BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1628750**
TAD VAN NGUYEN **456 URBANO DRIVE** **SAN FRANCISCO, CA 94127** **Employer**	**DECISION**

Statement of the Case

Tad Van Nguyen (Nguyen or Employer) is an individual who was operating as a licensed construction contractor. Beginning October 18, 2022, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer, Evan Li, conducted an inspection of a jobsite at 1600 Thomas Street in San Francisco, California, in response to a complaint about a scaffold.

On March 27, 2023, the Division issued five citations, consisting of 11 alleged violations, to Nguyen. The Division alleged in the citations that Nguyen failed to: establish, implement, and maintain a written Injury and Illness Prevention Program; adopt a written Code of Safe Practices; ensure the availability of a trained person to render first aid at the construction site; ensure that scaffold ledgers were made of two pieces of one-inch by six-inch board; ensure that employees did not use a step ladder in a closed position or step on the step below the topcap of the ladder; establish, implement, and maintain a written COVID-19 Prevention Program; establish, implement, and maintain a written Heat Illness Prevention Plan; ensure splices of the scaffold uprights were made with square butt joints and scabs; ensure the scaffold had sufficient diagonal bracing in a vertical plane across the entire face of the scaffold in both directions; ensure working levels of the scaffold above seven and one-half feet had midrails; and ensure working platforms covered the entire space between the scaffold uprights on the working levels.

Nguyen filed timely appeals[1] of the citations on the grounds that the safety orders were not violated, the classifications were incorrect, and the proposed penalties are unreasonable for all

[1] During the hearing, after Nguyen saw Exhibit 2, which is an unsigned certified mail receipt, he claimed that he never received the citations. However, Nguyen timely appealed all the citations, and, on his appeal forms, it is indicated that he received the citations on March 30, 2023. (Ex. 4.) As such, Nguyen's claim that he did not receive the citations is not supported by his own appeal forms.

citations. Nguyen asserted that he did not have any employees because he hired a separate business entity to build the scaffold.[2]

Nguyen also contested the reasonableness of abatement for Citation 1, Items 2 through 7, and Citations 2 through 5. However, Citation 1, Items 3, 4, and 5, and Citations 2 through 5, reflect that the alleged violations in those citations were corrected during inspection. (Ex. 1.) As to the remaining citations, neither party raised the issue of abatement. As such, the issue of abatement will not be addressed in this decision.

This matter was originally heard by Leticia Tanner, Administrative Law Judge (ALJ), for the California Occupational Safety and Health Appeals Board (Appeals Board) in Sacramento, California, via the Zoom video platform on January 28, 2025. ALJ Tanner became unavailable to write the decision. As a result, the parties had the option of having another ALJ write the decision or conduct a de novo hearing. (Cal. Code Regs., § 375.1, subd. (c).) While the Division agreed to waive the de novo hearing, Nguyen did not. Therefore, a video hearing was scheduled with ALJ Jennie Culjat on August 19, 2025. Nguyen appeared late to this hearing and had internet connectivity issues. Due to Nguyen's internet issues, the August 19, 2025, hearing was continued to October 16, 2025, over the Division's objection. Additionally, the Division requested that Nguyen's appeals be dismissed due to his inability to participate in the remote hearing, which was denied. The Division filed a Petition for Reconsideration of the Order Continuing Hearing, which was denied.

ALJ Culjat conducted the hearing on October 16, 2025, at the Appeals Board's office in Sacramento, California. Tad Van Nguyen appeared in pro per. Jordan R. Davis, Staff Counsel, represented the Division.

Before the conclusion of the hearing, Nguyen abruptly left the hearing room because he did not agree with the Division being allowed to recall its witness for a few additional questions. A recess was taken to see if Nguyen would return to the hearing room. However, Nguyen did not return. As Nguyen elected to absent himself from the remaining proceedings, the Division was allowed to recall its witness for additional questioning on the record. The hearing concluded approximately eight minutes from the time the hearing resumed after the recess. Due to Nguyen's refusal to remain for the conclusion of the hearing, the Division made a verbal motion for Nguyen's appeals to be dismissed. The Division's motion was denied.

The Appeals Board's audio recording of the hearing is the official record. The matter was submitted for decision on December 1, 2025.

[2] Except where discussed in this decision, Nguyen did not present evidence in support of his 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. Were the workers at the jobsite Nguyen's employees or independent contractors?

2. Did Nguyen have a written Injury and Illness Prevention Program?

3. Did Nguyen have a written Code of Safe Practices?

4. Did Nguyen fail to ensure that a suitable number of persons appropriately trained to render first aid were available at the jobsite?

5. Did Nguyen fail to ensure that ledgers on the scaffold were made of two one-inch by six-inch boards on each side of the scaffold uprights?

6. Did Nguyen fail to ensure that employees properly used a step ladder at the jobsite?

7. Did Nguyen have a written COVID-19 Prevention Program?

8. Did Nguyen have a written Heat Illness Prevention Plan?

9. Did Nguyen fail to ensure that the splices of uprights on the scaffold were made with square butt joints and nailed on two sides with scabs?

10. Did Nguyen fail to ensure that there was sufficient diagonal bracing supporting the scaffold?

11. Did Nguyen fail to ensure that the scaffold had midrails?

12. Did Nguyen fail to ensure that platform planks covered the entire space between the uprights on the working levels of the scaffold?

13. Did Nguyen establish the logical time defense for Citation 1, Item 4, and Citations 2 through 5?

14. Did the Division establish that the citations were properly classified?

15. Did Nguyen rebut the presumption that the violations in Citations 2 through 5 were Serious by demonstrating that he did not know, and could not, with the exercise of reasonable diligence, have known of the existence of the violations?

16. Are the proposed penalties reasonable?

Findings of Fact

1. On October 18, 2022, Nguyen was a contractor engaged in painting the exterior of a house located at 1600 Thomas Street in San Francisco, California (jobsite).[3]

2. At the time of the inspection, Nguyen was licensed by the California Contractors State License Board (CSLB).

3. Nguyen hired two workers to help him with the job. The workers were involved in erecting a wooden scaffold on the exterior of a multi-story house at the jobsite.

