

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held On July 29, 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
Kevin Bland, Attorney, Ogletree Deakins
Jennifer Yanni, Attorney, Ogletree Deakins
Dan Lucido, Chief Counsel, DOSH
Norma Wallace, Executive Director, Tuolumne JPA
Jean Wolfgang, Executive Assistant, Tuolumne JPA
Kumani Armstrong, Special Counsel, DIR Director's Office

Minutes of July 15, 2021 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the July 15, 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: Elizabeth Clarke reported on current legislation.

Chairperson's Report:

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

Action: Chair Lowry shared brief report on articles read.

Board Members Reports:

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

Action: Member Freyman attended the Advisory Committee meeting. Ms. Freyman gave a brief report highlighting COVID related complaints being filed. In addition, there was a discussion regarding posting DAR's on the OSHAB website. DAR's are posted on the website once they are edited and pass set protocols, to be accessible

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood, Acting Executive Officer, reported the Federal OSHA meeting is scheduled for next week. HR interviews for the Attorney III position are complete. Interviews for the Office Technician position are being held August 2 and 3. Two retired annuitants are returning as Administrative Law Judges.

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 proposed changes to the regulations. Next meeting should have final revision and rulemaking documents completed for review.

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.

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3. Discuss status of Video Hearings.

Action: Presiding Judge Reedy and Judge Lucas reported on hearings conducted by video platforms. Judge Lewis and Judge Jessup are training the returning Retired Annuitants. Concerns regarding uploading evidence was discussed. Parties can call the OSHAB office for help with uploading evidence or send the item to the OSHAB office by fax or mail and staff will complete the process.

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

Action: The Board discussed cases related to COVID-19. Comments from the public were welcomed.

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 regarding regulation changes and on reporting abated violations, scheduling pre-hearings and uploading evidence.

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 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 voted to grant Arriaga's petition.
Moved: Judith Freyman
Seconded: Marvin Kropke
Vote: 3-0

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

1426730 ERB and Sons General Contracting, 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.

1246527 Cemex
Whether the settlement in this matter was procured by fraud.

1133550 Hansford Industries, Inc. Dba Viking Steel
Whether Employer properly secured a load for movement within its facility, and whether employees were properly supervised.

Action: The Board reviewed and discussed this matter.

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- 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 voted to issue DAR.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.
- Action: The Board voted to remand this case to Judge Reedy for a Settlement Conference.
Moved: Judith Freyman
Seconded: Marvin Kropke
Vote: 3-0

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. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
13. MWL Solutions, 34-2020-80003549 (1436014)
14. Hampton Tedder Electric, 34-2020-80003562 (1233597)
15. BMW West, LLC, 34-2021-80003574 (1399613)
16. Southern California Edison, 34-2021-80003580 (1320327)
17. Davis Development Company 34-2021-80003586 (1293194)
18. APTCO, LLC, BCV-21-100421 (1332715)
19. Ventura Coastal, (317808970)
20. L&S Framing, Inc., SCV-0046603 (1173183)

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21. Granite Construction, 34-2021-80003634 (1235643)
22. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
23. Golden State FC, LLC dba Amazon Fulfillment,
STK-CV-UWM-2021-0004380 (1310525)
24. 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: Cases with citations related to COVID-19 were discussed.

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.)

1487556	3 - D Polymers
1405615	Advantage Painting Solutions
1485198	Alfaro Farm Labor Contractor, Inc.
1496873	American
1317186	Arborwell, Inc.
1435572	California State University Channel Islands
1505058	Cardenas Markets, LLC

