

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

**Held on July 25, 2019
Sacramento, California
West Covina, California**

PRESENT:

Ed Lowry, Chair
Judith Freyman, Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Kerry Lewis, Administrative Law Judge
Dan Leacox, Leacox & Associates

MINUTES OF July 11, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: The draft minutes of the July 11, 2019 meeting were inadvertently left out of the Board Packet for the July 25, 2019 meeting. The July 11, 2019 draft minutes will be submitted at the August 8, 2019 meeting.

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 that he attended the four-day mandatory HR training. There was a brief discussion about new hiring protocol set forth by CalHR.

Chair Lowry will be out of town July 31 through August 7, 2019.

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 August 22, 2019 Board meeting will be open for public comment.

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 25, 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.)

NONE

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.)

| | |
|---------|---|
| 1048310 | AEG MANAGEMENT OAKLAND, LLC ACTION: The Employer did not intend to file a Petition for Reconsideration in this case. |
| 1206788 | DPR CONSTRUCTION INC. ET AL ACTION: Board discussed. |
| 1368418 | MCMILLAN TREE SERVICE ACTION: Board discussed. |
| 1345451 | ON THE THIRTY, INC. ACTION: Board discussed. |
| 1341411 | UPS ACTION: Board discussed. |

PETITIONS FOR RECONSIDERATION (Second Review):

| | |
|---------|--|
| 1355423 | CINTAS CORPORATION ACTION: Denial was approved. Moved: Judith Freyman, Seconded: Ed Lowry Vote: 2-0 |
| 1310525 | GOLDEN STATE FC, LLC ACTION: Granted. Moved: Judith Freyman, Seconded: Ed Lowry Vote: 2-0 |

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

July 25, 2019

Page 5

| | |
|-----------|---|
| 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. |
| 1204848 | PAPICH CONSTRUCTION COMPANY, INC. |
| 1326588 | PRO FRAME BUILDERS, INC. |
| 1232555 | PROCESS COOLING INTERNATIONAL, INC. ACTION: Board discussed. |
| 1123110 | SINCLAIR CONCRETE, 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)
25. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623
(1200875)

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)
9. LION FARMS, LLC, MCV075788 (1070258)

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.)

| | |
|---------|---------------------------------|
| 1385630 | ABEL'S AUTOMOTIVE, INC. |
| 1130275 | ADVANTAGE DRYWALL SYSTEMS, INC. |
| 1367599 | ALPINE SHUTTER CRAFT LLC |
| 1342609 | ANNING JOHNSON COMPANY |
| 1356269 | ARSHA CORP. |
| 1298457 | BARON HR |
| 1262902 | BAS RESEARCH |
| 1394749 | BEHIND YOUR SEAMS, INC. |
| 1338207 | BENNY SILVA |
| 1327482 | BIOTA TECH SERVICES, INC |
| 1339881 | BJ PERCH CONSTRUCTION, INC. |
| 1289554 | BOSKOVICH FARMS, INC. |

