MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Thursday, January 26, 2017 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair

Scott P. LeMarr Robin S. Orchard Commissioner Commissioner

James Ashley

Director

Jason M. Porter

Chief Legal Counsel

Bob Charles

Legislative Affairs Chief / Public Information Officer

Renee Pastor

Accounting

Jamie Stacy William Warren HR Manager ADOSH Director

Brad Harbour
Billie Gingrass

Compliance Officer Compliance Officer

Billie Gingrass Kara Dimas

Compliance Officer
Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Richard Glover and Cory Glover with J L & S Electrical Construction, Inc.; Dianne Shoemake and Lorena Sanchez-Zumph with the City of Glendale; Hector Contreras with Peterson Dean; Joshua Wilkinson with IMS Acquisition, LLC; Bryce Pennington and Shawn Dozier with Redmond Construction; and Jason Weber with Snell & Wilmer.

Approval of Minutes of January 19, 2016 Regular Meeting.

Commissioner Orchard moved to approve the Minutes of the January 19, 2017 meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

- a. <u>Approval of Requests for Renewal of Self-Insurance Authority.</u>
 - 1. City of Glendale
 - 2. Costco Wholesale Corporation

Chairman Shultz removed item a.2. (Costco Wholesale Corporation) from the Consent Agenda.

Commissioner LeMarr moved to approve the remaining items on the Consent Agenda and Commissioner Orchard seconded the motion.

Commissioner Orchard noted that representatives from the City of Glendale were in attendance. Chairman Schultz commended the City of Glendale for its excellent experience modification rating and safety programs. Ms. Shoemake thanked Chairman Schultz.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Costco Wholesale Corporation: Chairman Schultz discussed the company's experience modification rating.

Commissioner LeMarr moved to approve Costco Wholesale Corporation's request for renewal of self-insurance authority and to direct the company to work with the ADOSH Consultation Division to improve its experience modification rating. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles provided an update concerning Proposition 206 and an Arizona Daily Star report concerning accidents in Arizona.

Mr. Charles provided an update on the status of the Commission's legislative proposals.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

J L & S Electrical Construction, Inc.

Marana, AZ 85653

P.O. Box 515

Site Location: 400 N. Toole Ave.

Tucson, AZ 85701

Inspection No:

B7667-1169137

Inspection Date:

08/11/2016

<u>SERIOUS</u> – Citation 1 - Item 1 – Second Floor Attic: Employees replaced electrical fixtures without de-energizing the circuit and grounding it or guarding it effectively. (29 CFR 1926.416(a)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Empl. Covered by inspection:

Fatality/Accident Years in Business:

49

3

NON-SERIOUS – Citation 2 - Item 1 – Office: The employer failed to report the work-related fatality within 8 hours of its occurrence. (29 CFR 1904.39(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$6,500.00

TOTAL FORMULA AMT. - \$6,500.00

Mr. Warren discussed ADOSH's fatality investigation and summarized the citation and proposed penalties.

Commissioner Orchard, Commissioner LeMarr, and Mr. Warren discussed ADOSH's after-hours availability and the requirement to report a fatality within eight hours.

Commissioner LeMarr and Mr. Warren discussed the "MG" designation and proposed penalty reductions.

Richard Glover, Cory Glover, and Mr. Warren discussed the reporting of the fatality to the Claims Division.

Commissioner Orchard ask about any changes made at the company as a result of the fatality. Richard Glover and Cory Glover noted they will address that issue when they contest the citation and penalty. Mr. Warren discussed the nature of the citations.

Commissioner Orchard moved to amend the citations and proposed penalties, as follows: decrease the proposed penalty for Citation 2, Item 1, to \$100.00, for a total penalty of \$5,100.00. Commissioner LeMarr seconded the motion and discussed the good faith efforts of the employer to notify the Commission regarding the fatality. Commissioner Orchard discussed the reporting standard and the timing of ADOSH's investigation. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Castles N' Coasters, Inc.

Referral

9445 N Metro E

Years in Business:

Empl. Covered by inspection:

40

150

Phoenix, AZ 85051

9445 N Metro E

Phoenix, AZ 85051

Inspection No:

Site Location:

W0250-1186606

Inspection Date:

10/21/2016

<u>SERIOUS</u> – Citation 1 - Item 1 – 9445 N Metro E Phoenix, AZ 85051: Employees were not protected from falls while on amusement rides. (29 CFR 1910.23(c)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

<u>SERIOUS</u> – Citation 1 - Item 2 - 9445 N Metro Pkwy E: One employee was not provided training in the use, care, how to properly don, doff, adjust, and wear personal protective equipment (PPE) (e.g. harness and lanyard). (29 CFR 1910.132(f)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Chairman Schultz, Commissioner LeMarr, and Mr. Warren discussed personal protective equipment (PPE), related training issues, and the location of the PPE.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly,

Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Family Dollar, Inc.

