

**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 5, 2019**

**9:30 a.m.**

**Sacramento, California**

**&**

**West Covina, California**

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

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

**DATE: November 21, 2019**

**RE: Closed Session of the Board to be held on December 5, 2019**

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.

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**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.)*

1213886      JACE VARGHESE

**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.)*

1308948      GOLDEN STATE BORING & PIPE JACKING, INC.  
1402052      UNION PACIFIC RAILROAD  
1242676      UNITED PARCEL SERVICE, INC.  
1218807      PARK WEST RESCOM, INC.

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

1351916      BRAGG INVESTMENT COMPANY, INC.  
1290766      MILLENNIUM REINFORCING, INC.

**ORDERS DISMISSING APPEAL:**

1262198      ADJ GROUP, LLC.  
1372880      JO WA, INC.  
1331340      U.S. PIPE AND FOUNDRY COMPANY

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

1386802      CELERINO'S PALLETS, INC.  
1366264      SUMMERSET LANDSCAPE SERVICES

**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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|-----------|--|
| 1308968   | AEG MANAGEMENT OAKLAND, LLC<br>Whether employer received the citations, and thus, whether there was good cause for a late appeal.    |
| 1200176   | AEROTEK, INC. dba AEROTEK<br>Whether the employer established and implemented its IIPP as required.                                  |
| 1272378   | ANDREW HARRISON BARNES<br>Whether Mr. Barnes was/is an employer.   |
| 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.     |
| 1374985   | C & A PETRA, INC.<br>Whether there was good cause for the late appeal.   |
| 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 DOSH had jurisdiction. Whether the ALJ decision constituted an underground regulation.
- 1199473 FEDEX GROUND  
Whether the employer's supervisor 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.
- 1251604 INTERLINE BRANDS, INC.  
Whether Employer had provided adequate foot protection by means of administrative and engineering controls
- 1173183 L & S FRAMING, INC.  
Whether the stairway involved was a "stairwell." Whether the motion to amend citation was timely and for good cause.
- 1236440 PAPICH CONSTRUCTION COMPANY, INC.  
Whether the Division proved exposure to Valley Fever.
- 1237932 SACRAMENTO COUNTY WATER AGENCY  
Whether the Division proved a violation as cited.
- 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.

**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. 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. W.A. RASIC COMPANY, INC., 13-R4D1-1422, 34-2016-80002454  
(314863978)
8. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
9. KEY ENERGY SERVICE, LLC 12004280
10. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,  
34-2017-80002562, (1144056)
11. ATKINSON CONSTRUCTION, LP (317386084)
12. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
13. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632

14. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
15. BLUE DIAMOND GROWERS, (1040471)
16. UNITED PARCEL SERVICE, (1158285)
17. NORM WILSON & SONS INC., 19STCP00663 (1116151)
18. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
19. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
20. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623  
(1200875)
21. PERFORMANCE TEAM FREIGHT SYSTEMS, 19STCP 02154 (1183505)
22. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174  
(1116529)
23. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191  
(1059365)
24. OWENS CORNING ROOFING & ASPHALT, LLC, 19STCP04117  
(1063574)
25. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
26. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
27. STADCO, INC., 192TCP04944(1142674)

**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. HOME DEPOT, U.S.A. INC. DBA HOME DEPOT #6683,  
CIVDS1716416, (1014901)

5. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)
6. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910  
(1111325)
7. LION FARMS, LLC, MCV075788 (1070258)
8. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)
9. PROCESS COOLING INTERNATIONAL 34-2019-80003220 (1232555)

**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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| 1295529 | A-1 EXPERT TREE SERVICE INC                    |
| 1409896 | A.M. CASTLE & CO.                              |
| 1409561 | AARON JOYCE ALCAIDE CAMAT                      |
| 1298463 | ACHEM INDUSTRY AMERICA, INC                    |
| 1413932 | ACTION SANITARY, INC.                          |
| 1191621 | ALAMILLO REBAR, INC.                           |
| 1338177 | ALBERTSON'S LLC.                               |
| 1393817 | ALPERT & ALPERT IRON & METAL, INC.             |
| 1332184 | ALWAYS PROTECTIVE SERVICES                     |
| 1395161 | AMERICAN COOLING, INC                          |
| 1341163 | AMERICAN PREMIER HOMES AND/OR T & R PAINTING & |
| 1306148 | ANDES CONSTRUCTION INC.                        |
| 1325695 | ANGCHA, INC.                                   |
| 1257224 | ASSOCIATED FEED AND SUPPLY CO.                 |
| 1397592 | BEN CARREIRO & SONS                            |
| 1343451 | BETTER BOOCH, LLC.                             |