4. The two workers hired by Nguyen were not licensed by CSLB and did not operate their own independent businesses.

5. Nguyen did not have a written Injury and Illness Prevention Program.

6. Nguyen did not have a written Code of Safe Practices related to the painting operation.

7. Nguyen did not have a written Heat Illness Prevention Program.

8. The scaffold was made of wood and, at the time of the inspection, was in place on the front and on one side of the house. The scaffold on the side of the house was 37.7 feet in height with four working levels. The scaffold on the front of the house was at least 25 feet in height with three working levels.

9. At the time of the inspection, a worker was using a step ladder that was leaning against the scaffold in the closed position. The worker stood on the step below the topcap of the ladder while accessing the scaffold.

10. The scaffold ledgers were made of one piece of board.

[3] Finding of fact number 1 is a stipulation of the parties.

11. The splices of the scaffold uprights were not made with butt joints and scabs. Rather, the uprights were joined together by overlapping one end of the upright with another end of an upright and nailing the ends together.

12. The entire face of the scaffold was not secured by diagonal bracing in a vertical plane in both directions.

13. Insufficient splices and diagonal bracing impact the structural integrity of a scaffold creating the hazard of a scaffold collapse. A worker falling from a scaffold during a collapse can suffer broken bones, internal injuries, and death.

14. Platform planks did not cover the entire space between the scaffold uprights on the working levels.

15. None of the working levels of the scaffold had midrails.

16. The lack of midrails and insufficient platform planks on a scaffold create a fall hazard. A worker falling off a scaffold can suffer broken bones, internal injuries, and death.

17. The proposed penalties were calculated in accordance with the Division's policies and procedures.

Analysis

1. Were the workers at the jobsite Nguyen's employees or independent contractors?

The California Occupational Safety and Health Act of 1973 was established "for the purpose of assuring safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions… ." (Lab. Code, § 6300.) There must be an employee-employer relationship in order for the Division to have jurisdiction to issue a citation. (*Treasure Island Media, Inc.*, Cal/OSHA App. 10-1093, Decision After Reconsideration (Aug. 13, 2015).)

Labor Code section 6303, subdivision (b), defines "employment" as "the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work... ." Labor Code section 6304 specifies that "employer" has the same meaning as it has pursuant to Labor Code section 3300, subdivision (c), which provides that an employer is "every person…which has any natural person in service." Labor Code section

6304.1, subdivision (a), defines an "employee" as "every person who is required or directed by any employer to engage in any employment or to go to work or be at any time in any place of employment."

On October 18, 2022, Associate Safety Engineer, Evan Li (Li), arrived at the jobsite where he observed and photographed two workers on a wooden scaffold, one on the topmost level and another on the level directly below.[4] (Ex. 8 and 9.) Li testified that he asked one of the workers to call the supervisor or manager. Li testified that, about 10 to 15 minutes later, Nguyen appeared at the jobsite and introduced himself as the person in charge. Li then conducted his opening conference. Li testified that, after asking Nguyen how many employees he had, Nguyen answered that he had two employees, which were the two workers Li observed on the scaffold.

Li testified that, at a later point in the investigation, Nguyen stated that he (Nguyen) hired the workers from a Home Depot. Li further testified that, when he requested contact information for Nguyen's employees, Nguyen provided him with the names and phone numbers of the two workers, and Nguyen asserted, at that time, that they were 1099 workers. Li requested that Nguyen submit evidence to support his assertion that the workers were independent contractors. However, Nguyen did not provide any additional information regarding the workers.

During the hearing, Nguyen did not dispute that there were two workers on the jobsite building the scaffold. However, Nguyen denied making the above statements and denied that the workers were his employees. Nguyen alleged that there were two business entities operating at the jobsite. Nguyen explained that the two workers were a separate business entity that he was referred to and contracted with to build the scaffold. Essentially, Nguyen argues that the workers were operating as independent contractors.

There are two tests relevant in this matter for determining whether the workers were independent contractors or employees, the ABC test found in Labor Code section 2775, and Labor Code section 2750.5, which pertains to work for which a contractor's license is required.

a. Labor Code section 2775—the ABC test.

Labor Code section 2775, subdivision (b)(1), provides the following:

> (b)(1) For purposes of this code…a person providing labor or services for remuneration shall be considered an employee rather than an independent

[4] Li testified that a third person came from the back of the house during the inspection. Neither party provided additional information about this third person. As such, it is unknown what, if any, relationship the person had to the work being performed at the jobsite.

contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Under Labor Code section 2775, subdivision (b)(1), a worker is presumed to be an employee unless the hiring entity proves all three parts of the ABC test. (*People v. Uber Technologies, Inc.,* (2020) 56 Cal.App.5th 266, 287.) The ABC test "'places the burden on "the hiring entity to establish that the worker is an independent contractor"…and to do so by meeting all three factors in the ABC test.'" (*Uber Technologies, Inc.*, Cal/OSHA App. 1594663, Decision After Reconsideration and Order of Remand (Jan. 24, 2025), quoting *People v. Uber Technologies, Inc., supra,* 56 Cal.App.5th at p. 287, quoting *Dynamex Operations West, Inc. v. Superior Court,* (2018) 4 Cal.5th 903, 957.)

(1) Were the workers customarily engaged in an independently established trade, occupation, or business building scaffold?

An individual who operates an independent business "generally takes the usual steps to establish and promote his or her independent business—for example, through incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like." (*Dynamex Operations West, Inc. v. Superior Court, supra,* 4 Cal.5th at p. 962.)

