

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on June 27, 2019
Sacramento, California
West Covina, California**

PRESENT:

Ed Lowry, Chair
Judith Freyman, Member
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Andia Farzaneh, Attorney
Janis Jonas, Management Services Technician
Kerry Lewis, Administrative Law Judge
Robert Moutrie, California Chamber of Commerce

MINUTES OF June 13, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the June 13, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the June 13, 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: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

ACTION: No 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: The New Regulations are published and a meeting for public comment is scheduled for August 22, 2019.

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: Robert Moutrie, Policy Advocate with the California Chamber of Commerce was introduced.

The Board recessed to its closed session.

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.)

1206788 DPR CONSTRUCTION INC. ET AL
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.)

1310206 MARDAV MANUFACTURING, INC.
ACTION: Board discussed.

1333532 ROBERT L. HORVATH INC. DBA CLAYBORN LAB
ACTION: Board discussed.

1123110 SINCLAIR CONCRETE, INC.
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1272378 ANDREW HARRISON BARNES
ACTION: Granted
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

1319149 ANITA'S MEXICAN FOODS CORP
ACTION: Denied
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

1351545 JOSEPH CROWN CONSTRUCTION, INC.
ACTION: Denied
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

1269612 PEARL CROP, INC.
ACTION: Denied
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

- 1342020 REAL TIME STAFFING SERVICES, LLC
ACTION: Denied
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0
- 1137088 SOUTHLAND INDUSTRIES
ACTION: Denied
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0
- 1359495 VICTOR C. GARCIA
ACTION: Granted
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

ORDERS DISMISSING APPEAL:

- 1335852 DIRECTV, LLC.
ACTION: Board discussed.
- 1331154 FIRESIDE HEALTH CARE CENTER
ACTION: Board discussed.
- 1296194 KAJJ CLEANERS, INC.
ACTION: Board discussed.
- 1303130 QUALI-T-RUCK SERVICE, INC
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

- 1355423 CINTAS CORPORATION
ACTION: Board discussed.
- 1348404 EAGLE NASHER, LLC.
ACTION: Board discussed.
- 1324980 PARAGON FRAMING 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
1195414	ACCO ENGINEERED SYSTEMS ACTION: Board discussed.
1339143	ACTION PRESSURE WASHING
1347210	AK CORAL CAY TRUST LLC
1195416	ALON KASPI
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
1221889	HERBERT ALLEN KELLY
1251604	INTERLINE BRANDS, INC.
1192145	KPRS CONSTRUCTION SERVICES, INC.
1173183	L & S FRAMING, INC.
1201848	PAPICH CONSTRUCTION COMPANY, INC.
1326588	PRO FRAME BUILDERS, INC.
1232555	PROCESS COOLING INTERNATIONAL, INC. ACTION: Board discussed.
1059365	SHIMMICK CONSTRUCTION COMPANY, INC. ACTION: Issue DAR. Moved: Judith Freyman, Seconded: Ed Lowry. Vote: 2-0
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 & INSTRUMENTAIONS, 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)
24. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)

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)

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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.)

1263324	A. VIDOVICH CONSTRUCTION, INC.
1368740	AEROTEK, INC.
1341975	AF GOMES, INC.
1113172	AFAKORI INC. DBA AAF STEEL STRUCTURAL
1334833	AIR CONTROL SYSTEMS, INC.
1342963	ALL-COAST FOREST PRODUCTS, INC.
1123384	ALSTON CONSTRUCTION COMPANY, INC.
1347015	ALTA CARE CENTER, LLC.
1369775	ANAMAR WINDOWS MFG., INC.
1356008	AUTO PERFECTION GROUP, INC.
1335882	B P CABINETS, INC.
1346698	BAMCORE, LLC.
1318868	BERRY GLOBAL
1378919	BONANZA CONCRETE, INC.
1380609	BROWN CONSTRUCTION, INC
1356156	BYRNES AND KIEFER COMPANY
1014490	CALIBER AUTO TRANSFER OF MIRA LOMA INC
1322702	CASUAL PERFORMANCE, INC.
1324246	CITY OF CONCORD
1347456	CITY OF PASADENA, FIRE DEPARTMENT
1287813	CITY OF WHITTIER ADMINISTRATIVE SERVICES DEPT.
1344067	CYDNEY ORTZOW PAINTING
1350175	DYNALLOY, INC.
1348697	FISHER FARMS
1316601	FITZ FRESH INCORPORATED
1085615	FRAME TENT INC. DBA CENTRAL TENT
1317340	FULL CIRCLE FARMING, LLC
1358895	FULL STEAM STAFFING, LLC.
1362686	GARY SILVA SR.
1317661	GERALD WANG
1328536	GUMARO'S AUTO REPAIR, INC.
1273635	HARDER MECHANICAL CONTRACTORS, INC.
1341537	HEALTHRIGHT 360
1226633	HENKELS & MCCOY, INC.
1374046	HI-TECH MACHINE SHOP, INC.
1311551	HILL BROTHERS CHEMICAL COMPANY
1339667	I C C, INC.
1221061	INDUSTRIAL COMMERCIAL SYSTEMS, INC.
1285180	INTER-CON SECURITY SYSTEMS, INC.
1374143	JASON TURNER, AN INDIVIDUAL

