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1 NEVADA OCCUPATIONAL SAFETY AND HEALTH

2 REVIEW BOARD

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4 CHIEF ADMINISTRATIVE OFFICER
5 OF THE OCCUPATIONAL SAFETY
6 AND HEALTH ADMINISTRATION OF
7 THE DIVISION OF INDUSTRIAL
8 RELATIONS OF THE DEPARTMENT
9 OF BUSINESS AND INDUSTRY, STATE
10 OF NEVADA,

Docket No. RNO 21-2106

Inspection No. 1502876

FILED

September 11, 2024

OSH Review Board

By: Karen Kennedy

Complainant,

vs.

RAINE'S MARKET, INC.,

Respondent.

12 DECISION OF THE BOARD, FINDINGS OF FACT,
13 CONCLUSIONS OF LAW AND FINAL ORDER

14 The above caption matter first came on for hearing on September 14, 2023. At this time,
15 the Board heard testimony of the parties and their closing arguments. Because of the lateness of
16 the hour, however, the Board continued the matter to deliberate at a later date. The Board
17 reconvened on May 8, 2024 to deliberate and dispose of this matter. At the conclusion of the
18 deliberations the Board voted in favor of the respondent and against the complainant, dismissing
19 the case with prejudice.

20 The complainant in this matter is the Chief Administrative Officer of the Occupational
21 Safety and Health Administration of the Division of Industrial Relations of the Department of
22 Business and Industry, State of Nevada (the State or DIR). The respondent is Raine's Market,
23 Inc. Raine's Market is a convenience store, bank, hardware store and some what of a focal point
24 of Eureka, Nevada, a small community located in a highly rural portion of Northeast Nevada.
25 Raine's Market provides many services to what is colloquially referred to as rural America.

26 Raine's Market, Inc., (Raine's Market) is a domestic corporation organized and chartered
27 in the State of Nevada. See, State's Exhibit C-1. Its registered agent is Lee Arlene Raine. Ms.
28 Raine is the President, Secretary and Treasurer of the company. The Director is Scott Franklin

1 Raine, who works the store and is the focal point of the business operation. *See*, Exhibit C-2.
2 Raine's Market is situated at 901 North Main Street, Eureka, Nevada. *See*, Exhibit C-4. It is
3 listed as a supermarket and hardware store, again, generic terms for a small town store in
4 Northern Nevada. The company has 1,000 no par value shares of stock. *See*, Exhibit C-2. The
5 matter was before State OSHA upon a referral concerning health, labeled as serious. The
6 business is the only hardware store in the region, the only source of propane except for that
7 delivered to households, the only source of most goods, the source of building material, animal
8 feed and other goods and the only financial institution in the area outside of Nevada State Bank.
9 Access to these goods and services, exists only through Raine's doors if it keeps the doors open.
10 Tr., p. 498.

11 This testimony was offered by Mr. Raine without question or challenge. Tr., p. 500.
12 When first subject to an investigation or inspection, Raine's Market was not given a citation,
13 only a warning. Tr., pp. 500-501. The area being an extremely rural part of the State, there was a
14 very small labor force available to populate the store and provide these services. Tr., p. 505.

15 The hazard being investigated by State OSHA was a failure to comply with the mandate
16 for employees to wear face coverings and generally a failure observe the State's mandate for
17 social distancing of employees and patrons. *See*, Exhibit C-4. Raine's Market, Inc., the
18 company, did business as Raine's Market. The inspection initiating type was a "referral." *See*,
19 Exhibit C-8. Raine's Market has 7 persons employed at the market and 17 individuals controlled
20 by the employer. *See*, Exhibit C-8.

21 While a small closely knit rural community, there was displayed a degree of hostility
22 towards Federal and State governments, when seeking to impose restrictions upon the manner in
23 which access to local businesses such as Raine's Market, could be had. *See*, respondent's Exhibits
24 R-1 through R-6, resolution of J.J. Golcoechea, and a resolution of the Sheriff Jesse J. Watts, of
25 Eureka County. Both denounced governmental intrusion upon local businesses such as Raine's
26 Market, *see*, R-3-6. Mr. Golcoechea was the Chairman of the Board of Eureka County
27 Commissioners. Respondent's Exhibits R-1- R-6.

