

**FINAL ORDERS OF THE VIRGINIA COURTS
IN CONTESTED CASES ARISING UNDER THE
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT
2024**

Donnie Lee Jenkins Jr. d/b/a Donnie Jenkins Jr. Tree & Landscaping Service, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL2022-15915 (Circuit Court of the County of Fairfax)

Barnett Steel Erection, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL22000556-00 (Circuit Court of the City of Charlottesville)

Hazel Court Enterprises, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL13001561-00 (Circuit Court of the City of Chesapeake)

Thomas Builders of Virginia, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL21001798-00 (Circuit Court of the County of Bedford)

Perdue Foods, LLC, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL23000944-00 (Circuit Court of the County of Prince George)

Ashton Lewis Ruther Glen, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL24000025-00 (Circuit Court of the County of Caroline)

APG Mid-Atlantic, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL23004747-00 (Circuit Court of the County of Chesterfield)



VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

GARY G. PAN,)
 Commissioner of Labor and Industry,)
Plaintiff,)
 v.)
 DONALD LEE JENKINS, JR. d/b/a)
 DONNIE JENKINS JR. TREE & LANDSCAPING)
 SERVICE)
Defendant.)

Case No. CL2022-15915

FINAL ORDER

This cause came to be heard upon Commissioner Pan's Motion to Enforce Settlement Agreement against defendant Donald Lee Jenkins, Jr., declaring that the parties' Settlement Agreement, as presented at hearing, affirm the contested violations and amend the civil penalties to ^{12,000}~~20,000~~.00 for the Virginia Occupational Safety and Health ("VOSH") citations, identified by VOSH Inspection Number 1335210.

ABA
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UPON CONSIDERATION WHEREOF, it appearing to the Court that the defendant Mr. Jenkins, acting through his *Guardian ad Litem* responded to the Commissioner's settlement terms with a counteroffer, and to which the Commissioner then promptly accepted, it is ADJUDGED, ORDERED, and DECREED that there is effectively and legally a meeting of the minds sufficient to establish and enforce a settlement on the agreed terms reflected in the attached Settlement Agreement. Accordingly, Settlement Agreement as presented in Court shall be appended to this Final Order.

MM

9/11/24 cc: GAL

The defendant Mr. Jenkins is indigent and is unable to pay the cost of Guardian ad Litem's fees incurred in the case. Accordingly, it is ORDERED that the cost of Guardian ad

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Litem's representation of defendant in this case, which totals \$ 1715 shall be taxed as cost of proceedings and be paid by the Commonwealth of Virginia.

It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall strike this matter from the docket and place it among the ended civil cases.

The Clerk shall mail certified copies of this order to Defendant's Guardian ad Litem Alfredo Vasquez, Esquire, at 100 M Street, S.E., Suite 600, Washington, DC 20003.


Pursuant to *Rule 1:13*, endorsement shall be dispensed with.

JUDGE: 


ENTER: 9/6/24

I ask for this:

GARY G. PAN,
Commissioner of Labor and Industry

By: 
Alfred B. Albiston (VSB No. 29851)
Special Assistant Commonwealth's Attorney
Fairfax County
c/o Department of Labor and Industry
6606 West Broad Street, Suite 500
Richmond, Virginia 23230-1717

(804) 786-6760
(804) 786-8418 fax
alfred.albiston@doli.virginia.gov


Alfredo Vasquez (VSB 84569)
Guardian ad litem
100 M Street SE
Suite 600
Washington, DC 20003
202-525-7710
av@vasquezlawdc.com

GARY G. PAN
Commissioner of Labor and Industry

DONALD LEE JENKINS, JR., d/b/a Donnie Jenkins, Jr. Tree & Landscaping Service
VOSH Inspection No. 1404019

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by Gary G. Pan, Commissioner of Labor and Industry (Commissioner), and Donald Lee Jenkins, Jr., d/b/a Donnie Jenkins, Jr. Tree & Landscaping Service (Employer).

WHEREAS, on or about November 18, 2019, the Commissioner issued citations to the Employer alleging four serious violation and two willful-serious violations of the Virginia Occupational Safety and Health (VOSH) Standards. A total of \$272,169.00 in civil penalties were proposed by the Commissioner along with the violations. (Copy of the citations bearing VOSH inspection number 1404019, attached by reference hereto);

WHEREAS, the Employer filed a notice of contest of all violations and proposed penalties contained in the citations within fifteen working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, the Commissioner caused to be filed a Complaint to affirm the contested VOSH citations under Va. Code § 40.1-49.4(E) in the Fairfax County Circuit Court, which was assigned case number CL-2022-15915 (the "Litigation"); and

WHEREAS, the parties desire to settle the citations and associated litigation in a manner that will further protect and promote the safety and health of the employees of the Employer and avoid the time and expense of court proceedings without any finding of wrongdoing or liability on the part of Employer;

NOW, THEREFORE, the parties agree to the following:

TERMS AND CONDITIONS OF AGREEMENT

1. Upon full execution of the agreement, the Commissioner will modify the citations and penalties as follows:

- a. Citation 1, Item 1 is upheld as a Serious violation, and its \$12,726.00 penalty is amended to \$1,000.00 and affirmed;
- b. Citation 1, Item 2 is upheld as a Serious violation, and its \$1,645.00 penalty is amended to \$1,000.00 and affirmed;
- c. Citation 1, Item 3 is upheld as a Serious violation, and its \$1,645.00 penalty is amended to \$1,000.00 and affirmed;

DJ ABA

- d. Citation 1, Item 4 is upheld as a Serious violation, and its \$1,645.00 penalty is amended to \$1,000.00 and affirmed;
- e. Citation 2, Item 1 is upheld as a Willful-Serious violation, and its \$127,254.00 penalty is amended to \$4,000.00 and affirmed; and
- f. Citation 2, Item 2 is upheld as a Willful-Serious violation, and its \$127,254.00 penalty is amended to \$4,000.00 and affirmed.

These amendments will be made, provided Mr. Jenkins complies with requirements listed in paragraphs 2 through 4 below;

2. That the amended total penalties due of twelve thousand dollars (\$12,000.00) shall be paid to the Commonwealth as follows: upon release from his present incarceration Mr. Jenkins shall pay to the Commissioner \$12,000.00, to be paid in 35 monthly incremental payments of \$335.00, with a concluding 36th payment of \$275.00, each made on the first day of the month over thirty-six (36) successive months. The first monthly payment shall be due on the first day of the month that begins at least fifteen days after Mr. Jenkins' release from this incarceration. Each payment will be made in the form of a check or money order, payable to the "Treasurer of Virginia," with the VOSH inspection number 1404019, listed on each check. Payment must be mailed or delivered to:

Virginia Department of Labor and Industry
c/o Accounting
6606 West Broad St., Suite 500
Richmond, Virginia 23230-1717

- 3. Mr. Jenkins' responsibilities and duties under this Settlement Agreement over and above his responsibilities and duties under applicable law and regulation, shall cease once he has paid the \$12,000.00 adjusted penalties in full. Mr. Jenkins' responsibilities and duties under this Settlement Agreement shall otherwise continue until all such amounts have been paid in full and no further payments are due;
- 4. It is expressly understood that any penalty amount modifications in this Settlement Agreement are contingent upon Mr. Jenkins' full and timely payment of the penalties as adjusted. Mr. Jenkins' failure to substantially comply with the terms of this Order or to make a penalty payment by its due date constitutes a breach of this Order. Any breach shall mean that the originally proposed penalties of \$272,169.00 shall be reinstated and affirmed as a final order, and all unpaid amounts shall become due and payable 15 calendar days following the breach;
- 5. Pursuant to Va. Code § 2.2-614.1(C), returned checks or dishonored credit card or debit card payments shall incur a handling fee of the greater of \$35.00 or the amount of the costs charged by the financial institution, and shall not be considered timely payment.

DJ ABA

6. So long as no material breach occurs, the Commissioner agrees to waive any interest and costs otherwise assessable pursuant to Va. Code §§ 40.1-49.4(A)(4)(a) and 2.2-4805.

7. Any documentation required by paragraph 7 above, will be sent to the following address:

Jeremias Cruz-Corniel
Regional Safety Director
Virginia Department of Labor and Industry
9400 Innovation Drive, Suite 120
Manassas, Virginia 20110

8. Upon execution of this Agreement in full, counsel for the Commissioner will file a motion to dismiss the Litigation in the Fairfax County Circuit Court under the expectation that case CL-2022-15915 will be dismissed and the matter filed among the Court's closed cases. The Employer authorizes his *Guardian ad Litem* to endorse such an order on his behalf as "seen and agreed" and to take no steps to hinder the entry of such an order. Under 16 Va. Admin. Code § 25-60-340(F), this Agreement shall be incorporated into and made an exhibit of the dismissal order.

9. As consideration for the modification of the penalties originally proposed, the Employer agrees to withdraw its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining terms contained in this Agreement in accordance with its terms.

10. The Employer certifies that the violations affirmed in this agreement have been abated.

11. The Employer represents that it is entering into this Settlement Agreement in the spirit of conciliation, cooperation, and in an effort to avoid further litigation. This Agreement shall not be construed as an admission by Employer of civil or criminal liability for any violation or penalty alleged by the Commissioner. By entering into this Agreement, the Employer does not admit the truth of any alleged facts, any of the characterization of the Employer's alleged conduct, or any conclusions set forth in the citations issued in this matter. Neither this Agreement nor the Employer's consent to entry of a final order of the Commissioner pursuant to this Agreement shall constitute an admission by the Employer of civil liability for any violation alleged by the Commissioner.

12. This Agreement compromises and settles the above contested claims. Under Va. Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia will not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Agreement may be used for future enforcement proceedings and enforcement actions under Title 40.1 of the Code of Virginia against the Employer.

