

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on May 9, 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
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager

MINUTES OF April 16, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the April 16, 2019 Board meeting as amended. Chair Lowry seconded. The Board voted to approve the draft minutes of the April 16, 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: No report.

BOARD MEMBERS' REPORTS:

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

ACTION: Member Freyman led a discussion regarding the Dynamex decision. There was also a discussion about the Future of Work Commission, a new California commission announced by the Governor.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

ACTION: Executive Officer Hapgood reported on attending an Executive Officer meeting in Oakland. The State Personnel Board has placed a hold on Board hiring.

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: The Assistant General Counsel has been appointed to do legal review of the Appeals Board regulations. The economic impact statement is being reviewed by 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.)

- 1153253 FED EX GROUND PACKAGE SYSTEM, INC
 ACTION: Board discussed.

- 1094206 NORROMMY, INC. DBA LEE'S AUTO & MUFFLER
 ACTION: Board discussed.

- 1015631 SAN MARCOS CONSTRUCTION
 ACTION: Board discussed.

- 1137088 SOUTHLAND INDUSTRIES
 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.)

- 1326588 PRO FRAME BUILDERS, INC.
 ACTION: Board discussed.

- 1088791 TUTOR PERINI CORPORATION
 ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

- 1195416 ALON KASPI
 ACTION: Granted
 Moved: Judith Freyman, Second: Ed Lowry
 Vote: 2-0

- 1266860 H.B. REDWOOD MOULDING MANUFACTURING CO.
 ACTION: Denied
 Moved: Judith Freyman, Second: Ed Lowry
 Vote: 2-0

1155353 J.M. EQUIPMENT COMPANY, INC.
ACTION: Denied
Moved: Judith Freyman, Second: Ed Lowry
Vote: 2-0

1307854 OPPORTUNITY STAFFING, INC.
ACTION: Denied
Moved: Judith Freyman, Second: Ed Lowry
Vote: 2-0

ORDERS DISMISSING APPEAL:

1233426 A-1 READY MIX, INC.
ACTION: Board discussed.

1322387 COAST CITRUS DISTRIBUTORS
ACTION: Board discussed.

1325349 NEXT LEVEL DOOR & MILLWORK, INC.
ACTION: Board discussed.

1315727 PRO WALL LATH & PLASTER, INC.
ACTION: Board discussed.

1273021 TEMPORARY STAFFING SOLUTIONS (TSS)
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1351545 JOSEPH CROWN CONSTRUCTION, INC
ACTION: Board discussed.

1326588 PRO FRAME BUILDERS, 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.)

- 310060629 AC TRANSIT
ACTION: Board discussed.
- 1347210 AK CORAL CAY TRUST LLC
- 1180499 ALPHA CONSTRUCTION COMPANY, INC.
ACTION: Board discussed.
- 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
ACTION: Issue DAR.
Moved: Judith Freyman, Second: Ed Lowry
Vote: 2-0
- 1240360 HARRIS SPICE COMPANY
ACTION: Issue Order of Remand.
Moved: Judith Freyman, Second: Ed Lowry
Vote: 2-0
- 1221889 HERBERT ALLEN KELLY
- 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.
- 1232555 PROCESS COOLING INTERNATIONAL, INC.
- 1059365 SHIMMICK CONSTRUCTION COMPANY, INC.
- 1116095 SOUTHERN CALIFORNIA EDISON
ACTION: Issue DAR.
Moved: Judith Freyman, Second: Ed Lowry
Vote: 2-0

- 1298791 TURNER BROADCASTING SYSTEM, INC.
- 1116529 UNITED PARCEL SERVICE, INC. DBA UPS
 ACTION: Board discussed.
- 1195264 WAL-MART STORES INC. STORE # 1692
- 1200858 WESTERN DIGITAL CORPORATION
 ACTION: Issue DAR.
 Moved: Judith Freyman, Second: Ed Lowry
 Vote: 2-0

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. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 through 3098)
2. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
3. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002206 (12-R3D1-0781)
4. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
5. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
6. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
7. W.A. RASIC COMPANY, INC., 13-R4D1-1422, 34-2016-80002454 (314863978)
8. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
9. KEY ENERGY SERVICE, LLC 12004280

10. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
11. ATKINSON CONSTRUCTION, LP (317386084)
12. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
13. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
14. ELECTRICAL SYSTEMS & INSTRUMENTATIONS, INC. (316695469)
15. UNITED PARCEL SERVICE, BS171154 (315347864)
16. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
17. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910, (1111325)
18. BULKLEY & ASSOCIATES, LLC, CV43751 (1052467)
19. BLUE DIAMOND GROWERS, (1040471)
20. UNITED PARCEL SERVICE, (1158285)
21. BRAGG COMPANIES, DBA BRAGG CRANE SERVICE,
HG18930741 (1157108)
22. NORM WILSON & SONS INC. (1116151)

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. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910 (1111325)

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.)

1330125	20/20 COMMERCIAL CARE, INC.
1249455	ACTION GYPSUM SUPPLY WEST, LP.
1257929	ALBERTSON'S, LLC.
1354680	ALEJANDRA INIGUEZ
1155108	AMERICAN INCORPORATED
1349054	BAY VISTA BUILDING MAINTENANCE, INC.
1348355	BINDER SANDHU
1296285	BRADY CONSTRUCTION, INC.
ART-201902	BUBBLE FUN, INC.
1350989	C SMITH TRANSPORT INC.
1304630	CA TRANSPORTATION
1337836	CAL WEST UNDERGROUND, INC.
1303422	CALIFORNIA DAIRIES, INC.
1328089	CALIFORNIA DAIRIES, INC.
1333448	CALIFORNIA PAVING AND GRADING CO INC
1306787	CAMBRO MANUFACTURING COMPANY
1366826	CANNEDY ROOFING SYSTEMS
1370802	CEILING EXPERTS INC.
1252195	CEJA-REYES, INC.
1307448	CEN CAL PLASTERING, INC.
1355717	CITY MANAGEMENT LLC
1381885	CONSOLIDATED DISPOSAL SERVICES, L.L.C.
1336536	CONTEMPORARY SERVICES CORPORATION
1341600	COOL PACIFIC LAND COMPANY
1320315	CORONADO UNIFIED SCHOOL DISTRICT
1200370	COSTA MESA COLLISION AND AUTO PAINTING
1357405	COVANTA LONG BEACH RENEWABLE ENERGY
1258419	CREAM OF THE CROP
1338712	D C J VENTURES, INC.
1326300	DAMATO ASSOCIATES, INC.
1356142	DAVID HALL MASONRY, INC.
1370028	DJI SERVICE, LLC.

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1279491	DMD MARBLE AND GRANITE, INC.
1324387	DOUG TERZIAN CONSTRUCTION, INC.
1332650	DOUGLAS EMMETT MANAGEMENT LLC
1316895	ECPL RETURNS
1288206	EQUITY BUILDERS, INC.
1299022	EVOLVE REALTY AND DEVELOPMENT CORP.
316209345	IREWORKS & STAGE FX AMERICA INC
1345074	FONTANA UNIFIED SCHOOL DISTRICT
1245210	FORTUNE FOODS, INC.
1276012	GENERAL FREIGHT HANDLERS, INC.
1242781	GERDAU AMERISTEEL US., INC.
1065818	GLORIOUS AG SERVICES, INC
1297527	GOLDEN STATE FC, LLC.
1364116	GOY GOY'S FASHIONS, INC.
1280226	GREYSTAR LP
1366429	GUSTAVO BRITO
1356471	GUY YOCOM CONSTRUCTION, INC.
1294463	HELADOS LA TAPATIA INC.
1202888	HERC RENTALS INC.
1341838	HERRON CONSTRUCTION, INC.
1359494	HUGHSON NUT, INC.
1345799	J BAILON CONSTRUCTION INC
1345611	J BAILON CONSTRUCTION, INC.
1370324	JERRY THOMPSON & SONS PAINTING, INC.
1346339	K & Z CABINET COMPANY, INC.
1350667	KELLOGG'S COMPANY
1333154	KERN OIL & REFINING CO.
1354694	KEYSTONE D C S, INC.
1363377	KRASNE'S INC
1373653	KT'S KITCHEN, INC.
1354358	LAIBCO, LLC
1324934	LAZ PARKING
1347046	LERNER, TAMBOR, BLACK, INC.
1318098	LINEAGE LOGISTICS ICM, LLC.
1262936	LION FARMS, LLC
1340037	LITERACY FIRST CHARTER SCHOOLS, INC.
1384965	LUCCHESI BUILDERS INC
1180474	MANUEL QUEZADA
1357067	MAXIM CRANE WORKS, L.P
1325391	MOUREN FAMILY FARMS, INC.
1364560	NAPASPORT, LLC
1319311	NATIONAL READY MIXED CONCRETE
1324952	NATIONAL READY MIXED CONCRETE
1373357	NEW TREND CUSTOM TRAILER, INC.
1348646	NEXUS STEEL, LLC.

