

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on May 23, 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
Leslie Murad II, Administrative Law Judge
Sam Lucas, Administrative Law Judge

MINUTES OF May 9, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the May 9, 2019 Board meeting as amended. Chair Lowry seconded. The Board voted to approve the draft minutes of the May 9, 2019. Board meeting as amended. The vote was 2-0.

NEW BUSINESS:

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

ACTION: To accommodate the scheduling of Hearings on Board meeting days, Board meetings will be held in the library when needed.

OLD BUSINESS:

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

ACTION: A stipulation of the parties will be filed with the court requesting permission to issue a corrected decision in the case of AC Transit.

LEGISLATION:

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

ACTION: re: independent contractors. AB5 is still in process.
Administrative Law Judges will continue to follow the precedent set by
Borello for now.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Lowry shared that he watched the commencement speech
at the Georgetown Law School graduation given by Barbara Underwood,
Solicitor General of New York.

BOARD MEMBERS' REPORTS:

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

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

ACTION: Executive Officer Hapgood reported on hiring efforts for an
Administrative Law Judge for the West Covina office. The process is not
yet completed.

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.

ACTION: The economic impact assessment is completed.

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.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

NONE

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1195414 ACCO ENGINEERED SYSTEMS, INC.
ACTION: Board discussed.

1336043 P & R PAPER SUPPLY COMPANY INC.
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1326588 PRO FRAME BUILDERS, INC.
ACTION: Order Granting Petition approved.
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

1088791 TUTOR PERINI CORPORATION
ACTION: Order Granting Petition approved.
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

ORDERS DISMISSING APPEAL:

1338523 C&K FORM FABRICATION, INC.
ACTION: Board discussed.

1326937 LONESTAR CONSTRUCTION, INC.
ACTION: Board discussed.

1210984 SKY HARBOR FULLERTON LLC
ACTION: Board discussed.

1309484 VICTOR TORRES AND MIGUEL ANGEL CALDERON
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1338709 AMB RANCH MANAGEMENT, INC.
ACTION: Board discussed.

1330747 BROTHERS INTERNATIONAL DESSERTS
ACTION: Board discussed.

1342020 REAL TIME STAFFING SERVICES, 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.)

310060629 AC TRANSIT
1347210 AK CORAL CAY TRUST LLC
1195416 ALON KASPI

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- 1180499 ALPHA CONSTRUCTION COMPANY, INC.
ACTION: Approved to issue DAR.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0
- 1141604 BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
- 1141604 BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
- 1205214 CALIFORNIA STRUCTURAL CONCEPTS INC.
ACTION: Approved to issue DAR.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0
- 1246527 CEMEX
- 316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
- 1221889 HERBERT ALLEN KELLY
- 1251604 INTERLINE BRANDS, INC.
- 1071914 JOSEPH PERALTA
- 1192145 KPRS CONSTRUCTION SERVICES, INC.
ACTION: Approved to issue DAR.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0
- 1173183 L & S FRAMING, INC.
- 1200875 NATIONAL RETAIL TRANSPORTATION, INC.
ACTION: Approved to issue DAR.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0
- 1201848 PAPICH CONSTRUCTION COMPANY, INC.
- 1232555 PROCESS COOLING INTERNATIONAL, INC.
- 1059365 SHIMMICK CONSTRUCTION COMPANY, INC.
- 1298791 TURNER BROADCASTING SYSTEM, INC.
ACTION: Board discussed.
- 1116529 UNITED PARCEL SERVICE, INC. DBA UPS
ACTION: Approved to issue DAR.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0

1195264 WAL-MART STORES INC. STORE # 1692

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. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 through 3098)
2. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
3. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002206 (12-R3D1-0781)
4. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
5. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
6. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
7. W.A. RASIC COMPANY, INC., 13-R4D1-1422, 34-2016-80002454 (314863978)
8. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
9. KEY ENERGY SERVICE, LLC 12004280
10. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
11. ATKINSON CONSTRUCTION, LP (317386084)
12. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
13. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
14. ELECTRICAL SYSTEMS & INSTRUMENTAIONS, INC. (316695469)

15. UNITED PARCEL SERVICE, BS171154 (315347864)
16. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
17. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910, (1111325)
18. BULKLEY & ASSOCIATES, LLC, CV43751 (1052467)
19. BLUE DIAMOND GROWERS, (1040471)
20. UNITED PARCEL SERVICE, (1158285)
21. BRAGG COMPANIES, DBA BRAGG CRANE SERVICE,
HG18930741 (1157108)
22. NORM WILSON & SONS INC., 19STCP00663 (1116151)
23. ROBINSON MFG., INC., 30-2019-01067631 (1169633)

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. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910 (1111325)

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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.)

