

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS
BOARD**

MINUTES OF THE PUBLIC MEETING & CLOSED SESSION

Held on September 19, 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

MINUTES OF SEPTEMBER 5, 2019 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the September 5, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the September 5, 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: The Board discussed the signing of AB 5 by Governor Newsom.

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 on the new accessibility requirements when posting documents to the website.

STAFF REPORTS:

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

REGULATIONS:

- REGULATIONS:
ACTION: The Board discussed the public comments submitted regarding the changes proposed to the California Code of Regulations, title 8, sections 347, 359.1, 361.3, 372.2, 372.9, and 373.
- 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.)

1290026 CS MARINE CONSTRUCTORS, INC.
ACTION: Board discussed.

1199473 FEDEX GROUND
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.)

1142674 STADCO, INC
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1308968 AEG MANAGEMENT OAKLAND, LLC
ACTION: Order Granting Petition approved.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote: 2-0

1352895 MICRODYN-NADIR US, INC.
ACTION: Order Denying Petition approved.
Moved: Judith Freyman,
Seconded: Ed Lowry.
Vote: 2-0

ORDERS DISMISSING APPEAL:

1284941 OAK TREE FURNITURE INC.
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1342208 GEORGE CASTANO
ACTION: Board discussed.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
September 19, 2019

- 1374116 MIRAMAR SEAFOOD PRODUCTS, INC.
ACTION: Board discussed.
- 1184142 PESCADERIA MR. FISH PO, LLC
ACTION: Board discussed.
- 1274695 PESCADERIA MR. FISH PO, LLC
ACTION: Board discussed.
- 1367265 PRESTIGE PAINTING CORP
ACTION: Board discussed.
- 1367953 RUSTIC BAKERY, 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
1347210 AK CORAL CAY TRUST LLC
ACTION: Remand approved.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0
- 1195416 ALON KASPI
ACTION: Remand approved.
Moved: Judith Freyman, Seconded: Ed Lowry.
Vote: 2-0
- 1272378 ANDREW HARRISON BARNES
1141604 BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
- 1141604 BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
- 1374985 C & A PETRA, INC.
1246527 CEMEX
316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
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 CONSTUCTION COMPANY, INC.
ACTION: Board discussed.
1123110 SINCLAIR CONCRETE, INC.
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., 34-2016-80002345 (14-R3D2-3707)
7. W.A. RASIC COMPANY, INC., 34-2016-80002454, (314863978),
(13-R4D1-1422)
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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
September 19, 2019

11. ATKINSON CONSTRUCTION, LP (317386084)
12. BARNARD IMPREGILO HEALY, JV, CPF 17-515575, (317134021)
13. R N R CONSTRUCTION, INC., 34-2017-80002632, (1092600)
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.)

1222530	ACE WORLD WIDE MOVING, INC.
1395808	ALAN DWAYNE PIERCY, AND INDIVIDUAL
1398485	ALLIED WASTE TRANSPORTATION, INC.
1378763	APELINC LANDSCAPE SERVICES, INC.
1404812	AQUALINE INCORPORATED
1356699	BEN'S ROOFING, INC
1290779	BLAINE ENTERPRISES, INC
1364732	BOHEMIAN CLUB
1393200	BROWARD BUILDERS, INC.
1290972	BUESTAD CONSTRUCTION, INC.
1306824	CA CORRECTIONS PLEASANT VALLEY STATE PRISON
1367865	CA DEPARTMENT OF CORRECTIONS AND REHAB.
1377443	CA ROGERS CONSTRUCTION, CO.
1363369	CALIBER INTERIORS, INC.
1342394	CARDINAL LOGISTICS MANAGEMENT CORPORATION
1384744	CENTRAL VALLEY EGG, LLC
1400027	CERNO LLC
1305479	CG ROXANE, LLC.
1302494	CITISTAFF SOLUTIONS, INC.
1288661	CLAUSEN NURSERY, INC.
1320006	COMMUNITY TREE SERVICE, INC.
1364142	COUSENS CONSTRUCTION, INC.
1310870	DAISO HOLDINGS USA INC.
1326868	DAVIS DEVELOPMENT COMPANY, INC.
1389749	DELLWOOD KITCHEN & FLOOR, INC.
1356908	DIAMOND D CONSTRUCTION, LLC.
1408958	DISTRIBUTION ALTERNATIVES, INC.
1320771	DUCOMMUN AEROSTRUCTURES, INC.
1377735	EFR ENVIRONMENTAL SERVICES INC
1264911	EMMETT'S EXCAVATION, INC.
1387450	EQUITY RESIDENTIAL SERVICES, LLC

