

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE

PLANNED PARENTHOOD FEDERATION OF	)	
AMERICA, INC., et al.,	)	
	)	
Plaintiffs,	)	
vs.	)	No. C 16-0236 WHO
	)	
CENTER FOR MEDICAL PROGRESS,	)	
et al.,	)	San Francisco, California
	)	Tuesday
Defendant.	)	October 22, 2019
	)	7:30 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

**For Plaintiffs:**

ROGERS JOSEPH O'DONNELL  
311 California Street  
10th Floor  
San Francisco, California 94104

**BY: AMY LYNNE BOMSE, ESQ.**

ARNOLD AND PORTER KAYE SCHOLER LLP  
Three Embarcadero Center  
10th Floor  
San Francisco, California 94111

**BY: SHARON D. MAYO, ESQ.**  
**JEREMY KAMRAS, ESQ.**  
**STEVEN L. MAYER, ESQ.**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

**Reported By: Debra L. Pas, CSR 11916, CRR, RMR**  
**Belle Ball, CSR 8785, CRR, RMR**  
*Official Reporters - US District Court*

1 APPEARANCES (Continued):

2 **For Plaintiffs:**

3 ARNOLD AND PORTER KAYE SCHOLER LLP  
4 777 South Figueroa Street  
5 Suite 4400  
6 Los Angeles, California 90017

7 **BY: RHONDA R. TROTTER, ESQ.**  
8 **OSCAR RAMALLO, ESQ.**

9 ARNOLD AND PORTER KAYE SCHOLER LLP  
10 250 West 55th Street  
11 New York, New York 10019

12 **BY: DIANA K. STERK, ESQ.**

13 ARNOLD AND PORTER KAYE SCHOLER LLP  
14 601 Massachusetts Avenue N.W.  
15 Room 9515  
16 Washington, D.C. 20001

17 **BY: MEGHAN C. MARTIN, ESQ.**

18 PLANNED PARENTHOOD NORTHERN CALIFORNIA  
19 2185 Pacheco Street  
20 Concord, California 94520

21 **BY: BETH HARRISON PARKER, ESQ.**

22 PLANNED PARENTHOOD FEDERATION AMERICA  
23 123 William Street  
24 New York, New York 10038

25 **BY: MAITHREYI RATAKONDA, ESQ.**

18 **For Defendant Albin Rhomberg:**

19 LAW OFFICES OF MICHAEL MILLEN  
20 119 Calle Marguerita  
21 Suite 100  
22 Los Gatos, California 95032

23 **BY: MICHAEL MILLEN, ESQ.**

24 LIFE LEGAL DEFENSE FOUNDATION  
25 Post Office Box 1313  
Ojai, California 93024

**BY: CATHERINE WYNNE SHORT, ESQ.**  
**CORRINE GURA KONCZAL, ESQ.**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

1 **APPEARANCES (Continued):**

2 **For Defendant David Daleiden:**

3 THOMAS MORE SOCIETY  
4 309 West Washington Street  
5 Suite 1250  
6 Chicago, Illinois 60606

7 **BY: PETER C. BREEN, ESQ.**

8 **For Defendants Center for Medical Progress, BioMax Procurement  
9 Services, David Daleiden and Gerardo Adrian Lopez:**

10 FREEDOM OF CONSCIENCE DEFENSE FUND  
11 Post Office Box 9120  
12 Rancho Santa Fe, California 92067

13 **BY: CHARLES LIMANDRI, ESQ.**  
14 **PAUL M. JONNA, ESQ.**

15 **For Defendants BioMax Procurement Services, LLC, and Center for  
16 Medical Progress:**

17 FINNEGAN MARKS THEOFEL AND DESMOND  
18 Post Office Box 478011  
19 San Francisco, California 94147

20 **BY: DOROTHY CHEN YAMAMOTO, ESQ.**

21 **For Defendants BioMax Procurement Services, LLC, Center for  
22 Medical Progress, and David Daleiden:**

23 DHILLON LAW GROUP, INC.  
24 177 Post Street  
25 Suite 700  
San Francisco, California 94108

**BY: HARMEET K. DHILLON, ESQ.**

**For Defendant Troy Newman:**

AMERICAN CENTER FOR LAW AND JUSTICE  
3001 Plymouth Road  
Suite 203  
Ann Arbor, Michigan 48105

**BY: ERIK M. ZIMMERMAN, ESQ.**  
**EDWARD L. WHITE, III, ESQ.**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

1 APPEARANCES (Continued):

2 **For Defendant Troy Newman:**

3 AMERICAN CENTER FOR LAW AND JUSTICE  
4 1000 Regent University Drive  
5 RH-422  
6 Virginia Beach, Virginia 23464

7 **BY: JOHN A. MONAGHAN, ESQ.**  
8 **CHRISTINA ANN CARTER STIERHOFF, ESQ.**

9  
10 MAYALL HURLEY, P.C.  
11 2453 Grand Canal Boulevard  
12 Stockton, California 95207

13 **BY: VLADIMIR FRANK KOZINA, ESQ.**

14  
15 **For Defendant Sandra Susan Merritt:**

16 LIBERTY COUNSEL  
17 Post Office Box 540774  
18 Orlando, Florida 32854

19 **BY: HORATIO G. MIHET, ESQ.**  
20  
21  
22  
23  
24  
25

— — —

## PROCEEDINGS

P R O C E E D I N G S

October 22, 2019

7:30 a.m.

---000---

(The following proceedings were held outside of the presence of the Jury)

**THE CLERK:** Please come to order.

**THE COURT:** Good morning, everybody.

**MS. TROTTER:** Good morning, Your Honor.

**MS. DHILLON:** Good morning, Your Honor.

**THE COURT:** Please be seated.

All right. We have a few things to address. First, with respect to the 20/20 video, I will allow it. I'll instruct the jury before it's shown that the taping was in -- the taping in the restaurant occurred in a state with very different laws than the ones at issue here. Then I'll instruct them on the relevant laws later. But the fact that ABC taped a restaurant -- taped in a restaurant in another state should not impact their decision in this case.

I will also instruct that the statements in the report are not offered for the truth; go to the state of mind of the plaintiff. I think the other distinctions that were -- have been identified by the plaintiffs can be brought out on cross.

With respect to Larton, I'm not going to allow the video that was taken, again, without her consent, regards a TPO, involves hearsay from an unidentified person about one abortion

## PROCEEDINGS

1 that's not tied to Planned Parenthood.

2 Mr. Daleiden may testify about what he learned from it.  
3 And if there's some dispute about his recollection, then we can  
4 take up the question of whether the video need to be shown on  
5 redirect.

6 The two other issues that are out there, the -- I don't  
7 know whether anybody had any final comments with respect to the  
8 law enforcement contacts.

9 And then I saw Mr. Jonna's letter regarding the 16  
10 minutes. And I don't know whether there's any sort of  
11 response. I'm loath to add any time back for anybody on any --  
12 for any reason at all, but I understand the equity that is  
13 behind that request. So I'm confident that nobody's going to  
14 be using the full amount of time in this case, but, but I'll  
15 deal with that later.

16 So, is there anything else that we need to deal with?

17 We'll start on the left.

18 **MR. KAMRAS:** I think small, and I think probably  
19 undisputed. But I wanted to confirm.

20 With respect to experts, I assume that the Court's order  
21 that witnesses who are going to testify cannot have -- cannot  
22 sit in the courtroom, cannot have access to transcripts, would  
23 not apply to experts. And that they may have the transcripts.

24 **THE COURT:** Correct.

25 **MR. KAMRAS:** Thank you.

## PROCEEDINGS

1           **MR. LIMANDRI:** Good morning, Your Honor.

2           **THE COURT:** Good morning.

3           **MR. LIMANDRI:** Charles LiMandri.

4           With regard to the stipulation on law enforcement, I just  
5 wanted the record to reflect that we had submitted a bit of a  
6 longer stipulation. And I understand the Court's going to be  
7 reading the shorter one.

8           Inasmuch as it's called a stipulation, I just wanted the  
9 record to reflect that what we were willing to stipulate to was  
10 a longer one, which is not what we received. So it's not, in  
11 its present form, a stipulation, per se, we have agreed to.

12           But of course, I'm understanding and accepting of the  
13 Court's order. But I wanted the record to reflect that.

14           **THE COURT:** So, you agree to the facts that are here.

15           **MR. LIMANDRI:** I do.

16           **THE COURT:** You would like additional facts.

17           **MR. LIMANDRI:** Exactly, Your Honor.

18           **THE COURT:** Okay. So the record should reflect that.  
19 And I'll read it as -- instead of a stipulation, I'll just say  
20 that the parties agree that the following -- these are -- these  
21 facts should be taken as true by the jury.

22           **MR. LIMANDRI:** Fair enough. Thank you, Your Honor.

23           The other question I had, what impact would that have on  
24 Mr. Daleiden talking about his contacts with law enforcement?

25           As I understand your order, that would obviate his need or

## PROCEEDINGS

1 ability to go into that any -- any further? Or -- I just want  
2 to make sure I'm not skirting the Court's ruling as to whether  
3 or not he would say anything further on that issue than what's  
4 in the stipulation.

5 **THE COURT:** Yeah, I think the -- I think you would  
6 frame the -- the -- my instruction to the jury with "And did  
7 you go to law enforcement?"

8 And then say -- and then he would agree that he did. And  
9 then I would read the stipulation, and that would basically be  
10 it.

11 **MR. LIMANDRI:** That would be it on that.

12 **THE COURT:** Yeah.

13 **MR. LIMANDRI:** Okay. Fair enough.

14 The only thing, we received two videos last night after I  
15 went to bed, from the plaintiffs. I haven't been able to open  
16 them or view them yet. And even if I do, I wouldn't be able to  
17 view them with my client and get any information from him about  
18 it. So we're objecting on timeliness to the two late-disclosed  
19 videos.

20 And I think that's the only thing -- well, of course, we  
21 need to know about the opening-the-door issue, because a number  
22 of the videos we would play with Mr. Daleiden is dependent upon  
23 your Court's -- the Court's final ruling on those issues. So  
24 there's about a dozen videos hanging in the balance there. So  
25 I don't want to be throwing videos up, and have you get mad at

## PROCEEDINGS

1 us. So -- of course, they'll object so we'll deal with it.  
2 But I want to save some time if I can.

3 I guess for the record I probably should offer those  
4 videos. And we could dispense with it more expeditiously if we  
5 knew in advance how the Court was going to approach that final  
6 matter pending.

7 **THE COURT:** So I have -- it is not my belief that the  
8 door's open. And so I was going to take a little more time to  
9 go through things this afternoon. I have a hunch that  
10 Mr. Daleiden might still be on the stand at the end of today.  
11 And I can -- and then, then I could make a final ruling in the  
12 morning.

13 And if I stick with where I am, you could certainly -- you  
14 can offer them, you know, at -- tomorrow morning before the  
15 jury comes in, just so that they're in the record.

16 **MR. LIMANDRI:** I see. Okay. There'll be some --

17 **THE COURT:** I think that would be -- that would be  
18 way of dealing with it.

19 **MR. LIMANDRI:** Right.

20 **THE COURT:** But, whatever we do, it'll -- I will  
21 preserve your -- I'll preserve the record for you on that.

22 **MR. LIMANDRI:** I appreciate that. Mr. Breen is  
23 preparing to argue that issue at the appropriate time regarding  
24 the opening the door. So I assume you'll give him an  
25 opportunity to do that when you're ready.

## PROCEEDINGS

1           **THE COURT:** All right.

2           **MR. LIMANDRI:** Thank you, Your Honor.

3           **THE COURT:** All right.

4           Ms. Bomse.

5           **MS. BOMSE:** Your Honor, just one clarification on the  
6 law enforcement issue.