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1379430	NIBBI BROS ASSOCIATES, INC.
1224699	O.C. COMMUNICATIONS, INC.
1323139	OFR, INC.
1366563	PACIFIC COAST PRODUCERS
1355977	PANADERIA GUADALAJARA, INC.
1348389	PASADENA CAR WASH, INC.
1304378	PENDARVIS MANUFACTURING, INC.
1328531	PEOPLEREADY, INC.
1374352	PERILS OF PAULINE FOOD PRODUCTIONS, INC.
1366083	PERSONNEL STAFFING SOLUTIONS GROUP, INC.
1328111	POLYCELL PACKAGING CORP
1332494	PORTERVILLE ROCK & RECYCLE, INC.
1262723	PREMIER MUSHROOMS, INC.
1351386	PREMIER MUSHROOMS, INC.
1297200	PULICE CONSTRUCTION, INC.
1354729	QUIKRETE OF CALIFORNIA, LLC
1362790	R C I GENERAL ENGINEERING
1233923	RED ROBIN GOURMET BURGERS
1333646	REDWOOD BUILDING MAINTENANCE CO, INC.
1290377	RESOURCE ENVIRONMENTAL, INC.
1374179	RICARDO ESTRADA, AN INDIVIDUAL
1303782	ROBERT B. HESS JR. RACING
1334092	ROBERT DOMINIKUS GENERAL ENGINEERING
1275424	ROCKWELL DRYWALL INC
1314375	ROMERO FOOD PRODUCTS, INC.
1376211	RUBEN CHAVEZ, AN INDIVIDUAL
1361996	RYDER INTEGRATED LOGISTICS
1340006	SAFE USA, INC.
1272703	SAN MARCOS GROWERS
1327852	SEESCAN, INC.
1316896	SERENITY TRANSPORTATION, INC.
1359674	SHADOWCREST ROOFING, INC.
1359561	SHAWN PHAM, AN INDIVIDUAL
1348022	SIERRA PACIFIC INDUSTRIES
1363952	SOLEDAD ARMENTA
1230022	SOUTHERN CALIFORNIA EDISON COMPANY
1379710	SWEET TRADE CORP.
1326875	T. A. INDUSTRIES, INC.
1300372	T.C. STEEL
1341601	TEEN CHALLENGE OF SOUTHERN CALIFORNIA, INC.
1361855	THOMAS TODD TRAPHAGAN
1162242	TILBURY CONSTRUCTORS
1367161	TIM ROY REED, AN INDIVIDUAL
1347577	TIWANA INVESTMENT INC
1351326	TRANSPAK, INC.

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1343310	TRI BAK DAIRY, LLC.
1370201	TRIMM'S SCAFFOLDING INC.
1374151	TUFF SHED, INC.
1237603	TUTOR PERINI CORPORATION
1372867	US HANGER COMPANY, LLC.
1345990	VANN BROTHERS LP
1351314	WARANER TREE EXPERTS
1346053	WEST COAST BACKHOE, INC.
1265189	WORTHING'S GENERAL SERVICES
1316961	XPO LAST MILE, INC. ERRONEOUSLY CITED AS XPO
1374068	YADAV ENTERPRISES, INC.
1281922	ZHEN WU MIAO

ACTION: Approve all Administrative Law Judge Settlement Orders.
Moved: Judith Freyman, Second: Ed Lowry
Vote: 2-0

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 11:14 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 11:15 a.m.