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1 The complaint consisted of Citation 1, Item 1: Serious, which states:

2 Nevada Revised Statutes 618.375(2): Duties of employers. Every employer shall
3 furnish and use such safety devices and safeguards, and adopt and use such
4 practices, means, methods, operations and processes as are reasonably adequate to
render such employment and places of employment safe and comply with all
orders issued by the Division. Complaint, p. 2.

5 NRS 618.375(2) is a part of Nevada's version of the "general duty clause" governing the
6 responsibility of employers for the safety of their employees in the workplace. In this case it is
7 alleged:

8 On 11/17/20 employees working at Raine's Market, Inc., at 901 N. Main Street,
9 Eureka, Nevada 89316, were observed to be in areas of the workplace accessible
10 to the public and other workers and were not adequately protected against
COVID-19 contraction by means and methods prescribed by order of the
Division. Employees of the establishment were not wearing face coverings.
11 It was alleged further in the complaint that:

12 Patrons were permitted to enter the store without donning face coverings. The
observed conditions and practices resulted in employee exposure to infection
from COVID-19, which is a recognized serious hazard to employee health.
13 Additionally, during a previous observation of the establishment on 10/20/2020,
multiple employees were observed not wearing face coverings. *See, Compliant*
14 *p., 2.*

15 In support of these allegations, the State cited references:

- 16 • Declaration of Emergency Directive #003, 3/20/2020, #024, 6/24/20
- 17 • Division of Industrial Relations - Updated Guidance for Businesses Operating in
18 Phase 2 of Nevada United: Roadmap to Recovery Plan 7/29/2020, Governor
19 Sisolak's path intended to lead out from under the COVID-19 crisis.

20 The allegations were classified as "serious" and the State pursued a fine or penalty of
21 \$2,950, giving, it is alleged, due consideration to the probability, severability and extent of the
22 violation, the employer's history of previous violations, and the employer's size and good faith.
23 Complaint, p. 3.

24 The hearing in this matter was conducted in furtherance of two duly provided notices of
25 hearing, *see*, Notice of Hearing, filed August 15, 2023, and Notice filed April 17, 2024. In
26 attendance to hear the matter on September 14, 2023, at the start of the meeting were Rodd
27 Weber, Chairman, William Spielberg, Secretary and Members Frank Milligan, Jorge Macias and
28 Scott Fullerton. Member Milligan had to excuse himself and made an early departure from the

1 meeting. Tr., p. 532. In attendance to hear the matter when the Board deliberated and decided
2 the case on May 8, 2024, were Chairman Rodd Weber and members Tyson Hollis, Jorge Macias
3 and Scott Fullerton. Tyson Hollis is the public alternate member of the Board. He sat in place
4 of Frank Milligan. As a public member, labor representative and management member were in
5 attendance, a quorum was present to deliberate and decide the case.

6 At the outset of the hearing, the State of Nevada offered for admission into evidence its
7 Exhibits 1 through 3, pages C-1 through C-84. Respondent objected to a portion of the State's
8 Exhibits namely the interview of Scott Raine, at pages C-14 through C-16. Exhibits 1 through 3
9 were admitted, however, into evidence in their entirety, subject to further objection in the event
10 one or more of these pages of the Exhibits were specifically addressed during the course of the
11 hearing. Tr., p. 491.

12 The respondent offered an Exhibit packet consisting of page R-1 through R-6. R-1, R-2
13 consisted of the Golcochea resolution and Exhibits R-3 through R-6 consisted of Sheriff Watts'
14 resolution objecting to the State's insertion into Eureka County with the imposition of these
15 regulations impacting upon the manner in which businesses conducted in the county. Raine's
16 Market's Exhibit R-1 through R-6 were offered without objection and admitted into evidence
17 without objection. Tr., p. 491.

