Plaintiff is further informed and believe, and thereon allege, that at all times herein
4 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
5 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
6 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
7 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
8 Whenever and wherever reference is made to individuals who are not named as defendants in this
9 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
10 acted on behalf of Defendants named in this Complaint within the scope of their respective
11 employment or agency with Defendants.

12 **FIRST CAUSE OF ACTION**

13 **Failure to Establish, Implement, and Maintain Effective Injury Prevention Program**

14 **(By Plaintiff against All Defendants)**

15 17. Plaintiff incorporates by reference and realleges each and every allegation
16 contained above, as though fully set forth herein.

17 18. "Every employer shall establish, implement, and maintain an effective injury
18 prevention program. The program shall be written, except as provided in subdivision (e), and shall
19 include, but not be limited to, the following elements: (1) Identification of the person or persons
20 responsible for implementing the program. (2) The employer's system for identifying and
21 evaluating workplace hazards, including scheduled periodic inspections to identify unsafe
22 conditions and work practices. (3) The employer's methods and procedures for correcting unsafe
23 or unhealthy conditions and work practices in a timely manner. (4) An occupational health and
24 safety training program designed to instruct employees in general safe and healthy work practices
25 and to provide specific instruction with respect to hazards specific to each employee's job
26 assignment. (5) The employer's system for communicating with employees on occupational health
27 and safety matters, including provisions designed to encourage employees to inform the employer
28 of hazards at the worksite without fear of reprisal. (6) The employer's system for ensuring that

employees comply with safe and healthy work practices, which may include disciplinary action.”
Lab. Code, 6401.7, subd. (a). “The employer shall correct unsafe and unhealthy conditions and
work practices in a timely manner based on the severity of the hazard.” Lab. Code, 6401.7, subd.
(b).

19. “The employer shall train all employees when the training program is first
established, all new employees, and all employees given a new job assignment, and shall train
employees whenever new substances, processes, procedures, or equipment are introduced to the
workplace and represent a new hazard, and whenever the employer receives notification of a new
or previously unrecognized hazard.” Lab. Code, 6401.7, subd. (c). “The employer shall keep
appropriate records of steps taken to implement and maintain the program.” Lab. Code, 6401.7,
subd. (d). The standards board shall adopt a standard setting forth the employer’s duties under this
section....” Lab. Code, 6401.7, subd. (e)(1).

20. To substantially comply with Section 6401.7, the employer must provide adequate
“meetings, training programs, posting, written communications, a system of anonymous
notification by employees about hazards, labor/management safety and health committees, or any
other means that ensures communication with employees.” Cal. Code Regs., tit. 8, § 3203, subd.
(a)(3).

21. “Records of the steps taken to implement and maintain the Program shall include:
(1) Records of scheduled and periodic inspections required by subsection (a)(4) [of § 3203] to
identify unsafe conditions and work practices, including person(s) conducting the inspection, the
unsafe conditions and work practices that have been identified and action taken to correct the
identified unsafe conditions and work practices. These records shall be maintained for at least one
(1) year; and ... (2) Documentation of safety and health training required by subsection (a)(7) for
each employee, including employee name or other identifier, training dates, type(s) of training,
and training providers. This documentation shall be maintained for at least one (1) year.” Cal.
Code Regs., tit. 8, § 3203, subd. (b).

22. Throughout the Statutory Period, Defendants subjected all Employees, including
Mr. Wagner, to working conditions that exposed them to hazards from the lack of a legally

1 mandated injury prevention program. Defendants were subject to all of the foregoing
2 requirements with regard to all of its operations. Defendants failed to establish, implement, and
3 maintain an effective injury prevention program. Defendants failed to perform periodic inspections
4 to identify unsafe conditions and work practices, and failed to provide occupational health and
5 safety training designed to instruct Employees in general safe and healthy work practices and to
6 provide specific instruction with respect to hazards specific to each Employee's job assignment;
7 Defendants failed to provide such training to Employees, including Mr. Wagner. During Mr.
8 Wagner's employment with Defendants, Defendants did not provide any injury prevention
9 program materials to him, and did not provide any safety training to Mr. Wagner or his colleagues.

10 23. Defendants also failed to keep appropriate records of steps taken to implement and
11 maintain its program and comply with regulations set by the standards board. Defendants failed to
12 provide adequate meetings, training programs, posting, written communications, a system of
13 anonymous notification by employees about hazards, labor/management safety and health
14 committees, or any other means that ensures communication with Employees, including Mr.
15 Wagner, regarding health and safety conditions and workplace injury reporting. During Mr.
16 Wagner's employment with Defendants, Defendants did not conduct safety meetings or
17 implement any safety training programs.

18 24. Defendants also failed to keep records of steps taken to implement and maintain a
19 compliant program, including adequate records of scheduled and periodic inspections to identify
20 unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe
21 conditions and work practices that have been identified, and action taken to correct the identified
22 unsafe conditions and work practices, and documentation of required safety and health training for
23 each of the Employees, including each employee's name or other identifier, training dates, type(s)
24 of training, and training providers.

