

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on April 16, 2019
Sacramento, California
West Covina, California

PRESENT:

Ed Lowry, Chair
Judith Freyman, Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician

MINUTES OF April 4, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the April 4, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the April 4, 2019 Board meeting. The vote was 2-0.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: No report.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: No report.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: Member Freyman reported meeting with Robert Moutrie who is new with California Chamber of Commerce, following departure of Marti Fisher.

Ms. Freyman also reported that the International Labour Organization is celebrating its 100th anniversary.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

ACTION: Executive Officer Hapgood reported progress on hiring new Administrative Law Judges and new Office Technician.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. REGULATIONS:

A. Discussion on proposed changes to regulations 359.1, 361.3, 372.2, and 372.9 concerning (1) changes to rules regarding docketing and perfecting an appeal, (2) changes to rules regarding employer provision of the citation package, (3) changes to rules regarding subpoenas, allowing attorneys to issue subpoenas and providing the board time to process subpoena requests, and (4) repeal of rule 372.9 requiring the Division's automatic production of evidence. Review of associated proposed rulemaking documents, including draft of ISOR and Notice.

2. LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported on current court cases.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its closed session.

- 1291708 ROBERT CHAMPAGNE LANDSCAPE
 ACTION: Denied
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0
- 1188395 SILICONSAGE CONSTRUCTION INC
 ACTION: Denied
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0
- 1180192 WEST COAST ARBORISTS, INC.
 ACTION: Denied
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0
- 1195264 WAL-MART STORES INC. STORE # 1692
 ACTION: Granted
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

ORDERS DISMISSING APPEAL:

- 1256604 SILVERADO FRAMING & CONSTRUCTION, INC.
 ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

- 1325022 BRISTOL EXPRESS CAR WASH, LLC
 ACTION: Board discussed.
- 1331985 KAG MERCHANT GAS GROUP, LLC
 ACTION: Board discussed.

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

- 1347210 AK CORAL CAY TRUST LLC
1180499 ALPHA CONSTRUCTION COMPANY, INC.
1141604 BOY RACER INC. DBA BURNING ANGEL
 (EMPLOYER'S PETITION)

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- 1141604 BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
- 1205214 CALIFORNIA STRUCTURAL CONCEPTS INC.
ACTION: Board discussed.
- 1246527 CEMEX
316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
1129260 ENVIRONMENTAL CONSTRUCTION GROUP
1240360 HARRIS SPICE COMPANY
1221889 HERBERT ALLEN KELLY
1251604 INTERLINE BRANDS, INC.
1071914 JOSEPH PERALTA
- 1192145 KPRS CONSTRUCTION SERVICES, INC.
ACTION: Board discussed.
- 1173183 L & S FRAMING, INC.
1200875 NATIONAL RETAIL TRANSPORTATION, INC.
1201848 PAPICH CONSTRUCTION COMPANY, INC.
- 1183505 PERFORMANCE TEAM FREIGHT SYSTEMS
ACTION: Issue DAR
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0
- 1232555 PROCESS COOLING INTERNATIONAL, INC.
1059365 SHIMMICK CONSTRUCTION COMPANY, INC.
1116095 SOUTHERN CALIFORNIA EDISON
1298791 TURNER BROADCASTING SYSTEM, INC.
1116529 UNITED PARCEL SERVICE, INC. DBA UPS
1200858 WESTERN DIGITAL CORPORATION

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
34-2014 80001749 (2008-R2D1-3414 through 3418)
2. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 through 3098)
3. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087
(13-R2D4-0572 through 0574)
4. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
5. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002206 (12-R3D1-0781)
6. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
7. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
8. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
9. W.A. RASIC COMPANY, INC., 13-R4D1-1422, 34-2016-80002454 (314863978)
10. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
11. KEY ENERGY SERVICE, LLC 12004280
12. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
13. ATKINSON CONSTRUCTION, LP (317386084)
14. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
15. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
16. LION FARMS, LLC 1070258, MCV075788
17. ELECTRICAL SYSTEMS & INSTRUMENTATIONS, INC. (316695469)
18. UNITED PARCEL SERVICE, BS171154 (315347864)

19. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
20. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910, (1111325)
21. SSA CONTAINERS, INC. (314758756)
22. BULKLEY & ASSOCIATES, LLC, CV43751 (1052467)
23. BLUE DIAMOND GROWERS, (1040471)
24. UNITED PARCEL SERVICE, (1158285)
25. BRAGG COMPANIES, DBA BRAGG CRANE SERVICE,
HG18930741 (1157108)
26. NORM WILSON & SONS INC. (1116151)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
2. NOLTE SHEET METAL, INC., 16CE CG03592 (14-R6D8-2888 through 2783)
3. VENTURA COASTAL, F077267 (317808970)
4. HOME DEPOT, U.S.A., INC. 48C1710947 (1011071)
5. AVALON BAY COMMUNITIES, INC., G056506, 30-2016-00872036
(317232965)
6. HOME DEPOT, U.S.A. INC. DBA HOME DEPOT #6683, CIVDS1716416,
(1014901)
7. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)
8. AC TRANSIT, RG13687314, A142799 (310060629)

