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VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

CALIFORNIA DIVISION OF
OCCUPATIONAL SAFETY AND HEALTH
455 Golden Gate Ave., Rm. 9516
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL

Durant Harvesting Inc.
2350 A St.
Santa Maria, CA 93455

Re: Erick Mejia's Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

To the California Labor and Workforce Development Agency, the California Division of Occupational Safety and Health, and Durant Harvesting Inc.:

WorkWorld Law Corp. represents Erick Mejia, who intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately 1,500 similarly situated current and former aggrieved employees employed by Durant Harvesting Inc. between January 27, 2021, and the conclusion of the forthcoming action ("Statutory Period"), and the People of the State of California (hereinafter collectively "Employees").

PAGA, specifically Section 2699, subdivision (a) of the California Labor Code, permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Employees intend to bring a civil action to recover civil penalties for the violations identified below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil penalties specifically set forth within the text of the California Labor Code. Those penalties are sought for violations committed against Employees of Durant Harvesting Inc.

*   *   *

Pursuant to Section 2699.3, the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

A. Failure to Pay Minimum Wages Owed

Section 1197 provides that "[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." "(1) For any employer who employs 26 or more employees, the minimum wage shall be as follows: … From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars ($14) per hour. (F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars ($15) per hour." Cal. Lab. Code, § 1182.12, subd. (b).

Pursuant to Section 1197.1, "(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203."

Throughout the Statutory Period, Durant Harvesting failed to pay Employees at least minimum wage for all time worked, including time during which Employees were required to report to work prior to their scheduled start times and time during which Employees were required to work after their recorded end times, which must be paid at a rate of not less than minimum wage pursuant to California law. For example, Durant Harvesting supervisors informed Employees that they were required to report to worksites several minutes prior to their scheduled start times to allow the employer to maximize its efficiency at the expense of the Employees' wages. Durant Harvesting required Mr. Mejia to report to work 10 minutes prior to her scheduled start time, for which he was not paid.

Additionally, throughout the Statutory Period, Durant Harvesting required its employees to take 15-minute rest periods through their workdays, but paid only 10 minutes of that time. Because the Employees were under Durant Harvesting's control for the full amount of the 15-minute rest period, Durant Harvesting was and is required to pay Employees the full 15-minute rest periods. Durant Harvesting paid zero dollars for the foregoing 5-minute increments of

Employees' rest periods and for Employees' nonproductive waiting time prior to the start of each shift. Consequently, Durant Harvesting violated the minimum wage laws.

B. Failure to Record All Hours Worked, including 15-Minute Rest Periods

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Lab. Code, § 1198.

Pursuant to Industrial Welfare Commission Wage Order 14(7), "[e]very employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. … (5) Total hours worked in the payroll period and applicable rates of pay."

Employees incorporate the preceding section herein. By failing to record the Employees' pre-shift work time and post-shift work time, Durant Harvesting violated Wage Order 14, in addition to Labor Code, § 1174.

Wage Order 14(7) also provides that "Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages." By failing to count the full amount of Employees' authorized 15-minute rest periods as hours worked, Durant Harvesting violated Wage Order 14, in addition to Labor Code, §§ 226.7 and 1174.

C. Failure to Provide Compliant Meal Periods or Pay Meal Premiums

"An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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." Cal. Lab. Code, § 512, subd. (a).

Pursuant to Labor Code sections 226.7 and 512, and Wage Order 14, duty-free meal periods of no less than thirty (30) minutes are required for all non-exempt employees who work at least five (5) hours in a work period per day. The employee must be free to leave the employer's premises. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Time records of meal periods must be kept. Meal periods must be paid when the employee is not relieved of all duties or free to leave the premises. An employer who fails to provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for each day in which a duty-free meal period is not provided.

"If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Cal. Lab. Code, § 226.7, subd. (c).

"Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Cal. Lab. Code, § 558, subd. (a).

Employees incorporate the preceding sections herein. Throughout the Statutory Period, although Employees were entitled to a meal period within the first five (5) hours of work, Durant Harvesting regularly scheduled Employees' first meal periods after such time. For example, during the Statutory Period Durant Harvesting regularly did not provide meal periods to Mr. Mejia until after approximately 10:00 a.m., which was more than 5 hours after the Employees' commencement of work each day.

The meal periods provided to Employees were also noncompliant because Durant Harvesting supervisors informed Employees they were not free to leave the worksite during their meal periods. Rather, Employees were required to stay onsite because, for example in Mr. Mejia's case, Durant Harvesting sought to hold work-related meetings during that time and wanted Employees to remain available to work, on call as needed.

For these reasons, Durant Harvesting violated Section 226.7.

D. Inaccurate Wage Statements

"An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment." Cal. Lab. Code, § 226, subd. (a).

"Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law." Cal. Lab. Code, § 226.3.

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Durant Harvesting failed to furnish Employees with accurate itemized statements at the time of each payment of wages showing the correct gross wages earned, correct total hours worked, correct net wages earned, and the corresponding correct number of hours worked at each applicable hourly rate. Rather than providing statements of actual time worked and a correct payment of wages based thereon, Durant Harvesting failed to capture and pay Employees for nonproductive pre-shift waiting time, rest-period time, and post-shift work time, and also failed to capture and pay premium pay for noncompliant meal-and-rest periods.

