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HAWAII
LABOR RELATIONS BOARD

Attorneys for Complainant Director, Department
of Labor and Industrial Relations

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of DIRECTOR,)	CASE NO. OSH 2004-17
)	
DEPARTMENT OF LABOR AND)	STIPULATION AND SETTLEMENT
INDUSTRIAL RELATIONS,)	AGREEMENT; EXHIBIT A; APPROVAL
)	AND ORDER
Complainant,)	
)	
vs.)	
)	
ISLAND DEMO, INC.,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director")
and Respondent ISLAND DEMO, INC. ("Respondent") having reached a full and complete
settlement of the above-captioned contested case presently pending before the Hawai'i Labor
Relations Board ("Board") stipulate and agree as follows:

On or about September 15, 2004 to September 24, 2004, the Director, by and
through the State of Hawai'i's Occupational Safety and Health Division ("HIOSH"), inspected
Respondent's workplace located at 1350 Sand Island Access Road, Honolulu, Hawaii 96819.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on October 25, 2004 ("Citation") to Respondent alleging violations of the Hawai'i Occupational Safety and Health Standards and assessed an aggregate penalty of \$7,500.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawai'i Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 1350 Sand Island Access Road, Honolulu, Hawaii 96819.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirement of HRS chapter 396, the Hawai'i Occupational Safety and Health Law.
4. Respondent has abated each violation listed in the Citation.
5. The Citation is amended to read as follows:
 - a. Citation 1 Item 2: An employee who fell 47' to the lower level could have been protected from falling through a hole by an appropriate cover over the opening.
 - b. Citation 1 item 3a: An employee fell 47' to a lower level because a cover over the opening was not secured to prevent accidental displacement by employees.
 - c. Citation 1 Item 3b: An employee fell 47' to a lower level because an opening was not properly marked with the word "HOLE" or

"COVER" to provide warning of a fall hazard.

6. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

7. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose other than proceedings under the Hawai'i Occupational Safety and Health Law.

8. Respondent shall post a copy of this Agreement and Order in a prominent place where it will be readily observable by all affected employees, e.g., a location from which its employees operate to carry out their activities. The Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. Respondent shall continue to comply with HRS chapter 396, the Hawai'i Occupational Safety and Health Law, and the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawai'i Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, _____.

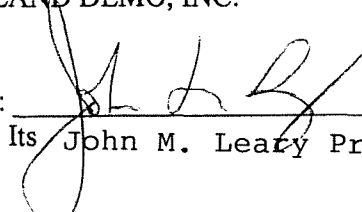
APPROVED AS TO FORM:

ISLAND DEMO, INC.




ANNE T. HORIUCHI BELL
Attorney for Respondent
Island Demo, Inc.

By:


Its John M. Leary President/CEO


APPROVED AS TO FORM:

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS, STATE OF
HAWAII

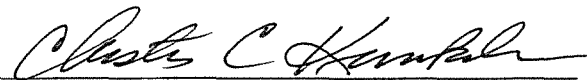

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Department of Labor and
Industrial Relations, State of Hawai'i

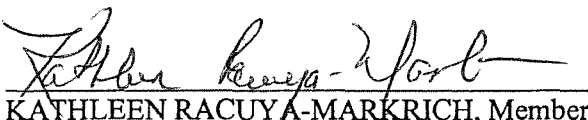

NELSON B. BEFITELE

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:


BRIAN K. NAKAMURA, Chair

ORDER NO: 135
DATED : APRIL 29, 2005


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

In re: Director, Department of Labor and Industrial Relations vs. Island Demo, Inc., OSH 2004-17, Stipulation and Settlement Agreement, Exhibit "A"; Approval and Order

State of Hawaii

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET, ROOM 425

Honolulu, HI 96813

Phone: (808) 586-9110

FAX: (808) 586-9104



Certified Number: 7003 3110 0003 1480 5691

Citation and Notification of Penalty

To:
Island Demo Inc
and its successors
2769 Kilihau St
Honolulu, HI 96819

Inspection Number: 307260182 Charles Flippo

Inspection Date(s): 09/15/2004 - 09/24/2004

Issuance Date: 10/25/2004

OSHA ID: D3062

Optional Report No.: 05604

Inspection Site:
1350 Sand Island Access Rd
Honolulu, HI 96819

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.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 10/25/2004. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 307260182
Inspection Dates: 09/15/2004 - 09/24/2004



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/25/2004

Citation and Notification of Penalty

Company Name: Island Demo Inc
Inspection Site: 1350 Sand Island Access Rd, Honolulu, HI 96819

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

29 CFR 1926.21(b)(2) [Refer to chapter 12-111.1, HAR] was violated because:

An employee who fell 47' from an upper level was not informed of potential safety hazards prior to working in the area.

29 CFR 1926.21(b)(2) states "The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury."

Location: Sand Island Waste Water Treatment Plant

Abatement documentation such as written, video graphic, or photographic evidence of abatement is required.

Date By Which Violation Must be Abated:	Corrected
Penalty:	\$2,500.00

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

29 CFR 1926.501(b)(4)(i) [Refer to chapter 12-121.2, HAR] was violated because:

An employee fell 47' to the lower level because proper procedures were not followed in covering an opening to prevent falls.

29 CFR 1926.501(b)(4)(i) states "Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes."

Location: Sand Island Wastewater Treatment Plant

Abatement documentation such as written, video graphic, or photographic evidence of abatement is required.

Date By Which Violation Must be Abated:	Corrected
Penalty:	\$2,500.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 307260182
Inspection Dates: 09/15/2004 - 09/24/2004



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/25/2004

Citation and Notification of Penalty

Company Name: Island Demo Inc
Inspection Site: 1350 Sand Island Access Rd, Honolulu, HI 96819

The alleged violations below (3a & 3b) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 3a Type of Violation: Serious

29 CFR 1926.502(i)(3) [Refer to chapter 12-121.2, HAR] was violated because:

An employee fell 47' to a lower level because a cover over the opening was not secured to prevent removal thus exposing employees to a fall hazard.

29 CFR 1926.502(i)(3) states "All covers shall be secured when installed so as to prevent accidental displacement by the wind, equipment, or employees."

Location: Sand Island Wastewater Treatment Plant

Abatement Documentation Required

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$2,500.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 307260182
Inspection Dates: 09/15/2004 - 09/24/2004



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/25/2004

Citation and Notification of Penalty

Company Name: Island Demo Inc
Inspection Site: 1350 Sand Island Access Rd, Honolulu, HI 96819

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

29 CFR 1926.502(i)(4) [Refer to chapter 12-121.2, HAR] was violated because:

An employee fell 47' to a lower level because an opening was not properly marked to prevent exposing employees to fall hazards.

29 CFR 1926.502(i)(4) states "All covers shall be color coded or they shall be marked with the word "HOLE" or "COVER" to provide warning of the hazard."

Location: Sand Island Wastewater Treatment Plant

Abatement documentation such as written, video graphic, or photographic evidence of abatement is required.

Date By Which Violation Must be Abated:

Corrected

NELSON B. BEFITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813



SUMMARY OF PENALTIES

Company Name: Island Demo Inc
Inspection Site: 1350 Sand Island Access Rd
Honolulu, HI 96819
Issuance Date: 10/25/2004

Summary of Penalties for Inspection Number 307260182

Citation 01, Serious	=	\$7,500.00
TOTAL PENALTIES	=	\$7,500.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.