BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No.
COTTI FOODS CALIFORNIA, INC. **dba Wendy's**	**1808018**
Employer	**DECISION**

Statement of the Case

Cotti Foods California, Inc., dba Wendy's (Employer) owns and operates Wendy's fast-food restaurants. From March 4 to July 21, 2025, the Division of Occupational Safety and Health (the Division), through Junior Safety Engineer Adedoyin Sadiq Okusi (Okusi), conducted an accident investigation at Employer's worksite located at 3907 Cochran Street in Simi Valley, California, (the site/the restaurant), after an employee suffered a burn while cleaning a deep fryer (the accident).

On July 21, 2025, the Division issued two citations to Employer, alleging three violations of safety orders found in title 8 of the California Code of Regulations.[1] Citation 1, Item 1, alleges that Employer failed to implement its Injury and Illness Prevention Program (IIPP) by not disciplining employees who violate its safety policies. Citation 1, Item 2, alleges that Employer failed to assess the hazard of hot oily surfaces being cleaned by hand and to select personal protective equipment (PPE) to be used by employees affected by the hazard. Citation 2 alleges that Employer failed to protect employees from slippery aisles or walkways.

Employer filed a timely appeal of the citations, challenging the alleged violations and asserting numerous affirmative defenses. Regarding Citation 2, Employer also challenged the classification. Prior to the hearing, Employer amended its appeal to assert additional affirmative defenses and to challenge the reasonableness of abatement and the proposed penalties as to Citation 2.

This appeal was heard by Administrative Law Judge (ALJ) Howard I. Chernin for the California Occupational Safety and Health Appeals Board (Appeals Board) on February 13 and April 9, 2026, from Los Angeles, California, with all participants appearing remotely via the Zoom video platform. Attorneys Kevin Bland and Adam Crane, of Ogletree Deakins, represented

[1] Undesignated references are to sections of California Code of Regulations, title 8.

Employer. District Manager Tomas Micheo and Staff Counsel William Cregar represented the Division. The matter was submitted on July 1, 2026. During the hearing, the parties stipulated to have a certified court reporter prepare a transcript of the hearing and to have said transcript be designated as an official recording of the hearing. An order granting the parties' request and designating the court reporter's transcript as an official recording of the hearing pursuant to section 376.7, subdivision (b), is incorporated into this Decision.

Issues

1. Did Employer fail to implement its IIPP by not implementing a system for ensuring that employees comply with safe and healthy work practices?

2. Did Employer fail to assess the hazard of hot oily surfaces being cleaned by hand and to select PPE to be used by employees affected by the hazard?

3. Did Employer fail to protect employees from slippery aisles or walkways?

4. Did Employer establish any of its pleaded affirmative defenses?

Findings of Fact

1. Employer has a policy of training and retraining that it had already implemented at the time of the inspection, which includes training on topics related to avoiding burn injuries while cleaning the inside of a fryer.

2. Employer has a disciplinary policy that it enforced against employees for violations of its safety policies at the time of the accident.

3. The restaurant's kitchen contains equipment including deep fryers. The deep fryers hold cooking grease that gets hot enough during operation to cause serious burn injuries.

4. Employees wipe grease from the outsides of the deep fryers throughout the day. Employer provides two types of wipes for employees to use for this task.

5. Neither wipe selected and provided by Employer for wiping grease off of the outside surface of the deep fryers is adequate to protect employees' hands from coming into contact with hot grease capable of causing serious burn injuries.

6. Employer's floors are not slippery as designed and Employer has effective systems in place to keep floors clean and non-slippery.

Analysis

1. Did Employer fail to implement its IIPP by not implementing a system for ensuring that employees comply with safe and healthy work practices?

Section 3203, subdivision (a), states, in relevant parts:

> (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:
>
> […]
>
> (2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

Citation 1, Item 1, alleges:

> Prior to and during the course of the investigation, including, but not limited to on March 4, 2025, the employer's system for making sure that employees comply with safe practices was ineffective, in that the employer does not discipline employees who violate company policies, as in the case of employees not wearing the required Personal Protective Equipment (PPE) in the kitchen.

