BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1183524**
PANDA RESTAURANT GROUP, INC. **dba PANDA EXPRESS** **P.O. BOX 1159** **ROSEMEAD, CA 91770** **Employer**	**DECISION**

Statement of the Case

Panda Restaurant Group, Inc. (Employer), operates a chain of restaurants. Beginning October 13, 2016, the Division of Occupational Safety and Health (Division), through Associate Safety Engineer Arsen Sanasaryan (Sanasaryan), commenced an inspection at Employer's place of business at 5300 North Lankershim Boulevard in North Hollywood, California. On March 17, 2017, the Division cited Employer for not providing strain relief for an electrical cord, for not ensuring that a portable ladder extended at least 36 inches above a landing surface, and for not providing guardrails on an elevated work location.

Employer filed timely appeals of the citations on the grounds that the safety orders were not violated, the classifications are incorrect, and the proposed penalties are unreasonable. Employer also asserted numerous affirmative defenses, including that an independent employee act caused the violation.[1] At hearing, Employer moved to withdraw its appeal of Citation 1, regarding strain relief of an electrical cord and the motion was granted.

This matter was heard by Sam E. Lucas, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board. On January 26, 2021, ALJ Lucas conducted the hearing from Los Angeles, California, with the parties and witnesses appearing remotely via the Zoom video platform. Jenifer L. Kienle, of Kienle Law, PC, represented Employer. William Cregar, Staff Attorney, represented the Division. The matter was submitted for decision on July 26, 2021.

[1] Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

Issues

1. Did the Division establish that a portable ladder was used for access to an upper landing surface and that Employer failed to ensure the ladder extended at least 36 inches above a landing surface?

2. Did the Division establish that Employer failed to provide guardrails on an elevated work location?

3. Are the violations properly classified as Serious?

4. Did Employer rebut the presumption that the violations are Serious by demonstrating that it did not know and could not, with the exercise of reasonable diligence, have known of the existence of the violations?

5. Did the Division establish that Citation 3 was properly characterized as Accident-Related?

6. Are the proposed penalties reasonable?

Findings of Fact[2]

1. Employer's subject location (a restaurant) was equipped with a multi-position folding ladder.

2. The restaurant's kitchen was equipped with a walk-in cooler/freezer (cooler). The top of the cooler was 10 feet tall and the top was not visible to employees in the restaurant when it was enclosed by ceiling tiles.

3. On October 6, 2016, Adan Lopez (Lopez), an employee of Employer, used the ladder to climb on top of the cooler.

4. In order to climb on top of the cooler, ceiling tiles surrounding the cooler were removed.

5. Lopez climbed from the ladder onto the top surface of the cooler.

6. The side rails of the ladder did not extend 36 inches above the top of the cooler, it was not secured at its top to a rigid support, nor was a grasping device provided.

[2] Findings of Fact 1, 2, 3, 4, 5, 9, and 10, were by stipulation of the parties.

7. The top of the cooler was not part of a building or building structure and was more than four feet above the ground.

8. Lopez was on top of the cooler to retrieve stored restaurant items.

9. When the restaurant's manager, May Ortega (Ortega) discovered Lopez on top of the cooler, Ortega noticed a small gasket and fryer in front of Lopez's feet and asked him to pass them to her. Ortega asked Lopez to be careful and to get down from the cooler.

10. Lopez fell to the ground and died.

11. A realistic possibility of death or serious injury may result from a fall as a result of violation of the safety orders cited.

12. Employer did not take effective action to eliminate employee exposure to the hazards created by the violations as soon as the violations were discovered.

13. The penalty for Citation 2 was not calculated in accordance with the Division's policies and procedures.

Analysis

1. Did the Division establish that a portable ladder was used for access to an upper landing surface and that Employer failed to ensure the ladder extended at least 36 inches above a landing surface?

