



1 those witnesses who are intended to be called by the Division to testify at any  
2 hearing in this proceeding; and

3 3. Provide a separate list identifying by name, title, and address  
4 any individual the Division may call to testify as an expert witness; and

5 4. Provide a separate list identifying by name, title and address  
6 any individual the Division intends to call for the purpose of attempting to  
7 establish any element of the "serious" classification of any violation alleged in  
8 this proceeding.

9 5. If, subsequent to providing any list in response to the above  
10 requests, it is determined by the Division that additional persons should be  
11 identified on any such list, Appellant is to be immediately provided an updated  
12 list identifying those additional persons. This is a continuing request throughout  
13 the completion of these proceedings.

14 6. Appellant requests the Division produce for inspection and  
15 copying the following documents or things on or before *December 6, 2014*, at  
16 the office of Appellant's counsel at 3300 Sunset Boulevard, Suite 110, Rocklin,  
17 California 95677:

18 a. Any and all statements, written or otherwise, of any  
19 individual, including but not limited to parties or witnesses, which statements  
20 may have been prepared as a result of this matter, whether or not such  
21 statements are intended or expected to be introduced into evidence;

22 b. Any and all writings, statements, documents, reports, or  
23 matters of a similar nature prepared during or as a result of any investigation of  
24 this matter, whether or not expected to be introduced into evidence;

25 c. Any and all written statements pertaining to the subject  
26 matter of the proceeding made by any person, whether or not expected to be  
27 introduced into evidence;

28

1 d. Any and all writings which, on any occasion, existed within  
2 any Division inspection or investigation file in this matter, including text and  
3 digital materials, prepared by any person, whether or not prepared as a result of  
4 this proceeding, whether or not expected to be introduced into evidence;

5 e. Any and all writings and reports made by a representative of  
6 the Division pertaining to the above-entitled matter, including field notes,  
7 scratch notes, each and every State of California form including, but not limited  
8 to, the Cal/OSHA 1, Cal/OSHA 1A, Cal/OSHA 1B, Cal/OSHA 1BX,  
9 Cal/OSHA 1BY, OSHA 94, Cal/OSHA 1E, Cal/OSHA 1H and Cal/OSHA 1HX,  
10 Cal/OSHA 7, OSHA 167C, Cal/OSHA 20, Cal/OSHA 36(s), OSHA-170,  
11 Cal/OSHA 170A, Cal/OSHA 170AX, and all related documents, each and every  
12 laboratory note and/or document, which pertain in any degree to the above-  
13 entitled matter;

14 f. Investigative reports made by or on behalf of the Division  
15 pertaining to the subject matter of the proceeding, to the extent that such reports  
16 (1) contain the names and addresses of witnesses or of persons having personal  
17 knowledge of the acts, omissions or events which are the basis of the  
18 proceeding, or (2) reflect matters perceived by the investigator in the course of  
19 his/her investigation, or (3) contain or include by attachment any statement or  
20 writing described in (1) to (6), inclusive, above, or any summary thereof.

21 g. If a "repeat" citation is alleged, any document, including any  
22 computer printout or digital document which sets forth any record or history of  
23 any previous citations issued to Appellant upon which the alleged "repeat"  
24 characterization of the citation is based, and also those documents relied upon  
25 by the Division in support of the "repeat" characterization of the alleged  
26 violation, including any certification of the proof or accuracy of such  
27 documents.

28

1 h. Any and all photographs taken by any person which are in  
2 the possession of the Division and which relate to the subject matter of this  
3 proceeding, whether or not expected to be introduced into evidence;

4 i. Any and all photographs taken by any person, whether or not  
5 in the possession of the Division, which relates to the subject matter of this  
6 proceeding, whether or not expected to be introduced into evidence;

7 j. Any and all drawings, graphs, or charts prepared by any  
8 person and which relate to or which will be used in support of the violations in  
9 contest herein.

10 k. Any and all audio and video recordings prepared by any  
11 person as a result of any inspection or investigation of this matter, whether or  
12 not expected to be introduced into evidence.

13 l. Provide a copy of each and every citation notification form  
14 (the "1BY" form) forwarded to the employer by the Division in this matter.

15 m. Provide a copy of the proof of service of the citation  
16 notification form (the "1BY" form) served upon the employer by the Division in  
17 this matter.

