

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on September 5, 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
Janis Jonas, Management Services Technician
Mario Grimm, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Kerry Lewis, Administrative Law Judge

MINUTES OF AUGUST 22, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the August 22, 2019 Board meeting as amended. Chair Lowry seconded. The Board voted to approve the draft minutes of the August 22, 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: The Board had a discussion regarding AB5.

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: Executive Officer Hapgood reported the scheduling of the October 3, 2019 Board meeting to be held in West Covina, California.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

- DISCUSSION REGARDING SUBSTITUTING AN ADMINISTRATIVE LAW JUDGE WHEN CURRENT JUDGE ON THE CASE LEAVES OR BECOMES UNAVAILABLE TO COMPLETE THE APPEAL.
ACTION: The Board discussed the topic of substituting an Administrative Law Judge in a case when the need presents itself.

- 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: There were no public comments.

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.)

- | | |
|---------|---|
| 1235643 | GRANITE CONSTRUCTION COMPANY, INC. / GRANITE
ACTION: Board discussed. |
| 1236440 | PAPICH CONSTRUCTION COMPANY, INC.
ACTION: Board discussed. |
| 1237932 | SACRAMENTO COUNTY WATER AGENCY, DEPARTMENT OF
ACTION: Board discussed. |
| 1094815 | TUTOR PERINI CORPORATION
ACTION: Board discussed. |
| 1200858 | WESTERN DIGITAL CORPORATION
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.)

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|---------|---|
| 1308968 | AEG MANAGEMENT OAKLAND, LLC
ACTION: Board discussed. |
| 1352895 | MICRODYN-NADIR US, INC
ACTION: Board discussed. |

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

- 1275561 ALLSTATE SECURITY SERVICE, INC.
ACTION: Board discussed.
- 1306151 IMPACT CONSTRUCTION, INC.
ACTION: Board discussed.
- 1305494 TEECCINO CAFFE, INC.
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

- 1340303 A+ PLASTERING COMPANY
ACTION: Board discussed.
- 1380250 BRAD HARDIE
ACTION: Board discussed.
- 1393307 E G S CONTRACTORS, 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.)

- 1195414 ACCO ENGINEERED SYSTEMS
ACTION: Board discussed.
- 1347210 AK CORAL CAY TRUST LLC
- 1195416 ALON KASPI
- 1272378 ANDREW HARRISON BARNES
- 1141604 BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
- 1141604 BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
ACTION: Board discussed.
- 1374985 C & A PETRA, INC.
- 1246527 CEMEX
- 316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
ACTION: Board discussed.
- 1310525 GOLDEN STATE FC, LLC.
- 1206788 DPR CONSTRUCTION INC. ET AL

1348404	EAGLE NASHER, LLC
1310525	GOLDEN STATE FC, LLC.
1221889	HERBERT ALLEN KELLY
1251604	INTERLINE BRANDS, INC.
1173183	L & S FRAMING, INC.
1368418	MCMILLAN TREE SERVICE
1201848	PAPICH CONSTRUCTION COMPANY, INC. ACTION: Board discussed.
1123110	SINCLAIR CONCRETE, INC. ACTION: Board discussed.
1088791	TUTOR PERINI CORPORATION
1341411	UPS
1195264	WAL-MART STORES INC. STORE # 1692 ACTION: Board discussed.

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. UNITED PARCEL SERVICE, BS171154 (315347864)
15. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
16. BLUE DIAMOND GROWERS, (1040471)
17. UNITED PARCEL SERVICE, (1158285)
18. BRAGG COMPANIES, DBA BRAGG CRANE SERVICE,
HG18930741 (1157108)
19. NORM WILSON & SONS INC., 19STCP00663 (1116151)
20. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
21. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
22. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
23. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH,
19STCP02756; REGARDING ALPHA CONSTRUCTION COMPANY,
INC.(1180499), CALIFORNIA STRUCTURAL CONCEPTS, INC.
(1205214) AND KPRS CONSTRUCTION SERVICES, INC. (1192145)
24. PERFORMANCE TEAM FREIGHT SYSTEMS, 19STCP 02154 (1183505)
25. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
26. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)

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. DBA HOME DEPOT #6683,
CIVDS1716416 (1014901)
5. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)
6. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910
(1111325)
7. LION FARMS, LLC, MCV075788 (1070258)
8. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)

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.)

