BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1451264**
TRADE MARK CONSTRUCTION CO. INC. **dba J.M.W. TRUSS AND COMPONENTS** **15916 BERNARDO CENTER DRIVE** **SAN DIEGO, CA 92127** **Employer**	**DECISION**

Statement of the Case

Trademark Construction Company, Inc., dba J.M.W. Truss and Components (Employer), is a general contractor. Beginning December 11, 2019, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Timothy Decker (Decker), conducted a complaint investigation at Employer's worksite, a multistory building under construction at 2799 Health Center Drive in San Diego, California (the site).

On April 22, 2020, the Division issued one citation to Employer, alleging a violation of the California Code of Regulations, title 8.[1] Citation 1, classified as Serious, alleges that Employer failed to require employees to use an approved personal fall protection system while working from thrustouts, or similar locations at heights exceeding 15 feet above ground level and where temporary guardrail protection is impracticable.

Employer filed a timely appeal contesting the existence of the alleged violation, the classification, and the proposed penalty. In addition, Employer raised numerous affirmative defenses, including, but not limited to, the Independent Employee Action Defense (IEAD).

This matter was heard by Howard Isaac Chernin, Administrative Law Judge (ALJ), for the California Occupational Safety and Health Appeals Board (Appeals Board) in Los Angeles, California, on July 12, 2022. ALJ Chernin conducted the video hearing with all participants appearing remotely via the Zoom video platform. Staff Counsel Manuel Arambula, Esq., represented the Division, and Kevin Bland, Esq., of Ogletree Deakins, represented Employer.

The hearing record was left open to allow Employer to engage in further efforts to secure the testimony of two additional witnesses, and to submit post-hearing briefs. This matter was submitted on February 6, 2023.

[1] Unless otherwise specified, all references are to California Code of Regulations, title 8.

Issues

1. Did Employer fail to require employees to use an approved personal fall protection system while working from thrustouts or similar locations at heights exceeding 15 feet above ground level?

2. Did the Division appropriately classify Citation 1 as Serious?

3. Did Employer rebut the presumption that the violation alleged in Citation 1 was Serious?

4. Did Employer prove any of its affirmative defenses?

5. Did the Division propose a reasonable penalty for Citation 1?

Findings of Fact

1. On December 11, 2019, Employer was framing a multi-unit residential building under construction.

2. Two of Employer's employees were working at the site while standing on top plates, without any fall protection, approximately 40 feet above ground level.

3. The employees who were standing on the top boards were exposed to a fall hazard in excess of 15 feet.

4. The scaffolding surrounding the building lacked toe boards and was too low from the level of the top plates to provide fall protection.

5. Employees were working in areas on the perimeter where the studs were not present and did not afford fall protection.

6. A fall from approximately 40 feet could result in injuries serious enough to require hospitalization for more than 24 hours for treatment.

7. Employer had a foreman at the site, but the foreman was distracted by other work and was not observing the two employees on the roof.

8. The violation occurred in plain view.

9. The employees observed on the top boards were not experienced in the work they were performing.

10. Employer does not enforce its safety program through effective training and monitoring of employees for compliance with its fall protection rules. Employer failed to heed warnings from the general contractor that its employees were not wearing fall protection and did not provide adequate supervision to ensure that they did so.

11. The Division did not propose a reasonable penalty for Citation 1.

Analysis

1. Did Employer fail to require employees to use an approved personal fall protection system while working from thrustouts or similar locations at heights exceeding 15 feet above ground level?

Section 1669, subdivision (a), provides:

> When work is performed from thrustouts or similar locations, such as trusses, beams, purlins, or plates of 4-inch nominal width, or greater, at elevations exceeding 15 feet above ground, water surface, or floor level below and where temporary guardrail protection is impracticable, employees shall be required to use approved personal fall protection system in accordance with Section 1670.