Complaint

3035 E. 36th Street

Years in Business:

57 3

Tucson, AZ 85716

3035 E. 36th Street

Empl. Covered by inspection:

Site Location:

Tucson, AZ 85716

Inspection No:

W6968-1188708

Inspection Date:

10/19/2016

SERIOUS – Citation 1 - Item 1 –

a) Main Store, Warehouse Storage and Receiving Area: The exit route to the exit door was blocked by a conveyor, stored boxes and inventory. (29 CFR 1910.37(a)(3)).

b) Main Store, North side: Exit door in the store was blocked by a display and a storage of boxes. (29 CFR 1910.37(a)(3)).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – Main Store Room, Restroom Area: Two helium tanks which were observed and standing unsupported and not secured in an open area near the manager's office and restroom area. (29 CFR 1910.101(b)).

Div. Proposal - \$1,350.00

Formula Amt. - \$1,350.00

TOTAL PENALTY - \$5,850.00

TOTAL FORMULA AMT. - \$5,850.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Commissioner LeMarr and Mr. Warren discussed a previous matter involving Family Dollar Tree and a recent nationwide OSHA settlement concerning the same safety violation.

Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed a typographical error in the report concerning the number of employees.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

IMS Acquisition LLC dba

Planned

Innovative Manufacturing Solutions, Inc.

Years in Business:

Empl. Covered by inspection:

18 32

4355 S Santa Rita Ave.

Tucson, AZ 85714

Site Location:

4355 S Santa Rita Ave.

Tucson, AZ 85714

Inspection No:

W6968-1183982

Inspection Date:

10/13/2016

<u>SERIOUS</u> – Citation 1 - Item 1 – Main shop: Three Okuma Cadet Mates (Model unknown, Various Serial Numbers), and three E Series Machines (Model unknown, Various Serial Numbers) had their

barrier guard door locks bypassed, and were not protecting the operators from ingoing nip points, rotating parts, flying chips and sparks. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – Finishing Area: A Sharp brand surface grinder (Model #SG618, Serial Number unknown) had the guard removed and was not protecting the operators from ingoing nip points, rotating parts, flying chips and sparks. (29 CFR 1910.215(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

<u>SERIOUS</u> – Citation 1 - Item 3 – Thought out the shop: Over 50 air nozzles used by employees for cleaning metal and other shavings from parts and for parts finishing were set over 30 p.s.i. (29 CFR 1910.242(b)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$6,250.00

TOTAL FORMULA AMT. - \$6,250.00

Mr. Warren summarized the citation and proposed penalties and reviewed the history and photographs.

Commissioner LeMarr, Mr. Warren, and Mr. Wilkinson discussed the CNC machine.

Mr. Warren, Mr. Porter, and Mr. Wilkinson discussed contestment and an informal conference.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Commissioner Orchard noted appreciation for the company's cooperation. Commissioner LeMarr and Wilkinson discussed whether the subject conditions had been corrected. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Petersen-Dean, Inc. dba Petersen Dean

Referral

215 S 13th St

Years in Business:
Empl. Covered by inspection:

32 2

Phoenix, AZ 85034

Lot #300 & Lot #301

1626 N 77th Glen

Phoenix, AZ 85034

And

Lot #218 N 77th Glen

Phoenix, AZ 85034

Inspection No:

Site Location:

D4452-1181341

Inspection Date:

09/30/2016

REPEAT-SERIOUS – Citation 1 - Item 1 –

a) 1626 N 77th Glen, Phoenix, AZ-Lot #301: Employees engaged in roofing activities on a low slope roof, were not protected from falling approximately 24 feet to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(10)).

- b) 1626 N 77th Glen, Phoenix, AZ-Lot #300: Employees engaged in roofing activities on a low slope roof, were not protected from falling approximately 18 feet to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(10)).
- c) 77th Glen, Lot #218, Phoenix, AZ: Employees engaged in roofing activities on a low slope roof, were not protected from falling approximately 30 feet 6 inches to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(10)).

Petersen-Dean, Inc., dba, Petersen Dean was previously cited for a repeat violation of this occupational safety and health standard or its equivalent standard, 29 CFR 1926.501(b)(10), which was contained in OSHA inspection number 1113375, citation number 1, item number 1 and was affirmed as a final order on 5/1/16, with respect to a workplace located at 1842 N. 156th Dr., Goodyear AZ 85395.

Petersen-Dean, Inc., dba, Petersen Dean was previously cited for a repeat violation of this occupational safety and health standard or its equivalent standard, 29 CFR 1926.501(b)(10), which was contained in OSHA inspection number 1108328, citation number 1, item number 1 and was affirmed as a final order on 5/4/16, with respect to a workplace located at 1187 N. 164th Ave., Goodyear, AZ 85338.

