

**State of California  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS  
BOARD**

**CLOSED SESSION AGENDA**

**Government Code § 11126 (a), (c)(3), (e) and (f)**

**for**

**Thursday, January 9, 2020**

**9:30 a.m.**

**Sacramento, California**

**&**

**West Covina, California**

**TO: Members of the California Occupational Safety & Health Appeals Board**

**FROM: J. Jeffrey Mojcher, Chief Counsel**

**DATE: December 30, 2019**

**RE: Closed Session of the Board to be held on January 9, 2020**

**Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. 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.**

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**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.)*

1268655      ANGELUS BLOCK COMPANY

1226084      DAVIS DEVELOPMENT COMPANY INC.

1152851      VINCENT TUOMEY

**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.)*

1374636      AMERI-KLEEN, INC.

**PETITIONS FOR RECONSIDERATION (Second Review):**

1213886      JACE VARGHESE

**ORDERS DISMISSING APPEAL:**

1356474      AFFLUENT STAFFING, LLC.

1309484      VICTOR TORRES AND MIGUEL ANGEL CALDERON

**ORDERS DENYING LEAVE TO FILE LATE APPEAL:**

1404787      IMPERIAL AG, LLC

1395180      JONES, LANGE AND LASALLE

1386789      MARIANO MORENO & ARCELIA TOSTADO, INDIVIDUALLY

**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.)*

*The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.*

- |           |  |
|-----------|--|
| 1308968   | AEG MANAGEMENT OAKLAND, LLC<br>Whether employer received the citations, and thus, whether there was good cause for a late appeal.    |
| 1200176   | AEROTEK, INC. dba AEROTEK<br>Whether the employer established and implemented its IIPP as required.                                  |
| 1272378   | ANDREW HARRISON BARNES<br>Whether Mr. Barnes was/is an employer.   |
| 1141604   | BOY RACER INC. DBA BURNING ANGEL<br>(EMPLOYER'S PETITION)<br>Whether adult film performers are employees or independent contractors. |
| 1141604   | BOY RACER INC. DBA BURNING ANGEL<br>(DOSH'S PETITION)<br>Whether adult film performers are employees or independent contractors.     |
| 1246527   | CEMEX<br>Whether the settlement in this matter was procured by fraud.  |
| 316446855 | CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367<br>Whether adult film performers are employees or independent contractors.            |

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- 1206788 DPR CONSTRUCTION, INC. ET AL  
Whether DOSH had jurisdiction. Whether the ALJ decision constituted an underground regulation.
- 1199473 FEDEX GROUND  
Whether the employer's supervisor of the workplace was reasonable.
- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.  
Whether the cited employer committed the alleged violations and whether the ALJ erred in evidentiary rulings.
- 1310525 GOLDEN STATE FC, LLC  
Whether Employer provided appropriate foot protection under § 3385.
- 1235643 GRANITE CONSTRUCTION CO., INC/GRANITE INDUSTRIAL  
Whether the Division proved exposure to Valley Fever.
- 1251604 INTERLINE BRANDS, INC.  
Whether Employer had provided adequate foot protection by means of administrative and engineering controls
- 1173183 L & S FRAMING, INC.  
Whether the stairway involved was a "stairwell." Whether the motion to amend citation was timely and for good cause.
- 1290766 MILLENIUM REINFORCING  
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1236440 PAPICH CONSTRUCTION COMPANY, INC.  
Whether the Division proved exposure to Valley Fever.
- 1237932 SACRAMENTO COUNTY WATER AGENCY  
Whether the citation was correctly classified as serious. Whether the ALJ correctly denied Employer's Newbery defense.
- 1123110 SINCLAIR CONCRETE, INC.  
Whether the widow of decedent employee had adequate notice of Employer's appeal of the OSHA citation.

- 1088791 TUTOR PERINI CORPORATION  
Whether Employer violated safety orders pertaining to keeping equipment and spoils a safe distance from an excavation.
- 1402052 UNION PACIFIC RAILROAD  
Whether there was good cause for the late appeal.
- 1242676 UNITED PARCEL SERVICE, INC.  
Whether the cited employer had an effective IIPP and trained its employees as required.