Nguyen testified that a private homeowner hired him to paint the exterior of a multi-story house, and he then contracted with another business to build a scaffold. Nguyen further testified that someone referred him to some people that could build the scaffold. Nguyen explained that he called the number he was given, spoke to someone, and a person named Adan met Nguyen at the jobsite. Nguyen testified that he discussed the work to be performed with Adan, Adan offered to build the scaffold for $4,500 or $5,000, and Nguyen agreed. Nguyen testified that he later learned that there was another worker at the jobsite named Cesar Jorge. Adan and Cesar Jorge are the two workers Li observed and photographed on the scaffold during the inspection.

Other than the generalized testimony above, Nguyen could not provide any other details to establish that either Adan or Cesar Jorge operated an independent business. Nguyen did not know if the alleged business had a name. Nguyen did not know if Adan or Cesar Jorge were self-employed or working under a business entity, such as a corporation. Nguyen did not present any evidence, such as a business card, a business license, an invoice, a receipt, a written contract for service, or a business advertisement, all of which are items it is expected would exist had either worker been operating their own business. It is reasonable to conclude that Nguyen was unable to provide details or produce corroborating evidence to support his assertion because neither worker operated their own independent business.[5]

Based on the foregoing, Nguyen failed to establish part C of the ABC test, that either worker was "customarily engaged in an independently established trade, occupation, or business." (Lab. Code, § 2775, subd. (b)(1)(C).)

(2) Were the workers free from Nguyen's control and direction in connection with building the scaffold?

Nguyen asserted that he was not involved in the building of the scaffold, and the workers were to inform him once the scaffold was complete. However, this testimony is undermined by the fact that Nguyen appeared at the jobsite shortly after Li requested one of the workers to call their supervisor or manager. It is reasonable to conclude that the worker called Nguyen and Nguyen arrived at the jobsite because he was in charge of the workers.

Nguyen did not dispute that the worker called him and testified that Adan called him because Li asked to speak with the boss. When Nguyen was asked if he was the boss, Nguyen did not directly answer the question and testified that the worker did not tell him it was the Division that wanted to speak to him. Nguyen's evasive answer does not detract from the reasonable conclusion that Nguyen was the workers' boss and had the ability to control the work being performed.

[5] Nguyen gave vague testimony about who he spoke with when he first contacted the alleged business and claimed that he did not know Adan's relationship to the alleged business. To the extent that Nguyen's testimony can be construed to assert that the workers were employees of another business Nguyen hired to build the scaffold, Nguyen's generalized and uncorroborated testimony is insufficient to establish that the workers were employed by another business entity operating at the jobsite.

Accordingly, Nguyen failed to establish part A of the ABC test, that the workers were free from his control in building the scaffold. (Lab. Code, § 2775, subd. (b)(1)(A).)

In sum, Nguyen's generalized and uncorroborated testimony is insufficient to establish parts A and C of the ABC test. The "failure to satisfy any one of the three parts itself establishes that the worker should be treated as an employee… ." (*Dynamex Operations West, Inc. v. Superior Court*, *supra*, 4 Cal.5th at p. 963.) Therefore, under the ABC test, the workers are found to be Nguyen's employees.

b. Labor Code section 2750.5—work for which a contractor's license is required.

While the workers have been found to be employees under the ABC test, also relevant to this case is Labor Code section 2750.5. Labor Code section 2750.5 creates a "rebuttable presumption" that a worker performing work for which a contractor's license is required "is an employee rather than an independent contractor." Furthermore, Labor Code section 2750.5 provides that "any person performing any function or activity for which a [contractor's] license is required…shall hold a valid contractors' license as a condition of having independent contractor status." Thus, Labor Code section 2750.5 "absolutely denies independent contractor status to a person required to have such a license who is not licensed." (*Foss v. Anthony Industries* (1983) 139 Cal. App. 3d 794, 797.)

In this case, the two workers were building a scaffold, which is work for which a contractor's license is required. (Bus. & Prof. Code, § 7026.) At the time the citations were issued, construction projects with an aggregate cost of $500 or more require the contractor to have a valid contractor's license. (Bus. & Prof. Code, §§ 7027.2 and 7048). Nguyen testified that the contract amount to build the scaffold was $4,500 to $5,000. As such, the workers were performing work for which a contractor's license was required.

Nguyen testified that he did not know or verify if Adan had a contractor's license, and he made no assertion that Cesar Jorge held such a license. As there is no evidence that either worker had the required contractor's license, the workers are deemed to be the employees of Nguyen pursuant to Labor Code section 2750.5.

In conclusion, Nguyen failed to establish that either worker was an independent contractor. The workers are found to be Nguyen's employees because they were required by Nguyen to engage in construction work. As such, the Division had jurisdiction to issue the citations to Nguyen as an employer.

2. Did Nguyen have a written Injury and Illness Prevention Program?

California Code of Regulations, title 8, section 1509, subdivision (a),[6] requires that "[e]very employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders." Section 3203 requires employers to have a written Injury and Illness Prevention Program (IIPP) that meets the minimum requirements outlined in section 3203.

In Citation 1, Item 1, the Division alleges:

> Prior to and during the course of the inspection, including but not limited to, on October 18, 2022, the employer failed to establish, implement and maintain a written Injury and Illness Prevention Program.

Li testified that, on the day of the inspection, he verbally requested from Nguyen a copy of his written IIPP and provided Nguyen with a Document Request Sheet. (Ex. 19.) Li testified that, in response to this request, it appeared that Nguyen did not know what an IIPP was and a copy was never produced. During the hearing, Nguyen denied this and argued that he did not receive the Document Request Sheet. However, Nguyen acknowledged that Li requested a copy of his IIPP by arguing that Li asked for an IIPP related to the workers. Nguyen explained that he did not have an IIPP for the workers because they were not his employees. Nguyen asserted that he had an IIPP for himself.

As discussed above, the workers are found to be Nguyen's employees. Nguyen admitted that he did not have an IIPP for these employees. As to the IIPP Nguyen allegedly kept for himself, at any point during the investigation and hearing, Nguyen could have simply produced this document, but he did not do so. It is inferred from Nguyen's failure to produce the IIPP that he did not have one. (Evid. Code, § 412.)

