

UNITED STATES DISTRICT COURT

for the

Central District of California

Vivid Entertainment, LLC et al

Plaintiff

v.

Jonathan Fielding et al

Defendant

Civil Action No. 13-CV-00190-DDP-AGR

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Cutting Edge Testing, LLC
5000 VAN NUYS BLVD STE 202, VAN NUYS CA 91403

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Please see attachment.

Place: 6255 W. Sunset Boulevard, 21st Floor, Los Angeles,
CA 90028

Date and Time:

08/31/2015 10:00 am

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/14/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant
Intervenor Michael Weinstein, who issues or requests this subpoena, are:

Liza Brereton; 6255 W. Sunset Blvd., 21st Floor, Los Angeles, CA 90028; Liza.brereton@aidhealth.org; (323) 860-5200

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 13-CV-00190-DDP-AGR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

1 Tom Myers (SBN 176008)
2 E-Mail: tom.myers@aidshhealth.org
3 Arti L. Bhimani (SBN 235240)
4 E-Mail: arti.bhimani@aidshhealth.org
5 Liza M. Brereton (SBN 261380)
6 E-Mail: liza.brereton@aidshhealth.org
7 AIDS Healthcare Foundation
8 6255 W. Sunset Blvd., 21st FL
9 Los Angeles, CA 90028
10 Phone: 323-860-5200
11 Fax: 323-467-8450
12 *Attorneys for Intervenors*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 VIVID ENTERTAINMENT, LLC;
16 CALIFA PRODUCTIONS, INC.;
17 JANE DOE a/k/a Kayden Kross; JOHN
18 DOE a/k/a Logan Pierce;

19 Plaintiffs,

20 vs.

21 JONATHAN FIELDING, Director of
22 Los Angeles County Department of
23 Public Health, JACKIE LACEY, Los
24 Angeles County District Attorney, and
25 COUNTY OF LOS ANGELES,

26 Defendants, and

27 MICHAEL WEINSTEIN, MARIJANE
28 JACKSON, ARLETTE DE LA CRUZ,
MARK MCGRATH, WHITNEY
ENGERAN, and the CAMPAIGN
COMMITTEE YES ON B, MAJOR
FUNDING BY THE AIDS
HEALTHCARE FOUNDATION

Defendants-Intervenors.

) Case No.: 13-CV-00190-DDP-AGR

) **ATTACHMENT TO SUBPOENA**
) **OF CUTTING EDGE TESTING,**
) **LLC, PURSUANT TO FED. R. CIV.**
) **PROC. 45**

1 **Subpoena to Produce Documents, Information, or Objects or to Permit**
2 **Inspection of Premises in a Civil Action:**

3 **Attachment**

4 ***Vivid Entertainment, LLC, et al. v. Jonathan Fielding, et al.,***
5 **No.: 13-CV-00190-DDP-AGR**

6 **INSTRUCTIONS**

7 **PRELIMINARY STATEMENT**

8 The following directions apply to the following Request for Production of
9 Documents (“Requests”) unless expressly negated or made inapplicable by the
10 context of the particular request:

11 You (“Responding Party”) are requested to respond to this request for
12 production of documents within 14 days of the date of service, in accordance with
13 Rule 45 of the Federal Rules of Civil Procedure. Your responses should be sent or
14 delivered to the offices of counsel for Defendants-Intervenors as follows: to the
15 attention of Liza M. Brereton, *esq.* at 6255 West Sunset Boulevard, 21st Floor, Los
16 Angeles, CA 90028.

17 The Request below is to be answered in the manner and form required by Rule
18 45(e) of the Federal Rules of Civil Procedure, that is, the Responding Party must
19 produce them as they are kept in the ordinary course of business or must organize and
20 label them to correspond to the categories in the demand.

21 Electronic information must be produced in its native form, along with all
22 metadata and standard load files. If for some reason this is not feasible, the
23 Responding Party will notify the Requesting Party to work out a mutually agreeable
24 alternative production method before the date for production of documents and
25 information.

26 Pursuant to Rule 45(e)(2) of the Federal Rules of Civil Procedure, a person
27 withholding subpoenaed information under a claim that it is privileged or subject to
28 protection as trial-preparation material must produce a privilege log, in which the
person (i) expressly makes the claim; and (ii) describes the nature of the withheld

1 documents, communications, or tangible things in a manner that, without revealing
2 information itself privileged or protected, will enable the parties to assess the claim.

3 Pursuant to Rule 45(d) of the Federal Rules of Civil Procedure, the Requesting
4 Party may move the court for the district where compliance is required for an order
5 compelling production or inspection.

6 Unless otherwise specified in the Requests, the time period covering each
7 Request is from date January 1, 2007 to the present.

8 9 **DEFINITIONS**

10 As used herein and in any subsequent Requests for Production, the following
11 definitions apply:

12 AND/OR: The connectives “and” and “or” shall be construed either
13 disjunctively or conjunctively as necessary to bring within the scope of the discovery
14 request all responses that might otherwise be construed to be outside of its scope.

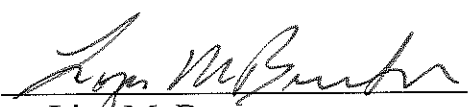
15 COMMUNICATION: the transmittal of information (in the form of facts,
16 ideas, inquiries or otherwise).

17 DOCUMENT: Every writing or record of any type and description that is or
18 has been in the possession, control of custody of Responding Party, including without
19 limitation, correspondence, memoranda, tapes, emails, and any other electronic
20 documents including metadata, stenographic or handwritten notes, studies,
21 publications, books, pamphlets, pictures, films, voice recordings, maps, reports,
22 surveys, minutes, statistical complications, trademark appraisals, trademark
23 registrability or availability searches or reports, trademark infringement reports,
24 opinions of counsel, and any other information-containing paper, writing or physical
25 thing; every copy of such writing or record where the original is not in the possession,
26 custody, or control of Responding Party; and every copy of every such writing or
27 record where such copy is not an identical copy of an original or where such copy
28 contains any commentary or notations whatsoever that do not appear on the original.
Additionally, the term “Document” shall include any document considered privileged

1 accessed by, and/or utilized by the Free Speech Coalition, the Adult Industry Medical
2 Foundation, the Performer Availability Provider Services (also known as PASS), the
3 Adult Production Health & Safety Services (also known as APHSS), and/or any other
4 person or entity associated with and/or involved in the making of an ADULT FILM,
5 for all tests conducted during the period January 1, 2007 to the present. Information
6 that would disclose the identity of the persons who received the tests may be redacted
7 from the DOCUMENTS and/or RECORDS, including, but not limited to the
8 following: name, date of birth, social security number, address, and/or phone number.

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Dated: August 14, 2015 By:


Liza M. Brereton
Attorney for Intervenor
Michael Weinstein