7           Plaintiffs understand that the facts of going to law  
8 enforcement are supposed to be lightly dealt with, and dealt  
9 with mostly with the facts. But just to clarify, would it be  
10 permissible for plaintiffs, on cross, to ask questions of  
11 Mr. Daleiden, like "So you spoke to individuals in California  
12 and Oregon and Washington, but you went to law enforcement in  
13 Alabama?"

14           That's sort of cross, but not deep cross.

15           **THE COURT:** Um, you know, I think you run a risk --

16           **MS. BOMSE:** Uh-huh.

17           **THE COURT:** -- by -- by making any sort of -- I think  
18 the facts speak for themselves. You may be able to argue at  
19 the end of the day, based on the facts.

20           **MS. BOMSE:** Yep.

21           **THE COURT:** But to cross, I think, will likely open  
22 channels that at the moment are cabined.

23           **MS. BOMSE:** Appreciate it.

24           **THE COURT:** Okay.

25           **MR. KOZINA:** As a practical matter, I could walk up

## PROCEEDINGS

1 there, but it's with regard to this particular television  
2 (Indicating). If we just pull that blue feed, that would be  
3 easier than turning it around.

4 **THE COURT:** I have a hunch not, somehow.

5 **MR. KOZINA:** Okay.

6 **THE COURT:** I don't know the answer. I'm not  
7 technologically adept or knowledgeable. But my -- my concern  
8 with all of our courtroom technology is that it -- it is  
9 fragile.

10 **MR. KOZINA:** Okay.

11 **THE COURT:** And, and things often don't work very  
12 well.

13 **MR. KOZINA:** Okay.

14 **THE COURT:** You're doing such a good job turning it,  
15 Mr. Kozina.

16 **MR. KOZINA:** I know, you wouldn't think (Inaudible).

17 **MR. MILLEN:** Your Honor, on that topic, the courtroom  
18 -- not deputy, but court staff --

19 **THE COURT:** Yes.

20 **MR. MILLEN:** -- and I did work on that yesterday. I  
21 have a little bit of a tech background.

22 And we did figure out that actually just -- just that  
23 ethernet cable that just goes in and out, it actually  
24 completely -- it shuts it off. And we put the cable back in,  
25 and in eight seconds it comes back on. So it's very quick.

## PROCEEDINGS

1 And I think --

2 **THE COURT:** Okay. If you worked, if you worked it  
3 and it works, and you're willing to bear the wrath of the  
4 public from -- then that's fine. It's fine with me. I don't  
5 care what you do, as long as it works.

6 **MR. MILLEN:** It's: No signal, no -- nothing's on the  
7 monitor.

8 **THE COURT:** Okay. All right.

9 **MS. BOMSE:** Your Honor, I -- just one more thing.  
10 Mr. LiMandri raised something about two what he called  
11 "late-disclosed videos." I don't know if there was anything  
12 further on that.

13 **THE COURT:** Well, so, what are they? Can you show  
14 them to him in the next 20 minutes?

15 **MS. BOMSE:** I think so, Your Honor. I don't think  
16 there is any such thing as a late-disclosed video.

17 **THE COURT:** I don't think there is such a thing as a  
18 late-disclosed video.

19 **MS. BOMSE:** Okay.

20 **THE COURT:** But I think there is a problem. If he  
21 hasn't seen them then we'll just take time trying to work  
22 through the issue.

23 **MS. BOMSE:** I understand. Thank you.

24 **MR. LIMANDRI:** If it will save time, I'll mention  
25 that on that list of other videos that the plaintiffs have

## PROCEEDINGS

1 provided us, we only were objecting to two of them. So if that  
2 saves you time without the jury having to wait to deal with  
3 these issues, I'll just mention them. 5067-A and 5081-B.

4 And we can talk about those for a minute, or we can do it  
5 later. But I just thought I might mention that, it might save  
6 some time. The other ones are going to go in without  
7 objection.

8 **MS. BOMSE:** 5067-A and B (sic)?

9 **MR. LIMANDRI:** Yeah. 5067-A there's a discussion  
10 about Phil Cronin and the credit card that we felt was more  
11 prejudicial than probative, and irrelevant. Mr. Daleiden can  
12 explain if he has to, but I don't see where that's really  
13 relevant to the issues in the case.

14 And 5081-B, he's talking to a transgender person. And  
15 it's not like there is anything inflammatory; I just don't know  
16 how it's relevant at all to the issues.

17 So those were the only two things that we're looking at,  
18 figuring out why these are in the case. Okay?

19 **MS. BOMSE:** Do you want me to address it?

20 **THE COURT:** If you want to. It would be helpful,  
21 probably.

22 **MS. BOMSE:** Sure.

23 Working backwards, 5081-B, this is a video that  
24 Mr. Daleiden recorded with his secret camera, and at the event  
25 in question. So we think it's relevant, and the relevance will

## PROCEEDINGS

1 be apparent from the questioning.

2 And with respect to Mr. Cronin, he's the individual  
3 who's -- who was put in as the agent for service of process. A  
4 bank card was obtained in his name. We have testimony relating  
5 to that from Mr. Cronin. So it has relevance to all of the  
6 issues in the case. Use of names -- use of false names, use of  
7 names without permission, obtaining of various identification  
8 cards.

9 **THE COURT:** Okay. Well, why don't you raise the  
10 objection at the time, and we'll take a look and figure it out.

11 **MR. LIMANDRI:** Okay. But just as a Phil Cronin  
12 thing, it's not anything the plaintiffs have standing to argue  
13 about. They're certainly not claiming they're hurt by that.  
14 If Mr. Cronin has an issue, I mean, he could deal with it. It  
15 just seems to me that that's being injected unfairly.

16 The other thing being injected unfairly -- and I'm not  
17 sure how I'll handle it with my client, because obviously, I  
18 haven't talked to him about it. But the issue about he did not  
19 put on the tax forms about lobbying, they didn't read the next  
20 sentence that says there's an exception where you can lobby --  
21 which the Court -- all non-profits are pretty much aware of --  
22 if it's an insubstantial portion of your revenues.

23 And they weren't spending money on lobbying. So they may  
24 give the jury the impression that somehow he was lying to the  
25 IRS, that they were going to do lobbying. But in fact, one,

## PROCEEDINGS

1 they don't officially do it. And two, they don't spend money  
2 doing it. So three, they're not in violation.

3 Now, I'll ask about it. I don't know; I assume he'll  
4 know. But I'm just saying I think that was kind of unfair, the  
5 way that came up, because it gives the jury an idea that there  
6 was a potential legal violation, where there wasn't. I mean,  
7 churches can do issue advocacy so long as it's not a  
8 substantial part of their revenues, which is generally  
9 depending upon how much they make, 15 to 20 percent of their  
10 revenues.

11 My understanding, CMP wasn't spending anything. And quite  
12 frankly, by contrast, my understanding, Planned Parenthood who  
13 spends tens of millions of dollars on issue advocacy, which is  
14 their right as a nonprofit. But I mean, it was an unfair form  
15 of impeachment, and raises a legal issue that I don't think was  
16 appropriate for the lay witness to necessarily have to address  
17 on my cross-examination of him. But I have no choice.

18 So I don't know where it's going to go. But I wanted to  
19 bring that to the Court's attention.

20 **THE COURT:** All right. Well, I think you can deal  
21 with it on direct, and we'll see where we are.

22 **MR. LIMANDRI:** Okay.

23 **THE COURT:** All right.

24 **MS. BOMSE:** Thank you, Your Honor.

25 **MS. MARTIN:** Meghan Martin. Good morning, Your

## PROCEEDINGS

1 Honor.

2 We have a quick housekeeping update. There are a few  
3 exhibits that were shown to the jury, but we just didn't  
4 formally go through the process of admitting them. And we have  
5 a agreement from the defendants that we are going to move these  
6 (Indicating) into evidence. There's four of them.

7 **THE COURT:** Okay.

8 **MS. MARTIN:** And that is Exhibit 6107, 6129, 1813.  
9 And currently on the record Exhibit 819-A is admitted, but it  
10 should actually be 891-A.

11 **THE COURT:** 891-A?

12 **MS. MARTIN:** Yeah.

13 **THE COURT:** Okay. Thank you.

14 So any video that's shown, I try to say that it's admitted  
15 when it comes in. But anything that is publicly shown to the  
16 jury, unless -- anything that I say can be shown to the jury is  
17 going to be an exhibit that's admitted. Unless I say it's a  
18 demonstrative.

19 (Reporter interruption)

20 **THE COURT:** So, so those, the 6107, 6129, 1813, and  
21 891-A are all admitted, yes.

22 (Trial Exhibits 6107, 6129, 1813 and 891-A received in  
23 evidence)

24 **THE COURT:** All right. See you at 8:00.

25 (Recess taken from 7:45 a.m. to 8:04 a.m.)

## PROCEEDINGS

1 (The following proceedings were held outside of the  
2 presence of the Jury)

3 **THE CLERK:** Please come to order.

4 **THE COURT:** All right, ready for the jury.

5 **MS. TROTTER:** Yes, Your Honor.

6 **THE COURT:** Not quite. Everybody sit down, please.

7 **MR. MIHET:** Your Honor, we were alerted to what the  
8 two new videos were about, and we think we should be heard on  
9 those before the jury comes. Perhaps out of the presence of  
10 the witness.

11 **THE COURT:** Okay. Mr. Daleiden, if you don't mind,  
12 if you would step out.

13 (Request complied with by Mr. Daleiden)

14 **MS. BOMSE:** Just getting the transcripts, Your Honor.  
15 But go ahead, Mr. Mihet.

16 **MR. MIHET:** I was waiting for the witness.

17 **MS. BOMSE:** Of course.

18 **MR. MIHET:** So Your Honor, it appears that the two  
19 clips come from the dinner that was had between Mr. Daleiden,  
20 Ms. Merritt and StemExpress personnel.

21 The Court will -- will recall that we attempted to depose  
22 Ms. Dyer from StemExpress, and to bring her in, and the Court  
23 denied us those opportunities. There were no Planned  
24 Parenthood people recorded at that event. So this is strictly  
25 to do with a third party or a non-party, StemExpress.

## PROCEEDINGS

1           The two clips that they want to show, in one of them  
2 Mr. Daleiden -- it's after the dinner takes place, and the  
3 StemExpress folks leave. It's Mr. Daleiden and Ms. Merritt  
4 sort of debriefing about how things went.

5           And he says things to her to the extent of: You know, I  
6 feel like we've hit every checkmark in that discussion. We've  
7 hit every checkmark. So my understanding is they want to argue  
8 from that, that they had a predetermined script, and they  
9 somehow tricked or entrapped the StemExpress people to say  
10 things that they would not have otherwise said.

11           Our position is that if they show that clip, that would  
12 then open the door for us to show numerous other clips from  
13 that conversation, to show what checkmarks were hit, and to  
14 show that those checkmarks were hit voluntarily by the  
15 StemExpress folks. They were not tricked or entrapped into  
16 saying the things that they did.

17           And some of that material I know they're not going to want  
18 to allow in. I know we've been fighting about that a lot. But  
19 that is a clear opening of that door.

20           The other thing they want to play in the other clip, I  
21 think Ms. Merritt -- and when Mr. Daleiden say: Well, they  
22 want to do business with us because we have been vetted at NAF.

23           Your Honor, if -- we're talking about StemExpress here,  
24 not Planned Parenthood. So if we're going to bring in evidence  
25 that StemExpress was trusting the NAF vetting process, then I

## PROCEEDINGS

1 think we need the StemExpress witness to talk about what it is  
2 that StemExpress knew about the vetting process, and whether or  
3 not, in fact, that was relevant to them. Again, the Court  
4 ruled that those issues are out of bounds for this particular  
5 case.

