

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

CLOSED SESSION AGENDA

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

for

Thursday, April 2, 2020

9:30 a.m.

Teleconference

877-411-9748

Access Code: 6382355

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

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: March 19, 2020

RE: Closed Session of the Board to be held on March 19, 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.)

1375070	CARLTON FORGE WORKS
1256643	GIUMARRA VINEYARDS CORPORATION
1195278	NUSIL TECHNOLOGY, LLC
1210439	SASCO
1384029	USA WASTE OF CALIFORNIA, 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.)

1205077 HANOVER R S CONSTRUCTION LLC
1398487 SMITH & SONS DISASTER KLEENUP, INC.

PETITIONS FOR RECONSIDERATION (Second Review):

1395729 ANTONIO CORONA dba CENTRAL VALLEY UPHOLSTERY
1356215 VIKING INSULATION CO., INC.

ORDERS DISMISSING APPEAL:

1280236 ACKER RESOURCES
1207946 FRANCISCO BAUTISTA

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1399753 ERIC DEAN LARSON, AN INDIVIDUAL
1385041 PC, INC.
1430956 TRANSWORLD INTERNATIONAL CONVERSION
1416217 VEG FRESH FARMS

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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted March 20, 2020

- 1200176 AEROTEK, INC. dba AEROTEK
Whether 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 the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation.
- 1300039 EMERICARE, INC. dba BROOKDALE NORTHRIDGE
- 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.
- 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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted March 20, 2020

- 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.
- 1304615 MASTER TREE SERVICE, INC.
Whether the appeal was late and if so, was there good cause for the late appeal? Whether the employer's motion to include additional citations be treated as a motion to amend the 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.
- 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.

1226666 WASHINGTON ORNAMENTAL IRON WORKS, INC., dba
WASHINGTON IRON WORKS
Whether the Administrative Law Judge was correct in
holding Employer had violated the safety orders as
alleged in Citation 1, Item 1, and Citation 2.

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. LION FARMS, LLC, MCV075788 (1070258)
4. 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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| 1391062 | 99 CENTS ONLY STORES, LLC. |
| 1423488 | ALLEN CONSTRUCTION, INC. |

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted March 20, 2020

1405678 ALTA LOMA SCHOOL DISTRICT CARNELIAN ELEMENTARY
1371027 ANGELUS BLOCK CO., INC.
1360448 ANTHONY KIM
1376395 ARCON CONSTRUCTION CORPORATION
1439529 AWESOME DOUGHNUT, LLC
1434053 BECKMANN'S OLD WORLD BAKERY, LTD
1418985 BIG BOUNCE AMERICA, LLC
1441424 BLACKWIDOW LLC
1350991 BODEGA LATINA CORPORATION
1453097 BOETHING TREELAND FARMS, INC.
1428335 BRIGHTVIEW LANDSCAPE SERVICES, INC.
1419822 C&SD CONSTRUCTION, INC
1387059 CA DEPARTMENT OF VETERAN AFFAIRS
1437445 CABINET OUTSOURCE, INC.
1386290 CALAVERAS COUNTY PUBLIC WORKS
1297879 CALIFORNIA HUMAN DEVELOPMENT CORPORATION
1268283 CITRUS HARVEST, INC.
1392024 CITY OF LOS ANGELES DEPARTMENT OF RECREATION &
1313046 COLORADO FARMS LLC
1390443 COLUMBIA STEEL, INC.
1374643 COMPASS GROUP USA, INC.
1401157 COSTCO WHOLESALE
1396171 CUESTA CONSTRUCTION CO.
1442371 D & E CONSTRUCTION, INC.
1439959 DAN PARISH LTD
1423760 DEMETRIO FLORES ZETIN, AN INDIVIDUAL
1403348 DOLE FRESH VEGETABLES, INC.
1419724 EL PELADO, LLC
1321741 ESSENDANT CO.
1423943 FERRELLGAS PARTNERS, L.P.
1406372 G.L. WOODWORKING, INC

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted March 20, 2020

1400563 GEODIS LOGISTICS LLC
1417711 GEREMIA POOLS
1393332 GOLD COAST TREE SERVICE, INC.
1426394 GREAT HIRE, INC.
1410979 GUERRERO ROOFING CORP.
1288706 H&H GROUP ERRONEOUSLY CITED AS PIXIOR, LLC
1402111 HELIX AUTO CENTER INC.
1257360 INTERNATIONAL GLACE, INC.
1398325 JETT HARVEST, INC.
1418558 JOJO ENTERPRISES, INC.
1305026 JUAN TORRES CONSTRUCTION INC
1287275 LA TAPATIA TORTILLERIA, INC.
1415150 LANDMARK MEDICAL SERVICES, INC.
1218772 LSC COMMUNICATIONS
1374682 M.S. AEROSPACE INC.
1337877 MADLAND TOYOTA-LIFT, INC.
1415544 MARUZEN OF AMERICA, INC.
1386702 MAXIMINIO SILVEIRA DAIRY
1449906 MBC MATTRESS CO., INC.
1405979 MERIT ALUMINUM, INC.
1421631 MILLER-JONES MORTUARY & CREMATORY, INC.
1416811 MT. DIABLO UNIFIED SCHOOL DISTRICT
1446232 MYBURGER & CO., INC.
1420759 NEVADA BARRICADE AND SIGN COMPANY, INC.
1422173 NUIMAGE WINDOWS & DOORS INC.
1371719 OA LOGISTICS SERVICES, INC.
1377121 OCEAN ELEVEN, INC
1402221 ONNI CONTRACTING (CALIFORNIA) INC.
1421012 OSMOSE UTILITY SERVICES, INC.
1407841 PACIFIC CRANE MAINTENANCE COMPANY LLC
1393174 PACIFIC FOUNDATION, INC.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted March 20, 2020

1439507 PARADISE CHEVROLET CADILLAC
1430971 PEOPLEREADY, INC.
1384969 PETCO ANIMAL SUPPLIES STORES, INC.
1430163 PPS PACKAGING COMPANY
1387087 PROFESSIONAL ASBESTOS REMOVAL CORPORATION
1408482 RESTPADD, INC.
1438207 RM PALLETS, INC.
1443756 RODNEY KENNETH COOLEY
1451636 SAN BERNARDINO CITY UNIFIED - GEORGE BROWN
1323215 SAN FRANCISCO PUBLIC UTILITIES COMMISSION
1438698 SECCOMBE HOMES, INC.
1439856 SHASTA BEVERAGES, INC.
1361308 SILVERLINE CONSTRUCTION INC.
1390433 SILVERLINE CONSTRUCTION, INC.
1450946 SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT, INC.
1393998 SPS TECHNOLOGIES LLC
1356688 SUB-ZERO EXCAVATING, INC.
1424914 SUNWEST MILLING, INC.
1393179 TEMECULA VALLEY DRYWALL, INC.
1252732 THE DAVEY TREE EXPERT COMPANY
1398427 TIMBERWORKS CONSTRUCTION, INC.
1372864 UC DAVIS
1359868 VALLARTA FOOD ENTERPRISES, INC.
1412562 VALLEY PRESTIGE FARM LABOR, INC.
1394205 VILLA PARK LANDSCAPE
1384201 VILORIA CONSTRUCTION, INC.
1446216 WHJSK INVESTMENT, INC.
1410089 WILLITTS EQUIPMENT & ENGINEERING CO. LNC.
1346115 WOODWARD HRT., INC.
1412153 XPO LOGISTICS FRIEGHT, INC.

PERSONNEL:

(Issues regarding staff.)

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