

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

MINUTES OF THE PUBLIC MEETING & CLOSED SESSION

Held on October 31, 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

MINUTES OF OCTOBER 17, 2019 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Member Freyman moved that the Board approve the draft minutes of the October 17, 2019 Board meeting. Chair Lowry seconded. The Board voted to approve the draft minutes of the October 17, 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: Continued discussion on Stakeholders' Roundtable to be held during the first quarter of 2020.
Update on the accessibility project.
Update discussion regarding adding summaries to cases on the Board Meeting Agenda's Matters Pending List

LEGISLATION:

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

ACTION: Discussion on progress of AB5.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair Lowry announced the appointment of Marvin Kropke as a new Board member. Mr. Kropke's first Board meeting will be the November 12, 2019 meeting.

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 announced the new posting for a Limited Term Attorney for OSHAB Legal Unit.

STAFF REPORTS:

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

1. REGULATIONS:

ACTION: The 15 day notice has been posted regarding the modifications to the changes to the regulations. Public comment closes November 12, 2019.

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.

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.)

1255331 CREATIVE COMMUNICATION TECHNOLOGIES, INC.
ACTION: Board discussed.

1308948 GOLDEN STATE BORING & PIPE JACKING, INC.
ACTION: Board discussed.

1242676 UNITED PARCEL SERVICE, INC.
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.)

1199473 FEDEX GROUND
ACTION: Board discussed.

1299594 LEGACY TRANSPORTATION SERVICE, INC.
ACTION: Board discussed.

1089904 STRUCTURES
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1235643 GRANITE CONSTRUCTION CO., INC/GRANITE INDUSTRIAL, INC.
ACTION: Issue Order taking petition for reconsideration under submission was approved.
Moved: Judith Freyman.
Seconded: Ed Lowry.
Vote: 2-0

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
October 31, 2019

- 1374116 MIRAMAR SEAFOOD PRODUCTS, INC.
ACTION: Denial issued.
Moved: Judith Freyman.
Seconded: Ed Lowry.
Vote: 2-0
- 1236440 PAPICH CONSTRUCTION COMPANY, INC.
ACTION: Issue Order taking petition for reconsideration under
submission was approved.
Moved: Judith Freyman.
Seconded: Ed Lowry.
Vote: 2-0
- 1274695 PESCADERIA MR. FISH PO, LLC
ACTION: Denial issued.
Moved: Judith Freyman.
Seconded: Ed Lowry.
Vote: 2-0
- 1184142 PESCADERIA MR. FISH PO, LLC
ACTION: Denial issued.
Moved: Judith Freyman.
Seconded: Ed Lowry.
Vote: 2-0
- 1367265 PRESTIGE PAINTING CORP.
ACTION: Denial issued.
Moved: Judith Freyman.
Seconded: Ed Lowry.
Vote: 2-0

ORDERS DISMISSING APPEAL:

- 1357982 ARROWHEAD BRASS AND PLUMBING, LLC
ACTION: Board discussed.
- 1372873 BFC APPAREL, INC.
ACTION: Board discussed.
- 1326533 CEDAR FAIR, LP
ACTION: Board discussed.
- 1328494 PEOPLEREADY, INC.
ACTION: Board discussed.

1286463 SAMUEL D. WHITE
ACTION: Board discussed.

1356215 VIKING INSULATION CO., INC.
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1405598 DC CONSTRUCTION ENTERPRISES, INC.
ACTION: Board discussed.

1408910 LA ESPIGA DE ORO
ACTION: Board discussed.

1402052 UNION PACIFIC RAILROAD
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.)

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.
1246527 CEMEX
316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
1310525 GOLDEN STATE FC, LLC
1206788 DPR CONSTRUCTION, INC., ET AL.
1310525 GOLDEN STATE FC, LLC
1221889 HERBERT ALLEN KELLY
1251604 INTERLINE BRANDS, INC.
1173183 L & S FRAMING, INC.
1237932 SACRAMENTO COUNTY WATER AGENCY
1123110 SINCLAIR CONCRETE, INC.
1088791 TUTOR PERINI CORPORATION
1195264 WAL-MART STORES, INC., STORE # 1692
ACTION: Denial issued.
Moved: Judith Freyman.
Seconded: Ed Lowry.
Vote: 2-0

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. 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. PERFORMANCE TEAM FREIGHT SYSTEMS, 19STCP 02154 (1183505)
22. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-8000317 (1116529)
23. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
24. OWENS CORNING ROOFING & ASPHALT, LLC, 19STCP04117
(1063574)
25. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)

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.)