6 And so we think if -- if they show any clip from the  
7 StemExpress dinner, then we think it would be prejudicial if we  
8 cannot come back in and introduce evidence about who  
9 StemExpress is, why it was necessary to record them, what --  
10 what information or evidence we were thinking to gather from  
11 them.

12 And also, if they show any clips from that, we then have  
13 to show that that also was not a confidential communication,  
14 because in the jury's mind, they're going to be thinking: Here  
15 we go, more of the recording.

16 We've got to show them that it wasn't a confidential  
17 communication. We've got to show them that they were talking  
18 about very sensitive matters in the presence of other waiters.  
19 I mean, there's discussions about the weight of human livers,  
20 and the cost, and how much they need to weigh in order for them  
21 to be profitable. There's discussion about how: In the good  
22 old days we used to do things for free, but now we've raised  
23 the bar and we're making good money here. Discussion in the  
24 presence of waiters, complete strangers. All of that  
25 information comes in.

## PROCEEDINGS

1           So that's just our position. We don't want them to claim  
2 unfair surprise on this. And we would hope the Court would  
3 agree with us.

4           **THE COURT:** All right.

5           Ms. Bomse?

6           **MS. BOMSE:** So our position is these are -- this  
7 conversation takes place between just Mister -- Mr. Daleiden  
8 and Ms. Merritt after -- after lunch. So there's -- there's no  
9 discussion specifically -- there's no recording of anyone from  
10 StemExpress in these. These are simply conversations about  
11 their process.

12           Particularly with respect to the comment that these  
13 individuals are willing to work with Mr. Daleiden and  
14 Ms. Merritt because: "We're so vetted because we've been at  
15 NAF," we think that's extremely germane to the key issue which  
16 is that it was by gaining access to NAF that BioMax was able to  
17 gain the trust of our clients, as well as others. So that  
18 would be the relevance.

19           And I don't -- with respect to whether they need to show  
20 the whole video to show whether it was a confidential  
21 communication or not, this is not -- this is -- showing this  
22 clip doesn't relate to confidentiality at all. It's the  
23 statement that by having gone to NAF, they have gained the  
24 trust of the reproductive health community.

25           So I -- that -- so the notion that you have to show the

## PROCEEDINGS

1 whole video to show whether or not Mr. Daleiden and Ms. Merritt  
2 had an expectation of confidentiality, themselves, in recording  
3 themselves doesn't make sense.

4 With respect to the checklist, this is simply  
5 consistent -- this -- this conversation between the two  
6 individuals is consistent with documents that are party  
7 admissions where they say: We want to make sure that at this  
8 lunch we get -- it looks like haggling, it looks like this, it  
9 looks like that. So it's consistent with that other evidence.  
10 And we don't believe it's opening the door.

11 **MR. MIHET:** That takes us back to the whole haggling  
12 issue. I mean, they can't imply to the jury that we forced  
13 them to haggle, and then preclude us from showing the video  
14 that shows that if there was haggling, it was initiated by  
15 Planned Parenthood, and not tricked or entrapped by the  
16 defendants.

17 **THE COURT:** So first of all, it does sound to me as  
18 though, what -- the points that you are trying to make may not  
19 be particularly controversial on cross-examination.

20 Second of all, if you use the videos, I think you run the  
21 risk. I don't know what's there; I haven't seen it. And I  
22 don't know -- I know what Mr. Mihet just proposed. And that  
23 might be overbroad. But there may well be things that, in  
24 fairness, the defense would be allowed to do. Particularly  
25 since we're dealing with a party that we've -- I've been

## DALEIDEN - DIRECT / TROTTER

1 excluding a lot of information about.

2 So, Mr. Mihet, I hear you.

3 Ms. Bomse, do -- do what you do.

4 **MS. BOMSE:** Thank Your Honor.

5 **MR. MIHET:** Thank you.

6 **THE COURT:** Thank you.

7 All right. Let's get the jury. And please invite

8 Mr. Daleiden back in.

9 (The following proceedings were held in the presence  
10 of the Jury)

11 **THE COURT:** Thank you for being here as promptly as  
12 you are.

13 And Ms. Trotter, please proceed.

14 **MS. TROTTER:** Thank you, Your Honor.

15 **DAVID DALEIDEN,**

16 called as a witness for the Plaintiffs, having previously been  
17 duly sworn, testified as follows:

18 **DIRECT EXAMINATION RESUMED**

19 **BY MS. TROTTER**

20 **Q.** Good morning, Mr. Daleiden.

21 **A.** Good morning.

22 **MS. TROTTER:** Ken, if you could pull up Exhibit 140  
23 again, first page.

24 (Document displayed)

25

1 BY MS. TROTTER

2 Q. Mr. Daleiden, we took a look at Exhibit 140 yesterday.  
3 You recall that?

4 A. Yes.

5 Q. I want to focus on this particular identification that is  
6 in Exhibit 140. This was an identification that you obtained  
7 for Ms. Merritt to use as part of the operation you had, the  
8 project. Correct?

9 A. That's correct.

10 Q. And in order -- and this was one, unlike the one we looked  
11 at that's later in the exhibit that has "ROBERT" -- that has  
12 "SARKIS" on it, that you made, yourself, this identification,  
13 you had someone make for you.

14 A. Yes. I had them fabricated. I may have -- I may have  
15 contributed to the -- the image that was printed, but the -- I  
16 did not do the printing, myself.

17 Q. And in fact, what you did in order to obtain this  
18 identification was you first went onto Craigslist. Correct?

19 A. I found a local producer of novelty IDs on Craigslist,  
20 that's correct.

21 Q. Okay. And that was a person that was advertising novelty  
22 IDs. Correct?

23 A. To the best of my recollection, yes.

24 Q. And you contacted that person after finding the listing on  
25 Craigslist, correct?

## DALEIDEN - DIRECT / TROTTER

1 A. Yes, I did.

2 Q. And then you met that person in an industrial park in  
3 either Irvine or Newport Beach, California. Correct?

4 A. Yeah. I'm not sure about all the city lines exactly,  
5 based on the location where I was. But it was that general  
6 area.

7 Q. And ultimately you paid that person for the ID?

8 A. Yes. It was a cash payment. I don't really remember the  
9 exact amount. It was somewhere between 40 and \$120 for two,  
10 two documents. One for Susan and one for Brianna.

11 Q. And so you obtained from that person, also, an  
12 identification with the name "BRIANNA BAXTER." Correct?

13 A. The name printed on it was "BRIANNA ALLEN." But it was  
14 for Ms. Baxter to use.

15 Q. Other than the identification that contained the name that  
16 you were using, "SARKIS," all of the other identifications that  
17 you obtained were from this person that you found on the  
18 Craigslist listing. Correct?

19 A. That's correct. All the -- all the final documents that  
20 were used, yes.

21 Q. I would like to now have you turn -- I'm in the same  
22 exhibit -- to the last page of the exhibit.

23 (Document displayed)

24 Q. And we looked at this page briefly, I believe, yesterday.  
25 That page contains the images of various bank cards. Correct?

## DALEIDEN - DIRECT / TROTTER

1 A. Yes, that's correct.

2 Q. And turning your attention first to the bank card that is  
3 at the top left, the Bank of America card, which ends in the --  
4 the card number ends in -6028. Do you see where I am?

5 A. Yes, I see that.

6 Q. And underneath that, the last two lines, "THE CENTER FOR  
7 MEDICAL PROGRESS" -- I think "PROGRESS" is a bit obscured by  
8 the Visa symbol, correct?

9 A. Right.

10 Q. And then underneath that, the name "PHIL CRONIN," correct?

11 A. Yeah, I see that.

12 Q. And Phil Cronin is the same person who at the time was  
13 serving as the registered agent for service of process for  
14 BioMax. Correct?

15 A. Yes. This is an employee or associate debit card on the  
16 CMP bank account, so this is the one for the BioMax agent for  
17 service of process.

18 Q. And you, you obtained this card with the name "PHIL  
19 CRONIN" in late 2013 or early 2014. Correct?

20 A. Yes, that's correct.

21 Q. Now, I believe you testified yesterday that you had been  
22 put in touch with Mr. Cronin by Katie Short. Correct?

23 A. Yes, that's correct.

24 Q. Ms. Short, in addition to connecting you to Mr. Cronin,  
25 also made a donation to the Center for Medical Progress.

## DALEIDEN - DIRECT / TROTTER

1 Correct?

2 **MR. MIHET:** Objection, relevance.

3 **THE COURT:** Yeah, what's the relevance?

4 **MS. TROTTER:** It's all part of the plan, Your Honor.

5 **THE COURT:** I'll sustain the objection.

6 **BY MS. TROTTER**

7 **Q.** Now, Mr. Daleiden --

8 **MS. TROTTER:** You can take that down, Ken, to show  
9 the other parts.

10 (Document displayed)

11 **BY MS. TROTTER**

12 **Q.** There's a card -- at the top right-hand side, it's a card,  
13 "Chase Visa." Do you see that?

14 **A.** Yeah, I see that.

15 **Q.** And the name on that card is "Gerardo Lopez." That's  
16 Mr. Lopez, correct?

17 **A.** Yes.

18 **Q.** And the company is listed as "BIOMAX PROCUREMENT  
19 SERVICES"?

20 **A.** Yes.

21 **Q.** So BioMax Procurement Services had a bank account at Chase  
22 Bank --

23 **A.** Yes, that's correct.

24 **Q.** -- at the time that card was obtained.

25 **A.** Yes. That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And then, let's look at the final one on that page.

2 (Document displayed)

3 Q. And this, again, is a Bank of America Visa card for the  
4 Center for Medical Progress. Correct?

5 A. Yes, that's correct.

6 Q. With the name "Brianna Allen." Correct?

7 A. Yes. This was customized for Brianna Allen as an  
8 associate for Center for Medical Progress.

9 Q. And Brianna Allen's name is Baxter?

10 A. The individual who portrayed Brianna Allen in the  
11 undercover scenario is Brianna Baxter.

12 Q. Right. So the name "Brianna Allen" was not a legal name.  
13 Correct?

14 A. It's a pseudonym or an assumed name.

15 Q. Although not reflected in Exhibit 140, there was also a  
16 bank card that you obtained with the name "Robert Sarkis" on  
17 it. Correct?

18 A. I believe there was another Center for Medical Progress  
19 associate debit card on the CMP bank account. And there may  
20 have also been one on the BioMax bank account, or there might  
21 have been one for each of them; I can't really remember at this  
22 point. But there was an employee associate debit card on one  
23 or both of those accounts that had -- customized to have the  
24 name "ROBERT SARKIS" on it, that's correct.

25 Q. And you also obtained one or more bank cards with the name

## DALEIDEN - DIRECT / TROTTER

1 "SUSAN TENNENBAUM" on it. Correct?

2 **A.** I believe there was at least one other business debit card  
3 on either the BioMax bank account or on the CMP bank account  
4 that was customized to have the associate "SUSAN TENNENBAUM"  
5 name on it, yes.

6 **Q.** Now Mr. Daleiden, I believe you testified yesterday that  
7 during the course of the planning and also the implementation  
8 of the project, you and others were raising money from donors  
9 in order to fund your efforts. Correct?

10 **A.** That's correct.

11 **Q.** And in fact, that was one of the reasons why you obtained  
12 for Center for Medical Progress 501(c)(3) status. Correct?

13 **A.** That's correct.

14 **Q.** Not everyone that was approached to donate to CMP was in  
15 favor of the tactics that you intended to employ. Correct?

16 **A.** There were -- I would say maybe one, two, three  
17 individuals who were potential donors who we approached early  
18 on. And to kind of back up a little bit, all of -- most of the  
19 donor pool for CMP's work tended to be very conservative,  
20 orthodox Catholic people who were very pro-life.

