

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
for
Wednesday, February 4, 2010
10:00 a.m.
Sacramento, California
&
West Covina, California

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

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: January 21, 2010

RE: Closed Session of the Board to be held on February 4, 2010

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), and (e) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in 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.)

1. ABC LETTER ART, INC., 09-R4D1-2609 THROUGH 2615
2. FOUR TECH GLASS, INC., 06-R4D3-4978 THROUGH 4980
3. INTERNATIONAL COATINGS, 09-R3D5-2662
4. KINETIC SYSTEMS, INC., 06-R2D2-3627
5. SMITH RANCH, 08-R2D3-1313
6. STATE ROOFING SYSTEMS, INC., 08-R1D5-275 AND 276

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in

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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.)

1. ALL AG, INC., 08-R2D5-0907 AND 0908
2. JUAN CARLOS ALVARADO DBA ALVARADO CONSTRUCTION, 09-R4D3-2865 and 09-R4D3- 3283
3. AMERICAN HEAT PROCESSING EQUIPMENT & SERVICE CO., 09-R3D6-2544
4. APPLIED CONVEYOR TECHNOLOGIES, INC., 09-R5D3-2552
5. AZCONA HARVESTING, 08-R1D2-4310
6. BCI C-C L.A., INC. DBA COCA COLA BOTTLING OF SOUTHERN CALIFORNIA, 09-R6D2-3156
7. BCI C-C L.A., INC. DBA COCA COLA BOTTLING CO. OF SO. CA, 09-R6D2-3157 THROUGH 3159
8. BCI C-C-B CO., L.A. DBA COCA COLA BOTTLING CO. OF SO. CAL., 09-R6D2-3336
9. BREWER CORP. DBA BREWER CRANE & RIGGING, 09-R6D2-2417 AND 2418
10. BULK TRANSPORTATION, 08-R4D4-1904 THROUGH 1909
11. CA CORRECTIONS, 08-R2D5-0975 THROUGH 0978
12. CAPTEK SOFTGEL INT'L., INC., 09-R3D5-3281 AND 3282
13. CARONE & COMPANY, 07-R2D2-1614 AND 1615
14. CBC FRAMING, INC., 09-R6D5-2567
15. CEI ROOFING CALIFORNIA, A TECTA AMERICA CO., 08-R2D3-3832
16. CITY OF EMERYVILLE/MESA DBA EMERYVILLE POLICE DEPARTMENT, 08-R1D4-4168
17. DECORE-ATIVE SPECIALTIES, INC., 08-R4D4-4826 AND 4827
18. ENGEL HOLDINGS, INC. DBA CABRILLO HOIST, 08-R1D2-3402

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19. EZE TRUCKING, INC., 09-R2D5-0238 AND 0239
20. F & A DAIRY OF CA., INC., 08-R2D4-1391
21. F J BRAWLEY CONCRETE, 09-R6D5-1792
22. GENERAL MILLS, 09-R6D2-1337 THROUGH 1342
23. GOME ELECTRIC, INC., 09-R3D3-3724
24. H.D. SUPPLY, 09-R3D6-2203 AND 2204
25. HANSON AGGREGATES, WEST REGION, 09-R5D2-1392
26. JLR CONSTRUCTION, 09-R6D5-1565
27. JOHN LIST CORP. DBA PROTOCAST, 09-R6D2-1884 THROUGH 1886
28. K & W FARMS, INC., 09-R6D5-2376
29. KIEWIT PACIFIC, 09-R5D1-1146
30. KING CITY VOLUNTEER FIRE DEPARTMENT, 07-R1D2-3636 and 09-R1D2-4263 AND 4264
31. LA MINA CANTINA, 09-R2D5-0039
32. LAUNDRY ROOM CLOTHING CORPORATION, 09-R6D5-1568 THROUGH 1571
33. LOS ANGELES COUNTY USC MEDICAL CENTER, 09-R4D2-2597
34. MAP LINK, INC., 09-R4D3-1873 THROUGH 1875
35. McCARTHY MANAGEMENT, INC., DBA CONDOMINIUM MANAGEMENT SERVICES, 09-R3D6-2247
36. MELMARC PRODUCTS, INC., 09-R3D1-1702 AND 1703
37. MELMARC PRODUCTS, INC., 09-R3D1-2878
38. NOAH'S NEW YORK BAGELS, 09-R2D1-2977 THROUGH 2979
39. NORCAL FLOOR COVERING DBA YUBA CITY FLOOR COVERING, 08-R2D3-3738 THROUGH 3740

