

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

**CLOSED SESSION AGENDA**

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

for

**Thursday, July 23, 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: July 10, 2020**

**RE: Closed Session of the Board to be held on July 23, 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.)*

1236516      ALCAL SPECIALTY CONTRACTING, 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.)*

1135350      HILL CRANE SERVICE INC.

1422921      LINEAGE LOGISTICS

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

1401228 ERNEST GONZALES  
1436614 SAPUTO CHEESE USA, INC.

**ORDERS DISMISSING APPEAL:**

NONE

**ORDERS DENYING LEAVE TO FILE LATE APPEAL:**

1457200 JKD CONSTRUCTION  
1447173 PENSKE LOGISTICS LLC

**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.*

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.*

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- 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 employer was in violation of injury and illness prevention plan requirements and lockout/tag-out requirements as alleged.
- 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.
- 1205077 HANOVER R S CONSTRUCTION LLC  
Whether the ALJ committed reversible error in evidentiary rulings regarding the alleged injury and illness prevention plan violation and the forklift operations violations.
- 1135350 HILL CRANE SERVICE INC.
- 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.

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- 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.
- 1320327 SOUTHERN CALIFORNIA EDISON  
Whether the ALJ commit reversible errors of law and/or fact in ruling on each of the alleged violations.
- 1061365 SPHERE ALLIANCE, INC. dba ADVANCED AIRCRAFT SEAL  
Whether the Division had jurisdiction to cite the employer.
- 1251879 TARGET STORES, INC.
- 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.
- 1384029 USA WASTE OF CALIFORNIA, INC.  
Whether the Division proved the alleged violation.
- 1226666 WASHINGTON ORNAMENTAL IRON WORKS, INC., dba WASHINGTON IRON WORKS  
Whether the ALJ was correct in holding the employer violated the injury and illness prevention plan requirements, the injury log (recordkeeping) requirement, and the machinery operational limitations, as alleged in the citations.

**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.)*

1. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR, 15CV-00945 (08-R2D1-3093 through 3098)
2. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
3. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
4. SOLARCITY CORP., 34-2016-80002345 (14-R3D2-3707)
5. KEY ENERGY SERVICE, LLC (12004280)
6. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV, 34-2017-80002562, (1144056)
7. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
8. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
9. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
10. BLUE DIAMOND GROWERS, (1040471)
11. UNITED PARCEL SERVICE, (1158285)
12. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
13. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
14. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
15. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
16. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191 (1059365)
17. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)

18. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
19. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
20. STADCO, INC., 192TCP04944 (1142674)
21. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
22. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
23. VINCENT TUOMEY, RG20061099 (1152851)

**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)
6. BRAGG CRANE, A158500, HG18930741 (1157108)

**OTHER ITEMS:**

- Discussion on categorizing the Board's DARs and Denials on the DIR website.

**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.)*

1204721	A & D FIRE PROTECTION, INC.
1311812	ADIDAS AMERICA, INC.
1308825	ADVANCED CONSTRUCTION
1452194	AFFIRMA REHABILITATION INC.
1458402	AFRIDI ENTERPRISES INC.
1434679	ALLIANCE CONSTRUCTS, INC.
1444096	AMERICAN INCORPORATED

