

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

**MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**

**Held on October 3, 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

Andia Farzaneh, Attorney

Lee Berlin, Staff Services Manager

Janis Jonas, Management Services Technician

Mario Grimm, Administrative Law Judge

Les Murad, Administrative Law Judge

Sam Lucas, Administrative Law Judge

Tom Song, Attorney, Carothers DiSante & Freudenberger LLP

**MINUTES OF SEPTEMBER 19, 2019 MEETING:**

*(Approve or amend minutes of previous Board meeting)*

ACTION: Member Freyman moved that the Board approve the draft minutes of the September 19, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the September 19, 2019 Board meeting. The vote was 2-0.

**NEW BUSINESS:**

*(The Appeals Board hears and discusses new reports presented by staff.)*

ACTION: Draft 2020 Board Meeting calendar was presented for review.

**OLD BUSINESS:**

*(The Appeals Board hears and/or discusses matters on a follow-up basis.)*

ACTION: 1. Discussion on planning a stakeholders' round table to be held tentatively in the spring of 2020.  
2. Update on creating a summary of DARS.

**LEGISLATION:**

*(Review and discuss current legislation which may affect the Appeals Board)*

ACTION: Discussion about Assembly Bill 105 regarding changes in the definition of serious.

**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 updated the Board on the new requirements for accessibility of documents when posting to the website and the progress the department is making.

**STAFF REPORTS:**

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

1. REGULATIONS:

ACTION: The Department of Finance has signed off on the regulation changes.  
A memo on new suggested regulation changes was presented and approved to be noticed.

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: Tom Song introduced himself to the Board. Mr. Song presented, to the Board, courtesy copies of documents he had previously submitted to the courts.

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.)*

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.)*

1342208 GEORGE CASTANO  
ACTION: Board discussed.

1237932 SACRAMENTO COUNTY WATER AGENCY DEPARTMENT OF  
ACTION: Board discussed.

1372535 ZADNA  
ACTION: Board discussed.

**PETITIONS FOR RECONSIDERATION (Second Review):**

1142674 STADCO, INC.  
ACTION: Denied  
Moved: Judith Freyman.  
Seconded: Ed Lowry  
Vote: 2-0

**ORDERS DISMISSING APPEAL:**

- 1315936 ALAMILLO REBAR INC  
ACTION: Board discussed.
- 1327231 ALFREDO CASAS  
ACTION: Board discussed.
- 1339357 J H BIOTECH, INC.  
ACTION: Board discussed.
- 1363939 JELD-WEN, INC.  
ACTION: Board discussed.
- 1264010 JUST BUILDERS, INC.  
ACTION: Board discussed.
- 1285791 ORIGINAL SIXTEEN TO ONE MINE, INC.  
ACTION: Board discussed.

**ORDER DENYING LEAVE TO FILE LATE APPEAL:**

- 1403404 DAVID BENNETT  
ACTION: Board discussed.
- 1366275 OSMART GENERAL CONSTRUCTION, 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: Issue DAR.  
Moved: Judith Freyman.  
Seconded: Ed Lowry  
Vote: 2-0
- 1308968 AEG MANAGEMENT OAKLAND, LLC.
- 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.

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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  
ACTION: Remanded.  
Moved: Judith Freyman.  
Seconded: Ed Lowry  
Vote: 2-0

1310525 GOLDEN STATE FC, LLC.  
1221889 HERBERT ALLEN KELLY  
1251604 INTERLINE BRANDS, INC.  
1173183 L & S FRAMING, INC.  
1368418 MCMILLAN TREE SERVICE  
ACTION: Remanded.  
Moved: Judith Freyman.  
Seconded: Ed Lowry  
Vote: 2-0

1201848 PAPICH CONSTRUCTION COMPANY, INC.  
1123110 SINCLAIR CONCRETE, INC.  
1088791 TUTOR PERINI CORPORATION  
1341411 UPS  
ACTION: Remanded.  
Moved: Judith Freyman.  
Seconded: Ed Lowry  
Vote: 2-0

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)

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

24. 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)
9. PROCESS COOLING INTERNATIONAL 34-2019-80003220 (1232555)

**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.)*

1329931	AMERICOLD LOGISTICS
1393320	ANTIS ROOFING & WATERPROOFING, LLC
1254801	ARGONAUT CONSTRUCTORS
1388135	ARYZTA, LLC
1399790	B.V. GENERAL, INC.
1335428	BEYER SERVICES, LLC
1377369	BUILD GROUP, INC.
1382590	C & K BUILDERS
1396574	CALIFORNIA BOX COMPANY
1273824	CALIFORNIA WATER SERVICE COMPANY
1351848	CARBON ACTIVATED CORP.
1360849	CARO NUT COMPANY
1387231	CATHOLIC FUNERAL AND CEMETERY SERVICES OF THE
1378478	CHEUSIENG KHO, AND INDIVIDUAL

