

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

**COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA**

Complainant,

v.

**ADENA CORPORATION
and its successors**

Respondent.

)
)
)
)
)
)
)
)
)
)
)
)

DOCKET NO: 2023-6600

FILED

INSPECTION

NO: 318262532

NOV 12 2025

CSHO ID: D1115

NC OSH Review Commission

CONSENT ORDER

THIS CAUSE came on for pre-hearing and was heard before the undersigned Mary-Ann Leon, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on November 12, 2025, at 10 a.m., via Lifesize teleconferencing platform, pursuant to a Notice of Hearing. The Notice of Hearing explicitly stated that the purpose of the hearing is to determine all matters relating to Respondent's Notice of Contest in this matter.

Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, appeared as counsel for Complainant. Curtis Moore of Fisher & Phillips LLP, Charlotte, N.C., appeared as counsel for Respondent. No other affected employee of Respondent attended to have a say in, or participate as a party in, the Hearing.

As a result of this Hearing, based upon the record and the consideration of the stipulations of the parties, the Undersigned makes the Findings of Fact as hereinafter set forth. During the Hearing, Complainant made the motion set forth in Complainant's Motion. Complainant's Motion being granted, Respondent made the Motion set forth in Respondent's Motion. Respondent's Motion was also granted.

FINDINGS OF FACT

Based on the stipulations of the parties at the time of Hearing and the record, the Undersigned makes the following Findings of Fact:

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"), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§95-133 et seq.

2. Pursuant to N.C.G.S. §95-135 the Review Commission has jurisdiction over the parties and the subject matter of this action.

3. Respondent, at the time of the Inspection, (a) was an Ohio corporation duly organized and existing under the laws of the State of Ohio, and (b) was registered with the North Carolina Secretary of State. Respondent is classified as current-active in North Carolina by the North Carolina Secretary of State. Respondent did business in North Carolina, and conducted business in Belmont, North Carolina. Respondent is engaged in the business of providing general contracting services. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(11); the worker injured in this matter is an "employee" within the meaning of N.C.G.S. Section 95-127(10).

4. Between March 25, 2023, and March 29, 2023, Compliance Safety and Health Officer Carl Burgette, employed by the North Carolina Department of Labor ("NC DOL"), conducted an inspection (the "Inspection") of the work site at 114 Wimmer Circle in Belmont, North Carolina ("Worksite").

5. As a result of the Inspection, on September 20, 2023, 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 1926.501(b)(13)	Immediately Upon Receipt	\$ 10,937.50
002	29 CFR 1926.502(d)(15)	Immediately Upon Receipt	\$ 9,375.00

6. Respondent submitted a timely Notice of Contest. On or about December 18, 2023, NC DOL received "Employer's/Respondent's Statement of Position".

7. The 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 have no objection, either procedural or otherwise, to this Hearing; both parties consent to the conduct of this Hearing by the Undersigned, and to entry of

this Final Order. Complainant and Respondent confirm that there has been no employee objection in this matter to the reasonableness of any abatement period.

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 time.

10. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated.

11. The parties agree that upon granting of Complainant's Motion that the proposed penalty for each Item designated in the Original Citation, as amended, has been calculated in accordance with the standard Field Operations Manual procedure; and the new proposed penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived in consideration of the standard mitigating factors and specific factors applicable to Respondent.

12. Respondent agrees to the following, provided the parties respective Motions are granted:

- a) Retrain its site Project Leaders within **120** calendar days of the fully-executed settlement agreement on conducting worksite reviews/audits. Adena shall provide documentation of this re-training to NC DOL.
- b) Retain worksite audit/inspection records for any of Adena's North Carolina worksites during the **6 months following the date of this agreement**. Respondent shall provide the records to NC OSH if the NC OSH requests them during an inspection occurring within that 6-month period at a North Carolina Worksite.
- c) Send 6 Project leaders for an OSH-30 construction training within **180** calendar days of the fully executed settlement agreement.
- d) Pay the penalty of \$5,000.00 assessed in this matter within **30** calendar days of the date of this Final Order.

In the event Respondent does not pay the penalty as stated above, all unpaid amounts shall become immediately due and payable, and the Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant institutes collection proceedings to collect the debt.

Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318262532) 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.

13. 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 Consent Order.

14. Complainant and Respondent agree that provided the respective Motion of each party is 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 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;

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, or actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation, the Original Citation as amended, or as a waiver of any defense, 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;

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.

MOTIONS

Complainant moved to do the following with respect to the Original Citation ("Complainant's Motion"):

- a) Delete Citation 1, Item 1 and associated penalty.
- b) Reclassify Citation 1, Item 2 to Nonserious;
- c) Modify the penalty of Citation 1, Item 2 to \$5,000.00;
- d) Change the cited standard of Citation 1, Item 2 to 29 CFR 1926.20(f)(2); and,
- e) Rewrite the AVD of Citation I, Item 2 to read: "jobsite-where the employer did not train each and every employee on confirming that a subcontractor adhered to all facets of its site-specific fall-protection plan."

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"):

- a) 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.

CONCLUSIONS OF LAW

1. 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.
2. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11); Respondent's employees referred to in the Original Citation as Amended are "employees" within the meaning of N.C.G.S. §95-127(10).
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.

Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.

4. Based on the foregoing Findings of Fact and Conclusions of law, **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

1. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**; and
3. That the parties shall comply with the terms and conditions set forth in the Stipulations contained this Order, including Stipulation 12.

Effective the 12th day of November 2025.

SO ORDERED

Signature: Mary-Ann Leon
Mary-Ann Leon (Nov 12, 2025 09:26:40 CST)

Email: maleon@leonlaw.org

Mary-Ann Leon
Hearing Examiner

CONSENTED TO:

JEFF JACKSON, Attorney General

Signature: Rory Agan
Rory Agan (Nov 12, 2025 10:23:41 EST)
Email: ragan@ncdoj.gov

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
Raleigh, NC 27602-0629
Tel. 919-716-6681
Email: ragan@ncdoj.gov
Counsel for Complainant

Signature: Curtis Moore
Curtis Moore (Nov 12, 2025 10:21:43 EST)
Email: cmoore@fisherphillips.com

Curtis G. Moore
Partner
Fisher & Phillips LLP
227 West Trade Street, Suite 2020
Charlotte, NC 28202
Tel. 704-778-4179
Email: cmoore@fisherphillips.com
Counsel for Respondent, Adena Corporation

CERTIFICATE OF SERVICE

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

CURTIS G. MOORE
FISHER & PHILLIPS
227 WEST TRADE ST STE 2020
CHARLOTTE, NC 28202
cmoore@fisherphillips.com

RORY AGAN
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602
ragan@ncdoj.gov

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

via email.

THIS THE 13 DAY OF November 2025.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
422 N. Blount St., Raleigh, NC 27601
TEL.: (984) 389-4132
NCOSHRC@oshrc.labor.nc.gov