13. All citations and penalties, as modified above, including all new obligations contained in this Settlement Agreement, are a final order of the Commissioner of Labor and Industry.

14. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives and shall also bind and inure to the benefit of any successor in interest of the Employer, except that the Employer may not assign any right or obligation flowing from this Agreement.

15. This Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained in this document. This Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and citation(s), and all prior negotiations, offers, and agreements, whether written or oral, are either superseded or merged in this document. This Agreement cannot be amended except by a writing signed by the parties.

16. A court's ruling rendering any provision(s) of this Agreement invalid or unenforceable shall not affect the validity of the remaining provisions of the Agreement.

17. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

18. This Agreement may be executed in any number of copies, each of which shall be deemed a counterpart original.

{remainder of page intentionally left blank; signature page to follow}

DJ ABA

IN WITNESS WHEREOF, the Commissioner and the Employer, intending to be legally bound, duly acknowledges and executes this Settlement Agreement relating to VOSH Inspection Number 1404019.

DONALD LEE JENKINS, JR.

By: Donald Lee Jenkins Jr.
Donald Lee Jenkins, Jr.
Director and Owner
Donnie Jenkins, Jr. Tree & Landscaping Service

9-6-24
Date

GARY G. PAN,
Commissioner of Labor and Industry

By: [Signature]
Charles Stiff, Assistant Commissioner
Virginia Department of Labor and Industry
for Mr. Stiff w/ authorization

9-6-24
Date

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSH) Compliance
9400 Innovation Drive, Suite 120
Manassas, VA 20110
Phone: (703) 392-0900 Fax: (703) 392-0308



Citation and Notification of Penalty

To:
Donnie Jenkins Jr. Tree & Landscaping Service
and its successors
9078 Heritage Drive
Culpeper, VA 22701

Inspection Number: 1404019
Inspection Date(s): 05/29/2019-05/29/2019
Issuance Date: 11/18/2019

Inspection Site:
3405 Surrey Lane
Falls Church, VA 22042

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

Citation and Notification of Penalty. Described herein are alleged violations of Virginia's Occupational Safety and Health (VOSH) laws, standards and/or regulations. Any penalty proposed is based on the corresponding violation. In accordance with Virginia Code §40.1-49.4(b)(4), you must abate all alleged violations by the dates listed and pay the penalties proposed, unless, within 15 working days (excluding weekends and State and Federal holidays) from the date you receive this citation, you submit a written notice of contest to the Virginia Department of Labor and Industry Regional Office at the address listed above. Issuance of this citation does not constitute a finding by the Commissioner that you have violated the law, standard or regulation described unless you fail to file a written notice of contest or this citation is affirmed by a court of law.

Please read the enclosed booklet entitled *Employer Responsibilities and Courses of Action Following a VOSH Inspection* in conjunction with this citation to learn your rights and responsibilities.

Posting. Virginia law requires you to immediately post a copy of this Citation in a prominent place at or near the location of the violation(s), or if it is not practicable because of the nature of your operations to do so, in a place where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) have been abated, or for 3 working days (excluding weekends, State and Federal holidays), whichever is longer. **The penalty amounts may be marked out or covered up prior to posting. Please note that these penalty amounts are releasable by the Department in response to a Freedom of Information Act (FOIA) request.**

Informal Conference. You have the right to an informal conference with the VOSH Regional Safety Director at which you may present evidence to support amending the citation, order of abatement or penalties proposed. An informal conference, which is normally held during the 15 working day contest period, is optional. If you wish to attend an informal conference, you must contact the VOSH Regional Safety Director at the Regional Office listed above.

If you request an informal conference, you must notify your employees of the time and place. Be sure to bring to the conference any documentation of existing conditions as well as abatement steps taken thus far. If conditions warrant, this matter may be resolved amicably without the need for litigation, by way of an Informal Settlement Agreement.

Requesting an informal conference does not extend the 15 working day contest period.

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSH) Compliance
9400 Innovation Drive, Suite 120
Manassas, VA 20110

Inspection Number: 1404019
Inspection Date: 05/29/2019-
05/29/2019
Issuance Date: 11/18/2019



Citation and Notification of Penalty

Company Name: Donnie Jenkins Jr. Tree & Landscaping Service
Inspection Site: 3405 Surrey Lane Falls Church, VA 22042

Citation 1 Item 1 Type of Violation: **Serious**

Va. Code §40.1-49.4.0 and §59.1-409.B: The employer, Donnie Jenkins Jr. Tree & Landscaping Service, did not ensure that their employees who will be engaged in work within 10 feet of any overhead high voltage line, comply with the provisions of this chapter and the regulations prescribed and promulgated pursuant to it.

On May 28, 2019, located at 3405 Surrey Ln, Falls Church, Virginia 22042, An employee was in the process of climbing and cutting limbs from a maple tree that was to be removed from the property and during the course of work the employee secured himself to the tree in attempts to cut a limb that was located approximately 7 feet, 5 inches away from a 19,900 volt, primary, overhead high voltage line and in the process of cutting the limb the employee made contact with the overhead high voltage line and was electrocuted.

The employer did not ensure that employees were trained on the requirements of the Overhead High Voltage Safety Act, prior to the employees performing work within 10 feet of any overhead high voltage line.

Date by Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$12,726.00

Citation 1 Item 2 Type of Violation: **Serious**

16VAC25-73-30.A: The employer, Donnie Jenkins Jr. Tree & Landscaping Service, did not ensure that prior to permitting an employee to engage in any arboricultural activity covered by this regulation, the employer shall ensure that each employee receives orientation and training on the requirements of this regulation.

On May 25, 2019, and May 28, 2019, located at 3405 Surrey Ln, Falls Church, Virginia 22042, employees were performing arboricultural activities such as: climbing trees and utilizing chain saws to cut tree limbs and remove sections of the trees from the property, without the employer ensuring that each employee received orientation and training on the requirements of this regulation.

Date by Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$1,645.00

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSH) Compliance
9400 Innovation Drive, Suite 120
Manassas, VA 20110

Inspection Number: 1404019
Inspection Date: 05/29/2019-
05/29/2019
Issuance Date: 11/18/2019



Citation and Notification of Penalty

Company Name: Donnie Jenkins Jr. Tree & Landscaping Service
Inspection Site: 3405 Surrey Lane Falls Church, VA 22042

Citation 1 Item 3 **Type of Violation: Serious**

16VAC25-73-40.D.2: The employer, Donnie Jenkins Jr. Tree & Landscaping Service, did not ensure that workers engaged in arboricultural operations shall wear head protection (helmets) that conforms to ANSI Z89.1, and in accordance with 16VAC25-90-1910.135. Class E helmets shall be worn when working in proximity to electrical conductors, in accordance with ANSI Z89.1. Workers shall not place reliance on the dielectric capabilities of such helmets.

On May 25, 2019, and May 28, 2019, located at 3405 Surrey Ln, Falls Church, Virginia 22042, employees were performing arboricultural activities such as: climbing trees and utilizing chainsaws to cut tree limbs and remove sections of the trees from the property, without utilizing head protection while engaged in arboricultural operations.

Instance One: On May 25, 2019, employees were engaged in arboricultural operations when climbing, cutting and removal of an oak tree that was located in front of the dwelling, adjacent to the side walk. Employees were not utilizing head protection while engaged in these activities.

Instance Two: On May 28, 2019, employees were engaged in arboricultural operations when climbing, cutting in attempts to remove a maple tree that was located to the right side of the entrance to the driveway. Employees were not utilizing head protection while engaged in these activities.

Date by Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$1,645.00

Citation 1 Item 4 **Type of Violation: Serious**

16VAC25-73-40.D.7: The employer, Donnie Jenkins Jr. Tree & Landscaping Service, did not ensure that eye protection shall comply with 16VAC25-90-1910.133 and shall be worn when engaged in arboricultural operations.

On May 25, 2019, and May 28, 2019, located at 3405 Surrey Ln, Falls Church, Virginia 22042, employees were climbing and utilizing a chainsaw to cut tree limbs without utilizing any type of eye protection to protect against flying debris while performing arboricultural operations.

Instance One: On May 25, 2019, an employee was climbing and cutting an oak tree that was located in front of the dwelling adjacent to the sidewalk without utilizing eye protection to protect against flying debris while performing arboricultural operations.

Instance Two: On May 28, 2019, an employee was climbing and cutting a maple tree that was located to the right side of the entrance to the driveway without utilizing eye protection to protect against flying debris while performing arboricultural operations.

Date by Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$1,645.00

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSH) Compliance
9400 Innovation Drive, Suite 120
Manassas, VA 20110

Inspection Number: 1404019
Inspection Date: 05/29/2019-
05/29/2019
Issuance Date: 11/18/2019



Citation and Notification of Penalty

Company Name: Donnie Jenkins Jr. Tree & Landscaping Service
Inspection Site: 3405 Surrey Lane Falls Church, VA 22042

Citation 2 Item 1

Type of Violation: Willful-Serious

Va. Code §40.1-49.4.0 and §59.1-408.1: The employer, Donnie Jenkins Tree Service & Landscaping did not ensure that unless danger of contact with overhead high voltage lines has been guarded against as provided by §§ 59.1-410:1., in that no person shall, individually or through an agent or employee, perform, or require any other person to perform, any work, as defined in §§ 59.1-407, that will cause any person or tools, machinery, ladders, antennas, equipment, covered equipment, supplies, materials, or apparatus to be placed within 10 feet (3.1 meters) of any overhead high voltage line.