In Citation 2, Employer was cited for a violation of California Code of Regulations, title 8, section 3276, subdivision (e)(11),[3] which provides:

> (e) Care, Use, Inspection and Maintenance of Ladders
> […]
> (11) Access to Landings. When portable ladders are used for access to an upper landing surface, the side rails shall extend not less than 36 inches above the upper landing surface to which the ladder is used to gain access; or when such an extension is not possible, then the ladder shall be secured at its top to a rigid support that will not deflect, and

[3] All section references are to the California Code of Regulations, title 8, unless otherwise specified.

> a grasping device, such a grab-rail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.

The Division alleges:

> Prior to and during the course of the investigation, including but not limited to, on October 6, 2016 an employee/Cook was using portable ladder to access the top of the a walk-in cooler/freezer. The portable ladder did not extend at least 36 inches above the cooler/freezer, nor was there a grasping device provided on the cooler/freezer.

The Division has the burden of proving a violation by a preponderance of the evidence. (*ACCO Engineered Systems*, Cal/OSHA App. 1195414, Decision After Reconsideration (Oct. 11, 2019).) "'Preponderance of the evidence' is usually defined in terms of probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence." (*Timberworks Construction, Inc.*, Cal/OSHA App. 1097751, Decision After Reconsideration (Mar. 12, 2019).) As part of its burden, the Division also bears the burden of proving employee exposure to the violative condition addressed by the safety order. (*Home Depot, USA, Inc.*, Cal/OSHA App. 1011071, Decision After Reconsideration (May 16, 2017).)

The parties entered twenty-six stipulations into the record that establish the following uncontroverted facts.[4] Employer's cited location was equipped with a multi-position portable folding ladder, with a maximum working length of 18 feet, 11 inches, and a maximum working height of 15 feet, 6 inches. On October 6, 2016, Lopez, an employee of Employer, used the ladder to climb on top of a 10-foot-tall walk-in cooler. The top of the cooler was concealed by ceiling tiles and when so concealed was not visible to employees or accessible by other means. In order to climb on top of the cooler, Lopez removed ceiling tiles surrounding the cooler, then climbed from the ladder onto the top surface of the cooler. Ortega, the location's manager, had been working at the subject restaurant for seven months prior to the accident. She did not see Lopez climb the ladder to remove the ceiling tiles, and she did not see Lopez gain access to the top of the cooler. When Ortega discovered Lopez on top of the cooler, she climbed the ladder,

[4] Stipulated facts that are not relevant to the issues or are duplicative are not considered herein. Other evidence in the record is used to reconcile some stipulated facts that are inconsistent with one another. For example, the parties stipulated that "None of the restaurant employees, aside from May Ortega, used the restaurant's portable ladder," which is inconsistent with the stipulation immediately following that "On October 6, 2016, Mr. Lopez used the restaurant ladder to climb on top of the 10-foot-tall walk in cooler/freezer."

saw a small gasket and fryer in front of Lopez and asked him to pass those items to her. She told him to be careful and to get down. Within a "split second" of saying that, Lopez fell from the top of the cooler and died.

In addition to these stipulated facts, Sanasaryan testified that, during his inspection, he asked the restaurant's managers to set up the ladder as it was at the time of the accident. Sanasaryan testified that the distance between the top of the ladder and ceiling tiles covering the top of the cooler was "close to two feet." The Division also submitted a photograph taken by Sanasaryan during this investigation which clearly shows that the side rails of the ladder do not extend 36 inches above the top of the cooler. (Ex. 24.) Photos show that the ladder was not secured at its top to a rigid support or that a grasping device was provided.

The weight of the evidence supports a finding that an employee of Employer used a portable ladder to access an upper landing surface and that the side rails of the portable ladder did not extend 36 inches above the upper landing surface. The Division has met its burden of proof and the violation is established. Accordingly, Citation 2 is affirmed.

2. Did the Division establish that Employer failed to provide guardrails on an elevated work location?

In Citation 3, Employer was cited for a violation of section 3210, subdivision (b), which provides:

> (b) Other Elevated Locations. The unprotected sides of elevated work locations that are not buildings or building structures where an employee is exposed to a fall of 4 feet or more shall be provided with guardrails. Where overhead clearance prohibits installation of a 42-inch guardrail, a lower rail or rails shall be installed. The railing shall be provided with a toeboard where the platform, runway, or ramp is 6 feet or more above places where employees normally work or pass and the lack of a toeboard could create a hazard from falling tools, material, or equipment.

