United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
U.S. CUSTOM HOUSE 721 19TH STREET, ROOM 407
DENVER, COLORADO 80202-2517

SECRETARY OF LABOR, Complainant, v. MDLG, INC., dba PHENIX LUMBER COMPANY, Respondent.	OSHRC Docket No.: 24-0405

DECISION AND ORDER

This matter comes before the Court on Complainant's *Motion for Summary Judgment*, which was filed on February 27, 2026. Based on the following discussion, the Court hereby GRANTS the *Motion* and AFFIRMS all citation items and penalties as a final order of the Commission. Accordingly, the telephone conference call scheduled for March 23, 2026, as well as the trial scheduled for April 13, 2026, are hereby CANCELLED.

I. Background

Complainant initiated an inspection of Respondent in response to reports from local law enforcement and the local fire department that one of Respondent's employees died after falling into a woodchipper auger while attempting to clear a jam in the machinery. As a result of the inspection, Complainant issued a *Citation and Notification of Penalty* (Citation) stemming from Inspection No. 1695169 on February 21, 2024. The Citation alleges 22 Willful-Serious violations, one Repeat violation, and five Serious violations of the Occupational Safety and Health Act of

1970, 29 U.S.C. § 651 *et seq*. (the Act), and proposes a penalty of $2,471,683.[1] Respondent filed a timely notice of contest, which brought the matter before the Commission. Initially, this matter was assigned to Mandatory Settlement Proceedings; however, those proceedings were cancelled, and the matter was re-assigned to this Court.

While this matter was pending, Respondent notified the Court it had filed a petition for an order of relief under Chapter 7 of the United States Bankruptcy Code and requested a stay. The request was denied by this Court on February 20, 2025. On June 24, 2025, the Court issued an *Order Establishing Trial Date and Entry of Scheduling Order*, setting the matter for trial on April 13, 2026.

II. Procedural History

Prior to filing the *Motion*, Complainant reached a settlement with two of the named Respondents, John Menza Dudley, Jr. and Leslie Elizabeth Dudley aka Leslie D. Greene, and submitted a *Joint Notification of Settlement Only as to Respondent John Menza Dudley, Jr. and Respondent Leslie Elizabeth Dudley aka Leslie D. Greene*. In response, the Court severed the case against Mr. Dudley and Ms. Greene and created a new docket, No. 26-0382. The Court issued a *Notice of Order and Report* and *Order Terminating Proceeding* on March 19, 2026, in Docket No. 26-0382. Respondent MDLG, Inc. did not reach settlement with Complainant. Accordingly, this *Order* only applies to Respondent MDLG, Inc. (hereinafter "Respondent").

On February 19, 2026, the remaining parties to this action filed a *Notice of Stipulation of Liability Executed Between Complainant and Respondent MDLG, Inc.* (*Notice of Stipulation*). The *Notice of Stipulation* includes stipulations regarding applicable principles of law, as well as

[1] The Citation includes violations of the lockout/tagout, fall protection, guarding, powered industrial truck, electrical, and fire protection standards, as well as a violation of the General Duty Clause.

stipulations of fact. As to the principles of law, the parties agreed: (1) the Commission has jurisdiction over this action; (2) Respondent was an employer as defined by § 3(5) of the Act; (3) OSHA's jurisdiction over Respondent; (4) Respondent contested the citations and penalties pursuant to § 10(c) of the Act; (5) the Commission has authority to determine penalties under § 17(j) of the Act; and (6) Respondent's stipulations as to the violations alleged by Complainant do not equate to a stipulation regarding the appropriateness of the penalties proposed. In addition to the foregoing stipulations regarding the applicable principles of law, the parties also stipulated as follows:

> Subject to approval by the Bankruptcy Court, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, Complainant and MDLG, Inc. agree to the following statements in the interest of expedience. The statements require no further evidence during a hearing on the matter. Complainant and MDLG, Inc. stipulate and agree as follows:
>
> 1) Respondent MDLG, Inc. admits that it violated all the OSHA safety standard violations cited in the Citations resulting from Inspection No. 1695169, in the manner as alleged in the Citations.