On May 28, 2019, located at 3405 Surrey Ln, Falls Church, Virginia 22042, An employee was in the process of climbing and cutting limbs from a maple tree that was to be removed from the property. The employee secured himself to the tree in an attempt to cut a limb that was located approximately 7 feet, 5 inches away from a 19,900 volt, primary, overhead high voltage line. In the process of cutting the limb the employee made contact with the overhead high voltage line and was electrocuted.

The investigation revealed that the employer was present and specifically aware that its employee was working in close proximity to overhead high voltage lines on the day of the accident and that it could contact the owner of the lines to have them de-energized. The investigation also revealed that the employer was present and specifically aware that its employee had cut limbs from the tree which contacted the overhead high voltage line on multiple occasions resulting in visible sparks/flashes in the time period preceding the fatal accident.

Date by Which Violation Must Be Abated:

Corrected During Inspection

Proposed Penalty:

\$127,254.00

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSH) Compliance
9400 Innovation Drive, Suite 120
Manassas, VA 20110

Inspection Number: 1404019
Inspection Date: 05/29/2019-
05/29/2019
Issuance Date: 11/18/2019



Citation and Notification of Penalty

Company Name: Donnie Jenkins Jr. Tree & Landscaping Service
Inspection Site: 3405 Surrey Lane Falls Church, VA 22042

Citation 2 Item 2

Type of Violation: Willful-Serious

Va. Code §40.1-49.4.0 and §59.1-410.A: The employer, Donnie Jenkins Jr. Tree & Landscaping Service, did not ensure that when any person desires to carry on any work in closer proximity to any overhead high voltage line than permitted by this chapter, the person responsible for the work shall promptly notify the owner or operator of the high voltage line on a working day, or in emergency situations as soon as possible under the circumstances, in the manner prescribed in §§ 59.1-411. The person responsible for the work shall ensure that the temporary safety arrangements described in this subsection are completed prior to the commencement of any such work.

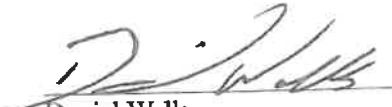
On May 28, 2019, located at 3405 Surrey Ln, Falls Church, Virginia 22042, An employee was in the process of climbing and cutting limbs from a maple tree that was to be removed from the property. The employee secured himself to the tree in an attempt to cut a limb that was located approximately 7 feet, 5 inches away from a 19,900 volt, primary, overhead high voltage line. In the process of cutting the limb the employee made contact with the overhead high voltage line and was electrocuted.

The investigation revealed that the employer was present and specifically aware that its employee was working in close proximity to overhead high voltage lines on the day of the accident and that it could contact the owner of the lines to have them de-energized. The investigation also revealed that the employer was present and specifically aware that its employee had cut limbs from the tree which contacted the overhead high voltage lines on multiple occasions resulting in visible sparks/flashes in the time period preceding the fatal accident.

The employer did not notify the owner of the overhead high voltage line to make necessary safety arrangements, nor did the employer ensure that temporary safety arrangements had been completed prior to the commencement of work being performed within 10 feet of any overhead high voltage line.

Date by Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$127,254.00


Daniel Wells
Regional Safety Director



Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSH) Enforcement
 9400 Innovation Drive, Suite 120
 Manassas, VA 20110
 Phone: (703) 392-0900 FAX: (703) 392-0308

INVOICE/DEBT COLLECTION NOTICE

Company Name: Donnie Jenkins Jr. Tree & Landscaping Service
Inspection Site: 3405 Surrey Lane Falls Church, VA 22042
Issuance Date: 11/18/2019
Inspection Number: 1404019

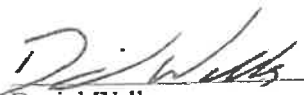
Summary of Proposed Penalties:	
Citation 1 Item 1, Serious	12,726.00
Citation 1 Item 2, Serious	1,645.00
Citation 1 Item 3, Serious	1,645.00
Citation 1 Item 4, Serious	1,645.00
Citation 2 Item 1, Willful-Serious	127,254.00
Citation 2 Item 2, Willful-Serious	127,254.00
TOTAL PROPOSED PENALTIES:	272,169.00

Pursuant to Virginia Code §40.1-49.4.A.4.(a), the Commissioner of the Department of Labor and Industry may assess interest on all past-due penalties as well as administrative costs incurred in the collection of the penalties for violations of Virginia Occupational Safety and Health (VOSH) laws, regulations, and standards. Interest charges are assessed at an annual rate in accordance with Virginia Code §2.2-4805.

Interest shall accrue from the date on which the citation, either as issued or as amended, becomes a final order of the Commissioner. A citation becomes a final order 15 working days after the date that the employer receives the citation unless the employer files a notice of contest with VOSH. **Interest is waived if the employer pays the full amount within 30 calendar days of the final order date.**

A debt is past-due 30 calendar days after the final order date unless the employer makes a satisfactory payment arrangement with the Commissioner. If the debt remains unpaid for more than 90 days, it is deemed delinquent and referred to the Office of the Attorney General or other collection agency for collection. Administrative costs incurred in collecting the debt will be added to the amount of the debt.

To avoid potential interest and collection costs, please send payment promptly for the total amount of the uncontested penalties shown on the citation to the Accounting Office, Virginia Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia 23219. You may use the enclosed self-addressed envelope. **Please make your check or money order payable to: "Commonwealth of Virginia". Please indicate the Inspection Number on the payment. Do not send payment to the Regional Office.**


 Daniel Wells
 VOSH Regional Safety Director

Date 11/18/19

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

GARY G. PAN,
Commissioner of Labor and Industry,

Plaintiff.

Case No. 22000556-00

v.

BARNETT STEEL ERECTION, INC.,

Defendant.

AGREED FINAL ORDER

COME NOW the parties, jointly and by counsel, having reached a settlement of all matters complained of in the Complaint, and moving that this Court enter this Agreed Final order embodying the terms of the settlement reached; and further

FINDING that pursuant to 16 Va. Admin. Code § 25-60-340(F) this Court has authority to approve a settlement of this action embodied in a court order; and therefore

Upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, and DECREED:

1. That the citation in VOSH Inspection 1456806 attached to the Complaint in this action as Exhibit A is hereby amended as follows:

- a. Citation 1, Item 1 is amended to an Other-Than-Serious violation of 29 C.F.R § 1926.753(d)(2)(ii) with a penalty of \$5,000.00
- b. Citation 1, Item 2 and Citation 1, Item 3 are grouped as Citation 1 Item 2a and 2b and amended to an Other-Than-Serious violation of 29 C.F.R § 1926.1421(a) and (b) with a penalty of \$5,000.00.

2. The total penalties from the amended citations are due and payable in two (2) equal installments of \$5,000.00 each. The first installment is due forty-

five (45) days from the date of this order. The second installment is due ninety (90) days after the date of this order. All penalty payments will be made payable to the "Treasurer of Virginia" and mailed to Department of Labor and Industry, c/o Accounting, 600 East Main Street, Suite 207, Richmond, VA 23219. The memo line will read "Inspection 1456806."

3. The Defendant certifies that the violations resulting from this Order have been abated. Unless already provided, within thirty calendar days of this Order, the Defendant agrees to provide documentation proving all violations alleged have been abated.

4. Within forty-five (45) days of the date of this Order, the Defendant will provide all potentially exposed employees who have or may conduct work in Virginia with Signal Person & Qualified Rigger Training in compliance with training documents provided by the Defendant to the Commissioner on October 16, 2023. Training must be provided at no cost to the employee and conducted in a language and format each employee understands. Within fifteen (15) days following such training, provide documentation proving such training was conducted, including a roster of attendees and the name of the trainer, to the regional office which issued the original citations.

5. The Defendant must comply with all portions of 16 Va. Admin. Code § 25-60-308, including but not limited to, employee notification requirements regarding abatement. Pursuant to Va. Code § 40.1-49.4(C), the failure to abate or provide abatement documentation may subject Defendant to a

subsequent follow-up inspection and additional citations and penalties, or may be deemed a violation of this Order, at the option of the Commissioner.

6. Neither this settlement agreement nor the Employer's waiver of its right to contest pursuant to this agreement constitutes any admission by Employer of a violation of the Occupational Safety and Health Act or regulation or standards promulgated thereunder. This settlement agreement shall not be offered, used, or admitted in evidence in any civil proceeding or litigation.

7. Employer retains the right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citation or the citation as amended to not violate the Occupational Safety and health Act or any standard promulgated thereunder. By entering into this agreement Employer does not admit the truth of any alleged facts, any of the characterizations of the Employer's alleged conduct or any of the conclusions set forth in the citation or amended citations issued in this matter.

8. That this agreement shall not be constructed as an admission by the Commissioner as to any factual or legal positions of the Defendant. Pursuant to Va. Code § 40.1-51.3:2, the fact of the issuance of a citation, the voluntary payment of a civil penalty by a party or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

9. That, as consideration for the modification of the terms of the

original citations, the Defendant hereby withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining items contained in this Final Order.

10. That the Defendant will post a copy of this Final Order for a period of fifteen (15) days in a conspicuous location where notices to its employees are generally posted.

11. That any modifications to citation classification, description, or penalty level, is contingent upon the Defendant's full payment of all penalties due as required by this Order. Failure by the Defendant to substantially comply with the terms of this agreement, including timely penalty payment, constitutes a breach, and upon any breach all originally proposed citations and penalties shall be reinstated and affirmed as a Final Order of this Court, and all unpaid amounts of the original proposed penalty will become a judgment against the Defendant in favor of the Commissioner fifteen (15) calendar days following the breach, and following written notice by the Commissioner to the Defendant by certified mail or commercial delivery service of such breach. Should the Defendant respond to such notice in writing within fifteen (15) working days disputing the existence of a material breach, the Commissioner may move to reinstate this action and move for appropriate relief from the Court. In such event, however, the Defendant will not be permitted to contest the underlying penalties or citations which are the subject of this Order, only the existence of a breach of this Order.

