

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on June 11, 2014
Sacramento, California**

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Kari Johnson, Executive Officer
Jeff Mojcher, Chief Counsel
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Lee Berlin, Executive Secretary

MINUTES OF MAY 28, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the May 28, 2014 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the May 28, 2014 Board meeting.

ADMINISTRATIVE MATTERS:

(Information and discussion regarding the general administration of cases pending before the Appeals Board)

EXPEDITED PROCEEDINGS:

(Report on general administration of expedited proceedings)

ACTION: The Board reviewed the Expedited Proceedings report through May. 175 cases have been designated as Expedited Proceedings since the program's inception on July 1, 2013. Of those, 61 were abated within the first 30 days, 23 within 31-60 days, 27 within 61-90 days, and 27 within 91-120 days. 33 are currently awaiting hearing. The report is posted to the Board's website at <http://www.dir.ca.gov/oshab/Expedited-Proceedings-Reports.html>

DOCUMENT RETENTION POLICY PROJECT:

ACTION: A representative from CalRIM (the State Records Program) will visit the Board to review various stored documents in preparation for completing a written retention schedule for administrative, financial and personnel documents.

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NEW BUSINESS:

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

ACTION: The Board reviewed its proposed meeting calendar and approved it for posting to the website.

OLD BUSINESS:

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

ACTION: Executive Officer Johnson plans to meet with DOSH to work out an action plan to manage hearing continuances resulting from the department's August training on the Federal OIS system.

LEGISLATION:

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

ACTION: The Board receives updates on pieces of legislation from a staff analyst. Judge Fassler asked about the status of AB1897, which has to do with subcontracted workers. The Board asked that the legislative analyst provide an update.

CHAIRPERSON'S REPORT:

ACTION: Chair Carter and EO Johnson met with Federal OSHA Area Director David Shiraishi regarding the draft 2013 FAME report, which will be finalized in the coming weeks. Mr. Shiraishi indicated that there may be one-time partial matching federal funds available for purchase of software and hardware, but the application must be submitted before September. EO Johnson suggested that those funds may help pay for a high-speed scanner to aid the Board in digitizing case records.

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)

OASIS PROJECT:

ACTION: The OASIS team will review another COTS software product next week. Business lead Neil Robinson and Rene Taylor Consulting are beginning work on an RFP (Request for Proposal) that will solicit bids from software vendors.

STAFF REPORTS:

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

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ACTION: Chief Counsel Mojcher reported that no new writs were filed since the last Board meeting.

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 the discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

LEVY PREMIUM FOODSERVICE LIMITED, 12-R1D5-2714 AND 2715

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

ALS FASHION, INC., 14-R6D5-9046

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

HONEYBAKED HAMS, 13-R3D1-0941

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

SPRECKLES SUGAR CO., INC., 13-R3D2-0945 THROUGH 0947

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

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ORDERS DISMISSING APPEAL:

CLASSIC FOODS INTERNATIONAL CORP., 13-R3D1-1635 THROUGH 1637

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal from an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

ORDER DENYING LEAVE TO FILE LATE APPEAL:

BANYAN GROUP CONSTRUCTION, 14-R3D1-9067

ACTION: Member Lowry moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge.

CEDAR CREST RESORT, 14-R2D5-9066

ACTION: Member Lowry moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge.

FALKNER WINERY, INC., 14-R6D2-9055

ACTION: Member Lowry moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge.

REYNALDO MENDOZA DBA ELITE KREATIONS AUTO BODY, 14-R6D7-9069

ACTION: Member Lowry moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge.

NAKASH ENTERPRISES DBA SHELL GAS STATION, 14-R2D1-9068

ACTION: Member Lowry moved that the Board vote to rescind this Order Denying Leave to File Late Appeal of an Administrative Law Judge and grant the request for a late appeal. Member Freyman seconded. The Board voted to rescind this Order Denying Leave to File Late Appeal and grant the request for late appeal.

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R.M.T. CONTRACTING, INC., 14-R4D7-9070

ACTION: Member Lowry moved that the Board vote to rescind this Order Denying Leave to File Late Appeal of an Administrative Law Judge and grant the request for a late appeal. Member Freyman seconded. The Board voted to rescind this Order Denying Leave to File Late Appeal and grant the request for late appeal.

AMENDED ORDER:

HENKEL CORPORATION, 13-R2D2-1386 AND 1387

ACTION: Member Lowry moved that the Board approve this Amended Order of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Amended Order of an Administrative Law Judge.

