

**STATE OF CALIFORNIA  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS  
BOARD**

**MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**

**Held on October 15, 2020  
on Zoom**

**PRESENT:**

Ed Lowry, Chair, Public Member  
Judith Freyman, Management Member  
Marvin Kropke, Labor Member  
Patricia Hapgood, Acting Executive Officer  
Jeff Mojcher, Chief Counsel  
Kevin Reedy, Presiding Administrative Law Judge  
Ursula Clemons, Presiding Administrative Law Judge  
Aaron Jackson, Industrial Relations Counsel  
Autumn Gonzalez, Industrial Relations Counsel  
Andia Farzaneh, Attorney  
Lee Berlin, Staff Services Manager  
Janis Jonas, Management Services Technician  
Kerry Lewis, Administrative Law Judge  
Christopher Jessup, Administrative Law Judge  
Sam Lucas, Administrative Law Judge

**MINUTES OF OCTOBER 1, 2020 MEETING:**

*(Approve or amend minutes of previous Board meeting.)*

ACTION: Board approved minutes of the October 1, 2020  
Board meeting.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
The vote was 3-0

**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.)*

- Board to discuss progress on implementing Video Hearings.  
ACTION: Presiding Administrative Law Judge Ursula Clemons updated the Board regarding the implementation of video hearings.

**LEGISLATION:**

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

ACTION: The Board discussed AB2043.  
Summary of AB 2043: this bill was signed into law by the Governor on September 28, 2020. The COVID-related bill adds a new section to the Labor Code, section 6725. It passed as an urgency measure, meaning that it went into effect immediately. The new law requires the Division to engage in outreach and educational efforts in the agricultural industry regarding COVID-19.

**CHAIRPERSON'S REPORT:**

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

ACTION: No report.

**BOARD MEMBERS REPORTS:**

*(Hear reports from Board Members on activities and issues affecting the Appeals Board.)*

ACTION: Member Judith Freyman reported on the meeting held by the Senate Special Committee on Pandemic Emergency Response. The Committee discussed the desire to shorten the time between an OSHA inspection and citations being issued. The Committee would like to see focus on enforcement whether than outreach.

**EXECUTIVE OFFICER'S REPORT:**

*(Report regarding administrative matters.)*

ACTION: No report.

**STAFF REPORTS:**

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

1. REGULATIONS:

ACTION: No report.

2. Discuss the creation of, and availability of, OSHAB documents created in other languages.

ACTION: Lee Berlin reported on research on the possibility of using a translation link on the website. DIR has decided not to use this method for translating

websites and documents. There is a possibility of using outside resources to develop documents written in other languages. The Language Line has other capabilities available that can be purchased. Ms. Berlin will procure pricing for developing documents.

3. Discuss recent appeals filed which are related to the current COVID-19 pandemic.

**ACTION:** The Board provided direction that Administrative Law Judges (ALJ) should prioritize, where possible, the hearing of COVID-19 related cases. The ALJs should utilize available regulatory mechanisms to prioritize these cases, and should also exercise appropriate discretion when setting cases with proper regard to due process.

4. LITIGATION:

**ACTION:** Chief Counsel Mojcher reported on current court cases.

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 discussion of each agenda item of the Open Meeting.)

**ACTION:** There were no public comments.

The Board recessed to its closed session.

**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.)*

1153101      SUNVIEW VINEYARDS OF CALIFORNIA, INC.  
ACTION:      Granted  
                 Moved: Marvin Kropke  
                 Second: Judith Freyman  
                 Vote: 3-0

**PETITIONS FOR RECONSIDERATION (Second Review):**

NONE

**ORDERS DISMISSING APPEAL:**

NONE

**ORDER 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.

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- 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.
- 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.

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- 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.  
  
ACTION:      The Board discussed this matter.
- 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.
- 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.
- 1061365      SPHERE ALLIANCE, INC. dba ADVANCED AIRCRAFT SEAL  
Whether the Division had jurisdiction to cite the employer.
- 1303461      SSA TERMINALS (OAKLAND), LLC DBA SSA MARINE TERMINALS  
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 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.

ACTION:      The Board discussed this matter.

**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. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,  
15CV-00945 (08-R2D1-3093 through 3098)
2. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
3. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
4. SOLARCITY CORP., 34-2016-80002345 (14-R3D2-3707)
5. KEY ENERGY SERVICE, LLC (12004280)
6. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
7. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
8. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
9. BLUE DIAMOND GROWERS, (1040471)
10. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
11. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
12. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174  
(1116529)
13. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191  
(1059365)

14. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
15. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
16. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
17. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
18. VINCENT TUOMEY, RG20061099 (1152851)
19. GOLDEN STATE BORING & PIPE JACKING, INC. (1308948)

**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)

**OTHER ITEMS:**

- Discuss 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.)*

1461811	A.J. SONS, INC.
1464144	ACCURATE STEEL TREATING, INC.
1444398	ADVANCED CONSTRUCTION COMPANY
1468858	ALONSO'S AUTO REPAIR
1464802	ARMANDO CORNELIO, AN INDIVIDUAL
1400337	BANKS & CO.
1377479	BIDART DAIRY II, LLC
1486750	BIG W RANCH CORP.
1425094	BLUE ROCK CONSTRUCTION, INC.
1365259	BMC WEST LLC
1395503	BMY CONSTRUCTION GROUP, INC.
1398432	BOGHOSIAN RAISIN PACKING CO., INC.



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1398846	C & A SWINNEY, INC.
1461667	CALAMCO
1387207	CAPSTONE LOGISTICS, LLC
1362645	CENTRAL VALLEY CONCRETE, INC.
1430726	CHRISCO BITS, INC.
1444858	COSTCO WHOLESALE CORPORATION
1432018	COSWAY COMPANY, INC
1245160	DELANO JOINT UNION HIGH SCHOOL DISTRICT
1309220	EMERITUS PROPERTIES XVI INC
1449997	ENI-JR-286, INC.
1434834	EUROLINE STEEL WINDOWS
1386815	FOCUS BUILDERS INC.
1439010	FOLEY FAMILY WINES VINEYARD
1478623	FOLLIOTT CONSTRUCTION INC.
1468197	FOOTHILL CARWASH
1441310	GMR NORTHERN CALIFORNIA, LLC
1352228	GOLDEN HILLS MINI STORAGE
1292269	GUADALAJARA GRILL LLC
1464147	ILINK BUSINESS MANAGEMENT, INC.
1396176	JD HOME RENTALS
1452209	JOHN E. PETRICKA JR., AN INDIVIDUAL
1222118	KUNZIK & SARA CONSTRUCTION, INC.
1485355	LEADING OUR FUTURE, LLC
1443755	LINEAGE LOGISTICS ICM, LLC
1445855	LIVE OAK ORCHID, LLC
1432468	MARKARIAN FAMILY LIMITED PARTNERSHIP, A CA.
1476401	MCNEILUS TRUCK & MANUFACTURING, INC.
1471111	MID VALLEY DISPOSAL
1425867	MKB CONSTRUCTION
1465817	MRS. WILLIAMS' COUNTRY KITCHEN, INC.
1470067	NELSON CASE CORPORATION
1448271	NICANDO VELEZ ORTEGA, FILEMON VASQUEZ, JULIANA
1462570	O.F.R. INC.
1442040	OIL WELL SERVICE COMPANY
1474264	OUTDOOR KEEPERS
1463470	PENA CONSTRUCTION SERVICES, INC
1358885	PHILIP MANGIAFICO
1326114	PM LABOR SERVICES
1399838	PPF AMLI 21200 KITTRIDGE STREET, LLC
1461752	S.E. COMBINED SERVICES OF CALIFORNIA INC
1378918	SCHNITZER STEEL INDUSTRIES, INC.
1376645	SITEONE LANDSCAPE SUPPLY LLC
1469344	STOCKTON RUBBER MFG. CO. INC.
1344711	SWEETWOOD FARM, INC.
1481298	TFN ARCHITECTURAL SIGNAGE, INC
1422034	TOLL BROTHERS, INC.

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1346283	TURNER DRYWALL, INC.
1384709	TYP RESTAURANT GROUP, INC.
1204808	UNIVERSAL PACKAGING SYSTEMS, INC.
1395507	VALLEY UNIQUE ELECTRIC, INC.
1431706	VINCENT GUERRERO DBA G & G CONTRACTORS
1371304	WASTE MANAGEMENT RECYCLING AND DISPOSAL
1378465	WAVEDIVISION HOLDINGS, LLC
1461686	WELLINGTON FOODS, INC.
1347317	WEST BUILDERS, INC.
1448174	WEST COAST MARBLE & GRANITE, INC.
1453393	WEST COAST RECYCLING CENTER
1457508	WOODMACK PRODUCTS, INC.
1456083	WWF OPERATING COMPANY LLC

ACTION: All Administrative Law Judge Settlement Orders  
approved.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

**PERSONNEL:**

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:29 p.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 12:30 p.m.