

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

COMMISSIONER OF LABOR FOR	)	DOCKET NO: 2022 - 6508
THE STATE OF NORTH CAROLINA	)	
	)	INSPECTION
	)	NO: 318242237
Complainant,	)	
	)	CSHO ID: K0085
v.	)	
NORTHEAST FOODS, INC. DBA	)	<u>CONSENT ORDER</u>
AUTOMATIC ROLLS OF NORTH	)	
CAROLINA	)	
and its successors	)	
Respondent.	)	

**THIS CAUSE** coming on pursuant to the Notice of Pre-Hearing Conference (“Hearing Notice”) on June 27, 2024 at 10:00 a.m., and continued to July 1, 2024 and July 11, 2024 at 10:00 a.m. Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant. Kathleen Pontone, Veronica Jackson and Brianna Gaddy, with Miles & Stockbridge P.C., Baltimore, Maryland, appeared Pro Hac Vice for Respondent, being sponsored by Susan H. Briggs, attorney with Quintairos, Prieto, Wood & Boyer, P.A., Charlotte, North Carolina.

Pursuant to the Hearing Notice a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the Hearing Complainant and Respondent (i) notified the Undersigned that the parties agree upon certain stipulations (“Stipulations”) and wish to make certain motions (“Motions”), and (ii) request that the Stipulations and Motions be made part of the Hearing record and that a Consent Order be issued. 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 is a foreign corporation, duly authorized to do business and existing under the laws of the State of North Carolina, which does business in the State of North Carolina. Respondent is in the business of baking and producing food products for sale. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).
3. On April 16, 2022, a Compliance Safety and Health Officer (“CSHO”) employed by the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 68 Harvest Mill Lane, Clayton, North Carolina (the “Inspection”). The Inspection was conducted pursuant to a reported fatality. The CSHO presented credentials and initiated the Inspection; Respondent’s representative was on site during the time of the Inspection.
4. As a result of the Inspection, on October 13, 2022 Complainant issued the following Citation and Notification of Penalty (herein referred to as the “Original Citation”):

### **CITATION 01 (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.147(c)(4)(i)	Immediately Upon Receipt	\$ 14,502.00
002	29 CFR 1910.147(c)(6)(i)	Immediately Upon Receipt	\$ 13,051.80
003	29 CFR 1910.147(c)(7)(i)	Immediately Upon Receipt	\$ 13,051.80

5. Respondent submitted a timely Notice of Contest.
6. On December 9, 2022 Complainant’s “Statement of Employer’s/Respondent’s Position” was filed.
7. The 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”).
8. Complainant and Respondent waived the making of a transcript of this proceeding before the Undersigned, and neither objected, either procedurally or otherwise, to this Pre-Hearing and to entry of this Order.

9. Respondent posted the Original Citation and the Hearing Notice 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.

10. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated. Complainant confirms that no additional documentation of abatement is required by Complainant.

11. The parties agree that upon granting of Complainant's Motion 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 that the new proposed penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived giving consideration of the standard mitigating factors and specific factors applicable to Respondent.

12. **Respondent agrees:**

- a. to pay the penalty assessed in this matter as amended within 30 days of the date of this Order. In the event Respondent does not pay as agreed upon, Complainant retains the right to institute collection proceeding as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt.
- b. payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318242237) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.
- c. that the alleged violative conditions identified in Citation 01, Items 001 and 002 have been abated.

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

14. 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 Consent Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) 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, 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 Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Consent Order brought directly under the Act by Complainant, this Consent 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 do the following (“Complainant’s Motion”):

1. withdraw Citation 01, Items 001 and 002 and the associated penalty; and
2. modify Citation 01, Item 003 to have a penalty of \$24,950.00.

Except as set forth in this motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant’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. to withdraw Respondent’s Notice of Contest to the Original Citation as amended pursuant to Complainant’s Motion set forth above.

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. 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.
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 Hearing.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

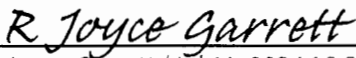
**CONCLUSIONS OF LAW**

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**.
3. That Respondent shall meet the requirements of stipulation 12 as laid out above.
4. That the parties shall comply with the terms and conditions as agreed and set out above.

This the 11th day of July, 2024.


  
\_\_\_\_\_  
R Joyce Garrett (Jul 11, 2024 16:53 EDT)

R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

  
\_\_\_\_\_  
Rory Agan (Jul 11, 2024 14:30 EDT)

**Rory Agan**  
**Special Deputy Attorney General**  
**North Carolina Department of Justice**  
**Raleigh, North Carolina**  
**Attorney for Complainant**

  
\_\_\_\_\_  
Kathleen Pontone (Jul 11, 2024 14:29 EDT)

**Kathleen Pontone**  
**Principal**  
**Miles & Stockbridge P.C.**  
**Baltimore, Maryland**

**Veronica Jackson**  
**Principal**  
**Miles & Stockbridge P.C.**  
**Baltimore, Maryland**

**Brianna Gaddy**  
**Associate**  
**Miles & Stockbridge P.C.**  
**Baltimore, Maryland**

**Attorneys for Respondent**

**CERTIFICATE OF SERVICE**

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

KATHLEEN PONTONE  
MILES & STOCKBRIDGE PC  
100 LIGHT STREET  
BALTIMORE, MD 21202

By depositing a copy of the same in the United States Mail, by certified mail, return receipt requested, postage prepaid at Raleigh, North Carolina, and upon:

RORY AGAN  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH NC 27602

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 12 DAY OF July 2024.

PAUL E. SMITH  
CHAIRMAN

  
\_\_\_\_\_  
Karissa B. Sluss  
Docket Administrator  
NC Occupational Safety &  
Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
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NCOSHRC@oshrc.labor.nc.gov