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15 **BEFORE THE**
16 **STATE OF CALIFORNIA**
17 **OCCUPATIONAL SAFETY AND HEALTH**
18 **APPEALS BOARD**

19 **In the Matter of the Appeal of:**

20 **CALVARY CHAPEL OF SAN JOSE**
21 **dba CALVARY CHRISTIAN ACADEMY,**

22 **Employer.**

23 **Inspection No.**

24 **1564732**

25 **EMPLOYER'S MOTION TO**
26 **DISMISS CITATIONS**

27 **Hearing: September 30, 2025**
28 **Time: 9:00am**

ORAL ARGUMENT REQUESTED

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on September 30, 2025, at 9:00 a.m., via Zoom in the
3 courtroom of the Honorable Jennie Culjat, Employer Calvary Chapel of San Jose Dba Calvary
4 Christian Academy (“Employer”) will move for dismissal of the citations issued in the above-
5 captioned matter. On August 18, 2025, Employer’s counsel requested to meet and confer with
6 Division’s counsel regarding this pre-hearing motion. Despite follow-up attempts, Employer’s
7 counsel has not received a response from Division’s counsel regarding this request. Employer
8 moves for dismissal on the following grounds:

- 9 1. **Suppression of Inspection Evidence.** The Appeals Board has already suppressed the
10 Division’s inspection evidence, together with all related evidence as “fruit of the
11 poisonous tree.” Despite these rulings, the Division has not withdrawn the citations.
- 12 2. **Absence of a Lawful Inspection.** The Division cannot legally prosecute citations
13 without conducting a lawful inspection. Here, the initial search warrant was thrown
14 out, and no lawful inspection occurred. The Constitution does not allow the state to
15 pursue alleged violations without an inspection, nor to use trial proceedings as a
16 substitute for investigative authority.
- 17 3. **Exclusion of Remaining Evidence.** Any non-inspection evidence in the Division’s
18 possession does not justify the notice of violation, as it was not based on a properly
19 warranted inspection and is likewise excluded as derivative of the unlawful search.
20 The Division cannot retroactively build a case on an illegal foundation.
- 21 4. **Application of the Exclusionary Rule.** The exclusionary rule exists to deter
22 constitutional violations. Allowing this matter to continue absent a valid inspection
23 pursuant to a lawful warrant would effectively reward unconstitutional conduct.
- 24 5. **Lack of Purpose in Proceeding.** These citations have now lingered before this Board
25 for nearly four years. The Board has issued multiple rulings, finding the inspection
26 unconstitutional. There is no abatement left to perform, no current employee safety
27 concern, and no remedial purpose to be served. The only rationale for proceeding is
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1 COVID-19 Prevention, face covering and outbreak reporting requirements.” Haskell Decl. ¶ 3.
2 But it did not attach the complaint – not even a redacted copy. The affidavit contained nothing
3 about the identity or role of the complainant (i.e, employee, parent, student, member of the public,
4 etc.). It contained no information describing what the complainant observed as the basis of the
5 complaint. It contained nothing “demonstrate[ing] a basis for believing that a complaint was
6 actually made” or “that the complainant was sincere in the assertion that a violation exists.” DAR
7 at 14. And – at least as far as the declaration described – the Division did nothing to verify any of
8 the claims of the complainant before attempting to inspect the premises.

9 On November 29, 2021, it secured a warrant to inspect the premises. The declaration asked
10 that the usual twenty-four-hour notice requirement be waived, which the Superior Court granted.
11 The Division performed that inspection the following day, but it did not issue citations until March
12 10, 2022. The Employer timely appealed the citations on March 21, 2022.

13 The Employer filed a Motion to Suppress Evidence arguing that the Haskell Declaration
14 was insufficient to establish probable cause. It also asserted that the good faith defense did not
15 apply. The Division opposed that motion, claiming that the Board did not even have the authority
16 to consider the sufficiency of the affidavit and that the warrant was properly obtained.¹ It did not
17 address the good faith defense at all.

