

March 15, 2004

Darrel Roloff, District Manager R1-D2
Cal/OSHA
39141 Civic Center Drive #310
Fremont, CA 94538

via hand delivery and fax (510) 794-3889

Re: 879 Blossom Hill Road, San Jose, CA - Target Store - under construction

Dear Mr. Roloff,

This is being submitted as a serious formal complaint pursuant to Labor Code Section 6309. For a complaint to be classified as formal and serious, Labor Code 6309 requires the complaint be filed by a certain class of persons and also that the character of the unsafe conditions be serious.

With respect to who is filing the complaint, Labor Code 6309 provides:

"if the division receives a complaint from an employee, an employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or government agency representative, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation...."

In that regard, I am an attorney representing Iron Workers Local 377 and its members for the purposes of this complaint. Iron Workers Local 377 represents workers working for Nor-Cal Steel Inc., one of the subcontractors at the jobsite referenced above. These employees and others working for the general contractor and other subcontractors are being exposed to serious unsafe conditions being created by K.D. Steel Inc., 700 North Altamont, Spokane, WA 99217 (509) 467-5309, a subcontractor, and created and/or controlled by W.L. Butler Construction Inc., 204 Franklin Street, Redwood City, CA 94062, (650) 361-1270, which are described below

in more detail. Thus our members are being exposed, under the multi-employer regulation, to unsafe conditions and this complaint is being submitted on their behalf and on behalf of others who may also be exposed.

The unsafe conditions described below also meet the criteria for serious which is set forth in Labor Code 6309, which says:

"For purposes of this section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment."

The photographs we are submitting clearly show violations of, among other regulations, Title 8 CCR 1710 (steel erection). The workers who are pictured in most of the photographs are working at heights, a fall from which could easily result in death or serious physical harm. This is a commercial structure with open steel and no decking. On most commercial structural steel building projects, the floors are often 15 feet, but could range from 12 feet to 25 feet. Exact height information is verifiable by looking at the architectural plans. Thus when a worker is on the second tier, it is likely they are working at a height of 24 to 30 feet. And when a worker is at a height of more than 6 feet, studies show that a fall could result in a substantial possibility of death or serious injury.

If based on the information provided here, you do not believe this matter should be classified as a serious formal complaint, I would appreciate it if you could notify me as soon as so that we may discuss that issue.

Cal/OSHA's Policy & Procedure notes that during the **opening conference** an employee representative is permitted to attend, stating:

"Compliance personnel shall hold a joint opening conference with the employer, or his or her representative, and **bargaining unit representative of the employees**. When is not possible to hold a joint opening conference, compliance personnel shall hold separate opening conferences when appropriate." [Emphasis added.]

As well, employee representatives have a right to accompany the inspector on the **walkaround** according to Cal/OSHA's Policy & Procedure:

"An **authorized employee representative** shall be offered the opportunity by the employer to accompany compliance personnel during the walkaround." [Emphasis added.]

I realize it is a violation of law for Cal/OSHA to notify anyone in advance of an inspection, but **should you decide to do an inspection**, I would greatly appreciate hearing from the inspector assigned to this matter by phone as soon as possible after that inspector announces his or her presence to the employer(s) who are present at the jobsite referenced above. My cell phone is (415) 385-3905 and if for some reason I am not available to take the call, I would greatly appreciate it if the inspector would leave a message for me indicating the inspection has commenced. In this way, I will try to make sure that an employee representative is present at the opening conference and is able to accompany you on the walkaround.

As well, or alternatively, please contact John Ford, Iron Workers 377, at the union hall at (415) 285-3880 or via his mobile phone at (415) 760-1509 if you are unable to reach Mr. Ford through the union hall. Mr. Ford is the Business Representative of employees working for Nor-Cal Steel Inc., one of the subcontractors at the jobsite referenced above, and represents the workers who, among other workers at this site, are being exposed to unsafe conditions created by K.D. Steel Inc. and/or created by or controlled by W.L. Butler Construction Inc. in this multi-employer setting. **He will attend the opening conference and accompany the Cal/OSHA inspector on the walkaround.**

If you decide to conduct an inspection, but feel you cannot comply with this request, I would greatly appreciate it if you would contact me so we can discuss it before the inspection and make arrangements to identify for you a steward who may be at the jobsite and fulfill these obligations until Mr. Ford arrives. We do not believe it would be appropriate to ask the general contractor or the subcontractor who are creating and/or controlling employers to select an employee from among their ranks to represent the workers of Iron Workers Local 377 during this inspection.

