

ORIGINAL

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Attorney General of Hawaii

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Labor Division
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Honolulu, Hawaii 96813
Telephone: 586-1450

HAWAII LABOR
RELATIONS BOARD

Attorneys for Complainant Director
of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. OSH 2012-13
) (Inspection No. 316265404)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,) STIPULATION AND SETTLEMENT
) AGREEMENT; EXHIBIT A; APPROVAL
Complainant,) AND ORDER
)
vs.)
)
HILBERS, INC.,)
)
Respondent.)

STIPULATION AND SETTLEMENT AGREEMENT

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

On or about May 11, 2012, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 805 Pohukaina Street, Honolulu, Hawaii, 96813.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on May 29, 2012 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,155.00. 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, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 805 Pohukaina Street, Honolulu, Hawaii, 96813.
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 requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The Citation is amended as follows:
 - a. Citation 1, item 1, alleging a serious violation of 29 CFR 1926.304(h)(1): no change to the serious characterization and \$412.50 penalty;
 - b. Citation 1, item 2a, alleging a serious violation of 29 CFR 1926.403(b)(2): amend to 'other-than-serious,' and reduce the grouped penalty of \$412.50 to \$330.00.
 - c. Citation 1, item 2b, alleging a serious violation of 29 CFR 1926.405(d): no change to the serious characterization.

d. Citation 1, item 3a, alleging a serious violation of 29 CFR 1926.404(f)(6): amend to 'other-than-serious,' and reduce the grouped \$330.00 penalty to \$0.

e. Citation 1, item 3b, alleging a serious violation of 29 CFR 1926.405(g)(2)(iv): amend to 'other-than-serious.'

6. The Director reduces the aggregate penalty from \$1,155.00 to \$742.50 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. 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.

8. If Respondent fails to fulfill any condition of this Agreement within the time stated, the characterization of the violations that were reduced to 'other-than-serious' along with the original penalty amounts shall automatically and without further notice be reinstated, and all the original violations shall be final and conclusive and shall be treated as such with regard to any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

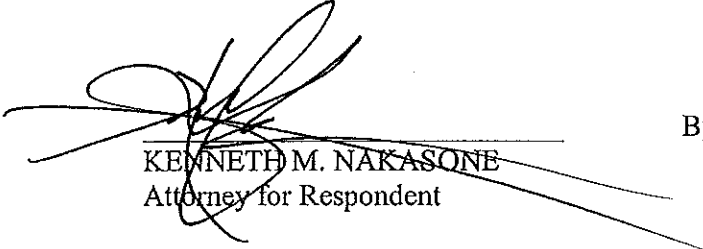
11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

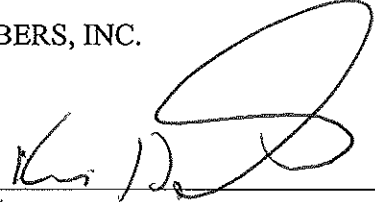
12. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, October 22, 2012.

APPROVED AS TO FORM:

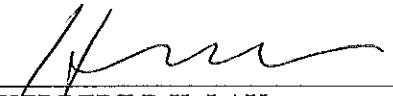
HILBERS, INC.


KENNETH M. NAKASONE
Attorney for Respondent

By: 
Its PRESIDENT

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii


DWIGHT TAKAMINE

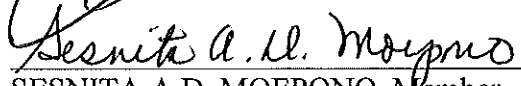
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 486

DATED: October 22, 2012



JAMES B. NICHOLSON, Chair



SESNITA A.D. MOEPONO, Member



ROCK B. LEY, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 2150 0000 0119 6840

Citation and Notification of Penalty

To:
Hilbers Inc
and its successors
1210 Stabler Ln
Yuba City, CA 95993

Inspection Number: 316265404
Inspection Date(s): 05/11/2012- 05/11/2012
Issuance Date: 05/29/2012

Inspection Site:
805 Pohukaina St
Honolulu, HI 96813

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 5, 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 violations 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 (examples: 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 12-51-22 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.

ABATEMENT CERTIFICATION

DIANTHA M. GOO, ADMINISTRATOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

Hilbers Inc
1210 Stabler Ln
Yuba City, CA 95993

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

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



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 05/29/2012. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 423, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Hilbers Inc
Inspection Site: 805 Pohukaina St, Honolulu, HI 96813

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

29 CFR 1926.304(h)(1) [Refer to chapter 12-110-50(a), HAR] was violated because:

A Ryobi 7.5" table saw, serial #XX120973809, did not have an upper guard installed at the time of inspection. The employer was not able to locate the upper guard at the project site. An unguarded blade exposed employees to potential serious injuries.

29 CFR 1926.304(h)(1) states "Each circular crosscut table saw shall be guarded by a hood which shall meet all the requirements of paragraph (i)(1) of this section for hoods for circular ripsaws."

Location: Second floor level backroom

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 412.50

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Hilbers Inc
Inspection Site: 805 Pohukaina St, Honolulu, HI 96813

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

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

29 CFR 1926.403(b)(2) [Refer to chapter 12-110-50(a), HAR] was violated because:

A flexible extension cord and a circuit breaker box were not used according to the manufacturer's listing and labeling. The extension cord was spliced and wired into the circuit breaker box to bring temporary power for the second floor level lighting of the commercial building under renovation. The electrical cord and circuit breaker box not being used per the manufacturer's listing and labeling exposed employees to an electrical hazard with the potential for serious injuries.

