

**State of California  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
CLOSED SESSION AGENDA**

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

for

**Wednesday, August 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: July 24, 2020**

**RE: Closed Session of the Board to be held on August 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.)*

1356645 ANTELOPE VALLEY COLLEGE

1303461 SSA TERMINALS (OAKLAND), LLC.

1303471 SSA TERMINALS (OAKLAND), 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.)*

1275101 JUAN CARLOS ARRELLANO MEDINA DBA CYPRESS FLC

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

NONE

**ORDERS DISMISSING APPEAL:**

1323053 ARMSTRONG INTERIOR SPECIALTIES, INC.

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

NONE

**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.

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- 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.
- 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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- 1422951 LINEAGE LOGISTICS
- 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.)*

- |         |   |
|---------|---|
| 1204572 | AERO PACIFIC CORPORATION                    |
| 1314700 | ALBERTSON'S COMPANY                         |
| 1433988 | AMERICAN SERVICES GROUP OF CALIFORNIA, INC. |
| 1419922 | ANZA MANAGEMENT COMPANY                     |
| 1435011 | BEST TILE, INC.                             |
| 1303789 | BOILER DYNAMICS                             |
| 1318541 | CAL AG RESOURCES, INC.                      |

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1454397 CALIFORNIA MEDICAL INNOVATIONS, LLC  
1432010 CALIFORNIA UNITED MECHANICAL, INC.  
1445382 CAMBLIN STEEL SERVICE, INC.  
1377118 CARLSON LATH & PLASTER, INC.  
1416957 CASINO LLC  
1452939 CATALINA CYLINDERS, INC.  
1397343 CEM CONSTRUCTION GROUP, INC.  
1423265 CENTRIC CONSTUCTION CO.  
1461354 CHESAPEAKE FINISHING, INC  
1372876 CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.  
1039009 COFFMAN SPECIALTIES INC  
1448272 COMMUNITY RECONSTRUCTION SOLUTIONS, INC.  
1418671 COSTCO WHOLESALE CORPORATION  
1424429 DELICATO VINEYARDS  
1212421 DONEGAN PAINTING  
1465713 E.V. RIFE ENTERPRISES, INC.  
1457223 ELECTRIC TECH CONSTRUCTION, INC.  
1278855 FEDEX FREIGHT  
1471099 FIRST STUDENT INC.  
1458838 FOTIS AND SON IMPORTS, INC.  
1461689 GOODWILL INDUSTRIES OF SAN FRANCISCO,  
1441085 GOODWILL OF SILICON VALLEY  
1436934 HANOVER BUILDERS  
1450287 HECTOR GUTIERREZ  
1408168 HILLTOWN PACKING CO., INC.  
1445111 HND GROUP, INC.  
1307909 HY-MAX BUILDING CORP  
1460401 IMPERIAL WOODS ENTERPRISE INC.  
1434866 INTERNATIONAL WINDOW CORPORATION  
1439626 JL CONSTRUCTION, INC.  
1425301 JOHNSON'S QUALITY TREE CARE & LOGGING CO., LLC

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1446452 KULWANT JHIKKA, AN INDIVIDUAL  
1412992 MEEPOS MANAGEMENT CO.  
1351450 MERCER, FRASER COMPANY  
1431696 MIKE KELLY CONSTRUCTION, INC.  
1354691 MISSION FOODS  
1431350 NARMSIN ELHAMNIA  
1433249 NET ZERO DISASTER RESISTANT STRUCTURES, LLC  
1398025 NEW ORANGE HILLS, INC.  
1360499 OA LOGISTICS SERVICES, INC.  
1426750 P.R. FARMS INCORPORATED  
1452467 PAC SV LLC  
1422674 PARAGON MECHANICAL, INC.  
1459662 PHILLIP LEROY WILSON, AN INDIVIDUAL  
1434380 PHILLIPS 66 COMPANY  
1460323 PITMAN FAMILY FARMS  
1435193 POLYCHEMIE, INC.  
1442822 PROSET CONSTRUCTION, INC.  
1343447 RC WENDT PAINTING, INC.  
1359959 RED CEDAR STEEL SOUTHWEST  
1419348 RW MURRAY, INC.  
1386063 SALAZAR CONSTRUCTION CO. INC.  
1304397 SCAFFOLD CONTRACTING SERVICES INC.  
1297647 SCALED COMPOSITES, LLC  
1437910 SHERAZ BROTHERS, INC.  
1423471 SILVER CREEK CONSTRUCTION  
1439655 SOUTH EAST EMPLOYEE LEASING SERVICES, INC.  
1279821 SOUTHWEST LANDSCAPE, INC.  
1410014 STERIGENICS INTERNATIONAL US LLC  
1418458 STEVEN LEATHERBARROW MASONRY  
1446024 SUMMIT BUILDERS  
1454981 SUNLINE ENERGY INC



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1463756	T. WALLACE CONSTRUCTION
1343800	TESLA, INC.
1454957	THE VILLAGE COLLECTION, INC.
1444063	TIMIRAN INC.
1201901	TITAN INDUSTRIAL METAL CORPORATION
1416501	TOO GOOD AUTO BODY, INC.
1440376	TOTAL PLACEMENT SOLUTIONS, LLC
1301428	TURN AROUND COMMUNICATIONS, INC.
1375084	UNITED AG FORCE
1457873	UNLEADED DESIGN SYSTEMS
1449408	VISIONARY SLEEP, LLC
1445123	WESTERN STATES CONSTRUCTION, INC.
1218550	WM. BOLTHOUSE FARMS, INC.

**PERSONNEL:**

*(Issues regarding staff.)*

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