

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

EDUARDO OLVERA, *Applicant*

vs.

**CABINETS BY PRECISION WORKS, INC.; PALOMAR
SPECIALTY INSURANCE COMPANY, administered by
OMAHA NATIONAL UNDERWRITERS, *Defendants***

**Adjudication Numbers: ADJ18902547; ADJ18901822
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks removal of the Joint Findings, Award, and Orders (F&A), issued by the workers' compensation administrative law judge (WCJ) on April 22, 2026, wherein the WCJ found in pertinent part that: 1) cost petitioner carried the burden of proving that payment of attorney fees in this case is appropriate; 2) defendant does not have a legal basis to withhold all interpreter explanations of review (EORs); 3) sanctions in the form of attorney fees are appropriate in this case; 4) EORs for invoicing regarding contracted interpreter services may be relevant to market rate alleged by cost petitioner; and 5) cost petitioner submitted sufficient evidence to establish market rate.

Defendant contends in pertinent part that it did not unreasonably delay payment and that it did not conduct discovery in bad faith; that the award of sanctions in the form of attorney fees was not warranted; and that cost petitioner did not meet its burden to establish market rate.

We received an Answer from cost petitioner. The WCJ issued a Joint Report and Recommendation (Report) recommending that the Petition for Removal be denied or if the Petition is construed as a Petition for Reconsideration that it also be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated in the WCJ's Report, which

we adopt and incorporate, and for the reasons outlined below, we will treat the Petition as one seeking reconsideration and deny the Petition as one seeking reconsideration.

BACKGROUND

On February 22, 2024, applicant filed an Application for Adjudication of Claim (Application) claiming injury to his wrist and hand while employed by defendant as a delivery shop hand helper on January 26, 2024. This matter was assigned Case Number ADJ18901822.

On February 22, 2024, applicant filed an Application claiming injury to his thigh, femur, and lower leg tibia and fibula while employed by defendant as a delivery shop hand helper on February 8, 2024. This matter was assigned Case Number ADJ18902547.

On April 17, 2024, defendant filed an Answer to the Application in Case Number ADJ18901822 with the following denials: occupation (in dispute), injury (denied AOE/COE), liability for self-procured treatment and future medical treatment (denied), Medical-legal costs (in dispute), and Earnings (in dispute).

On April 17, 2024, defendant filed an Answer to the Application in Case Number ADJ18902547 with the following denials: occupation (in dispute), injury (dispute nature and extent), liability for self-procured treatment and future medical treatment (reasonable necessary in compliance with Labor Code), Medical-legal costs (in dispute), and Earnings (in dispute).

On June 12, 2024, certified interpreter Jessica M. Luna (translator identification #100690) (see Exhibit 1), provided Spanish translation services for applicant's deposition preparation from 9:00-10:00 a.m. The deposition did not take place because the case was settled. Ms. Luna provided translation services for applicant at the reading and signing of the joint Compromise & Release (C&R) which resolved both cases. The C&R was signed by both applicant and Ms. Luna on June 12, 2024. Ms. Luna completed A Verification of Interpreting Services which reflects the above. (Exhibit 2, 6/12/2024.)

On June 21, 2024, cost petitioner served defendant with an interpreting services invoice for "PREP DEPOSITION/JESSICA LUNA #100690" in the amount of \$230.00 and "READ COMPROMISE & RELEASE/JESSICA LUNA #100690" in the amount of \$230.00 for a total of \$460.00. Attached to the invoice was a copy of cost petitioner's Interpreters market rates for 2022-2024 documenting payments received from various claims for deposition preparation services and

cost petitioner's market rates for 2023-2024 documenting payments received from various claims for C&R reading services. (Exhibit 3, 6/21/2024.)

On June 21, 2024, the WCJ issued a Joint Order Approving the Compromise and Release (OACR).

On April 11, 2025, cost petitioner filed a Petition for costs and attorney's fees, along with a Notice to Produce Documents, and a Declaration of Readiness to Proceed (DOR) to status conference.

On May 2, 2025, defendant filed an Objection to the Notice to Produce.

On June 23, 2025, cost petitioner filed a Motion to Compel Production of Relevant Documents. (Exhibit 6, 6/23/2025.)

