

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**

**Held on January 9, 2020
Sacramento, California
West Covina, California**

PRESENT:

Ed Lowry, Chair
Judith Freyman, Member
Marvin Kropke, Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician

MINUTES OF December 19, 2019 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the December 19, 2020 meeting.
Moved: Judith Freyman.
Seconded: Member Kropke.
The vote was 3-0.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: Due to scheduling conflicts, the Board agreed to change the Thursday, May 14, 2020 meeting to Wednesday, May 13, 2020.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

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

ACTION: Discussion and update on the Board's DARs and Denials on the DIR website and computer accessibility.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board.)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: No report.

BOARD MEMBERS REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Acting Executive Officer Patricia Hapgood announced that Administrative Law Judge Howard Chernin returned to OSHAB/West Covina office.

The resignation of Office Technician Carri Riedel was also announced.

Plans for the Stakeholder's Roundtable Meeting continues. Staff is working to secure a location and date.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. REGULATIONS:

ACTION: The most recent changes to the Regulations is still under review at the Department of Finance.

2. LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported on current court cases.

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.

PUBLIC COMMENT:

(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: There were no public comments.

The Board recessed to its closed session.

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.)

1268655 ANGELUS BLOCK COMPANY
ACTION: Board discussed.

1226084 DAVIS DEVELOPMENT COMPANY INC.
ACTION: Board discussed.

1152851 VINCENT TUOMEY
ACTION: Board discussed.

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.)

1374636 AMERI-KLEEN, INC.
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1213886 JACE VARGHESE
ACTION: Issue Order Granting petition for reconsideration.
Moved: Marvin Kropke.
Seconded: Judith Freyman.
Vote: 3-0.

ORDERS DISMISSING APPEAL:

1356474 AFFLUENT STAFFING, LLC.
ACTION: Board discussed.

1309484 VICTOR TORRES AND MIGUEL ANGEL CALDERON
ACTION: Board discussed

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1404787 IMPERIAL AG, LLC
ACTION: Approved as amended.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

1395180 JONES, LANGE AND LASALLE
ACTION: Board discussed.

1386789 MARIANO MORENO & ARCELIA TOSTADO, INDIVIDUALLY
ACTION: Taken under reconsideration on Board's own motion.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

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.

1308968 AEG MANAGEMENT OAKLAND, LLC
Whether Employer received the citations, and thus, whether there was good cause for a late appeal.

1200176 AEROTEK, INC. dba AEROTEK
Whether Employer established and implemented its IIPP as required.

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

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- 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
- 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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- 1290766 MILLENIUM REINFORCING
Whether 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.
- 1237932 SACRAMENTO COUNTY WATER AGENCY
Whether the citation was correctly classified as serious. Whether the ALJ correctly denied Employer's Newbery defense.
- 1123110 SINCLAIR CONCRETE, INC.
Whether the widow of decedent employee had adequate notice of Employer's appeal of the OSHA citation.
- 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.

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)

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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. NORM WILSON & SONS INC., 19STCP00663 (1116151)
16. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
17. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
18. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
19. PERFORMANCE TEAM FREIGHT SYSTEMS, 19STCP 02154 (1183505)
20. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
21. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191 (1059365)
22. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
23. OWENS CORNING ROOFING & ASPHALT, LLC, 19STCP04117 (1063574)
24. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
25. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)

26. STADCO, INC., 192TCP04944 (1142674)

27. PRESTIGE PAINTING, 37-2019-00066143 (1367265)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
2. NOLTE SHEET METAL, INC., 16CE CG03592 (14-R6D8-2888 through 2783)
3. VENTURA COASTAL, F077267 (317808970)
4. HOME DEPOT, U.S.A. INC. DBA HOME DEPOT #6683, CIVDS1716416, (1014901)
5. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)
6. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910 (1111325)
7. LION FARMS, LLC, MCV075788 (1070258)
8. 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.)

1364573	1ST CLASS LAUNDRY
1402578	35 DISTRICT AGRICULTURE ASSOCIATION
1378761	7 LEAVES ANAHEIM, LLC
1062551	A PLUS POOL & SPA INC
1358837	A.M. FINISHING, INC.
1401924	ACTIVCARE LIVING, INC.
1265099	ADAMS GROUP, INC.
1374514	ADVANCED EQUIPMENT CORPORATION
1401973	ADVANCED EQUIPMENT CORPORATION
1137715	AHERN RENTALS
1422167	AJ WINDOW CLEANING, INC.
1394052	ALAN JAMES ROATH
1403922	ALLIED WEST PAPER CORPORATION
1400607	ALLRIGHT ENTERPRISES, INC.
1353381	AMERICAN LINEHAUL CORPORATION
1292446	AMERICAN MODULAR SYSTEMS, INC
1310187	AMERICAN TEXTILE PROFESSIONAL SERVICES INC

