

**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 20, 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: February 7, 2020

RE: Closed Session of the Board to be held on February 20, 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.)

NONE

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.)

1226666 WASHINGTON ORNAMENTAL IRON WORKS INC.

PETITIONS FOR RECONSIDERATION (Second Review):

1226084 DAVIS DEVELOPMENT COMPANY, INC.

1152851 VINCENT TOUMEY

ORDERS DISMISSING APPEAL:

1365913 BACK TO BACK SERVICE & TIRES, LLC

1165931 IAN CZIRBAN

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1395729 ANTONIO CORONA

1304615 MASTER TREE SERVICE, INC.

1422470 THOMPSON BUILDERS

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

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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.

- 1200176 AEROTEK, INC. dba AEROTEK
Whether Employer established and implemented its IIPP as required.
- 1374636 AMERI-KLEEN
Whether Employer showed good cause for late appeal.
- 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.
- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.
Whether the cited Employer committed the alleged violations and whether the ALJ erred in evidentiary rulings.

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- 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.
- 1199064 SA RECYCLING
Whether employer established that the alleged violation was abated at the time of inspection.
- 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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|---------|---|
| 1145146 | AAA ROOFING BY GENE, INC |
| 1375902 | AERO ELECTRIC CONNECTOR INC. |
| 1413487 | AEROTEC ALLOYS, INC. |
| 1262166 | AGRILAND INCORPORATED |
| 1405976 | AIR PRODUCTS AND CHEMICALS, INC. |
| 1358341 | AIR SYSTEMS, INC |
| 1248996 | AJM PACKAGING CORPORATION |
| 1432285 | AKSHAR INC. |
| 1442048 | ALLIANCE PAINTING & DECORATING, INC. |
| 1314400 | AMCAL GENERAL CONTRACTORS, INC. |
| 1357588 | AMERICAN COOLING, INC. |
| 1228086 | ANDERSON LOGGING |
| 1297866 | ANGELUS BLOCK CO., INC. |
| 1336597 | ARE DESIGN BUILDERS, INC. |
| 1097707 | ATKINSON/WALSH A JOINT VENTURE AND ATKINSON |
| 1354011 | ATRIA MANAGEMENT COMPANY, LLC. |
| 1323406 | AVAR CONSTRUCTION INC |
| 1409532 | BAVARO FARMING COMPANY, INC. |
| 1420850 | BELLEVUE MEMORIAL PARK |
| 1269110 | BRIGHT EVENT RENTALS, LLC |

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1354152 BUDDHIST TZU CHI FOUNDATION
1275691 BUILD GROUP, INC.
1266137 C & K CUSTOM SAW & MILLS, INC.
1376406 CA CORRECTIONS AND REHABILITATION
1417660 CA STATE HOSPITALS (DSH) ATASCADERO
1434666 CALIFORNIA BUILDING & ROOFING SUPPLY CORP.
1447086 CAPAY FARMS, INC.
1412890 CASA CANELA, INC.
1343362 CASA HERRERA, INC.
1407060 CHCM, INC.
1437127 CMC RESCUE, INC.
1403383 COLD STORAGE MANUFACTURING, INC.
1413963 COLLEGE HOSPITAL, INC., COLLEGE HOSP. GROUP, INC.
1427329 COMBUSTION ASSOCIATES, INC.
1415524 CONVEYOR & STORAGE SOLUTIONS, INC.
1368878 COSTCO WHOLESALE CORP. DBA COSTCO DEPOT
1385003 CREEKSIDE FARMING COMPANY, INC.
1417298 DB MOTELS, INC.
1155475 DEL MONTE FOODS, INC.
1229816 DU CROS ELECTRICAL CONTRACTING & DESIGN INC.
1389742 E.W. BOYKIN CONSTRUCTION COMPANY
1373182 FASTENER TECHNOLOGY CORPORATION
1169911 FLORENCE AUTO PARTS, INC.
1387665 FOREST LAWN MORTUARY
1398314 FULL STEAM STAFFING, LLC
1407476 FULL STEAM STAFFING, LLC
1305649 GANDOLA'S LANDSCAPE & LAWN CARE INC
1344845 GOLDEN STATE FC, LLC.
1426270 GREGORY A. KUPPER
1382871 HALEY BROS, INC.
1347052 HAYKINGDOM INC.