Notice of Stipulation at 2. While the foregoing factual stipulation was "Subject to Approval by the Bankruptcy Court," Complainant's *Statement of Undisputed Material Facts* affirmatively states the stipulation was approved by the Bankruptcy Court. *See* Complainant's *Statement of Undisputed Material Facts* ¶31.

As noted above, Complainant filed its *Motion for Summary Judgment* on February 27, 2026. The response to the *Motion* was due on March 16, 2026; however, Respondent failed to file a response in opposition to Complainant's *Motion*.

III. Findings of Fact and Conclusions of Law

A. Summary Judgment Standard

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P.

56(a). A party seeking summary judgment "always bears the initial responsibility of informing a [] court of the basis for its motion, and . . . demonstrat[ing] the absence of a genuine issue of material fact" as to the issue(s) raised. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The parties can establish the presence or absence of a genuine issue of material fact through record materials, such as pleadings, discovery and disclosure documents, and affidavits. *See* FED. R. CIV. P. 56(c). "[T]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In response to a motion for summary judgment, it is incumbent upon the nonmoving party to "establish the existence of at least one issue that is both 'genuine' and 'material.'" *Kelly v. U.S.*, 924 F.2d 355, 357 (1st Cir. 1991) (citing *Celotex*, 477 U.S. at 325). "In doing so, the nonmovant may not rest upon mere allegations in . . . an unverified complaint or lawyer's brief, but must produce evidence that would be admissible at trial to make out the requisite issue of material fact." *Id.* (citing *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 50 (1st Cir. 1990)). Further, the nonmoving party may not rely on "mere allegations or denials" in the pleadings. *See Celotex*, 477 U.S. at 322-24; *see also* FED. R. CIV. P. 56(e) ("If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it.").

As noted above, Respondent did not file a response to Complainant's *Motion*. Indeed, the only information the Court has from Respondent with respect to the present motion is (1) Respondent admits that it violated all the OSHA safety standard violations cited in the Citations resulting from Inspection No. 1695169, in the manner as alleged in the Citations; and (2) its denial

that the penalties assessed by Complainant were appropriate. (*See Notice of Stipulation*). This denial is not supported by affidavits or any other form of evidence otherwise admissible at trial. Absent a substantive denial—supported by admissible evidence or affidavit—of Complainant's *Statement of Undisputed Material Facts*, the only determination left for the Court is whether the facts, as established by the parties' stipulations and Complainant's *Statement of Undisputed Material Facts*, support Complainant's penalty assessment. The Court finds they do.

B. Complainant's Penalty Assessments are Supported by the Record

The Secretary has the authority to propose a penalty according to Section 17 of the Act. *See* 29 U.S.C. §§ 659(a), 666. The amount proposed, however, merely becomes advisory when an employer timely contests the matter. *Brennan v. OSHRC* (*Interstate Glass*), 487 F.2d 438, 441–42 (8th Cir. 1973); *Revoli Constr. Co.*, No. 00-0315, 2001 WL 1568807, at *5 (OSHRC, Dec. 7, 2001). Ultimately, it is the province of the Commission to "assess all civil penalties provided in [Section 17]", which it determines *de novo*. 29 U.S.C. § 666(j); *see also Valdak Corp.*, No. 93-0239, 1995 WL 139505, at *3 (OSHRC, Mar. 29, 1995), *aff'd*, 73 F.3d 1466 (8th Cir. 1996). "[T]he Act requires that 'due consideration' be given to the employer's size, the gravity of the violation, the good faith of the employer, and any prior history of violations." *Briones Util. Co.*, No. 10-1372, 2016 WL 7424575, at *4 (OSHRC, Dec. 14, 2016) (citing 29 U.S.C. § 666(j)).