21 And there were one to three of those individuals early on,  
22 by which I mean in 2013, basically, who had a very  
23 particular -- sort of idiosyncratic moral-theology problem with  
24 undercover work in general. It was a very sort of Immanuel  
25 Kant position that no lying any time for any reason, you know,

## DALEIDEN - DIRECT / TROTTER

1 Nazis at the door, all of that is wrong and sinful and bad.  
2 And so there's maybe one to three potential donors who had that  
3 position. There was some who were sort of on the fence.

4 If you back up a little bit more, in 2011 and 2012, when I  
5 was still working at Live Action, there was sort of a raging  
6 debate among the sort of right-of-center Catholic circles and  
7 online blogs on the internet about the appropriate -- really,  
8 about the morality of undercover tactics, just -- you know, for  
9 anybody. Undercover police officers, undercover news  
10 reporters, undercover citizen journalists.

11 So that's basically sort of the remnants of that  
12 discussion or the remnants of that debate was what we  
13 encountered in 2013 with one to three potential donors for CMP.

14 **Q.** One of those donors or potential donors was a man by the  
15 name of Greg Pfundstein, correct?

16 **A.** Yeah, that's correct.

17 **Q.** And he was opposed to the notion of using, quote,  
18 undercover tactics as part of the project?

19 **A.** Yes. As I remember, Greg Pfundstein was vehemently  
20 against any kind of undercover work, for any reason,  
21 whatsoever.

22 **Q.** And in fact, he did not end up donating. Correct?

23 **A.** That's correct.

24 **Q.** And after he refused to donate, you ceased communicating  
25 with him about the project. Correct?

1     **A.**    That's correct.

2                 **MS. TROTTER:**  I would like to play from the April 17,  
3     2019 deposition, Page 129, Lines 2 through 7.

4                 **MR. LIMANDRI:**  No objection.

5                 **THE COURT:**  All right.  Go ahead.

6                 (Portion of videotape played in open court, not  
7                 reported)

8     **BY MS. TROTTER**

9     **Q.**    Now, Mr. Daleiden, I want to turn to -- I want to turn to  
10    prior to the time that Center for Medical Progress began the  
11    actual recording that's at issue in this case.

12                We discussed yesterday CMP recruiting people who served as  
13    independent contractors, as opposed to employees with Center  
14    for Medical Progress, who went, quote, undercover (Indicating  
15    quotation marks).  Do you recall that?

16    **A.**    That's correct.  Could you give me the timeframe again  
17    that you just transitioned to here?

18    **Q.**    So I'll -- I'm going before the recordings.

19    **A.**    Okay.

20    **Q.**    So prior to the time that individuals would actually go  
21    undercover, and enter conferences or clinics or other events,  
22    you provided some training.

23    **A.**    Yes, that's correct.

24    **Q.**    Correct?  And indeed, you created scenarios for these  
25    people to use when they were going undercover.  Correct?

## DALEIDEN - DIRECT / TROTTER

1 **A.** I don't know if I would use -- um, use the word "scenario"  
2 exactly in that way. "Scenario" describes sort of the overall  
3 kind of characters involved, and the themes or issues being  
4 explored. A scenario -- I suppose you could describe a  
5 scenario as a training module. So yeah, I would describe it a  
6 little bit differently.

7 But yes, there was extensive training that I did with each  
8 undercover actor before they actually went undercover.

9 **Q.** If you could turn in your binder to Exhibit 426.

10 (Request complied with by the Witness)

11 **Q.** Mr. Daleiden, you recognize Exhibit 426 as a document that  
12 you prepared?

13 **A.** Yes, I do.

14 **MS. TROTTER:** Your Honor, I'm frankly not recalling  
15 if this exhibit is in evidence, but plaintiffs would move  
16 Exhibit 426 into evidence.

17 **MR. LIMANDRI:** No objection.

18 **THE COURT:** It is admitted. I think, maybe again.

19 (Trial Exhibit 426 received in evidence)

20 (Document displayed)

21 **BY MS. TROTTER**

22 **Q.** So, Mr. Daleiden, the heading on the first page of this  
23 document reads:

24 "CONFIDENTIAL: FIELD WORKER VOCABULARY."

25 Correct?

## DALEIDEN - DIRECT / TROTTER

1 A. Yes, that's correct.

2 Q. And this was a document that you provided to individuals  
3 who were going to go, quote, undercover. Correct?

4 A. Yes, it was.

5 Q. And in the first paragraph, you provide what you called a  
6 "synopsis." Correct?

7 A. Yes.

8 Q. And you explain to these individuals, quote (As read):

9 "You and your team member are business partners in a  
10 new venture to start up your own fetal tissue  
11 procurement corporation."

12 Correct?

13 A. Yes.

14 Q. (As read)

15 "Between two of you, have contacts at multiple  
16 prestigious research universities and have thus  
17 identified initial demand and markets for your tissue  
18 services."

19 Do you see that?

20 A. Yeah, I see that.

21 Q. And then towards the end of that paragraph, you write:

22 "You are hoping to network with abortion providers,  
23 clinic directors, and Planned Parenthood executives  
24 at the Association of Reproductive Health  
25 Professionals annual meeting..."

1 Do you see that?

2 A. Yeah, I see that.

3 Q. Now, underneath that paragraph, you list what you called  
4 "Key Organizations." Correct?

5 A. Yes.

6 Q. And those key organizations included ARHP, the Association  
7 of Reproductive Health Professionals, right?

8 A. Yeah.

9 Q. And it included Planned Parenthood Federation of America,  
10 right?

11 A. Yes.

12 Q. And the National Abortion Foundation or NAF, right?

13 A. That's correct.

14 Q. Underneath that, you provided a section that you entitled  
15 "Your Competition," correct?

16 A. Yes, I did.

17 Q. And by "Your Competition," you were meaning the  
18 competition of the, quote, new venture that was starting up a  
19 fetal tissue procurement corporation. Correct?

20 A. That's correct. I meant other -- other companies that  
21 were competing in the -- in the space to sell fetal tissue from  
22 abortion clinics like Planned Parenthood.

23 Q. And then you listed those organizations?

24 A. Yes, I listed as many as I was aware of at that time.

25 Q. On the next page of the exhibit, Page 2.

## DALEIDEN - DIRECT / TROTTER

1 (Document displayed)

2 Q. At the bottom, you have a section entitled "Words That  
3 Will Raise Red Flags You Are an 'Anti'." And "Anti" is in  
4 quotation marks. Do you see that?

5 A. Yeah, I see that.

6 Q. And by "Anti" in quotation marks, you meant a person who  
7 was anti-abortion, correct?

8 A. Yeah, I was actually even mimicking the language of a lot  
9 of abortion providers and people in the abortion community.  
10 They refer to people who are anti-abortion or pro-life as  
11 "anti-choice" and they've described them as "Antis" for short.  
12 So this was -- yeah. This is even -- the title is almost part  
13 of the vocabulary training in this document.

14 Q. Now, Mr. Daleiden, as part of the project, you, yourself,  
15 personally made decisions about what roles various people who  
16 were recruited as independent contractors to be involved in the  
17 undercover work would have. Right?

18 A. Yes, that's correct.

19 Q. What roles they would play. Correct?

20 A. Yes.

21 Q. And you made the decision that Ms. Merritt would take on  
22 the role as the CEO or chief executive officer of BioMax  
23 Procurement Services. Correct?

24 A. Yes, that's correct.

25 Q. You made that decision.

## DALEIDEN - DIRECT / TROTTER

1 A. Yes.

2 Q. Even though you were really the one who was leading the  
3 project. Correct?

4 A. That's correct.

5 Q. And you told Ms. Merritt that when you and she would be  
6 together as part of the undercover operation, that she ought to  
7 identify you as "Robby." Correct?

8 A. Um, I believe I had a conversation with her about -- about  
9 -- well, yes. I think -- I think that that was the conclusion  
10 of it was yes, that she should refer to me as "Robby."

11 Q. In order to use a name that was more like a nickname, so  
12 that it would be clear that she had the superior position  
13 within BioMax, and you were her subordinate. Correct?

14 A. That's correct. That was what I was about to explain.

15 Q. When Mr. Lopez was going to be -- when Mr. Lopez was  
16 recruited as part of the undercover operation, you decided that  
17 he would pose as a BioMax Procurement technician. Correct?

18 A. That's correct.

19 Q. And you asked Mr. Lopez to actually provide to you a draft  
20 background summary for that role. Correct?

21 A. I probably did. I don't remember that off the top of my  
22 head, but that sounds consistent with -- with my method.

23 Q. If you would take a look at Exhibit 243 in your binder.

24 (Request complied with by the Witness)

25 Q. Exhibit 243 is an email that you wrote to Mr. Lopez on

1 September 26, 2014. Correct?

2 **A.** Yes, that's correct.

3 **MS. TROTTER:** Your Honor, plaintiffs would move  
4 Exhibit 243 into evidence.

5 **MR. LIMANDRI:** No objection.

6 **THE COURT:** It is admitted.

7 (Trial Exhibit 243 received in evidence)

8 (Document displayed)

9 **BY MS. TROTTER**

10 **Q.** The subject line of the email contained in Exhibit 243  
11 reads:

12 "To-do 9/26/14."

13 Do you see that?

14 **A.** Yeah, I see that.

15 **Q.** And then you start the email:

16 "Hey! Here's the to-do list we have after the  
17 meeting yesterday."

18 Do you see that?

19 **A.** Yeah, I see that.

20 **Q.** The second item under the to-do list says:

21 "Examine wardrobe for costuming purposes -- shirts  
22 with black buttons or silver studs..."

23 Do you see that?

24 **A.** Yeah, I see that.

25 **Q.** The specification of shirts with black buttons or silver

## DALEIDEN - DIRECT / TROTTER

1 studs, that was to camouflage hidden-camera equipment?

2 **A.** It's for the shirts to be compatible with the  
3 police-quality undercover equipment that we use, that's  
4 correct.

5 **Q.** But to camouflage the equipment, correct? So it couldn't  
6 be easily seen?

7 **A.** Well, I think by its very nature, the undercover  
8 equipment, itself, is camouflaged, but yes, it's for the shirts  
9 to fit with the undercover equipment.

10 **Q.** So the answer is yes?

11 **A.** I think so. I mean, I would formulate it a little  
12 differently maybe, but I could agree with that.

13 **Q.** No. 3 says:

14 "Prepare background summary of Adrian Lopez, BioMax  
15 Procurement Technician.

16 Correct?

17 **A.** That's correct.

18 **Q.** So you had Mr. Lopez prepare a background summary for  
19 himself?

20 **A.** I certainly requested it here. Again, like I said, I  
21 don't remember, off the top of my head, I don't remember  
22 specifically receiving it or reading it.

23 But, you know, this is definitely consistent with my  
24 method and with -- of training undercover actors. So I would  
25 imagine that he did that.

## DALEIDEN - DIRECT / TROTTER

1 Q. And the background summary that ultimately was prepared  
2 for Mr. Lopez included a statement that he was a medical  
3 student. Is that correct?

4 A. Um, I -- you know, if -- if the document exists, and --  
5 and you have a copy of it here, I would have to see it in order  
6 to refresh my recollection. I don't really remember, off the  
7 top of my head, all the details of Adrian's character's  
8 background.

9 Q. The fourth item says:

10 "Practice undercover scenario."

11 And then in parentheses:

12 "Your house on Mon."

13 Meaning Monday, correct?

14 A. Yes.

15 Q. And that was the undercover scenario that you and  
16 Mr. Lopez would use when you went into conferences.

17 A. Yes, that's correct.

18 Q. I would like you to take a look in your binder at Exhibit  
19 549.

20 (Request complied with by the Witness)

21 A. I have it.

22 Q. Exhibit 549 is an email that you sent to Brianna Baxter on  
23 February 21st, 2014. Correct?

24 A. Yes, that's correct.

25 MS. TROTTER: Your Honor, plaintiffs would move

## DALEIDEN - DIRECT / TROTTER

1 Exhibit 549 into evidence.

2 **MR. LIMANDRI:** No objection.