Accordingly, the preponderance of the evidence is that Nguyen did not have a written IIPP at the time of inspection, and the Division established a violation of section 1509, subdivision (a). Therefore, Citation 1, Item 1, is affirmed.

3. Did Nguyen have a written Code of Safe Practices?

Section 1509, subdivision (b), provides that "[e]very employer shall adopt a written Code of Safe Practices which relates to the employer's operations. The Code shall contain language equivalent to the relevant parts of Plate A-3 of the Appendix."

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

In Citation 1, Item 2, the Division alleges:

> Prior to and during the course of the inspection, including but not limited to, on October 18, 2022, the employer failed to adopt a written Code of Safe Practices which relates to the employer's operations.

Nguyen was a contractor engaged in painting a house and, therefore, required to have a written Code of Safe Practices (CSP). (§§ 1502, subd. (a), and 1509, subd. (b).) Similar to the above, Li testified that he requested a copy of Nguyen's CSP, it appeared that Nguyen did not know what a CSP was, and a copy was never provided. At the hearing, Nguyen denied making this statement and again asserted that he understood Li's request to be related to the workers, so he never produced the CSP that he allegedly had for himself. Nguyen did not produce the alleged CSP during the hearing.

It is reasonable to conclude the Nguyen has never produced a copy of his alleged CSP, either at hearing or to the Division, because he did not have one. Therefore, the Division established a violation of section 1509, subdivision (b), and Citation 1, Item 2, is affirmed.

4. Did Nguyen fail to ensure that a suitable number of persons appropriately trained to render first aid were available at the jobsite?

Section 1512, subdivision (b), provides the following:

> (b) Appropriately Trained Person. Each employer shall ensure the availability of a suitable number of appropriately trained persons to render first aid. Where more than one employer is involved in a single construction project on a given construction site, the employers may form a pool of appropriately trained persons. However, such pool shall be large enough to service the combined work forces of such employers.

In Citation 1, Item 3, the Division alleges:

> Prior to and during the course of the inspection, including but not limited to, on October 18, 2022, the employer failed to ensure the availability of a trained person to render first aid at the construction site.

The Appeals Board recently explained that section 1512, subdivision (b), does not require a person appropriately trained in first aid to always be physically present on site. (*Arana Residential and Commercial Painting, Inc*., Cal/OHSA-App. 1568252, Decision After Reconsideration (Oct. 18, 2024.) "'While the safety order does not require, and we do not interpret

it to require, such person(s) to be on site at all times, *available* for purposes of rendering first aid to someone in need suggests such person be able to do so [...] in the span of but a few minutes.'" (*Id*., quoting *Damon, Inc.,* Cal/OSHA App. 13-1976, Denial of Petition for Reconsideration (Aug. 15, 2014), original italics.) To prove a violation of section 1512, subdivision (b), the Division must establish that an appropriately trained person was not available on short notice to render first aid prior to the arrival of professional health care personnel. (*Arana Residential and Commercial Painting, Inc*., *supra*, Cal/OSHA App. 1568252.)

Li testified that during the inspection Nguyen provided evidence that he was appropriately trained in first aid. Li explained that he issued Citation 1, Item 3, because Nguyen was not present at the jobsite at the time of the inspection. However, this is not what is required. Nguyen only needed to be available on short notice. While there was testimony that it took Nguyen 10 to 15 minutes to arrive at the jobsite to meet Li, it is unknown whether Nguyen could have arrived at the jobsite more quickly in the event that first aid became necessary.

Accordingly, the Division failed to present sufficient evidence to establish that Nguyen violated the cited regulation. Therefore, Employer's appeal of Citation 1, Item 3, is granted.

5. Did Nguyen fail to ensure that ledgers on the scaffold were made of two one-inch by six-inch boards on each side of the scaffold uprights?

Section 1640, which is entitled "Light-Duty Wooden Pole Scaffolds" sets forth the various requirements for building such a scaffold. Section 1640, subdivision (b)(2), provides:

> (b) Light-Duty Exterior Scaffolds.
>
> (2) Ledgers and Ribbons. The platforms of the scaffold shall be supported by ledgers. For ledgers spanning not more than 3 feet between uprights, use 2 pieces of 1-inch by 6-inch board, 1 being on each side of the uprights and fastened securely at each point of support. Single 2-inch by 4-inch ledgers are not permitted. Vertical spacing of ribbons and ledgers shall not exceed 7 feet. The ribbons shall be 1-inch by 6-inch or heavier material, placed on the outer uprights, directly under, and in contact with, the ledgers. The ribbons shall be long enough to extend from upright to upright without splices. Exceptions: 1. When metal ledgers are used or when ledgers are bolted or when a 45-degree angle brace is nailed to the uprights between double ledgers, and ledgers also nailed to this brace, the ribbon may be placed at other elevations such as guardrail height, but they cannot be eliminated from the scaffold. 2. Metal ledgers and ribbons that are part of a patented scaffold system may be used when installed in accordance with the manufacturer's instructions.

In Citation 1, Item 4, the Division alleges:

> Prior to and during the course of the inspection, including, but not limited to, on October 18, 2022, the employer failed to ensure that ledgers use 2 pieces of 1-inch by 6-inch board, 1 being on each side of the uprights and fastened securely at each point of support.

Among its many requirements, section 1640, subdivision (b)(2), provides: "For ledgers spanning not more than 3 feet between uprights, use 2 pieces of 1-inch by 6-inch board, 1 being on each side of the uprights and fastened securely at each point of support. Single 2-inch by 4-inch ledgers are not permitted." Ledgers support the working platforms of the scaffold.

Li testified that the ledgers of the wooden scaffold surrounding the exterior of the house did not have two boards per upright as required. During his inspection, Li took several photographs of the scaffold. Exhibit 8 is a photograph of the scaffold on the front of the house. The ledgers visible in Exhibit 8 had only one board per upright. The photographs of the scaffold on the side of the house also reflect that the scaffold ledgers were not made of two boards per ledger as required. (Ex. 9, 10 and 14.) Other than claiming that the business entity he hired was responsible for building the scaffold, Nguyen did not dispute that the scaffold ledgers were not made of two one-inch by six-inch boards per upright.

