

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
(916) 274-5751  
FAX (916) 274-5785

RECEIVED

APR 11 2011

OSH Appeals Board

APPEAL FORM

312318348

Inspection Number on Citation

2011-R 6D2 -0966

LFP Video Group LLC d/b/a Hustler Video

Employer Name on Citation

1. You only have 15 working days from receipt of a citation to appeal.

Employer Legal Name or DBA (Optional)

8484 Wilshire Boulevard, Suite 900

Address

Beverly Hills, CA 90211

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

Inspection Site:

20932 Osbourne St Canoga Park, CA 91304

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE  
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[  ] CITATION NO(s): 1 Item No(s): 1

[  ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s): Item No(s):

[  ] SPECIAL ORDER/SPECIAL ACTION NO: Item No(s):

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. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>  
See Addendum #1 attached

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APR 11 2011

OSH Appeals Board

APPEAL FORM

ADDENDUM 1

Inspection No. 312318348

Citation #1, Item #1

Paragraph #3:

A. **GENERAL ISSUES/AFFIRMATIVE DEFENSES.**

1. Studies relied upon by CalOSHA with respect to mandating use of condoms are flawed, lack a proper scientific basis, and are scientifically and medically invalid.
2. The cited regulation does not require the Appellant "ensure the use of appropriate personal protective equipment" by anyone at the inspected site.
3. Independent employee action.
4. The Appellant is not a producer of adult videos.
5. The Appellant does not produce adult videos.
6. It is impossible to comply with the regulation given the nature of the alleged "Employer's" business.
7. No employee of the employer was exposed to the alleged violation.
8. The citation does not identify any part of the inspected site where violations are alleged to have occurred, and at which location employees of Appellant were actually working.
9. The alleged "Employer" acted with due diligence to comply with all regulatory requirements.
10. The Appellant does not employ, and never has employed, employees of Forsaken Pictures.
11. The alleged "Employer" openly supplied and placed appropriate personal protective equipment, specifically condoms, in areas of the inspected site which were used by employees of Forsaken Pictures, for use by all persons who could be working at the inspected site.
12. The alleged "Employer" utilized engineering and work practice controls which

eliminated or minimized exposure to blood and other potentially infectious material.

13. Appellant did not engage in any actions which make it responsible through actual practice for safety and health conditions at those parts of the inspected site which are made available for use by other entities and employees of those other entities.
14. The inspected site is not a multi-employer worksite.
15. The Appellant was not and is not a “multi-employer” of employees of Forsaken Pictures.
16. Appellant has and had at the time of the inspection, and implements and maintains, a written Exposure Control Plan which contains the required elements, including training programs and the Hepatitis B vaccine/vaccination series for its employees who may reasonably be anticipated to have contact with “other potentially infectious materials.”
17. Appellant has and had at the time of the inspection, a written Injury and Illness Prevention Program.
18. Appellant had no actual knowledge, nor with the exercise of reasonable diligence could have known, of the existence of the alleged violation.
19. The alleged “Employer” had no control, direct or indirect, over the actions and/or inactions of persons present at the inspected site who were not employees of LFP Video Group, LLC.
20. The inspected site is partitioned for use by multiple entities, and has separate entrances for ingress/egress by non-Appellant entities.
21. The citation was issued to the wrong alleged “Employer” and/or a non-existing employer.
22. There are fewer than 10 employees of the Appellant at the inspected site.
23. The alleged “Employer” at all times acted in good faith.
24. The alleged “Employer” has no prior violation history.
25. The Division of Occupational Safety and Health does not have jurisdiction over the subject place of employment.
26. The inspection(s) was invalid.
27. The regulation cited is vague and/or ambiguous.

28. The citation does not give notice of the violation and/or is otherwise defective.
29. The citation was not issued timely.
30. An exception to the regulation exempts compliance.
31. There is no mandate for an employee safety committee.
32. The alleged "Employer" reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter

**B. FIRST AMENDMENT AND PRIVACY RIGHTS VIOLATIONS.** The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry, and of the Injury and Illness Prevention Program standards designed for construction and other industries, constitutes an unduly broad and inordinately suppressive restriction on the Appellant's right, and the rights of all those working in the adult industry, to associational privacy under the First Amendment and Burse v. United States, 466 F.2d 1059 (9<sup>th</sup> Cir. 1972).