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1315592 ANCON MARINE
1366188 AUS DECKING, INC.
1075168 AVALONBAY COMMUNITIES INC
1313393 B AND R CUSTOM CHOPPING LLC
1398302 BAMCORE, LLC
1327317 BIRRUETA REFORESTATION, INC.
1388583 BRAGG INVESTMENT COMPANY, INC.
1375309 BROUGH CONSTRUCTION, INC.
1404756 C & W FASHION, INC.
1335695 CALIF. DEPT. OF FORESTRY AND FIRE PROTECTION
1401986 CARLOS CORONA
1313409 CLAWSON MOTORSPORTS
1436767 CLEATECH LLC
1398354 COMMODITY TRANSPORTERS, INC.
1323550 CONCRETE VALUE CORP
1396266 CONSOLIDATED CONTAINER COMPANY
1399405 CONTAINER SOLUTIONS INC.
1340184 CONTRA COSTA ELECTRIC, INC.
1404383 CORNERSTONE CERTIFIED VINEYARD
1402276 COSCO DIVERSIFIED FINISHES, INC
1369500 COUNTY OF LA - AUGUSTUS F HAWKINS PSYCHIATRIC
1433079 CYPRESS GROVE CHEVRE, INC.
1396962 D & G FLOORING, INC.
1247604 D M S I STAFFING, LLC.
1411824 DAVE WILSON NURSERY, INC.
1410262 DELTA PACIFIC ACTIVEWEAR, INC., DELTA KNITS, INC.,
1380518 DKS STEEL DOOR & FRAME SYSTEMS, INC.
1367600 EAGLE RIDGE CONSTRUCTION & ROOFING INC
1345023 ECLIPSE RECREATIONAL VEHICLES, INC.
1365488 EMPLOY BRIDGE
1395824 ESTELA'S DRAPERIES & INSTALLATIONS, INC.
1368575 GATE GROUP
1428159 GAUTHIER CONSTRUCTION, INC.
1381861 GEORGE JUE MANUFACTURING COMPANY, INC.
1315870 GERAWAN FARMING PARTNERS, INC
1265733 GERAWAN FARMING, INC
1414308 GILLEY WOOD, INC.
1423504 GOOD EGGS, INC.
1279641 GRUNDFOS PUMPS MANUFACTURING CO.
1427053 HARTILL HEAVY HAUL, INC.
1407162 HEALTHCARE SERVICES GROUP, INC.
1351369 HIGH VIEW, INC.
1392836 HOWE ELECTRIC CONSTRUCTION, INC.
1339357 J H BIOTECH, INC.
1420614 JC'S PAINTING & COATINGS, INC.
1237922 JOHNSTONE MOYER, INC.

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1331799 LKQ LAKENOR AUTO COMPANY
1396480 LYNAM INDUSTRIES, INC.
1266128 MANNA DEVELOPMENT DBA PANERA BREAD
1381063 MCCUTCHEON CONSTRUCTION, INC.
1411517 MCHEMICAL CO.
1368418 MCMILLAN TREE SERVICE
1399942 MEGA CAR WASH, LLC
1360310 MEYER CORPORATION, U.S.
1349561 MGM DRYWALL, INC.
1374491 NONGSHIM AMERICA, INC.
1398831 NORSTAR PLUMBING & ENGINEERING, INC.
1410879 NORTH AMERICAN PIPE CORPORATION
1359539 NORTHROP CONSTRUCTION, INC.
1383249 O TASTY FOODS
1419730 ONTARIOIDENCE OPCO, LLC
1212380 P KAY METAL, INC.
1363170 PACIFIC DUTCH GROUP LLC, PBR PROP.MANAGEMENT
1354395 PAINTERS UNLIMITED CA, INC.
1254567 PETROCHEM MATERIALS INOVATION, LLC.
1401890 PIPIS INCORPORATED
1382813 R & R CONSTRUCTION, INC.
1425682 R. E. BRADLEY GENERAL BUILDING CONTRACTOR
1334649 R. NUNEZ AG, INC.
1312300 RAMA FOOD MANUFACTURE CORP.
1414370 RAMONA DAIRY LLC
1397311 RAMONA REHABILITATION AND POST ACUTE CARE, INC.
1400266 RANDSTAD NORTH AMERICA, INC.
1387514 REPUBLIC WASTE SERVICES OF SOUTHERN CALIF., LLC
1391010 ROMEROS FOOD PRODUCTS, INC.
1361984 ROSA E. ANDERSON
1395078 ROSE MEAT SERVICES
1365478 S & H CONSTRUCTION BUILDER CORPORATION
1392839 S.D.S. INDUSTRIES, INC
1375314 SCHULTZ INDUSTRIAL SERVICES, INC.
1428405 SDI INDUSTRIES, INC.
1318859 SEE'S CANDIES, INC.
1312687 SHANNON BROS, CO.
1279877 SILVER MOON LOW VOLTAGE LIGHTING, INC.
1409545 SILVIA Riestra
1381429 STAFFMARK INVESTMENT, LLC.
1434716 STATER BROS. MARKETS
1362678 STEFAN MERLI PLASTERING COMPANY, INC.
1385297 STEVE LANE
1326131 STILL WATER RANCH, LP.
1380281 SUNSET CULTURAL CENTER, INC.
1381233 TRANSPAK, INC.

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1433711	TREE OF LIFE TREE SERVICE
1217813	TRENCH PLATE RENTAL CO.
1412196	UNITED STATES COLD STORAGE OF CALIF., INC.
1372108	VALLEY MILK, LLC
1307234	VERTICAL MASONRY INC.
1389798	VIE DE FRANCE YAMAZAKI, INC.
1360302	VINCE TAYLOR FARMS
1422490	VINTAGE TIMBERWORKS, INC.
1372624	WALTERS WHOLESALE ELECTRIC CO.
1408852	WEKA INC.
1392395	WEST COAST AGGREGATE SUPPLY, INC.
1340320	WESTERN NATIONAL BUILDERS
1395036	WJLP COMPANY, INC.
1415078	YREKA TRANSFER LLC

ACTION: All Administrative Law Judge Settlement Orders
approved.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Voted: 3-0

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:27 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 12:28 p.m.