As the scaffold ledgers were not made of two one-inch by six-inch boards fastened to each side of the scaffold uprights, the Division established a violation of section 1640, subdivision (b)(2). Therefore, Citation 1, Item 4, is affirmed.

6. Did Nguyen fail to ensure that employees properly used a step ladder at the jobsite?

Section 1675, subdivision (b), requires that "[a]ll portable ladders used in construction shall comply with the provision of Section 3276 of the General Industry Safety Orders."

Section 3276, subdivision (e), sets forth the requirements for "Care, Use, Inspection and Maintenance of Ladders." Section 3276, subdivision (e)(15)(E), provides that "[e]mployees shall not sit, kneel, step or stand on the pail shelf, topcap or the step below the topcap of a step ladder." Section 3276, subdivision (e)(16)(C), further provides "[s]tep ladders shall not be used as single ladders or in the partially closed position."

Section 3276, subdivision (b) defines "step ladder" as "a self-supporting portable ladder, nonadjustable in length, having flat steps and a hinged back."

In Citation 1, Item 5, the Division alleges:

> Prior to and during the course of the inspection, including, but not limited to, on October 18, 2022, the employer failed to ensure portable ladders used in construction comply with the provisions of Section 3276 of the General Industry Safety Orders in the following instances:
>
> l. Employer failed to ensure that employees do not step or stand on the step below the topcap of a step ladder.
>
> 2. Employer failed to ensure that employees using step ladders do not used them as single ladders or in the partially closed position.

During his inspection, Li observed and photographed one of the workers using a step ladder to access the scaffold. (Ex. 12 and 13.) The step ladder was in the closed position and leaning against the scaffold. (Ex. 11, 12, and 13.) The worker used the step below the topcap of the step ladder while he was using the step ladder to access the scaffold. (Ex. 13.) Based on the photographs, the two alleged violations of section 1675, subdivision (b), are established. As such, Citation 1, Item 5, is affirmed.

7. Did Nguyen have a written COVID-19 Prevention Program?

At the time of the inspection, section 3205, subdivision (c), provided the following:

> Written COVID-19 Prevention Program. Employers shall establish, implement, and maintain an effective, written COVID-19 Prevention Program, which may be integrated into the employer's Injury and Illness Prevention Program required by section 3203, or be maintained in a separate document. […]

In Citation 1, Item 6, the Division alleges:

> Prior to and during the course of the inspection, including, but not limited to, on October 18, 2022, the employer failed to establish, implement, and maintain [a] written COVID-19 Prevention Program.

During the inspection, Li requested a copy of Nguyen's COVID-19 Prevention Program. Nguyen did not provide a copy to the Division. At the hearing, Nguyen testified that he did not have a written COVID-19 Prevention Program.

The current version of section 3205, subdivision (a)(1), provides that "[t]his section shall apply until February 3, 2025, except for the recordkeeping subsection 3205(j), which shall apply until February 3, 2026." Accordingly, section 3205, subdivision (c), for which Nguyen was cited, is no longer in effect.

"The repealing of a safety order requires dismissal of matters that have not reached final disposition unless a new safety order is enacted or there is evidence of an intent to preserve the requirement of the repealed safety order." (*Dorfman Construction Company, Inc.*, Cal/OSHA App. 76-1100, Decision After Reconsideration (Feb. 26, 1981).) As of February 3, 2025, there is no longer an obligation for an employer to have a written COVID-19 Prevention Program. This provision has not been retained in any other section of the California Code of Regulations, title 8. As the COVID-19 Prevention Program requirement has not been preserved, this citation must be dismissed. As such, Citation 1, Item 6, is vacated.

8. Did Nguyen have a written Heat Illness Prevention Plan?

Section 3395, subdivision (i), provides:

> (i) Heat Illness Prevention Plan. The employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The Heat Illness Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program required by section 3203, and shall, at a minimum, contain:
>
> (1) Procedures for the provision of water and access to shade.
> (2) The high heat procedures referred to in subsection (e).
> (3) Emergency Response Procedures in accordance with subsection (f).
> (4) Acclimatization methods and procedures in accordance with subsection (g).

In Citation 1, Item 7, the Division alleges:

> Prior to and during the course of the inspection, including, but not limited to, on October 18, 2022, the employer failed to establish, implement, and maintain a written Heat Illness Prevention Plan.

As Nguyen was an employer whose employees were working outdoors, he was required to have a written Heat Illness Prevention Plan (HIPP). (§ 3395, subds. (a)(1) & (i).) During the inspection, Li requested a copy of Nguyen's written HIPP. Nguyen did not provide a copy to the

Division. Nguyen conceded that he did not have a written HIPP. As such, the Division established a violation of section 3395, subdivision (i), and Citation 1, Item 7, is affirmed.

9. Did Nguyen fail to ensure that the splices of uprights on the scaffold were made with square butt joints and nailed on two sides with scabs?

Section 1640, subdivision (b)(1), requires the following:

(b) Light-Duty Exterior Scaffolds.

(1) Uprights. For heights not to exceed 20 feet, the uprights shall be 2-inch by 4-inch lumber or heavier, spaced not more than 3 feet between uprights at right angles to the wall and not more than 10 feet center to center, parallel to the wall. The inside uprights may be omitted and ledgers attached to the permanent structure, provided that the method of attaching the ledgers to the permanent structure will make the connection as secure as though the ledger were nailed to the upright with 5 8-penny nails. The splices of uprights shall be made with square butt joints, and scabs of 1-inch by 4-inch or heavier material at least 48 inches long shall be nailed on 2 sides of each upright with 6 nails in each 1/2 of each scab. If the uprights of the scaffold rest on a surface that might cause slipping, a continuous sill or other means shall be provided to hold the uprights in place. When the scaffold is resting on earth or other such material, the uprights shall rest on and be secured to the equivalent of a 2-inch by 10-inch by 10-inch wooden base. Note:1 1/8-inch by 10-inch by 10-inch piece of exterior grade plywood may be used in lieu of the wooden base mentioned above.