18 The ALJ granted the Employer’s motion in September of 2022. The ALJ noted that
19 multiple precedents – both from this Board and from the California courts – established the ability
20 of this Board to hear suppression motions. Order Mot. Suppress Evid. at 1–2. The ALJ then
21 suppressed the illegally obtained evidence, finding that the Haskell Declaration was “utterly
22 devoid of detail” and “provided nothing more for the magistrate to review.” Order Mot. Suppress
23 Evid. at 5–7.

24 The Division then filed its first Petition for Reconsideration. It argued that the Board was
25 without power to grant the motion, that the Employer procured the ALJ’s order by fraud, and that
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27 ¹ The Division claims in its Petition that its Opposition contained the argument that “the Academy did not have the same
28 expectation of privacy in its business premise during its hours of operation as one has in a private home.” Pet. 3. But that
argument appears nowhere in the Opposition, and this Board on reconsideration expressly noted that any argument on the
expectation of privacy was waived. DAR at 10–11 n.7.

1 the Haskell Declaration was not insufficient. Pet. Recons. Mot. Suppress Evid. at 4–5. It also
2 argued for the first time that the Division was entitled to the good faith defense. Pet. Recons. Mot.
3 Suppress Evid. at 26–27. The Employer filed an opposition to that petition. It argued that the
4 Board was empowered to suppress the evidence, that there was no fraud in obtaining the ALJ’s
5 ruling, and that the Motion was correctly granted. It also argued that the good faith defense was
6 waived.

7 This Board, on reconsideration, held that it has the power to consider the adequacy of the
8 Haskell Declaration, that the Haskell Declaration did not demonstrate probable cause, and that
9 the exclusionary rule applies to proceedings in front of this Board. It held that the good faith
10 defense was not waived and remanded this case back to the ALJ for briefing on that last remaining
11 issue.

12 The ALJ ruled that the Division could not rely on the good faith defense for its actions.

13 The ALJ found that the issuing judge was misled by the Haskell Declaration and that from
14 an objective standard, no reasonably well-trained officer could rely on it. Order Re Good Faith at
15 3–4. The ALJ then suppressed all unlawfully obtained evidence for the purpose of imposing
16 penalties. Order Re Good Faith at 6. This decision was upheld on appeal, and the evidence was
17 thrown out. The court ruled,

18 The ALJ’s order rejected application of the good faith exception,
19 finding that the judge was misled by information (or the omission of
20 information) that the Division knew, or should have known, made the
21 declaration false. The order also concluded that the affidavit in
support of the warrant was so lacking in probable cause that it would
be entirely unreasonable for an investigator to believe such cause
existed. We agree with the ALJ’s conclusions.

22 *See* Decision After Reconsideration, 2.

23 III. ARGUMENT

24 **A. The citations must be dismissed because the California Labor Code requires a valid
25 inspection to support any claim.**

26 The Division must possess reasonable belief that violations exist *before* issuing citations
27 – it cannot reverse-engineer that belief after an unlawful inspection has already occurred.
28 California Labor Code section 6317 allows the Division to issue a citation only “[i]f, upon

1 inspection or investigation, the division believes that an employer has violated” some rule or
2 regulation.² Cal. Lab. Code, § 6317. The Division’s posted notice of citation must include “that
3 the division investigated the workplace and found one or more workplace safety or health
4 violations” and that “the investigation resulted in one or more citations.” *Id.*; § 6318(c)(1), (2).
5 And the Division is required to produce an inspection report upon request for every citation. *Id.*;
6 § 6319(d). In fact, nearly every statute regarding the Division’s authority to cite is predicated on
7 its inspection. *E.g.*, Cal. Lab. Code, § 6317.5(a) (“If, upon inspection or investigation, the division
8 finds . . .”); *Id.* § 6317.7 (“If, upon inspection or investigation, the division finds . . .”); § 6317.8(a)
9 (“if, upon inspection or investigation, the division believes...”); *Id.* § 6318(a) (“following each
10 investigation”); *Id.* § 6317.8(b) (“at the time of inspection or upon reinspection”); *Id.* § 6319(a)
11 (“If, after an inspection or investigation, the division issues a citation . . .”); *Id.* § 6320(a) (“If, after
12 inspection or investigation...”). *See also* *Donovan v. Sarasota Concrete Co.*, 9 O.S.H.C. (BNA)
13 1608 (1981) (dismissing citation after evidence excluded under Fourth Amendment); *Marshall v.*
14 *Barlow Inc.*, 436 U.S. 307 (1978) (holding it is unconstitutional to search a work area without a
15 warrant).

