

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on February 7, 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
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician

MINUTES OF January 24, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the January 24, 2019 Board meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the January 24, 2019 Board meeting. The vote was 2-0.

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:

1. The Board approved changing the language used in the Board meeting minutes to better reflect the actual flow of documents through the appeal process.

After Board review, ALJ Decisions will be listed either as 'Board Discussed' or as 'Taken under consideration on Board's own motion'. Petitions for Reconsideration will be marked as 'Board Discussed' then added to the agenda for the next Board meeting under the category of Petitions for Reconsideration (Second Review). Either they will then be granted reconsideration or the petition will be denied.

Orders dismissing appeals or Orders denying late appeals will be marked as 'Board Discussed'.

2. The Board discussed a staff prepared table involving the Administrative Law Judge decisions issued in 2018.

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 on his trip to the West Covina Appeals Board office. He held a staff meeting and met with staff members individually as well.

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: Executive Officer Hapgood reported on the quarterly meeting with Amber Rose, the representative from the Federal OSHA office.

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.)

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| 1040743 | ABB, INC. DBA ABB DE INC.
ACTION: Board discussed. |
| 1077612 | KWAN WO IRONWORKS
ACTION: Board discussed. |
| 1169633 | ROBINSON MFG., INC.
ACTION: Board discussed. |
| 1140304 | URS MIDWEST, INC. DBA UNITED ROAD SERVICES WEST, INC.
ACTION: 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.)

- | | |
|---------|---|
| 1312270 | CLAYCO, INC.
ACTION: Board discussed. |
| 1311568 | M S INTERNATIONAL, INC.
ACTION: Board discussed. |
| 1059365 | SHIMMICK CONSTRUCTION COMPANY INC
ACTION: Board discussed. |

PETITIONS FOR RECONSIDERATION (Second Review):

- 1216971 BAKER'S 4, INC.
 ACTION: Denied.
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0
- 1203246 BUZEK CONSTRUCTION INC
 ACTION: Granted.
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0
- 1094067 JFJ PIPELINE, INC.
 ACTION: Denied.
 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

ORDERS DISMISSING APPEAL:

- 1221889 HERBERT ALLEN KELLY
 ACTION: Board discussed.
- 1287573 S & L BUILDING
 ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

- 1308975 PANDA RESTAURANT GROUP, INC.
 ACTION: Board discussed.

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
1192145	KPRS CONSTRUCTION SERVICES, INC.
1200875	NATIONAL RETAIL TRANSPORTATION, INC.
1201848	PAPICH CONSTRUCTION COMPANY, INC.
1183505	PERFORMANCE TEAM FREIGHT SYSTEMS
1232555	PROCESS COOLING INTERNATIONAL, INC.
1116095	SOUTHERN CALIFORNIA EDISON
1193994	SUNVIEW VINEYARDS OF CALIFORNIA, INC. ACTION: Board discussed.
1097751	TIMBERWORKS CONSTRUCTION, INC. ACTION: Board voted to issue DAR. 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 & INSTRUMENTAIONS, 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.)

1317366	110% CONSTRUCTION, INC.
1233833	99 CENTS ONLY STORES, STORE #119
316819382	AEROJET ROCKETDYNE, INC.
1223764	AGE INC. DBA AGE NAMEPLATE
1308813	AMERIPEC INC.
1275958	ANCHOR SINGH PAINTING
1305213	APS WEST COAST INC.
1263580	ARMEN MOVSESYAN
1347881	ARTHUR GREGORY HAWKINS, AN INDIVIDUAL
1299158	ARYZTA, LLC.
1326788	B-K LIGHTING
1318865	B-SPRING VALLEY, LLC.
1345616	BERGER TRANSFER & STORAGE, INC.
1190056	BOB WILLIAMS
1352152	BOBO CONSTRUCTION INC
1307445	BRINKER RESTAURANT CORPORATION
1318097	BURTON JAMES, INC.
1329168	CAL WEST UNDERGROUND, INC.
1188759	CALIFORNIA DEPT. OF FORESTRY AND FIRE PROTECTION
1140697	CARMEL PARTNERS LLC
1263927	CCHR CONSTRUCTION
1311891	CERTIFIED SERVICE CENTER INC.
1273807	CHARLES PANKOW BUILDERS, LTD., A CALIFORNIA
1334474	CHRIS BRITTION & PAUL VAN KONYNENBURG,
1334447	CITY VENTURES CONSTRUCTION, INC.
1272251	CONTRA COSTA FIRE PROTECTION DISTRICT
1249321	COSMETIC LABORATORIES OF AMERICA, LLC
1325735	CROCUS HOLDINGS, LLC
1291703	D.R. HORTON BAY, INC.
1337690	DANIEL BARRIOS, AN INDIVIDUAL
1329505	DAZEY'S, INC.
1307097	DENNIS GIVENS RACING
1337891	DESILVA GATES CONSTRUCTION, L.P.
1220996	DOLE PACKAGED FOODS LLC
1324680	DOVETAIL FURNITURE AND DESIGNS, INC.
1276033	DRILL TECH DRILLING & SHORING, INC.
1297210	E.B. STONE & SON, INC.
1184490	EAT SWEET FARMS, LLC
1249384	EMPLOYEE BRIDGE HOLDING COMPANY
1341591	FULL-SWING GOLF, INC.