18 n. Provide a copy of any written document(s) which the  
19 Division may possess, or have access to, from the employer regarding any  
20 response to the notification form (a "1BY" form) served upon the employer.

21 For the purpose of this request and pursuant to Title 8, CCR  
22 § 372.1, "statements" include written statements by any person, signed or  
23 otherwise authenticated, stenographic, mechanical, electrical or other recordings  
24 or transcripts thereof, of oral statements by any person, and written reports or  
25 summaries of such oral statements.

26 These requests are continuing requests throughout the completion  
27 of these proceedings so that any person, or any witnesses or any statements,  
28 documents, reports, photographs, or items referenced in paragraphs (a) to (k),

1 inclusive, above, of this document that are actually or constructively obtained  
2 after initial compliance with this request, shall be disclosed and made available  
3 forthwith.

4  
5 November 6, 2014

  
\_\_\_\_\_  
6 Robert D. Peterson  
7 Attorney for Appellant  
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**DECLARATION OF SERVICE BY MAIL**

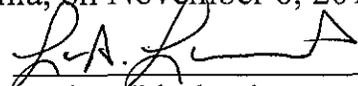
I am a citizen of the United States and employed in Placer County, California. I am over the age of 18 years and am not a party to this action; my business address is 3300 Sunset Boulevard, Suite 110, Rocklin, California 95677. On November 6, 2014, I served a copy of the within **Notice of Appearance and Appellant's Request For Identity of Witnesses and Production of Documents and Things** by depositing the original and one copy of the above document in a box or other facility regularly maintained by United Parcel Service in an envelope or package designated by United Parcel Service (Airbill No. 1ZF34A41399231783) with delivery fees paid or provided for as follows:

Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833

I further declare that on November 6, 2014, I served a copy of the within **Notice of Appearance and Appellant's Request For Identity of Witnesses and Production of Documents and Things** by following ordinary business practice, placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited for first class delivery in the United States mail that same day in the ordinary course of business, addressed as follows:

Jon Weiss, District Manager  
Division of Occupational Safety and Health  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

I declare under penalty of perjury that the foregoing is true and correct. Executed at Rocklin, California, on November 6, 2014.

  
Lori A. Limbocker

DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY  
AND HEALTH APPEALS BOARD

2520 VENTURE OAKS WAY, SUITE 300  
SACRAMENTO, CA 95833  
(916) 274-5751  
FAX (916) 274-5785



November 25, 2014

Robert Peterson, Attorney at Law  
ROBERT D. PETERSON LAW CORPORATION  
3300 Sunset Boulevard, Suite 110  
Rocklin, CA 95677

Re: DISNEY CONSTRUCTION INC.  
14-R2D1-3749/3758

DOCKETED: 11/24/2014

Dear Mr. Peterson:

Enclosed are the docketed copies of each Appeal form that you filed with the Board. The above listed docket numbers should appear on all future correspondence. A copy of any correspondence with the Appeals Board must be served on the Division of Occupational Safety and Health DOSH and any other party to the proceeding.

You are obligated to notify any affected employees or their representative that an appeal is pending and that they have a right to participate in the proceeding. You are required to post a copy of the docketed Appeal form and a Participation Notice (similar to the sample enclosed) at or near the site of the violation or in a conspicuous place where it will be readily observable by employees. In addition to posting, a copy of the Appeal form and the Participation Notice must be served on the following: 1) any authorized employee representative; and 2) any employee (or their representative) who was seriously injured or killed in an accident related to this appeal. Proof, such as a brief letter, that the forms were posted must be sent to the DOSH District Manager whose address appears on the citation.

Please direct any request for information dealing with the **filing** of your appeal to the above address and/or telephone number. All other communications prior to the hearing will be handled by the assigned Administrative Law Judge (ALJ) **Kevin Reedy** (916) 274-5751.

Any written motion, such as a request for subpoena, consolidation of cases, or request for party or intervenor status must be made by written motion to the ALJ named above at **2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833**.

Sincerely,

  
Carri Riedel  
Office Technician

cc: Accounting  
DOSH District Manager-Sacramento  
DOSH Legal Unit-Oakland

Inspection No. 317251106

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

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NOV 07 2014

CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R 2D1 -3749

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE  
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 1 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). \_\_\_\_\_ Item No(s) \_\_\_\_\_

[ ] SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_ Item No.(s) \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

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CALOSHA APPEALS BOARD

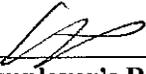
3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
14. Appellant acted with due diligence to comply with all regulatory requirements.
15. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
16. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
17. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
18. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
19. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

4.