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1353785 CLIFFORD MOBILE SOLAR PANEL CLEANING, INC.  
1371049 COMPTON AG SERVICES  
1354848 COOK AG SERVICES  
1201751 CTC GROUP INC  
1296282 D.C. ELECTRIC SERVICES  
1380228 DALE CANFIELD CONSTRUCTION, INC.  
1286480 DEVINE INTERMODAL  
1321702 DOWNSTREAM SERVICES, INC.  
1369901 DURAND FAMILY, INC.  
1338345 EASYDISC, INC  
1362666 ENVIROBLIND, LLC  
1352190 ERICK NIELSEN ENTERPRISES, INC.  
1366733 FALK FORESTRY, INC.  
1420984 FLATIRON WEST INC.  
1371984 FOSTER POULTRY FARMS  
1355795 GALASSO'S BAKERY  
1324226 GARDA CL WEST, INC.  
1353780 GARDENERS' GUILD, INC.  
1352237 GILES PAVING  
1407662 GOLDEN DIAMOND RETIREMENT, LLC  
1394255 HACKNEY ELECTRIC, INC.  
1050278 HAMPTON TEDDER ELECTRIC  
1189371 HOUSES 4 US, INC.  
1405724 HUGHES CONSTRUCTION  
1377065 INTERNATIONAL WINDOW CORPORATION  
1401720 J & D WILSON & SONS DAIRY  
1377769 J TAYLOR ROOFING, INC.  
1375066 JADE, INC.  
1342629 JENNIFER RAGSDALE  
1359373 JOSEPH CROWN CONSTRUCTION AND DEVELOPMENT  
1257295 KELLY TEEGARDEN ORGANICS, LLC.  
1233438 KENYON PLASTERING OF VISALIA, INC.  
1369770 KERRY, INC.  
1372146 LANDMARK GRADING & PAVING, INC.  
1219288 LANDSEA HOLDINGS CORPORATION  
1355083 LEON KROUS DRILLING, INC.  
1249804 LOS ANGELES CITY FIRE DEPARTMENT  
1414023 LULU'S EST. INC.  
1366754 MAXCO SUPPLY, INC.  
1284774 MERRITT CONSTRUCTION INC.  
1366929 MGA ENTERTAINMENT, INC.  
1364610 MID VALLEY DISPOSAL  
1392668 MID-VALLEY RECYCLING, LLC  
1393323 MIKE & GAIL BETTENCOURT



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1355028 MKB CONSTRUCTION  
1403316 MT. SHASTA AMBULANCE SERVICE, INC.  
1370682 NEW ALTERNATIVES, INCORPORATED  
1393208 NEWPORT WINDOW MAINTENANCE, INC.  
1317071 NORTHROP GRUMMAN AEROSPACE SYSTEMS  
1381954 ORGANICGIRL, LLC  
1315710 PACIFIC AG RENTALS, LLC.  
1352766 PACIFIC BELL TELEPHONE COMPANY  
1265489 PACIFIC GAS & ELECTRIC COMPANY  
1289371 PETROCHEM MATERIALS INNOVATION, LLC  
1345170 PHIBRO-TECH, INC.  
1364759 PLEASANTON CAR WASH, INC.  
1373824 PORTO'S FOOD PRODUCTS  
1399588 PRIDE CONVEYANCE SYSTEMS, INC  
1249480 PROGRESSIVE POWER GROUP, INC.  
1401755 PROSET CONSTRUCTION, INC.  
1196520 QUALITY CUSTOM DISTRIBUTION SERVICES, INC.  
1387730 QUANEX SCREENS LLC  
1390208 RSVC COMPANY  
1272250 SAFEWAY, INC.  
1366476 SAZZADUL KHAN  
1390429 SHIM'S FOOD LLC  
1134021 SIERRA LATHING COMPANY INC.  
1321323 SIMPLIFIED LABOR STAFFING SOLUTIONS, INC.  
1365543 SOUTHERN CALIFORNIA ICE COMPANY  
1391278 STAFFMARK INVESTMENT LLC  
1360556 STANFORD COLD STORAGE, INC.  
1409163 STATER BROS. MARKETS  
1338127 STUCCO SPECIALIST, INC.  
1308961 SUPER CENTER CONCEPTS  
1266892 SUPER CENTER CONCEPTS INC  
1372878 SUPERIOR SEWING, INC.  
1375684 THE ENKEBOLL CO.  
1298376 THE MANAGEMENT TRUST  
1110746 TRADESMEN INTERNATIONAL LLC  
1375982 TRICORBRAUN, INC.  
1115840 TWE ENTERPRISES  
1365406 UNITED PALLET SERVICES, INC.  
1021445 UNITED PARCEL SERVICE, INC. DBA UPS  
1315237 UNITED SITE SERVICES OF CALIFORNIA, INC.  
1231348 UNIVERSAL CITY STUDIOS, LLC.  
1237254 US MINE CORPORATION  
1303463 WILLIAM LYON HOMES, INC.

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1394601 ZC&R COATINGS FOR OPTICS, INC./ABRISA HOLDING  
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 11:11 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 11:12 a.m.