

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 7, 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: December 24, 2020

RE: Closed Session of the Board to be held on January 7, 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.)

1293194 DAVIS DEVELOPMENT COMPANY, INC.

1426007 DOWNING CONSTRUCTION, INC.

1291481 SIERRA FOREST PRODUCTS

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

1310514 Greengo Farms

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.

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|-----------|---|
| 1272378 | Andrew Harrison Barnes
<i>Whether Mr. Barnes was/is an employer.</i> |
| 1332715 | Aptco, LLC
<i>Whether the ALJ Decision correctly analyzed the record in deciding Employer had committed the alleged violation.</i> |
| 1268738 | Arizona Tile, LLC.
<i>Whether the hearing should be continued.</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> |
| 316446855 | Cybernet Entertainment, LLC, 14-R6D1-0364-0367
<i>Whether adult film performers are employees or independent contractors.</i> |

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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.)

Supperior 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)

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.)

1360664	99 Cents Only Store, LLC
1417136	Abbey Party Rents of San Diego and Riverside
1419358	ACS Security
1494981	American Civil Constructors West Coast LLC
1495017	American Hospitality Concept Inc.
1488959	Ardent Mills LLC
1408060	Aries Builders, Inc.
1458565	AWT Construction Group, Inc.
1459653	Barrett Business Services Inc.
1471355	Caesarstone USA, Inc.
1488763	California Nuggets Inc.
1407139	California Polytechnic State University, San Luis Obispo
1322089	Cannon Constructors, Inc.
1464815	Capital City Drywall, Inc.
1479506	Cencal Services, Inc.
1284915	Central Valley Plastering, Inc.
1459390	Chooljian & Sons, Inc. DBA Del Rey Packing
1414401	Circle M Contractors
1417702	Ciro Ramirez
1419917	Claim Jumper Acquisition, LLC
1323082	County of Kern Fire Department
1398685	Craftsmen Construction, Inc.
1464794	Dale Canfield Construction, Inc.
1269730	Davey Tree Surgery Company
1317187	Diversified Utility Services, Inc.
1406329	Dowbuilt
1472019	Emerald Kingdom Greenhouse LLC
1110431	First Avenue Inc. DbA Highland Commercial Roofing
1446001	Fischer Tile and Marble, Inc.
1308648	G & F Concrete Cutting Inc.
1309227	Gallo Sales Company, Inc.
1457848	Gil's Transmissions, Inc.
1468534	Greg Hooker
1498260	GW Peoples Contracting Co., Inc.
1461375	Haute House Home Furnishings, Inc.

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1471106	Hellwig Products Co, Inc.
1411495	Herman Design & Construction
1073373	HP Communications, Inc.
1478513	IHerb, LLC
1485020	IL Pastaio Foods
1430155	Kaiser Foundation Hospitals
1491776	Kampschmidt Trucking Inc.
1448678	Kitchen Mart, Inc.
1483913	La Selva Beach Spice Company Inc.
1448605	Lotus Construction & Design Inc.
1403783	McCarthy Building Companies, Inc.
1449895	McMurray & Sons, Inc.
1483176	Michel Labor Services Inc.
1305592	Nordic Industries, Inc.
1464440	NSMG Shared Services LLC
1368257	O.C. Communications, Inc.
1491479	One Way Development & Construction Company, Inc.
1474678	Pacific Farm Management, Inc.
1443955	Pacific Gas and Electric Company
1469840	Pacific Pavingstone Inc.
1448167	Pacific Stoneworks, Inc.
1328530	Perdue Farms, Inc.
1462948	Perfect 85 Degrees C, Inc.
1462749	Plastic Reinforcements Inc.
1410961	Porterville Developmental Center
1425260	Primetime Harvesting Inc.
1427400	Primetime Harvesting, Inc.
1448213	Ready Roast Nut Company, LLC
1421623	Reliant Holdings
1476794	Rm Covington Homes
1481945	Roudybush, Inc.
1475442	San Joaquin County
1436508	Santa Paula Hay & Grain and Ranches, LLC
1352883	Schuff Steel Company
1297616	Securitas Security Services USA, Inc.
1494493	Smart & Final Stores LLC
1499060	Sonray Solar, Inc.
1328500	Southern California Edison Company
1111741	Southern California Gas Company
1450003	Steven Stones Inc.

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1464520	Stone Point Construction Inc.
1278818	Stuart and Sons Electrical Contractors, Inc.
1440311	Superior Paving Company, Inc.
1485469	Swinerton Builders
1412335	The Countertop Factory, Inc.
1425960	The Morning Star Packing Company, L.P.
1474640	Transform Km LLC
1240702	Trench Plate Rental, Co.
1443601	Triplett Painting and Restoration
1485472	U.S. Rubber Recycling, Inc.
1431664	United Production Framing
1420567	United Production Framing, Inc.
1346342	Vallarta Food Enterprises, Inc.
1321159	Xpress Data, Inc.
1354741	Xtreme Manufacturing

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
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.

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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
1480579	National Security Industries
1473792	Central Valley Meat Holding Company

Personnel:

(Issues regarding staff.)

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