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
September 19, 2019

1399563 ERICSSON, INC. / EUS, INC.
1352888 FLOWRITE, INC.
1386072 FN LOGISTICS, INC.
1294532 G P S PAINTING AND WALLCOVERING INC
1380229 GARDA CL WEST, INC.
1373862 GATEWAY PET CEMETERY, INC.
1353653 GEYSERS POWER COMPANY, LLC
1368580 GOLDEN STATE FOODS
1332527 GRANITE CONSTRUCTION COMPANY
1295887 GRANITE ROCK
1347685 HAROLD SMITH & SON, INC.
1328522 HENRY'S HOLDINGS, LLC
1303647 IMPERIAL VALLEY AGGREGATES INC.
1281886 INTEGRITY REBAR PLACERS
1299025 INTREN
1407691 J.D. PACKAGING GROUP, INC.
1271024 JACQUES LACROIX DESIGN
1393205 JENSEN ENTERPRISES
1360869 JOHNNY MIRZAPOUR
1357257 KOMAR DISTRIBUTION SERVICES, INC.
1299594 LEGACY TRANSPORTATION SERVICE, INC.
1382334 LOS ANGELES UNIFIED SCHOOL DISTRICT
1345148 MARTINELLI LANDSCAPE CONSTRUCTION, INC.
1348672 MASS DEVELOPMENT, INC.
1357633 MCMILLEN JACOBS ASSOCIATES
1328831 MERITAGE HOMES OF CALIFORNIA, INC.
1378455 METAL MART RANCHO CORDOVA, INC.,
1378065 MTNA, INC.
1398323 MUSCO OLIVE PRODUCTS, INC.
1366282 NHI A TANG, AN INDIVIDUAL
1370986 NICK'S DOOR CORPORATION
1387834 OHL USA
1350109 OLD GLOBE THEATRE
1351445 ONE WORKPLACE L. FERRARI, LLC.
1345997 ORANGE COUNTY SHERIFF DEPARTMENT
1387002 PAT'S RESTAURANT & CATERING, INC.
1366778 PITMAN FAMILY FARMS
1311918 PREMIER DISPLAYS & EXHIBITS, INC.
1364173 PULP STUDIO, INCORPORATED
1373458 REHRIG PACIFIC COMPANY, INC.
1377498 REYES COCA-COLA BOTTLING, LLC.
1256929 ROBINSON COMPANY CONTRACTOR
1350056 SAN JOAQUIN STEEL CO., INC.
1341797 SCOTT CAMPBELL MCINTYRE
1288637 SEACREST DEVELOPERS, INC.
1363531 SF EXPRESS

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
September 19, 2019

1368614	SIERRA VIEW HOMES
1325341	STEVE'S HARDWOOD
1405314	TELEFUND, INC.
1374032	THE SHERWIN-WILLIAMS MANUFACTURING COMPANY
1371980	THIESSEN HOMES
1276904	TIGHT QUARTERS
1317395	TOLL BROTHERS
1393017	TRILOGY DAIRY, L.P.
1259488	UNITED STAFFING ASSOCIATES, LLC
1399107	UNITED STAFFING ASSOCIATES, LLC
1326820	VELDHUIS NORTH FARMS, INC.
1343181	VULCAN MATERIALS COMPANY
1290987	WESTERN DENTAL SERVICES, INC.
1167003	WRIGHT TREE SERVICE OF THE WEST, INC.

ACTION: All Administrative Law Judge Settlement Orders approved.
Moved: Judith Freyman,
Seconded: Ed Lowry
Voted: 2-0

PERSONNEL:

(Issues regarding staff

ACTION: No report.

The Closed Session was adjourned at 12:00 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, then closed the Open Session. The meeting was adjourned at 12:11 p.m.