12. That given the Defendant's withdrawal of its notice of contest, this

action is DISMISSED WITH PREJUDICE, subject to the terms of this Order.

13. Nothing in this Order should be interpreted as precluded either party from taking appropriate action to enforce the terms of their agreement, or this Order.

14. Each party shall bear their own costs in this matter.

15. The Clerk will transmit a certified copy of this Order to the parties' counsel, and then will place this matter amongst the ended cases.

ENTERED this 25th day of July, 2024.

By: Claudia V. Womack, Sr.

Judge

We ask for this:

GARY G. PAN, Commissioner of Labor and Industry

By: 

Kaitlin M. Hopingardner, Esq. (VSB # 97034)
Al B. Albiston, Esq. (VSB # 29851)
Special Assistant Commonwealth's Attorney
City of Charlottesville
c/o Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, VA 23219
(804) 371-2631
(804) 371-6524 (fax)
kaitlin.hopingardner@doli.virginia.gov
al.albiston@doli.virginia.gov
Counsel for the Commissioner

Seen and agreed:

BARNETT STEEL ERECTION, INC.

By: 

Dan Deacon, Esq. (VSB # 87451)
CONN MACIEL CAREY LLP
5335 Wisconsin Avenue NW, Suite 660
Washington DC, 20015
(202)909-2738
ddeacon@connmaciel.com
Counsel for the Defendant

VIRGINIA:

IN THE CIRCUIT COURT FOR CITY OF CHESAPEAKE

GARY G. PAN,
Commissioner of Labor and Industry,

Plaintiff,

v.

Civil Action No. CL13001561-00

HAZEL COURT ENTERPRISES, INC.,

Defendant.

FINAL ORDER

This matter came before the Court on the plaintiff's Motion to Dismiss the Complaint of Gary G. Pan, Commissioner of Labor and Industry (Commissioner), as originally filed June 24, 2013, against the defendant Hazel Court Enterprises, Inc. (Hazel Court), and IT APPEARING that the Commissioner and Hazel Court have subsequently settled all outstanding issues through a separate Settlement Agreement, attached to this Order as Exhibit A as required by 16 Va. Admin. Code 25-60-340.F; and upon agreement of the parties and for good cause shown, it is therefore ADJUDGED, ORDERED, AND DECREED that:

The plaintiff's Motion to Dismiss is GRANTED and that this matter be and hereby is dismissed with prejudice.

The Clerk will strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

1/2

Entered this 20th day of May 2024.

By: Robin A. Kellogg
Hon.

I ask for this:

Alfred B. Albiston

Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
City of Chesapeake
c/o Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
(804) 786-6760
(804) 786-8418 Fax
Email: alfred.albiston@doli.virginia.gov

CERTIFIED TO BE A TRUE COPY
OF THE RECORD IN MY CUSTODY
ALAN P. KRASNOFF, CLERK CIRCUIT COURT,
CHESAPEAKE, VA
BY: Robin A. Kellogg
DEPUTY CLERK

Counsel for Plaintiff Commissioner of Labor and Industry

Seen and agreed:

Christopher H. Falk

Christopher H. Falk, Esq.
The Law Firm of Christopher H. Falk
205 S. Battlefield Blvd., Suite 100
Chesapeake, VA 23322
(757) 482-4224
(757) 482-3633 Fax
Falk@aol.com

Counsel for Defendant Hazel Court Enterprises, Inc.

2 h

GARY G. PAN
Commissioner of Labor and Industry

HAZEL COURT ENTERPRISES, INC.
Inspection Nos. 315815472 & 315942037

SETTLEMENT AGREEMENT

THIS AGREEMENT, made on this 17 day of March 2022 is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry (Commissioner) with Hazel Court Enterprises, Inc. (Employer).

WHEREAS, on or about September 22, 2011, the Commissioner issued safety citations to the Employer alleging serious violations of the Virginia Occupational Safety and Health (VOSH) Standards, inspection number 315815472 and assessing a total of \$7,350.00 proposed penalties;

WHEREAS, on or about September 20, 2011, the Commissioner issued a health citation to the Employer alleging serious violations of the VOSH Standards, inspection number 315942037, and assessing a total of \$3,150.00 proposed penalties;

WHEREAS, the Employer filed a notice of contest of the violation and penalty contained in the citation within fifteen working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, the Commissioner caused to be filed a Complaint to affirm the contested VOSH citations under Va. Code § 40.1-49.4(E) in the City of Chesapeake Circuit Court against the Employer and Ber Lem Company Incorporated, the real property owner, case number CL13001561-00; and

WHEREAS, the parties desire to settle these cases in a manner that will further protect and promote the safety and health of the employees of the Employer and avoid the time and expense of court proceedings;

NOW, THEREFORE, the parties agree to the following:

TERMS AND CONDITIONS OF AGREEMENT

1. Upon full execution of the Agreement, the Commissioner will modify the monetary penalties in the following manner:
 - a. Health citations in inspection no. 315815472 are affirmed with the \$3,150.00 proposed penalty reduced to \$600.00.
 - b. Safety citations in inspection no. 315942037 are affirmed with the \$7,350.00 proposed penalty reduced to \$1,800.00.
2. The Employer, upon execution of this Settlement Agreement, will pay the Commonwealth \$2,400.00 in payment of the penalty assessed for the above violations, to be paid as follows: twenty-four payments of \$100.00 each, payable on the first day of each month for the next twenty-four successive months. The first month payment shall be due on the first day of the month that begins at least fifteen days after execution of this Settlement Agreement. Each payment will be made in the form of a check or money order, payable to the "Commonwealth of Virginia", with the VOSH inspection numbers 315815472 and 315942037, noted on the check or money order.
3. Upon execution of this Agreement, the Commissioner, within thirty days, will file a motion to dismiss with prejudice the litigation against Ber Lem Company Incorporated, CL13001561-00.
4. Upon completion of the payment plan, the Commissioner will file a motion to dismiss with prejudice the litigation against the Employer, CL13001561-00. The Employer agrees to endorse such an order as "seen and agreed" and to take no steps to hinder the entry of such an order. Under 16 Va. Admin. Code § 25-60-340(F), this Agreement shall be made an exhibit and incorporated into the dismissal order.
5. The Employer represents that it is entering into this Agreement of Settlement in the spirit of conciliation and cooperation in an effort to avoid litigation. This Agreement shall not be construed as an admission by the Employer of civil or criminal liability for any violation or penalty alleged by the Commonwealth. By entering into this Agreement, the Employer does not admit the truth of any alleged facts, any of the characterization of Employer's alleged conduct, or any conclusions set forth in the citations issued in this matter. Neither this Agreement nor the Employer's consent to entry of a final order of the Commissioner under this Agreement shall

constitute an admission by the Employer of violation of VOSH laws, regulations, or standards promulgated thereunder.

6. It is expressly understood that any modification to the citations' penalty levels is contingent upon the Employer's full payment of all penalties due. Failure by the Employer to substantially comply with the terms of this agreement or to make a penalty payment by the due date constitutes a breach of this agreement. Any breach shall mean that all originally proposed penalties shall be reinstated and affirmed as a final order of the Commissioner, and all unpaid amounts shall become due and payable fifteen calendar days following the breach.
7. The Employer certifies that the cited violations referred to in this Agreement have been abated.
8. As consideration for the modification of the terms of the original penalty amount, the Employer agrees to withdraw its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining terms contained in this Agreement.
9. The Employer will post a copy of this Settlement Agreement for ten working days at the work site in a conspicuous location where it generally posts notices to its employees as required by 16 VAC § 25-60-40.
10. This Agreement settles the above contested claims. Under Va. Code § 40.1-51.3:2, the fact of an issuance of a citation under Chapter 3 of Title 40.1 of the Code of Virginia will not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.
11. This Agreement *shall not* be construed as an admission by the Employer of civil or criminal liability for any violation or penalty alleged by the Commissioner.
12. The citations and penalties, as modified above and any new obligations contained in this Agreement, are a final order of the Commissioner of Labor and Industry.

13. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and shall also bind and inure to the benefit of any successor in interest of the Employer, except that the Employer may not assign any right or obligation flowing from this Agreement.
14. This Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and citation(s), and all prior negotiations, offers, and agreements, whether written or oral, are either superseded or merged in this document. This agreement cannot be amended except by a writing signed by the parties.
15. A court's ruling rendering any provision(s) of this Agreement invalid or unenforceable shall not affect the validity of the remaining provisions of the Agreement.
16. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.
17. This Agreement may be executed in any number of copies, each of which shall be deemed a counterpart original.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW**

HAZEL COURT ENTERPRISES, INC.

By: Joanne West 3-17-22
Date

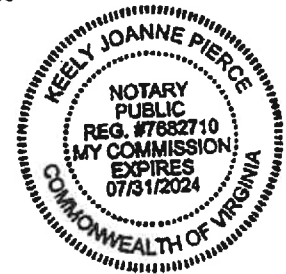
Commonwealth of Virginia, AT LARGE, to wit:

The foregoing instrument was acknowledged before me this 17 day of March 2022, by Joanne W. Falk (name), President (title) of Hazel Court Enterprises, Inc.

Keely Pierce
Notary Public

My commission expires: 7/31/2024

Commission Number: 1682710



GARY G. PAN,
COMMISSIONER OF LABOR AND INDUSTRY

By: Ron Graham
Ron Graham, Director
Occupational Health Compliance 3/17/22
Date

By: Marta Fernandez
Marta Fernandez, Director
Occupational Safety Compliance 3/17/22
Date

VIRGINIA: IN THE CIRCUIT COURT OF BEDFORD COUNTY

GARY G. PAN,
Commissioner of Labor and Industry,
Plaintiff,

v.

