

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

Held on November 12, 2019

Sacramento, California

West Covina, California

PRESENT:

Ed Lowry, Chair
Judith Freyman, Member
Marvin Kropke, 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 OCTOBER 31, 2019 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes from the October 31, 2019 meeting.
Moved: Judith Freyman
Seconded: Ed Lowry
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 preparations for hosting and holding a Stakeholders Roundtable. The date and location have not been determined. The plan is to schedule the Roundtable during the first quarter or early in the second quarter of 2020.

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 welcomed Marvin Kropke as the newest member to the Appeals Board.

Chair Lowry reported on attending the Advisory Committee Meeting. He also reported on attending supervisor training.

BOARD MEMBERS REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: Member Judi Freyman announced she will not be available for the June 25, 2020 scheduled Board meeting.

Member Freyman shared an article from the Future of Work Commission.

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:

ACTION: Aaron Jackson shared explanations regarding the new regulations and is preparing the final statement of reasons.

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.)

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| 1200176 | AEROTEK, INC.
ACTION: Taken under reconsideration on Board's own motion.
Move: Marvin Kropke.
Seconded: Judi Freyman.
Vote: 3-0 |
| 1218807 | PARK WEST RESCOM, INC
ACTION: Board discussed. |
| 1321307 | PAUL GRAHAM DRILLING & SERVICE CO
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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| 1351916 | BRAGG INVESTMENT COMPANY, INC.
ACTION: Board discussed. |
| 1290766 | MILLENNIUM REINFORCING, INC.
ACTION: Board discussed. |

PETITIONS FOR RECONSIDERATION (Second Review):

1199473 FEDEX GROUND
ACTION: Granted
Moved: Marvin Kropke.
Seconded: Judi Freyman.
Vote: 3-0

1089904 STRUCTURES
ACTION: Denied
Moved: Marvin Kropke.
Seconded: Judi Freyman.
Vote: 3-0

ORDERS DISMISSING APPEAL:

1386606 JYAP CORP.
ACTION: Board discussed.

1308268 RENO CONTRACTING INC.
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1285287 BOBBY'S PLACE, INC.
ACTION: Board discussed.

1344695 PETERSENDEAN, INC.
ACTION: Board discussed.

1407429 SAN MATEO COUNTY EXPOSITION & FAIR ASSOCIATION
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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 12, 2019

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.

1235643 GRANITE CONSTRUCTION CO., INC/GRANITE INDUSTRIAL

1251604 INTERLINE BRANDS, INC.

1173183 L & S FRAMING, INC.

1236440 PAPICH CONSTRUCTION COMPANY, INC.

1237932 SACRAMENTO COUNTY WATER AGENCY

1123110 SINCLAIR CONCRETE, INC.

1088791 TUTOR PERINI CORPORATION

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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 12, 2019

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, 34-2019-80003174 (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.)

1410115	ALL CURRENT ELECTRICAL SALES, INC.
1333131	ARTZAI, LLC.
1423414	AUTO BUYLINE SYSTEMS, INC.
1361322	BAKER COLD STORAGE
1217015	BARON HR
1218246	BIGGE CRANE AND RIGGING CO.
1364587	BODEGA LATINA CORPORATION, A DELAWARE
1352870	BRAGG INVESTMENT COMPANY INC
1386618	BRIAN NOPPERT
1288128	BRITZ FARMING CORP
1380072	C&M MOTORS, INC.
1370041	C.B.F., INC.
1318792	COLCRIS PRODUCTIONS
1380564	CORD INDUSTRIES
1385436	D A C SERVICE INC.
1105366	DESIGN GROUP FACILITY SOLUTIONS
1374165	DOCTORS MEDICAL CENTER OF MODESTO, INC. DBA
1387452	DYNACAST, LLC
1415723	DYNALLOY, INC.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 12, 2019

1265468 ECOLOGY RECYCLING SERVICES, LLC
1385580 ELEMENTAL STAFFING CORPORATION
1329741 ENABLE ENERGY, INC.
1281558 ENSIGN UNITED STATES DRILLING
1370761 ERNIE & SONS SCAFFOLDING
1374768 FAST TRACK STEEL, INC.
1402716 FIRE ACE, INC.
1291727 FOLSOM LAKE COLLEGE
1235307 FONTANA PAPER MILLS
1381061 G BROTHERS CONSTRUCTION, INC.
1330943 GDT FRAMING
1421237 GEORGE DELALLO COMPANY
1348397 GEORGE SALINAS TREE PRESERVATION
1355993 GIBSON WINE CO
1379090 GREAT EASTERN ENTERTAINMENT
1389732 GREENS CONSTRUCTION
1385934 HILGENFELD MORTUARY
1347837 ICEBERG HEATING & AIR CONDITIONING, INC.
1410303 J&A COMPANIES INC
1391549 JACK IN THE BOX, INC. (#3280)
1423410 JIM WALKER DAIRY
1395889 KAR CONSTRUCTION INC.
1380279 LUMILEDS LLC
1385439 MACARTHUR CO.
1397490 MANLEY'S BOILER LLC
1394429 MCGUIRE CONTRACTING, INC.
1414041 MESA COLD STORAGE, LTD
1383152 MID VALLEY DAIRY
1417879 MYERS FUNERAL SERVICE
1244632 O'ROURKE, INC.
1319476 ON LINE GRAPHICS & FINISHING, INC.
1360588 ORG SAN DIEGO
1341413 P P CONSTRUCTION & REMODELING, INC.
1356927 PACIFIC BELL TELEPHONE COMPANY
1428781 PACIFIC COAST PRODUCERS
1394252 PAULS TARPAULINS & MERCHANDISE, INC.
1300463 PEKING NOODLE CO. INC.
1372014 PHILLIPS 66 COMPANY
1383157 PORVENE DOORS, INC.
1238831 PRIME TECH CABINETS, INC.
1323702 QUEENS LAND BUILDER, INC.
1408274 QUICKWIRE ELECTRIC, INC.
1299009 RICHARD LOPEZ CONSTRUCTION, INC.
1339665 SAN MIGUEL PRODUCE, INC.
1394836 SAN-MAR CONSTRUCTION CO INC.
1400288 SIERRA RECYCLING & DEMOLITION, INC.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 12, 2019

1399204	SOUTHWESTERN WIRE, INC.
1350163	STARCO ENTERPRISES, INC.
1391284	STONECO CONSTRUCTION, INC.
1279158	STONEEDGE FURNITURE LLC
1403959	SUN PACIFIC FARMING COOPERATIVE, INC.
1334696	SUNRISE SENIOR LIVING, LLC. / SUNRISE SENIOR LIVING
1233839	SW & JW INDUSTRIES, INC
1352441	TESLA ENERGY OPERATIONS, INC.
1361560	TOM RINGER GOLF, INC.
1365759	TREND TECHNOLOGIES LLC
1276037	TRI SPAN, INC.
1352891	UNITED BUILDING COMPANY, INC.
1384351	VERA COURT
1283702	W & Z DEVELOPMENT CORPORATION
1365760	WRIGHT RESIDENTIAL CONSTRUCTION, LLC
1281932	XPO LOGISTICS
1380341	ZONNEVELD DAIRIES, INC.

ACTION: All Administrative Law Judge Settlement Orders approved.
Moved: Marvin Kropke.
Seconded: Judith Freyman.
Voted: 3-0

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 11:55 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 11:56 a.m.