



WORKWORLD LAW

6907 El Camino Real, Suite A
Atascadero, CA 93422
support@workworldlaw.com
(805) 335-2476
(805) 892-6213 (Fax)

October 8, 2024

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

Wonderful Citrus Packing, LLC
11444 W. Olympic Blvd. 10th Fl.
Los Angeles, CA 90064

Lexus Farm Labor Contractor
1301 Shattuck Ave.
Bakersfield, CA 93305

**Re: Jose Luis Cruz Martinez'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 Wonderful Citrus Packing, LLC and Lexus Farm Labor Contractor (collectively "Employer"):

WorkWorld Law Corp. represents Jose Luis Cruz Martinez, who intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of approximately 1,000 similarly situated current and former aggrieved employees employed by Employer between September 20, 2023, and the conclusion of the action ("Statutory Period"), and the People of the State of California (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 Employer.

* * *

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 Provide Proper Ladders and Training

“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.

Throughout the Statutory Period, Employer violated the following provisions of applicable regulation, Cal. Code Regs., tit. 8, § 3276:

“(d) Selection. (1) Ladders shall be selected and their use restricted to the purpose for which the ladder is designed. Single-rail ladders shall not be used. (A) Scaffolds or other worker positioning equipment shall be used when work cannot be safely done from ladders. (B) Portable ladders are generally designed for one-person use to meet the requirements of the person, the task, and the environment. When selecting a ladder for use, consideration shall be given to the ladder length or height required, the working load, the duty rating, worker position to the task to be performed, and the frequency of use to which the ladder will be subjected.”

Throughout Employees’ employment, Employees were subjected to working conditions that exposed them to hazards from improperly selected ladders which were inappropriate for picking fruit from Employer’s trees. Employer required Employees to use insufficiently short ladders that required them to overreach to pick fruit, which they were required to do by hand. Employer is required to provide taller ladders or other mechanisms to allow for Employees to safely reach and pick the fruit. Employees regularly complained about the overly short ladders and unsafe working conditions, which caused many Employees to fall, and Employer failed to remedy the improper ladder selection.

“(e) Care, Use, Inspection and Maintenance of Ladders. ... (15) Climbing and Working on Ladders. (A) The employee shall climb or work with the body near the middle of the step or rung and shall not overreach from this position. When necessary to avoid overreaching, the employee shall descend and reposition the ladder. When it is not practical to work with the body near the middle of the step or rung, the ladder shall be secured to the top support, and the employee shall be protected by a personal fall protection system in accordance with Article 36 of the High-Voltage Electrical Safety Orders, Article 24 of the Construction Safety Orders, Article 12 of the General Industry Safety Orders, or Article 1 of the Telecommunication Safety Orders. Operations or conditions not specifically covered by Article 36 of the High-Voltage Electrical Safety Orders, Article 12 of the General Industry Safety Orders, or Article 1 of the

Telecommunication Safety Orders shall comply with the fall protection provisions of Article 24 of the Construction Safety Orders. (B) Employees shall be prohibited from carrying equipment or materials which prevent the safe use of ladders.”

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer’s practices and instructions precluded Employees from maintaining safe positioning on ladders as required by the foregoing regulation.

“(f) **Employee Training.** Before an employee uses a ladder, the employee shall be provided training in the safe use of ladders, unless the employer can demonstrate that the employee is already trained in ladder safety as required by this subsection. Supervisors of employees who routinely use ladders shall also be provided ladder safety training, unless the employer can demonstrate that the supervisor is already trained in ladder safety as required by this subsection. The training may be provided as part of the employer’s Injury and Illness Prevention Program required by Section 3203. The training shall address the following topics, unless the employer can demonstrate a topic is not applicable to the safe use of ladders in the employer’s workplace. (1) Importance of using ladders safely, including: frequency and severity of injuries related to falls from ladders. (2) Selection, including: types of ladders, proper length, maximum working loads, and electrical hazards. (3) Maintenance, inspection, and removal of damaged ladders from service. (4) Erecting ladders, including: footing support, top support, securing, and angle of inclination. (5) Climbing and working on ladders, including: user’s position and points of contact with the ladder. (6) Factors contributing to falls, including: haste, sudden movement, lack of attention, footwear, and user’s physical condition. (7) Prohibited uses, including: uses other than designed, climbing on cross bracing, maximum lengths, and minimum overlap of extension ladder sections.”

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to provide training that addressed each of the foregoing topics. Employer is subject to additional civil penalties as provided by law.

B. Failure to Establish, Implement, and Maintain Effective Injury Prevention Program

“Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements: (1) Identification of the person or persons responsible for implementing the program. (2) The employer’s system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices. (3) The employer’s methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner. (4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee’s job assignment. (5) The employer’s system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer 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).

“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).

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).

“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).

Employees incorporate the foregoing sections herein. Throughout the Statutory Period, Employer failed to establish, implement, and maintain an effective injury prevention program. Employer failed to perform periodic inspections to identify unsafe conditions and work practices, particularly those concerning the unsafe use of ladders, and failed to provide occupational health and safety training designed to instruct Employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each Employee’s job assignment (again, especially regarding the use of ladders); Employer failed to provide such training to Employees.

There was ineffective communication between Employees and Employer on occupational health and safety matters regarding the use of ladders. Employees complained to management that the ladders and work required on them were unsafe, but the Employer either ignored the Employees’ complaints or conveyed that Employees could quit if they did not like the working conditions.

Employer failed to 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 regarding health and safety conditions and workplace injury reporting.

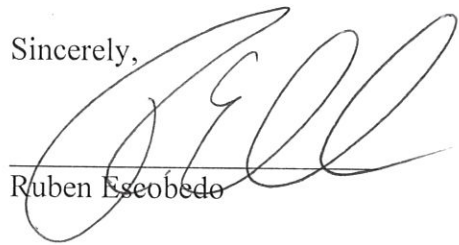
C. Permitting Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes

Employees incorporate the preceding sections herein. By committing the acts and omissions described in the preceding sections throughout Employees' employment, Employer also violated Labor Code, §§ 6400, 6401, 6402, 6403, 6404 by requiring and permitting unsafe work, and failing to provide safe workplaces, practices, and processes to its Employees. Employer is subject to additional civil penalties as provided by law.

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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