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1389893 HEARTLAND STEEL PRODUCTS WEST LLC
1381665 HN CONSTRUCTION SERVICES
1426910 HOLLANDIA FARMS NORTH, INC.
1381942 HOUSING AUTHORITY OF THE COUNTY OF MERCED
1445995 HUNNYS RESTAURANTS, INC.
1312302 I LINK MANAGEMENT
1399145 INFINIUM AIR, INC.
1361839 J G BOSWELL COMPANY
1275552 J.W. MCCLENAHAN CO.
1155353 JM EQUIPMENT COMPANY, INC.
1322937 JOE HEIDRICK ENTERPRISES, INC.
1446280 JORGE ROMERO
1435643 JOSEPH L. CHIRIACO, INC.
1383712 KATHLEEN RYAN
1420285 KENTUCKY MATERIAL HANDLING SYSTEMS, INC.
1378705 KW STEEL, INC.
1401004 LANDSEA HOLDINGS CORPORATION
1396931 LANGETWINS, INC.
1409669 LKQ CORPORATION / LKQ NORTHERN CALIFORNIA
1417224 MAGNUS HOSPITALITY MANAGEMENT, INC.
1411480 MARIE CALLENDER'S, INC.
1351812 MODERN HR, INC.
1373134 MORRELL'S ELECTRO PLATING, INC
1378910 NAUTILUS GROUP, INC
1226741 NES EQUIPMENT & SERVICE CORPORATION
1409171 NEW IMAGE LANDSCAPE COMPANY
1234266 NIELSEN FARMS, INC.
1313401 NORMAN JACOBSON REALTY RESOURCES, INC.
1415779 NSI SERVICES, INC
1420231 OAK HARBOR FREIGHT LINES, INC.
1350091 OLD DOMINION FREIGHT LINE, INC.

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1353104	OLIMPO GONZALEZ MARISCAL
1275717	PACIFIC STEEL GROUP
1290783	PBA LTD
1431064	PRATHER DRYWALL & PLASTERING, INC.
1394483	PREMIER STEEL STRUCTURES, INC.
1377974	PURE HOME REMODELING
1366766	QUIKRETE INTERNATIONAL INC.
1363386	R & B FARM SERVICES
1292758	R D OLSON CONSTRUCTION INC
1400527	RANCHO WEST LANDSCAPE, INC.
1368768	REYES COCA COLOA BOTTLING, LLC.
1438901	ROBERT COLBURN ELECTRIC, INC.
1337902	SAFELITE FULFILLMENT, INC.
1382280	SAN FRANCISCO OPERA
1418023	SAN GABRIEL STAFFING SERVICES, LLC
1426899	SB CLOSETS LLC
1299738	SCAFFOLD SOLUTIONS INC
1426889	SCHMIDBAUER LUMBER, INC.
1277795	SDLOFTS INC. DBA
1419326	SEABRIGHT SOLAR
1423956	SECARD POOLS & SPAS
1191741	SHZ DEVELOPMENT INC
1206870	SIEMENS POSTAL PARCEL AND AIRPORT LOGISTICS, LLC
1210984	SKY HARBOR FULLERTON LLC
1364516	SMURFIT KAPPA NORTH AMERICA, LLC.
1420539	SOLTA DEVELOPMENT LLC, CLONTARF MANOR
1299162	STAFFMARK INVESTMENTS, LLC.
1378288	STILES CUSTOM METAL, INC.
1412206	SUTTER HEALTH
1309103	TESLA, INC.
1339346	TIME OUT PIZZA & FUN CENTER

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1416623	U-HAUL
1403402	UNITED LABOR SERVICES, INC.
1413381	V I S E COMPANY, INC.
1412337	VAN RYN BROTHERS
1377962	VEST, INC.
1438201	VINA GOLD ALMOND HULLING & DRYING, LLC
1315943	WEST COAST ARBORISTS, INC.
1431284	WILLIAM EUGENE ZIMMER, AN INDIVIDUAL
1407312	WOOD SERVICE PALLETS, INC.

PERSONNEL:

(Issues regarding staff.)

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