

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

COMMISSIONER OF LABOR FOR )  
THE STATE OF NORTH CAROLINA, )  
 )  
COMPLAINANT, )  
 )  
v. )  
 )  
FOUNDATION SOLUTIONS, LLC, )  
DBA RAM JACK, )  
*and its successors,* )  
 )  
RESPONDENT. )

DOCKET NO.: OSHANC 2020-6230  
INSPECTION NO.: 318178068  
CSHO ID.: K2333

STIPULATION  
AND NOTICE OF  
SETTLEMENT

FILED

JUL 27 2022

NC Occupational & Safety

NOW COME the parties in the above-captioned action, pursuant to Rule 10701 of the Commission

Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review  
Commission, and respectfully show unto the Hearing Examiner as follows:

CERTAIN FACTS

1. Respondent is a North Carolina Limited Liability Company engaged in residential and commercial foundation repair with its principal office in Durham, North Carolina.
2. On September 13, 2019, Complainant received a complaint regarding Respondent's home office and warehouse located at 4122 Bennett Memorial Road, Suite 304, Durham, North Carolina 27705. The complaint also alleged safety violations at project work sites.
3. During the period between September 16, 2019, and October 2, 2019, Compliance Safety and Health Officer (CSHO) Altagracia Guzman accompanied by Katie Perry (CSHOIT), employed by the North Carolina Department of Labor, inspected Respondent's home office and warehouse.

4. CSHOs Guzman and Perry provided credentials to Brad Sykes (B. Sykes), Office Manager, who contacted Rick Sykes (R. Sykes), Respondent company's Owner.
5. B. Sykes participated in the opening conference and consented to the inspection.
6. B. Sykes accompanied CSHOs Guzman and Perry during the walkthrough.
7. Officers Guzman and Perry properly entered onto Respondent's site and properly conducted the partial scope inspection.
8. The warehouse area included supplies, PPE, sump pumps, welding equipment, power tools, metal pipes and rods, and Powered Industrial Trucks (PITs) (forklifts and excavators).
9. B. Sykes granted CSHOs permission to visit one of his active crews working at 409 Riggsbee Farm Drive, Cary, North Carolina.
10. On September 16, 2019, at approximately 1:45 p.m., the CSHOs arrived at the Riggsbee site, and presented credentials to Rodney Ramsey, South East Division Crew Leader for Ram Jack.
11. CSHOs informed Ramsey that B. Sykes had granted permission for the inspection.
12. Ramsey accompanied CSHOs Guzman and Perry during the walkthrough.
13. A closing conference was held on October 2, 2019, via telephone with Rick Sykes, Brad Sykes, Cindy Adams (Bookkeeper/Accountant for Ram Jack), Tyler Wilkerson (Production Manager), Tim Neubauer (Director of Safety), and Julia Kunlo (Safety Manager).
14. On November 5, 2019, Complainant received the OSHA 59 form signed by R. Sykes for Respondent.
15. Unless otherwise noted below, all conditions described in these allegations existed at the time of Officers Guzman and Perry's inspection.

16. As a result of the inspection, one Serious citation with nine sub-parts and one Nonserious citation with two subparts were issued on December 11, 2019, carrying the following proposed abatement dates and penalties:

<u>Item</u>	<u>Standard</u>	<u>Abate Date</u>	<u>Penalty</u>
<b>Citation One (Serious)</b>			
001a	1910.133(a)(1)	1/10/2020	\$ 1,500.00
001b	1910.133(b)(1)	1/10/2020	\$ -
002	1910.136(a)	1/10/2020	\$ 900.00
003	1910.178(1)(1)(ii)	1/10/2020	\$ 2,800.00
004	1910.178(p)(1)	1/10/2020	\$ 450.00
005	1910.178(q)(7)	1/10/2020	\$ 450.00
006	1910.253(b)(2)(ii)	1/10/2020	\$ 900.00
007	1910.253(b)(2)(iv)	1/10/2020	\$ 450.00
008	1910.253(b)(4)(iii)	1/10/2020	\$ 2,800.00
		<b>SUBTOTAL</b>	<b>\$ 10,250.00</b>
<b>Citation Two (Non-Serious)</b>			
001	1910.132(d)(2)	1/10/2020	\$ -
002	1910.157(c)(1)	CDI	\$ -
		<b>TOTAL</b>	<b>\$ 10,250.00</b>

17. For the alleged violations, the Complainant avers that it calculated the proposed penalties and proposed abatement dates according to the procedures set forth in the Complainant's North Carolina Operations Manual. Pursuant to Chapter VI, section B of the North Carolina Operations Manual, Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty, as appropriate, for each item: 50% credit for size, 0-10% credit for good faith, and 10% credit for history, for a total 60-70% adjustment.

18. An informal conference was requested and held.

19. Respondent submitted a timely Notice of Contest, dated January 15, 2020.

20. On or about February 12, 2020, Complainant received "Employer's/Respondent's Statement of Position," dated February 10, 2020, which did not request that formal pleadings be served.

