

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

EVEREST SCAFFOLDING, INC., and its
successors,

Respondent.

DOCKET NO. 21-0548

STIPULATED SETTLEMENT AGREEMENT

Based upon the following recital, the Complainant and the Respondent herein agree to the following as a conclusion of this matter:

1) The Secretary hereby amends the total proposed penalty to \$169,000, to be apportioned as follows:

<u>Citation and Item Number</u>	<u>Classification</u>	<u>Original Proposed Penalty</u>	<u>Amended Proposed Penalty</u>
1, 1	Serious	\$13,653.00	\$9,000.00
1, 2	Serious	\$13,653.00	\$9,000.00
2, 1	Willful	\$136,532.00	\$75,500.00
2, 2	Willful	\$136,532.00	\$75,500.00
<u>Total Amended Proposed Penalty:</u>			\$169,000.00

2) Respondent will pay the amended proposed penalty of \$169,000.00 no later than June 6, 2022 via www.pay.gov.

- 3) Respondent affirmatively states that:
 - (a) All violations alleged in the citation(s) have been corrected and abated.
 - (b) It will comply in the future with the Occupational Safety and Health Act.

- 4) Respondent agrees to implement the following measures throughout the period covered by this Stipulated Settlement, which terminates June 7, 2024:
 - a) Respondent shall notify the Manhattan Area Office in advance of any projects Everest is scheduled to work on which Respondent reasonably anticipates will last for more than one day.
 - b) No later than July 8, 2022, Respondent shall revise its Written Safety Guidelines and Pre-Shift Meeting Forms to ensure compliance with all applicable safety requirements regarding scaffolding and fall protection, including but not limited to:
 - i. Requiring all employees to visually inspect their Personal Fall Arrest System prior to each use;
 - ii. Removal of its current requirement/policy that employees are only required to use PFAS if working in the same location for three minutes or longer, and expressly requiring employees to use fall protection whenever required by the safety standards.
 - c) No later than July 8, 2022, Respondent shall create a written Job Hazard Analysis (“JHA”) addressing fall protection measures to be used on scaffolds, including but not limited to:
 - i. Setting forth guidelines for Respondent’s competent person to use in making a determination regarding the feasibility of using fall protection prior to commencing work on a particular job or project;
 - ii. Requiring the competent person to document his or her feasibility determination, including but not limited to describing the areas inspected by the competent person in making this determination, the fall protection devices the competent person considered in connection with this determination, and the reason(s) as to (1) why a particular method of fall protection was selected, or alternatively, (2) why the competent person determined that fall protection was not feasible; and
 - iii. Requiring the competent person or foreman to complete daily inspection checklists for safety and hazard prevention, including fall protection.
 - d) Implement daily inspection checklists, including fall protection, completed by foreman/competent person; and
 - e) Train all competent persons on conducting feasibility determinations.

f) Respondent shall provide documentation to OSHA's Manhattan Area Office that the measures described above have been implemented no later than July 29, 2022.

5) Citation 2, item 1 and Citation 2, item 2 are deemed amended to include the specific abatement measures described in paragraph 4(a) through 4(e) of this Stipulated Settlement. The measures described in paragraph 4(a) through 4(e) of this Stipulated Settlement are hereby incorporated as terms and required abatement conditions of this Stipulated Settlement.

6) Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

7) Respondent withdraws its notice of contest in this matter, and agrees that the citations, penalties, and abatement measures (as set forth and amended herein by this Stipulated Settlement) shall become a final order of the Commission on the same date that the Order Terminating Proceeding becomes a final order, as set forth in the Notice of Docketing issued by the Executive Secretary of the Commission.

8) None of the foregoing agreements, statements, stipulations and actions taken by respondent shall be deemed an admission by respondent of the allegations contained within the citations, notifications of penalty and the complaint herein. The agreements, statements, stipulations, findings and actions taken herein are made for the purpose of settling this matter amicably and they shall not be used for any purpose, except for proceedings and matters arising under the Occupational Safety and Health Act.

9) This Stipulated Settlement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument

Date: 5/10/22

EXECUTED BY:

Christopher Downes

NAME: Christopher Downes

TITLE: President

On behalf of Respondent, Everest
Scaffolding, Inc.

/s/Andrew Karonis

NAME: ANDREW KARONIS

TITLE: Senior Trial Attorney

On behalf of Complainant, Secretary of Labor

RESPONDENT'S CERTIFICATIONS FOR POSTING AND SERVICE

1. POSTING

Respondent certifies that on the following date: May 10, 2022, a copy of this Stipulated Settlement was posted where affected employees may see it, and will remain posted for at least 14 days thereafter.

2. AUTHORIZED EMPLOYEE REPRESENTATIVE(S)?

(Mark "X" next to Option 1 OR Option 2 as appropriate)

Option 1

Respondent certifies that there is no authorized employee representative for the employees affected by the action which is the subject of this Stipulated Settlement.

OR

Option 2

Respondent certifies that there is one or more authorized employee representatives for the employees affected by the action which is the subject of this Stipulated Settlement. The names and addresses of the authorized employee representative(s) are as follows:

N/A, _____
[name] [address]

3. SERVICE ON AUTHORIZED EMPLOYEE REPRESENTATIVE(S)

Respondent certifies that this Stipulated Settlement was served on the authorized employee representative(s) of the affected employees on the following date: _____, by the following method(s) of service (i.e. first-class mail, overnight delivery, personal delivery): _____.