The unsafe conditions described below are accompanied by photographs taken on March 7, 8, 9, 10 and 12. Some of the photographs include pictures of the workers exposed to the unsafe conditions and some do not. We will supply you with written declarations under penalty of perjury by the photographer that the photographs were taken on the days which are indicated on the photos themselves and are a true representation of what the declarant observed. Further, the declarations will include the names, if possible, of the worker(s) exposed to the unsafe condition and by whom those worker(s) are employed. This information, along with documents that can be obtained from the contractor(s) will provide adequate proof of the employer-employee relationship and other elements of a violation that can result in a citation by Cal/OSHA.

Please be aware we are continuing to monitor this extremely unsafe jobsite, and will continue to take photographs of conditions we believe are unsafe. We will submit these to Cal/OSHA with declarations as amendments to this complaint for the purposes of requesting citations based upon the evidence that we observed and are submitting.

For those situations illustrated by the photographs submitted this far and which may be submitted as an amendment to this complaint, where we can provide declarations and other evidence to prove all the elements of a violation, we would ask Cal/OSHA to issue citations based upon such evidence. **If for some reason, Cal/OSHA does not wish to issue citations based on this referred evidence, we would appreciate your informing us as soon as possible so that we may proceed with other independent remedies available to us.**

Whether or not Cal/OSHA decides to issue citations based on the referred evidence, we believe that the conditions shown by these photographs merit a speedy inspection by Cal/OSHA so as to address the unsafe conditions which are continuing at this jobsite. It is our opinion that there are numerous violations of Title 8 California Code of Regulations ranging from more general violations of Sections 1509 and 3203 to more specific regulations such as Sections 1710, 3648 and others which a Cal/OSHA inspector will recognize, and that this inspection is necessary to assure for all those on the site, a safe and healthful workplace.

Finally, please be aware that time is of the essence with respect to this complaint. The Labor Code requires you to respond within 3 working days of receipt of the complaint. Additionally, the Labor Code 6309 provides:

"The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence."

To help you in your determination of when to inspect, please also be aware that the erection of this facility began on or about Sunday March 7. We would estimate that the erection may be completed within the next two weeks. As of Sunday March 14, there is still no decking spread, but that process will begin shortly. When the decking process begins and is underway, there may be other and different violations observable, but some violations related to the erection of structural steel may not be observable.

Thus, in order to observe violations similar to those in the accompanying photographs, we would request that an inspection commence as soon as possible. And in order to observe other violations, which based on the nature of the violations and sloppy procedures we have seen thus far we believe will occur, we would request that an inspector continue the inspection during the course of the steel erection and decking.

VIOLATIONS

Below is a list of what we believe constitute violations of some Cal/OSHA regulations based upon what various pictures show (and what was observed by the photographer who will testify to that). We may not have cited every single violation for each picture, but we have tried to cite the regulation we thought appropriate; we understand that Cal/OSHA may see other violations that we missed or regulations that are more applicable.

