

**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 19, 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: March 6, 2020

RE: Closed Session of the Board to be held on March 19, 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.)

1312486 BLACKWOOL, INC.

1133550 HANSFORD INDUSTRIES, INC. DBA VIKING STEEL

1231720 RIVERSIDE CITY FIRE DEPARTMENT

1320327 SOUTHERN CALIFORNIA EDISON

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.)

1395729 ANTONIO CORONA dba CENTRAL VALLEY UPHOLSTERY
1356215 VIKING INSULATION CO., INC.

PETITIONS FOR RECONSIDERATION (Second Review):

1325655 AMERICAN LINEHAUL CORPORATION
1300039 EMERICARE, INC.

ORDERS DISMISSING APPEAL:

NONE

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1398487 SMITH & SONS DISASTER KLEENUP, INC.
1404796 XING CONSTRUCTION, 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.)

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.

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- 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.
- 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

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- 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.

1226666 WASHINGTON ORNAMENTAL IRON WORKS, INC., dba
WASHINGTON IRON WORKS
Whether the Administrative Law Judge was correct in
holding Employer had violated the safety orders as
alleged in Citation 1, Item 1, and Citation 2.

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. 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.)

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1436165 1-888-4-ABATEMENT, INC.
1320314 AEROTEK
1346622 ALL AMERICAN LABOR SERVICE, INC.
1342945 ALTMAN SPECIALTY PLANTS, INC.
1386096 ANA LUISA CORONO LUNARES
1424770 ARNOP AMARAPHORNKUL
1436765 ART CARE INTERNATIONAL
1392056 ASSOCIATED CONSTRUCTION ENGINEERING, INC.
1385652 ATRIA SENIOR LIVING, INC.
1368293 AWAKENING VITALITY LLC
1320773 AZUL WORKS, INC.
1406584 BASORE PAINTING
1407168 BEO-MAG, INC.
1348195 BIG RED MACHINE SHOP, INC.
1377400 BLH CONSTRUCTION COMPANY
1398420 BODEGA LATINA CORPORATION
1285742 BUILDERS FIRSTSOURCE, INC.
1425659 C HAMMOND CONSTRUCTION
1337612 CAL SUPREMA CHEESE CO.
1308645 CAST-RITE CORP
1438685 CASTLE PLASTERING, INC.
1355656 CERTIFIED TIRES & SERVICE CENTERS, INC.
1426680 CHICO PAINTING, INC.
1435291 CJB COMMUNICATIONS INC.
1438930 COASTAL INNOVATIVE PRODUCTS, INC.
1189314 CONRE INC.
1366612 CONTI SOLAR
1416131 CONTROL AIR ENTERPRISES LLC
1309466 COOLING DYNAMICS HVAC, INC
1423649 COSTCO WHOLESALE CORPORATION
1419493 CRAIN WALNUT SHELLING, INC.

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1394811 DALE CANFIELD CONSTRUCTION, INC.
1417285 DOLLAR GENERAL STORE #14306
1385257 EAST LAWN, INC.
1391086 EDF RENEWABLES
1441771 EDGEBANDING SERVICES, INC.
1431967 EMPLOYBRIDGE HOLDING COMPANY
1405731 EVERLASTING ENTERPRISES, INC.
1405281 FEDEX GROUND PACKAGE SYSTEM, INC.
1439909 FITTANTE & SON
1409139 FJ KNIGHT CONSTRUCTION, INC.
1452205 FREEDOM FOREVER LLC
1409177 FULL STEAM STAFFING
1337951 G J TE VELDE RANCH
1405705 GETTLER RYAN INC.
1403934 GHC OF AUBURN LLC / LIFE GENERATIONS HEALTHCARE
1424448 GOURMET'S FRESH PASTA
1418795 GRASSROOTS CAMPAIGNS, INC.
1359519 HALL MANAGEMENT, INC.
1396556 HAYKINGDOM, INC.
1382784 HIBACHI GRILL COUNTRY CLUB, INC.
1368974 HORIZONS CONSTRUCTION COMPANY INTERNATIONAL,
1338287 JENSEN MEAT COMPANY, INC.
1374191 JMB CONSTRUCTION, INC.
1451538 JOHN W LAWS CONSTRUCTION
1395179 K&S AIR CONDITIONING
1421265 KAISER PERMANENTE / KAISER FOUNDATION HOSPITALS
1279149 KIP INCORPORATED
1394867 L.P. MCNEAR BRICK CO., INC.
1437722 LA BOTTLEWORKS, INC.
1442050 LE PAFE, INC.
1385989 LYNWOOD UNIFIED SCHOOL DISTRICT