On February 18, 2026, the matter proceeded to trial.

On April 22, 2026, the WCJ issued the Joint Findings, Award and Orders which defendant challenges.

I.

Former Labor Code section 5909¹ provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on May 28, 2026 and 60 days from the date of transmission is July 27, 2026. This decision is issued by or on July 27, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on May 28, 2026, and the case was transmitted to the Appeals Board on May 28, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 28, 2026.

II.

In addition to the analysis outlined in the Report incorporated hereto, we find it relevant to discuss the distinction between a petition for reconsideration and a petition for removal.

A petition for reconsideration is taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order is defined as one that determines “any substantive right or liability of those involved in the case” or a “threshold” issue fundamental to a claim for benefits. (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]; *Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of

limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian, supra*, at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, and other similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Gaona, supra*, 5 Cal.App.5th at p. 662.) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the April 22, 2026, F&A includes interlocutory findings² and final findings, including that cost petitioner was awarded sanctions in the form of attorney's fees. Thus, the WCJ's decision is subject to reconsideration rather than removal. Based on our review, we concur with the WCJ's decision, and we do not disturb it.

Accordingly, we treat defendant's Petition for Removal as a Petition for Reconsideration, and deny it as a Petition for Reconsideration.

² The WCJ analyzed defendant's contentions under the Removal standard for interlocutory issues.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the Joint Findings, Award and Orders of April 22, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 27, 2026

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**LAW OFFICES OF GEORGE CORSON
AM LIEN SOLUTIONS**

DLM/oo

*I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this
date. o.o*

JOINT REPORT AND RECOMMENDATION
ON PETITION FOR REMOVAL

I.

INTRODUCTION:

Occupation:	Delivery helper.
Applicant's Age on DOI:	30 years of age.
Date of Injury:	January 26, 2024 and February 8, 2024.
Parts of Body Claimed:	Right wrist and right hand.
Identity of Petitioner:	Defense representative, AM Lien Solutions, by Ted Durden filed the petition.
Type of Petition:	Petition for Removal.
Timeliness:	The Petition for Removal is timely.
Response to Petition:	Cost Petitioner has not responded or filed answer to petition for removal.
Verification:	A verification is included.
Date of trial:	February 18, 2026.
Date of decision:	April 22, 2026.
Date of transmission to recon unit:	05/28/2026

Petitioner's contentions:

1. The Order issued April 22, 2026, finding that Defendant unreasonably delayed payment pursuant to Title 8, CCR 9795.4 will result in irreparable harm and significant prejudice of the Defendant.
2. The Order issued on April 22, 2026, awarding Cost Petitioner sanctions in the form of attorney fees pursuant to Title 8, CCR§ 10421, Title 8, CCR§ 10545, and Labor Code §5813 will result in irreparable harm and significant prejudice to the Defendant.
3. The Order issued on April 22, 2026, admonishing Defendant for failure to conduct discovery in good faith will result in irreparable harm and significant prejudice of the Defendant.
4. The Order issued on April 22, 2026, finding EORs for contracted interpreter Payments are relevant to market rate in this case will result in irreparable harm to the Defendant.
5. The Findings issued on April 22, 2026, finding Cost Petitioner provided sufficient evidence to establish market rate will result in irreparable harm to the Defendant.

II.

FACTS:

Case Number ADJ18901822

The applicant was injured on 01/26/2024 as a delivery helper. He injured his right wrist and hand. The Application for Adjudication was filed on February 24, 2024. The case was settled by Joint Compromise and Release for \$15,000.00 on 06/18/2024.

The case was initially set for trial from a mandatory settlement conference on 07/22/2025 regarding cost petition of Language Arts Interpreting and initial trial setting on 09/17/2025. The case was continued multiple times due to other cases having priority or party unavailability. Trial commenced on 02/18/2026 in which ADJ18901822 was designated the master file (MF) for trial purposes.

