

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held On July 15, 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
Rheeah Yoo Avelar, Administrative Law Judge
Howard Chernin, Administrative Law Judge
Les Murad, Administrative Law Judge
Thomas Song, Attorney,
Andrew Siersema,
Andrew Sommer, Conn Maciel Carey
Chris Grossgart, Counsel, DOSH
Dave Wiseman, Attorney, Cal Fire
Dave Donnell, Donnell Melgoza Scates
Faith Driscoll, Barsamian & Moody
Kumani Armstrong, Counsel, DIR
Lisa Baiocchi, Attorney, Prince Law Firm
Lisa Prince, Attorney, Prince Law Firm
Perry Poff, Donnell Melgoza and Scates
Manuel Melgoza, Donnell Melgoza
Scates
Glenn Sias, Senior Manager, So. Ca
Edison

Minutes of June 24, 2021 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the June 24, 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 of regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376.

Action: The Board discussed the draft of the regulatory amendments. The public was invited to share comments. The comments will be reviewed and evaluated.

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 shared names of new appointments made by Governor Newsom.

Board Members Reports:

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

Action: Member Freyman shared a Sacramento Bee article on number of job vacancies at California's Division of Occupational Safety and Health and the Department's effort to fill the positions.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood, Acting Executive Officer, reported on recruitment for several positions at the Board. There are new protocols on COVID prevention procedures.

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: Discussed during old business.

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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: Public comments were received during the discussion regarding regulation changes under old business.

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.)

1279492 Arriaga USA, LLC.

Action: The Board discussed this decision.

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have 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.)

1279492 Arriaga USA, LLC.

Action: The Board took no action on this matter.

1386092 P&P Fresh Mex, Inc.

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

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

1460113 Oldcastle Infrastructure Inc.

Action: The Board discussed this Order.

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
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.

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- 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.
- 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 voted to issue DAR on this matter.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

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)
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)

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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.
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.)

1406107	Airport Specialty Products, Inc.
1477608	Alhambra Hospital Medical Center, L.P.
1276593	Allied Protection Service, LLC
1500181	Aluminum Technology Inc.
1492078	American Pacific Plastic Fabricators, Inc.
1473921	Americold Logistics, LLC
1369541	Amerigas Propane, Inc.
1437602	Berberian Enterprises, Inc.
1482374	Blum Construction Co., Inc.
1482586	Bockmon & Woody Electric Co Inc.
1492135	Brutocao Vineyards, Inc.
1398844	C R Garcia Roofing, Inc.
1405111	CA Transportation, District 5
1466270	California Building Products Services Inc.
1388483	California Department of Forestry and Fire
1125088	California Multimodal, LLC
1484803	California State Lottery
1489868	Campbell Certified Inc.
1396273	Case Vander Eyk Dairy
1458962	Chevron U.S.A. Inc.
1483898	Chipotle Mexican Grill Inc.
1456399	Chris Huy Ho
1399111	Collision City
1481247	Coronell Construction Inc.
1474125	D & T Fiberglass, Inc.
1465764	Dick James & Associates, Inc.
1285129	Ecology Auto Parts Inc.
1499592	Fairway Staffing
1499420	Fairway Staffing Services
1462703	Fenceworks Inc.
1415235	Fernando Gomez
1476400	First Class General Construction
1269751	G4s Secure Solutions (USA) Inc.
1527872	Gettler Ryan Inc.
1460067	GK Welding, Inc.

