

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on October 2, 2013
Sacramento, California**

PRESENT:

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

MINUTES OF SEPTEMBER 18, 2013 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the September 18, 2013 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the September 18, 2013 Board meeting.

ADMINISTRATIVE MATTERS:

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

1. BOARD CALENDAR REPORT:

ACTION: The Board reviewed its draft calendar for 2014 and discussed various topics for the ALJ training session tentatively scheduled in January.

NEW BUSINESS:

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

ACTION: No report.

OLD BUSINESS:

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

ACTION: No report.

LEGISLATION:

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

ACTION: Chair Carter reported that the Governor is considering AB1165.

CHAIRPERSON'S REPORT:

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

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1. UPDATE FROM SENIOR MANAGERS MEETING

ACTION: Chair Carter reported that the DIR management meeting was cancelled.

2. MEETINGS/EVENTS SCHEDULED FOR UPCOMING WEEKS

ACTION: Chair Carter will attend the Cal OSHA Advisory Committee meeting on October 3 and will report back at the next meeting.

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 and news from the Department and Appeals Board.)

1. NEW PROCESSES PROJECT:

ACTION: Executive Officer Johnson reported on the expedited proceedings process. Of the 84 cases examined for inclusion in the expedited process since July 1, 42 have been calendared. Of the remainder, 18 were removed because they were abated, three cases are being considered by the Bureau of Investigation and 21 are still pending proof of abatement.

2. UPDATE ON WEST COVINA TELEPHONES:

ACTION: The phone project is moving along well. The repairs to the ceiling, required because of telephone wiring issues, have been completed and a new telephone system has been ordered. The project is expected to be completed by the end of the year.

STAFF REPORTS:

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

ACTION: Chief Counsel Mojcher reported that a hearing date of October 23 was set for the Teichert case, but that he would be unavailable at that time and would request a continuance.

Any matter not completed at this meeting may be continued to subsequent meetings

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:

ASC PROCESS SYSTEMS, INC. 12-R4D3-2673

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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.

D. R. HORTON, 12-R2D2-3572

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.

L3 TELEMETRY WEST, 12-R3D2-3426 AND 3427

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.

PASQUINI CAPITAL, INC., DBA OUTLAWS GRILL & SALOON,
12-R4D3-2329

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.

SHAW PIPELINE, INC., 12-R1D3-1587 THROUGH 1588

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:

1. SAM HILL & SONS, INC., 2013-R4D3-9127

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.

2. MARIA de LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
2008-R2D1-3093-3098

ACTION: The Board held this matter until the next meeting.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

1. SF BAY AREA RAPID TRANSIT, 10-R1D1-3056-3058

ACTION: The Board took no action on this matter. The Board discussed

the petitions and deferred its decision to the October 16, 2013 meeting.

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.)

A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
C.C. MYERS, INC., 08-R1D1-0952 THROUGH 0955
CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
COMMUNITY RECONSTRUCTION SOLUTIONS, INC., 11-R1D1-1484
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455
EZ MIX, INC., 08-R4D3-1898
FERMA CORPORATION, 12-R2D2-1669
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HARRIS CONSTRUCTION, 03-R2D5-3914
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
INNOVATIVE MAINTENANCE SOLUTIONS, INC., 12-R2D2-3151 and 3152
JERRY'S TREE SERVICE, A PARTNERSHIP, 13-R1D5-9022
KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
LA CITY BUILDING AND SAFETY, 13-R4D1-9110
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC., 08-R2D1-0025 AND 0026

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PERSONNEL PLUS, INC., 11-R3D5-1302
ROEBBELEN CONTRACTING, INC., 12-R2D2-3248
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
SIERRA FOREST PRODUCTS, 09-R2D5-3979
SMUD, 08-R2D1-4887 THROUGH 4889
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414
THROUGH 3418
SONIC DRIVE-IN, 12-R2D5-2734
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERES FROZ SUN FOODS, 09-R4D3-2850
TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 & 0097

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.)

ORDERS DISMISSING APPEAL:

1. TELACU CONSTRUCTION MANAGEMENT, 12-R4D1-2276

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.

