

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on December 7, 2023**  
**Sacramento, California**  
**West Covina, California**  
**Zoom Platform**

**Present:**

Ed Lowry, Public Member, Chair  
Judith Freyman, Management Member  
Marvin Kropke, Labor Member  
Patricia Hapgood, Acting Executive Office  
Jeff Mojcher, Chief Counsel  
Kerry Lewis, Presiding Administrative Law Judge  
Sam Lucas, Presiding Administrative Law Judge  
Aaron Jackson, Staff Attorney  
Vincent Mersich, Staff Attorney  
Elizabeth Clarke, Staff Attorney  
Janis Jonas, Executive Secretary  
Chris Jessup, Presiding Administrative Law Judge  
David Wiseman, Staff Counsel, CalFire  
Rocio Reyes, Assistant Chief Counsel, DOSH  
Megan Shaked, Attorney, Conn Maciel Carey LLP  
Bruce Wick, Risk Management Director, Housing Contractors of California

**Minutes of November 16, 2023, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the November 16, 2023, 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. Update of DOSH LEGEND system interfacing with OASIS.  
Action: Rocio Reyes updated the Board on LEGEND.

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2. Discussion of precedential index.  
Action: Jeff Mojcher updated the Board on the precedential index.
3. Discuss creation of an appeals advisor for cited employers to help them avoid dismissals on technicalities.  
Action: No report.
4. Discuss process for purging of files in OASIS.  
Report: No report.
5. Reminder: the February 7, 2024, Board meeting will be held in West Covina and on the Zoom video platform.

**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: No report.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood spoke to staff hiring status.

**Staff Reports:**

*(Reports from the Supervising 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 current regulations. In addition, discuss whether any concerns exist regarding regulations.  
Action: Aaron Jackson updated the Board on the review of regulations and proposed changes.

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2. Discuss status of Video Hearings.

Action: No report.

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

Action: Sam Lucas updated the Board on the Appeals with COVID related citations.

4. Litigation update:

Action: Jeff Mojcher updated the Board 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 comments will be entertained during discussion of each agenda item of the open meeting.)*

Action: Public comments were received.

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.)*

There are no Decisions scheduled for review.

**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.)*

1568252 Arana Residential and Commercial Painting, Inc.  
Action: The Board voted to take this petition under submission.  
Moved: Marvin Kropke  
Second: Judith Freyman.  
Vote: 3-0

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- 1636116 CAS Building Specialists, Inc.  
Action: The Board voted to remand this matter to hearing operations.  
Moved: Marvin Kropke  
Second: Judith Freyman.  
Vote: 3-0
- 1233597 Hampton Tedder Electric (DOSH)  
Action: The Board voted to take this petition under submission.  
Moved: Marvin Kropke  
Second: Judith Freyman.  
Vote: 3-0
- 1619367 Brett Kelly, an individual.  
Action: The Board voted to remand this matter to hearing operations.  
Moved: Marvin Kropke  
Second: Judith Freyman.  
Vote: 3-0

**Orders Dismissing Appeal:**

- 1582669 Coastal Pacific Food Distributors, Inc.  
Action: The Board discussed this matter.
- 1591652 Colucci Bros. Plumbing, LLC  
Action: The Board discussed this matter.
- 1607878 Gauthier Enterprises, Inc.  
Action: The Board discussed this matter.
- 1519345 Raders LLC  
Action: The Board discussed this matter.
- 1567691 Wonderful Pistachios & Almonds, LLC  
Action: The Board discussed this matter.

**Orders Denying Leave To File Late Appeal:**

There are no Orders Denying Leave to File Late Appeal scheduled for review.