Div. Proposal - \$25,000.00

Formula Amt. - \$25,000.00

SERIOUS – Citation 2 - Item 1 –

- a) 1626 N 77th Glen, Phoenix, AZ-Lot #301: Employees ascended and descended a portable aluminium ladder, manufacturer and model unknown, to gain access to the roof without side rails extending 3 feet above landing surface. (29 CFR 1926.1053(b)(1)).
- b) 1626 N 77th Glen, Phoenix, AZ-Lot #300: Employees ascended and descended a 24 foot fiberglass Werner portable extension ladder to gain access to the roof without side rails extending 3 feet above landing surface. (29 CFR 1926.1053(b)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$27,500.00

TOTAL FORMULA AMT. - \$27,500,00

Mr. Warren summarized the citations and proposed penalties and reviewed the history and photographs.

Chairman Schultz, Commissioner LeMarr, Mr. Warren, and Mr. Harbour discussed reclassification of a prior citation during settlement proceedings, the origin of the inspection, the inspection process, and citation grouping.

Commissioner Orchard, Mr. Warren, and Mr. Harbour discussed the distinction between a failure to properly enforce fall protection standards and a lack of appropriate fall protection.

Commissioner Orchard, Mr. Harbour, Mr. Warren, and Chairman Schultz discussed the company's policy concerning foreman accountability and the need for regular safety checks.

Commissioner LeMarr and Mr. Harbour reviewed photographs 5 through 8 and the guardrail/scaffolding seen in the photographs.

Mr. Contreras addressed the commission. He discussed the company's training program, safety meetings, discipline policy, and noted the company's improvements in these regards. Mr. Contreras indicated that the employees were retrained following the subject inspection.

Mr. Warren noted that the company was not cited for a training violation.

Chairman Schultz discussed the company's participation in the Chairman's Roofing Alliance program and said that the company's training program was used as the model for Alliance members.

Mr. Contreras discussed employee misconduct, his concerns about targeting, and the company's safety-related efforts.

Chairman Schultz discussed Mr. Contreras comments, the Commission's efforts to ensure that individual employers are not being targeted, and the formal contest process. He noted that the investigation was prompted by a referral from a member of the public. He noted his appreciation of the company's participation in the Roofing Alliance and Mr. Contreras' dedication to safety.

Mr. Warren and Mr. Contreras discussed the inspections, the interviews, and the informal conference.

Chairman Schultz, Mr. Warren, Mr. Porter, Mr. Harbour, and Mr. Contreras discussed photograph 9, the photo's representation of the foreman on the subject ladder, and the requirement that the ladder's side rails extend three feet above landing surface.

Commissioner Orchard moved to approve the citations and proposed penalties as presented and Commissioner LeMarr seconded the motion. Commissioner Orchard indicated that the Commission was willing to work with the company to help them avoid further violations. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Redmond Construction, LLC 5902 Highway 95 Ste 118

Fort Mohave, AZ 86426

Empl. Covered by inspection:

Site Location: 1751 AZ 95 Ste 25 Bullhead City, AZ 86442

Inspection No: H9685-1184375

Inspection Date: 10/12/2016

SERIOUS - Citation 1 - Item 1 -

a) 1751 Highway 95 Ste 25, Bullhead City, AZ 86442: The employer did not ensure that one powered industrial truck operator was competent to safely operate a JLG Skytrak Telehandler, model 6042 and serial number 0160016017, by the successful completion of the training and evaluation specified in paragraph (l). (29 CFR 1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

Referral

Years in Business:

11

7

SERIOUS - Citation 1 - Item 2 -

a) 1751 Highway 95 Ste 25, Bullhead City, AZ 86442: The employer did not instruct one employee who was in charge of rigging and controlling the tag line for 200 pound 42 foot 9 inch long by 30 inch high wood and steel frame trusses in the recognition and avoidance of unsafe conditions and the regulations applicable to his environment to control or eliminate any hazards or other exposure to illness or injury. (29 CFR 1926.21(b)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 –

- a) 1751 Highway 95 Ste 25, Bullhead City, AZ 86442: A synthetic lifting sling, manufacturer, model, and serial number unknown, did not have a permanently affixed and legible identification marking that indicated the rated capacity for hoisting materials. (29 CFR 1926.251(a)(2)(i)).
- b) 1751 Highway 95 Ste 25, Bullhead City, AZ 86442: A synthetic lifting sling, manufacturer, model, and serial number unknown, was not inspected for damage or defects by a competent person prior to being used to lift and remove trusses from a commercial building. (29 CFR 1926.251(a)(6)).