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40. NUNEZ AG, INC., 08-R6D1-3634
41. ORMAT NEVADA, INC., 08-R3D2-1597 THROUGH 1600
42. PACHECO BROTHERS, INC., DBA PACHECO BROTHERS SERVICE, 08-R6D1-3635 AND 3636
43. PEACH TREE CLINIC, INC., 08-R2D3-3136 AND 3137
44. PICAR FLC, 08-R2D5-0168
45. PORTION PAC, INC., 09-R4D3-0724
46. QUEMETCO, INC., 08-R4D4-5058
47. ROBERT STINCHFIELD, INC., 08-R4D4-4564 AND 4565
48. SAVE MART DISTRIBUTION, 08-R6D3-2901 THROUGH 2903
49. SAVE MART SUPERMARKET, 07-R2D5-3446 AND 3447
50. SCREEN TECH, INC., 08-R1D2-4538
51. SMITH BROTHERS STRUCTURAL STEEL PRODUCTS, INC., 09-R6D2-3147 THROUGH 3153
52. SOLANO CONCRETE CO., INC. DBA RINKER MATERIALS, 08-R5D1-0497
53. SOLID TERRAIN MODELING, INC., 09-R4D5-2367 AND 2368
54. STATER BROTHERS MARKET, 09-R3D3-3447 AND 3448
55. STELITZ COMPANY, INC., DBA CALIFORNIA METAL-X, 09-R6D2-3415 AND 3416
56. SUPERIOR QUALITY FOODS, INC., 09-R6D2-3024 THROUGH 3027
57. THE SOFA COMPANY, 09-R3D6-2157 AND 2158
58. TMCI, INC. DBA KUNERT ELECTRIC, 09-R3D3-3133
59. WAL MART DISTRIBUTION CENTER, 6021, 07-R2D5-3662
60. WELLDONE DEVELOPMENT CORPORATION, 08-R2D3-1086
61. WEST COAST PALLET, INC., 09-R6D2-2487 THROUGH 2491

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ORDER OF REMAND:

1. ACTIVE TECHNOLOGIES GROUP, 08-R3D5-3745

ORDER DISMISSING APPEAL:

1. PRINCESS PAL, INC., 09-R6D5-2770 THROUGH 2773

ORDERS DENYING-DISMISSING LATE APPEALS:

1. ALTA DEVELOPMENT, INC., 10-R3D2-9001
2. ENG BROS. WOOD & METAL PRODUCTS, INC., 10-R6D7-9005
3. MARISA'S MEXICAN SEAFOOD GRILL LLC, 10-R6D5-9003

ORDERS DENYING LEAVE TO FILE LATE APPEALS:

1. COMMERCIAL MEAT CO., INC., 10-R6D2-9019
2. JESUS GALAVIZ DBA GALAVIZ CUSTOM AUTO BODY & REPAIR, 10-R6D5-9020
3. GREENHAVEN ESTATES, 09-R2D1-9347
4. INTERCON CONTRACTORS, INC., 09-R4D1-9348
5. PAINCARE MEDICAL PRACTICE, 10-R2D1-9021
6. SHOOTERS PARADISE LLC, 09-R2D1-9360
7. UNITED PARCEL SERVICE, INC., 10-R3D6-9018
8. WOODEN WINDOW, INC., 10-R1D4-9022

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

1. UNITED PARCEL SERVICE, 10-R1D5-0063

ORDER RE SANCTIONS DISMISSING APPEAL:

1. STAR KERN, INC. DBA STAR ELECTRIC, 09-R6D5-2713

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PETITIONS FOR RECONSIDERATION:

1. ACTIVE TECHNOLOGIES GROUP, 08-R3D5-3745
2. COUNTY OF NEVADA, 09-R2D1-2287
3. INGLEWOOD PARKS & RECREATION, 08-R4D1-4182 AND 4183
4. POUK & STEINLE, INC., 09-R3D3-0491
5. RH TECH & CONSTRUCTION, INC., 09-R3D6-9326
6. SAN MATEO UNIFIED SCHOOL DISTRICT – CAPUCHINO HIGH SCHOOL,
09-R1D3-9342
7. SUN VALLEY HARVEST, 09-R2D5-9284

DECISIONS AFTER RECONSIDERATION (DRAFTS):

(If the Appeals Board grants a petition for reconsideration it reviews the facts of the appeal and then issues a decision after reconsideration upholding, reversing or modifying the underlying ALJ decision.)