**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 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.

- 1431672      A. Teichert & Son, LLC  
*Whether the cited employer was in violation of lockout/tagout requirements.*
  
- 1473644      Amazon.com Services, LLC  
*Whether the employer's training program was in compliance with the applicable safety order.*
  
- 1113026      Angelus Block Co., Inc.  
*Whether Employer violated lock out/tag out requirements as alleged.*
  
- 1398352      Anheuser-Busch, LLC  
*Whether the evidence supports the holding that employer violated lockout/tagout requirements.*
  
- 1490008      Elite MD, Inc.  
*Whether the ALJ's denial of leave to file a late appeal was correct.*
  
- 1674336      Finishing Touch Moulding, Inc.  
*Whether employer established good cause for its late appeal.*
  
- 1497263      Hamilton Iron Works, Inc.  
*Whether the evidence supports a finding that employer violated section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) be reduced.*
  
- 1436480      Interline Brands, Inc.  
*Whether the employer violated foot protection standards.*
  
- 1465354      Natural Alternatives International, Inc.  
*Whether the ALJ erred in dismissing the matter.*

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- 1405107 S.C. Anderson, Inc.  
*Whether employer committed the alleged violations.*  
Action: The Board discussed this matter.
- 1291481 Sierra Pacific Forest Products  
*Whether Employer was in compliance with the cited safety order.*
- 1465119 Sun Belt Rentals  
*Whether certain information accepted into evidence was inadmissible hearsay, and whether the evidence supports a finding that Employer violated sections 3203 and 3328, as alleged.*
- 1475491 Sutter Bay Medical Foundation  
*Whether the employer failed to comply with COVID protections as alleged.*
- 1609228 The Geo Group, Inc. dba Golden State Annex (3<sup>RD</sup> PTY PFR)  
*Whether the motion for third party status was properly denied.*
- 1488312 The Indiana Finish Line, Inc.  
*Whether the cited employer established procedures adequate to protect employees from COVID-19.*
- 1486257 The Kroger Company  
*Whether the cited employer adequately trained employees regarding workplace hazards.*
- 1594663 Uber Technologies, Inc.  
*How Proposition 22 interacts with the Board's statutes and operative regulations.*  
Action: The Board discussed this matter.

**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. Ashley Furniture Industries, 34-2017-800002750 (1016514)
2. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
3. Davis Development Company, 34-2020-80003373 (1226084)

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4. Southern California Edison, 34-2021-80003580 (1320327)
5. Hill Crane Service Inc., 34-2021-80003744 (1135350)
6. USA Waste of California, Inc., 34-2022-80003841 (1384029)
7. American Fumigation Services, LLC, 22STCP04305 (1506586)

**Appellate Court:**

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Granite Construction Company, 34-2021-80003634 (1235643)
3. MWL Solutions, C097353, 34-2020-80003549 (1436014)
4. BMC West LLC, 34-2020-80003459 (1399613)
5. Hampton Tedder Electric, 34-2020-80003549 (1233597)
6. RND Contractors, Inc., CIVSB2119442 (1436785)

**Other Items:**

1. Stakeholders' comments from June 27, 2023, Roundtable Discussion.  
Action: No report.
2. Discuss Cal/OSHA Reporter's requests for access to OASIS.  
Action: No report.
3. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.  
Action: No report.
4. Categorizing the Board's DARs and Denials on the DIR website.  
Action: No report.
5. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.  
Action: No report.
6. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.  
Action: No report.

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7. Discussion regarding Board communications with stakeholders.