The penalty factors are not necessarily accorded equal weight. *J.A. Jones Constr. Co.*, No. 87-2059, 1993 WL 61950, at *15 (OSHRC, Feb. 19, 1993) (citation omitted). Rather, the Commission assigns the weight that is reasonable under the circumstances. *See, e.g., Merchant's Masonry, Inc.*, No. 92-424, 1994 WL 723829, at *1 (OSHRC, Dec. 30, 1994). It is the Secretary's burden to introduce evidence bearing on the factors and explain how she arrived at the penalty she proposed. *Valdak Corp*., 1995 WL 139505, at *4. "Gravity is typically the most important factor in determining an appropriate penalty and depends upon the number of employees exposed, the

duration of the exposure, the precautions taken against injury, and the likelihood that any injury would result." *Capform, Inc.*, No. 99-0322, 2001 WL 300582, at *4 (OSHRC, Mar. 26, 2001) (citing *J.A. Jones Constr.*, 1993 WL 61950, at *15).

The Court finds the factual allegations contained within each citation item, as further explained by the gravity-based assessment performed by Compliance Safety and Health Officer (CSHO) William Kitchen, support the penalties proposed by Complainant. The factual allegations for each citation item, which were stipulated by Respondent, are established as fact. Further, the assessments of CSHO Kitchen, which are supported by his sworn declaration and based on the stipulated-to allegations, have not been disputed by Respondent and are supported as required by Federal Rule of Civil Procedure 56. Respondent's only response to the foregoing is that it would not stipulate to the appropriateness of the penalties; however, as discussed above, it is not sufficient to rely on pleadings to illustrate a genuine dispute of material fact. *See* FED. R. CIV. P. 56(e). Accordingly, the Court hereby incorporates, as its findings of fact, Complainant's *Statement of Undisputed Material Facts*, as well as the allegations contained within each citation item.

With respect to each citation item, or group of similar citation items, the Court finds Complainant's analysis comports with the penalty factors discussed above. Citation items 1-1 through 1-4 were treated reasonably. Complainant assessed the severity as medium to high, but in each case determined that the probability of injury was low, and assessed a penalty below the statutory maximum for Serious violations issued under § 17(b) of the Act. *See* Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701; *see also* Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2024 (2024 Annual Adjustment), 89 Fed. Reg. 1810 (January 11, 2024). Citation item 1-5 was also characterized as Serious; however, the penalty was assessed at the statutory maximum under the 2024 Annual Adjustment. The citation item was assessed as high severity, due to the possibility of amputation,

and high probability, due to the likelihood that such injury would occur. The Court does not find any reason to modify the penalty assessed.

Willful citation items 2-1 through 2-9 and citation items 2-10 through 2-15, inclusive of subparts,[2] were assessed at or near the statutory maximum based on CSHO Kitchen's determination that the severity of each violation was high and the possibility of injury was greater. Citation items 2-1 through 2-9 alleged violations of the lockout/tagout standard found at section 1910.147 and were directly implicated in the death of Respondent's employee, which led to the inspection at issue. Further, Respondent's previous history not only justifies the willful characterization, but also the penalty: Respondent received 183 final order citations over 24 inspections in the previous 20 years. Of those, 71 citations were related to lockout/tagout, including 42 Serious and 28 Willful-Serious violations. In his declaration, CSHO Kitchen also stated that Respondent had another fatality investigation in 2020 after an employee fell into a different auger on the property. Citation items 2-10 through 2-15 alleged violations of both the guarding and fall protection standards, which CSHO Kitchen determined would result in severe injury due to the failure to properly guard the chipper and prevent employees from falling into it. The Court finds assessing a penalty at, or near, the statutory maximum is appropriate because, as with citation items 2-1 through 2-9, Respondent had an extensive history of violating the Act in this area, including five Serious and two Repeat violations of the fall protection standards.

