

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

**CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, November 19, 2020
9:30 a.m.
on Zoom**

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

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: November 6, 2020

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

NONE

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.)

1321676 JOHN LOCHER HARVESTING INC.

1436014 MWL SOLUTIONS, INC.

1474264 OUTDOOR KEEPERS

1080515 SHIMMICK CONSTRUCTION COMPANY, INC.

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

1408754 MR. TACO FRESH MEXICAN GRILL LLC
1417900 SONIC INDUSTRIES, INC.

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1397958 AMERICA'S BEST, 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.

1272378 ANDREW HARRISON BARNES
Whether Mr. Barnes was/is an employer.

1332715 APTCO, LLC
Whether the ALJ Decision correctly analyzed the record in deciding Employer had committed the alleged violation.

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.
- 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.
Whether Employer violated the safety orders as alleged.
- 1213886 JACE VARGHESE
Whether Employer has satisfied requirements of petition for reconsideration.
- 1290383 JAFEC USA, INC.
Whether the ALJ correctly decided the Employer was in violation of a safety order, as alleged.
- 1173183 L & S FRAMING, INC.
Whether the stairway involved was a "stairwell." Whether the motion to amend citation was timely and for good cause.
- 1422951 LINEAGE LOGISTICS
Whether Employer's motion to amend its appeal should be granted.
- 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

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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.
- 1303461 SSA TERMINALS (OAKLAND), LLC DBA SSA MARINE TERMINALS
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1153101 SUNVIEW VINEYARDS OF CALIFORNIA, INC.
Whether the Board should reconsider this interlocutory petition. Whether the Division should be required to provide a redacted copy of the complaint to Employer.
- 1251879 TARGET STORES, INC.
Whether the employee suffered a serious injury as defined by statute and regulation.
- 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.

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.)

SUPPERIOR COURT:

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. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
7. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
8. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
9. BLUE DIAMOND GROWERS, (1040471)
10. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
11. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
12. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)

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13. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191 (1059365)
14. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
15. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
16. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
17. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
18. VINCENT TUOMEY, RG20061099 (1152851)
19. GOLDEN STATE BORING & PIPE JACKING, INC. 34-2020-80003465 (1308948)
20. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204 (12-R3D1-0781) (315525790)
21. INTERLINE BRANDS, INC., CIVDS2021813 (1251604)

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. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705 (317386084)
5. UNITED PARCEL SERVICE, B308218, 18STCP03195 (1158285)
6. WALSH SHEA CORRIDOR CONSTRUCTORS, S264760, (1093606)

OTHER ITEMS:

- New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
- Categorizing the Board's DARs and Denials on the DIR website.
- Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

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.)

1391076	AMCAL GENERAL CONTRACTORS, INC.
1439734	ARAMARK FOOD & SUPPORT SERVICES GROUP, INC.
1350192	BAY CITY MARINE, INC.
1474948	COASTCRAFT RUBBER CO.
1416834	DAN'S LANDSCAPING COMPANY, INC.
1458034	EFRAIN L NUNEZ
1281598	ELITE LIGHTING
1473122	ELLIOTT ENTERPRISES, INC.
1446445	EXTREME PLASTERING, INC.
1468786	FOG COAT CORPORATION
1192746	GOOD VIEW ROOFING & BUILDING SUPPLY CORPORATION
1475483	GRADETEK INC.
1375985	GUY F. ATKINSON CONSTRUCTION, LLC
1347513	KPS FIRE SPRINKLERS, INC.
1471992	LAMANUZZI & PANTALEO, LLC
1391857	LODI FARMING, INC.
1378306	LOS ANGELES DEPARTMENT OF WATER AND POWER
1272077	LOS ANGELES ENGINEERING, INC.
1445401	MCPAYNE ENTERPRISES, INC.
1433085	MICHAELS STORES PROCUREMENT COMPANY, INC.
1442639	MTNA, INC.
1364467	NEXUS ENERGY SYSTEMS, INC.
1476494	OSI INDUSTRIES LLC
1472024	PANERA, LLC
1473521	PIONEER WINDOW PRODUCTS
1447962	PRIMUS MARBLE INC.
1372171	RESTAURANTS DEL SUR, LLC

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1474343	ROSAS CORPORATION
1422986	SCOTT MCMILLAN DBA MCMILLAN TREE SERVICE
1371614	SIMWON AMERICA
1453822	SKYLINE CONSTRUCTION & DESIGN, INC.
1249627	SKYLINE STEEL, INC.
1442273	SLM DEVELOPMENT INC
1465706	SO CAL STONE FABRICATORS INC.
1346634	SOLO MIO, INC.
1271710	SOUTHERN CALIFORNIA GAS COMPANY
1455083	SPROUTS FARMERS MARKET
1371306	T&U ROOFING
1313385	TAYLOR FARMS RETAIL, INC.
1444562	VENEZIA STONE FABRICATION, INC.
1472531	XPRESS TECHNICAL SERVICES, INC.

PERSONNEL:

(Issues regarding staff.)

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