log & file

Sue Feldmann

Sue Feldmann From: Friday, April 15, 2016 9:34 AM Sent: Nathan Barankin To: Cc: Rowena Aquino; Kelly Sloan; Victoria Sawyer FW: Case No. 3:15-cv-3522 - NAF v. The Center for Medical Progress Biomax Subject: Procurement Services, David Daleiden, and Troy Newman NAF - Letter to K. Harris re Confidential Materials.pdf

Attachments:

Attached is a letter dated 4-15-16 from Morrison/Foerster regarding video files seized by DOJ on April 6, 2016 from David Daleiden. I am forwarding this email to the CDAG office for review/handling.

From: Bento, Christine [mailto:CBento@mofo.com]

Sent: Thursday, April 14, 2016 5:08 PM

To: Kamala Harris

Cc: Victoria Terry; Foran, Derek F.

Subject: Case No. 3:15-cv-3522 - NAF v. The Center for Medical Progress Biomax Procurement Services, David Daleiden, and Troy Newman

SENT ON BEHALF OF DEREK FORAN

Dear Madam Attorney General Harris: In connection with the above referenced case please find the attached correspondence sent on behalf of Mr. Derek Foran.

Original to follow via express mail.

Respectfully submitted.

Christine Bento

Legal Secretary to Derek Foran, Todd Edmister and Dustin Elliott Morrison & Foerster LLP 425 Market St. | San Francisco, CA 94105 P: +1 (415) 268.6730 CBento@mofo.com | www.mofo.com

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#16-0514

Kelly Sloan

From:		Bento, Christine <cbento@mofo.com></cbento@mofo.com>	
Sent:		Thursday, April 14, 2016 5:08 PM	
To:		Kamala Harris	
Cc:	crim	Victoria Terry; Foran, Derek F.	
Subject:	Leganalist	Case No. 3:15-cv-3522 ~ NAF v. The Center for Medical Progress Biomax Procurement	
•	ACT and all	Services, David Daleiden, and Troy Newman	
Attachments:		NAF - Letter to K. Harris re Confidential Materials.pdf	

SENT ON BEHALF OF DEREK FORAN

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> APR REC'D ATTORNEY CENENAL Executive Office

Writer's Direct Contact +1 (415) 268.6323 DForan@mofo.com

Via Email & Express Mail

April 15, 2016

Ms. Kamala Harris Office of the Attorney General State of California 455 Golden Gate Ave, Suite 11000 San Francisco, CA 94102-7004

Re: Video Files Seized from David Daleiden on April 6, 2016, Protected from Disclosure by a Federal Preliminary Injunction and Protective Order

Dear Ms. Harris:

I am outside litigation counsel for the National Abortion Federation ("NAF") in the matter NAF v. The Center for Medical Progress Biomax Procurement Services, David Daleiden, and Troy Newman, Case No. 3:15-cv-3522, currently pending in the Northern District of California. Based on published media reports, I understand that the Office of the Attorney General seized video footage in the possession of David Daleiden during the execution of a search warrant of Mr. Daleiden's premises on April 6, 2016, I further understand that among the material seized was video footage that Mr. Daleiden illegally obtained by surreptitiously recording NAF members and meeting attendees at NAF's annual medical conferences.

I am writing to inform you that the NAF video footage seized by the Office of the Attorney General is currently protected from disclosure by a Federal Preliminary Injunction. I have attached a copy of the Federal Preliminary Injunction for your convenience.

Given the high sensitivity of this material, we respectfully urge restraint in your Office's handling of the NAF video footage. The federal district court has already found that in illegally recording NAF's members, the defendants assumed false identities, created a fake company, and entered into confidentiality agreements – agreements designed to protect NAF members – that they unquestionably breached. The federal court has also found that the disclosure of these materials would cause irreparable injury to NAF and its members, including harassment and death threats leveled at the individuals who were surreptitionably taped. As has been widely reported, NAF members have suffered an onslaught of /2

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Kamala Harris April 15, 2016 Page Two

intimidation and harassment in the wake of CMP's videotaping campaign, culminating in the brutal and tragic murder of three individuals at a NAF member clinic in Colorado, a clinic that CMP prominently featured in its early videos. The Federal Preliminary Injunction is designed to protect NAF's members from any further instances of extreme harassment and violence of the type that has been perpetrated against them thus far in the wake of CMP's campaign.

Separately, the NAF video footage has been designated confidential under the federal court's Protective Order, a copy of which is also enclosed for your convenience.

Thank you for your professional courtesy and cooperation in this matter. We have no doubt that you will treat this matter with the utmost sensitivity in light of the circumstances. If you have any questions, please do not hesitate to reach out to me directly.

Sincerely,

Derek F. Foran

Enclosures

sf-3644279

cc: Victoria Terry (via email)

	Case3:15-cv-03522-WHO Document92	-iled08/26/15 Page1 of 28
1 2	LINDA E. SHOSTAK (CA SBN 64599) LShostak@mofo.com DEREK F. FORAN (CA SBN 224569) DEoran@mofo.com	•
3	DForan@mofo.com CHRISTOPHER L. ROBINSON (CA SBN 260778	3)
4	ChristopherRobinson@mofo.com MORRISON & FOERSTER LLP	
5	425 Market Street San Francisco, California 94105-2482	
6	Telephone: 415.268.7000 Facsimile: 415.268.7522	
7	Attorneys for Plaintiff	
8	NATIONAL ABORTION FEDERATION (NAF)	
9		
10	UNITED STATES DI	STRICT COURT
11	NORTHERN DISTRICT	OF CALIFORNIA
12		
13	NATIONAL ABORTION FEDERATION (NAF),	Case No. 3:15-cv-3522-WHO
14	Plaintiff,	Hon. William H. Orrick, III
15	v .	STIPULATED PROTECTIVE
16	THE CENTER FOR MEDICAL PROGRESS,	ORDER FOR PURPOSES OF EXPEDITED PRELIMINARY
17	BIOMAX PROCUREMENT SERVICES LLC, DAVID DALEIDEN (aka "ROBERT SARKIS"),	INJUNCTION DISCOVERY
	and TROY NEWMAN,	Data Action Filade Inter 21,0015
18	Defendants.	Date Action Filed: July 31, 2015 Trial Date:
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	STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY	
	CASE NO. 3:15-CV-3522-WHO sf-3563261	

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1. PURPOSES AND LIMITATIONS

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1.1 Plaintiff National Abortion Federation ("NAF") and Defendants the Center for Medical Progress, Biomax Procurement Services, LLC, David Daleiden (aka "Robert Sarkis") and Troy Newman (collectively, "Defendants") submit that disclosure and discovery in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation is warranted. Accordingly, the Parties hereby stipulate to and petition the court to enter the following stipulated protective order for the purposes of expedited preliminary injunction discovery (this "Stipulation and Order"). The Parties acknowledge that this Stipulation and Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the information or items that are entitled under the applicable legal principles to treatment as confidential.

1.2 This Protective Order shall not be construed to preclude the named parties and client representatives from attending depositions taken in this Action.

2. <u>DEFINITIONS</u>

2.1 "<u>Action</u>" means the above-captioned action, presently pending in the United States District Court for the Northern District of California.

2.2 <u>Party</u>: Any party to this Action; including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.3 <u>Non-Party</u>: Any person, not a Party, who serves as a witness or provides Disclosure or Discovery Material in this Action.

2.4 <u>Disclosure or Discovery Material</u>: All items or information, regardless of the medium or the manner in which it is generated, stored or maintained (including, among other things, testimony, transcripts, or tangible things), that is produced or generated in disclosures or responses to discovery in this Action.

2.5 <u>"CONFIDENTIAL" Information or Items</u>: Disclosure or Discovery Material that is non-public and that a Party or Non-Party in good faith believes must be held

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confidential to protect personal privacy interests, confidential, proprietary, and/or commercially sensitive information, or otherwise has a compelling need for privacy.

2.6 <u>"HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"</u> <u>Information or Items</u>: Disclosure or Discovery Material that is extremely confidential and/or sensitive in nature, including highly sensitive personal privacy information, disclosure of which to another Party or Non-Party the Producing Party reasonably believes is likely to cause a substantial risk of serious injury that could not be avoided by less restrictive means. This includes all NAF Personal Identification Information as defined in paragraph 2.11 below.

2.7 <u>Receiving Party</u>: A Party that receives Disclosure or Discovery Material provided, produced or made available for inspection by a Producing Party.

2.8 <u>Producing Party</u>: A Party or Non-Party that provides, produces or makes available for inspection Disclosure or Discovery Material in the course of this Action.

2.9 <u>Designating Party</u>: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY.

2.10 <u>Protected Material</u>: Any Disclosure or Discovery Material that is designated as or deemed to be CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY.

2.11 <u>NAF Personal Identification Information</u>: Any Disclosure or Discovery Material that NAF produces or discloses may contain information related to NAF that reveals private identifying information. Given the highly sensitive nature of this Action and the privacy interests involved, such information is defined broadly to include:

(a) Names of NAF staff, NAF members, and any attendees or other participants of any NAF Annual Meeting;

(b) Security code words used by NAF;

(c) All photos, videos or audio recordings of NAF staff, NAF

members, and any attendees or other participants of any NAF Annual Meeting;

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1 Social-security numbers of NAF staff, NAF members, and any (d) 2 attendees or participants at any NAF Annual Meeting; 3 (e) Taxpayer-identification numbers of NAF, NAF staff, NAF 4 members, and any attendees or participants at any NAF Annual Meeting: 5 (f) Any financial account numbers of NAF, NAF staff, NAF members, 6 and any attendees or participants at any NAF Annual Meeting; 7 Birthdates of NAF staff, NAF members, and any attendees or (g) 8 participants at any NAF Annual Meeting: 9 Direct telephone numbers of NAF staff, NAF members, and any (h) 10 attendees or participants at any NAF Annual Meeting; 11 Drivers' License numbers of NAF staff, NAF members, and any (i) .12 attendees or participants at any NAF Annual Meeting; 13 Addresses of NAF staff, NAF members, and any attendees or (i) 14 participants at any NAF Annual Meeting; and 15 Email addresses of NAF staff, NAF members, and any attendees or (k) 16 participants at any NAF Annual Meeting. 17 2.12 Outside Counsel: Attorneys who are not employees of a Party but who are 18 employed at law firms that appear on the pleadings as counsel for a Party in this Action and who 19 have been admitted to practice before the United States District Court of the Northern District of 20 California in this Action (including by pro hac vice admission). 21 In-House Counsel: Attorneys who are employees of a Party who have 2.1·3 22 signed the "General Acknowledgment of Confidentiality and Agreement to Be Bound by 23 Protective Order" that is attached hereto as Exhibit A-1, 24 Non-Party Counsel: Attorneys who represent a Non-Party and who have 2.1425 signed the "General Acknowledgment of Confidentiality and Agreement to be Bound by 26 Protective Order" that is attached hereto as Exhibit A-1. 27 28 STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY 3 CASE NO. 3:15-CV-3522-WHO sf-3563261

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2.15 <u>Counsel</u> (without qualifier): Outside Counsel and In-House Counsel (as well as their support staffs).

2.16 <u>Expert</u>: a person who has been retained by a Party or its Outside Counsel to serve as a testifying or non-testifying expert or consultant in this Action. This definition includes any professional jury or trial consultant retained in connection with this Action but does not include mock jurors.

2.17 <u>Professional Vendors</u>: Persons or entities that provide litigation support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. <u>SCOPE</u>

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The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

After the termination of this Action, the confidentiality obligations imposed by this Stipulation and Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order otherwise directs.

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5. DESIGNATING PROTECTED MATERIAL

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Procedures for Designating Material for Protection: Any Party to this 5.1 2 Action, or any Non-Party who produces Disclosure or Discovery Material, shall have the right to 3 designate as CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY 4 any Protected Material it produces. All Protected Material shall bear a legend on each page 5 stating that the material is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ----6

ATTORNEYS' EYES ONLY." Materials designated as or deemed to be CONFIDENTIAL or 7 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY consistent with this Stipulation and Protective Order are subject to the provisions of this Stipulation and Protective Order and shall be protected, used, handled and disposed of in accordance with the provisions of this Stipulation and Protective Order.

Each Party or Non-Party that designates information or items for protection under this 12 Order must take care to limit any such designation to specific material that qualifies under the 13 appropriate standards set forth herein. A Designating Party must take care to designate for 14 protection only those materials, documents, items, or oral or written communications that so 15 qualify. 16

Manner and Timing of Designations: Except as otherwise provided in this 5.2 17 Stipulation and Protective Order (see, e.g., second paragraph of 5.2(a), below) or as otherwise 18 stipulated or ordered, material that qualifies for protection under this Stipulation and Protective 19 Order must be clearly designated as such before the material is disclosed or produced. 20 Designation in conformity with this Stipulation and Protective Order requires: 21

. (a) For Information in Documentary Form (apart from transcripts of 22 depositions or other pretrial proceedings): That the Producing Party affix the legend 23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each 24 page that contains Protected Material. In order to speed up the process of producing large 25 volumes of Protected Material, multi-page documents in which Protected Material is pervasive 26 may be marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES. 27 ONLY" throughout. Where it is not possible to affix a legend to particular Protected Material. 28 STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY CASE NO. 3:15-CV-3522-WHO

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the Producing Party shall take reasonable steps to give all Receiving Parties notice of the Protected Material's status as such. Except as otherwise agreed, within 45 days after receipt of Disclosure or Discovery Material, any Receiving Party may designate the material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") on each page that contains Protected Material, except that multipage documents may be designated in accordance with the preceding paragraph.

(b) For Testimony Given in Deposition or in Other Pretrial Proceedings: Any Party or Non-Party offering or sponsoring the testimony may identify on the record, before the close of the deposition, hearing or other proceeding, all protected testimony and may further specify any portions of the testimony that qualify as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Alternatively, within thirty (30) days of receipt of a transcript or recording of a deposition or other pretrial proceeding, the offering or sponsoring Party or Non-Party may designate such transcript or recording or any portion thereof as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" by notifying all Parties, in writing, of the specific pages and lines of the transcript or recording that should be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." All transcripts or recordings of depositions or other pretrial proceedings shall be treated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES only" for thirty (30) days after receipt of the transcript or recording, or until written notice of a designation

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is received, whichever occurs first. In the case of a Non-Party, testimony can be designated as containing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information by a Party, the Non-Party or upon agreement of the Parties.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" as instructed by the Party or Non-Party offering or sponsoring the witness or presenting the testimony.

In the event the deposition is videotaped, the original and all copies of the videotape shall be marked by the video technician to indicate that the contents of the videotape are subject to this Stipulation and Protective Order, substantially along the lines of "This videotape contains confidential testimony used in this case and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to the terms of the operative Stipulation and Protective Order in this Action or pursuant to written stipulation of the parties."

Except as stated in Section 1.2 above, counsel for any Producing Party shall have the right to exclude from oral depositions, other than the deponent, deponent's counsel, the reporter and videographer (if any), any person who is not authorized by this Stipulation and Protective Order to receive or access Protected Material based on the designation of such Protected Material. Such right of exclusion shall be applicable only during periods of examination or testimony regarding such Protected Material.

(c) For Information Produced in A Form Other than Documentary, and for Any Other Tangible Items: The Producing Party shall affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

(d) For Inspection of Things or Premises: The Producing Party shall
 state in writing prior to the inspection that "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY" information or material will be revealed.

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5.3 Upward Designation of Information or Items Produced by Other Parties or Non-Parties. A Party may upward designate (i.e., change any documents or other material produced without a designation to a designation of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," or change any Protected Material produced as "CONFIDENTIAL" to a designation of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY,") any Disclosure or Discovery Material produced by any other Party or Non-Party. provided that said Disclosure or Discovery Material contains the upward designating Party's own CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY information. or otherwise is entitled to protective treatment under Fed. R. Civ. P. 26(c). Upward designation shall be accomplished by providing written notice to all Parties identifying (by Bates number or other individually identifiable information) the Disclosure or Discovery Material to be redesignated within sixty (60) days of production by the Producing Party. Failure to upward designate within sixty (60) days of production, alone, will not prevent a Party from obtaining the agreement of all Parties to upward designate certain Disclosure or Discovery Material or from moving the Court for such relief. Any Party may object to the upward designation of Disclosure or Discovery Material pursuant to the procedures set forth herein regarding challenging designations.

5.4 <u>Inadvertent Failures to Designate and Redesignation</u>: A Producing Party that inadvertently fails to designate Disclosure or Discovery Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to this Stipulation and Protective Order at the time of its production shall be able to make a correction to its designation, with the Receiving Party reserving the right to assert such re-designation is improper pursuant to the procedures set forth herein regarding challenging designations. Such failure shall be corrected by providing to the Receiving Party written notice of the error and substituted copies of the inadvertently unmarked or mis-marked Disclosure or Discovery Materials. Any party receiving such inadvertently unmarked or mis-marked Disclosure or Discovery Materials shall, within five (5) days of receipt of the substitute copies, destroy or return to the law firm

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representing the Producing Party all copies of such mis-designated documents. The Producing Party shall comply with Paragraph 5.2 when redesignating Disclosure or Discovery Material as Protected Material. Following any redesignation of Disclosure or Discovery Material as Protected Material (or redesignation of "CONFIDENTIAL" material as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"), the Party receiving such Protected Material shall take reasonable steps to comply with the redesignation, including, without limitation, retrieving all copies and excerpts of any redesignated Protected Material from persons not entitled to receive it as re-designated.

A Receiving Party shall not be in breach of this Stipulation and Protective Order for any use of such inadvertently-non-designated or inadvertently-mis-designated material before the Receiving Party receives notice of the inadvertent failure to designate, unless a reasonable person would have realized that the material should have been appropriately designated with a confidentiality designation under this Stipulation and Protective Order. Once a Receiving Party has received notice of the inadvertent failure to designate pursuant to this provision, the Receiving Party shall treat such material at the appropriately designated level pursuant to the terms of this Stipulation and Protective Order, reserving all rights to assert that such redesignation is not proper under the procedures set forth herein regarding challenging designations.

6.- REDACTING NAF PERSONAL IDENTIFICATION INFORMATION In addition to designating Disclosure or Discovery material containing NAF Personal Identification Information as defined in paragraph 2.11 above as "HIGHLY CONFIDENTIAL. – ATTORNEYS' EYES ONLY" in accordance with this Stipulation and Order, NAF may redact all NAF Personal Identification Information from all Disclosure and Discovery material it produces for the purposes of Expedited Preliminary Injunction Discovery. The redaction of NAF Personal Identification Information will be done in such a way that those persons will be anonymously identified in a consistent, recognizable manner (*e.g.*, Person #1, Person #2, etc.; or Security Code), and NAF will disclose to Outside Counsel the identity of any witnesses who have

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been noticed for deposition and whose NAF Personal Identification Information has been redacted in accordance with this provision.

7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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7.1 <u>Timing of Challenges</u>: The Receiving Party must challenge the Designating Party's designations within ninety (90) days of receipt of the challenged information.

7.2 <u>Meet and Confer</u>: A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must identify the specific Bates (or other individually identifiable) range(s) for the challenged document(s), explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party a reasonable opportunity (not to exceed 3 business days) to review the designated material, reconsider the circumstances and, if no change in designation is offered, explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has first engaged in this meet-and-confer process.

7.3 <u>Judicial Intervention</u>: A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party pursuant to the preceding paragraph may prepare in accordance with the Court's Standing Order a concise joint statement of five pages or less, stating the nature and status of the dispute, and certifying that the Parties have met the meet-and-confer requirement (or if a joint statement is not possible, each side may submit a brief individual statement of two pages or less, including a certification of compliance with the meet-and-confer requirement and an explanation of why a joint statement was not possible).

Nothing in this Stipulation and Protective Order shall preclude or prejudice any Party from arguing for or against any designation, establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information. Until the Court rules on the challenge, all Parties shall

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continue to afford the material in question the level of protection to which it is entitled under the Designating Party's designation.

8. ACCESS TO AND USE OF PROTECTED MATERIAL

Basic Principles: A Receiving Party may use Protected Material that is 8.1 disclosed or produced by another Party or by a Non-Party in connection with this Action only for this case or any related appellate proceeding. A Receiving Party may not use Protected Material for any other purpose, including, without limitation, any other litigation or any business, personal, or political endeavor. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order and may not be disclosed to any other person, entity, or to the media. In the event of a dispute regarding whether a proposed disclosure is "reasonably necessary for this Action," the Parties shall meet and confer in good faith on an expedited basis, and shall promptly raise any dispute that cannot be resolved through the meet and confer process on an expedited basis in accordance with the joint statement procedures outlined in Section 7.3; or, alternatively, the Parties may seek resolution of their dispute through a more expedited dispute-resolution mechanism that is acceptable to the Court as needed due to the time-sensitivity of the dispute at issue (e.g., a telephone conference with the Court during a deposition). For purposes of this Stipulation and Protective Order, and specifically as utilized in this paragraph, "disclosed" or "disclose" shall mean any physical or electronic showing of the Protected Materials to any person, including communication in any form of the contents (in whole or in part) or existence of the Protected Materials. When this Action has been terminated, a Receiving Party must comply with the provision's of Paragraph.12 below (FINAL DISPOSITION).

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Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner ensuring that access is limited to the persons authorized under this Order.

8.2 <u>Disclosure of "CONFIDENTIAL" Information or Items</u>: Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

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The Receiving Party's Outside Counsel and such Outside Counsel's (a) immediate paralegals and staff, and any copying or clerical litigation support services working at the direction of such counsel, paralegals, and staff, to whom it is reasonably necessary to disclose the information for this Action;

the former and current officers, directors, and employees (including (b) In-House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A-1;

a Non-Party and Non-Party's Counsel who have (1) signed the (c) "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A-1 and (2) to whom disclosure is reasonably necessary for this 12 Action:

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any insurer or indemnitor of any defendant in this Action; the Court and any mediators or arbitrators and their respective

mock jurors, subject to the provisions of Paragraphs 8.6 and 8.7

any other person with the prior written consent of the Designating

personnel:

court reporters, their staffs, and professional vendors to whom (f) disclosure is reasonably necessary for this Action and who have signed the "General" Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is

below; and

attached hereto as Exhibit A-1;

(h) experts, subject to the provisions of Section 8.6 below;

(i) the author(s) and recipient(s) of the "CONFIDENTIAL" Material 24 who have signed the "General Acknowledgment of Confidentiality and Agreement to Be Bound 25 by Protective Order" that is attached hereto as Exhibit A-1; 26

.27 Party.

> STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY CASE NO. 3:15-CV-3522-WHO sf-3563261

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8.3 <u>Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES</u> <u>ONLY" Information or Items</u>: Unless otherwise ordered by the Court or permitted in writing by the Designating Party, any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" may be disclosed only to:

(a) In-House Counsel of a Party to whom disclosure is reasonably
 necessary for this Action and who have been admitted to practice before the United States District
 Court of the Northern District of California in this Action or who have signed the "General
 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is
 attached hereto as Exhibit A-1;

(b) A Party's Outside Counsel of record in this Action and such Outside Counsel's immediate paralegals and staff, and any copying or clerical litigation support services working at the direction of such counsel, paralegals, and staff, to whom it is reasonably necessary to disclose the information for this Action;

(c) a Non-Party and Non-Party's Counsel who have (1) signed the "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A-1 and (2) to whom disclosure is reasonably necessary for this Action:

(d) experts, subject to the provisions of Section 8.6 below;

personnel;

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(f) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this Action and who have signed the "General"

the Court, and any mediators or arbitrators, and their respective

Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A-1; and

(g) the author(s) and recipient(s) of the "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Material who have signed the "General Acknowledgment of

STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY CASE NO. 3:15-CY-3522-WHO sf-3563261

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Confidentiality and Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A-1.

8.4 General Procedure for Disclosure of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:

(a) Before any information or item designated "CONFIDENTIAL," or substance or summary thereof, shall be disclosed to the persons or entities identified in subparagraphs (b), (c), (d), (f), (g), (h), (i), and (j) of paragraph 8.2 above, the Parties are hereby ordered to tender a copy of this Stipulation and Protective Order to each such person and witness in order that each such entity or person to whom such disclosure of "CONFIDENTIAL" information or item is made shall be on notice and fully informed that the existence and substance of the Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her. Before any information or item designated "CONFIDENTIAL," or substance or summary thereof, is disclosed to any such person, each such person shall sign and abide by the terms of the General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order, attached hereto as Exhibit A-1, The person to whom the "CONFIDENTIAL" information or item is disclosed shall not give, show, or otherwise divulge any of the "CONFIDENTIAL" information or item to any entity or person except as specifically provided for by this Stipulation and Protective Order.

(b) Before any information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY;" or substance or summary thereof, shall be disclosed to the persons or entities identified in sub-paragraphs (a), (c), (d), (f), and (g) of paragraph 8.3 above, the Parties are hereby ordered to tender a copy of this Stipulation and Protective Order to each such person and witness in order that each such entity or person to whom such disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information or item is made shall be on notice and fully informed that the existence and substance of the Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her. Before any information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES

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ONLY," or substance or summary thereof, is disclosed to any such person, each such person shall sign and abide by the terms of the General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order, attached hereto as Exhibit A-1. The person to whom the "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information or item is disclosed shall not give, show, or otherwise divulge any of the "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY" information to any entity or person except as specifically provided for by this Stipulation, and Protective Order.

Procedure for Disclosure of "CONFIDENTIAL." Information or Items to 8.5 Mock Jurors: A Receiving Party may disclose to mock jurors materials prepared by its Outside Counsel that are derived from information or items designated "CONFIDENTIAL" (but not materials that are derived from information or items designated "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY"), so long as the derivative materials do not include the asproduced information itself. Before providing such material to a mock juror, the Receiving Party must, in compliance with Paragraph 8.4(a) above, tender a copy of this Stipulation and Protective Order to each mock juror in order that each person to whom such disclosure is made shall be on notice and fully informed that the existence and substance of the Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her, as well as upon the Parties and their counsel. Before any materials prepared by Outside Counsel that are derived from information or items designated "CONFIDENTIAL" are disclosed to a mock juror, each such person shall sign and abide by the terms of the General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order, attached hereto as Exhibit A-1. The mock juror to whom the material is disclosed shall not give, show, or otherwise divulge any of the information contained therein to any entity or person except as specifically provided for by this Stipulation and Protective Order.

8.6 Procedure for Disclosure of "CONFIDENTIAL" or "HIGHLY

CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information or Items to Experts:

(a) Before any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -

ATTORNEYS' EYES ONLY" information, or substance or summary thereof, shall be disclosed

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to an Expert, the Expert shall sign and abide by the terms of the "Expert/Consultant Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order," attached as Exhibit A-2.

Unless otherwise ordered by the Court or agreed in writing by the (b) Designating Party, a Receiving Party that seeks to disclose to an Expert any information or item that has been designated "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" first must make a written request to the Designating Party that (1) identifies the specific "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information that the Receiving Party seeks to disclose to the Expert; (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches the Expert's fully executed Expert/Consultant Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order (attached hereto as Exhibit A-2); and (4) attaches a copy of the Expert's current resume that identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has provided any professional services during the preceding five years. The Party seeking to disclose "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" material to an Expert shall provide such other information regarding the Expert's professional activities reasonably requested by the Producing Party in order for it to evaluate whether good cause exists to object to the disclosure to the Expert.

(c) A Party that makes a request and provides the information specified in the preceding paragraph may disclose the subject Protected Material to the identified Expert unless, within seven (7) days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(d) A Designating Party that makes a timely written objection must meet and confer with the Party seeking to disclose the information to the Expert (through direct voice-to-voice dialogue) to try to resolve the matter by agreement. If no agreement is reached,

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the Party objecting to the disclosure to the Expert may seek judicial intervention in accordance with the joint statement procedures outlined in Section 7.3.

8.7 The Party's Counsel who discloses "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Material shall be responsible for assuring compliance with the terms of this Stipulation and Protective Order regarding execution of the "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" by persons to whom such Protected Material is disclosed and shall obtain and retain the originals of the "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" executed by qualified recipients of Protected Material (if such execution was required by terms of this Stipulation and Protective Order).

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9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION OR GOVERNMENT INVESTIGATIONS

If a Receiving Party is served with a subpoena, including a Congressional subpoena or other legislative or executive branch subpoena, or an order issued in other litigation, legislative, executive, administrative, or other legal proceedings or investigation that would compel disclosure of any information or items designated in this Action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party in writing (by email, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or Court order.

The Receiving Party must also immediately inform in writing the party who caused the subpoena or order to issue in the other litigation, legislative, executive, administrative, or other legal proceedings or investigation that some or all of the material covered by the subpoena or order is the subject of this Stipulation and Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulation and Protective Order promptly to the party in the other action that caused the subpoena or order to issue.

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The purpose of imposing these duties is to alert the interested parties to the existence of this Stipulation and Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court or tribunal from which the subpoena or order issued. The Designating Party shall bear the burden and expense of seeking protection in that court or tribunal of its Protected Material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court or tribunal or a subpoena issued by a legislative or executive body or agent,

None of the foregoing provisions are intended to limit or supersede the Parties' rights or obligations with respect to any preexisting agreements between the Parties.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected 13 Material to any person or in any circumstance not authorized under this Stipulation and Protective 14 Order, the Receiving Party must immediately: (a) notify the Designating Party in writing of the 15 unauthorized disclosure (by email, if possible) immediately and in no event more than three court 16 days after learning of the disclosure; (b) use its best efforts to retrieve all copies of the Protected 17 Material subject to the unauthorized disclosure; (c) inform the person or persons to whom 18 unauthorized disclosures were made of all the terms of this Order; and (d) request such person or 19 persons to execute the "General Acknowledgment of Confidentiality and Agreement to Be Bound 20 by Protective Order" (Exhibit A-1). Unauthorized or inadvertent disclosure does not change the status of Discovery Material or waive the right to maintain the disclosed document or information 22 as Protected.

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11. <u>INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE</u> PROTECTED MATERIAL

11.1 When a Producing Party gives notice to the Receiving Party or the 25 Receiving Party otherwise becomes aware that certain inadvertently produced material, including 26 any NAF Personal Identification Information, is subject to a claim of privilege or other 27 protection, the Receiving Party must promptly return or destroy the specified information and any 28 STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY · 18 CASE NO. 3:15-CV-3522-WHO sf-3563261

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copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the Court for a determination of the claim. Pursuant to Federal Rule of Evidence 502(d) and (e), the production of privileged or work-product protected documents or information, including electronically stored information, whether inadvertent or not, is not a waiver of the privilege or protection in connection with discovery in this case or any other federal proceeding.

11.2 Additionally, the inadvertent or unintentional disclosure by the Producing Party of Confidential Information—including Disclosure or Discovery Material that contains NAF Personal Identification Information—shall not be deemed a waiver in whole or in part of the Designating Party's claim of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or the same or related subject matter.

12. FILING PROTECTED MATERIAL

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Without written permission from the Designating Party or a Court order secured after appropriate notice to all interested persons, a Party may not file any Protected Material in the public record in this Action. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. A Party who seeks to introduce Protected Material at a hearing, pretrial or other proceeding shall advise the Court at the time of introduction that the information sought to be introduced is protected. If the Party who designated the information as Protected Material requests the protection be continued, the Court will review the information to determine if the information is entitled to continued protection. Prior to disclosure of Protected Material at a hearing, the Producing Party may seek further protections against public disclosure from the Court.

13. FINAL DISPOSITION

13.1 Unless otherwise ordered or agreed in writing by the Producing Party, within 90 days after the final termination of this Action and upon receiving a written request to do so from the Producing Party or Designating Party, each Receiving Party must destroy all Protected Material, return it to the Producing Party, or make the Protected Material available for

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pick-up by the Producing Party. As used in this order, "final termination" shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice, and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable laws.

13.2 As used in this paragraph, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed upon request by the Producing Party, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 90-day deadline that represents that all Protected Material that was returned or destroyed and affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain copies of all pleadings, motion papers, transcripts, legal memoranda, correspondence, and attorney work product (but not document productions), even if such materials contain Protected Material, for archival purposes. Any such copies of pleadings, motion papers, transcripts, legal memoranda, correspondence, and attorney work product that contain or constitute Protected Material remain subject to this Stipulation and Protective Order as set forth in Paragraph 4 (DURATION), above.

