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Case No. 2015-17

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STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. OSH 2015-17
	)	
DIRECTOR, DEPARTMENT OF LABOR	)	STIPULATION AND SETTLEMENT
AND INDUSTRIAL RELATIONS,	)	AGREEMENT; EXHIBIT "A"; APPROVAL
	)	AND ORDER
Complainant,	)	ORDER NO. 720
	)	
vs.	)	
	)	
CERTIFIED CONSTRUCTION, INC.,	)	
	)	
Respondent.	)	
	)	

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director of Labor and Industrial Relations ("Director") and Respondent CERTIFIED CONSTRUCTION, 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 April 16, 2015, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 3675 Kilauea Avenue, Honolulu, Hawaii 96816.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on June 8, 2015 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed penalties totaling \$8,700.00. 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 Hawaii Revised Statutes ("HRS") § 396-11.
2. At all relevant times, Respondent maintained a workplace at 3675 Kilauea Avenue, Honolulu, Hawaii 96816.
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. Respondent shall submit the completed abatement certification to HIOSH no later than fourteen (14) days after this Agreement is approved and filed; failure to timely do so may result in additional penalties or follow up inspections.

5. The Citation is amended as follows:

a. The aggregate penalty is reduced from \$8,700.00 to \$8,000.00.

6. The aggregate penalty of \$8,000.00 shall be paid in full to the Director of Budget and Finance upon execution of this Agreement. All checks shall be made payable to the "Director of Budget and Finance."

7. Except for the stipulated amendments 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, then Respondent shall automatically and without further notice be liable for all original penalties totaling \$8,700.00. 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. 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. Notwithstanding the foregoing, the instant citations shall not be used to justify a repeat characterization 36 months or

more after the approval of this Agreement.

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


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

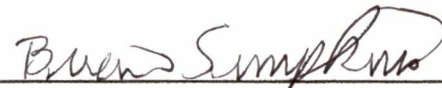
13. If Respondent fails to sign and return this Agreement along with a check for <sup>B.S.</sup> ~~\$8,000~~ <sup>\$3,650.00</sup> within five (5) business days of November 12, 2015 to Director, Respondent agrees to withdraw its contest.

DATED: Honolulu, Hawaii, 11-13-15.

APPROVED AS TO FORM:

CERTIFIED CONSTRUCTION, INC.

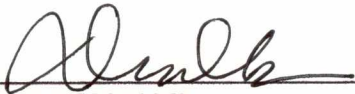
  
STACY N. H. MILLER  
Attorney for Respondent

  
By: \_\_\_\_\_  
Title: V.P.



APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

  
DORIS DVONCH  
Deputy Attorney General

  
LINDA CHU TAKAYAMA

Attorney for Complainant Director  
of Labor and Industrial Relations

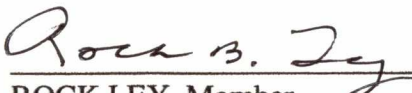
APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 720

DATED: November 24, 2015

EXCUSED  
KERRY M. KOMATSUBARA, Chair

  
SESNITA A.D. MOEPONO, Member

  
ROCK LEY, Member



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Director, Department of Labor and Industrial Relations v. **CERTIFIED CONSTRUCTION, INC.**, OSH  
2015-17 (Insp. No. 1056012) – 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 423  
HONOLULU, HI 96813  
Phone: (808) 586-9110 Fax: (808) 586-9104



**Certified Mail Number:** 7014 2120 0004 6050 1252

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## **Citation and Notification of Penalty**

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**To:**  
Certified Construction Inc  
and its successors  
1009 Uluono St  
Honolulu, HI 96819

**Inspection Number:** 1056012  
**Inspection Date(s):** 04/16/2015-04/16/2015  
**Issuance Date:** 06/08/2015

**Inspection Site:**  
3675 Kilauea Ave  
Honolulu, HI 96816

The violation(s) described in this Citation and Notification of Penalty is (are) all violations that occurred on or about the date(s) the inspection was made and is to be used in accordance with the description given below.

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This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health (HIOSH) Law. The penalty listed herein is 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 file a contest in the manner described in the section "Employer's Right to Contest" on page 2 of this Citation and Notification of Penalty. 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 Citation. 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 allowed by Law or, if contested, the 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.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the HIOSH 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. If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must schedule it early enough to

**EXHIBIT**

**"A"**



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 also contest all citation items or only individual items. You may also contest the penalty and/or abatement dates without contesting the underlying violations. To contest you must submit a signed original letter of contest to the Administrator which must be postmarked or, if not mailed, received by the Administrator within 20 calendar days after you receive this Citation and Notification of Penalty. The letter of contest must be a signed original and may not be submitted by facsimile or e-mail. Address your letter of contest to the State of Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty. Once a letter of contest is received, it becomes the jurisdiction of the HLRB. If a timely contest is not filed, the Citation and Notification of Penalty will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency.

