

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

CLOSED SESSION AGENDA

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

for

Thursday, November 5, 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 23, 2020

RE: Closed Session of the Board to be held on November 5, 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.)

1176128 ROCKWELL DRYWALL 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.)

1321676 JOHN LOCHER HARVESTING INC

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

1442575 ARROW DRILLERS INC.
1411950 FOREVER 21, INC.
1446191 UNMUEANG KONGNAPA

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
 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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted October 23, 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.
- 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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted October 23, 2020

- 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.
- 1153101 SUNVIEW VINEYARDS OF CALIFORNIA, INC.
- 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. 34-2020-80003465
(1308948)
20. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002204 (12-R3D1-0781) (315525790)
21. INTERLINE BRANDS, INC., CIVDS2021813 (1251604)

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)
5. UNITED PARCEL SERVICE, B308218, 18STCP03195 (1158285)
6. UNITED PARCEL SERVICE, B308218, 18STCP03195 (1158285)
7. WALSH SHEA CORRIDOR CONSTRUCTORS, S264760, (1093606)

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.)

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| 1450560 | AARON J. TALAMANTES CONSTRUCTION |
| 1482692 | ABBOTT RANCH LLC |
| 1428829 | ALPHA DYNO NOBEL |
| 1319465 | ARTISTIC ARBOR GARDENS, INC. |
| 1438733 | BEAUMONT RV, INC. |
| 1432231 | BERNARDO L. FARIAS |

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted October 23, 2020

1447932 BEST VALUE RECYCLING, LLC
1400596 CA TRANSPORTATION, DISTRICT 5
1465331 CAFORIO DEVELOPMENT GROUP, LLC
1321709 CALIFORNIA DEPARTMENT OF CORRECTIONS
1475922 CALIFORNIA MAJESTIC LANDSCAPE AND MAINTENANCE,
1421967 CALIFORNIA STATE UNIVERSITY, STANISLAUS
1361890 CALLEGUAS MUNICIPAL WATER DISTRICT
1455645 CARDENAS MARKET LLC
1470917 CATALYST FORWARD GROUP
1299973 CHAMPION WINDOWS, INC.
1428152 CHAU LAM
1467850 CITY OF BANNING POLICE DEPARTMENT
1375305 CITY OF REDDING
1439269 CLEAN HARBORS ENVIRONMENTAL SERVICES, INC
1432404 COMPLETE DEVELOPMENT & CONSTRUCTION COMPANY
1321948 CUSTOM FRESH HARVEST, INC.
1351137 DALEY'S DRYWALL AND TAPING, INC.
1445935 DONALD LANGERMAN
1483358 DUNCAN FAMILY FARMS
1411958 EL CAJON MANAGEMENT, INC.
1450855 ERIKSSON TILE & STONE, INC.
1444897 ES ONE INC.
1404783 ETERNITY WINDOWS & DOORS, INC.
1450232 EXACT STAFF, INC.
1475602 FAR WEST FUNGI, INC.
1435729 FLEETWASH, INC.
1441288 FLUEGGE EGG RANCH 2, INC.
1396295 FOOD 4 LESS OF SOUTHERN CALIFORNIA, INC.
1457231 FRESHPOINT SOUTHERN CALIFORNIA, INC.
1474327 FULL STEAM STAFFING, LLC
1417600 GOOD SAMARITAN HOSPITAL

