

FILED

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

COMMISSIONER OF LABOR OF THE	)	DOCKET NO.: OSHANC 2019-6120
STATE OF NORTH CAROLINA	)	DOCKET NO.: OSHANC-2019-6121
	)	
COMPLAINANT,	)	INSPECTION NO: 318118916
	)	REINSPECTION NO: 318147873
	)	INSPECTION NO: 318118916
v.	)	REINSPECTION NO: 3181488053
	)	
UCS Inc. dba United Canvas & Sling, Inc.	)	CSHO ID: F1857
<i>and its successors</i>	)	
	)	
RESPONDENT.	)	<u>ORDER</u>

THIS CAUSE came on for hearing and was heard before the undersigned Reagan Weaver, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on August 20, 2020, at 10:00 A.M. pursuant to a Notice for Prehearing Conference. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared remotely for Complainant. John McDonald and John Bishop, Attorneys, McGuireWoods, appeared remotely for Respondent. The owner of Respondent attended remotely with Respondent’s counsel. No other affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Prehearing.

At the time of the Prehearing, the parties agreed upon and consented to the following stipulations:

**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, active and in good standing, in the State of North Carolina, and maintains a place of business in Lincolnton, North Carolina. Respondent is an “employer” as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).

**OSHANC 2019-6120**

3. During the period between October 15, 2018 and October 23, 2018, an Occupational Safety and Health Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at 511 Hoffman Road, Lincolnton, North Carolina, hereinafter referred to as "the site."

4. CSHOs properly entered into the site pursuant to a follow-up inspection due to a failure to certify abatements from a previous inspection on September 17, 2017 (318118916).

5. As a result of the Inspection, on March 1, 2019, Complainant issued the following Citation and Notification of Penalty (herein referred to collectively as the "First Original Citation"):

**CITATION NUMBER ONE (Repeat Serious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
1	29 CFR 1910.212(a)(1)	Corrected	\$3,600.00
2a	29 CFR 1910.215(a)(4)	Immediate	\$3,600.00
2b	29 CFR 1910.215(b)(9)	Corrected	\$Grouped
3a	29 CFR 1910.219(c)(2)(i)	Immediate	\$3,600.00
3b	29 CFR 1910.219(e)(3)(i)	Immediate	\$Grouped

**CITATION NUMBER TWO (Repeat Nonserious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
1	29 CFR 1910.305(g)(1)(iv)(A)	Immediate	\$200.00

**CITATION NUMBER THREE (Serious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
1	29 CFR 1910.133(a)(3)	Immediate	\$1,800.00
2	29 CFR 1910.219(e)(1)(i)	Immediate	\$1,800.00
3	29 CFR 1910.219(f)(3)	Corrected	\$1,800.00

**CITATION NUMBER FOUR (Nonserious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
1	29 CFR 1910.303(b)(2)	Immediate	\$0.00
2	29 CFR 1910.303(b)(7)	Corrected	\$0.00

6. On March 1, 2019, Complainant also issued failure to abate (FTA) citations carrying the following proposed abatement dates and penalties:

**CITATION NUMBER ONE (FTA-Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
3c	29 CFR 1910.151(c)	Immediate	\$27,000.00
4	29 CFR 1910.147(c)(1)	Immediate	\$126,000.00
10b	29 CFR 1910.213(c)(2)	Immediate	\$45,000.00
14	29 CFR 1910.242(b)	Immediate	\$27,000.00

**CITATION NUMBER TWO (FTA-Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
8b	29 CFR 1910.1200(h)(1)	Immediate	\$27,000.00

**OSHANC 2019-6121**

7. During the period between October 15, 2018 and October 23, 2018, an Occupational Safety and Health Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at 511 Hoffman Road, Lincolnton, North Carolina, hereinafter referred to as "the site."

8. CSHOs properly entered into the site pursuant to a follow-up inspection due to a failure to certify abatements from a previous inspection on September 17, 2017 (318118916).

9. As a result of the Inspection, on March 1, 2019, Complainant issued the following Citation and Notification of Penalty (herein referred to collectively as the "Second Original Citation"):

**CITATION NUMBER ONE (Nonserious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.134(f)(2)	3/27/2019	\$0.00
2	29 CFR 1910.134(h)(3)(i)(A)	Immediate	\$0.00

10. On March 1, 2019, as a result of the reinspection, Complainant also issued failure to abate (FTA) citations based on the prior inspection, carrying the following proposed abatement dates and penalties:

**CITATION NUMBER ONE (FTA-Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
2	29 CFR 1910.95(c)(1)	Immediate	\$63,000.00
18a	29 CFR 1910.1052(c)(1)	Immediate	\$27,000.00
18c	29 CFR 1910.1052(e)(1)	Immediate	\$27,000.00
18d	29 CFR 1910.1052(f)(1)	Immediate	\$27,000.00
18f	29 CFR 1910.1052(g)(3)(i)	Immediate	\$27,000.00
18g	29 CFR 1910.1052(h)(1)	Immediate	\$27,000.00
18j	29 CFR 1910.1052(j)(1)(i)	Immediate	\$27,000.00
18k	29 CFR 1910.1052(l)(1)	Immediate	\$27,000.00

**CITATION NUMBER TWO (FTA-Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1d	29 CFR 1910.134(k)	Immediate	\$18,000.00

11. Respondent submitted a timely Notice of Contest and requested formal pleadings in the matter.

12. A Pre-Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules") and proper notice to the employees and other interested parties was made.

13. Respondent and Complainant waived the presence of a court reporter at the Pre-Hearing and the making of a transcript of the Pre-Hearing.

14. Complainant and Respondent have no objection, either procedural or otherwise, to this Pre-Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Order.

15. Respondent posted the First Original Citation, the Second Original Citation, and the Reinspection Citations and the Pre-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.

16. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated or will be abated by Respondent as soon as reasonably possible where a new procedure must be drafted and trained.

17. The parties agree to bear their own attorney's fees (if any), costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.

18. Complainant and Respondent agree that provided the respective Motions of each party are 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 claim 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 Order brought directly under the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act") by Complainant, this Order shall have the full force and effect of a final order; (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; (f) 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; and (g) there has been no employee objection to the reasonableness of any abatement period.

19. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further :

a. Respondent agrees to continue with its present safety program, including conducting periodic meetings with employees. During such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor(s) who will forward the information to Respondent's safety spokesperson. Respondent agrees to meet regularly with its employees to discuss safety issues and receive safety suggestions or complaints. Respondent agrees that all employees that submit complaints or suggestions shall have the same protection as employees under Article 21, Chapter 95 of the North Carolina General Statutes.

### MOTIONS

#### **Complainant's Motion**

Complainant moved to make the following amendments to the Original Citation ("Complainant's Motion"):

1. Change the penalties of the Citations as follows, for a new total balance of all penalties of \$53,400.00:

**REINSPECTION NO: 318147873**

**CITATION NUMBER ONE (Repeat Serious)**

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
1	29 CFR 1910.212(a)(1)	Corrected	\$3,600.00
2a	29 CFR 1910.215(a)(4)	Immediate	\$3,600.00
2b	29 CFR 1910.215(b)(9)	Corrected	\$Grouped
3a	29 CFR 1910.219(c)(2)(i)	Immediate	\$3,600.00
3b	29 CFR 1910.219(e)(3)(i)	Immediate	\$Grouped

**CITATION NUMBER TWO (Repeat Nonserious)**

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
1	29 CFR 1910.305(g)(1)(iv)(A)	Immediate	\$200.00

**CITATION NUMBER THREE (Serious)**

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
1	29 CFR 1910.133(a)(3)	Immediate	\$1,800.00
2	29 CFR 1910.219(e)(1)(i)	Immediate	\$1,800.00
3	29 CFR 1910.219(f)(3)	Corrected	\$1,800.00

**CITATION NUMBER FOUR (Nonserious)**

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
1	29 CFR 1910.303(b)(2)	Immediate	\$0.00
2	29 CFR 1910.303(b)(7)	Corrected	\$0.00

**INSPECTION NO: 318118916**

**CITATION NUMBER ONE (FTA-Serious)**

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
3c	29 CFR 1910.151(c)	Immediate	\$2,762.07
4	29 CFR 1910.147(c)(1)	Immediate	\$12,889.66
10b	29 CFR 1910.213(c)(2)	Immediate	\$4,603.45
14	29 CFR 1910.242(b)	Immediate	\$2,762.07

**CITATION NUMBER TWO (FTA-Serious)**

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
8b	29 CFR 1910.1200(h)(1)	Immediate	\$2,762.07

**REINSPECTION NO: 3181488053**

**CITATION NUMBER ONE (Nonserious)**

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
1	29 CFR 1910.134(f)(2)	3/27/2019	\$0.00