14. DISCOVERY FROM EXPERTS OR CONSULTANTS

14.1 Testifying experts shall not be subject to discovery with respect to any draft of his or her report(s) in this case. Draft reports, notes, or outlines for draft reports developed and drafted by the testifying expert and/or his or her staff are also exempt from discovery.

14.2 Discovery of materials provided to testifying experts shall be limited to those materials, facts, consulting expert opinions, and other matters actually relied upon by the testifying expert in forming his or her final report, trial, or deposition testimony or any opinion in

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this case. No discovery can be taken from any non-testifying expert except to the extent that such non-testifying expert has provided information, opinions, or other materials to a testifying expert relied upon by that testifying expert in forming his or her final report(s), trial, and/or deposition testimony or any opinion in this case.

14.3 No conversations or communications between counsel and any testifying or consulting expert will be subject to discovery unless the conversations or communications are relied upon by such experts in formulating opinions that are presented in reports or trial or deposition testimony in this case.

14.4 Materials, communications, and other information exempt from discovery under the foregoing Paragraphs 14.1, 14.2, and 14.3 shall be treated as attorney-work product for the purposes of this litigation and Order.

15. MISCELLANEOUS

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15.1 <u>Right to Further Relief</u>: Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

15.2 <u>Right to Assert Other Objections</u>: By stipulating to the entry of this Protective Order, no Party waives any right it would otherwise have to object to disclosing or producing any information or item on any ground not addressed in this Stipulation and Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulation and Protective Order.

15.3 <u>Computation of Time</u>: The computation of any period of time prescribed or allowed by this Order shall be governed by the provisions for computing time set forth in Federal Rules of Civil Procedure 6.

15.4 <u>Fact of Designation Not Admissible</u>: The fact of designation, or failure to designate, Disclosure or Discovery Materials as CONFIDENTIAL or HIGHLY

CONFIDENTIAL – ATTORNEYS' EYES ONLY pursuant to this Stipulation and Protective Order shall not be admissible for any purpose in a trial on the merits or at any other proceeding other than at a proceeding arising from or related to this Stipulation and Protective Order.

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15.5 <u>Successors</u>: This Order shall be binding upon the Parties hereto, their attorneys, and their successors, executors, heirs, assigns, and employees.

15.6 The provisions of this Stipulation and Protective Order do not apply to any trial proceedings in this Action. The Parties will separately request the Court to enter an Order governing the handling of such materials at trial.

15.7 The Court shall retain jurisdiction to enforce the terms of this Stipulation and Protective Order.

15.8 Nothing in this Stipulation and Order shall alter the requirements for and scope of expert discovery in accordance with Federal Rule of Civil Procedure 26, local rules, and case law.

15.9 The procedures set forth in this Stipulation and Order shall apply to every action that is subject to this proceeding, whether filed in or transferred to this Court for so long as such actions are pending.

STIPULATED AND AGREED TO BY:

Dated: August 24, 2015

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By <u>/s/ Derek D. Foran</u> Derek D. Foran

LINDA E. SHOSTAK (CA SBN 64599) <u>LShostak@mofo.com</u> DEREK F. FORAN (CA SBN 224569) <u>Dforan@mofo.com</u> CHRISTOPHER L. ROBINSON (CA SBN 260778) <u>ChristopherRobinson@mofo.com</u> 425 Market Street San Francisco, CA 94105-2482 Telephone: 415-268-7000 Facsimile: 415-268-7522

Attorney for Plaintiff NATIONAL ABORTION FEDERATION (NAF)

STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY CASE NO. 3:15-CV-3522-WHO sf-3563261

Case3:15-cv-03522-WHO Document92 Filed08/26/15 Page24 of 28 /s/ Carly F. Gammill By: Dated: August 24, 2015 1 Carly F. Gammill 2 BRIAN R. CHAVEZ-OCHOA (CA Bar 190289) ż brianr@chavezochoalaw.com CHAVEZ-OCHOA LAW OFFICES, INC. 4 4 Jean Street, Suite 4 Valley Springs, CA 95252 5 Tel: (209) 772-3013; Fax: (209) 772-3090 6 EDWARD L. WHITE III (MI Bar P62485) ewhite@acli.org 7 ERIK M. ZIMMERMAN (MI Bar P78026) ezimmerman@aclj.org AMERICAN CENTER FOR LAW & 8 JUSTICE 9 3001 Plymouth Road, Suite 203 Ann Arbor, MI 48105 10 Tel: (734) 680-8007 Fax: (734) 680-8006 11 CARLY F. GAMMILL (TN Bar 28217) 12 cgammill@aclj-dc.org ABIGAIL A. SOUTHERLAND (TN Bar 13 022608) asoutherland@acli.org 14 AMERICAN CENTER FOR LAW & JUSTICE 15 201 Maryland Avenue, NE Washington, DC 20002 ·16 Tel: (202) 546-8890 Fax: (202) 546-9309 17 Attorneys for Defendant, TROY NEWMAN 18 19 20 <u>/s/ D. John Sauer</u> D. John Sauer Dated: August 24, 2015 By: 21 CATHERINE W. SHORT (CA Bar 117442) 22 LIFE LEGAL DEFENSE FOUNDATION P.O. Box 1313 23 Ojai, CA 93024-1313 Tel: (707) 337-6880 24 Fax: (805) 640-1940 E-Mail: LLDFOjai@earthlink.net 25 D. John Sauer 26James Otis Law Group, LLC 231 South Bemiston Ave., Suite 800 27 St. Louis, Missouri 63105 Email: jsauer@jamesotis.com 28 STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY CASE NO. 3:15-CV-3522-WHO

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Case3:15-cv-03522-WHO Document92 Filed08/26/15 Page25 of 28 1 Thomas Brejcha Thomas More Society 2 19 La Salle St., Ste. 603 Chicago, IL 60603 3 Email: tbreicha@thomasmoresociety.org 4 Attorneys for Defendants, The Center for Medical Progress, Biomax Procurement Services LLP, David Daleiden (aka 5 "Robert Sarkis") 6 7 8 ATTESTATION OF E-FILED SIGNATURE 9 I, Derek F. Foran, am the ECF user whose ID and password are being used to file this 10 [PROPOSED] STIPULATED PROTECTIVE ORDER FOR PURPOSES OF EXPEDITED 11 PRELIMINARY INJUNCTION DISCOVERY. In compliance with Civil Local Rule 5-1(i)(3), I 12 hereby attest that Carly Gammill and John Sauer have concurred in this filing. 13 14 MORRISON & FOERSTER LLP Dated: August 24, 2015 15 16 /s/ Derek Foran By: 17 Derek F. Foran 18 Attorneys for Plaintiff NATIONAL ABORTION FEDERATION 19 20 21 22 23 24 25 26 . 27 28 24 STIPULATED PROTECTIVE ORDER FOR EXPEDITED DISCOVERY CASE NO. 3:15-CV-3522-WHO sf-3563261

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<u>EXHIBIT A-1</u>

GENERAL ACKNOWLEDGMENT OF CONFIDENTIALITY AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I agree to comply with and be bound by all the terms of the Stipulation and Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Stipulation and Protective Order to any person or entity except in strict compliance with the provisions of the Stipulation and Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of the Stipulation and
 Protective Order even if such enforcement proceedings occur after termination of this action.

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Case 3:15-cv-03522-WHO Document 354 Filed 02/05/16 Page 1 of 42 2 3 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 5 6 NATIONAL ABORTION FEDERATION. Case No. 15-cv-03522-WH(7 et al., 8 Plaintiffs. ORDER GRANTING MOTION FOR 9 ν PRELIMINARY INJUNCTION Re: Dkt. Nos. 3, 109, 222, 225, 287, 298, 10 CENTER FOR MEDICAL PROGRESS, et al., 310, 320, 322, 346, 352 11 Defendants. 12 On July 31, 2015, plaintiff National Abortion Federation (NAF) filed this lawsuit and 13 14 sought a Temporary Restraining Order to prohibit defendants David Daleiden, Troy Newman, and 15 the Center for Medical Progress from publishing recordings taken at NAF Annual Meetings, NAF 16 alleged, and it has turned out to be true, that defendants secured false identification and set up a phony corporation to obtain surreptitious recordings in violation of agreements they had signed 17 18. that acknowledge that the NAF information is confidential and agreed that they could be enjoined 19 in the event of a breach. In light of those facts, because the subjects of videos that defendants had released in the previous two weeks had become victims of death threats and severe harassment, 20 and in light of the well-documented history of violence against abortion providers, I issued the 21 TRO. 22 23 The defendants' principal arguments against injunctive relief rest on their rights under the First Amendment, a keystone of our Constitution and our democracy. It ensures that the 24

government may not - without compelling reasons in rare circumstances - restrict the free flow of
information to the public. It provides that "debate on public issues should be uninhibited, robust,
and wide-open." New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). But Constitutional
rights are not absolute. In rare circumstances, freedom of speech must be balanced against and

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give way to the protection of other compelling Constitutional rights, such as the First Amendment's right to freedom of association, the Fifth and Fourteenth Amendments' protection of liberty interests, and the right to privacy. After fully considering the record before me, I conclude that NAF has made such a showing here.

Discovery has proven that defendants and their agents created a fake company and lied to gain access to NAF's Annual Meetings in order to secretly record NAF members for their Human Capital Project. In furtherance of that Project, defendants released confidential information 7 gathered at NAF's meetings and intend to release more in contravention of the confidentiality agreements required by NAF. Critical to my decision are that the defendants agreed to injunctive relief if they breached the agreements and that, after the release of defendants' first set of Human Capital Project videos and related information in July 2015, there has been a documented, dramatic increase in the volume and extent of threats to and harassment of NAF and its members. Balanced against these facts are defendants' allegations that their video and audio recordings show criminal activity by NAF members in profiteering from the sale of fetal tissue. I have reviewed the recordings relied on by defendants and find no evidence of criminal activity. And I am skeptical that exposing criminal activity was really defendants' purpose, since they did not provide recordings to law enforcement following the NAF 2014 Annual Meeting and only provided a bit of information to law enforcement beginning in May, 2015. But I have not interfered with the Congressional committee's subpoena to obtain the recordings to make its own evaluation, nor with the subpoenas from the states of Arizona and Louisiana (although I have approved a process to insure that only subpoenaed material is turned over).

Defendants also claim that the injunction is an unconstitutional prior restraint. They ignore that they agreed to keep the information secret and agreed to the remedy of an injunction if they breached the agreement. Confidentiality agreements are common to protect trade secrets and other sensitive information, and individuals who sign such agreements are not free to ignore them because they think the public would be interested in the protected information.

There is no doubt that members of the public have a serious and passionate interest in the debate over abortion rights and the right to life, and thus in the contents of defendants' recordings,

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It should be said that the majority of the recordings lack much public interest, and despite the misleading contentions of defendants, there is little that is new in the remainder of the recordings. Weighed against that public interest are NAF's and its members' legitimate interests in their rights to privacy, security, and association by maintaining the confidentiality of their presentations and conversations at NAF Annual Meetings. The balance is strongly in NAF's favor.

Having fully reviewed the record before me, I GRANT NAF's motion for a preliminary injunction to protect the confidentiality of the information at issue pending a final judgment in this case.

BACKGROUND

I.

THE CENTER FOR MEDICAL PROGRESS AND THE HUMAN CAPITAL PROJECT

In 2013, defendant David Daleiden founded the Center for Medical Progress ("CMP") for the purpose of monitoring and reporting on medical ethics, with a focus on bioethical issues related to induced abortions and fetal tissue harvesting. Declaration of David Daleiden (Dkt. No. 265-3, "Daleiden PI Decl.") ¶ 2. CMP is incorporated in California as a nonprofit public benefit corporation, with a stated purpose "to monitor and report on medical ethics and advances." NAF Appendix of Exhibits in Support of Motion for Preliminary Injunction ("Pl. Ex.") 9 (at NAF0000533).¹ In order to/obtain CMP's tax-exempt status, in its registration with the California Attorney General and in its application with the Internal Revenue Service Daleiden certified, among other things, that "[n]o substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this corporation shall

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¹ Defendants raise a number of objections to NAF's evidence. See Dkt. No. 265-7. These evidentiary objections were submitted as a separate document in violation of this Court's Local Rules. Civ. L. R. 7-3(a). Recognizing that error, defendants filed a motion asking for leave to file an amended Opposition or for relief therefrom. Dkt. No. 298. That motion is GRANTED and I will consider defendants' evidentiary objections. See also Dkt. No. 301. To the extent I rely on evidence to which defendants object, I will address the specific objection, bearing in mind that on a motion for preliminary injunction evidence is not subject to the same formal procedures as on a motion for summary judgment or at trial and that a court may consider hearsay evidence. See, e.g., Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir. 1984). To the extent I do not rely on specific pieces of evidence, defendants' objections to that evidence are overruled as moot. These evidentiary rulings apply only to the admissibility of evidence for purposes of determining the motion for a preliminary injunction.

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not participate or intervene in any political campaign." Pl. Ex. 9 (at NAF0000535); Pl. Ex. 10 (at NAF0001789).

As part of CMP's work, Daleiden created the "Human Capital Project" ("Project") to "investigate, document, and report on the procurement, transfer, and sale of fetal tissue." Daleiden PI Decl. ¶ 3. The Project's goal is to uncover evidence regarding violations of state and/or federal law due to the sale of fetal tissue, the alteration of abortion procedures to obtain fetal tissue for research, and the commission of partial birth abortions. *Id.* Putting the Project into action, Daleiden created a fake front company that purportedly supplies researchers with human. biological specimens and specifically secured funding from supporters in order to infiltrate NAF's 2014 Annual Meeting. Pl. Ex. 26. The express aim of that infiltration was to: "1) network with the upper echelons of the abortion industry to identify the best targets for further investigation and ultimate prosecution, and 2) gather video and documentary evidence of the fetal body parts trade and other shocking activities in the abortion industry." *Id.*

Defendant Troy Newman was, until January 2016, a board member and the secretary of 14 CMP. He counseled Daleiden on the efforts to set up the fake company, to infiltrate meetings, and 15 16 to secure recordings in support of the Project. Pl. Ex. 14 (at NAF0004475-76); Pl. Ex. 16 (at NAF0004493-94); see also Dkt. No. 344.² The result of the Project. Newman hoped, would be 17 prosecution of abortion providers, state and Congressional investigations, the defunding of 18 19 Planned Parenthood by the government, and the closure of abortion clinics. Pl. Ex. 16 (at NAF0004494, 4496); Pl. Ex. 136 at 16.³ Defendant Newman is President of Operation Rescue, an 20 anti-abortion group that posts the names and work addresses of abortion providers on its website 21 22 and manages another website that lists every abortion facility and all known abortion providers. 23 Pl. Exs. 18, 20, 21, 22.⁴

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² Defendants object to Exhibits 14 and 16 for lack of foundation and authentication. Defendants do not contend these transcripts do not accurately represent the contents of the recordings attached as Exhibits 15 and 17. Defendants' objections are overruled.

26 as Exhibits 15 and 17. Defendants objections are overfuled.
 ³ Defendants object to Exhibit 136 on the grounds of relevance, lack of foundation, and lack of authentication. Defendants to not contend the transcript does not accurately represent the contents of the recording identified. Defendants' objections are overruled.

⁴ After the public launch of the Project on July 15, 2015, counsel for CMP and Daleiden, Life Legal Defense Foundation, explained that it had also been involved in the Project as a legal Case 3:15-cv-03522-WHO Document 354 Filed 02/05/16 Page 5 of 42

II. THE CREATION OF BIOMAX AND INFILTRATION OF NAF'S 2014 AND 2015 ANNUAL MEETINGS

In September 2013, Daleiden directed "investigators" on the Project (known by the aliases 2 Susan Tennebaum and Brianna Allen) to attend a conference of the Association of Reproductive Health Professionals (ARHP) as a representative of a fake business, BioMax Procurement Services. That business did not exist, other than to be a "front" for the Project. Daleiden PI Decl. ¶ 8; Pl. Ex. 26. Daleiden's associates spoke with representatives from NAF, and BioMax was invited to apply to attend the NAF Annual Meeting in San Francisco, California the following April. Daleiden PI Decl. ¶ 10.

9 In February 2014, defendant CMP received a grant to fund the "infiltration of the ... NAF Annual Meeting," Pl. Exs. 26, 36; Deposition Transcript of David Daleiden (Dkt. No. 187-3) 10 213:14-214:6. To that end, Daleiden followed up with the NAF representatives - posing as 11 Brianna Allen on behalf Tennenbaum and BioMax – and received a copy of the 2014 NAF Annual 12 Meeting Exhibitor Prospectus and Exhibitor Application for the upcoming meeting. Daleiden PI 13 14 Decl. ¶ 11; Pl. Ex. 43. Daleiden filled out the Exhibitor Application packet – comprised of the 15 "Exhibit Rules and Regulations" ("Exhibit Agreement" or "EA"), the "Application and Agreement for Exhibit Space," and the "Annual Meeting Registration Form." Daleiden signed Susan 16 Tennenbaum's name to the EA, and returned the Application packet. Daleiden PI Decl. ¶ 11; PL. 17 18 Ex. 3; Daleiden Depo. at 160:8-18.

19 In February 2015, Daleiden contacted NAF seeking information about BioMax exhibiting at NAF's 2015 Annual Meeting in Baltimore, Maryland. Pl. Ex. 47. Daleiden again filled out the 20 21 "Application Agreement for Exhibit Space," "Exhibit Rules and Regulations," and "Registration 22 Form," signing Susan Tennenbaum's name to the EA. Pl. Exs. 4, 47; Daleiden Depo. at 287:5-

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advisor "since its inception" and were committed to defunding "contract killer" Planned Parenthood. Pl. Ex. 24. Defendants object to Exhibits 18, 20, 21 and 22 as irrelevant and 26 inadmissible hearsay. Those objections are overruled.

On the 2014 EA, Daleiden listed the "exhibitor representatives" as Brianna Allen a Procurement Assistant, Susan Tennenbaum the C.E.O., and Robert Sarkis a V.P. Operations. Pl. Ex. 3. On the 2015 EA, Daleiden listed the exhibitor representatives as Susan Tennenbaum the C.E.O., Robert Sarkis the Procurement Manager, and Adrian Lopez the Procurement Technician. Pl. Ex. 4.
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Both the 2014 and 2015 EAs contain confidentiality clauses:

In connection with NAF's Annual Meeting, Exhibitor understands that any information NAF may furnish is confidential and not available to the public. Exhibitor agrees that all written information provided by NAF, or any information which is disclosed orally or visually to Exhibitor, or any other exhibitor or attendee, will be used solely in conjunction with Exhibitor's business and will be made available only to Exhibitor's officers, employees, and agents. Unless authorized in writing by NAF, all information is confidential and should not be disclosed to any other individual or third parties.

Pl. Exs. 3 & 4 at ¶ 17. Above the signature line, the EAs provide: "I also agree to hold in trust and confidence any confidential information received in the course of exhibiting at the NAF Annual Meeting and agree not to reproduce or disclose confidential information without express permission from NAF." Pl. Exs. 3, 4 (emphasis in originals).

The EAs required Exhibitor representatives to "be registered" for the NAF Annual Meeting 11 12 and wear badges in order to gain entry into exhibit halls and meeting rooms. Id. ¶ 8. The EAs also provide that "[p]hotography of exhibits by anyone other than NAF or, the assigned Exhibitor 13 14 of the space being photographed is strictly prohibited." Id. ¶ 13. The EAs required an 15 affirmation: "[b]y signing this Agreement, the Exhibitor affirms that all information contained 16 herein, contained in any past and future correspondence with either NAF and/or in any publication, advertisements, and/or exhibits displayed at, or in connection with, NAF's Annual 17 Meeting, is truthful, accurate, complete, and not misleading." Id. ¶ 19. Finally, the EAs provide 18 that breach of the EA can be enforced by "specific performance and injunctive relief" in addition 1.9 20 to all other remedies available at law or equity. Id. ¶ 18.

- In order to gain access to the NAF Annual Meetings, Exhibitor representatives also had to
 show identification and sign a "Confidentiality Agreement" ("CA"). Declaration of Mark Mellor
 (Dkt. No. 3-33) ¶ 11.⁶ For the 2014, Annual Meeting Daleiden (as Sarkis) and the individuals
- ⁶ NAF has identified copies of two drivers licenses it claims were used by Daleiden and Tennenbaum to access the NAF meetings. Pl. Exs. 49-50. During his deposition, Daleiden asserted his Fifth Amendment rights and refused to testify about the licenses. Foran PI Decl. ¶¶ 31-32. Defendants object to Exhibits 49 and 50 for lack of personal knowledge. Those objections are overruled.
 - Relatedly, NAF filed a motion to supplement the Preliminary Injunction record, to include a press release from the Harris County District Attorney's office in Houston Texas. Dkt. No. 346. That motion is GRANTED. In the press release, the District Attorney explained that a grand jury

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pretending to be Tennenbaum and Allen, each signed a CA. Pl. Exs. 5, 6; Daleiden PI Decl. ¶ 13. 1 For the 2015 Annual Meeting, the individual pretending to be Adrian Lopez, signed the CA. PI. 2 3 Ex. 8,⁷ Daleiden (as Sarkis), Tennenbaum, and Allen did not sign the 2015 CAs. When Daleiden, Tennenbaum, and Allen were at the registration table, they were met by a NAF representative. A •4 NAF representative asked Daleiden to confirm that the sign-in staff had checked their 5 identifications and that they had signed the confidentiality forms. Daleiden responded "Yeah yeah 6 yeah. Excellent, Thank you so much " Declaration of Derek Foran in Support of Preliminary 7 Injunction (Dkt. No. 228-6) ¶ 79C⁸; Daleiden Decl. ¶ 17; Daleiden Depo. 290:2 -291:14. Daleiden 8 9 testified that it was his "preference" to avoid signing the 2015 CA. Daleiden Depo. at 291:15-25, The CAs provide: 10 11 It is NAF policy that all people attending its conferences (Attendees) sign this confidentiality agreement. The terms of attendance are as 12 follows: 13 1. Videotaping or Other Recording Prohibited: Attendees are prohibited from making video, audio, photographic, or other 14 recordings of the meetings or discussions at this conference. 2. Use of NAF Conference Information: NAF Conference 15 Information includes all information distributed or otherwise made available at this conference by NAF or any conference 16 participants through all written materials, discussions, workshops, or other means.... 17 Disclosure of NAF Materials to Third Parties: Attendees may 3. not disclose any NAF Conference Information to third parties 1.8 without first obtaining NAF's express written consent 19 Pl. Exs. 5-8. 20 had cleared a local Planned Parenthood affiliate of wrongdoing, but indicted Daleiden and the 21 person posing as Susan Tennenbaum for tampering with governmental records, presumably related to their use of false identification to gain access to meetings in Texas. *Id.* In his deposition, Daleiden testified that he created false business cards to use at the ARHP 22 meeting and the NAF Meetings for Susan Tennenbaum, Robert Daoud Sarkis, and Brianna Allen. 23 Pl. Ex. 51; Daleiden Depo. at 200:2 – 201:6 (business cards used at the 2014 Meeting); see also Pl. Exs. 51, 52 & Daleiden Depo. at 315:23 – 316:19 (business cards for Adrian Lopez and Susan Wagner used at the 2015 Annual Meeting); Declaration of Megan Barr (Dkt. No. 226-27) ¶¶ 4-5 24 (use of business card at 2015 Meeting). 25 Daleiden testified that all of the "investigators" involved in the Project were CMP "contractors" acting under Daleiden's specific direction. Daleiden Depo. Trans. at 131:7-24, 135:21-136:11, 26 194:1, 194:10-195:6; see also Daleiden Supp. Resp. to NAF Interrogatories (Dkt. No. 227-18) Nos. 2, 6. 27 ¶ 79(C) refers to a specific excerpt of a recording taken by Daleiden. Sub-Bates 15-062; Time stamp: 14:56:02-14:56:50. The Court has reviewed all recording excerpts or transcripts of 28 recording excerpts cited in this Order. 7

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At the 2014 and 2015 Annual Meetings, Daleiden and his associates wore and carried a 1 variety of recording devices that they did not disclose to NAF or any of the meeting attendees, 2 Daleiden Depo. at 118-121; 255; 292-93. Daleiden and his associates did not limit their recording 3 to presentations or conversations regarding fetal tissue, but instead turned on their recording 4 devices before entering the meetings each day and only turned them off at the end of the day. 5 Daleiden Depo. at 121:24-122:22, 124:1-15. In the end, they recorded approximately 257 hours 6 and 49 minutes at NAF's 2014 Annual Meeting and 246 hours and 3 minutes at NAF's 2015 7 Annual Meeting. They recorded conversations with attendees at the BioMax Exhibitor booths, the 8 formal sessions at the Meetings, and interactions with attendees during breaks. Foran PI Decl. ¶2 . 9 & Pl. Ex. 1⁹: Daleiden PI Decl. ¶ 18; Daleiden Depo. at 122:18-123:25; 293:4-25. The ·10 interactions with individuals were recorded in exhibit halls, hallways, and reception areas where 11 Daleiden contends hotel staff were "regularly" present. Daleiden PI Decl. ¶ 18. Hotel staff were 12 also present in the rooms during presentations and talks, but hotel staff did not sign confidentiality 13 14 agreements. Id. ¶ 19; Deposition of Vicki Saporta (Defendants' Ex. 7) at 33:10-23. Broadly speaking, the majority of the recordings lack any sort of public interest and consist of 15 16 communications that are tangential to the ones discussed in this Order. 17

During the Annual Meetings, Daleiden and his associates would meet to "discuss our ... strategy for ... the project and for the meeting," including "specific strategies for specific individuals." Daleiden Depo. at 134:15-135:6. The associates were given a "mark list" to identify their targets. Foran PI Decl. ¶ 79D (Sub-Bates: 15-145; Time stamp: 14:56:02-14:56:50). The group also picked targets based on circumstance: in one instance, Daleiden tells "Tennenbaum" that it "would be really good to talk tonight" with a particular doctor "now that she's been drinking." *Id.* ¶ 79E (Sub-Bates: 15-225; Time stamp 15:33:00 - 15:34:00).

In approaching these individuals, the group used "pitches" in their efforts to capture NAF members agreeing to suggestions and proposals made by the group about the "sale" of fetal tissue

⁹ Plaintiff's Exhibit 1 is a copy of the hard drive produced by defendants containing the audio and video recordings made by Daleiden and his associates at the 2014 and 2015 NAF Annual Meetings.

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or other conduct that might suggest a violation of state or federal law. Daleiden told his associates that their "goal" was to trap people into "saying something really like messed up, like yeah, like, I'll give them, like, live everything for you. You know. If they say something like that it would be cool." *Id.* ¶ 79G (Sub-Bates: 15-021; Time Stamp: 5:13-5:49). Daleiden also instructed his group to attempt to get attendees to say the words "fully intact baby" on tape. *Id.* ¶ 79H (Sub-Bates: 15-152; Time Stamp: 16:06:50-16:07:00). As part of their efforts, "Tennenbaum" would explain to providers that she "can make [fetal tissue donation] extremely financially profitable for you" and that BioMax has "money that is available" and is "sitting on a goldmine" as long as you're "willing to be a little creative with [your] technique." Foran PI Decl. ¶ 79J (Sub-bates: 15-152 Time Stamp: 15:48:00 - 15:52:00). She asked NAF attendees: "what would make it profitable for you? Give me a ballpark figure" *Id.* Or "[i]f it was financially very profitable for you to perhaps be a little creative in your method, would you be open to" providing patients with reimbursements for tissue donations. *Id.* ¶ 79K (Sub-bates: 15-203; Time Stamp: 12:09:00 -12:10:21).

The parties dispute whether these goals were met and if defendants' traps worked.¹⁰ Defendants argue that they captured NAF attendees agreeing to explore, or at least expressing interest in exploring, being compensated for the sale of fetal tissue at a profit, which defendants contend is illegal under state and federal laws. Defendants' Opposition to Motion for Preliminary Injunction (Dkt. No. 262-4) at 10-14. However, they tend to misstate the conversations that occurred or omit the context of those statements. For example, defendants rely on a conversation

¹⁰ NAF argues that defendants cannot rely on any portion of the recordings to oppose NAF's motion for a preliminary injunction. NAF Reply Br. at 29-30. NAF is correct that under California and Maryland law, recordings taken in violation of state laws prohibiting recordings of confidential communications are not admissible in judicial proceedings, except as proof of an act or violation of the state statutes. See Cal. Penal Code § 632(d); Feldman v. Allstate Ins. Co., 322 F.3d 660, 667 (9th Cir. 2003) (concluding that § 632(d) is a substantive law, applicable in federal court on state law claims); see also Md. Code Ann., Cts. & Jud. Proc. § 10-405; Standiford v. Standiford, 89 Md. App. 326, 346 (1991). Because the accuracy of defendants' allegations of criminal conduct are central to this decision, however, I discuss the portions of the recordings relied upon by plaintiff and defendants in some detail in this section. To place this discussion under seal would undermine my responsibility to the public as a court of public record to explain my decision. Consistent with the TRO and the reasoning of this Order, in describing the protected conversations I balance the interests of the providers' privacy, safety and association by omitting names, places, and other identifying information.

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with a clinic owner where Daleiden suggests BioMax could pay \$60 per sample instead of \$50 per sample. Defs. Ex. 8. The clinic owner doesn't respond to that suggestion, or give any indication about the actual costs to the clinic of facilitating outside companies to come in and collect fetal tissue. Id. Instead, the clinic owner responds that providing tissue to outside companies "is a nice way to get extra income in a very difficult time, and you know patients like it." Id.¹¹ Defendants point to another conversation where a provider asks what the "reimbursement rate" is for the clinic, and was told "it varies" by Tennenbaum. Defs. Ex. 9 (Dkt. No. 266-4) at p. 18. Then, in response to Tennenbaum's suggestion about whether she'd "be open to maybe being a little creative in the procedure," the provider responds that she was not sure and would have to discuss it and run it by the doctors. Defs. Ex. 9 (Dkt. No. 266-4) at p. 18. Tennenbaum explains that specimens "go for" anywhere from "500 up to 2,000" and so "you can see how profitable" it would be for clinics, to which the provider says "Yeah, absolutely" and a different provider says "that would be great" in response to comments about having further discussions. Id. at p. 19.

Another provider responded to defendants' suggestion of financial incentives by indicating that the clinic would be "very happy about it," but admitted others would have to approve it and it wasn't up to her. Id., Dkt. No. 266-4 at p.8. Defendants point to a conversation with a provider who discusses the "fine line" between an illegal partial birth abortion and the types of abortion that 18 they perform, and the techniques that they employ to ensure that they do not cross that line. Defs: Ex. 10; Dkt. No. 266-5 at p. 4. That conversation, however, does not indicate that any illegal activity was occurring. Similarly, defendants contend that a provider stated that he ordinarily minimizes dilation, since that is what is safest for the women, but that if he had a reason to dilate more (such as tissue procurement), he might perform abortions differently. Oppo. Br. at 11. But that is not what the provider said. After acknowledging tissue donation was not allowed in his state, he stated that "I could mop up my technique if you wanted something more intact, But right now my only concern is the safety of the woman" and there was no reason to further dilate a

¹¹ Defendants do not suggest the "patients like it" is a suggestion that patients are being paid for the fetal tissue. Instead, in the context of that conversation, it refers to patients that like providing fetal tissue for research purposes.

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woman. Defs. Ex. 11, Dkt. No. 266-6 at p. 5.

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Defendants rely on another conversation where an abortion provider explains that how intact aborted fetuses are depends on the procedure used and that she does not ordinarily use digoxin to terminate the fetus before performing 15-week abortions. Defs. Ex. 12, Dkt. No. 266-7, . pgs. 1-8. She goes on to say that if there was a possibility of donating the tissue to research, women may choose that, and with the consent of the woman she would be open to attempting to obtain intact organs for procurement. Id. Again, this is not evidence of any wrongdoing.

