

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

CLOSED SESSION AGENDA

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

for

Thursday, February 6, 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 24, 2020

RE: Closed Session of the Board to be held on February 6, 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.)

1165502 KS INDUSTRIES, L.P

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.)

1152851	VINCENT TUOMEY
1226084	DAVIS DEVELOPMENT COMPANY, INC.

PETITIONS FOR RECONSIDERATION (Second Review):

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

ORDERS DISMISSING APPEAL:

NONE

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

NONE

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.)

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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 Employer established and implemented its IIPP as required. |
| 1374636 | AMERI-KLEEN |
| 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 the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation. |
| 1199473 | FEDEX GROUND
Whether Employer's supervision of the workplace was reasonable. |

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- 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
Whether Employer has satisfied requirements of petition for reconsideration.
- 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
Whether Employer showed good cause for late appeal.
- 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
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. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
16. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
17. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623
(1200875)
18. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174
(1116529)
19. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
20. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
21. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
22. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
23. STADCO, INC., 192TCP04944(1142674)
24. PRESTIGE PAINTING, 37-2019-00066143 (1367265)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)

2. VENTURA COASTAL, F077267 (317808970)
3. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910
(1111325)
4. LION FARMS, LLC, MCV075788 (1070258)
5. 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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|---------|---------------------------------------|
| 1331151 | ABLE IRON WORKS, INC. |
| 1356432 | ADVANCE SERVICES, INC. |
| 1444111 | ALLIED PLUS LOW VOLTAGE |
| 1285093 | AMERICAN LABOR POOL INC |
| 1405603 | ANAHEIM DOOR INCORPORATED |
| 1386057 | ANGELES CONTRACTOR, INC. |
| 1192762 | ATLAS CONSTRUCTION SUPPLY, INC |
| 1426587 | BLAZING STRUCTURE STEEL, INC. |
| 1399029 | BRALLIER FINE WOODWORKING, INC |
| 1223768 | BRS ROOFING, INC. |
| 1374985 | C & A PETRA INC. |
| 1196599 | CA DEPT OF FORESTRY & FIRE PROTECTION |
| 1338696 | CA FORESTRY AND FIRE PROTECTION |
| 1125974 | CAL-CITY CONSTRUCTION, INC. |
| 1412156 | CALLEGUAS MUNICIPAL WATER DISTRICT |
| 1261697 | CAPAY ORGANIC |
| 1390638 | CARTEL ELECTRONICS, INC. |
| 1276911 | CHAMPION HOME BUILDERS INC |
| 1380548 | COMMUNICATION TECH SERVICES, INC. |

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1258197 COUNTY OF LOS ANGELES PARKS AND RECREATION
1369873 COVI CONCRETE CONSTRUCTION, INC.
1279600 CVS HEALTH
1363052 DAWIT GOITOM FESSEHAYE
1410013 DOG DAYZ OF CALIFORNIA
1428021 EDWARD HARINGA, AN INDIVIDUAL
1269714 FIRST CHOICE FLOORING
1264318 FLASH PLASTERING, INC.
1231748 GHIRARDELLI CHOCOLATE COMPANY
1265863 GHIRARDELLI CHOCOLATE COMPANY
1287581 GRANITE CONSTRUCTION COMPANY
1296629 HAWAIIAN GARDENS CASINO
1393052 HENRY SALAZAR
1356394 HERRON CONSTRUCTION, INC.
1398796 HPS MECHANICAL, INC.
1324279 HUNT CONSTRUCTION GROUP, INC.
1370045 HUNTERS POINT BREWERY, LLC
1332044 ITT - AEROSPACE CONTROLS
1283887 JAKELA INC.
1389783 JALAL JAHROMI GHASVARIAN, AN INDIVIDUAL
1329234 JD2 INCORPORATED
1411921 JOEL GARCIA, AN INDIVIDUAL
1393625 KAISER FOUNDATION HOSPITALS
1419723 KENCO CONTRACTING
1411945 LANA DESIGN INCORPORATED
1199972 LANCASTER BURNS CONSTRUCTION, INC.
1398108 LAZ PARKING CALIFORNIA, LLC
1321767 LEPRINO FOODS, INC.
1343033 LINEAGE LOGISTICS ICM, LLC.
1306917 LIQUID GRAPHICS INC
1349839 LOS ANGELES ENGINEERING, INC.

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1432643	LUCIANO DIAZ BERNABE
1408915	MARCOS PADILLA
1422394	MARTIN RANGEL FUERTE
1288727	MERIT FRAMING
1405109	MIDSTATE CONSTRUCTION CORPORATION
1422379	MILLERS GRAFFIX
1416505	NEW GENERATION HARVESTING CORPORATION
1417214	NGUYEN HITEK, INC
1311515	O'BRIEN STEEL ERECTORS
1361897	OAK HARBOR FREIGHT LINES, INC.
1391683	P.W. STEPHENS ENVIRONMENTAL INC.
1397723	PEDRO ONIVEROS VALERIA AYALA, AN INDIVIDUAL
1401330	PETERSON TRACTOR COMPANY
1207700	PLASTIC EXPRESS
1347333	POPCORNOPOLIS, LLC.
1387716	PRISM PAINTING & WALL COVERING INC.
1264013	QUEMETCO, INC
1264013	QUEMETCO, INC
1411690	R+R CAMPA CONSTRUCTION
1332182	R. & J. JOY, INC. DBA JOY ENGINEERING
1297495	RAFAEL MUNOZ
1400427	RAS ENTERPRISE, INC.
1429477	REITER BERRY FARMS, INC.
1442881	REYNALDO'S MEXICAN FOOD MANUFACTURER, INC.
1412214	RIVERSIDE SANITARIUM, LLC
1436158	ROLL-A-SHADE
1385269	ROOFING & SOLAR CONSTRUCTION, INC.
1419507	S-K RANCH MANAGEMENT, LLC
1374521	SEFNCO COMMUNICATIONS INC.
1391082	SERVICE SYSTEMS ASSOCIATES
1419761	SKY RIDER EQUIPMENT COMPANY, INC.

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1336412	SOUTHERN CONTRACTING CO.
1415746	SOUTHWEST GENERATION OPERATING COMPANY
1426709	SUN CITY PALM DESERT COMMUNITY ASSOCIATION
1382943	SYNEAR FOODS USA, LLC
1366409	TESLA, INC.
1378357	TESORO REFINING & MARKETING COMPANY LLC
1432542	THE FAB SHOP, INC.
1287501	TRIBUNE DIRECT MARKETING, LLC.
1252332	UNITED CONTINENTAL HOLDINGS INC
1271048	UNITED PARCEL SERVICE
1295266	UNITED RENTALS NORTH AMERICA, INC.
1399086	UNIVERSAL ALLOY CORPORATION
1380804	VONS BREAD PLANT
1402893	WASOCO INC.
1376403	WHALING PACKAGING CO.
1326117	WM HEALTHCARE SOLUTIONS, INC.

PERSONNEL:

(Issues regarding staff.)

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