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1385228 AMERINE SYSTEMS, INC  
1366269 ARGO SPRING MANUFACTURING CO., INC.  
1438243 AUTO ZONE, INC.  
1453856 AVL ROOFING INC.  
1418467 B&B DOORS AND WINDOWS, INC.  
1439816 B.H.L. ENTERPRISES, INC.  
1460040 BABUBHAI C. PATEL, AN INDIVIDUAL  
120141080 BASALITE CONCRETE PRODUCTS LLC  
1469102 BAY AREA BEVERAGE CO.  
1413265 CALIFORNIA STATE UNIVERSITY NORTHRIDGE  
1435236 CALSCAPE COMMERCIAL & RESIDENTIAL LANDSCAPING,  
1443747 CARLSON LATH & PLASTER, INC.  
1445915 CONTRA COSTA WATER DISTRICT  
1226419 CORSAIR ELECTRICAL CONNECTORS, INC.  
1327488 COVANTA STANISLAUS, INC.  
1394909 CRAM NCSD, INC.  
1313045 CROWN ENERGY SERVICES, INC.  
1362037 CTM APARTMENT SERVICES  
1433587 CURTI FAMILY, INC.  
1413694 CVIN LLC  
1388292 DAMCO DISTRIBUTION SERVICES, INC.  
1383935 DAVIS PACIFIC INC.  
1342025 DISNEY CONSTRUCTION, INC.  
1446164 DIX METALS, INC.  
1348404 EAGLE NASHER, LLC.  
1428840 ELLZEY'S PAINTING, INC  
1274008 ENVIRONMENTAL CONSTRUCTION GROUP, INC.  
1286976 EVOLVE REALTY AND DEVELOPMENT CORP.  
1441929 FANTASY COOKIE CORP.  
1474354 FC BICKERT COMPANY INC.  
1425878 FOUR SEASONS HAULING, INC.  
1336390 GILLIAM & SONS, INC.  
1437917 HARBOR TRUCK BODIES, INC.  
1471356 HOME BOX OFFICE INC. / COOLER WATER PRODUCTION  
1446444 HOUSE OF LEATHER AND FABRICS  
1441679 INLAND BOBCAT, INC  
1468165 JKD CONSTRUCTION  
1440753 JLCS, INC.  
1357259 JT2, INC.  
1459748 KOELSCH CONSTRUCTION INC.

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1367616 L D L GENERAL CONTRACTORS INC.  
1337196 LEPRINO FOODS, INC.  
1306589 LLOYD'S MATERIAL SUPPLY CO, INC.  
1414880 LONE OAK FARMS  
1456601 LORENZO VITE-AGUILAR, AN INDIVIDUAL  
1346473 LOUIS A. SCHEUER ROOFING SPECIALIST  
1431890 LRN PROCESSORS, INC.  
1435888 LRN PROCESSORS, INC.  
1427311 METROPOLITAN PROPERTY SERVICES LLC  
1461674 MONROVIA NURSERY COMPANY  
1110968 MORLEY BUILDERS INC  
1382008 MP 3600 LLC  
1409918 NESTLE WATERS NORTH AMERICA INC.  
1436514 NEXEM STAFFING, INC.  
1280713 NORDSTROM INC DBA HAUTE LOOK  
1404244 OG RECYCLING CORPORATION  
1446714 OLDE THOMPSON, LLC  
1289688 OLIVE HILL GREENHOUSES, INC.  
1444294 PASSPORT INN & SUITES  
1449983 PMQC, INC.  
1452132 REFRESCO BEVERAGES US INC  
1423376 RICH READIMIX CONCRETE, INC.  
1407888 ROBERTS MANAGING CONTRACTORS, INC.  
1424531 ROGELIO HERNANDEZ CORONA, AN INDIVIDUAL  
1394802 RWC INC.  
1470375 SANTIAGO MENJIVAR, AN INDIVIDUAL  
1439632 SHORE TERMINALS LLC  
1283583 SIBONEY CONTRACTING CO.  
1374301 SM CONSTRUCTION & ASSOCIATES, INC.  
1431317 SMOKEHOUSE PET PRODUCTS, INC.  
1447442 STEEL TECH INDUSTRIAL CORP.  
1429960 STEINBERG, HALL & ASSOCIATES, INC.  
1336385 STEVEN M. FOWLER CONSTRUCTION, INC.  
1311020 SUFFOLK CONSTRUCTION COMPANY  
1458035 SUNDT CONSTRUCTION, INC  
1457868 SYNEAR FOODS USA, LLC  
1419920 THE DYNO SHOP, INC.  
1374705 TOTAL PLACEMENT SOLUTIONS  
1240868 ULTRAMAR, INC.  
1274582 UMC ACQUISITION CORP

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1468470 VADNAIS TRENCHLESS SERVICES, INC.  
1399402 VILLAGE CAR WASH, INC.  
1445324 WEST COAST PROFESSIONAL DOOR, INC.

**PERSONNEL:**

*(Issues regarding staff.)*

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