BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1869449**
SODEXO AMERICA LLC dba SODEXO **2031 Mariposa Avenue** **El Segundo, CA 90245** **Employer**	**DENIAL OF PETITION FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration (Petition) filed in the above-entitled matter by Sodexo America LLC (Employer).

JURISDICTION

From January 15, 2026, to June 17, 2026, the Division of Occupational Safety and Health (Division) investigated the Sodexo America LLC (Employer) facility located at 2031 E. Mariposa Blvd., in El Segundo. On June 17, 2026, the Division issued two Serious citations alleging violations of title 8[1] of the California Code of Regulations.[2] The Serious violations were both corrected during the inspection and carried a total penalty of $5,850 ($2,925 each). The citations were served on Employer on June 20, 2026.

On July 1, 2026, Employer attended an informal conference with the Division's District Manager Lex Eaton (Eaton), who made a settlement offer giving Employer two days to accept or reject the proposed settlement. On that same day, to preserve its rights, Employer filed an appeal. Based on procedural guidance received from Eaton, who was unaware of the concurrent filing of an appeal, Employer's General Manager Nancy Salamanca (Salamanca) paid the citation believing that prompt payment was required as a part of the appeal process to preserve her defenses and to be able to bring the matter before a judge. Payment was apparently made on July 1, 2026, by Salamanca giving the Division a check to cover the agreed-to penalty.

Employer seems to have struggled to understand the appeal process, because on the next morning, July 2, 2026, Salamanca re-filed a copy of the Citation in OASIS,[3] referenced an agreement to amend the citations, and "requested to withdraw the appeal." Responding to Employer's filing, Presiding Administrative Law Judge (PALJ) Kerry Lewis sent an email addressed to both Salamanca and Eaton explaining to Salamanca that withdrawal of the appeal would result in the citations becoming final as issued, which PALJ Lewis assumed neither party wanted. PALJ Lewis further wrote:

[1] Unless otherwise specified, section references are to title 8 of the California Code of Regulations.
[2] Citation 1, Item 1 is for a violation of section 5162, subdivision (a) [failure to supply emergency eyewash] and Citation 2, Item 1, is for a violation of section 5162, subdivision (b) [failure to supply emergency shower equipment]
[3] OASIS is the Board's Appeals Scheduling and Information System

> "Mr. Eaton: Please prepare settlement terms reflecting the amendments that the parties discussed during the informal conference and send them to Ms. Salamanca for her confirmation. Ms. Salamanca, after you respond to Mr. Eaton's email, he can forward those terms to me, and I will issue a Settlement Order that reflects the amendments to the citations that the parties have agreed upon.
>
> Please let me know if you have any questions about this."

(ALJ Email to Parties on July 2, 2026.)

Eaton then sent Salamanca an email with the settlement terms attached, and Salamanca emailed Eaton back, thanking him and writing: "we accept all the settlement terms as presented." Eaton then emailed the settlement terms to PALJ Lewis and copied Salamanca, stating "[t]he parties have reached a settlement in this matter." PALJ Lewis then sent one email to both Eaton and Salamanca stating:

> "The settlement terms are approved. A Settlement Order will be issued shortly. The Settlement Order provides instructions for payment of the modified penalty amount.
>
> There are no future events on the calendar.
>
> Thank you for your cooperation in resolving this matter so promptly."

(ALJ Email to Parties on July 2, 2026.)

Promptly thereafter, Eaton, and then Salamanca, emailed the PALJ, copying the other party and thanking the PALJ for her email that had both approved the settlement and indicated that PALJ Lewis would issue the Settlement Order. Later that day, PALJ Lewis signed the Settlement Order (Order) which included assessing the total penalty.The Order was served on the parties on July 3, 2026. On July 7, 2026, one of Employer's local general managers processed the July 1, 2026, check Salamanca had written to pay the penalty (in the amount set out on the Summary Table sent with the Settlement Order).

On July 14, 2026, Salamanca filed correspondence in OASIS asserting that Employer's July 7, 2026, payment by its local general manager had been in error and made an "amended counter-offer." Also on July 14, 2026, Salamanca sent a letter to Eaton asserting that Employer's July 7, 2026, payment had been made in error and asking that the Division, due to Employer implementing risk-mitigation measures at the facility, either withdraw or delete the violations, or in the alternative, reclassify the violations as Other-Than-Serious. After reviewing Employer's July 14, 2026, OASIS filing, PALJ Lewis sent an email to both Salamanca and Eaton clarifying that the Settlement Order had been issued on July 3, 2026, and if a party disagreed with the terms of the Settlement Order, the proper procedure is to file a petition for reconsideration.

