

**BEFORE THE NORTH CAROLINA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION  
RALEIGH, NORTH CAROLINA**

**FILED**

SEP 28 2020

**COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA,**

**Complainant,**

**v.**

**JULIO CESAR LOPEZ  
DBA JC MASONRY,  
and its successors,**

**Respondent.**

) **DOCKET NO: 2019 - 6111**

) **INSPECTION NO: 318144714**

) **CSHO ID: N3070**

) **FINAL ORDER**

NC Occupational & Safety  
Commission

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**THE PARTIES in the above-captioned action appeared** before the undersigned for a Pre-hearing Conference via live videoconference before the undersigned on September 15, 2020, at 10:00am, with Stacey A. Phipps, Assistant Attorney General appearing by videoconference as counsel for the Complainant, and Jay M. Wilkerson, of Conner Gwyn Schenck, PLLC, appearing by videoconference for the Respondent. No affected employee of Respondent, or its representative, informed the Review Commission prior to Pre-hearing Conference that such employee wanted to have a say in, or participate as a party in, the Pre-hearing, and no employee appeared or participated in the Pre-hearing Conference.

**THE PARTIES reached an Agreement** to resolve this matter at the Pre-hearing Conference, which they briefly outlined to the undersigned, and now have advised the undersigned of the underlying facts and specific terms of their agreement, which are:

1. The parties agree that 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. The parties agree that Respondent maintains a place of business in North Carolina at 1141 Durbin Way, Fuquay-Varina, NC 27526. Respondent is in the construction business. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(10); each of Respondent's employees referred to in this matter are an "employee" within the meaning of N.C.G.S. § 95-127(10).
3. The parties agree that during the period between August 21, 2018, and February 15, 2019, Doreen Makaya, an Occupational Safety and Health Compliance Officer, conducted an

inspection (“the Inspection”) of the Respondent’s worksite located at 2300 Eubanks Road, Chapel Hill, North Carolina 27516 (“the Worksite”).

4. The parties agree that on or about February 15, 2019 a closing conference relative to the Inspection was held and, as a result of the Inspection, on February 18, 2019, Complainant issued a Citation and Notification of Penalty 01 (“Citation 01”), alleging a Serious Violation of each of the following:

Item No.	Standard	Penalty	Description
001	29 CFR 1904.39(a)(2)	\$ 2,000.00	Injury not reported
002a	29 CFR 1926.55(b)	\$ 5,600.00	No admin/eng controls to reduce exp
002b	29 CFR 1926.55(a)	Grouped	Exposure above TLV
003	29 CFR 1910.134(c)(2)(i)	\$ 2,000.00	No respirator info provided
004a	29 CFR 1926.1153(d)(1)	\$ 2,100.00	Respirable crystalline silica
004b	29 CFR 1926.1153(c)(1)	Grouped	Table 1- no eng controls, respiratory
005a	29 CFR 1910.1200(h)(3)(i)	\$ 5,600.00	No training - hazardous chemicals
005b	29 CFR 1910.1200(h)(3)(ii)	Grouped	No training - phys hazards chem
005c	29 CFR 1910.1200(h)(3)(iii)	Grouped	No training - PPE hazardous chem
006a	29 CFR 1926.1203(a)	\$ 5,600.00	No competent person, confined spaces
006b	29 CFR 1926.1203(d)	Grouped	No written permit space program
007a	29 CFR 1926.1204(b)	\$ 5,600.00	No eval of hazards of permit space
007b	29 CFR 1926.1204(c)	Grouped	Practices necess safe permit space entry
007c	29 CFR 1926.1204(d)(1)	Grouped	No testing and monitoring equipment
007d	29 CFR 1926.1204(d)(2)	Grouped	No ventilating equip for accept entry
007e	29 CFR 1926.1204(f)	Grouped	No attendant outside permit space
008	29 CFR 1926.1205(a)	\$ 5,600.00	No documentation of .1204(c) meas
009	29 CFR 1927.1207(a)	\$ 5,600.00	No training – wet concrete cutting, gas
		\$39,700.00	TOTAL

