

**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 15, 2020
9:30 a.m.
on Zoom**

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

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: October 2, 2020

RE: Closed Session of the Board to be held on October 15, 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.)

1153101 SUNVIEW VINEYARDS OF CALIFORNIA, 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.

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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. |

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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.
- 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.

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- 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.)

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.
- Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

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.)

1461811	A.J. SONS, INC.
1464144	ACCURATE STEEL TREATING, INC.
1444398	ADVANCED CONSTRUCTION COMPANY
1468858	ALONSO'S AUTO REPAIR
1464802	ARMANDO CORNELIO, AN INDIVIDUAL
1400337	BANKS & CO.
1377479	BIDART DAIRY II, LLC
1486750	BIG W RANCH CORP.
1425094	BLUE ROCK CONSTRUCTION, INC.
1365259	BMC WEST LLC
1395503	BMV CONSTRUCTION GROUP, INC.
1398432	BOGHOSIAN RAISIN PACKING CO., INC.
1398846	C & A SWINNEY, INC.
1461667	CALAMCO
1387207	CAPSTONE LOGISTICS, LLC
1362645	CENTRAL VALLEY CONCRETE, INC.
1430726	CHRISCO BITS, INC.
1444858	COSTCO WHOLESALE CORPORATION

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1432018	COSWAY COMPANY, INC
1245160	DELANO JOINT UNION HIGH SCHOOL DISTRICT
1309220	EMERITUS PROPERTIES XVI INC
1449997	ENI-JR-286, INC.
1434834	EUROLINE STEEL WINDOWS
1386815	FOCUS BUILDERS INC.
1439010	FOLEY FAMILY WINES VINEYARD
1478623	FOLLIOTT CONSTRUCTION INC.
1468197	FOOTHILL CARWASH
1441310	GMR NORTHERN CALIFORNIA, LLC
1352228	GOLDEN HILLS MINI STORAGE
1292269	GUADALAJARA GRILL LLC
1464147	ILINK BUSINESS MANAGEMENT, INC.
1396176	JD HOME RENTALS
1452209	JOHN E. PETRICKA JR., AN INDIVIDUAL
1222118	KUNZIK & SARA CONSTRUCTION, INC.
1485355	LEADING OUR FUTURE, LLC
1443755	LINEAGE LOGISTICS ICM, LLC
1445855	LIVE OAK ORCHID, LLC
1432468	MARKARIAN FAMILY LIMITED PARTNERSHIP, A CA.
1476401	MCNEILUS TRUCK & MANUFACTURING, INC.
1471111	MID VALLEY DISPOSAL
1425867	MKB CONSTRUCTION
1465817	MRS. WILLIAMS' COUNTRY KITCHEN, INC.
1470067	NELSON CASE CORPORATION
1448271	NICANDO VELEZ ORTEGA, FILEMON VASQUEZ, JULIANA
1462570	O.F.R. INC.
1442040	OIL WELL SERVICE COMPANY
1474264	OUTDOOR KEEPERS
1463470	PENA CONSTRUCTION SERVICES, INC
1358885	PHILIP MANGIAFICO

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1326114	PM LABOR SERVICES
1399838	PPF AMLI 21200 KITTRIDGE STREET, LLC
1461752	S.E. COMBINED SERVICES OF CALIFORNIA INC
1378918	SCHNITZER STEEL INDUSTRIES, INC.
1376645	SITEONE LANDSCAPE SUPPLY LLC
1469344	STOCKTON RUBBER MFG. CO. INC.
1344711	SWEETWOOD FARM, INC.
1481298	TFN ARCHITECTURAL SIGNAGE, INC
1422034	TOLL BROTHERS, INC.
1346283	TURNER DRYWALL, INC.
1384709	TYP RESTAURANT GROUP, INC.
1204808	UNIVERSAL PACKAGING SYSTEMS, INC.
1395507	VALLEY UNIQUE ELECTRIC, INC.
1431706	VINCENT GUERRERO DBA G & G CONTRACTORS
1371304	WASTE MANAGEMENT RECYCLING AND DISPOSAL
1378465	WAVEDIVISION HOLDINGS, LLC
1461686	WELLINGTON FOODS, INC.
1347317	WEST BUILDERS, INC.
1448174	WEST COAST MARBLE & GRANITE, INC.
1453393	WEST COAST RECYCLING CENTER
1457508	WOODMACK PRODUCTS, INC.
1456083	WWF OPERATING COMPANY LLC

PERSONNEL:

(Issues regarding staff.)

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