In the citation, the Division alleges:

> Prior to and during the course of the investigation, including but not limited to, on October 6, 2016 there was no protection for the top of the walking [sic] cooler/freezer used as a storage, while an employee/Cook was getting an item/Lytespan-Track Light from the storage. As a result on or about October 6, 2016 the employee/Cook was fatally injured when he

> fell approximately 10 feet 3 inches from the top of the walking [sic] cooler/freezer onto concrete floor.

The stipulations of the parties and testimony of Sanasaryan establish that the top of the cooler was not part of a building or building structure and was more than four feet above the ground. The testimony of Sanasaryan further establishes that Lopez was on top of the cooler to retrieve stored restaurant items. The issue before us is whether the top of the cooler was an "elevated work location" contemplated by section 3210.

The definitions applicable to section 3210 are found in section 3207. Section 3207 does not define "elevated work location," but does define "working level or working area" as "[a] platform, walkway, runway, floor or similar area fixed with reference to the hazard and used by employees in the course of their employment." The top of the cooler, more than 10 feet off the ground, is undoubtedly "elevated," and became a work location when Lopez stepped on the top of the cooler to retrieve stored restaurant items. Section 3207 also provides that a "platform" can be an "elevated working level," which includes "storage platforms," and further supports a finding that the top of the cooler is a section 3210 "elevated work location."

Accordingly, the top of the cooler, at the time Lopez was on top of it, required guardrails or an alternate means of fall protection.[5] A guardrail is a "vertical barrier erected along the open edges of a floor opening, wall opening, ramp, platform, runway, or other elevated area to prevent falls of persons." (§ 3207.) Sanasaryan testified that he could see the top of the cooler and that it did not have guardrails. This testimony is supported by photographic evidence admitted at the hearing of an open ceiling tile next to the top of the cooler showing no visible evidence of a guardrail. (Ex. 18.)

Employer argues that section 3210 is not applicable because the top of the cooler was not "used by employees in the course and scope of their employment." Employer is correct that there is no evidence that employees of Employer *regularly* used the top of the cooler in the course of their employment, but the evidence shows that, at least on this one occasion, the top of the cooler was being used as a work location. Lopez was retrieving stored restaurant items. This also creates a reasonable inference that the top of the cooler was used at other times, including when, on at least one occasion, an employee placed the stored items on top of the cooler. This elevated work location may not have been used regularly or often, but section 3210 does not contain any such requirement.

[5] Section 3210, subdivision (c), allows for alternate means of protecting employees from falling, if the guardrail requirements of section 3210, subdivision (b), are "impracticable." There was no evidence presented at hearing that any such alternate method existed.

The evidence supports a finding that the top of the cooler was an elevated work location that required guardrails or some other fall protection system. There were no such protections in place. The Division has met its burden of proof and the violation is established. Accordingly, Citation 3 is affirmed.

3. Did Employer establish the "Newbery" or "unforeseeability" defense?

Employer argues that any violation committed was unforeseeable to Employer. The judicially-created affirmative defense that allows an employer to avoid liability for a violation based on an unforeseeable act by its employee was first established in *Newbery Electric Corporation v. Occupational Safety and Health Appeals Board* (1981) 123 Cal.App.3d 641. In order to successfully assert the *Newbery* defense, an employer must prove that none of the following four criteria exist:

(1) the employer knew or should have known of the potential danger to employees;
(2) the employer failed to exercise supervision adequate to assure safety;
(3) the employer failed to ensure employee compliance with its safety rules; an
(4) the violation was foreseeable.

