

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

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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)

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): 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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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 (9th Cir. 1972).

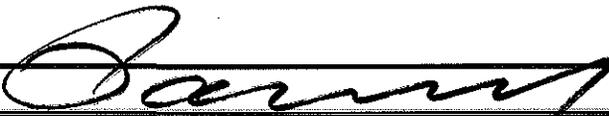
C. FIRST AND FOURTEENTH AMENDMENT VIOLATIONS. The application to the creation of expressive materials, i.e., the creation of non-obscene sexually-oriented films, of the bloodborne pathogen standards designed for the medical industry, and of the Injury and Illness Prevention Program standards designed 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)

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Employer Legal Name or DBA (Optional)

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2011-R 6 D2 -0967

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ADDENDUM 1

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OSH Appeals Board

Inspection No. 312318348

Citation #2, Item #1

Paragraph #3:

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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.
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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.
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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.
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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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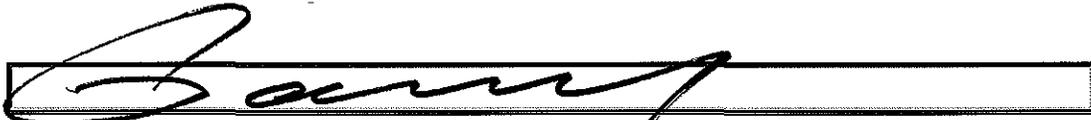
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Inspection Number on Citation

2011-R 6D2 -0968

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ADDENDUM 1

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OSHA Appeals Board

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Citation #3, Item #1

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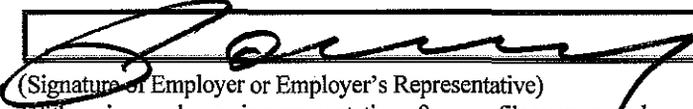
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