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1471924	Central Valley Meat
1472842	City Mechanical, Inc.
1459014	City of Los Angeles Department Of Water and Power
1471125	Cousins Hay Harvesting
315533190	CR&R Inc.
1285075	CR&R Incorporated
1293566	CR&R Incorporated
1363712	CR&R Incorporated
1405099	CR&R Incorporated
1454333	CR&R Incorporated
1477632	DI Poultry, Inc.
1466545	Edwin Giovani Gomez, an Individual
1463394	FH II Homebuilders, Inc.
1499307	G & G Quality Case Co. Inc.
1489663	GLB Builders Inc.
1518525	Goton Tiles Inc.
1482192	Green Walls-Us, Inc.
1479302	Grijalva Contractors, Inc.
1443583	Hunter Construction & Management, Inc.
1481071	J S Builders, LLC
1478836	Los Angeles County Metropolitan Transportation
1397627	Los Angeles County Sheriff's Department
1448352	M&S Construction Services Inc.
1404018	Mark III Construction, Inc.
1469065	Midway Construction Corp.
1416829	Nestle Dreyer's Ice Cream Company
1315479	Newport-Mesa Unified School District
1482464	Nextcrop, Inc.
1481858	Numa Brothers Construction, Inc.
1491206	Pasadena Hospital Association, LTD
1492591	Priority Business Services, Inc.

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1500560	Pro Cast Industries
1478858	Rachma Contracting, Inc.
1454150	Reinalt Thomas Corp.
1350208	Saul Chevrolet, Inc.
1499885	Skanska USA Civil West California District Inc.
1476062	Solid Personnel
1477005	Sun Pacific Farming Cooperative, Inc.
1465020	Superior Truck Lines, Inc.
1399786	Tesla, Inc.
1408787	The Beach Restaurant, Inc.
1496784	Timothy Finnigan
1472737	University Of California, Santa Cruz
1479188	Zanker Road Resource Management, LTD
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.

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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
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 Hospitals
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

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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
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.
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

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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
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

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1482373	Catalyst Family Inc.
1478754	California Department of Corrections and Rehabilitation
1487741	BSF Fitness II, 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 Bay Hospitals
1494822	Ciasom, LLC
1491648	Sandhu Orchards, LLC
1492130	Grapes FLC
1483579	Amazon
1484803	California State Lottery
1493805	Simmons Real Estate, Inc.
1485435	Healthcare Services - Encino Hospital, LLC
1494655	Randstad USA LLC
1481021	American Machine & Tool, Inc.
1492283	Aerotek Inc.
1479497	Calif. Department 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.

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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.
1487776	Grocery Delivery E-Services USA Inc.
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
1479470	Prime Healthcare Anaheim, LLC
1496930	Day-Lee Foods Inc.
1488604	Calif. Department of Corrections and Rehabilitation - Centinela
1512743	BCOK, Inc.
1496216	Santa Clara County Sheriff's Office
1483625	Cardenas Market
1496882	Santa Clara County Elmwood Correctional Complex
1477608	Alhambra Hospital Medical Center L.P.
1494286	Kaiser Foundation Hospitals
1485868	Sutter Health
1518525	Goton Tiles Inc.
1497916	Del Mar Food Products Corp.
1485170	Target Corporation

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1487768	Prime Healthcare Services-Sherman Oaks, LLC
1505058	Cardenas Markets, LLC
1476065	AG Redlands, LLC
1497589	Sanchietti Farming Inc.
1505530	Shannon Masonry Construction, Inc.
1505149	La Mar USA, LLC dba La Mar Cebicheria Peruana
1487971	Sutter Health
1487483	Staffing Solutions, Inc.
1487509	Marcos Renteria Ag Services, Inc.
1476070	Extended Care Hospital of Riverside
1498861	Walgreen Co.
1487494	Intermountain Employment Services, Inc.
1489043	Human Bees, Inc., AKA Avitek Recruit, Inc.
1496781	Foster Poultry Farms, Inc.
1485155	Foster Poultry Farms, Inc.
1488960	United Parcel Service, Inc.
1488602	Sierra View Homes, Inc.
1480199	Being Alive/People with AIDS Action Coalition, Inc.

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session was adjourned at 12:30 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 12:31 p.m.