Employer has the burden to prove the elements of each affirmative defense by a preponderance of the evidence. (*Sacramento County Water Agency Department of Water Resources*, Cal/OSHA App. 1237932, Decision After Reconsideration (May 21, 2020); *Synergy Tree Trimming, Inc.*, Cal/OSHA App. 317253953, Decision After Reconsideration (May 15, 2017).) Regarding the first element of the *Newbery* defense, Employer did not offer evidence that it did not know of the potential danger to employees other than to argue that Ortega, the location's manager for seven months, did not know of the violation. Similarly, Employer argues that "Ortega exercised supervision adequate to assure safety" and that "Ortega acted to ensure employee complied with its safety rules." However, Ortega is not Employer. Without more, Employer cannot meet its burden. Employer therefore has not proved the first, second, or third elements and the defense fails.

4. Did Employer establish that an Independent Employee Act caused the violation?

Employer also asserted the Independent Employee Act defense (IEAD). In *Fedex Freight, Inc.*, Cal/OSHA App. 1099855, Decision After Reconsideration (Sep. 24, 2018), the Appeals Board explained:

> There are five elements to the IEAD, all of which must be shown by an employer in order for the defense to succeed: (1) the employee was experienced in the job being performed; (2) the employer has a well-devised safety program; (3) the

> employer effectively enforces the safety program; (4) the employer has a policy of sanctions which it enforces against employees who violate the safety program; and (5) the employee caused the safety violation which he knew was contrary to employer's safety rules. (*Synergy Tree Trimming, Inc.*, Cal/OSHA App. 317253953, Decision After Reconsideration (May 15, 2017) [other citations omitted].)

As to the third and fourth elements, Employer argues that the "every employee's statement verified enforcement of the policy," presumably referring to the summaries of interviews by the Division of employees Luis Antonio (Antonio), Marco Gonzalez (Gonzalez), and Iosy Rodriguez (Rodriguez) admitted into evidence. (Ex. C.) A review of the three statements reveals that although Antonio, Gonzalez, and Rodriguez acknowledge the existence of Employer's safety program, none mention Employer's policy of sanctions or enforcement of the policy. Other than those summaries, there are no statements of employees in the record, and these three statements are not enough for Employer to show by a preponderance of the evidence that it effectively enforces its safety program or that it has a policy of sanctions which it enforces against employees who violate the safety program. Further, Employer offered no evidence that Lopez knew that hisuse of the ladder or being on top of the cooler was contrary to Employer's safety rules. Therefore, the third, fourth, and fifth elements are not proved. A single missing element defeats the IEAD. (*Home Depot USA, Inc. # 6617, Home Depot*, Cal/OSHA App. 10-3284, Decision After Reconsideration (Dec, 24, 2012).) Accordingly, Employer has not met its burden of proof and the defense fails.

5. Are the violations properly classified as Serious?

Labor Code section 6432, subdivision (a), states:

> There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The actual hazard may consist of, among other things:
> […]
> (2) The existence in the place of employment of one or more unsafe or unhealthful practices that have been adopted or are in use.
> […]

"Serious physical harm" is defined as an injury or illness occurring in the place of employment that results in:

> (1) Inpatient hospitalization for purposes other than medical observation.
> (2) The loss of any member of the body.
> (3) Any serious degree of permanent disfigurement.
> (4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency

> on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

(Lab. Code §6432, subd. (e).)

The parties stipulated that a realistic possibility of death or serious injury may result from violations of Citations 2 and 3. Consequently, the Division has met its burden and Citations 2 and 3 are both properly classified as Serious violations.

6. Did Employer rebut the presumption that the violations are Serious by demonstrating that it did not know and could not, with the exercise of reasonable diligence, have known of the existence of the violations?

Labor Code section 6432, subdivision (c), provides that an employer may rebut the presumption that a Serious violation exists by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. In order to satisfactorily rebut the presumption, the employer must demonstrate both:

> (1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b) [; and]
>
> (2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

As set forth in Labor Code section 6432, subdivision (c), the burden is on the employer to rebut the presumption that the citation was properly classified as Serious.

The parties stipulated that Ortega did not know the top of the cooler was being used as a storage area and that the top of the cooler was not visible from the ground because of drop-down ceiling tiles. Employer offered the Division's interview summary of manager May Ortega to

further support its position that Employer lacked knowledge of the violations.[6] (Ex. F.) That interview shows that, on the day of the incident, Ortega did not know Lopez had climbed the ladder to the top of the cooler until she herself climbed the ladder and instructed him to hand her the stored items and come down. She descended the ladder and Lopez fell soon after.

