

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on February 21, 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
Autumn Gonzalez, Industrial Relations Counsel
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician

MINUTES OF February 07, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the February 07, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the February 07, 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: 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: 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: Executive Officer, Patricia Hapgood updated the Board on the search to fill the open Hearing Officer I position. Interviews are scheduled for March 13 and 14, 2019.

The applications for the Limited Term Hearing Officer I position have been received.

Administrative Law Judge Rheeah Avelar began her leave of absence on Tuesday, February 19, 2019.

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.

ORDERS DISMISSING APPEAL:

- 1294857 BENTLEY MILLS, INC.
ACTION: Board discussed.
- 1266860 H.B. REDWOOD MOULDING MANUFACTURING CO.
ACTION: Board discussed.
- 1287501 TRIBUNE DIRECT MARKETING, LLC.
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

- 1314739 CA CORRECTIONS CORCORAN INMATE WARD LABOR
ACTION: Board discussed.
- 1316483 DURHAM CONSTRUCTION COMPANY, INC.
ACTION: Board discussed.
- 1305558 JASON LEE
ACTION: Board discussed.
- 1347879 LOS ANGELES UNIFIED SCHOOL DISTRICT
ACTION: Board discussed.
- 1287828 M AND R LABOR SERVICE
ACTION: Board discussed.
- 1310206 MARDAV MANUFACTURING, INC.
ACTION: Board discussed.
- 1308933 WARREN MANH YOUNG
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.
ACTION: Board discussed.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

February 21, 2019

Page 5

- 1141604 BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
- 1141604 BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
- 1203246 BUZEK CONSTRUCTION, INC.
ACTION: Board discussed.
- 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 voted to issue DAR.
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0
- 1097751 TIMBERWORKS CONSTRUCTION, INC.
1116529 UNITED PARCEL SERVICE, INC. DBA UPS
1200858 WESTERN DIGITAL CORPORATION

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. SSA CONTAINERS, INC. (314758756)
22. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)
23. BULKLEY & ASSOCIATES, LLC, CV43751 (1052467)
24. BLUE DIAMOND GROWERS, (1040471)
25. UNITED PARCEL SERVICE, (1158285)
26. 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)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

February 21, 2019

Page 8

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.)

1339592	5TH STREET WASH AND LUBE, INC.
1334037	888 BROOKHURST, INC.
1274686	AMERICOLD LOGISTICS, LLC
1326889	ANDREAS, LLC.
1230361	ARB, INC.
1317443	ARYZTA LLC
1279247	BAR 20 DAIRY
1339839	BARREL TEN QUARTER CIRCLE LAND COMPANY
1188371	BARRETT BUSINESS SERVICES, INC.
1306111	BASALITE CONCRETE PRODUCTS, LLC
1311915	BERG AND SONS CONSTRUCTION
1372013	BLUE LAKE ROUNDSTOCK COMPANY, LLC.
1352548	BONDED APPAREL, INC.
1276583	BROTHERS INTERNATIONAL DESSERTS
1348009	CAFE FICELLE, INC.
1293003	CAL COAST CONSTRUCTION SPECIALTIES, INC.
1339135	CALIFORNIA HIGHWAY CONSTRUCTION GROUP, INC.
1356384	CALIFORNIA LANDSCAPE STUDIOS, INC.
1266515	CEDARLANE NATURAL FOODS
1290774	CHARLIE'S ENTERPRISES
1332716	CISCO BROS.CORP
1222973	CITY OF CLOVERDALE WASTE WATER TREATMENT PLANT
1134638	CLARK STEEL FABRICATORS INC.
1319084	COAST COMPOSITES, INC.
1332546	CORE TREE CARE, INC.
1329956	D'ARRIGO BROS. CO., OF CALIFORNIA
1181322	DAESHIN USA, INC.
1355073	DAISO CALIFORNIA, LLC.
1255592	DARLING INGREDIENTS, INC.
1311913	DAVID LASCO
1299635	DEFAZIO PAINTING INCORPORATED
1267198	EKEDAL CONCRETE INC.
1326008	ELECTRIC TECH CONSTRUCTION INC
1351275	ELECTRIC TECH CONSTRUCTION, INC.
1237139	ELECTROLURGY MANUFACTURING INC
1337453	EMMONS ROOF SERVICE, INC.
1180731	ERICK NIELSEN ENTERPRISES, INC.
1340676	ESQ STONE SURFACES, INC.

