

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
for
Thursday, July 2, 2009
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: June 19, 2009

RE: Closed Session of the Board to be held on July 2, 2009

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. MICHELS CORP. DBA MICHELS PIPELING CONSTRUCTION, 07-R5D1-4747
2. SMUD, 08-R2D1-1711

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.)

3. 99 CENT ONLY STORES, 09-R4D2-0458
4. A BAR AG ENTERPRISES, 08-R2D4-1962

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For July 2, 2009

Page 2

5. JOSEPH J. ALBANESE, INC., 08-R1D2-0377
6. DENNIS ALLEGRE DBA ALLEGRE CONSTRUCTION, 08-R2D4-0704 AND 0705
7. AMERICAN AIRLINES, 08-R1D3-2934
8. AMERICAN SCISSOR LIFT, INC., 08-R1D2-2588
9. S. J. AMOROSO, 08-R1D2-2932
10. ANHEUSER BUSCH, INC., 08-R6D4-4986 AND 4987
11. ARCHITECTURAL COATINGS, INC., 08-R6D5-4534
12. ARKA CONSTRUCTION, INC., 09-R4D1-0450
13. SCOTT ARMSTRONG INDIVIDUAL DBA ARMSTRONG, CONSTRUCT, 08-R2D3-1082 THROUGH `084
14. ARTISTRY IN TREES, 07-R1D5-2893 AND 2894
15. AT & T MOBILITY, 08-R1D1-0510
16. BARRON'S TILE, INC., 08-R2D5-0910
17. BAS RECYCLING, INC., 08-R3D3-3209 AND 3210
18. BOGHOSIAN RAISIN PACKING CO., 07-R2D5-4131
19. CHRISTOPHER BROCCINI, DAVID RUEGG, ET ALL DBA BROCCINI PARTNERS, 08-R2D1-1830 THROUGH 1832
20. MJ BUTTLER, INC., 08-R1D1-2727
21. CAL FIRE, 08-R1D2-0513
22. CAL STATE UNIVERSITY-LONG BEACH, 08-R3D5-2783
23. CALIFORNIA WIRE CLOTH, 07-R2D5-2584 AND 2585
24. RALPH COLLAZO PACKING, INC., 08-R2D5-1394 THROUGH 1396
25. COOL SOLUTIONS MANUFACTURING, 08-R1D1-1060 AND 1061
26. CREAM OF CROP AG SERVICE, 08-R2D5-2190 AND 2191

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For July 2, 2009

Page 3

27. ALEX DE MARTIMPREY & CHRYSTAL DE MARTIMPREY INDIVIDUALLY
DBA LASSEN TRUE VALUE, 07-R2D3-4338 AND 4339
28. DIANA'S MEXICAN FOOD, 08-R4D4-4911 THROUGH 4913
29. DI-PRO, INC., 08-R2D5-5011 AND 5012
30. DISTRIBUTORS UNLIMITED LLC, 09-R6D2-0954 THROUGH 0959
31. DROSIHN CONSTRUCTION, INC., 08-R1D5-0019 AND 0020
32. FCI CONSTRUCTORS/GRANITE, A JOINT VENTURE OF FCI
CONSTRUCTORS, 07-R2D3-4845 THROUGH 4848
33. FEATHER RIVER CONCRETE, 07-R2D3-2318 THROUGH 2320
34. FRACO PRODUCTS, INC., 07-R2D1-4998
35. FRONTIER MOTEL, 08-R2D3-1716
36. GARDNER TRUCKING, INC., 08-R3D3-2949 AND 2950
37. GIUMARRA VINEYARDS CORP., 08-R2D5-0721
38. GREENFIELD UNION SCHOOL DISTRICT, 08-R2D5-3349
39. GRUMA CORP. DBA MISSION FOODS, 08-R4D4-2332 AND 2333
40. H & W ROOFING, 08-R1D2-2641 AND 2642
41. HANSON PERMANENTE CEMENT, INC., 08-R5D1-0935
42. HEMMINGSEN CONSTRUCTION CO., INC., 08-R2D3-0883 THROUGH 0885
43. HIGH TECH STEEL, INC., 09-R6D2-1017 THROUGH 1019
44. PAUL HILLESHEIM DBA FOOTHILL WIRELESS, 08-R2D1-0533 THROUGH
0538
45. HONEST JOHN'S LANDSCAPING, INC., 08-R2D3-0702 AND 0703
46. IVANKO BARBELL CO., 09-R3D5-0564
47. JC PENNEY STORE #0250-1, 08-R3D5-3216
48. ROBERT JOHNSON FARMS, 08-R2D5-3500