Ortega is a supervisor, and the Appeals Board regularly finds that a supervisor's knowledge of a violation is imputed to the employer. (*Sacramento County Water Agency Department of Water Resources*, supra, Cal/OSHA App. 1237932.) Even if Ortega did not know the top of the cooler was being used for storage, the inquiry does not end. Panda Restaurant Group, Inc. is the cited Employer, who employed other managers on the site before Ortega. There is nothing in the record showing what those previous supervisors did or did not know about the top of the cooler. The burden is on Employer to prove that Employer did not know of the existence of the violation. By showing that its current manager of seven months did not know does not support a finding that Employer was never aware of the cooler being used as a storage area.

Further, a successful rebuttal of the presumption of a Serious violation requires Employer to show it "took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered." This did not happen here. Employer offered no evidence to support that its actions after discovery of the two violations did anything to eliminate Lopez's exposure to the two violations. Ortega even asked him to hand her some items stored there before she descended the ladder. She did nothing to help eliminate his exposure to the hazard.

Labor Code section 6432, subdivision (b), provides that the following factors may also be taken into account:

> (A) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards; (B) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards; (C) Supervision of employees exposed or potentially exposed to the hazard; and (D) Procedures for communicating to employees about the employer's health and safety rules and programs.

There is no evidence provided by Employer to establish it provided training to employees and supervisors relevant to preventing employee exposure to the hazards, its procedures for discovering, controlling access to, and correcting the hazards, or the supervision of employees exposed or potentially exposed to the hazards. The parties did stipulate that "Employer produced

[6] It is noted that although it is Employer's burden to rebut the presumption here, Employer did not offer the testimony of Lopez herself, who was present at hearing. Rather, Employer relied on the statements recorded by the Division.

its Injury and Illness Prevention Program" and that "Employees received effective training for their job classification." This one limited stipulation, however, does little to help Employer meet its burden here. For all of the reasons above, therefore, Employer has failed to rebut the presumption that the Citation 2 and Citation 3 violations are properly classified as Serious.

7. Did the Division establish that Citation 3 was properly characterized as Accident-Related?

In order for a citation to be classified as accident-related, there must be a showing by the Division of a 'causal nexus between the violation and the serious injury.' The violation need not be the only cause of the accident, but the Division must make a "showing [that] the violation more likely than not was a cause of the injury." (*RNR Construction, Inc.*, *supra*, Cal/OSHA App. 1092600.)

Lopez fell from the top of the cooler and sustained fatal injuries as a result. The Division offered evidence in the form of the testimony of Sanasaryan that the lack of guardrails or other fall protection directly contributed to the fall and Lopez's injuries. The Division established that the lack of guardrails or other fall protection was more likely than not a cause of the fatality. Accordingly, the citation was properly characterized as Accident-Related.

8. Are the proposed penalties reasonable?

Although the parties stipulated that Sanasaryan was current on the Division-mandated training at the time of the hearing, the parties did not stipulate that the penalties were calculated in the accordance with the Division's policies and procedures and there was no testimony to that effect at hearing. Therefore, the reasonableness of the penalties must be determined from the evidence available in the record.

The Appeals Board has held that "while there is a presumption of reasonableness to the penalties proposed by the Division in accordance with the Director's regulations, the presumption does not immunize the Division's proposal from effective review by the Board…." (*DPS Plastering, Inc.*, Cal/OSHA App. 00-3865, Decision After Reconsideration (Nov. 17, 2003).)

Section 336, subdivision (b), provides that a Base Penalty will be set initially based on the Severity of the violation and thereafter adjusted based on Extent and Likelihood. Section 335, subdivision (a), provides that Serious violations are considered to be High Severity. Serious violations therefore have a base penalty of $18,000. (§336, subd. (c).)