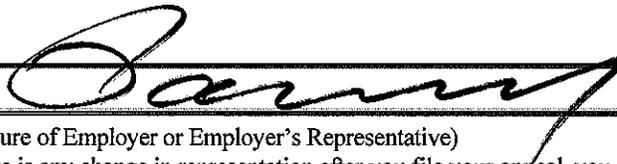
**C. FIRST AND FOURTEENTH AMENDMENT VIOLATIONS.** The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry, and of the Injury and Illness Prevention Program standards designed for construction and other industries, constitutes an unduly broad and inordinately suppressive restriction on the content of constitutionally protected expression in violation of the First and Fourteenth Amendments to the United States Constitution. When applied to the Appellant herein, these standards and restrictions are content based and must survive a strict scrutiny standard. The health protection methods employed by the industry are a less restrictive yet effective means of fulfilling the health goal.

**D. FIRST AND FOURTEENTH AMENDMENT VIOLATIONS.** The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry and of the Injury and Illness Prevention Program standards designed for construction and other industries, constitutes an unduly broad and inordinately suppressive restriction on the content of constitutionally protected expression in violation of the First and Fourteenth Amendments to the United States Constitution. As applied to the Appellant herein, these standards and restrictions are not valid content - neutral regulations of constitutionally protected expression insofar as they are not narrowly tailored to promote a substantial government interest while leaving open adequate alternative avenues of communication.

**E. FEASIBILITY.** The Appellant has reasonably evaluated the hazardous condition or operation and reasonably determined that short of not performing the work there is no less hazardous alternative method of accomplishing the task. The industry within which the alleged "Employer" is engaged, uses reasonable and good faith methods, including the

requirement for regular health testing combined with tracking of contacts to identify, quarantine and treat any outbreaks.

4.

  
\_\_\_\_\_

(Signature of Employer or Employer's Representative)  
{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Paul J. Cambria, Jr., Esq.

\_\_\_\_\_  
(Type or print name)

Attorney

\_\_\_\_\_  
(Title)

42 Delaware Avenue, Suite 120

\_\_\_\_\_  
(Address) {Address where all communications from the Appeals Board will be sent}

Buffalo

New York

14202

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip Code)

(716)849-1333

pcambria@lglaw.com

04/06/11

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(E-Mail Address)

\_\_\_\_\_  
(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

### IMPORTANT INFORMATION

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- D. **Be sure to sign your appeal form and provide all the information requested in No. 4 above.**
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- F. If you or your representative change address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

Division of Occupational Safety and Health  
Cal/OSHA High Hazard Unit (0950662;4502)  
2000 East McFadden Street, Suite 111  
Santa Ana, CA 92705

**Inspection Number:** 312318348  
**Inspection Dates:** 09/14/2010 -  
**Issuance Date:** 03/09/2011  
**CSHO ID:** W9404  
**Optional Inspection Nbr:** 008-011



**Citation and Notification of Penalty**

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**APR 11 2011**

**Company Name:** LFP VIDEO GROUP LLC dba HUSTLER VIDEO  
**Inspection Site:** 20932 OSBOURNE ST, CANOGA PARK, CA 91304

**OSH Appeals Board**

**Citation 1 Item 1 Type of Violation: **Serious****

§3203. Injury and Illness Prevention Program.3203. Injury and Illness Prevention Program.

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(1) Identify the person or persons with authority and responsibility for implementing the Program.

(2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

(3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.

EXCEPTION: Employers having fewer than 10 employees shall be permitted to communicate to and instruct employees orally in general safe work practices with specific instructions with respect to hazards unique to the employees' job assignments as compliance with subsection (a)(3).

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

(A) When the Program is first established;

EXCEPTION: Those employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with previously existing section 3203.

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of California**

Division of Occupational Safety and Health  
Cal/OSHA High Hazard Unit (0950662;4502)  
2000 East McFadden Street, Suite 111  
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**Inspection Number:** 312318348  
**Inspection Dates:** 09/14/2010 -  
**Issuance Date:** 03/09/2011  
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**Citation and Notification of Penalty**

**Company Name:** LFP VIDEO GROUP LLC dba HUSTLER VIDEO  
**Inspection Site:** 20932 OSBOURNE ST, CANOGA PARK, CA 91304

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

(5) Include a procedure to investigate occupational injury or occupational illness.