Case No. CL21001798-00

THOMAS BUILDERS OF VIRGINIA, INC.,
Defendant.

3-25-24

AGREED FINAL ORDER

IT APPEARING, on or about June 29, 2021, plaintiff Gary G. Pan, Commissioner of Labor and Industry (Commissioner) filed a civil Complaint against defendant Thomas Builders of Virginia, Inc. (TBOV) regarding contested citations and proposed penalties for violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry. (Copy of the citations attached to Complaint by reference).

WHEREAS a civil trial arising from the Commissioner's Complaint to enforce the contested citations is scheduled for May 1-2, 2024, before this Court; and

WHEREAS the parties desire to settle this case in a manner that will further, protect and promote the safety and health of the employees of TBOV and avoid the time and expense of trial and other contest proceedings;

COME NOW the parties having reached a settlement of all matters complained of in the Complaint, and upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED and DECREED:

1. Upon full execution of the agreement, but subject to TBOV's compliance with the remainder of this Agreed Order, the Commissioner will modify the citations as follows:

- a. Willful-Serious Citation 1, Items 1 and 2 are amended to a new grouped Serious Item 7a and 7b, and are affirmed as amended with a civil penalty of \$40,000.00.
- b. Serious Citation 2, Items 1 - 6 are affirmed as issued, with individual civil penalties of \$2,500.00 each (i.e., total penalties of \$15,000.00).

2. TBOV agrees to pay, and the Commissioner agrees to accept, twelve (12) monthly partial payments toward amended total penalty amount due equaling \$55,000.00, pursuant to the following schedule:

- a. Upon entry of this Agreed Order, TBOV shall pay to Commissioner an initial payment of \$5,500.00, on or before April 1, 2024; and
 - b. On or before May 1, 2024 and the first of each month thereafter through March 1, 2025, payments in the amount of \$4,500.00 (a total of 12 monthly payments).
3. Any monthly payment not received on or before the tenth (10th) day of the month will be considered a material breach of this Agreement. All payments must be made payable to "Treasurer of Virginia" and mailed or delivered to:

Virginia Department of Labor and Industry
c/o Accounting
600 E Main Street, Suite 207
Richmond, VA 23219

TBOV shall place a reference to "Inspection number 1474316" on any forms of payment.

4. Pursuant to Va. Code § 2.2-614.1(C), returned checks or dishonored credit card or debit card payments shall incur a handling fee of the greater of \$35.00 or the amount of the costs charged by the financial institution, and shall not be considered timely payment.

5. So long as no material breach occurs, the Commissioner shall waive any interest and administrative costs otherwise assessable pursuant to Va. Code §§ 40.1-49.4(A)(4)(a) and 2.2-4805.

6. Pursuant to Va. Code § 2.2-4805(C), should this account be referred for collection to the Division of Debt Collection, TBOV will be liable for reasonable attorney's fee, and TBOV agrees that 30% of the outstanding debt at the time of referral is a reasonable attorneys fee. Otherwise, each party shall bear their own costs in this matter.

7. For a period of two (2) years following the date of full execution of this Agreement TBOV agrees to the immediate consent, upon request to a TBOV representative, to the entry and inspection of TBOV's worksites within the Commonwealth of Virginia, without requiring or requesting that an administrative warrant be procured or produced. This explicitly includes consent to monitoring inspections of TBOV's worksite with cause, upon reasonable suspicion of a possible violation of law, and upon reference to the agency's established procedures for selecting worksites for programmed or unprogrammed inspections. This requirement extends only to the scope of consent that TBOV is capable of providing when performing services on a multi-employer worksite, however TBOV agrees not to oppose or obstruct the granting of consent to the Commissioner's request to inspect as to any other employer on such a site.

8. All notifications and any other correspondence relating to this Agreement, with the exception of payments, to the Commissioner will be sent to the following address:

Russell Bambarger
Regional Safety Director

Virginia Department of Labor and Industry
3013 Peters Creek Road
Roanoke, VA 24019

With carbon copy to:
Alfred B. Albiston
Senior Staff Attorney
Virginia Department of Labor and Industry
600 E Main Street, Suite 207
Richmond, VA 23219

9. All notifications and any other correspondence relating to this Agreed Order directed to TBOV will be sent to the following addresses:

R. Patrick Bolling, Esq.
WOODS ROGERS VANDEVENTER BLACK PLC
828 Main Street, 19th Floor
Lynchburg, VA 24504

10. The reclassification and penalty reductions in this Order are expressly contingent upon TBOV's compliance with the terms of this Agreement. Should a breach occur, upon the sending of written notice by the Commissioner to TBOV, the originally proposed and issued citations and penalties will become a Final Order of the Commissioner not subject to contest as of the date of sending of the notice, as if no notice of contest was ever filed for these citations. The entire unpaid balance of the debt subject to the payment plan (the unpaid remainder of the adjusted \$55,000.00) shall become due fifteen days following the date of sending of the notice.

11. Should TBOV become the subject of any insolvency proceeding, including but not limited to TBOV seeking (voluntarily or involuntarily) federal bankruptcy protection, the entire unpaid balance of the debt subject to the payment plan (the unpaid remainder of the adjusted \$55,000.00) shall become immediately due and payable.

12. TBOV represents that it is entering into this settlement in the spirit of conciliation and cooperation in an effort to avoid litigation. This Order shall not be construed as an admission by TBOV of civil liability for any violation alleged by the Commissioner.

13. TBOV certifies that the violations accepted as modified in this Agreement have been abated. Unless already provided, within thirty calendar days of the execution of this Order, TBOV agrees to provide to the Commissioner documentation proving the violations alleged have been abated.

14. As consideration for the modification of the terms of the original citations, TBOV agrees to withdraw its original notice of contest filed with respect to the above-referenced VOSH citations and agrees the remaining terms contained in this Order.

15. TBOV will post a copy of this Agreed Order for a period of fifteen (15) days at all

its worksites in Virginia in a conspicuous location where notices to its employees are generally posted.

16. This Agreed Order compromises and settles the above contested claims. Under Va. Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia will not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

17. All citations and penalties, as modified above, including all new obligations contained in this settlement agreement, are a final order of the Commissioner of Labor and Industry.

18. This Agreed Order and the rights and obligations hereunder will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives and will also bind and inure to the benefit of any successor in interest of TBOV, except that TBOV may not assign any right or obligation flowing from this Order.

19. This settlement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This settlement constitutes the entire agreement between the parties concerning the aforesaid settlement and citation(s), and all prior negotiations, offers, and agreements, whether written or oral, are either superseded or merged in this document. This agreement cannot be amended except by further Order of this Court.

20. Any court's ruling rendering any provision(s) of this Agreed Order invalid or unenforceable shall not affect the validity of the remaining provisions of the Order.

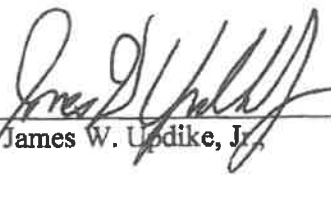
21. Each party signing this Agreed Order hereby represents and warrants that they have the authority to bind the entity on behalf of which he or she has signed.

22. The parties represent that the facts stated in the whereas clauses are true and accurate.

23. That this action is DISMISSED WITH PREJUDICE, subject to the terms of this Order.

24. The Clerk will transmit a certified copy of this Order to the parties' counsel, and then will place this matter amongst the ended cases.

ENTERED this 25th MARCH day of ~~February~~, 2024.

By: 
Judge James W. Updike, Jr.


We ask for this:

GARY G. PAN, Commissioner of Labor and Industry

By: 

Alfred B. Albiston (VSB # 29851)
James B. Brooks (VSB # 89036)
Special Assistant Commonwealth's Attorneys
Bedford County
c/o Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, VA 23219
(804) 786-6760
(804) 786-8418 (fax)
alfred.albiston@doli.virginia.gov
james.brooks@doli.virginia.gov



BEDFORD CO CIRCUIT COURT
A TRUE COPY - TESTE
JUDY REYNOLDS, CLERK
BY: 
Crystal Overstreet, Deputy Clerk
Electronic Certification Pursuant
To §17.1-250.3C2 and §17.1-251.4

Counsel for the Commissioner

Seen and agreed:

THOMAS BUILDERS OF VIRGINIA, INC.

By: 

R. Patrick Bolling (VSB No. 87334)
Patrick.bolling@wrvblaw.com
Ruth Turley (VSB No. 99406)
Ruth.turley@wrvblaw.com
Woods Rogers Vandeventer Black PLC
828 Main Street, 19th Floor
Lynchburg, Virginia 24504
Telephone: (434) 846-9000
Facsimile: (434) 422-5722

3.26.24-cc
cc: Albiston
nance
Bolling

Counsel for Thomas Builders of Virginia, Inc.

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE GEORGE COUNTY

GARY G. PAN
Commissioner of Labor and Industry

Plaintiff,

v.

Civil Action No. CL23-944

PERDUE FOODS, LLC

Defendant.

FINAL ORDER

This matter came before the Court on the parties' Joint Motion to Dismiss the Complaint of plaintiff Gary G. Pan, Commissioner of Labor and Industry (Commissioner), originally filed on September 28, 2023, against the defendant Perdue Foods, LLC (Perdue), and


IT APPEARING that the Commissioner and Perdue have subsequently settled all outstanding issues through a separate Settlement Agreement, attached to this Order as Exhibit A as required by 16 Va. Admin. Code 25-60-340.F; upon agreement of the parties and for good cause show, it is therefore ADJUDGED, ORDERED, AND DECREED that:

The Joint Motion to Dismiss is GRANTED and that this matter be and hereby is dismissed with prejudice.

