

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held On January 21, 2021**  
**Sacramento, California**  
**West Covina, California**

**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  
Aaron Jackson, Industrial Relations Counsel  
Andia Farzaneh, Attorney  
Elizabeth Clarke, Attorney  
Lee Berlin, Staff Services Manager  
Janis Jonas, Management Services Technician  
Kerry Lewis, Administrative Law Judge  
Christopher Jessup, Administrative Law Judge

**Minutes Of January 7, 2021 Meeting:**

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

Action: Board approved minutes of the January 7, 2021 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: There was a brief discussion regarding current virtual hearings. All virtual hearings held have run smoothly.

**Legislation:**

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

Action: There was a brief discussion regarding AB25.

**Chairperson's Report:**

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

Action: Chair Lowry noted some observations regarding changes the new Administration may bring to OSHA operations.

**Board Members Reports:**

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

Action: Member Freyman discussed changes in the labor laws made by the new administration and how they may effect OSHA regulations.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Acting Executive Officer provided an overview of current and upcoming department's COVID-19 employee training and related compliance actions.

**Staff Reports:**

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

1. Discuss whether there are any proposals for new regulations or proposals for modifications to existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

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

Action: Acting Executive Officer Patricia Hapgood sent a report to Chair Lowry regarding creating documents in other languages. There is an estimate for putting other languages on the website and a separate estimate for creating hard copy documents in other languages. The estimates are being reviewed.

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

Action: There was a brief discussion about current cases with COVID-19 related citations.

4. Litigation update:

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 comments from the public.

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.)*

1408581      Full Service Maintenance, Inc.  
Action:       No action was taken.

1253573      Watson Companies, Inc.  
Action:       The Board voted to issue a Denial.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

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

NONE

**Orders Dismissing Appeal:**

1461746      J J & R Automotive Repair, LLC  
Action:       The Board reviewed this Order.

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

1467405      R & M Appliance Inc.  
Action:       Board voted to remand this appeal to hearing operations.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Voted: 3-0

**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.*  
Action: The Board voted to issue the DAR.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0
- 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.*  
Action: The Board discussed this matter.

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- 1206788 DPR Construction, Inc. ET AL  
*Whether the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation.*  
Action: The Board discussed this matter.
- 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.*  
Action: The Board voted to issue the DAR.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0
- 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.*

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- 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.*
- 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
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 agendized.  
Action: No report.
2. Categorizing the Board's DARs and Denials on the DIR website.  
Action: No report.
3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.  
Action: No report.

**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 II 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



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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.

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

**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.
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

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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

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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
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)*

Action: No report.

The Closed Session was adjourned at 11:49 a.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 11:50 a.m.