



inspected Respondent's worksite located at 696 River Highway, Mooresville, North Carolina.

5. As a result of the inspection, Complainant issued the following citations carrying the following proposed abatement dates and penalties on June 22, 2020:

**CITATION NUMBER ONE (Repeat Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.20(b)(2)	Immediately Upon Receipt	\$4,900.00
2	29 CFR 1926.706(a)(1)	Immediately Upon Receipt	\$4,900.00
3	29 CFR 1926.706(b)	Corrected During Inspection	\$4,900.00
4a	29 CFR 1926.1153(c)(1)	Corrected During Inspection	\$4,900.00
4b	29 CFR 1926.1153(d)(2)(i)	Corrected During Inspection	Grouped
4c	29 CFR 1926.1153(g)(1)	Corrected During Inspection	Grouped
4d	29 CFR 1926.1153(i)(1)	Immediately Upon Receipt	Grouped

6. The Respondent submitted a Notice of Contest, dated July 21, 2020.
7. A hearing in this matter was scheduled pursuant to the Rules of Procedure of the Occupational Safety and Health Review Commission of North Carolina ("the Rules").
8. Complainant and Respondent waived the making of a transcript of the proceeding before the undersigned, and neither objected, either procedurally or otherwise, to this Hearing and the entry of this Order.
9. Respondent posted the original citation and the Notice of Pre-Hearing Conference as required by the Rules. Neither Complainant nor Respondent has received notification from any affected employee that such employee, or his or her 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.
10. Respondent confirms that the violations alleged in the Original Citation, to the extent they existed have been abated.
11. 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.
12. Provided the respective Motions below of each party are granted, Complainant and Respondent agree that:

- (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;
- (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 or as a waiver of defense, provided however, that in any subsequent proceeding with respect to matters covered by this Order brought directly under 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 purposes 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 has been calculated in accordance with the standard Field Operations Manual procedure 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 requested abatement period.

13. Respondent agrees to continue its best efforts to comply with the requirements of the Act.

14. Respondent further agrees to the following:

- (a) Help ensure that safety and health rules are enforced (by the Respondent) through frequent or regular worksite safety inspections, and establish documented progressive disciplinary procedures. The Respondent will maintain records of worksite inspections, audits, evaluations, and disciplinary actions associated with safety and health issues for two (2) years.
- (b) To the extent applicable, improve or maintain a silica safety and health program to comply with the requirements of 29 CFR 1926.1153.

Conduct safety training, as necessary, of its employees as required by 29 CFR 1926 in the recognition, control or avoidance of hazards associated with their work environment. 15. Respondent agrees to pay the settlement amount of **\$14,700.00 within one hundred twenty (120) days of this Order**. Payment is to be by check payable to North Carolina Department of Labor, OSH Division (Identifying Inspection No. 318193992) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina, 27699-1101.

### MOTIONS

1. Complainant moves to make the following amendments to the Original Citation

("Complainant's Motion"):

- (a) Delete Citation One, Item 1 in its entirety;
- (b) Increase the amount on Citation One, Item 2 from \$4,900.00 to \$14,700.00;
- (c) Group Citation One, Items 2 and 3;
- (d) Reduce the amount on Citation One, Item 3 from \$4,900 to \$0;
- (e) Delete Citation One, Items 4a, 4b, 4c and 4d in their entirety; and
- (f) Except as expressly set forth above in Complainant's Motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant's Motion.

2. Respondent requested that, upon granting the Complainant's Motion, the Undersigned consider its Motion to Withdraw Respondent's Notice of Contest to the Original Citation.

Complainant did not object to Respondent's Motion.

### FINDINGS OF FACT

Based on the stipulations at the time of the Hearing and as memorialized herein, the

Undersigned makes the following:

- 1. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State Charged by law with and enforcement of the provisions of the Act.

2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this action.
4. Neither party has any objection, procedural or otherwise, to this Hearing Conference.
5. The stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

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

1. The Complainant's Motion is hereby **GRANTED**; and
2. The Respondent's Motion is hereby **GRANTED**, and Respondent shall pay the settlement amount of **\$14,700.00** in the manner set forth herein.

This Jun 30, 2023.

Richard M. Koch

Richard M. Koch (Jun 30, 2023 14:02 EDT)

**Richard M. Koch**  
Hearing Examiner

**CONSENTED TO:**

JOSHUA H. STEIN  
Attorney General

Jonathan Jones

Jonathan Jones (Jun 29, 2023 18:26 EDT)

Jonathan D. Jones  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629/Labor Section  
Raleigh, North Carolina 27602-0629  
Telephone No. (919) 716-0049  
jdjones@ncdoj.gov

ATTORNEY FOR COMPLAINANT

Greg Ahlum

Greg Ahlum (Jun 29, 2023 18:24 EDT)

Greg C. Ahlum  
Johnston, Allison & Hord, P.A.  
1065 East Morehead Street  
Charlotte, NC 28204  
Telephone No. (704) 998-2319  
gahlum@jahlaw.com

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

GREG C. AHLUM  
JOHNSTON ALLISON HORD  
1065 EAST MOREHEAD ST.  
CHARLOTTE, NC 28204

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

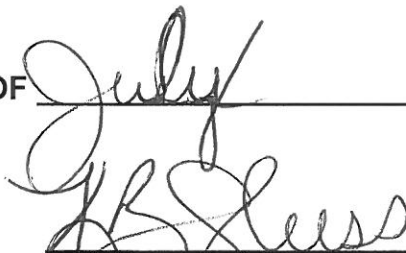
JONATHAN JONES  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629

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  
carla.rose@labor.nc.gov

via email.

THIS THE 3 DAY OF July 2023.



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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  
NCOSHRC@labor.nc.gov