18 Salli Ortiz, Esq., counsel for the Chief Administrative Officer of the Occupational Safety
19 and Health Administration of the Division of Industrial Relations of the Department of Business
20 and Industry, State of Nevada (the State), appeared on behalf of the complainant (the State).
21 Raine's Market, Inc., was not represented by legal counsel but it was represented by Scott Raine,
22 the Director of Raine's Market, Inc., the manager of the store, and general central focus of the
23 community and business. The Board was represented by its Legal Counsel, Charles R. Zeh,
24 Esq., The Law Offices of Charles R. Zeh, Esq.

25 Jurisdiction in this matter is conferred by Chapter 618 of the Nevada Revised Statutes,
26 *see*, NRS 618.315. No party disputed the Board's jurisdiction. As there were at least four
27 members of the Board present to decide the case during each of the two hearings on this matter,

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1 with at least one member representing management and one member representing labor in
2 attendance, a quorum was present for the Board to conduct business.

3 Nevada has adopted all Federal Occupational Safety and Health Standards which the
4 Secretary of Labor has promulgated, modified or revoked and any amendments thereto. They are
5 deemed the Nevada Occupational Safety and Health Standards. *See*, NRS 618.295(8). A
6 complaint may be prosecuted for circumstances which arise before or during an inspection of the
7 employer's workplace. *See*, NRS 618.435(1).

8 The State issued a citation and notification of penalty on December 2, 2020. The
9 complaint consists of the one citation and item listed above. Generally, the State believes that in
10 this convenience store and community center, Raine's Market failed to protect its employees
11 from each other and from the public and failed to protect the public from the employees of
12 Raine's Market by disregarding the practice of social distancing of patrons and staff from each
13 other.

14 Respondent countered with a challenge to the facts, *i.e.*, that social distancing was
15 practiced to the best of the ability of Raine's Market, that Raine's Market observed directions
16 given by the State to Scott Raine when Raine's Market was first inspected by an investigator on
17 behalf of complainant, *see*, Tr., p. 552, and generally, the degree of hostility displayed in the
18 community towards agencies such as State OSHA complicated the observation of social
19 distancing. *See*, Watt and Golcoechea, R-1 through R-6, Tr., p. 551. Therefore, Raine's Market
20 did the best it could, under trying circumstances, to observe the restrictions upon the manner in
21 which business could be conducted in light of the COVID-19 assault upon the community.

22 Respondent sent a notice of its intent to contest the citation on January 7, 2021. *See*,
23 Exhibit 1, pp. C-34 and 35. The State filed and served its complaint January 15, 2021. *See*,
24 Exhibit 1, pp. C-36 through C-41. Raine's Market answered the complaint by a letter addressed
25 to Steve Ingersoll, at that time Chairman of the Board of Review, c/o The Law Offices of
26 Charles R. Zeh, Esq. The letter is signed by Scott Raine for Raine's Market, Inc. It is dated
27 January 25, 2021, received by DIR Legal, Carson City office on February 3, 2021. *See*, Exhibit
28 1, p. C-42.

1 **II. Statement of Facts**

2 The recitation of facts set forth in the introduction to this decision are incorporated herein
3 by reference as a part of the statement of facts of the Board in the disposition of this matter. The
4 State called one witness to be heard, Robert Nanse, the investigator of the referral to the
5 complainant in this matter. His testimony fairly approximated the allegations set forth above
6 when questioned on direct by counsel for the State.

7 When cross examined, a different version of the facts was revealed. During the first
8 inspection, Raine's Market was given by the State OSHA a packet of materials addressing the
9 proper response to the COVID-19 pandemic. Mr. Nanse remembered that Raine distributed the
10 materials to employees to review. Tr., p. 525.

11 Mr. Nanse was asked whether Mr. Raine was attempting to comply with the COVID-19
12 requirements or was he in outright defiance. The answer was: "I believe he was attempting to
13 comply." Tr., p. 533.