In Citation 2, the Division alleges:

Prior to and during the course of the inspection, including, but not limited to, on October 18, 2022, the employer failed to ensure that splices of uprights [*sic*] made with square butt joints, and scabs of 1-inch by 4-inch or heavier material at least 48 inches long shall be nailed on 2 sides of each upright with 6 nails in each 1/2 of each scab.

Of its many requirements, section 1640, subdivision (b)(1), requires that the splices of uprights on a wooden light-duty exterior scaffold be made with square butt joints and scabs. A splice is where the uprights are joined together. Li testified that a square butt joint is formed when the vertical end of one board is butted up against the vertical end of another board. A scab, which must be made of at least one-inch by four-inch material and at least 48 inches long, must be nailed on each side of the splice with six nails in each half of the scab. (§ 1640, subd. (b)(1).)

The Division's photographs of the scaffold reflect that the uprights of the scaffold had several splices. (Ex. 10, 14, and 15.) These photographs further reflect that the splices were not made with square butt joints and did not have the required scabs. Rather, the uprights were joined together by overlapping one end of an upright with the end of another upright and nailing the uprights together. (Ex. 10, 14, and 15.) Nguyen did not dispute that the splices were not made with square butt joints and scabs. Accordingly, the Division established a violation of section 1640, subdivision (b)(1), and Citation 2 is affirmed.

10. Did Nguyen fail to ensure that there was sufficient diagonal bracing supporting the scaffold?

Labor Code section 1640, subdivision (b)(3), provides:

(b)Light-Duty Exterior Scaffolds.

(3)Ties and Braces. The scaffold shall be securely tied to the building or structure by means of a double looped No. 12 iron wire, or single looped No. 10 iron wire or 1-inch by 4-inch boards with at least 2 nails at each connection or equivalent means. Ties shall connect to the inside uprights and shall not be more than 20 feet apart horizontally and vertically. The outside line of uprights shall contain sufficient diagonal bracing of 1-inch by 6-inch material in a vertical plane across the entire face of the scaffold in both directions to prevent swaying, tipping, or collapsing. (See Appendix Plate B-18).

In Citation 3, the Division alleges:

Prior to and during the course of the inspection, including, but not limited to, on October 18, 2022, the employer failed to ensure the outside line of uprights contain sufficient diagonal bracing of 1-inch by 6-inch material in a vertical plane across the entire face of the scaffold in both directions to prevent swaying, tipping, or collapsing.

Li testified that the scaffold did not have the required diagonal bracing. A review of the Division's photographs of the scaffold confirms Li's testimony. (Ex. 8 and 9.) There was no diagonal bracing supporting the scaffolding on the front of the house. (Ex. 8.) As to the side of the house, while there was diagonal bracing on sections of the base structure of the scaffold, there was no diagonal bracing on any of the sections of the upper levels of the scaffold. (Ex. 9.) As the scaffold did not have diagonal bracing in a vertical plane across the entire face of the scaffold in both directions, the Division established a violation of section 1640, subdivision (b)(3). Therefore, Citation 3 is affirmed.

11. Did Nguyen fail to ensure that the scaffold had midrails?

Section 1640, subdivision (b)(4), provides the requirements for railings on wooden light-duty exterior scaffolds:

> (b)Light-Duty Exterior Scaffolds.
>
> (4) Railing. Open sides and ends of intermediate working levels 7 1 /2 feet or more above grade shall be guarded by a 2-inch by 4-inch top rail nailed to the uprights so that the top edge is between 42 inches and 45 inches above the platform. Midrails of at least 2-inch by 4-inch material are required at all work levels. The uppermost platform shall be protected by a top rail consisting of double 2-inch· by 4-inch members. One member shall be fastened in a flat position on top of the uprights and the other member shall be fastened in an edge-up position to the inside of the uprights and at the side of the top member. A single 2-inch by 4-inch member having an allowable bending stress of at least 1,900 psi may be used as a top rail.

In Citation 4, the Division alleges:

> Prior to and during the course of the inspection, including, but not limited to, on October 18, 2022, the employer failed to ensure that midrails were at work levels.

Li testified that he issued this citation because the scaffold did not have midrails at any of the working levels. The Division's photographs confirm the violative condition. (Ex. 8, 9, and 10.) While the scaffold had handrails on the working levels, there are no railings between the handrail and the platforms on any of the working levels, which is where the midrails should be located. (Ex. 8, 9, and 10.) Nguyen did not dispute that these violations existed and again denied that he was responsible for the scaffold. However, as established above, the workers were Nguyen's employees.

Based on the foregoing, the Division met its burden of proof regarding the violations of section 1640, subdivision (b)(4). Accordingly, Citation 4 is affirmed.

12. Did Nguyen fail to ensure that platform planks covered the entire space between the uprights on the working levels of the scaffold?

Section 1640, subdivision (b)(5), sets forth the requirements for platforms on wooden light-duty exterior scaffolds. The Division cited Nguyen for a violation of section 1640, subdivision (b)(5)(A), which requires the following:

(b) Light-Duty Exterior Scaffolds.

(5) Platforms.

(A) Platform planks shall be of 2-inch by l0-inch or larger material and of such length that they overlap the ledgers at each end by at least 6 inches. A plank shall not overlap an unsupported end of another plank. The working platform shall cover the entire space between scaffold uprights, except for the open area under the backrailing, which shall not be more than 8 inches wide. Platforms shall be at least 20 inches wide and within 14 inches of the structure wall. When moving platforms to the next level, the old platform shall be left undisturbed until the new ledgers have been set in place ready to receive the platform planks.

In Citation 5, the Division alleges:

Prior to and during the course of the inspection, including, but not limited to, on October 18, 2022, the employer failed to ensure working platform were cover [*sic*] the entire space between scaffold uprights.