3 **THE COURT:** It is admitted.

4 (Trial Exhibit 549 received in evidence)

5 (Document displayed)

6 **BY MS. TROTTER**

7 **Q.** Now, this email that you sent to Ms. Baxter was before the  
8 time that you attended the 2014 NAF conference here in  
9 San Francisco. Correct?

10 **A.** That's correct.

11 **Q.** And in the email, you're providing to Ms. Baxter the  
12 scenario that would be used as -- in connection with the NAF  
13 conference?

14 **A.** I wouldn't describe what's written here as a scenario or  
15 as a complete scenario. I would just describe this as  
16 background information for the -- for the undercover  
17 investigators to know about their -- about their characters.  
18 So this is maybe pre-scenario, or just a piece of a scenario.  
19 It's not a complete undercover module.

20 **Q.** But important background information, at least, to begin  
21 to set the scenario that would be used. Correct?

22 **A.** On a scale of 1 to 10, this is probably a 7 in terms of  
23 the importance of the background information.

24 **Q.** It included in the very first line:

25 "Startup founded at the end of the summer by Susan

1 Tennenbaum."

2 Do you see that?

3 **A.** Yeah, I see that.

4 **Q.** And the "Startup" referred to there is BioMax. Correct?

5 **A.** That's correct.

6 **Q.** And then:

7 "Tissue and organ procurement organization."

8 Correct?

9 **A.** Yes.

10 **Q.** And that:

11 "We provide biological specimens to medical  
12 researchers."

13 Correct?

14 **A.** Correct.

15 **Q.** So that was the background information necessary at least  
16 to have even the foundation of the scenario. Correct?

17 **A.** Exactly.

18 **Q.** The second paragraph starts with the phrase:

19 "Met Sandy and Jennifer at ARHP."

20 Do you see that?

21 **A.** Yeah, I see that.

22 **Q.** And Sandy and Jennifer were two women who were associated  
23 with the National Abortion Federation; correct?

24 **A.** Yes. That's Sandy Fulkerson-Schaeffer and Jennifer Hart,  
25 who were representatives of NAF at the ARHP meeting in

1 September of 2013, and they are the ones who invited BioMax to  
2 come exhibit in San Francisco.

3 **MS. TROTTER:** Ken, if you could reduce that down?  
4 And go to the section that has the heading "Susan Tennenbaum."

5 (Document displayed)

6 **BY MS. TROTTER**

7 **Q.** Under that section that lists "Susan Tennenbaum (CEO),"  
8 you see it says "Brianna's aunt"?

9 **A.** Yes, I see that.

10 **Q.** Susan Tennenbaum, again, just for reference, that was the  
11 role that Ms. Merritt was playing; correct?

12 **A.** Yes. Susan Tennenbaum was portrayed by Mrs. Merritt.

13 **Q.** And Ms. Merritt actually is not Brianna's aunt; correct?

14 **A.** That's correct. She's not.

15 **Q.** It says that:

16 "Susan Tennenbaum founded BioMax and worked in  
17 clinics in the 1980's."

18 Correct?

19 **A.** Yes.

20 **Q.** And that's also false; correct?

21 **A.** That is part of her fictional character background.

22 **Q.** Under the "Brianna Allen" heading, that was the name that  
23 Ms. Baxter used; correct?

24 **A.** Yes, that's correct.

25 **Q.** It says at the end:

1 "Grad student at USC."

2 Right?

3 **A.** Yes.

4 **Q.** And that's not accurate; correct?

5 **A.** That is also fictional.

6 **Q.** And then the last name there is the name that you used,  
7 "Robert Sarkis (V.P. for Operations);" correct?

8 **A.** Yes.

9 **Q.** And it says at the end of that paragraph:

10 "Brianna knows him" -- meaning Robert Sarkis --  
11 "from undergrad at San Jose State."

12 Correct?

13 **A.** Correct.

14 **Q.** And that's also false?

15 **A.** That's also fictional.

16 **Q.** I'd like you to now turn to Exhibit 362.

17 (Witness complied.)

18 **Q.** Exhibit 362 contains an email thread between you and  
19 Ms. Merritt; correct?

20 **A.** Yes, that's correct.

21 **MS. TROTTER:** Your Honor, plaintiffs would move  
22 Exhibit 362 into evidence.

23 **MR. LIMANDRI:** No objection.

24 **THE COURT:** It's admitted.

25 (Trial Exhibit 362 received in evidence)

1 (Document displayed)

2 **BY MS. TROTTER**

3 **Q.** Now, starting on the bottom of the first page of  
4 Exhibit 362 is an email from you to Ms. Merritt dated  
5 March 28th, 2014; correct?

6 **A.** Yes, that's correct.

7 **Q.** And the subject line reads "Summary Background"?

8 **A.** Yes.

9 **Q.** And then underneath that the first paragraph says:

10 "BioMax is in a very busy time right now with new  
11 hires, new relationships and intensive marketing. We  
12 finally got our start-up loan approved."

13 Correct?

14 **A.** Yes, I see that.

15 **Q.** And all that is false; correct?

16 **A.** All that is fiction. Part of the -- part of the  
17 undercover scenario.

18 **Q.** The next line after where we were just looking says:

19 "Robert Sarkis (background in molecular bio and  
20 biotech.)"

21 Do you see that?

22 **A.** Yes, I see that.

23 **Q.** That's also false?

24 **A.** Well, I mean, I had a fair amount of bio experience in  
25 both the training that I did to go undercover and also in some

1 of my undergrad and high school work.

2 But if this is in reference to the character Robert  
3 Sarkis', you know, degree, background with biology, no, that's  
4 fiction as well.

5 **Q.** Later on in the paragraph it reads:

6 "BioMax has been working with local hospital  
7 pathology labs to procure normal and diseased primary  
8 tissue samples for research clients."

9 Do you see that?

10 **A.** Yeah, I see that.

11 **Q.** And that's false?

12 **A.** I actually made several calls on behalf of BioMax to  
13 different local path labs and other clinics that dealt with  
14 samples like that, as BioMax was from time to time exploring  
15 the possibility of -- well, sort of what it would take to work  
16 with, like, ethical tissue samples and do ethical tissue  
17 procurement.

18 So that -- I mean, that really does reflect actual  
19 contacts that were made and actual discussions that people  
20 associated with BioMax were having at that time, although --  
21 although there was no actual procurement work that occurred.

22 **Q.** That full paragraph that starts "BioMax" and ends in  
23 "memorial," close paren period, is all part of a scenario that  
24 would be used by you and others going undercover; correct?

25 **A.** Yeah. It's all part of a scenario that was realized and

## DALEIDEN - DIRECT / TROTTER

1 actualized to varying degrees along the way.

2 Q. The next paragraph says:

3 "Brianna has been in charge of getting everything  
4 ready for the conference next weekend."

5 Do you see that?

6 A. Yes, I see that.

7 Q. And that's referring to Ms. Baxter, who was using the name  
8 Brianna Allen?

9 A. That is referring to the Brianna Allen character.

10 Q. When you made the calls that you just testified to to  
11 hospital pathology labs, you used the fake name Robert Sarkis?

12 A. At this point I can't remember off the top of my head. I  
13 probably either used Robert Sarkis or David Sarkis.

14 Q. But not your real name David Daleiden?

15 A. I don't think I told them David Daleiden, no.

16 Q. But you -- your testimony is that you were intending to  
17 actually find out if you could establish tissue procurement,  
18 even though you were using a fake name?

19 A. We were exploring it. We were exploring what it would  
20 take and what would be involved, and that's as far as it went  
21 at that time.

22 Q. Now, before you and the other people who were involved in  
23 the project went into any conference, you would have a meeting  
24 or meetings to discuss your strategy; correct?

25 A. We would have basically training meetings ahead of time to

## DALEIDEN - DIRECT / TROTTER

1 practice the undercover scenarios, practice the vocabulary.

2 And I don't know if I would describe it as a strategy  
3 meeting. I think it was just a -- sort of a coordination  
4 meeting.

5 **Q.** You recall having strategy meetings in hotel rooms, which  
6 were hotel rooms in the location where conferences were  
7 occurring?

8 **A.** I don't know that I ever called it a strategy meeting,  
9 but, yes, we would have sort of check-in meetings in the hotel  
10 rooms periodically throughout the conferences.

11 **Q.** Mr. Daleiden, you recall giving a videotaped deposition in  
12 October of 2015?

13 **A.** Yes, I believe I do.

14 **MS. TROTTER:** Your Honor, I would like to read  
15 from -- if I could provide the Court, I don't know if you have  
16 this deposition transcript. The date is October 29th, 2015.

17 **THE COURT:** I do.

18 **MS. TROTTER:** Okay. Great.

19 **MR. LiMANDRI:** I don't have it. I'm sorry.

20 **MS. TROTTER:** Let me give a copy to counsel.

21 **MR. LiMANDRI:** Thank you, counsel.

22 (Whereupon document was tendered to counsel.)

23 **MR. LiMANDRI:** Can you give me the page and line  
24 again, please?

25 **MS. TROTTER:** Page 134, Line 15 through 22. And then

## DALEIDEN - DIRECT / TROTTER

1 Page 134, continuing on, Line 23 through 135, Line 6.

2 **MR. LIMANDRI:** Okay. No problem.

3 **THE COURT:** Okay. Go ahead.

4 **BY MS. TROTTER**

5 **Q.** I'm going to read from your deposition, Mr. Daleiden.

6 **"QUESTION:** Sure. I mean, from time to time you would  
7 get together with the other individuals who purport to  
8 represent BioMax and talk about a plan for what you  
9 would do once you got inside the exhibitor space;  
10 right?

11 **"ANSWER:** We would discuss our -- our strategy for  
12 the -- for the -- for the project and for the meeting  
13 in the hotel rooms, yeah.

14 **"QUESTION:** Including with respect to who would  
15 approach which individuals and in what way?

16 **"QUESTION:** Right?

17 **"ANSWER:** We would sometimes discuss specific  
18 strategies for specific individuals."

19 That was the testimony that you provided under oath;  
20 correct?

21 **A.** Yes, that looks correct.

22 **Q.** I'm going to pass forward to 2015.

23 **A.** Okay.

24 **Q.** You recall in 2015 there was a conference, the annual  
25 meeting of NAF in 2015 in Baltimore?

1     **A.**    Yes.

2     **Q.**    Prior to the NAF 2015 conference, you prepared a fake  
3    second quarter report for BioMax; correct?

4     **A.**    I don't know if the -- you know, if the fictitious quarter  
5    report for BioMax that was used for investigator training, I  
6    don't know if that came immediately before the Baltimore NAF  
7    meeting or if it actually might have come before some of the --  
8    some of the Planned Parenthood conferences.

9            But, yes, I know that in the -- sort of in the springtime  
10   of 2015 or in the first part of 20- -- sorry, 2015 that's  
11   something like -- that I prepared something like that to  
12   continue to train the investigators.

13   **Q.**    If you could turn to Exhibit 363 in your binder?

14            (Witness complied.)

15   **Q.**    Exhibit 363 is an email from yourself to Anna Bettisworth;  
16   correct?

17   **A.**    Yes, that's correct.

18   **Q.**    And it's dated April 14th, 2015?

19   **A.**    Yeah, I see that.

20            **MS. TROTTER:** Your Honor, again, I don't know if this  
21   one is actually in evidence, but plaintiffs would move  
22   Exhibit 363 into evidence.

23            **MR. LIMANDRI:** No objection.

24            **THE COURT:** It's admitted.

