

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

BIMBO BAKERIES USA INC.
264 South Spruce Avenue
South San Francisco, CA 94080

Employer

**DOCKETS 10-R6D1-1091
and 1092**

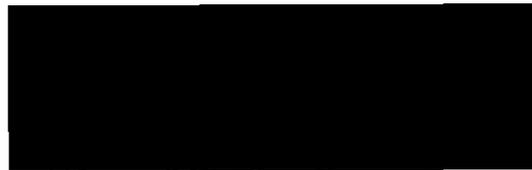
ORDER

Good cause having been shown, the above captioned matter is resolved as set forth in the attached summary table.

The parties have entered into a series of stipulations with respect to the issuance of the pending citations, amendments of those citations by the Division of Occupational Safety and Health, and withdrawals of the pending appeals by the employer, Bimbo Bakeries USA Inc. Those stipulations are set forth in the document entitled "Stipulation Re Settlement," which is signed by a representative of each party, and attached to this Order, and is hereby incorporated.

IT IS SO ORDERED.

DATED: June 30 , 2011



MARTIN J. FASSLER
Administrative Law Judge

Pursuant to § 364.2(d), Title 8 California Code of Regulations, Employer shall post for 15 working days a copy of this Order. Pursuant to § 364.2(b), Title 8 California Code of Regulations, the Division shall serve a copy of this disposition on any authorized employee representative if known to the Division to represent affected employees.

1 PETER H. WEINER (SB# 048844)
 2 MYLES P. CULHANE (SB# 235975)
 3 PAUL, HASTINGS, JANOFSKY & WALKER LLP
 4 55 Second Street, Twenty-Fourth Floor
 San Francisco, CA 94105-3441
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5 Attorneys for Appellant Bimbo Bakeries USA, Inc.

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BEFORE THE STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

In the Matter of the Appeal of:
BIMBO BAKERIES USA, INC.

Docket Nos. 10-R6D1-1091/1092
STIPULATION RE SETTLEMENT

STIPULATION RE SETTLEMENT

1 The Division of Occupational Safety and Health ("the Division") and Appellant Bimbo
2 Bakeries USA, Inc., by and through their counsel of record, stipulate and agree as follows:

3 1. This stipulation and approval by the California Occupational Safety and Health
4 Appeals Board ("the Appeals Board") shall constitute full settlement of the violations alleged by
5 the Division in these matters.

6 2. This stipulation and the terms and conditions set forth herein are not intended to be
7 and shall not be construed by anyone as an admission of liability or fault by Appellant, except for
8 purposes of administration and enforcement of the California Occupational Safety and Health Act
9 in proceedings before the Appeals Board, and neither this agreement nor anything from this
10 settlement shall be used in any other proceeding between the parties or involving any other
11 person, whether said proceeding be legal, equitable, or administrative in nature.

12 3. On or about April 1, 2010, the division issued citations to Appellant alleging
13 violations of safety orders contained in Title 8 of the California Code of Regulations ("C.C.R.")
14 and proposing civil penalties as follows:

Docket Nos. 10-R6D1-1091/1092 (South San Francisco - Inspection No. 313832446)			
1:1	§ 2500.8(a)	general	\$250
1:2	§ 3314(h)	general, willful	\$5,000
1:3	§ 4051(a)	general	\$500
1:4	§ 4051(b)	general	\$500
1:5	§ 4070(a)	general	\$500
2:1	§ 3314(c)	serious, willful	\$70,000
			Total: \$76,750

24 4. Appellant filed a timely appeal of all citations.
25 5. The Division agrees to modify the citations and proposed civil penalties as
26 follows:
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28

Docket Nos. 10-R6D1-1091/1092 (South San Francisco - Inspection No. 313832446)			
1:1	§ 2500.8(a)	general	\$250
1:2	§ 3314(h)	general	\$7,000
1:3	§ 4051(a)	general	\$500
1:4	§ 4051(b)	general	\$500
1:5	§ 4070(a)	general	\$500
2:1	§ 3314(c)	serious	\$27,000
			Total: \$35,750

6. The Division makes these amendments based upon review of its investigations and evidence presented by Appellant. Appellant's evidence tends to rebut evidence of a substantial probability of serious injury and/or tends to show lack of employer knowledge of alleged hazards.