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

(A) When observed or discovered; and,

(B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

(7) Provide training and instruction:

(A) When the program is first established;

EXCEPTION: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in Section 3203.

(B) To all new employees;

(C) To all employees given new job assignments for which training has not previously been received;

(D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;

(E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,

(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

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**State of California**

Division of Occupational Safety and Health  
Cal/OSHA High Hazard Unit (0950662;4502)  
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Issuance Date: 03/09/2011  
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Optional Inspection Nbr: 008-011



**Citation and Notification of Penalty**

Company Name: LFP VIDEO GROUP LLC dba HUSTLER VIDEO  
Inspection Site: 20932 OSBOURNE ST, CANOGA PARK, CA 91304

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The employer, LFP Video Group LLC dba Hustler Video, failed to establish, implement, or maintain a written Injury and Illness Prevention Program (IIPP) which met the requirements of this standard for employees of Forsaken Pictures who were exposed to hazards in the course of producing adult videos. LFP Video Group LLC dba Hustler Video was responsible for safety and health conditions at 20932 Osbourne Street Canoga Park, CA 91304 by actual practice.

Date By Which Violation Must be Abated: 03/16/2011  
Proposed Penalty: \$ 4725.00

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See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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APR 11 2011

OSH Appeals Board

APPEAL FORM

312318348

Inspection Number on Citation

2011-R 6 D2 -0967

LFP Video Group LLC d/b/a Hustler Video

Employer Name on Citation

1. You only have 15 working days from receipt of a citation to appeal.

Employer Legal Name or DBA (Optional)

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

8484 Wilshire Boulevard, Suite 900

Address

Beverly Hills, CA 90211

Inspection Site:

20932 Osbourne St Canoga Park, CA 91304

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE  
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[  ] CITATION NO(s): 2 \_\_\_\_\_ Item No(s): 1 \_\_\_\_\_

[  ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s): \_\_\_\_\_ Item No(s): \_\_\_\_\_

[  ] SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_  
Item No(s): \_\_\_\_\_

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. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>  
See Addendum #1 attached

APPEAL FORM

ADDENDUM 1

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APR 11 2011

OSH Appeals Board

Inspection No. 312318348

Citation #2, Item #1

Paragraph #3:

**A. GENERAL ISSUES/AFFIRMATIVE DEFENSES.**

1. Studies relied upon by CalOSHA with respect to mandating use of condoms are flawed, lack a proper scientific basis, and are scientifically and medically invalid.
2. The cited regulation does not require the Appellant "ensure the use of appropriate personal protective equipment" by anyone at the inspected site.
3. Independent employee action.
4. The Appellant is not a producer of adult videos.
5. The Appellant does not produce adult videos.
6. It is impossible to comply with the regulation given the nature of the alleged "Employer's" business.
7. No employee of the employer was exposed to the alleged violation.
8. The citation does not identify any part of the inspected site where violations are alleged to have occurred, and at which location employees of Appellant were actually working.
9. The alleged "Employer" acted with due diligence to comply with all regulatory requirements.
10. The Appellant does not employ, and never has employed, employees of Forsaken Pictures.
11. The alleged "Employer" openly supplied and placed appropriate personal protective equipment, specifically condoms, in areas of the inspected site which were used by employees of Forsaken Pictures, for use by all persons who could be working at the inspected site.
12. The alleged "Employer" utilized engineering and work practice controls which

eliminated or minimized exposure to blood and other potentially infectious material.

13. Appellant did not engage in any actions which make it responsible through actual practice for safety and health conditions at those parts of the inspected site which are made available for use by other entities and employees of those other entities.
14. The inspected site is not a multi-employer worksite.
15. The Appellant was not and is not a "multi-employer" of employees of Forsaken Pictures.
16. Appellant has and had at the time of the inspection, and implements and maintains, a written Exposure Control Plan which contains the required elements, including training programs and the Hepatitis B vaccine/vaccination series for its employees who may reasonably be anticipated to have contact with "other potentially infectious materials."
17. Appellant has and had at the time of the inspection, a written Injury and Illness Prevention Program.
18. Appellant had no actual knowledge, nor with the exercise of reasonable diligence could have known, of the existence of the alleged violation.
19. The alleged "Employer" had no control, direct or indirect, over the actions and/or inactions of persons present at the inspected site who were not employees of LFP Video Group, LLC.
20. The inspected site is partitioned for use by multiple entities, and has separate entrances for ingress/egress by non-Appellant entities.
21. The citation was issued to the wrong alleged "Employer" and/or a non-existing employer.
22. There are fewer than 10 employees of the Appellant at the inspected site.
23. The alleged "Employer" at all times acted in good faith.
24. The alleged "Employer" has no prior violation history.
25. The Division of Occupational Safety and Health does not have jurisdiction over the subject place of employment.
26. The inspection(s) was invalid.
27. The regulation cited is vague and/or ambiguous.

