

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on August 08, 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
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Christopher Jessup, Administrative Law Judge

MINUTES OF JULY 11 AND JULY 25, 2019 MEETINGS:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the July 11 and July 25, 2019 Board meetings. Chair Lowry seconded. The Board voted to approve the draft minutes of the July 11 and 25, 2019 Board meetings. The vote was 2-0.

NEW BUSINESS:

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

ACTION: Discussed supervisor training required by government code.

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: Administrative Law Judge Jessup presented an update on AB5-Dynamex.

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: Discussion on subject of temporary workers versus full time employees.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

ACTION: Executive Officer Hapgood reported on attending an Executive Officer meeting. The department of Human Resource is beginning a search for a new HR Chief.

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: Public comment will be heard at the next Board meeting, August 22, 2019.

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: There was no public comment.

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.)

1253399 KENAI DRILLING LIMITED
ACTION: Board discussed.

1229419 STEVE BUBALO CONSTRUCTION, CO.
ACTION: Board discussed.

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.)

1348404 EAGLE NASHER, LLC
ACTION: Board discussed.

1295850 LIBERTY MFG
ACTION: Board discussed.

1094206 NORROMMY, INC. DBA LEE'S AUTO & MUFFLER
ACTION: Board discussed.

1063574 OWENS CORNING ROOFING & ASPHALT LLC
ACTION: Board discussed.

1176203 SUPER KING MARKETS
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

- 1206788 DPR CONSTRUCTION INC, ET AL
ACTION: Granted.
 Moved: Judith Freyman,
 Seconded: Ed Lowry.
 Vote: 2-0
- 1368418 MCMILLAN TREE SERVICE
ACTION: Denied.
 Moved: Judith Freyman,
 Seconded: Ed Lowry.
 Vote: 2-0
- 1345451 ON THE THIRTY, INC.
ACTION: Denied.
 Moved: Judith Freyman,
 Seconded: Ed Lowry.
 Vote: 2-0
- 1341411 UPS
ACTION: Denied.
 Moved: Judith Freyman,
 Seconded: Ed Lowry.
 Vote: 2-0

ORDERS DISMISSING APPEAL:

- 1359650 ACS STAFFING, INC.
ACTION: Board discussed.
- 1114208 ANTHONY'S FISH GROTTA
ACTION: Board discussed.
- 1290987 WESTERN DENTAL SERVICES, INC.
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

- 1337521 FERITAGE QUKN, INCORPORATED
ACTION: Board discussed.

- 1364651 FOSTER DAIRY FARMS
ACTION: Board discussed.
- 1333614 HAL HAYS CONSTRUCTION INC
ACTION: Board discussed.
- 1378444 HUMBERTO CAZARAS AND RICHARD PARRA-SOTO
ACTION: Board discussed.
- 1367895 TOTAL RESTORATION SERVICES 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.)

- 1195414 ACCO ENGINEERED SYSTEMS
- 1339143 ACTION PRESSURE WASHING
ACTION: Remanded.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote: 2-0
- 1347210 AK CORAL CAY TRUST LLC
- 1195416 ALON KASPI
- 1180499 ALPHA CONSTRUCTION COMPANY, INC.
- 1272378 ANDREW HARRISON BARNES
- 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.
- 1246527 CEMEX
- 316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
- 1310525 GOLDEN STATE FC, LLC.
- 1221889 HERBERT ALLEN KELLY
- 1251604 INTERLINE BRANDS, INC.
- 1192145 KPRS CONSTRUCTION SERVICES, INC.
- 1173183 L & S FRAMING, INC.
- 1201848 PAPICH CONSTRUCTION COMPANY, INC.

- 1326588 PRO FRAME BUILDERS, INC.
ACTION: Remanded.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote: 2-0
- 1232555 PROCESS COOLING INTERNATIONAL, INC.
- 1123110 SINCLAIR CONCRETE, INC.
ACTION: Board discussed.
- 1298791 TURNER BROADCASTING SYSTEM, INC.
ACTION: Remanded.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote: 2-0
- 1088791 TUTOR PERINI CORPORATION
1359495 VICTOR C. GARCIA
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. UNITED PARCEL SERVICE, BS171154 (315347864)
15. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
16. BLUE DIAMOND GROWERS, (1040471)
17. UNITED PARCEL SERVICE, (1158285)
18. BRAGG COMPANIES, DBA BRAGG CRANE SERVICE, HG18930741 (1157108)
19. NORM WILSON & SONS INC., 19STCP00663 (1116151)
20. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
21. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
22. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
23. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH, 19STCP02756; REGARDING ALPHA CONSTRUCTION COMPANY, INC.(1180499), CALIFORNIA STRUCTURAL

CONCEPTS, INC. (1205214) AND KPRS CONSTRUCTION
SERVICES, INC. (1192145)

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. DBA HOME DEPOT #6683, CIVDS1716416, (1014901)
5. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)
6. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910 (1111325)
7. LION FARMS, LLC, MCV075788 (1070258)

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.)

