

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

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

**PRESENT:**

Ed Lowry, Chair, Public Member  
Judith Freyman, Management Member  
Marvin Kropke, Labor 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  
Autumn Gonzalez, Industrial Relations Counsel  
Andia Farzaneh, Attorney  
Lee Berlin, Staff Services Manager  
Janis Jonas, Management Services Technician  
Rheeah Avelar, Administrative Law Judge  
Sam Lucas, Administrative Law Judge  
Chris Jessup, Administrative Law Judge  
Kerry Lewis, Administrative Law Judge  
Lisa Prince, Attorney, The Prince Firm  
Lisa Baiocchi, Attorney, The Prince Firm  
Steff Meldgaard, Paralegal, The Prince Firm  
Bruce Wick, Risk Management Director, CALPASC  
Fred Walter, Attorney,

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

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

ACTION: Board approved minutes of the July 9, 2020 Board meeting.  
Moved: Marvin Kropke.  
Seconded: Judith Freyman.  
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.)*

- Board to discuss implementation of Video Hearings.  
ACTION: Kerry Lewis updated the Board on progress and training for video hearings.

**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: No report.

**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: Fed OSHA quarterly meeting is scheduled Aug 4.  
Update on staff hiring.

**STAFF REPORTS:**

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

- REGULATIONS:  
ACTION: No report.
- 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.)*

1236516 ALCAL SPECIALTY CONTRACTING, INC.

ACTION: The Board discussed this decision.

**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.)*

1135350 HILL CRANE SERVICE INC.

ACTION: Granted  
Motion: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

1422921 LINEAGE LOGISTICS

ACTION: Granted  
Motion: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

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

1401228 ERNEST GONZALES

ACTION: Denial issued.  
Motion: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

1436614 SAPUTO CHEESE USA, INC.

ACTION: Denial issued.  
Motion: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

**ORDERS DISMISSING APPEAL:**

NONE

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

1457200 JKD CONSTRUCTION  
ACTION: The Board discussed this order.

1447173 PENSKE LOGISTICS LLC  
ACTION: Remand to Hearing operations.  
Moved: 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.*

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.

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 and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
July 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.
- 1300039 EMERICARE, INC. dba BROOKDALE NORTHRIDGE  
Whether the employer's alternate means of guarding satisfied the requirements of the applicable safety order.
- 1199473 FEDEX GROUND  
Whether Employer's supervision of the workplace was reasonable.
- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.  
Whether the employer was in violation of injury and illness prevention plan requirements and lockout/tag-out requirements as alleged.  
ACTION: DAR issued.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 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.  
ACTION: The Board discussed this case.
- 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.
- 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.

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

- 1173183 L & S FRAMING, INC.  
Whether the stairway involved was a “stairwell.” Whether the motion to amend citation was timely and for good cause.
- 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.
- 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.
- 1251879 TARGET STORES, INC.
- 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.

**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)
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. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV, 34-2017-80002562, (1144056)
7. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
8. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
9. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
10. BLUE DIAMOND GROWERS, (1040471)
11. UNITED PARCEL SERVICE, (1158285)
12. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
13. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
14. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
15. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
16. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191 (1059365)
17. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)

18. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
19. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
20. STADCO, INC., 192TCP04944 (1142674)
21. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
22. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
23. VINCENT TUOMEY, RG20061099 (1152851)

**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. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)
5. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705 (317386084)
6. BRAGG CRANE, A158500, HG18930741 (1157108)

**OTHER ITEMS:**

- Discussion on 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 will reconsider or remand the issued order.)*

1204721	A & D FIRE PROTECTION, INC.
1311812	ADIDAS AMERICA, INC.
1308825	ADVANCED CONSTRUCTION
1452194	AFFIRMA REHABILITATION INC.
1458402	AFRIDI ENTERPRISES INC.
1434679	ALLIANCE CONSTRUCTS, INC.
1444096	AMERICAN INCORPORATED