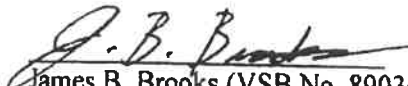
The Clerk will strike this matter from the docket of this Court, place it among the ended

civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 15 day of Feb. 2024.

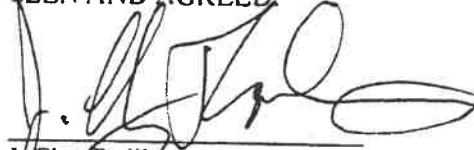
By: 
Hon. W. Edward Tomko, III

WE ASK FOR THIS:


James B. Brooks (VSB No. 89036)
Diane Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorneys
Prince George County
c/o Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
Tel.: 804-786-0610
Fax: 804-786-8418
Email: james.brooks@doli.virginia.gov

Counsel for Plaintiff Commissioner

SEEN AND AGREED:


J. Clay Rollins (VSB No. 84382)
W. Ryan Waddell (VSB No. 91148)
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
901 East Byrd Street, Suite 1300
Richmond, VA 23219
Tel.: 804-663-2332
Fax: 804-225-8641
Email: clay.rollins@ogletreedeakins.com

Counsel for Defendant Perdue Foods, LLC

2

I, JOYCE B. JACKSON, CLERK, HEREBY CERTIFY
THAT THE DOCUMENTS TO WHICH THIS
AUTHENTICATION IS AFFIXED IS A TRUE COPY OF A
RECORD IN THE PRINCE GEORGE CIRCUIT
COURT, AND THAT I AM CUSTODIAN OF THAT RECORD.

2/15/2024
Date


Clerk/Deputy Clerk

Exhibit A
Settlement Agreement

GARY G. PAN
Commissioner of Labor and Industry

PERDUE FOODS, LLC
Inspection No. 1529782

SETTLEMENT AGREEMENT

THIS AGREEMENT, made on this 19th day of December 2023 is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry ("Commissioner") with Perdue Foods, LLC (the "Employer") (collectively, the "Parties").

WHEREAS, on October 29, 2021, the Commissioner issued safety citations to the Employer alleging two Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards, Inspection Number 1529782 and assessing a total of \$26,550.00 in proposed penalties;

WHEREAS, the Employer filed a notice of contest of the violation and penalty contained in the citation within fifteen working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia; and

WHEREAS, the Commissioner caused to be filed Complaints to affirm the contested VOSH citations under Va. Code § 40.1-49.4(E) in the Prince George County Circuit Court, under case number CL-23-944 (the "Litigation"); and

WHEREAS, the Parties desire to settle this case in a manner that will further protect and promote the safety and health of the employees of the Employer and avoid the time and expense of further court proceedings;

NOW, THEREFORE, the Parties agree to the following:

TERMS AND CONDITIONS OF AGREEMENT

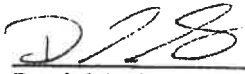
1. Upon full execution of the Agreement, the Commissioner modifies the citations and monetary penalties in Inspection Number 1529782 in the following manner:
 - a. Citation 1, Item 1 is affirmed as a Serious violation; the \$13,275.00 proposed penalty is maintained. Citation 1, Item 1 is further modified to only include 16 Va. Admin. Code § 25-60-120. The violation cited in the alternative, 29 C.F.R. § 1910.178(n)(6), is stricken from the citation.
 - b. Citation 1, Item 2 is vacated; the \$13,275.00 proposed penalty is withdrawn.
2. The Employer, within sixty days of the execution of this Agreement, will implement enhanced abatement actions as follows:
 - a. The turret truck aisle at the facility shall be completely enclosed by a chain-linked fence.
 - b. The gates to the fence enclosing the turret truck aisle shall be locked whenever the turret truck is in operation. The key to the gates must be signed out from the facility's central supply room and must remain attached to the same key that is used to turn on and operate the turret truck.
 - c. A lockout tagout process must be used for entry to the turret truck aisle by anyone at the facility, except for the driver of the turret truck. This lockout tagout process must be mentioned to every new hire though the onboarding orientation.
 - d. The lockout tagout process must require an entrant to the turret truck aisle to place lock devices on the battery cables of the turret truck to prevent the unit from turning on and becoming operational.
 - e. The system put in place by subparagraphs (a) through (d), above, must be written into the Standard Operating Procedure (SOP) that applies to the turret truck aisle. All employees must be presented with this SOP and must sign to acknowledge that they have been presented, read, and understand the SOP.
3. The Employer, upon execution of this Settlement Agreement, will pay the Commonwealth \$13,275.00 for the settlement of the claims associated with the above violations. Payment must be received within thirty days from the date this settlement agreement is executed. Payment must be made in the form of a check or money order. Payment must be made payable to the "Commonwealth of Virginia", with the VOSH Inspection Number 159782, written on the check or money order. Payment must be mailed or delivered to: Department of Labor and Industry, c/o Accounting, Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia, 23219.

4. Pursuant to Va. Code § 2.2-614.1(C), returned checks or dishonored credit card or debit card payments shall incur a handling fee of the greater of \$35.00 or the amount of the costs charged by the financial institution, and shall not be considered timely payment.
5. So long as no material breach occurs, the Commissioner agrees to waive any interest and administrative costs otherwise assessable under Va. Code § 40.1-49.4(A)(4)(a) and § 2.2-4805.
6. Upon execution of this Agreement in full, counsel for the Commissioner will file a motion to dismiss the Litigation in the Prince George County Circuit Court under the expectation that case CL-23-944 will be dismissed and the matter filed among the Court's closed cases. The Employer agrees to endorse such an order as "seen and agreed" and to take no steps to hinder the entry of such an order. Under 16 Va. Admin. Code § 25-60-340(F), this Agreement shall be made an exhibit and incorporated into the dismissal order.
7. The Employer represents that it is entering into this Agreement in the spirit of conciliation and cooperation to avoid further litigation. This Agreement shall not be construed as an admission by the Employer of civil or criminal liability for any violation or penalty alleged by the Commonwealth. By entering into this Agreement, the Employer does not admit the truth of any alleged facts, any of the characterizations of Employer's alleged conduct, or any conclusions set forth in the citations issued in this matter. Neither this Agreement nor the Employer's consent to entry of a final order of the Commissioner under this Agreement shall constitute an admission by the Employer of violation of VOSH laws, regulations, or standards promulgated thereunder.
8. It is expressly understood that any modification to the citations and proposed penalty levels is contingent upon the Employer's compliance with this Agreement and full payment of all penalties due. Failure by the Employer to substantially comply with the terms of this agreement or to make a penalty payment by the due date constitutes a breach of this agreement. Any breach shall mean that all originally proposed penalties shall be reinstated and affirmed as a final order of the Commissioner, and all unpaid amounts shall become due and payable fifteen calendar days following the breach.
9. The Employer certifies that the cited violations referred to in this Agreement have been abated.
10. As consideration for the modification of the terms of the original penalty amount, the Employer agrees to withdraw its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining terms contained in this Agreement.
11. The Employer will post a copy of this Settlement Agreement for ten working days at the work site in a conspicuous location where it generally posts notices to its employees as required by 16 Va. Admin. Code § 25-60-40.

12. This Agreement settles the above contested claims. Under Va. Code § 40.1-51.3:2, the fact of an issuance of a citation under Chapter 3 of Title 40.1 of the Code of Virginia will not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia against the Employer.
13. This Agreement *shall not* be construed as an admission by the Employer of civil or criminal liability for any violation or penalty alleged by the Commissioner.
14. The citations and penalties, as modified above, including all new obligations contained in this Agreement, are a final order of the Commissioner of Labor and Industry.
15. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and shall also bind and inure to the benefit of any successor in interest of the Employer, except that the Employer may not assign any right or obligation flowing from this Agreement.
16. This Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and citations, and all prior negotiations, offers, and agreements, whether written or oral, are either superseded or merged in this document. This agreement cannot be amended except by a writing signed by the parties.
17. A court's ruling rendering any provision of this Agreement invalid or unenforceable shall not affect the validity of the remaining provisions of the Agreement.
18. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.
19. This Agreement may be executed in any number of copies, each of which shall be deemed a counterpart original.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW

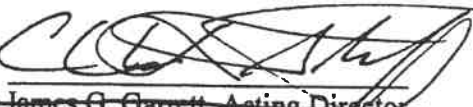
PERDUE FOODS, LLC

By: 
Daniel Stein

12-19-2023
Date

Title: Director of Operations

**GARY G. PAN,
Commissioner of Labor and Industry**

By: 
~~James G. Garrett, Acting Director~~
~~Occupational Safety Compliance~~
Charles Stiff
Assistant Commissioner

12/21/23
Date

VIRGINIA:

IN THE CIRCUIT COURT FOR CAROLINE COUNTY

GARY G. PAN,)	
Commissioner of Labor and Industry,)	
)	
<i>Plaintiff,</i>)	
v.)	Case No. CL24-25
)	
ASHTON LEWIS RUTHER GLEN, INC.)	
)	
<i>Defendant.</i>)	

FINAL ORDER

This matter came before the Court on plaintiff Gary G. Pan, Commissioner of Labor and Industry's ("Commissioner's") Motion to Dismiss the Commissioner's Complaint, originally filed on January 9, 2024, against the defendant Ashton Lewis Ruther Glen, Inc. ("Ashton Lewis" or "the Employer"), and IT APPEARING that the Commissioner and Ashton Lewis have subsequently settled all outstanding issues through a separate Settlement Agreement, attached to this Order as Exhibit A as required by 16 Va. Admin. Code 25-60-340.F; upon agreement of the parties and for good cause show, it is therefore ADJUDGED, ORDERED, AND DECREED that:

The Commissioner's Motion to Dismiss is GRANTED and that this matter be and hereby is dismissed with prejudice.

