

**STATE OF CALIFORNIA  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**

**Held on January 23, 2020  
Sacramento, California  
West Covina, California**

**PRESENT:**

Ed Lowry, Chair  
Judith Freyman, Member  
Marvin Kropke, Member  
Patricia Hapgood, Acting Executive Officer  
Jeff Mojcher, Chief Counsel  
Kevin Reedy, Presiding Administrative Law Judge  
Ursula Clemons, Presiding Administrative Law Judge  
Aaron Jackson, Industrial Relations Counsel  
Lee Berlin, Staff Services Manager  
Janis Jonas, Management Services Technician

**MINUTES OF January 9, 2020 MEETING:**

*(Approve or amend minutes of previous Board meeting.)*

ACTION: Board approved minutes of the January 9, 2020 meeting.  
Moved: Judith Freyman.  
Member Kropke seconded.  
The vote was 3-0.

**NEW BUSINESS:**

*(The Appeals Board hears and discusses new reports presented by staff.)*

ACTION: No report.

**OLD BUSINESS:**

*(The Appeals Board hears and/or discusses matters on a follow-up basis.)*

ACTION: Discussion regarding Stakeholder Roundtable scheduled February 26, 2020.

**LEGISLATION:**

*(Review and discuss current legislation which may affect the Appeals Board.)*

ACTION: No report.

**CHAIRPERSON'S REPORT:**

*(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)*

ACTION: Chair Lowry reported that he will a meeting with Fed/OSHA and other DIR agencies February 4, 2020 in Oakland.

**BOARD MEMBERS REPORTS:**

*(Hear reports from Board Members on activities and issues affecting the Appeals Board.)*

ACTION: No report.

**EXECUTIVE OFFICER'S REPORT:**

*(Report regarding administrative matters.)*

ACTION: No report.

**STAFF REPORTS:**

*(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)*

1. REGULATIONS:

ACTION: No report.

2. LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported on current court cases.

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.

**PUBLIC COMMENT:**

*(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)*

ACTION: There were no public comments.

The Board recessed to its closed session.

**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.)*

- 1300039      EMERICARE INC  
ACTION:      The Board discussed.
- 1334995      KERN RIDGE GROWERS, LLC.  
ACTION:      The Board discussed.
- 1226666      WASHINGTON ORNAMENTAL IRON WORKS INC.  
ACTION:      The Board discussed.

**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.)*

- 1404976      233 DIESEL CLUB, LLC  
ACTION:      The Board discussed.
- 1255331      CREATIVE COMMUNICATION TECHNOLOGIES INC.  
ACTION:      The Board discussed.
- 1395180      JONES, LANGE AND LASALLE  
ACTION:      The Board discussed.
- 1165335      KRISTOPHER DEANMARCHANT DBA MARCHANT SITE  
DEVELOPMENT  
ACTION:      The Board discussed.
- 1199064      SA RECYCLING  
ACTION:      The Board discussed.

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

- 1374636      AMERI-KLEEN  
ACTION:      Order Granting petition issued.  
Moved: Judith Freyman.  
Seconded: Marvin Kropke.  
Vote: 3-0.

**ORDERS DISMISSING APPEAL:**

- 1389227 CALIFORNIA FRESH CITRUS COMPANY  
ACTION: The Board discussed.
- 1323274 HOLT PREMIUM CAR WASH, INC.  
ACTION: The Board discussed.

**ORDER DENYING LEAVE TO FILE LATE APPEAL:**

- 1411035 JENSEN CONSTRUCTION AND DEVELOPMENT  
ACTION: The Board discussed.
- 1391980 SOUTHERN CALIFORNIA EDISON COMPANY  
ACTION: Issue Order Reinstating appeal.  
Move: Judith Freyman.  
Seconded: Marvin Kropke.  
Vote: 3-0.

**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.*

- 1200176 AEROTEK, INC. dba AEROTEK  
Whether Employer established and implemented its IIPP as required.
- 1272378 ANDREW HARRISON BARNES  
Whether Mr. Barnes was/is an employer.
- 1141604 BOY RACER INC. DBA BURNING ANGEL  
(EMPLOYER'S PETITION)  
Whether adult film performers are employees or independent contractors.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
January 23, 2020

- 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.  
ACTION: Board discussed this matter.
- 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.
- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.  
Whether the cited Employer committed the alleged violations and whether the ALJ erred in evidentiary rulings.
- 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.
- 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.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
January 23, 2020

- 1386789 MARIANO MORENO & ARCELIA TOSTADO, INDIVIDUALLY  
Whether Employer showed good cause for late appeal.
- 1290766 MILLENIUM REINFORCING  
Whether 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.
- 1237932 SACRAMENTO COUNTY WATER AGENCY  
Whether the citation was correctly classified as serious. Whether the ALJ correctly denied Employer's Newbery defense.
- 1123110 SINCLAIR CONCRETE, INC.  
Whether the widow of decedent employee had adequate notice of Employer's appeal of the OSHA citation.
- 1088791 TUTOR PERINI CORPORATION  
Whether Employer violated safety orders pertaining to keeping equipment and spoils a safe distance from an excavation.
- 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.

