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11
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13 **UNITED STATES DISTRICT COURT,**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 NATIONAL ABORTION FEDERATION) Case No. 3:15-cv-3522 (WHO)
16 (NAF),)
17 Plaintiff,) Judge William H. Orrick, III
18 vs.) DECLARATION OF DAVID
19 THE CENTER FOR MEDICAL) DALEIDEN IN OPPOSITION TO
20 PROGRESS; BIOMAX PROCUREMENT) MOTION FOR PRELIMINARY
21 SERVICES, LLC; DAVID DALEIDEN (aka) INJUNCTION
22 "ROBERT SARKIS"); and TROY)
NEWMAN,)
23 Defendants.)

24
25 **PUBLIC VERSION**

1 I, DAVID DALEIDEN, declare as follows:

2 1. I am named defendant in this action. I make this declaration on personal knowledge and, if
3 called as a witness in this matter, could testify competently to its contents.

4 2. I am an investigative journalist and the founder and director of the Center for Medical
5 Progress (CMP). CMP is a California not-for-profit corporation formed for the purpose of
6 monitoring and reporting on medical ethics and advances with an especial concern for
7 contemporary bioethical issues that impact human dignity, such as induced abortion and aborted
8 fetal tissue and organ harvesting. To this end, CMP seeks to educate and inform the public and
9 thereby serve as a catalyst for reform of unethical and inhuman practices. CMP carries out its work
10 by means of investigative journalism that complies with all applicable laws.

11 3. For three years, I have been investigating fetal tissue and organ procurement practices. I
12 inaugurated the Human Capital Project at CMP to investigate, document, and report on the
13 procurement, transfer, and sale of fetal tissue. These practices include the sale of fetal tissue, the
14 altering of abortion procedures to obtain fetal tissue for research, the commission of partial birth
15 abortions, and the killing of babies born alive following abortion procedures, all of which are
16 violations of federal and/or state law.

17 4. In the process of gathering information about these illegal activities, I also became aware of
18 and gathered information on other issues surrounding these practices, issues that are a topic of
19 discussion and debate among abortion providers themselves at their gatherings. These issues
20 include the difficulties of disposing of fetal tissue, both legally and economically; the practical
21 difficulties of fetal tissue procurement and ways abortion providers can, in their own words,
22 “facilitate the process;” the fear of late-term abortion providers that babies will be born alive
23 following an abortion procedure; the steps taken by abortion providers to, as one put it, “kill the
24 baby” before he is taken from the womb; the fact that, contrary to public perception created by
25 abortion advocates, women having late-term abortions rarely do so for reasons of health or fetal
26 anomaly; the stigma abortion providers, particularly late-term abortion providers, frequently feel is
27 attached to their work; the mental and physical toll both the stigma and their work exacts from
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1 them; and the perceived harms caused by laws regulating abortions and abortion providers and how
2 these laws can be circumvented.

3 5. In the course of his investigation, I also witnessed and documented the de-sensitizing and
4 traumatizing effect of performing late-term abortions on the abortion providers and those who work
5 with them, as evidenced most dramatically in their firsthand descriptions of abortion procedures
6 and the disposition of fetal tissue and organs.

7 6. Prior to and in the course of this investigative project, I gathered information from many
8 sources, including medical journal articles, transcripts of legislative hearings, and websites for
9 tissue procurement companies. I also spoke with scientists, researchers, abortion providers, and
10 current and former tissue procurement specialists, among others. I attended seven scientific and
11 industry conferences and had several in-person meetings under the assumed name of Robert Sarkis
12 of BioMax Procurement Services.

13 7. In the course of carrying out the Human Capital Project, in addition to my own reading and
14 research, I consulted with attorneys on various legal issues. These issues included the legality, or
15 lack thereof, of the abortion and fetal tissue procurement practices I learned about, and the legality
16 of my own methods of investigation, including the limits of nondisclosure agreements.

17 8. In September 2013, I directed two investigators, known by the names Susan Tennenbaum
18 and Brianna Allen to attend a conference of the Association of Reproductive Health Professionals
19 (ARHP) as representatives of BioMax Procurement Services (BioMax). At that time, BioMax was
20 not registered with the California Secretary of State and did not have a website, flyers, or signage.
21 BioMax was the name for a business that had not yet come into formal existence. The investigators
22 went to the meeting as attendees, without exhibit space, flyers, or signage. I maintained close
23 contact with the investigators throughout the time they were at the meeting, and I retrieved all
24 recordings of their conversations with other conference participants shortly after the investigators
25 left the conference area.

26 9. On the evening of September 19, 2013, I retrieved from the investigators the recording they
27 made of their conversations at a reception that had been held that evening. I have listened to the
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1 recording several times and recognize the voices of the investigators. A true and correct transcript
2 of the recording is attached as Ex. A to my declaration.