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For July 2, 2009

Page 4

49. KD STEEL, INC., 08-R1D3-0007 THROUGH 0014
50. LA REINA, INC., 07-R4D4-3363 THROUGH 3366
51. LA TAPATIA TORTILLERIA, INC., 08-R2D5-2189
52. LA TROPICANA FOOD LP DBA TROPICANA FOODS, 08-R6D1-0324
53. LAYNE CHRISTENSEN COMPANY, 07-R2D1-4830
54. MACY'S, INC. DBA MACY'S STORES OF CALIFORNIA, 08-R1D5-0804
55. W. C. MALONEY, INC., 08-R2D4-0713 AND 0714
56. METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, 07-R3D3-3507 AND 3508
57. M G CONSTRUCTION, 08-R2D4-1841 AND 1842
58. MKM, INC., 08-R2D5-0911
59. MORNING GLORY GOLD MINES, 08-R5D1-1429
60. NEXCOIL, INC., 07-R3D3-1176 THROUGH 1180
61. OLIVHURST PUBLIC UTILITY DISTRICT, 08-R6D3-0856
62. OXNARD PRECISION FABRICATION, 09-R6D2-1316 THROUGH 1323
63. PARTNERS ALLIANCE COLD STORAGE, INC., 09-R3D3-0906
64. PEPSI COLA CO., 08-R2D5-0720
65. PETER D. PETERSON DBA PETERSON RANCH, 08-R2D3-1836 THROUGH 1839
66. PITA PIT BAKERY, 08-R4D4-2788
67. POTENTIAL INDUSTRIES, INC., 08-R3D5-3985 THROUGH 3987
68. PTANN CORP., 08-R2D3-3279 AND 3280
69. RB FAB, INC., 08-R2D2-1118 THROUGH 1120
70. RENEWABLE MANAGEMENT CORP., 07-R2D5-1865

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For July 2, 2009

Page 5

71. RENN TRANSPORTATION, 08-R1D2-2585 AND 2587
72. R-N MARKET, INC., 08-R2D4-1087
73. F. RUIZ CONTRACTING, 08-R2D5-0717
74. SHANKARA IND. DBA RUSS'S AUTO BODY & PAINT,
75. SMC CONTRACTING, INC., 08-R2D1-0690
76. ANTHONY F. & GLORIA P. SOUZA DBA SOUZA REALTY & DEVELOPMENT
AND A. SOUZA & SON, 08-R2D4-707 THROUGH 709
77. DALE STICKNEY CONSTRUCION, INC., 08-R2D3-0698
78. STOCKTON POLICE DEPARTMENT, 08-R2D4-0715 AND 0716
79. SUBWAY SANDWICHES #1561, 08-R2D3-0288
80. TRI CITY GROWERS, INC., 08-R2D5-1864
81. TRI-CORP CONSTRUCTION, INC., 08-R2D1-0540 AND 0541
82. TWO RIVERS DEMOLITION, INC., 08-R2D1-4740
83. THE UNI-KOOL PARTNERS, 08-R6D3-3018 THROUGH 3024
84. UNIVERSITY OF CA-DAVIS, MEDICAL CENTER, 08-R2D1-1136
85. VALLEY PUMP & DAIRY SYSTEMS, 08-R2D5-4319 AND 4320
86. VISUAL IMAGING PRODUCTS, INC., 09-R3D3-1042 AND 1043
87. VSP PRODUCTS, INC., 08-R2D4-1718
88. WESTSIDE PRODUCE, 08-R2D5-0722

ORDER AFTER REMAND:

1. BHANDAL BROS. TRUCKING, INC., 09-R6D1-9060

ORDER DISMISSING APPEAL:

1. ANYTIME TREE & FENCE SERVICE, 08-R2D1-3410 THROUGH 3412

ORDER DENYING LATE APPEAL:

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For July 2, 2009
Page 6

1. SEARS ROEBUCK AND CO., 09-R2D1-9123

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

1. HOLLAND WATERPROOFING, 09-R2D1-2134

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1. J. A. HILL CORPORATION, 09-R4D4-9144

