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Cal/OSHA Advisory Committee
Bloodborne Pathogens in the Adult Film Industry

Re: Petition Number 513
General Industry Safety Orders
Chapter 4, Subchapter 7
Section 5193, Bloodborne Pathogens
Status of Performers in Adult Films as Employees

To Whom It May Concern:

AIDS Healthcare Foundation, Petitioner in the above-referenced matter, respectfully submits the following for the consideration of the Advisory Committee:

- Maria de Cesare, *RXXX: Resolving the Problem of Performer Health and Safety in the Adult Film Industry*, 79 S. Cal. L. Rev. 667 (2006).
- *Deupree v. Workers' Compensation Appeals Board*, 73 Cal. Comp. Cas. 1354 (Cal. App. 2d Dist., 2008).

Both of the foregoing conclude that performers in adult films are employees, not independent contractors.

In § IV(A)(2) of Ms. de Cesare's article, published in the University of Southern California Law Review, the author reviews case law and statutes, concluding that under every applicable legal test performers in adult films are employees, not independent contractors. She notes that "under either the traditional economic realities inquiry into control over the manner and means of work details, or the alternative three-part inquiry, it is clear that adult film performers should be classified as employees, not independent contractors." Ms. de Cesare concludes that "[t]hese workers should therefore fall under the jurisdiction of regulatory agencies such as Cal/OSHA and should accordingly be entitled to health and safety protections in the workplace."

The California Court of Appeal came to the same conclusion in *Deupree v. Worker's Compensation Appeals Board*. In that decision, the Court held that an adult film producer was responsible for providing workers compensation protection for an actress in adult films who contracted HIV while working. The Court specifically held that the actress was an employee, not an independent contractor.

I hope that the foregoing will be of value to the Committee.

Very Truly Yours,

A handwritten signature in black ink, appearing to be 'B. Chase', with a long horizontal flourish extending to the right.

Brian Chase