25            (Trial Exhibit 363 received in evidence)

1 (Document displayed)

2 **BY MS. TROTTER**

3 **Q.** This email that you sent to Ms. Bettisworth, it indicates  
4 on the first page of the exhibit it had an attachment with the  
5 file name BioMaxQ2.docx?

6 **A.** Could you ask me that one more time?

7 **Q.** Sure. On the very first page of the email it indicates  
8 there was an attachment to the email; correct?

9 **A.** Yes, that's correct.

10 **Q.** It has the heading:

11 "BioMax Procurement Services, LLC - Quarter 2  
12 report."

13 Correct?

14 **A.** Yeah.

15 **Q.** And underneath that it says:

16 "Executive Summary: With a finalized start-up  
17 loan."

18 There was no start-up loan; right?

19 **A.** That's correct. That was fiction.

20 **Q.** (As read)

21 "A procurement team of two techs and one  
22 supervisor, five collection sites operating weekly,  
23 and dozens of regular clients."

24 That's all false; correct?

25 **A.** That's all part of the fictional undercover scenario.

## DALEIDEN - DIRECT / TROTTER

1 Q. (As read)

2 "BioMax is now operating at a net profit for the  
3 first time in six months."

4 That's false?

5 A. That's also part of the fictional scenario.

6 Q. If you turn to the next page, there is a section under the  
7 heading "Current Client Profile." Do you see where I am?

8 A. Yes. I see that.

9 Q. And there are five organizations listed there; correct?

10 A. Yes. I see that.

11 Q. And these were not clients of BioMax; correct?

12 A. That's fiction.

13 Q. You prepared, Mr. Daleiden, this fictional quarterly  
14 report for BioMax so that your team would be prepared to  
15 discuss such details, if necessary, when they would go into, in  
16 this instance, the NAF 2015 meeting; correct?

17 A. That's correct. It was so that they would -- you know,  
18 they would have enough information in their minds to -- or  
19 enough ideas in their minds to have a full conversation if they  
20 needed to.

21 Q. I'd like you to now turn to Exhibit 245.

22 (Witness complied.)

23 A. I see it.

24 Q. Exhibit 245 is an email you sent to Mr. Lopez on  
25 February 14th, 2015; correct?

## DALEIDEN - DIRECT / TROTTER

1 A. That's correct.

2 Q. And the subject line reads "MeDC Meeting Plan;" do you see  
3 that?

4 A. Yes, I see that.

5 Q. And MeDC being a conference, you understood, to be held by  
6 Planned Parenthood Federation of America?

7 A. That's correct.

8 Q. And underneath that you listed a heading "Top Affiliate  
9 Targets," and then a list; correct?

10 A. That's correct.

11 Q. And underneath that "Target Lines," and then a list of  
12 five things; correct?

13 A. That's correct.

14 Q. Now, the "Top Affiliate Targets" that you listed, the  
15 first one included Dr. Mary Gatter; correct?

16 A. So on this list of the top Planned Parenthood affiliates  
17 that we were interested in talking to, the first one is  
18 actually the Orange County affiliate plaintiff, Planned  
19 Parenthood Orange and San Bernardino Counties.

20 Dr. Mary Gatter is listed as a -- as a contact that had  
21 already been made who could introduce us to the chief medical  
22 officer for that affiliate.

23 Q. Okay. So you were using the contact that you had  
24 previously made with Dr. Gatter in order to be able to make  
25 contact with this affiliate of Planned Parenthood; correct?

## DALEIDEN - DIRECT / TROTTER

1 A. That's correct.

2 Q. The second target affiliate reads "Rocky Mountain." And  
3 that's in Colorado; correct?

4 A. That's correct.

5 Q. And the target there was Dr. Savita Ginde; correct?

6 A. No. The target referred to in this list is the affiliate,  
7 wanting to connect with the affiliate, because ultimately this  
8 was an investigation of Planned Parenthood as a corporation.  
9 This wasn't about targeting individual people as individuals.

10 So Dr. Ginde is only list here by virtue of the fact that  
11 she was the Vice-President and Chief Medical Officer of Planned  
12 Parenthood -- plaintiff Planned Parenthood Rocky Mountain. So  
13 she's a key corporate officer and the main contact for that  
14 corporation for the -- for the topic that we're investigating,  
15 which is fetal tissue sales.

16 Q. You had already been in contact with Dr. Ginde at the time  
17 of this email that you sent to Mr. Lopez; correct?

18 A. Yes, that's correct. I met her at Planned Parenthood's  
19 Forum conference in Miami in October 2014.

20 Q. And when you introduced yourself to Dr. Ginde at that  
21 conference, you introduced yourself as Robert Sarkis; correct?

22 A. That's correct.

23 Q. Dr. Ginde didn't know your real name; correct?

24 A. She did not know my birth name David Daleiden, that's  
25 correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. The "Target Lines," those five items were things that you  
2 planned to discuss with individuals that you hoped to make  
3 contact with at the MeDC conference; correct?

4 A. Yes. These were lines or specific topics that the  
5 investigators had to target our conversations to.

6 Q. Now, Mr. Daleiden, you claim that you were attending  
7 conferences of abortion providers because you were trying to  
8 obtain evidence that they were committing crimes; is that  
9 accurate?

10 A. We were seeking to document evidence of -- of violent  
11 crimes and criminal sale of -- criminal trafficking in aborted  
12 fetuses and aborted fetal organs and tissues, that's correct.

13 Q. And you would disagree with the notion that you were  
14 trying to create a propaganda project as a result of this work;  
15 correct?

16 A. In the way that people normally use the word "propaganda,"  
17 which normally people use that to imply that there is something  
18 false about what's being said or something manipulative about  
19 what's being said, yeah, I would disagree with that.

20 I think this was -- well, I know this was an honest --  
21 this was an honest reporting project, to report true facts  
22 about your clients to the public.

23 Q. When you filmed at the various conferences, you were not  
24 simply looking for evidence of alleged crimes; correct?

25 MR. MIHET: Objection. Vague.

1           **THE COURT:** Overruled. You can answer, if you can.

2   **A.** That is sort of a difficult question for me to answer  
3 because that is a little vague and broad, but, I mean, the  
4 primary and overriding purpose of this project was to gather  
5 and document evidence of how Planned Parenthood participates in  
6 the harvesting and trafficking of aborted fetal organs and  
7 tissue for profit.

8   **BY MS. TROTTER**

9   **Q.** Before you would actually enter a conference, you would  
10 turn on the hidden camera equipment; correct?

11   **A.** That's correct.

12   **Q.** Before you even approached the registration desk; correct?

13   **A.** Umm, you know, the exact start time would sometimes vary  
14 just based on sort of the physical logistics of the place.

15           But in general, you know, the -- the idea was to try to  
16 begin the -- you know, begin the recording at the beginning  
17 of -- of our participation in the conference for the precise  
18 reason that we did not want to miss any scrap of evidence that  
19 could contribute to the -- you know, the overall purpose. So  
20 we wanted it to be a very forensically valid undercover study  
21 and video documentation.

22   **Q.** And you didn't turn off the cameras generally except for  
23 perhaps during bathroom breaks until the day's events of the  
24 conference were over; correct?

25   **A.** That's correct, or sometimes switching out the battery and

## DALEIDEN - DIRECT / TROTTER

1 downloading footage and things like that.

2 **Q.** It would be possible to turn off the equipment any time  
3 you wanted to; correct?

4 **A.** Not to get too abstract for you, it would be logically  
5 possible, but it would be practically very difficult in many  
6 situations because the recorder -- you know, it's not like  
7 there is a button, you know, sitting on your lapel or something  
8 that you can just press and turn it off. There is -- you know,  
9 you would have to access the equipment and turn it off and then  
10 hope that you could, you know, discreetly turn it on again in  
11 some kind of other situation.

12 So actually the practice of keeping the cameras running  
13 for the whole time that you're actually in the undercover  
14 space, that's a practice that dates back to my work at Live  
15 Action, where we discovered very early on that the camera  
16 equipment was sometimes -- could sometimes be a little finicky  
17 if you were messing with it too much.

18 So as a safety measure, to make sure that we always had a  
19 complete video record and a forensically valid complete video  
20 record, it was -- it's been our common practice for almost a  
21 decade at this point to always keep it running and not to risk  
22 turning it off and then not being able to turn it back on again  
23 in the middle of an investigation.

24 **Q.** But you would turn it off when you went to the restroom,  
25 as a general matter?

## DALEIDEN - DIRECT / TROTTER

1 A. Me, personally, and some of them, no, not necessarily. I  
2 mean, obviously, that's why we would use the stalls in the  
3 restrooms, but...

4 Q. There were times when you went into the restroom and you  
5 turned off the camera equipment while you were in the restroom;  
6 correct?

7 A. I don't know that I personally turned it off. I think  
8 that some -- some people did and some people didn't, depending  
9 on what they were comfortable with.

10 Q. You taped anyone that you -- when you were -- had the  
11 equipment, you taped anyone that you encountered at the  
12 conference; correct?

13 A. Anyone who, you know, crossed -- you know, crossed the  
14 front of the camera lens and the public spaces that we were  
15 interacting in would be on the video.

16 Q. And when you say "public spaces," you're including  
17 conference rooms where seminars were occurring?

18 A. I'm including conference hotel rooms, which are places  
19 of -- I consider places of public accommodation.

20 Q. Even where the seminar rooms and other conference  
21 locations had been rented, for example, by NAF, for the NAF  
22 conference that was here in San Francisco?

23 A. That's correct.

24 Q. So even while there were panel presentations that were  
25 going on, you viewed that as public; is that your testimony?

## DALEIDEN - DIRECT / TROTTER

1 **A.** I know that the Westin St. Francis Hotel refers to those  
2 spaces as public meeting spaces. They are places of public  
3 accommodation, and you have very little -- I think anyone in  
4 those spaces has very little control over who is walking in or  
5 out at any given time and can overhear what's happening.

6 **Q.** You had a badge in order to access those spaces that was  
7 issued -- let's just take NAF 2014 that was here in  
8 San Francisco. You were issued a badge by NAF in order to  
9 access those spaces, correct?

10 **A.** We purchased badges from NAF, correct.

11 **Q.** In order to access that conference; correct?

12 **A.** In order to attend the conference, that's correct.

13 **Q.** Including in order to get into the rooms where seminars  
14 were taking place; correct?

15 **A.** That's correct.

16 **Q.** And you taped all of that, all of those seminars that you  
17 attended; correct?

18 **A.** The ones that I attended, that's correct.

19 **Q.** And the others taped everything that -- the other people  
20 who were involved in going undercover at the NAF 2014  
21 conference turned their cameras on and taped everything that  
22 was happening at the conference that came within view of their  
23 camera; correct?

24 **A.** The cameras accurately captured what was happening in  
25 those spaces, that's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. All you discussions, regardless of topic; correct?

2 A. Any discussion that was attended. We didn't necessarily  
3 attend every single -- every single discussion, but anything  
4 that was attended, that's correct.

5 Q. Regardless of the topic of the discussion; correct?

6 A. I mean, every -- every discussion was happening as part of  
7 a National Abortion Federation trade show, which is very  
8 relevant to the topic that we were investigating.

9 Q. So it didn't have to be a discussion involving fetal  
10 tissue; correct?

11 A. To the best of my understanding, the National Abortion  
12 Federation trade shows are discussions at hotels, which are  
13 places of public accommodation, among major players in the  
14 abortion industry. That's who --

15 Q. That's not my question, Mr. Daleiden. It's not about the  
16 general scope of the NAF conferences.

17 It was a very specific question. It was whether when you  
18 were at the NAF -- let's just take 2014 here in San Francisco.  
19 You taped all discussions, regardless of whether the discussion  
20 involved the subject, the specific subject of fetal tissue;  
21 correct?

22 A. Could you ask me that question one more time? I got a  
23 little lost in the pieces. And I was trying to be responsive  
24 in my prior answer, but...