On July 29, 2026, Employer filed a petition for reconsideration (Petition) asserting the payment had been mistakenly made due to internal administrative confusion about the protocol for appeals and the interaction between appeals and settlements, insisting that its local general

manager that had processed the check Salamanca wrote did not have authority to waive Sodexo's statutory appeal rights. Employer's Petition consisted of a verified three-page letter of explanation signed by Salamanca, the July 3, 2026, Settlement Order and Summary Table, and two July 14, 2026, letters that Employer sent, one to Eaton and the other addressed to PALJ Lewis and filed on OASIS. In its Petition, Employer asked the Board to vacate the Order issued on July 3, 2026, credit the payment erroneously made on July 7, 2026 (Confirmation No. 57709752), stay enforcement of the Order, and "restore the matter to the active appeal docket for mediation and proceedings on the merits."

The Division did not file an answer to Employer's Petition.

We have fully reviewed the record in this case, including the arguments and documents presented in the petition for reconsideration. We have taken no new evidence.

ISSUES

1. Did the PALJ act without or in excess of the Board's authority in issuing the Order?
2. Did Employer enter into the Order on the basis of misrepresentation or unilateral mistake of fact?
3. Was the settlement agreement approved by someone with sufficient authority to enter into the agreement?

REASONS FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

a. That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
b. That the order or decision was procured by fraud.
c. That the evidence does not justify the findings of fact.
d. That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
e. That the findings of fact do not support the order or decision.

In its Petition, Employer asserts a violation of subdivision (a), saying the Settlement Order was issued in excess of the Board's powers because Employer didn't give "valid, knowing and voluntary" agreement to the settlement, and a violation of subdivision (c), saying that the evidence does not justify finding that a binding settlement agreement was reached because Employer's purported acceptance was the product of a material mistake as to the consequences of its acceptance.

I. Did the PALJ act without or in excess of the Board's authority in issuing the Order?

Section 364.2 of the Board's regulations concerns Settlement Orders, and states that the Board "may dispose of an appeal by issuing a Settlement Order [. . .] at any time after the Appeals Board obtains jurisdiction of the appeal." The Division may also settle appealed citations by settlement as a part of exercising its prosecutorial discretion. (*Westech Industries, Inc.* Cal/OSHA App. 08-3717, Denial of Petition for Reconsideration (Oct. 25, 2012); *Northern California Paper Recyclers, Inc.*, Cal/OSHA App. 09-2351, Denial of Petition for Reconsideration (Jun. 1, 2010).)

Section 350.1 of the Board's regulations sets out the broad authority the Board grants to ALJs. Section 350.1, subdivision (a) specifically states that an ALJ has the authority "to approve a stipulation voluntarily entered into by the parties[.]" The Board will not reconsider a voluntary settlement agreement between the employer and the Division absent allegations of fraud, misrepresentation, or other grounds to void the agreement. (*Westech Industries, Inc., supra,* Cal/OSHA App. 08-3717; see also § 364.2, subd. (f).) Employer's assertion of material mistake is discussed below.

Employer asserts in its Petition that it did not understand the Board's settlement and appeal processes, and that it entered into the settlement agreement believing that doing so would not hinder its ability to pursue its appeal. Because that belief was erroneous, Employer asserts that it didn't give "valid, knowing and voluntary" agreement to the settlement.

The Second District Court of Appeal has upheld the Board's determination that the citation package itself sufficiently informs employers about their appeal rights and the appeal process when it comes to when to file an appeal. (*Murray Co. v. Occupational Safety and Health Appeals Board* (2009) 180 Cal.App.4th 43; *McLean Steel, Inc.* Cal/OSHA App.87-9002 Denial of Petition for Reconsideration (March 27, 1987), *Brick "N" Wire, Inc.* Cal/OSHA App. No Docket Number, Denial of Petition for Reconsideration (Feb. 10, 1981).)

Next, while the citation packet doesn't provide information about settlements with the Division, we have reviewed the correspondence pertaining to settlement and the language unequivocally indicates that the parties intended to enter into a settlement agreement reflecting the terms memorialized in the settlement order.

