

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held On April 22, 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  
Sam Lucas, 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  
Laura Handeland, Head of Talent, Triplebyte

**Minutes Of April 8, 2021 Meeting:**

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

Action: Board approved the minutes of the April 8, 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.)*

Action: No report.

**Legislation:**

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

Action: There was a brief discussion regarding SB 606. This Bill has moved through the Appropriations Hearing. There was a brief discussion regarding SB 410. It is scheduled for Appropriations Hearing May 3, 2021.

**Chairperson's Report:**

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

Action: Chair Lowry discussed the expiration of the Governor's Emergency Executive Order related to COVID and the effect on holding video hearings. The Chair requested a memo from the Legal Unit as to options and suggested actions of the Board with regards to continuing video hearings or returning to in-person hearings.

**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: Final file date for Attorney III position was Monday April 19, 2021.

Patricia Hapgood, Acting Executive Officer, announced Sam Lucas has been selected as the Presiding Administrative Law Judge in the West Covina OSHAB office.

**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: Kevin Reedy presented a proposal regarding holding hearings remotely.

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

Action: No report.

3. Discuss status of Video Hearings.

Action: Video hearings are being held and several have been completed and decisions are being processed. There continues to be smooth operations regarding holding virtual hearings.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

4. 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.

5. 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.)*

1333608 City Of Santa Barbara Public Works Street Division  
Action: The Board discussed this decision.

1155042 Signal Energy LLC  
Action: The Board discussed this decision.

1306170 Siu's Products and Distributor, Inc.  
Action: The Board discussed this decision.

**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.  
Action: This case settled, no action needed by the Board.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

- 1321161 Pacific Utility Installation, Inc.  
Action: The Board denied this petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1488970 Running Luck Ranch LLC  
Action: The Board will wait for an answer and then it  
will remand the matter.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1361815 Thompson Pipe Group  
Action: The Board denied this petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

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

None

**Orders Dismissing Appeal:**

None

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

- 1466139 El Rancho Unified School District North Park  
Action: The Board voted to remand this case to  
hearing operations.  
Moved: Marvin Kropke  
Seconded: 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*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

*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.*
- 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.*  
Action: The Board discussed this matter.
- 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.*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

- 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.*  
Action: The Board discussed this meeting.
- 1384029 USA Waste of California, Inc.  
*Whether the Division proved the alleged violation.*  
Action: The Board voted to issue DAR.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

**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., 34-2017-80002632 (1092600)
5. Ashley Furniture Industries, 34-2017-800002750 (1016514)

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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. Diversified Utility Services, Inc., 34-2020-80003564 (1326355)
19. BMW West, LLC, 34-2021-80003574 (1399613)
20. Southern California Edison, 34-2021-80003580 (1320327)
21. Davis Development Company 34-2021-80003586 (1293194)
22. Downing Construction, Inc. 34-2021-80003585 (1426007)
23. 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.  
Action: No report.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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.)*

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
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.



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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.
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

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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.
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.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

- 1333897 Watermark Bayside, LLC
- 1390071 West Coast Arborists, Inc.
- 1395492 Western Digital Corporation

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
- 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.
- 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.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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.
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.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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
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.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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.
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

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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.
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

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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
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



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 22, 2021

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)*

Action: No report.

The Closed Session was adjourned at 11:43 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 11:45 a.m.