

**State of California**  
**California Occupational Safety and Health Appeals Board**  
**Closed Session Agenda**

**Government Code § 11126 (a), (c)(3), (e) and (f)**

**for**

**Thursday, January 20, 2022**

**9:30 a.m.**

**Held on Zoom**

**To: Members of the California Occupational Safety & Health Appeals Board**

**From: J. Jeffrey Mojcher, Chief Counsel**

**Date: January 7, 2021**

**RE: Closed Session of the Board to be held on January 20, 2021**

**Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. 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.**

**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 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.)*

None

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

None

**Orders Dismissing Appeal:**

1502988      La Vie Wellness Inc.

**Orders 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.*

- |         |   |
|---------|---|
| 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>  |
| 1494822 | Ciasom, LLC dba Advoque Safeguard<br><i>Whether Employer operated an industrial truck within appropriate limits.</i>  |
| 1332867 | Guy F. Atkinson Construction, LLC<br><i>Whether the Division proved the alleged violation.</i>  |
| 1410726 | Hathaway Dinwiddie Construction Co.<br><i>Whether the Division proved the alleged violation.</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> |
| 1334740 | Olam West Coast, Inc. dba Olam Spices and Vegetable<br>Ingredients<br><i>Whether the Employer committed the alleged violations.</i>   |

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- 1327187 Ontario Refrigeration Service, Inc.  
*Whether the Division proved the “serious” classification.*
- 1155042 Signal Energy LLC  
*Whether Employer appropriately oversaw the actions of the subcontractors.*
- 1192534 Shimmick Construction Company Inc.  
*Whether the employer committed the violation alleged.*
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals  
*Whether Employer violated section 3212(a)(2)(A) as alleged.*
- 1509967 United Pumping Service, Inc.  
*Whether the citations were issued timely.*
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services  
*Whether the Employer committed the alleged violations.*
- 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, (317134021), CPF 17-515575
3. Ashley Furniture Industries, 34-2017-800002750, (1016514)
4. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
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)

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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. Interline Brands, Inc., CIVDS2021813 (1251604)

**Other Items:**

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
2. Categorizing the Board's DARs and Denials on the DIR website.
3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

**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.)*

1195416	Alon Kaspi
1385353	APM Terminals Pacific LTD
1563337	Beeler Industries, Inc.
1508370	Bold Quail Holdings, Inc.
1523318	Boreal Ridge, Inc.
1495767	Bragg Crane And Rigging Company
1533521	Chinchiolo Stemilt California, LLC
1335193	City Of San Diego Fire Rescue Dept.
1342184	CMEBUILD, Inc.
1293907	Crown Energy Services, Inc.
1515070	CVS Pharmacy, Inc.
1474531	EE Hall Inc.
1496758	Foley Family Wines
1532355	General Production Service of California, Inc.
1500448	Hall Management Corp.
1510943	HBA Incorporated
1526623	L/C/F LYT Auttun, LLC
1514639	Medstar, LLC
1491142	Mental Health Management, Inc.
1523915	NFI, L.P.
1545203	Personnel Staffing Solutions Group, Inc.
1333964	Platinum Pipeline, Inc.
1499293	Richwood Meat Company, Inc.
1490265	Rubicon Bakers LLC
1378128	Salsbury Industries, Inc.
1480869	Setzer Forest Products, Inc.
1492581	UC Davis
1474385	Wayfair, LLC
1410265	Yonts Construction

**Personnel:**

*(Issues regarding staff.)*

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