The Division agrees:

a. Appellant's evidence tends to rebut evidence of employer awareness of the hazard alleged in Citation 1, Item 2. The Division agrees to reclassify Citation 1, Item 2 as a general violation for this reason. In accordance with the policies of the Division, the civil penalty for Citation 1, Item 2 will be \$7,000.

b. Appellant's evidence tends to rebut evidence of employer awareness of the hazard alleged in Citation 2. The Division agrees to reclassify Citation 2 as a serious violation. In accordance with the policies of the Division, the civil penalty for Citation 2 will be \$27,000.

7. Appellant agrees to withdraw its appeal of the citations as amended.

8. The parties stipulate that Appellant has entered into this agreement in order to avoid protracted litigation and costs associated therewith.

9. The parties further stipulate that no findings or conclusions have been made by any trier-of-fact regarding the citations or the penalties at issue herein.

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10. Appellant agrees to waive any rights that it may have under California Labor Code section 149.5 to petition for or to recover costs or fees incurred in connection with this appeal.

11. Appellant shall complete abatement of the violations alleged in the citations within 30 days of approval of this stipulation by the Appeals Board.

12. The Appeals Board may enter such order as it deems necessary or appropriate to give effect to the provisions of this stipulation. The parties agree that the terms, stipulations and recitations contained herein are contingent upon the issuance of such an order and that they shall have no force or effect unless such an order is issued.

DATED: June 24, 2011

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

By: _____

WILLIE N. NGUYEN
Staff Counsel

DATED: June _____, 2011

PETER H. WEINER
MYLES P. CULHANE
PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: _____

MYLES P. CULHANE

Attorneys for Appellant Bimbo Bakeries USA, Inc.

LEGAL_US_W# 67463006.5

RECEIVED
JUN 28 2011
BIMBO BAKERIES USA, INC.

SUMMARY TABLE ORDER

In the Matter of the Appeal of:

BIMBO BAKERIES USA, INC.
Docket No(s). 10-R6D1-1091 & 1092

Abbreviation Key:	Reg=Regulatory
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 313832446

Site: 264 South Spruce Avenue, San Francisco, CA 94080
Date of Inspection: 10/05/2009 ~ 4/01/2010

Date of Citation: 04/01/2010

DOCKET	CITATION	ITEM	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	AFFIRMED	VALETED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY PARTIES IN STIPULATION	FINAL PENALTY ASSESSED BY BOARD
2010-R6D1-1091	1	1	2500.8(a)	G	ER's use of flexible extension cord.	x		\$250	\$250	\$250
2010-R6D1-1091	1	2	3314(h)	W	Reclassified as General and penalty increased based on ER's evidence which tends to rebut evidence of ER awareness of the hazard.	x		\$5,000	\$7,000	\$7,000
2010-R6D1-1091	1	3	4051(a)	G	ER's failure to guard projecting shaft with non-rotating casing.	x		\$500	\$500	\$500
2010-R6D1-1091	1	4	4051(b)	G	ER's failure to guard unused key-way.	x		\$500	\$500	\$500
2010-R6D1-1091	1	5	4070(a)	G	ER's failure to guard moving parts of belt and pulley.	x		\$500	\$500	\$500
2010-R6D1-1092	2	1	3314(c)	W	Reclassified as Serious and penalty reduction based on ER's evidence which tends to rebut evidence of ER awareness of the hazard.	x		\$70,000	\$27,000	\$27,000
Sub-Total								\$76,750	\$35,750	\$35,750

Total Amount Due*

\$35,750

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Payment of final penalty amount should be made to:

Accounting Office (OSH)
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.

POS: 6/30/2011

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.

On June 30, 2011, I served the attached **Order** by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

Peter H. Weiner
Myles P. Culhane
Paul Hastings, Janofsky & Walker, LLP
55 Second Street, Twenty-Fourth Floor
San Francisco, CA 94105-3441

Willie Nguyen
DOSH LEGAL UNIT
1515 Clay Street – Suite 1901
Oakland, CA 94612

District Manager
Division of Occupational Safety and Health
1515 Clay Street, Suite 1303 – MS #40
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 30, 2011, at Sacramento, California.



Declarant