3 10. In the recording, the investigators can be heard speaking to two women they identified to
4 me as ██████████ and ██████████ of the National Abortion Federation. (See
5 <http://www.arhp.org/Professional-Education/Annual-Meetings/Reproductive-Health-2013/Faculty>
6 and http://www.arhp.org/uploadDocs/RH13_Agenda_Final.pdf) Less than four minutes into the
7 conversation, ██████████ invited the investigators, as representatives of BioMax, to attend and
8 exhibit at the next NAF Annual Meeting, which she informed them would be in San Francisco the
9 following April. One of the investigators told ██████████ that BioMax planned to give clinics some
10 of the fees that it received from researchers for providing fetal tissue—an action that would be
11 plainly illegal. Ms. ██████████ responded that their members would be very interested in learning
12 about that and strongly encouraged them to exhibit at the NAF meeting. She explained that they
13 would meet “a lot of the same people” at the NAF meeting as were at the ARHP conference, but
14 the NAF meeting was “just bigger.” Ms. ██████████ told the investigators to “stay in touch with us
15 because our exhibitor prospectus comes out at the end of the year.” ██████████ and ██████████ can be
16 heard giving their business cards, and ██████████ said she would put the BioMax representatives in touch
17 with the NAF employee in charge of the exhibitor space at the NAF meetings. I later received the
18 business cards from the investigators.

19 11. In November 2013, I e-mailed Ms. ██████████ and Ms. ██████████ referencing the conversation at
20 the ARHP conference. Ms. Hart thanked me for the e-mail and copied ██████████ on her reply,
21 saying that Ms. ██████████ could provide all the information needed to register for a booth. In
22 December, I e-mailed Ms. ██████████ and asked about pricing and availability for exhibit space for the
23 April meeting. Ms. ██████████ responded on January 2, 2014, by sending the 10-page 204 NAF Annual
24 Meeting Exhibitor Prospectus, which contained the dates, times, and exact location of the April
25 meeting. I completed and returned the Exhibitor Application, along with debit card information to
26 pay the nonrefundable fees of \$3235.

27 12. To the best of my recollection, I did not show the Exhibitor Agreement to anyone, including
28 any attorneys. Through my prior discussions with attorneys, I understood that no nondisclosure

1 agreement is valid in the face of criminal activity. In the course of my investigative journalism
2 work, I have seen other confidentiality agreements, all of which were far more specific and detailed
3 in terms of what the protected information was. I believed that the wording of the nondisclosure
4 portions of the Exhibitor Agreement was too broad, vague, and contradictory to be enforced.

5 13. When two other investigators and I arrived at the 2014 NAF meeting, we were presented
6 with the Confidentiality Agreement at registration. At no time prior to this had NAF informed me
7 or anyone associated with me that we would be required to sign this document to gain access to the
8 Meeting. We were not told of any other conditions or restrictions that would be imposed on our
9 admission to the Meeting. My understanding was that, by completing the Exhibitor Agreement and
10 paying the nonrefundable fees, we had done everything required to be entitled to access to the
11 Meeting. I read the Confidentiality Agreement quickly. Among other problems, the vagueness of
12 the wording of the nondisclosure portions of the agreement led me to believe it was not
13 enforceable, particularly as to disclosing evidence of illegal activity.

14 14. At the 2014 NAF Annual Meeting, I and two other investigators engaged in many
15 conversations with other attendees, including NAF personnel. I took every opportunity to describe
16 BioMax's business model of financially "rewarding" and "thanking" clinics for providing fetal
17 tissue. As can be seen on the recordings, most attendees, including NAF personnel, appeared to
18 welcome BioMax's and my presence at the conference. At no time did any industry participants
19 raise concerns about BioMax's stated business plan. The BioMax stated business plan, similar
20 to other tissue procurement companies, involves sending a company tissue procurement technician
21 into an abortion facility. That technician identifies specimens, collects those specimens (including
22 through dissection of the fetus), prepares the specimens, and packages and ships the
23 specimens. All of this is done with little or no involvement of abortion facility staff—and at no
24 cost to the abortion facility. Because there is usually no cost to the abortion provider, no
25 reimbursement is allowed by law, yet even so, we had many conversations with NAF attendees and
26 personnel about paying abortion providers \$50, \$60, or more for desired fetal tissue specimens.

27 15. [REDACTED]

28 [REDACTED] I was already very familiar with StemExpress's work at that

1 time, having examined their website, interviewed a former employee, and had some direct
2 interactions with the company itself.

3 16. Attending the 2015 NAF Annual Meeting was not a priority for the Human Capital Project,
4 and I let the deadline for registering pass without taking any action. However, when I received the
5 e-mail from [REDACTED] in March 2015, encouraging BioMax to attend and exhibit, I decided
6 that NAF's significant interest in assisting its members with selling fetal tissue warranted
7 BioMax's attendance.

8 17. At the 2015 Annual Meeting, I was greeted by [REDACTED] at the registration desk and
9 given a bag of NAF conference materials. Neither I nor the two investigators with me signed a
10 confidentiality agreement, nor were we asked to present identification.

11 18. In the course of both NAF Annual Meetings, the other investigators and I recorded
12 numerous hours of conversations with other attendees. All of the conversations with individuals
13 were recorded in exhibit halls, hallways, and reception areas where other attendees were present
14 and within earshot. I believe a few conversations might have taken place in elevators, but these
15 were incidental. Neither I nor the other investigators made any effort to have private conversations
16 with attendees outside the presence of others.

