

DECLARATION OF SERVICE BY MAIL OR EMAIL

Inspection Number
1709899

I, Ashley Ames, declare:

1. I am at least 18 years of age, not a party to this action, and I am employed in Sacramento County at 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
2. On _____, I served a copy of the attached Notice of Perfected Appeal in an envelope addressed as shown below and placed the envelope for collection and mailing on the date and at the place shown in item 3 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

3. Date mailed: _____ Place mailed: (city, state): Sacramento, CA

4. On 03/12/2024, I electronically served the document listed in item 2 as follows:

NAME OF PERSON SERVED	ELECTRONIC SERVICE ADDRESS
<u>Denise Cardoso, DOSH Legal</u>	<u>dcardoso_doshlegal@dir.ca.gov</u>
<u>Rocio Reyes, DOSH Legal</u>	<u>rreyes_doshlegal@dir.ca.gov</u>
<u>DOSH Southern Office</u>	<u>doshlegal_la@dir.ca.gov</u>
<u>Timothy Decker</u>	<u>TDecker@dir.ca.gov</u>
<u>Regina Marie Frasca</u>	<u>rfrasca@csusm.edu</u>
<u>Michele Boswell</u>	<u>MBoswell@dir.ca.gov</u>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Ashley Ames

(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)



In the Matter of the Appeal of: CALIFORNIA STATE UNIVERSITY SAN MARCOS	Inspection Number 1709899
Employer	Perfected Date: 03/12/2024
NOTICE OF PERFECTED APPEAL	

The California Occupational Safety and Health Appeals Board (Appeals Board) has perfected your completed appeal under the docket number 1709899.

This means your appeal can move forward, and it has been assigned to Administrative Law Judge Rheeah Yoo Avelar to begin the adjudication process.

The attached perfected appeal package contains the following information regarding your appeal:

1. An overview of video hearings.
2. A printed appeal form containing all the information provided to the Appeals Board. Please review the appeal form carefully to ensure that we correctly entered your important information and all of the items you intended to appeal.
3. Employer's Mandatory Posting Requirements including instructions and information explaining your obligation to post information about your appeal and report the posting to the Cal/OSHA District Manager.
4. A blank Mandatory Participation Notice to Employees for you to fill out and post at or near the worksite where the citation was issued.

Copies of this package have also been sent to your representative (if any), the Division of Occupational Safety and Health (Cal/OSHA) and any other party to this proceeding. You may view documents in your appeal through OSHAB's "OASIS" online portal. You may sign in to the OASIS online portal at www.dir.ca.gov/OSHAB.

All communications and/or questions regarding your perfected appeal can be addressed by calling the California Occupational Safety and Health Appeals Board at (916) 274-5751.



VIDEO HEARINGS

The California Occupational Safety and Health Appeals Board conducts hearings by video. Video hearings afford parties with the opportunity to present witness testimony, videos and documents as exhibits, and legal arguments. Video hearings are conducted by Administrative Law Judges via Zoom.

Zoom is free to use. Participants may use a desktop computer, laptop, tablet, or smart phone.

The Appeals Board will schedule a prehearing conference prior to a hearing so that the Administrative Law Judge assigned to the case can provide instructions to prepare for the video hearing and answer any questions. The prehearing conference will be conducted via Zoom and instructions will be provided. At the prehearing conference, the parties will need to: identify any witnesses who will testify at the hearing; inform the Administrative Law Judge of the location from which witnesses will be expected to testify; discuss whether subpoenas will be required to compel witness attendance; and, discuss the documents or photographs that will be presented as exhibits at the hearing.

The Appeals Board will send a notice of video hearing providing further instruction. The notice describes the steps needed to be prepared for the video hearing, including how to submit exhibits prior to the video hearing. The notice will also provide the Zoom meeting identification number ("meeting ID") which allows participants to join the hearing.