**(Signature of Employer or Employer's Representative)**

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

November 6, 2014

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

**IMPORTANT INFORMATION**

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing.*
- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative changes address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106  
**Inspection Dates:** 05/30/2014-11/03/2014  
**Issuance Date:** 11/04/2014  
**CSHO ID:** K4874  
**Optional Inspection Nbr:** 082-14



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**NOV 07 2014**

**CALOSHA APPEALS BOARD**

Phone: (916) 263-2800 Fax: (916) 263-2798

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**Citation 1 Item 1 Type of Violation: **Regulatory****

T8 CCR 1613.5(a)(3): Cranes and Derricks in Construction. Inspections - Periodic. Periodic inspections shall be conducted at least four times a year. The annual certification, as required by General Industry Safety Orders, Sections 5021(a) and Construction Safety Orders Section 1613.6, can serve as one of the required periodic inspections. The periodic inspections shall be evenly spaced or as close to evenly spaced as scheduling permits through the year. Cranes shall not be operated more than 750 hours, between periodic inspections. An inspection record shall be maintained which includes the date of the inspection, the signature of the person who performed the inspection, and the serial number or other identifier of the crane inspected, the items checked and the results of the inspection. The most recent inspection record shall be maintained on file.

During an inspection related to an accident which occurred on May 30, 2014, at a construction site located near 4540 Putah Creek Road, Winters, CA, the Cal/OSHA program was not provided with the most recent periodic inspection records for a Link Belt HC238 crane which was being operated by employees of Disney Construction Inc.

Date By Which Violation Must be Abated: Abated  
Proposed Penalty: \$ 375.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106  
**Inspection Dates:** 05/30/2014 - 11/03/2014  
**Issuance Date:** 11/04/2014  
**CSHO ID:** K4874  
**Optional Inspection Nbr:** 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

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**NOV 07 2014**

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**CALOSHA APPEALS BOARD**

**Citation 1 Item 2 Type of Violation: **Regulatory****

T8 CCR 1610.9(a)(2): Cranes and Derricks in Construction. Equipment over Three Tons Rated Capacity. All cranes and derricks used in lifting service, exceeding three tons rated capacity, and their accessory gear shall not be used until the employer has ascertained that such equipment has been certificated as evidenced by current and valid documents attesting to compliance with the following: Certificates attesting to current compliance with testing and examination standards of requirements shall be maintained for each crane or derrick and shall be in a form acceptable to the Division. (See Section 4885, Plate V.) A copy of such certification shall be available with each crane and derrick or at the project site.

On or about May 30, 2014, Disney Construction Inc. with employees working at a construction site located near 4540 Putah Creek Road, Winters, CA, had been operating a Link Belt HC238 250,000lb crane for lifting service which was not certified and current on compliance with testing and examination standards.

Date By Which Violation Must be Abated:	Abated
Proposed Penalty:	\$ 375.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106

**Inspection Dates:** 05/30/2014- 11/03/2014

**Issuance Date:** 11/04/2014

**CSHO ID:** K4874

**Optional Inspection Nbr:** 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

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NOV 07 2014

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**CALOSHA APPEALS BOARD**

**Citation 1 Item 3 Type of Violation: General**

T8 CCR 1616.6(h)(1): Cranes and Derricks in Construction. Hoisting Personnel. Trial lift and inspection. A trial lift with the unoccupied personnel platform loaded at least to the anticipated lift weight shall be made from ground level, or any other location where employees will enter the platform, to each location at which the platform is to be hoisted and positioned. Where there is more than one location to be reached from a single set-up position, either individual trial lifts for each location, or a single trial lift, in which the platform is moved sequentially to each location, shall be performed; the method selected shall be the same as the method that will be used to hoist the personnel.

On May 30, 2014, a Disney Construction Inc. crane operator, operating a Link Belt HC238 crane at a construction site located near 4540 Putah Creek Road, Winters, CA, did not perform a trial lift with the unoccupied personnel platform attached to each location at which the platform is to be hoisted and positioned in the same method that was to be used to hoist the personnel.