**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. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083

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8. KEY ENERGY SERVICE, LLC 12004280
9. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,  
34-2017-80002562, (1144056)
10. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
11. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
12. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
13. BLUE DIAMOND GROWERS, (1040471)
14. UNITED PARCEL SERVICE, (1158285)
15. NORM WILSON & SONS INC., 19STCP00663 (1116151)
16. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
17. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
18. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623  
(1200875)
19. PERFORMANCE TEAM FREIGHT SYSTEMS, 19STCP 02154 (1183505)
20. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174  
(1116529)
21. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191  
(1059365)
22. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
23. OWENS CORNING ROOFING & ASPHALT, LLC, 19STCP04117  
(1063574)
24. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
25. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
26. STADCO, INC., 192TCP04944(1142674)
27. PRESTIGE PAINTING, 37-2019-00066143 (1367265)

**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)
8. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)

**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.)*

1364573	1ST CLASS LAUNDRY
1402578	35 DISTRICT AGRICULTURE ASSOCIATION
1378761	7 LEAVES ANAHEIM, LLC
1062551	A PLUS POOL & SPA INC
1358837	A.M. FINISHING, INC.
1401924	ACTIVCARE LIVING, INC.
1265099	ADAMS GROUP, INC.
1374514	ADVANCED EQUIPMENT CORPORATION
1401973	ADVANCED EQUIPMENT CORPORATION
1137715	AHERN RENTALS

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1422167 AJ WINDOW CLEANING, INC.  
1394052 ALAN JAMES ROATH  
1403922 ALLIED WEST PAPER CORPORATION  
1400607 ALLRIGHT ENTERPRISES, INC.  
1353381 AMERICAN LINEHAUL CORPORATION  
1292446 AMERICAN MODULAR SYSTEMS, INC  
1310187 AMERICAN TEXTILE PROFESSIONAL SERVICES INC  
1315592 ANCON MARINE  
1366188 AUS DECKING, INC.  
1075168 AVALONBAY COMMUNITIES INC  
1313393 B AND R CUSTOM CHOPPING LLC  
1398302 BAMCORE, LLC  
1327317 BIRRUETA REFORESTATION, INC.  
1388583 BRAGG INVESTMENT COMPANY, INC.  
1375309 BROUGH CONSTRUCTION, INC.  
1404756 C & W FASHION, INC.  
1335695 CALIF. DEPT. OF FORESTRY AND FIRE PROTECTION  
1401986 CARLOS CORONA  
1313409 CLAWSON MOTORSPORTS  
1436767 CLEATECH LLC  
1398354 COMMODITY TRANSPORTERS, INC.  
1323550 CONCRETE VALUE CORP  
1396266 CONSOLIDATED CONTAINER COMPANY  
1399405 CONTAINER SOLUTIONS INC.  
1340184 CONTRA COSTA ELECTRIC, INC.  
1404383 CORNERSTONE CERTIFIED VINEYARD  
1402276 COSCO DIVERSIFIED FINISHES, INC  
1369500 COUNTY OF LA - AUGUSTUS F HAWKINS PSYCHIATRIC  
1433079 CYPRESS GROVE CHEVRE, INC.  
1396962 D & G FLOORING, INC.  
1247604 D M S I STAFFING, LLC.