Video hearings follow the traditional in-person hearing format which affords parties the opportunity to present evidence and cross-examine witnesses. The Administrative Law Judge will display the exhibits on the screen as they are discussed during the hearing. As with in-person hearings, the Administrative Law Judge controls the proceedings to ensure that the parties' due process rights are protected.



OSHAB APPEAL FORM

Note: You have a ***total of 15 working days*** from receipt of a citation to file an appeal. Failure to file a completed form may result in dismissal of the appeal. Late appeals will not be accepted unless good cause is shown.

Please print legibly or type all information.

A. CITATION INFORMATION

Please complete the following information as indicated on your citation.

1. Case (Inspection) #: 1709899 Issuance date: 02/21/2024 Reporting ID#: 0950632

2. Employer: CALIFORNIA STATE UNIVERSITY SAN MARCOS Date Citation Received: 02/21/2024

3. Employer legal name or DBA (Optional):

4. Employer contact: Regina Frasca

5. Address: 333 S. TWIN OAKS VALLEY RD.

City: San Marcos

State: CA

ZIP code: 92096-0001

6. Primary phone: (760) 750-4502

Secondary phone: (760) 497-9435

7. Email address: rfrasca@csusm.edu

8. Preferred method of service: ☐ U.S. Postal Service **OR** ☒ Email **(Choose one only)**

B. REPRESENTATIVE INFORMATION (if any)

1. Firm name:

2. Representative name:

3. Address:

City:

State:

ZIP code:

4. Primary phone:

Secondary phone:

5. Email address:

6. Preferred method of service: ☐ U.S. Postal Service **OR** ☐ Email **(Choose one only)**

C. CONTACT INFORMATION and SIGNATURE

I am the: Representative ☐ Employer ☒ Other ☐

I understand that it is my responsibility under Appeals Board regulations to notify the Appeals Board in writing if there are any changes to either employer or representative address, telephone number, and/or email address.

SIGNATURE ON FILE

March 6, 2024

Signature of employer or employer's representative

Date

Regina Frasca

(760) 750-4502

Print name and title

Phone No.

Please note that you must complete page 2 of this OSHAB Appeal Form for each citation/item.

Appellant must complete a separate page 2 for each citation/item being appealed.

D. APPEAL INFORMATION

1. This is an Appeal of:

☒ CITATION AND NOTIFICATION OF PENALTY

CITATION No.: 1 ITEM No.: 1

☐ NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION

☐ SPECIAL ORDER / ORDER TO TAKE SPECIAL ACTION

2. Specific ground(s) for this appeal are: (Check all that apply)

☐ The safety order was not violated.

☐ The classification (i.e. serious, willful, repeat) is incorrect.

☐ The abatement requirements are unreasonable:

☐ Required changes ☐ Time allowed to complete changes

☒ The proposed penalty is unreasonable.

3. An affirmative defense is a justification or excuse that if proved by appellant relieves the cited employer of all or some of the responsibility for the alleged violation. An affirmative defense must be raised by the appellant in a timely manner. **Affirmative defenses for this appeal are: (Check all that apply)**

☐ Independent employee action caused the violation.

☐ A different safety order applied to the work activity that is the subject of the citation, and the appellant was in compliance with that other safety order. (The different safety order should be identified.)

☐ An exception exists in the California Code of Regulations, Title 8 which allows for the action that is the subject of the citation. (The specific safety order containing the exception should be identified.)

☐ The inspection that gave rise to the citation was invalid because the Division employee who inspected the appellant's worksite failed to comply with laws governing administrative searches.

☒ Another affirmative defense: other affirmative defenses may exist and can be asserted by the employer. If the appellant contends one or more affirmative defenses exist, the appellant may, but is not required to, provide a short, plain statement in writing setting forth the facts or circumstances which, if true, would prove the affirmative defense. Extenuating circumstances surrounded the timely reporting of this incident. The information regarding the severity of the injury was delayed and the usual process was not followed. The employee was a student assistant and the incident occurred outside of the usual business hours. The University was unclear how to handle the specifics and confidentiality for this type of employee. The injury was reported as soon as the Reporter had ample knowledge and opportunity. Review attached document.