Date	Violation	Picture(s)
3/7/04	8 CCR 1710 (d) (1) (B) 1. When working under loads, materials being hoisted shall be rigged to prevent unintentional displacement.	See pictures D3 and D6 which show hoisting a column using a below the hook lifting device where the running tail of the choker is against a quick release shackle pin creating a dangerous condition where the load could be unintentionally displaced.
3/7/04	8 CCR 1710 (d) (1) (B) 3. and 8 CCR 1710 (q) - all loads shall be rigged by a qualified rigger.	See pictures D3 and D6 which show hoisting a column using a below the hook lifting device where the running tail of the choker is against a quick release shackle pin. Cal/OSHA might determine based on this rigging that there is also a violation because the rigger wasn't qualified and properly trained.
3/8/04	8 CCR 1710 (d) (1) (B) 1. When working under loads, materials being hoisted shall be rigged to prevent unintentional displacement.	See pictures B20, B18, B21, B24, P1, P2, P3, P8, P9, P10, P22 which show hoisting a column using a below the hook lifting device where the running tail of the choker is against a quick release shackle pin, and in addition, the column has been rigged with a simple choke with no device to prevent sliding off the top of the load. All this create a dangerous condition where the load could be unintentionally displaced.
3/8/04	8 CCR 1710 (d) (1) (B) 3. and 8 CCR 1710 (q) - all loads shall be rigged by a qualified rigger.	See pictures B20, B18, B21, B24, P1, P2, P3, P8, P9, P10, P22 which show hoisting a column using a below the hook lifting device where the running tail of the choker is against a quick release shackle pin and in addition, the column has been rigged with a simple choke with no device to prevent sliding off the top of the load. Cal/OSHA might determine based on this rigging that there is also a violation because the rigger wasn't qualified and properly trained.

Date	Violation	Picture(s)
3/9/04	8 CCR 1710 (m) (1) (A) - When connecting beams or other structural members at the periphery or interior and the fall distance is greater than 2 stories or 30 feet, whichever is less, iron workers shall be provided with and use a personal fall protection system ... tied-off to either columns, pendant lines secured at the tops of columns, catenary lines, or other secure anchorage points.	See picture W1 for an overview of the structure; it shows the connector is working at a height over 2 stories. See pictures W2 and W3 to show the connector is not tied off. One worker exposed: worker with yellow shirt and red bandana.
3/9/04	8 CCR 1710 (l) (7) - Where skeleton steel is being erected, a tightly planked and substantial floor shall be maintained within 2 stories or 30 feet, whichever is less, below and directly under that portion of each tier of beams on which any work is being performed.	See picture W1 for an overview of the structure; it shows the worker is working at a height over 2 stories. Pictures W2 and W3 show there is no temporary flooring (decking). One worker exposed: worker with yellow shirt and red bandana.
3/9/04	8 CCR 1710 (m) (1) (A) - When connecting beams or other structural members at the periphery or interior and the fall distance is greater than 2 stories or 30 feet, whichever is less, iron workers shall be provided with and use a personal fall protection system ... tied-off to either columns, pendant lines secured at the tops of columns, catenary lines, or other secure anchorage points.	See pictures BB1, BB2 and BB3 which show an overview of the structure; they show the connector is working at a height over 2 stories. They also show at least one connector is not tied off. One worker exposed: worker with white shirt (known as Little Hat).
3/9/04	8 CCR 1710 (l) (7) - Where skeleton steel is being erected, a tightly planked and substantial floor shall be maintained within 2 stories or 30 feet, whichever is less, below and directly under that portion of each tier of beams on which any work is being performed.	See pictures BB1, BB2 and BB3 which show an overview of the structure; they show the connector is working at a height over 2 stories. They also show there is no temporary flooring (decking). Two workers exposed: worker with yellow shirt and red bandana and worker with white shirt (known as Little Hat).
3/9/04	8 CCR 1710 (l) (7) - Where skeleton steel is being erected, a tightly planked and substantial floor shall be maintained within 2 stories or 30 feet, whichever is less, below and directly under that portion of each tier of beams on which any work is being performed.	See picture BB4 which shows an overview of the structure; it shows the connector is working at a height over 2 stories. It also shows there is no temporary flooring (decking). One worker exposed: worker with white shirt (known as Little Hat).
3/9/04	8 CCR 3648 (e) - Employees shall not sit or climb on the edge of the basket ... to gain greater working height.	See pictures W4 and W5 which show the connector is standing on the midrail of the aerial basket. See also pictures T1, T2, T3, T4 which show the connector then climbing up to and actually standing on the toprail of the aerial basket. One worker exposed: worker with white shirt (known as Little Hat).