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1411824 DAVE WILSON NURSERY, INC.  
1410262 DELTA PACIFIC ACTIVEWEAR, INC., DELTA KNITS, INC.,  
1380518 DKS STEEL DOOR & FRAME SYSTEMS, INC.  
1367600 EAGLE RIDGE CONSTRUCTION & ROOFING INC  
1345023 ECLIPSE RECREATIONAL VEHICLES, INC.  
1365488 EMPLOY BRIDGE  
1395824 ESTELA'S DRAPERIES & INSTALLATIONS, INC.  
1368575 GATE GROUP  
1428159 GAUTHIER CONSTRUCTION, INC.  
1381861 GEORGE JUE MANUFACTURING COMPANY, INC.  
1315870 GERAWAN FARMING PARTNERS, INC  
1265733 GERAWAN FARMING, INC  
1414308 GILLEY WOOD, INC.  
1423504 GOOD EGGS, INC.  
1279641 GRUNDFOS PUMPS MANUFACTURING CO.  
1427053 HARTILL HEAVY HAUL, INC.  
1407162 HEALTHCARE SERVICES GROUP, INC.  
1351369 HIGH VIEW, INC.  
1392836 HOWE ELECTRIC CONSTRUCTION, INC.  
1339357 J H BIOTECH, INC.  
1420614 JC'S PAINTING & COATINGS, INC.  
1237922 JOHNSTONE MOYER, INC.  
1331799 LKQ LAKENOR AUTO COMPANY  
1396480 LYNAM INDUSTRIES, INC.  
1266128 MANNA DEVELOPMENT DBA PANERA BREAD  
1381063 MCCUTCHEON CONSTRUCTION, INC.  
1411517 M-CHEMICAL CO.  
1368418 MCMILLAN TREE SERVICE  
1399942 MEGA CAR WASH, LLC  
1360310 MEYER CORPORATION, U.S.  
1349561 MGM DRYWALL, INC.

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1374491 NONGSHIM AMERICA, INC.  
1398831 NORSTAR PLUMBING & ENGINEERING, INC.  
1410879 NORTH AMERICAN PIPE CORPORATION  
1359539 NORTHROP CONSTRUCTION, INC.  
1383249 O TASTY FOODS  
1419730 ONTARIOIDENCE OPCO, LLC  
1212380 P KAY METAL, INC.  
1363170 PACIFIC DUTCH GROUP LLC, PBR PROP.MANAGEMENT  
1354395 PAINTERS UNLIMITED CA, INC.  
1254567 PETROCHEM MATERIALS INOVATION, LLC.  
1401890 PIPIS INCORPORATED  
1382813 R & R CONSTRUCTION, INC.  
1425682 R. E. BRADLEY GENERAL BUILDING CONTRACTOR  
1334649 R. NUNEZ AG, INC.  
1312300 RAMA FOOD MANUFACTURE CORP.  
1414370 RAMONA DAIRY LLC  
1397311 RAMONA REHABILITATION AND POST ACUTE CARE, INC.  
1400266 RANDSTAD NORTH AMERICA, INC.  
1387514 REPUBLIC WASTE SERVICES OF SOUTHERN CALIF., LLC  
1391010 ROMEROS FOOD PRODUCTS, INC.  
1361984 ROSA E. ANDERSON  
1395078 ROSE MEAT SERVICES  
1365478 S & H CONSTRUCTION BUILDER CORPORATION  
1392839 S.D.S. INDUSTRIES, INC  
1375314 SCHULTZ INDUSTRIAL SERVICES, INC.  
1428405 SDI INDUSTRIES, INC.  
1318859 SEE'S CANDIES, INC.  
1312687 SHANNON BROS, CO.  
1279877 SILVER MOON LOW VOLTAGE LIGHTING, INC.  
1409545 SILVIA Riestra  
1381429 STAFFMARK INVESTMENT, LLC.

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1434716 STATER BROS. MARKETS  
1362678 STEFAN MERLI PLASTERING COMPANY, INC.  
1385297 STEVE LANE  
1326131 STILL WATER RANCH, LP.  
1380281 SUNSET CULTURAL CENTER, INC.  
1381233 TRANSPAK, INC.  
1433711 TREE OF LIFE TREE SERVICE  
1217813 TRENCH PLATE RENTAL CO.  
1412196 UNITED STATES COLD STORAGE OF CALIF., INC.  
1372108 VALLEY MILK, LLC  
1307234 VERTICAL MASONRY INC.  
1389798 VIE DE FRANCE YAMAZAKI, INC.  
1360302 VINCE TAYLOR FARMS  
1422490 VINTAGE TIMBERWORKS, INC.  
1372624 WALTERS WHOLESALE ELECTRIC CO.  
1408852 WEKA INC.  
1392395 WEST COAST AGGREGATE SUPPLY, INC.  
1340320 WESTERN NATIONAL BUILDERS  
1395036 WJLP COMPANY, INC.  
1415078 YREKA TRANSFER LLC

**PERSONNEL:**

*(Issues regarding staff.)*

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