

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

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

for

Thursday, July 15, 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: June 11, 2021

RE: Closed Session of the Board to be held on June 24, 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.)

1279492 Arriaga USA, LLC.

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.)

1279492 Arriaga USA, LLC.

1386092 P&P Fresh Mex, Inc.

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

1460113 Oldcastle Infrastructure Inc.

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
<i>Whether Mr. Barnes was/is an employer.</i> |
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
<i>Whether adult film performers are employees or independent contractors.</i> |
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
<i>Whether adult film performers are employees or independent contractors.</i> |
| 1246527 | Cemex
<i>Whether the settlement in this matter was procured by fraud.</i> |
| 1135350 | Hill Crane Service Inc.
<i>Whether Employer violated the safety orders as alleged.</i> |
| 1422951 | Lineage Logistics
<i>Whether Employer's motion to amend its appeal should be granted.</i> |
| 1290766 | Millenium Reinforcing
<i>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.</i> |

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- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients
Whether the Employer committed the alleged violations.
- 1199064 SA Recycling
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1306170 Siu's Products and Distributor, Inc.
Whether Employer complied with lockout/tagout requirements.
- 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.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.

Matters 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)

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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. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
13. MWL Solutions, 34-2020-80003549 (1436014)
14. Hampton Tedder Electric, 34-2020-80003562 (1233597)
15. BMW West, LLC, 34-2021-80003574 (1399613)
16. Southern California Edison, 34-2021-80003580 (1320327)
17. Davis Development Company 34-2021-80003586 (1293194)
18. APTCO, LLC, BCV-21-100421 (1332715)
19. Ventura Coastal, (317808970)
20. L&S Framing, Inc., SCV-0046603 (1173183)
21. Granite Construction, 34-2021-80003634 (1235643)
22. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
23. Golden State FC, LLC dba Amazon Fulfillment,
STK-CV-UWM-2021-0004380 (1310525)
24. USA Waste of California, Inc. dba Blue Barrel Disposal Services,
21STCP01729 (1384029)

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.)

1406107	Airport Specialty Products, Inc.
1477608	Alhambra Hospital Medical Center, L.P.
1276593	Allied Protection Service, LLC
1500181	Aluminum Technology Inc.
1492078	American Pacific Plastic Fabricators, Inc.
1473921	Americold Logistics, LLC
1369541	Amerigas Propane, Inc.
1437602	Berberian Enterprises, Inc.
1482374	Blum Construction Co., Inc.
1482586	Bockmon & Woody Electric Co Inc.
1492135	Brutocao Vineyards, Inc.
1398844	C R Garcia Roofing, Inc.
1405111	CA Transportation, District 5
1466270	California Building Products Services Inc.
1388483	California Department of Forestry and Fire
1125088	California Multimodal, LLC
1484803	California State Lottery
1489868	Campbell Certified Inc.
1396273	Case Vander Eyk Dairy
1458962	Chevron U.S.A. Inc.

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1483898	Chipotle Mexican Grill Inc.
1456399	Chris Huy Ho
1399111	Collision City
1481247	Coronell Construction Inc.
1474125	D & T Fiberglass, Inc.
1465764	Dick James & Associates, Inc.
1285129	Ecology Auto Parts Inc.
1499592	Fairway Staffing
1499420	Fairway Staffing Services
1462703	Fenceworks Inc.
1415235	Fernando Gomez
1476400	First Class General Construction
1269751	G4s Secure Solutions (USA) Inc.
1527872	Gettler Ryan Inc.
1460067	GK Welding, Inc.
1363456	Golden Gate Disposal & Recycling Company
1249144	Hart Concrete Designs, Inc.
1431721	Harvest Landscape Enterprises, Inc.
1472000	Heidelberg USA, Inc.
1471103	Hellwig Products Co., Inc.
1372856	Herrick Grapevines, LLC
1479938	High Tech Irrigation, Inc.
1454752	ICPK Corporation
1490009	Imperial County Public Works
1479073	Integral Senior Living, LLC
1485058	M & M Sheet Metal & Rain Gutter Corp.
1483922	Mastro's Restaurant, LLC
1456252	Melquize Cervantes Guzman, an Individual
1381222	Mesquite Productions, Inc.
1496729	MGA Electrical Corporation
1498859	Mitchell Jones Concrete, Inc.