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1363456	Golden Gate Disposal & Recycling Company
1249144	Hart Concrete Designs, Inc.
1431721	Harvest Landscape Enterprises, Inc.
1472000	Heidelberg USA, Inc.
1471103	Hellwig Products Co., Inc.
1372856	Herrick Grapevines, LLC
1479938	High Tech Irrigation, Inc.
1454752	ICPK Corporation
1490009	Imperial County Public Works
1479073	Integral Senior Living, LLC
1485058	M & M Sheet Metal & Rain Gutter Corp.
1483922	Mastro's Restaurant, LLC
1456252	Melquize Cervantes Guzman, an Individual
1381222	Mesquite Productions, Inc.
1496729	MGA Electrical Corporation
1498859	Mitchell Jones Concrete, Inc.
1332672	Monterey Mushroom, Inc.
1439638	Navarro Roofing
1315478	Newport-Mesa Unified School District
1315480	Newport-Mesa Unified School District
1335100	Oakwest Services, Inc.
1461798	Pacific Gas and Electric Company
1495647	Pasadena Unified School District
1472020	Pitman Family Farms
1443965	Populus Financial Group Inc.
1455877	Priority Workforce, Inc.
1465840	Royal Recycling Center Inc.
1279155	Rubio's Restaurants
1475902	Ryan Companies Us, Inc.
1476554	Sacramento Metropolitan Fire District
1400972	Safety Service Scaffold Company
1491216	San Fernando Motor Company
1491648	Sandhu Orchards, LLC
1511765	Schmidbauer Building Supply, LLC
1496211	Shasta Green, Inc.
1451501	Shogun Corona, LLC
1497242	Simplex Strip Doors LLC
1511873	Skanska USA Civil West California District Inc.
1470188	South Pasadena Fire Station
1502682	Table Bluff Brewing, Inc.

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1479936	Target Corporation
1487997	Technip Stone & Webster Process Technology, Inc.
1347040	Tesla, Inc.
1468105	Tesoro Refining & Marketing Company LLC
1324582	The Penta Building Group, LLC
1351796	UC Los Angeles
1284771	United Airlines, Inc.
1484370	United Metal Concepts, Inc.
1317337	United Production Framing
1247984	United Production Framing, LLC
1412370	USS Posco Industries
1455962	West Coast Drywall & Company, Inc.
1420544	Westrock Converting LLC
1425896	Wright Tree Service of the West, Inc.

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
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
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.
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
1476072	Windsor Vallejo Care Center LLC
1476167	Kaiser Foundation Hospitals
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

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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
1483438	Mills-Peninsula Medical Center
1488121	Apollo Wood Recovery, Inc.
1483129	Walmart Inc.
1487976	Stevens Creek BMW
1482808	Primex Farms, LLC
1477773	Citistaff Solutions, Inc.
1486320	Coldwater Care Center LLC
1481574	Daniel C Salas Harvesting, Inc.
1477159	Grimmway Enterprises, Inc.
1479549	Kaiser Foundation Hospitals
1481502	Fremont Healthcare Operating Co, LP
1481792	HGST, 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.

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1478155	Kingston Healthcare Center, LLC
1478320	Sutter Bay Hospitals
1485410	SC Warehouses, Inc.
1483470	HR Staffing Solutions, Inc.
1489768	State of California, Dept. of Corrections - Avenal State Prison
1489025	Los Angeles Apparel, Inc.
1482518	G.L. Mezzetta Inc.
1484564	Integrated Pain Management Medical Group, Inc.
1489371	Frontier-Kemper Constructors, Inc. and Tutor Perini Corporation
1481476	Marin Resource Recovery Center
1489032	Michael Nicholas Designs, Inc.
1486257	The Kroger Company
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
1489284	Tosca Services, LLC
1482373	Catalyst Family Inc.
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

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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
1492130	Grapes FLC
1483579	Amazon
1493805	Simmons Real Estate, Inc.
1485435	Healthcare Services - Encino Hospital, LLC
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.
1497482	Monterey Mushrooms, Inc.
1499522	Advanced Roof Design Inc.
1479039	Armorcast Products Company, 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.

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1487776	Grocery Delivery E-Services USA Inc.
1499047	Partners Personnel
1514218	Wesley Allen 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
1479470	Prime Healthcare Anaheim, LLC
1496930	Day-Lee Foods Inc.
1488604	California Depart. of Corrections and Rehabilitation - Centinela
1512743	BCOK, Inc.
1496216	Santa Clara County Sheriff's Office
1483625	Cardenas Market
1494286	Kaiser Foundation Hospitals
1485868	Sutter Health
1496882	Santa Clara County Elmwood Correctional Complex
1518525	Goton Tiles Inc.
1487768	Prime Healthcare Services-Sherman Oaks, LLC
1497916	Del Mar Food Products Corp.
1485170	Target Corporation
1505058	Cardenas Markets, LLC
1476065	AG Redlands, LLC
1497589	Sanchietti Farming Inc.
1505530	Shannon Masonry Construction, Inc.

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session was adjourned at 12:03 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 12:04 p.m.