

**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 23, 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: January 10, 2020

RE: Closed Session of the Board to be held on January 23, 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.

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.)

1300039 EMERICARE INC

1334995 KERN RIDGE GROWERS, LLC.

1226666 WASHINGTON ORNAMENTAL IRON WORKS INC.

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.)

1404976	233 DIESEL CLUB, LLC
1255331	CREATIVE COMMUNICATION TECHNOLOGIES INC.
1395180	JONES, LANGE AND LASALLE
1165335	KRISTOPHER DEANMARCHANT DBA MARCHANT SITE DEVELOPMENT
1199064	SA RECYCLING

PETITIONS FOR RECONSIDERATION (Second Review):

1374636	AMERI-KLEEN
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ORDERS DISMISSING APPEAL:

1389227	CALIFORNIA FRESH CITRUS COMPANY
1323274	HOLT PREMIUM CAR WASH, INC.

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1411035	JENSEN CONSTRUCTION AND DEVELOPMENT
1391980	SOUTHERN CALIFORNIA EDISON COMPANY

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.

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| 1200176 | AEROTEK, INC. dba AEROTEK
Whether the employer established and implemented its IIPP as required. |
| 1272378 | ANDREW HARRISON BARNES
Whether Mr. Barnes was/is an employer. |
| 1141604 | BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
Whether adult film performers are employees or independent contractors. |
| 1141604 | BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
Whether adult film performers are employees or independent contractors. |
| 1246527 | CEMEX
Whether the settlement in this matter was procured by fraud. |
| 316446855 | CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
Whether adult film performers are employees or independent contractors. |
| 1206788 | DPR CONSTRUCTION, INC. ET AL
Whether DOSH had jurisdiction. Whether the ALJ decision constituted an underground regulation. |

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- 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
- 1213886 JACE VARGHESE
- 1173183 L & S FRAMING, INC.
Whether the stairway involved was a "stairwell." Whether the motion to amend citation was timely and for good cause.
- 1386789 MARIANO MORENO & ARCELIA TOSTADO, INDIVIDUALLY
- 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. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
24. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
25. STADCO, INC., 192TCP04944(1142674)
26. 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. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910
(1111325)
5. LION FARMS, LLC, MCV075788 (1070258)
6. 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.)

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| 1347614 | 2R DRILLING, INC. |
| 1386827 | ALI AHMED FARA |
| 1298298 | BALDWIN CONTRACTING COMPANY, INC. |
| 1391911 | BMC WEST LLC |
| 1369268 | BRIDGESTONE AMERICA TIRE OPS, LLC. |
| 1335901 | CALIBER DRYWALL |
| 1396115 | CALIFORNIA ASPHALT PRODUCTION, LLC |
| 1359846 | CALIFORNIA PRISON INDUSTRY AUTHORITY |
| 1412687 | CANYON SUSHI, INC. |
| 1384527 | CAPITOLA VETERINARY HOSPITAL |
| 1410717 | CAVCO INDUSTRIES, INC. |
| 1421733 | CHANNEA UN, AN INDIVIDUAL |
| 1423085 | CREEKSIDE COMMERCIAL BUILDERS, INC. |
| 1409634 | DE-JONG DAIRY FARMS, INC. |

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1409535	DIMITRIA KAIRIS
1310890	EMERALD STEEL, INC.
1380604	FINE ELECTRONIC ASSEMBLY, INC.
1072232	FRED GARZA JR., INC
1408610	FROY TRANSPORT INC
1381183	GLOBAL ENVIRONMENTAL PRODUCTS, INC.
1182513	GOLD POINT TRANSPORTATION, INC.
1347677	GRANITE CONSTRUCTION COMPANY
1405316	GRIMMWAY ENTERPRISES, INC.
1372539	H.J. MODE, INC.
1404651	HLT CONRAD DOMESTIC LLC
1366775	HORTICULTURAL VENTURES, INC.
1400788	JETICO, INC.
1402292	JOEL GARCIA, AN INDIVIDUAL
1192164	JOSE LUIS NAPOLES SOLIS
1348305	JOSEPH ANTHONY PAINTING
1389075	KBS STAFFING, INC.
1374954	KRALLCAST, INC.
1427375	MAT LOGISTICS LLC, MIDWEST AIR TECHNOLOGIES, INC.
1437594	NUTRINUT INC.
1407902	OMEGA PRODUCTS INTERNATIONAL, INC.
1284722	OPTIMUS CONSTRUCTION, INC.
1410436	PACIFIC AG AND VINEYARD, INC.
1282138	PARADIGM BUILDERS, INC.
1419103	PARROTT SCREEN PRINTING & EMBROIDERY, INC.
1335175	PKC CONSTRUCTION CO
1418476	PLATINUM SALES GROUP LLC
1395454	PORT OF OAKLAND
1411332	PREMIERE BRAND MEATS
1289562	PRIMESKILL STAFFING SERVICES
1380244	R&S PROCESSING, INC.

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1349109	REDMAN HOMES, INC.
1374185	SARANGHE, INC.
1373730	SASAKI FAMILY PARTNERSHIP
1339909	SCHEU STEEL SUPPLY COMPANY
1421647	SCI CALIFORNIA FUNERAL SERVICES, INC.
1401643	SD BISHOP RANCH LLC
1409226	SENIOR RESOURCE GROUP, LLC
1285439	SIERRA BUILDING PRODUCTS INC.
1365793	SIERRA MOUNTAIN CONSTRUCTION, INC.
1312145	SNO SHACK, LLC
1367217	SUPERVALU
1401746	TDR PROPERTIES LLC
1305494	TEECCINO CAFFE, INC.
1362647	TENNYSON ELECTRIC, INC.
1393459	THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA
1409887	TRINITY DEVCO INC.
1413002	TRUITT AND WHITE LUMBER COMPANY
1275353	UNITED GROWERS BERRY FARMS, LLC.
1183151	WESTERN OIL SUPPLY COMPANY
1281994	YAGO'S PRO PAINTING

PERSONNEL:

(Issues regarding staff.)

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