LEGISLATION:

ACTION: No report

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)

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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)
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)

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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)

ACTION: The Board discussed this matter.

25. HOME DEPOT USA, INC., BS141301 (10-3284)

ACTION: A brief has been filed and a hearing is scheduled in November.

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)

ACTION: The Board discussed this matter.

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)

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.)

2 FRIENDS INC., DBA: MAMA N PAPA'S PIZZA GROTTTO, 13-R3D2-2333
ART'S PAINTING & CLEANING SERVICES, INC., 13-R4D1-0228 AND 0229
ASI ELECTRIC, INC., 12-R4D3-2088 THROUGH 2090
AUTO NATION CORP, DBA AUTOWEST DODGE, 12-R2D1-3771
DAN AVILA & SON, 13-R2D4-1295 AND 1296
BARNHART-BALFOUR BEATTY DBA BALFOUR BEATTY CONST.,
13-R3D5-0219 AND 0220
BERRY'YS SAWMILL INC., 12-R6D1-2331 AND 2332

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BODEGA LATINA CORP DBA EL SUPER, 12-R3D3-2544
DAN BROWN DBA SANTA CRUZ VENDING, 13-R1D2-1100
CAL TOP BUILDERS, 13-R4D1-0104 THROUGH 0106
CARTER ELECTRIC, 13-R3D2-0786 AND 0787
CBS OUTDOOR, INC. 12-R3D2-1210
CEDAR FAIR LP DBA: KNOTT'S BERRY FARM, 12-R3D1-2694
CODE ENFORCEMENT DEPT. COUNTY OF RIVERSIDE, 12-R3D3-3363
CONNIE CHAN & BENJAMIN LEE DBA SACTOWN AUTO TECH, 13-R6D7-1202
THROUGH 1204
COUNTY OF RIVERSIDE ANIMAL CONTROL, 13-R3D3-0486
DIGNITY HEALTH DBA ST. FRANCIS MEMORIAL HOSPITAL, 13-R1D1-0262
DIVERSIFIED WATERSCAPES, 12-R3D1-3613
EMCOR GROUP DBA CONTRA COSTA ELECTRIC, INC., 13-R6D3-0478
EXEL INC., 13-R6D2-2305
EXPRESS EMPLOYMENT PROFESSIONALS, 13-R6D2-1087
EXTERIOR CLADDING SYSTEMS, INC., 13-R3D3-2164
BASSAM F. FAKHER DBA AMERICAN AUTO FINANCE, 13-R6D5-2307
THROUGH 2309
FAMILY ASSISTANCE MINISTRIES, 12-R3D1-2907
FARBEX CONSTRUCTION SERVICES, INC., 13-R1D2-1114 AND 1115
FILLMORE PIRU CITRUS ASSOCIATION, 13-R6D2-1896 AND 1901
GEN ON ENERGY, INC., 12-R2D2-1901
GEN ON ENERGY, INC., 12-R2D2-1902
GEO PLASTICS, 13-R6D2-1674
GFF, INC., 12-R6D2-2829 THROUGH 2842
GLOBAL BAKERIES, INC., 12-R6D2-0726 AND 0727
GOLDEN ACRE FARMS, INC., 13-R3D3-2335 AND 2336
GOODWILL OF SILICON VALLEY DBA GOODWILL INDUSTRIES, 13-R6D1-1228
AND 1229
GREEN VALLEY FARM LABOR, 12-R3D3-3750
GSE CONSTRUCTION COMPANY, INC., 13-R1D2-1732
HARA NO SHITA DE HOLDINGS DBA UNDERBELLY, 13-R3D2-0950 AND 0951
ALBERT HERNANDEZ DBA ALBERT HERNANDEZ PAINTING, 12-R6D5-2689
AND 2690
INTERIOR EXPERTS GENERAL BUILDERS, INC. DBA INTERIOR EXPERTS,
12-R3D1-3529
INTERNATIONAL DIE CASTING, 13-R3D5-0415 AND 0416
JALI MORGENRATH DBA VILLAGE SHOPS ,13-R1D2-0912 AND 0913
KENYON PLASTERING INC., 12-R2D2-3670
LA COUNTY DEPT OF PUBLIC WORKS, 12-R3D6-2589
LGC BUILDERS, 12-R3D1-2266 THROUGH 2270
MESA & VICTORIA IN., DBA CODY'S CAFÉ, 12-R6D5-3691 AND 3692
JULIE L. MULLER DBA A & A TRANSMISSION CENTER, 13-R3D3-0320
NAPA AUTO PARTS DBA JACKSON'S AUTO SUPPLY, 12-R3D1-3644
NAJARIAN FURNITURE COMPANY, 12-R3D6-3108 AND 3109
NB & T INDUSTRIES INC. DBA APC INDUSTRIES, 12-R4D1-3467 THROUGH 3470

