



MICHELLE LUJAN GRISHAM  
GOVERNOR

JAMES C. KENNEY  
CABINET SECRETARY

## AFFIDAVIT OF POSTING


### OHSB NOTIFICATION

### OF EMPLOYER INFORMAL SETTLEMENT AGREEMENT

Employer: Kabana Inc.  
Activity No: 1661831  
Date of Posting: 5-12-23  
Date Copy Given  
To Employee Representative: 5-12-23

On behalf of the employer, I certify that a copy of the informal settlement agreement received from the Occupational Health and Safety Bureau (OHSB) of the New Mexico Environment Department has been posted in a conspicuous place, where all affected employees will have notice, and such notice has been given to each authorized representative of affected employees, if any. This notice was or will be posted for a minimum of twenty (20) working days.

SIGNATURE:



TITLE:

goldsmith

**STATE OF NEW MEXICO  
BEFORE THE  
OCCUPATIONAL HEALTH AND SAFETY REVIEW COMMISSION**

**NEW MEXICO ENVIRONMENT DEPARTMENT**

**Inspections No. 1661831**

**Complainant,**

**v.**

**KABANA INC.,**

**Respondent.**

**NOTICE TO AFFECTED EMPLOYEES  
(PROPOSED INFORMAL SETTLEMENT OF CASE)**

The attached settlement agreement has been entered into by the New Mexico Environment Department and Kabana Inc. Any affected employee, or representative of affected employees, who objects to the Informal Settlement Agreement should file a written objection, including reasons, by hand-delivery to the Occupational Health and Safety Review Commission Secretary at 1190 St. Francis Dr., or by first class mail addressed to P.O. Box 5469, Santa Fe, NM 87502. Objections must be received by the Commission Secretary within twenty (20) days after filing of the Informal Settlement Agreement. Specific procedures for objection are set forth in 11.5.5 NMAC, Occupational Health and Safety Review Commission Procedures, a copy of which may be obtained from the Commission Secretary by calling (505) 660-4305. Copies of all documents in this matter may be inspected at 525 Camino de los Marquez, Suite 3, Santa Fe, NM 87505. New Mexico Administrative Code, NMAC provisions can also be found at: [NMAC Titles – State Records Center & Archives](#)

  
\_\_\_\_\_  
[Signature]

5.12.23  
\_\_\_\_\_  
[Date of Posting]

Scott Jordan  
\_\_\_\_\_  
[Typed or Printed Name]

(This document must be posted with an attached copy of the Informal Settlement Agreement, in accordance with Subsection D of 11.5.5.503 NMAC. Neither the original nor a copy should be filed with NMED.)

**STATE OF NEW MEXICO  
BEFORE THE  
OCCUPATIONAL HEALTH AND SAFETY REVIEW COMMISSION**

**NEW MEXICO ENVIRONMENT DEPARTMENT**

**Inspection No. 1661831**

**Complainant,**

**v.**

**KABANA INC.,**

**Respondent.**

**INFORMAL SETTLEMENT AGREEMENT**

Complainant, New Mexico Environment Department (NMED), and Respondent, Kabana Inc., hereby agree to the following terms for full and complete settlement of this case, subject to the provisions of 11.5.5.503 NMAC.

1. The Citation and Notification of Penalty for Inspection No. **1661831** is amended as follows:
  - a. Citation 1, Item 1/a is hereby reclassified as an Other-than-Serious violation with a monetary penalty reduction of 35% for a total of \$5,142.80 to be paid in full by May 30, 2023. Respondent represents that the corrective action included developing and implementing the use of a Respiratory Protection Program in 1998 for use of personal protective equipment against workplace respiratory hazards for affected employees. Respondent provided OHSB with written verification of completed abatement including a written program, medical evaluations, fit testing and training records for the affected employee by May 5, 2023.
  - b. Citation 1, Item 1/b remains classified as a Serious violation with a \$0.00 monetary penalty by way of grouping with Citation 1, Item 1/a. Respondent represents that the corrective action included developing and implementing the use of a Respiratory Protection Program in 1998 for use of personal protective equipment against workplace respiratory hazards for affected employees. Respondent provided OHSB with written verification of completed abatement including a written program, medical evaluations, fit testing and training records for the affected employee by May 5, 2023.
  - c. Citation 1, Item 1/c remains classified as a Serious violation with a \$0.00 monetary penalty by way of grouping with Citation 1, Item 1/a. Respondent represents that the corrective action included developing and implementing the use of a Respiratory Protection Program in 1998 for use of personal protective equipment against workplace respiratory hazards for affected employees. Respondent provided OHSB with written verification of completed abatement including a written program, medical evaluations, fit testing and training records for the affected employee by May 5, 2023.

