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**NOTICE OF BREACH OF CONTRACT AND MY NOTICE TO RESCIND**

Porn Star Name & Address

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Studio Name & Address

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Agency Name & Address

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The California Occupational Safety and Health Act (LABOR CODE SECTION 6300-6332) requires employers to provide a safe and healthful workplace for employees, and pay the costs of their health and safety program. This same act gives Cal/OSHA jurisdiction over virtually all private employers in California, including employers in the adult film industry. Employers must comply with all relevant regulations, which are contained in Title 8 of the California Code of Regulations.

Independent Contractors are also covered by the California Regulations of the Adult Film Industry as decided in the California Supreme Court in the case of *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341. The Division of Labor Standards Enforcement (DLSE), depending on the remedial nature of the legislation at issue, this means applying the "multi-factor" or the "economic realities" test as set forth by the California Supreme Court case aforementioned. In applying the economic realities test, the most significant factor to be considered is whether the person to whom service is rendered (the employer or principal) has control or the right to control the worker both as to the work done and the manner and means in which it is performed. Additional factors that may be considered depending on the issue involved are:

1. Whether the person performing services is engaged in an occupation or business distinct from that of the principal;

2. Whether or not the work is a part of the regular business of the principal or alleged employer;
3. Whether the principal or the worker supplies the instrumentalities, tools, and the place for the person doing the work;
4. The alleged employee's investment in the equipment or materials required by his or her task or his or her employment of helpers;
5. Whether the service rendered requires a special skill;
6. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision;
7. The alleged employee's opportunity for profit or loss depending on his or her managerial skill;
8. The length of time for which the services are to be performed;
9. The degree of permanence of the working relationship;
10. The method of payment, whether by time or by the job; and
11. Whether or not the parties believe they are creating an employer-employee relationship may have some bearing on the question, but is not determinative since this is a question of law based on objective tests.

In accordance with the California Supreme Court decisions using the "multi-factor" or the "economic realities" test. In this case, the studio does arguably grant legal employee status since it controls the entire production of the adult film or scene involved resulting in total supervision, the studio supplies all the relevant "tools" (clothing, place of performance, sex toys, lubricants, et al), and the studio invests in the equipment required to film an adult entertainment film or scene in a film. Certainly, the studio does not require a "special skill" to perform in an adult film or scene in a film. It is not doubt a court of law would determine an "independent contractor" in the adult entertainment business to be an employee since, as it has been explained, any reasonable person would conclude as such. Nevertheless, as discussed further, an "independent contractor" contract would be void since it would be "unconscionable" as defined by the U.S. Supreme Court and California Law since the Blood Pathogen Regulations should be followed regardless of employee or "independent contractor" status. The California Division of Occupational Safety and Health (DOSH) has agreed in the past that "independent contractors", even exotic dancers, are employees.

**The Division of Occupational Safety and Health (DOSH) has established Vital information for workers and employers in the adult film industry as follows:**

"In addition to general health and safety hazards associated with film and video production, workers in the adult film industry face particular hazards because actors perform sex acts in the course of making the films or videos. Many diseases can be transmitted through blood, semen, vaginal fluid and fecal material, or by mucous membrane contact.

One important group of diseases is those caused by bloodborne pathogens, including HIV, hepatitis B and hepatitis C. In addition to actors, employees in this industry at risk of becoming infected include people who clean up after scenes and people who assist in developing scenes, whether or not they are shown on film. If any sharps, such as razor blades or wires, are used (for

shaving, piercing, etc.), they pose a particular risk for spreading infection because they can puncture the skin.

Other sexually transmitted diseases (STDs) are not considered bloodborne pathogens, but can be transmitted through contact with mucous membranes, semen, vaginal fluids or feces.”