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.)

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.)

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

JAMES BALDWIN DBA LYON'S MUFFLER & BRAKE, 14-R6D5-9019
BELLINGHAM MARINE INDUSTRIES, 12-R2D2-3144 THROUGH 3146
BRAD STONER PAINTING, INC., 13-R3D2-9200
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387

DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature as amended. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature as amended.

DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455

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FERMA CORPORATION, 12-R2D2-1669
GMAC ELECTRIC, INC., 13-R6D5-9138
HARRIS CONSTRUCTION, 03-R2D5-3914
HHS CONSTRUCTION, 12-R3D2-0492-0497
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
LABOR READY, 13-R3D2-0164
LA VALENCIA HOTEL, 13-R3D2-9199
LYON'S MUFFER & BRAKE, 14-R6D5-9019
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
08-R2D1-3093 THROUGH 3098
MARCO RUFO DBA MARCO RUFO, 13-R6D5-9217
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
MCCARTHY BUILDING CO., INC., 12-R1D4-3458
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
MORROW MEADOWS CORP., 09-R3D3-2295

NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791

ACTION: The Board discussed this matter.

NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186

O.C. JONES AND SONS, INC. 13-R2D2-0310

ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637

OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature as amended. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature as amended.

JIM PARKER, 2014-R4D1-9009

PERSONNEL PLUS, INC., 11-R3D5-1302

ROEBBELEN CONTRACTING, INC., 12-R2D2-3248

ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048

ACTION: The Board discussed this matter.

ROSENDIN ELECTRIC, INC., 12-R2D1-3028 (Board Order of Recon)

ROSENDIN ELECTRIC, INC., 12-R2D1-3028 (Employer)

SIERRA FOREST PRODUCTS, 09-R2D5-3979

SONIC DRIVE-IN, 12-R2D5-2734

STAFFCHEX, 10-R4D3-2456 THROUGH 2458

ACTION: The Board discussed this matter.

STARBUCKS DBA STARBUCK'S COFFEE #5867, 12-R3D2-3675
THROUGH 3678

TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
ACTION: Member Lowry moved that the Board vote to approve this
draft Decision After Reconsideration for signature. Member Freyman
seconded. The Board voted to approve this draft Decision After
Reconsideration for signature.

TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 AND 0097
TREASURE ISLAND MEDIA, INC., 10-R6D1-1093 THROUGH 1095
VICTORY SCREEN PRINTING 12-R3D1-3673 & 3674

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.)

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. SMUD, 34-2010-80000723 (08-R2D1-4887)
3. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-8000820 (03-R1D1-5170)
4. MASCON, INC., 34-2011-80000819 (08-R2D1-4278 AND 4279)
5. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965
(10-0188~0191)
6. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459
THROUGH 2461)
7. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
8. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
9. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
10. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
11. DUININCK BROS., INC., 34-2012-80001129 (06-2871)

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12. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
13. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
14. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
15. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
16. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
17. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
18. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
19. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
20. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
21. HOME DEPOT USA, INC., BS141301 (10-3284)
22. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
23. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
24. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
25. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)
26. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
27. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
28. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)
29. AC TRANSIT, RG13687314 (08-R1D4-0135)
30. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
31. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)
32. CA PRISON INDUSTRY AUTHORITY, 13 C 0327 (08-R2D5-3426 ~ 3429)

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33. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
34. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
35. SHIMMICK-OBAYASHI, 34-2014-80001750 (2008-R3D3-5023 THROUGH 5025)
36. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
37. BAY AREA RAPID TRANSIT DISTRICT, RG14715710 (10-R1D1-3056 THROUGH 3058) (DOSH)
38. LAND O'LAKES PURINA FEED, LLC, RG14715717 (08-R2D4-1843 AND 1844) (DOSH)
39. BAY AREA RAPID TRANSIT DISTRICT, RG14715720 (10-R1D1-3056 THROUGH 3058) (3rd Party)
40. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)
41. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)

APPELLATE COURT:

1. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, C075477, 34- 2011-80000640 (08-R2D1-0027 THROUGH 0030)
2. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)
3. SHERWOOD MECHANICAL, INC., D065322, 37-2012-00101466 (08-R3D2-4690 ~ 4693)

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.)