- d. Respondent agrees to pay penalties totaling \$5,142.80 by May 30, 2023. Payment made pursuant to this agreement shall be by corporate check, certified check, or other guaranteed negotiable instrument, and shall be sent to the Department at the following address:

New Mexico Environment Department  
Occupational Health and Safety Bureau  
525 Camino de los Marquez, Suite 3  
Santa Fe, New Mexico 87505

2. Respondent, by signing this Agreement, hereby waives its right to contest the above citation and penalties, as amended herein. Further, Respondent will submit a signed copy of this Informal Settlement Agreement to NMED by May 12, 2023.
3. Respondent shall post, at one or more locations reasonably accessible to affected employees, the Notice to Affected Employees attached hereto, with an attached copy of this Agreement signed by all approving parties. Such notice shall remain posted until at least twenty (20) days after filing of this Agreement.
4. Respondent shall submit to OHSB by May 12, 2023, a signed copy of Affidavit of Posting, in the format attached hereto, attesting to posting of the notice required by Paragraph 3 above.
5. Respondent's failure to submit the affidavit of posting required by Paragraph 4 above on or before May 12, 2023, shall render this Agreement null and void. In such case, the Citation and Notification of Penalty shall become a final order of the Occupational Health and Safety Review Commission (the Commission) pursuant to NMSA 1978, Section 50-9-17.B, unless Respondent notifies NMED in writing that it intends to contest the citation in accordance with the provisions of NMSA 1978, Section 50-9-17.D on or before May 12, 2023.
6. Neither this Settlement Agreement nor Respondent's consent to entry of a Final Order by the Occupational Health and Safety Review Commission pursuant to this Settlement Agreement constitutes any admission by Respondent of a violation of the New Mexico Occupational Health and Safety Act or regulations or standards promulgated thereunder in any proceedings other than proceedings brought directly under the provisions of the Act. The parties acknowledge that the agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter fairly, economically and without litigation or further expense.
7. NMED reserves the right to take any action, administrative or judicial, civil or criminal, to enforce the Citation or Final Order issued under the authority of the Occupational Health and Safety Act, and any regulations or standards promulgated thereunder. In any such action, Respondent reserves the right to assert any defenses it may have. The district court for Santa Fe County shall have personal jurisdiction over disputes arising under this Settlement Agreement and Final Order, and Respondent waives any right to challenge such jurisdiction in any forum. The laws of New Mexico shall govern the construction and interpretation of this Settlement Agreement and Final Order pursuant to NMSA 1978, Section 50-9-17.G.
8. This agreement may be signed in multiple counterparts.

9. If no timely objection to this Informal Settlement Agreement is filed within twenty (20) days after its filing, then without further action, it shall become a Final Order of the Commission pursuant to Subsection G of Section 503 of 11.5.5 NMAC.

Respectfully submitted,

NEW MEXICO ENVIRONMENT  
DEPARTMENT

By:

**Robert Genoway** Digitally signed by Robert Genoway  
Date: 2023.05.11 17:02:26 -06'00'

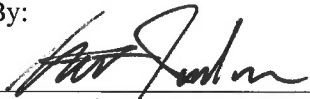
Robert Genoway, Bureau Chief  
New Mexico Environment Department  
Occupational Health & Safety Bureau  
525 Camino de los Marquez, Ste. 3  
Santa Fe, NM 87505

Date:

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KABANA INC.,

By:

  
\_\_\_\_\_  
Scott Jordan, Chief Goldsmith  
616 Indian School Rd. NW  
Albuquerque NM 87102  
[scott@kabana.net](mailto:scott@kabana.net)

Date:

5-12-23