5. Respondent has denied all such violations and fully contests all issues and matters relating to the Citation, including abatement dates and proposed penalties.
6. Respondent filed/submitted a timely Notice of Contest dated March 27, 2019.
7. Respondent posted the Citation and the Pre-hearing Order as required by the Rules.
8. The Respondent has posted in its workplace the terms of the parties’ agreement as set forth herein, and 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 that any employee has any objection(s) in connection with this matter including without limitation the terms of the parties’ agreement and the reasonableness of any abatement period, as set out herein.

9. The parties agree that the Complainant shall modify Citation 01 as follows:
- a. Item 001 shall be reclassified from Serious to NonSerious, and the penalty reduced to \$500;
  - b. Items 002a and 002b shall remain unchanged;
  - c. Items 003, 004a and 004b shall be regrouped for penalty purposes, and the penalty reduced, as now grouped, to \$2100;
  - d. Items 005a, 005b, 005c and 009 shall be grouped for penalty purposes, and the penalty reduced, as regrouped, to \$5,000;
  - e. Items 006a, 006b, 007a, 007b, 007c, 007d, and 007e shall be regrouped for penalty purposes, and the penalty reduced, as regrouped, to \$8,400;
  - f. Item 008 and the associated penalty shall be withdrawn;
  - g. The injured minor multiplier in Item 009 shall be removed and the penalty accordingly reduced by \$2,800;
  - h. The foregoing modifications result in the following changes to the Citation:

Item No.	Standard	Penalty	Abatement Date
001	29 CFR 1904.39(a)(2)	\$ 500.00	2/26/19
002a	29 CFR 1926.55(b)	\$ 5,600.00	Immediately
002b	29 CFR 1926.55(a)	Grouped	Immediately
003	29 CFR 1910.134(c)(2)(i)	Grouped	3/14/19
004a	29 CFR 1926.1153(d)(1)	\$ 2,100.00	4/4/19
004b	29 CFR 1926.1153(c)(1)	Grouped	4/4/19
005a	29 CFR 1910.1200(h)(3)(i)	\$ 5,000.00	3/14/19
005b	29 CFR 1910.1200(h)(3)(ii)	Grouped	3/14/19
005c	29 CFR 1910.1200(h)(3)(iii)	Grouped	4/4/19
009	29 CFR 1926.1207(a)	Grouped	4/4/19
006a	29 CFR 1926.1203(a)	Grouped	4/4/19
006b	29 CFR 1926.1203(d)	Grouped	4/4/19
007a	29 CFR 1926.1204(b)	\$ 8,400.00	4/4/19
007b	29 CFR 1926.1204(c)	Grouped	4/4/19
007c	29 CFR 1926.1204(d)	Grouped	4/4/19
007d	29 CFR 1926.1204(d)(2)	Grouped	4/4/19
007e	29 CFR 1926.1204(f)	Grouped	4/4/19
008	29 CFR 1926.1205(a)	withdrawn	n/a
		\$21,600.00	TOTAL

- i. Complainant further agrees to reduce the total penalty so that the total amount due from the Respondent is \$19,000, and to accomplish this goal, for administrative purposes the Complainant shall record the foregoing penalties on Citation 001 as follows: for the

grouping of Items 5a-5c with Item 9, the penalty is reduced from \$5,000 to \$4,000; for the grouping of Items 6a -6b with 7a-7e, the penalty is reduced from \$8,400 to \$6,800.

