

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on June 13, 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
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Christopher Jessup, Administrative Law Judge

MINUTES OF May 23, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the May 23, 2019 Board.. Chair Lowry seconded. The Board voted to approve the draft minutes of the May 23, 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: There was a discussion regarding AB5.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair Lowry reported that he attended an awards ceremony for the Center For Workers' Rights.

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 reported on attending the Executive Officer's Meeting in May.

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: Regulation changes have been approved to move forward for publishing at OAL and scheduling a comment period.

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: Administrative Law Judge Chris Jessup provided an update on news regarding AB5.

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.)

- 1183541 BBSI, INC.
 ACTION: Board discussed.

- 1310525 GOLDEN STATE FC, LLC.
 ACTION: Board discussed.

- 1245080 TCI TRANSPORTATION SERVICES
 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.)

- 1272378 ANDREW HARRISON BARNES
 ACTION: Board discussed.

- 1319149 ANITA’S MEXICAN FOODS CORP
 ACTION: Board discussed.

- 1351545 JOSEPH CROWN CONSTRUCTION, INC.
 ACTION: Board discussed.

- 1269612 PEARL CROP, INC.
 ACTION: Board discussed.

- 1342020 REAL TIME STAFFING SERVICES, LLC
 ACTION: Board discussed.

- 1137088 SOUTHLAND INDUSTRIES
 ACTION: Board discussed.

- 1359495 VICTOR C. GARCIA
 ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1195414 ACCO ENGINEERED SYSTEMS
ACTION: Granted
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0

1336043 P&R PAPER SUPPLY
ACTION: Denied
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0

ORDERS DISMISSING APPEAL:

1327803 C&J ENERGY SERVICES, INC.
ACTION: Board discussed.

1285370 FERIA FARM MGT. FLC
ACTION: Board discussed.

1282132 ROMA URBAN MARKET
ACTION: Board discussed.

1261165 STATE OF CALIFORNIA DEPART. OF CORRECTIONS
ACTION: Board discussed.

1278532 WINNEKER, DAVID MICHAEL
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1339143 ACTION PRESSURE WASHING
ACTION: Reconsidered on Board's Own Motion.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0

1321750 E.V.A IMPORT & EXPORT
ACTION: Board discussed.

1338714 J.F. SAYLER RACING STABLES
ACTION: Board discussed.

1173183	L & S FRAMING, INC. ACTION: Board discussed.
1201848	PAPICH CONSTRUCTION COMPANY, INC.
1326588	PRO FRAME BUILDERS, INC.
1232555	PROCESS COOLING INTERNATIONAL, INC.
1059365	SHIMMICK CONSTRUCTION COMPANY, INC.
1298791	TURNER BROADCASTING SYSTEM, INC.
1088791	TUTOR PERINI CORPORATION
1195264	WAL-MART STORES INC. STORE # 1692

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., 19STCP00663 (1116151)
23. ROBINSON MFG., INC., 30-2019-01067631 (1169633)

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.)

1378371	3B WINDOWS & DOORS, INC.
1377955	99 CENTS ONLY STORES
1373831	A. TEICHERT & SON, INC.
1379206	ABC CUSTOM WOOD SHUTTERS, INC.
1343994	AERO-CLASSICS HEAT TRANSFER PRODUCTS, INC.
1307580	ALCAL SPECIALTY CONTRACTING, INC.
1365452	ALS WEST COAST INC
1197824	AMERICAN RESTORE INC
1307442	ANGELUS PACIFIC COMPANY
1378839	ARCADIA, INC.
1348036	ARIES PREPARED BEEF CO.
1382575	BERG DRYWALL, LLC.
1358849	BEST-WAY MARBLE & TILE CO., INC.
1351809	BOCCHI LABORATORIES, INC.
1385926	BT PIPELINE, INC.
1335427	CA SENIOR LIVING EE GROUP, LLC.
1302408	CALIBER HOLDINGS CORP.
1334311	CAMERON PARK COMMUNITY SERVICES DISTRICT
1253050	CANII AG MGT, INC.
1356374	CHAN TAK CHUNG
1275410	CHANNEL ISLAND VEGETABLE FARMS, INC.
1243432	CLARK CONSTRUCTION GROUP CALIFORNIA, LP.
1356061	COMMERCIAL DOOR COMPANY, INC.
1229645	CREAM OF THE CROP AG SERVICES, INC.
1312676	CRYOGENIC EXPERTS, INC.
1089811	DEACON CORP.
1279882	DEL TACO, LLC