1. A & C LANDSCAPING, INC. aka A & C CONSTRUCTION, INC., 03-R4D4-4791
2. AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
3. AC FRAMERS INC., 03-R2D3-3475
4. AC TRANSIT, 08-R1D4-0135
5. ADVANCE DISPOSAL CO. & RECYCLING CENTER DBA BESTWAY
DISPOSAL, 09-R3D3-9212
6. AGWOOD MILL & LUMBER, INC., 08-R1D5-1068
7. VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY
DBA ANTONSEN CONSTRUCTION, 06-R2D3-1272
8. ANNING-JOHNSON COMPANY, 06-R1D3-1976
9. AVESON EDUCATIONAL COOPERATIVE, 09-R4D2-0337
10. BART, 03-R1D1-5170
11. BIMBO BAKERIES USA, 03-R1D3-5215 THROUGH 5217
12. BIMBO BAKERIES USA, 05-R6D2-856 AND 857

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13. BLF, INC. dba LARRABURE FRAMING, 03-R4D3-4428 AND 4429
14. BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445
15. BURTON L. SILVA FARMS, 09-R1D2-1498
16. C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155
17. C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
18. CA RASMUSSEN, INC., 08-R4D5-219 AND 220
19. CALDWELL-ROLAND ROOFING, INC., 03-R1D4-2905
20. CELTIC SCAFFOLDING, INC., 08-R1D1-1469 THROUGH 1471
21. PEN CHANG, 08-R2D4-3102
22. CLINE CELLARS, INC., 08-R1D5-2946
23. CJI PROCESS SYSTEMS, 09-R6D2-1333 THROUGH 1336
24. CNL ROOFING COMPANY, 08-R1D2-1692 AND 1693
25. CORE GENERAL CONTRACTOR, INC. DBA CORE BUILDERS, 08-R1D2-1379
26. CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
27. DAKOTA COMPANIES UNLIMITED, 05-R4D3-392 AND 393
28. DAVIS BROTHERS FRAMING, INC., 03-R3D1-114
29. DAVIS BROTHERS FRAMING, INC., 05-R3D3-634 THROUGH 636
30. DESIGN BUILDERS, INC., 08-R4D4-1901
31. JOAQUIN DUARTE DBA PROFESSIONAL TREE SERVICE, 09-R3D3-1111
32. DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177
33. DUKE PACIFIC, INC., 08-R3D3-574
34. JOAQUIN DUARTE DBA PROFESSIONAL TREE SERVICE, 09-R3D3-1111
35. DUININCK BROS., INC., 06-R4D3-2871

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36. DYNALECTRIC, 03-R1D1-4101
37. E. C. U., INC., 09-R3D5-1094 AND 1095
38. ESTENSON LOGISTICS LLC 05-R1D4-1755 AND 1756
39. ETTER & SON CONSTRUCTION, INC., 03-R1D5-3131
40. EZ MIX, INC., 08-R4D3-1898
41. FORKLIFT SALES OF SACRAMENTO, INC., 05-R2D1-3477
42. FORTUNA IRON WORKS 06-R2D3-4222
43. FREAS PLASTERING CO., INC., 08-R1D1-1188 AND 09-R1D1-2568
44. G.T. ALDERMAN, INC., 05-R4D3-3513
45. GENERAL TRUSS CO. INC., 06-R2D1-783 AND 784
46. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
47. GLASS PAK, 03-R2D2-750 AND 751
48. GOLDEN WEST INDUSTRIES, INC., 08-R3D2-3930
49. GRISWOLD INDUSTRIES, 09-R6D2-0981 THROUGH 0984
50. HAMMOND POWER SOLUTIONS, INC., 09-R4D2-1124 AND 1125
51. HARBOR ORNAMENTAL, INC., 09-R3D5-2086
52. HB PARKCO, 07-R4D2-1730 AND 1731
53. HELPMATES STAFFING SERVICES, 05-R3D3-2239
54. HELM & SONS, INC., DBA HELM & SONS AMUSEMENTS, 08-R3D3-3513
55. THE HERRICK CORP., 07-R3D1-495
56. HUSSMAN CORPORATION, 03-R3D1-2939
57. INDUSTRIAL MASONRY, INC., 07-R3D2-735 AND 736
58. INTERNATIONAL ALUMINUM CORPORATION, 09-R6D2-1185

