

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, July 9, 2020
9:30 a.m.

Teleconference

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

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: June 26, 2020

RE: Closed Session of the Board to be held on July 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.

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.)

1422960 CHAMPION HOME BUILDERS, INC.

1401228 ERNEST GONZALES

1436614 SAPUTO CHEESE USA, INC.

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

NONE

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1446296 A & F LEGACY CORP.

1401228 ERNEST GONZALES

1431329 PEREZ PALLETS RECYCLED, INC.

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.

- | | |
|---------|--|
| 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. |

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted June 26, 2020

- 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
Whether the employer's alternate means of guarding satisfied the requirements of the applicable safety order.
- 1199473 FEDEX GROUND
Whether Employer's supervision of the workplace was reasonable.
- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.
Whether the employer was in violation of injury and illness prevention plan requirements and lockout/tagout requirements as alleged.
- 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.
- 1205077 HANOVER R S CONSTRUCTION LLC
Whether the ALJ committed reversible error in evidentiary rulings regarding the alleged injury and illness prevention plan violation and the forklift operations violations.
- 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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted June 26, 2020

- 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.
- 1275087 QUALITY AG, INC.
Whether the ALJ correctly analyzed the issue presented.
- 1199064 SA RECYCLING
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1320327 SOUTHERN CALIFORNIA EDISON
Whether the ALJ commit reversible errors of law and/or fact in ruling on each of the alleged violations.
- 1061365 SPHERE ALLIANCE, INC. dba ADVANCED AIRCRAFT SEAL
Whether the Division had jurisdiction to cite the employer.
- 1251879 TARGET STORES, INC.
- 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.
- 1384029 USA WASTE OF CALIFORNIA, INC.
Whether the Division proved the alleged violation.
- 1226666 WASHINGTON ORNAMENTAL IRON WORKS, INC., dba WASHINGTON IRON WORKS
Whether the ALJ was correct in holding the employer violated the injury and illness prevention plan requirements, the injury log (recordkeeping) requirement, and the machinery operational limitations, as alleged in the citations.

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. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
3. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
4. SOLARCITY CORP., 34-2016-80002345 (14-R3D2-3707)
5. KEY ENERGY SERVICE, LLC (12004280)
6. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV, 34-2017-80002562, (1144056)
7. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
8. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
9. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
10. BLUE DIAMOND GROWERS, (1040471)
11. UNITED PARCEL SERVICE, (1158285)
12. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
13. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
14. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
15. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
16. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191 (1059365)

17. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
18. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
19. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
20. STADCO, INC., 192TCP04944 (1142674)
21. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
22. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
23. VINCENT TUOMEY, RG20061099 (1152851)

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)
5. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705
(317386084)
6. BRAGG CRANE, A158500, HG18930741 (1157108)

OTHER ITEMS:

- Discussion on categorizing the Board's DARs and Denials on the DIR website.

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.)

- | | |
|---------|---|
| 1344348 | A. TEICHERT & SON, INC. |
| 1444416 | AGRO LABOR SERVICES, INC. |
| 1243091 | ALAMEDA - CONTRA COSTA TRANSIT DISTRICT |
| 1274386 | ALAMEDA - CONTRA COSTA TRANSIT DISTRICT |

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted June 26, 2020

1474480	ALPINE LANDSCAPE, INC.
1423935	ANDERSON LOGGING, INC.
1456507	ANTONIO PERALTA AN INDIVIDUAL
1434021	APPIAN ENGINEERING, INC.
1375709	ART SIGNS & PRINTING, INC.
1461341	BARTH ROOFING CO.
1287277	BLOWER-DEMPSAY CORPORATION
1406740	BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC
1473249	C & B RANCH INC.
1453918	CALIFORNIA CONSERVATION CORPS
1312684	CALIFORNIA STATE UNIVERSITY, FRESNO
1442573	CARDINAL CONCRETE
1450436	CENTRAL VALLEY MILLWORKS, INC.
1410913	CENTRAL VALLEY TANK OF CALIFORNIA, INC.
1459395	CERAMIC DESIGNS BY RON GREEN INC.
1366541	CERCA TOVA RESTAURANT CONCEPTS, INC.
1332850	CG SCAFFOLDING, INC.
1354162	CHAMPION WINDOWS, INC.
1436603	CHEVRON USA, INC.
1442258	CITY OF SAN DIEGO
1321508	COAST TO COAST MANPOWER, LLC. - SAN BERNARDINO
1460683	DAIRY FARMERS OF AMERICA
1411070	DANIEL ALCOCER CONSTRUCTION
1439241	DOT FOODS, INC.
1439625	DREAMWORKS ANIMATION LLC

