

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

**CLOSED SESSION AGENDA  
Government Code § 11126 (a), (c)(3), (e) and (f)  
for  
Thursday, September 17, 2020  
9:30 a.m.  
on Zoom**

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

**FROM: J. Jeffrey Mojcher, Chief Counsel**

**DATE: September 4, 2020**

**RE: Closed Session of the Board to be held on September 17, 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.)*

1332715      APTCO, LLC

1290383      JAFEC USA, INC.

**PETITIONS FOR RECONSIDERATION (Second Review):**

NONE

**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.)*

*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<br>Whether Mr. Barnes was/is an employer.   |
| 1141604   | BOY RACER INC. DBA BURNING ANGEL<br>(EMPLOYER'S PETITION)<br>Whether adult film performers are employees or independent contractors. |
| 1141604   | BOY RACER INC. DBA BURNING ANGEL<br>(DOSH'S PETITION)<br>Whether adult film performers are employees or independent contractors.     |
| 1246527   | CEMEX<br>Whether the settlement in this matter was procured by fraud.  |
| 316446855 | CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367<br>Whether adult film performers are employees or independent contractors.            |

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- 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.
- 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.
- 1135350 HILL CRANE SERVICE INC.  
Whether Employer violated the safety orders as alleged.
- 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.
- 1422951 LINEAGE LOGISTICS  
Whether Employer's motion to amend its appeal should be granted.
- 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.

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- 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.
- 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.
- 1303461      SSA TERMINALS (OAKLAND), LLC DBA SSA MARINE TERMINALS  
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1251879      TARGET STORES, INC.  
Whether the employee suffered a serious injury as defined by statute and regulation.
- 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.

**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.)*

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. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
7. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
8. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
9. BLUE DIAMOND GROWERS, (1040471)
10. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
11. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
12. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
13. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191 (1059365)
14. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
15. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
16. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
17. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
18. VINCENT TUOMEY, RG20061099 (1152851)
19. GOLDEN STATE BORING & PIPE JACKING, INC. (1308948)

**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. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705  
(317386084)

**OTHER ITEMS:**

- Discuss 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*

1439960	AERIOCONNECT, INC.
1427522	AIRGAS SPECIALTY PRODUCTS
1466806	AMERICAN JERKY COMPANY LLC
1444885	ARTAK DALDUMYAN
1412185	ASPIRANET
1446835	ASTONISH, INC./ASTONISH MARBLE & GRANITE
1447087	AT CONSTRUCTION SERVICES INC.
1444290	BEE IMAGINE LLC
1422766	BRIAN A. NORWOOD
1432706	BROWN CONSTRUCTION, INC.
1400338	CALIFORNIA MANTEL & FIREPLACE, INC.
1451912	CARGILL MEAT SOLUTIONS
1444597	CENTRAL VALLEY EGGS, LLC
1461339	COLIN MORRIS, AN INDIVIDUAL
1383269	DASALLA TRADING COMPANY INCORPORATED
1476050	DELORI-NUTIFOOD PRODUCTS, INC.

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1352213	DONALD T. HEADRICK
1449595	DOWNEY WHOLESale, INC.
1240872	EATON CORPORATION
1431360	FELIX LIGHTING, INC.
1440951	FOREVER 21 RETAIL, INC.
1343335	FRESNO COUNTY CORRECTIONS DEPT.
1330743	G4S SECURE SOLUTIONS (USA) INC.
1377640	HANNIBAL INDUSTRIES
1246501	HY-MAX BUILDING, CORP.
1397315	JOHNRE CARE LLC
1425239	JOSE GUADALUPE CARRANZA
1359203	JPA CONSTRUCTION CLEAN-UP SERVICE
1391083	LA TRADICIONAL MICHOACANA
1340624	LENNAR HOMES OF CALIFORNIA, INC.
1420911	LENNAR HOMES OF CALIFORNIA, INC.
1449607	M & M SHEET METAL & RAIN GUTTER CORP.
1411695	M&M LABOR, INC.
1472468	MBL & SONS, INC.
1435527	MGBD, INC.
1447877	NEILMED PHARMACEUTICALS
1336773	NEUTRON HOLDINGS, INC.
1425548	NOODLE KING HOUSE
1412358	PACIFIC PARKS LANDSCAPING, INC.
1444091	PICO RIVERA HEALTHCARE, INC.
1238171	PRO LANDSCAPING, INC.
1470088	R PLANET EARTH
1469083	RALPHS-PUGH CO., INC.
1461315	REFCO FARMS, LLC
1380234	RESTORATION HARDWARE, INC.
1368465	ROOFING WHOLESale CO., INC.
1470069	ROSEVILLE ROCKLIN ELECTRIC INC.

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1472740	S & R EGG RANCH COMPANY
1442605	SAN DIEGO ZOO GLOBAL
1454971	SERTA SIMMONS BEDDING, LLC
1445878	SHADYBROOK ESTATE WINERY
1424743	SHIMMICK / FCC / IMPREGILO, JOINT VENTURE
1466149	STONEHENGE MARBLE, INC.
1442540	SUNSHINE METAL CLAD INC.
1434581	SUPERIOR WALL SYSTEMS, INC.
1465023	TDI REFRIGERATION AND AIR CONDITIONING, INC.
1456533	THOMAS BUI, AN INDIVIDUAL
1394119	TRUST RESTAURANT GROUP, INC.
1427722	TURFRESH, INC.
1278505	WEST ISLAND COTTON GROWERS, INC.

**PERSONNEL:**

*(Issues regarding staff.)*

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