Date By Which Violation Must be Abated:

12/08/2014

Proposed Penalty:

\$ 750.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

Inspection Number: 317251106  
Inspection Dates: 05/30/2014 - 11/03/2014  
Issuance Date: 11/04/2014  
CSHO ID: K4874  
Optional Inspection Nbr: 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

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NOV 07 2014

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**CALOSHA APPEALS BOARD**

**Citation 1 Item 4 Type of Violation: General**

T8 CCR 1616.6(j)(2): Cranes and Derricks in Construction. Hoisting Personnel. Proof testing. The platform shall be lowered by controlled load lowering, braked, and held in a suspended position for a minimum of five minutes with the test load evenly distributed on the platform.

On May 30, 2014, a Disney Construction Inc. crane operator, operating a Link Belt HC238 crane at a construction site located near 4540 Putah Creek Road, Winters, CA, did not proof test the personnel platform prior to lifting employees by performing controlled load lowering, braking, and then holding the personnel platform in a suspended position for a minimum of five minutes with the test load evenly distributed on the platform.

Date By Which Violation Must be Abated:  
Proposed Penalty:

12/08/2014  
\$ 750.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

Inspection Number: 317251106  
Inspection Dates: 05/30/2014 - 11/03/2014  
Issuance Date: 11/04/2014  
CSHO ID: K4874  
Optional Inspection Nbr: 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

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NOV 07 2014

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**CALOSHA APPEALS BOARD**

**Citation 1 Item 5 Type of Violation: General**

T8 CCR 1618.2(a): Cranes and Derricks in Construction. Signal Person Qualifications. The employer of the signal person shall ensure that each signal person meets the Qualification Requirements [subsection (c)] prior to giving any signals.

On May 30, 2014, Disney Construction Inc. with employees working at a construction site located near 4540 Putah Creek Road, Winters, CA, did not ensure the signal person assigned to signal a crane operator on a personnel platform lift operation met the Qualification Requirements listed in subsection (c) prior to giving any signals.

Date By Which Violation Must be Abated: 12/08/2014  
Proposed Penalty: \$ 750.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106  
**Inspection Dates:** 05/30/2014-11/03/2014  
**Issuance Date:** 11/04/2014  
**CSHO ID:** K4874  
**Optional Inspection Nbr:** 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**RECEIVED**

NOV 07 2014

**CALOSHA APPEALS BOARD**

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**Citation 1 Item 6 Type of Violation: **General****

T8 CCR 1618.4(b): Cranes and Derricks in Construction. Training. Signal persons. The employer shall train each employee who will be assigned to work as a signal person who does not meet the requirements of Section 1618.2(c) in the areas addressed in that section.

Disney Construction Inc. did not train a signal person to meet the Qualification Requirements of Section 1618.2(c) before assigning him on May 30, 2014, to signal a crane operator on a personnel platform lift operation at a construction site located near 4540 Putah Creek Road, Winters, CA.

Date By Which Violation Must be Abated:  
Proposed Penalty:

12/08/2014  
\$ 750.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

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NOV 07 2014

CAL OSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R 2D 1 -3750

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 2 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). Item No(s).

[ ] SPECIAL ORDER/SPECIAL ACTION NO: Item No.(s)

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes

[ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

4.



**(Signature of Employer or Employer's Representative)**

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

November 6, 2014

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

**IMPORTANT INFORMATION**

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing.*
- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
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- G. Mail each completed appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106  
**Inspection Dates:** 05/30/2014 - 11/03/2014  
**Issuance Date:** 11/04/2014  
**CSHO ID:** K4874  
**Optional Inspection Nbr:** 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**RECEIVED**

NOV 07 2014

**CALOSHA APPEALS BOARD**

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**Citation 2 Item 1 Type of Violation: **Serious****

T8 CCR 1613.4(a): Cranes and Derricks in Construction. Inspections - Each Shift. Each Shift. A qualified person shall visually inspect the crane's or derrick's controls, rigging and operating mechanism prior to the first operation on any work shift. The inspection shall consist of observation for apparent deficiencies. Taking apart equipment components and booming down is not required as part of this inspection unless the results of the visual inspection or trial operation indicate that further investigation necessitating taking apart equipment components or booming down is needed. Any unsafe conditions disclosed by the inspection requirements of this Article shall be corrected promptly. Defective components of equipment which create an imminent safety hazard shall be replaced, repaired or adjusted prior to use. At a minimum the inspection shall include all of the following: Control mechanisms for maladjustments interfering with proper operation. Hooks and latches for deformation, cracks, excessive wear, or damage such as from chemicals or heat. The equipment for level position within the tolerances specified by the equipment manufacturer's recommendations, both before each shift and after each move and setup. Safety devices and operational aids for proper operation.