Cost-petitioner attorney has filed an answer to Petition for Removal (EAMS DOC ID 64495179). Cost-petitioner argued that the defendant did not show irreparable harm, was already on notice that the defendant's position on preventing discovery was legally unacceptable, that removal was inappropriate on 4 of 5 issues raises as they are final orders and not interlocutory, that cost petitioner did provide sufficient evidence of market rate, that omission of an EOR was equivalent to bad-faith by defendant, and that sanctions against defendant are appropriate due to defendant's misuse of the system to delay ordered discovery and payment without legal basis.

Case Number ADJ18902547

The applicant filed an application on 02/22/2024 for an injury to thigh/femur and lower leg when a cabinet fell forward and struck applicant in right thigh and shin on 02/08/2024. The case was settled by Joint Compromise and Release for \$15,000.00 on 06/18/2024.

The case was initially set for trial from a mandatory settlement conference on 07/22/2025 regarding cost petition of Language Arts Interpreting and initial trial setting on 09/17/2025. The case was continued multiple times due to other cases having priority or party unavailability. Trial commenced on 02/18/2026 in which ADJ18901822 was designated the master file (MF) for trial purposes.

III.

JOINT DISCUSSION **(ADJ18901822 MF; ADJ18902547)**

The Petition for Removal is timely, from the Findings and Award and Opinion on Decision dated 04/22/2026. The Petition for Removal was filed and served by defendant AM Lien Solutions on or about 05/18/2026 (EAMS DOC ID 64356410). The petitioner attached to the

petition, two bills from Language Arts Interpreting, in apparent violation of CCR 10945(C)(1). The total page count of the petition with attachments is 20 pages.

The petitioner did not state that reconsideration is not an adequate remedy. Consideration as a Petition for Removal is not appropriate as there are final orders on many of the issues. It will be treated as a Petition for Removal as that is what it is labelled and that is what defendant has argued in the petition but there will be a discussion on considering it Reconsideration.

Petitioner argues that reliance on 8 CCR 9795.4 is reversible error; awarding sanctions in the form of attorney fees pursuant to 8 CCR 10421, 10545; and Labor Code 5813; the order admonishing defendant for failure to conduct discovery in good faith; that finding EOR's for contracted interpreter payments are relevant; and the findings that Cost-Petitioner provided sufficient evidence to establish market rate resulted in irreparable harm to defendant.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).)

Petitioner has not shown substantial prejudice or irreparable harm. After the Findings and Award and Opinion on Decision issued, this matter was set for a status conference on June 29, 2026, at 1:30 p.m. on the issue of attorney fees awarded and status of resolution of same. As this is a petition for removal the matter should still be able to proceed with that hearing and absent settlement or granting petition for removal, the case should proceed.

The petitioner alleged but failed to show substantial prejudice or irreparable harm and in fact cannot show any type of prejudice at this stage of the case.

WCJ FINDING THAT DEFENDANT UNREASONABLY DELAYED PAYMENT

Petitioner has argued that although CCR 9795.4 states that "All expenses for interpreter services shall be paid within 60 days after receipt by claims administrator of the bill for services unless the claims administrator, within this period, contest liability for such payment, or the reasonableness or necessity of incurring such expenses" the defendant was not required to pay due to the interpreter submitting defective billing.

Petitioner submitted two documents that appear to be billing for services by Language Arts Interpreting on 06/12/2024. There is no explanation why these documents were not listed and offered at trial or why these documents would be considered the only type of billing served on defendant or that there was an objection that would put Language Arts Interpreting on notice of any curable defect in submission of billing. Attaching the documents to petition was in violation of CCR 10945 as the documents were not part of the record at trial.

It is clear that the Compromise and Release filed on 06/17/2024, included a signature of Jessica Luna from Language Arts Interpreting. The defendant had the benefit of services in order to file for approval of Compromise and Release by WCALJ. In addition, Language Arts Interpreting Service served billing for June 12, 2024, totaling \$460.00 on June 17, 2024, and July 25, 2024. There was no argument that these were not served or received.

There was no objection near any of these dates from defendant. According to Exhibit E, the defendant paid for these services on July 30, 2025, and July 31, 2025. This was an unreasonable delay as it was over 60 days. There was notice to defendant of the billing and market rate but no payment for over a year after being served with the billing, and after a Notice to Produce and Notice of Representation by George Corson, Esq. In addition there was no irreparable harm or significant prejudice shown by petitioners.