14 The investigation generated by the complaint against Raine's Market began at 9:30-9:35,
15 and included a walk around and interviews. Mr. Nanse left the store at 12:05, meaning he was
16 present and observing operations for 3 hours and this 3 hour inspection generated the complaint
17 for the violation of the COVID-19 guidelines and regulations issued by the State of Nevada and
18 made applicable to businesses such as Raine's Market, Tr., p. 534. Of the 3 hours, however,
19 Nanse spent at the store approximately 55% of that time devoted to interviewing Scott Raine, the
20 store director, manager and general overseer of operations. Tr., p. 534.

21 According to Mr. Nanse, there were 4 employees in the store at the time of his
22 investigation and inspection of the premises. Tr., p. 534. Nanse recalled that there were
23 customers in the store but he could not give a hard number as to the number of customers he
24 saw. He recalls seeing customers not wearing a face mask but that there may have been
25 customers wearing face coverings. While he could not remember the exact number of customers
26 or patrons wearing face coverings at the store, he recalls patrons wearing face coverings. Tr., p.
27 535. He recalls that there were customers wearing masks. Tr., p. 535. He was unable to recall
28 or tell, however, how many customers were wearing masks versus how many customers were not

1 wearing masks. Tr., p. 535. He recalls there being customers wearing masks and other
2 customers not wearing masks. Tr., p. 536.

3 Mr. Nanse recalled seeing only one employee not wearing a mask. This employee was
4 behind the deli-counter taking inventory. Tr., p. 536. Mr. Nanse does not recall whether there
5 was anybody around the employee who was not wearing a mask when he saw him without the
6 mask. Tr., p. 536. Mr. Nanse does not recall whether the deli-employee donned a mask after he
7 got out from behind the deli-counter. "He may have." Tr., p. 537.

8 There were 4 employees, Nanse claims, that he saw not wearing a mask. He does not
9 recall whether they were not wearing masks the entire time he was in the store. He believes
10 some of them wore their masks. He does not recall whether the employees, when they were not
11 wearing masks, were around anyone else while they had shorn their masks. Tr., p. 537.

12 In sum, Nanse specifically recalls seeing one employee, isolated by himself, not wearing
13 a mask. He recalls four employees who were not wearing masks at least a part of the time. He
14 recalls some put their masks on. As for the others, he does not recall if they were around anyone
15 else while they were not wearing a mask. Tr., p. 538.

16 State and local law enforcement personnel frequented the store. They were not wearing
17 masks while frequenting the store. Tr., p. 547.

18 The store was one of the few places that remained open as a source of food, propane and
19 the like through out Northeast Nevada during the pandemic. Tr., p. 541. Raine explained that
20 one of the customers seen not wearing a mask was an elderly lady who was deaf. She needed to
21 see a face to read lips in order to communicate. Tr., p. 543.

22 Mr. Nanse, according to Mr. Raine, told Raine that he needed to force customers who
23 came to the store without wearing a mask to either wear a mask or leave. And, if they didn't
24 according to Mr. Nanse, Mr. Raine needed to contact law enforcement to escort their departure.
25 Tr., p. 547. Mr. Nanse's suggestion was, therefore, for Raine to enlist the help of law
26 enforcement personnel who had expressed hostility towards the COVID regulations and would
27 in all likelihood be less than enthusiastic about enforcing the mask rules. Tr., p. 547.

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1 Raine testified:

2 The sheriff had never worn a mask, not once, not one of his deputies. I submit to
3 you that dozens of highway patrol officers roll in there, Nevada highway patrol,
4 state officers, armored officers, uniformed and local police in Federal, NDI
officers, Nevada Department of Investigation, I know them fairly well from
various dealings and search issues. Nobody ever wore a mask.

5 And the armored officers, if - how am I going to make those armored officers
6 wear a mask? Absolutely not. Its - everyone to a person stated it's
unconstitutional. This is illegal. We will not enforce this. Tr., p. 547.