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59. IRWIN INDUSTRIES, INC., 08-R6D4-1454 THROUGH 1456
60. JENSEN PRECAST, 05-R2D1-2377
61. JOHN LAING HOMES, 04-R3D1-194 AND 195
62. JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
63. JT WINDOWS, INC., 09-R6D2-0693 THROUGH 0698
64. KELLY SERVICES, INC., 06-R1D2-1024
65. KENNY-SHEA-TRAYLOR-FRONTIER/KEMPER, JV, 03-R5D2-323
66. KINDER MORGAN ENERGY PARTNERS, LP., 05-R5D1-2013 AND 2014
67. LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
68. LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
69. LOS ANGELES, CITY OF, FIRE DEPARTMENT, 03-R2D5-3960
70. LOS ANGELES, CITY OF, HOUSING AUTHORITY, (HACLA), 05-R4D2-2541
71. LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
72. MARINE TERMINALS, 08-08-R6D2-1920
73. MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274
74. NEWMAN FLANGE & FITTING COMPANY, 07-R2D4-2581 THROUGH 2583
75. NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494
76. O & M INDUSTRIES, 04-R1D5-1597
77. PARKER-HANNIFIN CORPORATION, 08-R2D4-2508
78. POUK & STEINLE, INC., 03-R4D2-1495 AND 1496
79. POWER FREIGHT SYSTEMS, 06-R1D4-3347
80. PUSD ALEXANDER HAMILTON ELEMENTARY SCHOOL, 09-R4D2-0784
81. R.A. CAMPBELL, INC., 09-R6D2-1209 THROUGH 1211
82. R & L BROSAMER, INC., 03-R1D5-4832

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83. SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-0655
84. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
85. SELECT REMEDY, 08-R2D5-0048 THROUGH 0050
86. STACY & WITBECK, INC., 05-R1D1-1142
87. STENDERUP AG PARTNERS, 09-R6D2-2111 AND 2112
88. STRUCTURAL SHOTCRETE SYSTEM, 03-R4D3-986
89. SUNOPTA FRUIT GROUP, 09-R3D1-9245
90. TEICHERT & SON, INC., A CORPORATION DBA TEICHERT
AGGREGATES, 04-R5D2-850 AND 851
91. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 05-R2D4-2650
AND 2651
92. TEICHERT AGGREGATES, 04-R5D1-2982
93. UKIAH FORD-LINCOLN-MERCURY, INC., 06-R1D5-2256 AND 2557
94. UNITED PARCEL SERVICE, 07-R3D3-3322
95. WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095
96. WESTCOAST COMMUNICATION, 05-R2D3-2801 AND 2802
97. WINCHESTER CONSTRUCTION, 08-R4D3-4709 AND 4710
98. WINDMILL PROPANE, 08-R2D5-1217 AND 1218

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. HARRIS CONSTRUCTION COMPANY, INC., 07CS00518 (02-3914)

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2. JERLANE v DIVISION OF OCCUPATIONAL SAFETY & HEALTH, 37-2007-00056381-CU-WM-NC (01-4344/4345)
3. JERLANE V DIVISION OF OCCUPATIONAL SAFETY AND HEALTH, 37-2009-00059323-CU-WM-NC (08-1733)
4. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB), 34-2007-00882192-CU-WM-GDS, (01-3261)
5. BRUTOCO ENGINEERING & CONSTRUCTION, INC., 30-2007 00100159 (07-9223)
6. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (00-440)
7. SHIMMICK CONSTRUCTION CO., 34-2008-80000121-CU-WM-GDS (06-1136)
8. SOUTHERN CALIFORNIA EDISON COMPANY, BS 119297, LOS ANGELES SUPERIOR COURT (08-9062)
9. UNITED AIRLINES (SFO), 34-2009-80000256
10. XL CONSTRUCTION, SUPERIOR COURT (34-2009-80000300), 08-R1D2-1191 THROUGH 1193
11. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
12. WEBCOR CONSTRUCTION LP dba WEBCOR BUILDERS, 34-2009-80000384 (08-R1D2-2499 AND 2500)

PERSONNEL:

(Issues regarding staff.)

Any matter not completed at this Closed Session may be continued to subsequent meetings.