Citation 1 alleges:

> Prior to and during the course of the inspection, including, but not limited to December 11, 2019, employees were exposed to falls of approximately 40 feet while working from top plates and similar locations without being protected by guardrails or a personal fall protection system.

The Division has the burden of proving a violation, including the applicability of the safety order, by a preponderance of the evidence. (*Coast Waste Management, Inc.*, Cal/OSHA App. 11-2385 and 2386, Decision After Reconsideration (Oct. 7, 2016).) "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. (*United Parcel Service*, Cal/OSHA App. 1158285, Decision After Reconsideration (Nov. 15, 2018); *Leslie G. v. Perry & Associates* (1996) 43 Cal.App. 4th 472, 483.)

Applicability

Section 1669 is found within the Construction Safety Orders, which apply "whenever employment exists in connection with the construction…of any fixed structure or its parts." (Section 1502, subd. (a).) Here, the parties do not dispute that the site was a multistory building under construction, or that Employer had employees working at a height of greater than 15 feet. Section 1669 is a fall protection safety order that applies to certain work being performed in connection with the construction of a fixed structure, such as the subject building. The safety order therefore applies.

Violation

Senior Safety Engineer Decker testified that he visited the site approximately 1 hour and 15 minutes after the Division received a complaint of employees working at heights of 15 feet or more without fall protection. Upon arriving at the site, he observed employees standing on the top plates[2] of the wood frames being constructed for a four-story building, without fall protection. Decker's testimony was corroborated by photographs. (Exhibits 4, 5, 6, 7, and 8). Employer did not offer any evidence to dispute that the employees were present or that they were not using fall protection at the time. Decker testified that the employees were working at heights of approximately 40 feet, and his testimony is corroborated by the photographs that he took despite the fact that he took no measurements. Decker's testimony regarding the fall distance is, therefore, credited.

Decker testified that during his inspection he interviewed Fernando Terronas (Terronas) and Alexis Herrera (Herrera), the two employees who he had observed working without fall protection. The employees informed Decker that they had been working since approximately 7:00 a.m., and that they were not wearing fall protection while working on the top plates because it was easier to move around without fall protection. (Exhibit 2.) Although the statements made by Terronas and Herrera to Decker are hearsay, they corroborate Decker's testimony about his observations and the photographs that he took during the inspection, and so the statements are therefore admissible. (Section 376.2.)

Employer argues that no violation occurred because a parapet wall surrounding the top of the building where the employees were working rendered personal fall protection systems unnecessary. Employer's Vice President of Construction Emanuel Hernandez (Hernandez) testified that at the time of the inspection, the perimeter of the building was surrounded by a parapet wall comprised of vertical two-by-four inch studs placed 16 inches apart when measured from their center (16 inches on center). Hernandez testified that the presence of the studs in this

[2] Decker testified that a top plate is a two-by-four inch board on top of a framed wall. Employer did not dispute this definition at hearing or in its post-hearing brief. The undersigned, therefore, credits Decker's definition.

configuration meant that the employees that Decker observed were not exposed to falls contemplated by the safety order. Decker admitted that a parapet wall with studs placed 16 inches on center would, hypothetically, prevent employees from being exposed to a fall "if there's complete coverage."

Assuming for sake of argument that portions of the perimeter were protected by such a configuration, Decker's testimony and the photographs entered into evidence demonstrate that employees were working on the top plates of the building outside of the perimeter protection afforded by the parapet wall. (Exhibits 5, 6, 7, and 8.) Decker credibly testified that these employees were exposed to falls in excess of 15 feet. Finally, although Decker acknowledged that there was scaffolding present around the building, he credibly testified that it did not provide adequate protection from falls because the working level of the scaffold was too low compared to where the employees were working, and it lacked toe boards. Employer did not present evidence that the scaffolding qualified as temporary guardrail protection. Accordingly, the Division established a violation of section 1669, subdivision (a).

For all of the foregoing reasons, therefore, Citation 1 is affirmed.