7 Raine continued:

8 How did I deal with the OSHA rules. I did exactly what the first inspector
9 requested that I do, and I did that exactly to the letter. I did extra signs. I did
10 bigger signs. I did double signs that she recommended. I said don't engage
anybody if you know, its like hey what do I do. Don't worry about it. That's
sufficient. That follows the - that's sufficient for a very good period. Tr., p. 552.

11 Raine stated additionally:

12 I gave all those documents and you will notice that one employee that he - that
13 Officer Nanse interviewed mentioned and Officer Nanse himself mentioned that,
14 hey, yeah, those documents were made available to the employees. I made a
direct point of talking to every single employee, generally in groups of twos and
what do you think about this? What - you know, are you worried about this
COVID? Tr., p. 552.

15
16 Raine's Market posted signs at the entry to the store requiring that mask be worn by
17 patrons. To enforce the mask requirement signs for patrons, Raine was on his own.

18 This testimony by Raine was left unchallenged by the State. Scott Raine's testimony as
19 to the content and results of the initial investigation by the first investigator on October 20, 2020,
20 was not contradicted. The State did not call the first investigator to testify. Mr. Raine's
21 testimony, as to his handling of the COVID situation, is uncontradicted. His testimony that he
22 followed to the letter what the first investigator told him to do when dealing with patrons in the
23 store is also uncontroverted.

24 Mr. Nanse was not called back to testify to explain his recollection of the circumstances
25 upon cross examination. His testimony upon cross examination revealed that at no point was an
26 employee seen without a mask in the presence of either employees or patrons. Mr. Nanse's
27 recollection was that face masks were worn or if not worn, social distancing was maintained.

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1 There is no testimony from Mr. Nanse that social distancing was not: (a) required of
2 employees or (b) practiced by employees in the presence of other employees or patrons. Patrons
3 were asked to wear mask. For those patrons not wearing mask, there was no testimony that
4 employees were not wearing masks in the presence of patrons who were not wearing masks. Mr.
5 Nanse could not tell Mr. Raine that he saw employees who were not wearing a mask, in the
6 presence of other employees who were not wearing mask or were in the presence of patrons who
7 were not wearing mask. In fact, Mr. Nanse never testified that he saw employees, not wearing a
8 mask, while in the presence of others.

9 Again, Mr. Nanse's testimony was that Mr. Raine was not intentionally defying the
10 COVID regulations and policies promulgated by the State. Mr. Raine testified:

11 Anyways, I submit to you that I received this OSHA citation exactly because I
12 followed the best and safest path anyone in my position could have possibly of
13 taken. I can't think of today how I would, how I could have done it better to keep
14 people more safe. And at the end of the day, nobody was hurt. Our community
15 had like next to no problem with COVID. Tr., p. 558.

16 According to Mr. Raine when the employee was working inventory he was in a,
17 ...room by himself where there is no one visible for 50 feet. He would work on
18 stocking. He would go into freezers. He would go into the cooler. He would cut
19 stuff back in the walk-in's. Like, yeah, dude you're basically working by yourself
20 alone in another facility. Tr., p. 562.

21 Now you come inside around people and they are wearing mask absolutely.
22 Tr., p. 562.

23 When asked by Chairman Weber if he ever corrected any of his employees on their
24 compliance or noncompliance with any type of safety issues at work, Raine's answer was, yes, he
25 did including mask wearing. He corrected employees on the wearing of a mask. Tr., p. 577.

26 To the extent any of the following conclusions of law are also statements of fact, they are
27 incorporated herein. Also, as indicated, the introductory recitation, to the extent it constitutes a
28 statement of fact, is incorporated herein.