2                    29 CFR 1910.134(h)(3)(i)(A)    Immediate            \$0.00

**INSPECTION NO: 318118916**  
CITATION NUMBER ONE (FTA-Serious)

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
2	29 CFR 1910.95(c)(1)	Immediate	\$6,444.83
18a	29 CFR 1910.1052(c)(1)	Immediate	\$2,762.07
18c	29 CFR 1910.1052(e)(1)	Immediate	\$2,762.07
18d	29 CFR 1910.1052(f)(1)	Immediate	\$2,762.07
18f	29 CFR 1910.1052(g)(3)(i)	Immediate	\$2,762.07
18g	29 CFR 1910.1052(h)(1)	Immediate	\$2,762.07
18j	29 CFR 1910.1052(j)(1)(i)	Immediate	\$2,762.07
18k	29 CFR 1910.1052(l)(1)	Immediate	\$2,762.07

CITATION NUMBER TWO (FTA-Serious)

<b>Item No.</b>	<b>Standard</b>	<b>Abatement Date</b>	<b>Penalty</b>
1d	29 CFR 1910.134(k)	Immediate	\$1,841.38

2. Allow for an upfront payment of \$5,400.00, to be followed by 48 equal payments of \$1,000 paid monthly or until the balance is \$0.00;

Except as expressly set forth in Complainant's Motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant's Motion.

**Respondent'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"):

1. Withdraw Respondent's Notice of Contest to all Citation and Notification of Penalties as amended pursuant to Complainant's Motion set forth above.

2. Make payment as detailed above with a single upfront payment of \$5,400.00, to be followed by 48 equal monthly payments of \$1,000.00. Payment of this penalty is by check or money order payable to NC Department of Labor, OSHA Division and should include the inspection(s) in the memo line of the check. Send the payment directly to the Department of Labor at NC Department of Labor Budget & Management Division, Attn: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101. Respondent agrees that if two payments are missed without approval from NCDOL Budget Office the penalty may be accelerated at NCDOL's discretion for the full balance to become due immediately.

3. Respondent has completed abatements for all items not explicitly discussed with NCDOL. As to the equipment discussed by NCDOL and Respondent, Respondent will complete its new procedures for energization sources not currently listed.

4. Respondent will put regulators on the air hoses to be used to clean off employees at a level that is below the regulated level. Respondent shall also ensure that the new signage listing the different air hoses be maintained, be clear, and be on the hoses as well. Respondent will also conduct training on the difference between the hoses and the hazards of high pressure air to employees. Respondent shall also ensure that supervisors of employees who utilize the air hoses require compliance with those rules and take appropriate action where employees do not follow the new procedures.

5. Respondent shall conduct a machine guarding audit program, including semi-annual audits of all machines in the facility with guards to verify the presence and function of guarding including barrier guards, two-hand controls, interlocks, and light curtains.

6. Respondent shall request 2 Consultative Services Bureau surveys within the next 5 years.

7. Respondent's Safety Coordinator shall complete a 30-hour OSH course and gain certification at that level.

8. Lockout/Tagout training shall be conducted annually for affected and authorized staff for a period of three (3) years.

9. Respondent shall conduct a written hazard assessment for product changes (such as adhesives) that include a component which is the subject of an expanded health standard under 29 CFR 1910 or 1926.

10. Respondent shall continue to request to participate or participate with the Gaston County Schools program where it allows students to enter the facility to learn about the process and products that are made in Gaston County. As part of this ongoing effort and service, Respondent will add a new section of the event that teaches students about the importance and types of efforts to conduct all work in a healthy and safe environment.

Complainant did not object to Respondent's Motion.

### **FINDINGS OF FACT**

Based on the Stipulations at the time of the Hearing and on 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 objection, procedural or otherwise, 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 provisions 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 the 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**; Respondent shall pay the penalty of \$53,400.00 in the manner set forth in the Stipulations.

This the 29 day of November, 2021.

Reagan H Weaver  
Reagan H Weaver (Nov 29, 2021 11:10 EST)

Reagan Weaver  
Administrative Law Judge

**CONSENTED TO:**

*Rory Agan*

Rory Agan (Nov 29, 2021 10:36 EST)

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Rory Agan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629/Labor Section  
Raleigh, North Carolina 27602-0629

Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT

*John McDonald*

John McDonald (Nov 24, 2021 09:38 EST)

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McGuireWoods LLP  
201 North Tryon Street, Suite 3000  
Charlotte, North Carolina 28202-2146

Telephone No. (704) 343-2276

ATTORNEY FOR RESPONDENT

**Signature:**

**Email:** rweaver@capitolaw.com

**CERTIFICATE OF SERVICE**

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

JOHN G MCDONALD  
MCGUIRE WOODS LLP  
201 N TRYON ST STE 3000  
CHARLOTTE NC 28202-2146

RORY AGAN  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO 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

Via email to [carla.rose@labor.nc.gov](mailto:carla.rose@labor.nc.gov).

THIS THE 30 DAY OF November 2021.



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Karissa B. Sluss  
Docket and Office Administrator  
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