

**STATE OF CALIFORNIA**  
**CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**  
**MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**  
**Held on April 4, 2019**  
**Sacramento, California**  
**West Covina, 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  
Lee Berlin, Staff Services Manager  
Janis Jonas, Management Services Technician  
Kerry Lewis, Administrative Law Judge

**MINUTES OF March 21, 2019 MEETING:**

*(Approve or amend minutes of previous Board meeting)*

ACTION: Member Freyman moved that the Board approve the draft minutes of the March 21, 2019 Board meeting as amended. Chair Lowry seconded. The Board voted to approve the draft minutes of the March 21, 2019 Board meeting as amended. 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: Chair Lowry reported on attending the California State Council of Laborers reception event held March 25, 2019.

**BOARD MEMBERS' REPORTS:**

*(Hear reports from Board Members on activities and issues affecting the Appeals Board.)*

ACTION: Member Freyman reported on attending the California State Council of Laborers reception event held March 25, 2019.

**EXECUTIVE OFFICER'S REPORT:**

*(Report regarding administrative matters)*

ACTION: Executive Officer Hapgood reported on attending a leadership skill meeting.  
She also discussed the auditor's general 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.

ACTION: There was a brief discussion on the status of the proposed regulation changes. We are waiting for approval by the Labor Agency and DIR.

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.)*

1152445 CALIFORNIA CARTAGE COMPANY, LLC  
ACTION: Board discussed.

1220369 GRIFFITH COMPANY  
ACTION: Board discussed.

1088791 TUTOR PERINI CORPORATION  
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.)*

1307598 CITY VENTURES CONSTRUCTION, INC.  
ACTION: Board discussed.

1316483 DURHAM CONSTRUCTION COMPANY, INC.  
ACTION: Board discussed.

1325955 JOHNSON UNITED INC  
ACTION: Board discussed.

1291708 ROBERT CHAMPAGNE LANDSCAPE  
ACTION: Board discussed.

1188395 SILICONSAGE CONSTRUCTION INC  
ACTION: Board discussed.

1180192 WEST COAST ARBORISTS, INC.  
ACTION: Board discussed.

1195264 WAL-MART STORES INC. STORE # 1692  
ACTION: Board discussed.

**PETITIONS FOR RECONSIDERATION (Second Review):**

1221889      HERBERT ALLEN KELLY  
                  ACTION: The Board granted the Petition for Reconsideration.  
                  Moved: Judi Freyman, Seconded: Ed Lowry  
                  Vote: 2-0

**ORDERS DISMISSING APPEAL:**

1313409      CLAWSON MOTORSPORTS  
                  ACTION: Board discussed.

1063574      OWENS CORNING ROOFING COMPANY LLC  
                  ACTION: Board discussed.

1319355      SUNCOAST FARMING COMPANY LLC  
                  ACTION: Board discussed.

1349931      ZACKY & SONS POULTRY  
                  ACTION: Board discussed.

**ORDER DENYING LEAVE TO FILE LATE APPEAL:**

1313986      MAIER VINEYARD MANAGEMENT  
                  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.)*

1347210      AK CORAL CAY TRUST LLC

1180499      ALPHA CONSTRUCTION COMPANY, INC.

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

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1251604	INTERLINE BRANDS, INC.
1071914	JOSEPH PERALTA
1192145	KPRS CONSTRUCTION SERVICES, INC.
1173183	L & S FRAMING, 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 ACTION: Board discussed.
1298791	TURNER BROADCASTING SYSTEM, 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 & 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. 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)

**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.)*

1316177	A & F PLASTERING, INC.
1352450	A LEFEVRE GENERAL CONTRACTOR
1075147	ACCO ENGINEERED SYSTEMS, INC
1322403	ACTION SPORTS EQUIPMENT, INC.
1283925	ALLIANCE WELDING SUPPLIES, INC.
1361324	ALTA VISTA COLD STORAGE, INC.
1354456	ANTONIO BIONDI AN INDIVIDUAL
1342217	ARBOR RESIDENCE, INC.
1348393	ARROYO CALIFORNIA CAR WASH CORP.
1284566	B I CONSTRUCTION
1316750	BASS PRO OUTDOOR WORLD, LLC.
1307484	BAUMANN ENGINEERING
1115861	BROOKFIELD NORCAL BUILDERS, INC.
1291698	BUILDER SERVICES GROUP, INC.
1215569	CA PRISON INDUSTRY AUTHORITY
1366913	CAL, INC.
1309834	CALAVERAS MATERIALS, INC.