16 The exclusionary rule applies with full force when the Division attempts to assess
17 penalties. *In re Beacom Const. Co.*, No. 80-R2D2-842, 1981 WL 140516 (Cal. Occ. Safety &
18 Health Appeals Bd. Dec. 10, 1981) (excluding evidence following an inspection that lacked legal
19 authority.) In some cases, only part of an inspection is unlawful, and only that portion of the
20 evidence is suppressed. *Id.* But this case is different. The Division’s inspection was
21 unconstitutional from the outset, and all the resulting evidence has already been suppressed. *See*
22 *Order re Good Faith Exception to the Exclusionary Rule* at 7. That distinction matters. No portion
23 of the Division’s search was lawful – meaning none of it can be used to satisfy the statutory
24 prerequisites for issuing citations. Yet, the Division persists in seeking penalties from Employer
25 based on its unconstitutional search. To allow the Division to proceed would not only validate
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27 ² “Investigation” refers to an on-site visit from a member of the Division. *See* Cal. Lab.
28 Code, § 6314(a) (“To make an investigation or inspection, the chief of the division and all qualified
divisional inspectors and investigators authorized by him or her shall . . . have free access to any
place of employment to investigate and inspect . . .”)

1 illegal inspections but would also force employers into hearings despite the Division's complete
2 failure to comply with constitutional requirements. Worse still, it would undermine the Labor
3 Code's core premise: that a lawful inspection must precede any citation. Cal. Lab. Code, §
4 6317(a).

5 The Labor Code insists and assumes that citations are based on inspections for good
6 reasons. The inspection requirement is supposed to keep the Division from arbitrarily prosecuting
7 employers. But, here, Employer was inspected even though the Division could not show any
8 reasonable, good-faith basis for believing violations were occurring. *See* Decision After Recons.
9 at 8 (“[W]e reiterate our decision that a reasonable and well-trained investigator could not have
10 harbored any objectively reasonable belief here in the existence of cause ...”) The Labor Code
11 must be interpreted to require a *legal* inspection, or else the inspection requirement becomes an
12 unimportant formality and the incentive to follow the Constitution is lost. This Board should hold
13 as much and dismiss the citations because the Division has not completed a valid inspection.

14 **B. The Division's non-inspection evidence is inadmissible as fruit of the poisonous tree.**

15 Even if the Division was allowed to prosecute a citation without a valid inspection, it has
16 no other evidence to present. This Board ordered: “All evidence, whether tangible or intangible,
17 that could be considered ‘fruit of the poisonous tree’” “is excluded.” Order Mot. Suppress Evid.
18 at 7. This is not a case where only part of the Division's search was illegal, and some parts remain
19 available to the Division as evidence. This is a case where the Division misled a judge so it could
20 conduct a search that was illegal in its entirety. The Division's first reasonable belief that a
21 violation occurred came from the illegal search. That means all its later evidence is necessarily
22 tainted as fruit of the poisonous tree.