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1271986	DEMATIC CORP.
1339599	DH BLATTNER & SONS INC
1346664	DSC LOGISTICS, INC.
1332857	ELECTRIC MOTOR SHOP AND SUPPLY, CO.
1344119	ESKATON PROPERTIES, INCORPORATED
1359677	FAMOUS FRAMING CONTRACTORS, INC.
1366406	FASHION AVE PLUS, INC
1223203	FIGUEROA CONSTRUCTION
1320991	FIRST RATE STAFFING CORPORATION
1322283	FLOW TRANSPORT, INC.
1317507	FOOTHILL PACKING, INC.
1334426	FOREMOST FOODS
1308438	FOUND VINTAGE RENTALS, INC
1359222	GALLO GLASS CO.
1325617	GEORGE TE VELDE
1307498	GRANITE CONSTRUCTION COMPANY
1325200	GRANITE ROCK COMPANY
1377469	GREGORY CONSTRUCTION
1326775	GWP HOLDINGS, LLC.
1315073	HAL LARSEN CONSTRUCTION
1359686	HALDEN LARSEN
1331578	HALF MOON & FRUIT PRODUCE CO.
1369469	INNOVATIVE ROTATIONAL MOLDING, INC.
1260714	INTERSTATE CONCRETE PUMPING CO., INC.
1259486	J AND B LANDSCAPING
1386574	J. FRANCISCO TAPIA
1372710	JAIMAV PROPERTIES, LLC.
1382982	JAIMAV PROPERTIES, LLC.
1367212	JASON SCOTT LOOMIS, AN INDIVIDUAL
1100941	JONES CONSTRUCTION, INC.
1348023	JUAN V SANDOVAL MORALES, AN INDIVIDUAL
1357403	JW STRAUSS, LLC.
1229191	KP SHINES, LLC.
1309385	KUCKENBECKER TRACTOR CO. INC
1328222	KULVINDER KUMAR, SOLE OWNER
1338150	L & R AUTO PARKS, INC.
1206790	L & S FRAMING INC.
1335191	L&S EMBROIDERY INC
1356373	LAGUNA VAULT, LLC.
1342593	LARGO CONCRETE, INC.
1352502	LENNAR HOMES, INC.
1357780	LOS ANGELES UNIFIED SCHOOL DISTRICT, TRUCK
1351442	LOWE'S HOME CENTERS, LLC.
1267178	MADISON MATERIALS
1377063	MAURICIO GURRISQUETA, AN INDIVIDUAL
1374499	MONTE VISTA LODGE LIMITED PARTNERSHIP
1325562	MONTEREY ZOOLOGICAL SOCIETY, INC.

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1350359	MOUNTAIN MEADOW MUSHROOM FARMS, INC.
1336002	MUNOZ PLUMBING REPAIR
1336388	NEIL JONES FOOD COMPANY
1322037	NEWEGG, INC.
1319827	O'NEILL CONSTRUCTION
1378416	OC RECYCLING, INC.
1123408	PANELIZED STRUCTURES, INC.
1183383	PEGASUS FOODS INC
1183473	PEGASUS FOODS, INC.
1280909	PELGER ROAD. 1700 LLC
1343446	PEOPLE READY, INC
1338311	PHILLIPS FARMS
1249477	PREMIER DISPLAYS & EXHIBITS
316213826	R.J. NOBLE COMPANY
1363207	REDWOOD EMPIRE FOOD BANK
1335610	RIVER ROCK OUTSCAPE
1373377	RJP FRAMING, INC.
1355092	ROBERT BRKICH CONSTRUCTION CORP.
1350402	RODRIGO AND CLAUDIA RODRIGUEZ
1368276	ROY COSTELLO
1348225	RRND SERVICES, INC.
1313605	SANTA BARBARA UNIFIED SCHOOL DISTRICT
1303144	SCHMIDT INDUSTRIES, INC.
1316875	SIERRA ALLOYS COMPANY
1244663	SILVER STAR CONSTRUCTION ENGINEERING, INC.
1336228	SOUTHLAND TRANSIT, INC.
1339869	STRAUSSER CONSTRUCTION, INC.
1360999	SUN PACIFIC SHIPPERS, L.P.
1290777	SUNNY FLOORING AND CARPETS
1370320	SUPERIOR STORAGE TANK
1358445	SUPHERB FARMS
1329975	TAIFUNG FOOD COMPANY
1269728	TELFER PAVEMENT TECHNOLOGIES, LLC.
1300076	TIGERS (USA) GLOBAL LOGISTICS
1192671	TORO ENTERPRISES INC.
1347315	TRAXX CORPORATION
1344828	TULE TRASH COMPANY, LLC.
1253345	TYP RESTAURANT GROUP, INC.
1306922	UKA'S BIG SAVER FOODS
1347657	UNITED FURNITURE INDUSTRIES CA, INC.
1337897	UNITY COURIER SERVICE, INC.
1344285	USTE, INC.
1275281	VALLEY PALLET, INC.
1249809	WAG HOTELS, INC.
1295861	WALT OXLEY ENTERPRISES, INC.
1319657	WASTE MANAGEMENT COLLECTION
1274956	WEST COAST ARBORISTS, INC.

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1292283	WEST COAST DRYWALL & COMPANY INC
1381225	WESTERN STATES WHOLESALE, INC.
1356945	WESTERN WOODS, INC.
1321336	WM BUILDERS, INC.
1311756	WRIGHT CONTRACTING INC.
1372007	WRIST SHIP SUPPLY A/S

ACTION: Approved all Administrative Law Judge Orders.

Moved: Judith Freyman, Seconded: Ed Lowry.

Vote: 2-0

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 11:57 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 11:58 a.m.