In addition, California has established explicit procedures for the adult film industry with regards to blood pathogens (§5193. Bloodborne Pathogens) as follows:

“The Cal/OSHA bloodborne pathogens standard requires employers to protect workers from serious diseases including HIV, hepatitis B and hepatitis C, which can be transmitted through exposure to blood and other potentially infectious materials. The major requirements of this standard include:

### **Controlling exposures**

The bloodborne pathogens standard requires employers to use feasible **engineering and work practice controls** to protect workers from coming into contact with blood or other disease-carrying body fluids (referred to in the standard as "other potentially infectious material", or "OPIM"). Semen and vaginal fluid are always considered OPIM. Any other body fluid is considered OPIM if it's visibly contaminated with blood. Saliva is considered OPIM in connection with dental procedures because these procedures routinely cause saliva to be contaminated with blood.

The kind of contact prohibited by the standard is contact between skin or mucous membranes and blood or OPIM.

The methods an employer will use to protect employees from contact with blood or OPIM must be spelled out in detail in a written **exposure control plan**, which is described in the bloodborne pathogens standard.

“The bloodborne pathogens standard is built on the rule of **universal precautions**. This means blood or OPIM is always treated as hazardous, no matter who the source is. This is important because the available testing methods do not always guarantee that disease will be detected. This is particularly true right after a person has become infected. Depending on the test and the disease, it may take anywhere from two weeks to six months to be able to detect an infection. There is also a risk of "false negative" results, particularly if tests have not been properly administered, or if specimens have not been properly stored. Also, many bloodborne diseases are not routinely tested for.

Examples of engineering and work practice controls used in the adult film industry include:

Simulation of sex acts using acting, production and post-production techniques

- Ejaculation outside the partner's body
- Use of barriers, which protect the partner from contact with semen, vaginal fluids, mucous membranes, etc. Examples of barriers include condoms and dental dams

(Condoms and dental dams can also be considered personal protective equipment for the partner who uses them)

- Plastic and other disposable materials to clean up sets
- Sharps containers for disposal of any blades, wires or broken glass.
- Personal protective equipment

If, after using all practical engineering and work practice controls, workers are still exposed to hazards, employers must provide, and ensure employees use, appropriate personal protective equipment. Personal protective equipment can include:

- Condoms
- Dental dams
- Gloves
- Eye protection.

### **Hepatitis B vaccine**

Employers in this industry must provide the hepatitis B vaccine series to employees who may be exposed to blood, semen, vaginal fluid or OPIM. This series consists of three shots, generally administered into the arm muscle, over a period of six months. About one or two months after the third shot, the healthcare provider will draw blood to ensure the employee has developed a strong enough immune response (antibody titer, which refers to the concentration of antibodies in the blood) to protect against infection. In some cases the healthcare provider will recommend an additional series of shots. To learn more about the hepatitis B vaccine, [click here](#).

### **Confidential medical record**

Every employer covered by this standard must ensure that a medical record is maintained for each employee, which must be kept confidential.

### **Procedures for exposure incidents**

If an employee has unprotected contact with someone else's blood, semen, vaginal fluid, or OPIM, the employer must provide them with a medical evaluation and follow up [5193 (f)] at no cost to the employee. If the source individual consents, he or she can be tested, and the results can be disclosed to the exposed employee, but that employee must be informed of requirements to keep the person's identity and infection status confidential.

If there is reason to believe a person has been exposed to HIV, the doctor may recommend the person be put on drugs to prevent infection (post-exposure prophylaxis, or PEP), such as AZT. If there is reason to believe a person has been exposed to hepatitis B, and has not been completely vaccinated, the doctor may recommend hepatitis B immunoglobulin, and may start the vaccine series. There is currently no post-exposure treatment recommended for hepatitis C.”

Even Independent Contractors in the adult film industry are protected by The Division of Occupational Safety and Health (DOSH) as follows:

“Currently, some workers in the adult film industry are paid as employees (they get a paycheck with taxes and other deductions) and some are paid as independent contractors (they get a 1099 at the end of the year). Even workers who are paid as independent contractors may be considered employees under the law. The Division of Labor Standards Enforcement (DLSE) provides guidance for determining whether someone is an independent contractor. Although determinations about whether a person is an employee or an independent contractor are made based on the circumstances of each case, an employer/employee relationship has been found in similar circumstances, including in the mainstream film industry and exotic dance establishments.”

