

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), (e) and (f)
for
Wednesday, December 4, 2013
9:30 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: November 22, 2013

RE: Closed Session of the Board to be held on December 4, 2013

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.)

1. BELLINGHAM MARINE INDUSTRIES, INC., 12-R2D2-3144 THROUGH 3146
2. CALFIRE – DEPT. FORESTRY/FIRE PROTECTION, ALDER CONSERVATION CAMP, 12-R2D3-2578
3. CONTAIN-A-WAY, INC DBA NEXCYCLE, 12-R2D1-2358 AND 2359
4. J K ENTERPRISES, 12-R3D2-1079 AND 1080

PETITIONS FOR RECONSIDERATION:

1. DIEGO COBIAN DBA COBIAN’S TAQUERIA, 13-R6D7-0299

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2. IRWIN INDUSTRIES, 13-R6D4-9063
3. TAD VAN NGUYEN, 13-R1D1-9163

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

1. ACE COMMERCIAL PLASTERING, INC., 13-R2D2-9154
2. GARDNER TRUCKING, INC., 12-R3D2-0782
3. HILL CRANE SERVICE, INC., 12-R4D1-2475 THROUGH 2477

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.)

1. A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
2. AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
3. ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
4. BAY AREA RAPID TRANSIT DISTRICT, 12-R1D1-3056 THROUGH 3058 (DOSH)
5. BAY AREA RAPID TRANSIT DISTRICT, 12-R1D1-3056 THROUGH 3058
(THIRD PARTY - SEIU)
6. BODEGA LATINA CORP., DBA EL SUPER, 12-R2D2-3500
7. BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241
8. BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
9. CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
10. C.C. MYERS, INC, 08-R1D1-0952 THROUGH 0955 .
11. CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
12. COFFMAN SPECIALTIES, INC., 10-R3D3-3532
13. COMMERCIAL METAL FORMING, 09-R3D1-1592

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14. CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
15. CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
16. CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
17. DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
18. DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455
19. FERMA CORPORATION, 12-R2D2-1669
20. GMAC ELECTRIC, INC., 13-R6D5-9138
21. HARRIS CONSTRUCTION, 03-R2D5-3914
22. IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
23. KANA PIPELINE, INC., 13-R3D3-9108
24. KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014
25. K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
26. LABOR READY, 13-R3D2-0164
27. LA CITY BUILDING AND SAFETY, 13-R4D1-9110
28. LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
29. LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
30. L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
31. M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
32. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
08-R2D1-3093 THROUGH 3098
33. McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
34. MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
35. MORROW MEADOWS CORP., 09-R3D3-2295

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36. NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
37. NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186
38. ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637
39. OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
40. PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
41. PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
42. PERSONNEL PLUS, INC., 11-R3D5-1302
43. ROEBBELEN CONTRACTING, INC., 12-R2D2-3248
44. ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
45. JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
46. SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
47. SIERRA FOREST PRODUCTS, 09-R2D5-3979
48. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414 THROUGH 3418
49. SONIC DRIVE-IN, 12-R2D5-2734
50. STAFFCHEX, 10-R4D3-2456 THROUGH 2458
51. STARBUCKS DBA STARBUCK'S COFFEE #5867, 12-R3D2-3675 THROUGH 3678
52. SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850
53. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
54. TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
55. TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 AND 0097

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ORDERS DISMISSING APPEAL:

1. BIRRIERIAS TLAQUEPAQUE, INC., 13-R6D5-0147 THROUGH 0149
2. DECTON, INC., 12-R3D2-3780 AND 3781
3. FERNANDO FLORES MARTINEZ, FLC, 12-R3D2-3040
4. VOLT INFORMATION SCIENCE INC DBA VOLT WORKFORCE SOLUTIONS,
13-R3D2-1037

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1. AUTOTEK, INC., 13-R6D7-9191
2. L.A. EXPRESS ONE, INC., 13-R3D1-9176
3. L.A. EXPRESS ONE, INC., 13-R3D1-9177

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

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. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
3. SMUD, 34-2010-80000723 (08-R2D1-4887)
4. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
5. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)

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6. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965
(10-0188~0191)
7. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459
THROUGH 2461)
8. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
9. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
10. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
11. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
12. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
13. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
14. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
15. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219
AND 0220)
16. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
17. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258
(05-R2D4-2650 AND 2651)
18. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
19. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
20. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
21. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
22. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
23. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332
(09-R4D5-0459 & 0460)
24. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881
(10-R5D1-3029)

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25. HOME DEPOT USA, INC., BS141301 (10-3284)
26. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
27. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
28. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
29. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)
30. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
31. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
32. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)
33. AC TRANSIT, RG13687314 (08-R1D4-0135)
34. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
35. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514 (2008-R1D2-1191-1193)

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.)

