

STIPULATIONS

Regarding the conduct of the Hearing the parties stipulated the following:

- The Hearing in this matter shall be conducted via the video conferencing platform known as “Lifesize”;
- The presence of a court reporter during the Hearing is waived;
- The Hearing’s audio and video will be recorded through Lifesize (the “Recording”);
- The Recording will be the official record of the Hearing;
- The Record will be made available to the parties after the Hearing concludes (the Host will send a link to the Recording as soon as practicable after the Hearing concludes);
- The Administrative Law Judge shall control when the Hearing is on and off the record, and will inform the parties;
- The Hearing will be deemed to have taken place in Raleigh, North Carolina.

The parties also agreed to the following 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”), 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 is a North Carolina corporation, which is authorized to do business in North Carolina. It is active and current and maintains a place of business in Winston Salem, North Carolina. Respondent is in the business of construction. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).
4. During the period of April 4 to April 11, 2025, a Compliance Safety and Health Officer employed by the North Carolina Department of Labor, inspected Respondent’s worksite located at 2066 Grosvenor Place, Winston Salem, North Carolina (the “Inspection”).
5. As a result of the Inspection on May 9, 2025, Complainant issued a citation (the “Original Citation”), carrying the following proposed abatement dates and penalties:

CITATION NUMBER 01 (Repeat Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.1053(b)(1)	Corrected During Inspection	\$6,000.00

CITATION NUMBER 02 (Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.100(a)	Corrected During Inspection	\$1,300.00
002	29 CFR 1926.300(b)(2)	Corrected During Inspection	\$1,300.00
003	29 CFR 1926.501(b)(13)	Corrected During Inspection	\$4,839.30
004	29 CFR 1926.552(a)(1)	Corrected During Inspection	\$1,300.00
TOTAL PROPOSED PENALTY			\$14,739.30

6. Respondent submitted a timely Notice of Contest dated June 11, 2025.
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 Order.
9. Respondent posted the Original Citation and the Hearing Notice as required by the Rules. Complainant and Respondent each confirm that it has not 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.

Complainant confirms that no additional documentation of abatement is required by Complainant.
11. The parties agree that upon granting of Complainant's Motion that the proposed penalty for the Items designated in the Original Citation has been calculated in accordance with the standard Field Operations Manual procedure; and the new proposed penalty for the Items 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
 - a) To develop written disciplinary policies for employees and subcontractors that include requirements for wearing fall protection and for proper ladder usage;

b) To conduct pre-start safety checks at all job sites, with documentation, to ensure that employees and subcontractors have the required safety gear for the job.

c) To pay the new proposed penalty of \$9,000 in twenty four (24) equal monthly installments of \$375.00 each without interest, with the first installment due and payable on the first business day of the second month immediately following the filing of this Order. 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 twenty-four (24) month period, unless agreed upon by Complainant.

In the event Respondent does not pay the penalty as stated above, all unpaid amount 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. 318304391) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 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 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 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 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 a waiver of any 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.

15. Respondent states for the purpose of this Hearing that Respondent disagrees with the placement of money paid as the penalty by Respondent being placed in the same education fund which it is Respondent's understanding is currently being investigated for fraud and misappropriation of funds.

MOTIONS

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

- a) Amend the proposed penalty for Citation 1, Item 1 from \$6,000 to \$3,600.00;
- b) Amend the proposed penalty for Citation 2, Item 1 from \$1,300 to \$833.00;
- c) Amend the proposed penalty for Citation 2, Item 2 from \$1,300 to \$833.00;
- d) Amend the proposed penalty for Citation 2, Item 3 from \$4,839.30 to \$2,901.00;
- e) And amend the proposed penalty for Citation 2, Item 4 from \$1,300 to \$833.00, resulting in a new total penalty of \$9,000.00

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"):

- a) 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

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

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**;
3. That Respondent shall meet the requirements of Stipulation 12 as set out above including without limitation payment of the penalty in the amount of \$9000.00 without interest in the manner stated in Stipulation 12; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations and in this Order.

Effective February 26, 2026.

SO ORDERED

Signature: R. Joyce Garrett
R. Joyce Garrett (Feb 26, 2025 16:24 27 EST)

Email: rjg.rjg@aol.com

R. Joyce Garrett
Hearing Examiner

CERTIFICATE OF SERVICE

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

ANGELA PFAFF
AVERY CONSTRUCTION & CONSULTING, INC.
southernmama0715@aol.com

JONATHAN JONES
NC DEPARTMENT OF JUSTICE
jjones@ncdoj.gov

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION

via email.

THIS THE 27 DAY OF February 2026.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
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Health Review Commission
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