

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held On June 10, 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  
Elizabeth Clarke, Attorney  
Janis Jonas, Management Services Technician  
Kerry Lewis, Administrative Law Judge  
Christopher Jessup, Administrative Law Judge

**Minutes Of May 27, 2021 Meeting:**

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

Action: The Board approved the minutes of the May 27, 2021 Board meeting as amended.  
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: Elizabeth Clarke gave an update on current legislation.

**Chairperson's Report:**

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

Action: Chair Lowry discussed an article in Cal OSHA Reporter.

Chair Lowry updated the Board on his reappointment interview with the Senate Rules Committee staff.

**Board Members Reports:**

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

Action: Member Freyman discussed comment letter received by Worksafe in reference to the discussion held during the May 27, 2021 Board meeting concerning hearings held by telephone or videoconference. The Board will add a discussion topic, considering the public's increased access to documents and information within OASIS on the June 24, 2021 meeting agenda.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood, Acting Executive Director, reported that the DIR anti-nepotism policy is being revised.

Ms. Hapgood also updated the Board on the status of the lease agreements for the office buildings for the Sacramento and the West Covina Appeals Board offices.

**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: The Board discussed the proposed regulation permitting hearings to occur via telephone or videoconference.

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

Action: Patty Hapgood updated the Board on the progress of providing documents and forms in other languages. The Chinese translation is proving more difficult and will take more time.

3. Discuss status of Video Hearings.

Action: Presiding Judge Reedy and Judge Lewis reported on current and scheduled hearings being conducted by video platforms.

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4. Discuss recent appeals filed which are related to the current COVID-19 pandemic.  
Action: Presiding Judge Reedy and Judge Lewis reported on the appeals filed related to COVID issues. There was a discussion regarding abated cases being expedited.
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 public comments.

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.)*

1438716      Mon Fong Lin  
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.)*

1351863      Grimmway Enterprises, Inc.  
Action:      Board voted to approve Order, as amended to consolidate case with Grimmway (1477159)  
Moved: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0  
  
Action:      Board voted to deny the Petition for Reconsideration.  
Moved: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

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- 1477159 Grimmway Enterprises, Inc.  
Action: Board voted to approve Order, as amended to consolidate case with Grimmway (1351863)  
Moved: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0
- Action: Board voted to deny the Petition for Reconsideration.  
Moved: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0
- 1334740 Olam West Coast, Inc.  
Action: Board voted to grant the petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1464711 So Cal Stone Fabricators Inc.  
Action: Board voted to grant the petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1384029 USA Waste of California, Inc.  
Action: Board voted to grant the petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

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

None

**Orders Dismissing Appeal:**

- 1316142 Baked In the Sun Inc.  
Action: The Board discussed this matter.
- 1488292 International Rubber Products Inc.  
Action: The Board discussed this matter.
- 316215961 National Distribution Services, Inc.  
Action: The Board discussed this matter.

**Order 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<br><i>Whether Mr. Barnes was/is an employer.</i>   |
| 1141604 | Boy Racer Inc. DBA Burning Angel<br>(Employer's Petition)<br><i>Whether adult film performers are employees or independent contractors.</i>   |
| 1141604 | Boy Racer Inc. DBA Burning Angel<br>(Dosh's Petition)<br><i>Whether adult film performers are employees or independent contractors.</i>   |
| 1246527 | Cemex<br><i>Whether the settlement in this matter was procured by fraud.</i>  |
| 1135350 | Hill Crane Service Inc.<br><i>Whether Employer violated the safety orders as alleged.</i>   |
| 1422951 | Lineage Logistics<br><i>Whether Employer's motion to amend its appeal should be granted.</i>  |
| 1290766 | Millenium Reinforcing<br><i>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.</i> |
| 1199064 | SA Recycling<br><i>Whether employer established that, the alleged violation was abated at the time of inspection.</i>   |
| 1155042 | Signal Energy LLC   |

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- 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.*
- 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.*  
Action:          The Board discussed this matter.
- 1251879      Target Stores, Inc.  
*Whether the employee suffered a serious injury as defined by statute and regulation.*

**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, CPF 17-515575, (317134021)
4. R N R Construction, Inc., 34-2017-80002632 (1092600)
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)

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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)
22. Ventura Coastal, (317808970)
23. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)

**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.
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.)*

1459952	A Plus K
1321165	ACAA Limited Partnership
1431719	Albertsons LLC
1503794	Applegate Autocare, Inc.
1397586	Arb, Inc.
1285994	Arrow Pipeline Repair
1436465	B.H.L. Industries, Incorporated
1221024	Bali Construction, Inc.
1421328	Bee Sweet Citrus, Inc.
1497136	BJ Rees's Enterprise
1465337	Bland A/C & Heating, Inc.
1473792	Central Valley Meat Holding Company
1423379	City Lift Parking, LLC
1459932	City Of Los Angeles Department Of Public Works,
1231617	CSI Electrical Contractors, Inc.
1277955	Demler Brothers LLC and Andrew Demler
1464032	Di Industrial Coatings, Inc.
1471365	Elite Force Staffing, Inc.
1462658	Empire Remodeling Inc.
1517049	Freyssinet, Inc.