In another conversation, a provider states that his/her clinic has postponed the stage at which digoxin is used and that as a result they can secure more and bigger organs for research so the tissue "does not go to waste," to which the vast majority of women using their facility consent. Defs. Ex. 13, Dkt. No. 266-8 pgs. 1-8.¹² Defendants contend that a provider commented that he/she may be willing to be "creative" on a case-by-case basis, but the provider was responding to a question about doctors using digoxin in general. Defs. Ex. 9, Dkt. No. 266-4 pg. 13. And while defendants characterize that provider as assenting to being "creative," so that BioMax could "keep them happy financially" (Oppo. Br. at 11-12), the actual discussion was about off-setting the disruption that third-party technicians can have on clinic operations and keeping those disruptions to a minimum. *Id.* at p. 14.

18 In a different conversation, defendants characterize a provider as agreeing to discuss ways in which a financial transaction would be structured to make it look like a clinic was not selling 19 20 tissue. Oppo. Br. at 12. The unidentified female (there is no indication of where she works or 21 what role she plays) simply responds to Tennenbaum's suggestions that in response to payment 22 for tissue from BioMax the clinic could offer its services for less money or provide transportation for the patients, with an interested but non-committal response and clarified "that's something 23 we'd have to figure out how to do that." Defs. Ex. 14, Dkt. No. 266-9 pgs. 1-4. Another provider 24 25 admits that doing intact D&Es for research purposes would "be challenging" and explained that there are layers of people and approvals at the clinic before any agreements to work with a 26

- 27 28
- 12 There is no evidence that a desire to secure more fetal tissue samples caused the clinic to alter its procedures. 11

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bioprocurement lab could be reached. Defs. Ex. 9, Dkt. No. 266-4 pgs. 8-9.

United States District Court Northern District of California Defendants state that a provider responded to Tennenbaum's comment that with the right vision an arrangement can be "extremely financially profitable," with "we certainly do" have that vision. Oppo. Br. at 12. But defendants omit that the context of the conversation was the "waste" of fetal tissue that could otherwise be going to research. Defs. Ex. 9, Dkt. No. 266-4 pgs. 2-3. In the excerpt relied on by defendants, after Tennenbaum mentioned the profit she went onto describe tissue donation working for those that have the "vision and the passion for research." The provider responded, "Which we certainly do." *Id.* p. 2. Similarly, while defendants are correct that a provider did say, "if guys it looks like you'd pay me for [fetal tissue], that would be awesome," but omit that the provider preceded that comment with "I would love to have it [the fetal tissue] go somewhere" and that the provider was excited about the possibility of the tissue going to be used in research to be "doing something." Defs. Ex. 15, Dkt. No. 266-10. pgs. 1-2.

Defendants cite a handful of similar discussions - where "profit" "sale" or "top dollar" are terms used by Daleiden or Tennenbaum and then providers at some point following that lead in the conversation express general interest in exploring receiving payment for tissue - but those conversations do not show that any clinic is making a profit off of tissue donations or that the providers are agreeing to a profit-making arrangement.¹³ Defendants are correct that one provider indicates it received \$6,000 a quarter from a bioprocurement lab, but there is no discussion showing that amount is profit (in excess of the costs of having third-party technicians on site and providing access and storage for their work). Defs. Ex. 21, Dkt. No. 267-2 p.2. An employee of a bioprocurement lab also agrees in response to statements from Tennenbaum that the clinics know it is "financially profitable" for them to work with bioprocurement labs and that arrangement helps

¹³ Some of defendants' citations are to comments about providers performing abortions differently, not in terms of gestational timing, but in terms of attempting to keep tissue samples more intact during the procedure if those samples might be of use for research. Oppo. Br. at 12-13. There is no argument that taking those steps violates any law. Defendants also cite provider comments – for example, an abortion provider engaging in conduct "under the table" to get around restrictions – which do not show up in the transcript excerpts they refer to. Oppo. Br. at 13. Finally, defendants rely on comments – from panel presentations and individual conversations – where providers express the personal and societal difficulties they face in performing abortions. There is no indication in those comments of any illegal conduct. Oppo. Br. at 12, 14-15.

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the clinics "significantly," Defs. Ex. 23, Dkt. No. 267-4 p. 2.

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Having reviewed the records or transcripts in full and in context, I find that no NAF attendee admitted to engaging in, agreed to engage in, or expressed interest in engaging in potentially illegal sale of fetal tissue for profit. The recordings tend to show an express rejection of Daleiden's and his associates' proposals or, at most, discussions of interest in being paid to recoup the costs incurred by clinics to facilitate collection of fetal tissue for scientific research. which NAF argues is legal. See, e.g., Foran PI Decl. ¶ 79(I) (Sub-bates: 14-147; Time Stamp .05:56:00 - 05:57:00 (Dr. Nucatola identifying an "ethical problem" with Daleiden's payment proposal: "We just really want the affiliates to be compensated in a way that is proportionate to the amount of work that's required on their end to do it. In other words, we don't see it as a money making opportunity. That's not what it should be about."); Foran PI Decl. ¶ 79(K) (Sub-bates: 15-203; Time Stamp: 12:09:00 - 12:10:21) (NAF attendee responding to Tennenbaum's proposal" "Do the patients get any reimbursement? No, you can't pay for tissue, right. You can't pay for tissue."); Foran PI Decl. ¶ 79(M) (Sub-bates: 15-010; Time Stamp: 24:29 - 25:43) (NAF attendee responds that "we cannot have that conversation with you about being creative," because it "crosses the line."); Foran PI Decl. ¶ 79(N) (Sub-Bates: 15-010; Time Stamp: 59:18-1:04:32) (NAF attendee responding to Tennenbaum with, "No profiteering or appearance of profiteering. . we need it to be a donation program rather than a business opportunity.").

Defendants also gathered confidential NAF and NAF-member materials at the Annual Meetings, including lists and biographies of NAF faculty and contact information for NAF members. Foran PI Decl. ¶ 3; Pl. Ex. 56 at 3; Pl. Ex. 58.

Following the 2014 Annual Meeting, Daleiden followed up with the "targets" he met at the Meeting, in part to set up meetings with abortion providers, including Dr. Deborah Nucatola,¹⁴ Pl. Exs. 26 (list of "targets"), 36, 59-61, 64-65, 67-69; Daleiden Depo, 257-259, 265-269. As he explained to his supporters and funders in a report prepared following the 2014 Meeting - in which he shared some of the confidential NAF information that had been collected at that meeting

Dr. Nucatola was identified by defendants as a key target and the Senior Director of Medical Services for Planned Parenthood, Pl. Ex. 26.

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- he was able to secure the follow up meetings because, following its attendance at the 2014 1 2 Annual Meeting, "BioMax is now a known and trusted entity to many key individuals in the upper echelons of the abortion industry." Pl. Ex. 26; see also Pl. Exs. 59-63 (emails to targets 3 referencing their meeting at NAF); Pl. Ex. 64 (email to Dr. Nucatola); Daleiden Depo. at 253-259 4 (Daleiden's follow up with Dr. Nucatola); Pl. Ex. 67 ¶ 3-4 (StemExpress representative 5 explaining her initial meeting with Daleiden at the NAF 2014 Annual Meeting, as the reason a б subsequent meeting was arranged); Daleiden Tr. at 271-274 (discussing his follow up 7 communications with StemExpress representatives). In a recording following Daleiden and 8 Tennenbaum's meeting with StemExpress representatives, Daleiden credited the ability to secure that meeting to "because like we've been at NAF. Like, we're so vetted and so like." Foran PI Decl. ¶ 12; Pl. Ex. 70 at FNPB029820150522190849 avi at 19:13:00-19:15:00).

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DEFENDANTS RELEASE HUMAN CAPITAL PROJECT VIDEOS TIT.

13 . On July 14, 2015, CMP released two videos of a lunch meeting that Daleiden had with Dr. 14 Nucatola, a "key" target from the 2014 NAF Annual Meeting. Daleiden PI Decl. ¶ 25; Pl. Ex. 26. 15 Daleiden testified that one of the videos "contained the entire conversation with Nucatola" and the other was "a shorter summary version of the highlights from the conversation." Id. CMP issued a press release in conjunction with the release of these videos entitled "Planned Parenthood's Top Doctor, Praised by CEO, Uses Partial-Birth Abortion to Sell Baby Parts." Pl. Ex. 66. NAF counters that the "highlights" video was misleadingly edited and omits Dr. Nucatola's comments 20 that "nobody should be selling tissue. That's just not the goal here," and her repeated comments that Planned Parenthood would not sell tissue or profit in any way from tissue donations. Foran 21. 22 TRO Decl. Ex. 18 at 7, 21-22, 25-26, 34, 48, 52-54.

On July 21, 2015, CMP released two more videos: a 73-minute video and a shorter "highlights summary" from Daleiden's lunch meeting with Planned Parenthood "staff member" 24 25 Dr. Mary Gatter. Daleiden PI Decl. § 26. CMP issued a press release in conjunction with the release of these videos entitled "Second Planned Parenthood Senior Executive Haggles Over Baby 26 Parts Prices, Changes Abortion Methods." Pl. Ex. 71. NAF again contends the "highlight" video 27 was misleadingly edited, including the omission of Dr. Gatter's comments that tissue donation was 28

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not about profit, but "about people wanting to see something good come out" of their situations, "they want to see a silver lining" Pl. Ex. 82 at NAF0001395.

CMP has continued to release other videos as part of the Project, including one featuring a site visit to Planned Parenthood Rocky Mountains, where Savita Ginde is Medical Director. Daleiden PI Decl. ¶ 27. On July 30, 2015, CMP issued a press release in conjunction with the release of this video entitled "Planned Parenthood VP Says Fetuses May Come Out Intact, Agrees Payments Specific to the Specimen." Pl. Ex. 74.15

Daleiden asserts that when CMP released the "highlight" or summary videos. CMP also released "full" copies of the underlying recordings. Daleiden PI Decl. ¶ 25-27. NAF has submitted a report by Fusion GPS, completed at the request of counsel for Planned Parenthood. analyzing the videos released by CMP and concluding that there is evidence that CMP edited content out of the "full" videos and heavily edited the short videos "so as to misrepresent statements made by Planned Parenthood representatives." Pl. Ex. 77; see also Pl. Exs. 78-79.¹⁶ The day before the first set of videos was released, CMP put together a press kit with "messaging guidelines" that was circulated to supporters. Pl. Ex. 135; Deposition Transcript of Charles C. Johnson (Dkt. No. 255-11) 70:22-71:19. In those guidelines, defendants assert that their aim for the Project is to create "political pressure" on Planned Parenthood, focusing on "Congressional hearings/investigation and political consequences for" Planned Parenthood such as defunding and abortion limits. Pl. Ex. 135.

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> To be clear, the videos released by CMP as part of the Project to date do not contain information recorded during the NAF Annual Meetings.¹⁷ With respect to the NAF material

and authentication, and improper expert testimony. Those objections are overruled. ¹⁷NAF contends that the meetings Daleiden had with Doctors Nucatola, Gatter, and Ginde that

resulted in the CMP videos would not have been possible without BioMax having fraudulently

¹⁵ See also Pl. Ex. 74 (CMP press release on fifth Project video; "'Intact Fetal Cadavers' at 20 Weeks 'Just a Matter of Line Items' at Planned Parenthood TX Mega-Center; Abortion Docs Can 'Make it Happen.'''); Pl. Ex. 69 (CMP press release on eighth Project video; "Planned Parenthood Baby Parts Buyer StemExpress Wants 'Another 50 Livers/Week,' Financial Benefits for Abortion Clinics.''); Pl. Ex. 75 (CMP press release on ninth Project video; "Planned Parenthood Baby Parts Vendor ABR Pays Off Clinics, Intact Fetuses 'Just Fell Out.'''); Pl. Ex. 76 (CMP press release on tenth Project video; "Top Planned Parenthood Exec Agrees Baby Parts Sales 'A Valid Exchange,' Some Clinics 'Generate a Fair Amount of Income Doing This.''').

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covered by the TRO and at issue on the motion for a preliminary injunction, Daleiden affirms that other than: (i) providing a StemExpress advertisement from the NAF 2014 Annual Meeting program to law enforcement in El Dorado County, California in May 2015; (ii) short clips of video to law enforcement in Texas in June or July 2015; (iii) providing the 504 hours of recordings in response to the Congressional subpoena; and (iv) providing a short written report to CMP donors in April 2014, "Daleiden and CMP have made no other disclosures of recordings or documents from NAF meetings." Daleiden PI Decl. ¶ 24. However, a portion of the NAF materials were leaked and posted on the internet on October 20 and 21, 2015.¹⁸

IV. IMPACT OF DISCLOSURES ON NAF AND ITS MEMBERS

NAF is a not-for-profit professional association of abortion providers, including private and non-profit clinics, Planned Parenthood affiliates, women's health centers, physicians' offices, and hospitals. Declaration of Vicki Saporta (Dkt. No. 3-34) \P 2. It sets standards for abortion care through Clinical Policy Guidelines (CPGs) and Ethical Principles for Abortion Care, and develops continuing medical education and training programs and educational resources for abortion providers and other health care professionals. *Id.* \P 3. NAF also implemented a multi-faceted security program to help ensure the safety of abortion providers by putting in place reference, security, and confidentiality requirements for its membership and for attendance at its Meetings. *Id.* \P 10-14; Declaration of Mark Mellor (Dkt. No. 3-33) \P 5-12. NAF tracks security threats to abortion providers and clinics, and offers technical assistance, on-site security training, and

gained access to NAF's Annual Meetings and, thereby, appearing to be a legitimate operation. ¹⁸ This leak occurred after defendants produced NAF materials covered by the TRO to Congress. NAF argues – and moves for an Order to Show Cause asking me to sanction defendants – that defendants violated my order and the TRO by producing to Congress NAF audio and video recordings that were not directly responsive to the Congressional subpoena. *See* Dkt. Nos. 155, 222. NAF complains that as a result of this "over production," the subsequent leak included NAF Materials that had nothing to do with alleged criminal activity. I heard argument on this motion on December 18, 2015. Dkt. No. 310. Having considered the representations of defense counsel, I DENY the motion for an order to show cause. Defendants did produce materials that were not covered by the subpoena, but were covered by the TRO, contrary to my Order allowing a response to the subpoena. Dkt. No. 155. Defense counsel did so because in light of their conversations with Congressional staffers, they believed Congress wanted "unedited" recordings, which defense counsel interpreted to mean the whole batch of recordings, even those where fetal tissue was not being discussed. At the hearing I cautioned defense counsel that in the future, before they take it upon themselves to arguably violate an order from this Court – even if in good faith – they should seek clarification from me first.

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assessments at facilities and homes of clinic staff, as well as 24/7 support to its members when they are "facing an emergency or are targeted. *Id.* ¶ 10, 15; *see also* Declaration of Derek Foran in Support of TRO (Dkt No. 3-2) ¶ 6 & Ex 2 (NAF statistics documenting more than 60,000 incidents of harassment, intimidation, and violence against abortion providers, including murder, shootings, arson, bombings, chemical and acid attacks, bioterrorism threats, kidnapping, death threats, and other forms of violence between 1997 and 2014).

Following the release of the videos in July 2015, the subjects of those videos (including Doctors Nucatola, Gatter, and Ginde), have received a large amount harassing communications (including death threats). Pl. Exs. 80-81 (internet articles and threats by commentators), 83-91; *see also* Saporta Deol. ¶ 19. Incidents of harassment and violence directed at abortion providers increased nine fold in July 2015, over similar incidents in June 2014. Pl. Ex. 92. The incidents continued to sharply rise in August 2015. Pl. Ex. 93. The FBI has also reported seeing an increase in attacks on reproductive health care facilities. Pl. Ex. 94.¹⁹ Since July 2015, there have also been four incidents of arson at Planned Parenthood and NAF-member facilities. Saporta Depo. at 42:1-10; Pl. Exs. 96-99.²⁰ Most significantly, the clinic where Dr. Ginde is medical director – a fact that was listed on the AbortinDocs.org website operated by defendant Newman's Operation Rescue group – was attacked by a gunman, resulting in three deaths. Pl. Exs. 18, 20, 21, 22, $148.^{21}$

NAF's President and CEO testified that there "has been a dramatic increase" in harassment since July 14, 2015, and the "volume of hate speech and threats are nothing I have ever seen in 20 years." Pl. Ex. 95 (Deposition Transcript of Vicki Saporta) at 16:17-23, 39:13-20; *see also id.* at 43:15-18 ("We have uncovered many, many direct threats naming individual providers. Those

United States District Court Northern District of California ¹⁹ Defendants object to Exhibits 92 - 94 on the grounds that Foran lacks personal knowledge and cannot authenticate the exhibits, as hearsay, and on relevance. Those objections are overruled. ²⁰ Defendants object to Exhibits 96 - 99 as inadmissible hearsay, lack of personal knowledge, lack of authentication, irrelevant and prejudicial. Those objections are overruled. Defendants also filed a motion to supplement the Preliminary Injunction record with a news article indicating the individual arrested in connection with the fire at the Thousand Oaks Planned Parenthood office was not motivated by politics, but by a "domestic feud." Dkt. No. 322. That motion is GRANTED.

²¹ Defendants object to Exhibit 148 as irrelevant and inadmissible hearsay. Those objections are overruled.

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providers have had to undergo extensive security precautions and believe they are in danger."). In response, NAF hired and committed additional staff to monitoring the internet for harassment and threats. Saporta Depo. at 38:2-20. NAF's security team has also seen an increase in off-hour communications from members about security. Mellor Decl. ¶ 15. As a result, NAF has been forced to take increased security measures at increased cost, has cut back on its communications with members, and alerted hotel staff and security for its upcoming events that those meetings have been "compromised." Id. ¶ 15.

Two NAF members also submit declarations in support of NAF. Jennifer Dunn, a law 8 professor, submits a declaration explaining her expectation that she was filmed during the 2014 9 10 Annual Meeting during a panel presentation and that following the release of the CMP videos, she took steps to protect the safety and privacy of her family. Declaration of Jennifer T. Dunn (Dkt. 11 No. 3-31) ¶ 10.²² She explains that she is fearful that CMP may release a misleading and highly 12 edited video featuring some or all of her panel presentation that would open her up to the sort of 13 public disparagement and intimidation she saw directed towards Doctors Nucatola and Gatter after 14 the CMP videos were released. Id. ¶¶ 9-10. 15

16 Dr. Matthew Reeves, the medical director of NAF, submits a declaration explaining his understanding that Daleiden filmed conversations with him during the 2014 Annual Meeting, 17 Declaration of Dr. Matthew Reeves (Dkt. No.) ¶¶ 12-16.23 Dr. Reeves explains that he has 18 19 witnessed "the terrible reaction towards the prior doctors" who were featured in CMP's videos and he expects he "will suffer similar levels of reputational harm should a heavily edited and 20 misleading video of me be released." Id. ¶ 17. Because of his expectation that defendants could 21 "target" him, since the release of the videos, he had his home inspected by NAF's security team 22 23 and is installing a security system, but given the current atmosphere he remains fearful for his safety and that of his family. Id. ¶¶ 19, 21. 24

²² Defendants object to paragraph 10 of Dunn's declaration as lacking in personal knowledge, improper expert testimony, inadmissible hearsay, and improper opinion. Those objections are overruled.
 ²³ Defendants object to paragraph 10 of Dunn's declaration as lacking in personal knowledge, overruled.

²³ Defendants object to paragraph 12 of Dr. Reeves declaration as speculative, improper expert testimony, improper opinion testimony, and for lack of personal knowledge. Those objections are overruled.

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TEMPORARY RESTRAINING ORDER AND PRELIMINARY INMINCTION

On July 31, 2015, based on an application from NAF and after reviewing the preliminary evidentiary record, I granted NAF's request and entered a Temporary Restraining Order that restrained and enjoined defendants and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them from:

 publishing or otherwise disclosing to any third party any video, audio, photographic, or other recordings taken, or any confidential information learned, at any NAF annual meetings;

(2) publishing or otherwise disclosing to any third party the dates or locations of any future NAF meetings; and

(3) publishing or otherwise disclosing to any third party the names or addresses of any NAF members learned at any NAF annual meetings.

Dkt. No. 15. On August 3, 2015, after reviewing the arguments and additional evidence submitted by defendants, I issued an order keeping the TRO in place pending the hearing and ruling on NAF's motion for a preliminary injunction. Dkt. No. 27. On August 26, 2015, I entered a stipulated Protective Order, which provided that before responding to any subpoenas from law enforcement entities for information designated as confidential under the Protective Order, the party receiving the subpoena must notify the party whose materials are at issue and inform the entity that issued the subpoena that the materials requested are covered by the TRO. Dkt. No. 92 ¶9. The purpose of the notice provision is to allow the party whose confidential materials are sought the opportunity to meet and confer and, if necessary, seek relief from the subpoena in the court or tribunal from which the subpoena issued. *Id*.

In NAF's motion for preliminary injunction, NAF asks me to continue in effect the injunction provided in the TRO, but also to expand the scope to include the following:

(4) enjoin the publication or disclosure of any video, audio, photographic, or other

recordings taken of members or attendees Defendants first made contact with at NAF

meetings; and publishing or otherwise disclosing to any third party the dates or

locations of any future NAF meetings; and

(5) enjoin the defendants from attempting to gain access to any future NAF meetings.

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Motion (Dkt. No. 228-4) at i.

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LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on 3 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the 4 balance of equities tips in his favor, and that an injunction is in the public interest." Alliance for 5 the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting Winter v. Nat. Res. Def. 6 Council, Inc., 555 U.S. 7 (2008)). Where an injunction restrains speech, a showing of 7 "exceptional" circumstances may be required, as the Reporters Committee for Freedom of the 8 Press pointed out.²⁴ See, e.g., Bank Julius Baer & Co. Ltd v. Wikileaks, 535 F. Supp. 2d 980, 985 .9 (N.D. Cal. 2008). On this record, I conclude that exceptional circumstances exist, meriting the 10 continuation of injunctive relief pending final resolution of this case. 11

DISCUSSION

I. LIKELIHOOD OF SUCCESS

NAF's Amended Complaint asserts eleven different causes of action against the three defendants. Dkt. No. 131. In moving for a preliminary injunction, NAF rests on only two – breach of contract and violation of California Penal Code section 632 – to argue its likélihood of success on the merits.

A. Breach of Contract

Under California law, to succeed on a breach of contract claim, a plaintiff must prove: (1)
the existence of a contract, (2) plaintiff performed or is excused for nonperformance, (3)
defendant's breach, and (4) resulting damages to plaintiff. See, e.g., Reichert v. Gen. Ins. Co. of
Am., 68 Cal. 2d 822, 830 (1968). NAF argues that defendants' conduct: (i) breached the EAs, by
misrepresenting BioMax and their own identities; (ii) breached the EAs and CAs by secretly
recording during the Annual Meetings; and (iii) breached the EAs and CAs by disclosing and
publishing NAF's confidential materials.

27 ²⁴ The Reporters Committee for Freedom of the Press resubmitted their motion asking the Court to consider their *amici curiae* letter brief. Dkt. No. 287. I GRANT that motion and consider the Reporters Committee letter, as well as NAF's response, and the Reporters Committee's reply. Dkt. Nos. 109, 111, 114, 287.

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1. Existence of a Contract; Consideration for the Confidentiality Agreements Defendants argue that NAF cannot enforce the CA because that particular agreement was not supported by consideration for the 2014 or 2015 Meetings. See Chicago Title Ins. Co. v. AMZ Ins. Servs., Inc., 188 Cal. App. 4th 401, 423 (2010) ("Every executory contract requires consideration, which may be an act, forbearance, change in legal relations, or a promise.").²⁵ They contend that the only document that needed to be signed to gain access to the NAF Meetings was the EA. Therefore, according to defendants, there was no separate consideration given with respect to the CAs that were signed by or sought from the attendees at the NAF registration tables because NAF already had a legal obligation to permit them access to the meetings. Oppo. Br, at 19-20.

Defendants' argument is not supported by the facts. The EAs on their face provided access to the exhibition area ("Exhibit Rules and Regulations") and also required that any exhibitor's representatives be registered for the NAF Annual Meetings. Pl. Exs. 3.4. The CAs were required as part of the registration for the NAF Annual Meeting, and NAF's evidence demonstrates that no one was supposed to be allowed into the Meetings unless their identification was checked and they signed a CA. Declaration of Mark Mellor (Dkt. No. 3-33) ¶11; Dunn Decl. ¶6; see also Foran PI Decl. ¶ 79(C) (Sub-Bates 15-062; Time stamp; 14:56:02-14:56:50) (NAF representative confirming that Daleiden and associates had their identification checked and signed confidentiality agreements). Nothing in the language of the EAs or CAs, or the other facts in the record, support defendants' argument that upon signing the EAs, NAF had the legal obligation to permit Daleiden's group access to the meetings without further requirement.

Other than lack of consideration, the only other argument defendants appear to make with respect to the CA is that the CA cannot be enforced against Daleiden and two of his associates (Tennenbaum and Allen) because they did not execute CAs for the 2015 NAF Annual Meeting. Oppo. Br. at 19-20 & fn. 7. As an initial matter, there is no dispute that everyone in Daleiden's group signed the CAs for the 2014 Meeting. There is also no dispute that the reason Daleiden and

²⁵ Defendants make no argument that the EA was not supported by consideration. It plainly was; access to the exhibition hall in exchange for submission of the Application and payment of the exhibitor fee.

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two of his associates did not sign the CAs for the 2015 Meeting is that Daleiden lied about it to a NAF representative. Foran PI Decl. ¶ 79(C) (Sub-Bates 15-062; Time stamp: 14:56:02-14:56:50). There is likewise no dispute that at least one of the CMP associates working at Daleiden's direction, "Lopez," signed the 2015 CA. Given these facts, on this record, the 2015 CA can be enforced against defendants for purposes of determining likelihood of success on NAF's breach of contract claim.

I find that NAF has shown a likelihood of success on their breach of contract claim based on the 2014 and 2015 CAs.

2. Whether Defendants' Conduct Breached the EA

Defendants argue that NAF cannot prevail on its claim that defendants misrepresented themselves in violation of the EA because Paragraph 15 of the EA only requires Exhibitors to "identify, display, and/or represent their business, products, and/or services truthfully, accurately, 12 and consistently with the information provided in the Application." Defendants contend that this 13 14 requirement applies only to BioMax, not Daleiden and his associates "individually," and that NAF is attempting to base its breach claim on representations defendants made about BioMax 16 and/or CMP outside of the NAF Annual Meetings. Oppo. Br. at 20-21.

17 By signing the EA on behalf of a fake company, defendants CMP and Daleiden necessarily 18 violated paragraph 19 of the EA, which required the signatory's affirmation that the information in 19 the Agreement, as well as any information displayed at the Meetings, was "truthful, accurate, complete, and not misleading." Pl. Exs. 3.4. Similarly, by signing the EA and then displaying and 20 representing false and inaccurate information about BioMax at the Meetings, defendants CMP and 21 Daleiden violated paragraph 15 as well.²⁶ Defendants' conduct with respect to the information 22 23 they conveyed in the EA and their conduct at the NAF meeting is sufficient - on this record - to

²⁶ Defendants assert in their brief, without any citation to evidence, that BioMax's "business" was to "assess the market for clinics and abortion providers willing to partner with it in buying and selling fetal tissue." Oppo. Br. at 21. This post-hoc rationalization is contrary to the defendants' own contemporaneous statements and their statements on the EAs themselves which required the applicant to "5. List the products or services to be exhibited" and which Daleiden filled out as "biological specimen procurement, stem cell research" and "fetal tissue procurement, human biospecimen procurement." Pl. Exs. 3,4; see also Pl. Ex. 26 (describing BioMax as a "front organization.").

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show a violation of that agreement, regardless of how defendants may have portraved BioMax 1 outside of the NAF Meetings. 2

Defendants' argument that paragraph 15 of the EA restricts the remedies NAF can seek for breach to cancellation of the EA and removal of exhibits at the Meetings, and excludes the injunctive relief sought in this motion is likewise without support. Defendants continue to ignore paragraphs 18 and 19, which provide that if there is a breach of the EA, NAF is entitled to seek specific performance, injunctive relief and "all other remedies available at law or equity." Pl. Exs. 3.4.

On the record before me, NAF has a strong likelihood of success on its argument that defendants breached the EA for the 2014 and 2015 NAF Annual Meetings.²⁷

3. Scope and Reasonableness of the EA

Defendants argue that the EA is unenforceable because it is overbroad, imprecise, and unreasonable. Specifically, they rely on NAF's characterization of the EA (and presumably the CA as well) as "broad" and encompassing all NAF communications and things learned at the NAF. Meetings to argue that the EA's breadth is problematic.

That a confidentiality provision is broad does not mean it is unenforceable. The cases cited by defendants on this point are not to the contrary.²⁸ For example, in *Wildmon v. Berwick* Universal Pictures, 803 F. Supp. 1167, 1178 (N.D. Miss.) aff'd, 979 F.2d 209 (5th Cir. 1992), after applying Mississippi's contract interpretation doctrine and determining that the contract language was ambiguous, the Court concluded that "an ambiguous contract should be read in a

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Defendants also argue that their recordings could not have violated the EA because the EA did not prohibit audio and video recording, it only prohibited photography. Oppo. Br. at 19-20; EA at ¶ 13. Disputes over whether a ban on "photography" would prohibit video and audio recording aside, the CAs clearly prohibited all forms of recording and are enforceable against defendants, even for the 2015 meeting as discussed above. In a footnote, defendants assert that the CAs should be read as limiting the prohibition on recording to only formal sessions at the Meetings and not informal discussions. Oppo. Br. at 20, fn. 8. That argument is not supported. There is nothing in the text of the CA that indicates that "discussions" is limited to formal panel or workshop presentations and does not encompass information that is conveyed outside of those "formal" events,

Cf. Coast Plaza Doctors Hosp. v. Blue Cross of California, 83 Cal. App. 4th 677, 684 (2000), as modified (Sept. 7, 2000) (giving full effect to "contractual language [that] is both clear and plain. It is also very broad. In interpreting an unambiguous contractual provision we are bound to give effect to the plain and ordinary meaning of the language used by the parties.").

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way that allows viewership and encourages debate." The problem in *Wildmon* was not breadth, but ambiguity.

In In re JDS Uniphase Corp. Sec. Litig., 238 F. Supp. 2d 1127 (N.D. Cal. 2002), a 3 securities class action, the state of Connecticut moved the court to limit the scope of a 4 confidentiality agreement the employer imposed on its employees so that the employees could 5 respond to a state investigation. The court concluded, to "the extent that those agreements 6 preclude former employees from assisting in investigations of wrongdoing that have nothing to do 7 with trade secrets or other confidential business information, they conflict with the public policy in 8 9 favor of allowing even current employees to assist in securities fraud investigations." Id. at 1137. The considerations the court addressed in In re JDS Uniphase Corp. Sec. Litig that led it to limit 10 the scope of the employee confidentiality agreement may have some persuasive value with respect 11 to the interests of the Attorney General amici discussed below, but do not weigh against 12 enforcement of NAF's confidentiality agreements against defendants generally. This is especially 13 14 true considering that there are significant, countervailing public policy arguments weighing in 15 favor of enforcing NAF's confidentiality agreements. See, e.g., Cal. Govt. Code § 6215(a) 16 (recognizing that persons working in the reproductive health care field, specifically the provision 17 of terminating a pregnancy, are often subject to harassment, threats, and acts of violence by 18 persons or groups).

The final case relied on by defendants in support of their argument that the EA should be interpreted narrowly, consistent with the public's interest in hearing speech on matters of public concern, did not address a confidentiality agreement at all. See Curtis Pub. Co. v. Butts, 388 U.S. 130, 145 (1967). The Curtis case found that absent clear and compelling circumstances, the Court would not find that a defendant had waived a First Amendment defense to libel (where that specific defense had not been established by the Supreme Court at the time of defendants' libel trial).

