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Transaction ID 56337046
Case No. OSH 2014-1

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Attorneys for Respondent
HALE MAHAOLU

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

vs.

HALE MAHAOLU,

Respondent.

CASE NO. OSH 2014-1
(Inspection No. 316270644)

STIPULATION AND SETTLEMENT
AGREEMENT; APPROVAL AND
ORDER 626

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and

Respondent Hale Mahaolu ("Hale Mahaolu"), 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 June 7 through June 21, 2013, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Hale Mahaolu's workplace located at 1037 Wainee Street, Lahaina, Hawai'i 96761.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on December 3, 2013 ("Citation") to Hale Mahaolu alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$155,375.

Hale Mahaolu timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the Director and Hale Mahaolu, 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 of the Hawaii Revised Statutes ("HRS").
2. At all relevant times, Hale Mahaolu maintained a workplace at 1037 Wainee Street, Lahaina, Hawai'i 96761.
3. At all relevant times, Hale Mahaolu 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. The Director and Hale Mahaolu agree to resolve the following citation, issued to Hale Mahaolu in relation to Inspection Number 316270644:

Citation 1 Item 1 – Type of Violation: Serious

29 CFR 1926.1101(k)(9) [Refer to Chapter 12-110-50(a), HAR]

Location: Lahaina Surf

Penalty: \$1,375.00

Citation 2 Item 1 – Type of Violation: Serious

29 CFR 1926.1101(f)(1)(i) [Refer to Chapter 12-110-50(a), HAR]

Location: Lahaina Surf

Penalty: \$53,900.00

Citation 2 Item 2 – Type of Violation: Serious

29 CFR 1926.1101(k)(2)(ii) [Refer to Chapter 12-110-50(a), HAR]

Location: Lahaina Surf

Penalty: \$23,100.00

The citation description above shall supersede and replace the description in the citation and notification of penalty issued to Hale Mahaolu on December 3, 2013.

5. Hale Mahaolu agrees that it has or will abate each violation listed in paragraph 4 above in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Hale Mahaolu shall submit the completed abatement certification to HIOSH no later than within 10 calendar days of the Effective Date of this Agreement; failure to timely do so may result in additional penalties or follow up inspections.

6. For the purpose of settlement, Hale Mahaolu shall make a total payment of \$78,375.00 to the Director of Budget and Finance not more than three (3) business days after the Agreement is approved and filed by the Board or Respondent shall automatically and without further notice be liable for the entire original penalty sum of \$155,375.00, which shall be immediately due and owing. If 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 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.

7. This Agreement and any actions taken to comply with its terms are a result of compromise of disputed claims and shall not be construed as an admission of the allegations and findings set forth in the Citation or of violation, fault, liability, or wrongdoing of any kind by Hale Mahaolu. Hale Mahaolu stipulates that, only as between HIOSH and Hale Mahaolu, Hale Mahaolu will not dispute that subsequent violations of HRS Chapter 396 and rules issued under authority of HRS Chapter 396 found within 36 months of the Effective Date of this Agreement are repeat violations under HRS § 396-10.

8. Upon approval by the Board, this Agreement shall become a final order of the Director.

9. Hale Mahaolu 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. Hale Mahaolu shall continue to comply with HRS Chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

11. This Agreement shall become effective upon its execution by the Director, Hale Mahaolu and the Board. The effective date ("Effective Date") shall be the

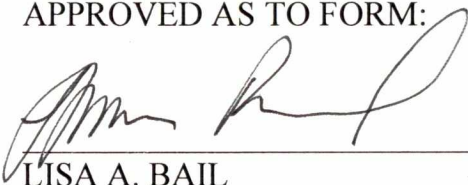
date upon which the Director, Hale Mahaolu or the Board, whoever is later in time, executes this consent order.

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

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

DATED: Honolulu, Hawaii, November 13, 2014.

APPROVED AS TO FORM:



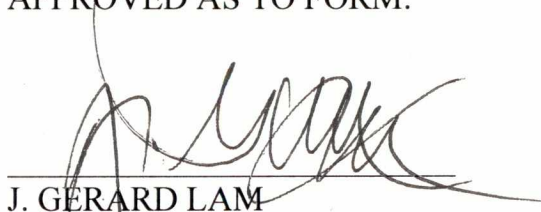
LISA A. BAIL
Attorney for Respondent
Hale Mahaolu

HALE MAHAOLU



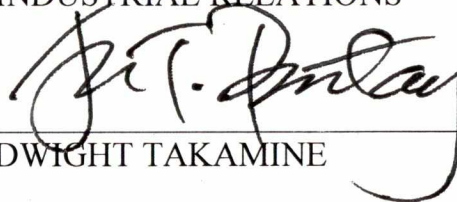
RICHARD NISHIHARA
President
Hale Mahaolu

APPROVED AS TO FORM:



J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



For

DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY

HAWAII LABOR RELATIONS BOARD:



JAMES B. NICHOLSON, Chair



SESNITA A.D. MOEPONO, Member



ROCK B. LEY, Member

Director, Department of Labor and Industrial Relations v. Hale Mahaolu Corporation,
OSH 2014-1 (Inspection No. 316270644) –Stipulation and Settlement Agreement