On May 30, 2014, Disney Construction Inc. with employees working at a construction site located near 4540 Putah Creek Road, Winters, CA, did not ensure a qualified person visually inspected a Link Belt HC238 crane's controls, rigging, operating mechanism and hook safety latch prior to the first operation on the work shift.

Date By Which Violation Must be Abated:  
Proposed Penalty:

12/08/2014  
\$ 8435.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

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NOV 07 2014

CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R2D1 - 3751 -

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE  
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 3 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). \_\_\_\_\_ Item No(s) \_\_\_\_\_

[ ] SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_ Item No.(s) \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health (“Division”) does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant’s Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka “logical time defense”).
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a “serious” violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.



4.

**(Signature of Employer or Employer's Representative)**

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

November 6, 2014

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

**IMPORTANT INFORMATION**

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- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
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- G. Mail each completed appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

Inspection Number: 317251106  
Inspection Dates: 05/30/2014-11/03/2014  
Issuance Date: 11/04/2014  
CSHO ID: K4874  
Optional Inspection Nbr: 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**RECEIVED**

NOV 07 2014

**Citation and Notification of Penalty**

Company Name: Disney Construction Inc.  
Inspection Site: 4540 Putah Creek Road, Winters, CA 95694

**CALOSHA APPEALS BOARD**

**Citation 3 Item 1 Type of Violation: **Serious****

T8 CCR 1616.6(a): Cranes and Derricks in Construction. Hoisting Personnel. The use of equipment to hoist employees is prohibited except where the employer demonstrates that the erection, use, and dismantling of conventional means of reaching the work area, such as a personnel hoist, ladder, stairway, aerial lift, elevating work platform, or scaffold, would be more hazardous, or is not possible because of the project's structural design or worksite conditions.

On May 30, 2014, Disney Construction Inc., with employees working at a construction site located near 4540 Putah Creek Road, Winters, CA, operated a Link Belt HC238 crane to hoist employees with a personnel platform which was prohibited, because other less hazardous conventional means of reaching the work area were available.

Date By Which Violation Must be Abated:  
Proposed Penalty:

12/08/2014  
\$ 8435.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

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NOV 07 2014

CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R 2D1 -3752 -

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 4 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). Item No(s).

[ ] SPECIAL ORDER/SPECIAL ACTION NO: Item No.(s)

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

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NOV 07 2014

CALOSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.



**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106  
**Inspection Dates:** 05/30/2014-11/03/2014  
**Issuance Date:** 11/04/2014  
**CSHO ID:** K4874  
**Optional Inspection Nbr:** 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**RECEIVED**

NOV 07 2014

**CALOSHA APPEALS BOARD**

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**Citation 4 Item 1 Type of Violation: **Serious****

T8 CCR 1616.6(d)(5)(E): Cranes and Derricks in Construction. Hoisting Personnel. Equipment criteria. Devices. Anti two-block. A device which automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component) shall be used. The device(s) shall prevent such damage/failure at all points where two-blocking could occur.

On May 30, 2014, an employee of Disney Construction Inc. operated a Link Belt HC238 crane at a construction site located near 4540 Putah Creek Road, Winters, CA, to hoist employees in a personnel platform which was not equipped with an anti two-block device which automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component).

Date By Which Violation Must be Abated: 12/08/2014  
Proposed Penalty: \$ 8435.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

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NOV 07 2014

CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R2D1 -3753

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 5 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). Item No(s).

[ ] SPECIAL ORDER/SPECIAL ACTION NO: Item No.(s)

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

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CALOSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.



4.

**(Signature of Employer or Employer's Representative)**

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

November 6, 2014

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

**IMPORTANT INFORMATION**

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**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

Inspection Number: 317251106  
Inspection Dates: 05/30/2014 - 11/03/2014  
Issuance Date: 11/04/2014  
CSHO ID: K4874  
Optional Inspection Nbr: 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**RECEIVED**

NOV 07 2014

**CALOSHA APPEALS BOARD**

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**Citation 5 Item 1 Type of Violation: **Serious****

T8 CCR 1616.6(h)(4): Cranes and Derricks in Construction. Hoisting Personnel. Trial lift and Inspection. Immediately after the trial lift, the competent person shall: Conduct a visual inspection of the equipment, base support or ground, and personnel platform, to determine whether the trial lift has exposed any defect or problem or produced any adverse effect.

