

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

In the Matter of the Appeal of:

BIMBO BAKERIES USA, INC.  
480 South Vail Avenue  
Montebello, CA 90640

Employer

Docket No(s). 10-R6D2-1096  
through 1101

**ORDER**

On April 1, 2010, the Division of Occupational Safety and Health (Division) issued to Bimbo Bakeries USA, Inc. (Employer) the following citations, items and proposed penalties for alleged violations of the occupational safety and health standards and orders found in Title 8, California Code of Regulations:

<u>Cit/Item</u>	<u>Section</u>	<u>Type</u>	<u>Penalty</u>
1 / 1	5162(e) [Failure to regularly inspect and maintain Emergency Eyewash and Shower Equipment]	General	\$250
1 / 2	4051(a) [Failure to guard projecting shaft ends of #1 conveyor]	General	\$750
2 / 1	3314(g) [Failure to include separate procedural steps for the safe lockout/tagout of each machine or piece of equipment]	Serious	\$6,750
3 / 1	3999(b) [Failure to ensure all chain conveyor head drums and dip take-up drums were guarded]	Serious	\$6,750
4 / 1	4075(a) [Failure to ensure the two sprocket driven conveyors located at 1-056 were guarded]	Serious	\$6,750

5 / 1                      4051(b)                      Serious                      \$4,500  
[Failure to ensure unused key-ways  
located at 1-112-A wrap line were guarded]

6 / 1                      5162(a)                      Serious                      \$4,500  
[Failure to ensure emergency eyewash and  
shower unit was properly aligned to allow  
for dual usage]

On July 13, 2011, the Division and Employer submitted to the Appeals Board a "Stipulation Re Settlement" which, by mutual agreement of the Division and Employer, disposes of all the contested issues on appeal. The written stipulation is incorporated herein and attached as Exhibit A.

GOOD CAUSE APPEARING, the Appeals Board hereby grants the written motion of the parties, thereby disposing of the instant appeal as set forth in the motion. Because no other issues remain on appeal, this proceeding is hereby closed.

[Redacted Signature]

ART R. CARTER, Chairman

[Redacted Signature]

ED LOWRY, Member

OCCUPATIONAL SAFETY AND HEALTH-APPEALS BOARD  
FILED ON: AUG 25 2011

*DTC*



**NOTE:** Pursuant to regulation section 364.2(d) the employer shall post for 15 working days a copy of this Order and a copy of the disposition, which is attached hereto as Exhibit A. Pursuant to regulation section 364.2(b), the Division shall serve a copy of the disposition on any authorized employee representative if known to the Division to represent affected employees.

If any party disagrees with this Order, they may petition the Appeals Board for reconsideration within 30 days of service of the Order. The petition for reconsideration must be filed in Sacramento, California and must fully comply with the requirements of Labor Code sections 6614 through 6619. Please call the Appeals Board at (916) 274-5751 for information.

1 PETER H. WEINER (SB# 048844)  
2 MYLES P. CULHANE (SB# 235975)  
3 PAUL, HASTINGS, JANOFSKY & WALKER LLP  
4 55 Second Street  
5 Twenty-Fourth Floor  
6 San Francisco, CA 94105-3441  
7 Telephone: (415) 856-7000  
8 Facsimile: (415) 856-7100

9 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-R6D2-1096/1101  
**STIPULATION RE SETTLEMENT**

STIPULATION RE SETTLEMENT

**EXHIBIT A**

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

<b>Docket Nos. 10-R6D2-1096/1101 (Montebello – Inspection No. 312314644)</b>				
17	1:1	§ 5162(e)	general	\$250
18	1:2	§ 4051(a)	general	\$750
19	2:1	§ 3314(g)	serious	\$6,750
20	3:1	§ 3999(b)	serious	\$6,750
21	4:1	§ 4075(a)	serious	\$6,750
22	5:1	§ 4051(b)	serious	\$4,500
23	6:1	§ 5162(a)	serious	\$4,500
				Total: \$30,250

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

Docket Nos. 10-R6D2-1096/1101 (Montebello - Inspection No. 312314644)			
1:1	§ 5162(e)	general	\$250
1:2	§ 4051(a)	withdrawn	none
2:1	§ 3314(g)	general	\$250
3:1	§ 3999(b)	serious	\$6,750
4:1	§ 4075(a)	serious	\$6,750
5:1	§ 4051(b)	serious	\$450
6:1	§ 5162(a)	serious	\$450
			Total: \$14,900