1. AERO DYNAMIC MACHINING, INC., 13-R3D1-2815 AND 2816
2. ALCO IRON & METAL CO., 13-R1D4-0301 AND 0302
3. ALLIED CONTAINER SYSTEMS INC., 13-R3D3-2858 AND 2859
4. ALL INTERCITY PLUMBING, 13-R3D3-0321 THROUGH 0323
5. ASV WINES, INC., 13-R1D2-1165

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6. ATASCADERO STATE HOSPITAL, 11-R4D3-0208
7. A TEICHERT & SON INC DBA TEICHERT AGGREGATES, 13-R5D1-2666
8. BARRERA AG SERVICES, 13-R2D5-2974
9. BAVERSTOCK CONSTRUCTION DBA RHINO CONCRETE PUMPING,
13-R3D1-0692
10. BCM CONSTRUCTION COMPANY INC., 13-R2D4-1514
11. BEADOR CONSTRUCTION COMPANY INC., 13-R3D3-0215 THROUGH 0218
12. BLUE OLIVE LLC DBA CAFE BLISS, 13-R6D7-0909
13. BLU HOMES INC., 12-R1D5-3245 AND 3246
14. BUILDING MATERIALS CONSTRUCTION SERVICES, INC., 13-R6D7-2099
15. BUILDING MATERIALS HOLDING CORP. DBA BMC, 13-R4D3-0142
16. CA DEPARTMENT OF MOTOR VEHICLES, VALLEJO, 13-R2D2-3217
17. CALIFORNIA MEDICAL FACILITY, 13-R2D2-0688
18. CARUSO'S LLC DBA FISH RESTAURANT, 13-R1D5-0264 AND 0265
19. CA STATE METROPOLITAN STATE HOSPITAL, 12-R3D6-0066
20. CEILINGS PLUS, 13-R6D2-0807 THROUGH 0809
21. SEBASTIAN CIPPONERI DBA CIPPONERI ORCHARDS, 13-R6D7-2574
22. DIEGO COBIAN DBA COBIAN'S TAQUERIA, 13-R6D7-0299
23. COLE SUPPLY CO. INC., 13-R2D2-2696
24. CONCRETE EXPRESS, INC., 13-R4D3-2609
25. COSTCO WHOLESALE CORPORATION, 13-R2D4-3373 AND 3374
26. C P KELCO, 13-R6D4-2306
27. DAN ELLIOTT EQUIPMENT REPAIR, 13-R2D3-0313

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28. DECKER ELECTRIC CO INC ELECTRICAL CONTRACTORS, 12-R1D1-3594 AND 3595
29. DEOME 2 BUILDERS INC., 12-R2D1-3417 AND 2418
30. DIEGO COBIAN DBA COBIAN'S TAQUERIA, 13-R6D7-0299
31. DIESTEL TURKEY RANCH, 13-R2D4-1389
32. DNC PLUMBING DBA HYDRO-TECH PLUMBING CORP, 13-R4D1-0795 AND 0796
33. THINH TIEN DO, 13-R6D7-0150 THROUGH 0156
34. EAGLEWARE MG., CO., INC., 12-R6D2-1971 THROUGH 1978
35. ELEMENTAL ENERGY, INC., 13-R3D3-2165
36. ENKI HEALTH & RESEARCH SYSTEMS, INC., 13-R3D5-2024
37. ESPARZA ENTERPRISES, INC., 13-R4D7-1870
38. EXPRESS CONTRACTORS INC., 13-R3D3-2857
39. GENERAL FINISHING WORKS, INC., 13-R4D1-0110
40. GRANITE CONSTRUCTION CO., 13-R1D2-2378
41. JIM GUERTIN DBA NORCAL PLASTERING, 13-R6D7-1981 THROUGH 1984
42. HEARTWOOD INC DBA ALEXANDER WOODWORKS, 13-R2D1-1495
43. INLAND BOBCAT, INC., 13-R3D3-3020
44. INLAND ERECTORS, INC., 13-R3D5-0100
45. J & R GIESBRECHT TRUCKING, 13-R2D1-2318
46. KAISER PERMANENTE, 13-R2D2-0126 AND 13-R2D2-1010 AND 1011
47. KEECO, LLC, 13-R1D4-1166 AND 1167
48. KING CONCRETE & CONSTRUCTION, INC., 13-R6D7-1924
49. KING ISLAND GROWERS LLC, 13-R6D7-2181 THROUGH 2183

