

UNITED STATES DISTRICT COURT

for the
District of Utah

1.800.Vending, Inc. a Utah corporation

Plaintiff

v.

Chris Wyland, an individual et al.

Defendant

Civil Action No. 1:14-cv-00121-CW

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

To: Sean P. Kelly, Publisher-UnhappyFranchisee.com c/o Relentless, Inc. 266 W. Main Str., Leola, PA 17540 OR 2221 New Holland Pike, Lancaster, PA 17601

(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 Exhibit "A" hereto.

Place: Buchanan Ingersoll & Rooney PC Two Liberty Place 50 S. 16th Street, Suite 3200 Philadelphia, PA-19102-2555-Att: Howard-Sher/Cheri-Pearce
Date and Time: 9am on Monday, February 23, 2015

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: 2/2/15

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

S. L. Hiatt

The name, address, e-mail address, and telephone number of the attorney representing (name of party) 1.800 Vending, Inc.

, who issues or requests this subpoena, are:

Ian Hiatt, Burbidge Mitchell & Gross, 215 S. State Str., Ste 920, Salt Lake City, UT 84111 (801)355-6677 ihiatt@bmgtrial.com

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. _____

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.

Exhibit A

EXHIBIT A

Please produce the following:

1. Any and all records related to the Internet web poster who posted on UnhappyFranchisee.com on June 17, 2011 under the name "Emily", including but not limited to any and all identifying information, IP address, username, and registration information of web poster. Please see the following web post comment for your reference:

Wow, I am so glad I found this – I will not be doing business with this company! I too have found some of the legitimate complaints while searching for consumer reviews of this company and I'm not confident in getting involved with them at all. Thank you for the additional background information! You have saved me, and likely others a huge headache!

2. Any and all records related to the Internet web poster who posted on UnhappyFranchisee.com on May 1, 2013 under the name "Eleanor" including but not limited to any and all identifying information, IP address, username, and registration information of web poster. Please see the following web post comment for your reference:

Hello All,

The company I work for recently ordered one of these machines and we possibly had the worst customer service ever. Though polite on the phone their services are horrific. We were told by the company to check the machine, but their delivery service wouldn't let us. The delivery services started screaming and shouting instantly making it a huge deal, I then rang customer service saying we was in our rights to up pack to inspect the machine. It became this horrific fight between bosses and it was disgraceful immature and unprofessional behavior. I would not expect one of our 4 year old students to act in such a manner.

My advice is go else where! We have complained on several occasions and no one on the phone could resolve anything or give us any answers. Absolutely ridiculous. What is customer help there for if they cannot help?

3. Any and all records related to the Internet web poster who posted on UnhappyFranchisee.com on October 11, 2012 under the name "Lynn," including but not limited to any and all identifying information, IP address, username, and registration information of web poster. Please see the following web post comment for your reference:

There has to be something we can if we join forces. Who is interested in holding these creeps accountable?!

4. Any and all records related to the Internet web poster who posted on UnhappyFranchisee.com on January 17, 2014 under the name "Thomas", including but not limited to any and all identifying information, IP address, username, and registration information of web poster. Please see the following web post comment for your reference:

I bought 2 1800vending machines about 2 years ago and boy was that a mistake. About one month after receiving the machines, I placed my 1st machine in it's location. On the very 1st day after about an hour of setting it up, the lock broke on the snack section. Since there was no one around that I could trust, I had to leave the machine unlocked and run to the nearest hardware store. I spent about \$250 to purchase a drill, latch, padlock, and screws just so I could lock the machine and I could not get help from tech support because of the time difference. And this was just the beginning!!! on the very 1st day!!! A week later, the lock on the drink section of the same machine broke too, and since I didn't have any tools with me, off I went again to the hardware store to spend another \$250...and this is still the 1st week!!! In the months to follow, I've experienced everything from malfunctioning motors, dying circuit boards, drinks being incorrectly dispensed (example: you select B1 which is a coke & B4 which is Red Bull dispenses), to calling tech support dozens of times, only getting their voice recording, but not being able to even leave a message because their mailbox is full. This went on for months and years and I've finally given up hope that these machines are even worth my time. My best advice to anyone who has these machines and are having similar issues is to file a complaint with the Better Business Bureau. They will follow up and require a response from 1800vending. This was the only way I got the company to provide any kind of decent customer service, but since the machines suck, you will continually have problems!! If you are trying to decide what machines to buy, don't buy 1800vending machines!! Every other machine has got to be a better choice!!

5. Any and all records related to the Internet web poster who posted on UnhappyFranchisee.com on August 19, 2014 under the name "MW," including but not limited to any and all identifying information, IP address, username, and registration information of web poster. Please see the following web post comment for your reference:

I bought my HealthyYOU machines in May of 2013. So optimistic when I starte out as was the other 30 or so folks in my group at the HealthyYOU University. Everything to do with this company is a terrible experience. The folks I have read here have it right, they seem really nice and genuine (do they get training how to do that??) but in reality they are wolves in sheep's clothing. From the beginning delivery 'til today, August 19, 2014, these machines have been nothing but a nightmare. Loose screws in the bottom of the machines, shims that fall out constantly, back gates that are near impossible to get in correctly, motors & switches that don't work, circuit boards & wiring harnesses go bad /blow up, misvend after misvend after misvend and customers who quit buying because they have lost faith in the machines. I don't honestly know how those folks at 1-800-VENDING sleep at night.

The reason I went with them in the first place was this wonderful 7-year warranty thwy were able to offer because these machines are wonderful, state-of-the-art, quality built machines. They really need called on this because this warranty is nothing more than a 1 year warranty hidden in deceptive language, not to mention that YOU are the one that does all the diagnosing and repair. When I needed the warranty, 2 weeks out of the 12 months, I was quoted prices ("1/2 price", mind you) that were 5x as much as I could find the parts online myself.

I notice that others mention getting together, "reaching out" and "joining forces" but no one replies to these...is there not a way we can get a group together for perhaps a class action lawsuit or such???

If nothing else, I want to make sure that no one else loses their life savings, etc. If I can prevent one person from falling for their BS this post will be worth it.

As others have said, RUN, RUN, RUN from this company and DO NOT look back! company. If their advice worked, I wouldn't care, but since the opposite is the case, it's another question I have wondered about.

Every time this machine requires servicing, it costs me about 3 hours of travel and service time and \$15-20 in gas. When you are making your profit a quarter at a time, this really hurts.

All I ask from 1-800 Vending was a machine that worked. Instead, I have a \$4000 investment which has been an ongoing money pit almost from day one. Vending can be a good business, but I can't recommend this company based on my experience.

6. Any and all records identifying any and all posts and/or comments posted from IP address 50.137.171.187 in the last five (5) years.