On May 30, 2014, Disney Construction Inc. working at a construction site located near 4540 Putah Creek Road, Winters, CA, did not have a competent person conduct a visual inspection of the equipment, base support or ground, and personnel platform, to determine whether the trial lift had exposed any defect or problem or produced any adverse effect prior to hoisting personnel.

Date By Which Violation Must be Abated:  
Proposed Penalty:

12/08/2014  
\$ 8435.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R 2 D 1 - 3754

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 6 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). \_\_\_\_\_ Item No(s). \_\_\_\_\_

[ ] SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_ Item No.(s) \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

NOV 07 2014

CAL OSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.



4.

**(Signature of Employer or Employer's Representative)**

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

November 6, 2014

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

**IMPORTANT INFORMATION**

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- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item**. Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative changes address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

Inspection Number: 317251106  
Inspection Dates: 05/30/2014 - 11/03/2014  
Issuance Date: 11/04/2014  
CSHO ID: K4874  
Optional Inspection Nbr: 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**RECEIVED**

NOV 07 2014

**Citation and Notification of Penalty**

Company Name: Disney Construction Inc.  
Inspection Site: 4540 Putah Creek Road, Winters, CA 95694

**CALOSHA APPEALS BOARD**

**Citation 6 Item 1 Type of Violation: **Serious****

T8 CCR 1616.6(h)(6): Cranes and Derricks in Construction. Hoisting Personnel. Trial lift and Inspection. Any condition found during the trial lift and subsequent inspection(s) that fails to meet a requirement of this standard or otherwise creates a safety hazard shall be corrected before hoisting personnel.

On May 30, 2014, Disney Construction Inc., working at a construction site located near 4540 Putah Creek Road, Winters, CA, allowed a personnel platform to be hoisted with employees on it, before a competent person inspected the personnel platform and corrected any condition found to create a safety hazard prior to hoisting personnel.

Date By Which Violation Must be Abated:  
Proposed Penalty:

12/08/2014  
\$ 8435.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R2D1 -3755

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 7 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). Item No(s).

[ ] SPECIAL ORDER/SPECIAL ACTION NO: Item No.(s)

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT

ATTACHMENT TO APPEAL

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.



**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106

**Inspection Dates:** 05/30/2014 - 11/03/2014

**Issuance Date:** 11/04/2014

**CSHO ID:** K4874

**Optional Inspection Nbr:** 082-14



**RECEIVED**

**NOV 07 2014**

**CALOSHA APPEALS BOARD**

Phone: (916) 263-2800 Fax: (916) 263-2798

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**Citation 7 Item 1 Type of Violation: **Serious****

T8 CCR 1616.6(j)(4): Cranes and Derricks in Construction. Hoisting Personnel. Proof testing. Personnel hoisting shall not be conducted until the competent person determines that the platform and rigging have successfully passed the proof test.

On May 30, 2014, Disney Construction Inc., working at a construction site located near 4540 Putah Creek Road, Winters, CA, allowed a personnel platform to be hoisted with employees on it, before a competent person inspected the personnel platform and rigging and corrected any condition found to create a safety hazard prior to hoisting personnel.

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

12/08/2014  
\$ 8435.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

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NOV 07 2014

CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R 2 D 1 - 3756

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE  
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 8 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). \_\_\_\_\_ Item No(s) \_\_\_\_\_

[ ] SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_ Item No.(s) \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.



4.

**(Signature of Employer or Employer's Representative)**

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

November 6, 2014

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

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**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106  
**Inspection Dates:** 05/30/2014 - 11/03/2014  
**Issuance Date:** 11/04/2014  
**CSHO ID:** K4874  
**Optional Inspection Nbr:** 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**RECEIVED**

**NOV 07 2014**

**CALOSHA APPEALS BOARD**

**Citation 8 Item 1 Type of Violation: **Serious****

T8 CCR 1616.6(k)(2)(B): Cranes and Derricks in Construction. Hoisting Personnel. Work practices. Platform occupants must: Not stand, sit on, or work from the top or intermediate rail or toeboard, or use any other means/device to raise their working height.