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.)*

1611558	2400 Newport, Inc.
1614318	Abdul R. Patel, an Individual
1604508	Ai California, LLC
1625032	Air New Zealand, LTD
1615180	Albino Construction, Inc.
1624807	Amazon.Com Services LLC
1564068	Ancor Flexibles, Inc.
1638440	Aramark Uniform Services
1683196	Arriola Farm Labor Inc.
1660576	Bakersfield Renewable Fuels, LLC
1619414	Barry Shy, an Individual
1624988	Benelli Roofing
1640344	Brittco Wall Systems, Inc.
1428393	BSA Framing, Inc.
1608876	BZ Resources
1631122	Cal AG Funding and Vince Terada
1554621	Cal Corrections - Central California Women's
1666642	California Department of Parks and Recreation
1647994	Capitol Steel Fabricators Inc
1690997	Cirilo Becerra FLC
1696919	City Ventures Construction, Inc.
1689207	Coastal Development Group Inc.
1627572	Commercial Scaffolding of Ca, Inc.
1668841	Creative Masonry, Inc.
1660521	Danco Builders
1681355	Diamond Elite Labor Services Inc.
1679375	Dignity Health
1647713	Doreva Produce Company, Inc.
1642143	E&D Framing, Inc.
1356393	Express Messenger Systems, Inc.
1678061	F.C.H., Inc.
1644021	Finis Inc.



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1697219	First Point, Inc.
1692953	Five Managers Inc.
1603640	FJ Willert Contracting Company, Inc.
1605734	Francisco Atilano
1693830	Freedom Forever California, LLC
1623859	Fresno Oxygen and Welding Suppliers, Inc.
1592092	Frontier-Kemper Constructors, Inc., and Tutor
1658709	Frontier-Kemper Constructors, Inc., and Tutor
1591776	G2 Metal Fab
1692428	Golden Star Dairy, LLC
1556122	High End Development, Inc.
1642693	Houweling's Camarillo, Inc.
1644317	Houweling's Camarillo, Inc.
1558612	HTNS America, Inc.
1662684	Jack in The Box, Inc.
1462364	Johnson Controls Fire Protection, LP
1180481	JR Concrete Construction Inc.
1672296	Kelter Electric Company Inc.
1539905	Lawton Construction and Restoration, Inc.
1567999	Leviton Builders, Inc.
1402088	Meritage Homes of California, Inc.
1639990	Mike Sobh & Associates, Inc.
1494070	Modesto Irrigation District
1405974	Naylor Construction, Inc.
1619411	NF Farm Labor, Inc.
1604823	Nooter Construction Company, LLC
1677101	Norman's Nursery, Inc.
1652435	Oasis Integration
1621879	P.S. Tree Services and Maintenance
1688757	Pacific Bell Telephone Company
1659620	Partners Personnel Management Services, LLC.
1620040	Procida Landscape, Inc.
1665158	R & S Erection of Southern Alameda County Inc.
1507547	Ralphs Supermarket
1618001	Rommy Shy, an Individual
1553814	Sacramento City Unified School District
1488202	Santa Monica Operating Company, LP
1677644	Schmidl Farms Inc.
1610589	Seahorse Transportation, Inc.
1666826	Sheki & Miki, Inc.

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1504257	Sherman Oaks Subtenant, LLC
1635912	So Cal Construction, Inc.
1652302	Sonray Solar Inc.
1630389	Specialty Glass & Mirror
1628401	Star Staffing LLC.
1688870	Tali-Pak Lumber Services, LLC
1658366	Target Corporation
1577764	Target Corporation, Distribution Center #T-555
1585331	Target Corporation, Distribution Center #T-555
1591300	TC Construction Company, Inc.
1659922	The Lyman Group, Inc.
1628111	The Regents of University of California
1634907	Torrance Refining Company
1599045	Torres Farm Labor Contractor, Inc.
1673579	Tri-State Communications, Inc.
1610319	Trim-Lok, Inc.
1639077	USA Construction Management, Inc.
1673113	Vann Family Orchards
1451627	Visalia Counter Top <i>Design</i> Inc.
1636215	Walker Built General Contracting
1652334	Ward's Concrete, Inc.
1698798	Ward's Concrete, Inc.
1655707	Whitewater Maintenance Corp.
1653499	Wild River Construction, Inc.
1678455	Wyndham Vacation Ownership Inc.
1442910	YRC, Inc.

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

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session adjourned at 11:31 a.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 Board meeting was adjourned at 11:32 a.m.