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1118639	HARRIS INDUSTRIAL GASES
1355657	HD SUPPLY FACILITIES MAINTENANCE LP
1328884	HERITAGE BAG COMPANY
1305353	HILL BROTHERS CHEMICAL COMPANY
1249646	HILTY'S ELECTRIC-CALIFORNIA, INC.
1299935	HORIZON PERSONNEL SERVICES, INC
1283053	HORIZON SOLAR
1325741	IHI POWER SERVICES CORP.
1289365	IKEA DISTRIBUTION SERVICES, INC.
1297343	INCA PLASTICS MOLDING CO., INC.
1292242	INFINITE DESIGN SOLUTIONS INC
1276908	INLAND EMPIRE TRUSS, INC.
1274590	ISL LEASING, LLC
1275310	JANUS CORPORATION
1319804	JAVAIQ IQBAL, AN INDIVIDUAL
1330475	JEFFREY B LONG
1239148	JOBBER'S MEAT PACKING CO
1325634	JOSE ESPINOSA VALDEZ
1326569	JOSE JESUS ALDACO
1331793	JOSE MAGDALENO
1306784	K & L ROOFING INC.
1337687	KQ INTEGRATED SOLUTIONS, INC.
1347024	KTLA PROPERTIES LIMITED PARTNERSHIP
1242784	LANDCARE, USA.
1221792	LINEAGE LOGISTICS
1357958	LOMA LINDA UNIVERSITY CHILDREN'S HOSPITAL
1318426	LOOMIS ARMORED US, LLC
1352417	LUIS B. ROMERO
1312232	MACTAC AMERICAS, LLC.
1210804	MB2 RACE WAY
1311903	MECHANIC MIKE'S AUTOMOTIVE, INC.
1330923	MERCER, FRASER COMPANY
1199400	MILGARD MANUFACTURING INC.
1253273	MISSION LANDSCAPE COMPANIES, INC.
1314263	MR. MARTIN, INC.
1288205	NATIONAL ECON CORPORATION
1318549	NEW ALTERNATIVES, INC.
1264921	PACIFIC AG RENTALS, LLC.
1359491	PACIFIC EXTERIORS, INC.
1172190	PALO ALTO VINEYARD MANAGEMENT, LLC
1328887	PEOPLE READY, INC.
1264603	PIXIOR
1250072	POCINO FOODS COMPANY
1282440	PODS ENTERPRISES, LLC.
1256979	RACE ENGINEERING CORP.

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1249490	RAMIREZ LABOR SERVICES, LLC.
1347056	REDLANDS AUTOMOTIVE SALES, INC.
1298828	RJK CONSTRUCTION, INC.
1208368	RMS SUPPLY
1306910	ROAD HOME ENTERPRISES INC.
1326470	SAKO BEST CAR WASH, INC.
1335202	SHAWCOR PIPE PROTECTION, LLC.
1347865	SHEP AND NANCY BRYAN CORPORATION
1348410	SIERRA NEVADA JOURNEYS
1261466	SIX FLAGS MAGIC MOUNTAIN
1355686	SPOTLIGHT CONCEPT, INC.
1318857	ST. PAUL'S EPISCOPAL HOME, INC.
1320742	STAPLES, INC.
1314963	SUBURBAN MOTORS, INC
1152844	SUDHA MICHEL
1282629	SUN DESIGN, INC.
1324645	SUNNYSIDE PACKING COMPANY
1238585	SUPER CENTER CONCEPTS
1342006	SUPER STAR FASHION CLUB
1319834	TAPIA ENTERPRISES, INC.
1147276	TDI CONSOLIDATED LLC, DBA,
1212501	TEAM INDUSTRIAL SERVICE, INC.
1313035	TIERRA ENGINEERING & DESIGNS, INC.
1311781	TUAN THAI
1235341	TUTOR PERINI CORPORATION
1286958	TW SERVICES INC
1325545	U.S. SECURITY ASSOCIATES, INC.
1303792	ULTRAMAR, INC. / VALERO WILMINGTON REFINERY
1258227	UNITED PALLET SERVICES, INC
1256586	UNIVERSAL PLANT SERVICES
1182503	UNIVERSAL PROTECTION SERVICE, LP
1310835	VALLEY PIPELINE SERVICES INC
1257210	VULCAN CONSTRUCTION & MAINTENANCE, INC.
1264297	WEST COAST CONSTRUCTION, INC.
1261830	WEST COAST DRYWALL & COMPANY, INC.
1245120	WILLIAM FRANKEL
1288626	YOUNG IDEAS, INC.

ACTION: Board approved all Administrative Law Judge orders.

Moved: Judith Freyman, Seconded: Ed Lowry

Vote: 2-0

PERSONNEL:

(Issues regarding staff)

ACTION: The Board met to discuss personnel matters.

The Closed Session was adjourned at 12:23 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 12:24 p.m.