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NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186
PEPSI BEVERAGE SOMpany, 13-R2D5-1517 AND 1518
PETERSEN-DEAN, INC., DBA PETERSENDEAN, 13-R3D1-1914 THROUGH 1916
PRE-PRESS INTERNATIONAL DBA DIGITAL PRE-PRESS INC., 2008-R1D1-3255
THROUGH 3262 *
PRECISION ENGINEERING INC., 12-R1D1-3242
PWLC II INC., 13-R3D3-0319
RAMIREZ FARM LABOR CONTRACTOR, INC., 13-R4D3-0065 AND 0066
RENO CONTRACTING, INC., 12-R6D5-3732
RICHARD AND SONS, LLC DBA ISLAND CAR WASH, 13-R3D6-0019 *
RIVERSIDE PUBLIC WORKS WASTE WATER, 12-R3D3-3394
ROHR, INC., DBA FOODRICH AEROSTRUCTURES, 13-R3D2-0610 THROUGH 0612
RUIZ FOODS, 12-R2D5-3155
SAINT GOBAIN SOLAR GARD, LLC., 13-R3D2-2402 THROUGH 2404
SCOTT ENGLISH PLUMBING, INC., 12-R3D1-3593
SHIN SHIN CONSTRUCTION CORP., 12-R4D3-3441
SHOBAHANA GANDHI M. D., INC., 13-R4D1-0294
SIMON CONTRACTING COMPANY, 13-R3D3-0098
SLATOR FLASS & MIRROR, 13-R3D6-0054
SMART & FINAL STORES, LLC., 12-R4D1-3273 AND 3274
SOCOASTMETALFIN. DBA WEST COAST METAL FINISHING INC., 12-R6D2-3292
THROUGH 3297
SOFIA NEW, 13-R1D1-0260 AND 0261
SOURCE REFRIGERATOR & HVAC. INC., 13-R4D3-0531 AND 0532
SOUTH STATE TOWING, INC., 12-R4D1-3168
SOUTHERN COUNTIES TERMINALS, INC., 12-R4D1-3211 THROUGH 3214
STATE WIDE STRIPES, INC., 13-R3D2-0613 AND 0614
STS, INC. DBA SVA-TEK STAFFING INC., 12-R1D5-3351
SUNNY SPORTS, INC., 12-R3D6-3788 AND 3789
SYNERGY PROJECT MANAGEMENT, INC., 13-R1D1-0444
TAQUERIA LA BAMBA, LLC DBA AY CARAMBA ITS LA BAMBA, 13-R6D7-1110
TRADER JOE'S COMPANY, 12-R3D3-2406
PHUONG CHONG TRUONG DBA PT CATERING TRUCK, 11-R1D2-1973 AND
11-R1D2-2047
VISION EXPRESS/WARG-TIME TRANSPORTATION, 13-R3D5-0511 AND 0512
ROBERT WILLIAM CO. LLC., 13-R4D3-0425 AND 0426
WIN SOON, INC. DBA EPOCA, 13-R6D2-0561 THROUGH 0563
WNA COMET WEST, INC., 12-R3D6-3577 AND 3578 *

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.

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PERSONNEL:

(Issues regarding staff)

ACTION: No report

The Closed Session 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.