29 **III. Conclusions of Law**

30 For the State to sustain a citation set forth in its complaint before the Board, the State is
31 obligated to establish the alleged violation set forth in the complaint is shown by a

1 preponderance of the reliable evidence in the record. Mere, estimates, assumptions and
2 inferences fail this test for proving a citation. Conjecture is also insufficient. Findings
3 supporting a citation must be based upon the kind of the evidence which responsible persons are
4 accustomed to rely in serious affairs. *William B. Hopke Co., Inc.* 1982 OSHARC LEXIS 302 *
5 15, 10 BNA OSHC 1479 (No. 81-206, 19820 (ALJ)). The Board's decision must be based on
6 consideration of the whole record and shall state all facts officially noticed and relied upon. 29
7 CFR 1905.27(b). *Armor Elevator Co.*, 1 OSHA 1409, 1973-1974 OHSD ¶ 16, 958 (1973). *Olin*
8 *Construction Inc. v. OSHARC and Peter J Brennan, Secretary of Labor*, 525 F. 2d 464 (1975). A
9 Respondent may then rebut the allegations by showing, 1) the standard was inapplicable to the
10 situation at issue or 2) the situation was in compliance. *S. Colorado Prestress Co. v.*
11 *Occupational Safety & Health Rev. Comm'n*, 586 F.2d 1342, 1349-50 (10th Cir. 1978).

12 The burden is on the State to prove by a preponderance of the evidence, a *prima facie*
13 case against the Respondent. *See*, NAC 618.788(1); *see also*, *Original Roofing Company LLC v.*
14 *Chief Administrative Officer of the Nevada OSHA*, 442 P.3d 146, 149 (Nev. 2019). Thus, in
15 matters before the Board of Review, the State must establish: (1) the applicability of a standard
16 being charged; (2) the presence of a non-complying condition; (3) employee exposure or access
17 to the non-complying condition; and, (4) the actual or constructive knowledge of the employer's
18 violative conduct. *Id.* at 149, *see also*, *American Wrecking Corp. v. Secretary of Labor*, 351
19 F.3d 1254, 1261 (D.C. Cir., 2003).

20 Furthermore, the State must prove by a preponderance of evidence each element of the
21 *prima facie* case for each citation being prosecuted. *See*, *ComTran Group, Inc. v. U.S. Dept. Of*
22 *Labor*, 722 F.3d 1304, 1308 (11th Cir., 2013); *Secretary of Labor v. JPC Group, Inc.*, 2009 WL
23 2567337, Final Order Dated 2009, (O.S.H.R.B.) WL p. 2. A respondent's ability to defeat one
24 element of the *prima facie* case is sufficient to defeat the State's entire claim for relief. That is,
25 all else falls by the wayside, once it is shown that the State has failed to prove at least one
26 element of the *prima facie* case. Raine's Market need not engage in the discussion of the other
27 elements of the *prima facie* case and those various theories of the case as they become irrelevant
28 to the defeat by Raine's Market of the Citations brought against the Company.

1 This is where the State's case founders. There is little doubt that the first element of
2 *prima facie* case was met. The regulations and State statute were intended to confront COVID
3 and provide a safe harbor for employment and for patrons in the face of an epidemic of the
4 magnitude presented by COVID-19. COVID was the ambient, ubiquitous condition confronting
5 the world, although, the testimony in this case was that in rural, Northeastern Nevada, with its
6 vast expanse, the area was nearly free of COVID-19 presence. *See, Tr.*, p. 558.

7 The State fails, markedly, however, in the proof of employee exposure or access to the
8 non-complying condition. The uncontroverted evidence before this Board shows a failure by the
9 State to prove exposure or access to a non-complying COVID condition. The uncontroverted
10 testimony is that Raine's Market followed the direction given to it when first investigated. Face
11 masks were required of patrons but they were to be treated only with reason and not forcibly
12 required to wear a mask when patronizing the store. As directed, signs were posted on the store
13 entrance requiring patrons to wear face masks. Information about the COVID epidemic that was
14 given to Mr. Raine during the first investigation of the market was disseminated to staff. Staff
15 were required to wear a face mask. Staff were disciplined for failure to wear a face mask.

16 Mr. Nanse could not testify and did not testify that he saw, during the three hour
17 investigation, any employee of the store failing to wear a face mask in the vicinity of a patron
18 not wearing a face mask or in the vicinity of a co-employee or colleague not wearing a face
19 mask. The testimony of Mr. Nanse upon cross examination was not countered either through re-
20 direct or by calling the investigator of the first occasion when the store investigated by the
21 complainant's staff. In short, there was no credible evidence brought forward that social
22 distancing, the bottom line here, of the complaint, was not practiced by Raine's Market, the
23 respondent in this matter.