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1399859	BROWN-PACIFIC, INC.
1415883	C REYNOLDS FOR MASONRY
1368297	CAHILL CONTRACTORS
1302768	CALIFORNIA ENVIRONMENTAL SYSTEM, INC.
1310858	CALIFORNIA TRUSFRAME, LLC.
1368769	CAMINO REAL FOODS, INC.
1285266	CHAMPAGNE LANDSCAPING AND NURSERY
1375702	CHEVRON USA., INC.
1424228	CHROMADEX, INC.
1238666	CITY OF BAKERSFIELD - POLICE DEPARTMENT
1401285	CLAUDIO ARZILLO
1385426	CLOVER VISUAL COMMUNICATIONS LLC
1408883	COPART, INC.
1370809	COSTCO WHOLESALE CORPORATION
1206033	CRAIG WINTON
1423385	CUSTOM GOODS, LLC
1390601	DIENER'S ELECTRIC, INC.
1389101	DNE NURSERY INCORPORATED
1360806	DOLE FRESH VEGETABLES, INC.
1347025	DOMINO'S PIZZA STORE #8187
1368610	DONG JIN AMERICA, INC.
1348032	E & C LABOR SERVICES, INC.
1391407	EMERALD FASHION INC.
1398678	ENVIRONMENTAL CONTRACTING CORPORATION
1381068	EQUILON ENTERPRISES LLC
1286473	EXPO DYEING & FINISHING INC.
1258871	F M G, INC.
1369551	FARO SERVICES, INC.
1362798	FRESNO SIERRA CONTRACTORS, INC.

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1398348 FULLERTON HEALTHCARE, INC. DBA ST. ELIZABETH  
1338540 G & H FARMS, LLC.  
1426892 GARDEN PASSAGES  
1348102 GARZELLI FARMS  
1305007 GLENDALE POLICE DEPARTMENT  
1422344 GLOBAL PLASTICS RECYCLING, INC.  
1335649 GLOBAL TEAM CORPORATION  
1356130 GOT CONSTRUCTION  
1386822 GRAMAJO PALLETS, INC.  
1402989 HONEY'S AIR, INC.  
1256655 HORT TECH, LLC.  
1407151 INFINITY STRUCTURES, INC.  
1400257 INNOVATIVE HOUSING SOLUTIONS, INC  
1377649 J. MITCHELL CONSTRUCTION, INC.  
1374189 JACK ARTHUR PAQUIN, AN INDIVIDUAL  
1359478 JFB RANCH, INC.  
1295862 JV INDUSTRIAL COMPANIES  
316671544 KEY ENERGY SERVICES CALIFORNIA, INC.  
1366255 KOSHER SUPER MEAT  
1287885 LAPORTE CONSULTANTS CORP  
1326993 LEONARD ROOFING, INC.  
1192061 LEVEL 10 CONSTRUCTION LP  
1365733 MAGNOLIA OF MILLBRAE, INC.  
1324243 MARIN'S ROOFING  
1319463 MARIO'S TREE SERVICE  
1398462 MG PARTNERS, INC.  
1410395 MUHAMMAD ASLAM CHOUDHRY, AN INDIVIDUAL  
1424164 NATIONAL READY MIXED CONCRETE CO.  
1368508 NEWHALL TEMPORARY STAFFING SERVICES, LLC

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1374517 NEXUS CONSTRUCTION SERVICES, INC.  
1354843 OLD PUEBLO RANCH  
1382467 P&R PAPER SUPPLY COMPANY, INC.  
1429515 PACIFIC COAST PRODUCERS  
1223724 PACIFIC GAS & ELECTRIC COMPANY  
1351139 PALM SPRINGS DISPOSAL SERVICES  
1431710 PANKU, INC.  
1379440 R & J DONDERO, INC  
1380109 RED IRON FABRICATORS, INC.  
1279087 RESIDENTIAL DESIGN SERVICES  
1398459 RIZO-LOPEZ FOODS, INC.  
1193707 ROCKWELL DRYWALL  
317203057 SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
1252700 SANTOS MONTEMAYOR FLC, INC.  
1171141 SDPB HOLDINGS LLC  
1315415 SEELEY UNION SCHOOL DISTRICT  
1223718 SEMPER SOLARIS CONSTRUCTION, INC.  
1205188 SEPULVEDA BUILDING MATERIALS  
1422413 SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT, INC.  
1387233 SONRAY SOLAR, INC.  
1395191 ST. GEORGE DISTRIBUTION CORP.  
1415710 STONE & QUARTZ FAB, INC.  
1352460 TEAM FINISH INC.  
1305365 THOMAS WELDING & MACHINE  
1367264 TRINITY VALLEY CONSTRUCTION, INC.  
1204271 TRIUMPH PROCESSING - EMBEE DIVISION INC.  
1309820 UDDER-LY, INC.  
1363944 UNITED RENTALS (NORTH AMERICA), INC.  
1356218 W.S. EMERIAN TRUCKING, INC.

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1313286	WALSH VINEYARDS MANAGEMENT, INC.
1365873	WELLPATH
1409883	WEST CENTRAL FOOD SERVICE, INC.
1341872	WESTSIDE HARVESTING, LLC.
1399593	WOLF LAKES PARK, INC.

**PERSONNEL:**

*(Issues regarding staff.)*

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