29 CFR 1926.403(b)(2) states "Installation and use. Listed, labeled, or certified equipment shall be installed and used in accordance with instructions included in the listing, labeling, or certification."

Location: Second floor level DJ booth area

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 412.50

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Hilbers Inc
Inspection Site: 805 Pohukaina St, Honolulu, HI 96813

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

29 CFR 1926.405(d) [Refer to chapter 12-110-50(a), HAR] was violated because:

Energized parts of a circuit breaker panel box were exposed because it was missing a dead front. A non-dead fronted, energized circuit breaker panel box exposed employees to an electrical hazard with the potential for serious injuries.

29 CFR 1926.405(d) states "Switchboards and panelboards. Switchboards that have any exposed live parts shall be located in permanently dry locations and accessible only to qualified persons. Panelboards shall be mounted in cabinets, cutout boxes, or enclosures designed for the purpose and shall be dead front. However, panelboards other than the dead front externally-operable type are permitted where accessible only to qualified persons. Exposed blades of knife switches shall be dead when open."

Location: Second floor level DJ booth area '

Date By Which Violation Must be Abated:	Corrected During Inspection
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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Hilbers Inc
Inspection Site: 805 Pohukaina St, Honolulu, HI 96813

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

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

29 CFR 1926.404(f)(6) [Refer to chapter 12-110-50(a), HAR] was violated because:

A 100 foot long, 3-wire, yellow extension cord was missing its ground pin thus exposing employees to an electrical hazard with a potential for serious injuries.

29 CFR 1926.404(f)(6) states "Grounding path. The path to ground from circuits, equipment, and enclosures shall be permanent and continuous."

Location: Group fitness room area

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 330.00

See pages 1 through 5 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: 316265404
Inspection Dates: 05/11/2012-05/11/2012
Issuance Date: 05/29/2012



Citation and Notification of Penalty

Company Name: Hilbers Inc
Inspection Site: 805 Pohukaina St, Honolulu, HI 96813

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


29 CFR 1926.405(g)(2)(iv) [Refer to chapter 12-110-50(a), HAR] was violated because:

The outer protective jacket of a 100 foot long, 3-wire, yellow extension cord was pulled back one-half inch from the receptacle head thus allowing the inner insulated conductors to be exposed. The lack of flexible cord strain relief exposed the employees to potential electrical hazards.

29 CFR 1926.405(g)(2)(iv) states "Strain relief. Flexible cords shall be connected to devices and fittings so that strain relief is provided which will prevent pull from being directly transmitted to joints or terminal screws."

Location: Group fitness room area

Date By Which Violation Must be Abated: Corrected During Inspection



DIANTHA M. GOO
Administrator

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

10/08

DISTRIBUTION SHEETCASE NO. 2012-13 DECISION NO. _____ ORDER NO. 485 DATE SENT 10/22/12

NOTICE _____

EMPLOYERSSTATE OF HAWAII

 _____ X GOVERNOR
 _____ ATTORNEY GENERAL H. Law
 _____ CHIEF NEGOTIATOR
 _____ DHRD

UNION & ATTORNEYS

 _____ HFFA
 _____ HGEA
 _____ HSTA
 _____ SHOPO
 _____ UHPA
 _____ UPW
 _____ ATTORNEY
 _____ ATTORNEY
 _____ ATTORNEY
 _____ ATTORNEY
 _____ ATTORNEY
 _____ ATTORNEY

DEPARTMENT OF EDUCATION

 _____ CHAIRMAN, BOARD OF EDUCATION 1
 _____ SUPERINTENDENT 1

UNIVERSITY OF HAWAII

 _____ CHAIRMAN, BOARD OF REGENTS 1
 _____ PRESIDENT 2
 _____ General Counsel 1

MISCELLANEOUS

 _____ B & F (IMPASSE MATTERS)
 _____ LIBRARY OF CONGRESS**
 15 _____ PUBLICATION DISTRIBUTION CTR**
 1 _____ RICHARDSON SCHOOL OF LAW LIB**
 1 _____ STATE ARCHIVES**
 2 _____ UH LIBRARY (SERIALS REC.)
 1 _____ WILLIAM PUETTE, CLEAR, UH**

CITY & COUNTY OF HONOLULU

 _____ MAYOR
 _____ DEPT OF HUMAN RESOURCES
 _____ CORPORATION COUNSEL

HLRB

 _____ X CHAIR
 _____ X BOARD MEMBER
 _____ X BOARD MEMBER
 _____ X EXECUTIVE OFFICER
 _____ DECISION FILED
 _____ X ORDER FILE NE
 _____ BULLETIN BOARD

HAWAII COUNTY

 _____ MAYOR
 _____ DEPT OF PERSONNEL
 _____ CORPORATION COUNSEL

KAUAI COUNTY

 _____ MAYOR
 _____ DEPT OF PERSONNEL
 _____ COUNTY ATTORNEY

OTHER PARTIES IN INTEREST OR ATTORNEYS

X Kenneth Nakasone

MAUI COUNTY

 _____ MAYOR
 _____ DEPT OF PERSONNEL
 _____ CORPORATION COUNSEL

COPIES SENT

 _____ CERTIFIED COPIES 2
 _____ OTHER 5
 _____ TOTAL COPIES 7

UPON NOTIFICATION FROM HLRB ON _____
 A COPY OF ATTACHED WAS PICKED UP:
 BY _____ FOR _____ ON _____

*CRRR: Sent by Certified Mail,
 Return Receipt Requested

**Send copies of ALL decisions.