

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

**CLOSED SESSION AGENDA**

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

**for**

**Thursday, April 16, 2020**

**9:30 a.m.**

**Teleconference**

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

**FROM: J. Jeffrey Mojcher, Chief Counsel**

**DATE: April 3, 2020**

**RE: Closed Session of the Board to be held on April 16, 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.)*

1241779      DAVIS DEVELOPMENT COMPANY, INC.

1299712      KING FRESH PRODUCE LLC

1101230      M T M BUILDERS, INC.

**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.)*

1133550	HANSFORD INDUSTRIES, INC. DBA VIKING STEEL
1231720	RIVERSIDE CITY FIRE DEPARTMENT
1280908	SIBONEY CONTRACTING CO
1320327	SOUTHERN CALIFORNIA EDISON
1061365	SPHERE ALLIANCE INC DBA ADVANCED AIRCRAFT SEAL

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

1205077	HANOVER R S CONSTRUCTION LLC
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**ORDERS DISMISSING APPEAL:**

1359678	CONSOLIDATED STAFFING SOLUTIONS, INC.
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**ORDERS DENYING LEAVE TO FILE LATE APPEAL:**

1446191	UNMUEANG KONGNAPA
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**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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California Occupational Safety & Health Appeals Board  
Closed Session Agenda  
Posted April 3, 2020

- 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.
- 1300039      EMERICARE, INC. dba BROOKDALE NORTHRIDGE  
Whether the employer's alternate means of guarding satisfied the requirements of the applicable safety order.
- 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.

California Occupational Safety & Health Appeals Board  
Closed Session Agenda  
Posted April 3, 2020

- 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.
- 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.
- 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. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,  
34-2015-80002206 (12-R3D1-0781)
3. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221  
(13-R4D1-1759)
4. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
5. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
6. KEY ENERGY SERVICE, LLC 12004280
7. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,  
34-2017-80002562, (1144056)
8. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
9. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
10. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
11. BLUE DIAMOND GROWERS, (1040471)
12. UNITED PARCEL SERVICE, (1158285)
13. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
14. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
15. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623  
(1200875)

California Occupational Safety & Health Appeals Board  
Closed Session Agenda  
Posted April 3, 2020

16. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174  
(1116529)
17. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191  
(1059365)
18. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
19. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
20. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
21. STADCO, INC., 192TCP04944(1142674)
22. 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)
5. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705  
(317386084)

**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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| 1404033 | 22ND DISTRICT AGRICULTURAL ASSOCIATION |
| 1402019 | 3 BRAND CATTLE COMPANY                 |
| 1393458 | ADECCO USA, INC.                       |
| 1356476 | AIR CONTROL SYSTEMS, INC.              |
| 1347210 | AK CORAL CAY TRUST LLC                 |
| 1424777 | ALDERWOODS GROUP (CALIFORNIA), INC.    |
| 1356988 | ALPHA STRUCTURAL INC                   |

California Occupational Safety & Health Appeals Board  
Closed Session Agenda  
Posted April 3, 2020

1385747	AMB RANCH MANAGEMENT, INC.
1317818	AMERICOLD LOGISTICS LLC
1433290	ANDERSON SEAFOODS, INC.
1441094	ANTHONY HUYNH, AN INDIVIDUAL
1391600	ARTCAD BUILDERS INC.
1412242	AURORA - SAN DIEGO, LLC
1395919	BAR BAKERS LLC
1399425	BLUE STAR STEEL, INC.
1433378	BOGETTI CONSTRUCTION, INC.
1413647	BRADS CONCRETE CUTTING, INC.
1339105	BSA FRAMING, INC.
1399202	CALIFORNIA PAPER PRODUCTS, LLC
1353448	CERTIFIED BUSINESS SERVICE/UNLIMITED, INC.
1429615	CHAMBERS LOGGING COMPANY, INC.
1423883	CREATIVE GREEN LANDSCAPING, INC.
1312288	CUSTOM AGRICULTURE FORMULATORS, INC.
1372879	DAEHO FASHION INC.
1426672	DEMLER FARMS LLC
1286218	DIG A PONY, LLC
1330734	EAST BAY STRUCTURAL & TERMITE COMPANY
1425973	EMAZING LIGHTS, LLC
1265243	FD THOMAS, INC.
1303453	FIRST TEAM OIL TRANSPORT, INC.
1330122	GLOBEX ENERGY CORPORATION
1295270	GOLETA WEST SANITARY DISTRICT
1333201	GRC HOMECARE PROVIDER
1416584	GREENSCAPES PROPERTY SERVICES, INC.
1446819	HEALTHCARE SERVICES GROUP, INC.
1357592	HERRICK CORPORATION
1368233	HERRICK CORPORATION
1419766	HETCH HETCHY WATER & POWER

California Occupational Safety & Health Appeals Board  
Closed Session Agenda  
Posted April 3, 2020

1373925	HUFF CONSTRUCTION COMPANY, INC.
1423468	ILAD, INC.
1416244	IMPERIAL CFS, INC.
1430926	IZZY INSTALLATION, LLC
1428135	JAMPRO ANTENNAS, INC.
1413695	JB CHEMICAL COMPANY, INC.
1294503	JONATHAN ALFONSO
1443962	KHANH HOAI CAO, AN INDIVIDUAL
1394238	MAR VISTA BERRY II, LLC
1400239	METAL IMPROVEMENT LLC
1445069	MIKE FRIDLEY, AN INDIVIDUAL
1292591	OAA INVESTMENTS, INC.
1340030	OLD CASTLE BUILDING ENVELOPE, INC.
1439007	PABLO GONZALEZ & CLAUDIA CALDERON, INDIVIDUALS
1408492	PACIFIC CYCLE INC.
1408096	PARS DESIGN & CONSTRUCTION
1401929	PEACEFUL PAWS LLC
1387538	PEDRO ARCOS
1424504	ROCCOH GENERAL CONSTRUCTION
1433088	RYAN A. FISCHER, AN INDIVIDUAL
1439340	SANCHEZ LANDSCAPING, INC.
1369222	SCHWED CONSTRUCTION, INC.
1438737	SHENG LI ENTERPRISE, INC.
1426634	SIERRA COUNTY PUBLIC WORKS & TRANSPORTATION
1436809	SKYCO SHADING SYSTEMS, INC.
1421601	SOCAL ROOFING SOLUTIONS
1394876	SONIC INDUSTRIES, INC.
1394003	SPS TECHNOLOGIES LLC
1304278	SSA TERMINALS (LONG BEACH), LLC.
1453657	SUPER STORE INDUSTRIES
1406517	TAWA SUPERMARKET, INC.

California Occupational Safety & Health Appeals Board  
Closed Session Agenda  
Posted April 3, 2020

1439882	TERIYAKI KING, INC.
1329736	TESLA, INC.
1399454	TREESMITH ENTERPRISES, INC.
1161013	TUTOR PERINI CORPORATION
1284771	UNITED AIRLINES, INC.
1358842	USA CORP.
1445273	VARNI BROTHERS CORPORATION
1456591	VBS ENTERPRISES, INC.
1383553	WELLS FARGO BANK, NA
1396539	WESTSIDE AG. II, INC.
1445162	WOMACK CONSTRUCTION

**PERSONNEL:**

*(Issues regarding staff.)*

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