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 the existence of the hazard alleged in Citation 1, Item 2. The Division agrees to withdraw Citation 1, Item 2 for this reason.
- b. Appellant's evidence tends to rebut evidence of a substantial probability of serious injury related to the hazard alleged in Citation 2. The Division agrees to reclassify Citation 2 as a general violation for this reason. In accordance with the policies of the Division, the civil penalty for Citation 2 will be \$250.
- c. Appellant's evidence tends to demonstrate that Citation 5 is duplicative of the hazard addressed in Citation 4. In accordance with § 336(k), the Division agrees that the penalty for Citation 5 will be \$450.

1 d. Appellant's evidence tends to demonstrate that Citation 6 is duplicative of  
2 the hazard addressed in Citation 1, Item 1. In accordance with § 336(k), the Division agrees that  
3 the penalty for Citation 6 will be \$450.

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

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

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

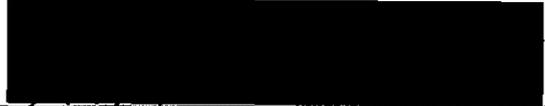
9 10. Appellant agrees to waive any rights that it may have under California Labor Code  
10 section 149.5 to petition for or to recover costs or fees incurred in connection with this appeal.

11 11. Appellant shall complete abatement of the violations alleged in the citations within  
12 30 days of approval of this stipulation by the Appeals Board.

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

17 DATED: July 14, 2011

DIVISION OF OCCUPATIONAL SAFETY AND  
HEALTH

18 By: 

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20  
21 WILLIE N. NGUYEN  
Staff Counsel

22 DATED: July 15, 2011

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

23  
24 By: 

25 MYLES P. CULHANE  
26 Attorneys for Appellant Bimbo Bakeries USA, Inc.

27  
28 LEGAL\_US\_W# 68564144.1

## SUMMARY TABLE ORDER

In the Matter of the Appeal of:

**BIMBO BAKERIES USA, INC.**  
**Docket No(s). 10-R6D2-1096 through 1101**

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

IMIS No. 312314644

Site: 480 S. Vail Avenue, Montebello, CA 90640

Date of Inspection: 10/05/2009

Date of Citation: 04/1/2010

DOCKET	CITATION	ITEM	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	AFFIRMED	VALIDATED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY PARTIES IN STIPULATION	FINAL PENALTY ASSESSED BY BOARD
2010-R6D2-1096	1	1	5162(e)	G	Failure to regularly inspect & maintain Emergency Eyewash and Shower Equipment.	x		\$250	\$250	<b>\$250</b>
2010-R6D2-1096	1	2	4051(a)	G	Withdrawn by DOSH based on rebuttal evidence.		x	\$750	\$0	<b>\$0</b>
2010-R6D2-1097	2	1	3314(g)	S	ER's evidence tends to rebut DOSH's evidence of substantial probability of serious injury related to the hazard. Penalty reduced.	x		\$6,750	\$250	<b>\$250</b>
2010-R6D2-1098	3	1	3999(b)	S	Failures to ensure all chain conveyor head drums and dip take-up drums were guarded.	x		\$6,750	\$6,750	<b>\$6,750</b>
2010-R6D2-1099	4	1	4075(a)	S	Failure to ensure two sprocket driven conveyors located at 1-056 were guarded.	x		\$6,750	\$6,750	<b>\$6,750</b>
2010-R6D2-1100	5	1	4051(b)	S	Further reduced per 336(k), same as Citation 4.	x		\$4,500	\$450	<b>\$450</b>
2010-R6D2-1101	6	1	5162(a)	S	Further reduced per 336(k), same as Cit 1; Item 1.	x		\$4,500	\$450	<b>\$450</b>
<b>Sub-Total</b>								\$30,250	\$14,900	<b>\$14,900</b>

**Total Amount Due\***

**\$14,900**

(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: 8/25/2011

**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 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.

On August 25, 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, Esq.  
Myles P. Culhane, Esq.  
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& WALKER LLP  
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Peter Riley, District. Manager  
DOSH – HHC UNIT  
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Willie N. Nyugen, Staff Counsel  
DOSH – LEGAL UNIT  
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Los Angeles, CA 90013

Amy Martin, Chief Counsel  
DOSH – LEGAL UNIT  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 2011, at Sacramento, California.



DeWayne T. Holloway