28. The citation does not give notice of the violation and/or is otherwise defective.
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**B. FIRST AMENDMENT AND PRIVACY RIGHTS VIOLATIONS.** The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry, and of the Injury and Illness Prevention Program standards designed for construction and other industries, constitutes an unduly broad and inordinately suppressive restriction on the Appellant's right, and the rights of all those working in the adult industry, to associational privacy under the First Amendment and Burse v. United States, 466 F.2d 1059 (9<sup>th</sup> Cir. 1972).

**C. FIRST AND FOURTEENTH AMENDMENT VIOLATIONS.** The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry, and of the Injury and Illness Prevention Program standards designed for construction and other industries, constitutes an unduly broad and inordinately suppressive restriction on the content of constitutionally protected expression in violation of the First and Fourteenth Amendments to the United States Constitution. When applied to the Appellant herein, these standards and restrictions are content based and must survive a strict scrutiny standard. The health protection methods employed by the industry are a less restrictive yet effective means of fulfilling the health goal.

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**E. FEASIBILITY.** The Appellant has reasonably evaluated the hazardous condition or operation and reasonably determined that short of not performing the work there is no less hazardous alternative method of accomplishing the task. The industry within which the alleged "Employer" is engaged, uses reasonable and good faith methods, including the

requirement for regular health testing combined with tracking of contacts to identify, quarantine and treat any outbreaks.

4.



(Signature of Employer or Employer's Representative)  
{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Paul J. Cambria, Jr., Esq.

(Type or print name)

Attorney

(Title)

42 Delaware Avenue, Suite 120

(Address) {Address where all communications from the Appeals Board will be sent}

Buffalo New York 14202

(City) (State) (Zip Code)  
(716)849-1333 pcambria@lglaw.com 04/06/11

(Telephone) (E-Mail Address) (Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

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Inspection Number: 312318348  
Inspection Dates: 09/14/2010 -  
Issuance Date: 03/09/2011  
CSHO ID: W9404  
Optional Inspection Nbr: 008-011



**Citation and Notification of Penalty**

Company Name: LFP VIDEO GROUP LLC dba HUSTLER VIDEO  
Inspection Site: 20932 OSBOURNE ST, CANOGA PARK, CA 91304

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**APR 11 2011**

Citation 2 Item 1 Type of Violation: **Serious**

**OSH Appeals Board**

§5193. Bloodborne Pathogens.

(c) Exposure Response, Prevention and Control.

(1) Exposure Control Plan.

(A) Each employer having an employee(s) with occupational exposure as defined by subsection (b) of this section shall establish, implement and maintain an effective Exposure Control Plan which is designed to eliminate or minimize employee exposure and which is also consistent with Section 3203.

The employer, LFP Video Group LLC dba Hustler Video failed to establish, implement, or maintain all the required elements of a written Exposure Control Plan for employees of Foresaken Pictures who had reasonably anticipated contact with "other potentially infectious materials (OPIM)," including semen and vaginal secretions, as well as with blood or other fluids contaminated with blood, in the course of producing adult videos. LFP Video Group LLC dba Hustler Video was responsible for safety and health conditions at 20932 Osbourne Street Canoga Park, CA 91304 by actual practice.

Missing elements include but are not limited to the following:

1. The employer, LFP Video Group LLC dba Hustler Video, failed to use engineering and work practice controls to eliminate or minimize exposure to blood and other potentially infectious material for employees of Foresaken Pictures.
2. The employer, LFP Video Group LLC dba Hustler Video, failed to make available hepatitis B vaccine and vaccination series to all employees of Foresaken Pictures who had occupational exposure to blood and other potentially infectious material.
3. The employer, LFP Video Group LLC dba Hustler Video, failed to ensure that employees of forsaken Pictures with occupational exposure to blood and other potentially infectious material participate in a training program.