10. The parties agree that the Respondent shall pay the total penalty of \$19,000 in 24 monthly installments, with the first installment in the amount of \$791.82 and each remaining installment in the amount of \$791.66. The first installment shall be due and payable on the first business day of the second month immediately following approval of this Stipulation and Settlement by the Hearing Examiner; all subsequent installments shall be due and payable on the first business day of each month following payment of the first installment. In no event shall the payment term extend beyond a consecutive twenty-four (24) month period, unless agreed upon by Complainant. In the event that the Respondent does not pay each monthly installment as agreed upon, all remaining installments become immediately due and payable, and the Commissioner retains the right to institute collection proceedings as allowed by law. Respondent agrees to pay attorneys' fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt. Payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318144714) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.
11. The parties agree that the Respondent shall develop a separate training program for employees regarding confined space work, whether permit-required spaces or not, for any space that has limited airflow; to provide certification that such training has taken place by January 31, 2021; to repeat training annually; and to retain training records for 3 years for production to NCDOL upon request.
12. The parties agree that the foregoing terms and agreements shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, nor shall the Respondent's agreement to the same be deemed an admission by the Respondent of any of the allegations contained in Citation 001 as originally issued or amended. Nevertheless, the Respondent confirms, and the Complainant agrees, that each of the violations alleged in the Original Citation as amended by Complainant's Motion have been abated as of the date specified above.
13. The parties agree that each party shall bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.
14. The parties agree that this Final Order shall be a full and final resolution of the claims set out in the underlying Citation, as amended pursuant to the parties' agreement as set forth above.
15. The Respondent agrees to withdraw its Notice of Contest to the Original Citation, as amended herein, upon execution of this Final Order.
16. The parties agree that there are no other matters that remain to be decided with respect to Citation 001, and confirm that there have been no employee objections to the foregoing terms.

17. The Respondent shall post this Final Order in accordance with Rules .0107(e), .0107(f), .0107(h) and .0701(c) of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

### **FINDINGS OF FACT**

Based on the foregoing stipulations and agreements, and the representations of the Parties at the Prehearing Conference, 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 the jurisdiction of the Occupational Safety and Health Review Commission of North Carolina.
3. Neither party has stated any procedural objection to the Pre-trial Hearing or to entry of this Final Order according to the terms set forth herein.
4. The Hearing Commission has not 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 the terms of the parties' agreement and the reasonableness of any abatement period, as set out herein.
5. The foregoing paragraphs 1-17 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.

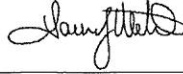
### **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

1. All documents filed with the Review Commission in this proceeding by either or both parties may be filed either in hard copy (with one original and/or electronic signature) or through electronic means, by circulating the document(s) and signature page (s) via email, fax, and/or .pdf.
2. The terms of the parties' agreement, as set forth in paragraphs 9-11 above, are approved and incorporated herein and the Parties are ordered to perform in conformity therewith.
3. Each party shall bear its own attorneys' fees and costs.
4. This Order shall fully resolve all issues presently pending before the parties in the above-referenced matter, as set out herein.



5. The Respondent's Notice of Contest is deemed withdrawn.

This the 28th day of December, 2020.



Digitally signed by Laura J Wetsch  
DN: cn=Laura J Wetsch, o=Winslow Wetsch, PLLC,  
ou, email=lwetsch@winslow-wetsch.com, c=US  
Date: 2020.12.28 11:00:23 -05'00'

Laura Wetsch, Hearing Officer

**CONSENTED TO:**

/s/ Stacey A. Phipps

**Stacey A. Phipps, Assistant Attorney General  
Attorney for Complainant**



**Jay M. Wilkerson  
Conner Gwyn Schenck, PLLC  
Attorney for Respondent**

**CERTIFICATE OF SERVICE**

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

JAY M. WILKERSON  
CONNER GWYN SCHENCK PLLC  
PO BOX 30933  
RALEIGH NC 27602

by depositing same in the United States Mail, First Class postage prepaid at Raleigh, North Carolina, and upon:

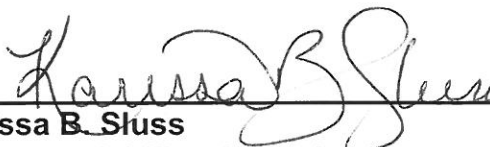
STACEY PHIPPS  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
P O BOX 629  
RALEIGH, NC 27602-0629

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 30 DAY OF December 2020.



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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