AWARDING SANCTIONS IN FORM OF ATTORNEY FEES IS REVERSIBLE ERROR

This WCALJ awarded sanctions in the form of attorney fees pursuant to CCR 10421, CCR 10545, and Labor Code 5813. It was determined that the defendant failed to comply with CCR 9795.4 in which the language states that defendant shall pay within 60 days of receipt of billing or object. Neither was done. The failure to perform a mandatory action appears willful. Petitioner did not show irreparable harm or significant prejudice.

ADMONISHING DEFENDANT FOR FAILURE TO CONDUCT DISCOVERY IN GOOD-FAITH IS REVERSIBLE ERROR

The attorney for cost petition made a notice to produce on defendants. It cannot be determined when it was served as that portion was not completed, but the defendant did object to all demands but the request for a benefits printout. The defendant even objected to explanations of review for invoices on all dates of interpreters services on case as they were irrelevant. The relevance cannot be determined without the service of those documents, or a description of the potential documents is made. Further, liberal discovery rules apply in workers' compensation.

As the court said in *Hardesty v. McCord & Holdren, Inc.* (1976) 41 CCC 111 (panel decision), that pursuant to the state constitution, "the parties appearing before us a forum which shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character. The adoption by us of a set of rules relating to discovery which would permit a paper war of interrogatories and would require frequent pre-trial appearances by counsel to argue discovery motions would be inconsistent with that constitutional mandate." The court went on to say "... we must give force to the declaration of public policy implicit in those provisions and in the decisional law interpreting them that liberal pre-trial discovery is desirable and beneficial for the purpose of ascertaining the truth checking and preventing perjury detecting and exposing false, fraudulent and sham claims and defenses making available in a simple, convenient and inexpensive way facts which otherwise could not be proved except with great difficulty educating the parties in advance of trial as to the real value of their claims and defenses, thereby encouraging settlement expediting litigation safeguarding against surprise preventing delay, simplifying and narrowing the issues and expediting and facilitating both pre-trial preparation and trial (citing *Greyhound Corp. v. Superior Court of Merced County*, 56 Cal. 2d 355).

The standard for evaluating the appropriateness of pre-trial discovery is whether or not it is reasonably calculated to lead to the discovery of admissible evidence. It is easy to say that the records are not relevant, but it cannot be said that the evidence requested by cost petitioner was not reasonably calculated to lead to discovery of admissible evidence of value, market value, costs, penalties and interest, and attorney fees. By objecting to everything but the benefits printout, the defendant did not appear to allow discovery in good faith as there was no attempt to list potential documents responsive to requests, whether any privilege applied by supplying a privilege log, did not attempt to provide a name of the person most knowledgeable in response to request number 5. Failure to attempt to respond without anything but an objection to relevance goes against the public policy for and preference for liberal pre-trial discovery.

When the defendant was admonished, it was meant for the defendant to take caution and warn against such practices. This was to encourage the defendant to enter into pre-trial discovery with opposing parties in a cooperative good-faith way as that is what is expected in the present workers' compensation system. It would be unfeasible to require that workers' compensation judges oversee and rule on all pre-trial discovery.

FINDING AND ORDER THAT EXPLANATIONS OF REVIEW FOR CONTRACTED INTERPRETER PAYMENTS ARE RELEVANT TO ISSUE OF MARKET RATE CONSTITUTES REVERSIBLE ERROR

It is unclear what this issue by petitioner corresponds to. The relevant rule is as follows: Market rate is defined as the amount an interpreter has actually been paid for recent interpreter services provided in connection with the preparation and resolution of an employee's claim (CCR 9795.1(e)). Here, Finding and Order number 4 included the following: **Explanations of reviews for invoicing regarding contracted interpreter services may be relevant to market rate alleged by cost petitioner.** There is a possibility that it is relevant to an amount an interpreter has actually been paid for recent interpreter services in connection with preparation and resolution of employee's claim. Again, public policy favors liberal pre-trial discovery.