Defendants also rely on established case law directing courts to interpret ambiguous
contracts in a manner that is reasonable and does not lead to absurd results. Oppo. Br. at 22-23.
Defendants argue that the broad coverage NAF contends the EA imposes on defendants is

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unreasonable and absurd because NAF's interpretation of the broad scope of the EA would cover all information discussed at NAF's Meetings, even publicly known information. Oppo. at 22-23. Defendants' argument might have some merit if it was made concerning a challenge to the application of the EAs' confidentiality provisions with respect to specific pieces or types of information that are otherwise publicly known or intended by NAF to be shared with individuals not covered by the EA. Defendants do not make that type of "as applied," narrow argument. Instead, they argue that the whole EA is unenforceable. There is no legal support for that result or for defendants' speculation that the EA might be enforced in an unreasonable manner against other NAF attendees.²⁹

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United States District Court Northern District of Californis 4. What Information is Covered by EA

Defendants argue that even if enforceable, the EA should be read to create confidentiality only for the information *provided* by NAF in formal sessions and should not be construed to cover information provided by conference attendees in informal conversations. Oppo. Br. at 26-27. Defendants rely on the two portions of paragraph 17 of EA for their restrictive interpretation of its coverage; they argue that paragraph 17 only restricts disclosure of information "NAF may furnish" and "written information provided by NAF." Those provisions, defendants say, should be read to modify "any information which is disclosed orally or visually." Taken together, defendants argue, this language "connotes formality" and therefore should cover only oral and visual information provided in formal sessions at the Meetings. Oppo. Br. at 26.

As an initial matter, defendants wholly ignore the provision in the EAs that signatories agree – on behalf of entities and their employees and agents – to "hold in trust and confidence any confidential information received in the course of exhibiting at the NAF Annual Meeting and agree not to reproduce or disclose confidential information without express permission from NAF." Pl. Exs. 3,4. The only reason defendants gained access to the NAF Annual Meetings was

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²⁹ I agree with defendants that NAF's intent with respect to the EA and CA is irrelevant for purposes of this motion. Under California contract law, intent comes into play only when contract language is ambiguous. There is no ambiguity concerning meaning of the EA or CA with respect to defendants' conduct here and, therefore, no need to construe otherwise ambiguous terms against the drafter. But see Rebolledo v. Tilly's, Inc., 228 Cal. App. 4th 900, 913 (2014) ("ambiguities in standard form contracts are to be construed against the drafter.").

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under their guise as exhibitors and all information they received was in the course of that role, even if gathered in places other than the exhibition hall. Moreover, defendants' constrained reading of paragraph 17 is illogical. The text of paragraph 17, when read as a whole, covers all written, oral, and visual information, and the "formality" of the language does not restrict its requirements to only the "formal" workshops and presentations as argued by defendants. ³⁰

In sum, on the record before me, NAF has demonstrated a strong likelihood of success on its breach of contract claims both with respect to the EAs that were signed by all CMP operatives in 2014 and 2015, and with respect to the CAs that were signed by Daleiden and his associates in 2014 and signed by Lopez in 2015.

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B. California Penal Code section 632

NAF also contends that it has demonstrated a likelihood of success on its claim that 11 12 defendants violated California Penal Code section 632. That provision makes it a crime to. "without the consent of all parties to a confidential communication, by means of any electronic 13 14 amplifying or recording device, eavesdrops upon or records the confidential communication, 15 whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device." Cal. Penal Code § 632(a). "The term 16 'confidential communication' includes any communication carried on in circumstances as may 17 reasonably indicate that any party to the communication desires it to be confined to the parties 18 thereto, but excludes a communication . . . in any other circumstance in which the parties to the 19 communication may reasonably expect that the communication may be overheard or recorded." 20 Id. § 632(c). And "[e]xcept as proof in an action or prosecution for violation of this section, no 21 evidence obtained as a result of eavesdropping upon or recording a confidential communication in 22 violation of this section shall be admissible in any judicial, administrative, legislative, or other 23 24 proceeding." Id. § 632(d).

25 Defendants argue that because section 632 does not prohibit publication of recordings 26 made in violation of the statute, NAF cannot justify an injunction against defendants based upon

³⁰ The same is true of defendants "implications of formality" argument made with respect to the CAs in a footnote. See Oppo. Br. at 27, n.12.

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an alleged violation of that statute. Indeed, California courts have held that "Penal Code section 632 does not prohibit the disclosure of information gathered in violation of its terms." *Lieberman v. KCOP Television, Inc.*, 110 Cal. App. 4th 156, 167 (2003); *cf. Kight v. CashCall, Inc.*, 200 Cal. App. 4th 1377, 1393 (2011) ("Although a recording preserves the conversation and thus could cause greater damage to an individual's privacy in the future, these losses are not protected by section 632.").

In reply, NAF argues that its section 632 claim is not being asserted as a basis for enjoining release of the recordings already made, but in support of its request that defendants be enjoined from "attempting to gain access to any future NAF meetings in order to tape its members, a form of relief specifically provided under § 637.2(b) ("Any person may . . . bring an action to enjoin and restrain any violation of this chapter, and may in the same action seek damages as provided by subdivision (a).").

Penal Code section 632, therefore, is not relevant to NAF's chances of success on the merits, but only with respect to the appropriate scope of injunctive relief, discussed below.³¹

C. The First Amendment and Public Policy Implications of the Requested Injunction Defendants argue that, assuming NAF demonstrates a likelihood of success on the breach of contract claim, the EAs and CAs should not be enforced through an injunction prohibiting defendants from publishing the recordings because that is an unjustified prior restraint and against public policy. NAF counters that even if First Amendment issues are raised by the injunction it seeks, any right to speech implicated by publishing the NAF recordings has been waived by defendants knowing agreement to the EAs and CAs.

NAF relies primarily on a line of cases holding that where parties to a contract agree to restrictions on speech, those restrictions are generally upheld. For example, in *Leonard v. Clark*, the Ninth Circuit addressed a union and union members' challenge to a Collective Bargaining

³¹ Both sides spend much time arguing whether section 632 prohibits recording panel presentations as opposed to conversations between individuals, because section 632's protections only extend to information as to which the speaker has a "reasonable expectation" of privacy. I need not reach these arguments as NAF no longer asserts section 632 as a ground for its likelihood of success on this motion.

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Agreement that arguably restricted their First Amendment rights to petition the government. 12 F.3d 885, 886 (9th Cir. 1993), *as amended* (Mar. 8, 1994). The court, following Supreme Court precedent, recognized that "First Amendment rights may be waived upon clear and convincing evidence that the waiver is knowing, voluntary and intelligent," and concluded that in negotiating the CBA the union knowingly waived any First Amendment rights that may have been implicated. *Id.* at 890.

Other cases have likewise found that speech rights can be knowingly waived. *ITT Telecom Prod. Corp. v. Dooley*, 214 Cal. App. 3d 307, 317, 319 (1989) (recognizing, in a case determining the scope of California's litigation privilege, that "it is possible to waive even First Amendment free speech rights by contract."); *Perricone v. Perricone*, 292 Conn. 187, 202 (2009) (Supreme Court of Connecticut enforced non-disclosure agreement as knowing and voluntary waiver of First Amendment rights and enjoined ex-wife from "appearing on radio or television" for purposes of discussing her former marriage or spouse); *Brooks v. Vallejo City Unified Sch. Dist.*, No. 2:09-CV-1815 MCE JFM, 2009 WL 10441783, at *5 (E.D. Cal. Oct. 30, 2009) (recognizing, in denying a third-party's attempt to secure a copy of a public entities' settlement agreement with two individual plaintiffs, that individuals "were entitled to bargain away their free speech rights by agreeing to confidentiality provisions or other contractual provisions that restrict free speech").

18 Defendants respond that NAF has not shown that Daleiden knowingly and intelligently waived his First Amendment rights by signing the NAF confidentiality agreements, resting their 19 argument on Daleiden's position that he believed the agreements were unenforceable and void. 20 21 Daleiden PI Decl. ¶ 12 ("I understood that no nondisclosure agreement is valid in the face of 22 criminal activity. In the course of my investigative journalism work, I have seen other confidentiality agreements, all of which were far more specific and detailed in terms of what the 23 24 protected information was. I believed the working of the nondisclosure portions of the Exhibit Agreement was too broad, vague, and contradictory to be enforced."). However, even if Daleiden 25 honestly believed he had *defenses* to the enforcement of the confidentiality agreements, there is no 26 argument - and no case law cited - that his signature on them and his agreement to them was not 27 "knowing and voluntary." Daleiden and his associates chose to attend the NAF Annual Meetings 28

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and voluntarily and knowingly signed the EAs and CAs.

Daleiden's argument would vitiate the enforceability of confidentiality agreements based on an individual's correct or mistaken belief as to the enforceability of those agreements. It is contrary to well-established law. See, e.g., Leonard v. Clark, 12 F.3d at 890 ("The fact that the Union informed the City of its view that Article V was 'unconstitutional, illegal, and unenforceable' does not make the Union's execution of the agreement any less voluntary."); see also Griffin v. Payne, 133 Cal. App. 363, 373 (Cal. Ct. App. 1933) ("A secret intent to violate the law, concealed in the mind of one party to an otherwise legal contract, cannot enable such party to avoid the contract and escape his liability under its terms.").

Defendants contend that the public policy at issue – allowing free speech on issues of significant public importance – weighs against finding a waiver and/or enforcing the confidentiality agreements. The Ninth Circuit has recognized that courts should balance the competing public interests in determining whether to enforce confidentiality agreements that restrict First Amendment rights. *Leonard*, 12 F.3d at 890 ("even if a party is found to have validly waived a constitutional right, we will not enforce the waiver 'if the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement."") (quoting *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1394 (9th Cir.1991)); *see also Perricone*, 292 Conn. 187, 221-22 (in weighing the public interests as to whether to enforce the agreement, the court observed: "The agreement does not prohibit the disclosure of information concerning the enforcement of laws protecting important rights, criminal behavior, the public health and safety or matters of great public importance, and the plaintiff is not a public official.").

On the record before me, balancing the significant interests as stake on both sides supports enforcement of the confidentiality agreements at this juncture. As the Supreme Court recognized in *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991), "the First Amendment does not confer on the press a constitutional right to disregard promises that would otherwise be enforced under state law." *Id.* at 672. ""[T]he publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of

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others." Id. at 7670 (quoting Associated Press v. NLRB, 301 U.S. 103 (1937)); see also Dietemann v. Time, Inc., 449 F.2d 245, 249 (9th Cir. 1971) ("The First Amendment is not a license to trespass, to steal, or to intrude by electronic means into the precincts of another's home or office. It does not become such a license simply because the person subjected to the intrusion is reasonably suspected of committing a crime."). That defendants intended to infiltrate the NAF Annual Meetings in order to uncover evidence of alleged criminal wrongdoing that would "trigger oriminal prosecution and civil litigation against Planned Parenthood and to precipitate pro-life political and cultural ramifications when the revelations become public," does not give defendants an automatic license to disregard the confidentiality provisions. Pl. Ex. 26.

Defendants passionately contend that public policy is on their side (and the side of public 10 disclosure) because the recordings show criminal wrongdoing by abortion providers - a matter 11 that is indisputably of significant public interest. Cf. Bernardo v. Planned Parenthood Fed'n of ·12 Am., 115 Cal. App. 4th 322, 358 (2004) (approving judicial notice "of the fact that abortion is one 13 of the most controversial political issues in our nation.").³² I have reviewed the recordings relied 14 on by defendants and find no evidence of criminal wrongdoing. At the very most, some of the 15 16 individuals expressed an interest in exploring a relationship with defendants' fake company in response to defendants entreaties of how "profitable" it can be and how tissue donation can assist 17 18 in furthering research. There are no express agreements to profit from the sale of fetal tissue or to change the timing of abortions to allow for tissue procurement.³³ 19

³² Defendants ask for leave to supplement the record to include the January 20, 2016 Order in the StemExpress LLC, Inc. v. Center for Medical Progress case pending in Los Angeles Superior Court. Dkt. No. 352. Defendants ask me to take notice that the Superior Court found defendants' Project video regarding StemExpress was "constitutionally protected activity in connection with a matter of public interest" under California's anti-SLAPP statute. That motion is GRANTED.
³³ The first piece of evidence that defendants repeatedly point to show "illegality" is an advertisement by StemExpress that was in both of the NAF 2014 and 2015 Meeting brochures. That ad states that olinics can "advance biomedical research," that partnering with StemExpress can be "Financially Profitable*Easy to Implement Plug-In Solution*Safeguards You and Your Donors" and that the "partner program" "fiscally rewards clinics." See Dkt. No. 270-1 at p. 3 of 10. However, the ad explains that StemExpress is a company that provides human tissue products "ranging from fetal to adult tissues and healthy to diseased samples" to many of the leading research institutions in the world. Id. The ad, therefore, is a general one and not one aimed solely at providers of fetal tissue. The ad does not demonstrate that StemExpress was engaged in illegal conduct of paying clinics at a profit for fetal tissue.

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I also find it significant that while defendants' repeatedly assert that their primary interest 1 in infiltrating NAF was to uncover evidence of criminal wrongdoing, and that the NAF recordings 2 show such wrongdoing, defendants did not provide any of the NAF recordings to law enforcement 3 4 following the 2014 Annual Meeting. Nor did defendants provide any of the NAF recordings to law enforcement immediately following the 2015 Annual Meetings. Instead, defendants decided it 5 was more important to "curate" and release the Project videos starting in July 2015. Sworn . .6 7 testimony from Daleiden establishes that the only disclosure of NAF materials he made to law 8 enforcement officers was: (i) providing a StemExpress advertisement from the NAF 2014 Annual Meeting program to law enforcement in El Dorado County, California in May 2015; and, 9 10 providing (ii) "short clips" of video to law enforcement in Texas in June or July 2015. Daleiden 11PI Decl. 124. If the NAF recordings truly demonstrated criminal conduct – the alleged goal of the 12 undercover operation - then CMP would have immediately turned them over to law enforcement. They did not.

Perhaps realizing that the recordings do not show criminal wrongdoing, defendants shift 14 15 and assert that there is a public interest in the recordings showing "a remarkable de-sensitization in 16 the attitudes of industry participants." Oppo. Br. at 14. As part of that shift, defendants' 17 opposition brief highlights portions of the recordings where abortion providers comment candidly 18 about how emotionally and professionally difficult their work can be. Oppo. Br. at 14-15. I have 19 reviewed defendants' transcripts of these portions of the recordings. Some comments can be 20 characterized as callous and some may show a "de-sensitization," as defendants describe it. They 21 can also be described as frank and uttered in the context of providers mutually recognizing the 22 difficulties they face in performing their work. However they are characterized, there issome 23 public interest in these comments, But unlike defendants' purported uncovering of criminal 24 activity, this sort of information is already fully part of the public debate over abortion. Oppo. Br. 25 at 49-50 (citing Gonzales v. Carhart, 550 U.S. 124, 158 (2007); Stenberg v. Carhart, 530 U.S. 26 914, 962 (2000)); see also VALUE OF HUMAN LIFE, 162 Cong Rec S 162, 163 (January 21, 27 2016); PROVIDING FOR CONSIDERATION OF H.R. 1947, FEDERAL AGRICULTURE 28 REFORM AND RISK MANAGEMENT ACT OF 2013, 159 Cong Rec H 3708, 3709 (June 8,

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2013 testimony on the PAIN-CAPABLE UNBORN CHILD PROTECTION ACT). The public interest in additional information on this issue cannot, standing alone, outweigh the competing interests of NAF and its members' expectations of privacy, their ability to perform their professions, and their personal security.

It is also this very information that could – if released and taken out of the context that it was shared in by NAF members – result in the sort of disparagement, intimidation, and harassment of which NAF members who were recorded during the Annual Meetings are afraid. Dunn Decl. ¶ 10; Reeves Decl. ¶ 17. In sum, the public interest in these comments is certainly relevant, but does not weigh heavily against the enforcement of the NAF confidentiality agreements.

On the other side, public policy also supports NAF's position: NAF has submitted 10 extensive evidence that in order to fulfill its mission and allow candid discussions of the 11 challenges its members face - both professional and personal - confidentiality agreements for . 12 NAF Meeting attendees are absolutely necessary. Dunn Decl. ¶ 5-6; Reeves Decl. ¶ 7; Saporta 13 14 Decl. ¶¶ 11, 13-16; Mellor Decl. ¶¶ 7, 10-14. Release of the recordings procured by fraud and 15 taken in violation of NAF's stringent confidentiality agreements, which disclose the identities of NAF members and compromise steps NAF members take to protect their privacy and professional 16 interests, is also contrary to California's recognition of the dangers faced by providers of abortion, 17 as well as California's efforts to keep information regarding the same shielded from public 18 disclosure and protect them from threats and harassment. See Cal. Govt. Code § 6215(a) ("(a) 19 Persons working in the reproductive health care field, specifically the provision of terminating a 20 pregnancy, are often subject to harassment, threats, and acts of violence by persons or groups,"); ·21 Cal. Civ. Code § 3427 et seq. (creating cause of action to deter interference with access to clinics 22 and health care); Cal. Govt. Code § 6218 ("Prohibition on soliciting; selling, trading, or posting on 23 Internet private information of those involved with reproductive health services"); Cal. Govt. Code 24 25 § 6254.28; Cal. Penal Code § 423 ("California Freedom of Access to Clinic and Church Entrances Act."). As noted above, since defendants' release of the Project videos (as well as the leak of a 26 portion of the NAF recordings), harassment, threats, and violent acts taken against NAF members 27 and facilities have increased dramatically. It is not speculative to expect that harassment, threats. 28

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and violent acts will continue to rise if defendants were to release NAF materials in a similar way. Weighing the public policy interests on the record before me, enforcement of the confidentiality agreements against defendants is not contrary to public policy.

That said, public policy may well support the release of a small subset of records – those 4' that defendants believe show criminal wrongdoing – to law enforcement agencies.³⁴ Defendants rely on a line of cases where courts have refused to enforce, or excused compliance with, otherwise applicable confidentiality agreements for the limited purpose of allowing cooperation with a specified law enforcement investigation. See, e.g., Alderson v. United States, 718 F. Supp. 2d 1186, 1200 (C.D. Cal. 2010); In re JDS Uniphase Corp. Sec. Litig., 238 F. Supp. 2d 1127 (N.D. Cal. 2002); Lachman v. Sperry-Sun Well Surveying Co., 457 F.2d 850, 854 (10th Cir. 1972); see also United States ex rel. Green v. Northrop Corp., 59 F.3d 953, 965 (9th Cir. 1995) (refusing to enforce a prefiling release of a False Claims Act claim); Siebert v. Gene Sec. Network, Inc. No. 11-CV-01987-JST, 2013 WL 5645309, at *8 (N.D. Cal. Oct. 16, 2013) (declining to enforce a nondisclosure agreement with respect to documents relevant to a FCA claim because application of the NDA to those documents would "would frustrate Congress' purpose in enacting the False Claims Act—namely, the public policy in favor of providing incentives for whistleblowers to come forward, file FCA suits, and aid the government in its investigation efforts."); but see 18. Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1062 n.15 (9th Cir. 2011) (upholding breach of confidentiality claim, despite plaintiff's attempt to "excuse her conduct on the grounds that she was in contact with, and providing information to, government investigators," in part because that justification "neither explains nor excuses the overbreadth of her seizure of documents.").35

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I do not disagree with the analysis and results in those cases, but note that the posture of

34 As I have said, my review of the recordings relied on by defendants does not show criminal conduct, but I recognize that law enforcement agencies may want to review the information at issue themselves in order to make their own assessment.

Defendants also rely on a related line of cases holding that contracts which expressly prohibit a signatory from reporting criminal behavior to law enforcement agencies are void as against public policy. See, e.g., Oppo. Br. at 52-55 (citing Fomby-Denson v. Dep't of the Army, 247 F.3d 1366, 1376 (Fed. Cir. 2001); Bowyer v. Burgess, 54 Cal. 2d 97, 98 (1960)). Those cases are inapposite.

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this case is different. Defendants' purported desire to disclose the NAF recordings to law 1 enforcement does not obviate the confidentiality agreements for all purposes. At most, defendants 2 might have a defense to a breach of contract claim based on production of NAF materials to law 3 enforcement. However, the question of whether defendants should be excused from complying 4 with NAF's confidentiality agreements in order to provide NAF materials to law enforcement has 5 not been placed directly at issue. In this case, Attorney General amici have appeared (with leave 6 of court) to present their arguments on the scope of the TRO and the requested preliminary 7 injunction.³⁵ They have not directly sought relief from the confidentiality agreements, the TRO. 8 or the requested preliminary injunction by intervening and moving for declaratory relief in this 9 Court or by seeking enforcement of their subpoenas in the courts of their own states. And 10 contrary to their assertion, the TRO in place and the Preliminary Injunction requested do not 11 prevent law enforcement officials from investigating defendants' claims of criminal wrongdoing. 12 13 For example, law enforcement agencies from the states of Arizona and Louisiana have instituted 14 formal efforts to secure the NAF recordings. Under procedures outlined in the Protective Order in 15 this case, NAF and defendants have been and continue to meet and confer with those state authorities about the scope of the subpoenas and defendants' responses.37 16 17 The record before me demonstrates that defendants infiltrated the NAF meetings with the Intent to disregard the confidentiality provisions and secretly record participants and presentations at those meetings. Defendants also admit that only a small subset of the total material gathered

19 20 implicate any potential criminal wrongdoing. Oppo. Br. at 10-14. I have reviewed those transcripts and recordings and find no evidence of actual criminal wrongdoing. That defendants 21 22 did not promptly turn over those recordings to law enforcement likewise belies their claim that

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> ³⁶ I have granted the Attorneys General of the states of Alabama, Arizona, Arkansas, Michigan, 24 Montana, Nebraska, and Oklahoma leave to participate as *amici curiae* in this matter. Dkt. Nos. 99, 100, 285. As represented by the office of the Attorney General of Arizona, the *amici* filed a 25 brief and argued in court during the hearing on the Motion for a Preliminary Injunction. There have only been three subpoenas served on CMP for NAF materials; the Congressional 26 subpoena that has been complied with, as well as subpoenas from Louisiana and Arizona. Negotiations between NAF, CMP, and the states of Louisiana and Arizona are ongoing. While NAF and the defendants have repeatedly stipulated to extend the timeframe for NAF to file a 27 challenge to the state subpoenas in state court (see Dkt. Nos. 246, 300), those were decisions 28 reached by the parties and not imposed by the Court.

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they uncovered criminal wrongdoing, and instead supports NAF's contention that defendants' goal instead is to falsely portray the operations of NAF's members through continued release of its "curated" videos as part of its strategy to alter the political landscape with respect to abortion and the public perception of NAF's members.³⁸ I conclude that NAF has shown a strong likelihood of success on its breach of contract claims against CMP and Daleiden. Enforcement of NAF's confidentiality provisions for purposes of continuing the injunction prohibiting defendants from releasing the NAF materials is not against public policy.

D. Claims Against Newman

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Defendant Newman argues that NAF has failed to show a likelihood of success against 9 him because there is no evidence of his role in the NAF infiltration and no argument that Newman 10 breached any of NAF's agreements. Newman's argument would be more relevant if this were a 11 motion for summary judgment. However, it is not. The only question is whether NAF has made a 12 strong showing of the likelihood of success on its contract claim against CMP and Daleiden, 13 14 which it has. NAF submitted evidence of Newman's own admissions that he advised Daleiden on 15 how to infiltrate the NAF meetings as part of the Project, which is relevant to the appropriate 16 scope of an injunction. Pl. Ex. 14 (at NAF0004475-76); Pl. Ex. 16 (at NAF0004493-94). That 17 evidence makes clear that Newman should remain covered by the Preliminary Injunction, even if 18 he is no longer serving as a board member of CMP. Dkt. No. 344.

19 || II. IRREPARABLE INJURY

To sustain the request for a preliminary injunction, NAF must demonstrate that
"irreparable injury is likely in the absence of" the requested injunction" and establish a "sufficient
causal connection" between the irreparable harm NAF seeks to avoid and defendants' intended
conduct - release of the NAF materials. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22
(2008); Perfect 10, Inc. v. Google, Inc., 653 F.3d 976, 982 (9th Cir. 2011).

³⁸ In opposing NAF's request that the Court order Daleiden to turn over the NAF materials to his outside counsel, Daleiden's counsel explained that Daleiden needed access to the NAF materials because "Mr. Daleiden continues to work on the Human Capital Project, including the work of curating available raw investigative materials for disclosure to law enforcement and for release of videos to the public." Dkt. No. 195.

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Defendants argue that NAF has not shown that it will suffer irreparable injury to justify a 1 preliminary injunction. However, as detailed above, the release of videos as part of defendants' 2 3 Human Capital Project has directly led to a significant increase in harassment, threats, and violence directed not only at the "targets" of CMP's videos but also at NAF and its members more 4 generally. This significant increase in harassment and violent acts - including the most recent 5 6 attack in Colorado Springs at the clinic where "target" Dr. Ginde is the medical director - has been adequately linked to the timing of the release of the Project videos by CMP. Saporta Decl. ¶ 19: 7 Saporta Depo. 42:1-10; Pl. Exs. 92, 93, 96-99.³⁹ If the NAF materials were publicly released, it is likely that the NAF attendees shown in those recordings would not only face an increase in harassment, threats, or incidents of violence, but also would have to expend more effort and money to implement additional security measures. See, e.g., Dunn Decl. ¶ 10; Reeves Decl. ¶ 19.⁴⁰ The same is true for NAF itself, which provides security assessments and assistance for its members. Mellor Decl., ¶ 15; Saporta Decl. ¶ 10.

14 Defendants contend that they cannot be held responsible for the threats, harassment, and 15 violence caused by "third-parties" in response to the release of the Project videos, and that defendants' ability to publish the NAF materials cannot be prevented when defendants have not 16 themselves been linked to the threats, harassment, and violence. Oppo. Br. at 43-44. But they fail 17 18 to contradict NAF's evidentiary showing that a significant increase in these acts followed CMP's 19 release of its Project videos. Moreover, a report submitted by NAF of an analysis of many of the "highlight" and "full" videos released by CMP concluded that the "curated" or highlight Project 20 21 videos were "misleading" and suggests that the "full" videos defendants released along with their 22 "highlights" were also edited. Pl. Ex. 77. Defendants do not counter this evidence, other than pointing to Daleiden's assertion that the highlight videos were accompanied by the release of the 23 24 "full" recordings. Given the evidence of defendants' past practices, allowing defendants to use the NAF materials in future Project videos would likely lead to the same result - release of misleading 25

³⁹ Defendants object to Exhibits 98 and 99 as inadmissible hearsay, for lack of personal knowledge, lack of authentication, and as irrelevant. Those objections are overruled. ⁴⁰ Defendants object to paragraph 19 of Dr. Reeves' declaration as speculative, improper expert testimony, and for lack of foundation. Those objections are OVERRULED.

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"highlight" videos disclosing the identity and comments of NAF members and meeting attendees, resulting in further harassment and incidents of violence against the individuals shown in those recordings. The NAF members and attendees in the recordings have a justifiable expectation that release of the materials – in direct contravention of the NAF confidentiality agreements – will result not only in harassment and violence but reputational harms as well. See, e.g., Dunn Decl. ¶¶ $9-10;^{41}$ Reeves Decl. ¶ 17.

Defendants miss the point in their attempt to shift the responsibility to overly zealous thirdparties for the actual and likely injury to NAF and its members that would stem from disclosure of the NAF materials. If defendants are allowed to release the NAF materials, NAF and its members would suffer immediate harms, including the need to take additional security measures. The "causal connection" between NAF's and its members' irreparable injury and the conduct enjoined (release of NAF materials) has been shown on this record.⁴²

On the other side of the equation is defendants' claim of irreparable injury. They focus on their First Amendment right to disseminate the information fraudulently obtained at the NAF Meetings, and the injury to the public of being deprived of the NAF recordings. But freedom of speech is not absolute, especially where there has been a voluntary agreement to keep information confidential. While the disclosure of evidence of criminal activity or evidence of imminent harm to public health and safety could outweigh enforcement of NAF's confidentiality agreements (as discussed above), there is no such evidence in defendants' recordings. Viewed in a light most favorable to defendants, what does appear is information that is already in the public domain that defendants characterize as showing a "de-sensitization" as to the work performed by abortion

The sum of defendants' argument and evidence on this point is that they cannot be blamed for the "hyperbolic comments of anonymous Internet commenters" and that "hyperbolic 'death threats' on the Internet and through social media has become an ubiquitous feature of online discourse." Oppo. Br. at 44-45. But the misleading nature of the Project videos that they have produced – reflective of the misleading nature of defendants' repeated assertions that the recordings at issue show significant evidence of criminal wrongdoing – have had tragic consequences, including the attack in Colorado where the gunman was apparently motivated by the CMP's characterization of the sale of "baby parts."

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 ⁴¹ Defendants object to paragraph 9 of the Dunn Declaration as lacking in personal knowledge, improper expert testimony, inadmissible hearsay, improper opinion testimony, and under the best evidence rule. Those objections are overruled.
 ⁴² The sum of defendants' argument and evidence on this point is that they cannot be blamed for

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providers. The balance of NAF's strong showing of irreparable injury to its members' freedom of
 association (to gather at NAF meetings and share their confidences), to its and its members'
 security, and to its members' ability to perform their chosen professions against preventing
 (through trial) defendants from disclosing information that is of public interest but which is neither
 new or unique, tilts strongly in favor of NAF.

III. BALANCE OF EQUITIES

Similar to the discussion of competing claims of irreparable injury, the balance of equities favors NAF. Defendants will suffer the hardship of being restricted in what evidence they can release to the public in support of their ongoing Human Capital Project, at least through a final determination at trial. However, the hardships suffered by NAF and its members are far more immediate, significant, and irreparable.

IV. PUBLIC INTEREST

I fully recognize that there is strong public interest on the issue of abortion on both sides of that debate, and that members of the public therefore have an interest in accessing the NAF materials. I also recognize that this case impinges on defendants' rights to speech and the public's equally important interest in hearing that speech. But this is not a typical freedom of speech case.⁴³ Nor is this a typical "newsgathering" case where courts refuse to impose prior restraints on speech, leaving the remedies for any defamatory publication or breach of contract to resolution

⁴³ None of the "prior restraint" cases defendants rely on address the types of exceptional facts established here: (i) enforceable confidentiality agreements, knowingly and voluntarily entered into, in which defendants agreed to the remedy of injunctive relief in the event of a breach; (ii) extensive and repeated fraudulent conduct; (iii) misleading characterizations about the information procured by misrepresentation; and (iv) a strong showing of irreparable harm if the confidentiality agreements are not enforced pending trial. See Oppo. Br. at 32-35. Several of defendants' prior restraint cases expressly left open the possibility of limits on speech where "private wrongs" and "clear évidence of criminal activity" occurred. See, e.g., Org. for a Better Austin v. Keefe, 402 U.S. 415, 419-20 (1971) (overturned broad injunction prohibiting "peaceful" pamphleteering across a city where injunction was not necessary to redress a "private wrong"); CBS, Inc. v. Davis, 510 U.S. 1315, 1318 (1994) (emergency stay overturning prior restraint where damage to meat packing company was readily remedied by post-publication damages action and "the record as developed thus far contains no clear evidence of criminal activity on the part of CBS, and the court below found none."); see also Bartnicki v. Vopper, 532 U.S. 514, 529-30 (2001) (striking down wiretap statutes to extent they penalized the publishing of secretly recorded phone conversations by reporters who played no role in the illegal interception; rejecting proposition that "speech by a law-abiding possessor of information can be suppressed in order to deter conduct by a non-law-abiding third party.").

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post-publication. See, e.g., CBS, Inc. v. Davis, 510 U.S. 1315, 1318 (1994); see also Promotions, Ltd. v. Conrad, 420 U.S. 546, 559 (1975).

Instead, this is an exceptional case where the extraordinary circumstances and evidence to date shows that the public interest weighs in favor of granting the preliminary injunction. Weighing against the public's general interest in disclosure of the recordings showing the "desensitization" of abortion providers, is the fact that there is a constitutional right to abortions and that NAF members also have the right to associate in privacy and safety to discuss their profession at the NAF Meetings, and need that privacy and safety in order to safely practice their profession. On the record before me, NAF has demonstrated the release of the NAF materials will irreparably impinge on those rights.

