

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held On February 4, 2021**  
**Sacramento, California**  
**West Covina, California**

**Present:**

Ed Lowry, Chair, Public Member  
Judith Freyman, Management Member  
Marvin Kropke, Labor Member  
Patricia Hapgood, Acting Executive Officer  
Jeff Mojcher, Chief Counsel  
Kevin Reedy, Presiding Administrative Law Judge  
Aaron Jackson, Industrial Relations Counsel  
Andia Farzaneh, Attorney  
Elizabeth Clarke, Attorney  
Lee Berlin, Staff Services Manager  
Janis Jonas, Management Services Technician  
Kerry Lewis, Administrative Law Judge  
Marlene Harris, Office Technician, OSHAB

**Minutes Of January 21, 2021 Meeting:**

*(Approve or amend minutes of previous board meeting.)*

Action: Board approved minutes of the January 21, 2021 Board meeting.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
The vote was 3-0

**New Business:**

*(The appeals Board hears and discusses new reports presented by staff.)*

Action: No report.

**Old Business:**

*(The appeals Board hears and/or discusses matters on a follow-up basis.)*

- Board to discuss progress on implementing Video Hearings.

Action: Presiding Judge Kevin Reedy reported on current video hearings. He reported in-office examinations of witnesses on Zoom will be scheduled as necessary. There was a brief discussion regarding the continuation of video hearings after COVID restrictions are lifted.

**Legislation:**

*(Review and discuss current legislation which may affect the appeals Board.)*

Action: There was a brief discussion regarding AB31 and AB73.

**Chairperson's Report:**

*(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)*

Action: Chair Ed Lowry announced that he has been reappointed by Governor Newsom to chair the Appeals Board.  
There was a brief discussion regarding the Federal oversight meeting which was held.

**Board Members Reports:**

*(Hear reports from Board members on activities and issues affecting the Appeals Board.)*

Action: No report.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Acting Executive Officer Patty Hapgood added comments regarding the meeting with the Federal OSHA representative.  
Ms. Hapgood also announced that the open position of Hearing Officer II has been posted.

**Staff Reports:**

*(Reports from the presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)*

1. Discuss whether there are any proposals for new regulations or proposals for modifications to existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

2. Discuss the creation of, and availability of, OSHAB documents created in other languages.

Action: Lee Berlin reported on working with the DIR Media Group in moving forward in creating documents in other languages and making the documents ADA accessible for posting on the website.

3. Discuss recent appeals filed which are related to the current COVID-19 pandemic.

Action: There was a brief discussion about current cases with COVID-19 related citations.

4. Litigation update:

Action: Chief Counsel Mojcher reported on current court cases.

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.

**Public Comment:**

*(Public comment will be entertained during discussion of each agenda item of the open meeting.)*

Action: There were no comments from the public.

The board recessed to its closed session.

**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.)*

1437646 FABRICATION TECHNOLOGIES INDUSTRIES, INC.

Action: Denied  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

**Petitions For Reconsideration (Second Review):**

NONE

**Orders Dismissing Appeal:**

NONE

**Order Denying Leave To File Late Appeal:**

1464368 PAUL BLANCO'S GOOD CAR COMPANY SACRAMENTO

Action: The Board discussed this matter.

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1448264 SOMATDARY INCORPORATED

Action: The Board remanded this matter to the hearing operations unit.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

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

Action: The Board discussed this matter.

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- 1206788 DPR Construction, Inc. ET AL  
*Whether the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation.*
- Action: The Board discussed this matter.
- 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.*
- 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.*
- Action: The Board discussed this matter.
- 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.*
- Action: The Board remanded this matter to the hearings operations unit.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0
- 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.*
- 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. Solarcity Corp., 34-2016-80002345 (14-R3D2-3707)

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3. Key Energy Service, LLC (12004280)
4. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
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)
19. Hampton Tedder Electric, 34-2020-80003562 (1233597)
20. Diversified Utility Services, Inc., 34-2020-80003564 (1326355)

**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)

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**Other Items:**

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

Action: No report.

2. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Action: No report.

**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.)*

1497452	Barney & Co California LLC
1324701	Brycon Corporation
1477055	Builder Services Group, Inc.
1291087	Cement Cutting, Inc.
1332190	Charter Communications, Inc.
1485053	Chipotle Mexican Grill
1468484	Collinsworth Construction, Inc.
1374770	D.A. Wood Construction, Inc.
1388275	Dion International Trucks, LLC
1316824	Driftwood Dairy, Inc.
1481274	Employbridge LLC
1438034	Felix Agranovich & Associates, Inc.
1408581	Full Service Maintenance, Inc
1354709	Gmp Plating, Inc.
1369445	Golden State Fc, LLC (LGB3 Amazon)
1373844	Goodwill of Silicon Valley
1373433	Greenwich West, Inc.
1471739	Guerrero Fencing Inc.



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1431905	H & S Granite, Inc.
1380268	Hamilton Construction Company
1477989	James White and Son's, Inc.
1388631	Keenan, Hopkins, Suder & Stowell Contractors,
1480835	Key Technology, Inc.
1446224	Land O'Lakes, Inc.
1455561	Managed Mobile, Inc.
1451295	Mashin Mohammad, an individual
1229642	McMinn Equipment Rental & Leasing, Inc.
1458816	MCRT Northern California Construction, LP
1416689	Melvin Monteiro, Angie Monteiro, Manuel Monteiro,
1442361	Pacific Oasis Inc.
1484743	Perfect Plank Co.
1315727	Pro Wall Lath & Plaster, Inc.
1429269	Proset, Inc.
1475290	RMG Management Inc.
1335829	Rua & Son Mechanical, Inc.
1428125	Sacramento Rendering Co.
1302815	Shimmick/Fcc/Impreglio JV
1497909	Shultz Steel Company
1495466	So Mo Co Labor Supply
1313267	Southern California Gas Company
1338717	State Roofing Systems, Inc.
1387562	The New Home Company, Inc.
1477943	The Precision Coil Spring Company
1399197	TMI Products, Inc.
1477995	Tortillacraft, LLC
1452075	Trademark Construction Co.
1399074	Triangle Brass MFG Co Inc.
1323997	Walmart
1266822	West Coast Air Conditioning Co. Inc.

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1499596 Wonder Metals Corporation

1462372 Woodspur Farming, LLC

Action: All Administrative Law Judge Settlement Orders approved.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

**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 – Calif. Pacific Med. 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.

1475903 Ralphs Grocery Company

1473922 Cardenas Market, LLC

1472915 Kaiser Permanente Psychiatric Health Facility - Santa Clara

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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
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 Hosp/Kaiser Permanente - Oakland Med. Center
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

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1476072	Windsor Vallejo Care Center LLC
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

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session was adjourned at 11:49 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its actions in the Closed Session, as indicated above. The meeting was adjourned at 11:50 a.m.