

**State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS
BOARD**

CLOSED SESSION AGENDA

Government Code § 11126 (a), (c)(3), (e) and (f)

for

Thursday, March 5, 2020

9:30 a.m.

Sacramento, California

&

West Covina, California

TO: Members of the California Occupational Safety & Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: February 21, 2020

RE: Closed Session of the Board to be held on March 5, 2020

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. 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.

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.)

1205077

HANOVER R S CONSTRUCTION LLC

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.)

1300039 EMERICARE INC
1325655 AMERICAN LINEHAUL CORPORATION

PETITIONS FOR RECONSIDERATION (Second Review):

1226666 WASHINGTON ORNAMENTAL IRON WORKS, INC., DBA
WASHINGTON IRON WORKS

ORDERS DISMISSING APPEAL:

1392076 BYD COACH & BUS, LLC
1268863 FLOR OAXAQUENA, INC.
1369964 LEPRINO FOODS COMPANY
1061365 SPHERE ALLIANCE INC DBA ADVANCED AIRCRAFT SEAL

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1366828 ANDRES DOROTEO
1426864 PEDRO MIRELES
1432541 REED VAN HOUTEN
1395516 WEST VALLEY CONCRETE, INC.

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.)

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The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

- | | |
|-----------|--|
| 1200176 | AEROTEK, INC. dba AEROTEK
Whether Employer established and implemented its IIPP as required. |
| 1374636 | AMERI-KLEEN
Whether Employer showed good cause for late appeal. |
| 1272378 | ANDREW HARRISON BARNES
Whether Mr. Barnes was/is an employer. |
| 1141604 | BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
Whether adult film performers are employees or independent contractors. |
| 1141604 | BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
Whether adult film performers are employees or independent contractors. |
| 1246527 | CEMEX
Whether the settlement in this matter was procured by fraud. |
| 316446855 | CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
Whether adult film performers are employees or independent contractors. |
| 1206788 | DPR CONSTRUCTION, INC. ET AL
Whether the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation. |
| 1199473 | FEDEX GROUND
Whether Employer's supervision of the workplace was reasonable. |

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- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.
Whether the cited Employer committed the alleged violations and whether the ALJ erred in evidentiary rulings.
- 1310525 GOLDEN STATE FC, LLC
Whether Employer provided appropriate foot protection under § 3385.
- 1235643 GRANITE CONSTRUCTION CO., INC./GRANITE INDUSTRIAL
Whether the Division proved exposure to Valley Fever.
- 1251604 INTERLINE BRANDS, INC.
Whether Employer had provided adequate foot protection by means of administrative and engineering controls
- 1213886 JACE VARGHESE
Whether Employer has satisfied requirements of petition for reconsideration.
- 1173183 L & S FRAMING, INC.
Whether the stairway involved was a “stairwell.” Whether the motion to amend citation was timely and for good cause.
- 1386789 MARIANO MORENO & ARCELIA TOSTADO, INDIVIDUALLY
Whether Employer showed good cause for late appeal.
- 1304615 MASTER TREE SERVICE, INC.
Whether the appeal was late and if so, was there good cause for the late appeal? Whether the employer’s motion to include additional citations be treated as a motion to amend the appeal?
- 1290766 MILLENIUM REINFORCING
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1236440 PAPICH CONSTRUCTION COMPANY, INC.
Whether the Division proved exposure to Valley Fever.
- 1199064 SA RECYCLING
Whether employer established that, the alleged violation was abated at the time of inspection.

- 1237932 SACRAMENTO COUNTY WATER AGENCY
Whether the citation was correctly classified as serious.
Whether the ALJ correctly denied Employer's Newbery defense.
- 1088791 TUTOR PERINI CORPORATION
Whether Employer violated safety orders pertaining to keeping equipment and spoils a safe distance from an excavation.
- 1402052 UNION PACIFIC RAILROAD
Whether there was good cause for the late appeal.
- 1242676 UNITED PARCEL SERVICE, INC.
Whether the cited Employer had an effective IIPP and trained its employees as required.

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)

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6. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
7. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
8. KEY ENERGY SERVICE, LLC 12004280
9. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
10. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
11. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
12. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
13. BLUE DIAMOND GROWERS, (1040471)
14. UNITED PARCEL SERVICE, (1158285)
15. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
16. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
17. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623
(1200875)
18. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174
(1116529)
19. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
20. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
21. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
22. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
23. STADCO, INC., 192TCP04944(1142674)
24. PRESTIGE PAINTING, 37-2019-00066143 (1367265)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
2. VENTURA COASTAL, F077267 (317808970)

3. LION FARMS, LLC, MCV075788 (1070258)

4. 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.)

1415259	A-1 CAR WASH AND DETAIL, INC.
1435244	ABLE JANITORIAL SERVICES
1435989	ABM BUILDING AND INDUSTRY
1395043	ABM INDUSTRY GROUPS, LLC
1457477	AEROTEK, INC.
1401326	AGRO LABOR SERVICES, INC
1351586	ALBERTSON'S, LLC.
1430990	ALINE M GONZALEZ AND RAMON HERNANDEZ
1426315	ALTERNATIVE ENERGY SYSTEMS, INC.
1369920	ALTMAN SPECIALTY PLANTS, INC.
1387746	APEX BUILDING & RESTORATION, INC.
1373151	ARCADIA RECLAMATION, INC.
1416400	ARCON CONSTRUCTION, INC.
1394588	ARS AMERICAN RESIDENTIAL SERVICES OF CALIFORNIA,
1415422	BAKER PETROLITE LLC
1387571	BIAGI BROS. INC.
1392838	BOWMAN PLATING
1436532	CALAVO GROWERS, INC.
1403395	CALIFORNIA STEELS INDUSTRIES, INC.
1249164	CHRISTOPHER ALAN CRARY
1415460	CITADEL PREMIUM DESIGN, INC.
1373747	CITY & COUNTY OF SAN FRANCISCO - DEPARTMENT OF
1381012	COSTCO WHOLESALE CORPORATION

