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6 Attorneys for Plaintiffs
7 VIVID ENTERTAINMENT, LLC; CALIFA
PRODUCTIONS, INC.; JANE DOE A/K/A
8 KAYDEN KROSS; AND JOHN DOE A/K/A
LOGAN PIERCE

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 VIVID ENTERTAINMENT, LLC;
CALIFA PRODUCTIONS, INC.;
13 JANE DOE a/k/a Kayden Kross;
and JOHN DOE a/k/a Logan Pierce,

14 Plaintiffs,

15 vs.

16 JONATHAN FIELDING, Director of
Los Angeles County Department of
17 Public Health, JACKIE LACEY, Los
Angeles County District Attorney, and
18 COUNTY OF LOS ANGELES

19 Defendants.

) Case No. CV 13-00190 DDP (AGR_x)

) **PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE;
DECLARATION OF MATTHEW D.
PETERSON**

) Date: May 6, 2013
Time: 10:00 a.m.

) Courtroom 3

) Action Filed: January 10, 2012

) [Filed concurrently with Motion for
Judgment on the Pleadings and Motion
for Preliminary Injunction]

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1 In connection with its concurrently-filed Motion for Judgment on the
2 Pleadings and Motion for Preliminary Injunction, Plaintiffs Vivid Entertainment,
3 LLC; Califa Productions, Inc.; Jane Doe aka Kayden Kross; and John Doe aka Logan
4 Pierce (collectively “Plaintiffs”), respectfully request that this Court take judicial
5 notice of the following materials and facts pursuant to Federal Rule of Evidence 201:

6 1. A letter issued by the County of Los Angeles Department of Public
7 Health, via its director Jonathan E. Fielding, on December 14, 2012, directed to
8 “Producers of Adult Films in Los Angeles County,” including Plaintiff Vivid
9 Entertainment, LLC, a true and correct copy of which is attached as Exhibit 1 to
10 the Declaration of Matthew D. Peterson.

11 Federal Rule of Evidence 201(b) authorizes this Court to take judicial notice of
12 any fact that is “not subject to reasonable dispute in that it is ... capable of accurate
13 and ready determination by resort to sources whose accuracy cannot reasonably be
14 questioned.” In ruling on a Rule 12(c) motion, this Court may consider not only the
15 complaint and answer, but also matters subject to judicial notice without converting
16 the motion to one for summary judgment. *See e.g. Taylor v. San Bernardino County*
17 *Deputy Sheriffs*, 2012 WL 6878887, at *4 (C.D. Cal. Nov. 29, 2012) (*citing L-7*
18 *Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011); *MGIC Indem.*
19 *Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986)).

20 Requests to take judicial notice of government documents generally are
21 granted. *See, e.g., Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375
22 F.3d 861, 866 n. 1 (9th Cir. 2004) (taking judicial notice of agreements to which a
23 state entity was a party); *Transmission Agency of N. Cal. v. Sierra Pac. Power Co.*,
24 295 F.3d 918, 924 n. 3 (9th Cir.2002) (taking judicial notice of order from a federal
25 agency); *Serrano v. World Saving Bank*, 2011 WL 1668631, at *2 (N.D. Cal. May
26 3, 2011) (government documents not subject to reasonable dispute and so judicially
27 noticeable); *Lopez v. Wachovia Mortg.*, 2010 WL 2836823, at *2 (N.D. Cal. July 19,
28 2010) (same). *See also Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir.

1 1999), *overruled in part on other grounds, Swierkiewicz v. Sorema N.A.*, 534 U.S.
2 506, 508-14 (2002) (public records and government documents are generally con-
3 sidered “not to be subject to reasonable dispute”); *United States ex rel. Dingle v.*
4 *BioPort Corp.*, 270 F.Supp.2d 968, 972 (W.D. Mich. 2003) (same).

5 This Court may also consider materials on which the Plaintiffs’ complaint
6 necessarily relies, even if not attached to the complaint. *In re Silicon Graphics*
7 *Securities Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (under federal rules, court
8 may consider documents “whose contents are alleged in the complaint and whose
9 authenticity no party questions” even where plaintiff does not attach the documents
10 to the complaint).