1339570	A T & T SERVICES, INC.
1321497	AE COM ENERGY & CONSTRUCTION, INC
1358289	ALAMILLO REBAR, INC.
1359528	ALEJANDRA BERRELLEZA, AN INDIVIDUAL
1175508	AMERICAN GOLF CORPORATION
1373369	APPLIED CONVEYOR TECHNOLOGY INC.
1292842	ARAMARK UNIFORM SERVICES AND APPAREL
1242487	ATHLON POOL COMPANY
1339875	BAINS PROPERTIES INC.
1235627	BAP POWER CORPORATION
1373492	BAY AREA TRAPPING, INC.
1338230	BEACON PROPERTY MANAGEMENT, INC.
1364920	BIG TIRE & WHEELS, INC.
1290785	BRANAGAN BUILDERS, INC.
1295165	BRIGHTVIEW COMPANIES, INC.
1336221	BRYANT RACING, INC.
1273470	CA FORESTRY & FIRE PROTECTION
1288777	CAL ENTERPRISE LABOR SOLUTIONS INC
1320036	CAL ENTERPRISE LABOR SOLUTIONS, INC.
1339602	CALIFORNIA CREATIONS
1239561	CALIFORNIA KITCHEN CABINET DOOR, CORPORATION
1284796	CENTRAL COAST SPRING
1352440	CHARTWELL STAFFING SOLUTIONS
1340250	CHAVOLLA FLC
1292850	CHRISTIAN BUILDING MATERIALS, INC.
1370022	COMMUNITY LIVING SOLUTIONS, INC.
1342350	CORNERSTONE PACKING AND COOLING
1359665	CORONA TOWN FARMERS MARKET, INC.
1327805	CVS #9241
1279500	D & D CONSTRUCTION SPECIALTIES, INC.
1323232	DALE CANFIELD CONSTRUCTION INC
1374483	DONALD WACHTER, AN INDIVIDUAL
1359648	DOOR COMPONENTS, INC.
1357692	EMPLOYBRIDGE, LLC
1203310	ENGEN ENTERPRISES INC.
1364292	ENVIRONMENTAL CHEMICAL CORPORATION
1234259	EPISODIC VENTURES, LLC.
1262954	EQUITY LIFESTYLE PROPERTIES, INC. AND/OR MHC NAC,
1335885	EXETER UNIFIED SCHOOL DISTRICT

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1261810	FABIE TILE & MARBLE, INC.
1337166	FEDEX GROUND
1311765	GENEVA STAFFING, INC.
1183860	GOLDEN VALLEY FARM SERVICE INC
1260971	GONSALVES & SANTUCCI, INC.
1346318	GRANT CONSTRUCTION, INC.
1239564	GREYSTAR, LP.
1348398	GYNA, INC.
1346117	HEARTLAND TECHNOLOGY GROUP
1316258	HOLLYBROOK MONTECITO OPERATIONS LLC
1372517	HOSSAM MOHAMMAD KADDOURA, AN INDIVIDUAL
1223383	HUMBOLDT SHERIFFS OFFICE WORK DETAIL PROGRAM
1322726	ILINK BUSINESS MANAGEMENT, INC.
1290626	IMPERIAL 162, LLC.
1330001	J G WESTSTEYN DAIRY LP
1373088	JOSE GONZALEZ AND MARTIN GONZALEZ
1364538	JUAN MACHUCA, AN INDIVIDUAL
1325983	KEY PIN, INC.
1313740	KIEWIT INFRASTRUCTURE WEST CO.
1373450	KINDRED NURSING CENTERS WEST, LLC.
1329751	LASCO ELECTRIC, INC.
1254876	LOWE'S HOME CENTERS, LLC.
1383802	MHE ENTERPRISES, INC.
1263355	MICHAEL ROBERTS CONSTRUCTION, INC.
1315422	MIR, CO.
1366455	MLU SERVICES, INC.
1369425	MULEHEAD GROWERS, LLC
1319135	NEIL JONES FOOD COMPANY
1306598	NEW IMAGE PLASTERING
1287701	NUNEZ BROTHERS, INC.
1360311	O' JOE'S, INC.
1227776	OBED LOAIZA
1319025	PARTNERS PERSONNEL MANAGEMENT, LLC.
1318881	PERFECT 85-DEGREES C., INC.
1346588	PWS CONSTRUCTION, INC.
1380277	RAUL ANDRADE CORTES, AN INDIVIDUAL
1377681	REDDING COUNTER TOPS, INC.
1351569	ROBERT AND SANDRA GARCIA FARMING PARTNERSHIP
1297006	ROOFCO INC
1348277	SAIGON GOURMET, LLC.
1284949	SAN DIEGO CUTTING, INC.
1270946	SAN FRANCISCO UNIFIED SCHOOL DIST. - BRET HARTE
1348399	SCHUTZ FARMS
1349493	SIERRA LANDSCAPE DEVELOPMENT, INC.
1367189	SILVER CREEK INDUSTRIES, INC.

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1233231	SILVERLINE CONSTRUCTION INC.
1123110	SINCLAIR CONCRETE, INC.
1353411	SPORTS CAR RACING ASSOCIATION OF THE MONTEREY
1241983	STANTRU RESOURCES, INC.
1290990	T HASEGAWA LLC
1217151	TAYLOR MORRISON SERVICES, INC.
1373069	THC - ORANGE COUNTY, LLC.
1205239	TLP METAL WORKS INC.
1328410	TURNER'S OPERATIONS INC.
1330792	VALLEY GUTTER SUPPLY, INC.
1306521	VANTAGE DEVELOPMENT & CONSTRUCTION
1279949	VAV PLASTICS, INC.
1330760	VISTA VERDE LABOR, INC.
1274645	VMC INTERNATIONAL, LLC.
1241999	W. M. KLORMAN CONSTRUCTION CORP
1217814	WASTE SOLUTIONS GROUP OF SAN BENITO, LLC
1327788	WEATHER-TECH ROOFING, INC.
1371742	WEBER DISTRIBUTION, LLC.
1206629	WESTERN FABRICATION TECH CORP.
1324753	WHELAN SECURITY OF CALIFORNIA INC.
1366246	WILLIAM BARKER GRAHAM II, AN INDIVIDUAL
1300793	WISMETTAC ASIAN FOODS INC
1358597	WM. STRATFORD, INC.
1331346	WORKFORCE ENTERPRISES WFE, INC.

ACTION: Board discussed all Administrative Law Judge Settlement Orders listed above.

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 11:38 a.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 11:39 a.m.