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1386590	JAVIER ESCOBEDO
1212700	JOHN MOURIER CONSTRUCTION, INC
1380269	JOSE PORRAS, AN INDIVIDUAL
1343743	KIEWIT INFRASTRUCTURE WEST CO.
1363967	KODIAK CONCEPTS, INC.
1297085	LAC / RANCHO LOS AMIGOS NATIONAL
1288213	LAIRD TECHNOLOGIES, INC.
1311379	LANDSCAPE DEVELOPMENT, INC.
1320377	LAZY DOG RESTAURANTS, LLC.
1347991	MANHATTAN BEACH UNIFIED SCHOOL DISTRICT
1318548	MARJAN STONE
1368418	MCMILLAN TREE SERVICE
1319336	MINNESOTA MINING & MANUFACTURING COMPANY
1328219	MOULTON NIGUEL WATER DISTRICT
1332876	NATURAL GREEN LANDSCAPE, INC.
1339669	NATURAL GREEN LANDSCAPE, INC.
1336621	NATURAL GREEN LANDSCAPING & CONSTRUCTION
1308213	OCEAN SPAULDING, INC.
1283290	PACIFIC TANK & CONSTRUCTION, INC.
1250916	PALATIN REMODELING INC
1216410	PDM FOOD SERVICE, INC.
1247519	PHX MANAGEMENT
1333829	PR PLUMBING, HEATING & AIR CONDITIONING, INC.
1370573	PRECISION CONCRETE GROUP, INC.
1373477	PRECISION CONSTRUCTION GROUP, INC.
1316159	R. C. WENDT PAINTING CONTRACTORS
1357336	RANDY HILL CONSTRUCTION, INC.
1346742	RIVERSIDE UNIVERSITY HEALTH SYSTEM
1241243	ROBERT & SANDRA GARCIA FARMING PARTNERSHIP
1305570	SAN GABRIEL TEMPORARY STAFFING SERVICES LLC
1327589	SAPUTO CHEESE USA, INC.
1386282	SIERRA CHEESE MANUFACTURING COMPANY, INC.
1331319	SIERRA PACIFIC INDUSTRIES
1343095	SIERRA PACIFIC INDUSTRIES
1348553	SINCLAIR TELEVISION OF CALIFORNIA, LLC.
1349778	SINCLAIR TELEVISION OF CALIFORNIA, LLC.
1385647	SUNLAND TIRE COMPANY OF LA VERNE, INC.
1355086	SWANER HARDWOOD COMPANY, INC.
1309503	TEXTILE WORLD COLOR MASTER INC
1311919	THROUGH 6
1319064	TOWN & COUNTRY EVENT RENTALS, INC.
1330916	UNIFIED GROCERS, INC.
1182360	VERDUGO MANAGEMENT & INVESTMENT, INC.
1275298	VERTICAL ACCESS INC.
1382024	VIDAURRE HOLDINGS, INC.

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1374036	VJPD, INC.
1342308	W E O'NEIL
1213089	WEST COAST ARBORISTS, INC.

ACTION: All Administrative Law Judge Orders approved
as amended.

Moved: Judith Freyman, Seconded: Ed Lowry.

Vote: 2-0

PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 11:41 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 11:42 a.m.