Li testified that platform planks did not cover the entire space between the uprights on the working levels of the scaffold. Photographs of the scaffold demonstrate that none of the working platforms were covered as required. (Ex. 16 and 17.) There were large sections of the working levels where only one platform plank was in place, leaving significant open spaces. (Ex. 16 and 17.) On one level of the scaffold in the front of the house, the open space appears to be large enough that a person could easily fall through. (Ex. 16.) Accordingly, the Division established a violation of section 1640, subdivision (b)(5)(A), and Citation 5 is affirmed.

13. Did Nguyen establish the logical time defense for Citation 1, Item 4, and Citations 2 through 5?

During the hearing, Nguyen asserted that the scaffold was not completely built at the time of inspection. Nguyen did not expressly raise the logical time defense. However, Nguyen's assertion evokes this defense and warrants a discussion of why his mere assertion that the scaffold was not yet complete does not relieve him of any violations related to the scaffold.

"The logical time defense is a Board created rule which provides that '[t]he requirements of any safety order will not begin to apply until the necessary and logical time has arrived for an employer to make provisions to correct the violation and abate the hazard. [Citations.]'" (*Bay Cities Paving & Grading, Inc.*, Cal/OSHA App. 12-1665, Denial of Petition for Reconsideration (May 16, 2014).) In order for this defense to apply, an employer must prove: "(1) compliance with

the cited safety order during the cited time period will expose the employee to greater danger, or a more hazardous situation, than non-compliance; and, (2) compliance with the safety order will occur at the earliest appropriate and logical time once the greater danger has passed." (*ACCO Engineered System, Inc.*, Cal/OSHA App. 1195414, Decision After Reconsideration (Oct. 11, 2019).)

Nguyen did not present evidence that his employees would have been in greater danger at the time the violations occurred had the scaffold been in compliance. Nguyen also failed to establish that compliance would have occurred at any time, let alone the most appropriate and logical time.

At the time of the inspection, the scaffold was present on the front and one side of the house, with multiple working levels. (Ex. 8 and 9.) The insufficient ledgers, splices, diagonal bracing, and platform planks, and the missing midrails were not isolated to one area of the scaffold. (Ex. 8, 9, 10, 14, 15, 16 and 17.) The violations were present on the entirety of the scaffold, suggesting that the scaffold was simply built deficiently. Furthermore, Nguyen's employees were exposed to these violations because they were on the scaffold, with one employee present on the topmost level and another on the level directly below. (Ex. 8 and 9.) Even if the employees were not done building the scaffold in its entirety, Nguyen provided no reason why one level of the scaffold could not be constructed as required by the safety order before moving to the next level.

Based on the foregoing, Nguyen's mere assertion that the scaffold was not yet complete does not establish the logical time defense or otherwise excuse Nguyen from the violations.

14. Did the Division establish that the citations were properly classified?

a. Citation 1, Items 1, 2, and 7—Regulatory violations.

Section 334, subdivision (a), provides:

> Regulatory Violation - is a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc.

Citation 1, Item 1, was issued to Nguyen because he did not have an IIPP. An IIPP is a document that an employer is required to keep. During the hearing neither party presented any evidence that the classification of this citation was incorrect. As such, the Regulatory classification of Citation 1, Item 1, is affirmed.

Citation 1, Item 2, was issued to Nguyen because he did not have a CSP. A CSP is a written document that Nguyen was required to keep. During the hearing neither party presented any evidence that the classification of this citation was incorrect. Accordingly, the Regulatory classification of Citation 1, Item 2, is affirmed.

Citation 1, Item 7, was issued to Nguyen because he did not have a HIPP. A HIPP is a document Nguyen was required to keep. During the hearing neither party presented any evidence that the classification of this citation was incorrect. Therefore, the Regulatory classification of Citation 1, Item 7, is affirmed.

b. Citation 1, Items 4 and 5—General violations.

Section 334, subdivision (b), provides: "General Violation - is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees."

Regarding Citation 1, Item 4, the evidence at hearing was sufficient to establish that employees were working on a scaffold that did not have appropriate ledgers. The requirement in section 1640, subdivision (b)(2), that ledgers on a light-duty wood pole scaffold be made of two one-inch by six-inch boards is to ensure the structural integrity of scaffolds to prevent worker injuries. As such, this violation has a relationship to occupational safety and health of employees. Accordingly, the General classification of Citation 1, Item 4, is affirmed.

Citation 1, Item 5, was issued to Nguyen for failing to ensure employees properly used a step ladder because the ladder was used in the closed position and an employee stood on the step directly below the topcap. The use requirements for step ladders found in section 3276 are in place to prevent workplace accidents and injuries and, thus, this violation has a relationship to occupational safety and health of employees. Therefore, the General classification of Citation 1, Item 5, is affirmed.

c. Citations 2, 3, 4, and 5—Serious violations.

Labor Code section 6432, subdivision (a), in relevant part states:

> (a) 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:

[…]

(2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes 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 Appeals Board has defined the term "realistic possibility" to mean a prediction that is within the bounds of human reason, not pure speculation. (*A. Teichert & Son, Inc. dba Teichert Aggregates*, Cal/OSHA App. 11-1895, Decision After Reconsideration (Aug. 21, 2015).)

Labor Code section 6432, subdivision (g), provides:

(g) A division safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that their division-mandated training is current shall be deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

Li testified that he was current on his division-mandated training at the time of the hearing. As such, he was competent to offer testimony regarding the classification of the citations as Serious.

The Serious citations at issue in this case are all regarding deficiencies in the erection of the wooden scaffold. As to Citation 2, Li testified that the upright splices not being made of square butt joints and scabs creates a risk of a scaffold collapse resulting in a fall hazard. For Citation 3,

Li testified that the diagonal bracing impacts the structural integrity of the scaffold and insufficient bracing also creates a risk of a scaffold collapse resulting in a fall hazard. As for Citation 4, Li testified that the lack of required midrails on the scaffold created a fall hazard because a worker could fall off the scaffold if they tripped or otherwise became unstable. Finally, for Citation 5, Li testified that the working levels not being completely covered with platform planks also created a fall hazard because a worker could step through the open space.