21. The parties having reached a Settlement Agreement now seek approval of said Agreement by the Hearing Examiner.

### STIPULATIONS

Effective upon approval of this Stipulation and Notice of Settlement, the parties to this action hereby agree and stipulate to the following settlement of the matters at issue herein:

1. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended, have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act").
2. Complainant agrees to make the following amendments to the Citation:
  - (a) Group Citation 1, Items **001a and 002**, and reclassify those items from Serious to **NonSerious**, and reduce the penalty for these grouped items from \$2,400.00 to **\$585.00**;
  - (b) **Delete Citation 1, Item 001b** which had no penalty;
  - (c) Group Citation 1, Items **003 and 004**, and reduce the penalty for those grouped items from \$3,250.00 to **\$293.00**;
  - (d) **Delete Citation 1, Item 005** and the penalty associated therewith;
  - (e) Group Citation 1, Items **006 and 007**, and reduce the total penalty from \$1,350.00 to **\$585.00**;
  - (f) For Citation 1, **Item 008**, reduce the total penalty from \$2,800.00 to **\$2,537.00**;
  - (g) Delete Citation 2, Item 001 which had no penalty;
  - (h) Retain Citation 2, Item 002 which had no penalty.

3. Respondent agrees to implement weekly safety and health inspections of the facility to include identifying and correcting hazards such as, but not limited to, the hazards that were identified during the inspection. The safety and health inspections should be documented and maintained for a period of three years, and available upon reasonable request for review by NIOSH.
4. Respondent agrees to continue to employ a full-time safety person.
5. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Stipulation and Notice of Settlement.
6. The parties agree that this Stipulation and Notice of Settlement is a full and final settlement of the claims set out in the underlying Citation and Notification of Penalty, and none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Citation and Notification of Penalty or waiver of defenses; provided, however, that in any subsequent proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein are made solely for the purpose of settling 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 Occupational Safety and Health Act and Article 21, Chapter 95 of the North Carolina General Statutes.
7. Respondent agrees to pay the new proposed penalty of \$4,000.00 in twelve (12) equal monthly installments of \$333.33 each, with the first installment due and payable on the first business day of the second month immediately following approval of this Stipulation and Notice of Settlement by the Hearing Examiner. Payments are to be made by check, payable to North

Carolina Department of Labor, OSHA Division (Identifying Inspection No. 318178068) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina, 27699-1101. Credit card payment may also be arranged. 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 twelve (12) 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.

8. Respondent agrees that by signing this Stipulation and Notice of Settlement and upon approval of said Stipulation and Notice of Settlement by the Hearing Examiner, its Notice of Contest is withdrawn as a matter of law.

9. The parties agree that there are no other matters that remain to be decided, and there have been no employee objections to the reasonableness of any abatement period.

10. Respondent shall post this Stipulation and Notice of Settlement 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.

**WHEREFORE**, the parties to this action hereby respectfully request approval of this Stipulation and Notice of Settlement.

This the 26th day of July 2022.

APPROVED BY:

*Bruce T. Miles*

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Bruce Miles  
District Supervisor  
Occupational Safety and Health Division

JOSHUA H. STEIN  
Attorney General

**Stacey A  
Phipps**

Digitally signed by Stacey A. Phipps  
DN: OU=NCD/DOJ/Atty General, O=Labor  
Section, CN=Stacey A. Phipps,  
E=sphipps@ncdoj.gov  
Reason: I am approving this document with my  
legally binding signature  
Location: your signing location here  
Date: 2022.07.26 12:23:25-04'00'  
Foxit PDF Editor Version: 11.2.2

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*Michael Lord*

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919-981-4093

ATTORNEYS FOR COMPLAINANT

FOR RESPONDENT

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

Under current safety measures taken in light of the COVID 19 pandemic, it is difficult to gather original signatures on a single document. Accordingly, the parties have agreed that all documents filed with the Review Commission related to this settlement may be filed through electronic means, in accordance with the Review Commission's temporary submission process with original hard copies to follow as soon as it is possible to do so.

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

COMMISSIONER OF LABOR FOR	)	DOCKET NO.: OSHANC 2020-6230
THE STATE OF NORTH CAROLINA,	)	INSPECTION NO.: 318178068
	)	CSHO ID.: K2333
COMPLAINANT,	)	
	)	
v.	)	
	)	
FOUNDATION SOLUTIONS, LLC,	)	<u>CONSENT ORDER</u>
DBA RAM JACK,	)	FILED
<i>and its successors,</i>	)	
	)	
RESPONDENT.	)	JUL 27 2022

This cause comes on before the undersigned Hearing Examiner (the Court) and being heard upon consent of the parties hereto, upon consideration of the Stipulation and Notice of Settlement submitted by the parties (the Agreement), the Court makes the following:

FINDINGS OF FACT

1. That the Agreement is reasonable and supported by the underlying facts.
2. That no outstanding issues remain to be resolved by a hearing of this matter.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to this action and over the subject matter.
2. That the Agreement is consistent with the purpose and objectives of the Occupational Safety and Health Act of North Carolina (The Act) and complies with Rule .0701 of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

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

1. That the Agreement is approved;
2. That both parties are hereby required to comply with the terms and conditions



stipulated in the agreement.

This the 26th day of July 2022.

*Reagan H Weaver*

Reagan H Weaver (Jul 27, 2022 11:30 EDT)

REAGAN WEAVER

Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN  
Attorney General

**Stacey A  
Phipps**

Digitally signed by Stacey A. Phipps  
DN: OU=NCCDOJ/Atty General, O=Labor  
Section, CN=Stacey A. Phipps,  
E=sphippa@ncdoj.gov  
Reason: I am approving this document with  
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Location: your signing location here  
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*Michael Lord*

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919-981-4093

FOR RESPONDENT

CERTIFICATE OF SERVICE

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

MICHAEL C LORD  
WILLIAMS MULLEN  
PO BOX 1000  
RALEIGH NC 27602  
mlord@williamsmullen.com

STACEY A PHIPPS  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629  
sphpips@ncdoj.gov

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.

THIS THE 29 DAY OF July 2022.



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**Karissa B. Sluss**  
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