**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 found on the front page 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 (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 on the top of page 1 of this Citation and Notification of Penalty.

**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 signed original contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty 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](http://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 the Hawaii Occupational Safety and Health Division (HIOSH) to discuss the Citation and Notification of Penalty issued on 06/08/2015.

The informal conference will be 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.

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

Inspection Number: 1056012  
Inspection Date(s): 04/16/2015-04/16/2015  
Issuance Date: 06/08/2015



### **Citation and Notification of Penalty**

**Company Name:** Certified Construction Inc  
**Inspection Site:** 3675 Kilauea Ave, Honolulu, HI 96816

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

29 CFR 1926.303(b)(1) [Refer 12-110-50(a), HAR]: Grinding machines shall be equipped with safety guards in conformance with the requirements of American National Standards Institute, B7.1-1970, Safety Code for the Use, Care and Protection of Abrasive Wheels, and paragraph (d) of this section.

Rooftop of Leahi Hospital - Employees used angle grinders missing their safety guards, thus exposing the employees to potentially serious bodily injuries.

- 1) Ryobi angle grinder model #AG453 bearing serial #AB13514D001612.
- 2) DeWalt angle grinder model #DC410 with unknown serial #.

**Date by Which Violation Must Be Abated:**  
**Penalty:**

**06/19/2015**  
**\$2,100.00**

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

29 CFR 1926.502(b)(1) [Refer to 12-110-50(a), HAR]: Top edge height of top rails, or equivalent guardrail system members, shall be 42 inches (1.1 m) plus or minus 3 inches (8 cm) above the walking/working level. When conditions warrant, the height of the top edge may exceed the 45-inch height, provided the guardrail system meets all other criteria of this paragraph.

Rooftop of Leahi Hospital, North facing edge - Two 10 foot long sections of the steel cable guardrail system at the edge of the roof had crisscrossed cables which resulted in the middle of the top rail cable being pulled down to 26 inches above the roof surface where employees were walking/working, thus exposing the employees to a potential fall hazard. The height of the roof edge was 60 feet above the ground.

**Date by Which Violation Must Be Abated:**  
**Penalty:**

**06/15/2015**  
**\$3,300.00**

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

Inspection Number: 1056012  
Inspection Date(s): 04/16/2015-04/16/2015  
Issuance Date: 06/08/2015



### **Citation and Notification of Penalty**

**Company Name:** Certified Construction Inc  
**Inspection Site:** 3675 Kilauea Ave, Honolulu, HI 96816

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

29 CFR 1926.502(b)(2) [Refer to 12-110-50(a), HAR]: Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members shall be installed between the top edge of the guardrail system and the walking/working surface when there is no wall or parapet wall at least 21 inches (53 cm) high.

Rooftop of Leahi Hospital, South facing edge - A 20 foot long steel cable guardrail system had its midrail strung through the stanchions resulting in a midrail 12 inches above the roof surface where employees were walking/working, thus exposing the employees to a potential fall hazard. The height of the roof edges was 60 feet above the ground.

**Date by Which Violation Must Be Abated:**  
**Penalty:**

**06/15/2015**  
**\$3,300.00**

**Citation 2 Item 1**      Type of Violation: **Other-than-Serious**

29 CFR 1926.251(a)(2)(i) [Refer to 12-110-50(a), HAR]: Employers must ensure that rigging equipment has permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load.

Ground floor of Leahi Hospital - The 4 way bridle rigging set used by the company crane operator to hoist and place materials on the rooftop of Leahi Hospital, had no marking tags to indicate the recommended safe working load as required by the standard.

**Date by Which Violation Must Be Abated:**  
**Penalty:**

**06/19/2015**  
**\$0.00**

  
DIANTHA M. GOO  
Administrator



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



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## SUMMARY OF PENALTIES

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**Company Name:** Certified Construction Inc  
**Inspection Site:** 3675 Kilauea Ave, Honolulu, HI 96816  
**Issuance Date:** 06/08/2015

**Summary of Penalties for Inspection Number: 1056012**

Citation 1 Item 1, Serious	\$2,100.00
Citation 1 Item 2, Serious	3,300.00
Citation 1 Item 3, Serious	3,300.00
Citation 2 Item 1, Other-than-Serious	0.00

**TOTAL PENALTIES:** **\$8,700.00**

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 \$25.00 will be charged for any returned checks.