Even if the person engaging in the adult film industry is not considered an employee, exposing said person to bloodborne pathogens and not following California law would be considered as an “unconscionable contract.” The controlling laws and court decision, which are included in the final paragraph, conclude a person may not surrender rights a reasonable person wouldn’t. The U.S. Supreme Court’s “shock the conscience test” (*Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952), a California initiated decision, makes this distinction clear and without any contradiction. Since the U.S. Supreme Court has determined this “shock the conscience test” as the standard in determining an “unconscionable contract”, your studio’s violations of the Division of Occupational Safety and Health (DOSH) and the established explicit procedures for the adult film industry with regards to blood pathogens renders my contract as unconscionable and therefor unenforceable allowing me to rescind the contract.

The bloodborne pathogens regulations established by California law would make the following illegal since STD, HIV, and Hepatitis C, et al contraction is extremely possible:

- Oral sex without a condom (also dental dams) for females or males including gay or lesbian sexual acts and/or stimulation during sexual intercourse (the stopping of sexual intercourse to stimulate a male performer’s penis with oral stimulation since bodily fluids can be easily passed from one to another or a male performer stimulating a female performer with oral sex without protection).
- Vaginal sex or anal sex without a condom that fits the entire penis.
- Ejaculation on any part of the other person’s body especially the mouth, the face, the eyes, the anus, the vagina, etc. This renders the common term “The Money Shot” as in violation of the bloodborne pathogens regulations.
- A female performer’s “ejaculation” and/or “squirting” that goes past the protection of the condom.
- Using fingers for a performer to masturbate another since such contact could tear the vaginal tissue or, if a male performer is being masturbated by a female performer, the exchange of bodily fluids such as “pre-ejaculate” (commonly referred to as “pre-cum”) or ejaculation itself.
- Exchanging “spittle” in any insistence that would or could lead to an exchange of bodily fluids

- Slapping that causes abrasions and or redness on the skin that could lead to an exposure to bodily fluids
- Ejaculation in the vagina (known as a “creampie”) is an exchange of bodily fluids
- Choking a performer during any sex act (since this could easily be assault and battery especially if it was spontaneous)
- Forcing a female performer to “depththroat” (oral sex) an male performer’s (or performers) penis that was not explicitly explained beforehand and not objected to by the female performer
- The condom not covering the entire girth of a male performer’s penis since it could lead to an exchange of bodily fluids
- The condom not being strong enough to withstand sexual intercourse since it could tear without anyone’s knowledge and therefore cause a possible exchange of bodily fluids
- Bondage, even if specified, devices should be removed upon the performer’s request (If not, such an act could constitute rape, assault, false imprisonment, and/or battery)
- Not disposing of cleaning materials on the set into a hazardous waste receptacle as soon as such a cleaning material is used

The Following are the Violations of the California Regulations of the Adult Film Industry I have encountered during my current contract:

- ❑ Oral sex without the protection of a condom (female performer)
- ❑ Stimulation of male genitalia without the protection of a condom (female performer)
- ❑ Oral sex performed on me without the protection of a condom (female performer)
- ❑ Intercourse (as defined by me as any act of penetration of vagina by a penis) without the protection of a condom, including covering the entire penis
- ❑ The exchange of “spittle” in any instance of oral sex, intercourse, genitalia stimulation, and/or kissing, et al.
- ❑ The forcing of “depththroating” a male performer’s penis without prior knowledge and consent
- ❑ A male performer performing ejaculation on my mouth without any protection as prescribed by law
- ❑ A male performer performing ejaculation on my vagina (defined as near my vagina, on my vagina, et al) without any protection as prescribed by law
- ❑ A male performer performing ejaculation on my anus (defined as near my anus, on my anus, et al) without any protection as prescribed by law
- ❑ A male performer performing ejaculation inside my vagina without protection of a condom, including covering the entire penis
- ❑ A male performer performing ejaculation inside my anus without protection of a condom, including covering the entire penis
- ❑ A male performer performing ejaculation inside my mouth without protection of a condom, including covering the entire penis
- ❑ The breakage of a condom during any sexual activity where bodily fluids could be exchanged
- ❑ The lack of using a hazardous waste material receptacle to dispose of cleaning materials