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted June 26, 2020

1384928	EAGLE TRANSPORTATION COMPANY, INC.
1463799	EDUARDO VALENCIA AND GREGORIO GUTIERREZ
1461080	ELEMENT MATERIALS TECH. HUNTINGTON BEACH
1453042	EMPLOYBRIDGE HOLDING COMPANY
1460627	ESCALANTE'S WELL DONE CONCRETE
1449719	FFE TRANSPORTATION SERVICES, INC.
1397966	FRIZE CORPORATION
1448648	G W SURFACES
1405420	GEORGE REED INC.
1413386	GLENDALE IRON, INC.
1456271	HELIX CHARTER HIGH SCHOOL
1419014	HOCKING INTERNATIONAL LABORATORIES, INC.
1446026	JOE YEUNG FARMS, INC.
1450616	JOSE FLORES GONZALEZ, AN INDIVIDUAL
1332828	JOSEPH HOLT PLASTERING, INC.
1275101	JUAN CARLOS ARRELLANO MEDINA DBA CYPRESS FLC
1446428	JUAN TINOCO, AN INDIVIDUAL
1455296	KAIROS MANUFACTURING INC
1403681	KOBAYASHI NOODLE U.S.A.
1461363	LHM CORP TSD
1464657	LI YUAN DIM SUM, LLC
1392405	LOS ANGELES PHILHARMONIC ASSOCIATION
1337865	MARQUES PIPELINE, INC.
1446430	MARTIN RUBBER CORPORATION
1445281	MARTINEZ & TUREK, INC.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted June 26, 2020

1444934	MECHANIC REFRIGERATION COMPANY, INC.
1439212	MIRAMAR ACQUISITION CO., LLC
1193431	MOTIVE ENERGY TELECOMMUNICATIONS GROUP, INC.
1250230	NAES CORP.
1439618	NEW PRIDE TIRE, INC., NEW PRIDE CORPORATION
1461718	NINYO & MOORE GEOTECHNICAL & ENVIRONMENTAL
1436011	NORCAL LUMBER COMPANY, INC.
1452447	NQ AUTOMOTIVE, INC.
1433905	PACIFIC STORAGE COMPANY
1456526	PAJARO VALLEY FABRICATION, INC.
1438564	PAPE MATERIAL HANDLING INCORPORATED
1450439	PAR ENGINEERING INC.
1425875	PENINSULA INDUSTRIES
1354978	PINNACLE REMODELING CORP.
1453330	PITMAN FAMILY FARMS
1399819	PROVENA FOODS, INC.
1447956	PYRAMID TILE COMPANY
1446666	RLMK INC.
1433347	ROLLING CAMEL RANCHES
1422150	ROOFING STANDARDS, INC.
1424872	ROTO POWER INC.
1413976	S & K PLATING, INC.
1444409	SAFEWAY STORES, INC.
1453712	SANDOVAL ROOFING, INC.
1444076	SETH JONATHAN WALKER, AN INDIVIDUAL

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted June 26, 2020

1443617	SOUTH TAHOE REFUSE CO.
1450612	STEPHEN CARTER, AN INDIVIDUAL
1434408	SUNWORKS UNITED INC.
1276679	SUPERIOR GROCERS
1447214	SUPHERB FARMS
1454990	TAWA SUPERMARKET INC.
1406337	THE FEED BARN
1464519	THE SUNSHINE CAFE LLC
1380834	THISTLE ROLLER COMPANY, INC.
1284905	TREND OFFSET
1406108	VALLEY ADULT DAY HEALTH CARE CENTER, INC.
1422477	VCA ANIMAL SPECIALTY GROUP
1434925	WALMART, INC.
1448625	WB BUILDERS INC.
1416857	WILDWOOD PACKING & COOLING, INC.
1458851	WIN FOODS CORPORATION
1267181	WP WEST BUILDERS CALIFORNIA LP
1367190	YRC FREIGHT, INC.

PERSONNEL:

(Issues regarding staff.)

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.