

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held On June 24, 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  
Lee Berlin, Staff Services Manager  
Janis Jonas, Management Services Technician  
Kerry Lewis, Administrative Law Judge  
Christopher Jessup, Administrative Law Judge  
Bruce Wick, Risk Management Director, Housing Contractors of California

**Minutes Of June 10, 2021 Meeting:**

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

Action: The Board approved the minutes of the June 10, 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.)*

1. Consideration and discussion regarding increasing public access to OASIS documents and information, including discussion of potential changes to OASIS to allow greater public access.

Action: Lee Berlin reported on discussions held with stakeholders regarding their needs and how the needs can be met through OASIS.

2. Consideration of adoption of a specific regulation permitting hearings to occur via telephone or videoconference, including consideration of proposed text for the regulation.

Action: The Board discussed proposed text for a regulation regarding holding hearings via telephone or videoconference. Stakeholders will be invited to the next Board meeting to review the proposed regulation.

**Legislation:**

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

Action: Elizabeth Clarke reported on current legislation. New COVID regulations were reviewed.

**Chairperson's Report:**

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

Action: Chair Lowry discussed Decisions reported in the Cal-OSHA Reporter and an article in California Trucking Association regarding AB5.

**Board Members Reports:**

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

Action: Member Freyman is attending HR training classes for personnel recruitment.

Ms. Freyman introduced a discussion regarding COVID related cases.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood, Acting Executive Officer, reported on an opening for a Hearing Officer in the Sacramento office and one also in the West Covina office. Notices should be posted mid-July for both positions.

**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: Lee Berlin updated the Board on the status of creating documents in additional languages and having them posted on the website.
3. Discuss status of Video Hearings.  
Action: Presiding Judge Reedy and Judge Lewis reported on current and scheduled hearings being conducted by video platforms.
4. Discuss recent appeals filed which are related to the current COVID-19 pandemic.  
Action: The Board discussed cases related to COVID-19.
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: Bruce Wick thanked the Board for the discussions and the continued collaborative work by the Board.

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.)*

1239535 Los Angeles City Fire Department

- Action: The Board discussed this decision.

0000139 Special Order- Los Angeles City Fire Department  
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.)*

1457804 ATV Inc.  
Action: Board voted to deny the Petition for Reconsideration.  
Moved: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

1240360 Harris Spice Company, Inc.  
Action: Board voted to deny the Petition for Reconsideration.  
Moved: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

1480202 Precision Castparts Corporation  
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:**

None

**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*

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*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.*
- 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.*
- 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.*

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- 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.*  
Action: The Board discussed this matter.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services  
*Whether the Employer committed the alleged violations.*

**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. 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)
11. Vincent Tuomey, RG20061099 (1152851)

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12. Golden State Boring & Pipe Jacking, Inc. 34-2020-80003465 (1308948)
13. Interline Brands, Inc., CIVDS2021813 (1251604)
14. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
15. MWL Solutions, 34-2020-80003549 (1436014)
16. Hampton Tedder Electric, 34-2020-80003562 (1233597)
17. BMW West, LLC, 34-2021-80003574 (1399613)
18. Southern California Edison, 34-2021-80003580 (1320327)
19. Davis Development Company 34-2021-80003586 (1293194)
20. Sierra Forest Products, VCU285853 (1291481)
21. APTCO, LLC, BCV-21-100421 (1332715)
22. Ventura Coastal, (317808970)
23. L&S Framing, Inc., SCV-0046603 (1173183)
24. Granite Construction, 34-2021-80003634 (1235643)
25. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
26. Golden State FC, LLC dba Amazon Fulfillment,  
STK-CV-UWM-2021-0004380 (1310525)
27. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729  
(1384029)

**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.

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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.)*

1471585	Alpha General Contracting Inc.
1464466	Andreas Natural Marble and Stone
1425590	B & V Enterprises, Inc.
1468729	Berry Global
1489764	Broc Cellars
1483650	Cal North Farming Group, Inc.
1489305	Calavo Growers, Inc.
1271885	California Industrial Rubber Company
1493465	Cardenas Markets, LLC
1487880	Century Rubber Company Inc.
1496358	City of Covina
1399861	Clark-Pacific Corporation
1253598	Clayco Inc.
1345041	Condon-Johnson and Associates, Inc.
1495252	Elkhorn Packing Co. LLC
1343535	Express Messenger Systems, Inc.
1484303	Finley Farming Inc., a California Corporation



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1487405	George's Auto Body & Service
1474096	Green Giant Landscape
1494843	Harbor Area Gang Alternatives Program
1449027	Icon West
1465029	J & A Pallet Accessory, Inc.
1105855	Jeff Alexander Farming
1515289	K H Mckenny Inc.
1447926	Lidan Corporation
1422484	Lidestri Foods, Inc.
1452715	Lovesticks
1194484	Maruichi American Corporation
1480395	Metzer Farms, Inc.
1420163	Minasian Brothers, Inc.
1466517	MM Reforestation, Inc.
1476487	MNET Solutions LLC
1480989	Musco Excavators, Inc.
1484737	Newton Heat Treating Company, Inc.
1431912	Orange Coast Building Services, Inc.
1474680	Pacific Farm Management, Inc.
1363991	Primex Farms, LLC
1448470	Protech Deliver & Installation
1401990	Richard M. Blank
1501770	San Francisco Fire Department

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- 1491604 San Luis Rey Bakery & Restaurant Corp.
- 1297209 Setton Pistachio of Terra Bella, Inc.
- 1415143 Standard Homeopathic Company
- 1490099 Stanley G. Alexander, Inc.
- 1514502 Steelhead Constructors, Inc.
- 1483240 Stephen H. Smith Farms, Inc.
- 1491340 Success Valley Farms LLC
- 1459671 Universal Coatings, Inc.
- 1468207 Vallarta Food Enterprises, Inc.
- 1418301 Van-G Trucking, Inc.
- 1319823 Venado Custom Tillage, Inc.
- 1436458 Venterra Environmental, Inc.
- 1484707 Vivint Solar Inc.
- 1385239 Westrock Converting LLC

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

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1483569	Vie de France Yamazaki, Inc.
1484808	Jobsource North America, Inc.
1473542	Jobsource North America, Inc.
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
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.

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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
1482031	United Staffing Associates, LLC
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
1482357	H & R Labor Contracting, LLC
1474698	City of Santa Clarita-Santa Clarita Transit

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1488121	Apollo Wood Recovery, Inc.
1483438	Mills-Peninsula Medical Center
1483129	Walmart Inc.
1487976	Stevens Creek BMW
1482808	Primex Farms, LLC
1477773	Citistaff Solutions, Inc.
1486320	Coldwater Care Center LLC
1477159	Grimmway Enterprises, Inc.
1481574	Daniel C Salas Harvesting, Inc.
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
1485615	OOMA, Inc.
1491837	MV Transportation

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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
1483470	HR Staffing Solutions, Inc.
1478320	Sutter Bay Hospitals
1485410	SC Warehouses, Inc.
1489025	Los Angeles Apparel, Inc.
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

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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
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

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1483579	Amazon
1493805	Simmons Real Estate, Inc.
1484803	California State Lottery
1494655	Randstad USA LLC
1481021	American Machine & Tool, Inc.
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.



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1499047	Partners Personnel
1514218	Wesley Allen Inc.
1499592	Fairway Staffing
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
1512743	BCOK, Inc.
1496216	Santa Clara County Sheriff's Office
1483625	Cardenas Market

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session was adjourned at 12:16 p.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 12:17 p.m.