1310756	EUROMARKET DESIGN
1331173	FERNANDES AUTO WRECKING AND TOWING, INC.
1326102	FIRESTORM WILDLAND FIRE SUPPRESSION, INC.
1326566	FLAX HOLDINGS, LLC.
1233583	FORTERRA PIPE AND PRECAST LLC
1348028	FRANCISCO GUILLEN AND ELIZABETH GUILLEN
1307400	GILTON SOLID WASTE MANAGEMENT, INC.
1256522	GOMEZ SANDBLASTING
1337717	GORDON S. GIBSON, INC.
1280266	GOTHIC LANDSCAPING, INC.
1285838	HAAS AUTOMATION INC.
1160219	HAYWARD BAKER, INC.
1341117	HILBERS, INC.
1210853	HILDEBRAND & SONS TRUCKING, INC.
1343813	HOGAN DEDICATED SERVICES, LLC.
1326058	HOUSE PHO, INC.
1330889	INTERNATIONAL PALM GROWERS, INC.
1262677	INTERNATIONAL PAPER COMPANY
1143294	J GEYER PLUMBING INC.
1256902	JH REAL ESTATE PARTNERS, INC.
1327259	JOHN H BRASIL & SONS DAIRY
1004982	KACHINA BUILDERS AND CONTRACTORS, INC.
1351055	LA HABRA CITY SCHOOL DISTRICT
1323589	LA PERLA MEXICANA, INC.
1311540	LAMANUZZI & PANTALEO, LLC.
1247976	LANDMARK LANDSCAPE COMPANY INC.
1316146	LAZY DOG RESTAURANTS LLC
1327090	LENNAR HOMES OF CALIFORNIA INC.
1305828	MARR IRONWORKS, INC.
1280258	MCK ENTERPRISES INC.
1335835	MERLIN JOHNSON CONSTRUCTION, INC.
1301287	MIRANDAS THRIFT SHOP
1317358	MOCHI ICE CREAM COMPANY
1331337	MORONGO USD BLACK ROCK HIGH SCHOOL
1335618	NELSON NUTRACEUTICAL, LLC.
1352536	NEW HOPE DAIRY, LLC.
1229183	NUEVA CASTILLA IRON WORKS INC.
1268686	OK PRODUCE
1257240	OMEGA CASE CO., INC.
1318224	PALADIN PROTECTION SPECIALISTS, INC.
1345038	PALLET MARKET, INC.
1266869	PANDA RESTAURANT GROUP INC
1306915	PENA'S DISPOSAL INC

1328043	PERRY MASON-RY
1260727	PICK UP PROPANE
1189737	PINNACLE PRECISION SHEET METAL CORPORATION
1288187	PONDEROSA HOMES II, INC.
1329700	POWER MAINTENANCE SERVICES, INC.
1312966	PSC INDUSTRIAL OUTSOURCING, LP.
1304876	QUICKBITES INC.
1289082	R & G DEVELOPMENT CORPORATION
1329730	R-MAC PROPERTIES, INC.
1346003	RAVI AND JAY THIARA FARMS
1348360	RAY MOLES FARMS
1266808	RAZMIK TARKHANIAN
1274365	RICHARD BAGDASARIAN, INC.
1291697	ROSEBURROUGH TOOL COMPANY
1319833	ROSS F. CARROLL, INC.
1225303	ROSS STORES INC. PERRIS DISTRIBUTION CENTER
1326147	S & D CARWASH MANAGEMENT, LLC.
1314008	SAVE MART SUPERMARKETS
1134016	SCHUFF STEEL COMPANY
1262618	SCHUFF STEEL COMPANY
1330729	SHERPAUL CORPORATION
1323729	SOLDATE CORPORATION
1285223	SPECTRUM PAINTING & DECORATING, INC.
1315956	STATEWIDE ROOFING, INC.
1331331	SUN PACIFIC
1326421	SWEETWATER CAR WASH, INC.
1302502	T-N-T PAINTING AND DECORATING, INC.
1319808	TAYLOR FARMS CALIFORNIA, INC.
1346317	THE NEIL JONES FOOD COMPANY
1356025	THE OMEGA SOCIETY, INC.
1268880	TURNER'S NORTH CENTER PRODUCTIONS, INC. / THE LAST
1333108	ULTRAMAR INC - VALERO WILMINGTON
1242686	UNITED PARCEL SERVICE, INC
1239277	UNIVERSAL CUSTOM DISPLAY
1344114	VICTOR LUND GENERAL CONTRACTOR, INC.
1004997	W K R B BUILDERS, INC. DBA ONLINE BUILDERS
1275743	WAHOO TILE ROOF CLEANING
1349920	WALTER C. PANUS, AN INDIVIDUAL
317808368	WEST VALLEY AVIATION, INC.
1315934	WESTERN NATIONAL CONTRACTORS
1330948	YOUNG'S AUTOMOTIVE, INC.

ACTION: Board discussed.

PERSONNEL:
(Issues regarding staff)

ACTION: Board discussed.

The Closed Session was adjourned at 11:52 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 11:53 a.m.