11 Consequently, Plaintiffs respectfully request that this Court take judicial notice
12 of Exhibit 1 to the Peterson Declaration, which is a government document, and the
13 contents of which are alleged in the Complaint. See Complaint ¶ 66 (Docket No. 1).

14 DATED: April 5, 2013

LIPSITZ GREEN SCIME CAMBRIA LLP
PAUL J. CAMBRIA, JR.

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21 By: Matthew D. Peterson /S/
22 Matthew D. Peterson

23 Attorneys for Plaintiffs
24 VIVID ENTERTAINMENT, LLC;
25 CALIFA PRODUCTIONS, INC.;
26 JANE DOE a/k/a Kayden Kross; and
27 JOHN DOE a/k/a Logan Pierce
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DECLARATION

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DECLARATION OF MATTHEW D. PETERSON

I, Matthew D. Peterson, declare:

1. I am a lawyer admitted to practice before all courts in the State of California and before this Court. I am an attorney at the law firm of Davis Wright Tremaine LLP and represent Plaintiffs Vivid Entertainment, LLC; Califa Productions, Inc.; Jane Doe aka Kayden Kross; and John Doe aka Logan Pierce in this action. The matters stated herein are true of my own personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of a letter issued by the County of Los Angeles Department of Public Health, via its director Jonathan E. Fielding, on December 14, 2012, directed to "Producers of Adult Films in Los Angeles County," including Plaintiff Vivid Entertainment, LLC.

This declaration was executed on April 5, 2013, at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Matthew D. Peterson /S/
Matthew D. Peterson

EXHIBIT 1



JONATHAN E. FIELDING, M.D., M.P.H.
Director and Health Officer

CYNTHIA HARDING, M.P.H.
Chief Deputy Director

313 North Figueroa Street, Room 806
Los Angeles, California 90012
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December 14, 2012

TO: PRODUCERS OF ADULT FILMS IN LOS ANGELES COUNTY

In order to minimize the spread of HIV and other sexually transmitted infections resulting from the production of adult films in the County of Los Angeles, the people of Los Angeles County enacted an ordinance to improve the safety of workers in the Adult Film Industry (AFI). Measure B requires all adult film producers filming in unincorporated county areas or in any city that has adopted Los Angeles County Health and Safety Code, Title 39, to obtain an Adult Film Production Public Health Permit.

This ordinance, titled the "Safer Sex in the Adult Film Industry Act," became effective December 14, 2012 and regulates film production in all of the unincorporated areas of Los Angeles County and in those cities within the county's boundaries that adopt it. During the first twelve months following the effective date, the Los Angeles County Department of Public Health (DPH) may issue Conditional Adult Film Public Health Permits to producers of adult films. Upon issuance, the conditions to which such producers must comply include: (a) Within six months, provide proof of successful completion of a blood borne pathogen training course specific to the adult film industry and approved by the Department for the individual owner or all company principals and management level employees, including but not limited to all film directors; (b) within six months, submit and receive Departmental approval for an Exposure Control Plan that meets all requirements of the California Code of Regulations, Title 8, Sections 3203 and 5193, identifying how the employees' risk of exposure to blood or other potentially infectious material will be minimized; (c) require the use of condoms for any acts of vaginal or anal sexual intercourse in compliance with existing law (Los Angeles County Code, Title 11, Section 11.39.110A); and (d) display of the Public Health Permit in an area visible to performers at all times at the location where an adult film is being filmed.

The Act further authorizes DPH to take appropriate measures to enforce the Act, and conditions any film permit issued by the County for the production of an adult film on the use of condoms and other safety precautions.

Within the next 90 days, an ordinance will be filed for approval by the County's Board of Supervisors establishing the final fee for the public health permit required by Title 11, Chapter 39 of the Los Angeles County Health and Safety Code. Until that time, a provisional fee ranging from \$2,000 to \$2,500 per year has been established and will be billed on an annual basis.

If you have any questions regarding this ordinance and its regulations, please contact Los Angeles County Department of Public Health, at 877-777-6006.

Sincerely,

Jonathan E. Fielding, M.D., M.P.H.
Director and Health Officer