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1391439 M BAKER MANAGEMENT
1411758 MAMA COZZAS ITALIAN INN, INC.
1418305 MARSHALL BROTHERS ENTERPRISES, INC.
1373184 MARTIN & MICHAEL CONSTRUCTION, INC.
1279262 MCGUIRE AND HESTER
1418654 MDS ENTERPRISES, INC.
1267050 MEYERS CONSTRUCTORS INC.
1393453 MICHAEL KORS (USA), INC.
1431265 MID-STATE SOLID WASTE AND RECYCLING SERVICES,
1308644 MIDWAY CONSTRUCTION
1419396 MORAN CANVAS PRODUCTS, INC.
1394604 MOTIV DESIGN GROUP, INC.
1361316 NEAL PORTLOCK CONSTRUCTION, INC.
1422656 NEW IMAGE LANDSCAPE COMPANY
1426678 NORCAL CB - FIRST ST, INC.
1280716 OLDCASTLE PRECAST, INC.
1252283 OMNIMAX GROUP, INC.
1350669 PACIFIC AG & VINEYARD, INC.
1408596 PACIFIC BORING, INCORPORATED
1398000 PACIFIC FARM MANAGEMENT, INC.
1360329 PARTNERS PERSONNEL MANAGEMENT SERVICES, LLC.
1270626 PEKING NOODLE CO., INC.
1426748 PHOENIX DESIGN SYSTEMS, INC.
1399179 PREMIER DISPLAYS & EXHIBITS, INC.
1425687 PREMIER FOOD CONCEPTS, LLC
1264908 PRO STRUCTURAL, INC.
1369973 RAMCAST ORNAMENTAL SUPPLY
1426014 RED LINE INSTALLATIONS, INC.
1391712 RED TOP JERSEYS DAIRY
1299097 RESICOM, INC.
1453361 RESSAC

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1422642 ROSS DRESS FOR LESS, INC.
1433082 SALAZAR DRYWALL, INC.
1369171 SAN FRANCISCO FOODS, LLC
1434051 SCHMALL'S HATCHERY AND RANCH
1326939 SEARLES VALLEY MINERALS, INC.
1378823 SECA EQUIPMENT REMOVAL & DISMANTLING, INC.
1225907 SIBONEY CONTRACTING CO
1351439 SPECIALIZED MILLING
1434052 STAGNARO BROS. SEAFOOD, INC.
1349107 STATEWIDE ROOFING, INC.
1281912 SUN VALLEY RAISINS, INC.
1360913 SUPREME LANDSCAPE & TREE EXPERTS INC.
1265180 T W R ENTERPRISES, INC.
1425868 TABLE DE FRANCE
1268303 TESLA, INC.
1296310 THE HOME DEPOT USA INC SDC #5645
1363530 TIM LAWLOR CONSTRUCTION
1418041 TIMBERLINE ENGINEERING
1377904 TIMBERWORKS BUILDING CONTRACTORS, INC.
1450792 TIMMONS WOOD PRODUCTS, INC.
1374177 TRINITY FRAMING & CONSTRUCTION, INC.
1368595 ULTRA WELDING
1436948 VERO'S TREE SERVICE, INC.
1352131 VIEIRA AGRICULTURAL ENTERPRISES, LLC.
1411401 VILLA PARK ORCHARDS ASSOCIATION
1297309 WALT DISNEY PARKS & RESORTS U. S. INC.
1351598 WATER ASSOCIATES LLC
1381991 WAYNE J. SAND & GRAVEL, INC.
1375724 WESLAR, INC.
1282781 WILLIAM R ANDERSON

PERSONNEL:

(Issues regarding staff.)

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