1350076	7 STAR LOGISTICS INC.
1376619	A & A NETTO FARMS, INC.
1305366	A-RISING BUILDERS, INC.
1370390	A-Z CONSTRUCTION ENTERPRISES, INC.
1358007	ABLE SHEET METAL, INC.
1329247	AHRENS MECHANICAL
1335910	AIRTECH INTERNATIONAL, INC.
1338704	ALBERTO GARCIA CONSTRUCTION SERVICES, INC.
1322614	AMERICA'S BEST, INC.
1303470	ANDERSON/LA
1367983	ARP CONTRACTOR CORP
1366595	BARONHR WEST, INC.
1396267	BIOSENSE WEBSTER, INC.
1346630	BOARDWALK CONSTRUCTION INC.
1393451	BRIGHTVIEW GOLF MAINTENANCE, INC.
1341455	BROTHERS BEST PRODUCE
1201162	CALI-CO, INC.
1383214	CALIFORNIA SIERRA EXPRESS, INC.
1350207	CALIFORNIA TRUSFRAME, LLC
1373666	CAR SOUND EXHAUST SYSTEM
1376381	CEDARLANE NATURAL FOODS, INC.
1401338	CHANDI INVESTMENTS, INC.
1422373	CHER-AE HEIGHTS INDIAN COMMUNITY
1388698	CITY OF FRESNO, WASTEWATER DIVISION
1411972	CITY OF RIVERSIDE
1395710	COMMERCE TEMPORARY STAFFING SERVICES, LLC
1399437	COMMERCIAL PALLET SERVICE
1214541	CONTROL AIR CONDITIONING SERVICE CORPORATION
1398367	CORONA FUELING & ELECTRIC, INC.
1356887	COUNTRY BUILDERS CONSTRUCTION, INC.
1342656	CROP PRODUCTION SERVICES, INC.
1323876	D A WHITACRE CONSTRUCTION, INC.
1107993	DAVEY TREE SURGERY COMPANY
1332813	DBI BEVERAGE - SACRAMENTO

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
October 31, 2019

1419898 DEL REY AVOCADO COMPANY
1215242 DGC OPERATIONS, LLC
1392905 DONNY CHU CONSTRUCTION, INC.
1370265 DUARTE'S TOWING
1391262 EARLIMART PUBLIC UTILITY DISTRICT
1400438 EL MAHROOSA, INC
1367510 EL SOL ENTERPRISES, INC.
1409864 ELKHORN DAIRY, LLC
1401620 ELM PARK, INC.
1115778 EPI BRENTWOOD, DBA, ELITE PLUMBING, INC.
1408161 ESSENTIUM, INC.
1279275 EXCELSIOR CONSTRUCTION
1373855 FARM LABOR SERVICE OF CENTRAL CAL., INC.
1228471 FLAMINGO CONSTRUCTION, INC.
1390518 FLEETWOOD ALUMINUM PRODUCTS, INC.
1329101 FONTAINE WEATHERPROOFING, INC.
1387236 FOSTER POULTRY FARMS
1304884 FROMER, INC.
1335004 GEORGE REED CONSTRUCTION, INC.
1379730 GONZALEZ, INC.
1418407 GREENHORN RANCH, LLC
1421719 GRID ALTERNATIVES
1361190 HANWHA L&C USA, LLC
1293915 HENKELS & MCCOY, INC.
1328522 HENRY'S HOLDINGS, LLC
1383295 HOME ORGANIZERS
1376772 INNERLINE ENGINEERING, INC.
1368668 JADE, INC.
1348415 JOSEPH CUMISKEY CONSTRUCTION CORPORATION
1400290 LA JOLLA PACIFIC LTD
1324983 LAS LOMITAS ELEMENTARY SCHOOL DISTRICT
1279650 LENDLEASE (US) CONSTRUCTION, INC.
1372786 LINEAGE LOGISTICS, LLC
1387316 LUCKY CHARM RK INVESTMENTS, LLC
1362406 LYNEER STAFFING SOLUTIONS, LLC
1396290 MAXPOL PRECISION MACHINING, INC.
1369231 MODERN ONE PLASTERING
1337476 MP CORE SELBY RANCH, LLC
1367500 NMN CONSTRUCTION, INC.
1383233 NORTHEND EQUIPMENT, INC.
1409945 NSI SERVICES, INC.
1395513 OMEGA PRODUCTS INTERNATIONAL
1328052 PMC CONTRACTORS, INC.
1332001 PRECISION SPORTS
1318367 PRIMECO
1263984 PRO WALL LATHE PLASTER, INC.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
October 31, 2019

1332440 REALTY CENTER MANAGEMENT, INC.
1400804 RICHARD AND SONS, LLC
1399830 ROYALE HEALTH CARE CENTER, INC.
1310097 RUIZ FOODS
1385357 S.J. AMOROSO CONSTRUCTION CO., INC.
1345435 SAN FERNANDO TREE SERVICE, INC.
1378485 SAVY CHAN LY, AN INDIVIDUAL
1320046 SCHAFFNER DAIRY, INC.
1280496 SENTINEL REAL ESTATE CORPORATION
1359552 SETZER FOREST PRODUCTS, INC.
1398465 SILVERADO SENIOR LIVING
1366532 SRAN AG II, INC.
1333188 SUPERIOR CATTLE FEEDERS, LLC
1305666 SUPERIOR PLASTERING OF CALIFORNIA
1405870 SWINERTON INCORPORATED
1267500 TAYMAN INDUSTRIES, INC.
1403257 TEMSA NORTH AMERICA, INC.
1375308 TORRANCE REFINING COMPANY, LLC
1347191 TORTILLERIA HERMANOS REYES, INC.
1356666 TRI POINTE HOMES, INC.
1361862 TUTOR PERINI CORPORATION
1318085 UNIFIED FIELD SERVICES CORPORATION
1367136 UNIVERSAL LUMPERS OF CALIFORNIA, INC.
1174776 UPS
1376976 USA VAPE LAB
1386052 W L BUTLER CONSTRUCTION, INC.
1409620 WELLINGTON FOODS, INC.
1368091 WEST COAST PAINTING & DECORATING, INC.
1380878 WORKMAN HOLDINGS, INC.
1384911 YD WINDOW, 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 11:38 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 11:39 a.m.