EMPLOYER'S MANDATORY POSTING REQUIREMENTS

This Notice must be posted in accordance with sections 356 and 356.1 of the California Code of Regulations, title 8. These rules are posted at www.dir.ca.gov/OSHAB. Click on "Laws and Regulations".

PARTICIPATION NOTICE – Service and Posting

This notice to employees of their right to participate in the appeal process and a copy of the docketed Appeal and contested citation(s) must be posted at or near the site of the alleged violation or other conspicuous place where it can easily be seen by the employees. These documents must also be served on any authorized employee representative. These documents must also be served by employer on any employee who suffered a serious injury and on the representative of any employee who was killed. Following posting, an employer must file with the Division of Occupational Safety and Health (Cal/OSHA) proof of posting of the Participation Notice and any docketed Appeal Form. (Cal. Code Regs., title 8, § 356.1(c).

NOTICE OF HEARING

The Notice of Hearing must be posted in the same manner as this notice, and served by the employer on any authorized employee representative. The Notice of Hearing must also be served by the employer on any employee who suffered a serious injury and on the representative of any employee who was killed (Cal. Code Regs., title 8, § 356).

DISCOVERY AND SUBPOENAS

Each party, upon written request to another party, may obtain (unless privileged) the names and addresses of witnesses known to the other party, or inspect and copy documents relating to the case in the possession of the other party (Cal. Code Regs., title 8, § 372 and § 372.1). Subpoenas for attendance of a person or production of documents or things at a hearing may be obtained from the Appeals Board (Cal. Code Regs., title 8, § 372.2).

CHANGE OF REPRESENTATIVE AND ADDRESS

If there is a change in the appointed representative or if the representative has a change in contact information (i.e. address, phone number, email address, etc.) after the appeal is filed, a written notification must be sent to the Appeals Board. Changes can also be made online by completing the applicable form available at www.dir.ca.gov/OSHAB.

HEARING

The Hearing is before an administrative law judge, and evidence will be taken in a manner best suited to discover facts and safeguard the rights of the parties. Each party may call and examine witness, introduce exhibits, and question opposing witnesses on relevant issues. A party may be called to testify by the other party (Cal. Code Regs., title 8, § 376.1). Only relevant evidence will be admitted.

DECISION

A written Decision by the Administrative Law Judge will be issued after the case is submitted for decision.

PRINCIPAL OFFICE

Department of Industrial Relations
Occupational Safety & Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
(916) 274-5751

SOUTHERN CALIFORNIA OFFICE

Department of Industrial Relations
Occupational Safety & Health Appeals Board
100 N. Barranca Street, Suite 410
West Covina, CA 91791
(626) 332-1145

MANDATORY PARTICIPATION NOTICE TO EMPLOYEES

Your Employer,

(Name of Company)

has been cited by the California Division of Occupational Safety and Health for violation of an Occupational Safety and Health standard.

(Check which of the following is applicable)

___ The citation and/or civil penalty has been contested and will be the subject of a hearing before the Occupational Safety and Health Appeals Board; and/or

___ The reasonableness of the period prescribed by the Division of Occupational Safety and Health for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Appeals Board.

Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Appeals Board as published in the California Code of Regulations, title 8, commencing with section 345 by filing a motion for party status.

The motion for party status shall be sent to:

Occupational Safety and Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

The motion for party status must be accompanied by a proof of service and shall indicate it was served on the Division of Occupational Safety and Health and the Employer and any other parties as provided in California Code of Regulations, title 8, section 355.3.

NOTE: For a hearing to take place, Employer's docketed appeal must also be perfected pursuant to the requirements of California Code of Regulations, title 8, section 359.1.

All papers filed relative to this matter may be inspected at:

(Describe location reasonably convenient to employees, preferably at or near workplace)