ACCO ENGINEERED SYSTEMS, 13-R6D2-2565
A M DRYWALL, INC., 14-R1D4-0766
AMPAC FINE CHEMICALS, LLC, 14-R2D1-0242
AMTREND CORPORATION, 13-R6D2-2963 THROUGH 2966
GEORGE AYALA DBA AYALA CONSTRUCTION, 13-R6D5-2294
A.V. THOMAS PRODUCE, INC., 14-R2D4-1089

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JOSEPH BRADLEY DBA BELMEX CONSTRUCTION, 13-R4D4-2636
CAL STATE STEEL CORPORATION, 13-R4D1-1848
ANDRES CHAVEZ AND JORGE LOPEZ DBA OAKLAND LINEN SERVICE,
14-R1D4-0740 THROUGH 0744
CONTAINER INTERMODAL TRANSPORT, INC., 113-R6D2-1902
CORNERSTONE STAFFING SOLUTIONS, 13-R4D4-2048
C.S. LEGACY CONSTRUCTION, INC., 13-R3D3-3546
CVS PHARMACY, 14-R3D1-0991
DEVELOPLUS, INC., 13-R3D3-3786 THROUGH 3790
EAST BAY MUNICIPAL UTILITY DISTRICT, 14-R1D4-1312
FOOTHILL SUITES, LLC., 13-R4D4-2361
G & P AG MANAGEMENT CONTRACTORS, INC., 13-R6D7-2376
HERZOG REYES, A JOINT VENTURE, 14-R3D5-1291
HIGHLAND MANOR, 14-R6D2-1080 THROUGH 1082
ITAL CUSTOM SIGNS, INC., 13-R4D4-2028 THROUGH 2030
NADER JAVID, 14-R2D4-0806 THROUGH 0808
JJ HARVESTING, 13-R3D2-2737 THROUGH 2740
JOBBER'S WHOLESALE, INC., 13-R3D5-1715 AND 1716
JWCH INSTITUTE INC. DBA THE ABBEY, 13-R4D1-2289
ADELBERTO LUGO DBA CAL STATE CONSTRUCTION, 13-R6D5-3036
MARINE FENDERS INTERNATIONAL, INC., 13-R3D5-2263 AND 2264
MESQUITE ENTERPRISES, INC., 13-R3D3-2288
MING INTERNATIONAL DBA CARPET SOLUTIONS, INC., 13-R3D5-3103
THROUGH 3105
NELLSON NUTRACEUTICAL LLC., 13-R4D4-0138 AND 0139
NORWALK INDUSTRIES, L.P. 13-R3D3-2021 THROUGH 2023
ORGANIC MILLING ACQUISITION, 14-R6D2-0185 THROUGH 0193
PACIFIC EDGE REAL ESTATE, 11-R4D3-1274 AND 11-R4D3-1559
PACIFIC GAS & ELECTRIC COMPANY, 13-R2D1-1013 AND 1014
PACIFIC STEEL CASTING CO., 13-R6D1-3868 THROUGH 3870
PARAGON INDUST., INC. DBA BEDROSIAN TILE & MARBLE, 13-R3D1-2326
THROUGH 2329 AND 14-R3D1-1039
PHOENIX MOTORCARS, 13-R4D4-2610
RDO EQUIPMENT CO., 13-R3D2-1221 AND 1222
RICHARD BAGDASARIAN, INC., 13-R3D3-1996
ROADSTER WHEELS DBA WHEEL VINTIQUES, INC., 13-R2D5-2286
SILVERLINE CONSTRUCTION, 13-R4D1-0292 AND 0293
S.J. DENHAM, INC., 13-R2D3-3665
SOUTH COAST SPECIALTY SYSTEMS, INC., 13-R3D2-1157
SOUTHERN WINE & SPIRITS OF AMERICA, INC., 13-R4D4-2362 AND 2363
SPRAGUE'S ROCK AND SAND COMPANY, 13-R4D4-2511
TIME WARNER CABLE, 13-R3D2-1522
TRIUMPH PAINTING, 14-R3D5-0480
KEVIN TURNER DBA KA TURNER CONSTRUCTION, 13-R6D7-3671 AND 3672
WESLAR, INC., 13-R4D3-2225 AND 2226
WESTERN EXTERMINATOR COMPANY, 13-R3D3-1186

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WESTMONT CORP. DBA WILDWOOD MOBILE COUNTRY CLUB, 13-R4D4-1461

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 11:39 a.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 11:40 a.m.