

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on March 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
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Bryan Little, California Farm Bureau Federation
Dan Leacox, Greenberg Traurig, LLP

MINUTES OF February 21, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the February 21, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the February 21, 2019 Board meeting. The vote was 2-0.

NEW BUSINESS:

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

ACTION: Second quarter meeting dates were reviewed and the April 18, 2019 meeting was moved to April 16, 2019.

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 Hapgood updated the Board on the preparations for recruitments of the Hearing Officer I positions in West Covina.

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.

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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.)

- 1265240 USF REDDAWAY, INC.
 ACTION: Board discussed.
- 1195264 WAL-MART STORES INC. STORE # 1692
 ACTION: Board discussed.
- 1180192 WEST COAST ARBORISTS, 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.)

- 1251604 INTERLINE BRANDS, INC.
 ACTION: Board discussed.
- 1169633 ROBINSON MFG., INC.
 ACTION: Board discussed.
- 1308933 WARREN MANH YOUNG
 ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

- 1347210 AK CORAL CAY TRUST LLC
 ACTION: Granted.
 Moved: Judith Freyman, Seconded: Ed Lowry.
 Vote: 2-0
- 1173183 L&S FRAMING, INC.
 ACTION: Granted.
 Moved: Judith Freyman, Seconded: Ed Lowry.
 Vote: 2-0

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

ORDERS DISMISSING APPEAL:

1298075 FASHION LOGISITCS, INC.
 ACTION: Board discussed.

1156487 LX BUSINESS SERVICES, INC.
 ACTION: Board discussed.

1269612 PEARL CROP, INC.
 ACTION: Board discussed.

1283288 RAMIREZ ROOFING CORPORATION
 ACTION: Board discussed.

1275707 TLM PETRO LABOR FORCE, INC.
 ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1319149 ANITA'S MEXICAN FOODS CORP
 ACTION: Board discussed.

1307598 CITY VENTURES CONSTRUCTION, 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.
 ACTION: Board approved to issue DAR.
 Moved: Judith Freyman, Seconded: Ed Lowry.
 Vote: 2-0

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- 1141604 BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
- 1141604 BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
- 1203246 BUZEK CONSTRUCTION, INC.
- 1205214 CALIFORNIA STRUCTURAL CONCEPTS INC.
- 1246527 CEMEX
- 316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
-
- 1129260 ENVIRONMENTAL CONSTRUCTION GROUP
ACTION: Board discussed.
-
- 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.
- 1059365 SHIMMICK CONSTRUCTION COMPANY, INC.
- 1116095 SOUTHERN CALIFORNIA EDISON
-
- 1097751 TIMBERWORKS CONSTRUCTION, INC.
ACTION: Board approved 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)

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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)
8. AC TRANSIT, RG13687314, A142799 (310060629)
ACTION: Board discussed.

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.)

1322709	ACE CLEARWATER ENTERPRISES
1310422	ACE DESIGN & CONSTRUCTION, INC.
1278471	ADM RICE INC.

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1342571	AGRIMA FARMS, INC.
1359540	ALAMO TILE & STONE
1246407	ALCAL SPECIALTY CONTRACTING, INC.
1266501	ALLIED UNIVERSAL
1347940	ANTHONY WAYNE CRESPIN, AN INDIVIDUAL
1317677	APPROVED STAFFING SERVICES, LLC
1249156	ARMS ONE HOUR AIR CONDITIONING AND HEATING, INC.
1308199	ARREOLA'S FRAMING, LLC.
1341490	BANDY MODE, INC.
1330845	BARKLEY SEED, INC.
1335150	BEAUMONT JUICE, INC.
1298388	BURGIO STUCCO, INC.
1305919	BURLINGAME INDUSTRIES, INC.
1322220	C&L REFRIGERATION
1338323	CA DEPT. OF HOSPITALS - PATTON
1328038	CA FORESTRY AND FIRE PROTECTION
1337435	CA STATE HOSPITALS
1316087	CALIFORNIA BUTTON COMPANY, LLC
1302329	CALIFORNIA CABINET AND STORE FIXTURE INC
1339095	CALIFORNIA FOOD MANAGEMENT LLC
1318199	CAPSTONE CONSTRUCTION COMPANY LLC
1351128	CARONE & COMPANY, INC.
1200159	CHA HOLLYWOOD MEDICAL CENTER, L.P.
1254568	COLOMBO CONSTRUCTION COMPANY, INC.
1316581	COMFORT ENERGY, INC.
1269174	CUSTOM SCAFFOLD
1221852	D K ENTERPRISES, INC.
1287617	DALE'S ROOFING, INC.
1339595	DANIEL EDWARD WILCOX, AN INDIVIDUAL
1312142	DRAGON PRODUCTS, LIMITED PARTNERSHIP
1242157	EDISON POWER CONSTRUCTORS
1177463	ELOY FIGUEROA TRUCKING
1298071	EMPLOYBRIDGE, INC.
1327889	EQUILON ENTERPRISES, LLC
1304370	ESPECIAL T HVAC SHEET METAL FITTINGS, INC.
1318205	FORCE POWDER COATING, INC.
1320000	FOSTER POULTRY FARMS
1354421	FUSE CONSTRUCTION, INC.
1184377	GALLO VINEYARDS, INC.
1149147	GENERAL RESTAURANT EQUIPMENT CO.
1350198	GILDOR, INC.
1198777	GINO RINALDI INC.
1334672	GLADIOLUS HOLDINGS LLC
1342215	GLOBAL DESIGN & CONSTRUCTION, INC.
1333127	GOLDEN STATE CONSTRUCTION & FRAMING, INC.