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted October 23, 2020

1338656 GRANDMAISON CONSTRUCTION, INC.
1448657 GRANITE TRANSFORMATIONS VENTURA, INC.
1438345 HENKELS & MCCOY, INC.
1264008 HOOVER TREATED WOOD PRODUCTS, INC.
1440180 HORIZON PERSONNEL SERVICES, INC.
1462925 HSIAO & MONTANO, INC.
1417693 IMMEDIATE RESOURCE GROUP, INC
1457081 INTERIOR WOOD SYSTEM INC.
1452729 IPPOLITO INTERNATIONAL, L.P.
1456235 ITARCA, INC.
1453716 J&J SNACKFOODS CORPORATION
1282784 J.W. PETERSON PAINTING, INC
1475122 KAUFMAN CONSTRUCTION INC.
1457821 KNN APPAREL INC
1177778 KS INDUSTRIES, L.P.
1399031 KTL MUSHROOM CORP. (USA)
1237900 LARGO CONCRETE, INC.
1366262 LAS VIRGENES MUNICIPAL WATER DISTRICT
1421654 LATITUDE 36 FOODS, LLC
1444682 LATITUDE PHARMACEUTICALS INC.
1379504 LE POUF, LLC
1413631 LEPRINO FOODS COMPANY
1461030 LINE 204, LLC
1431684 MAC BROWN EXCAVATING, INC.
1429957 MARIANI NUT COMPANY
1467074 MARICH CONFECTIONERY COMPANY INC.
1402384 MARISCOS LAS GUERITAS LLC
1432467 MEGAN HALLER
1469812 METAROM USA LLC
1452975 MIZ APPAREL, INC.
1270658 N.M.N. CONSTRUCTION, INC.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted October 23, 2020

1461114 NATURE JOY HARVEST LLC
1408830 NAVAJO RUG CLEANING CO. INC.
1447172 NORTH AMERICAN FIRE HOSE CORPORATION
1321268 PARADIGM BUILDERS, INC.
1465382 PARIS CROISSANTS & SONS, INC
1469121 PBC COMMERCIAL CLEANING SYSTEMS INC.
1431329 PEREZ PALLETS RECYCLED, INC.
1462931 PICK UP STICKS
1452974 PINK COCONUT APPAREL, INC.
1483250 PLANASA LLC
1476069 PREMIER EMPLOYEE SOLUTIONS
1392059 PRO-CRAFT CONSTRUCTION INC.
1476122 RACEWAY FORD, INC.
1381620 RAGO & SON, INC.
1429148 RAKESH KUMAR (SOLE OWNER)
1422136 RALEY`S
1327865 RETIREMENT HOUSING FOUNDATION
1425859 RUGBY HOLDINGS LLC
1468064 S.D.S. INDUSTRIES, INC
1474964 SANTA MARIA ENERGY, LLC
1421305 SCI CALIFORNIA FUNERAL SERVICES, INC.
1314986 SECURITY PAVING COMPANY, INC.
1468177 SGB CUSTOM PAINTING
1280908 SIBONEY CONTRACTING CO
1288507 SIMPLIFIED LABOR STAFFING SOLUTIONS, INC
1388298 SIMPLIFIED LABOR STAFFING SOLUTIONS, INC.
1289680 SOUTHERN CALIFORNIA GAS COMPANY
1271027 SOUTHWEST INDUSTRIAL ELECTRIC
1350092 STANISLAUS FOOD PRODUCTS COMPANY
1447966 STAR MARBLE & GRANITE
1456455 STEWART HANDLING SYSTEMS, INC.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted October 23, 2020

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| 1444279 | SULLY GREEN INC. |
| 1242136 | TALION CONSTRUCTION, LLC. |
| 1418045 | TANIMURA & ANTLE FRESH FOODS, INC. |
| 1459387 | THE HUMBOLDT COUNTY FARMS, INC. |
| 1446451 | THE LOPEZ GROUP CORPORATION |
| 1460321 | THERMAL-VAC TECHNOLOGY, INC. |
| 1320790 | TIMBER WORKS CONSTRUCTION, INC. |
| 1228004 | TITAN SHEET METAL, INC. |
| 1304694 | TRADESMEN INTERNATIONAL LLC |
| 1274647 | UNITED AIRLINES |
| 1442088 | UNITED ALLOYS & METALS, INC. |
| 1476067 | UNITED FACILITIES INC |
| 1338688 | UNITED PARCEL SERVICE, INC. |
| 1472017 | VALERO REFINING COMPANY - CALIFORNIA |
| 1395381 | VOTAW WOOD PRODUCTS, INC. |
| 1490458 | WAYNE PERRY, INC. |
| 1386816 | WESTCO IRON WORKS, INC. |
| 1431209 | WONDERFUL PISTACHIOS & ALMONDS, LLC |
| 1431548 | YOUNG BROTHERS CONSTRUCTION COMPANY |
| 1385418 | ZAFRA, INC. |

PERSONNEL:

(Issues regarding staff.)

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