On May 30, 2014, a Disney Construction Inc. employee working at a construction site located near 4540 Putah Creek Road, Winters, CA, stood and worked from the top rail of a personnel platform in order to attach a chain around the crane hook while hoisted approximately 80 feet in the air.

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**12/08/2014**  
**\$ 6750.00**

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

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CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R2D1 - 3757 -

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE  
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 9 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). \_\_\_\_\_ Item No(s). \_\_\_\_\_

[ ] SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_ Item No.(s) \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.



4.

**(Signature of Employer or Employer's Representative)**

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

November 6, 2014

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

**IMPORTANT INFORMATION**

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- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
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- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106

**Inspection Dates:** 05/30/2014-11/03/2014

**Issuance Date:** 11/04/2014

**CSHO ID:** K4874

**Optional Inspection Nbr:** 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**Citation and Notification of Penalty**

**RECEIVED**

**NOV 07 2014**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**CALOSHA APPEALS BOARD**

**Citation 9 Item 1 Type of Violation: **Serious****

T8 CCR 1511(b): General Safety Precautions. Prior to the presence of its employees, the employer shall make a thorough survey of the conditions of the site to determine, so far as practicable, the predictable hazards to employees and the kind and extent of safeguards necessary to prosecute the work in a safe manner in accordance with the relevant parts of Plate A-2-a and b of the Appendix.

On May 30, 2014, Disney Construction Inc., with employees working at a construction site located near 4540 Putah Creek Road, Winters, CA, did not make a thorough survey of the conditions of the site to determine, so far as practicable, the predictable hazards to employees and the kind and extent of safeguards necessary to prosecute the work in a safe manner in accordance with the relevant parts of Plate A-2-a and b of the Appendix prior to hoisting two employees over 80 feet in the air with a crane and a personnel platform which fell, resulting in serious accident related fatal injuries to the two employees riding in the platform.

Date By Which Violation Must be Abated:

12/08/2014

Proposed Penalty:

\$ 22500.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

APPEAL FORM

Inspection No. 317251106

2014-R2DI -3758 -

Employer:

DISNEY CONSTRUCTION, INC.

1. You have only 15 working days from receipt of a citation to appeal.

Address:

859 COWAN ROAD, SUITE 3  
BURLINGAME, CA 94010

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s) 10 Item No.(s) All items are appealed.

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s). Item No(s).

[ ] SPECIAL ORDER/SPECIAL ACTION NO: Item No.(s)

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

NOV 07 2014

CALOSHA APPEALS BOARD

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).
17. The logical time had not arrived for Appellant to comply with the requirements of the cited regulation (aka "logical time defense").
18. The Division failed to comply with the statutory provision of Labor Code § 6432(b); therefore, any citation issued herein alleging a "serious" violation of a safety standard must be dismissed or otherwise reclassified.
19. The citation exposes Appellant to strict liability for any alleged violation appealed herein.
20. Any Serious violation alleged in any citation on appeal in this case was not served in accordance with Labor Code § 6317 and § 6319.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.



4.

**(Signature of Employer or Employer's Representative)**

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

November 6, 2014

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

**IMPORTANT INFORMATION**

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing*.
- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item**. Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative changes address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

Division of Occupational Safety and Health  
RID 0950621 Index 4021  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

**Inspection Number:** 317251106  
**Inspection Dates:** 05/30/2014-11/03/2014  
**Issuance Date:** 11/04/2014  
**CSHO ID:** K4874  
**Optional Inspection Nbr:** 082-14



Phone: (916) 263-2800 Fax: (916) 263-2798

**RECEIVED**

NOV 07 2014

**CALOSHA APPEALS BOARD**

**Citation and Notification of Penalty**

**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694

**Citation 10 Item 1 Type of Violation: **Serious****

T8 CCR 1616.6(g)(1)(A): Cranes and Derricks in Construction, Hoisting Personnel. Attachment and rigging. Hooks and other detachable devices. Hooks used in the connection between the hoist line and the personnel platform (including hooks on overhaul ball assemblies, lower load blocks, bridle legs, or other attachment assemblies or components) shall be: 1. Of a type that can be closed and locked, eliminating the throat opening. 2. Closed and locked when attached.