The Division bears the burden of proving, by a preponderance of the evidence, that a cited safety order was violated. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001).) The Appeals Board applies a reliability-based evidentiary standard in its proceedings, offering more flexibility than the strict mechanical rules of the Evidence Code. The Appeals Board must rely on "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" (§376.2), ensuring it meets the necessary reliability standard. (*Sweetheart Cup Company*, Cal/OSHA App. 95-979, Decision After Reconsideration (Nov. 5, 1999).)

> Section 3203, subdivision (a)(2) specifically lists four methods that can be used by an employer to ensure that its employees comply with safe work practices: recognition of employees, training and retraining programs, disciplinary actions, or any other such means that ensures compliance. The listed methods are written with the disjunctive "or," and the final method allows for, "any other such means that ensures compliance," indicating that any one (or more) of the previous three

> methods are sufficient to ensure compliance…Therefore, the Division must show that Employer did not comply with any of the four listed options under section 3203, subdivision (a)(2).

(*Marine Terminals Corp. dba Evergreen Terminals*, Cal/OSHA App. 08-1920, Decision After Reconsideration (Mar. 5, 2013).)

Recognition of Employees

Employer's IIPP (Exh. 16) provides on page three that "managers and supervisors shall recognize and award each employee who performs their job assignments" according to Employer's safety policies. No evidence was provided by either party establishing whether or how this policy is implemented by Employer.

Training and Retraining Programs

Employer's IIPP (Exh. 16) provides on pages three and four that managers and supervisors "shall be trained and instructed to familiarize themselves with the safety and health hazards which workers under their immediate direction and control may be exposed" and "shall train and instruct" said employees "with respect to hazards specific to each employee's job assignment."

Okusi testified that he requested the injured employee's training records as part of his investigation. In addition, Okusi interviewed Michele McClure (McClure), the injured employee and Employer's General Manager, who told him that employees receive training on an ongoing basis, although she testified that training on cleaning deep fryers was "optional" and denied being specifically trained on Employer's IIPP. (Exh. 15.) Although McClure did not testify and her statements to Okusi are hearsay, Employer did not dispute that McClure was a manager with responsibility for employee safety and health. Thus, McClure's statements are statements by a manager and therefore are admissible over Employer's objection pursuant to section 376.2 and Evidence Code sections 1220 and 1221.

Martha Hernandez (Hernandez), Employer's Risk Manager, credibly testified that Employer provides training to its employees on its IIPP, including but not limited to, on the use of PPE and avoiding burns and cuts. Employer offered examples of its training materials (e.g. Exhs. M, N, R and V). Hernandez's testimony is credited and is afforded substantial weight because it was corroborated by documentary evidence establishing that Employer implemented safety training and retraining. It is found, based on the preponderance of the evidence, that Employer had a policy of training and retraining that it implemented at the time of the inspection, which includes training on topics related to avoiding burn injuries while cleaning a deep fryer. (E.g. Exh. R.)

Disciplinary Actions

Okusi testified that the Division issued Citation 1, Item 1, because Employer failed to discipline McClure for violating Employer's policies, which resulted in McClure suffering a serious burn injury to her hand. Hernandez, however, credibly testified that Employer had a disciplinary policy at the time of the accident. The policy is contained in Employer's IIPP (Exh. 16) on page 3. In addition, Hernandez credibly testified to instances where Employer implemented its discipline policy, including writing up a General Manager (Exh. AA) and terminating another employee for horseplay (Exh. EE). Hernandez's testimony, corroborated by Exhs. AA and EE, is credited and afforded substantial weight. It is found, based on the preponderance of the evidence produced during the hearing, that Employer has a disciplinary policy that it enforced at the time of the inspection against employees who violate its safety policies.