Date	Violation	Picture(s)
3/9/04	8 CCR 3648 (o) - Employees while in an elevated aerial device shall be secured to the boom, basket or tub of the aerial device through the use of a safety belt, body belt or body harness equipped with safety strap or lanyard.	See pictures W4 and W5 which show the connector is in the aerial basket and not tied off. One worker exposed: worker with white shirt (known as Little Hat).
3/9/04	8 CCR 3648 (e) - Employees shall not sit or climb on the edge of the basket ... to gain greater working height.	See pictures N5 and N6 which show the connector is actually standing on the toprail of the aerial basket. One worker exposed: worker with white shirt (known as Little Hat).
3/9/04	8 CCR 3648 (o) - Employees while in an elevated aerial device shall be secured to the boom, basket or tub of the aerial device through the use of a safety belt, body belt or body harness equipped with safety strap or lanyard.	See pictures N5 and N6 which show the connector is in the aerial basket and not tied off. One worker exposed: worker with white shirt (known as Little Hat).
3/9/04	8 CCR 1710 (m) (1) (C) 2. - When shinning columns, and the fall distance exceeds 2 stories or 30 feet, whichever is less, ironworkers shall be provided with and use a personal fall protection system ... tied-off to either columns, pendant lines secured at the tops of columns, catenary lines, or other secure anchorage points, when connecting beams or other structural members at columns.	See pictures M5 and M6 which show the connector out of the man basket and is shinning the column Picture M7 shows the connector is working at a height over 2 stories. One worker exposed: worker with white shirt (known as Little Hat).
3/9/04	8 CCR 1710 (m) (1) (A) - When connecting beams or other structural members at the periphery or interior and the fall distance is greater than 2 stories or 30 feet, whichever is less, iron workers shall be provided with and use a personal fall protection system ... tied-off to either columns, pendant lines secured at the tops of columns, catenary lines, or other secure anchorage points.	See picture M7 which shows an overview of the structure; it shows the connector is working at a height over 2 stories. See pictures M24 and M25 which show one connector is not tied off. One worker exposed: worker with white shirt (known as Little Hat).
3/10/04	8 CCR 1710 (l) (7) - Where skeleton steel is being erected, a tightly planked and substantial floor shall be maintained within 2 stories or 30 feet, whichever is less, below and directly under that portion of each tier of beams on which any work is being performed.	See pictures DD1, DD2 and DD3 for an overview of the structure; it shows the worker is working at a height over 2 stories. They also there is no temporary flooring (decking). One worker exposed: worker with white shirt (known as Little Hat).
3/10/04	8 CCR 1710 (d) and (q) (3) (A) - Hoisting and rigging and Training. Special training programs are required for workers who engage in Multiple Lift Rigging procedures.	See pictures EE2, EE3, EE4 and EE5 which depict multiple lift rigging, which Cal/OSHA might determine to be a violation if the rigger wasn't qualified, among other violations.

Date	Violation	Picture(s)
3/12/04	8 CCR 1710 (d) and (q) (3) (A) - Hoisting and rigging and Training. Special training programs are required for workers who engage in Multiple Lift Rigging procedures.	See pictures X1, X2, X3, X4, X5, Y1, Y2, Y3, Y4, Y5, Y6 and Y7 which depict multiple lift rigging, which Cal/OSHA might determine to be a violation if the rigger wasn't qualified, among other violations.
3/12/04	8 CCR 1710 (q) (3) (B) 1. - Training. Special training programs are required for workers who engage in Connector Procedures with respect to the nature of the hazards associated with connecting.	See pictures U1, U2, U3, U4 and U5 which depict a connector standing and traveling on top flange of the free end of a suspended load in position on only one end. The crane is swinging the load in to be connected. The worker is using no means of fall protection. Cal/OSHA might determine based on this activity that there is a violation because the connector wasn't qualified and properly trained.

If there is further information we can provide, we would be happy to do so.

Sincerely,

Frances C. Schreiber
Attorney for Iron Workers Local 377

cc: Roy Berg