The context of how defendants came into possession of the NAF materials cannot be ignored and directly supports preliminarily preventing the disclosure of these materials. Defendants engaged in repeated instances of fraud, including the manufacture of fake documents, the creation and registration with the state of California of a fake company, and repeated false statements to a numerous NAF representatives and NAF members in order to infiltrate NAF and implement their Human Capital Project. The products of that Project – achieved in large part from the infiltration – thus far have not been pieces of journalistic integrity, but misleadingly edited videos and unfounded assertions (at least with respect to the NAF materials) of criminal misconduct. Defendants did not – as Daleiden repeatedly asserts – use widely accepted investigatory journalism techniques. Defendants provide no evidence to support that assertion and no cases on point.⁴⁴

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⁴⁴ Defendants rely on cases where reporters misrepresented themselves in the course of undercover investigations, but those cases do not show the level of fraud and misrepresentation defendants engaged in here. For example, in *Med. Lab. Mgmt. Consultants v. ABC*, 306 F.3d 806, 812 (9th Cir. 2002), reporters posed as employees of fictitious labs, in order to investigate whether an existing lab was violating federal regulations and misreading pap smear tests. There is no evidence that the reporters in the *Med. Lab.* case did anything other than verbally misrepresent themselves to the lab owner; the reporters did not create fictitious documents, register a fictitious company, or intentionally agree to confidentiality agreements before making their undercover recordings. *Id.* at 814 n.4 (noting the plaintiffs failed to obtain confidentiality agreements from defendants). It is also important to note that while the Ninth Circuit affirmed the district court's order granting summary judgment to defendants on plaintiffs' intrusion on seclusion, trespass, and tortious interference claims under Arizona law, the district court denied in part defendants' motion

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V. SCOPE OF INJUNCTION

A. Coverage of Third Party Law Enforcement Entities and Governmental Officials Defendants and the Attorney Generals of the states of Alabama, Arizona, Arkansas, Michigan, Montana, Nebraska, and Oklahoma (AG Amici) argue that any continuing injunction on the release of the NAF materials should not run to third-party law enforcement entities or government officials because NAF has not shown that disclosure of the NAF materials to law enforcement entities or government officials will result in irreparable harm and the public interest strongly favors governments being free to exercise their investigatory powers. See AG Amici Brief (Dkt. No. 285).

The Protective Order and the injunction in this case do not hinder the ability of states or other governmental entities from conducting investigations. Nor do they bar defendants from disclosing materials in response to subpoenas from law enforcement or other government entities. Instead, those orders simply impose a notice requirement on defendants; requiring them to notify NAF prior to defendants' production of the NAF materials so that NAF may (if necessary) challenge the subpoenas in the state court at issue. Contrary to the AG Amici position, these limited procedures do not purport to bind the states or prevent them from conducting investigations or seeking relief in their own courts. The Protective Order and injunction simply create an orderly procedure to allow production of relevant information to state law enforcement

as to plaintiffs' fraud claim. Id. at 812. In J.H. Desnick v. Am. Broad. Cos., 44 F.3d 1345, 1348 (7th Ĉir. 1995), the reporters posed as patients of an eye center and secretly recorded their eye exams. The misrepresentations in that case simply do not rise to the level of the misrepresentations here or the fraudulent lengths defendants went through to secure their recordings. Also, in that case, the Court of Appeals remanded the defamation claim for further proceedings, and affirmed the dismissal of the trespass, privacy, wiretapping, and fraud claims based on an analysis of the facts under the state and federal laws at issue. The district court did not dismiss the breach of contract claim. Id. at 1354. Finally, defendants' citation to Animal Legal Def. Fund v. Otter, No. 1:14-CV-00104-BLW, 2015 WL 4623943 (D. Idaho Aug. 3, 2015). for the proposition that using deceptive tactics to conduct an undercover investigation "is not 'fraud' and is fully protected by the First Amendment," is not supported. In that case, the district court struck down a state law that criminalized the use of "misrepresentation" to gain access to and record operations in an agricultural facility. In striking down the law as a content-based regulation of protected speech which failed strict scrutiny, the court noted that the law did not "limit its misrepresentation prohibition to false speech amounting to actionable fraud," and any harm from the speech at issue would not be compensable as "harm for fraud or defamation" because the harm did not stem from the misrepresentation made to access the facility. Id. at * 5-6. That case did not hold that undercover operations could not result in actionable fraud, breach of contract, or libel.

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or other governmental entities. As far as I am aware, that procedure has worked well and negotiations are ongoing between NAF, defendants, and the two states that have issued subpoenas to CMP, Arizona and Louisiana.⁴⁵

B. Expansion of Injunctive Relief

NAF also seeks to expand the injunctive relief to prevent defendants and those acting in concert with them from publishing or disclosing "any video, audio, photographic, or other recordings taken of members or attendees Defendants first made contact with at NAF meetings" and "enjoin the defendants from attempting to gain access to any future NAF meetings." Motion at i, 2.

On this record, NAF has not demonstrated that an expansion of the injunction is warranted. NAF does not identify (under seal or otherwise) the NAF members or attendees whom it believes have been recorded and whom defendants "first made contact with" at a NAF Annual Meeting. A request for injunctive relief must be specific and reasonably detailed, but NAF's request would import ambiguity into the scope of the injunction. Absent a more specific showing supported by evidence, I will not expand the preliminary injunction to ban CMP from releasing unspecified recordings of unspecified NAF members or attendees defendants "first made contact with" at the NAF Meetings.

Similarly, NAF has not shown that an "open-ended" expansion of the injunction to prohibit
the "defendants from attempting to gain access to any future NAF meetings," is necessary.
Defendants and their agents are now well known to NAF and its members and absent evidence
that defendants intend to continue to attempt to infiltrate NAF meetings, there is no need to extend
the preliminary injunction at this juncture.

⁴⁵ Similarly defendants appropriately notified the Court that CMP was subpoenaed to testify in front of a grand jury, and explained that if Daleiden was called upon to disclose information he learned at the NAF Annual Meetings in responding to the grand jury's questions, Daleiden intended to do so absent further order from this Court. Dkt. No. 323-5. This Court did nothing to, prevent Daleiden from testifying fully in front of that grand jury.

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CONCLUSION

Considering the evidence before me, and finding that NAF has made a strong showing on all relevant points, I GRANT the motion for a preliminary injunction. Pending a final judgment, defendants and those individuals who gained access to NAF's 2014 and 2015 Annual Meetings using aliases and acting with defendant CMP (including but not limited to the following individuals/aliases: Susan Tennenbaum, Brianna Allen, Rebecca Wagner, Adrian Lopez, and Philip Cronin) are restrained and enjoined from:

(1) publishing or otherwise disclosing to any third party any video, audio, photographic, or other recordings taken, or any confidential information learned, at any NAF annual meetings;
 (2) publishing or otherwise disclosing to any third party the dates or locations of any future

NAF meetings; and

(3) publishing or otherwise disclosing to any third party the names or addresses of anyNAF members learned at any NAF annual meetings.

IT IS SO ORDERED.

Dated: February 5, 2016

WILLIAM H. ORRICK United States District Judge

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-><u>EXHIBIT A-2</u>

EXPERT/CONSULTANT ACKNOWLEDGMENT OF CONFIDENTIALITY AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

_____, declare:

1. I reside at

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2. I have read the Stipulation and Protective Order ("Order") in National Abortion Federation v. Center for Medical Progress et al., Case No. 3:15-cv-3522-WHO, pending in the Northern District of California.

9 3. I am familiar with the contents of the Order and agree to comply and be bound by 10 the provisions thereof.

I will not divulge to persons other than those specifically authorized by the Order,
and will not copy or use except solely for the purposes of this litigation and only as expressly
permitted by the terms of the Order, any Confidential or Highly Confidential Information
obtained pursuant to the Order.

5. By signing below, I hereby agree to submit to the jurisdiction of the United States District Court for the Northern District of California for resolving any and all disputes regarding the Order and this Acknowledgment of Confidentiality. I further agree that any and all disputes regarding the Order and this Acknowledgment of Confidentiality shall be governed by the laws of the State of California, and that the district court for the Northern District of California shall be the sole and exclusive venue for resolving any disputes arising from the Order and this Acknowledgment of Confidentiality.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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	STIPULATED PROTECTIVE ORDER FO CASE NO. 3:15-CV-3522-WHO	R EXPEDITED DISCOVERY	•		27

Sue Feldmann

From:	Heather Saunders Estes, Planned Parenthood Northern California <info@ppnorcal.org></info@ppnorcal.org>
Sent:	Friday, April 29, 2016 9:00 AM
To:	AttorneyGeneral
Subject:	Kamala, What Will Inspire You?

Planned Parenthood Northern California



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Above: U.S. Senator Barbara Boxer, Acts of Courage 2016

SAVE THE DATE

Acts of Courage

WHAT WILL INSPIRE YOU?



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Sue Feldmann	
From:	Latanya Mapp Frett, Planned Parenthood Global <pponline@ppfa.org></pponline@ppfa.org>
Sent:	Wednesday, May 18, 2016 4:59 AM
To:	AttorneyGeneral
Subject:	Our response to the Zlka crisis





As the threat of Zika spreads and Congress continues to debate the U.S. response, millions of women are unable to access adequate sexual and reproductive health. Ģ care. Make a gift to Planned: Parenthood Global and help ensure they get the care they deserve. X Give Globally

Dear Kamala,

The Zika virus, which is transmitted by mosquitoes and linked to a condition affecting brain development in babies, continues to spread throughout Latin America and the Caribbean. Yet many governments in affected areas have only one piece of advice for women at risk: *Don't get pregnant*.





Don't get pregnant — but we won't help you access birth control. Don't get pregnant — even though abortion is illegal. Don't get pregnant — and if you do, you're on your own.

With reproductive and maternal health services so far out of reach, millions of women are bearing the burden of family planning on their own shoulders. And it's only making this public health crisis worse.

Planned Parenthood Global, the international division of Planned Parenthood Federation of America, is fighting to change that. <u>You can</u> <u>stand up for healthy moms</u> <u>everywhere by making a tax-</u> <u>deductible gift to help women —</u> <u>in Latin America, the Caribbean, and all over the world — access the care they deserve.</u>

Every country should ensure that its people have access to a full range of reproductive health care, including contraceptives and safe and legal abortion services. That's especially critical in times of emergency — times like now, as millions of women who are pregnant or may become pregnant face the threat of the Zika virus.

But in areas where governments can't — or won't — meet that need, Planned Parenthood Global and our partners are there to help. In countries around the globe, we're working with over 100 local partners to provide over one million women, men, and



Sue Feldmann		
From:	Planned Parenthood Mar Monte <development@ppmarmonte.org></development@ppmarmonte.org>	•
Sent:	Tuesday, May 03, 2016 1:28 PM	
То:	AttorneyGeneral	
Subject:	The Big Day of Giving is underway!	



"I first came to Planned Parenthood when I was 16 for STD-screening and birth control. I needed to go somewhere where I was anonymous, private and safe – and where people would really take care of me. I fo that place."



When you <u>donate to Planned Parenthood Mar Monte</u> you are fulfilling the promise to families in our commun that there is a safe place to go. You are opening the doors for the more than 8,000 patient visits that will ha in our health centers just this week alone.

That's why it's so important that you <u>give your gift now</u>. Without your support, vital health care services wou be available for tens of thousands of people who need it. Still not sure you're making a difference? Learn wh your gift can help achieve in only <u>one week</u>.

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Sue Feldmann					
From:	· Planr	ned Parenthood Mar Mo	nte <development@pr< td=""><td>marmonte.org></td><td></td></development@pr<>	marmonte.org>	
Sent:	Tues	day, May 03, 2016 12:01	AM		
	Tues	day, May 03, 2016 12:01 neyGeneral	AM .		



"After a financially debilitating divorce, I walked through your doors. My birth control prescription had run ou and I no longer had insurance. Kindness and understanding greeted me, and I was grateful. Thank you so m for being available to women in need."

When you <u>donate today</u>, you'll be part of more stories like this one. You'll ensure that over 200,000 people i communities will get the help they need. You'll guarantee that our patients – including 74% who live on less \$12,000 a year – don't have to live without health care.

Your gift will help transform thousands of lives every week. Your generosity makes possible the services highlighted in this one minute video



Sue Feldmann

From: Sent:	Planned Parenthood Mar Monte <development@ppmarmonte.org> Wednesday, April 27, 2016 4:40 PM</development@ppmarmonte.org>	•.
To: Subject:	AttorneyGeneral The Big DOG is One Week Away!	



Your Inspiring generosity during last year's <u>Big Day of Giving event</u> – a day when communities come togethe support local non-profits and charities – raised enough for Planned Parenthood Mar Monte to provide 275 pregnancy tests, 165 immunizations and 91 emergency contraceptive visits for our neighbors who can find t quality care nowhere else.

That's why we're reaching out today to remind you to join us next week, **Tuesday, May 3,** for the <u>Big Day (</u><u>Giving</u> 2016.



Without your support, health care services and education programs for thousands of families in mid-Californ and northern Nevada would be eliminated every year.

We're anticipating a day of buzz and feel-good giving on May 3! We're excited to share with you the many w your support helps keep families safe and healthy.

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Sue Feldmann

From:	Planned Parenthood Mar Monte <development@ppmarmonte.org></development@ppmarmonte.org>
Sent:	Wednesday, May 04, 2016 1:21 PM
To:	AttorneyGeneral
Subject:	The Big Day of Giving has been extended!



Dear Kamala,

Thank you for your interest in donating to Planned Parenthood Mar Monte through The Big Day of Giving. Du technical difficulties, The Big Day of Giving has been extended until 3:00 p.m. today, Wednesday, May 4.

If you haven't given your gift, but would like to, please <u>click here</u>. We appreciate your patience and generos

Sincerely,

Planned Parenthood



Sue Feldmann

ي ت

From:	Planned Parenthood Advocates Mar Monte <pre>publicaffairs@ppadvocatesmm.org></pre>
Sent:	Monday, May 23, 2016 9:58 AM
To:	AttorneyGeneral
Subject:	Take action for #PPCapitolDay!

Belanned Parenthood[•] Mar Monte

Dear Kamala,

Today is our annual <u>#PPCapitolDay</u>, when we throng the State Capitol to advocate for our priority legislation in 2016! We're working on important bills that increase access to birth control, improve telehealth care and protect privacy. Do you have a moment to stand with us in support of this legislation? <u>Click here</u> to take action now!

Right now more than 450 grassroots activists and Planned Parenthood Mar Monte staff are in Sacramento, urging leaders to support significant policies that will improve California's laws. This is a day to engage and educate supporters to spur change! Even if you can't join us in Sacramento **you can <u>support these efforts</u>** <u>by taking action virtually</u> to let legislators know you support these bills.

On social media? Track <u>#PPCapitolDay</u> on Twitter throughout the day to keep up with the latest news and see photos of the activities in Sacramento.

Finally, **did you know that May 23 is the voter registration deadline for the June primary election?** Are you registered? Have you moved recently and need to re-register? It's fast and easy to register online so you're ready to vote on June 7. <u>Register now</u>!

Thanks for all you do,

Care. No matici what pomalmonte.org.....

2016 Planned Parenthood Mar Monta 505 The Alameda, San Jose, CA 9512

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The Planned Parenthood Mar Monte Public Affairs Team

rom:	Heather Saunders Estes, CEO, Planned Parenthood Northern California <pride@ppnorcal.org></pride@ppnorcal.org>	
ent:	Thursday, May 12, 2016 8:04 AM	,
o: ubject:	AttorneyGeneral March with Planned Parenthood in the SF Pride Parade.	
	SPlanned Parenthood orthern California	
the	ark your calendars! Join Planned Parenthood Northern California at e San Francisco Pride Parade on Sunday, June 26 th . <u>Early</u> gistration is now open to our superstar supporters. Kamala, at means you!	
	SAVE THE DATE	
	March with Planned Parenthood Northern California in the SAN FRANCISCO PRIDE PARADE on June 26 ⁴ .	

SUNDAY, JUNE 26th www.ppactionca.org/sfpride

ß



Sue Feldmann

From:			•	Linda Williams <development@ppmarmonte.org></development@ppmarmonte.org>	
Sent:		•		Wednesday, May 25, 2016 7:33 PM	
To:	••			AttorneyGeneral	
Subject:			•	Statement from Linda Williams on Today's Arson Attack	
				•	

BPlanned Parenthood^{*} Mar Monte

Dear Kamala,

You may have already heard about the arson attack at our Modesto health center in the very

early hours of this morning, May 25. I want to fill you in on what we know at this time:

1) Though, thankfully, no one was hurt and there appears to be no structural damage to the building, there was enough damage – including to computers and the lobby (shown here) – to force us to close the health center for at least one week.

2) The fire was reported shortly before 4 a.m., and fire investigators at the scene found that someone had apparently thrown a gas can through one of the glass doors and ignited it. The fire damage was



contained to the immediate area, and, as often happens during this type of incident, the rest of the damage appears to be caused by the sprinkler system.

3) The incident is being investigated as arson.

4) When the insurance adjuster inspects the building we will have a clearer idea about the extent of the damage and what will be needed to restore it.

This incident is only the latest attack on Planned Parenthood health centers across the country as threats and attacks against our services, staff and sites have escalated nine-fold over the past year. These assaults are the result of a well-orchestrated smear campaign by anti-reproductive rights zealots that has spread to Congress and the violent fringe, resulting in four arson attacks within three months at our health centers around the country. The attack in Modesto makes it five.

I want to assure you that we will not be intimidated by extremists who try to shut down our services. Because of your steadfast and

communities that rely on us. With Gratitude,

Lunda

Linda Williams President and CEO

Donate

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Q.2016 Pletmed PatentholdtMat Manten 1605 Dry Alemeda San Jose CA 95126 <u>Arivacy Policy I Manage Subscription Unsubscribe</u>

Sliveralination (contenents)







Wednesday, March 30, 2016

HILTON SAN DIEGO BAYFRONT One Park Blvd. | San Diego, CA 92101

CHAIRS

Rosette Garcia & Daniel Kisner, MD

FEATURED SPEAKER Carole Joffe, PhD The Resilience of Planned Parenthood

FEARLESS VOICE AWARD RECIPIENT Willie J. Parker, MD, MPH, MSc

Reception 5:30 p.m. - 6:30 p.m. Dinner & Program 6:30 p.m. - 8:30 p.m. Dancing to follow.

Please note guest(s) on RSVP card. Tickets may be purchased online no later than March 25, 2016, at **planned.org/dinner**.

Prolaw: \$A2016/60969 Rec.d. HU. 3216

FEATURED SPEAKER



CAROLL JOPPE, PhD

Joffe is a professor in the Advancing New Standards in Reproductive Health (ANSIRH) program in the department of, obstetrics, gynecology, and reproductive sciences at UC San Francisco's Bixby Center for Global Reproductive Health, and a professor emerita of sociology at

UC Davis. She has spent a career studying reproductive rights and politics and is an expert on the history of abortion in the U.S. A defender of reproductive rights and an advocate for abortion providers, she stresses the need to end their marginalization from the mainstream medical community. Writing for both academic audiences and the general public, Joffe has published several books, including Doctors of Conscience: The Struggle to Provide Abortion Before and After Roe v. Wade; and Dispatches from the Abortion Wars: The Costs of Fanaticism to Doctors, Patients and the Rest of Us. She is a regular contributor to the Los Angeles Times, the Washington Post, The New York Times, RH Reality Check, Huffington Post, Slate, and others.

The recipient of numerous awards, she received the 2015 David Gunn Lifetime Achievement Award from the Abertion Care Network, given in memory of Dr. David Gunn, the first abortionproviding physician to be murdered in the U.S., to a person whose work in support of abortion care has been exemplary. She received her PhD in sociology from UC Berkeley.

PEARLESS VOICE AWARD RECIPIENT



WILLIE J. PARKER, MD, MPH, MSc

Dr. Willie J. Parker is a board-certified OB-GYN, women's health advocate, and abortion provider whose dedication to reproductive justice led him to relocate from Chicago, Illinois to his hometown of Birmingham, Alabama. There, he can ensure the women in Alabama and

neighboring states continue to get the reproductive care they need, despite an unprecedented enslaught of new restrictions on abortion providers, which has forzed many clinics to close. He is the physician plaintiff in a federal lawsuit to keep Mississippi's last remaining abortion clinic open, a case pending before the U.S. Supreme Court. His unflinching dedication to serving low-income women and women of color has been the focus of numerous print and online articles. He is also featured in *Trapped*, a new documentary about the erosion of reproductive rights in the U.S.

Dr. Parker holds degrees from the University of Iowa College of Medicine, Harvard School of Public Health, the University of Cincinnati, and the University of Michigan.

DIRECTIONS TO THE HILTON SAN DIEGO BAYFRONT One Park Blvd., San Diego, CA 92101

DRIVING SOUTH ON INTERSTATE.5

Take Front St./Civic Center exit. Stay on Front St. to Harbor Dr. Turn left onto Harbor Dr. (Pass Convention Center on right.) Turn right onto Park Blvd.

DRIVING SOUTH ON STATE ROUTE 163

Follow 10th Ave. to Market St. Turn right on Market St. to Front St. Turn left on Front St. to Harbor Dr. Turn left onto Harbor Dr. (Pass Convention Center on right.) Turn right onto Park Blvd.

DEIVING NORTH ON INTERSTATE 5

Take Cesar Chavez Pkwy. exit. At traffic signal turn left onto Cesar Chavez Pkwy. Turn right onto Harbor Dr. Turn left onto Park Blvd.

Parking Information

Valet service is \$15. After turning onto Park Blvd., go past parking structure entrance and turn left on Gull St. Drop off car at valet station just under bridge. Look for our helpful greaters.

Self-parking is \$10. After turning onto Park Blvd., take first left into the parking structure before hotel. Take parking structure elevator to third-floor sky bridge, which will take you to front of hotel. Look fer our helpful greeters.



We are excited to announce that a generous, anonymous donor has offered to match, dollar for dollar:

Any contribution that you make beyond the cost of each ticker of hable that you purchase

Any contribution you make, even aren'upurchasing fickets to arten

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Planned Parenthood of the Pacific Southwest

Please RSVP by Friday, March 25, 2016

TABLES (tab	le of ten)	QTY	TICKETS	QTY	
Advisory	\$1,750		\$175		
Patron	\$2,500		\$2,50		
Benefactor*	\$5,000		\$500		
*Honorary Committee: \$ dinner program, and inv	35,000 minimum cont itation to private rece	ribution. Incluc ption held on t	des a table of 10, n he same day.	ame in the	
I am unable to attend	but wish to make	a donation c	f\$		
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Please make check pa	yable to Planned I	Parenthood (or PPPSW.		
🗌 Visa 🔲 Master	Card 🔲 Americ	an Express	Discover		
Amount to be charged					
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Acct. #	omplin	nent	ary		
Signature					

Visit planned.org/dinner to purchase tickets or tables online. For more information, please call 619.881.4500 or email events@planned.org. All tickets are held at the door. The value of goods and services is \$100 per ticket or \$1,000 per table.

PLEASE LIST GUEST NAMES ON REVERSE.



Planned Parenthood[®]

Ear Pacific Southwest

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Please join us in celebrating the 25th anniversary of the Community Action Fund of Planned Parenthood of Orange and San Bernardino Counties.





KEYNOTE SPEAKER Lieutenant Governor Gavin Newsom

MISTRESS OF CEREMONIES Senator Connie Leyva (SD 20)

HONOREES

Orange County Women's Health Project for standing up for comprehensive sexual health education by advocating for AB 329, the California Healthy Youth Act.

> Tricia Nichols for leading the establishment of the Community Action Fund 25 years ago.



Protecting Public Health and Empowering Communities

FRIDAY, MAY 6, 2016

/ Hilton Costa Mesa
 .3050 Bristol Street, Costa Mesa
 .Complimentary self-parking and valet is available.

Sponsor's' VIP Champagne Reception: 11:00 a.m. Luncheon Registration: 11:30 a.m. Luncheon and Program Begins: 12:00 p.m.

For more information, visit us at CommunityActionFund.org.

ABOUT THE COMMUNITY ACTION FUND

The Community Action Fund is the political arm of Planned Parenthood of Orange and San Bernardino Counties. It is an independent, nonprofit, nonpartisan organization dedicated to protecting and expanding individual rights to reproductive choice and access to family planning. The Community Action Fund raises funds in support of progressive candidates that value access to affordable reproductive health services and comprehensive sexual health education.

COMMUNITY ACTION FUND BOARD OF DIRECTORS

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Contributions to the Community Action Fund of Planned Parenthood of Orange and San Bernardine Counties are not tax-deductible for federal income tax purposes because they fund lobbying and electoral work. We can accept contributions from individuals, businesses and labor organizations. One hundred percent (100%) of each contribution will be deposited into our state PAC (ID #1282464) to support state and local electoral work and advocacy on ballot initiatives.

COMMINITY ACTION FUND OF PEANNED PARENTHUDD OF ORANGE AND SAN DERVARDING GUINTIES 25TH ANNIVERSARY CELEBRATION

SPONSORSHIP OPPORTUNITIES

All sponsors and table captains will be recognized in printed and digital event materials. To assist with your recognition, please complete your gift by April J. For additional information, please call 714,633,6373, ext. 400 or email PublicAffairs@pposbc.org.

O VICTORY SPONSOR \$25,000

Includes program recognition, 20 VIP tickets to the event, and 10 invitations to the VIP 25th Anniversary champagne reception.

O CHAMPION SPONSOR \$10,000

Includes program recognition, 10 VIP tickets to the event, and 10 invitations to the VIP 25th Anniversary champagne reception.

O LEADER SPONSOR \$5,000

Includes program recognition, five tickets to the event, and five invitations to the VIP 25th Anniversary champagne reception.

O ADVOCATE SPONSOR \$2,500

Includes program recognition, four tickets to the event, and two invitations to the VIP.25th Anniversary champagne reception.

O FRIEND SPONSOR \$1,000

Includes program recognition, two tickets to the event, and two invitations to the VIP 25th Anniversary champagne reception.

EVENT ATTENDANCE AND GIFTS

O Yes! I would like to purchase_____tlcket(s) to the 25th Anniversary Celebration at \$95 each.

○ I can't attend, but wish to make a non tax-deductable donation of \$

O Sign me up to be a table captain! I want to help fill a table of 10 and be recognized in the program. Contact PublicAffairs@pposbc.org or call 714.633.6373, ext. 400 for more information.

If you would like to purchase tickets or make a gift online, you can also visit us at CommunityActionFund.org today!

(PLEASE GEF REVENGE)

DONOR INFORMATION

Name:			
Street:	• ••••••••••••••••••••••••••••••••••••		
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Preferred recogniti	on name:		
Occupation:*			
Employer:*	· · · · · · · · · · · · · · · · · · ·		
If self-employed, n	ame of the company or fo	oundation:*	

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PAYMENT INFORMATION

My gift of \$	will be made by	/: ·
O Cash or check payable	e to: PPOSBC CAF PAC	ID #1282464
O Visa O MasterCard	O American Express	O Discover .
Name on card:		
Oredit card #:		Exp. !Date:
Signature:		

My reservation includes the following guests:

Please indicate if requesting a vegetarian (v), vegan (ve), or gluten-free (gf) meal next to guest name(s).

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Please list the names of event attendees you would like to sit with. We will try our best to accommodate your request.

If you would like to send your guest names at a later date, please call 714.633.6373, ext. 400 or email PublicAffairs@pposbc.org.

Contributions to the Community Action Fund of Planned Parenthoed of Orange and San Bernardino Counties are not tax-deductible for federal Income tax purposes because they fund lobbying and electoral work. We can accept contributions from individuals, businesses and labor organizations. One hundred percent (100%) of each contribution will be deposited into our state PAC (ID #1282464) to support state and local electoral work and advocacy on ballot initiatives.

IN STREET, SO OF

Sue Feldmann From: Planned Parenthood Northern California <info@ppnorcal.org> Sent: Saturday, April 16, 2016 10:00 AM To: AttorneyGeneral Subject: You're Invited - Stand Up! with BATS Improv





Kamala, You're Invited!

Come laugh and raise a glassi Join the Napa Valley Board of Advocates for a night of comedy to celebrate the life saving work of Planned Parenthood Northern California.

Thursday, May 12, 2016

Dinner 5:30-7:30

Show 7:00-8:15

After Party 8:15-9:30

Buy your tickets today!

See you at Stand Up! Sincerely,

Heather Saundere Fetee

SAZO16101777 Gue 4.18:16


AttorneyGeneral

From: Sent:		Heather Saunders Estes, Planned Parenthood Northern California <info@pp Tuesday, May 03, 2016 4:41 PM</info@pp 	norcal.org>	•
To: Subject:	•	AttorneyGeneral Kamala, Don't Miss Your Chance to Stand Up! Plus, Special Group Pricing!	•	
•		·	•	





on Thursday, May 12th.

No need to drive into San Francisco to laugh out loud with the impressive improv hysterics by BATS.

Instead support our Stand Up! event by purchasing a \$150 ticket for the performance and a rockin' after party, or a special discount on 4 tickets for \$500!

Scargle paired with VIP seating and after party fun for \$750.

No auction - live or silent - just a lot of laughter and a Fund-A-Need.

Get in on the jokel We are almost at capacity - don't miss your chance to Stand Up!

Buy your tickets today!

P.S. Bring your mobile phone - we have games to entertain you! Those of you not at the dinner, we've got you covered - a glass of bubbly is waiting for you. See you there!

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O 2016 Plannest Parenthood Northern California 1650 Malencia Street, San Francisco, OA 94110 2185 Pacheco Street, Concord, CA 94520 Privacy Policy Manage Subscription (UnSubscribe

Sue Feldmann	
From:	Heather Saunders Estes, Planned Parenthood Northern California <info@ppnorcal.org></info@ppnorcal.org>
Sent:	Monday, May 09, 2016 6:39 PM
То:	AttorneyGeneral
Subject:	Get Your Laugh On!

Bearenthood Northern California Planned Paranthood Northern California presents "There is nothing in the world so irresistibly contagious as laughter and good humor." Charles Dickens We can't wait to laugh with you this Thursday evening at CIA's newest venue at the former Copia site, 500 1st St, Napa Check in with your funny side and enjoy a glass of bubbly before the show. Seating begins at 6:45pm Bring your fully charged cell phone (yes, bring it to the performance) to participate in the evening's Fund A Need to support Planned Parenthood Northern California. Napa Casual - of course

Haven't **purchased your tickets yet**? There's still time to get in on the fun!



Sue Feldmann

From:	Planned Parenthood Northern California <info@pp-sp.org></info@pp-sp.org>
Sent:	Friday, April 01, 2016 9:01 AM
To:	AttorneyGeneral
Subject:	Join us for Stand Up! with BATS Improv

Beanned Parenthood Northern California



Dear Kamala,

On Thursday, May 12, 2016, Planned Parenthood Northern California, in coordination with the Napa Valley Board of Advocates, will host <u>Stand Upl</u> an evening of comedy at the much-awaited



Culinary Institue of America (formerly Copia). Join us for an intimate dinner and customized show celebrating Planned Parenthood and our work in Napa.

The evening will feature **BATS Improv,** who will perform on-the-spot comedic skits with the help of audience suggestions. BATS Improv is a professional theatre company and an artistic community that cultivates and innovates the craft of Improvised theatre through engaging, playful, creative performance and training.

Come experience Stand Up as you never have before. There are two ways to experience Stand this year.

- Laugh and party with us. <u>Click</u>
 <u>here</u> for tickets.
- Eat, laugh and drink with us. To enjoy the gourmet dinner, be sure to <u>purchase tickets</u> at the Jubilant, Sassy, or Individual Reservation -Dinner, Performance & After-Party levels.

Seats are filling up fast and we are nearing capacity. Please <u>click here and</u> <u>RSVP today</u> to reserve your place. All tickets include admittance to the performance and after party. If you have any questions, please contact the Events Manager at (415)920-2068.

You may also receive a Paperless Post invitation, these invitations are for the same event - Stand Up! 2016.

2016 Planned Parenthood Northeth California

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Sincerely,

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Heather Saunders Estes President and CEO

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Wanada Subsorbtion -Unsubsories

From: Sent: To: Subject:

Kneer, Kathy <kathy:kneer@PPACCA.ORG> Friday, July 17, 2015 8:29 PM Kamala Harris Update from Planned Parenthood re: video attack



Flamed Paranizard Affiliates of California

Dear Madam Attorney General,

By now you may have heard about or have seen a heavily edited video of Dr. Deborah Nucatola, senior director of medical services for Planned Parenthood Federation of America, which was released this week by an organization calling Itself the Center for Medical Brogress. We wanted you to hear, directly from us/that the slaims being made are clearly outrageous and untrue.

As you know, Planned Parenthood's top pilotity is the compassionate care that we provide to close to 1 million Collfornians every year. In the video, the staffer speaks in a way that does not reflect the compassion or care that we know you expect. This is unacceptable to us and we apologize for het fore and her statements.

