

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on March 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
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 March 7, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the March 7, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the March 7, 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 Hapgood reminded everyone that the Form 700 is due April 2, 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.

ACTION: Waiting for Agency review.

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.

- 1183505 PERFORMANCE TEAM FREIGHT SYSTEMS
ACTION: Board discussed.
- 1232555 PROCESS COOLING INTERNATIONAL, INC.
1059365 SHIMMICK CONSTRUCTION COMPANY, INC.
1116095 SOUTHERN CALIFORNIA EDISON
1298791 TURNER BROADCASTING SYSTEM, INC.
1116529 UNITED PARCEL SERVICE, INC. DBA UPS
- 1200858 WESTERN DIGITAL CORPORATION
ACTION: Board discussed.

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. 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. AVALON BAY COMMUNITIES, INC., G056506, 30-2016-00872036 (317232965)
5. HOME DEPOT, U.S.A. INC. DBA HOME DEPOT #6683, CIVDS1716416,
(1014901)
6. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)
7. AC TRANSIT, RG13687314, A142799 (310060629)

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.)

1291104	CA TRANSPORTATION - DIVISION OF ENGINEERING
1323019	CWP CALIFORNIA CORPORATION
1306923	D C CUSTOM FRAMING
1334290	DAMATO ASSOCIATES, INC.
1344283	DANELL CUSTOM HARVESTING
317251106	DISNEY CONSTRUCTION INC.
1355995	DM CAMP & SONS
1280670	E&R CONSTRUCTION INC.
1323738	EMPLOYEE BRIDGE
1239639	EXTOL CONSTRUCTION, INC.
1211441	F.D.S. MANUFACTURING CO.
1347928	FIRST STEP GREENHOUSES, INC.
1263342	FIVE GUYS OPERATIONS LLC
1223382	FOSTER POULTRY FARMS
1316158	FRINGS RANCH, LP
1323138	FRINGS RANCH, LP.
1341912	G.M. FASHION, INC.
1285837	GIANT BICYCLE
1321158	GOSHEN WEST RANCH
1334675	GRUBB & NADLER, INC.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

March 21, 2019

Page 8

1348311	GSI CAPITAL PARTNERS, LLC.
1251302	GUY YOCOM CONSTRUCTION, INC.
1330764	HAROLD JONES LANDSCAPE, INC.
1356290	HOMEPRO REMODELING, INC.
1339589	I WOOD DESIGN, INC.
1338331	IN-N-OUT BURGER
1254926	JEFF HADDEN AND DOROTHY HADDEN
1253377	JEMA CONSTRUCTION, INC.
1359455	JPS AUTO CENTER
1330929	JSHELF LTD., A CALIFORNIA CORPORATION
1347911	JUSTINIANO LOPEZ IRIARTE
1326363	KELSEYVILLE FIRE PROTECTION DISTRICT
1318089	LANIER CONSTRUCTION
1315871	LOS ANGELES FIRE DEPARTMENT
1318758	M & J FARM LABOR CONTRACTOR, INC.
1089797	M.D.E. ELECTRIC COMPANY INC.
1359590	MARBLE YARD, INC.
1306789	MARSDEN BLDG MAINTENANCE, L.L.C
1320087	MASHINDUSTRIES, INC.
1306843	MATTHEWS MANUFACTURING, INC
1313916	MAXIM CRANE WORKS, LP
1306246	MAYFAIR GROUP HOLDINGS, INC.
1216595	MB TECHNOLOGY
1339822	MCLA CONSTRUCTION CO.
1364748	MELERO ENTERPRISES
1279848	MESA ENERGY SYSTEMS, INC.
1264598	METRO AIR SERVICE, INC.
1135360	MICHAEL STEPHEN RACHAL
1320151	MICHELS CORPORATION
1291279	MICROPRINT, INC.
1302490	MISSION BELL MFG. CO., INC.
1343959	MKB CONSTRUCTION
1291456	MORRISON LANDSCAPE
1349788	NGC CONSTRUCTION, INC.
1303805	NOOTER CONSTRUCTION COMPANY
1332542	NORTH COAST TILE & STONE, INC.
1285069	OMNI RESOURCE SOLUTIONS
1327634	ONE STOP EMPLOYMENT SERVICES, INC.
1373438	PACIFIC SOUTHWEST LUMBER
1269028	PANDA RESTAURANT GROUP
1328480	PR PLUMBING, HEATING & AIR CONDITIONING, INC.
1346906	PRECISE DISTRIBUTION INC
1347857	PRO CRAFT CONSTRUCTION

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

March 21, 2019

Page 9

1295146	PTAK, MIKE A.
1332873	QIC GRE
1299451	QUINN GROUP INC
1309199	RAM-MAR PAINTING, INC.
1309124	RITEMP REFRIGERATION, INC.
1345102	ROBERT BIALE VINEYARDS
1343455	ROYAL INDUSTRIES, INC.
1331353	RUSH PERSONNEL SERVICES, INC.
1308155	SA RECYCLING, LLC
1263554	SACRAMENTO REGIONAL CONSERVATION CORPS
1302013	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
1248754	SCHUFF STEEL COMPANY
1329098	SCV WATER
1234764	SETTON PISTACHIO OF TERRA BELLA, INC.
1227299	SGD ENTERPRISES
1348206	SHAWCOR PIPE PROTECTION, LLC.
1291883	SHORELINE BUILDERS, INC.
1344098	SMART & FINAL STORES, INC.
1302720	STEVENS CREEK QUARRY, INC.
1356382	STOCKTON PRODUCTS, INC.
1308256	SUN VALLEY PAPER STOCK, INC.
1293514	SUNG CHUL CHOUNG
1319138	T & R PAINTING AND DRYWALL
1280738	TAC AIR CALIFORNIA, INC.
1281239	TESORO REFINING AND MARKETING COMPANY LLC
1311730	THE LOTUS PET FOOD, INC.
1364895	THREE STAR LOGGING
1185232	TOURMALINE CONSTRUCTION, INC.
1303432	TREE ISLAND WIRE USA, INC.
1313375	TRINITY FRAMING & CONSTRUCTION, INC.
1349512	TUBE ONE INDUSTRIES, INC.
1332183	UKA'S BIG SAVER FOODS INC
1305878	ULTIMATE CONSTRUCTION, INC.
1314720	US SECURITY ASSOCIATES, INC.
1351889	VCA ANTECH, INC.
1311016	WALSH/SHEA CORRIDOR CONSTRUCTORS
1340585	WESTERN MILL FABRICATORS, INC.

ACTION: Board moved review of Administrative Law Judge Orders.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0

PERSONNEL:
(Issues regarding staff)

ACTION: The Board discussed staffing changes in West Covina.

The Closed Session was adjourned at 11:53 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 11:54 a.m.