

Del Monte Fresh Produce N.A. Inc.
2019-6128

1. During the period between March 22, 2018 and March 25, 2019 a Safety and Health Compliance Officer conducted an inspection (the "Inspection") of Respondent's worksite located at 6532 Judge Adams Road, Suite 170, Whitsett, North Carolina (the "Work Site");

2. As a result of the Inspection a Citation and Notification of Penalty 01 ("Citation 01") was issued alleging a Serious violation of each of the following:

* 29CFR 1910.147(c)(4)(i) alleging that procedures were not being developed, documented and utilized for the control of potentially hazardous energy; Abatement Date: Immediately Upon Receipt (Item 001a);

* 29 CFR 1910.147(c)(6)(i) alleging that the employer did not conduct a periodic inspection of the energy control procedure at least annually; Abatement Date: Immediately Upon Receipt (Item 001b); and

* 29 CFR 1910.147(c)(7)(i)(A) alleging that employee(s) did not receive training in the recognition of applicable hazardous energy sources, the type and magnitude of the energy available in the workplace, and the methods and means necessary for energy isolation and control; Abatement Date: 5/25/2019 (Item 001c);

Items 001a, 001b and 001c were grouped because they involve similar or related hazards that may increase the potential for injury or illness; the proposed penalty for Citation 01 was \$3,750.00.

3. As a result of the Inspection a Citation and Notification of Penalty 02 ("Citation 02") was issued alleging a NonSerious violation of each of the following:

* 29 CFR 1910.157(c)(1) alleging that portable fire extinguishers were not mounted, located and identified so that they were readily accessible without subjecting the employees to injuries; Abatement Date: Corrected During Inspection; Proposed Penalty: \$0.00; and

* 29 CFR 1910.303(g)(1)(iii) alleging at least one entrance of sufficient area to give access for the working space about electrical equipment operating at 600 volts, nominal, or less to ground was not provided; Abatement Date: Corrected During Inspection; Proposed Penalty: \$0.00.

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

Citation 01 and Citation 02 are collectively referred to herein as the "Original Citation".

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

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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 Florida corporation authorized to do business in the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Whitsett, North Carolina. Respondent is in the business of cutting, packaging, and selling whole fruits and vegetables. 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 March 22, 2018 and March 25, 2019, Alexa Cherry, a Safety and Health Compliance Officer, conducted the Inspection of Respondent's Work Site. On or about March 25, 2019 a closing conference relative to the Inspection was held.
4. As a result of the Inspection, on April 30, 2019, Complainant issued the Citation.
5. Respondent filed/submitted a timely Notice of Contest dated May 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.
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 penalty, if any, assessed in this matter within 15 business 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. 318160520) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101;
 - * to the additional terms, if any, set forth on Exhibit 1 attached hereto.

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 2 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 3 attached hereto ("Respondent's Motion") be granted.

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 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.

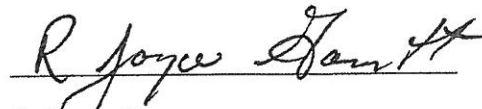
CONCLUSIONS OF LAW

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

Effective the 25th day of June, 2020

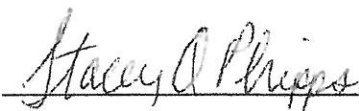


R. Joyce Garrett

Administrative Law Judge

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CONSENTED TO:

A handwritten signature in cursive script that reads "Stacey A. Phipps". The signature is written in black ink and is positioned above a horizontal line.


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

**Travis W. Vance, Attorney At Law
Fisher & Phillips LLP
Attorney for Respondent**

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CONSENTED TO:

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



**Travis W. Vance, Attorney At Law
Fisher & Phillips LLP
Attorney for Respondent**

Exhibit 1
Stipulations, Paragraph 10, Additional Terms

Respondent agrees:

* to provide to Complainant a written lock out tag out and energy control plan within 30 days of this Order;

* to develop a separate training program for authorized employees to include lock out tag out elements and procedures impacting such authorized employees;

* to ensure that the safety requirements of the manufacturer concerning whether the equipment is plugged in or hard wired are followed;

* to ensure that with respect to equipment which is plugged in, in order to be exempt from LOTO, the equipment will be unplugged from the energy source and the plug will be under the exclusive control of the employee performing the service or maintenance.

Exhibit 2
Complainant's Motion

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

*** to amend Citation 01 by deleting Item 001c, and by reducing the proposed penalty for Item 001a and Item 001b, as grouped, from \$3,750.00 to \$2,438.00; the type of violation will remain classified as "Serious";**

*** to delete Citation 02 in its entirety.**

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Exhibit 3
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 this date served a copy of the foregoing Final Order upon:

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

TRAVIS W. VANCE
FISHER & PHILLIPS, LLP
227 WEST TRADE ST
STE 2020
CHARLOTTE NC 28202


By email to sphipps@ncdog.gov , and tvance@fisherphillips.com respectively

And by depositing a copy of the same in the United States Mail, postage prepaid, at Raleigh, North Carolina, within 30 days and upon:

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

By email to jill.cramer@labor.nc.gov and by depositing a copy of the same in the NCDOL Interoffice Mail within 30 days.

THIS THE 14 DAY OF July 2020.



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