2. Did the Division appropriately classify Citation 1 as Serious?

Labor Code section 6432, subdivision (a), in relevant part 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 demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:
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> […]
> (2) The existence in the place of employment of one or more unsafe or unhealthful practices that have been adopted or are in use.

Labor Code section 6432, subdivision (e) provides:

> "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.

The Appeals Board has defined the term "realistic possibility" to mean a prediction that is within the bounds of human reason, not pure speculation. (*Sacramento County Water Agency Department of Water Resources*, Cal/OSHA App. 1237932, Decision After Reconsideration (May 21, 2020).)

The evidence offered by the Division during the hearing raises an inference that the Division complied with Labor Code section 6432, subdivision (b)(1), by sending Employer a Notice of Intent to Classify Citation as Serious (1BY). The Division included a 1BY dated April 3, 2020 in Exhibit 1, and Employer did not present any evidence or argument that it did not receive the 1BY. Thus, although the Division could have produced much stronger evidence of compliance, the undersigned finds based on these facts that the Division fulfilled this statutory obligation.

At the time of the hearing, Decker had been employed by the Division for about five years. He is currently a Senior Safety Engineer. Decker testified that he is current in his Division mandated training, and that his training has included how to conduct inspections and investigations, construction training and fall protection training. Prior to working for the Division, Decker was employed for approximately three-and-one-half years by Maryland Occupational Safety and Health. Decker testified that he classified Citation 1 as Serious because he determined as part of his investigation that there was a realistic possibility of serious physical harm that could result if an employee were to fall from a top plate while not utilizing fall protection. The photographs that Decker took demonstrate that employees were working without fall protection while standing on top plates at heights much greater than 15 feet. Decker credibly testified based on his knowledge and experience that such a fall from approximately 40 feet could result in injuries serious enough to require hospitalization for more than 24 hours for treatment. Accordingly, the Division established a rebuttable presumption that the citation was properly classified as Serious.

3. Did Employer rebut the presumption that the violation alleged in Citation 1 was Serious?

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 that:

> (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.

The Appeals Board has held that a hazard in plain view can constitute a Serious violation, and that an Employer's failure to detect such a hazard negates the argument that the employer acted reasonably and responsibly. (See e.g. *RNR Construction, Inc.*, Cal/OSHA App.1092600, Denial of Petition for Reconsideration (May 26, 2017); *National Steel and Shipbuilding Company*, Cal/OSHA App. 10-3791, Decision After Reconsideration (Nov. 17, 2014) ["hazardous conditions, plainly visible to the naked eye, constitute serious violations since the employer could have discovered them through reasonable diligence."].) Decker credibly testified that the Division received a complaint of employees working at heights greater than 15 feet without fall protection approximately one hour and 15 minutes before he arrived at the site, and that employees were still exposed to the hazard upon his arrival. Evidence at the hearing, in particular Decker's testimony and the photographs that he took, demonstrates that the employees that Decker observed were working out in the open and were observable from ground level. (See Exhibits 5, 6, 7 and 8.)

Employer asserts two arguments as to why it lacked knowledge of the violation, both of which lack merit. First, Employer argues that it had policies and procedures in place at the time of the inspection, including conducting daily inspections. (Exhibit F.) Vice President Hernandez testified Employer implements its Code of Safe Practices (Exhibit A) at every job site, and he recalled seeing fall protection used at the site on six to eight occasions. He further testified that employees received fall protection training at the site that was specific to the work at the site. However, Hernandez admitted that he was not at the site on the day of the inspection or the day before and had not previously observed the two employees who Decker interviewed as part of his inspection. Hernandez offered no explanation for how, despite these policies and procedures, the violation observed by Decker was allowed to exist for so long on the day of Decker's inspection. In fact, Decker credibly testified that when he spoke to the general contractor and the foreman, both were aware of what the two employees were doing, and the general contractor told Decker that it had previously informed Employer that employees were working without fall protection.