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ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1157719	ADVANCED CONSTRUCTION SOUTHWEST, INC.
1101946	AMERIGAS CORPORATION
1240345	BAKSH CONSTRUCTION
1310842	BMC WEST, LLC.
1369721	BOTTLING GROUP LLC
1298902	BOTTLING GROUP, LLC OPERATING AS PEPSI BEVERAGES
1238801	BRIAN MCCLANAHAN
1306585	BULWARK CONSTRUCTION INC.
1362338	BYD COACH & BUS LLC
1339028	CENTRAL STRIPING SERVICE, INC.
1264537	CITY OF GLENDALE GLENDALE WATER & POWER
1205562	CITY OF LOS ANGELES INFORMATION TECHNOLOGY
1286063	CITY OF SANTA CLARITA
1352196	CORE-MARK INTERNATIONAL INC
1307130	CORONET CONCRETE PRODUCTS, INC.
1366265	CRUZ CONSTRUCTION AND LANDSCAPE INC
1343795	CURTIS PFIZENMAIER
1306772	DEACON CORP.
1263031	DESCOR, INC.
1304312	DESKMAKERS INC
1324375	DICOR CONTRACTORS, INC.
1084912	EAGER BEAVER TREE SERVICE
1343674	FEDEX GROUND PACKAGE SYSTEM, INC.
1370048	FOOTHILL FIRE PROTECTION, INC.
1257340	FRONTIER CALIFORNIA, INC.
1320936	GANAHL LUMBER COMPANY
1347200	GEMPERLE FAMILY FARMS
1295239	GLACIER COLD STORAGE, LTD
1290220	GOLDEN EMPIRE TOWING, INC.
1155018	HAYWARD QUARTZ TECHNOLOGY, INC.
1326016	IN-N-OUT BURGER
1313961	INLAND EMPIRE FOODS, INC.
1279076	INSTITUTE FOR ENVIRONMENTAL HEALTH, INC.
1320633	IRON PANTHER, INC.
1361177	J N R CONSTRUCTION
1355662	JEWEL CITY AUTO BODY
1336710	JOHN A MACHADO

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1325742	KAISER PERMANENTE MORENO VALLEY MEDICAL CENTER
1287593	LA VALLE SABBIA
1267202	LAZER SPOT
1333929	LEVEL V CONSTRUCTION, INC.
1307119	LOW COST PLUMBING
1314251	MANADA ROOFING INC.
1351594	MARLEON, INC.
1265568	MATERIAL HANDLING SYSTEMS, INC.
1334469	MCEWEN NURSERY
314867441	METROHOME LTD
1334303	METROPOLITAN STATE HOSPITAL
1337852	MOREHEAD FARMS
1247582	MS INTERNATIONAL
1350087	NCW INCORPORATED
1317380	NONGSHIM AMERICA, INC.
1229187	OCEAN PARK DEVELOPMENT, LLC
1336043	P. & R. PAPER SUPPLY COMPANY INC.
1239966	PACIFIC COAST SUPPLIES
1306870	PACIFIC GAS & ELECTRIC COMPANY
1121300	PACIFIC RIM DAIRY
1297249	POMONA COLLEGE
1287297	PREMIER MUSHROOMS, INC.
1325959	RBC TRANSPORT DYNAMICS CORP
1328523	ROOF MASTER
1205431	ROSS STORES, INC.,
1305022	SAUMERS WELDING, INC.
1325077	SIMONIAN FRUIT COMPANY
1329248	SLSCO, LP.
1319500	SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT
1351551	STEPHEN GRIFFIN CONSTRUCTION, INC.
1279610	SURFACE MODIFICATION SYSTEMS, INC.
1325990	TATIANA CONTINENTAL DELI & MEAT, INC.
1345141	TECTA AMERICA SACRAMENTO, INC.
1367590	TEMPLE ISRAEL OF HOLLYWOOD
1329246	THE PRESENTATION SCHOOL
1248662	TITAN PERSONNEL INC
1275707	TLM PETRO LABOR FORCE, INC.
1355084	TRI-VALLEY CONTRACTING, INC.
1185979	TTL BUILDING COMPANY
1310442	TTRS, INC.
1323909	TURN KEY CONSTRUCTION AND SOLAR
1318481	WEST COAST AGGREGATE SUPPLY INC.

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1273815	WEST COAST ARBORISTS, INC.
1284696	WILLIS CONSTRUCTION COMPANY, INC.
1324920	WOOD LAND EXPANSION, INC.

ACTION: Approved all Administrative Law Judge Settlement
Orders as amended.

Moved: Judith Freyman, Seconded: Ed Lowry

Vote: 2-0

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:07 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 12:08 p.m.