Li testified that the scaffold on the side of the house was 37.7 feet in height and 25 feet in height on the front of the house. Li testified that a fall from 30 feet, or even less than 30 feet, can result in fractured bones, internal injuries, and death. Accordingly, the Division established a rebuttable presumption that the violations cited for in Citations 2, 3, 4, and 5 were properly classified as Serious.

15. Did Nguyen rebut the presumption that the violations in Citations 2 through 5 were Serious by demonstrating that he 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." 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.

Labor Code section 6432, subdivision (b), provides that the following factors may 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.

Nguyen failed to present any evidence that he "took all the steps a reasonable and responsible employer in like circumstances should be expected to take" regarding the assembly of the scaffold. (Lab. Code, § 6432, subd. (c)(1).) Nguyen did not present any evidence related to the factors set forth in section 6432, subdivision (b). Additionally, Nguyen's repeated claims that he was not responsible for the scaffold support the conclusion that Nguyen did not take any steps to avoid exposing his employees to the violations.

Accordingly, Nguyen did not demonstrate that he did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violations. Therefore, the Serious classifications of Citations 2, 3, 4, and 5 are sustained.

16. Are the proposed penalties reasonable?

"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." (*Sacramento County Water Agency Department of Water Resources,* Cal/OSHA App. 1237932, Decision After Reconsideration (May 21, 2020).)

A review of the Division's Proposed Penalty Worksheet does not reveal any miscalculations or reflect that the penalty setting regulations were misapplied. (Ex. 20.) None of the proposed penalties issued by the Division are for the maximum amount possible, which indicates that the Division gave Nguyen credits and adjustments where appropriate as required by the penalty setting regulations. While Nguyen's appeal asserts that the proposed penalties are unreasonable, other than to allege he was not an employer, Nguyen presented no evidence that the penalties were miscalculated or that the regulations were improperly applied. There is nothing about the circumstances of the case that otherwise suggests that further reduction of penalties is warranted. Accordingly, the proposed penalties are found to be reasonable.

Conclusion

Nguyen was the employer of the two workers he hired. Therefore, Nguyen was responsible for the health and safety of the employees at the jobsite, and the Division had jurisdiction to issue citations to Nguyen.

For Citation 1, Item 1, the Division established that Nguyen violated section 1509, subdivision (a), because Nguyen did not have a written Injury and Illness Prevention Program. The violation was properly classified as Regulatory. The penalty is found to be reasonable.

For Citation 1, Item 2, the Division established that Nguyen violated section 1509, subdivision (b), because Nguyen did not have a written Code of Safe Practices. The violation was properly classified as Regulatory. The penalty is found to be reasonable.

For Citation 1, Item 3, the Division failed to establish that Nguyen violated section 1512, subdivision (b). There was insufficient evidence that an appropriately trained person in first aid was not available on short notice.

For Citation 1, Item 4, the Division established that Nguyen violated section 1640, subdivision (b)(2). Nguyen failed to ensure that the scaffold ledgers were made of two boards per upright. The violation was properly classified as General. The penalty is found to be reasonable.

For Citation 1, Item 5, the Division established that Nguyen violated section 1675, subdivision (b), because Nguyen failed to ensure that employees did not step on the step below the topcap of a step ladder and did not use a step ladder in the closed position. The violation was properly classified as General. The penalty is found to be reasonable.

For Citation 1, Item 6, section 3205, subdivision (c), is no longer in effect and the requirement to have a written COVID-19 Prevention Plan was not retained elsewhere in the California Code of Regulations, title 8.

For Citation 1, Item 7, the Division established that Nguyen violated section 3395, subdivision (i). Nguyen did not have a written Heat Illness Prevention Plan. The violation was properly classified as Regulatory. The penalty is found to be reasonable.

For Citation 2, the Division established that Nguyen violated section 1640, subdivision (b)(1). Nguyen did not ensure the splices of scaffold uprights were made with square butt joints and scabs. The violation was properly classified as Serious. The penalty is found to be reasonable.

For Citation 3, the Division established that Nguyen violated section 1640, subdivision (b)(3). Nguyen failed to secure the scaffold with diagonal bracing in a vertical plane across the entire face of the scaffold. The violation is properly classified as Serious. The penalty is found to be reasonable.

For Citation 4, the Division established that Nguyen violated section 1640, subdivision (b)(4). Nguyen failed to ensure the working levels of the scaffold had midrails. The violation was properly classified as Serious. The penalty is found to be reasonable.

For Citation 5, the Division established that Employer violated section 1640, subdivision (b)(5)(A). Nguyen failed to ensure that the working levels of the scaffold were covered by platform

planks between the entire space of the uprights. The violation is properly classified as Serious. The penalty is found to be reasonable.

Order

It is hereby ordered that Citation 1, Item 1, and the associated penalty are affirmed.

It is hereby ordered that Citation 1, Item 2, and the associated penalty are affirmed.

It is hereby ordered that Citation 1, Item 3, is dismissed and the penalty is vacated.

It is hereby ordered that Citation 1, Item 4, and the associated penalty are affirmed.

It is hereby ordered that Citation 1, Item 5, and the associated penalty are affirmed.

It is hereby ordered that Citation 1, Item 6, is dismissed and the penalty is vacated.

It is hereby ordered that Citation 1, Item 7, and the associated penalty are affirmed.

It is hereby ordered that Citation 2 and the associated penalty are affirmed.

It is hereby ordered that Citation 3 and the associated penalty are affirmed.

It is hereby ordered that Citation 4 and the associated penalty are affirmed.

It is hereby ordered that Citation 5 and the associated penalty are affirmed.

It is further ordered that the penalties indicated above and set forth in the attached Summary Table be assessed.

/s/ Jennie Culjat
Jennie Culjat
Administrative Law Judge

Dated: 12/22/2025

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.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.