Employer also argues that it lacked knowledge of the violation because the foreman at the site was devoting his concentration to operating a forklift at the site on the date of the inspection,

and "would have been concerned about the load that he had on the equipment, and focused on what is in front of him—he would not have been viewing employees working on a project 150 yards away." (Employer's post-hearing brief, p. 9.) However, the Appeals Board has previously held that the failure to adequately supervise an employee supports a finding that the employer did not rebut the Serious classification. (*Timberworks Construction, Inc.*, Cal/OSHA App. 1097751, Decision After Reconsideration (Mar. 12, 2019) ["The lack of training on proper use of fall protection equipment, as well as the failure of supervision, support the ALJ's conclusion that the presumption of a serious violation was not rebutted by the employer."].)

Accordingly, Employer failed to rebut the presumption that the Division correctly classified Citation 1 as Serious.

4. Did Employer prove any of its affirmative defenses?

Employers bear the burden of proving their pleaded affirmative defenses by a preponderance of the evidence, and any such defenses that are not presented during the hearing are deemed waived. (*RNR Construction, Inc.*, *supra*, Cal/OSHA App. 1092600.) Here, Employer was given the opportunity to present evidence in support of its affirmative defenses during the hearing. Employer presented evidence which, viewed in the light most favorable to Employer, is relevant to Employer's asserted IEAD.

In order to successfully assert the affirmative defense of IEAD, an employer must establish the following elements:

(1) The employee was experienced in the job being performed;
(2) The employer has a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments;
(3) The employer effectively enforces the safety program;
(4) The employer has a policy of sanctions against employees who violate the safety program; and
(5) The employee caused a safety infraction which he or she knew was contra to the employer's safety requirements.

(*Fedex Freight, Inc.*, Cal/OSHA App. 12-0144, Decision After Reconsideration (Dec. 14, 2016); *Mercury Service, Inc.*, Cal/OSHA App. 77-1133, Decision After Reconsideration (Oct. 16, 1980).)

Here, Employer's defense fails for several reasons. First, Employer did not establish that the employees observed by Decker were experienced in the job being performed. Although Employer offered some evidence of training provided to its employees in the form of new hire orientation checklists (Exhibits C, D, and E), Employer failed to offer evidence showing that the

employees were experienced with framing work. This lack of evidence supports a negative inference that the employees were not experienced framers.

The Division did not cite Employer for its safety program, and the record demonstrates that Employer had a fall protection plan and Code of Safe Practices at the time of the inspection. Employer introduced testimonial evidence that it provided fall protection training to its employees. In addition, Employer offered evidence that foremen walk the site each morning and check to ensure employees are wearing fall protection. Viewing the evidence in the light most favorable to Employer, the evidence supports a finding that the employer has at least moderately well-devised safety program.

Employer had the opportunity to provide evidence to show that it effectively enforces its safety program, but Employer offered little such evidence. Rather, the facts as summarized previously demonstrate that Employer did not effectively enforce its safety program with regard to fall protection, because Employer failed to take adequate steps to ensure that its employees complied with its rules. Although Hernandez testified that Employer stops employees immediately when it observes safety violations, this evidence is afforded little weight in light of the substantial evidence that Employer failed to heed warnings from the general contractor that its employees were not wearing fall protection and did not provide adequate supervision to ensure that they did so. The evidence thus strongly supports an inference that Employer does not effectively enforce that aspect of its safety program.

Employer also offered insufficient evidence to establish that it has a policy of sanctions against employees who violate its safety program. Hernandez testified that Employer has a policy that starts with a verbal or written warning upon the first violation, followed by suspension and termination for repeated violations. Employer did not, however, provide any documentary evidence regarding the substance of its discipline policy or demonstrating that it implements the policy. In particular, Hernandez was not aware of whether the two employees observed by Decker were disciplined by Employer, despite the fact that he agreed that their behavior did not comply with Employer's safety rules. The weak evidence offered by Employer as to this element is therefore afforded very little weight and does not establish that Employer has a policy of sanctions against employees who violate its safety program.

