

**State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS
BOARD**

**CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, December 17, 2020
9:30 a.m.
on Zoom**

TO: Members of the California Occupational Safety & Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: December 4, 2020

RE: Closed Session of the Board to be held on December 17, 2020

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.)

NONE

PETITIONS 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.)

1268738	ARIZONA TILE, LLC.
1399613	BMC WEST, LLC
1233597	HAMPTON TEDDER ELECTRIC

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

1437646 FABRICATION TECHNOLOGIES INDUSTRIES INC.
1432421 IMPERIAL UNIFIED SCHOOL DISTRICT

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

NONE

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.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

1272378 ANDREW HARRISON BARNES
 Whether Mr. Barnes was/is an employer.

1332715 APTCO, LLC
 Whether the ALJ Decision correctly analyzed the record in deciding Employer had committed the alleged violation.

1141604 BOY RACER INC. DBA BURNING ANGEL
 (EMPLOYER'S PETITION)
 Whether adult film performers are employees or independent contractors.

1141604 BOY RACER INC. DBA BURNING ANGEL
 (DOSH'S PETITION)
 Whether adult film performers are employees or independent contractors.

1246527 CEMEX
 Whether the settlement in this matter was procured by fraud.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted December 4, 2020

- 316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
Whether adult film performers are employees or independent contractors.
- 1206788 DPR CONSTRUCTION, INC. ET AL
Whether the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation.
- 1199473 FEDEX GROUND
Whether Employer's supervision of the workplace was reasonable.
- 1310525 GOLDEN STATE FC, LLC
Whether Employer provided appropriate foot protection under § 3385.
- 1235643 GRANITE CONSTRUCTION CO., INC/GRANITE INDUSTRIAL
Whether the Division proved exposure to Valley Fever.
- 1205077 HANOVER R S CONSTRUCTION LLC
Whether the ALJ committed reversible error in evidentiary rulings regarding the alleged injury and illness prevention plan violation and the forklift operations violations.
- 1135350 HILL CRANE SERVICE INC.
Whether Employer violated the safety orders as alleged.
- 1213886 JACE VARGHESE
Whether Employer has satisfied requirements of petition for reconsideration.
- 1290383 JAFEC USA, INC.
Whether the ALJ correctly decided the Employer was in violation of a safety order, as alleged.
- 1173183 L & S FRAMING, INC.
Whether the stairway involved was a "stairwell." Whether the motion to amend citation was timely and for good cause.
- 1422951 LINEAGE LOGISTICS
Whether Employer's motion to amend its appeal should be granted.
- 1304615 MASTER TREE SERVICE, INC.
Whether the appeal was late and if so, was there good cause for the late appeal? Whether the employer's motion to include additional citations be treated as a motion to amend the appeal.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted December 4, 2020

- 1290766 MILLENIUM REINFORCING
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1474264 OUTDOOR KEEPERS
Whether the ALJ acted appropriately in approving settlement terms offered by the Division and not accepted by the Employer
- 1236440 PAPICH CONSTRUCTION COMPANY, INC.
Whether the Division proved exposure to Valley Fever.
- 1199064 SA RECYCLING
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1320327 SOUTHERN CALIFORNIA EDISON
Whether the ALJ commit reversible errors of law and/or fact in ruling on each of the alleged violations.
- 1303461 SSA TERMINALS (OAKLAND), LLC DBA SSA MARINE TERMINALS
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1153101 SUNVIEW VINEYARDS OF CALIFORNIA, INC.
Whether the Board should reconsider this interlocutory petition. Whether the Division should be required to provide a redacted copy of the complaint to Employer.
- 1251879 TARGET STORES, INC.
Whether the employee suffered a serious injury as defined by statute and regulation.
- 1402052 UNION PACIFIC RAILROAD
Whether there was good cause for the late appeal.
- 1242676 UNITED PARCEL SERVICE, INC.
Whether the cited Employer had an effective IIPP and trained its employees as required.
- 1384029 USA WASTE OF CALIFORNIA, INC.
Whether the Division proved the alleged violation.

- 1226666 WASHINGTON ORNAMENTAL IRON WORKS, INC., dba
WASHINGTON IRON WORKS
Whether the ALJ was correct in holding the employer violated the injury and illness prevention plan requirements, the injury log (recordkeeping) requirement, and the machinery operational limitations, as alleged in the citations.

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.)

SUPPERIOR COURT:

1. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
2. SOLARCITY CORP., 34-2016-80002345 (14-R3D2-3707)
3. KEY ENERGY SERVICE, LLC (12004280)
4. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
5. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
6. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
7. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
8. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174
(1116529)
9. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
10. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
11. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
12. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
13. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
14. VINCENT TUOMEY, RG20061099 (1152851)

15. GOLDEN STATE BORING & PIPE JACKING, INC. 34-2020-80003465
(1308948)
16. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002204 (12-R3D1-0781) (315525790)
17. INTERLINE BRANDS, INC., CIVDS2021813 (1251604)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
2. VENTURA COASTAL, F077267 (317808970)
3. LION FARMS, LLC, MCV075788 (1070258)
4. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705
(317386084)
5. UNITED PARCEL SERVICE, B308218, 18STCP03195 (1158285)

OTHER ITEMS:

- New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
- Categorizing the Board's DARs and Denials on the DIR website.
- Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

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.)