1410348	99 CENTS ONLY STORE, LLC
1369407	ABOVE ALL CO. FOREARM FORKLIFT
1407903	ADELANTO ELEMENTARY SCHOOL DISTRICT
1387126	ALCO GENERAL CONTRACTORS
1360547	ALL KNITS, INC.
1325198	ALL STAR AUTO PARTS, INC.
1375347	ALUMINUM ARCHITECTURE, INC.
1268543	ARBORMETRICS SOLUTIONS, LLC.
1352820	ARCOMEX CORP
1305627	ARREOLA'S FRAMING, LLC.
1393369	AUSTIN BUILDING AND DESIGN, INC.
1264935	BART MANUFACTURING, INC.
1372400	BAYLEY LUMBER & HARDWARE, INC.
1320787	BLACK GOLD PUMP AND SUPPLY, INC.
1383614	BOLD ELECTRIC, INC.
1314736	CA CORRECTIONS - CORCORAN
1348400	CA DEPT. OF CORRECTIONS AND REHABILITATION-CA
1344847	CA. DEPARTMENT OF TRANSPORTATION DIVISION

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
Minutes of the Public Meeting and Closed Session
August 22, 2019
Page 8

1281909 CALIFORNIA TRANSLOAD SERVICES LLC
1277843 CHRISTIAN ROOFING INC.
1367114 CITY OF SAN DIEGO CHOLLAS OPERATIONS YARD
1404819 CONSTRUCTION TESTING SERVICES, INC.
1246901 COUNTY OF SAN DIEGO
1260592 COUNTY OF SAN DIEGO
1278861 COUNTY OF SAN DIEGO
1364140 CREATIVE STONE MFG., INC.
1372498 D. F. CUSTOM CABINETS, INC.
1354510 DAMATO ASSOCIATES INC.
1274080 DARREL CRISWELL
1374775 DRIVEN RACEWAY FAIRFIELD, LLC
1335173 EARLE RAY STANTON
1340940 ENERGY CONCEPTS ENTERPRISES, INC.
1286016 EPIC CERAMIC & STONE
1361345 FELIPE H. LOPEZ
1232402 FOOTHILL PACKING, INC.
1347320 FRAMECOM, INC.
1266878 GARY ENGLISH CONSTRUCTION
1299725 GAYLE MANUFACTURING CO., INC.
1260718 GEORGE REED, INC.
1368265 GEORGE ROBBINS
1355097 GIBSON OVERSEAS
1377724 GOLD COUNTRY CABINETS & MILLWORK, INC.
1261753 GRANITE CONSTRUCTION, INC.
1397299 GTM WHOLESALE LIQUIDATORS INC.
1386999 H & E EQUIPMENT SERVICES, INC.
1382884 HARRISON CONTRACTING, INC.
1382035 HEBREW HOME FOR AGED DISABLED
1353820 HERITAGE FARMS
1322718 HORIZON NUT COMPANY, LLC
1318112 IMAGE TREE SERVICE, INC.
1323380 IMAGE TREE SERVICE, INC.
1406756 JOHNS MANVILLE
1325339 LA COUNTY HEALTH SERVICES
1325564 LA FAVORITA BAKERY - 90033, INC.
1235354 LEGENDS HOSPITALITY, LLC.
1364772 MERCILLINA AJUNWA
1354969 MICHAEL MACHOWSKY RACING STABLE
1340036 MICROVENTION
1336264 MIGUEL MARTIN RAMIREZ
1281931 NEXEM-ALLIED LLC
313510703 NIBBELINK MASONRY CONSTRUCTION CORP
1396515 ODIN CONSTRUCTION SOLUTIONS, INC.
1288352 PACIFIC COAST SUPPLY LLC

1349526	PACIFIC CONSTRUCTION AND HOME IMPROVEMENT
1274628	PACIFIC EH & S SERVICES, INC.
1290241	PACIFIC MDF PRODUCTS INCORPORATED
1184420	PACIFIC RESTORATION GROUP
1345182	PATH, INC.
1372758	PORTOCORK AMERICA
1364889	QUALITY TECH AUTOMOTIVE, INC.
1329214	RED LION HOTEL
1330708	REITER BERRY FARMS, INC.
1313053	REPUBLIC BAG INC
1393464	ROBERTSON'S READY MIX, INC.
1293543	SECURITY VAULT WORKS, INC.
1237906	SIMPLIFIED LABOR STAFFING SOLUTIONS, INC.
1396836	STATES LOGISTICS SERVICES, INC.
1242699	STEVENS CREEK QUARRY, INC.
1366279	SUNRISE PAINTING CO.
1303998	SUPER CENTER CONCEPTS INC
1375026	SUPER STORE INDUSTRIES
1386085	THARALDSON HOSPITALITY DEVELOPMENT, LLC
1336048	THERMAL STRUCTURES, INC.
1224359	TIDWELL EXCAVATION ACQUISITION CO., INC.
1391723	TREESAP FARMS, LLC
1373858	TRIMARK USA LLC
1021659	TRINIDAD RUDY MONTERROSO MONTERROSO
1374502	TRUE FRESH HPP
1160353	UNITED PRODUCTION FRAMING
1270316	WESTCO ROOFING COMPANY, INC.
1165655	WINSHIP STAKE & LATH, INC.
1284522	YOUNG'S MARKET COMPANY, LLC

ACTION: All 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 12:19 p.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 12:20 p.m.