PALJ Lewis's July 14, 2026, email sent to Employer and Eaton that included an email chain. The email chain begins on July 2, 2026, with Eaton's email to Employer providing the settlement terms agreed upon the previous day, and asking if "the company" accepts those terms. Eaton's email specifically states that "a Settlement Order will be issued to close the case at the agreed upon terms rather than with an Amended Citation." Next in the email chain is Salamanca's response accepting the terms, and after that is Eaton's email forwarding the settlement terms to PALJ Lewis, cc:ing Salamanca. Following that email is PALJ Lewis's email to Employer and Eaton approving the settlement terms. PALJ Lewis' email, quoted above, makes reference to "no future events on the calendar" and "resolving this matter.," Next in the email chain is Eaton's reply email thanking the PALJ, and finally Employer's reply email thanking the PALJ. All of this

correspondence, demonstrates that settlement terms were clear, giving no room for misunderstanding. [4]

Based on the documentation, we find no merit to the argument that PALJ Lewis acted without or in excess of the Board's authority. She did precisely what the parties had agreed upon in clear and unambigous terms. In short, she acted within the Board's authority when she issued the instant Order according to the stipulation into which Employer voluntarily entered.

2. Did Employer enter into the Order on the basis of misrepresentation or unilateral mistake of fact?

Section 364.2, subdivision (f) states a petition for reconsideration of a Settlement Order can be filed on the grounds of "fraud, misrepresentation, mutual mistake of fact, or undue influence in the formation of the Settlement Order."

Employer makes no assertions of fraud, nor does it allege that the Division misrepresented any of the settlement terms, simply that its "purported acceptance was the product of a material mistake as to the consequences of acceptance."

Employer's "material mistake" was not a mutual mistake of fact, but instead was a unilateral mistake, and such an error is generally not grounds for rescinding a settlement order under section 364.2. (*Santa Barbara Center for the Performing Arts Inc., dba Granada Theatre*m Cal/OSHA App. 1311884, Denial of Petition for Reconsideration (Jun. 6, 2022), *citing Eco-Bay Services,* Cal/OSHA App. 1443556, Denial of Petition for Reconsideration (April 11, 2022).) California law allows rescission of contract for a unilateral mistake only when the unilateral mistake is known to the other contracting party and is encouraged or fostered by that party." (*Wallens v. Milliman Fin. Risk Mgmt. LLC* (9th Cir. 2020 509 F. Supp.3d 1024, 1212, citing *Brookwood v. Bank of Am* (1996) 45 Cal.App.4th 1667, 1673-74.) Here, the unilateral mistake defense would not apply because there is no evidence to suggest that the Division knew that appellant did not understand the settlement terms. (*Meyer v. Benko* (1976) 55 Cal.App.3d 937, 944.)

To the contrary, Employer failed to consider all the ramifications of entering into a settlement, and asks the Board to relieve it of the consequences. Employer's unilateral mistake is a direct result of Salamanca not asking Eaton, PALJ Lewis, or any other attorney what the impact a settlement would have on its appeal. Employer's mistake arises from its failure to exercise reasonable diligence. Additionally, Statement of Fact #4 in Employer's Petition makes clear that Eaton was not aware that Employer had concurrently filed an appeal. The Division, as the other contracting party, had no knowledge of Employer's mistake and neither encouraged nor fostered Employer's erroneous assumption that the settlement would have no impact on its appeal. The doctrine of unilateral mistake cannot support rescinding the Order.

[4] We also note that Employer had opportunities to ask about the impact of a settlement on Employer's appeal. Salamanca and Eaton had a face-to-face meeting on July 1, 2026, during which she could have asked about the impact of a settlement on Employer's appeal that was filed that same day. Salamanca did not ask about the impact of a settlement on an appeal, intentionally keeping herself ignorant.

The Board has long held that employer must handle their appeals with the degree of care a reasonably prudent person would undertake in the conduct of its most important legal affairs. (*Timothy J. Kock,* Cal/OSHA App.01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) The faiure of a party to make a reasonable inquiry to understand the meaning and content of an agreement constitutes a neglect of duty that prevents recovery based on unilateral mistake of fact. (*Wal-Noon Corporation v. Hill* (1975) 45 Cal.App.3d 605, 615.)

3. Was the settlement agreement approved by someone with sufficient authority to enter into the agreement?

In its Petition, Employer asserts that on July 7, 2026, an unnamed local general manager processed the payment of the settlement check written by Salamanca and that the unnamed individual did not have the authority to terminate Employer's appeal rights. The assertion is specious, at best. On July 1, 2026, Employer's general manager Salamanca filed Employer's appeal and represented Employer in face-to-face settlement talks with Eaton, so Salamanca clearly had such authority. Salamanca agreed to the amount given to the Division to settle the citations and the subsequent processing and payment of the check by an unnamed local general manager simply effectuated the agreement Salamanca entered into with the Division.

DECISION

For the reasons stated above, the petition for reconsideration is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member

FILED ON: 09/11/2026