

ORIGINAL

DAVID M. LOUIE 2162  
Attorney General of Hawaii

2013 MAR -8 PM 3:37

HAWAII LABOR  
RELATIONS BOARD

LAWRENCE H. NAKANO  
Deputy Attorney General  
Department of Attorney  
General, State of Hawaii  
Labor Division  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: 586-1450

Attorneys for Complainant Director,  
Department of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2012-11
	) (Inspection No. 313083586)
DIRECTOR, DEPARTMENT OF LABOR	)
AND INDUSTRIAL RELATIONS,	) STIPULATION AND SETTLEMENT
	) AGREEMENT; EXHIBIT A; APPROVAL
Complainant,	) AND ORDER
	)
vs.	)
	)
GOZIP, LLC,	)
	)
Respondent.	)
_____	)

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director, Department of Labor and Industrial Relations ("Director") and Respondent GOZIP LLC, ("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 September 21, 2011, a workplace accident resulting in one death and one serious injury, occurred at 27-5159 Puia Road, Hilo, Hawaii 96720, as a result of which the

Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), performed a comprehensive non-programmed inspection.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on April 27, 2012 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$13,500.00. 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 Hawaii Revised Statutes ("HRS") § 396-11.
2. At all relevant times, Respondent maintained a workplace at 27-5159 Puia Road, Hilo Hawaii 96720.
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 or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rules § 12-51-22, as indicated in the completed abatement certification attached hereto as Exhibit B.
5. Respondent hereby withdraws its contest of Citation 1, Item 1.
6. The classification of Citation 1, Item 2 is amended from "Serious" to "Other than Serious," and the penalty is amended from \$4,500.00 to \$2,700.00.

7. The "Serious" classification of Citation 1, Item 3 is affirmed and the penalty is amended from \$4,500.00 to \$2,700.00.

8. As a result of amendments to the penalties as described above, Respondent will pay an aggregate penalty of \$9,900.00 which shall be paid in full to the Director of Budget and Finance within thirty (30) calendar days of execution of this Agreement.

9. 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.

10. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any purpose and the settlement hereof shall not be construed as an admission of fault or liability.

11. Respondent shall post a copy of this Agreement and Order in a prominent place at its headquarters, it being recognized that the accident site is privately owned and not under the control of Respondent, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

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

13. 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.

14. Upon approval of this Agreement, and payment as required by paragraph 8 above, all proceedings before the Board shall be dismissed with prejudice.

DATED: Honolulu, Hawaii, March 8, 2013.

APPROVED AS TO FORM:

GOZIP LLC,



PETER A. HOROVITZ, ESQ.  
Attorney for Respondent

By:

  
Its Member

APPROVED AS TO FORM:

DIRECTOR, DEPARTMENT OF LABOR AND  
INDUSTRIAL RELATIONS



LAWRENCE H. NAKANO  
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. 500

DATED: March 8, 2013

  
JAMES B. NICHOLSON, Chair  
SESNITA A.D. MOEPONO, Member  
ROCK B. LEY, Member



# EXHIBIT "A"

## 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 6093

---

## Citation and Notification of Penalty

---

To:  
Gozip LLC  
and its successors  
180 Dickenson St #212  
Lahaina, HI 96761

Inspection Number: 313083586  
Inspection Date(s): 09/22/2011- 02/21/2012  
Issuance Date: 04/27/2012

Inspection Site:  
27-5159 Puia Rd  
Hilo, HI 96720

*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](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

### ABATEMENT CERTIFICATION

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

Gozip LLC  
180 Dickenson St #212  
Lahaina, HI 96761

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 04/27/2012. 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.

**State of Hawaii**

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

**Inspection Number:** 313083586

**Inspection Dates:** 09/22/2011 - 02/21/2012

**Issuance Date:** 04/27/2012



**Citation and Notification of Penalty**

**Company Name:** Gozip LLC

**Inspection Site:** 27-5159 Puia Rd, Hilo, HI 96720

---

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

HAR §12-110-2(a)(1) was violated because:

The employer did not do everything reasonable and necessary to protect the life, safety, and health of the employees in that it failed to assure that the ground anchors and guy cable system at Line 8 could support two times the expected load imposed by the tower, zip lines, and the weight of human riders without failure. As a result of the employer's failure to assure the integrity of the zip line guy system cables and anchors, the system suffered a catastrophic failure when the anchors failed to hold in the soil and the tower and zip lines collapsed, resulting in fatal injury to one employee and serious injury to another employee.

§12-110-2(a)(1) states "Every employer shall comply with the State laws and standards regarding a safe place of employment and safe practices, and shall do everything reasonable and necessary to protect the life, safety, and health of the employees."

Location: Line 8, Honolii Mountain Outpost zip line course, 27-5159 Puia Road

**ABATEMENT DOCUMENTATION REQUIRED**

Date By Which Violation Must be Abated:

05/30/2012

Penalty:

\$ 4,500.00

---

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:** 313083586

**Inspection Dates:** 09/22/2011 - 02/21/2012

**Issuance Date:** 04/27/2012



**Citation and Notification of Penalty**

**Company Name:** Gozip LLC

**Inspection Site:** 27-5159 Puia Rd, Hilo, HI 96720

---

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

29 CFR 1926.100(a) [Refer to chapter 12-110, HAR] was violated because:

The employer did not assure that all employees working where there was possible danger of head injury from impact or from falling or flying objects were protected by protective helmets, in that an employee who was riding a zip line to test it and who was exposed to the risk of head injury did not wear a protective helmet. The potential result of failure to assure that the employees use protective helmets when exposed to head injury from impact and/or from flying or falling objects.

29 CFR 1926.100(a) states "Employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be protected by protective helmets."

Location: Line 8, Honolii Mountain Outpost zip line course, 27-5159 Puia Road

Date By Which Violation Must be Abated:

05/07/2012

Penalty:

\$ 4,500.00

---

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:** 313083586

**Inspection Dates:** 09/22/2011 - 02/21/2012

**Issuance Date:** 04/27/2012



**Citation and Notification of Penalty**

**Company Name:** Gozip LLC

**Inspection Site:** 27-5159 Puia Rd, Hilo, HI 96720

---

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

29 CFR 1926.1053(b)(1) [Refer to chapter 12-110, HAR] was violated because:

The side rails of an extension ladder used to provide access to the landing platform at Line 7, from which employees crossed by a suspended bridge to the takeoff platform at Line 8, did not extend at least 3' above the landing surface to which the ladder provided access. The potential result of failure to assure that side rails extend at least 3' above the landing surface could be serious injury from falling approximately 18' from the platform to the ground while mounting or dismounting the ladder.

29 CFR 1926.1053(b)(1) states "When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support."

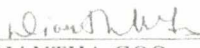
Location: Line 7 landing tower, Honolii Mountain Outpost zip line course, 27-5159 Puia Road

Date By Which Violation Must be Abated:

05/07/2012

Penalty:

\$ 4,500.00

  
DIANTHA GOO  
Administrator

---

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  
830 PUNCHBOWL STREET, ROOM 423  
HONOLULU, HI 96813

**SUMMARY OF PENALTIES**

---

**Company Name:** Gozip LLC  
**Inspection Site:** 27-5159 Puia Rd, Hilo, HI 96720  
**Issuance Date:** 04/27/2012

**Summary of Penalties for Inspection Number 313083586**

<b>Citation 1, Serious</b>	<b>= \$ 13,500.00</b>
<b>TOTAL PENALTIES</b>	<b>= \$ 13,500.00</b>

---

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.