

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on August 22, 2019
Sacramento, California
West Covina, California**

PRESENT:

Ed Lowry, Chair
Judith Freyman, Member
Patricia Hapgood, Acting Executive Officer
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
Christopher Jessup, Administrative Law Judge
J. Kevin Elmendorf, Administrative Law Judge
Jora Trang, Managing Attorney, Worksafe
Kevin Thompson, Cal/OSHA Reporter
Kevin Bland, Attorney, Ogletree Deakins
Fred Walter, Attorney, Walter & Prince LLP
Bruce Wick, Risk Management Director, CALPASC
Mitch Steiger, Legislative Advocate, California Labor Federation
Jorge M. Otano, Deputy City Attorney, City of Los Angeles
Kathrine Wolff, Attorney, Law Office of Katherine Wolff

MINUTES OF AUGUST 08, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the August 08, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the August 08, 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.

REGULATIONS:

- Public comments on the proposed regulatory changes to California Code of Regulations, title 8, sections 347, 359.1, 372.2, 372.9 and 373.
ACTION: This part of the meeting was recorded. Comments were expressed orally as well as in writing. All public comments will be reviewed by the Board and the Board will assess whether any changes to the proposed regulations need to be made.

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: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

ACTION: Executive Officer Patricia Haggood reported that the hiring of a new Hearing Officer has been approved for the West Covina office.

STAFF REPORTS:

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

1. STAFF REPORTS:
ACTION: No report.
2. LITIGATION UPDATE:
ACTION: No report.

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: Different members of the public commented on procedures of the appeal process.

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.)

1142674 STADCO, INC.
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.)

NONE

PETITIONS FOR RECONSIDERATION (Second Review):

1348404 EAGLE NASHER, LLC
ACTION: Petition approved.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote:2-0

- 1295850 LIBERTY MFG
ACTION: Denial approved.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote:2-0
- 1094206 NORROMMY, INC. DBA LEE'S AUTO & MUFFLER
ACTION: Denial approved.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote:2-0
- 1063574 OWENS CORNING ROOFING & ASPHALT LLC
ACTION: Denial approved.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote:2-0
- 1176203 SUPER KING MARKERS
ACTION: Denial approved.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote:2-0

ORDERS DISMISSING APPEAL:

- 1325655 AMERICAN LINEHAUL CORPORATION
ACTION: Board discussed.
- 1247000 GENESIS INNOVATORS, INC.
ACTION: Board discussed.
- 1349489 PEOPLE READY
ACTION: Board discussed.
- 1311890 THE OKONITE COMPANY, INC.
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

- 1308968 AEG MANAGEMENT OAKLAND, LLC
ACTION: Board discussed.

- 1374985 C & A PETRA INC.
ACTION: Taken under consideration on Board's own motion.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote:2-0
- 1333731 HAL HAYS CONSTRUCTION INC.
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
1347210 AK CORAL CAY TRUST LLC
1195416 ALON KASPI
1272378 ANDREW HARRISON BARNES
1141604 BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
1141604 BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
1246527 CEMEX
316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
1310525 GOLDEN STATE FC, LLC.
1206788 DPR CONSTRUCTION INC. ET AL
1221889 HERBERT ALLEN KELLY
1251604 INTERLINE BRANDS, INC.
1173183 L & S FRAMING, INC.
1368418 MCMILLAN TREE SERVICE
1201848 PAPICH CONSTRUCTION COMPANY, INC.
- 1232555 PROCESS COOLING INTERNATIONAL, INC.
ACTION: Board approved to issue DAR.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote:2-0
- 1123110 SINCLAIR CONCRETE, INC.
1088791 TUTOR PERINI CORPORATION
1341411 UPS

1359495 VICTOR C. GARCIA
ACTION: Board approved Remand.
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. 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)
24. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
25. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)

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.)

