

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on December 2, 2021**  
**on Zoom platform**

**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  
Janis Jonas, Executive Secretary  
Christopher Jessup, Administrative Law Judge  
Kerry Lewis, Administrative Law Judge  
Lisa Prince, Attorney, Prince Law Firm  
Dan Lucido, Chief Counsel, DOSH

**Minutes of November 18, 2021 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the November 18, 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.)*

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: Aaron Jackson updated the Board on progress of writing the notice and the regulatory amendments to the Board regulation 376.

**Legislation:**

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

Action: No report.

**Chairperson's Report:**

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

Action: No report.

**Board Members Reports:**

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

Action: Judith Freyman shared that she received an invitation to the Employee Advisory Group's Christmas zoom party.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Acting Executive Officer Patricia Hapgood updated the Board on new staffing.

**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: No report.

2. Discuss status of Video Hearings.

Action: Judge Sam Lucas updated the Board on current scheduled video hearings. Presiding Judge; Kevin Reedy reported a one-month pilot program, which will begin February 2022 for the purpose of holding Status Conferences on the zoom platform.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: Judge Sam Lucas discussed the current filing of appeals relating to the COVID pandemic. Judge Lucas explained the audit and updating of the COVID case report.

4. Litigation update:

Action: Chief Counsel Jeff 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: The Board received 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.)*

1410726 Hathaway Dinwiddie Construction Co.  
Action: The Board reviewed 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.)*

1494822 Ciasom, LLC dba Advoque Safeguard  
Action: The Board voted to grant this petition.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

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

1423464 Lineage Logistics LLC  
Action: The Board discussed this matter.

1342017 O.C. Jones & Sons, Inc.  
Action: The Board voted to deny this petition.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

**Orders Dismissing Appeal:**

317541761 C&L Sparks Inc. dba Sparks Electric Inc.  
Action: The Board reviewed 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.*  
Action: The Board discussed this matter.
- 1279492 Arriaga USA, LLC  
*Whether the cited employer's rights were adequately protected at the video hearing.*  
Action: The Board voted to issue DAR  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 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.*
- 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.*

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- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients  
*Whether the Employer committed the alleged violations.*
- 1327187 Ontario Refrigeration Service, Inc.
- 1155042 Signal Energy LLC  
*Whether Employer appropriately oversaw the actions of the subcontractors.*
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals  
*Whether Employer violated section 3212(a)(2)(A) as alleged.*
- 1509967 United Pumping Service, Inc.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services  
*Whether the Employer committed the alleged violations.*  
Action: The Board discussed this matter.
- 1152851 Vincent Tuomey  
*Whether the Board ordered to issue a new decision was consistent with the superior court's ruling on a writ of mandate.*  
Action: The Board voted to issue Order Setting Aside Denial of Petition for Reconsideration.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1461476 Walmart, Inc.  
Whether Walmart was an employer citable for the alleged violation.

**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. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)
3. Ashley Furniture Industries, 34-2017-800002750 (1016514)
4. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)

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5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
6. Process Cooling International, 34-2019-80003220 (1232555)
7. Prestige Painting, 37-2019-00066143 (1367265)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMW West, LLC, 34-2021-80003574 (1399613)
12. Southern California Edison, 34-2021-80003580 (1320327)
13. L&S Framing, Inc., SCV-0046603 (1173183)
14. Granite Construction, 34-2021-80003634 (1235643)
15. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
16. Golden State FC, LLC dba Amazon Fulfillment, STK-CV-UWM-2021-0004380 (1310525)
17. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729 (1384029)
18. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
19. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
20. RND Contractors, Inc., CIV SB 2119442 (1436785)
21. Sunview Vineyards of California, Inc. RG21111733 (1153101)
22. Hill Crane Service Inc., 34-2021-80003744 (1135350)

**Appellate Court:**

1. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
2. United Parcel Service, B308218, 18STCP03195 (1158285)

**Other Items:**

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendaized.

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: 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.)*

1441412	3001 ECR Partners, LLC
1508184	Accentcare, Inc.
1499844	Adco South Roofing Company
1481855	Aka General Construction
1513020	Amay's Bakery & Noodle Company, Inc.
1511766	American Honda Motor Co., Inc.
1268738	Arizona Tile, LLC
1380559	Bridgestone Retail Operations, LLC
1397974	Ca Corrections - Corcoran SATF
1463804	Central Bay Roofing & Restoration
1479554	Char Vale Vineyards, LLC
1431319	Clark Pacific Corporation
1481455	Comforcare Home Care
1484991	Correa Pallet, Inc.
1543418	Donald F. Gallino, Inc., General Contractors
1506587	Dreisbach Enterprises Inc.
1480382	Eisenbeiss Inc.
1510767	Entekra
1277107	Esterline/Kirkhill-Ta Co.
1491168	Farm And Land Company Inc.
1312254	Ferreira Construction Co., Inc.
1432621	Foster Poultry Farms

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1511657	Frank Lucarelli
1520524	Giampolini & Co.
1494181	Gomez Iron Works Inc.
1486559	Haykingdom, Inc.
1457442	Iron Mechanical, Inc.
1537891	J. Carlos, Inc.
1482930	Joseph J. Albanese, Inc.
1476007	KF Sunray, LLC
1507591	Kloeckner Metals Corporation
1454056	Kraft Heinz Food Company
1224651	Leslie Environmental Industries, LLC
1492489	Lone Oak Farms 2
1488793	Mariposa Baking Company, Inc.
1543077	Mcintosh Steel, Inc.
1484550	Mechanical Systems Contractor Inc. (MSC)
1494845	Merchants Metals LLC
1536945	Modern Building Company
1473118	Packers Sanitation Services, LTD, LLC
1498335	Paragon Custom Builders
1518232	Paramount Pictures
1531156	Perry Builders
1329674	Plumbing Concepts, Inc.
1474074	Prodigy Works
1517997	Propserv, Inc.
1486910	Rescue Electric Corporation
1487203	Rite Aid Corporation #5821
1476403	Robertson's Ready Mix, LTD
1493350	Ruszel Woodworks, Inc.
1503936	Ryder Systems Incorporated
1479474	S & H Independent Premium Brands West, LLC
1491400	S.R. Freeman, Inc.



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1489876	San Joaquin Refining Co., Inc.
1540867	Santa Fe Mercado, Inc.
1453257	Security Paving Company, Inc.
1475651	Sierra Arbor Works
1487537	Sierra Valley Mechanical
1488572	Sinclair Concrete, Inc.
1521274	Skillset Group, Inc.
1502156	St. Paul's Episcopal Home Inc.
1487483	Staffing Solutions, Inc.
1399884	Suffolk Construction Company, Inc.
1531793	Swinerton Builders, Inc.
1501475	Taqueria Senaida's
1425920	Top Rank & Air Conditioning, Inc.
1298791	Turner Broadcasting System, Inc.
1487657	Veterans Transition Center of Monterey County

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

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session adjourned at 12:02 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 adjourned at 12:03 p.m.