Throughout the Statutory Period, Durant Harvesting's wage statements issued to Employees also violated Section 226(a)(8) because they failed to state Durant Harvesting's address, and instead directed Employees to the Santa Maria post office. Likewise, although Durant Harvesting was and is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the Labor Code, Durant Harvesting failed to state the name and address of the legal entity that secured the services of the employer. For example, Mr. Mejia's check issued by Durant Harvesting dated March 25, 2021, listed Destiny Farms LLC, but, once again, directed Employees to the Santa Maria post office.

Throughout the Statutory Period, Durant Harvesting also violated the recordkeeping provisions of Section 226:

> (b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

Instead of making all of the data described in Section 226(a) available to Employees for inspection, Durant Harvesting makes only a Payroll Detail report available to Employees, which as it concerns Employees includes their name, identification number, name of the employer, total hours worked, rates of pay, deductions, and piece rate information, but *excludes* their net wages earned, the inclusive dates of the period for which the employee is paid for each payment of wages, and the name and address of the legal entity that secured the services of Durant Harvesting.

Consequently, Durant Harvesting failed to provide Employees accurate itemized wages statements, and failed to keep records available to Employees for copying and inspection, as required by Section 226.

E. Untimely Payment of Wages

Generally, "[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." Cal. Lab. Code, § 204, subd. (a).

Generally, "[l]abor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week. Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week." Cal. Lab. Code, § 204b.

Special rules govern agricultural employees, however: "All wages, other than those mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section 1140.4, are due and payable twice during each calendar month, on days designated in advance by the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the month during which the labor was performed. Labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid between the first and the seventh day of the following month." Cal. Lab. Code, § 205.5.

"In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." Cal. Lab. Code, § 210, subd. (a).

Employees incorporate the preceding sections herein. Rather than timely paying Employees all wages due within the periods set forth above, throughout the Statutory Period, Durant Harvesting failed to timely pay Employees for all hours worked and all premium wages.

F. Failure to Pay Wages at Termination

"If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal. Lab. Code, § 201, subd. (a). "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment." Cal. Lab. Code, § 203, subd. (a).

Employees incorporate the preceding sections herein. Throughout Employees' employment, Durant Harvesting failed to pay Employees at least minimum wage and all premium wages for all time worked. These wages were owed and due to Employees at the time of their termination. Durant Harvesting did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by law. Durant Harvesting's failure to timely pay these wages at the time of termination, and failure to pay Employees' continued wages for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

G. Improper Payment of Nonproductive Time, and Rest/Recovery Periods

Section 226.2 "appl[ies] for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, 'applicable minimum wage' means the highest of the federal, state, or local minimum wage that is applicable to the employment, and 'other nonproductive time' means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis." Cal. Lab. Code, § 226.2. Throughout the Statutory Period, the Employees, including Mr. Mejia, were paid on a piece-rate basis.

Throughout the Statutory Period, Durant Harvesting violated the following provisions of § 226.2, subdivision (a):

> For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
>
> . . .
>
> (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision,

> separately state the following, to which the provisions of Section 226 shall also be applicable: (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period. (B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.
>
> ***Employees incorporate the preceding sections herein. Durant Harvesting failed to provide itemized statements that accurately listed the total hours of compensable rest and recovery periods.***
>
> (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate…
>
> ***Employees incorporate the preceding sections herein. Durant Harvesting failed to pay Employees for the full amount of time spent during rest and recovery periods at their regular hourly rate.***
>
> (4) Employees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.
>
> ***Employees incorporate the preceding sections herein. Durant Harvesting failed to pay Employees for nonproductive pre-shift waiting time and post-shift working time at a rate of at least the applicable minimum wage.***

Cal. Lab. Code, § 226.2, subd. (a). Durant Harvesting is subject to additional civil penalties as provided by law.

H. Violation of Title 8, California Code of Regulations, § 3441

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

Among these rules, regulations, and orders is Title 8, Section 3441 of the California Code of Regulations, which was applicable to Durant Harvesting and the Employees. The regulation provides that "All tractors, self-propelled farm equipment, and trucks used between sunset and sunrise shall be equipped with at least one headlight which shall be used to illuminate the area in front of the equipment or truck at least 50 feet. There shall be at least one rear light which shall illuminate equipment at the rear. Additional lighting shall be provided where the operation requires field adjustment or the operator's attention." Cal. Code Regs., tit. 8, § 3441, subd. (g).

Throughout the Statutory Period, Durant Harvesting violated Sections 6407 and 3441 by requiring Employees, including Mr. Durant, to operate tractors between sunset and sunrise without any headlight and/or rear light. For example, because the tractor assigned to Mr. Durant lacked lighting, he was required to use the light from his mobile phone to see where he was driving in the early morning hours, as he often started working before 5:00 a.m. when it was still dark outside. Durant Harvesting is liable for additional civil penalties as a result of the foregoing.

* * *

Please do not hesitate to contact the undersigned if you would like to discuss this matter further. Thank you for your attention to this matter.

Sincerely,

Ruben Escobedo

cc: Brian T. Daly, Esq.