23 “It is fundamental that the exclusionary rule extends beyond evidence directly obtained in
24 violation of the Fourth Amendment to the ‘fruit of the poisonous tree.’” *United States v. Johns*,
25 891 F.2d 243, 245 (9th Cir. 1989). The Ninth Circuit's test considers “whether the illegal activity
26 tends to significantly direct the investigation to the evidence in question.” *Id.* (quoting *United*
27 *States v. Chamberlin*, 644 F.2d 1262, 1269 (9th Cir. 1980), *cert. denied*, 453 U.S. 914 (1981)). In
28 other words, the rule removes the effects of an illegal search, even evidence that would ordinarily

1 be considered legal. If an illegal search gave significant “direction and impetus” to the collection
2 of other evidence, that evidence needs to be excluded too. *See United States v. Bacall*, 443 F.2d
3 1050, 1056 (9th Cir. 1971).

4 It is the Division’s burden, as the prosecution, to prove any evidence is admissible. *Johns*,
5 891 F.2d at 245 (quoting *Chamberlin*, 644 F.2d at 1269). That requires proving that the evidence
6 was gained “by means sufficiently distinguishable to be purged of the primary taint” – not by the
7 “exploitation of [the] illegality.” *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). The
8 Division would have to prove that its other evidence was so remotely connected to the illegal
9 search that the deterring effect of the exclusionary rule would no longer be served. *See id.* at 487
10 (the connection to the illegal search must be “so attenuated as to dissipate the taint” (quoting
11 *Nardone v. United States*, 308 U.S. 338, 341 (1939))).

12 There are two scenarios where excluded facts can still be admitted, but neither applies
13 here. Suppressed facts can be admitted through an untainted, “independent source.” *People v.*
14 *Superior Court (Corbett)*, 8 Cal. App. 5th 670, 681–82 (2017). They can also be admitted if those
15 facts would have been “inevitably discovered” lawfully through some other branch of inquiry. *Id.*
16 But the purpose of those rules is to put the prosecution in the position they would have been
17 without the illegal search – not to allow them an advantage from the unconstitutional search. *See*
18 *id.* at 682.

19 *Corbett*, like this case, involved law enforcement attempting to bolster their case with
20 illegally gained knowledge. Officers had unconstitutionally interrogated a suspect, obtained
21 invalid consent to search his house for weapons, and seized numerous firearms without a warrant.
22 *Id.* at 673–78. They obtained a warrant the next day to search for more weapons. *Id.* at 678. They
23 tried to claim that the weapons from the first search would have been inevitably discovered in
24 their second search, and that their second search was an “independent source” since they had
25 probable cause and a warrant for it. *Id.* at 683–86. The court rejected those arguments for two
26 reasons. First, the officers could not articulate a reasonable basis for believing they would find
27 firearms in the house, except through the illegally obtained knowledge. *Id.* at 683. Second, the
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1 officers weren't actually "engaged in any lines of investigation" that would have revealed the facts
2 they sought to admit. *Id.* at 684.

3 Like the officers in *Corbett*, the Division had no reasonable, good-faith basis for believing
4 probable cause existed until it illegally gained that knowledge in its search. Decision After
5 Recons. at 2. In other words, these citations never would have been brought if the Constitution
6 had been followed. The Division had no authority to conduct the inspection without a warrant.
7 Because the citations are based entirely on that unconstitutional inspection, the entire case is
8 fundamentally flawed. That certainly fits the standard from *Johns*: The Division's illegal
9 inspection "significantly direct[ed] the investigation to the evidence in question." 891 F.2d at 245.
10 Whatever evidence the Division has come up with after-the-fact is the fruit of the poisonous tree.
11 And fruit of the poisonous tree is already suppressed under this Board's previous order. Order
12 Mot. Suppress Evid. at 7 (suppressing "[a]ll evidence, whether tangible or intangible, that could
13 be considered 'fruit of the poisonous tree'"). The citations should now be dismissed, since there is
14 no admissible evidence to support them.