The WCAB issued an *en banc* opinion in *DiFusco v. Hands On Spa et al* (2025) 90 Cal.Comp.Cases 1007, that is instructive on the issue. The commissioners stated the following:

Our holding herein is consistent with the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) We emphasize that in workers' compensation proceedings, the Labor Code makes explicit that the WCJ and the Appeals Board have greater discretion with respect to evidentiary matters than courts in civil proceedings, and not narrower discretion as defendant appears to believe. Section 5708 mandates that we are not "bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." (Lab. Code, § 5708, emphasis added.) Section 5709 specifically allows informality in our proceedings and ensures that "admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory

rules of evidence and procedure” will not invalidate an order, decision or award. (Lab. Code, § 5709.)

Unlike a discovery request where the right to privacy or another privilege is implicated, proof of good cause is not required for a routine discovery request such as the one here. (*Id.*)

Cost petitioner is entitled to reasonable discovery regarding market rate. This WCALJ concluded it may be relevant but that cannot be fully determined unless the documents are reviewed. There was no proof of irreparable harm or significant prejudice for concluding that the documents regarding contracted interpreter payments may be relevant to market rate.

THE FINDING AND ORDER THAT COST PETITIONER SUBMITTED SUFFICIENT EVIDENCE TO ESTABLISH MARKET RATES CONSTITUTES REVERSIBLE ERROR

In the Findings, Award, and Orders and Opinion on Decision, the undersigned concluded that cost-petitioner is entitled to payment at market rate of \$230.00 for each of the two billed services, less credit for prior payments for each date of service. The cost-petitioner Exhibits 3 & 4 were responsive to this issue.

It was determined that there was sufficient evidence to determine that the cost petitioner is entitled to market rate pursuant to CCR 9795.3(b)(1) & (b)(2). It was uncontroverted that Jessica Luna is certified according to Exhibit 1. Cost Petitioner submitted a market rate chart that showed dates of service and payments made with a variety of insurance companies and carriers. For both preparation and reading of a Compromise and Release, the amount claimed was \$230.00. The billing for services and market rate for each date has not been rebutted.

Defendant argues that the evidence by cost-petitioner has been cherry picked as it did not include a range of lowest amount accepted to a maximum amount. Cost petitioner served, listed, and evidence of market rate was admitted into evidence (Exhibits 3&4). The defendant had the opportunity to rebut, object, conduct discovery of market rate, and request evidence from cost-petitioner that may tend to show a lower market rate, but chose not to. After the cost-petitioner provided evidence of market rate, the burden shifted to the defendant to present evidence of market rate. They did not do so. Further, it would appear that equity requires that market rate be awarded in an instance where defendant is arguing lack of evidence but did not engage in discovery in good faith to allow cost-petitioner potential proof.

There is no proof of irreparable harm or significant prejudice, and defendant did have opportunity and ability to submit documents that would constitute substantial evidence on market rate.

IF PETITION FOR REMOVAL IS CONSIDERED AS A PETITION FOR RECONSIDERATION

Pursuant to Labor Code 5903 a petition for reconsideration must allege one of the following grounds:

- (a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers.
- (b) That the order, decision, or award 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 or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order, decision, or award.

Petitioner did not allege, discuss, or prove any of these allegations as aggrieved party. The decision was written within the powers granted to a WCALJ pursuant to Labor Code Section 5813, CCR 9795.4, CCR 10421. Further, the evidence justified the findings of fact, and the findings of fact support the order, opinion on decision and award, there was no fraud and no allegation that new evidence was discovered that was material that could not have been discovered and produced previously.

It is recommended that if construed as a petition for reconsideration that it be denied or dismissed.

IV. RECOMMENDATION:

It is respectfully recommended that the Petition for Removal be denied because petitioner failed to show significant prejudice or irreparable harm pursuant to Title 8, California Code of Regulations, and section 10955.

It is recommended that if construed as a Petition for Reconsideration that the petition be denied or dismissed for failure to properly file a petition for reconsideration in conjunction with Labor Code 5903 and failure to allege and prove that the judge acted in without or in excess of powers, that the evidence did not justify the findings of fact, or that the findings of fact do not support the order, decision, or award.

DATE: 05/28/2026

Eric Thompson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE