

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

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, May 27, 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: May 14, 2021

RE: Closed Session of the Board to be held on May 27, 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.)

1304597 Martin Roofing Company, Inc.

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.)

1351863 Grimmway Enterprises, Inc.

1155042 Signal Energy LLC

Petitions For Reconsideration (Second Review):

- 1310422 Ace Design & Construction, Inc.
- 1405439 McElroy Metal Mill, Inc.
- 1398365 Walmart, Inc.

Orders Dismissing Appeal:

- 1421726 Central Valley Tank of California, Inc.
- 1452819 Kevin Farrier Enterprises, Inc.

Orders Denying Leave To File Late Appeal:

- 1487566 NewAge Products Logistics California, 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.
- 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.

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- 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.
- 1135350 Hill Crane Service Inc.
Whether Employer violated the safety orders as alleged.
- 1290383 Jafec USA, Inc.
Whether the ALJ correctly decided the Employer was in violation of a safety order, as alleged.
- 1422951 Lineage Logistics
Whether Employer's motion to amend its appeal should be granted.
- 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.
- 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.
- 1306170 Siu's Products and Distributor, Inc.
Whether Employer complied with lockout/tagout requirements.
- 1251879 Target Stores, Inc.
Whether the employee suffered a serious injury as defined by statute and regulation.
- 1242676 United Parcel Service, Inc.
Whether the cited Employer had an effective IIPP and trained its employees as required.

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. Key Energy Service, LLC (12004280)
3. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
4. R N R Construction, Inc., 34-2017-80002632 (1092600)
5. Ashley Furniture Industries, 34-2017-800002750, (1016514)
6. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
7. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
8. Process Cooling International, 34-2019-80003220 (1232555)
9. Prestige Painting, 37-2019-00066143 (1367265)
10. Davis Development Company, 34-2020-80003373 (1226084)
11. Vincent Tuomey, RG20061099 (1152851)
12. Golden State Boring & Pipe Jacking, Inc. 34-2020-80003465 (1308948)
13. Shimmick Construction Co., Inc./Obayashi Corp., 34-2015-80002204 (12-R3D1-0781) (315525790)
14. Interline Brands, Inc., CIVDS2021813 (1251604)
15. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
16. MWL Solutions, 34-2020-80003549 (1436014)
17. Hampton Tedder Electric, 34-2020-80003562 (1233597)
18. BMW West, LLC, 34-2021-80003574 (1399613)
19. Southern California Edison, 34-2021-80003580 (1320327)

20. Davis Development Company 34-2021-80003586 (1293194)
21. Sierra Forest Products, VCU285853 (1291481)
22. Ventura Coastal, (317808970)

Appellate Court:

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

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
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.)

- | | |
|---------|-------------------------------------|
| 1503945 | A and C Roofing, Inc. |
| 1474396 | A+ Traffic Management, Inc. |
| 1446454 | Asphalt Dr. LLC |
| 1372735 | Basile, Inc. |
| 1424604 | Belching Beaver Brewery, Inc. |
| 1340733 | BN Builders Inc. |
| 1455516 | Bombardier Mass Transit Corporation |
| 1411026 | C and K Form Fabrication, Inc. |

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1440178 Cal West Lighting Services, Inc.
1465121 California Crafted Marble, Inc.
1451778 Club Demonstration Services, Inc.
1434713 Copper River Country Club
1439033 Corona-College Heights Orange & Lemon
1504643 Cream of the Crop AG Service, Inc.
1500038 CS Investigative Services, Inc.
1399435 Daniel Gilbert Babshoff
1430997 Deacon Construction, LLC
1459963 Del Real, LLC
1439641 E.E. Hall, Inc.
1457853 Eli Fashion, Inc.
1437685 Fed Ex Ground, Inc.
1489036 Frametek Steel
1501986 Frontier California Inc.
1232544 Future International Trading
1404745 Garcia Roofing, Inc.
1493082 Global Plastics Inc.
1512954 Good News Rescue Mission
1520798 GTM Wholesale Liquidators Inc.
1483675 Harbor Truck Bodies, Inc.
1501069 Heath Stairworks, Inc.
1353666 Herc Rentals Inc.
1367245 Herc Rentals Inc.
1458845 Honeycutt Tear Off

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1439642	International Die Casting, Inc./Cast Rite
1446155	Joel X Olmos
1400335	KBR Builders Inc.
1495899	Kittyhawk, Inc.
1500184	Legacy Frames
1250954	Los Angeles County Public Works
1491478	Lucky Farms, Inc.
1413915	Lusardi Construction Co.
1489793	Main Street Fibers
1365463	Marin Sanitary Service
1467102	McQuality Mobile Trailer Repair
1293004	Mike Meir Fornaldes
1440644	Morrow-Meadows Corporation
1452169	Netflix Productions, LLC
1360498	No Limit Flooring, Inc.
1487400	Orange Coast Memorial Medical Center
1502435	Orora Visual LLC
1475166	Oxnard Airport Shell, Inc.
1483768	Pace Supply Corp.
1469513	Pacific Gas And Electric Company
1512388	PBF&E, LLC
1520762	Platt Designs Inc.
1479934	Plumbing And Industrial Supply
1473424	Purchasing 411, Inc.
1438023	Raymond-Northern California, Inc.

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1264015	Raypak, Inc.
1292839	RSI Installations, Inc.
1516398	San Diego Unified School District
1461658	San-Mar Construction Co. Inc.
1355670	Security Paving Company, Inc.
1447220	Sel Roofing and Waterproofing
1493835	Seng Cheang Mong Food Corp.
1391248	Southbay Tile and Stone, Inc.
1462949	STL Fabrication, Inc.
1440311	Superior Paving Company, Inc.
1443935	Superior Stone Products, Inc.
1483601	The Fish Company
1477064	The Quarry at La Quinta Inc.
1483350	The Quarry at La Quinta Inc.
1486142	The Riverside County Sheriff's Department
1512130	The Salvation Army
1483988	TMI Construction, Inc.
1407032	Total Terminals International LLC
1495919	Trong Food International, Inc.
1299454	Van Dyk Cattle Company
1253573	Watson Companies, Inc.
1499624	Western Shasta Resource Conservation District
1457880	Workforce Enterprises
1472893	World Class Distribution 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
1485198	Alfaro Farm Labor Contractor, Inc.
1472716	Sutter Bay Hospitals
1477632	DL Poultry, Inc.
1475440	Sutter Health - California Pacific Medical Center - Mission Bernal
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
1476240	Overhill Farms, Inc.
1473510	Overhill Farms, Inc.
1475903	Ralphs Grocery Company
1472915	Kaiser Permanente Psychiatric Health Facility - Santa Clara
1474956	Kaiser Foundation Hospital Ontario
1472020	Pitman Family Farms
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

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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 Med.
1476723	Smithfield Foods Inc.
1474695	Kaiser Foundation Health Plan, Inc.
1479073	Integral Senior Living, LLC
1496706	Morada Produce Company, LLC
1476551	Arden Group, 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
1473792	Central Valley Meat Holding Company
1476167	Kaiser Foundation Hospitals
1476072	Windsor Vallejo Care Center LLC
1478727	Doctors Medical Center, Inc.

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1476882	NorthBay Medical Center
1477009	Lusamerica Foods, Inc.
1483221	CLW Foods LLC
1483678	California Farms Meat Company, Inc.
1477051	Marin General Hospital
1479906	Hayward Sisters Hospital
1484106	DHL Express (USA), Inc.
1475603	Kaiser Permanente Antioch Medical Center
1483240	Stephen H. Smith Farms, Inc.
1482357	H & R Labor Contracting, LLC
1474698	City of Santa Clarita-Santa Clarita Transit
1488121	Apollo Wood Recovery, Inc.
1483438	Mills-Peninsula Medical Center
1483129	Walmart Inc.
1487976	Stevens Creek BMW
1495252	Elkhorn Packing Co. LLC
1482808	Primex Farms, LLC
1477773	Citistaff Solutions, Inc.
1486320	Coldwater Care Center LLC
1477159	Grimmway Enterprises, Inc.
1481574	Daniel C Salas Harvesting, Inc.
1478942	Port City Operating Co LLC
1493465	Cardenas Market

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1479549	Kaiser Foundation Hospitals
1481502	Fremont Healthcare Operating Co, LP
1483898	Chipotle Mexican Grill Inc.
1495407	D'Arrigo Bros. Co. of California
1481860	Carter's Retail Inc.
1486771	Doctors Medical Center, Inc.
1483170	H&B Hospitality LLC
1478378	Kaiser Foundation Hospitals
1483472	California Enterprises Employment, Inc.
1484306	Olam West Coast, Inc.
1480866	State of California, Department of Corrections & Rehabilitation
1485615	OOMA, Inc.
1491837	MV Transportation
1482178	United Parcel Service Inc.
1477528	Tranquility Inc.
1480875	OWB Packers, LLC
1487546	Bevill Vineyard Management
1483601	The Fish Company
1495502	Al Pak Labor Inc.
1478155	Kingston Healthcare Center, LLC
1483470	HR Staffing Solutions, Inc.
1478320	Sutter Bay Hospitals
1485410	SC Warehouses, Inc.

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- 1489025 Los Angeles Apparel, Inc.
- 1481220 The Villa Park Orchards Association
- 1489768 State of California, Dept. of Corrections - Avenal State Prison
- 1482518 G.L. Mezzetta Inc.
- 1484564 Integrated Pain Management Medical Group, Inc.
- 1489371 Frontier-Kemper Constructors, Inc. and Tutor Perini Corporation
- 1489032 Michael Nicholas Designs, Inc.
- 1486257 The Kroger Company
- 1481476 Marin Resource Recovery Center
- 1504282 Imperfect Food
- 1490787 Gibraltar Convalescent Hospital Ind. / Del Mar Care Center
- 1488389 Mannington Mills, Inc.
- 1489305 Calavo Growers, Inc.
- 1492892 California Agriculture, Inc.
- 1491024 Grimmway Enterprises, Inc.
- 1476007 KF Sunray, LLC
- 1478127 Contra Costa Behavioral Health Services
- 1489226 Mollie Stone's Market
- 1499605 United Staffing Associates, LLC.
- 1473477 A Vidovich Construction, Inc.
- 1481578 California Prison Industry Authority
- 1489284 Tosca Services, LLC
- 1478754 California Department of Corrections and Rehabilitation

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1487741	BSF Fitness, LLC
1488834	Norman Elloway DDS
1481321	Autumn Hills Health Care Center
1491659	Studio City Rehabilitation Center
1483915	Sutter Health
1511137	Southern California Permanente Medical Group
1510890	Kaiser Foundation Hospitals
1492738	Dan Marcus
1495150	Troy Roofing, Inc.
1476839	PIH Health Good Samaritan Hospital
1490971	Santa Clara Valley Transportation Authority
1485894	Sutter Health
1494822	Ciasom, LLC
1491648	Sandhu Orchards, LLC
1492130	Grapes FLC
1485435	Healthcare Services - Encino Hospital, LLC
1483579	Amazon
1493805	Simmons Real Estate, Inc.
1484803	California State Lottery
1494655	Randstad USA LLC
1481021	American Machine & Tool, Inc.
1492283	Aerotek Inc.
1479497	California Department of Corrections & Rehabilitation

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1483379	Marin Senior Coordinating Council
1487399	Anaheim Healthcare Center, LLC
1482596	Parkview Operating Company, LP
1499765	Kaiser Foundation Hospitals - San Francisco
1492135	Brutocao Vineyards, Inc.
1500426	WB Powell Inc.
1479039	Armorcast Products Company, Inc.
1497482	Monterey Mushrooms, Inc.
1499522	Advanced Roof Design Inc.
1487717	Millbrae Care Center, LLC
1489597	The Growers Company, Inc.
1490265	Rubicon Bakers LLC
1493068	Kaiser Permanente
1488366	CourtSide Basketball Center
1476402	Northridge Care Center, Inc.
1487776	Grocery Delivery E-Services USA Inc.

Personnel:

(Issues regarding staff.)

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