

request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

STIPULATIONS

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Lexington, North Carolina. Respondent is in the business of manufacturing pallets and skids. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(10); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(9).
3. During the period of October 27, 2017 and April 5, 2018, Chris Oberst, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 4572 Highway 150 in Lexington, North Carolina (the "Inspection").
4. As a result of the Inspection, on April 6, 2018, Complainant issued the following Citation and Notification of Penalty (herein referred to as the "Original Citation"):

CITATION 01 (Serious)

| <u>Item No.</u> | <u>Standard</u> | <u>Abatement Date</u> | <u>Penalty</u> |
|-----------------|-----------------------|--------------------------|----------------|
| 001 | 29 CFR 1910.213(h)(1) | Immediately Upon Receipt | \$3,000.00 |
| 002 | 29 CFR 1910.213(h)(3) | Immediately Upon Receipt | \$3,000.00. |
| | | TOTAL | \$6,000.00 |

5. Respondent submitted a timely Notice of Contest.
6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
7. Neither party has any objection, procedural or otherwise, to this Hearing.
8. Respondent posted the Original Citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that

such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter including without limitation objection to the reasonableness of any abatement period.

9. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated.

10. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent.

11. Complainant and Respondent agree that provided the respective Motion of each party is granted (a) there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions no outstanding issues remain to be resolved by an evidentiary hearing of this matter; (b) this Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion; (c) the modification of any portion of the Original Citation by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, (d) none of the agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order; and (e) the agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without further litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

12. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further Respondent will pay the penalty of \$3,000.00 assessed in this matter within 10 days of the date of this Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division, identifying Inspection No. 318121951, and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101).

MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

*** delete the second paragraph of Citation 01 Item 002 and insert in lieu thereof the following: "a) facility (Saw Shop) – the adjustable stop on the DeWalt Radial Arm Saw**

(model GE 636, sn 335826) allowed the forward travel of the blade to move 3 inches beyond the 7.5 inch width boards that were being cut on a repetitive basis.”

- * renumber Citation 01 Item 001 as Citation 01 Item 001a;**
- * renumber Citation 01 Item 002 as Citation 01 Item 001b;**
- * group renumbered Citation 01 Item 001a and Citation 01 Item 001b;**
- * retain serious classification for the newly grouped Item 001a and Item 001b;**
- * as grouped, Citation 01 Item 001a and Citation 01 Item 001b shall have a classification of “Serious” with a total penalty of \$3,000.00;**

except as set forth in this motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant’s Motion.

Respondent requested that upon the granting of Complainant’s Motion that the Undersigned consider the following motion by the Respondent (“Respondent’s Motion”):

to withdraw Respondent’s Notice of Contest to the Original Citation as amended pursuant to Complainant’s Motion set forth above.

Complainant did not object to Respondent’s Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any procedural objection to this Hearing.

4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.


CONCLUSIONS OF LAW

The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 15th day of January, 2020.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Rory Agan, Attorney
North Carolina Department of Justice, Raleigh, North Carolina

For Respondent

Joshua Schultz, Law Office of Adele Abrams, P.C., Denver, Colorado, admitted Pro Hav Vice
and

D. Michael Parker of Cheshire & Parker, Hillsborough, North Carolina

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CONCLUSIONS OF LAW

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NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 15th day of January, 2020.

R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:

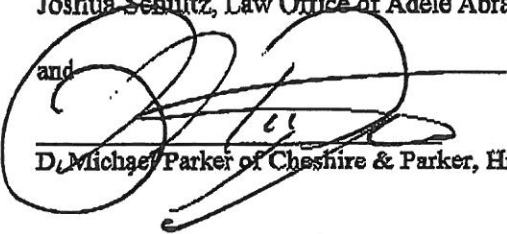
For Complainant

Rory Agan, Attorney
North Carolina Department of Justice, Raleigh, North Carolina

For Respondent

Joshua Schultz, Law Office of Adele Abrams, P.C., Denver, Colorado, admitted Pro Hac Vice

and



D. Michael Parker of Cheshire & Parker, Hillsborough, North Carolina

Pallet Resource of N.C., Inc.
2018-6009

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5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

CONCLUSIONS OF LAW

The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

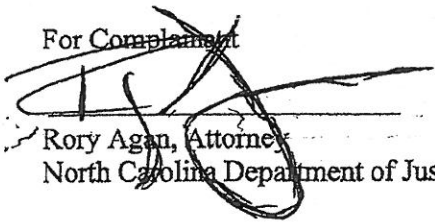
This the 15th day of January, 2020.

R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:

For Complainant



Rory Agan, Attorney
North Carolina Department of Justice, Raleigh, North Carolina

For Respondent

Joshua Schultz, Law Office of Adele Abrams, P.C., Denver, Colorado, admitted Pro Hac Vice

and

D. Michael Parker of Cheshire & Parker, Hillsborough, North Carolina

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this date served a copy of the foregoing ORDER upon:

JOSHUA SCHULTZ
LAW OFFICE OF ADELE ABRAMS, PC
600 17TH ST #2800 SOUTH
DENVER, CO 80202

D MICHAEL PARKER
CHESHIRE & PARKER
100 N CHURCH ST
HILLSBOROUGH, NC 27278

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

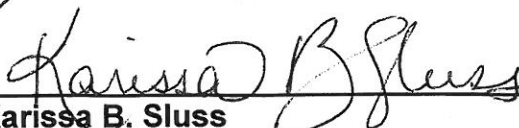
RORY AGAN
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

By depositing a copy of the same in the United States Mail, First Class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

By depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 21 DAY OF January 2020.



Karissa B. Sluss
Docket and Office Administrator
NC OSH Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
FAX: (919) 733-3020