1310142	A-1 FRAMING INC.
1359650	ACS STAFFING, INC.
1375888	AMERICAN TECHNOLOGIES, INC.
1374518	AMERICAN TECHNOLOGY, INC.
1237219	ANGELUS BLOCK, CO.
1350074	ARCH VETERINARY SERVICES, INC.
1375608	ARKA CORNERSTONE BUILDERS, INC.
1222558	ASSET MANAGEMENT AND LIQUIDATION
1204767	BALL CORPORATION
1354112	BRILL, INC.
1385673	BRUCE TAYLOR
1377238	C & L STAIRS AND MILLWORKS, INC.
1398820	CALIFORNIA ALMOND PACKERS & EXPORTERS, INC.
1369544	CAMPOS & CAMPOS CONSTRUCTION INC.
1385662	CHARLES TAYLOR
1380580	CHARTWELL STAFFING SOLUTIONS, INC.
1389210	CITY COLLEGE OF SAN FRANCISCO
1368689	CITY OF GLENDALE WATER AND POWER
1370617	COASTAL PACIFIC FOOD DISTRIBUTORS INC

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

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1246213	CR&R INCORPORATED
1365566	CROW ENTERPRIZES, INC.
1347833	CWC GENERAL CONTRACTING, INC.
1372869	DABIDA FASHION, INC.
1269374	DAVEY TREE SURGERY COMPANY
1364775	DEL REAL LLC
1375560	DEL REAL LLC
1333111	DEPENDABLE PERSONNEL, INC.
1379223	DIANA'S MEXICAN FOOD PRODUCTS INC.
1340253	DYANDSON INC.
1349525	ENTERPRISE ROOFING SERVICE, INC.
1166972	ETHOS ENERGY POWER PLANT SERVICES, LLC.
1294697	FAIRVIEW ASSOCIATES, INC.
1277554	FIRST TEAM OIL TRANSPORT, INC.
1346038	FLEMING & SONS CONCRETE PUMPING, INC.
1359683	GAGE HINDLE
1273090	GIULIANO & SONS BRINERS, INC.
1218565	GOLDEN LIVING, INC.
1313745	GRAYSIX COMPANY
1379082	GREGORIO DELA CRUZ MARTINEZ, AN INDIVIDUAL
1271651	HARRIS & BRUNO MACHINE CO., INC.
1323400	HMN, INCORPORATED
1258426	IMC REAL ESTATE & LOANS, INC.
1306761	J GINGER MASONRY, LP.
1268054	JDB & SONS CONSTRUCTION CO, INC
1374045	KFM RESTAURANTS, L.P.
1350813	KYA SERVICES, LLC.
1385030	L&B BUILDERS INC
1286301	LA REYNA MARKET Y CARNICERIA, INC.
1344112	LOS ANGELES UNIFIED SCHOOL DISTRICT PROCUREMENT
1340241	METRO RF
1343450	MIKE COELHO
1335645	NESTLE WATERS NORTH AMERICA, INC.
1349374	NORTH AMERICAN SEED CO.
1265132	OLD TOWN FAMILY HOSPITALITY
1279290	OLIVER DE SILVA, INC.
1133776	OTIS ELEVATOR COMPANY
1363938	P.A.C. HEATING & AIR CONDITIONING
1249169	PACIFIC STEEL GROUP
1282961	PACKWAY MATERIALS, INC.
1384702	PAIVA FARM MANAGEMENT INC
1345062	PETREE FARMS
1396259	PHO OLALA LLC
1208746	R.A. PHILLIPS INDUSTRIES, INC.
1322265	RAMCO ENTERPRISES, L.P.

1228364	RIPON OPERATIONS, INC.
1386593	RIZO-LOPEZ FOODS, INC.
1355883	ROOFING STANDARDS, INC.
1377975	SANDERS CANDY FACTORY, INC.
1320774	SAS SAFETY CORPORATION
1368076	SCIAMBRA-PASSINI FRENCH BAKERY, INC.
1367986	SHASTA LIVESTOCK AUCTION YARD, INC.
1404030	SKYLINE HEALTHCARE & WELLNESS CENTER, LLC
1262586	SOLAR TURBINES INCORPORATED
1306248	SONOMA VALLEY CSDTP
1280988	SUBSURFACE ELECTRIC, INC.
1367608	THE AMERICAN BOTTLING COMPANY
1367822	THE BERKELEY REPERTORY THEATRE
1352130	THE PICTSWEET COMPANY, INC.
1363436	UNIVERSAL LOGISTICS SYSTEM, INC.
1361205	VONS COMPANY, INC.
1370993	WAGNER ROOFING
1367606	WALGREEN CO.
1325390	WEISS SHEET METAL COMPANY
1389778	WHAREHOUSE SPECIALISTS LLC
1309473	WHITE METAL PRODUCTS, INC.

PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 12:18 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 and closed the Open Session. The meeting was adjourned at 12:29 p.m.