Div. Proposal - \$450.00

Formula Amt. - \$450.00

<u>SERIOUS</u> – Citation 1 - Item 4 – 1751 Highway 95 Ste 25, Bullhead City, AZ 86442: Three employees engaged in rolling off trusses from the roof of a commercial building were not protected from falling 9 feet 2 inches to 10 feet 8 inches the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

<u>SERIOUS</u> – Citation 1 - Item 5 – 1751 Highway 95 Ste 25, Bullhead City, AZ 86442: The employer did not provide a training program for two employees exposed to a fall of 9 feet 2 inches to 10 feet 8 inches to the ground below to enable each employee to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards while they were engaged in rolling off trusses from the top of a commercial building. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

<u>SERIOUS</u> – Citation 1 - Item 6 – 1751 Highway 95 Ste 25, Bullhead City, AZ 86442: An elevated load, which consisted of two 200 pound 42 foot 9 inch long by 30 inch high wood and steel frame trusses that were being lifted and moved horizontally using a JLG Skytrak Telehandler, model 6042 and serial number 0160016017, was allowed to pass over the head of one employee. (29 CFR 1926.602(c)(1)(vi)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$4,200.00

TOTAL FORMULA AMT. - \$4,200.00

Mr. Warren summarized the citation and proposed penalties, reviewed the photographs, and discussed the company's cooperation with the investigation.

Mr. Pennington and Mr. Dozier addressed the Commission. They discussed the subject inspection, subsequent training, and abatement.

Commissioner LeMarr and Mr. Warren discussed the worn strap.

Commissioner LeMarr moved to amend the citation and proposed penalties (due to quick abatement and proof of forklift training and rigging), as follows: the proposed penalties for Citation

1, Items 1, 2 and 3 be reduced by 25%, *i.e.*, Item 1 (\$562.50), Item 2 (\$562.50), Item 3 (\$337.50), for a total penalty of \$3,712.50. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and/or Action regarding proposed settlement in Arizona Division of Occupational Safety and Health discrimination litigation.

- (1) Industrial Commission of Arizona v. City of Winslow (Case No. CV2015-011711)
- (2) Industrial Commission of Arizona v. City of Winslow (Case No. CV2015-009104)

Mr. Porter discussed the above-referenced discrimination cases and the proposed settlement.

Mr. Porter discussed whether the Commission wanted the Legal Division to acquire Commission approval before settling these types of matters.

Vice Chair Hennelly and Commissioner LeMarr complimented the Legal Division's efforts and did not recommend going into executive session.

Mr. Porter stated that the City of Winslow's City Council had already reviewed and approved the proposed settlement agreement.

Commissioner LeMarr moved to accept the proposed settlement agreement. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, Commissioner LeMarr, and Mr. Porter discussed whether these settlements require Commission approval. Chairman Schultz and Vice Chair Hennelly stated that, given the small number of settlements, the Commissioners would prefer to approve the proposed settlement agreements.

Chairman Schultz, Commissioner LeMarr, Mr. Porter, and Mr. Warren discussed whether legal fees were recoverable in discrimination matters and the use of, and funding for, outside counsel.

Executive Session under A.R.S. §§ 38-431.03(A)(3) & (A)(4) to obtain legal advice and consult legal counsel regarding settlement in Arizona Division of Occupational Safety and Health discrimination litigation.

- (1) Industrial Commission of Arizona v. City of Winslow (Case No. CV2015-011711)
- (2) Industrial Commission of Arizona v. City of Winslow (Case No. CV2015-009104)

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed the Commission's online form submissions.

Mr. Porter suggested reviewing form instructions to inform employers that they have an obligation to report fatalities directly to ADOSH.

Mr. Ashley provided an update regarding the claims portal. He noted that Cherry Neumann, a Claims Assistant Manager, has suggested that a registration kiosk be set up at the Claims Seminar.

Mr. Ashley and Ms. Stacy provided an update on the ALJ hiring process.

Executive Session under A.R.S. § 38-431.03(A)(3) to obtain legal advice regarding December 9, 2016 OSHA Inquiry.

Commissioner Orchard moved to enter executive session. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed. Chairman Schultz announced the Commission would move into executive session.

The Commission returned to regular session at 3:17 p.m.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted conflicts with the March 23, 2017 meeting in Mohave County and proposed that the meeting take place March 30, 2017.

Mr. Ashley indicated that he will schedule another Gemba Walk for the Commissioners to see new the boards being implemented under the Arizona Management System.

Mr. Warren discussed the next safety summit for southern Arizona. Chairman Schultz suggested holding half-day programs in other areas. Commissioner Orchard suggested holding a question and answer session so that the Commissioners may answer questions from employers.

Ms. Dimas confirmed future meeting dates through March 2017.

Mr. Warren noted that the next Fall Protection Seminar will take place January 30, 2017.

Public Comment.

There was no public comment.

Commissioner Orchard moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:22 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley, Director

Kara Dimas, Commission Secretary