In health care, it's common practice for patients to have the option to donate these to selentific research that can be be lead to medical breakthroughs, such as treatments and surestion scribus diseases, Hour of seven. California Planned Parenthood affiliates have relationships with dona fide research centers that conduct lifesaving, outling edge stem cell and other research that is aimed at ouring heart disease, some cancers. Alzheimer's and other genetic diseases. Neither Planned Parenthood nor our patients financially benefit from these donations.

Planned Parenthood affiliates which participate in the programs rigorously follow all state and federal laws. We obtain consent from patients using the highest ethical and legal standards. Some affiliates which participate in donation programs do receive a modest fee, but that is for administrative and pransportation costs. The allegation that Planned Parenthood in any way profits from these donations is absolutely untrue.

This heavily edited wideo was created and gramoted by a well-funded group whose sole purpose is to damage Planned Parenthoed's reputation and to prevent us from providing preventive and reproductive health services that women need and deserve -- health services such as breast and cervical cancer screenings. STD testing and treatment, birth control and sexual health education. We know their real agenda, and they have never been concerned with protecting the health and safety of women. Their mission is to bar abortion completely and cut women off from care at Planned Parenthood and other health centers.

Sadly we do not believe this is the and to their charges against Planned Parenthood. If you have any question additional information, please do not besitate to call us. 5億地換款

Sincerely,

Kathy Kneer

DAG 245

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President and GEO Planned Parenthood Affiliates of CA

Jill Habig

From:	•			Robert Sumner
Sent:	÷			Tuesday, March 29, 2016 4:29 PM
· To:	٠	• •	•	Romero, Christina
Subject: `	•		• • • •	RE: Call with Robert Sumner (AG's Office) RE: AB,1671 (Illegal Video Taping)
• •				A Manual A M

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Jill.Habig@doi.ca.gov |

From: Romero, Christina [mailto:Christina.Romero@PPACCA:ORG]

Sent: Tuesday, March 29, 2016 4:28 PM

To: Robert Sumner

Subject: RE: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping);

Absolutely! If you send me her email I can add her to the invite. 🔘

Christina Romero, Legislative Director

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916-446-5247 | 916-441-0632 fax

B Planned Parenthood

Planned Parenthood Athilates of California

From: Robert Sumner <u>[mailto:Robert Sumner@doi.ca.gov]</u> Sent: Tuesday, March 29, 2016 4:27 PM To: Romero. Christina

Subject: RE: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)

Cool if I invite Jill Habig in case she can join?

-----Original Appointment-----From: Romero, Christina [mailto:Christina.Romero@PPACCA.ORG] Sent: Tuesday, March 29, 2016 4:26 PM

To: Romero, Christina; Robert Sumner; Parker, Beth; PPAC Line

Subject: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)

When: Friday, April 08, 2016 3:30 PM-4:00 PM (UTC-08:00) Pacific Time (US & Canada). Where: In person: 555 Capitol Mall Over the phone:

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From: Sent: To: Subject: Parker, Beth <beth.parker@PPACCA.ORG> Tuesday, July 21, 2015 9:42 AM Jill Habig; Robert Sumner Planned Parenthood: videos

Jill and Robby

A second video was released today. We believe we are fully compliant with all federal and state laws and are investigating the situation. Please feel free to reach out to me if you have any questions or concerns.

Beth

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Beth H. Parker, Chief Legal Counsel

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916.446.5247

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Planned Parentheod Adulties of California

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Jill Habig		· · · ·		•	
From: Sent: To: Subject:	Robert Sumner Tuesday, March 29, 2010 Romero, Christina RE: Call with Robert Sun	· · · ·	:: АВ.1671 (Illega	il Video Taping)	a da anti- ana anti-angla anti- angla da angla anti- angla da angla angla angla Angla da angla angla angla angla angla da angla angla angla
Jill.Habig@doi.ca.gov l				1	
From: Romero, Christina [<u>mailto:</u> Sent: Tuesday, March 29, 2016 4 To: Robert Sumner Subject: RE: Call with Robert Sur	:28 PM		o Taping):		
Absolutely! If you send me her en	nail I can add her to the i	nvite. ©		• •	•
Christina Romero, Legislative I Planned Parenthood Affiliates of 916-446-5247		tol Mall, Suite 510) Sacramento	, CA 95814	
Planned Parenthood [*] Act. No matter what.				. :	
Planned Parenthood Atlinates of California		-			
From: Robert Sumner [mailto:Rob Sent: Tuesday, March 29, 2016 4:2 To: Romero, Christina Subject: RE: Call with Robert Summ	27 PM		aping)	· · · · · ·	
Cool if I invite Jill Habig in case she Original Appointment From: Romero, Christina [mailto:O Sent: Tuesday, March 29, 2016 4:	hristina.Romero@PPACC	A.ORG]		• • •	
To: Romero, Christina; Robert Sun Subject: Call with Robert Sumner	nner; Parker, Beth; PPAC		ping)		

When: Friday, April 08, 2016 3:30 PM-4:00 PM (UTC-08:00) Pacific Time (US & Canada), Where: In person: 555 Capitol Mall Over the phone:

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🖾 Email

From: <u>Kneer, Kathy</u> To: <u>Robert Sumner</u> Subject:Update from Planned Parenthood re: video attack

Attachments may contain viruses that are harmful to your computer. Attachments may not display correctly.

image003.png (21Kb)



Planned Parenthood Attiliates of California

Dear Robert,

By now you may have heard about or have seen a heavily edited video of Dr. Deborah Nucatola, senior director of medical services for Planned Parenthood Federation of America, which was released this week by an organization calling itself the Center for Medical Progress. We wanted you to hear directly from us that the claims being made are clearly outrageous and untrue.

As you know, Planned Parenthood's top priority is the compassionate care that we provide to close to 1 million Californians every year. In the video, the staffer speaks in a way that does not reflect the compassion or care that we know you expect. This is unacceptable to us and we apologize for her tone and her statements.

In health care, it's common practice for patients to have the option to donate tissue to scientific research that can help lead to medical breakthroughs, such as treatments and cures for serious diseases. Four of seven California Planned Parenthood affiliates have relationships with bona fide research centers that conduct lifesaving, cutting edge stem cell and other research that is aimed at curing heart disease, some cancers, Alzheimer's and other genetic diseases. Neither Planned Parenthood nor our patients financially benefit from these donations.

Planned Parenthood affiliates which participate in the programs rigorously follow all state and federal laws. We obtain consent from patients using the highest ethical and legal standards. Some affiliates which participate in donation programs do receive a modest fee, but that is for administrative and transportation costs. The allegation that Planned Parenthood in any way profits from these donations is absolutely untrue.

This heavily edited video was created and promoted by a well-funded group whose sole purpose is to damage Planned Parenthood's reputation and to prevent us from providing preventive and reproductive health services that women need and deserve -- health services such as breast and cervical cancer screenings, STD testing and treatment, birth control and sexual health education. We know their real agenda, and they have never been concerned with protecting the health and safety of women. Their mission is to ban abortion completely and cut women off from care at Planned Parenthood and other health centers.

Sadly we do not believe this is the end to their charges against Planned Parenthood. If you have any questions or seek additional information, please do not hesitate to call us.

Sent:7/17/2015 3:27:15 PM

Print Message : Dell Archive Manager

Sincerely,

Kathy Kneer President and CEO Planned Parenthood Affiliates of CA

From: Sent: To: Subject: Robert Sumner Tuesday, March 29, 2016 4:13 PM 'Romero, Christina' RE: 2016 leg

Perfect. 🕲

From: Romero, Christina [mailto:Christina.Romero@PPACCA.ORG] Sent: Tuesday, March 29, 2016 4:12 PM To: Robert Sumner Subject: RE: 2016 leg

Hey Robertl I've been meaning to email you since yesterday!!! I'm going to give you a call and will also send to you.

Christina Romero, Legislative Director

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814

916-446-5247



Flavored Perenthood Alfillates of Galilornia

From: Robert Sumner [mailto:Robert.Sumner@doi.ca.gov] Sent: Tuesday, March 29, 2016 4:10 PM To: Romero, Christina Subject: 2016 leg

Hey Christinal Do you have a breakdown of PPAC's legislative priorities this session? Looking to check in on what you all are sponsoring/supporting, just generally in the interest of being helpful where I can. Thanksl

- Robby

Robert Sumner

Special Counsel for Legislation California Department of Justice Office of Attorney General Kamala D. Harris 1300 i Street Sacramento, CA 95814

robert.sumner@doj.ca.gov

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From:	Romero, Christina <christina.romero@ppacca.org></christina.romero@ppacca.org>
Sent:	Tuesday, March 29, 2016 4:13 PM
То:	Robert Sumner
Subject:	RE: 2016 leg

Just called you. Give me a call when you have a chance!

Christina Romero, Legislative Director

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916-446-5247

www.ppactionca.org



Planned Parenthood Altitizing of California

From: Robert Sumner [mailto:Robert.Sumner@doj.ca.gov] Sent: Tuesday, March 29, 2016 4:10 PM To: Romero, Christina Subject: 2016 leg

Hey Christinal Do you have a breakdown of PPAC's legislative priorities this session? Looking to check in on what you all are sponsoring/supporting, just generally in the interest of being helpful where I can. Thanks!

- Robby

Robert Sumner Special Counsel for Legislation California Department of Justice Office of Attorney General Kamala D. Harris 1300 I Street Sacramento, CA 95814



robert.sumner@doj.ca.gov

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From:	Romero, Christina <christina.romero@ppacca.org></christina.romero@ppacca.org>
Sent:	Tuesday, March 29, 2016 4:32 PM
То:	Robert Sumner
Subject:	RE: 2016 leg

Here are our priority bills this year. Happy to send fact sheets on any you are interested in l

BIII	Author	Subject	Position	Status
SPON	SORED PRIOR	ITY 1 BILLS		•
AB	Gomez	Illegal Video	Sponsor	Asm Public
1671		Distribution		Safety
AB 1947	Cher	Clinic Licensing	Sponsor	Asm Health TODAY
AB 2394	Garcia	Medi-Cal Non Trans	Support	Asm Health April 12
SB 447	Allen	Billing and Reimbursement	Sponsor	Asm Appropriations
SB 960	Hernandez/		Sponsor	Sen Health - April 13
SB 999	Pavley	12 Mo Contraceptives	Co- Sponsor	isen B&P 4-4 75en Health 4- 13
SJR 19	Jackson	Planned Parenthood	Sponsor	Asm Health
PPAC	OPPOSED BIL	l Reso LS		
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Christina Romero, Legislative Director

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Planned Parenthcod Artillates of California

From:	Romero, Christina <christina.romero@ppacca.org></christina.romero@ppacca.org>
Sent:	Tuesday, March 29, 2016 4:33 PM
To:	Robert Sumner
Subject:	RE: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)

Donel

Christina Romero, Legislative Director

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Planded Parantinoid Atliantes of California

From: Robert Sumner [<u>mailto:Robert.Sumner@doi.ca.gov</u>] Sent: Tuesday, March 29, 2016 4:29 PM To: Romero, Christina Subject: RE: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)

Jill.Habig@doj.ca.gov |

From: Romero, Christina [<u>mailto:Christina.Romero@PPACCA.ORG</u>] **Sent:** Tuesday, March 29, 2016 4:28 PM **To:** Robert Sumner **Subject:** RE: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)

Absolutely! If you send me her email I can add her to the invite. ③

Christina Romero, Legislative Director

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916-446-5247 | 916-441-0632 fax |

www.ppactionca.org

Planned Parenthood*

Placentel Parenthood Alfillates of California

From: Robert Sumner [mailto:Robert.Sumner@doi.ca.gov] Sent: Tuesday, March 29, 2016 4:27 PM To: Romero, Christina Subject: RE: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)

Cool if I invite Jill Habig in case she can join?

----Original Appointment----From: Romero, Christina [mailto:Christina.Romero@PPACCA.ORG]
Sent: Tuesday, March 29, 2016 4:26 PM
To: Romero, Christina; Robert Sumner; Parker, Beth; PPAC Line
Subject: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)
When: Friday, April 08, 2016 3:30 PM-4:00 PM (UTC-08:00) Pacific Time (US & Canada).
Where: In person: 555 Capitol Mall Over the phone:

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Planned Parenthood Affiliates of California

March 30, 2016

The Honorable Reginald B. Jones-Sawyer Chair, Assembly Committee on Public Safety 1020 N St, Room 111 Sacramento, CA 95814

RE: AB 1848 (Chiu) - SUPPORT

Dear Assemblymember Jones-Sawyer,

On behalf of Planned Parenthood Affiliates of California (PPAC) and our more than 115 health centers throughout the state, we are pleased to support AB 1848 (Chiu). This bill will require local law enforcement agencies to track the handling of sexual assault evidence kits and to provide annual reports to the California Department of Justice.

These sexual assault evidence kits, which are also known as "rape kits", can be a useful tool that law enforcement utilizes to provide justice to victims. However, forensic examination using such kits usually involves a number of highly invasive procedures and can last up to several hours. In many cases, survivors of sexual assault experience re-traumatization when undergoing the forensic evidence collection process. This does not undermine the value that these kits have but rather places an expectation on law enforcement to utilize these sensitive pieces of evidence. When these kits go unanalyzed, with no explanation for victims and further adds to the trauma endured by survivors seeking justice. In California, no comprehensive data is currently available about the number of sexual assault evidence kits law enforcement agencies collect annually or how many of those kits are analyzed. Further, no comprehensive data exists about the reasons some sexual assault evidence kits are not analyzed.

For these reasons, the scope of this problem cannot be properly estimated and the need for AB 1848 is clear. By requiring law enforcement to track and report the status of these kits, agencies would be able to better inform victims and policy makers so that they have the relevant information necessary to address this problem. For these reasons, PPAC supports AB 1848 (Chiu) and respectfully requests your AYE vote.

Sincerely,

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Christina Romero Legislative Director, Planned Parenthood Affiliates of California

cc: The Honorable David Chiu Members, Assembly Committee on Public Safety

555 Capitol Mall, Suite 510 · Sacramento, CA 95814 · (916) 446-5247 · (916) 441-0632 · www.ppactionCA.org

From:	Parker, Beth <beth.parker@ppacca.org></beth.parker@ppacca.org>
Sent:	Friday, April 08, 2016 3:39 PM
То:	Robert Sumner
Subject:	RE: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)

I didn't realize you were claling in. Christina said you were coming to office

From: Robert Sumner [mailto:Robert.Sumner@doj.ca.gov]

Sent: Friday, April 08, 2016 3:37 PM

To: Romero, Christina <<u>Christina Romero@PPACCA.ORG</u>>; Parker, Beth <<u>beth.parker@PPACCA.ORG</u>> Subject: RE: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping)

This is actually really lovely hold music so I'm doing fine, but let me know if folks plan on dialing in.

-----Original Appointment-----From: Romero, Christina [<u>mailto:Christina.Romero@PPACCA.ORG]</u> Sent: Tuesday, March 29, 2016 4:27 PM To: Romero, Christina; Robert Sumner; Parker, Beth; PPAC Line Subject: Call with Robert Sumner (AG's Office) RE: AB 1671 (Illegal Video Taping) When: Friday, April 08, 2016 3:30 PM-4:00 PM (UTC-08:00) Pacific Time (US.& Canada). Where: In person: 555 Capitol Mall Over the phone:

<< File: 2016_03_15_AB_1671_proposed_language (1).docx >>

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From:	Parker, Beth <beth.parker@ppacca.org></beth.parker@ppacca.org>
Sent:	Friday, April 08, 2016 3:51 PM
To:	Robert Sumner
Subject:	FW: 2016-03-15 AB 1671.docx - REVISED LEG. COUNSEL DRAFT
Attachments:	1610296.insert.docx

Here is current draft.

From: Joseph, Lori [mailto:lori.joseph@legislativecounsel.ca.gov] Sent: Wednesday, April 06, 2016 6:30 PM To: Parker, Beth <<u>beth.parker@PPACCA.ORG</u>> Subject: RE: 2016-03-15 AB 1671.docx - REVISED LEG. COUNSEL DRAFT

Hi Beth-

Sorry- Lattached the wrong draft! I've highlighted my correction in yellow on the attached.

1

Lari

From: Parker, Beth [mailto:beth.parker@PPACCA.ORG] Sent: Tuesday, April 05, 2016 10:02 AM To: Joseph, Lori Subject: FW: 2016-03-15 AB 1671.docx

AB 1671- CONFIDENTIAL COMMUNICATIONS DISCLOSURE—DRAFT LANGUAGE

632.01. Notwithstanding any other law, a person who, intentionally and without the consent of all parties to a confidential communication described in subdivision (c) of Section 632, does either of the following shall be punished as provided in subdivision (b) of Section 632:

(a) (1) Discloses or attempts to disclose, or distributes or attempts to distribute, in any manner, in any forum, including, but not limited to, Internet Web sites and social media, or for any purpose, the contents of any confidential communication obtained by that person in violation of subdivision (a) of Section 632.

(2) For purposes of this subdivision, "social media" means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

(b) Aids, abets, employs, or conspires with any person or persons to unlawfully do, permit, or cause to be done any of the acts described in subdivision (a).

From: Sent: To: Subject: Robert Sumner Wednesday, April 13, 2016 6:37 PM Romero, Christina Accepted: AB 1671 call Robby and Christina

From:	Romero, Christina <christina.romero@ppacca.org></christina.romero@ppacca.org>
Sent:	Thursday, April 14, 2016 10:00 AM
То:	Robert Sumner
Subject:	FW: AB 1671

Here is what I got from Sandy. Make sense? Please don't share.

Christina Romero, Legislative Director

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916-446-5247 | Sacramento | 916-441-0632 fax | Sacramento | Sacramento | Sacramento | Sacramento | 916-441-0632

www.ppactionca.org



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From: Uribe, Sandy [mailto:Sandy.Uribe@asm.ca.gov] Sent: Thursday, April 14, 2016 9:54 AM To: Romero, Christina Subject: RE: AB 1671

The case I argued on PC 654 was People v. Jones (2012) 54 Cal.4th 350. I'm forwarding via separate email from Lexis because I can't figure out how to attach it to this email.

Jones is distinguishable because the prosecutor alleged the multiple violations occurred from a single act. But I did lots of research in this area in order to prepare for the case. PC 654 applies to both literally one act, and also has a second application which looks to the intent and objective of the defendant. Neal v. CA (1960) 55 Cal.2d. 11, is the seminal case on this second application. There is an exception for when the course of conduct involves multiple victims.

Here is a blurb from a more recent case which would be applicable to the situation at hand, illegal recording and subsequent disclosure.

Section 654 provides: <u>HN7</u>* "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." The purpose of the statute "is to ensure that a defendant's punishment is commensurate with his culpability and that he is not punished more than once for what is essentially one criminal act." (<u>People v. Kwok (1998) 63</u> Cal.App.4th 1236, 1252 [75 Cal. Rptr. 2d 40](Kwok).)

(4) HN8 ★ Section 654 precludes multiple punishments for a single act or omission or for an indivisible course of conduct. (*People v. Deloza*(1998) 18 Cal.4th 585, 591 [76 Cal. Rptr. 2d 255, 957 P.2d 945] (*Deloza*).) "Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.' (*Neal v. State of California* [(1960)] 55 Cal.2d [11], 19 [9 Cal. Rptr. 607, 357 P.2d 839].)" (*Kwok. supra*, 63 Cal.App.4th at p. 1253.) "Whether the acts of which a defendant has been convicted constitute an indivisible course of

conduct is a question of fact for the trial court, and the trial court's findings [(whether express or implied)] will not be disturbed on appeal if they are supported by substantial evidence." (*Id.* at pp. 1252–1253.)

As this applies to your bill, I would say that in most situations the purpose of making a recording is to disseminate it to others. The person is not surreptitiously making a recording to listen to it himself.

If you have questions on this aspect, I'm happy to discuss this afternoon.

Sandy

From: Romero, Christina [mailto:Christina.Romero@PPACCA.ORG] Sent: Thursday, April 14, 2016 9:20 AM To: Uribe, Sandy Subject: RE: AB 1671

Sandy, do you have the court case that you were speaking to Beth about? I keep getting asked on my end but I'm not familiar with the conversation.

Christina Romero, Legislative Director

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916-446-5247

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Planned Parenthood Act. No matter which

Planned Parenthood Asthingtra of California

From: Uribe, Sandy [mailto:Sandy.Uribe@asm.ca.gov] Sent: Wednesday, April 13, 2016 10:07 PM To: Romero, Christina Subject: Re: AB 1671

Thank you for your email Christina. I hope so too. I honestly never thought I would be in a position to raise concerns about a PP bill. Besides personal friendship with Paul Knepprath, I used PP facilities both in college and law school. Also a college classmate was killed working at a PP facility in Boston shortly after graduation. So I get the sacrifice folks in your organization make. That being said, my job is to look at the legal issues.

I am available to meet around 1:30 or 2:00. I have to meet with the Chair again after session.

Sandy

Sent from my iPhone

On Apr 13, 2016, at 9:39 PM, Romero, Christina <<u>Christina.Romero@PPACCA.ORG</u>> wrote:

Good Evening Sandy,

I spoke to Assemblymember Gomez tonight and he said Chair Jones-Sawyer wanted us to meet tomorrow to clarify some of the language in our bill. What time is good for you? We are available from 11:45-1pm and 1:30pm-5pm, tomorrow.

If those times don't work for you Beth and I can see if we can move some of our meetings tomorrow. We look forward to talking and I thank you for all your attention to this bill. This is Planned Parenthoods number one priority bill in California because of all the suffering our staff has endured through the video attacks we have sustained. Thank you again. I really hope we can work this out!

Christina Romero, Legislative Director

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814

916-446-5247

<image001.png>

From: Uribe, Sandy [mailto:Sandy.Uribe@asm.ca.gov] Sent: Tuesday, April 12, 2016 4:33 PM To: Romero, Christina Subject: RE: AB 1671

Hi Christina,

The committee Chair allows two witnesses per side and gives them each two minutes to testify.

The staffer for Asm. Gomez offered to set up a meeting with you and me to discuss the bill. Unfortunately, because their office waited so long to amend this bill, I honestly don't have time to meet. I am not trying to be rude, but I have less than two days to draft the analyses for all my assigned bills we are going to hear next week. This is our biggest hearing because it's our last. I'm happy to speak with you on the phone, though.

Feel free to give me a call at your convenience. I will be here until about 7:30 tonight, or all day tomorrow. My direct line is a second seco

Sandy

Sandy Uribe Committee Counsel Assembly Committee on Public Safety 1020 N Street, Room 111 Sacramento, CA 95814

(916) 319-3745 - fax

From: Romero, Christina [mailto:Christina.Romero@PPACCA.ORG] Sent: Tuesday, April 12, 2016 10:30 AM To: Uribe, Sandy Subject: AB 1671 Importance: High

Hello Sandy,

I hope you are well. I'd love to come chat with you about this bill that we are sponsoring, AB 1671 (Gomez). Additionally, I can't find the committee rules posted and wondering how many witnesses the chair allows and how many minutes each witness has to speak. Looking forward to chatting with you and providing our perspective.

Christina Romero, Legislative Director

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814

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916-446-5247	916-441-0632 fax	
www.ppactionca.org		

<image001.png>

From:	Rotenberg, Deborah <deborah.rotenberg@ppacca.org></deborah.rotenberg@ppacca.org>
Sent:	. Tuesday, May 24, 2016 2:45 PM
То:	Robert Sumner
Subject:	RE: Hi Robbie, meet Deb

This is great. Thanks so very much for your help!

From: Robert Sumner [mailto:Robert.Sumner@doj.ca.gov] Sent: Monday, May 23, 2016 5:16 PM To: Rotenberg, Deborah <<u>deborah.rotenberg@PPACCA.ORG</u>> Subject: RE: Hi Robbie, meet Deb

Went down to the library and found it + scanned it myself. (Which explains why it's a rough scan; let me know if this is adequately readable!) That's personal service from your constitutional officer, right there.

- Robby

From: Rotenberg, Deborah [mailto:deborah.rotenberg@PPACCA.ORG] Sent: Friday, May 20, 2016 9:12 PM To: Robert Sumner Subject: Re: Hi Robbie, meet Deb

As a matter of fact, I do!

Office of the Attorney General of the State of California. Opinion No. CV 74-305, May 20, 1975.

I really appreciate your help with this!

Thanks so much, Deborah

Sent from my IPhone

On May 20, 2016, at 8:21 PM, "Robert Sumner" <<u>Robert.Sumner@doi.ca.gov</u>> wrote:

Lucky for you we have one at DOJ; let me check on Monday. Any idea of details beyond that?

Sent from my iPhone

On May 20, 2016, at 7:33 PM, Rotenberg, Deborah < deborah.rotenberg@PPACCA.ORG > wrote:

Hi there! Glad to e-meet you. The opinion I need is from the 70s. Law library, eh?

Sent from my iPhone

On May 20, 2016, at 6:37 PM, "Robert Sumner" <<u>Robert.Sumner@doi.ca.gov</u>> wrote:

Hi Debl I can look back as long ago as 1989 before having to start pointing you toward law libraries. Any additional details you can provide?

Unless it's the opinion attached from 2000, in which case I'm a wizard.

Robby

Robert Sumner

Director, Office of Legislative Affairs California Department of Justice Office of Attorney General Kamala D. Harris 1300 | Street Sacramento, CA 95814

robert.sumner@doj.ca.gov

From: Huchel, Sarah [<u>mailto:Sarah.Huchel@sen.ca.gov</u>] Sent: Friday, May 20, 2016 1:53 PM To: Rotenberg, Deborah Cc: Robert Sumner Subject: Hi Robbie, meet Deb

She needs an AG opinion from long ago and far away about both our second favorite subject, CPM. Could you please advise?

Sarah Huchel Principal Consultant Senate Committee on Business, Professions, and Economic Development State Capitol, Room 2053 Sacramento, CA 95814

F: 916.266.9343

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ATTORNEY GENERAL'S OPINIONS

[VOLUME 58

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cases upholding the unlimited power of the Legislature in workmen's on matters are: Dominquez v. Pendola, 46 Cal. App. 220 (1920) (parties vived of the constitutional right to a jury trial); Lee v. Superior Court, i (1923) (limitation of constitutional grant of authority to the superior eddy v. Industrial Acc. Com., 41 Cal. 24 118 (1953); Saeramento v. Acc. Com., 74 Cal. App. 386 (1925) (city charter provisions subordinate ag provisions in the compensation act); Ferrir v. Industrial Acc. Com., pp. 2d 427 (1965) (presumption in Workmen's Compensation Act o certain public employees not subject to constitutional attack as being (e).

ion Code section 12919 is confined to situations where the employee eath "in the course of his employment." The quoted words or similar are commonly found in laws concerned with workmen's compensation, section 21; Labor Code § 3600; Longshoremen's and Harbor Workers' on Act, 33 USC § 902; 58 Am. Jur., Workmen's Compensation § 209. creates a benefit for the dependents of a workman because of a death a the course of employment and as such it can be upheld as an item 's compensation legislation immune from the gift and extra compensaons of the Constitution.

Code section 3600 limits industrial injuries to those "arising out of and is of ... employment, ...," Article XX_s section 21 is not as restrictive; s the Legislature to create a system of workmen's compensation for tained in the course of employment. The injury need not arise out of near.

the compensation statutes of most states require the injury to arise out : in the course of employment some jurisdictions permit recovery if only onditions is met, that is, an injury is compensable if it either arises out in the course of employment. 58 Am. Jur., Workmen's Compensation § tion Code section 12919, in authorizing the payment of compensation ultring a showing that death atose out of employment, finds legislative t the latter class of enactments.

ection 12919 is found in the Education Code rather than in workmen's in portions of the Labor Code, section 3201 at seq., does not militate leing a workmen's compensation measure. A statute otherwise valid because it is found in any particular code; codification is for the conthe people and no one of the codes Is limited to a particular subject. In 4, 28 Cal. 2d 91 (1946); Proctor v. Justice's Court, 209 Cal. 39 (1930); 3utte v. Merrill, 141 Cal. 396 (1903); People v. Darby, 114 Cal. App. 52). As was said in People v. Darby, supra, at 424, "What the Legislathe law, wheresoever it be found."

• of the foregoing, it is concluded that Education Code section 12919 is inder Article XX, section 21, and is not in conflict with other constitusions above cited. .

Opinion No. CV 74-305-May 20, 1975

ATTORNEY GENERAL'S OPINIONS

SUBJECT: CLINICS—PHYSICIANS—Physician and surgeon may be employed by duly licensed clinic which operates as nonprofit corporation, limits its services to members of specific group, and bases charges on patient's ability to pay.

Requested by: EXECUTIVE SECRETARY, STATE BOARD OF MEDICAL EXAMINERS

Opinion by: EVELLE J. YOUNGER, Attorney General Maya S. Vasquez, Deputy

Honorable Raymond Reid, Executive Secretary of the State Board of Medical Examiners, has requested the opinion of this office on the following question:

May a community clinic lawfully employ a licensed physician and surgeon, and if so, under what circumstances?

The conclusion is:

MAY 19751

A community clinic may lawfully employ a licensed physician and surgeon, provided that the clinic is duly licensed, that charges, if any, are based on the patient's ability to pay, and that the medical services are available to a specific group but not to the general public.

ANALYSIS

Although this question is not presented with reference to a specific community clinic, the issue originally arose in connection with two particular nonprofit clinics, created for the medical care of migrant farmworkers, and funded in part by federal grants. Since there are now several such clinics within this State, the question has been presented, and is treated, generally.

Analysis of this issue involves the longstanding prohibition of the practice of medicine by artificial legal entities. *Pacific Employer: Ins. Co. v. Carpenter,* 10 Cal. App. 2d 592 (1935). In *People v. Pacific Health Corp.,* 12 Cal. 2d 156, 160 (1938), the court drew a distinction between a "private profit corporation" and a "philanthropic association" in considering what constitutes the corporate practice of medicine. "Philanthropic associations" were defined as "fraternal, religious, hospital, labor and similar benevolent organizations furnishing medical services to members." The court stated at page 160:

"The principal evils attendant upon corporate practice of medicine sprang from the conflict between the professional standards and obligations of the doctors and the profit motive of the corporate employer."

Since this conflict does not arise with a nonprofit corporation, the court concluded that policy objections to the corporate practice of medicine should not apply to nonprofit institutions.

A 1951 amendment to Business and Professions Code section 2008 provided a further exception as follows:



"Corporations and other artificial legal entities have no professional rights, privileges or powers; provided, however, that the board may in its sole discretion, after such examination, investigation and documentary evidence as it may require, and under rules and regulations adopted by it, grant approval of the employment of physicians and surgeons on a salary basis by licensed charitable and eleemosynary institutions, foundations or clinics or by approved medical schools operating clinics therewith, if no claste for professional services rendered patients is made by any such institution, foundation, clinic or school."

It has been previously stated by this office that, pursuant to the express provision of section 2008 of the Business and Professions Code, a nonprofit philanthropic association may employ on a salary basis a licensed physician and surgeon to render medical services to its members. 54 Ops. Cal. Atty. Gen. 126, 127 (1971); 55 Ops. Cal. Atty. Gen. 324, 327 (1972); 55 Ops. Cal. Atty. Gen. 39, 40 (1972).

Prior to 1971, the concept of a community clinic, funded by both grants of public funds and charitable contributions, and intended to serve a particular group defined by its social and economic characteristics, was not widely known. Private pay clinics, permitted to operate until 1953, were effectively abolished in that year by excluding them from the classes of clinics enumerated in Health and Safety Code section 1203. The only clinics eligible for licensure under the provisions of the Health and Safety Code were those classed as charitable, teaching and research, employer's and employees' clinics. However, by 1971, the Legislature saw a need to clarify the status of existing community clinics by amending Health and Safety Code section 1203 (a) to read as follows:

"(a) A community clinic is a clinic operated by a nonprofit corporation, supported and maintained in whole or in part by donations, bequests, gifts, grants, fees, or contributions. In a community clinic any charges for advice, diagnosis, treatment, medicines, drugs, appliances or apparatus concerning bodily and mental disease and injuries are based on ability of the patient to pay or such services are given without charge. No corporation, other than a nonprofit corporation, no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual, shall operate a community clinic. No natural person or persons shall operate a community clinic."