15 The Division cannot pretend it had sufficient evidence prior to its search to proceed to a
16 hearing on the citations, either. When it showed its case to a judge to secure a warrant, it only had
17 the observations in the Haskell Declaration and its still-unproduced, mysterious complaint. That
18 was not enough to establish the lowered standard of administrative probable cause – much less to
19 constitute the Division's case-in-chief. *See* Decision After Recons. at 14 ("We agree with the ALJ
20 that the declarations did not establish administrative probable cause."). If the evidence before the
21 search is insufficient, and the evidence after the search is excluded, the Division cannot put on a
22 prima facie case. The citations should be dismissed.

23 **C. The deterrence function of the exclusionary rule is best served by dismissing the**
24 **citations.**

25 The purpose of the exclusionary rule is to deter problematic behavior from law
26 enforcement. *Michigan v. Tucker*, 417 U.S. 433, 446 (1974). That purpose is part of the analysis
27 when considering the fruit of the poisonous tree doctrine: more offensive constitutional violations
28 support more exclusion. *See Bacall*, 443 F.2d at 1057.

1 Here, this Board has already found that the Division’s behavior is wholly offensive to the
2 Constitution:

- 3 • “The investigator’s declaration does exactly what *Salwasser II* prohibits: it merely
4 offers a conclusory assertion that complaints have been received.” Decision After
5 Recons. at 3.
- 6 • “[W]e think that a reasonable and well-trained Division investigator would have
7 known that this assertion did not establish cause for issuance of the warrant.”
8 Decision After Recons. at 3.
- 9 • “We conclude that the Division’s omission of this information was done recklessly
10 since the omitted information was essential to a probable cause determination”
11 Decision After Recons. at 7.

12 These findings illustrate precisely the kind of conduct the exclusionary rule was meant to
13 quash. But the rule loses its bite if the Division is allowed a do-over. The Division thinks it can
14 have all its evidence excluded and still have the chance to rebuild it from scratch. That leaves the
15 Division in a position hardly different than if it had followed the Constitution. If the Division’s
16 ability to fine employers remains the same regardless of whether it follows the Constitution, there
17 is no motivation to better train and regulate Division inspectors.

18 This is especially true in a case like this, where there is some reason to believe the citations
19 could be motivated by the Employer’s other litigation with the state and with the county. *See* Mot.
20 Suppress Evid. at 14; Order Mot. Suppress Evid. at 6 n.2. Obviously, no employer ought to be
21 illegally searched and prosecuted because of its use of the courts. But regardless of any motive,
22 the Division should not feel free to violate constitutional rights and still drag employers through
23 the hearing process – expensive and burdensome by itself, even if the citations are ultimately
24 dismissed. If at the onset of the investigation, the Division was unable to show even the lowered
25 threshold of administrative probable cause to obtain a warrant, it is not entitled to try to prove its
26 case again after its evidence is suppressed.

1 **IV. CONCLUSION**

2 The Division wants to circumvent the exclusionary rule and proceed with monetary
3 sanctions even though it issued those citations based on an illegal search. Even when it is “difficult
4 from a moral or practical standpoint to criticize” an illegal search by law enforcement, later
5 evidence that a violation did actually occur “cannot be used to retroactively justify” the
6 constitutional abuse that occurred. *People v. Perrusquia*, 150 Cal. App. 4th 228, 234 (2007). That
7 is even more true when the Division lacked a good-faith basis for its actions. This Board should
8 hold (1) that the Division lacks the legal authority to prosecute the citations because it never
9 conducted a valid inspection; (2) that the Division’s post-inspection evidence has already been
10 suppressed as fruit of the poisonous tree; and (3) that dismissal of the citations is warranted to
11 deter future unconstitutional conduct by the Division.

12
13 Respectfully submitted,

14 /s/Julianne Fleischer
15 Julianne Fleischer, Esq.

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PROOF OF SERVICE

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On August 25, 2025, I served a copy of the following document(s) described as **EMPLOYER’S MOTION TO DISMISS CITATIONS** on the interested party(ies) in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.



Susan Y. Kenney

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