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of California**

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Cal/OSHA High Hazard Unit (0950662;4502)  
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**Inspection Number:** 312318348  
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**Citation and Notification of Penalty**

**Company Name:** LFP VIDEO GROUP LLC dba HUSTLER VIDEO  
**Inspection Site:** 20932 OSBOURNE ST, CANOGA PARK, CA 91304

---

Date By Which Violation Must be Abated: 03/16/2011  
Proposed Penalty: \$ 4725.00

---

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OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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APR 11 2011

OSH Appeals Board

**A P P E A L F O R M**

312318348  
**Inspection Number on Citation**

2011-R *6D2* -0968

LFP Video Group LLC d/b/a Hustler Video  
**Employer Name on Citation**

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CITATION NO(s): \_\_\_\_\_ Item No(s): \_\_\_\_\_

SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_  
Item No(s): \_\_\_\_\_

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. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>  
See Addendum #1 attached

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**APPEAL FORM**

**ADDENDUM 1**

**RECEIVED**

**APR 11 2011**

**OSHA Appeals Board**

Inspection No. 312318348

Citation #3, Item #1

Paragraph #3:

**A. GENERAL ISSUES/AFFIRMATIVE DEFENSES.**

1. Studies relied upon by CalOSHA with respect to mandating use of condoms are flawed, lack a proper scientific basis, and are scientifically and medically invalid.
2. The cited regulation does not require the Appellant "ensure the use of appropriate personal protective equipment" by anyone at the inspected site.
3. Independent employee action.
4. The Appellant is not a producer of adult videos.
5. The Appellant does not produce adult videos.
6. It is impossible to comply with the regulation given the nature of the alleged "Employer's" business.
7. No employee of the employer was exposed to the alleged violation.
8. The citation does not identify any part of the inspected site where violations are alleged to have occurred, and at which location employees of Appellant were actually working.
9. The alleged "Employer" acted with due diligence to comply with all regulatory requirements.
10. The Appellant does not employ, and never has employed, employees of Forsaken Pictures.
11. The alleged "Employer" openly supplied and placed appropriate personal protective equipment, specifically condoms, in areas of the inspected site which were used by employees of Forsaken Pictures, for use by all persons who could be working at the inspected site.
12. The alleged "Employer" utilized engineering and work practice controls which

eliminated or minimized exposure to blood and other potentially infectious material.

13. Appellant did not engage in any actions which make it responsible through actual practice for safety and health conditions at those parts of the inspected site which are made available for use by other entities and employees of those other entities.
14. The inspected site is not a multi-employer worksite.
15. The Appellant was not and is not a “multi-employer” of employees of Forsaken Pictures.
16. Appellant has and had at the time of the inspection, and implements and maintains, a written Exposure Control Plan which contains the required elements, including training programs and the Hepatitis B vaccine/vaccination series for its employees who may reasonably be anticipated to have contact with “other potentially infectious materials.”
17. Appellant has and had at the time of the inspection, a written Injury and Illness Prevention Program.
18. Appellant had no actual knowledge, nor with the exercise of reasonable diligence could have known, of the existence of the alleged violation.
19. The alleged “Employer” had no control, direct or indirect, over the actions and/or inactions of persons present at the inspected site who were not employees of LFP Video Group, LLC.
20. The inspected site is partitioned for use by multiple entities, and has separate entrances for ingress/egress by non-Appellant entities.
21. The citation was issued to the wrong alleged “Employer” and/or a non-existing employer.
22. There are fewer than 10 employees of the Appellant at the inspected site.
23. The alleged “Employer” at all times acted in good faith.
24. The alleged “Employer” has no prior violation history.
25. The Division of Occupational Safety and Health does not have jurisdiction over the subject place of employment.
26. The inspection(s) was invalid.
27. The regulation cited is vague and/or ambiguous.

28. The citation does not give notice of the violation and/or is otherwise defective.
29. The citation was not issued timely.
30. An exception to the regulation exempts compliance.
31. There is no mandate for an employee safety committee.
32. The alleged "Employer" reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter

**B. FIRST AMENDMENT AND PRIVACY RIGHTS VIOLATIONS.** The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry, and of the Injury and Illness Prevention Program standards designed for construction and other industries, constitutes an unduly broad and inordinately suppressive restriction on the Appellant's right, and the rights of all those working in the adult industry, to associational privacy under the First Amendment and Bursey v. United States, 466 F.2d 1059 (9<sup>th</sup> Cir. 1972).