In 25 Ops. Cal. Atty. Gen, 198 (1955), this office determined that a physician may be employed on a salary basis by an employer's or employees' clinic, a situation analogous to that presented here. Although published before the 1971 amendment of Health and Safety Code section 1203 (a), that opinion is significant here because of its reliance upon the distinction between private profit corporations and nonprofit corporations.

In addition, that opinion defined the relationship between Health and Safety Code section 1203 and Business and Professions Code section 2393. It was determined, in 25 Ops. Cal. Atty. Gen. at page 204, that section 2393 is violated only when a fictitious name is used to identify the person of a practitioner automatically violated by designation of the facility in which he pra fictitious title. Where a designation refers to the establishment or facil no violation of the group practice provisions of section 2393.

A legislative enactment supported this conclusion by specifically those physicians employed by a community clinic from the provisions 2393. Amended by urgency legislation effective March 12, 1974 (Stat 62), section 2393 now states the requirements for a permit to use a fict as follows in relevant part:

"(b) The place or establishment, or the portion thereof, in wh applicant or applicants practice, is owned or leased by the applic applicants, and the practice conducted at such place or establishm portion thereof, is wholly owned and entirely controlled by the apor applicants provided, however, that where the applicant is workin community clinic, as defined in subdivision (a) of Section 1203 Health and Safety Code, which contracts with or employs ind licensed physicians and surgeons to render medical care, this subdivision shall not apply.

"(c) The name under which the applicant or applicants propoperate contains at least one of the following designations: 'n group,' medical clinic,' podiatrists' group,' podiatry group,' podi clinic,' or 'podiatry clinic'; provided, however, that where the ap is working for a community clinic, as defined in subdivision (Section 1203 of the Health and Safety Code, and Is subject to the limitations of Title 17, California Administrative Code, Section 12 applicants propose to operate contain the name under whi applicant or applicants propose to operate contain the name or na any of the physicians working for or employed by the community set.

The intent of the Legislature appears to be stated in the reciconstituting the necessity of designating the section 2393 amendment as statute. Section 2 of Stats. 1974, ch. 62, states as follows:

"There are several medical-free clinics which are being chal on their use of the designation 'clinic' and without such use th unable to effectively inform those citizens who are in need o services about the availability of the services which they offer. In that these medical-free clinics may achieve their goals ir is necessa this act go into immediate effect."

The foregoing discussion of the statutory and judicial authorities leads us to conclude that a community clinic may employ a licensed pr surgeon.

We are also asked under what circumstances a community clinic m employ a licensed physician and surgeon. Accordingly, we refer at
ATTORNEY GENERAL'S OPINIONS

VOLUME 58

orporations and other artificial legal entities have no professional privileges or powers; provided, however, that the board may in discretion, after such examination, investigation and documentary is as it may require, and under rules and regulations adopted by it, pproval of the employment of physicians and surgeons on a salary *i* licensed charitable and eleemosynary institutions, foundations or or by approved medical schools operating clinics therewith, if no for professional services rendered patients is made by any such ion, foundation, clinic or school."

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2 1971, the concept of a community clinic, funded by both grants of and charitable contributions, and intended to serve a particular group ts social and economic characteristics, was not widely known. Private permitted to operate until 1953, were effectively abolished in that year ; them from the classes of clinics enumerated in Health and Safety Code }. The only clinics eligible for licensure under the provisions of the Safety Code were those classed as charitable, teaching and research, nd employees' clinics. However, by 1971, the Legislature saw a need to atus of existing community clinics by amending Health and Safety Code (a) to read as follows:

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tion, that opinion defined the relationship between Health and Safety 1 1203 and Business and Professions Code section 2393. It was de-25 Ops. Cal. Atty. Gen. at page 204, that section 2393 is violated only MAY 1975]

ATTORNEY GENERAL'S OPINIONS

when a fictitious name is used to identify the person of a practitioner and is not automatically violated by designation of the facility in which he practices by a fictitious title. Where a designation refers to the establishment or facility, there is no violation of the group practice provisions of section 2393.

A legislative enactment supported this conclusion by specifically exempting those physicians employed by a community clinic from the provisions of section 2393. Amended by urgency legislation effective March 12, 1974 (Stats, 1974, ch. 62), section 2393 now states the requirements for a permit to use a fictitious name as follows in relevant part:

"(b) The place or establishment, or the portion thereof, in which the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at such place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants provided, however, that where the applicant is working for a community clinic, as defined in subdivision (a) of Section 1203 of the Health and Safety Code, which contracts with or employs individual licensed physicians and surgeons to render medical care, this subdivision shall not apply.

"(c) The name under which the applicant or applicants propose to operate contains at least one of the following designations: 'medical group,' 'medical clinic,' 'podiatrists' group,' 'podiatry group,' 'podiatrists' clinic,' or 'podiatry clinic', provided, however, that where the applicant is working for a community clinic, as defined in subdivision (a) of Section 1203 of the Health and Safety Code, and is subject to the same limitations of Title 17, California Administrative Code, Section 161, this subdivision shall not apply. In no case shall the name under which the applicant or applicants propose to operate contain the name or names of any of the physicians working for or employed by the community clinic."

The intent of the Legislature appears to be stated in the recital of facts constituting the necessity of designating the section 2393 amendment as an urgency statute. Section 2 of Stats. 1974, ch. 62, states as follows:

"* * *

"There are several medical-free clinics which are being challenged on their use of the designation 'clinic' and without such use they are unable to effectively inform those clitizens who are in need of their services about the availability of the services which they offer. In order that these medical-free clinics may achieve their goals it is necessary that this act go into immediate effect."

The foregoing discussion of the statutory and judicial authorities in this area leads us to conclude that a community clinic may employ a licensed physician and surgeon.

We are also asked under what circumstances a community clinic may lawfully employ a licensed physician and surgeon. Accordingly, we refer again to the

293

statement quoted above, designating the section 2393 amendment as urgency legislation. It appears the Legislature intended that these clinics should serve a specific group, that is, "those citizens who are in need of their services." That these clinics should limit their services to a particular group also appears to be necessary by the discinction drawn in *People v. Pacific Health Corp., supra*, between a profit corporation and a philanthropic association, the latter described as follows at page 160: "... medical service is rendered to a limited and particular group as a result of cooperative association through membership in the fraternal or other association, or as a result of employment by some corporation which has an interest in the health of its employees." See also, 25 Ops. Cal. Atty. Gen. 198, 205-206 (1955); 54 Ops. Cal. Atty. Gen. 126, 127 (1971); 55 Ops. Cal. Atty. Gen. 324, 327 (1972); 55 Ops. Cal. Atty. Gen. 39, 40 (1972). Generally, this requirement is easily met as most community clinics are intended to provide health care to persons of a particular income level, occupational group, or geographic area.

There remains some doubt whether a community clinic may require charges or fees. Business and Professions Code section 2008, quoted above, provides that no charges shall be made by charitable clinics for professional services. Health and Safety Code section 1203(a), above, provides:

"... any charges for advice, diagnosis, treatment, medicines, drugs, appliances, or apparatus concerning bodily and mental disease and injuries are based on ability of the patient to pay or such services are given without charge."

The former section is prohibitive, while the latter is permissive.

Although 17 Ops. Cal. Atty. Gen. 211 (1951) was published before the amendment of Health and Safety Code section 1203 (a), it does offer some guldance. That opinion stated that a charge of an administrative fee did not prevent classification of a clinic as charitable if the charge bore a proper relationship to actual administrative costs.

Until legislative enacements bring Business and Professions Code section 2393 and Health and Safety Code section 1203(a) into harmony, we can resolve this doubt by stating that a community clinic should charge only those fees based on the patient's ability to pay or the services should be rendered without charge.

Notwithstanding the issue of fees, we can set out the following circumstances under which a community clinic may employ a physician and surgeon;

1. The clinic must be licensed pursuant to section 1203(a) and operated as a nonprofit corporation.

2. The clinic should limit its services to members of a specific group, defined by such characteristics as income, occupational status, or voluntary association.

3. Charges, if any, should be based on the ability of the patient to pay.

Opinion No. CV 74-289-May 8, 1975

SUBJECT: FINANCIAL DISCLOSURE-Government Code section : not require assistant county administrative officer to file financial statement.

Requested by: COUNTY COUNSEL, YOLO COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General Richard C. Creeggan, Deputy

The Honorable Charles R. Mack, County Counsel of Yolo Cc requested an opinion on the following question:

Is an assistant county administrative officer required by Governm section 3700 (Moscone Governmental Conflict of Interests and Disclosur file a financial disclosure statement?

Out conclusion is:

An assistant county administrative officer is not required by Governn section 3700 to file a financial disclosure statement,

ANALYSIS

Your request states that Yolo County has by ordinance establi office of County Executive under Government Code section 24000, subdivit designating an administrative officer as a county officer. The problem concerns the applicability of section 3700, a part of the Moscone Gove Conflict of Interests and Disclosure Act, to a deputy or assistant of suc

Section 3700 requires those persons enumerated in subdivision (a. to file in April of each year a financial disclosure statement. This sub which specifically includes county chief administrative officers, reads as

"This section is applicable to constitutional officers, county su visors and *chief administrative officers*, mayors, city council memb members of planning commissions and planning officers of councies cities, and managets and chief administrative officers of general law charter cities." (Emphasis added.)

While the provisions of the Moscone Governmental Conflict of and Disclosure Act are to be liberally construed to fully protect th interest (\S 3602), section 3700, subdivision (n), does not mention a d assistant county administrative officer. It therefore appears that such positinot intended to be covered by that section, applying the familiar rule of conthat where a statute enumerates those things upon which it is to open to be construed as excluding from its effect all those not especially me

² All section references are to the Government Code unless otherwise indicates

Kneer, Kathy <kathy.kneer@PPACCA.ORG> Friday, July 17, 2015 3:27 PM Robert Sumner Update from Planned Parenthood re: video attack

From: Sent: To: Subject:

Planned Parenthood[®] Act. No matter what.

Plenned Parenthood Afflictes of Cellfornia

Dear Robert,

By now you may have heard about or have seen a heavily edited video of Dr. Deborah Nucatola, senior director of medical services for Planned Parenthood Federation of America, which was released this week by an organization calling itself the Center for Medical Progress. We wanted you to hear directly from us that the claims being made are clearly outrageous and untrue.

As you know, Planned Parenthood's top priority is the compassionate care that we provide to close to 1 million Californians every year. In the video, the staffer speaks in a way that does not reflect the compassion or care that we know you expect. This is unacceptable to us and we apologize for her tone and her statements.

In health care, it's common practice for patients to have the option to donate tissue to scientific research that can help lead to medical breakthroughs, such as treatments and cures for serious diseases. Four of seven California Planned Parenthood affiliates have relationships with bona fide research centers that conduct lifesaving, cutting edge stem cell and other research that is aimed at curing heart disease, some cancers, Alzheimer's and other genetic diseases. Neither Planned Parenthood nor our patients financially benefit from these donations.

Planned Parenthood affiliates which participate in the programs rigorously follow all state and federal laws. We obtain consent from patients using the highest ethical and legal standards. Some affiliates which participate in donation programs do receive a modest fee, but that is for administrative and transportation costs. The allegation that Planned Parenthood in any way profits from these donations is absolutely untrue.

This heavily edited video was created and promoted by a well-funded group whose sole purpose is to damage Planned Parenthood's reputation and to prevent us from providing preventive and reproductive health services that women need and deserve -- health services such as breast and cervical cancer screenings, STD testing and treatment, birth control and sexual health education. We know their real agenda, and they have never been concerned with protecting the health and safety of women. Their mission is to ban abortion completely and cut women off from care at Planned Parenthood and other health centers.

Sadly we do not believe this is the end to their charges against Planned Parenthood. If you have any questions or seek additional information, please do not hesitate to call us.

Sincerely,

Kathy Kneer

President and CEO Planned Parenthood Affiliates of CA

з.

From: Sent: To: Subject:

Parker, Beth <beth.parker@PPACCA.ORG> Tuesday, July 21, 2015 9:42 AM Jill Habig; Robert Sumner Planned Parenthood: videos

Jill and Robby

A second video was released today. We believe we are fully compliant with all federal and state laws and are investigating the situation. Please feel free to reach out to me if you have any questions or concerns.

Beth

Beth H. Parker, Chief Legal Counsel

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916.446.5247 ext. 102 office | 916.441.0632 fax | California Califor

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1 2 3 4 5 6 7 8	XAVIER BECERRA Attorney General of California ROBERT MORGESTER Senior Assistant Attorney General JOHNETTE V. JAURON Deputy Attorney General State Bar No. 183714 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102 Telephone: (415) 703-1662 Fax: (415) 703-1234 E-mail: Johnette.Jauron@doj.ca.gov Attorneys for the State of California SUPERIOR COURT OF THE STATE OF CALIFORNIA							
9	SAN FRANCISCO SUPERIOR COURT							
10								
11	THE PEOPLE OF THE STATE OF Case No.							
12	Plaintiff, CRIMINAL COMPLAINT							
13	v. Date: Time:							
14	Dept: Judge:							
15	DAVID ROBERT DALEIDEN and SANDRA SUSAN MERRITT,							
16	Defendants.							
17								
18 19								
	XAVIER BECERRA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, upon							
20	oath of the undersigned, information and belief complain against the Defendants, DAVID ROBERT DALEIDEN and SANDRA SUSAN MERRITT, for the crimes as follows:							
21 22	COUNT 1							
- 23	On April 6, 2014, in the County of San Francisco, in the State of California, defendants							
24	DAVID DALEIDEN and SANDRA SUSAN MERRITT did commit a felony in violation of							
25	Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a							
26	confidential communication, by means of an electronic amplifying and recording device,							
20 27	eavesdrop and record the confidential communication between themselves and DOE 1.							
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	Daleiden Complaint SF2016300608							

On April 6, 2014, in the County of San Francisco, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 2.

COUNT 3

8 On April 7, 2014, in the County of San Francisco, in the State of California, defendants
9 DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
10 Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
11 confidential communication, by means of an electronic amplifying and recording device,
12 eavesdrop and record the confidential communication between themselves and DOE 3.

COUNT 4

On April 7, 2014, in the County of San Francisco, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 4.

COUNT 5

On April 8, 2014, in the County of San Francisco, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 5.

COUNT 6

On April 8, 2014, in the County of San Francisco, in the State of California, defendants
 DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
 Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a

Daleiden Complaint SF2016300608

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confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 6.

COUNT 7

On April 8, 2014, in the County of San Francisco, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 7.

COUNT 8

On April 8, 2014, in the County of San Francisco, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 8.

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COUNT 9

On July 25, 2014, in the County of Los Angeles, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 9.

COUNT 10

On February 6, 2015, in the County of Los Angeles, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 10.

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Daleiden Complaint SF2016300608

On February 6, 2015, in the County of Los Angeles, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 11.

COUNT 12

8 On May 22, 2015, in the County of El Dorado, in the State of California, defendants 9 DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of 10 Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a 11 confidential communication, by means of an electronic amplifying and recording device, 12 eavesdrop and record the confidential communication between themselves and DOE 12.

COUNT 13

On May 22, 2015, in the County of El Dorado, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 13.

COUNT 14

On May 22, 2015, in the County of El Dorado, in the State of California, defendants
DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
confidential communication, by means of an electronic amplifying and recording device,
eavesdrop and record the confidential communication between themselves and DOE 14.

COUNT 15

On and between October 9, 2013 and July 22, 2015, in the Counties of San Francisco, El
Dorado, and Los Angeles in the State of California, the crime of CONSPIRACY, in violation of
Penal Code section 182(a)(1) a felony, was committed by DAVID ROBERT DALEIDEN AND

Daleiden Complaint SF2016300608

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SANDRA SUSAN MERRITT, who did willfully and unlawfully conspire together to commit the
 crime of Recording a Confidential Communications, 632(a) of the California Penal Code, a
 felony, pursuant to and for the purpose of carrying out the objects and purposes of the aforesaid
 conspiracy, defendants committed the following overt act(s):

1. On or about October 1, 2013, DAVID DALEIDEN accessed and took documents from Stem Express email system using a password from a terminated Stem Express employee;

7 2. On October 11, 2013, DAVID DALEIDEN filed Biomax Procurement Services,
8 LLC, as a Business Entity in the State of California, with the Agent of process as Philip Cronin
9 and CEO as Susan Tennenbaum;

On and between November 27, 2013 and March 27, 2014, individuals who
 represented themselves as Biomax employees corresponded with employees of the National
 Abortion Federation (NAF) using the email address of <u>biomaxprocurementservices@gmail.com</u>
 and <u>susan@biomax.com</u>, to apply for exhibit space at the San Francisco NAF conference as
 Brianna Allen and Susan Tennenbaum;

On February 5, 2014, DAVID DALEIDEN and SANDRA SUSAN MERRITT signed
 an Exhibitor Agreement listing Susan Tennenbaum as CEO of BioMax, Robert Sarkis as Vice
 President, and a \$3235 registration fee paid using Philip Cronin's VISA card;

5. On and between April 5, 2014 and April 8, 2014, defendants DAVID DALEIDEN
and SANDRA SUSAN MERRITT posed as BioMax employees to gain access to the NAF
conference in San Francisco, where they secretly video recorded conference speakers, vendors
and attendees:

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Daleiden Complaint SF2016300608

6. On and between July 25, 2014 and October 3, 2915, defendants DAVID DALEIDEN
 and SANDRA SUSAN MERRITT, posing as BioMax employees, set up and secretly video
 recorded private meetings with health care professionals in Century City (Los Angeles), Pasadena
 (Los Angeles), El Dorado (El Dorado), and San Francisco.

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Dated: March 28, 2017

Respectfully Submitted,

XAVIER BECERRA Attorney General of California

JOHNETTE V. JAURON Deputy Attorney General Attorneys for Plaintiff

Daleiden Complaint SF2016300608

Affidavit in Support of Arrest Warrant City and County of San Francisco

I, BRIAN CARDWELL, declare:

That I am a California Peace Officer per California Penal Code section 830.1, employed as a Special Agent by the California Department of Justice (DOJ), Bureau of Investigation (BI), eCrime Unit (eCU), and I allege and state the following:

I. <u>Summary of Probable Cause</u>

On December 2, 2015, the CA DOJ received a request to investigate whether David DALEIDEN, his organization, the Center for Medical Progress (CMP), and any co-conspirators, broke California laws regarding the surreptitious audio/video recordings of healthcare and biomedical services employees in California. DALEIDEN alleged publicly and to law enforcement that the employees were transferring aborted fetal tissue for profit in violation of California law. Special Agents from BI initiated an investigation into DALEIDEN and his co-conspirators.

During the course of this investigation, agents from BI learned that DALEIDEN created a phony fetal tissue procurement company, BioMax Procurement Services (BioMax), for the sole purpose of gaining access to various conferences hosted by Planned Parenthood, the National Abortion Federation (NAF) and others affiliated with women's healthcare services. DALEIDEN created a website, www.biomaxps.com, misrepresenting the company as a legitimate biomedical research service. He, and at least two others, used fraudulently created California driver's licenses (CDLs) in the name of Robert Sarkis (DALEIDEN), Susan Tennenbaum (Sandra MERRITT) and Briana Allen (Briana BAXTER) to obtain a BioMax vendor booth at the NAF conference in San Francisco, California, April 5 through April 8, 2014. While at the San Francisco conference, DALEIDEN, posing as Robert Sarkis, and MERRITT, posing as Susan Tennenbaum, used covert video/audio equipment to secretly record conversations they initiated with eight conference attendees.

From July 2014, through September 2015, DALEIDEN and MERRITT exploited the vetting procedures and connections they made as BioMax representatives to induce meetings with six individual healthcare and biomedical research providers in Los Angeles, California, and El Dorado, California. DALEIDEN and MERRITT, while wearing concealed audio/video digital recording devices, secretly recorded the meetings they initiated under false pretenses. Several of the secretly filmed video segments were edited and subsequently released for public viewing via CMP's website in July of 2015. Immediately afterward, several of the healthcare providers who had been named and identified in the edited videos, began receiving personal death threats.

The relevant identifying information for the 14 victims is contained in the "Confidential Attachment" incorporated herein. Declarant requests that the "Confidential Attachment" be ordered sealed pursuant to California Rule of Court 243.1(d) in order to protect the confidential personal information of the individuals. (See generally Pen. Code, §§ 293.5 and 964)

II. DOJ Investigation

A. The Sham Corporation: BioMax Procurement Services

DALEIDEN has admitted that in October of 2013, he communicated via FaceBook with Holly O'DONNELL, a recently terminated employee of Placerville biotech firm StemExpress.¹ O'DONNELL gave DALEIDEN the password to her former employer's email account. DALEIDEN admitted using the password to access the StemExpress internal system and take documents, read emails and download attachments containing confidential data. That stolen confidential data was subsequently published online and appears to be the source for manufactured promotional materials proferred by DALEIDEN in the name of BioMax Procurement Services.

Through their attorney, NAF provided DOJ emails regarding the registration BioMax Procurement Services submitted for the 2014 NAF Conference in San Francisco. In those emails, representatives using the emails <u>biomaxprocurementservices@gmail.com</u> and <u>susan@biomaxps.com</u> communicated the request to exhibit at the conference as a vendor. A February 7, 2014 email introduces Robert Sarkis as the new BioMax VP of Operations, with an associated email of bob@biomaxps.com.

NAF also provided DOJ additional conference materials submitted by BioMax Procurement Services as part of the registration process for the NAF conference. An Exhibitor Agreement signed on February 5, 2014, with the name Susan Tennenbaum, CEO of BioMax Procurement Services, was supported by two photocopied California Driver's Licenses in the names of Susan Tennenbaum and Robert Daoud Sarkis. The conference registration, purchased as a commercial firm with an exhibit booth and attendance at extra educational events, documents payment of \$3235 from the Visa card of Phillip Cronin.

Article of Incorporation for BioMax, L.L.C., were filed in California on October 11, 2013, with a registered Agent of Process as Philip Cronin. Phillip Cronin provided DOJ emails regarding the early development of the BioMax idea from DALEIDEN. In those emails, Cronin agreed to act as Agent of Process for BioMax until Daleiden told him he could resign in

¹ Daleiden Dep. 286:8-288:12, Dec. 30, 2015, StemExpress LLC, et al. v. Daleiden, et al., Case No.BC589145 (Ca. Sup. Ct.)

anticipation of the next phase of his project. The first such email on August 26, 2013, came from <u>david.daleiden@gmail.com</u>. In that email, DALEIDEN introduced himself and asked Cronin to participate as Agent of Process in his new corporation. After several additional emails and meetings, Cronin agreed to serve as agent after receiving the representation from an individual named Katie Short that "David & Co. don't expect there to be anything served, because their corporation is not actually going to be conducting any business. They are going to toy with conducting business, but stop well short of signing any contracts or the like." Cronin filed a resignation as Agent of Process on July 7, 2015 at the instigation of DALEIDEN, who sent an email on July 3, 2015, telling Cronin that he "may wish to resign now because the project was drawing to a close."

According to the internet domain history of the website Biomaxps.com, it was created from the same IP address as the CMP website through registrar BlueHost on September 2, 2013. The website registrant setting, a Domain Privacy Service, was changed to David Daleiden on Elkhorn Blvd in Sacramento on October 5, 2015. The privacy setting was replaced on October 24, 2015.

During the investigation, DOJ BI agents served a search warrant at DALEIDEN's residence at 8400 Edinger P107, Huntington Beach, California, and discovered printed paper copies of the same fake CDL's that were presented by BioMax to NAF for the 2014 conference. Also in the residence was promotional documentation for BioMax, BioMax Procurement Services business cards in the name of Robert Sarkis and Susan Tennenbaum, sophisticated recording equipment, and several thousand gigabytes of digital evidence.

Because DALEIDEN's attorney has claimed that material subject to attorney client privilege would be intermingled within all but the video recordings, all evidence seized by search warrant on April 5, 2016 was forensically acquired and imaged, but not searched. I have reviewed only those video files acquired from the digital evidence seized from DALEIDEN's residence, just over 2,300 video files, and I have determined that there are fourteen (14) victims of DALEIDEN's and MERRITT's conduct within California: recording a confidential conversation without knowledge or consent, a felony, in violation of Penal Code section 632.

B. Eight San Francisco Victims

On August 29, 2016, I extracted just over 2,300 video files from the digital evidence seized from DALEIDEN's residence, and started reviewing the videos in an attempt to identify individuals who were surreptitiously recorded by DALEIDEN and MERRITT. On September

15, 2016, I completed reviewing the videos and identified several victims who DALEIDEN and or MERRITT secretly recorded. I personally viewed the video files I was authorized to access.²

In reviewing the digital video evidence, I saw several individuals who appear to have been recorded without their knowledge in the sequestered conference area at the April 2014 NAF Conference in San Francisco at the Westin St. Francis hotel. Using the names the victims used to introduce themselves in the recordings, and in reviewing the file names themselves, I was able to identify and locate eight individuals.

I reviewed a video file which appeared to have been taken of a conversation with DOE 1 at the NAF conference on April 6, 2014. On January 9, 2017, I talked with DOE 1 regarding the April 2014 NAF Conference in San Francisco. She stated that she remembered talking with Robert Sarkis at the BioMax booth in the vendor area of the conference. She said that she did have an expectation of privacy in the conversation in that she would not have had it in public. She did not know she was being recorded and did not consent to it.

I reviewed a video file which appeared to have been taken of a conversation with DOE 2 at the NAF conference on April 6, 2014. On November 10, 2016, I contacted DOE 2 and informed him that I believed he had been surreptitiously filmed at the April 2014 NAF Conference in San Francisco. I asked DOE 2 if he recalled meeting DALEIDEN who represented himself as Robert Sarkis, an employee of BioMax. DOE 2 said he did not remember the conversation, but felt the conference was a private place where he could discuss matters in private with other conference attendees. He had no knowledge of the recording and did not consent to it having been taken.

I reviewed a video file which appeared to have been taken of a conversation with DOE 3 at the NAF conference on April 6, 2014. On November 10, 2016, I contacted DOE 3 and informed her about the investigation. I told DOE 3 that I believed she was surreptitiously recorded by DALEIDEN at the NAF conference hosted in San Francisco CA in April 2014. I asked DOE 3 if she recalled meeting DALEIDEN who represented himself as Robert Sarkis, an employee of BioMax. DOE 3 stated a man approached her at the conference who told her he worked for a fetal tissue procurement company, but she did not recall his name. DOE 3 said she absolutely felt the conversation was confidential, and that is why conference attendees are vetted before being allowed into a NAF conference, so attendees do not have to worry about issues such as being secretly recorded. DOE 3 stated she did not know she was being recorded and believed the conference was a private place where conference attendees could communicate privately.

² I am aware of the provisions of Penal Code section 633.5 under which recording is authorized under limited circumstances, and I did not observe any of those enumerated circumstances to be present.

I reviewed a video file which appeared to have been taken of a conversation with DOE 4 at the NAF conference on April 6, 2014. On November 16, 2016, I talked with DOE 4, an employee of a California medical clinic, regarding the investigation. I asked DOE 4 if she recalled speaking with DALEIDEN, who posed as Robert Sarkis, an employee of BioMax. DOE 4 stated she was at the NAF conference hosted in San Francisco, CA in April 2014, and recalled talking to DALEIDEN. DOE 4 stated DALEIDEN approached her at previous conferences and inquired about tissue procurement. DOE 4 stated she felt all the conversations she had with DALEIDEN, including the one in San Francisco, were confidential. DOE 4 stated she did not know DALEIDEN was recording her and did not give him permission to do so.

I reviewed a video file which appeared to have been taken of a conversation with DOE 5 at the NAF conference on April 6, 2014. On November 17, 2016, I talked with DOE 5 and informed her about the investigation. I asked DOE 5 if she recalled speaking with DALEIDEN, who posed as Robert Sarkis, an employee of BioMax. DOE 5 stated she was at the NAF conference in San Francisco in April 2014, and recalled talking with DALEIDEN and MERRITT at the BioMax booth. DOE 5 said DALEIDEN was interested in fetal tissue procurement, and she believed the conversation was private. DOE 5 said she did not give DALEIDEN permission to record her and already knew about the recording because video of her had been released on the internet. DOE 5 said after the video release, individuals protested at her facility, with her name written on signs. For her safety, DOE 5 had to hire security.

I reviewed a video file which appeared to have been taken of a conversation with DOE 6 at the NAF conference on April 6, 2014. On November 16, 2016, I talked with DOE 6 regarding the investigation. I asked DOE 6 if he recalled speaking with DALEIDEN, who posed as Robert Sarkis, an employee of BioMax. DOE 6 stated he was at the NAF conference hosted in San Francisco, CA in April 2014, and recalled talking to DALEIDEN at the BioMax booth. DOE 6 stated DALEIDEN approached him at several conferences, and at times was assertive with his questioning. DOE 6 stated he did not give DALEIDEN permission to record him and felt the conversation he had with DALEIDEN in San Francisco was confidential.

I reviewed a video file which appeared to have been taken of a conversation with DOE 7 at the NAF conference on April 6, 2014. On November 10, 2016, I contacted DOE 7, and informed her that I believed she had been surreptitiously filmed at the April 2014 NAF Conference in San Francisco. I asked DOE 7 if she recalled meeting DALEIDEN who represented himself as Robert Sarkis, an employee of BioMax. DOE 7 said she did not remember him, but that she felt the conference was a private place where she could discuss matters in private with other conference attendees. She did not know the video had been taken and did not give her permission for the conversation to be recorded. I reviewed a video file which appeared to have been taken of a conversation with DOE 8 at the NAF conference on April 6, 2014. On January 19, 2017, I talked with DOE 8 regarding the April 2014 NAF Conference in San Francisco. DOE 8 vaguely remembered having a conversation with DALEIDEN at the BioMax booth, and stated it was a private conversation among her peers, and not a conversation she would have had in public. She did not know she was being recorded and did not give anyone permission to record it.

C. Three Los Angeles Victims

I reviewed video obtained from the seized digital evidence in which DALEIDEN and MERRITT can be seen utilizing undercover audio/video recording devices during a meeting with DOE 9 at a restaurant on July 25, 2014. In the video, DALEIDEN and MERRITT posed as Sarkis and Tennenbaum, employees of BioMax, and met with physician DOE 9 at the Kraft restaurant, 10100 Constellation Blvd., Century City, CA.

On September 2, 2015, DOE 9 reported to Los Angeles Police Department in Report Number 15-916205, that she realized the meeting had been recorded after she began receiving numerous death threats via email. DOE 9 believed she received death threats because excerpts of the video were released for public viewing on CMP's website on July 14, 2015. On December 18, 2015, agents from BI interviewed DOE 9 who stated she believed the conversation at the restaurant was confidential, and the video was taken without her knowledge or consent.

I reviewed video obtained from the seized digital evidence in which DALEIDEN and MERRITT can be seen utilizing undercover audio/video recording devices during a meeting with physician DOE 10 and clinician DOE 11 on February 6, 2015. In the video, DALEIDEN and MERRITT posed as Sarkis and Tennenbaum, met with DOE 10 and DOE 11 at the Bistro restaurant, One Colorado, 41 Hugus Alley, Pasadena, CA.

On August 25, 2015, clinicians DOE 10 and DOE 11 reported to the Pasadena Police Department in Report Number 15-011054, that they had been secretly recorded by DALEIDEN. DOE 10 and DOE 11 did not learn the meeting was recorded until CMP released edited portions of the video on their website in July of 2015. At the restaurant meeting initiated by Biomax, DOE 10 and DOE 11 believed they were meeting Robert Sarkis, VP of BioMax, regarding biomedical tissue donations. Unbeknownst to DOE 10 and DOE 11, the meeting was secretly recorded without their permission via audio and video. Pasadena Detective Edgar Sanchez conducted follow-up into copies of two fake CDL's presented to DOE 10 and DOE 11 in the name of Sarkis and Tennenbaum. Detectives independently showed DOE 10 and DOE 11 photo lineups of DALEIDEN and MERRITT, who positively identified them as the two posing as BioMax representatives Sarkis and Tennenbaum.

