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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA BARBARA – COOK DIVISION**

13 STATE OF CALIFORNIA ex rel.
14 ERICK MEJIA, as Private Attorney
15 General,

16 Plaintiff,

17 v.

18 DURANT HARVESTING, INC.; and
19 DOES 1-25, inclusive,

20 Defendants.

Case No. 22CV01094

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

21 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. ERICK MEJIA as Private
22 Attorney General (“Plaintiff”), who asserts claims against DURANT HARVESTING, INC. and
23 DOES 1-25, inclusive (collectively “Defendants” or “Employer”) as follows:

INTRODUCTION

24 1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of
25 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately 1,500
26 similarly situated current and former aggrieved employees employed by Durant Harvesting Inc.
27 between January 27, 2021, and the conclusion of the forthcoming action (“Statutory Period”), and
28 the People of the State of California (hereinafter collectively “Employees”).

1 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
2 permits an aggrieved employee to recover civil penalties set forth within the California Labor
3 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
4 penalties for violations of California Labor Code provisions that do not contain their own civil
5 penalties. Employees bring this civil action to recover civil penalties for the violations identified
6 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
7 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
8 are sought for violations committed against Employees of Employer.

9 3. Plaintiff has exhausted or will exhaust all applicable administrative procedures
10 with the California Labor and Workforce Development Agency ("LWDA") providing notice of his
11 intent to bring a private attorneys general action for recovery of penalties under the PAGA. To the
12 extent any violations were curable, Employer failed to cure within the time prescribed by law.

13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction over this action pursuant to the California Constitution,
15 Article VI, §10.

16 5. Venue is proper in this Court because this action arises from work performed in
17 Santa Barbara County.

18 **PARTIES**

19 6. For all times relevant herein, ERICK MEJIA was an adult individual residing in the
20 State of California. Mr. Mejia is not suing in his individual capacity; he is proceeding herein
21 solely under the PAGA, on behalf of the State of California for all aggrieved employees, including
22 himself and other aggrieved employees.

23 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
24 alleges, that Defendant DURANT HARVESTING, INC. was and is a business entity doing
25 business and employing Employees in Santa Barbara County, California.

26 8. Whenever in this Complaint reference is made to any act, deed, or conduct of
27 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
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1 through one or more of its agents, employees, or representatives, who was actively engaged in the
2 management, direction, control, or transaction of the business and affairs of Defendants.

3 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
4 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
5 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
6 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
7 as the identities of the Doe Defendants are ascertained.

8 10. Plaintiff is informed and believes, and based thereon alleges, that the Doe
9 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
10 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
11 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
12 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
13 to the extent of the liability of Defendants as alleged herein.

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

23 **FIRST COUNT**

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

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

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

1 13. “Every employer shall establish, implement, and maintain an effective injury
2 prevention program. The program shall be written, except as provided in subdivision (e), and shall
3 include, but not be limited to, the following elements: (1) Identification of the person or persons
4 responsible for implementing the program. (2) The employer’s system for identifying and
5 evaluating workplace hazards, including scheduled periodic inspections to identify unsafe
6 conditions and work practices. (3) The employer’s methods and procedures for correcting unsafe
7 or unhealthy conditions and work practices in a timely manner. (4) An occupational health and
8 safety training program designed to instruct employees in general safe and healthy work practices
9 and to provide specific instruction with respect to hazards specific to each employee’s job
10 assignment. (5) The employer’s system for communicating with employees on occupational health
11 and safety matters, including provisions designed to encourage employees to inform the employer
12 of hazards at the worksite without fear of reprisal. (6) The employer’s system for ensuring that
13 employees comply with safe and healthy work practices, which may include disciplinary action.”
14 Lab. Code, 6401.7, subd. (a). “The employer shall correct unsafe and unhealthy conditions and
15 work practices in a timely manner based on the severity of the hazard.” Lab. Code, 6401.7, subd.
16 (b).

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

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

3 16. “Records of the steps taken to implement and maintain the Program shall include:

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

11 Code Regs., tit. 8, § 3203, subd. (b).

12 17. Throughout the Statutory Period, Employer subjected all Employees, including
13 Mr. Mejia, to working conditions that exposed them to hazards from the lack of a legally
14 mandated injury prevention program. Employer was subject to all of the foregoing requirements
15 with regard to all of its operations. Employer failed to establish, implement, and maintain an
16 effective injury prevention program. Employer failed to perform periodic inspections to identify
17 unsafe conditions and work practices

18 18. For example, whatever system(s) were in place, they were plainly ineffective
19 because they failed to inspect farm machinery and equipment to ensure that they were equipped
20 with all required safety devices, including adequate lighting. Employer permitted Employees to
21 operate tractors in violation of Title 8, Section 3441 of the California Code of Regulations.
22 Employees, such as Mr. Mejia, were discouraged from reporting such safety violations and
23 encouraged to get the job done on time with whatever tools and equipment, without making
24 employee safety a priority. Employer must revise its practices to require regular inspections of all
25 equipment, vehicles, and tractors to ensure they maintain all safety devices required by Title 8 of
26 the California Code of Regulations.

27 19. Employer failed to provide occupational health and safety training designed to
28 instruct Employees in general safe and healthy work practices and to provide specific instruction

1 with respect to hazards specific to each Employee's job assignment; Employer failed to provide
2 such training to Employees, including Mr. Mejia. During Mr. Mejia's employment with
3 Employer, Employer did not provide injury prevention program materials to him, and did not
4 provide any safety training to Mr. Mejia or his colleagues.

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

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

20 22. Employer is subject to civil penalties as provided by law.

21 **SECOND COUNT**

22 **Violation of Title 8, California Code of Regulations, § 3441**

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

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

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

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

11 26. Throughout the Statutory Period, Durant Harvesting violated Sections 6407 and
12 3441 by requiring Employees, including Mr. Durant, to operate tractors between sunset and
13 sunrise without any headlight and/or rear light. For example, because the tractor assigned to Mr.
14 Durant lacked lighting, he was required to use the light from his mobile phone to see where he was
15 driving in the early morning hours, as he often started working before 5:00 a.m. when it was still
16 dark outside. Durant Harvesting is liable for additional civil penalties as a result of the foregoing.

17 **THIRD COUNT**

18 **Permitting Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes** 19 **(By Plaintiff against All Defendants)**

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

22 28. Employees incorporate the preceding sections herein. By committing the acts
23 and omissions described in the preceding sections throughout Employees’ employment and
24 throughout the past year, Employer also violated Labor Code, §§ 6400, 6401, 6402, 6403, 6404 by
25 requiring and permitting unsafe work, and failing to provide safe workplaces, practices, and
26 processes to its Employees, including Mr. Mejia.

27 29. Employer is subject to additional civil penalties as provided by law.

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PRAYER

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

1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to be ascertained at trial exceeding \$25,000.
2. For reasonable costs and attorneys' fees; and
3. For such other and further relief as the Court deems proper.

DATED: March 14, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorneys for ERICK MEJIA
as Private Attorney General