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1332672	Monterey Mushroom, Inc.
1439638	Navarro Roofing
1315478	Newport-Mesa Unified School District
1315480	Newport-Mesa Unified School District
1335100	Oakwest Services, Inc.
1461798	Pacific Gas and Electric Company
1495647	Pasadena Unified School District
1472020	Pitman Family Farms
1443965	Populus Financial Group Inc.
1455877	Priority Workforce, Inc.
1465840	Royal Recycling Center Inc.
1279155	Rubio's Restaurants
1475902	Ryan Companies Us, Inc.
1476554	Sacramento Metropolitan Fire District
1400972	Safety Service Scaffold Company
1491216	San Fernando Motor Company
1491648	Sandhu Orchards, LLC
1511765	Schmidbauer Building Supply, LLC
1496211	Shasta Green, Inc.
1451501	Shogun Corona, LLC
1497242	Simplex Strip Doors LLC
1511873	Skanska USA Civil West California District Inc.
1470188	South Pasadena Fire Station
1502682	Table Bluff Brewing, Inc.
1479936	Target Corporation
1487997	Technip Stone & Webster Process Technology, Inc.
1347040	Tesla, Inc.
1468105	Tesoro Refining & Marketing Company LLC
1324582	The Penta Building Group, LLC
1351796	UC Los Angeles
1284771	United Airlines, Inc.

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1484370 United Metal Concepts, Inc.
1317337 United Production Framing
1247984 United Production Framing, LLC
1412370 USS Posco Industries
1455962 West Coast Drywall & Company, Inc.
1420544 Westrock Converting LLC
1425896 Wright Tree Service of the West, 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
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
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
1472737 University of California, Santa Cruz

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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.
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
1476072 Windsor Vallejo Care Center LLC
1476167 Kaiser Foundation Hospitals
1478727 Doctors Medical Center, Inc.
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
1482357 H & R Labor Contracting, LLC
1474698 City of Santa Clarita-Santa Clarita Transit
1483438 Mills-Peninsula Medical Center
1488121 Apollo Wood Recovery, Inc.

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1483129	Walmart Inc.
1487976	Stevens Creek BMW
1482808	Primex Farms, LLC
1477773	Citistaff Solutions, Inc.
1486320	Coldwater Care Center LLC
1481574	Daniel C Salas Harvesting, Inc.
1477159	Grimmway Enterprises, Inc.
1479549	Kaiser Foundation Hospitals
1481502	Fremont Healthcare Operating Co, LP
1481792	HGST, 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
1495502	Al Pak Labor Inc.
1478155	Kingston Healthcare Center, LLC
1478320	Sutter Bay Hospitals
1485410	SC Warehouses, Inc.
1483470	HR Staffing Solutions, Inc.
1489768	State of California, Dept. of Corrections - Avenal State Prison
1489025	Los Angeles Apparel, Inc.

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1482518	G.L. Mezzetta Inc.
1484564	Integrated Pain Management Medical Group, Inc.
1489371	Frontier-Kemper Constructors, Inc. and Tutor Perini Corporation
1481476	Marin Resource Recovery Center
1489032	Michael Nicholas Designs, Inc.
1486257	The Kroger Company
1504282	Imperfect Food
1490787	Gibraltar Convalescent Hospital Ind. / Del Mar Care Center
1488389	Mannington Mills, 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
1482373	Catalyst Family Inc.
1478754	California Department of Corrections and Rehabilitation
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

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1485894	Sutter Health
1494822	Ciasom, LLC
1492130	Grapes FLC
1483579	Amazon
1493805	Simmons Real Estate, Inc.
1485435	Healthcare Services - Encino Hospital, LLC
1494655	Randstad USA LLC
1481021	American Machine & Tool, Inc.
1492283	Aerotek Inc.
1479497	California Dept. of Corrections & Rehabilitation - Chuckawalla
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.
1497482	Monterey Mushrooms, Inc.
1499522	Advanced Roof Design Inc.
1479039	Aarmorcast Products Company, 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.
1499047	Partners Personnel
1514218	Wesley Allen Inc.
1483206	Elkhorn Packing Co. LLC
1491795	Salinas Farm Labor Contractor, Inc.
1486324	California Department of Food and Agriculture

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1487101	American Medical Response West
1494789	Fresh & Ready Foods LLC
1479470	Prime Healthcare Anaheim, LLC
1496930	Day-Lee Foods Inc.
1488604	California Depart. of Corrections and Rehabilitation - Centinela
1512743	BCOK, Inc.
1496216	Santa Clara County Sheriff's Office
1483625	Cardenas Market
1494286	Kaiser Foundation Hospitals
1485868	Sutter Health
1496882	Santa Clara County Elmwood Correctional Complex
1518525	Goton Tiles Inc.
1487768	Prime Healthcare Services-Sherman Oaks, LLC
1497916	Del Mar Food Products Corp.
1485170	Target Corporation
1505058	Cardenas Markets, LLC
1476065	AG Redlands, LLC
1497589	Sanchietti Farming Inc.
1505530	Shannon Masonry Construction, Inc.

Personnel:

(Issues regarding staff.)

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