25 Q. At the NAF 2014 conference in San Francisco, you taped all

## DALEIDEN - DIRECT / TROTTER

1 discussions, regardless of whether the subject of fetal tissue  
2 was part of the discussion?

3 **A.** We taped all of our interactions with the abortion  
4 providers who were attending a NAF meeting that was sponsored  
5 by a tissue procurement organization.

6 **Q.** That's not responsive to my question. My question is:  
7 You taped all discussions, regardless of whether in the  
8 particular discussion the subject of fetal tissue was  
9 discussed?

10 **A.** What I'm trying to tell you --

11 **MR. MIHET:** Objection. Asked and answered.

12 **THE COURT:** Overruled.

13 If you can answer it in a "yes" or "no," do that. If you  
14 can't, then explain it.

15 **THE WITNESS:** Right.

16 **A.** I don't think I can because what I'm trying to say to you  
17 is that in my judgment, all of the conversations and all of the  
18 interactions that we had at a meeting like that, like the NAF  
19 2014 meeting, which was sponsored by an organization that  
20 harvests and sells aborted fetal tissue, all of the discussions  
21 at a meeting like that are potentially relevant because all of  
22 the attendees are participating in that market space.

23 **BY MS. TROTTER**

24 **Q.** Mr. Daleiden, you are aware that there are abortion  
25 providers who do not participate in fetal tissue donation

1 programs; correct?

2 **A.** Yes, that's correct.

3 **Q.** And you are aware that the National Abortion Federation  
4 consists of a wide range of physicians and clinics who provide  
5 abortion services throughout the country; correct?

6 **A.** Yes, but we wouldn't know without talking to them which  
7 ones were which.

8 **Q.** And, therefore, since you didn't know which ones were  
9 which, when you encountered someone that you didn't know, you  
10 didn't know whether they would have information directly  
11 relevant to fetal tissue research or not; correct?

12 **A.** In my judgment, they all had some amount of information  
13 that's directly relevant because they -- that could direct me  
14 and direct the project either, you know, are you getting hotter  
15 or are you getting colder? You know, closer to this one or  
16 closer to that one?

17 **Q.** Meaning, they could tell you: You know what? I don't  
18 know anything about fetal tissue at all. I've never even heard  
19 the subject. But you recorded them still; correct?

20 **A.** They might say that to us while the recordings were going  
21 on, and then, you know, that would be someone that we didn't  
22 have much reason to talk to any more.

23 **Q.** But you would have already recorded them; correct?

24 **A.** They would be on camera, that's correct.

25 **MS. TROTTER:** Your Honor, I'd now like to play a

## DALEIDEN - DIRECT / TROTTER

1 video that has been marked as Exhibit 5081-B.

2 **MR. LIMANDRI:** We objected to this one. One of the  
3 two we objected to, Your Honor.

4 **THE COURT:** All right.

5 **MS. TROTTER:** Your Honor, I have a transcript, if  
6 that will help, Your Honor.

7 **THE COURT:** Why don't you send that up?

8 (Whereupon document was tendered to the Court.)

9 (Brief pause.)

10 **THE COURT:** All right. I will overrule the  
11 objection. You can play it.

12 **MS. TROTTER:** Thank you, Your Honor.

13 I'm sorry. We will move -- I'm sorry, can you stop it,  
14 Ken -- as just a formal matter, 5081-B into evidence.

15 **THE COURT:** Go ahead.

16 (Trial Exhibit 5081-B received in evidence)

17 **MS. TROTTER:** Thank you.

18 (Videotape played with audio in open court, not  
19 reported)

20 **MS. TROTTER:** If you could stop it?

21 **BY MS. TROTTER**

22 **Q.** Mr. Daleiden, you didn't know the person that who you were  
23 talking to here before you met her; isn't that correct?

24 **A.** That's correct. We just met in that conversation.

25 **Q.** She wasn't from Planned Parenthood; correct?

## DALEIDEN - DIRECT / TROTTER

1 A. I think that's what I heard her say, that's correct.

2 Q. She had been a presenter at the conference on the subject  
3 of transgender health; correct?

4 A. As far as I understand.

5 Q. And she told you she didn't know the medical directors  
6 that you were asking her about; correct?

7 A. That's correct.

8 Q. And you had no reason to believe that the person that we  
9 just saw in that video had committed any crime; correct?

10 A. No. This was a friendly conversation in public.

11 Q. But you taped her anyway?

12 A. I think -- you know, I taped a friendly conversation that  
13 we had in public and, for the record, this is a video that I  
14 have never released. This is the first time that this video  
15 has ever been played, you know, by the plaintiffs publicly in  
16 this courtroom, and I don't think that there is anything --

17 **THE COURT:** Mr. Daleiden --

18 A. -- shameful about what she's talking about.

19 **THE COURT:** Mr. Daleiden, just stick with the  
20 questions, please.

21 **BY MS. TROTTER**

22 Q. The location where this discussion took place was at a NAF  
23 conference reception; correct?

24 A. No. This was at the -- this was at the Planned Parenthood  
25 Forum in Miami in October 2014.

## DALEIDEN - DIRECT / TROTTER

1 Q. Sorry. Planned Parenthood conference reception; correct?

2 A. That's correct. It's at an outdoor reception by the hotel  
3 pool.

4 Q. And you had a badge on; correct?

5 A. I believe I did, yes.

6 Q. And the woman that you spoke to that we just saw in the  
7 clip had a badge on; correct?

8 A. From what I can tell, yes.

9 Q. Now, in the clip that we just saw, you mentioned to the  
10 woman that you spoke to that you had attended a transsexual  
11 health presentation at the NAF conference; correct?

12 A. No. I don't think I said that in this conversation.

13 Q. At NAF, prior to the time of this conference that we just  
14 looked at in the videotape, you and your team did go to a  
15 number of panel presentations; correct?

16 A. We went to several presentations at NAF in 2014, which  
17 would have been maybe six months before this video was taken.

18 Q. And do you recall that one of those presentations was on  
19 transsexual healthcare?

20 A. No. That was the 2015 NAF meeting.

21 Q. Got my years confused.

22 So at the 2015 NAF meeting there was a presentation on  
23 transsexual healthcare?

24 A. From what I remember. I don't think I attended that  
25 presentation, but I'm aware it was on the schedule.

## DALEIDEN - DIRECT / TROTTER

1 Q. And one of your team members attended?

2 A. I believe so.

3 Q. And taped; correct?

4 A. I believe so.

5 Q. And you didn't expect that that panel presentation on  
6 transsexual healthcare was going to include a discussion of  
7 fetal tissue; correct?

8 A. No. I think they attended because they expected that  
9 their conversations with other people who might be attending  
10 that meeting, that there might be opportunities to have those  
11 conversations with those individuals.

12 Q. But they taped everyone that they encountered in the  
13 presentation; correct?

14 A. They created accurate records of the spaces where these  
15 conversations took place.

16 Q. And that meant that they taped everything that occurred  
17 during the session when they were present; correct?

18 A. That means that the videos were -- are accurate  
19 reflection -- accurate documentation of what happened in those  
20 spaces.

21 Q. Meaning that the recorder -- the recording equipment was  
22 turned on and not turned off during any point of the seminar  
23 presentation; correct?

24 A. That's correct.

25 Q. Do you recall you or one of your team members recording a

## DALEIDEN - DIRECT / TROTTER

1 session at one of the NAF conferences on the subject of the  
2 feminist caucus?

3 **A.** Off the top of my head, no, I don't recall that.

4 **Q.** Do you recall at one of the NAF conferences you or one of  
5 your independent contractors taping a panel presentation on  
6 Latin American providers of service?

7 **A.** Not very distinctly, although that sounds like a  
8 presentation that Adrian might have been interested in and  
9 attended.

10 **Q.** Mr. Daleiden, you would agree, would you not, that trying  
11 to find evidence of a crime at these various conferences was  
12 like trying to find a needle in a haystack?

13 **MR. MIHET:** Objection. Argumentative.

14 **THE COURT:** Overruled. You can answer it, if you  
15 know.

16 **A.** No, I would not agree with that. There were quite a lot  
17 of conversations and admissions that the people that I spoke to  
18 at those conferences made that I think are very disturbing and  
19 that I -- that needed to be reported.

20 **MS. TROTTER:** I'd like to play now Exhibit 5081-C.

21 **THE COURT:** Is there an objection to this one?

22 **MR. LIMANDRI:** No. I'm sorry.

23 **THE COURT:** Okay. Go ahead.

24 **MS. TROTTER:** Move for admission.

25 **THE COURT:** It's admitted.

## DALEIDEN - DIRECT / TROTTER

1 (Trial Exhibit 5081-C received in evidence)

2 **MS. TROTTER:** Thanks.

3 (Videotape played with audio in open court, not  
4 reported)

5 **BY MS. TROTTER**

6 **Q.** Mr. Daleiden, that was you and Mr. Lopez having that  
7 discussion that we just saw; correct?

8 **A.** As I remember, that was me and Adrian talking about how  
9 difficult it was to find Dr. Laura Dalton at that meeting.  
10 Because Dr. Nucatola was trying to introduce her to us, but  
11 nobody could find her.

12 **Q.** And you used the words "it's like finding a needle in a  
13 haystack what we're trying to do;" correct?

14 **A.** In reference to trying to find somebody in an extremely  
15 crowded outdoor public area, someone trying to find someone  
16 that you never met before and didn't know what they looked  
17 like.

18 **Q.** Now, Mr. Daleiden, when you were at the NAF conferences in  
19 both 2014 and 2015, you introduced yourself to anyone that you  
20 met at those conferences as Robert Sarkis; correct?

21 **A.** That's correct.

22 **Q.** And you identified yourself at both of those conferences  
23 to anyone that you met there as a representative of BioMax;  
24 correct?

25 **A.** That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And you told anyone that you encountered that you were  
2 working in the area of tissue procurement; correct?

3 A. In general, yes, that's correct.

4 Q. And you distributed business cards at the NAF conferences  
5 with Robert Sarkis and the BioMax name; correct?

6 A. Yes, that's correct.

7 Q. And you handed out the brochures at the conferences that  
8 had the BioMax name that we looked at yesterday; correct?

9 A. Yes, that's correct.

10 Q. And while you were at both of the NAF conferences, at each  
11 of them you wore a hidden camera the entire time; correct?

12 A. Yes, that's correct.

13 Q. And you turned on the hidden camera before the conference  
14 sessions would start and you didn't turn them off until after  
15 the conference had ended for the day; correct?

16 A. Yes. In general, that's correct.

17 Q. You never told anyone that you interacted with at either  
18 of the NAF conferences that you were recording them; correct?

19 A. That is correct. I never stated that.

20 Q. When you went to the various Planned Parenthood  
21 conferences, you also used the name Robert Sarkis?

22 A. Yes, that's correct.

23 Q. And just so we're clear -- I believe we did this at the  
24 very beginning of the day, but just so we're clear, the Planned  
25 Parenthood conferences included the MeDC conference in 2015;

1 correct?

2 **A.** Yes.

3 **Q.** And the PPFA Forum in 2014?

4 **A.** Yes, that's correct.

5 **Q.** And the PPFA National Conference in 2015?

6 **A.** Yes, that's correct.

7 **Q.** And you wore hidden video equipment at each of those  
8 Planned Parenthood sponsored conferences; correct?

9 **A.** Yes, that's correct.

10 **Q.** And you never told anyone that you were recording at that  
11 conference, that they were -- at those conferences that they  
12 were being recorded; correct?

13 **A.** That's correct.

14 **Q.** In order to get your badge at the various Planned  
15 Parenthood conferences, you used your fake identification;  
16 correct?

17 **A.** We presented our undercover photo ID in order to obtain  
18 the badges that we had previously purchased, that's correct.