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1280012	CALIFORNIA RANCH FOODS CO
1321726	CALTEX FOODS, INC.
1249037	CHARTER COMMUNICATIONS
1352064	CHARTWELL STAFFING SOLUTIONS, INC.
1326790	CHRISTIAN CARE CONCEPTS LLC
1307950	CITY OF IRVINE PUBLIC SAFETY DEPARTMENT
1367180	CLEAN HARBORS, INC.
1342726	CLEARLAKE LAVA, INC.
1321493	COHN RESTAURANT GROUP
1326811	COLD STORAGE GROUP, INC.
1339802	COYOTE VALLEY NURSERY, INC.
1095554	CRANEVEYOR CORP
1341602	CROAD ELECTRIC AND TH, INC.
1346934	DECAMILLA BROTHERS, LLC.
1322715	DEL PACIFICO FARM LABOR SERVICES, INC.
1288687	DEL SOL HARVESTING, INC.
1329220	DEPENDABLE PLASTICS & PATTERN, INC.
1306847	DIGNITY HEALTH
1316140	DILLARD'S INC.
1284950	DIRECT RELIEF, INC.
1236207	DUANE FRIESEN
1204093	DYKON EXPLOSIVE DEMOLITION CORP
1333865	ECKERT COLD STORAGE COMPANY
1162325	EDCO WASTE & DISPOSAL, INC.
1352789	ELECTROLURGY MANUFACTURING, INC.
1291306	ENERGY RECONNAISSANCE, INC.
1333605	ERICKSON FRAMING CA, LLC.
1136738	EVERPORT TERMINAL SERVICES, INC.
1343345	EXCLUSIVE INSTALLATION SERVICES, INC.
1319125	FANTASY COOKIE CORPORATION
1305543	FRANCISCO CARPANO
1292505	FRANCISCO J. AVCEVES
1279924	FRONTIER-KEMPER CONSTRUCTORS, INC.
1346455	FVE MANAGERS, INC., FIVE STAR SENIOR LIVING, INC.
1328119	G & A UNDERGROUND UTILITY CORP
1355939	G. V. UNIQUE CONSTRUCTION, INC.
1356160	G.W. JOEL CONSTRUCTION, INC.
1349913	GARY FREEMAN, AN INDIVIDUAL
1357075	GEO DRILLING FLUIDS, INC.
1339849	GHC OF NATIONAL CITY I, LLC.
1225456	GRANITE SERVICES INTERNATIONAL, INC.
1319085	GREEN OASIS BUILDERS
1323345	GRILL CONCEPTS, INC.
1341597	GROWERS ICE COMPANY
1340272	HEALTHCARE SERVICES GROUP, INC.

