

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

**CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, October 1, 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 18, 2020

RE: Closed Session of the Board to be held on October 1, 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.)

NONE

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

1432476 GOODWILL INDUSTRIES OF SOUTHERN CALIFORNIA

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.

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| 1272378 | ANDREW HARRISON BARNES
Whether Mr. Barnes was/is an employer. |
| 1332715 | APTCO, LLC |
| 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. |

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted September 18, 2020

- 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.
- 1213886 JACE VARGHESE
Whether Employer has satisfied requirements of petition for reconsideration.
- 1290383 JAFEC USA, INC.
- 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.
- 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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted September 18, 2020

- 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.)

SUPPERIOR 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. 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

1304201	5M CONTRACTING, INC.
1422487	A.M. AG ENTERPRISE, INC.
1333609	ABC SUPPLY CO.
1433089	ACS STAFFING, INC.
1425711	ACTIVE PROTECTIVE SERVICES
1475849	ACV LOGISTICS LLC
1473207	ADVANCE QUALITY HAZMAT INDUSTRIES (AQHI), INC.
1449742	ALLWEATHER LANDSCAPE MAINTENANCE INC.
1448362	ALTAMIRA LABOR SERVICES, INC.
1407373	AMERICAN INCORPORATED
1441747	ANHEUSER-BUSCH INC.
1393471	CA DEPARTMENT OF STATE HOSPITALS - PATTON
1441464	CA WATER RESOURCES
1441742	CALIFORNIA CENTER FOR THE ART, ESCONDIDO
1273286	CALIFORNIA SHEET METAL WORKS, INC.
1436288	CAN AM ELECTRIC, INC.
1431332	CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.
1456485	CORVETTE PARTS, INC.
1461103	CROWN BAKERY INC.
1449421	CRUSHFOODS INC

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted September 18, 2020

1460437	DALOU CORPORATION
1436921	DENNY'S
1473977	DOC'S CONSTRUCTION & HANDYMAN SERVICE
1360827	EPIC SHEET METAL, INC.
1455366	ESPARZA ENTERPRISES, INC.
1477535	FARIA DAIRY INC.
1461728	FIVE STAR ROOFING, INC.
1394236	GARAVENTA ENTERPRISES INC.
1434884	GEARY & LESLIE REA
1477828	GENESIS SPROUTS, INC.
1443221	GOLDSTAR ROOFING INC.
1394258	HARP ENTERPRISES
1422091	HENLE CONSTRUCTION & RENOVATIONS, INC
1454770	HT WINDOW FASHIONS CORPORATION
1468508	J'S MAINTENANCE SERVICE INC
1449415	JOSEPH AND DIANE CARDENAS, A PARTNERSHIP
1398653	JT2 INC.
1441917	JV RECYCLING, INC.
1462628	KANN ENTERPRISES INC
1456112	KARAN BAKHSHI
1265728	KURIOS TOWING & STORAGE
1480497	MANUEL MORRIS DAIRY
1381224	MARIAK INDUSTRIES, INC.
1300058	MARTINEZ STEEL CORPORATION
1440981	MEHAR SEKHON HOTEL GROUP, LLC
1298690	MERICAL INCORPORATED
1444382	MORGAN DEVELOPMENT, INC.
1444389	NEWMAN BROS. OF CALIFORNIA, INC.
1481318	NEXT WAVE COMMUNICATIONS LLC
1426016	NORCAL MASONRY BUILDERS, INC.
1460439	ONE STOP AVIATION, INC.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted September 18, 2020

1397567	PACIFIC SPICE COMPANY, INC.
1471836	PACIFIC WIRED INC.
1470407	PROFESSIONAL PACKERS & FORWARDERS, INC.
1347338	QUALITY TREE SERVICE
1338178	REPLANET, LLC
1479425	RICHARD SWANSON INC.
1251468	SAXCO INTERNATIONAL, LLC.
1415250	SIMPSON SAND BLASTING AND SPECIAL COATINGS, INC.
1398413	SOCAL FRAMING, INC.
1430968	SONDANCE PAINTING, INC.
1452844	STANDARD OIL GROUP
1445701	TIPCO ENGINEERING INC.
1463466	TORKIAN CONSTRUCTION, INC.
1464943	TORKIAN CONSTRUCTION, INC.
1453915	TRI MARINE FISH COMPANY
1458707	UNIVERSITY INN CHICO, LLC
1317400	UTILITY TREE SERVICE, LLC.
1463598	VANIK ABELIAN
1478102	VARNER AND SON INCORPORATED
1403691	WAWONA FROZEN FOODS
1473550	WELLINGTON FOODS, INC

PERSONNEL:

(Issues regarding staff.)

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