

DECLARATION OF SERVICE BY MAIL OR EMAIL

**Inspection Number
1564732**

I, Mirna Lopez, declare:

1. I am at least 18 years of age, not a party to this action, and I am employed in Los Angeles County at 100 N. Barranca St., Suite 410, West Covina, CA 91791.
2. On _____, I served a copy of the attached Order Amending 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): West Covina, CA

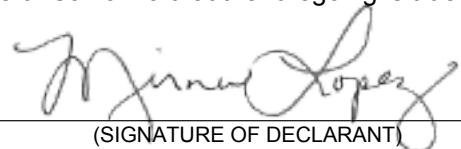
4. On 09/02/2022, I electronically served the document listed in item 2 as follows:

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>
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<u>Nic Cocis</u>	<u>ncocis@tylerbursch.com</u>
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<u>Jere Aolen</u>	<u>jaolen@calvaryca.org</u>
<u>Mariah Gondeiro</u>	<u>mgondeiro@faith-freedom.com</u>
<u>Kelly Tatum</u>	<u>KTatum@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.

Mirna Lopez

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

**CALVARY CHAPEL OF SAN JOSE
dba CALVARY CHRISTIAN ACADEMY
1175 HILLSDALE AVENUE
SAN JOSE, CA 95118**

Employer

Inspection No.
1564732

ORDER AMENDING APPEAL

Employer moves to amend its appeal to change the asserted grounds for appeal and add as an affirmative defense that the Division’s inspection was invalid. Employer’s amended appeal forms, filed July 28, 2022, are incorporated herein by reference.

California Code of Regulations, title 8, section 371,¹ provides: “A motion or request shall be served and filed no later than 20 days before the hearing date.” Employer’s motion is timely because there is no hearing date on calendar in this matter. The appeal was previously calendared on the Expedited track due to unabated Serious citations, but the parties were able to agree on abatement of those citations and the matter was removed from the Expedited calendar on July 25, 2022.

As the Appeals Board held in *Bimbo Bakeries USA*, Cal/OSHA App. 03-5215, Decision After Reconsideration (June 9, 2010), “the employer must provide facts describing its Fourth Amendment interest in the area searched, and facts describing the conduct of the Division employee that allegedly violated that right. It may do so by asserting sufficient facts in its appeal form. In the alternative, it may use the Board's pre-hearing motion procedures to file a timely motion to amend the appeal form to specifically assert the defense.” (*Id.*) Employer filed a Motion to Suppress Evidence (Motion) on July 18, 2022, asserting in detail the facts and legal arguments supporting its affirmative defense that the Division’s inspection was invalid due to a defective warrant application. The Division filed an Opposition to Employer’s Motion. As such, Employer has met the requirement that it provide sufficient facts to assert the defense and the Division is aware of the basis for the defense.


¹ Unless otherwise specified, all references to California Code of Regulations, title 8, are referred to as “section.”

The appeals of Citation 1, Items 1 through 8, are amended to assert that the inspection that gave rise to the citations was invalid. Additionally, the appeals for Citations 2 through 5 assert that the classifications are incorrect, the proposed penalties are unreasonable, and the inspection that gave rise to the citations was invalid. Finally, the appeal of Citation 2 asserts that the penalty is duplicative.

Employer's motion for leave to amend the appeals of all citations is **GRANTED**.

IT IS SO ORDERED.

Dated: 09/01/2022



Kerry Lewis
Administrative Law Judge