- ❑ Slapping that caused abrasions or redness that could break the skin exposing myself to the illegal exchange of bodily fluids (irrespective of whether or not on a common sexual area of my body)
- ❑ Hitting that caused abrasions or redness that could break the skin exposing myself to the illegal exchange of bodily fluids (irrespective of whether or not on a common sexual area of my body)
- ❑ Being forced to remain in a position during any filmmaking changes that caused injury to any part of my body including vagina, mouth, anus, et al
- ❑ Not being released from a restrained position (especially bondage) at my request and/or the obvious discomfort a reasonable person would notice (You should since you are an adult filmmaker, supervise the filmmaking, and/or have any control of the filmmaking)
- ❑ Oral sex with the same sex that does not afford the protection of a female condom, dental dam, or other protection gear
- ❑ Double (more than one sex partner during filmmaking even more than three (3) persons) penetration that does not protect all participants from the exchange of bodily fluids with condoms or any other protective gear

Since you have not acted with probity in accordance to the law—which governs our contract, your company unilaterally created an unconscionable contract by federal law U.C.C. § 2-302. Unconscionable contracts are determined by the California Occupational Safety and Health Act (Title 8 of the California Code of Regulations), California §5193 Bloodborne Pathogens, the U.S. Supreme Court's "shock the conscience test" in *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952) and California Law § 1667 (1) and § 1668.

*Even in states other than California, the U.S. Supreme Court's "shock the conscience test" in Rochin v. California, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952) would, by a reasonable person, exact a total breach of contract on your part since the California Occupational Safety and Health Act (Title 8 of the California Code of Regulations) and the California §5193 Bloodborne Pathogens Regulations are the standard of the adult film industry and thusly were violated by you and/or your studio.* Also, a person may also rescind an unconscionable contract when the terms favor the one side, namely yours, has boilerplate language not understood by the average person, and has been prepared to deceive so the one side, namely yours, receives a greater value. Also, you enforce your contract by duress, even when violations of the law occur, so you have furthered the “unconscionable contract” adding duress as well.

Even California law, § 1667 (1) and § 1668, allows for a person to rescind an “unconscionable contract”. All states have similar provisions *but the U.S. Supreme Court decision is the one I am citing with respect to “unconscionable contracts.”* In addition, an agent can’t force an adult film industry performer to execute an unconscionable contract when the laws have been so violated. Therefore, since I did not neglect my legal duty to our contract and you did, I rescind my obligations effective immediately since you effectively nullified our contract as aforementioned. I offer no warranties that I will not seek damages in relation to your violation(s) of our contract that caused me damages, including emotional, physical, and contractually. If you or your subordinates attempt to contact me regarding this document, I will file a copy of it with appropriate Agency in my state, OSHA, and may seek any and all legal remedies to sue for damages already mentioned.

Since violations have occurred and I wish to no longer perform any further contracts in the adult film industry, my agency representation is hereby concluded. The agency should have known of the “unconscionable contract” you offered me to perform. You should remove me from any agency materials, including any agency websites, that offer me as a possible employee or contractor in the adult film industry since I will not accept any further contracts. If you or your subordinates attempt to contact me regarding this document, I will file a copy of it with appropriate Agency in my state, OSHA, and may seek any and all legal remedies to sue for damages already mentioned against any and all parties involved in the creation (or even knowledge of) the “unconscionable contracts” used for my adult film industry performances.

Sincerely Yours,

\_\_\_\_\_  
**Legal Name**                      **Professional Name**

\_\_\_\_\_  
**(Legal Name Signature)**      **Date of Signature**      / \_\_\_\_ / \_\_\_\_

\_\_\_\_\_  
**Notary**