

**State of California**  
**California Occupational Safety and Health Appeals Board**  
**Closed Session Agenda**

Government Code § 11126 (a), (c)(3), (e) and (f)

For

Thursday, January 21, 2021

9:30 a.m.

Held on Zoom

**To: Members of the California Occupational Safety & Health Appeals Board**

**From: J. Jeffrey Mojcher, Chief Counsel**

**Date: January 8, 2021**

**RE: Closed Session of the Board to be held on January 21, 2021**

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.)*

1408581 Full Service Maintenance, Inc.

1253573 Watson Companies, Inc.

**Petitions For Reconsideration (Second Review):**

None

**Orders Dismissing Appeal:**

1461746 J J & R Automotive Repair, LLC

**Orders Denying Leave To File Late Appeal:**

1467405 R & M Appliance Inc.

**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.*
- 1268738 Arizona Tile, LLC.  
*Whether the hearing should be continued.*
- 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.*
- 316446855 Cybernet Entertainment, LLC, 14-R6D1-0364-0367  
*Whether adult film performers are employees or independent contractors.*

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- 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.*
- 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.*

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- 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.*
- 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.*

**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. 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

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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. Prestige Painting, 37-2019-00066143 (1367265)
12. Davis Development Company, 34-2020-80003373 (1226084)
13. Vincent Tuomey, RG20061099 (1152851)
14. Golden State Boring & Pipe Jacking, Inc. 34-2020-80003465  
(1308948)
15. Shimmick Construction Co., Inc./Obayashi Corp., 34-2015-80002204  
(12-R3D1-0781) (315525790)
16. Interline Brands, Inc., CIVDS2021813 (1251604)
17. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
18. MWL Solutions, 34-2020-80003549 (1436014)

**Appellate Court:**

1. Lion Farms, LLC, MCV075788 (1070258)
2. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
3. United Parcel Service, B308218, 18STCP03195 (1158285)

**Supreme Court:**

1. Ventura Coastal, F077267 (317808970)

**Other Items:**

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendaized.
2. Categorizing the Board's DARs and Denials on the DIR website.

3. 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.)*

1499055	Ace Plumbing
1475325	AP Roofing Group Inc.
1476124	Barret Business Services, Inc.
1347325	BCI Browning Contractors, Inc.
1285470	Boudreau Pipeline Corporation
1452380	Bronco Wine Company
1435043	California Service, LLC
1467090	Can li Ag Mgt, Inc.
1477041	Cappel Structures Inc.
1473690	Century Commercial Service
1316824	Driftwood Dairy, Inc.
1472094	Employbridge
1446697	Eser Horuz, An Individual
1475731	Flaherty Brothers Construction, Inc.
1438903	GFP Ethanol LLC
1467682	Greg Peterson General Contractor, Inc.
1421334	Jalos Food Enterprises, Inc.
1466942	Mitchell Jones Concrete, Inc.
1434291	Pacific Boring, Incorporated
1482573	Rachma Contracting, Inc.
1266795	Rocky Coast Builders Inc.
1392016	San Fernando Valley Pallet Co.
1479284	Shafer Vineyards
1441898	Taylor Farms Retail, Inc.
1377754	UC Davis Medical Center
1466491	Vekin Yeghiayan
1379747	Vie-Del Company
1315930	Walmart, Inc.

**Pending appeals involving covid19-related citations:**

*(The following list consists of pending appeals that involve Covid19-related citations. Find more information about the citations at the [Federal OSHA Website](#). Type the inspection number in a box and click on the submit button.)*

1475491	Sutter Bay Medical Foundation
1483044	Ruiz Farm Labor
1482809	Serve Max Farm Labor Contractor
1483172	Sierra-Cascade Nursery Inc.

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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.  
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  
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  
1474630 Kaiser Foundation Hospitals/Kaiser Permanente – Oakland  
Medical Center  
1476723 Smithfield Foods Inc.  
1474695 Kaiser Foundation Health Plan, Inc.  
1473356 The Regents of the University of California, Los Angeles  
1473875 Panorama Meadows Nursing Center, LP  
1476073 Kaiser Foundation Hospital  
1475159 Driftwood Hayward Operating Company, LP  
1478836 Los Angeles County Metropolitan Transportation Authority  
1482031 United Staffing Associates, LLC

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1480579	National Security Industries
1473792	Central Valley Meat Holding Company
1476167	Kaiser Foundation Hospitals
1476072	Windsor Vallejo Care Center LLC
1480541	Western General Insurance Company
1478727	Doctors Medical Center, Inc.
1476882	NorthBay Medical Center

**Personnel:**

*(Issues regarding staff.)*

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