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

July 25, 2019

Page 8

| | |
|---------|--|
| 1328763 | C. WOLFE INDUSTRIES, INC. |
| 1324382 | CALLENDERS HOUSE OF GLASS, INC. |
| 1264124 | CHARTER COMMUNICATIONS, INC. |
| 1329122 | CPS SECURITY |
| 1340348 | CREATIVE STONE MFG., INC. |
| 1300667 | DIAMOND SHARP CUTLERY, INC |
| 1335832 | DR. KIRIT SHAH & MRS. SONAL SHAH |
| 1041874 | E. G. A. CO. DBA A & B ELECTRIC |
| 1373644 | EL JALAPENO CRAZY, INC |
| 1284047 | ENVIRONMENTAL REMEDIATION CONTRACTORS, |
| 1261818 | ENZ VINEYARDS, INC. |
| 1266838 | FLOYD JOHNSTON CONSTRUCTION COMPANY |
| 1361332 | FUTURE FOAM, INC. |
| 1373711 | GLENAIR, INC. |
| 1209744 | GRANITE ROCK COMPANY |
| 1362417 | GREEN DINING TABLE, INC. |
| 1384042 | HABITAT FOR HUMANITY OF GREATER LA |
| 1174311 | HESTON CONSTRUCTION, INC. |
| 1385612 | HOT TIRES AUTO REPAIR, INC. |
| 1314985 | ICON WEST, INC. |
| 1359950 | J.G. BOSWELL COMPANY |
| 1325572 | JM STREAMLINE, INC. |
| 1365210 | JOSEF E. NAIRN, AN INDIVIDUAL |
| 1366442 | KROEGER EQUIPMENT & SUPPLY CO., A CALIFORNIA |
| 1316782 | L.A.. SOLAR GROUP, INC. |
| 1374407 | LADWP |
| 1349896 | LUM-TECH LIGHTING, INC. |
| 1164969 | LUTH AND TURLEY, INC. |
| 1323002 | MANERI TRAFFIC CONTROL, INC. |
| 1277927 | MARRIOTT RESORTS HOSPITALITY CORPORATION |
| 1342569 | MASCORRO LEATHER, INC. |
| 1374107 | MCPHEE MASONRY, INC. |
| 1373454 | MEC RECYCLING LLC |
| 1389565 | MIDWEST AIR TECHNOLOGIES, INC. |
| 1348318 | MOSS BROS. AUTO GROUP, INC. |
| 1359094 | MOUNTAIN WEST GLAZING, INC. |
| 1360880 | MOWBRAY'S TREE SERVICE |
| 1404391 | MY TRAN-E SHOP, LLC |
| 1369782 | OAK KNOLL FARMING |
| 1385584 | OPTIMUS GROUP, INC. |
| 1282084 | ORANGE COAST BUILDING SERVICES |
| 1366444 | PACIFIC ETHANOL STOCKTON, LLC |
| 1336620 | PERSONNEL STAFFING GROUP, LLC |
| 1318480 | PITMAN FAMILY FARMS |
| 1327159 | PREFERRED PRINTING & PACKAGING, INC. |

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

July 25, 2019

Page 9

| | |
|---------|--|
| 1319717 | PRODUCTION FRAMING, INC. |
| 1393061 | RAUL HERNANDEZ |
| 1380243 | RICHARD GARRISON BEATIE |
| 1256905 | RODRIGUEZ BROTHERS ENGINEERING, INC. |
| 1246762 | ROSENDIN ELECTRIC, / REDWOOD ELECTRIC, JOINT |
| 1315020 | SAN FRANCISCO PUBLIC UTILITIES COMMISSION |
| 1382859 | SEGOOSH INCORPORATED |
| 1347684 | SHANNON PACKAGING, CO. |
| 1369477 | SHAWCOR PIPE PROTECTION, LLC. |
| 1389719 | SIGNATURE LANDSCAPE, INC. |
| 1278189 | SOCAL FRAMING, INC. |
| 1387544 | STEEZ FASHION INC |
| 1310740 | SURFACES USA, INC. |
| 1394705 | SYNERGY LINE, INC. |
| 1359583 | THE NAZERIAN GROUP |
| 1307243 | TL VETERANS CONSTRUCTION, INC. |
| 1368618 | U.S. RESOURCE RECYCLING, INC. |
| 1372871 | UCLA |
| 1274768 | UNITED WESTERN ENTERPRISES |
| 1352756 | UPLAND UNIFIED SCHOOL DISTRICT, UPLAND JR. |
| 1355075 | V10 CONSTRUCTION |
| 1260694 | WEST COAST NETTING, INC. |
| 1270125 | WHOLE FOODS MARKET CALIFORNIA, INC. |
| 1380036 | XTREME MANUFACTURING, LLC |

ACTION: All Administrative Law Judge Settlement Orders approved.

Moved: Judith Freyman, Seconded: Ed Lowry

Vote: 2-0

PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 11:00 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 11:01 a.m.