Finally, Decker credibly testified that the two employees he interviewed knew they should have been wearing fall protection, as they were told as recently as the day before to wear it. Additionally, their statements to Decker that it was easier to move around without fall protection supports an inference that the employees knew that what they were doing was contra to Employer's safety requirements. Thus, it is found that Employer established the fifth element of the Independent Employee Action defense.

Employer failed to establish the first, third and fourth elements of its affirmative defense. Even taking into consideration the evidence supporting the first and fifth elements, Employer did not meet its burden of proof on every element of the defense. For all of the foregoing reasons, Employer's defense based on independent employee action fails.[3]

5. Did the Division propose a reasonable penalty for Citation 1?

Penalties calculated in accordance with the penalty setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*RNR Construction, Inc*., *supra*, Cal/OSHA App. 1092600, citing *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

Generally, the Division, by introducing its proposed penalty worksheet and testifying to the calculations being completed in accordance with the appropriate penalties and procedures, will be found to have met its burden of showing the penalties were calculated correctly. (*M1 Construction, Inc*., Cal/OSHA App. 12-0222, Decision After Reconsideration (Jul. 31, 2014).) The Appeals Board has held that maximum credits and the minimum penalty allowed under the regulations are to be assessed when the Division fails to indicate the basis of its adjustments and credits. (*Armour Steel Co*., Cal/OSHA App. 08-2649, Decision After Reconsideration (Feb. 7, 2014).)

A Serious classification violation that does not result in a serious injury or death has a base penalty of $18,000. (Section 336, subd. (c).) The base penalty is subject to further adjustment based on Extent and Likelihood. (*Id*.) Section 335, subdivision (a)(2)(ii) describes Extent as follows:

> ii. When the safety order violated does not pertain to employee illness or disease, Extent shall be based upon the degree to which a safety order is violated. It is related to the ratio of the number of violations of a certain order to the number of possibilities for a violation on the premises or site. It is an indication of how widespread the violation is. Depending on the foregoing, Extent is rated as:
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> LOW-- When an isolated violation of the standard occurs, or less than 15% of the units are in violation.
>
> MEDIUM-- When occasional violation of the standard occurs or 15-50% of the units are in violation.

[3] Employer also raised a "lack of knowledge" defense, but this is more properly discussed in the context of the Serious classification discussion in section 3 of the Decision.

> HIGH-- When numerous violations of the standard occur, or more than 50% of the units are in violation.

Decker credibly testified that he assessed Extent as medium because between 15 and 50 percent of the units (the employees) were in violation. The evidence supports a conclusion that Employer had at least three employees at the site at the time of the inspection, and that two employees were in violation. Even if only one employee had been in violation, that would amount to 33 percent of Employer's employees at the site. Employer offered no evidence contradicting Decker's conclusion as to the number of employees in violation. Decker's testimony, therefore, is credited. Accordingly, the Division correctly assessed Extent as medium.

Section 335, subdivision (a)(3), defines Likelihood as follows:

> 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:
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> LOW, MODERATE OR HIGH

Decker testified that he assessed Likelihood as medium because employees were walking on narrow, four-inch boards without fall protection, had they fallen they may have hit the adjacent scaffolding, as opposed to falling straight to the ground. Employer offered no evidence to contradict Decker's Likelihood assessment. Decker's testimony, therefore, is credited. Accordingly, the Division correctly assessed Likelihood as Medium.

When Extent and Likelihood are assessed as Medium, no further adjustment is made to the base penalty. Therefore, the calculated gravity-based penalty for Citation 1 is $18,000.

The gravity-based penalty is subject to further adjustment based on Good Faith, Size and History. (§ 336, subd. (d).) Good Faith is:

> […]based upon the quality and extent of the safety program the employer has in effect and operating. It includes the employer's awareness of CAL/OSHA, and any indications of the employer's desire to comply with the Act, by specific displays of accomplishments. Depending on such safety programs and the efforts of the employer to comply with the Act, Good Faith is rated as:

GOOD-- Effective safety program.