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

1385228	AMERINE SYSTEMS, INC
1366269	ARGO SPRING MANUFACTURING CO., INC.
1438243	AUTO ZONE, INC.
1453856	AVL ROOFING INC.
1418467	B&B DOORS AND WINDOWS, INC.
1439816	B.H.L. ENTERPRISES, INC.
1460040	BABUBHAI C. PATEL, AN INDIVIDUAL
120141080	BASALITE CONCRETE PRODUCTS LLC
1469102	BAY AREA BEVERAGE CO.
1413265	CALIFORNIA STATE UNIVERSITY NORTHRIDGE
1435236	CALSCAPE COMMERCIAL & RESIDENTIAL LANDSCAPING,
1443747	CARLSON LATH & PLASTER, INC.
1445915	CONTRA COSTA WATER DISTRICT
1226419	CORSAIR ELECTRICAL CONNECTORS, INC.
1327488	COVANTA STANISLAUS, INC.
1394909	CRAM NCSD, INC.
1313045	CROWN ENERGY SERVICES, INC.
1362037	CTM APARTMENT SERVICES
1433587	CURTI FAMILY, INC.
1413694	CVIN LLC
1388292	DAMCO DISTRIBUTION SERVICES, INC.
1383935	DAVIS PACIFIC INC.
1342025	DISNEY CONSTRUCTION, INC.
1446164	DIX METALS, INC.
1348404	EAGLE NASHER, LLC.
1428840	ELLZEY'S PAINTING, INC
1274008	ENVIRONMENTAL CONSTRUCTION GROUP, INC.
1286976	EVOLVE REALTY AND DEVELOPMENT CORP.
1441929	FANTASY COOKIE CORP.
1474354	FC BICKERT COMPANY INC.
1425878	FOUR SEASONS HAULING, INC.
1336390	GILLIAM & SONS, INC.
1437917	HARBOR TRUCK BODIES, INC.
1471356	HOME BOX OFFICE INC. / COOLER WATER PRODUCTION
1446444	HOUSE OF LEATHER AND FABRICS
1441679	INLAND BOBCAT, INC
1468165	JKD CONSTRUCTION
1440753	JLCS, INC.
1357259	JT2, INC.
1459748	KOELSCH CONSTRUCTION INC.

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

1367616	L D L GENERAL CONTRACTORS INC.
1337196	LEPRINO FOODS, INC.
1306589	LLOYD'S MATERIAL SUPPLY CO, INC.
1414880	LONE OAK FARMS
1456601	LORENZO VITE-AGUILAR, AN INDIVIDUAL
1346473	LOUIS A. SCHEUER ROOFING SPECIALIST
1431890	LRN PROCESSORS, INC.
1435888	LRN PROCESSORS, INC.
1427311	METROPOLITAN PROPERTY SERVICES LLC
1461674	MONROVIA NURSERY COMPANY
1110968	MORLEY BUILDERS INC
1382008	MP 3600 LLC
1409918	NESTLE WATERS NORTH AMERICA INC.
1436514	NEXEM STAFFING, INC.
1280713	NORDSTROM INC DBA HAUTE LOOK
1404244	OG RECYCLING CORPORATION
1446714	OLDE THOMPSON, LLC
1289688	OLIVE HILL GREENHOUSES, INC.
1444294	PASSPORT INN & SUITES
1449983	PMQC, INC.
1452132	REFRESCO BEVERAGES US INC
1423376	RICH READIMIX CONCRETE, INC.
1407888	ROBERTS MANAGING CONTRACTORS, INC.
1424531	ROGELIO HERNANDEZ CORONA, AN INDIVIDUAL
1394802	RWC INC.
1470375	SANTIAGO MENJIVAR, AN INDIVIDUAL
1439632	SHORE TERMINALS LLC
1283583	SIBONEY CONTRACTING CO.
1374301	SM CONSTRUCTION & ASSOCIATES, INC.
1431317	SMOKEHOUSE PET PRODUCTS, INC.
1447442	STEEL TECH INDUSTRIAL CORP.
1429960	STEINBERG, HALL & ASSOCIATES, INC.
1336385	STEVEN M. FOWLER CONSTRUCTION, INC.
1311020	SUFFOLK CONSTRUCTION COMPANY
1458035	SUNDT CONSTRUCTION, INC
1457868	SYNEAR FOODS USA, LLC
1419920	THE DYNO SHOP, INC.
1374705	TOTAL PLACEMENT SOLUTIONS
1240868	ULTRAMAR, INC.
1274582	UMC ACQUISITION CORP

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

1468470 VADNAIS TRENCHLESS SERVICES, INC.  
1399402 VILLAGE CAR WASH, INC.  
1445324 WEST COAST PROFESSIONAL DOOR, INC.

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

**PERSONNEL:**

*(Issues regarding staff)*

ACTION: No report.

The Closed Session was adjourned at 12:21 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 12:22 p.m.