Any Other Such Means that Ensures Compliance

Because it is found based on a preponderance of the evidence that Employer implemented training and retraining on relevant topics relating to hazards encountered by its employees and had enforced a disciplinary policy against employees for violating Employer's safety policies, this Decision does not reach whether Employer used any other such means that ensure compliance with section 3203, subdivision (a)(2).

Substantial evidence presented during the hearing establishes that Employer provided ongoing relevant hazard training to employees and implemented a disciplinary policy when employees violated Employer's safety policies. It was the Division's burden to establish that Employer did not comply with any of the four options in section 3203, subdivision (a)(2). Here, substantial evidence established that Employer complied with at least two of the options. Therefore, the Division did not meet its burden, and Citation 1, Item 1, is vacated.

2. Did Employer fail to assess the hazard of hot oily surfaces being cleaned by hand and to select PPE to be used by employees affected by the hazard?

Section 3380, subdivision (f)(1), states, in relevant part:

(f) Hazard assessment and equipment selection.

(1) The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

(A) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

Citation 1, Item 2, alleges:

Prior to and during the course of the investigation, including, but not limited to on March 4, 2025, the employer failed to assess the hazards in the kitchen, such as hot oily surfaces that are being cleaned by hand and which necessitate the use of personal protective equipment (PPE).

In order to comply with the safety order, an employer must conduct an adequate hazard assessment. (*Lion Farms, LLC*, Cal/OSHA App. 1070258, Denial of Petition for Reconsideration (June 30, 2017), affirmed in *Lion Farms, LLC v. California Occup. Safety and Health App. Bd.*, (2021 Cal. App. Unpubl. LEXIS 6290.) If the employer assesses that a hazard is present or likely to be present that necessitates the use of PPE, the employer must also select and have employees use appropriate PPE. Thus, it was the Division's burden to establish either that Employer conducted an inadequate hazard assessment, or that Employer identified a hazard that was present or likely to be present but nonetheless failed to select and require employees to use appropriate PPE.

Adequacy of Hazard Assessment

Assess means to evaluate. ("*Assess*," Dictionary.com, http://dictionary.com/browse/assess (accessed June 26, 2026).) The site is a fast-food restaurant, in the back of which is a commercial kitchen. Evidence received during the hearing established that the kitchen is equipped with multiple deep fryers used to cook various food items on Employer's menu. The fryers have open tops, and the grease in the fryers measures over 300 degrees Fahrenheit when operating.

Okusi testified that Employer failed to assess the hazard of hot oil surfaces that have to be cleaned by hand, and which necessitate the use of PPE. Okusi noted that Employer's documents state that employees clean the deep fryers and are supposed to use PPE when cleaning the deep fryers. McClure, Employer's General Manager, told Okusi that employees wipe oil from the surface of the deep fryers "as needed." (Exh. 15.) Nonetheless McClure told Okusi that PPE was not required when wiping off oil from the outside of the fryers. This was corroborated by Hernandez, who testified that employees could touch the outside of the deep fryers "with caution" to clean them.

Evidence presented during the hearing demonstrated that Employer assessed the hazard of burns from coming into contact with hot grease while cleaning *the insides* of the deep fryers. For instance, Exhibit R, a training document relating to burns and cuts states that "cuts and burns

are a concern at Wendy's because we use knives, sharp tools, oven, fryers and grills." Furthermore, it advises that, when cleaning fryers, an employee must "wear all required PPE, including heat-resistant gloves" and must wait until the pressure gauge on the deep fryer is at zero before opening the lid, to avoid "burns from direct contact or splashing." (*Id*.) However, Hernandez testified that Employer's PPE requirements for cleaning the deep fryers only applied to "deep cleaning" and *did not apply to surface cleaning*. Hernandez's testimony is deemed credible and given significant weight.

