

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on January 24, 2019
Sacramento, California

PRESENT:

Ed Lowry, Chair
Judith Freyman, 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

MINUTES OF January 10, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the January 10, 2019 Board meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the January 10, 2019 Board meeting. The vote was 2-0.

NEW BUSINESS:

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

Discussion regarding verbiage used when writing Appeals Board minutes.

ACTION: Discussed and held over for February 7, 2019 meeting.

OLD BUSINESS:

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

ACTION: No report.

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 travel to the West Covina office February 5 and 6, 2019.

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:

- A. Discussion on proposed changes to regulations 359.1, 361.3, 372.2, and 372.9 concerning (1) changes to rules regarding docketing and perfecting an appeal, (2) changes to rules regarding employer provision of the citation package, (3) changes to rules regarding subpoenas, allowing attorneys to issue subpoenas and providing the board time to process subpoena requests, and (4) repeal of rule 372.9 requiring the Division's automatic production of evidence. Review of associated proposed rulemaking documents, including draft of ISOR and Notice.

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: No report.

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.)

1251604 INTERLINE BRANDS, INC.
 ACTION: Approved
 Moved: Judith Freyman Seconded: Ed Lowry
 Vote: 2-0

1173183 L & S FRAMING, INC.
 ACTION: Approved
 Moved: Judith Freyman Seconded: Ed Lowry
 Vote: 2-0

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.)

1216971 BAKER'S 4, INC.
 ACTION: Denied.
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1203246 BUZEK CONSTRUCTION INC
 ACTION: Denied.
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1094067 JFJ PIPELINE, INC.
 ACTION: Denied.
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1232555 PROCESS COOLING INTERNATIONAL INC
 ACTION: Granted.
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1312675 RUI LIANG
 ACTION: Denied.
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1317404 VALLARTA SUPERMARKETS
 ACTION: Denied.
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

PETITIONS FOR RECONSIDERATION (Second Review):

1250102 TMC CONSTRUCTION
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

ORDERS DISMISSING APPEAL:

NONE

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1297235 DESERT WATER AGENCY
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1291433 LION RAISINS, INC.
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1298791 TURNER BROADCASTING SYSTEM, INC.
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1296980 VALLARTA SUPERMARKETS
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

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.)

- 1180499 ALPHA CONSTRUCTION COMPANY, INC.
317230919 BIGGE GROUP DBA BIGGE CRANE & RIGGING CO.
1141604 BOY RACER INC. DBA BURNING ANGEL
 (EMPLOYER’S PETITION)
1141604 BOY RACER INC. DBA BURNING ANGEL
 (DOSH’S PETITION)
1205214 CALIFORNIA STRUCTURAL CONCEPTS INC.
1246527 CEMEX
316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
1129260 ENVIRONMENTAL CONSTRUCTION GROUP
1240360 HARRIS SPICE COMPANY
315341818 HHS CONSTRUCTION
- 1071914 JOSEPH PERALTA
 ACTION: Board discussed this matter.
- 1192145 KPRS CONSTRUCTION SERVICES, INC.
1200875 NATIONAL RETAIL TRANSPORTATION, INC.
- 1116151 NORM WILSON & SONS INC.
 ACTION: Board approved to issue DAR.
- 1201848 PAPICH CONSTUCTION COMPANY, INC.
1183505 PERFORMANCE TEAM FREIGHT SYSTEMS
1116095 SOUTHERN CALIFORNIA EDISON
1193994 SUNVIEW VINEYARDS OF CALIFORNIA, INC.
1097751 TIMBERWORKS CONSTRUCTION, INC.
- 1253345 TYP RESTAURANT GROUP, INC. DBA TENDER GREENS
 ACTION: Remand Approved,
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0
- 1116529 UNITED PARCEL SERVICE, INC. DBA UPS
1200858 WESTERN DIGITAL CORPORATI

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. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
34-2014 80001749 (2008-R2D1-3414 through 3418)
2. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 through 3098)
3. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572
through 0574)
4. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
5. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002206 (12-R3D1-0781)
6. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
7. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
8. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
9. W.A. RASIC COMPANY, INC., 13-R4D1-1422, 34-2016-80002454
(314863978)
10. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
11. KEY ENERGY SERVICE, LLC 12004280
12. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
13. ATKINSON CONSTRUCTION, LP (317386084)

14. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
15. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
16. LION FARMS, LLC 1070258, MCV075788
17. ELECTRICAL SYSTEMS & INSTRUMENTATIONS, INC. (316695469)
18. UNITED PARCEL SERVICE, BS171154 (315347864)
19. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
20. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910, (1111325)
21. EXXONMOBIL OIL, BS172600 (1091462)
22. SSA CONTAINERS, INC. (314758756)
23. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)
24. BULKLEY & ASSOCIATES, LLC, CV43751 (1052467)
25. BLUE DIAMOND GROWERS, (1040471)
26. UNITED PARCEL SERVICE, (1158285)
27. BRAGG COMPANIES, DBA BRAGG CRANE SERVICE,
HG18930741 (1157108)

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. 48C1710947 (1011071)

5. AVALON BAY COMMUNITIES, INC., G056506, 30-2016-00872036(317232965)
6. HOME DEPOT, U.S.A. INC. DBA HOME DEPOT #6683, CIVDS1716416,
(1014901)
7. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)

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.)

