

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

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, April 22, 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: April 9, 2021

RE: Closed Session of the Board to be held on April 22, 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.)

1333608 City Of Santa Barbara Public Works Street Division

1155042 Signal Energy LLC

1306170 Siu's Products and Distributor, 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.)

1327905 Bragg Investment Co., Inc.

1321161 Pacific Utility Installation, Inc.

1488970 Running Luck Ranch LLC

1361815 Thompson Pipe Group

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

None

Orders Denying Leave To File Late Appeal:

1466139 El Rancho Unified School District North Park

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.
- 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.
- 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.
- 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. 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)

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.)

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|---------|--------------------------------|
| 1460109 | A & R Farm Contracting Inc. |
| 1485373 | A&A Dasso Farms Inc. |
| 1319013 | A.B. Welding |
| 1520297 | Alpine Landscape, Inc. |
| 1411451 | Altman Specialty Plants, Inc. |
| 1376314 | American Airlines, Inc. |
| 1328734 | Angels Baseball, Lp. |
| 1478162 | Aqseptence Group Inc. |
| 1485799 | Architectural Welding Services |

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1450966	Arnoldo's All Phase Construction Services, Inc.
1473151	AT & T
1362113	B.C. McCosker Construction, Inc.
1485640	Baja Roofing & Coatings Inc.
1452978	Baltas Cornejo, an Individual
1355698	Boghosian Raisin Packing Co., Inc.
1307774	Brightview Landscape Development, Inc.
1386082	BSA Framing, Inc.
1493677	Cal-Ore Produce
1470403	Cibus Corporation
1288188	Cobalt Construction Company
1468850	Costco Wholesale Corporation
1461377	Country Builders Construction, Inc.
1443981	Cypress Abbey Company
1426007	Downing Construction, Inc.
1490515	Eden Enterprises, Inc.
1507218	Eden Vale Dairy
1482321	Erickson Framing CA LLC
1490454	Erickson Framing CA LLC
1443954	Euro Builders Inc.
1463485	Expert Crane Service Inc.
1486471	Flavor House Inc.
1479264	Fresh Harvest, Inc.

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1441069	Fresno Housing Authority
1247000	Genesis Innovators, Inc.
1387413	Gm Construction & Developer Inc.
1362624	Hard Rock Concrete, Inc.
1365857	Innotech Construction, Inc.
1483864	JBM Restaurant Group Inc.
1432992	Jorge Hernandez
1495416	Jose Carrasco Avila
1490104	Lassen County Office of Education
1381975	Lundgren Management Corporation
1445926	Mechanical Air Control, Inc.
1467436	Mish-Ra, Inc.
1402945	MLA Construction
1485067	Orange County Bagel Partners, L.P.
1447173	Penske Logistics LLC
1392248	Perrin Bernard Supowitz LLC
1494197	Quality Aluminum Forge, LLC
1399470	Ramos & Lecona Ventures LLC
1482809	Serve Max Farm Labor Contractor
1418412	SLC Construction Corp.
1496534	SPS Technology LLC
1486765	Teledyne Defense Electronics, LLC
1484133	Three Rivers Village Market, Inc.

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1396499 Thyssenkrupp Supply Chain Services NA, Inc.
1457512 Timeless Wood Products, Inc.
1489873 Tonnellerie Radoux USA, Inc.
1474226 Tony Gomez Tree Service & Landscape, Inc.
1380745 UPS Ground Freight, Inc.
1388527 Veridiam, Inc.
1431897 Vic's Concrete Breaking & Removal, Inc.
1485271 Vitco Distributors Inc.
1333897 Watermark Bayside, LLC
1390071 West Coast Arborists, Inc.
1395492 Western Digital Corporation

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.
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.

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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

1473922 Cardenas Market, LLC

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

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.

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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
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

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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
1479549	Kaiser Foundation Hospitals
1481502	Fremont Healthcare Operating Co, LP
1481792	HGST, Inc.
1483898	Chipotle Mexican Grill Inc.
1495407	D'Arrigo Bros. Co. of California
1481860	Carter's Retail Inc.

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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.
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.

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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
1491478	Lucky Farms, Inc.
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
1484133	Three Rivers Village Market, Inc.
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
1487741	BSF Fitness, LLC
1488834	Norman Elloway DDS
1481321	Autumn Hills Health Care Center

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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
1494480	Fresno County Sheriff's Office
1491648	Sandhu Orchards, LLC
1492130	Grapes FLC
1485435	Healthcare Services - Encino Hospital, LLC
1483579	Amazon
1493805	Simmons Real Estate, Inc.
1484803	California State Lottery

Personnel:

(Issues regarding staff.)

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