24 The citation must, therefore, be dismissed by reason of a failure of proof of exposure, one
25 of the four essential elements required to support a claim. *ComTran, supra* at 1308; *Original*
26 *Roofing Company, supra* at 149. Social distancing was reasonably practiced by Raine's Market.

27 On these facts, it is only speculation that exposure occurred, and therefore, the State has
28 failed to prove the exposure element of a *prima facie* case. The theoretical possibility of

1 exposure is insufficient grounds to prove any element of a *prima facie* case. Mr. Nanse's
2 testimony amounts to only a theoretical prospect of exposure. Since the State must prove all
3 four elements of the *prima facie* case by a preponderance of the evidence for the citation set
4 forth in its complaint, *see, ComTran, supra* at 1308, the State has failed in its burden to prove its
5 claim. The citation rises and falls upon whether there was proof of exposure to COVID-19. The
6 State offers only speculation to satisfy its burden of proof of exposure to the hazardous
7 condition.

8 ACCORDINGLY, it was moved by Jorge Macias, seconded by Scott Fullerton, on May
9 8, 2024, after the Board deliberated on this matter, to dismiss the complaint with prejudice, with
10 the State taking nothing thereby. The motion was adopted on vote of 4 in favor of the motion
11 and none against. It was unanimously adopted. The members voting on the motion consisted of
12 Chairman, Rodd Weber and members Jorge Macias, Scott Fullerton and Tyson Hollis. Tyson
13 Hollis participated in the deliberations and voted on the motion to dismiss. He voted as a
14 member of the public, alternate in place of Frank Milligan, a public member, who was absent
15 during the course of the hearing on the merits. Board Secretary, William Spielberg was also
16 absent on this date. Mr. Hollis was given the record to review before voting. He was, therefore
17 eligible to participate in the disposition of this matter. Deliberation Transcript pp. 14-16.

18 The complaint IS HEREBY DISMISSED with prejudice. Deliberation Transcript pp. 14-
19 16. This is the final order of the Board.

20 IT IS SO ORDERED.

21 On August 14, 2024, the Board convened to consider the adoption of this decision, as
22 written or as modified by the Board, as the decision of the Board.

23 Those present and eligible to vote on this question consisted of 5 members. On a motion
24 of Scott Fullerton, seconded by Tyson Hollis, the Board voted 3-0-2 (Milligan absent, Bautista
25 abstaining as he was new to the Board on this date) to approve this Decision of the Board as the
26 action of the Board and to authorize Chairman Jorge Macias, after any grammatical or
27 typographical errors are corrected, to execute, without further Board review this Decision on

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1 behalf of the Nevada Occupational Safety and Health Review Board. Those voting in favor of
2 the motion either attended the hearing on the merits or had in their possession the entire record
3 before the Board upon which the decision was based.

4 On August 14, 2024, this Decision is, therefore, hereby adopted and approved as the Final
5 Decision and Order of the Board of Review.

6 Dated this 11th day of September, 2024.

NEVADA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

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By: /s/Jorge Macias
Jorge Macias, Chairman

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11 NOTICE: Pursuant to NRS 233B.130, any party aggrieved by this Final Order of the OSHA
12 Review Board may file a Petition for Judicial Review to the District Court within thirty (30) days
after service of this Order.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached document, *Decision and Order of the Board, Findings of Fact and Conclusion of Law, and Final Order*, on those parties identified below by placing an original or true copy thereof in a sealed envelope, certified mail/return receipt requested, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:

Salli Ortiz, Esq.
DIR Legal
1886 College Pkwy., Ste. #110
Carson City, NV 89706

Scott Raine
Raine's Market, Inc.
901 N Main Street
Eureka, NV 89316

Dated this 11th day of September, 2024.

By : /s/ Heather A. Evans
Employee of
The Law Offices of Charles R. Zeh, Esq.

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