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1424540 COUNTRY VILLA PLAZA
1380600 COVENANT CARE ENCINITAS, LLC
1431579 D. W. MACK CO., INC
1396294 DAN SCHWENZFEIER
1405296 DEBRA GROVE
1354526 DIAMOND PEO, LLC.
1400999 FASHION NOVA
1444907 FOOTHILL CARE CENTER, INC.
1368593 FROMER, INC.
1417205 GLACIER COLD STORAGE, INC.
1439662 GOKSAN INC.
1446176 HAE SEONG, INC. DBA SGC JAPANESE RESTAURANT
1355641 HALL WINES, LLC
1234424 HARDY AND HARPER, INC.
1374997 HARRIS CONSTRUCTION SERVICES LLC
1408936 HAYDON CONSTRUCTION, INC.
1404712 HORIZON PERSONNEL SERVICES INC.
1396930 HR HERNANDEZ CONSTRUCTION, INC.
1414355 HYBRID 911
1344005 IRVINE RANCH WATER DISTRICT
1399395 J-SQUARED GENERAL CONTRACTORS
1438627 J.L. DIBENEDETTO, INC.
1425071 JDMC MEDINA CONSTRUCTION, INC
1411948 JEL CONSTRUCTION, INC.
1399222 JORGE BENUTO
1353152 KARIBA SHIPPING, LLC.
1256612 KEN G RAYBURN AND LANA M RAYBURN, A MARRIED
1254423 KEY ENERGY SERVICES
1407430 KEY MECHANICAL CO.
1407876 KHAI NGUYEN AN INDIVIDUAL
1403044 KLING FAMILY CONSTRUCTION

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1279313	LESLIE HEAVY HAUL, LLC
1309838	LIGHTHOUSE FRAMING INC
1429443	MAZ PROPERTIES, INC.
1266331	MCDONALD'S
1388701	MCGUIRE TEAM, INC.
1406765	MENNONITE BRETHERN HOMES, INC.
1348103	MID VALLEY LABOR SERVICES, INC.
1370020	MID VALLEY LABOR SERVICES, INC.
1366275	OSMART GENERAL CONSTRUCTION, INC.
1412711	OSTERKAMP TRANS. GROUP DEDICATED FLEET
1392383	PACIFIC BAY MASONRY, INC.
1411011	PACIFIC SOUTHWEST CONTAINER
1334321	PAINTING & DECOR INC.
1310200	PAT MCCARTHY CONSTRUCTION INC.
1393374	PERSONNEL STAFFING GROUP, LLC
1385496	PHILLIPS 66
1364782	PHILLIPS 66 COMPANY
1398484	PHILLIPS 66 COMPANY
1447083	PLUMAS PAINTING
1431691	PRIMULA MOZZARELLA, LLC-BAGNOLI ORIG. ORGANIC
1375714	PRL GLASS SYSTEMS, INC.
1326588	PRO FRAME BUILDERS, INC.
1412977	PROVIDING EXTERMINATING SOLUTIONS TODAY, INC.
1424583	QUAIL H. FARMS LLC
1416782	RALPH'S GROCERY CO.
1403711	RMG ENGINEERING, INC.
1292753	ROOF KING ROOFING INC.
1388510	SAHARA SCAFFOLD, INC.
1228484	SCHUFF STEEL COMPANY
1425688	SCOTT LEE RUDGE CONSTRUCTION, INC.
1401643	SD BISHOP RANCH LLC

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1363045 SF MARKETS, LLC
1362066 SGD ENTERPRISES
1263026 SGL TECHNIC, INC.
1281425 SIERRA DESIGN & MANUFACTURING, LLC.
1422381 SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT, INC.
1435180 SODEXO AMERICA LLC
1245059 SOIL ENGINEERING CONSTRUCTION, INC.
1449044 SOON CHEOL HONG
1269603 SOUTH SHORE BUILDERS, INC.
1402988 SPANDAN PATEL
1442978 STATER BROS. MARKETS
1439922 STERNS PRODUCT DEVELOPMENT CORP.
1398676 STEVE WILLS TRUCKING AND LOGGING, LLC
1438586 SVC MANUFACTURING, INC.
1368290 SWANILLION, INC
1384051 T.B. PENICK & SONS, INC.
1420962 TAWA SERVICES, INC.
1192166 THOMAS BALSTROM
1360317 TOM CURRY ROOFING & WATERPROOFING, INC.
1413146 TRAMMELL CONSTRUCTION, INC.
1338329 TRIPLE J DIAMOND AG LABOR, INC.
1149878 UNITED PARCEL SERVICE
1397968 VICTORY VILLA LP
1379521 VOA INC.
1361591 WEBER DISTRIBUTION WAREHOUSES, INC.
1400805 WESTERN CORRUGATED DESIGN
1430600 WOODSPUR FARMING, LLC
1371745 YOUNGS MARKET COMPANY EXPRESS
1290313 ZCL XERXES72

PERSONNEL:

(Issues regarding staff.)

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