17 19. Hotel staff were frequently present in the meeting areas. During events where food or
18 drinks were served, including receptions in the exhibit hall, staff members were always present,
19 frequently circulating among the attendees. They were sometimes also present during formal
20 presentations, where, for example, refreshments were available in the room. I do not recall any
21 time where NAF staff or anyone else made any deliberate effort to exclude hotel staff from a
22 meeting area for any period of time.

23 20. Many formal presentations contained information, both verbal and written, that is publicly
24 available, such as printouts and citations to publications, discussions and descriptions of laws and
25 policies, and information available on the Internet. Publicly available information was also
26 distributed on exhibitor tables.

27 21. In May 2014, I contacted Deborah Nucatola to arrange a meeting. I knew of Dr. Nucatola
28 and that she worked for Planned Parenthood before the 2014 NAF Annual Meeting. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] I had many opportunities to meet her in other venues
5 and did in fact meet her at three other conferences in 2014 and 2015, other than NAF meetings.

6 22. In May of 2015, Megan Barr of StemExpress contacted BioMax to set up a phone meeting
7 between BioMax's CEO and Stem Express's CEO. I was well aware of StemExpress and its
8 involvement in buying and selling fetal tissue well before either NAF Annual Meeting. It was
9 through investigating Stem Express beginning in 2013 that I had gained much of his knowledge
10 about fetal tissue procurement business practices. I had also communicated directly with
11 StemExpress prior to the 2015 NAF meeting, and I found that it was very open to dealing with
12 others interested in providing or obtaining fetal tissue.

13 23. After the dinner with Cate Dyer on May 22, 2015, the other investigator and I shared our
14 reactions to seeing how eager Cate Dyer was to enter into a business arrangement with us,
15 demonstrating how vetted we were because we "know the space," by which I meant that we knew
16 many abortion providers and we knew how to speak their language and the language of tissue
17 procurement providers.

18 24. Neither CMP nor I have disclosed publicly or caused to be disclosed publicly any of the
19 information or the documents or recordings obtained at the NAF meetings. In May 2015, I
20 provided to law enforcement in El Dorado County, California, [REDACTED]

21 [REDACTED] In June or July of 2015, I
22 gave short video clips to law enforcement personnel in Texas. CMP and I also responded to the
23 congressional subpoena. Other than these instances and a short written report to CMP supporters,
24 neither CMP nor I have made any other disclosures of recordings or documents from NAF
25 meetings.

26 25. On July 14, 2015, CMP released two videos of my lunch meeting with Deborah Nucatola,
27 Medical Director of Planned Parenthood Federation of America (PPFA). One video, lasting well
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1 over two hours, contained the entire conversation with Nucatola. The other video was a shorter
2 summary version of the highlights from the conversation.

3 26. On July 21, 2015, CMP released two more videos—an unedited 73-minute video, and a
4 shorter highlights summary—from my lunch meeting with another Planned Parenthood “staff
5 member,” Dr. Mary Gatter, President of the PPFPA Medical Director’s Council and Medical
6 Director of Planned Parenthood Los Angeles. I met Dr. Gatter at a Society of Family Planning
7 conference in October 2014.

8 27. CMP has continued and continues to release other videos, always releasing full videos
9 simultaneously or nearly simultaneously with the shorter versions. One video was of a site visit to
10 Planned Parenthood Rocky Mountains, where Savita Ginde is Medical Director. I met Dr. Ginde at
11 a Society of Family Planning conference in 2014, and Dr. Ginde later invited BioMax to visit the
12 clinic to discuss a possible business relationship.

13 28. CMP has also released portions of a documentary entitled “The Human Capital Project”
14 based primarily on an interview of a former employee of a fetal tissue procurement company, Holly
15 O’Donnell, relating her experiences and observations, interspersed with clips from covertly taped
16 conversations with abortion providers and tissue procurement specialists that corroborate or
17 illustrate Ms. O’Donnell’s statements.

18 29. In my work with CMP, and in particular, in carrying out the Human Capital Project, neither
19 CMP nor I had the intention of harassing, intimidating, or exposing NAF members to physical
20 threats or harm. Neither CMP nor I ever attempted to learn any private information, such as a home
21 address or personal contact information, about any NAF member, NAF meeting attendee, or any
22 other abortion provider. Neither CMP nor I publicly or privately disclosed any such personal
23 information. [REDACTED]

24 30. While I disagree vehemently with what Drs. Nucatola, Gatter, Ginde, and many of the
25 other abortion providers I interviewed do, I feel no animosity toward them. I feel compassion for
26 them as individuals and do not want to see any harm come to them.

27 [REDACTED] Neither CMP nor I disclosed to anyone other than the investigators who attended the date
28 and location of the 2014 and 2015 NAF meetings, nor have we disclosed the date and location of

1 any NAF meeting subsequent to those. [REDACTED]

2 [REDACTED]

3 I declare under penalty of perjury that the foregoing is true and correct. Executed this third
4 day of December, 2015.

5 Respectfully submitted,

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8 David Daleiden

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