ORDERS GRANTING LEAVE TO PROCESS APPEAL AS TIMELY

1. AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
2. SHANKARA IND. DBA RUSS'S AUTO BODY & PAINT, 09-R6D5-2135 AND 2136

STIPULATIONS:

1. ATKINSON CONSTRUCTION LP, 06-R3D3-3422 THROUGH 3425
2. CA CORRECTIONS & REHABILITATION, FOLSOM PRISON, 07-R2D1-4631 THROUGH 4634
3. LA TOURAINE, INC., 08-R6D2-4243 THROUGH 4245
4. LEPRINO FOODS, 07-R2D5-2586
5. LEPRINO FOODS, 07-R2D5-2831
6. LIM & NASCIMENTO ENGINEERING CORP. (LAN), 06-R3D3-3568
7. THARALDSON DEVELOPMENT COMPANY, 08-R2D1-2648
8. WALMART DISTRIBUTION CENTER #6021, 07-R2D5-3571

PETITION 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.)

1. E & H INVESTMENT, INC., 08-R6D5-3992 AND 3995

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For July 2, 2009
Page 7

DENIALS OF PETITIONS FOR RECONSIDERATION (DRAFTS):

1. PARADISO MECHANICAL, INC., 06-R1D5-5033

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. AC FRAMERS INC., 03-R2D3-3475
3. AC TRANSIT, 08-R1D4-0135
4. AMERICAN REMEDIAL TECHNOLOGIES, 08-R4D2-3154 THROUGH 3156
5. VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY DBA ANTONSEN CONSTRUCTION, 06-R2D3-1272
6. ASC PROFILES, INC., 06-R2D1-1181
7. ANNING-JOHNSON COMPANY, 06-R1D3-1976
8. BART, 03-R1D1-5170
9. BIMBO BAKERIES USA, 03-R1D3-5215 THROUGH 5217
10. BLF, INC. dba LARRABURE FRAMING, 03-R4D3-4428 AND 4429
11. BLF, INC. dba LARRABURE FRAMING, 02-R4D1-4675 THROUGH 4680
12. C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155
13. CA RASMUSSEN, INC., 08-R4D5-219 AND 220
14. CALDWELL-ROLAND ROOFING, INC., 03-R1D4-2905
15. CALIFORNIA FRESH FARMS, 06-R2D4-4127
16. CENTRAL VALLEY CONCRETE, INC., 07-R2D4-1375 THROUGH 1378
17. COLES CARBIDE CORPORATION, 08-R4D3-2012 THROUGH 2014
18. CVS PHARMACY GARFIELD BEACH LLC, 08-R3D1-9368

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For July 2, 2009

Page 8

19. DAKOTA COMPANIES UNLIMITED, 05-R4D3-392 AND 393
20. DAVIS BROTHERS FRAMING, INC., 03-R3D1-114
21. DAVIS BROTHERS FRAMING, INC., 05-R3D3-634 THROUGH 636
22. DESIGN BUILDERS, INC., 08-R4D4-1901
23. DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177
24. DUKE PACIFIC, INC., 08-R3D3-574
25. DYNALECTRIC, 03-R1D1-4101
26. ESTENSON LOGISTICS LLC 05-R1D4-1755 AND 1756
27. ETTER & SON CONSTRUCTION, INC., 03-R1D5-3131
28. FORKLIFT SALES OF SACRAMENTO, INC., 05-R2D1-3477
29. FORTUNA IRON WORKS 06-R2D3-4222
30. G.T. ALDERMAN, INC., 05-R4D3-3513
31. GENERAL TRUSS CO. INC., 06-R2D1-783 AND 784
32. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
33. GLASS PAK, 03-R2D2-750 AND 751
34. GOLDEN WEST INDUSTRIES, INC., 08-R3D2-3930
35. HB PARKCO, 07-R4D2-1730 AND 1731
36. HELPMATES STAFFING SERVICES, 05-R3D3-2239
37. THE HERRICK CORP., 07-R3D1-495
38. HUSSMAN CORPORATION, 03-R3D1-2939
39. INDUSTRIAL MASONRY, INC., 07-R3D2-735 AND 736
40. IRWIN INDUSTRIES, INC., 08-R6D4-1454 THROUGH 1456
41. JENSEN PRECAST, 05-R2D1-2377
42. JOHN LAING HOMES, 04-R3D1-194 AND 195