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1339018	HEBREW HOME FOR AGED DISABLED
1347509	HILMAR CHEESE COMPANY
1316770	IMPACT DEMO & HAULING, INC.
1336375	INDIAN CREEK CAR WASH
1307133	J L WINGERT CO
1291109	J&C CONTRACTORS INC. DBA J&C ENVIRONMENTAL
1348343	JAVRILLO CUCUK
1307102	JCP LOGISTICS, INC.
1310450	KEMBAR CONSTRUCTION, INC.
1324747	KOLKKA FURNITURE, LLC.
1323063	KRUPPA FARMS
1352088	L&P FINANCIAL SERVICES CO.
1341810	LAMONICA'S PIZZA DOUGH COMPANY, INC.
1332509	LENNAR HOMES OF CALIFORNIA, INC. & LENNAR
1347678	LIGHTING TECHNOLOGIES INTERNATIONAL, LLC.
1355980	MANKE TRUCKING INCORPORATED
1235345	MARQUEZ BROTHERS INTERNATIONAL, INC.
1326498	MARTIN-HARRIS CONSTRUCTION, LLC.
1300676	MERHDAD AVAR
1319818	MICHELS CORPORATION
1364757	MOTHER NATURE'S GOODIES, INC.
1294210	MY CHEVROLET, INC.
1334826	NERI INSURANCE AGENCY
1270904	NISSEN DAIRY, INC.
1292593	NPL CONSTRUCTION
1323731	O'DUFFY CONSTRUCTION
1312290	OAKRIDGE LANDSCAPE, INC.
1344106	ORNAMENTALIC, INC.
1341522	PACIFIC COAST PRODUCERS
1339929	PALM SPRINGS MAINTENANCE DEPT.
1359344	PASTIME LAKES HOLDINGS, LLC.
1355082	PAUL MELLO CONSTRUCTION, INC.
1140547	PEGASUS FOODS INC.
1266702	PENTAIR WATER POOL AND SPA, INC.
1347963	PIERRE ANGEL RODRIGUEZ, AN INDIVIDUAL
1274093	PLANT CONSTRUCTION COMPANY L.P.
1331730	PLASTIC INDUSTRIES, INC.
1330014	PYRAMID53, LLC.
1357758	R.E.R. INC
1333984	RANDSTAD NORTH AMERICA, INC.
1298365	RESOURCE STAFFING GROUP, INC.
1352429	RICHARD ARMENTA JR.
1337896	RIVIANA FOODS, INC.
1366163	RONNIE LLOYD BROWN, AN INDIVIDUAL
1159849	ROUGHING IT DAY CAMP

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1306890	SAN FRANCISCO PUBLIC UTILITIES COMMISSION
1374018	SANTANA TRUCK BODIES LLC
1325999	SAWS FLOORING, INC.
1340324	SEAL ELECTRIC, INC.
1342235	SEWING 5, INC.
1318884	SHEEHAN CONSTRUCTION, INC.
1322909	SIERRA CONSTRUCTION & EXCAVATION, INC.
1356298	SIERRA LANDSCAPE
1363072	SMITH AND SON'S WELDING & FABRICATION, INC.
1374030	SONSRAY MACHINERY, LLC.
1346469	SOPHIE KING, AN INDIVIDUAL
1341778	SOUND-CRETE CONTRACTORS, INC.
1322073	SPRIG ELECTRIC
1321792	SRG II OPS, INC. / LVR SUBTENANT, LLC.
1314271	STATE OF CALIF DEPARTMENT OF TRANSPORTATION
1367484	STATEWIDE TRAFFIC SAFETY AND SIGNS, INC.
1373385	TARGET LUMBER SALES
1286617	TESORO REFINING AND MARKETING COMPANY LLC
1342392	THARALDSON HOSPITALITY DEVELOPMENT, LLC.
1221814	THOMPSON PIPE GROUP INC
1337688	TIMOTEO MELENDEZ, AN INDIVIDUAL
1334668	TOLAR MANUFACTURING COMPANY, INCORPORATED
1306104	TRI-PACIFIC HEATING & AIR CONDITIONING, L.P.
1351817	TRINITY GARDENS, LLC.
1356164	TRONG NGUYEN AN INDIVIDUAL
1288849	UC SAN DIEGO HEALTH
1330112	UNIVERSAL BUILDING SERVICES & SUPPLY COMPANY
1305274	VALERO REFINING COMPANY - CALIFORNIA
1341160	VICTORIANO BARRENECHE
1373114	VINCULUMS SERVICES, LLC.
1367146	VIRGIL EDWARD JEANS III, AN INDIVIDUAL
1179660	VIRTUS NUTRITION, LLC
1309502	VISTA REAL PUBLIC CHARTER, INC.
1343963	WALMART, INC.
1343796	WESPAK INC.
1357394	WEST CONTRA COSTA COUNTY SANITARY LANDFILL,
1337144	WEST CONTRA COSTA SANITARY LANDFILL, INC.
1224801	WING KWOK AND WAYNE QUOCK
1315579	WINTERSUN INTERNATIONAL, INC.
1306602	WISEMAN GLASS & MIRROR
1311145	YERGLER CONSTRUCTION CO. INC

ACTION: Board moved review as amended.

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**PERSONNEL:**

*(Issues regarding staff)*

ACTION: No report.

The Closed Session was adjourned at 12:17 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 12:18 p.m.