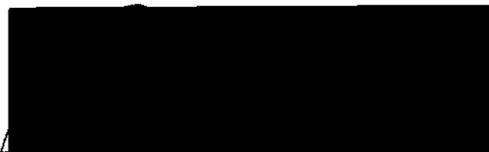
On May 30, 2014, Disney Construction Inc., working at a construction site located near 4540 Putah Creek Road, Winters, CA, did not ensure a hook safety latch used with a Link Belt HC238 crane, closed, latched and locked eliminating the throat opening after attaching the rigging of a personnel platform. The personnel platform slid off the hook and fell approximately 80 feet when the safety latch opened resulting in serious accident related fatal injuries to the two workers in the platform.

Date By Which Violation Must be Abated:

12/08/2014

Proposed Penalty:

\$ 22500.00



Compliance Officer/District Manager

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of California  
Division of Occupational Safety and Health  
CAL/OSHA DISTRICT OFFICE  
2424 Arden Way, Suite 165  
Sacramento, CA 95825  
Phone: (916) 263-2800 Fax (916) 263-2798

**RECEIVED**

NOV 07 2014

**CALOSHA APPEALS BOARD**

**NOTICE OF PROPOSED PENALTIES**

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**Company Name:** Disney Construction Inc.  
**Inspection Site:** 4540 Putah Creek Road, Winters, CA 95694  
**Mailing Address:** 859 Cowan Road #3, Burlingame, CA 94010

**Issuance Date:** 11/04/2014

**Reporting ID:** 0950621  
**Index Code:** 4021

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**Summary of Penalties for Inspection Number 317251106**

Citation 1, General	= \$	3750.00
Citation 2, Serious	= \$	8435.00
Citation 3, Serious	= \$	8435.00
Citation 4, Serious	= \$	8435.00
Citation 5, Serious	= \$	8435.00
Citation 6, Serious	= \$	8435.00
Citation 7, Serious	= \$	8435.00
Citation 8, Serious	= \$	6750.00
Citation 9, Serious	= \$	22500.00
Citation 10, Serious	= \$	22500.00
<b>TOTAL PROPOSED PENALTIES</b>	<b>= \$</b>	<b>106110.00</b>

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Penalties are due within 15 working days of receipt of this notification unless contested. If you are appealing any item of this citation, remittance is still due on all items that are not appealed. Enclosed for your use is a Penalty Remittance Form.

If you are paying by credit (MasterCard and Visa): Please have this form on-hand when you are ready to make your payment. The company name, index code, reporting ID, and Citation number(s) will be required to ensure that the payment is accurately posted to your account. Please go to [www.dir.ca.gov/dosh](http://www.dir.ca.gov/dosh) to access the secure payment processing site.

If you are paying by check: Mail this Notice of Proposed Penalties, the Penalty Remittance Form, along with a copy of the Citation and Notification of Penalty to:

**DEPARTMENT OF INDUSTRIAL RELATIONS  
CASHIER, ACCOUNTING OFFICE**

## DECLARATION OF SERVICE BY MAIL

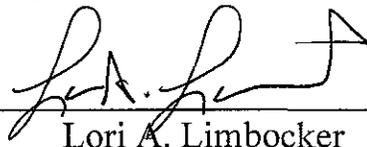
I am a citizen of the United States and employed in Placer County, California. I am over the age of 18 years and am not a party to this action; my business address is 3300 Sunset Boulevard, Suite 110, Rocklin, California 95677. On November 6, 2014, I served a copy of the within **Appeal** by depositing the original and one copy of the above document in a box or other facility regularly maintained by United Parcel Service in an envelope or package designated by United Parcel Service (Airbill No. 1ZF34A41399231783) with delivery fees paid or provided for as follows:

Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833

I further declare that on November 6, 2014, I served a copy of the within **Appeal** by following ordinary business practice, placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited for first class delivery in the United States mail that same day in the ordinary course of business, addressed as follows:

Jon Weiss, District Manager  
Division of Occupational Safety and Health  
2424 Arden Way, Suite 165  
Sacramento, CA 95825

I declare under penalty of perjury that the foregoing is true and correct. Executed at Rocklin, California, on November 6, 2014.

A handwritten signature in black ink, appearing to read 'Lori A. Limbocker', is written over a horizontal line. The signature is stylized and includes a large, sweeping flourish at the end.

Lori A. Limbocker