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For July 2, 2009
Page 9

43. JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
44. KELLY SERVICES, INC., 06-R1D2-1024
45. KENNY-SHEA-TRAYLOR-FRONTIER/KEMPER, JV, 03-R5D2-323
46. KINDER MORGAN ENERGY PARTNERS, LP., 05-R5D1-2013 AND 2014
47. LOS ANGELES, CITY OF, FIRE DEPARTMENT, 03-R2D5-3960
48. LOS ANGELES, CITY OF, HOUSING AUTHORITY, (HACLA), 05-R4D2-2541
49. LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
50. MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274
51. HARRY L. MURPHY, INC., 06-R1D2-218 AND 219
52. BILL NELSON GENERAL ENGINEERING & CONSTRUCTION, 06-R2D5-1552 THROUGH 1554
53. & M INDUSTRIES, 04-R1D5-1597
54. PMR RACE CARS, 03-R3D3-1825
55. POUK & STEINLE, INC., 03-R4D2-1495 AND 1496
56. R & L BROSAMER, INC., 03-R1D5-4832
57. REAL EQUITY DEVELOPMENT, INC., 07-R2D4-4129 AND 4130
58. SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-0655
59. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
60. STACY & WITBECK, INC., 05-R1D1-1142
61. STATE CENTER COMMUNITY COLLEGE DISTRICT, 05-R2D5-1688
62. THROUGH 1692
63. DAVID STOUPAKAS DBA DEVORE TRUCKING & AUTO WRECKING, 07-R3D3-5185 AND 5186
64. STRUCTURAL SHOTCRETE SYSTEM, 03-R4D3-986

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For July 2, 2009

Page 10

65. TEICHERT & SON, INC., A CORPORATION DBA TEICHERT
AGGREGATES,04-R5D2-850 AND 851
66. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 05-R2D4-2650
67. AND 2651
68. TEICHERT AGGREGATES, 04-R5D1-2982
69. TRADER DAN'S DBA ROOMS N. COVERS, ETC., 08-R6D2-4978 THROUGH
4980
70. UKIAH FORD-LINCOLN-MERCURY, INC., 06-R1D5-2256 AND 2557
71. UNITED PARCEL SERVICE, 07-R3D3-3322
72. WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095
73. WESTCOAST COMMUNICATION, 05-R2D3-2801 AND 2802

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)
2. JERLANE v DIVISION OF OCCUPATIONAL SAFETY & HEALTH, 37-2007-
0005631-CU-WM-NC, (01-4344/4345)
3. J.F. SHEA CONSTRUCTION, INC. (DOSH V OSHAB), 34-2007-00882187-CU-
WM-GDS, (02-801)
4. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB), 34-2007-
00882192-CU-WM-GDS, (01-3261)
5. BRUTO CO ENGINEERING & CONSTRUCTION, INC., 30-2007 00100159 (07-
9223)
6. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (00-440)
7. KHS & S CONTRACTORS, 32-2008-00107284-CU-WM-GDS CJC (06-2759)

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For July 2, 2009

Page 11

8. ARTHUR J. BREWSTER CORP. dba PRESTIGE KITCHENS, INC., 30-2008-00110573 (08-1121)
9. EMPIRE PRO-TECH INDUSTRIES, 37-2008-00091916-CU-WM-CTL (07-2837)
10. MENDOTA UNIFIED SCHOOL DISTRICT, 08-CE CG 04 324 (07-3572)
11. SHIMMICK CONSTRUCTION CO., 34-2008-80000121-CU-WM-GDS (06-1136)
12. INTERNATIONAL TRANSPORTATION SERVICE (07-3824)
13. SOUTHERN CALIFORNIA EDISON COMPANY v CALIFORNIA
14. OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD, BS 119297, LOS ANGELES SUPERIOR COURT (08-9062)
15. UNITED AIRLINES (SFO), 34-2009-80000256

APPELLATE COURT:

1. MURRAY COMPANY, BS112469
2. HARRIS CONSTRUCTION COMPANY, INC. 07CS00518 (02-3914)

PERSONNEL:

(Issues regarding staff.)

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