Although Employer did assess the hazards attendant to deep cleaning the deep fryers, it did not adequately assess the specific hazard of cleaning grease off the *outside surface* of the deep fryers. McClure told Okusi that her hand slipped while she was wiping grease from the outside of the fryer. This resulted in her hand coming into contact with the hot grease inside the fryer, which burned her. Evidence presented during the hearing established that grease is slippery, especially when hot, and this conclusion also coincides with general human experience. It is not so far-fetched to infer that cleaning grease by hand from the outside of the deep fryer could expose an employee to the risk of their hand slipping. If the deep fryer is running and contains hot grease, the employee's hand could come into contact with the hot grease, as occurred here, resulting in a burn injury. Employer offered no evidence that it adequately assessed the risks involved in such an activity.

Selection and Use of PPE

As noted above, Employer did not adequately assess the hazards associated with cleaning grease from the outside of the deep fryers. Moreover, even if one were to argue that Employer made such an assessment, it nonetheless failed to select appropriate PPE for employees to use when cleaning grease from the outside surfaces of deep fryers, given the risk of serious burns. The only evidence of "equipment" selected and provided by Employer to employees to complete this task consisted of the two wipes that were provided by McClure to Okusi depicted in Exhibit 15. McClure told Okusi that the brown wipe is absorbent and non-slippery, while the white wipe is not absorbent but is slippery. Employer instructs employees to use the white wipes. Nothing in the record suggests that either wipe effectively prevents employees from coming into contact with hot oil and receiving burns. Here, an employee suffered a serious burn to her hand when it came into contact with hot oil while the employee was attempting to wipe the outside of a deep fryer. The evidence strongly supports a finding that neither the white wipe nor the brown wipe would have afforded any protection against the hazard of hot grease, and the slippery nature of the white wipe likely increased the risk of the injury sustained by the injured employee. Accordingly, Employer failed to select and provide appropriate PPE under the cited safety order.

For the foregoing reasons, the Division established by a preponderance of the evidence that Employer neither adequately assessed the hot oil surfaces that need to be cleaned by hand

nor selected appropriate PPE to protect employees when wiping hot grease from the outside of the deep fryers. Accordingly, Citation 1, Item 2, is affirmed.

3. Did Employer fail to protect employees from slippery aisles or walkways?

Section 3272, subdivision (d), provides:

> Whenever aisles, walkways, or crawlways become slippery, high-friction surfaces, cleats, coverings, or other equivalent protection against slipping will be required.

Citation 2 alleges:

> Prior to and during the course of the investigation, including, but not limited to on March 4, 2025, the employer failed to provide anti-slip shoes to employees working at the restaurant. In addition, the employer did not provide anti-slip mats, coverings or any other equivalent protection to prevent slipping hazards in the kitchen area of the restaurant.

The Division may not rely on speculation or conjecture in order to support a violation. (*Wal-Mart Stores*, Cal/OSHA App. 1195264, Decision After Reconsideration (Nov. 4, 2019).) To prove a violation, the Division had the burden of establishing that (1) aisles, walkways, or crawlways become slippery at the site; and, if they do, that (2) Employer failed to provide high-friction surfaces, cleats, coverings, or other equivalent protection against slipping.

Here, Okusi testified that the Division issued Citation 2 to Employer because liquid splashes, oil spillage and dropped food such as french fries could make the floor in the kitchen slippery. Although Exhibits 26 and 27 show a few french fries or other pieces of food on the floor of the kitchen, the Division did not provide credible evidence that the food had been there for long or that the food made the floor slippery. Okusi took no measurements of floor surfaces to determine whether they were, in fact, slippery. The Division relied on Okusi's testimony of his observations to establish a violation. Okusi's testimony was predominately based on speculation and conjecture and is, therefore, afforded little weight pursuant to Appeals Board precedent.

