

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**

**Held on July 11, 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
Aaron Jackson, Industrial Relations Counsel
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 June 27, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the June 27, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the June 27, 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: Chair Lowry reported he will be attending mandatory HR training during the week of July 15-19 along with Jeff Mojcher, Patty Hapgood and Lee Berlin. ALJ Kevin Reedy has completed the training.

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 that she and Lee Berlin will meet with DOSH representatives on July 17th to discuss the operation of the Appeals Board's OASIS system.

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: Aaron Jackson reported that the Notice of proposed changes to the regulations has been published. A time for public comment is scheduled to be held during the August 22, 2019 Board meeting.

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.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

July 11, 2019

Page 3

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.)

1136664 U-HAUL
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.)

1355423 CINTAS CORPORATION
ACTION: Board discussed.

1310525 GOLDEN STATE FC, LLC
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1310206 MARDAV MANUFACTURING, INC.
ACTION: Denied
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

1333532 ROBERT L. HORVATH INC. DBA CLAYBORN LAB
ACTION: Denied
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

1123110 SINCLAIR CONCRETE, INC.
ACTION: Board voted to reconsider this matter on its own motion.
Moved: Judith Freyman, Seconded: Ed Lowry
Vote: 2-0

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.
1272378	ANDREW HARRISON BARNES
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.
1298791	TURNER BROADCASTING SYSTEM, INC.
1088791	TUTOR PERINI CORPORATION
1359495	VICTOR C. GARCIA
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)
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)

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.)

1326787	A C PALLETS
1388304	A W M CONSTRUCTION, INC.
1325721	A.J. FISTES CORPORATION
1319648	ACUITY BRANDS
1349416	ADVANEX AMERICAS, INC.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

July 11, 2019

Page 8

1341362	AEGEAN STONWORK
1311117	AGRO-JAL FARMING ENTERPRISES INC
1358574	ALEPH GROUP INC
1328723	ALLIED PLUS LOW VOLTAGE
1321479	AMERICAN LANDSCAPE INC.
1378359	AMERIPRIDE SERVICES, INC.
1162873	AMWARE PALLET SERVICES LLC
1359952	ANAHEIM ELEMENTARY SCHOOL DISTRICT
1378123	ANNING-JOHNSON CO.
1326948	ARCHITECTURAL GLASS & ALUMINUM CO., INC.
1330483	ARKTURA LLC
1356472	AYZAR, INC.
1353680	BENEL FARMS, INC.
1373188	BHL HOLDINGS, LLC.
1367567	BLH CONSTRUCTION COMPANY
1240710	BLUEWATER ENVIRONMENTAL SERVICES, INC.
1370411	BOYD SPECIALTIES, LLC.
1243092	CA PRISON INDUSTRY AUTHORITY
1369772	CALSTRIP STEEL CORP.
1325725	CELL-CRETE FIREPROOFING, INC.
1380473	CENTURY TUBES, INC.
1370653	COMFORT DRYWALL, INC.
1317485	COTTI FOODS
1389793	CP HOME DESIGN, INC.
1382047	DIAMOND FRESH FARMER'S MARKET, INC.
1401290	DK EXCHANGE, INC.
1304695	ERIKA RECORDS, INC
1376410	ETO DOORS CORPORATION
1323394	EXACT STAFF, INC.
1355695	FENCEWORKS, INC.
1312251	FIVE HUNDRED YARDS INC.
1371278	FLICKINGER PAINTING, INC.
1316844	GARDA WORLD CASH LOGISTICS
1232395	GAUSTON CORP
1343639	GREENWALL, INC.
1326845	HANOVER R S CONSTRUCTION, LLC
1349530	HEALTHCARE SERVICES GROUP, INC.
1402700	HILBERS, INCORPORATED
1351893	HILLSIDES
1363404	HMN, INCORPORATED
1255724	HOLLAND PARTNER GROUP, INC.
1349762	JIM NORMAN'S TREES UNLIMITED, INC.
1229220	JKB STAFFING LLC
1348326	KAISER PERMANENTE
1168851	KANA PIPELINE, INC.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

July 11, 2019

Page 9

1302991	KIK SOCAL, INC.
1383323	KILLION INDUSTRIES, INC.
1381474	L. M. HERNANDEZ & SONS, INC.
1342213	LE PARIS ARTISAN & GOURMET CAFE
1354412	LING N QUALH, AN INDIVIDUAL
1358913	LIQUID TECHNOLOGIES, INC.
1345793	MADERA COUNTY OFFICE OF EDUCATION
1351864	MAGANA LABOR SERVICES, INC.
1317026	MANNINGTON MILLS INC.
1210280	MCCARTHY
1353057	MILANESIO FARMS INC
1324364	MILLENNIUM REINFORCING, INC.
1316578	MISSION PRODUCE, INC
1306561	MOUNTAIN CASCADE, INC.
1348581	MZAJ PROPERTIES, LLC.
1363353	NATIONAL DIAMOND LABORATORY OF CALIFORNIA,
1348207	OCEAN PARK MECHANICAL, INC.
1239858	PALO ALTO LIGHTING, INC
1287473	PATHKARE, INC.
1236803	PHILATRON INTERNATIONAL
1266527	PINNACLE PLASTERING, INC.
1381950	PIPE JACKING TRENCHLESS, INC.
1245797	PRC BUILDERS, INC.
1371401	PREFERRED FREEZER SERVICES OF VERNON, LLC.
1330003	PYUNG CHOI DBA MOTEL 6
1356648	R W FORSUM ENTERPRISES, INC.
1326930	RAM ELECTRIC COMPANY, INC.
1364916	ROOZBEH HOJJAT, AN INDIVIDUAL
1358218	SAN DIEGO SIGN COMPANY
1371380	SES BUILDERS INC.
1388547	SINLESS SEWING, INC.
1335139	SOUTH GATE ENGINEERING
1303776	STAY SAFE STAFFING, INC.
1352108	SUNLUX
1269970	TCHO VENTURES, INC.
1273357	TCHO VENTURES, INC.
1325378	THE HABIT RESTAURANTS, INC.
1374101	THOMAS PLUCINAK, AN INDIVIDUAL
1388688	TK APPAREL, INC.
1286485	TOOLSHED EQUIPMENT RENTAL
1313747	TROJAN BATTERY COMPANY
1288742	UTILITY TREE SERVICE CORPORATION
1354160	VAN WINDEN LANDSCAPING, INC.
1333809	W.J. GRIFFIN, INC.
1364152	WESANCO, INC.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

July 11, 2019

Page 10

1383918 WESTPORT CONSTRUCTION INC.
1188735 WINSHIP STAKE & LATH INC
1309962 WORLD OF JEANS AND TOPS, INC

ACTION: All above Administrative Law Judge Settlement
Orders approved.

Moved: Judith Freyman, Seconded: Ed Lowry

Vote: 2-0

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 11:42 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 11:43 a.m.