The Clerk will strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 13th day of December 2024.

By: *J. Martin Barr*
Hon.

A COPY TESTE:
SUSAN W. MINARCHI, CLERK

BY *Rachel Farmer OC*
DEPUTY CLERK

I ASK FOR THIS:

GARY G. PAN
Commissioner of Labor and Industry



Alfred B. Albiston (VSB No. 29851)
Special Assistant Commonwealth's Attorneys
Fairfax County
c/o Department of Labor and Industry
6606 W. Broad Street, Suite 500
Richmond, Virginia 23230-1717
Tel.: 804-786-6760
Fax: 804-786-8418
Email: alfred.albiston@doli.virginia.gov

Counsel for Plaintiff Commissioner

SEEN AND AGREED:

ASHTON LEWIS RUTHER GLEN, INC.



W, Ryan Waddell (VSB # 91148)
OGLETREE, DEAKINS NASH SMOAK & STEWART, P.C.
908 East Byrd St., Suite 1300
Richmond, VA 23219
Tel: (804) 663-2332
Fax: (804) 225-8641
Ryan.waddell@ogletreedeakins.com

Counsel for Defendant Ashton Lewis

VIRGINIA:

IN THE CIRCUIT COURT FOR CAROLINE COUNTY

GARY G. PAN,)	
Commissioner of Labor and Industry,)	
)	
<i>Plaintiff,</i>)	
v.)	Case No. CL24-25
)	
ASHTON LEWIS RUTHER GLEN, INC.)	
)	
<i>Defendant.</i>)	

EXHIBIT A TO FINAL ORDER

(Settlement Agreement to contested VOSH citations, inspection number 1560949)

GARY G. PAN
Commissioner of Labor and Industry

ASHTON LEWIS – RUTHER GLEN, INC.
Inspection No. 1560949

SETTLEMENT AGREEMENT

THIS AGREEMENT, made on this 8 day of November 2024 is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry (“Commissioner”) with Ashton Lewis – Ruther Glen, Inc. (the “Employer”) (collectively, the “Parties”).

WHEREAS, on January 14, 2022, the Commissioner issued safety citations to the Employer alleging two Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards, Inspection Number 1560949 and assessing a total of \$13,434.00 in proposed penalties;

WHEREAS, the Employer filed a notice of contest of the violation and penalty contained in the citation within fifteen working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia; and

WHEREAS, the Commissioner caused to be filed a Complaint to affirm the contested VOSH citations under Va. Code § 40.1-49.4(E) in the Caroline County Circuit Court, under case number CL-24-25 (the “Litigation”); and

WHEREAS, the Parties desire to settle this case in a manner that will further protect and promote the safety and health of the employees of the Employer and avoid the time and expense of further court proceedings;

NOW, THEREFORE, the Parties agree to the following:

TERMS AND CONDITIONS OF AGREEMENT

1. Inspection No. 1560949 and this Settlement Agreement are in connection with Employer's facility located at 17258 Doggetts Fork Road, Ruther Glen, Virginia 22546. Upon full execution of the Agreement, the Commissioner modifies the citations and monetary penalties in the following manner:
 - a. Citation 1, Item 1a is vacated.
 - b. Citation 1, Item 1b is affirmed.
 - c. The total proposed penalty of \$13,434.00 is modified to \$8,060.00.
2. The Employer agrees to the enhanced abatement actions as follows:
 - a. Prior to resuming operations at the Ruther Glen facility, the Employer must have a written machine-specific and compliant lock out tagout procedure for the machine which caused the injury that initiated inspection number 1529782 and must then train employees and other workers at the facility consistent with this procedure.
 - b. The Employer will notify VOSH within sixty days of resuming operations at the Ruther Glen facility.
3. The Employer, upon execution of this Settlement Agreement, will pay the Commonwealth **\$8,060.00** for the settlement of the claims associated with the above violations. Payment must be received within thirty days from the date this settlement agreement is executed. Payment must be made in the form of a check or money order. Payment must be made payable to the "Commonwealth of Virginia", with the VOSH Inspection Number 1560949, written on the check or money order. Payment must be mailed or delivered to: Department of Labor and Industry, c/o Accounting, Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia, 23219.
4. Pursuant to Va. Code § 2.2-614.1(C), returned checks or dishonored credit card or debit card payments shall incur a handling fee of the greater of \$35.00 or the amount of the costs charged by the financial institution, and shall not be considered timely payment.
5. So long as no material breach occurs, the Commissioner agrees to waive any interest and administrative costs otherwise assessable under Va. Code § 40.1-49.4(A)(4)(a) and § 2.2-4805.
6. Upon execution of this Agreement in full, counsel for the Commissioner will file a motion to dismiss the Litigation in the Caroline County Circuit Court under the expectation that case CL-24-25 will be dismissed and the matter filed among the Court's closed cases. The Employer agrees to endorse such an order as "seen and agreed" and to take no steps to hinder the entry of such an order. Under 16 Va. Admin. Code § 25-60-

340(F), this Agreement shall be made an exhibit and incorporated into the dismissal order.

7. The Employer represents that it is entering into this Agreement in the spirit of conciliation and cooperation to avoid further litigation. This Agreement shall not be construed as an admission by the Employer of civil or criminal liability for any violation or penalty alleged by the Commonwealth. By entering into this Agreement, the Employer does not admit the truth of any alleged facts, any of the characterizations of Employer's alleged conduct, or any conclusions set forth in the citations issued in this matter. Neither this Agreement nor the Employer's consent to entry of a final order of the Commissioner under this Agreement shall constitute an admission by the Employer of violation of VOSH laws, regulations, or standards promulgated thereunder.
8. It is expressly understood that any modification to the citations and proposed penalty levels is contingent upon the Employer's compliance with this Agreement and full payment of all penalties due. Failure by the Employer to substantially comply with the terms of this agreement or to make a penalty payment by the due date constitutes a breach of this agreement. Any breach by Employer shall mean that all originally proposed penalties shall be reinstated and affirmed as a final order of the Commissioner, and all unpaid amounts shall become due and payable fifteen calendar days following the breach.
9. The Employer certifies that the cited violations referred to in this Agreement have been abated or would be abated as provided in Section 2.
10. As consideration for the modification of the terms of the original penalty amount, the Employer agrees to withdraw its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining terms contained in this Agreement.
11. The Employer will post a copy of this Settlement Agreement for ten working days at the work site in a conspicuous location where it generally posts notices to its employees as required by 16 Va. Admin. Code § 25-60-40.
12. This Agreement settles the above contested claims. Under Va. Code § 40.1-51.3:2, the fact of an issuance of a citation under Chapter 3 of Title 40.1 of the Code of Virginia will not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia against the Employer.
13. This Agreement *shall not* be construed as an admission by the Employer of civil or criminal liability for any violation or penalty alleged by the Commissioner.
14. The citations and penalties, as modified above, including all new obligations contained in this Agreement, are a final order of the Commissioner of Labor and Industry.

15. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and shall also bind and inure to the benefit of any successor in interest of the Employer, except that the Employer may not assign any right or obligation flowing from this Agreement.
16. This Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and citations, and all prior negotiations, offers, and agreements, whether written or oral, are either superseded or merged in this document. This agreement cannot be amended except by a writing signed by the parties.
17. A court's ruling rendering any provision of this Agreement invalid or unenforceable shall not affect the validity of the remaining provisions of the Agreement.
18. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.
19. This Agreement may be executed in any number of copies, each of which shall be deemed a counterpart original.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW

ASHTON LEWIS – RUTHER GLEN, INC.

By: Chris M...

11/8/24
Date

Title: General Counsel

**GARY G. PAN,
Commissioner of Labor and Industry**

By: Jeffrey Cabral
Jeffrey Cabral, Director
Occupational Safety Compliance

11/8/2024
Date

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSH)
Compliance

North Run Business Park,
 1570 E. Parham Road
 Richmond, VA 23228

Citation and Notification of Penalty

Company Name: Ashton Lewis- Ruther Glen Inc.
Inspection Site: 17258 Doggetts Fork Road Ruther Glen, VA 22546

Inspection Number: 1560949
Inspection Date: 10/29/2021-
 01/12/2022

Issuance Date: 01/14/2022



Citation 1 Item 1 a Type of Violation: **Serious**

1910.147(c)(4)(i):Procedures shall be developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

a) At this place of employment, located at 17258 Doggetts Fork Road, Ruther Glen, VA 22546, on or about 10/27/2021, the employer failed to include in their written lock out tag out program, machine specific procedures for each machine being maintained and operated such as but not limited to, the slab/shim conveyor system in the sawmill basement production area, exposing employees to an amputation hazard.

On approximately 10/27/2021, at approximately 7:05 AM, an employee sustained an amputation to his right middle finger tip, his right ring finger tip and his right little finger tip, while cleaning out accumulated sawdust in the conveyor belt adjustment area in order to track the slab/shim conveyor belt that was energized at the time of the accident.

Date by Which Violation Must Be Abated:

February 15, 2022

Proposed Penalty:

\$13434.00

Citation 1 Item 1 b Type of Violation: **Serious**

1910.147(d)(4)(i):Lockout or tagout devices shall be affixed to each energy isolating device by authorized employees.

a) At this place of employment, located at 17258 Doggetts Fork Road, Ruther Glen, VA 22546, on or about 10/27/2021, the employer failed to ensure that employees locked out and de-energized the slab/shim conveyor system in the sawmill basement production area before cleaning, exposing employees to a amputation hazard.