25 25. Defendants are subject to civil penalties as provided by law.

26 ///

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **Failure to Train and Certify Forklift Operators**

3 **(By Plaintiff against All Defendants)**

4 26. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 27. “Every employer and every employee shall comply with occupational safety and
7 health standards, with Section 25910 of the Health and Safety Code, and with all rules,
8 regulations, and orders pursuant to this division which are applicable to his own actions and
9 conduct.” Lab. Code 6407.

10 28. As required by occupational safety and health standards, “The employer shall
11 ensure that each powered industrial truck operator is competent to operate a powered industrial
12 truck safely, as demonstrated by the successful completion of the training and evaluation specified
13 in this section. (2) Prior to permitting an employee to operate a powered industrial truck (except
14 for training purposes), the employer shall ensure that each operator has successfully completed the
15 training required by this section, except as permitted in subsection (e).” Cal. Code Regs., tit. 8, §
16 3668, subd. (a). “The employer shall certify that each operator has been trained and evaluated as
17 required by this section. The certification shall include the name of the operator, the date of the
18 training, the date of the evaluation, and the identity of the person(s) performing the training or
19 evaluation.” Cal. Code Regs., tit. 8, § 3668, subd. (f).

20 29. Defendants were subject to the foregoing requirement with regard to their forklift
21 operations. Throughout the Statutory Period, Defendants subjected all Employees, including Mr.
22 Wagner, to working conditions that exposed them to hazards from poorly trained and uncertified
23 forklift operators. Defendants required Employees to operate forklifts without any training or
24 certification in compliance with Section 3668.

25 30. Defendants are subject to civil penalties as provided by law.

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **Removal of Back-Up Alarms on Forklifts**

3 **(By Plaintiff against All Defendants)**

4 31. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 32. "Every employer and every employee shall comply with occupational safety and
7 health standards, with Section 25910 of the Health and Safety Code, and with all rules,
8 regulations, and orders pursuant to this division which are applicable to his own actions and
9 conduct." Lab. Code 6407.

10 33. As required by occupational safety and health standards, "Every automotive truck
11 of one-half ton or more capacity shall be equipped with a warning device which can be clearly
12 heard for a distance of 200 feet from the vehicle." Cal. Code Regs., tit. 8, § 3706, subd. (a).
13 "Automotive vehicles operating in areas where their backward movement would constitute a
14 hazard to employees working in the area on foot, and where the operator's vision is obstructed to
15 the rear of the vehicle, shall comply with Section 1592(b) of the Construction Safety Orders."
16 Cal. Code Regs., tit. 8, § 3706, subd. (b).

17 34. "Those vehicles not subject to 1592(a) and operating in areas where their backward
18 movement would constitute a hazard to employees working in the area on foot, and where the
19 operator's vision is obstructed to the rear of the vehicle shall be equipped with an effective device
20 or method to safeguard employees such as: (1) An automatic back-up audible alarm which would
21 sound immediately on backing, or (2) An automatic braking device at the rear of the vehicle that
22 will apply the service brake immediately on contact with any obstruction to the rear, or (3) In lieu
23 of 1 or 2 above, administrative controls shall be established such as: (A) A spotter or flagger in
24 clear view of the operator who shall direct the backing operation, or (B) Other procedures which
25 will require the operator to dismount and circle the vehicle immediately prior to starting a back-up
26 operation, or (C) Prohibiting all foot traffic in the work area. (4) Other means shall be provided
27 that will furnish safety equivalent to the foregoing for personnel working in the area." Cal. Code
28 Regs., tit. 8, § 1592, subd. (b).

35. Throughout the Statutory Period, Defendants subjected all Employees, including Mr. Wagner, to working conditions that exposed them to hazards from the operation of forklifts without audible warning devices or suitable alternative procedures to ensure the safe operation of forklifts at Defendants' worksites. Defendants were subject to the foregoing requirements with regard to their forklift operations. Defendants improperly removed warning devices from forklift(s).

36. Defendants are subject to civil penalties as provided by law.

FOURTH CAUSE OF ACTION

Permitting Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes

(By Plaintiff against All Defendants)

37. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

38. By committing the acts and omissions described in the preceding sections throughout the Statutory Period, Defendants also violated Labor Code, §§ 6400, 6401, 6302, 6403, 6404 by requiring and permitting unsafe work, and failing to provide safe workplaces, practices, and processes to its Employees, including Mr. Wagner.

39. Defendants are subject to civil penalties as provided by law.

// // //

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

1. For all civil penalties provided by law and according to proof;
2. For reasonable costs and attorneys' fees; and
3. For such other and further relief as the Court deems proper.

DATED: May 19, 2020

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorney for Plaintiff, STATE OF
CALIFORNIA ex rel. RYAN WAGNER, as
Private Attorney General