

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 23, 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: September 10, 2021

RE: Closed Session of the Board to be held on September 23, 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.)

1298318 United Airlines

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.)

None

Petitions For Reconsideration (Second Review):

1341947 Acme Anything

Orders Dismissing Appeal:

- 1287507 CECO Concrete Construction LLC
- 1466139 El Rancho Unified School District North Park

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.
- 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.

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- 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.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.

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.)

Superior Court:

1. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575

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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)
24. Sunview Vineyards of California, Inc. RG21111733 (1153101)

Appellate Court:

1. Lion Farms, LLC, MCV075788 (1070258)

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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.)

1525027	A & L Dairy, L.P.
1428541	Agriland Farming Company, Inc.
1436564	Allied Universal Security Services, LLC
1467853	Ameri-Kleen, Inc.
1427297	Ba Lax LLC
1486122	Bodega Latina Corporation, A Delaware
1424398	Brightview Landscapes Services LLC
1517675	C & D Contractors, Inc.
1452500	Cannon Constructors North, Inc.
1518520	Centurion Industries, Inc.
1509111	Coastal Tree Experts, Inc.
1407490	Deploy HR, Inc.
1452503	Diablo Plumbing Incorporated
1442368	Diamond Road Maintenance, Inc.
1502615	Facility Solution Group, Inc.
1473938	Fidelity Roofing Co.
1485892	Fong Kee Tofu Co, Inc.
1523877	Goldbrecht, LLC
1458401	Hannibal Industries, Inc.
1527077	Harbert Roofing, Inc.
1483039	HD Supply Construction Supply, Limited Partnership
1450580	Hi-Point Construction, Inc.
1300777	Industrial Container Services - Ca North, LLC
1528184	International Line Builders, Inc.
1223009	J & S Property Management & Maintenance, Inc.
1498337	JHN, Inc.
1489201	John Blakenship Plumbing

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1479549	Kaiser Foundation Hospitals
1467438	Kandola Farms
1321487	Kenai Drilling Limited
1330778	L'oreal Usa S/D, Inc.
1522265	Larry Williams Custom Painting
1468861	Manal, Inc.
1475909	Maximus Development, Inc.
1376659	Millie And Severson Inc
1482153	Monarca Labor, Inc.
1342539	Olam West Coast, Inc.
1341890	Outfront Media LLC
1474981	Outsource Utility Contractor Corp.
1521457	Pacheco & Fagundes Dairy
1283878	Pro Painting Services, Inc.
1410274	QG Printing II LLC
1285229	QG Printing II, LLC
1482839	R B R Meat Company, Inc.
1492020	Real Time Staffing Services, LLC
1482840	Rite-Way Meat Packers, Inc.
1482838	Rose & Shore, Inc.
1501045	San Bernardino County Pre-School Services Dept.
1472724	Santa Rosa Police Department
1434652	Sequoia Union High School District
1489053	Sinanian Development
1305851	Stuart Dean Co Inc.
1518309	Sundt Construction, Inc.
1486329	Sutter Health
1295258	The Save Mart Companies, Inc.
1400233	Tom Corea Construction, Inc.
1457575	Trojan Battery Company, LLC
1444618	United Production Framing
1304093	Utility Tree Service
1515232	Wm. Bolthouse Farms, Inc.
1313024	WP West Builders California, LP

Personnel:

(Issues regarding staff.)

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