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1341822	Goldberg Operating, Inc.
1486786	Golden Bay Fence Plus Iron Works, Inc.
1364491	Gonsalves & Santucci, Inc.
1351863	Grimmway Enterprises, Inc.
1476536	Harvest Farms
1413481	Heath J Faria
1491637	Iamme 1a Inc.
1503734	Interior Logic Group Inc.
1397688	LAUSD - Esperanza Elementary
1478003	Marino's Ag Harvesting, Inc.
1492592	Medlin and Son Engineering Service, Inc
1479053	Michael Mellema, Darla Mellema, Dustin Berlinger,
1473756	Millcreek Construction Group, Inc.
1456106	Millennium Reinforcing, Inc.
1321116	Nueva Castilla Iron Works, Inc.
1433022	Oceanside Unified School District
1335203	Office Of The Commissioner Of Baseball, Its Bureaus
1410718	Pacific Stair Corporation
1383925	Panelized Structures, Inc.
1356970	Par Electrical Contractors, Inc.
1375348	Par Electrical Contractors, Inc.
1316900	Petrissans Dairy
1418620	Plant Construction Co, LP

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1393196	Pods Enterprises, LLC
1478942	Port City Operating Co LLC
1461404	Rainbow Waterproofing & Restoration Co.
1515187	Ralph King Furniture & Cabinetry
1518139	Richard Van Stavern Mobile Home Service
1488970	Running Luck Ranch LLC
1379864	San Francisco Bay Area Rapid Transit District
1496880	Sanco Pipelines, Incorporated
1506822	Seamless Roofing, Inc.
1373183	Simplehuman, LLC
1354842	Stanley Black & Decker, Inc.
1495963	Stytek, LLC
1478981	Sun Valley Skylights, Inc.
1484378	TGH Inc.
1481220	The Villa Park Orchards Association
1488774	Thermo Fisher Scientific
1477924	Tolly Landscape, Incorporated
1457573	Tolteca Manufacturing
1384747	Topnotch Metal Products, LLC
1095951	Troy Builders Construction & Remodeling, Inc.
1394898	V and K Distributing Company
1461712	Victorino Luna Garcia, an Individual
1404817	Walmart Distribution Center

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- 1513996 WCS Inc.
- 1217508 Western Equipment Manufacturing Inc.
- 1466112 Wo Chong, Inc.
- 1342247 Young's Commercial Transfer

Action: The Board reviewed and discussed the Settlement Orders issued by the Administrative Law Judges.

**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
- 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.
- 1475903 Ralphs Grocery Company
- 1472915 Kaiser Permanente Psychiatric Health Facility - Santa Clara

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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
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
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

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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
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.
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.

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1486320	Coldwater Care Center LLC
1477159	Grimmway Enterprises, Inc.
1481574	Daniel C Salas Harvesting, Inc.
1493465	Cardenas Market
1479549	Kaiser Foundation Hospitals
1481502	Fremont Healthcare Operating Co, LP
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
1485615	OOMA, Inc.
1491837	MV Transportation
1482178	United Parcel Service Inc.
1477528	Tranquility Inc.
1480875	OWB Packers, LLC
1487546	Bevill Vineyard Management
1495502	Al Pak Labor Inc.
1478155	Kingston Healthcare Center, LLC

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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

1488389 Mannington Mills, Inc.

1492892 California Agriculture, Inc.

1491024 Grimmway Enterprises, Inc.

1476007 KF Sunray, LLC

1478127 Contra Costa Behavioral Health Services

1489226 Mollie Stone's Market

1499605 United Staffing Associates, LLC.

1473477 A Vidovich Construction, Inc.

1481578 California Prison Industry Authority

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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.
1476839	PIH Health Good Samaritan Hospital
1490971	Santa Clara Valley Transportation Authority
1485894	Sutter Health
1494822	Ciasom, LLC
1491648	Sandhu Orchards, LLC
1492130	Grapes FLC
1485435	Healthcare Services - Encino Hospital, LLC
1483579	Amazon
1493805	Simmons Real Estate, Inc.
1484803	California State Lottery
1494655	Randstad USA LLC
1481021	American Machine & Tool, Inc.



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1492283	Aerotek Inc.
1479497	California Dept. of Corrections & Rehabilitation - Chuckawalla
1483379	Marin Senior Coordinating Council
1487399	Anaheim Healthcare Center, LLC
1482596	Parkview Operating Company, LP
1499765	Kaiser Foundation Hospitals - San Francisco
1492135	Brutocao Vineyards, Inc.
1500426	WB Powell Inc.
1479039	Armorcast Products Company, Inc.
1497482	Monterey Mushrooms, Inc.
1499522	Advanced Roof Design Inc.
1487717	Millbrae Care Center, LLC
1489597	The Growers Company, Inc.
1490265	Rubicon Bakers LLC
1493068	Kaiser Permanente
1488366	CourtSide Basketball Center
1476402	Northridge Care Center, Inc.
1487776	Grocery Delivery E-Services USA Inc.
1483206	Elkhorn Packing Co. LLC
1491795	Salinas Farm Labor Contractor, Inc.
1486324	California Department of Food and Agriculture
1487101	American Medical Response West
1494789	Fresh & Ready Foods LLC

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**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session was adjourned at 11:59 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 12:00 p.m.