

**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 19, 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: December 6, 2019

RE: Closed Session of the Board to be held on December 19, 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.

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.)

1199064 SA RECYCLING

1251174 TARGET

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.)

1213886 JACE VARGHESE

PETITIONS FOR RECONSIDERATION (Second Review):

1308948 GOLDEN STATE BORING & PIPE JACKING, INC.

1218807 PARK WEST RESCON, INC.

1402052 UNION PACIFIC RAILROAD

1242676 UNITED PARCEL SERVICE, INC.

ORDERS DISMISSING APPEAL:

1341830 FLAGSHIP FACILITIES

1376408 SAN DIEGO GRANITE, INC.

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1404976 233 DIESEL CLUB, LLC

1355736 MICHAILOV, INC.

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
Whether employer received the citations, and thus, whether there was good cause for a late appeal. |
| 1200176 | AEROTEK, INC. dba AEROTEK
Whether the 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. |
| 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. |

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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.
- 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.
- 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.

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. 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. ATKINSON CONSTRUCTION, LP (317386084)
11. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
12. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632

13. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
14. BLUE DIAMOND GROWERS, (1040471)
15. UNITED PARCEL SERVICE, (1158285)
16. NORM WILSON & SONS INC., 19STCP00663 (1116151)
17. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
18. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
19. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623
(1200875)
20. PERFORMANCE TEAM FREIGHT SYSTEMS, 19STCP 02154 (1183505)
21. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174
(1116529)
22. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
23. OWENS CORNING ROOFING & ASPHALT, LLC, 19STCP04117
(1063574)
24. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
25. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
26. 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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| 1323739 | ADVANCED WORKFORCE SOLUTIONS, INC. |
| 1330759 | AI CALIFORNIA LLC (DBA ALDI, INC.) |
| 1385322 | AKHGAR ATLMADZAI, AN INDIVIDUAL |
| 1250861 | ALL STAR AIR SYSTEMS, INC. |
| 316214295 | AN-WIL INC |
| 1381980 | ANS DISTRIBUTION, INC., ANS DISTRIBUTION CORP. |
| 1194637 | ARBORWORKS, INC. |
| 1386313 | ASSOCIATED READY MIXED CONCRETE, INC. |
| 1398673 | BORRMANN METAL CENTER |
| 1408597 | BOTTLING GROUP LLC DBA PEPSI BEVERAGES CO. |
| 1319483 | BROADLEY JAMES CORPORATION |
| 1367878 | CAMINO REAL FOODS INC. |
| 1401007 | CHALLENGER HARVEST, INC. |
| 1422938 | CHICO FOODS, LLC |
| 1396887 | COASTLINE CONSTRUCTION & AWNING CO., INC. |
| 1377651 | COLOREDGE INC. |
| 1146878 | COMMERCIAL BUILDERS INC. |
| 1416454 | CYPRESS LAWN CEMETERY ASSOCIATION |

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1296814 D G GRANADE, INC.
1408583 DWAYNE ANTHONY WEDGE
1379722 EMPLOYNET, INC.
1294506 EXECUTIVE COATINGS & CONTRACTING, LLC
1377988 FLORAWEST, INC.
1272063 FREEDOM PAINTING INC
1396300 FULL SPECTRUM MACHINING, INC
1392607 G M J ARBORISTS, INC.
1422427 GARY'S SIGNS & SCREEN PRINTING
1392332 GRANDE VISTA STEEL AND METAL SUPPLY, INC.
1414405 GREEN DAY POWER
1366831 HAIER US APPLIANCE SOLUTIONS, INC.
1206239 HANNIBAL INDUSTRIES INC.
1406473 HASA INC.
1219925 HI-GRADE MATERIALS CO
1377961 IMMEDIATE RESOURCE GROUP, INC.
1164819 JOHN MINOCK ENTERPRISES
1202200 JS ELECTRIC CO
1414395 KASHAF MUNIR, AN INDIVIDUAL
1292780 KEHE DISTRIBUTORS, LLC.
1184905 KERN RIDGE GROWERS, LLC
1391722 KLEEGER INDUSTRIES, INC.
1398830 LUSK QUALITY MACHINE PRODUCTS
1404708 M & A FASHION, INC.
1413957 MRS. GOOCH'S NATURAL FOOD MARKETS, INC.
1402304 NELLSON NUTRACEUTICAL, LLC.
1412172 NEW IDEAS APPAREL, INC.
1187389 NEWPORT-MESA UNIFIED SCHOOL DISTRICT DBA
1403073 NGOC HOANG GIA, LLC
1078948 OIL WELL SERVICE COMPANY
1343061 PHILLIPS 66 COMPANY

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1217465 POLY PAK AMERICA, INC.
1397322 PRATS INC.
1292130 PROSPECT MEDICAL HOLDINGS INC
1316259 PVH RETAIL STORES LLC
1373186 REASONABLE TREE SERVICES, INC.
1377658 RECYCLING SOLUTIONS, INC.
1193820 RJP FRAMING, INC. DBA R J P FRAMING INC.
1385980 ROHR INC.
1436003 ROMAN CATHOLIC BISHOP OF ORANGE
1357932 SANTA ANA CREEK DEVELOPMENT COMPANY
1342626 SCHLUMBERGER TECHNOLOGY CORPORATION
1370305 SCHULTZ INDUSTRIAL SERVICES, INC.
1365498 SHORETT PRINTING, INC
1393130 SIMGEL CO., INC.
1421327 SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT INC.
1409134 SRG MANAGEMENT, LLC
1427334 SUN RICH FOODS INTERNATIONAL, CORP.
1108660 SUNDANCE SPAS, INC.
1362409 TETRA TECH, INC.
1410589 THE LAGUNITAS BREWING COMPANY
1082040 THOMAS SCANLAN
1386438 TOTAL GROUP, INC.
1432977 TOYOCOM, INC.
1379876 UNITED FURNITURE INDUSTRIES CA, INC.
1274992 UTILITY TREE SERVICE, INC.
1339457 VISTRA ENERGY CORP.
1305344 VULCAN MATERIALS COMPANY
1403417 WALTON HANISH
1409525 WESTMONT INDUSTRIES
1385428 WULF VINEYARDS

PERSONNEL:

(Issues regarding staff.)

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