On approximately 10/27/2021, at approximately 7:05 AM, an employee sustained an amputation to his right middle finger tip, his right ring finger tip and his right little finger tip, while cleaning out accumulated sawdust in the conveyor belt adjustment area in order to track the slab/shim conveyor belt that was energized at the time of the accident.

Date by Which Violation Must Be Abated:

Corrected on Inspection

Proposed Penalty:

\$0.00


 T. Harvey Trice
 Central Region Safety Director

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSH) Enforcement
 North Run Business Park,
 1570 E. Parham Road
 Richmond, VA 23228
 Phone: (804) 371-3104 FAX: (804) 371-3166



INVOICE/DEBT COLLECTION NOTICE

Company Name: Ashton Lewis- Ruther Glen Inc.
Inspection Site: 17258 Doggetts Fork Road Ruther Glen, VA 22546
Issuance Date: 01/14/2022
Inspection Number: 1560949

Summary of Proposed Penalties:

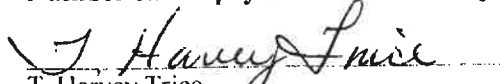
Citation I Item 1a, Serious	13434.00
Citation I Item 1b, Serious	0.00
TOTAL PROPOSED PENALTIES:	\$13,434.00

Pursuant to Virginia Code §40.1-49.4.A.4.(a), the Commissioner of the Department of Labor and Industry may assess interest on all past-due penalties as well as administrative costs incurred in the collection of the penalties for violations of Virginia Occupational Safety and Health (VOSH) laws, regulations, and standards. Interest charges are assessed at an annual rate in accordance with Virginia Code §2.2-4805.

Interest shall accrue from the date on which the citation, either as issued or as amended, becomes a final order of the Commissioner. A citation becomes a final order 15 working days after the date that the employer receives the citation unless the employer files a notice of contest with VOSH. **Interest is waived if the employer pays the full amount within 30 calendar days of the final order date.**

A debt is past-due 30 calendar days after the final order date unless the employer makes a satisfactory payment arrangement with the Commissioner. If the debt remains unpaid for more than 90 days, it is deemed delinquent and referred to the Office of the Attorney General or other collection agency for collection. Administrative costs incurred in collecting the debt will be added to the amount of the debt.

To avoid potential interest and collection costs, please send payment promptly for the total amount of the uncontested penalties shown on the citation to the Accounting Office, Virginia Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia 23219. You may use the enclosed self-addressed envelope. **Please make your check or money order payable to: "Commonwealth of Virginia". Please indicate the Inspection Number on the payment. Do not send payment to the Regional Office.**


 T. Harvey Trice
 Central Region Safety Director

1-14-2022

 Date

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

GARY G. PAN,
Commissioner of Labor and Industry,

Plaintiff,

v.

Case No. CL23004747-00

APG MID-ATLANTIC, INC.,

Defendant.

AGREED FINAL ORDER

COME NOW the parties, the plaintiff Gary G. Pan, Commissioner of Labor and Industry ("Commissioner") and defendant APG Mid-Atlantic, Inc. ("Defendant"), jointly and by counsel, having reached a settlement of all matters complained of in the Complaint, and moving that this Court enter this Agreed Final order; and further

FINDING that pursuant to 16 Va. Admin. Code § 25-60-340(F) this Court has authority to approve a settlement of this action embodied in a court order; and therefore

Upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, and DECREED:

1. That the citation in VOSH Inspection 1548405 attached to the Complaint in this action as Exhibit A is hereby amended as follows:

- a. Serious Citation 1, Item 1a is reduced from serious to other than serious with a reduced penalty of \$8,060.00.
- b. Serious Citation 1, Item 1b is reduced from serious to other than serious.
- c. Serious Citation 1, Item 1c is reduced from serious to other than serious.

2. The Defendant agrees to pay to the Commonwealth of Virginia the amount of eight

thousand and sixty dollars (\$8,060.00) in full satisfaction of the total civil penalties. The total penalties from the amended citations are due and payable within thirty (30) business days after the date of this Order. All penalty payments will be made payable to the "Treasurer of Virginia" and mailed to Department of Labor and Industry, c/o Accounting, 6606 W. Broad Street, Suite 500, Richmond, Virginia 23230. The memo line will read "Inspection 1548405."

3. Pursuant to Va. Code § 2.2-614.1(C), returned checks or dishonored credit card or debit card payments shall incur a handling fee of the greater of \$35.00 or the amount of the costs charged by the financial institution, and shall not be considered timely payment.

4. The Defendant, upon filing of this Order, will contact a third-party safety consultant to schedule and hold an on-site consultation at its Chesterfield facility, located at 1231 Willis Road, North Chesterfield, VA 23237. The consultation will consist of a comprehensive safety review, which will include reviewing lock-out/tag-out procedures at the location and a standdown supplementary training for all employees on: (i) lock-out/tag-out procedures specific to each machine/piece of equipment for which lock-out/tag-out is required; and (ii) inspecting lock-out/tag-out devices regularly. If the Defendant wishes to use VOSH consultation services, it may contact Ms. Jennifer Rose at jennifer.rose@doli.virginia.gov or at (804) 786-7776.

5. The Defendant must follow and abide by the recommendations of the third-party safety consultant.

6. The Defendant will have eighteen months from the date of this Order to hold the consultation and implement the consultant's recommendations.

7. That upon filing of this Order, the Defendant will invest at least \$5,374 in enhancements to its safety training and programs, to include the safety consultation and

implementation of the consultant's recommendations.

8. The Defendant will provide the Commissioner with documentation proving such consultation has occurred and recommendations were implemented within eighteen months from the date of this Order. The documentation consisting of proof must include evidence of the consultation; any report and/or document by the consultant, including a document listing the recommendations; evidence that the recommendations were actuated; and documentation of the costs associated, to include a minimum of \$5,374 spent on the enhancement of safety training and programs, the safety consultation, and implementation of the consultant's recommendations. The documentation required must be sent to Shannon Timberlake, either through e-mail at shannon.timberlake@doli.virginia.gov or by mail at the following address: Shannon Timberlake, Central Region Safety Director, Virginia Department of Labor and Industry, 1570 East Parham Road, Richmond, Virginia 23228.

9. The Defendant certifies that the violations alleged by the Commissioner have been abated.

10. That this Order shall not be construed as an admission by the Defendant of civil liability for any violation alleged by the Commissioner. This Order shall also not be construed as an admission by the Defendant of the truth of any alleged facts, the characterization of defendant's alleged conduct, or any conclusions set forth in the citations issued in this matter.

11. That this Order shall not be constructed as an admission by the Commissioner as to any factual or legal positions of the Defendant. Pursuant to Va. Code § 40.1-51.3:2, the fact of the issuance of a citation, the voluntary payment of a civil penalty by a party or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in

evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

12. That, as consideration for the modification of the terms of the original citations, the Defendant hereby withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining items contained in this Final Order.

13. That the Defendant will post a copy of this Final Order for a period of fifteen (15) calendar days in a conspicuous location where notices to its employees are generally posted.

14. That any modifications to citation classification, description, or penalty level, is contingent upon the Defendant's full payment of all penalties due as required by this Order. Failure by the Defendant to substantially comply with the terms of this Order, including timely penalty payment, constitutes a breach.

15. That upon any breach, all originally proposed citations and penalties shall be reinstated and affirmed as a Final Order of this Court, and all unpaid amounts of the original proposed penalty will become a judgment against the Defendant in favor of the Commissioner fifteen (15) calendar days following the breach and following written notice by the Commissioner to the Defendant by certified mail or commercial delivery service of such breach. Should the Defendant respond to such notice in writing within fifteen (15) working days disputing the existence of a material breach, the Commissioner may move to reinstate this action and move for appropriate relief from the Court. In such event, however, the Defendant will not be permitted to contest the underlying penalties or citations which are the subject of this Order, only the existence of a breach of this Order.

16. All prior negotiations, offers, and agreements, whether written or oral, between the parties are either superseded or merged in this document.

17. That given the Defendant's withdrawal of its notice of contest, this action is DISMISSED WITH PREJUDICE, subject to the terms of this Order.

18. Nothing in this Order should be interpreted as precluding either party from taking appropriate action to enforce the terms of this Order.

19. Each party shall bear their own costs in this matter.

20. The Clerk will transmit a certified copy of this Order to the parties' counsel, and then will place this matter amongst the ended cases.

ENTERED this 18 day of December, 2024.

By: _____

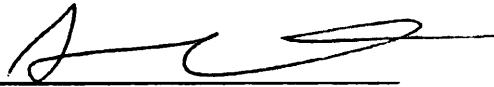
Judge

A COPY TESTE:
AMANDAL. FOHL, CLERK

BY: _____
DEPUTY CLERK

We ask for this:

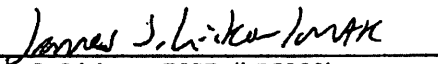
GARY G. PAN, Commissioner of Labor and Industry

By: 

Anderson V. O'Connell, Esq. (VSB # 98329)
Kaitlin M. Hoppingardner, Esq. (VSB # 97034)
Special Assistant Commonwealth's Attorney
Chesterfield County
c/o Department of Labor and Industry
6606 W. Broad St, Suite 500
Richmond, Virginia 23230
(804) 786-6427
(804) 786-8418 (fax)
anderson.oconnell@doli.virginia.gov
kaitlin.hoppingardner@doli.virginia.gov
Counsel for the Commissioner

Seen and agreed:

APG MID-ATLANTIC, INC.

By: 
James S. Liskow (VSB # 75883)
DeCaro, Doran, Siciliano, Gallagher & DeBlasis, LLP
3050 Chain Bridge Rd, Suite 300
Fairfax, Virginia 22030
(703) 255-6667
(703) 352-1256 (fax)
jliskow@decarodoram.com
Counsel for the Defendant