

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

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

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

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

**DATE: November 20, 2020**

**RE: Closed Session of the Board to be held on December 3, 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.)*

1326355      DIVERSIFIED UTILITY SERVICES, INC.

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

NONE

**ORDERS DISMISSING APPEAL:**

1341947 ACME ANYTHING

**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<br>Whether Mr. Barnes was/is an employer.   |
| 1332715   | APTCO, LLC<br>Whether the ALJ Decision correctly analyzed the record in deciding Employer had committed the alleged violation.       |
| 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.
- 1213886 JACE VARGHESE  
Whether Employer has satisfied requirements of petition for reconsideration.
- 1290383 JAFEC USA, INC.  
Whether the ALJ correctly decided the Employer was in violation of a safety order, as alleged.
- 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.
- 1474264      OUTDOOR KEEPERS  
Whether the ALJ acted appropriately in approving settlement terms offered by the Division and not accepted by the Employer
- 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.  
Whether the Board should reconsider this interlocutory petition. Whether the Division should be required to provide a redacted copy of the complaint to Employer.
- 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. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
2. SOLARCITY CORP., 34-2016-80002345 (14-R3D2-3707)
3. KEY ENERGY SERVICE, LLC (12004280)
4. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
5. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
6. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
7. BLUE DIAMOND GROWERS, (1040471) 34-2018-80003007
8. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
9. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
10. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174  
(1116529)
11. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191  
(1059365)
12. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
13. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
14. PRESTIGE PAINTING, 37-2019-00066143 (1367265)

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15. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
16. VINCENT TUOMEY, RG20061099 (1152851)
17. GOLDEN STATE BORING & PIPE JACKING, INC. 34-2020-80003465 (1308948)
18. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204 (12-R3D1-0781) (315525790)
19. 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. WALSH SHEA CORRIDOR CONSTRUCTORS, S264760, (1093606)

**OTHER ITEMS:**

- New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
- 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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|---------|--|
| 1425994 | 4 OVER LLC                                     |
| 1429492 | ABUNDANT WATER WELLS, INC.                     |
| 1366921 | ADVANCED CONSTRUCTION SOUTHWEST OF CALIFORNIA, |
| 1189103 | AJM PACKAGING                                  |

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1452095	ALL SEASONS FRAMING II CORP.
1249638	AMERESCO, INC.
1232030	AMIGOS FUERZA INC.
1302675	ARBORWELL, INC.
1421288	ARMOR COATINGS
1450456	ASHLEY PHAM, AN INDIVIDUAL
1437144	AT&T SERVICES, INC.
1400483	BASIC ENERGY, INC.
1377973	BEST WAY DISPOSAL CO., INC
1449382	CA STATE WATER RESOURCES CONTROL BOARD
1479792	CALIFORNIA CROSS DOCK INC.
1452180	CALIFORNIA DEPARTMENT OF STATE HOSPITALS
1487576	CBC FRAMING, INC.
1430951	CERON BUILDING REMODELING, INC.
1378805	CITISTAFF SOLUTIONS, INC.
1388114	COMCO COMMERCIAL REAL ESTATE AND DEVELOPMENT
1349917	CONTRA COSTA ELECTRIC, INC.
1453329	CUSTOM PRODUCE SALES
1333410	DOUGLAS HSIUNG AND AMY WANG-HSIUNG
1455277	DR. HARIDY VETERINARY EMERGENCY AND TRAUMA
1317842	DREISBACH ENTERPRISES, INC.
1459864	EPIC CERAMIC & STONE, INC.
1453020	EXCEL PROPERTY MANAGEMENT SERVICES, INC.
1471358	FLETCHLINE INC.
1431069	FRUITY AG, INC.
1263269	GAYTAN FOODS
1433959	GEORGE REED, INC.
1482953	GILES EXCAVATING & PAVING
1346432	GIMBAL BROTHERS, LLC
1464813	GONZALEZ LATH & PLASTER
1431669	GS BROTHERS, INC.
1498484	HAL STAUFF CONSTRUCTION
1235945	HALL MANAGEMENT CORP.
1390930	HAWA CORPORATION
1451177	HAYWARD SISTERS HOSPITAL
1366935	HOLLAND PARTNER GROUP MANAGEMENT, INC.
1472027	IONIKI FOODS, INC
1329986	J & E BERRY FARMS, LLC.
1443225	JEM UNLIMITED IRON, INC.
1410388	JOHNSON CONTROLS, INC.

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1435908	KBI PAINTING, INC
1290983	KLEIN FOODS INC
1375220	LA CITY FIRE
1439813	LA VERNE NURSERY INC.
1308482	LICO, INC.
1400817	MACAS CORPORATION
1461814	MANUEL ROBERT MONTEIRO, MICHAEL MANUEL
1414289	MICHELS CORPORATION
1406488	MILGARD MANUFACTURING INCORPORATED
1425586	MINTURN HULLER COOPERATIVE, INC.
1392841	NO TOIL INDUSTRIES INC
1461022	OSBETH CONSTRUCTION, INC
1063574	OWENS CORNING ROOFING & ASPHALT LLC
1333857	PARIS VALLEY VINEYARD SERVICES COMPANY
1461687	PRIMORIS ARB, INC.
1422153	SA RECYCLING, LLC
1412929	SAUL RAMIREZ, INDIVIDUALLY
1366195	SAVE MART SUPERMARKETS
1239465	SOUTHERN CALIFORNIA EDISON COMPANY
1450901	SUKUT CONSTRUCTION INC.
1460340	TADIN, LLC
1341136	TAYLOR FARMS CALIFORNIA, INC.
1378368	TFR BUILDERS, INC.
1471893	THE ALTERIAN GHOST FACTORY, INC.
1388974	THE WINE GROUP, INC.
1468860	TREESAP FARMS, LLC
1362628	UNIVERSAL CITY STUDIOS, LLC. / UNIVERSAL STUDIOS
1440279	VISION MEDIA MANAGEMENT AND FULFILLMENT, LLC
1282514	WALT DISNEY PARKS AND RESORTS U.S., INC.
1436937	WARNOCK FOOD PRODUCTS, INC.
1441622	WESTECH SYTEMS, INC.
1461787	WESTLAKE CATTLE COMPANY, LLC
1397730	WESTLAND FLOORING INC.

**PERSONNEL:**

*(Issues regarding staff.)*

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