

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Dat</u>	<u>Penalty</u>
001	29 CFR 1910.134(c)(2)(i)	2/26/2019	\$ 1,200.00
002a	29 CFR 1926.55(b)	immed	\$ 5,600.00
002b	29 CFR 1926.55(a)	immed	\$ 300.00
003a	29 CFR 1926.1153(d)(1)	4/4/2019	\$ 2,100.00
003b	29 CFR 1926.1153(c)(1)	4/4/2019	Grouped
004a	29 CFR 1910.1200(h)(3)(i)	3/14/2019	\$ 2,000.00
004b	29 CFR 1910.1200(h)(3)(i)	3/14/2019	Grouped
004c	29 CFR 1910.1200(h)(3)(i)	3/14/2019	Grouped
005a	29 CFR 1926.1203(a)	4/4/2019	\$ 5,600.00
005b	29 CFR 1926.1203(d)	4/4/2019	Grouped
006	29 CFR 1926.1205(a)	4/4/2019	\$ 5,600.00
007	29 CFR 1926.1207(a)	4/4/2019	\$ 5,600.00
Total			\$ 28,000.00

3. Respondent denied all such violations and fully contested all issues and matter relating to the Citation, including abatement dates and proposed penalties.

As a result of this Hearing, Complainant and Respondent 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 maintains a place of business in North Carolina. Respondent is in the construction business. 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 between August 21, 2018, and February 15, 2019, Doreen Makaya, a Safety and Health Compliance Officer, conducted the Inspection of Respondent's Work Site. On or about February 15, 2019 a closing conference relative to the Inspection was held.
4. As a result of the Inspection, on February 18, 2019, Complainant issued the Citation.
5. Respondent filed/submitted a timely Notice of Contest dated March 20, 2019.
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 or to entry of this Final Order.

8. Respondent posted the 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. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the 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.

10. Respondent agrees to pay the new proposed penalty assessed in this matter, in the total amount of \$14,000, in 36 monthly installments, with the first installment of \$392.00 due and payable on the first business day of the second month immediately following approval of this Stipulation and Settlement by the Hearing Examiner, and the remaining 35 monthly installments of \$388.88 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 thirty-six (36) 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; payments may also be made via bank draft or accepted credit cards.

11. The parties agree to 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.

12. Complainant and Respondent agree that, provided the respective Motions of each party are granted, 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. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) the modification of any portion of the Citation by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, and (ii) none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the 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. 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 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.

MOTIONS

Complainant moved to amend/modify the Original Citation as set forth on Exhibit 1 attached hereto (“Complainant’s Motion”); except as set forth in Complainant’s Motion, the Original Citation shall remain unmodified or amended. Respondent did not object to Complainant’s Motion.

Respondent confirmed that the violations alleged in the Original Citation as amended by Complainant’s Motion have been abated, and requested that upon the granting of Complainant’s Motion that the motion by the Respondent set forth on Exhibit 2 attached hereto (“Respondent’s Motion”) be granted. Complainant did not object to Respondent’s Motion.

FINDINGS OF FACT

Based on the record, the parties’ representations at the Hearing, and the foregoing Stipulations, 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 or to entry of this Final Order.
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 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”).
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**;
2. That Respondent’s Motion is hereby **GRANTED**;
3. The Respondent shall pay the new proposed penalty assessed in this matter, as provided in paragraph 10 of the above Stipulations.

This the 7th 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: 2020.12.07 10:45:16 -05'00'

Laura Wetsch
Hearing Examiner

**NOTICE OF FILING
BY WAY OF ELECTRONIC MEANS**

Under current safety measures taken in light of the COVID 19 pandemic, it is impractical to gather original signatures on paper. Accordingly, the parties have agreed that all documents filed with the Review Commission in this proceeding by either party or both parties may be filed either in hard copy (with original and/or electronic signatures) or through electronic means, by circulating the document(s) and signature page(s) via email, fax and (or) pdf.

Electronically Submitted

CONSENTED TO:

/s/ Stacey A. Phipps

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

/s/ H. Weldon Jones, III

**H. Weldon Jones, III
Jordan Price Law Offices
Attorney for Respondent**

Exhibit 1

Complainant's Motion

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

- **To amend Citation 01 by grouping Items 001, 003a and 003b for penalty purposes**
- **To reduce the penalty for Items 001, 003a and 003b, now grouped, to \$1,200;**
- **To reduce the penalty associated with Item 005a to \$4,760;**
- **To delete Item 006 and the penalty associated therewith;**
- **To remove the injured minor multiplier from Item 007, resulting in a decreased penalty amount of \$2,700;**

The modifications result in the Citation as follows:

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003b	29 CFR 1926.1153(c)(1)	4/4/2019	Grouped
004a	29 CFR 1910.1200(h)(3)(i)	3/14/2019	\$ 1,500.00
004b	29 CFR 1910.1200(h)(3)(ii)	3/14/2019	Grouped
004c	29 CFR 1910.1200(h)(3)(iii)	3/14/2019	Grouped
005a	29 CFR 1926.1203(a)	4/4/2019	\$ 3,000.00
005b	29 CFR 1926.1203(d)	4/4/2019	Grouped
006	29 CFR 1926.1205(a)	4/4/2019	\$ -
007	29 CFR 1926.1207(a)	4/4/2019	\$ 2,700.00
Total			\$ 14,000.00

Exhibit 2
Respondent's Motion

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

***to withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion set forth in Exhibit 2.**

CERTIFICATE OF SERVICE

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

H. WELDON JONES, III
JORDAN PRICE LAW OFFICES
1951 CLARK AVENUE
RALEIGH, NC 27605

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 14 DAY OF December 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