

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

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

For

Thursday, March 4, 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: February 19, 2021

RE: Closed Session of the Board to be held on March 4, 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.)

1269048 U.C.I. Construction, 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.)

1410726 Hathaway Dinwiddie Construction Co.

316347038 Midwest Roofing & Solar

Petitions For Reconsideration (Second Review):

NONE

Orders Dismissing Appeal:

1457804 ATV Inc.
1393295 Jason D. Watson
1464711 So Cal Stone Fabricators Inc.
1376243 Universal Chain of California, 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
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.

1246527 Cemex
Whether the settlement in this matter was procured by fraud.

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- 316446855 Cybernet Entertainment, LLC, 14-R6D1-0364-0367
Whether adult film performers are employees or independent contractors.
- 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.
- 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.
- 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.
- 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.

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- 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.
- 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. Key Energy Service, LLC (12004280)
3. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
4. R N R Construction, Inc., (1092600) 34-2017-80002632
5. Ashley Furniture Industries, 34-2017-800002750, (1016514)
6. Robinson Mfg., Inc., 30-2019-01067631 (1169633)
7. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
8. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
9. Process Cooling International, 34-2019-80003220 (1232555)
10. Prestige Painting, 37-2019-00066143 (1367265)
11. Davis Development Company, 34-2020-80003373 (1226084)
12. Vincent Tuomey, RG20061099 (1152851)

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13. Golden State Boring & Pipe Jacking, Inc. 34-2020-80003465
(1308948)
14. Shimmick Construction Co., Inc./Obayashi Corp., 34-2015-80002204
(12-R3D1-0781) (315525790)
15. Interline Brands, Inc., CIVDS2021813 (1251604)
16. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
17. MWL Solutions, 34-2020-80003549 (1436014)
18. Hampton Tedder Electric, 34-2020-80003562 (1233597)
19. Diversified Utility Services, Inc., 34-2020-80003564 (1326355)
20. BMW West, LLC, 34-2021-80003574 (1399613)
21. Southern California Edison, 34-2021-80003580 (1320327)
22. Davis Development Company 34-2021-80003586 (1293194)
23. Downing Construction, Inc. 34-2021-80003585 (1426007)

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.
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.)

1452351	Alameda Electrical Distributors Inc.
1427076	All Phase Concrete
1485377	Baron HR
1506956	Bob Smalley General Contracting
1488327	Bodycote Thermal Processing, Inc.
1494976	Bouncing Angels Inc.
1352535	Burrtec Waste Industries, Inc.
1480346	California Highway Construction Group Inc.
1478621	Camptonville Union Elementary School District
1410106	Cascade Drilling
1322885	Channell Commercial Corporation
1478565	Chevron USA, Inc.
1340361	Christensen Brothers General Engineering, Inc.
1405409	Citi Staff Solutions
1373860	Coast Sign Incorporated
1181239	Coastal Viticultural Consultants Inc. Dba North
1446722	Convoy Investments, Inc.
1498576	Coyne Stair Inc.
1483192	Dahlstrom & Watt Bulb Farms, Inc.
1458006	Department Of State Hospitals - Coalinga

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1439208	DHA Capital, Inc.
1492595	Digital Path, Inc.
1487770	Dollar General Corporation
1413011	DPR Construction
1282645	Eddy Liu
1485594	El Pollo Loco
1493789	FedEx Express
1272369	FedEx Freight, Inc.
1374671	FedEx Freight, Inc.
1409276	Fenix Marine Services
1303948	Green Valley Farm Supply, Inc
1439614	Greenstreak Landscaping, Inc.
1467717	Hawaiian Host Candies Of L.A. Inc.
1318222	Hill Phoenix, Inc.
1433948	Husks Unlimited, Inc.
1492360	In-N-Out Burger Inc. #76
1461147	James Otis
1472198	Jay Tree Service
1451245	Los Angeles County Metropolitan Transportation
1446861	Milano Granite, Inc.
1396505	Mission Linen Supply
1457524	Morin Corporation
1470441	Norms Restaurant

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1482761	Olson Meat Company
1433261	Paul Graham Drilling And Services
1482763	People's Sausage Company
1485044	Peterson Trucks, Inc.
1437400	Pomona Unified School District, Simons Middle
1498138	Redline Builders Inc
1350794	Rhino California, Llc.
1345627	Sandridge Partners
1214552	Searles Valley Minerals Inc
1483172	Sierra-Cascade Nursery Inc.
1464787	Signal Hill Petroleum, Inc.
1329847	Signature Flight Support Corporation
1486130	Smart & Final Llc
1477033	So Cal Construction Enterprises, Inc.
1485463	State Of Ca Dept. Of State Hospitals
1486327	Suja Life, LLC
1372531	Sulzer Bingham Pumps, Inc.
1291106	Szabolcs Ulics
1402103	The Raymond Group
1447044	Topline Nails, Inc.
1278609	Tutor Perini/Zachry/Parsons, Joint Venture
1289631	United Parcel Service
1401003	United Parcel Service, Inc.

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1246932	United Parcel Service, Inc.
1328447	United Parcel Service, Inc.
1351918	United Parcel Service, Inc.
1372841	United Parcel Service, Inc.
1429859	United Parcel Service, Inc.
1432733	United Parcel Service, Inc.
1461697	United Parcel Service, Inc.
1262192	UPS
1341411	UPS
1422682	UPS
1445680	UPS
1366332	UPS Supply Chain Solutions, Inc.
1481751	Usibelli Grape Ranch
1483904	Veestro LLC

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
1485198	Alfaro Farm Labor Contractor, Inc
1478209	The Uni Kool Partners
1482004	M & J Williams Inc.
1472716	Sutter Bay Hospitals

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1477632 DL Poultry, Inc.

1475440 Sutter Health – Calif. Pacific Med. 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

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

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

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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
1479264	Fresh Harvest, 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
1473792	Central Valley Meat Holding Company
1476167	Kaiser Foundation Hospitals
1476072	Windsor Vallejo Care Center LLC

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1480541	Western General Insurance Company
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
1482369	Fancher Creek Packing LLC
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.
1495517	River Valley Farms, LLC
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.
1485044	Peterson Trucks, Inc.

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1479944	Hughson Nut, Inc.
1486320	Coldwater Care Center LLC
1485067	Orange County Bagel Partners, L.P.
1477159	Grimmway Enterprises, Inc.
1481574	Daniel C Salas Harvesting, Inc.
1478942	Port City Operating Co LLC
1493465	Cardenas Market
1479549	Kaiser Foundation Hospitals
1481502	Fremont Healthcare Operating Co, LP
1483210	Community Home Partners LLC
1481792	HGST, Inc.
1485541	Draeger's Market
1483898	Chipotle Mexican Grill Inc.
1483864	JBM Restaurant Group 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.
1485373	A&A Dasso Farms Inc.
1498833	AMN Healthcare, Inc.
1484306	Olam West Coast, Inc.

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- 1490454 Erickson Framing CA LLC
- 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

Personnel:

(Issues regarding staff.)

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