**LEGISLATION:**

**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.)*

**SUPERIOR COURT:**

1. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,  
15CV-00945 (08-R2D1-3093 through 3098)

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
January 23, 2020

2. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
3. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,  
34-2015-80002206 (12-R3D1-0781)
4. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
5. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
6. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
7. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
8. KEY ENERGY SERVICE, LLC 12004280
9. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,  
34-2017-80002562, (1144056)
10. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
11. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
12. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
13. BLUE DIAMOND GROWERS, (1040471)
14. UNITED PARCEL SERVICE, (1158285)
15. NORM WILSON & SONS INC., 19STCP00663 (1116151)
16. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
17. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
18. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
19. PERFORMANCE TEAM FREIGHT SYSTEMS, 19STCP 02154 (1183505)
20. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
21. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191  
(1059365)
22. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
23. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
24. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)

25. STADCO, INC., 192TCP04944 (1142674)

26. PRESTIGE PAINTING, 37-2019-00066143 (1367265)

**APPELLATE COURT:**

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)

2. NOLTE SHEET METAL, INC., 16CE CG03592 (14-R6D8-2888 through 2783)

3. VENTURA COASTAL, F077267 (317808970)

4. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910 (1111325)

5. LION FARMS, LLC, MCV075788 (1070258)

6. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)

**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.)*

1347614	2R DRILLING, INC.
1386827	ALI AHMED FARA
1298298	BALDWIN CONTRACTING COMPANY, INC.
1391911	BMC WEST LLC
1369268	BRIDGESTONE AMERICA TIRE OPS, LLC.
1335901	CALIBER DRYWALL
1396115	CALIFORNIA ASPHALT PRODUCTION, LLC
1359846	CALIFORNIA PRISON INDUSTRY AUTHORITY
1412687	CANYON SUSHI, INC.
1384527	CAPITOLA VETERINARY HOSPITAL
1410717	CAVCO INDUSTRIES, INC.
1421733	CHANNEA UN, AN INDIVIDUAL
1423085	CREEKSIDE COMMERCIAL BUILDERS, INC.
1409634	DE-JONG DAIRY FARMS, INC.
1409535	DIMITRIA KAIRIS
1310890	EMERALD STEEL, INC.
1380604	FINE ELECTRONIC ASSEMBLY, INC.
1072232	FRED GARZA JR., INC
1408610	FROY TRANSPORT INC
1381183	GLOBAL ENVIRONMENTAL PRODUCTS, INC.
1182513	GOLD POINT TRANSPORTATION, INC.
1347677	GRANITE CONSTRUCTION COMPANY



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
January 23, 2020

1405316 GRIMMWAY ENTERPRISES, INC.  
1372539 H.J. MODE, INC.  
1404651 HLT CONRAD DOMESTIC LLC  
1366775 HORTICULTURAL VENTURES, INC.  
1400788 JETICO, INC.  
1402292 JOEL GARCIA, AN INDIVIDUAL  
1192164 JOSE LUIS NAPOLES SOLIS  
1348305 JOSEPH ANTHONY PAINTING  
1389075 KBS STAFFING, INC.  
1374954 KRALLCAST, INC.  
1427375 MAT LOGISTICS LLC, MIDWEST AIR TECHNOLOGIES, INC.  
1437594 NUTRINUT INC.  
1407902 OMEGA PRODUCTS INTERNATIONAL, INC.  
1284722 OPTIMUS CONSTRUCTION, INC.  
1410436 PACIFIC AG AND VINEYARD, INC.  
1282138 PARADIGM BUILDERS, INC.  
1419103 PARROTT SCREEN PRINTING & EMBROIDERY, INC.  
1335175 PKC CONSTRUCTION CO  
1418476 PLATINUM SALES GROUP LLC  
1395454 PORT OF OAKLAND  
1411332 PREMIERE BRAND MEATS  
1289562 PRIMESKILL STAFFING SERVICES  
1380244 R&S PROCESSING, INC.  
1349109 REDMAN HOMES, INC.  
1374185 SARANGHE, INC.  
1373730 SASAKI FAMILY PARTNERSHIP  
1339909 SCHEU STEEL SUPPLY COMPANY  
1421647 SCI CALIFORNIA FUNERAL SERVICES, INC.  
1401643 SD BISHOP RANCH LLC  
1409226 SENIOR RESOURCE GROUP, LLC  
1285439 SIERRA BUILDING PRODUCTS INC.  
1365793 SIERRA MOUNTAIN CONSTRUCTION, INC.  
1312145 SNO SHACK, LLC  
1367217 SUPERVALU  
1401746 TDR PROPERTIES LLC  
1305494 TEECCINO CAFFE, INC.  
1362647 TENNYSON ELECTRIC, INC.  
1393459 THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA  
1409887 TRINITY DEVCO INC.  
1413002 TRUITT AND WHITE LUMBER COMPANY  
1275353 UNITED GROWERS BERRY FARMS, LLC.  
1183151 WESTERN OIL SUPPLY COMPANY  
1281994 YAGO'S PRO PAINTING

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
January 23, 2020

ACTION: All Administrative Law Judge Settlement Orders  
approved.  
Moved: Judith Freyman.  
Seconded: Marvin Kropke.  
Voted: 3-0.

**PERSONNEL:**

*(Issues regarding staff)*

ACTION: No report.

The Closed Session was adjourned at 12:47 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 12:48 p.m.