**C. FIRST AND FOURTEENTH AMENDMENT VIOLATIONS.** The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry, and of the Injury and Illness Prevention Program standards designed for construction and other industries, constitutes an unduly broad and inordinately suppressive restriction on the content of constitutionally protected expression in violation of the First and Fourteenth Amendments to the United States Constitution. When applied to the Appellant herein, these standards and restrictions are content based and must survive a strict scrutiny standard. The health protection methods employed by the industry are a less restrictive yet effective means of fulfilling the health goal.

**D. FIRST AND FOURTEENTH AMENDMENT VIOLATIONS.** The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry and of the Injury and Illness Prevention Program standards designed for construction and other industries, constitutes an unduly broad and inordinately suppressive restriction on the content of constitutionally protected expression in violation of the First and Fourteenth Amendments to the United States Constitution. As applied to the Appellant herein, these standards and restrictions are not valid content - neutral regulations of constitutionally protected expression insofar as they are not narrowly tailored to promote a substantial government interest while leaving open adequate alternative avenues of communication.

**E. FEASIBILITY.** The Appellant has reasonably evaluated the hazardous condition or operation and reasonably determined that short of not performing the work there is no less hazardous alternative method of accomplishing the task. The industry within which the alleged "Employer" is engaged, uses reasonable and good faith methods, including the

requirement for regular health testing combined with tracking of contacts to identify, quarantine and treat any outbreaks.

4.



(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Paul J. Cambria, Jr., Esq.

(Type or print name)

Attorney

(Title)

42 Delaware Avenue, Suite 120

(Address) {Address where all communications from the Appeals Board will be sent}

Buffalo

New York

14202

(City)

(State)

(Zip Code)

(716)849-1333

pcambria@lglaw.com

04/06/11

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

### IMPORTANT INFORMATION

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing.*
- C. If the citation or notification being appealed includes more than one item **do not use separate appeals forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form. (for example, "Citation No. 1, Item Nos. 2, 5, and 8)
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4 above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative change address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
- H. Late appeals will not be accepted unless good cause is shown.

State of California  
Division of Occupational Safety and Health  
Cal/OSHA High Hazard Unit (0950662;4502)  
2000 East McFadden Street, Suite 111  
Santa Ana, CA 92705

Inspection Number: 312318348  
Inspection Dates: 09/14/2010 -  
Issuance Date: 03/09/2011  
CSHO ID: W9404  
Optional Inspection Nbr: 008-011



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APR 11 2011

Citation and Notification of Penalty

Company Name: LFP VIDEO GROUP LLC dba HUSTLER VIDEO  
Inspection Site: 20932 OSBOURNE ST, CANOGA PARK, CA 91304

OSH Appeals Board

Citation 3 Item 1 Type of Violation: **Serious**

§5193. Bloodborne Pathogens.

(d) Methods of Compliance.

(4) Personal Protective Equipment.

(A) Provision. Where occupational exposure remains after institution of engineering and work practice controls, the employer shall provide, at no cost to the employee, appropriate personal protective equipment such as, but not limited to, gloves, gowns, laboratory coats, face shields or masks and eye protection, and mouthpieces, resuscitation bags, pocket masks, or other ventilation devices. Personal protective equipment will be considered "appropriate" only if it does not permit blood or OPIM to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the duration of time which the protective equipment will be used. Note : For fire fighters, these requirements are in addition to those specified in Sections 3401-3411, and are intended to be consistent with those requirements.

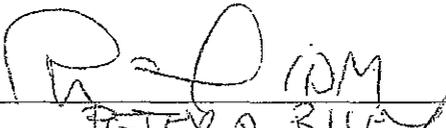
The employer, LFP Video Group LLC dba Hustler Video, failed to ensure the use of appropriate personal protective equipment, such as condoms, to employees of Forsaken Pictures who had reasonably anticipated contact with "other potentially infectious materials (OPIM)," including semen and vaginal secretions, as well as with blood or other fluids contaminated with blood, in the course of producing adult videos.

Date By Which Violation Must be Abated:

03/16/2011

Proposed Penalty:

\$ 4725.00

  
\_\_\_\_\_  
Peter A. Riley  
Compliance Officer/District Manager

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.