

JUL 21 2026

NC OSH Review Commission

) **DOCKET NO.: OSHANC 2025-6727**
) **INSPECTION NUMBER: 318297744**
) **CSHO ID: M1130**

)

)

)

)

)

)

)

)

)

Pursuant to North Carolina General Statute § 95-137(b)(1) and the case of *Lost Forest Development, LLC v. Commissioner of Labor of the State of North Carolina*, 280 N.C. App. 174,

867 S.E.2d 338 (2021), the citation and penalty in this matter became a final order on June 11, 2025 and may not be reviewed by the undersigned.

Respondent requested relief from the final order in Respondent's Rule 60 Motion. Rule 60(b) of the North Carolina Rules of Civil Procedure "potentially provides relief from a judgment or order in limited circumstances, including mistake, inadvertence, or excusable neglect." *See Lost Forest Dev. v. Comm'r of Labor of State of N.C.*, 280 N.C. App. 174, 181, 867 S.E.2d 338, 342-43 (2021). The undersigned found that Respondent had demonstrated sufficient grounds for equitable relief under Rule 60(b) as it relates to their contestment of the penalties. The undersigned did not find sufficient grounds for equitable relief under Rule 60(b) as it relates to their contestment of the classifications.

The undersigned entered an order setting aside the final order and further ordered that the Complainant's Motion to Dismiss was granted in part and Respondent's Rule 60 Motion was granted in part and that Respondent's contestment of the penalties in this matter is subject to the jurisdiction of the Review Commission ("Order Setting Aside Final Order").

Following the Order Setting Aside Final Order, Complainant and Respondent indicated that they had certain Motions and Stipulations that they wished to enter into on the record and requested that the undersigned issue this Consent Order. The specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. 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").
2. Respondent, Premium Cushion, Inc., is a North Carolina corporation, which was authorized to do business in North Carolina on September 9, 1998. It is active and current and maintains a place of business in Conover, North Carolina. Respondent has a facility located at 1009 1st Street W in Conover, North Carolina. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11) and Respondent has "employees" within the meaning of N.C.G.S. §95-127(10).
3. Pursuant to the Hearing Examiner's Order Setting Aside Final Order, the Review Commission has jurisdiction over the parties and the subject matter to this action.
4. During the period on and (or) between November 21, 2024 and May 15, 2025, Compliance Safety and Health Officer Grace Lewis, employed by the North Carolina Department of Labor (NCDOL), inspected Respondent's facility located at 1009 1st Street W in Conover, North Carolina (hereafter referred to as "the Inspection").

5. As a result of the Inspection, on May 20, 2025, Complainant issued the following citation items carrying the following proposed abatement dates and penalties in the Citation and Notification of Penalty (hereafter referred to as the "Original Citation"):

CITATION NUMBER ONE (Willful Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.147(c)(4)(i)	Immediately Upon Receipt	\$64,529.20

CITATION NUMBER TWO (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.147(c)(7)(i)(a)	Immediately Upon Receipt	\$6,452.40
2	29 CFR 1910.219(d)(1)	Immediately Upon Receipt	\$6,452.40
3	29 CFR 1910.219(f)(3)	Immediately Upon Receipt	\$6,452.40
4	29 CFR 1910.262(d)(2)	Immediately Upon Receipt	\$6,452.40

CITATION NUMBER THREE (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1904.39(a)(2)	Immediately Upon Receipt	\$4,000.00

TOTAL: \$94,338.80

6. The Hearing in this matter was scheduled pursuant to Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
7. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing; waive the making of a transcript; and consent to the conduct of this Hearing by the Undersigned and consent to entry of this Consent Order.
8. Respondent confirms that the Original Citation and the Hearing Notice have been posted as required by the Rules.
9. 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 have been abated.

11. **Respondent agrees to conduct an audit of machine guarding and lockout tagout procedures at the Respondent's facility within three months of this Consent Order and periodically thereafter; any audits shall be documented in writing, maintained for a period of one year following the completion of the audit, and made available to the NCDOL-OSH Division upon request.**
12. **Respondent agrees to pay the new total penalty of \$41,631.00 in twelve (12) equal monthly installments of \$3,469.25 each with the first payment due September 1, 2026. All subsequent payments 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.**

Payment is to be by check (or money order) payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. 318297744).

If mailing by United States Postal Service mail, please mail to North Carolina Department of Labor Financial Services Division, 1101 Mail Service Center Raleigh, North Carolina 27699-1101.

If mailing by FedEx or UPS Next Day, please mail payment to North Carolina Department of Labor Financial Services Division, 4 W. Edenton Street, Raleigh, North Carolina 27601.

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 Motions of each party are granted:**
 - (a) **there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions (in the following section), no outstanding issues remain to be resolved by additional 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 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; and
- (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 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 (“Complainant’s Motion to Amend”):

- 1. Amend the penalty in Citation One, Item 1 to \$41,631.00; and**
- 2. Amend the penalties in Citation Two, Items 1-4 and Citation Three, Item 1 to \$0.00.**

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

Respondent did not object to Complainant’s Motion to Amend.

Respondent requested that upon the granting of Complainant’s Motion to Amend, that the Undersigned consider the following motion by the Respondent (“Respondent’s Motion to Withdraw”):

- 1. Withdraw Respondent’s Notice of Contest to the Original Citation pursuant to Complainant’s Motion to Amend.**

Complainant did not object to Respondent’s Motion to Withdraw.

FINDINGS OF FACT

Based on the record and the Stipulations at the time of the Hearing as memorialized herein, 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. No affected employee elected party status and no employee raised an objection to the reasonableness of the abatement time.
5. The undersigned's Order Setting Aside Final Order is incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Consent Order.
6. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Consent 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 to Amend is hereby **GRANTED**;
2. That Respondent's Motion to Withdraw is hereby **GRANTED**; and
3. That Respondent shall pay the penalty of **\$41,631.00 in the manner set forth in the Stipulations**; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations.

This the 07/21/2026.

Signature: Richard M. Koch
Richard M. Koch (Jul 21 2026 11:35:50 EDT)

Email: lawoffice@richardkochlaw.com

RICHARD M. KOCH
HEARING EXAMINER

CONSENTED TO:

Signature: Sage A. Boyd
Sage A. Boyd Jul 27, 2026 11:32:22 EDT
Email: sboyd@ncdoj.gov

Sage A. Boyd
Special Deputy Attorney General
North Carolina Department of Justice

sboyd@ncdoj.gov

ATTORNEY FOR COMPLAINANT

Signature: Clark D. Tew
Email: ctew@popemcmillan.com

Clark D. Tew, Esq.
Pope McMillan, P.A.

ctew@popemcmillan.com

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

CLARK D TEW
POPE MCMILLAN PA
ctew@popemcmillan.com

SAGE BOYD
NC DEPARTMENT OF JUSTICE
sboyd@ncdoj.gov

NC DEPARTMENT OF LABOR
GENERAL COUNSEL'S OFFICE

via email.

THIS THE 21 DAY OF July 2026.

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
Karissa.sluss@oshrc.labor.nc.gov