1493987	ADDISON CONSTRUCTION
1451104	AFC TRADING & WHOLESALE, INC.
1470807	ARCADIA, INC.
1405957	ARNAZ ENGINEERING CONTRACTORS
1440745	BUTTONWILLOW WAREHOUSE COMPANY, INC.
1482701	COOK SAN FRANCISCO LLC
1459979	DECKRITE WATERPROOFING COMPANY INC.
1413458	ELWOOD STAFFING SERVICES, INC.
1370292	FUNFAR, LLC.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted December 4, 2020

1337020	GOLD COAST FARMS, INC.
1342225	HESS CONTRACTING INC
1478720	J T S MODULAR INC
1476714	JD RMD GROUP INC
1383336	JESSIE VERDUN, AN INDIVIDUAL
1495951	JIM CREW AND SONS GENERAL CONTRACTING
1452853	KBS STAFFING
1369964	LEPRINO FOODS COMPANY
1485375	M. BAKER MANAGEMENT, INC.
1435630	OLIVAS CONSTRUCTION
1429467	ORBIT INTERNATIONAL, INC.
1315321	PACIFIC BELL TELEPHONE COMPANY
ART-201903	PARK MANAGEMENT CORP.
1461766	PAUL MELLO CONSTRUCTION, INC.
1470060	PRIORITY BUSINESS SERVICES, INC.
1481240	PRIORITY PALLET, INC.
1408277	PRO-TECH PAINTING
1295202	RANDSTAD US, LLC
1464676	RESER'S FINE FOODS
1466509	RJP FRAMING, INC.
1434691	ROBERT BRKICH CONSTRUCTION CORP.
1386659	ROY O. HUFFMAN ROOF CO.
1295238	SPHERION STAFFING LLC
1395471	SYSTEM WATERPEROOFING, INC.
1408577	T.R.E. ELEVATOR CORPORATION
1483183	TAKAOKAYA USA, INC.
1442199	TGM CONSTRUCTION
1474060	TRUE VALUE COMPANY, L.L.C.
1436918	URMEC BUILDERS
1492723	VANLAW FOOD PRODUCTS INC.

PENDING APPEALS INVOLVING COVID19-RELATED CITATIONS:

(The following list consists of pending appeals that involve Covid19-related citations. To find more information for each case, go to the Federal OSHA website with this link: <https://www.osha.gov/pls/imis/InspectionNr.html> . Type the inspection number in a box and click on the SUBMIT button.)

1475491	Sutter Bay Medical Foundation
1483044	Ruiz Farm Labor
1483176	Michel Labor Services Inc.
1482809	Serve Max Farm Labor Contractor

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted December 4, 2020

1483172	Sierra-Cascade Nursery Inc.
1485198	Alfaro Farm Labor Contractor, Inc
1478209	The Uni Kool Partners
1482004	M & J Williams Inc.
1472716	Sutter Bay Hospitals
1477632	DL Poultry, Inc.
1475440	Sutter Health - California Pacific Medical Center - Mission Bernal Campus
1483569	Vie de France Yamazaki, Inc.
1475442	San Joaquin County
1484808	Jobsource North America, Inc.
1473542	Jobsource North America, Inc.
1472876	Sutter Health Memorial Hospital Los Banos
1475234	Amazon.com Services, LLC
1473644	Amazon.com Services, LLC
1482761	Olson Meat Company
1476240	Overhill Farms, Inc.
1473510	Overhill Farms, Inc.
1475903	Ralphs Grocery Company
1473922	Cardenas Market, LLC
1472915	Kaiser Permanente Psychiatric Health Facility - Santa Clara
1474956	Kaiser Foundation Hospital Ontario
1485053	Chipotle Mexican Grill
1482763	People's Sausage Company
1472020	Pitman Family Farms
1473260	Fletcher Cove Holdings, LLC
1473670	Dragonfruit Holdings, LLC
1473517	Kaiser Foundation Hospital - San Francisco
1474250	Ralphs Grocery Company
1472724	Santa Rosa Police Department
1488763	California Nuggets Inc.
1473654	CHA Health Systems, Inc. / CHA Hollywood Medical Center, LP
1476536	Harvest Farms
1472737	University of California, Santa Cruz
1482017	Food 4 Less Holdings Inc.
1476202	Ralphs #222
1476044	Ralphs Grocery Company
1474648	Kaiser Foundation Hospitals
1475605	Kaiser Foundation Hospitals Redwood City Medical Center

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted December 4, 2020

- | | |
|---------|---|
| 1474630 | Kaiser Foundation Hospitals/Kaiser Permanente – Oakland
Medical Center |
| 1476723 | Smithfield Foods Inc. |

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.