1238975	AC & A, LLC.
1355267	ALLIED AUTOMOTIVE
1311039	ALTA DENA CERTIFIED DAIRY, LLC.
1249476	ARB INC.
1349914	ATPN, INC.
1156392	ATS WINDOW CLEANING
317231868	AUSTIN SUNDT JOINT VENTURE
1298758	AZAD STEEL INC.
1187606	BAKER COMMODITIES, INC.
1129706	BARRETT BUSINESS SERVICES, INC. DBA BBSI
1291716	BARTON BRANDS OF CALIFORNIA, INC.
1333545	BAY VISTA HEALTHCARE & WELLNESS CENTRE, LP.
1298474	BMC WEST, LLC
1297345	CALIFORNIA EXPANDED METAL
1334435	CARBONLITE INDUSTRIES
1316513	CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT
1343634	CINERGY CONSTRUCTION CORP
1331338	CLARKWESTERN DIETRICH BUILDING SYSTEMS LLC
1326140	CMC FARMS
1343659	CONSOLIDATED STAFFING SOLUTIONS, INC.
1349478	DALIA MADRID, AN INDIVIDUAL
1302186	DE HART PLUMBING, HEATING & AIR, INC.
1324358	EM AVO INC.
1314009	FASTENAL
1249794	FLOYD JOHNSTON CONSTRUCTION CO. INC.
1287583	FRANCISCO MARTINEZ BONILLA
1322963	FRED FINCH YOUTH CENTER
1213099	GENERAL PRODUCTION SERVICE OF CALIFORNIA, INC.
1304003	GO HEALTHY LIFE, INC
1324912	HAYWARD INDUSTRIES, INC.
1339817	HEALTHY HARVESTING, INC.
1158424	HEAVENLY WORLD CONSTRUCTION

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1337524	HECTOR RODRIGUEZ CORDERO, AN INDIVIDUAL
1252023	HERBALIFE MANUFACTURING, LLC.
1225362	HP COMMUNICATIONS, INC.
1355259	IE MENESES, INC.
1345784	INTERNATIONAL AEROPACE COATINGS, INC.
1352544	JAYSSON, INC.
1300373	JCS SANTA ANA, INC.
1332110	JOSE AVILA, AN INDIVIDUAL
1310169	JT2, INC.
1319822	K & F BUILDERS
1273290	KC WELDING
1128912	L & S FRAMING, INC.
1328716	LINEAGE LOGISTICS, LLC.
1356915	LITTLE DRY CREEK FARM, LLC.
1304096	LUCAS BUILDERS, INC.
1288729	MANUEL VASQUEZ DELGADO
1326128	MARIA CASTANEDA
1280013	MICROBIOTIC HEALTH FOODS INCORPORATED
1113348	MILLARD MALL SERVICES, INC.
1344093	MORGAN DEVELOPMENT, INC.
1307153	NORTHWEST PALLET SERVICES LLC
1296299	PACKERS SANITATION SERVICES, INC.
1315058	PACKERS SANITATION SERVICES, INC., LTD.
1280237	PERSONNEL STAFFING GROUP, LLC.
1302429	PETE'S COLLISION CENTER INC.
1337955	PETROLINK, INC.
1350104	QYCELL CORPORATION
1256926	RAILWORKS TRACK SERVICES INC.
1306171	RAM-MAR PAINTING INC
1251163	RICH MEIER'S LANDSCAPING
1323923	S & H CABINETS & MANUFACTURING, INC.
1319408	S & S MOTORWORKS, INC.
1318848	SANCO PIPELINES, INCORPORATED
1337411	SCALIA FARMS
1314712	SCHORR METALS, INC.
1292139	SCHULZ LEATHER CO
1138810	SCREAMLINE INVESTMENT CORPORATION
1350020	SERGIO RODRIGUEZ, AN INDIVIDUAL
1312947	SMITH DEVELOPMENT, LLC.
1265703	SONPOWER, INC.
1148601	SQUIRES LUMBER COMPANY
1326482	STRANG HEATING AND AIR CONDITIONING, INC.
1261893	SUN VALLEY PACKING
1252238	THE BARON HR FAMILY OF STAFFING COMPANIES
1305832	THE OUTDOOR PLUS

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1278621	TINCO SHEET METAL INC.
1210989	TREASURY WINE ESTATES HOLDINGS, INC.
1355414	TREE OF LIFE TREE SERVICE
1341564	TUBIT ENTERPRISES, INC.
1289049	UNLIMITED PLASTICS INC.
1265718	USA WASTE OF CALIFORNIA, INC.
1350523	V I S E COMPANY
1282099	VILLAREAL ROOFING CO. INC.
1238660	VINE HARVESTING, INC.
1311822	WATER WELL SERVICE, INC.
1066820	WEST COAST ROOFING & CONSTRUCTION
1321164	WESTERN MILLING, LLC.
1289355	WILLIAMS-SONOMA, INC.
1350028	YAO SHIH MAR AND SUSAN M. PEECHER, INDIVIDUALLY
1309194	Z & T VENTURES, INC

ACTION: Approved all Administrative Law Judge Orders

Moved: Judith Freyman, Seconded: Ed Lowry

Vote: 2-0

PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 11:51 a.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 11:52 a.m.