Finally, the Court also finds the penalty assessed for citation item 3-1, which alleges a repeat violation of § 1910.178(l)(1)(i), is appropriate. Complainant presented evidence that Respondent violated the same standard, affirmed as a final order of the Commission, on November

[2] The subparts, themselves, were not assessed an individual penalty. They constituted separate violations but were grouped for the purposes of penalty. *See Citation and Notification of Penalty* at 11-30.

23, 2021. Because this was Respondent's first repeat violation of the standard, Complainant only applied a multiplier of two to the gravity-based penalty. The final proposed penalty of $20,080 is nearly eight times lower than the statutory maximum, which the Court finds appropriate based on the analysis described above.

IV. Conclusion

Based on Respondent's lengthy history of violations and fatalities, the Court finds the penalties proposed by Complainant are supported by the parties' stipulations, Complainant's *Statement of Undisputed Facts*, and the law applicable to penalty assessments. Accordingly, Complainant's *Motion for Summary Judgment* is GRANTED, and the citation items and proposed penalties are AFFIRMED as alleged and as reproduced below.

V. Order

The foregoing Decision constitutes the Findings of Fact and Conclusions of Law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure. Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Citation 1 Item 1 is AFFIRMED as Serious, and a penalty of $12,676.00 is ASSESSED.
2. Citation 1 Item 2 is AFFIRMED as Serious, and a penalty of $10,140.00 is ASSESSED.
3. Citation 1 Item 3 is AFFIRMED as Serious, and a penalty of $10,140.00 is ASSESSED.
4. Citation 1 Item 4 is AFFIRMED as Serious, and a penalty of $10,140.00 is ASSESSED.
5. Citation 1 Item 5, Serious, and a penalty of $16,131.00 is ASSESSED.
6. Citation 2 Item 1a is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
7. Citation 2 Item 1b is AFFIRMED as Willful - Serious, and a penalty of $0.00 is ASSESSED.

8. Citation 2 Item 2a is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
9. Citation 2 Item 2b is AFFIRMED as Willful - Serious, and a penalty of $0.00 is ASSESSED.
10. Citation 2 Item 3a is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
11. Citation 2 Item 3b is AFFIRMED as Willful - Serious, and a penalty of $0.00 is ASSESSED.
12. Citation 2 Item 4a is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
13. Citation 2 Item 4b is AFFIRMED as Willful - Serious, and a penalty of $0.00 is ASSESSED.
14. Citation 2 Item 5a is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
15. Citation 2 Item 5b is AFFIRMED as Willful - Serious, and a penalty of $0.00 is ASSESSED.
16. Citation 2 Item 6a is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
17. Citation 2 Item 6b is AFFIRMED as Willful - Serious, and a penalty of $0.00 is ASSESSED.
18. Citation 2 Item 7 is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
19. Citation 2 Item 8 is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.

20. Citation 2 Item 9 is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
21. Citation 2 Item 10 is AFFIRMED as Willful - Serious, and a penalty of $152,100.00 is ASSESSED.
22. Citation 2 Item 11 is AFFIRMED as Willful - Serious, and a penalty of $152,100.00 is ASSESSED.
23. Citation 2 Item 12 is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
24. Citation 2 Item 13a is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
25. Citation 2 Item 13b is AFFIRMED as Willful - Serious, and a penalty of $0.00 is ASSESSED.
26. Citation 2 Item 14 is AFFIRMED as Willful - Serious, and a penalty of $152,100.00 is ASSESSED.
27. Citation 2 Item 15 is AFFIRMED as Willful - Serious, and a penalty of $161,323.00 is ASSESSED.
28. Citation 3 Item 1 is AFFIRMED as Repeat - Serious, and a penalty of $20,280.00 is ASSESSED.

SO ORDERED.

/s/ Joshua R. Patrick

Dated: April 3, 2026
Denver, Colorado

Joshua R. Patrick Judge,
OSHRC