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50. KLOECKNER METALS CORPORATION, 12-R3D6-3616
51. LAFAYETTE SCHOOL DISTRICT, STANLEY MIDDLE SCHOOL, 13-R2D2-1930
52. LAMINATING COMPANY OF AMERICA, 13-R3D1-2212
53. L.L. CHRISTIAN CONSTRUCTION, INC., 13-R2D1-0687
54. MAGORIAN MINE SERVICES, 13-R5D1-2273
55. MAZT, INC DBA MCDONALDS RESTAURANT, 13-R2D1-2188
56. MAZT, INC DBA MCDONALDS RESTAURANT, 13-R2D1-2720
57. MENTAL HEALTH – PATTON STATE HOSPITAL, 12-R6D2-0800
THROUGH 0807
58. RANDOLPH MEZA DBA SOLRISE ELECTRIC, 13-R6D7-2374 AND 2375
59. MJM ENGINES, INC., 13-R6D5-2585 THROUGH 2587
60. OCEAN COMMERCIAL SUPPLY, INC., 13-R4D4-1063
61. ORANGE COURIER, INC., 13-R3D1-1302
62. PACHECO BROTHER'S INC., 13-R4D7-1871
63. PACIFIC BELL TELEPHONE COMPANY DBA AT&T CALIFORNIA,
12-R3D6-3790
64. PENSKE TRUCK LEASING CORP, 13-R2D1-2672
65. PLANT CONSTRUCTION COMPANY, L.P., 12-R1D1-3702 THROUGH 3704
66. QTECH AUTO REPAIR, INC., 13-R6D7-0198
67. NORMA L QUINTERO, 13-R6D7-2440 AND 2441
68. RUDYWORKS INC., 13-R6D7-2648 AND 2649
69. SAFEWAY INC., 12-R1D3-2877
70. SANDBERG FURNITURE, 13-R6D2-1484 THROUGH 1486
71. SAN FRANCISCO AUTO BODY, INC., 13-R6D7-0202 AND 0203

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72. PARKASH SINGH SHAHI, 13-R2D1-2735
73. SOLEX CONTRACTING INC., 13-R3D5-0324
74. STEELHEAD SEEMLESS GUTTERS, INC., 12-R2D1-2221 THROUGH 2223
75. SLM STAFFING & ASSOCIATES, 13-R4D7-1954 AND 1955
76. STILES CUSTOM METAL, INC., 13-R2D4-2256
77. SUN COUNTRY BUILDERS INC. DBA SUN COUNTRY BUILDERS,
13-R3D2-3102
78. TORRANCE STEEL WINDOW CO., INC., 13-R6D2-0363 THROUGH 0376
79. TRIANGLE COATINGS, INC., 13-R1D4-1799 AND 2463
80. TRIPLE D CO, INC DBA EARL SCHEIB, 13-R2D2-3033
81. UNIVERSAL ALLOY CORPORATION, 13-R3D1-0691
82. URBAN OUTFITTERS WEST LLC., DBA URBAN OUTFITTERS, 13-R2D1-1120
THROUGH 1122
83. VESTAS AMERICAN WIND TECHNOLOGY, INC., 13-R4D7-2865
84. WESTERN BADGE & TROPHY COMPANY, 13-R4D1-0107 THROUGH 0109
85. WEST-WORLD MFG INC. DBA WEST-WORLD COMPANY, 13-R6D2-2530
THROUGH 2534
86. WOODSMITHS ARCHITECTURAL CASEWORK & MILLWORK, INC.,
12-R2D1-2891
87. YMCA OF SILICON VALLEY, 13-R1D2-3301

PERSONNEL: *(Issues regarding staff.)*

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.