

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

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, September 09, 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: August 27, 2021

RE: Closed Session of the Board to be held on September 9, 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.)

1471575	Desert Garage Door, Inc.
1327187	Ontario Refrigeration Service, Inc.
1183524	Panda Restaurant Group, Inc.
1330292	West Coast Arborists, 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.)

1341947	Acme Anything
1262198	ADJ Group, LLC

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1359495 Victor C. Garcia, an Individual

1461476 Walmart, Inc.

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

1511775 Juniper Rock Corporation

1434045 Los Angeles County Department of Parks

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.

1279492 Arriaga USA, LLC
Whether the cited employer's rights were adequately protected at the video hearing.

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.

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- 1246527 Cemex
Whether the settlement in this matter was procured by fraud.
- 1135350 Hill Crane Service Inc.
Whether Employer violated the safety orders 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.
- 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.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.
- 1152851 Vincent Tuomey
Whether the Board ordered to issue a new decision was consistent with the superior court's ruling on a writ of mandate.

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.)

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Superior Court:

1. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
3. R N R Construction, Inc., 34-2017-80002632 (1092600)
4. Ashley Furniture Industries, 34-2017-800002750, (1016514)
5. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
6. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
7. Process Cooling International, 34-2019-80003220 (1232555)
8. Prestige Painting, 37-2019-00066143 (1367265)
9. Davis Development Company, 34-2020-80003373 (1226084)
10. MWL Solutions, 34-2020-80003549 (1436014)
11. Hampton Tedder Electric, 34-2020-80003562 (1233597)
12. BMW West, LLC, 34-2021-80003574 (1399613)
13. Southern California Edison, 34-2021-80003580 (1320327)
14. APTCO, LLC, BCV-21-100421 (1332715)
15. Ventura Coastal, (317808970)
16. L&S Framing, Inc., SCV-0046603 (1173183)
17. Granite Construction, 34-2021-80003634 (1235643)
18. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
19. Golden State FC, LLC dba Amazon Fulfillment,
STK-CV-UWM-2021-0004380 (1310525)
20. USA Waste of California, Inc. dba Blue Barrel Disposal Services,
21STCP01729 (1384029)
21. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
22. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
23. RND Contractors, Inc., CIV SB 2119442 (1436785)

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.)

1474959	Construction Developers Inc.
1492676	Courtney Inc.
1472339	Del Monte Foods, Inc.
1058820	E.E. Hall, Inc.
1490268	Eon Technologies, Inc.
1331361	F. D. S. Manufacturing Company
1493411	Fab 4, LLC
1442049	Flynn Restaurant Group LLC
1490096	GRB Con Inc.
1524494	Huhtamaki, Inc.
1524305	Imperial Painters Inc.
1471821	Jalita Corporation
1478865	James Raymond Wilson
1406512	JDS Industries, Inc.
1339069	Jensen Precast

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1504572	Jet Speed Plumbing Inc.
1488830	Karas Food, Inc.
1421499	Kebe Construction Corp.
1473687	Kleary Masonry, Inc.
1480118	Kleary Masonry, Inc.
1498330	LMC Enterprises
1499785	Lumber City Corp
1496888	MAMCO
1448915	MB's Exodus, Inc.
1417678	Moorefield Construction, Inc.
1494418	Morrison Landscape
1475089	MSS Construction Inc.
1396525	Next Level Construction Services, Inc.
1480840	Pacific Commodities Corporation
1497788	Price Manufacturing Co
1456202	Proset Construction, Inc.
1326774	Proven Management, Inc.
1478770	Purely Move, LLC
1270653	R & R Mountain Enterprises, Inc.
1473147	Ralph's Grocery Co.
1457443	Research Metal Industries, Inc.
1468209	Rohr Inc.
1400473	S.O.P.H.I.E., Inc.
1499541	Sepand Tofer
1368393	SFFI Company, Inc.
1462352	Sierra Pacific Industries
1480310	Sierra Pacific Industries
1481262	Sierra Pacific Industries
1482740	Sierra Pacific Industries
1509137	Sierra Pacific Industries
1304647	Sistemas Delfin USA Inc.

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1472537	Skilled Construction Services
1511197	Smart & Final Stores, LLC
1457079	Sunshine Raisin Corporation
1459679	Sway-A-Way, Inc.
1368217	Swinerton Builders
1532632	Taylor Structures, Inc.
1344257	Tesla, Inc.
1408862	Tesla, Inc.
1410880	Tesla, Inc.
1412988	Tesla, Inc.
1461134	Tesla, Inc.
1502851	The Chimney Guy Inc.
1331195	The Wine Group, Inc.
1514456	Tomales Bay Foods, Inc.
1431574	Total Placement Solutions, LLC
1403086	Vanguard Ag, Inc.
1444871	Walt Oxley Enterprises, Inc.
1466730	Wei-Chuan, USA
1474836	West Coast Arborists, Inc.
1508019	Z Logging, LLC

Personnel:

(Issues regarding staff.)

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