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1285836	HAAS AUTOMATION, INC.
1245472	HADLEY DATE GARDENS, INC.
1303651	HARRIS RANCH BEEF COMPANY
1349062	HOLLIDAY ROCK CO., INC.
1352561	HUMBOLDT HOUSE INN, LLC.
1317490	HYDRA ELECTRIC COMPANY
1324768	INNOVATIVE CONVEYOR SYSTEM
1366583	INNOVATIVE RESOURCE MANAGEMENT, INC.
1316106	JEFFERY LANE
1315047	JENNIFER'S BINDERY, INC.
1106288	JOSE LARA
1316886	KEY TERMITE AND PEST CONTROL, INC.
1288382	KM INDUSTRIAL, INC.
1352394	LA ESPERANZA ENTERPRISES, INC.
1229718	LAWTON CONSTRUCTION AND RESTORATION, INC.
1346011	LONE TREE CONVALESCENT HOSPITAL, INC.
1337691	LUIGI CEVOLA, AN INDIVIDUAL
1317188	MADDOX DAIRY LLC
1319353	MARIO SIMOES CALF RANCH
1354506	MESCHI CONSTRUCTION, INC.
1352383	MORENO'S AUTO REPAIR, LLC.
1256413	NEVAREZ FARM LABOR, INC.
1332701	NEW LIFE LANDSCAPES
1312149	NOUSHIG, INC.
1308228	PACIFIC BELL TELEPHONE COMPANY
1331318	PORT LOGISTICS GROUPS, INC.
1356322	PREMIER BUILDERS & HARDSCAPE, INC.
1293390	RANDSTAD US, L.P.
1304654	REGIONAL CONNECTOR CONSTRUCTORS
1325892	REGIONAL CONNECTOR CONSTRUCTORS
1332172	RELIABLE WHOLESALE LUMBER, INC.
1340358	RJP FRAMING, INC.
1291283	ROBINSON CONSTRUCTION CO
1360087	ROGELIO MACEDO ARENAS AND YAHIN GABRIEL MACEDO
1326829	ROMAN MEDINA SILVA
1288131	SAN FRANCISCO USD - BALBOA HIGH
1182319	SECURITAS SECURITY SERVICES USA, INC.
1291877	SEE'S ARE CORPORATION
1338954	SKANKA USA CIVIL WEST CALIFORNIA DISTRICT
1325087	SKECHERS USA, INC.
1314358	SOFTSCAPES THE ART OF LANDSCAPE
1339823	SOUTH VALLEY MUSHROOM FARM, INC.
1360118	SOUTHLAND FLOOR SYSTEMS, INC.
1311888	STAR AUTO REPAIR, INC.
1364728	STEVEN & JULIE PHO, INC.

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1286043	SULLIVAN OILFIELD SERVICES, INC.
1179914	SUN BASKET, INC.
1238915	SUPER COLOR DIGITAL, LLC
1296610	THE CARPENTER GROUP
1236204	THE DAVEY TREE EXPERT COMPANY
1281278	TIMBERWORKS CONSTRUCTION SERVICES, INC.
1324765	TIN NGUYEN, AN INDIVIDUAL
1327244	TORRES GENERAL INC
1327867	TOTORICA PLUMBING INC
1351779	TUTOR PERINI ZACHRY PARSONS JOINT VENTURE
1191677	WEBCOR CONSTRUCTION LP
1315955	WELLS CONSTRUCTION, INC.
1331344	WESTERN PACKING, INC.

ACTION: Board discussed.

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:13 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 12:14 p.m.