FAIR-- Average safety program.

POOR-- No effective safety program.

§ 335, subd. (c).)

Here, Decker testified that he assessed Good Faith as fair, but did not directly explain why. Nonetheless, as discussed earlier, the evidence supports a finding that Employer had a less than effective safety program in that it did not diligently enforce its fall protection rules. Because Employer's work is of a nature that would often require employees to work at heights covered by the cited safety order, this evidence weighs heavily against Employer and justifies Decker's assessment of Employer's Good Faith as fair, and the corresponding 15 percent adjustment. (§ 336, subd. (d)(2).)

Decker did not explain how he determined that Employer was not eligible to receive an adjustment based on size, as he did not testify as to the number of employees, and no evidence came in establishing how many employees Employer had at the time of the inspection. Accordingly, Employer shall be afforded the maximum size adjustment of 40 percent. (§ 336, subd. (d)(1).)

History, per section 335, subdivision (d), is:

> […]the employer's history of compliance, determined by examining and evaluating the employer's records in the Division's files. Depending on such records, the History of Previous Violations is rated as:
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> GOOD-- Within the last three years, no Serious, Repeat, or Willful violations and less than one General or Regulatory violation per 100 employees at the establishment.
>
> FAIR-- Within the last three years, no Serious, Repeat, or Willful violations and less than 20 General or Regulatory violations per 100 employees at the establishment.
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> POOR-- Within the last three years, a Serious, Repeat, or Willful violation or more than 20 General or Regulatory violations per 100 employees at the establishment.

For the purpose of this subsection, establishment and the three-year computation, shall have the same meaning as in Section 334(d) of this Article.

Decker testified that he assessed Employer's History as fair, "based on the history of final orders," and applied a corresponding five percent penalty reduction (§ 336, subd. (d)(3).) Employer offered no evidence to contradict Decker's assessment, so his testimony is credited.

Applying the adjustment factors based on the above to the gravity-based penalty results in an adjusted penalty of $7,200.

Finally, section 336, subdivision (e)(2), provides:

(e) Abatement Credit for General and Serious Violations -

[…]

(2) For Serious violations not listed in paragraph (3), the Division shall not grant a 50% abatement credit unless the employer has done either one of the following:

(A) Abated the Serious violation at the time of the initial or a subsequent visit during an inspection and prior to the issuance of a citation.

(B) Submitted a statement signed under penalty of perjury, together with supporting evidence when necessary to prove abatement, that the employer has abated the Serious violation within the period fixed for abatement in the citation. The signed statement and supporting evidence must be received within 10 working days after the end of the period fixed in the citation for abatement.

Here, Citation 1 issued with an abatement deadline of May 5, 2020. Nothing in the record suggests that Employer abated the violation prior to the issuance of the citation, and nothing in the record suggests that Employer submitted a signed statement of abatement within 10 working days after May 5, 2020. Therefore, no abatement credit applies.

In summary, the record supports a finding that the Division did not calculate a reasonable penalty for Citation 1. The gravity-based penalty of $18,000 shall be reduced by 60 percent, or $10,800. The resulting penalty is $7,200.00, consistent with the above factors.

Conclusion

The evidence supports a conclusion that Employer violated section 1669, subdivision (a), by failing to require employees to use an approved personal fall protection system while working from thrustouts or similar locations at heights exceeding 15 feet above ground level.

The evidence supports a conclusion that the Division correctly classified Citation 1 as Serious.

Employer did not establish any of its pleaded defenses.

The Division did not propose a reasonable penalty for Citation 1. The penalty of $14,400 shall be reduced to $7,200.

Order

Citation 1, is affirmed and the modified penalty of $7,200 is assessed as set forth in the attached Summary Table.

Howard I. Chernin

Dated: 02/13/2023

Howard I Chernin
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.**