Employer, in contrast, provided reliable evidence that its floors are not slippery. John Kovacs (Kovacs), a floor safety expert, testified that he visited the site and took measurements of the coefficient of friction of floor surfaces in the kitchen area as well as the customer-accessible area of the restaurant. Kovacs conducted both dry and wet testing and produced a report (Exh. K) summarizing the data he obtained and his conclusions. Kovacs testified that a coefficient of friction of 0.42 or higher would be acceptably safe and non-slippery in accordance with

generally accepted ANSI standards. Only one location tested by Kovacs, in the customer area near a fountain drink dispenser, tested below this threshold. Kovacs credibly testified that there was a non-slip floormat in the vicinity of that location, and that the condition he noted could be easily corrected by cleaning. Kovacs testified that all other locations that he tested, which included the kitchen, had coefficients of friction above 0.42 even when tested wet with a mixture of water and Sodium Lauryl Sulfate (soapy water) applied to the floor's surface. Based on his investigation, Kovacs concluded that the floor throughout the restaurant was safe and did not pose a slipping hazard to employees requiring mats or anti-slip shoes. Kovacs' testimony, which was supported by reliable data, is deemed credible and is afforded significant weight.

Based on the weight of the evidence, it is determined that the Division did not meet its burden of establishing that Employer allowed aisles, walkways, or crawlways to become slippery at the site. Even, however, assuming one concluded otherwise, substantial evidence supports a conclusion that Employer provided effective protection against slipping. Hernandez testified to the training and procedures in place to protect employees from slipping. Although Employer does require employees to wear anti-slip shoes as part of their uniforms, Employer also had procedures in place to prevent slippery conditions in the first instance and to correct them immediately. In particular, Hernandez credibly testified that employees are instructed to clean the floors on a schedule throughout the day using mops and hot water, as well as with a degreaser later in the day. Employees are also trained to clean when they observe spillage or any other condition that could be a hazard, including a slipping hazard. Floors also have drains built into them that prevent liquid from accumulating. Employer's evidence demonstrates that effective measures were taken to ensure against slippery floors at the restaurant. Based on a totality of the evidence, it is therefore determined that Employer did effectively protect employees from the hazard of slippery floors.

For the foregoing reasons, the Division did not establish a violation of section 3272, subdivision (d). Citation 2 is vacated.

4. Did Employer establish any of its pleaded affirmative defenses?

An employer bears the burden of proving its pleaded affirmative defenses by a preponderance of the evidence. (*RNR Construction, Inc*., Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).) Affirmative defenses that are not actually litigated are deemed waived. (*Id*.)

Citation 1, Item 2, alleges that Employer failed to assess the hazard of hot oily surfaces being cleaned by hand and to select PPE to be used by employees affected by the hazard. The undersigned ALJ has reviewed the hearing record and Employer's post-hearing brief, and the only defense alluded to by Employer is a brief mention of "reasonable diligence" on page five of

its brief. Even there, Employer only mentions "reasonable diligence" in the context of the allegation that Employer's floors were slippery. Employer did not offer any evidence in support of its pleaded affirmative defenses with regard to the violation that the Division proved, namely that Employer failed to assess the hazard of hot oily surfaces being cleaned by hand, and its failure to select and provide appropriate PPE for use by employees affected by the hazard. Accordingly, it is determined that Employer failed to establish any of its pleaded affirmative defenses.

Conclusions

The Division failed to establish by a preponderance of the evidence that Employer committed a violation of section 3203, subdivision (a)(2).

The Division established by a preponderance of the evidence that Employer committed a violation of section 3380, subdivision (f)(1). Employer did not establish any of its pleaded affirmative defenses.

The Division failed to establish by a preponderance of the evidence that Employer committed a violation of section 3272, subdivision (d).

Orders

Citation 1, Item 1, is vacated, and its associated penalty is vacated as set forth in the attached Summary Table.

Citation 1, Item 2, is affirmed, and a penalty of $600 is assessed for the violation as set forth in the attached Summary Table.

Citation 2 is vacated, and its associated penalty is vacated as set forth in the attached Summary Table.

/s/ Howard I. Chernin

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Dated: 07/14/2026

Howard I. Chernin
Administrative Law Judge

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

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