D. The El Dorado Conduct

On May 21, 2015, DALEIDEN reported to the El Dorado County Sheriff's Department (EDSO) that Placerville biotech company StemExpress was selling human fetal tissue for profit. In Report EG 1506682, DALEIDEN admitted to secretly recording employees of Planned Parenthood, and provided to EDSO a thumbdrive of documents stolen from StemExpress which he claimed proved his allegation that StemExpress transferred fetal tissue for profit. During the meeting, Detective Prencipe specifically inquired about the consent of the employees he recorded. DALEIDEN responded that his surreptitious recordings had occurred in "1 party consent" states, and that he knew California was a two party consent state for recording. After an investigation including at least four separate employee interviews, the El Dorado Sheriff's Department determined that there was no violation of California law by StemExpress.

I reviewed video obtained from the digital evidence seized from DALEIDEN in which DALEIDEN and MERRITT can be seen utilizing undercover audio/video recording devices during a meeting with three StemExpress employees on May 22, 2015, one day after DALEIDEN reported the allegation about StemExpress to El Dorado. In the video, DALEIDEN and MERRITT posed as Sarkis and Tennenbaum, and met with DOE 12, DOE 13 and DOE 14. The meeting took place at Bistro 33, 4364 Town Center Boulevard, El Dorado Hills, CA.

On July 19, 2015, according to EDSO Report EG 1506163, DOE 12 reported receiving multiple death threats over the course of the previous week. She told EDSO that StemExpress is a Placerville biotech company specializing in transferring biomedical research specimens. Although StemExpress had no affiliation with Planned Parenthood, her business was named as having conducted stem cell research in allegations released on the CMP website.

On May 24, 2016, I interviewed DOE 12 regarding her meeting with DALEIDEN and MERRITT on May 22, 2015. She confirmed that the audio/video recording of this meeting was done without her consent. She stated that she realized DALEIDEN had secretly recorded her conversation at Bistro 33 when she recognized his voice in the edited videos released by CMP. She stated that she recognized his face in an interview he gave on the Bill O'Reilly show, and recognized many of the same questions he posed to the other secretly recorded victims.

On November 2, 2016, I contacted DOE 13 regarding the meeting she had with DALEIDEN on May 22, 2015, which DALEIDEN secretly recorded. I informed DOE 13 that I reviewed a statement she had made and wanted to discuss the meeting she had with DALEIDEN and MERRITT. DOE 13 stated she initially met DALEIDEN, posing as Robert Sarkis, and MERRITT, posing as Susan Tennenbaum, at an earlier women's health conference in Baltimore, Maryland. The two presented themselves as employees of BioMax Procurement Services, and

expressed interest in collaborating with StemExpress. DOE 13 stated she told DOE 12 about the possible collaboration and coordinated a meeting with DALEIDEN and MERRITT.

DOE 13 stated on May 22, 2015, at around 4:30 PM, DOE 12, herself and DOE 13, met who they believed to be Sarkis and Tennenbaum from BioMax, at Bistro 33, located at 4364 Town Center Boulevard, El Dorado Hills, California. DOE 13 stated the restaurant was not crowded and they were seated in an area of the restaurant that contained no other customers. DOE 13 told me she did not believe other customers could overhear or record their conversation, and believed the conversation was confidential. DOE 13 said she did not give DALEIDEN or MERRITT permission to record their meeting.

On November 7, 2016, I spoke with former StemExpress employee DOE 14, who said he and DOE 12 and DOE 13 believed they were meeting Robert Sarkis of BioMax to discuss the possibility of BioMax working with StemExpress. The meeting occurred on May 22, 2015 at around 4:30 PM, when DOE 12, DOE 13 and himself met the people he believed to be Robert Sarkis (DALEIDEN) and Susan Tennenbaum (MERRITT) to discuss the possibility of BioMax working with tissue procurements. The meeting was held at restaurant Bistro 33 in El Dorado Hills and, at the time, the restaurant was sparsely populated with customers. DOE 14 said the booth they were seated in was away from other customers and he believed other patrons could not overhear their conversation. DOE 14 said he believed the meeting was private and that no one could have recorded their discussion. DOE 14 said he did not give DALEIDEN or MERRITT permission to record their meeting. I told DOE 14 that I watched an uneditéd video of the meeting, which I located on DALEIDEN's computer, and noted that when a customer was eventually seated in a booth next to their booth, DOE 14 mentioned to DOE 12 that someone was sitting behind her in an effort to keep the conversation private.

III. Conclusion

I assert there is probable cause to believe that DALEIDEN and MERRITT entered into an agreement to create a fictitious business for the sole purpose of gaining access to individuals employed in the healthcare and biomedical research industry to surreptitiously record private meetings in violation of Penal Code section 182/632, a felony. Additionally, I assert there is probable cause to believe that DALEIDEN and MERRITT, on 14 separate occasions in the counties of San Francisco, Los Angeles and El Dorado, did covertly record confidential conversations with individuals who had an expectation of privacy in their conversation in violation of California Penal Code section 632(a), a felony.

Therefore, I request that a warrant be issued ordering the arrest of David DALEIDEN and Susan MERRITT for the attached alleged felony violations charged in the accompanying Felony Complaint.

penalty of perjury under I declare under laws of the state my kny Oospect to æn

Brian Cardwell Special Agent

COURT ORDER

Based upon a review of the above declaration this Court finds that there exists an overriding interest that overcomes the right of public access to the record; the overriding interest supports sealing the record; a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest.

Therefore it is ordered that the following portion of the declaration identified as the "Confidential Attachment" be sealed and not be made part of the public record until further order of this Court or any other competent court.

DATED: 5/28/17 JUDGE:

KAMARA - WHO WAS YOUR MENTOR? LONGTON LYNCH, LOIS LETINGT, JOHN KOSKIGN, JANG COMMENT, BANK Townhall SEPTEMBER 28, 2016 OR HICLORY CLAST It Sure Looks Like the CLINTON California AG Colluded 104 IVERE TRAINED With Planned Parenthood to Enact Legislation LUG GOTAN N your connumo Cortney O'Brien ROSINING. - PUL ARB 9/28/2016 2:00:00 PM - Cortney O'Brien athenc For some time, the pro-life movement has been suspicious of California Attorney General Kanataa Hamis relationship with Planned Parenthood. After all, she gave the greenlight to the staden see storiale activist bavid Daleiden stitume. Daleiden is the man behind the shocking Planned Parenthood videos last summer that urged Congress to investigate the organization and introduce bills to defund it. Daleiden and his group, the Center for Medical Progress, posed as a fetal tissue buyer and secretly recorded Planned Parenthood employees negotiating the sale of fetal body parts. The footage exposed the organization as greedy and desensitized to the plight of unborn children. Yet, pro-abortion groups argued the real sin was Daleiden's questionable tactics. Now purelifers may have some proof that langus of the was working together to target Daleiden and his pro-lifections. New criticle obtained by the *Washington Timus* appear, of show e Calleguna Planned Reventioned influencing Aleitor, is bill that would make secretly recording communications with Health care providers a cume. The legislation was introduced after Daleiden's nvestigation. Eburmails show Beth Ranker, chieflegal counsel for Rhamed Raventhood Atilliates of California, conding multiple drafts of AB 1071.70 full Habig, very wasar the tim "Attached is the language for AB 1671, proposed amendments to Penal Code section 632," Ms. Parker wrote in an email marked March 8. "I look forward to your thoughts about this." Ms. Parker sent a revised draft of the legislation to Ms. Habig on March 16. "Here's the rewrite of the video tape bill," she wrote. "Let me know what you think." Planned Parenthood constact thousands of dollars to Planns's realection campaign. Is her office prewarding them by allowing them to have a say integristation relyed 007 PECD

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From: Sent: To: Subject: Parker, Beth <beth.parker@PPACCA.ORG> Tuesday, July 21, 2015 9:42 AM Jill Habig; Robert Sumner Planned Parenthood: videos

Jill and Robby

A second video was released today. We believe we are fully compliant with all federal and state laws and are investigating the situation. Please feel free to reach out to me if you have any questions or concerns.

Beth

Beth H. Parker, Chief Legal Counsel

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916.446.5247

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The contents of this e-mail message, including any attachments, are intended solely for the use of the person or entity to whom the email was addressed. It contains information that may be protected by the attorney-client privilege, work-product doctrine, or other privileges, and may be restricted from disclosure by applicable state and federal law. If you are not the intended recipient of this message, be advised that any dissemination, distribution, or use of the contents of this message is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately by reply e-mail or by phone at (916) 446-5247 ext. 108 and delete this message from your computer. Thank you, From: Sent: To: Cc: Subject: Parker, Beth <beth.parker@PPACCA.ORG> Tuesday, February 16, 2016 6:00 PM Jill Habig Melissa Goodman Re: Livingwell brief

Thank you for sharing, Jill.

Beth Parker Sent from my iPhone

On Feb 16, 2016, at 5:56 PM, Jill Habig <jill.habig@doj.ca.gov> wrote:

Beth and Melissa,

Attached is the brief we filed today. We did not make the conduct argument, and focused on intermediate scrutiny under Pickup. We continued to make our commercial speech argument, but made every effort to distinguish between the FACT Act and more burdensome laws that would not warrant rational basis review. Please let me know if you have any questions.

Thanks, Jill

Jill E. Habig Special Counsel to the Attorney General California Department of Justice Office of Attorney General Kamala D. Harris 455 Golden Gate Ave., Ste 14500 San Francisco, CA 94102

415-703-1008 jill.habig@doj.ca.gov

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1

<DOJ Brief 2.16.16.pdf>

Melissa Goodman <MGoodman@ACLUSOCAL.ORG> Tuesday, February 16, 2016 6:47 PM Jill Habig Beth Parker Re: Livingwell brief

Thank you sharing Jill and for your efforts.

М

From: Sent:

To:

Cc:

Subject:

Sent from my iPhone

On Feb 16, 2016, at 5:56 PM, Jill Habig <<u>jill.habig@doj.ca.gov</u>> wrote:

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1

<DOJ Brief 2.16.16.pdf>

Parker, Beth <beth.parker@PPACCA.ORG> Wednesday, February 17, 2016 4:38 PM Jill Habig; Melissa Goodman RE: Livingwell brief

Thanks Jill

Subject:

From:

Sent:

To:

From: Jill Habig [mailto:jill.habig@doi.ca.gov] Sent: Wednesday, February 17, 2016 4:35 PM To: Melissa Goodman <<u>mgoodman@aclusocal.org</u>> Cc: Parker, Beth <<u>beth.parker@PPACCA.ORG</u>> Subject: Re: Livingwell brief

And here's the AWF brief.

San Francisco, CA 94102

Jill E. Habig Special Counsel to the Attorney General California Department of Justice Office of Attorney General Kamala D. Harris 455 Golden Gate Ave., Ste 14500

415-703-1008 jill.habig@doj.ca.gov

From: Melissa Goodman <<u>MGoodman@ACLUSOCAL.ORG</u>> Date: Tuesday, February 16, 2016 at 6:47 PM To: Jill Habig <iill.habig@doi.ca.gov>

Cc: Beth Parker <<u>beth.parker@ppacca.org</u>> Subject: Re: Livingwell brief

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Thanks,

JIII

Jill E. Habig

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From: Sent: To: Subject: Parker, Beth <beth.parker@PPACCA.ORG> Thursday, March 03, 2016 10:50 AM Jill Habig RE: Whole Woman's Health

Jill

I think I can get that for you using a zipcode analysis of our patients. Let me find out. When do you need it? Interesting you ask as I was just on a webinar about Whole Women's Health and this issue came up.

Beth

From: Jill Habig [mailto:iill.habig@doi.ca.gov] Sent: Thursday, March 03, 2016 10:48 AM To: Parker, Beth <<u>beth.parker@PPACCA.ORG</u>> Subject: Whole Woman's Health

Beth,

Does PP happen to have any data regarding the number of out-of-state patients that come to CA for reproductive healthcare and whether it has increased in recent years? I'm interested in whether we have something concrete we could point to as the CA impact of TRAP laws in other states. Let me know your thoughts.

Thanks! Jill

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From: Sent: To: Subject: Parker, Beth <beth.parker@PPACCA.ORG> Thursday, March 03, 2016 10:59 AM Jill Habig Re: Whole Woman's Health

Apparently there is this bizarre argument that women can go to other states. Of course, traveling from Texas to California is only for the rich. I will see what I can find out.

Beth Parker Sent from my iPhone

On Mar 3, 2016, at 10:54 AM, Jill Habig <<u>jill.habig@doj.ca.gov</u>> wrote:

If it's not too difficult, I'm thinking about using it for press purposes when we talk to reporters about the case this week and then later when the decision comes down. We got a couple reporter questions after oral argument yesterday that seemed to indicate they had assumed the ruling wouldn't have any effect on CA because we're pro-choice, so I've been thinking about ways to challenge that assumption beyond just saying that pro-choice leadership isn't guaranteed forever. If you have zipcode analysis, it might be fascinating to see how many women have come from TX since the law went into effect. I remember Sue Dunlap mentioning anecdotally about TX women coming to PPLA, but I'm not sure how large the volume is.

1

Jill E. Habig

Special Counsel to the Attorney General

California Department of Justice

Office of Attorney General Kamala D. Harris

455 Golden Gate Ave., Ste 14500

San Francisco, CA 94102

415-703-1008

jill.habig@doj.ca.gov

From: Beth Parker <<u>beth.parker@ppacca.org</u>> Date: Thursday, March 3, 2016 at 10:49 AM To: Jill Habig <<u>jill.habig@doi.ca.gov</u>> Subject: RE: Whole Woman's Health

Jill

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Subject	NE. WHOIE WUITIANS FIEART		1

I already have zipcode lists from one affiliate for 2012 and 2015 so we are analyzing that. Another affiliate told me they see patients regularly from Arizona and heard a patient had flown in from Texas.

From: Jill Habig [mailto:jill.habig@doj.ca.gov] Sent: Thursday, March 03, 2016 10:54 AM To: Parker, Beth <<u>beth.parker@PPACCA.ORG</u>> Subject: Re: Whole Woman's Health

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California Department of Justice

Office of Attorney General Kamala D. Harris

455 Golden Gate Ave., Ste 14500

San Francisco, CA 94102

415-703-1008

jill.habig@doj.ca.gov

From: Beth Parker <<u>beth.parker@ppacca.org</u>> Date: Thursday, March 3, 2016 at 10:49 AM To: JIII Hablg <<u>iiII.hablg@doj.ca.gov</u>> Subject: RE: Whole Woman's Health

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From: Sent: To: Subject: Attachments:	Parker, Beth <beth.parker@ppacca.org> Thursday, March 03, 2016 3:21 PM Jill Habig Zip Code data Zip Codes 2012 vs 2015.xlsx</beth.parker@ppacca.org>	•
Follow Up Flag: Flag Status:	Follow Up Flagged	

Jill

Here is the zipcode analysis for **the second second second** As you predicted, the number of the out of state patients has increased since 2012, but so have the general patient numbers. We are collecting information from the other affiliates.

Beth

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Parker, Beth <beth.parker@PPACCA.ORG> Friday, March 04, 2016 1:29 PM Jill Habig McCune, Mary Out of state patients for

Jill

From: Sent:

To:

Cc:

Subject:

Here is a record of out of state patients for the first 2 months for It is 69. If you annualized it, it would be in the range of 414 visits per year ť

Grand

VV WM Total

Beth

State (Multiple Items)

10 Million		Ci s A		OR	SA SB	UP
	2016-1					

2010-1			-			-			
Alabama	1								1
Arizona			1				1		2
Colorado		1	1		•				2
Florida							1	·	1
Georgia		•		•				1	1
Illinois		2			3				5
Maryland								1 1	2
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Mississippi							1		1
Montana				•	1				1
Nevada	2		1	1				1.	5
North Carolina	·	1							1
NULL			1		•				1
Ohio ·		•					1		1
Oregon								1	1
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From: Sent: To: Subject:

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Parker, Beth <beth.parker@PPACCA.ORG> Friday, March 04, 2016 4:24 PM Jill Habig patients from out of state

For AZ, 188 patients in 2015. 60 of them went to

In terms of "kept appointments", these are the main stats:

107 total ABs from AZ. We believe these numbers are underreported.

Count of state	Column Labels		All	Grand
Row Labels CA	TAB 10,601	MAB 7,358	Other 248,244	Total 266,20
MX (Mexico)	92	70	169	33
	3	4	5	1
a a chun an	88	•	62	15
	1		•	
		62	92	15
All Other		4	10	1
AZ	58	. 49	189	29
	15	29	67	11
	. 35		20	5
	7	4	4	1
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All Other		13	90	10
Kana kana kana kana kana kana kana kana	1.0	6	69	8
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	10		4	1
		1		
		2	4	
All Other		3	60	6
WA	3	. 3	60	6
		1	1	
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All Other		1	54	5
	10	2	51	6
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	· · · ·	3	. 3
	5	4	9
		2	2
All Other	2	39	41

Here's some numbers on AZ patients:

	2014	2013	
Total patients from AZ	108	126	-
Patients from AZ that	62	71	
got an AB	57%	56%	
Patients from AZ that	46	55	-
did not get an AB	43%	44%	

All but 1 patient in 2014 paid with cash for their AB procedure. The other one had private insurance.

. 2

From: Sent: To: Subject: Attachments: Parker, Beth <beth.parker@PPACCA.ORG> Tuesday, March 08, 2016 11:19 AM Jill Habig Bill language AB 1671 - amendments to Penal Code 632 AB 1671 updated 3.pdf

JIII

Attached is the language for AB 1671, proposed amendments to Penal Code section 632. I look forward to your thoughts about this.

Beth

Beth H. Parker, Chief Legal Counsel

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916.446.5247



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02/26/16 04:27 PM RN 16 08431 PAGE 1 Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 1671

Amendment 1 In the title, in line 1, after "act" insert:

to amend Section 632 of the Penal Code,

Amendment 2

On page 1, before line 1, insert:

SECTION 1. Section 632 of the Penal Code is amended to read:

632. (a) Every <u>A</u> person who, intentionally and without the consent of all parties to a confidential-communication, by communication, does any of the following shall be punished pursuant to subdivision (b):

(1) By means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, radio.

(2) Uses, attempts to use, discloses, or attempts to disclose, in any manner, or for any purpose, the contents of any confidential communication knowing or having reason to know the information was obtained in violation of paragraph (1).

(3) Aids, agrees with, employs, or conspires with any person or persons to unlawfully do, permit, or cause to be done any of the acts described in this subdivision.

(b) A violation of subdivision (a) shall be punished by a fine not exceeding two thousand five hundred dollars $(\frac{2,500}{,}, \frac{2,500}{,}, \frac{2,500}{,}, \frac{2,500}{,}, \frac{2,500}{,}, \frac{2,500}{,}$ or imprisonment in the <u>a</u> county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars $(\frac{10,000}{,}, \frac{10,000}{,}, \frac{10,00}{,}, \frac{10,00}{,}, \frac{10,00}{,}, \frac{10,00}{,}, \frac{10,00}{,}, \frac{10,00}{,}, \frac{10,00}{,}, \frac{10,00}{,}, \frac{10,00}{,}, \frac$

(b) The term "person" includes

(c) For the purposes of this section, "person" means an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication.

(c) The term "confidential communication" includes

(d) For the purposes of this section, "confidential communication" means any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which



02/26/16 04:27 PM RN 16 08431 PAGE 2 Substantive

the parties to the communication may reasonably expect that the communication may be overheard or recorded.

(d) (e) Except as proof in an action or prosecution for violation of this section, no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.

(c) (f) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(f)

(g) This section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear.

(h) Paragraph (2) of subdivision (a) does not apply to any member of the media who uses, attempts to use, discloses, or attempts to disclose, a confidential communication if all of the following are true:

(1) The communication is truthful and regarding a matter of public concern.

(2) The communication was obtained lawfully by the member of the media and not obtained by him or her in violation of paragraph (1) of subdivision (a).

(3) The person did not know who was responsible for obtaining the information.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Amendment 3 On page 1, strike out lines 1 to 5, inclusive

- 0 -

Parker, Beth <beth.parker@PPACCA.ORG> Wednesday, March 09, 2016 5:05 PM Jill Habig RE: Bill language AB 1671 - amendments to Penal Code 632

Jill

From: Sent:

Subject:

To:

Thanks for coming over to our offices this morning. The Supreme Court case cite is Bartnicki v. Vopper, 532 US 514 (2001).

Beth

From: Jill Habig [mailto:jill.habig@doj.ca.gov] Sent: Tuesday, March 08, 2016 11:32 AM To: Parker, Beth <<u>beth.parker@PPACCA.ORG</u>> Subject: Re: Bill language AB 1671 - amendments to Penal Code 632

Taking a look now. You mentioned a case that was a potential obstacle. Can you remind me what that was?

Jill E. Habig

Special Counsel to the Attorney General

California Department of Justice

Office of Attorney General Kamala D. Harris

455 Golden Gate Ave., Ste 14500

San Francisco, CA 94102

415-703-1008

jill.habig@doj.ca.gov

From: Beth Parker <<u>beth.parker@ppacca.org</u>> Date: Tuesday, March 8, 2016 at 11:19 AM To: Jill Habig <<u>jill.habig@doi.ca.gov</u>> Subject: Bill language AB 1671 - amendments to Penal Code 632

Jill

Attached is the language for AB 1671, proposed amendments to Penal Code section 632. I look forward to your thoughts about this.

Beth

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Beth H. Parker, Chief Legal Counsel

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814 916.446.5247



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From:	Parker, Beth <beth.parker@ppacca.org></beth.parker@ppacca.org>	
Sent:	Wednesday, March 16, 2016 10:34 AM	2
То:	Jill Habig	•
Subject:	Right of Privacy in Confidential Communications di	raft language (2).docx
Attachments:	Right of Privacy in Confidential Communications d	raft language (2).docx

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Jill

Here's the rewrite of the video tape bill. Let me know what you think.

Beth

Right of Privacy in Confidential Communications

Existing law authorizes civil and criminal penalties when confidential communications are tapped, recorded, intercepted or received willfully and without the consent of all parties. The law was enacted after the proliferation of new devices and eavesdropping techniques created a serious threat to the free exercise of personal liberties. It was designed to protect the right of privacy of the people of California. Existing law creates an exception for the use of listening devices and techniques by law enforcement to investigate criminal conduct. In addition, it does not prohibit one party to a confidential communication from recording the communication to obtain evidence of commission of certain serious, enumerated crimes.

Existing law also imposes civil and criminal penalties on individuals, not parties to the communication, who willfully disclose the contents of a telegraphic or telephone message without the consent of the participants.

This bill will expand the scope of liability to encompass those who<u>include a prohibition on the</u> intentionally use or disclos<u>ure of</u>e the contents of any wire, oral or electronic communication obtained without the consent of all parties when they knew or had reason to knew the information was<u>by the party who taped the confidential communication</u> obtained without consent. This updates the law to account for the harm created by the broad dissemination over the internet. It aligns the law on unauthorized recording of confidential communications with the law on misappropriation of trade secrets. And it aligns California law with the law of other states that prohibit interception and disclosure of confidential wire, oral or electronic communications.

CHAPTER 1.5. Invasion of Privacy [630 - 638.53]

('Chapter 1.5 added by Stats. 1967, Ch. 1509.)

630.

The Legislature hereby declares that advances in science and technology have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications and that the invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise of personal liberties and cannot be tolerated in a free and civilized society.

The Legislature by this chapter intends to protect the right of privacy of the people of this state.

The Legislature recognizes that law enforcement agencies have a legitimate need to employ modern listening devices and techniques in the investigation of criminal conduct and the apprehension of lawbreakers. Therefore, it is not the intent of the Legislature to place greater restraints on the use of listening devices and techniques by law enforcement agencies than existed prior to the effective date of this chapter.

(Added by Stats. 1967, Ch. 1509.)

631.

(a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both a fine and imprisonment in the county jail or pursuant to subdivision (h) of Section 1170. If the person has previously been convicted of a violation of this section or Section 632, 632.5, 632.6, 632.7, or 636, he or she is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both that fine and imprisonment.

(b) This section shall not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) Except as proof in an action or prosecution for violation of this section, no evidence obtained in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.

(d) This section shall become operative on January 1, 1994.

(Amended by Stats. 2011, Ch. 15, Sec. 428. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

632.

(a) Every person who, intentionally and without the consent of all parties to a confidential communication:

(1) by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is

carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio;

(2) uses, or attempts to use<u>discloses</u>, in any manner, or for any purpose, the contents of any confidential communication <u>obtained by that party knowing or</u> having reason to know the information was obtained in violation of (a)(1);<u>or</u>

_(3) discloses, or attempts to disclose, in any manner, or for any purpose, the contents of any confidential communication knowing or having reason to know the information was obtained in violation of (a)(1);or

(<u>3</u>4) aids, agrees with, employs, or conspires with any person or persons to unlawfully do, permit, or cause to be done any of the acts or things mentioned above in this section.

shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500) *per violation*, or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000) *per violation*, by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) The term "person" includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication.

(c) The term "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

(d) Except as proof in an action or prosecution for violation of this section, no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.

(e) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(f) This section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear. (Amended by Stats. 1994, Ch. 1010, Sec. 194. Effective January 1, 1995.)

From:Salgado, Diana <diana.salgado@ppfa.org>Sent:Tuesday, April 19, 2016 8:59 AMTo:Jill HabigCc:Parker, BethSubject:Re: 9th circuit CPC cases - common interest privilege

Hi Jill -

I'm emailing about the NIFLA case challenging the FACT Act, which is now on appeal in the 9th Circuit. My understanding is that that case (unlike the two prior cases) challenges both the disclosure requirement for licensed facilities and the disclosure requirement for unlicensed facilities. I've been in conversation with Physicians for Reproductive Health about whether to submit an amicus brief in the NIFLA case. I was hoping we could have a call to discuss the current thinking on that.

Unfortunately, the deadline for amicus briefs is April 21. Would you have time for a quick call today or tomorrow? I am free to talk pretty much at any time. I'm also cc'ing Beth Parker on this email since she is hoping to join as well (but said we should go ahead and schedule a time that works for you and she will join, if she can).

Thanks.

-Diana

Diana O. Salgado Senior Staff Attorney Public Policy Litigation & Law Planned Parenthood Federation of America 212-261-4399

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1

On Fri, Feb 5, 2016 at 3:21 PM, Jill Habig <<u>jill.habig@doj.ca.gov</u>> wrote: Ok let's set the date/time for 2/10 at 12pm. I'll send around a call-in number. Thanks all!

Jill E. Habig

Special Counsel to the Attorney General California Department of Justice Office of Attorney General Kamala D. Harris 455 Golden Gate Ave., Ste 14500 San Francisco, CA 94102

415-703-1008 jill.habig@doj.ca.gov

From: "Salgado, Diana" <<u>diana.salgado@ppfa.org</u>>

Date: Wednesday, February 3, 2016 at 7:19 AM

To: Beth Parker < <u>beth.parker@ppacca.org</u>>

Cc: Jill Habig <<u>iill.habig@doj.ca.gov</u>>, Janill Richards <<u>Janill.Richards@doj.ca.gov</u>>, Kathleen Radez <<u>Kathleen.Radez@doj.ca.gov</u>>, Joshua Klein <<u>Joshua.Klein@doj.ca.gov</u>>, Jonathan M Eisenberg <<u>Jonathan.Eisenberg@doj.ca.gov</u>>

Subject: Re: 9th circuit CPC cases - common interest privilege

Thanks, everyone.

I am free on 2/5 between 1-3, on 2/8 between 1-3, and on 2/10 between 11--2.

Looking forward to the call.

Diana O. Salgado Senior Staff Attorney Public Policy Litigation & Law Planned Parenthood Federation of America 212-261-4399

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On Tue, Feb 2, 2016 at 9:17 PM, Parker, Beth <<u>beth.parker@ppacca.org</u>> wrote:

Adding Diana Salgado from PPFA to this chain.

From: Jill Habig [mailto:jill.habig@doj.ca.gov]

Sent: Tuesday, February 02, 2016 6:15 PM

To: Parker, Beth < beth.parker@PPACCA.ORG >

Cc: Janill Richards <<u>Janill.Richards@doj.ca.gov</u>>; Kathleen Radez <<u>Kathleen.Radez@doj.ca.gov</u>>; Joshua Klein <<u>Joshua.Klein@doj.ca.gov</u>>; Jonathan M Eisenberg <<u>Jonathan.Eisenberg@doj.ca.gov</u>>; Subject: Re: 9th circuit CPC cases - common interest privilege

Beth,

I'm cc'ing my colleagues from DOJ who would like to join the call. To propose a few times, how about 2/5 between 1-3pm, 2/8 after 1pm, or 2/10 between 11-2? Any of those windows work?

Thanks,

Jill

Jill E. Habig

Special Counsel to the Attorney General

California Department of Justice

Office of Attorney General Kamala D. Harris

455 Golden Gate Ave., Ste 14500

San Francisco, CA 94102

415-703-1008

jill.habig@doj.ca.gov

From: Beth Parker <<u>beth.parker@ppacca.org</u>> Date: Tuesday, February 2, 2016 at 2:28 PM To: Jill Habig <<u>jill.habig@doj.ca.gov</u>> Subject: 9th circuit CPC cases - common interest privilege

Jill

Who do you want to be on the call about the ninth circuit briefing in the CPC cases with the PPFA attorney handling the Arizona case? We should try to set the call up as soon as possible.

Beth

Beth H. Parker, Chief Legal Counsel

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814

916.446.5247

916.441.0632 fax



Fismond Parenthood Alfiliates of California

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From:Salgado, Diana <diana.salgado@ppfa.org>Sent:Wednesday, April 20, 2016 7:34 AMTo:Jill HabigCc:Parker, BethSubject:Re: 9th circuit CPC cases - common interest privilege

Thanks for getting back to me, Jill. Any time between 10-1 PST works best for me and Beth. If that doesn't work for you, let me know what time does and I'm sure I can make it work.

Thanks.

Diana O. Salgado Senior Staff Attorney Public Policy Litigation & Law Planned Parenthood Federation of America 212-261-4399

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On Tue, Apr 19, 2016 at 11:52 PM, Jill Habig <<u>jill.habig@doj.ca.gov</u>> wrote:

Diana,

I'm happy to talk tomorrow. We would certainly welcome amicus participation since this case raises some new issues. Attached is our brief. Let me know when you have time tomorrow.

Thanks,

Jill

From: "Salgado, Diana" <<u>diana.salgado@ppfa.org</u>> Date: Tuesday, April 19, 2016 at 8:58 AM To: Jill Habig <<u>jill.habig@doj.ca.gov</u>> Cc: Beth Parker <<u>beth.parker@ppacca.org</u>> Subject: Re: 9th circuit CPC cases - common interest privilege

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Thanks.

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Jill E. Habig Special Counsel to the Attorney General California Department of Justice Office of Attorney General Kamala D. Harris 455 Golden Gate Ave., Ste 14500 San Francisco, CA 94102

415-703-1008 jill.habig@doj.ca.gov

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Subject: Re: 9th circuit CPC cases - common interest privilege

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Diana O. Salgado Senior Staff Attorney Public Policy Litigation & Law

Planned Parenthood Federation of America 212-261-4399

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To: Parker, Beth < beth.parker@PPACCA.ORG >

Cc: Janill Richards <<u>Janill.Richards@doj.ca.gov</u>>; Kathleen Radez <<u>Kathleen.Radez@doj.ca.gov</u>>; Joshua Klein <<u>Joshua.Klein@doj.ca.gov</u>>; Jonathan M Eisenberg <<u>Jonathan.Eisenberg@doj.ca.gov</u>>; **Subject:** Re: 9th circuit CPC cases - common interest privilege

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Jill

Jill E. Habig

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From: Beth Parker <<u>beth.parker@ppacca.org</u>> Date: Tuesday, February 2, 2016 at 2:28 PM To: Jill Habig <<u>jill.habig@doj.ca.gov</u>> Subject: 9th circuit CPC cases - common interest privilege

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Beth

Beth H. Parker, Chief Legal Counsel

Planned Parenthood Affiliates of California | 555 Capitol Mall, Suite 510 | Sacramento, CA 95814

916.446.5247 916.441.0632 fax



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Salgado, Diana <diana.salgado@ppfa.org> Wednesday, April 20, 2016 11:17 AM Jill Habig Parker, Beth Re: 9th circuit CPC cases - common interest privilege

That works for me. I can circulate a conference number shortly.

Diana O. Salgado Senior Staff Attorney Public Policy Litigation & Law Planned Parenthood Federation of America 212-261-4399

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