Section 335, subdivision (a)(2), further defines the relevant factors to assess the Gravity of a violation:

Extent.

i. When the safety order violated pertains to employee illness or disease, Extent shall be based upon the number of employees exposed:

LOW – 1 to 5 employees
MEDIUM – 6 to 25 employees
HIGH – 26 or more employees

[…]

Section 335, subdivision (a)(3), defines the third factor in assessing the Gravity of a violation:

Likelihood.

Likelihood is the probability that injury, illness or disease will occur as a result of the violation. Thus, Likelihood is based on (i) the number of employees exposed to the hazard created by the violation, and (ii) the extent to which the violation has in the past resulted in injury, illness or disease to the employees of the firm and/or industry in general, as shown by experience, available statistics or records. Depending on the above two criteria, Likelihood is rated as:

LOW, MODERATE OR HIGH

Citation 2

In determining Extent, the consideration is the number of employees exposed to the injury or illness caused by the violation. Here, the evidence supports a finding that only one employee was exposed to the violation. Accordingly, the violation is assigned an Extent of Low, which results in a 25 percent reduction in the Base Penalty. (§336, subd. (b).)

The Division did not allege that the violation of Citation 2 resulted in the Lopez's fatal injuries and did not present any further evidence regarding likelihood of injury, illness or disease occurring as a result of the violation, other than Sanasaryan's conclusory testimony that "Likelihood is medium." The Appeals Board has held that when the Division does not provide evidence to support its proposed penalty, it is appropriate that an employer be given the

maximum credits and adjustments provided under the penalty-setting regulations such that the minimum penalty provided under the regulations for the violation is assessed. (*RII Plastering, Inc*, Cal/OSHA App. 00-4250, Decision After Reconsideration (Oct. 21, 2003).) Therefore, Employer is entitled to the maximum reduction and Likelihood is determined to be Low, with a correspondent reduction in the Base Penalty of 25 percent. (§ 336, subd. (b).)

Therefore, the violation is determined to be a High Severity with a Low Extent and Likelihood. The Base Penalty of $18,000 is reduced by 50 percent, for a Gravity-Based Penalty of $9,000.

Section 335 provides for further adjustment to the Gravity-Based penalty for Size, Good Faith, and History. Sanasaryan testified that, based on his interviews with employees, Employer has over 100 employees, so no adjustment for Size is available. Sanasaryan testified that Employer was assigned 15 percent for Good Faith, without further explanation as to why. The Division did not present testimony or further evidence for Good Faith or History. Therefore, Employer is given the maximum adjustment available: 30 percent for Good Faith, and 10 percent for History. This additional 40 percent adjustment results in a $3,600 penalty reduction and an adjusted penalty of $5,400.

Sanasaryan testified that Employer successfully abated the violation in Citation 2. Employer is therefore entitled to a 50 percent abatement credit, which results in final penalty of $2,700.

Citation 3

Having established that the violation in Citation 3 is properly classified as Serious, its base penalty is determined to be $18,000. Because Citation 3 is characterized as Accident-Related, the only penalty adjustment potentially available to Employer is for Size. (§ 336, subd. (d)(7).) As previously established, Employer has more than 100 employees, so that adjustment factor does not apply. Therefore, a final penalty of $18,000 is assessed.

Conclusion

The Division established that Employer violated section 3276, subdivision (e)(11). The citation was properly classified as Serious and the proposed penalty is reasonable as modified herein.

The Division established that Employer violated section 3210, subdivision (b). The citation was properly classified as Serious and properly characterized as Accident-Related. The proposed penalty is reasonable.

Order

It is hereby ordered that Citation 1 is affirmed due to Employer's withdrawal of its appeal of this item and the associated penalty, as set forth in the attached Summary Table, remains as issued.

It is hereby ordered that Citation 2 is affirmed and the penalty of $2,700 is assessed, as set forth in the attached Summary Table.

It is hereby ordered that Citation 3 is affirmed and the penalty of $18,000 is assessed, as set forth in the attached Summary Table.

Dated: 08/23/2021

SAM E. LUCAS
Presiding Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**