CERTIFIED BY [print name and title]: Christopher Downes - President



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

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DOCKET NO. 21-0548

JOINT NOTIFICATION OF FULL SETTLEMENT

The parties respectfully notify the Court that the parties have fully settled the above captioned case and have executed a formal settlement agreement.

CERTIFICATION OF CITATION ITEMS FULLY SETTLED

The parties certify that all citation items in this case have been fully settled. All settled citation items are set forth, on a separate row, in the following chart. Commission Rule 100(b)(1)(i).¹

Citation No.	Item No.	Resolution: Settled / Withdrawn
1	1	Settled
1	2	Settled
2	1	Settled
2	2	Settled

¹ OSHRC's new Rules of Procedure were effective June 10, 2019 and all references contained herein refer to these revised Rules. Rules of Procedure, 84 Fed. Reg. 14554 (April 10, 2019) (to be codified at 29 C.F.R. pt. 2200). (<https://www.federalregister.gov/documents/2019/04/10/2019-06581/rules-of-procedure>).

CERTIFICATION OF POSTING

The parties certify that the executed settlement agreement was posted to provide notice to the affected employees.² Commission Rules 7(g); 100(b)(1)(ii); 100(c). The parties certify that the settlement agreement was posted at a location prescribed by Commission Rule 7(g) on the following date: May 10, 2022.

The settlement agreement shall remain posted for fourteen (14) days.

CERTIFICATION OF SERVICE

The parties certify that the executed settlement agreement was served on the authorized employee representative of the affected employees³ in a manner prescribed in Commission Rule 7(c) on the following date: _____ . Commission Rules 7(f); 100(b)(1)(ii); 100(c).

² In cases where *all* affected employees are represented by an authorized employee representative an alternative certification shall be included in the Joint Notification of Full Settlement, rather than the posting certification stated above. The alternative certification shall comply with Commission Rules 7(f); 100(b)(1)(ii); 100(c) and shall include the date of service.

³ If *all* affected employees are not represented by an authorized employee representative, an additional certification of posting shall be included in the Joint Notification of Full Settlement. Commission Rules 7(g); 100(b)(1)(ii); 100(c). The settlement agreement shall remain posted for fourteen (14) days.

The parties certify that the settlement agreement was posted at a location prescribed by Commission Rule 7(g) on the following date: May 10, 2022.

CERTIFICATION REGARDING PARTY WHO HAS ELECTED PARTY STATUS

The parties certify that any party who has elected party status, under Commission Rule 20, has been afforded an opportunity to provide input on all matters pertaining to the settlement before the settlement agreement was finalized. Commission Rule 100(b)(1)(iii).

CERTIFICATION WHETHER SETTLEMENT INCLUDES PLEADING WITHDRAWAL, AND WHETHER THE WITHDRAWAL IS WITH PREJUDICE

In the following chart, the parties certify the status of any citations, notifications, notices, or petitions, withdrawn in the settlement agreement, and certify whether the withdrawal was with or without prejudice. Each citation item and notification of proposed penalty withdrawn is included, on a separate row, in the chart. Commission Rule 100(b)(1)(iv).

List of Pleadings Withdrawn	Withdrawal – With or Without Prejudice
Notice of Contest	With Prejudice

ACKNOWLEDGEMENT THAT THE PARTIES HAVE NOT PROVIDED THE SETTLEMENT AGREEMENT WITH THIS JOINT NOTIFICATION.

The parties confirm that they have not incorporated the settlement agreement in, or append it to, this joint Notification of Settlement. See Commission Rule 100(b)(2).

DRAFT ORDER TERMINATING PROCEEDING.

The parties confirm that they have filed, for execution by the Judge, a draft Order Terminating Proceeding, acknowledging that the parties have resolved contested citation items and agreed to terminate the proceeding before the Commission, pursuant to Commission Rules 100(b)(3); 100(c).

Date: May 13, 2022

EXECUTED BY:



NAME: STEFAN A. BOROVINA

TITLE: Partner,
GOLDBERG SEGALLA
200 Garden City Plaza, Suite 520
Garden City, NY 11530
Attorneys for Respondent

On behalf of Respondent, Everest
Scaffolding, Inc.

/s/Andrew Karonis

NAME: ANDREW KARONIS

TITLE: Senior Trial Attorney
U.S. Department of Labor
Office of the Solicitor
201 Varick Street, Room 983
New York, NY 10014
Attorneys for Complainant

On behalf of Complainant, Secretary of Labor

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CERTIFIED BY [print name and title]: Christopher Downes - President

Secretary v. Everest Scaffolding, Inc., (No. 21-0548)

CERTIFICATE OF SERVICE

I, Andrew Karonis, an attorney of the United States Department of Labor, in the Office of the Regional Solicitor, 201 Varick Street, New York, New York, certify that on the 13th day of May, 2022, I served a true and correct copy of the **Joint Notification of Full Settlement with Posting Certification** by electronically sending the same to the email address of the following:

Stefan A. Borovina, Esq.
GOLBERG SEGALLA,
665 Main Street
Buffalo, NY 14203
Tel. (716)566-5400
Fax (716)566-5401
sborovina@goldbergsegalla.com

*Attorneys for Respondent
Everest Scaffolding, Inc.*

/s/ Andrew Karonis