1371986	A PLUS PLUMBING LLC
1366144	A1 PRECISION AUTO REPAIR, INC.
1358955	ADVANCED GEOTECHNIQUES, INC.
1351928	ALLEN CONSTRUCTION, INC.
1348602	ALUMINUM PRECISION PRODUCTS, INC.
1339999	ANGELES PRECISION ENGINEERING, INC.
1225445	BEACH DENTISTRY
1375903	BEYOND RESOURCE SOLUTIONS, INC
1378664	BIO-RAD LABORATORIES, INC.
1323891	BOB MARSHALL CONSTRUCTION, INC
1320472	BUILDER SERVICES GROUP
1348651	BURGESS LUMBER

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1338965	C J ELECTRIC, INC.
1211626	CA CORRECTIONS AND REHABILITATION
1338006	CAL COAST REFRIGERATION INC.
1253372	CAMBRO MANUFACTURING COMPANY INC.
1388121	CDL TRUCK SALES, INC.
1369159	CHINCHIOLO STEMILT CALIFORNIA, LLC
1356475	CORN MAIDEN
1356334	COSTCO WHOLESALE CORPORATION
1366205	CUSTOM BUILDING PRODUCTS, INC.
1308650	D 7 ROOFING SERVICES, INC.
1289911	D J TANK LINE, INC.
1378020	DIAMOND ENGINEERING SERVICES
1377755	DONSUEMOR, INC.
1346615	EASYDISC, INC.
1359467	EDUARDO FILEMON GUTIERREZ
1361515	FAIRFIELD COOLING, INC.
1357781	FED EX GROUND PACKAGE SYSTEM, INC.
1331154	FIRESIDE HEALTH CARE CENTER
1365309	FRAMING EXPERT
1350695	FULLSHIELD, INC.
1386754	GAIN ADC HOLDINGS LLC
1384893	GOLDEN STATE FC, LLC.
1385692	GREENLINE LANDSCAPE CONSTRUCTION
1225740	HEAGY CONSTRUCTION IMPROVEMENTS
1284758	HOFFMAN CONCRETE COMPANY, INC.
1394246	HORIZON JERSEYS
1373191	HYUNG LEE
1290314	JENSEN ENTERPRISES, INC.
1283955	KEVIN J VINT MASONRY
1374045	KFM RESTAURANTS, L.P.
1359628	KULS
1380574	LAGUNA COOKIE COMPANY, INC.
1308266	LANGER FARMS, LLC
1359936	LAUSD FACILITIES SERVICES DIVISION
1394755	LT CATHY FASHION, INC
1346289	LUNADA BAY CONCRETE
1325727	M.R.R CAR WASH ENTERPRISES, INC.
1320460	MARSHALL MEDICAL CENTER
1364443	MARUZEN OF AMERICA INC.
1300486	MARY JOSEPHINE SUTTON, BRAD KEVIN SUTTON
1348418	MEDICAL HILL REHAB CENTER LLC.
1349906	MIKE MELLEMA DAIRY AND CATTLE
1314407	MISSION VIEJO ORNAMENTAL IRON, INC.
1373673	MONTEREY ONE WATER TREATMENT PLANT
1377477	NEWPORT WINDOW MAINTENANCE, INC.

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1387563	NICKY, INC.
1356644	PACIFIC RIM PLUMBING, INC.
1356754	PAPPAS FAMILY FARMS, INC.
1249456	PCC ROLLMET, INC.
1300459	PEKING NOODLE CO. INC.
1305595	PETERSEN-DEAN INC.
1228757	PLANET HOME DEVELOPMENT, INC.
1349554	PROGRESSIVE SURFACE SOLUTIONS, LLC.
1248597	ROADSAFE TRAFFIC SYSTEMS
1375232	RYDER INTEGRATED LOGISTICS, INC.
1367457	SELECT HARVEST USA LLC
1315828	SF A-1 ROOFING & MAINTENANCE CO, INC
1348407	SOUTH CORNER DAIRY
1345167	SULLY-MILLER CONTRACTING COMPANY
1246386	TINCO SHEET METAL CONTRACTORS
1233581	TOMBLESON, INC.
1315358	UC SAN DIEGO HEALTH
1241953	VALLEY PALLET
1326808	VAN GRONINGEN & SONS, INC.
1347686	VERITAS DESIGN BUILD, INC.
1293826	WORKFORCE OUTSOURCING INC.
1373107	ZAGA, INC.

ACTION: All Administrative Law Judge Settlement Orders approved.
Moved: Judith Freyman,
Seconded: Ed Lowry
Vote: 2-0

PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 12:34 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 12:35 p.m.