19 **Q.** And your identification contained the name Robert Sarkis;  
20 correct?

21 **A.** That's correct.

22 **Q.** And you never told anyone at any of the Planned Parenthood  
23 conferences that you attended using the name Robert Sarkis that  
24 that wasn't your legal name; correct?

25 **A.** That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. You didn't tell anyone that the ID that you were  
2 presenting was not a valid, legal ID; correct?

3 A. That's correct. They never asked.

4 Q. They never asked and you never told them?

5 A. That's correct.

6 Q. At the Planned Parenthood conferences, again, you  
7 identified yourself as being a representative from BioMax?

8 A. Yes, that's correct.

9 Q. And you told people that you worked in tissue procurement;  
10 correct?

11 A. Yes, that's correct.

12 Q. And you distributed the business cards that contained the  
13 name Robert Sarkis and BioMax; correct?

14 A. Yes, that's correct.

15 Q. At each of the Planned Parenthood conferences before you  
16 would enter the conference, you would turn on the hidden video  
17 camera equipment; correct?

18 A. Yes, that's correct.

19 Q. And you wouldn't turn off that equipment until the  
20 conference events for the day were over; correct?

21 A. In general, it's correct.

22 Q. You didn't turn off the equipment based on the person that  
23 you happened to be interacting with; correct?

24 A. That's correct.

25 Q. You didn't tell anyone at any of the Planned Parenthood

## DALEIDEN - DIRECT / TROTTER

1 conferences that you were taping them; correct?

2 **MR. LIMANDRI:** I'm going to object on cumulative  
3 grounds. The line of questioning has been asked now several  
4 times. Those questions are asked and answered or they are not  
5 in dispute.

6 **THE COURT:** I think we must be getting to the end of  
7 this line.

8 **MS. TROTTER:** Yes.

9 **THE COURT:** Okay. Sustained.

10 **BY MS. TROTTER**

11 **Q.** Now, before you went to the first conference at NAF here  
12 in San Francisco, Ms. Merritt and Ms. Baxter attended the ARHP  
13 conference; correct?

14 **A.** Yes, that's correct.

15 **Q.** And they posed as BioMax employees?

16 **A.** That's correct.

17 **Q.** And Ms. Merritt posed as Susan Tennenbaum?

18 **A.** That's correct.

19 **Q.** And Ms. Baxter posed as Brianna Allen?

20 **A.** That's correct.

21 **Q.** And they handed out BioMax business cards?

22 **A.** Yes, that's correct.

23 **Q.** And you were, in fact, personally at the hotel where the  
24 ARHP conference was being held; correct?

25 **A.** That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And during that conference, Ms. Baxter and Ms. Merritt  
2 would periodically come up to the hotel room where you were to  
3 discuss who they had met; correct?

4 A. That's correct.

5 Q. I'd like you to turn in your binder to Exhibit 69.

6 (Witness complied.)

7 MR. LIMANDRI: I don't believe I have a 69.

8 THE WITNESS: Yeah, I don't have a 69.

9 MS. TROTTER: That may be an error. One moment.

10 (Brief pause.)

11 BY MS. TROTTER

12 Q. I believe you testified earlier that Ms. Merritt and  
13 Ms. Baxter met two individuals from NAF at ARHP; correct?

14 A. Yeah, that's correct.

15 Q. And it's accurate, isn't it, that after the ARHP meeting,  
16 you used the connections that Ms. Merritt and Ms. Baxter had  
17 made with those two individuals to follow up to make  
18 connections with NAF more formally; correct?

19 A. We emailed them later after the meeting, after we met  
20 them, that's correct.

21 Q. And after making that contact, after ARHP and reaching out  
22 by email subsequently, BioMax made arrangements with NAF to  
23 attend the 2014 conference?

24 A. Could you ask me that one more time? I got lost --

25 Q. Sure. Just to place it in time, there is a timeline that

## DALEIDEN - DIRECT / TROTTER

1 may be hard for you to see. It's hard for me to see.

2 The ARHP conference was in 2013?

3 **A.** That's correct. September 2013 in Denver, Colorado.

4 **Q.** And the NAF conference, the first one attended was in  
5 April of 2014; correct?

6 **A.** That's correct.

7 **Q.** So in between the time of ARHP in September of 2013 and  
8 the NAF conference in 2014, you made arrangements for BioMax to  
9 attend NAF as an exhibitor; correct?

10 **A.** Yes, that's correct. We reached out to them and they got  
11 us registered for the meeting.

12 **Q.** Now, you were aware prior to reaching out to NAF after  
13 ARHP that they were a group, a professional group consisting  
14 largely of abortion providers, clinics, doctors; correct?

15 **A.** Yes, that's what I was generally aware of.

16 **Q.** And you were aware that they held annual conferences?

17 **A.** Yes. I was aware that they had -- I actually thought  
18 there were multiple conferences throughout the year, but, yes,  
19 I was generally aware that they had conferences.

20 **Q.** And you agree that the NAF Annual Meeting is a highly  
21 specific select gathering; correct?

22 **A.** I think it's highly specific in the sense that -- you  
23 know, that it's an abortion industry trade show, and there  
24 aren't very many of those around. It's a sort of the -- you  
25 know, it's a very specific industry.

1           Select? I mean, certainly in my experience now, I don't  
2 know that I would necessarily describe it that way. That's  
3 maybe how -- that's how I feel about it.

4 **BY MS. TROTTER**

5 **Q.** I'd like to read again from your deposition taken on  
6 October 29th, 2015 at Page 248, Line 4 through Line 24.

7           **MR. LIMANDRI:** No objection.

8           **THE COURT:** All right. Go ahead.

9 **BY MS. TROTTER**

10 **Q.** (As read:)

11           **"QUESTION:** Okay. Why were you -- why were you  
12 particularly sensitive to the infiltration of NAF  
13 versus the undercover videotaping, say, of Deb  
14 Nucatola or Cate Dyer or anybody else?

15           **"ANSWER:** Primarily because -- because the National  
16 Abortion Federation Annual Meeting is a highly  
17 specific, select gathering, and there's only a limited  
18 number of people that are in attendance there; right?  
19 You know, no more than 700 people. And it's typically  
20 the same crowd of people who all know each other  
21 anyway.

22           "And so for details to get out or be talked  
23 about, to percolate, and, you know, many places about  
24 a NAF meeting would be highly, highly suspicious and  
25 would be a dead -- a kind of dead give-away that --

## DALEIDEN - DIRECT / TROTTER

1 that -- that the information was coming out of there,  
2 whereas Dr. Nucatola, you know, has lunch with lots of  
3 people all the time.

4 "So there is just a difference in terms of the --  
5 the kind of information flow you can expect in those  
6 different situations."

7 You provided that testimony under oath; correct?

8 **A.** Yes, that is correct.

9 **MS. TROTTER:** Your Honor, this may be a good time for  
10 a morning break.

11 **THE COURT:** Okay. Ladies and gentlemen, we'll take  
12 our first break in the morning, about ten minutes. Please  
13 remember the admonitions.

14 (Jury exits the courtroom at 9:30 a.m.)

15 **THE COURT:** All right. We're in recess.

16 (Whereupon there was a recess in the proceedings  
17 from 9:31 a.m. until 9:45 a.m.)

18 **THE COURT:** All right. Please be seated, everybody.

19 Ms. Trotter, go ahead.

20 **MS. TROTTER:** Thank you, Your Honor.

21 **BY MS. TROTTER**

22 **Q.** Mr. Daleiden, prior to the break we were talking about NAF  
23 and, in particular, I want to focus on NAF 2014.

24 If you could turn in your binder to Exhibit 370?

25 **A.** Ms. Trotter, I don't think I have it -- oh, I do. I have

1 a 370. Okay, I got it.

2 **Q.** Exhibit 370 are the various documents that BioMax  
3 submitted in order to register as an exhibitor for the NAF 2014  
4 conference; correct?

5 **A.** Yes. They were not in this order when I received them,  
6 but these are the three pages.

7 **MS. TROTTER:** Again, I'm not sure, Your Honor, if  
8 this is already in evidence, but plaintiffs would move  
9 Exhibit 370 into evidence.

10 **MR. LIMANDRI:** I don't have it, apparently, in my  
11 notebook, unless it's out of order.

12 **THE COURT:** They are hidden behind 364. You have it.

13 **MR. LIMANDRI:** No objection.

14 **THE COURT:** They are admitted.

15 (Trial Exhibit 370 received in evidence)

16 (Document displayed)

17 **BY MS. TROTTER**

18 **Q.** So first just focusing on the first page of Exhibit 370,  
19 it's entitled "Exhibit Rules and Regulations;" do you see that?

20 **A.** Yes, I see that.

21 **Q.** And on the right-hand side sort of towards the bottom  
22 there is a signature block. Do you see where I am?

23 **A.** Yeah, I see that.

24 **Q.** And the signature block contains the company name "BioMax  
25 Procurement Services;" correct?

## DALEIDEN - DIRECT / TROTTER

1 A. Yes, that's correct.

2 Q. And then a couple of lines down it says "Print Name" and  
3 the name printed there is Susan Tennenbaum; do you see that?

4 A. Yeah, I see that.

5 Q. "Title: CEO;" correct?

6 A. Yeah, I see that.

7 Q. And it's dated February 3rd, 2014; correct?

8 A. I think that's a five. But it's February 5th, 2014.

9 Q. February 5th, 2014.

10 Now, and then above "Susan Tennenbaum" there is a  
11 signature for Susan Tennenbaum; correct?

12 A. That's correct.

13 Q. Again, Susan Tennenbaum being the name used by Ms. Merritt  
14 during the operation; correct?

15 A. That was the name of the character that she portrayed,  
16 that's correct.

17 Q. Even though the name Susan Tennenbaum is written on the  
18 document and there is the signature of Susan Tennenbaum, it was  
19 you that wrote in the name Susan Tennenbaum and the signature  
20 on the document; correct?

21 A. That's correct. It was me.

22 Q. Okay. I'd like you to turn to the -- well, actually,  
23 before we leave that, while we're there, Paragraph 17 of the  
24 "Exhibit Rules and Regulations" says:

25 "In connection with NAF's Annual Meeting,

1 Exhibitor" --

2 That would be BioMax; right?

3 **A.** That's correct.

4 **Q.** (As read:)

5 "...that any information that NAF may furnish is  
6 confidential and not available to the public."

7 Correct?

8 **A.** Yes, that's correct.

9 **Q.** And the next sentence reads:

10 "Exhibitor, means BioMax, agrees that all written  
11 information provided by NAF, or any information which  
12 is disclosed orally or visually to Exhibitor, or any  
13 other exhibitor or attendee, will be used solely in  
14 conjunction with Exhibitor's business and will be made  
15 available only to Exhibitor's officers, employees and  
16 agents."

17 Correct?

18 **A.** Yes, I see that.

19 **Q.** Let's now move to Paragraph 19.

20 (Document displayed)

21 **Q.** Paragraph 19 reads:

22 "By signing this agreement, the Exhibitor" --  
23 meaning BioMax -- "affirms that all information  
24 contained herein, contained in any past or future  
25 correspondence with either NAF and/or in any

## DALEIDEN - DIRECT / TROTTER

1 publication, advertisements, and/or exhibits displayed  
2 at, or in connection with, NAF's Annual Meeting, is  
3 truthful, accurate, complete and not misleading."

4 Correct?

5 **A.** That's correct. I see that.

6 **Q.** Now, if you turn to the second page of the exhibit, that  
7 page is entitled "Application and Agreement for Exhibit Space;"  
8 correct?

9 **A.** Yes. This was the first page of the document as I  
10 received it in 2014.

11 **Q.** And, again, that's for the NAF Annual Meeting here in  
12 San Francisco; correct?

13 **A.** Yes, that's correct.

14 **Q.** And then there is information that is filled in on that  
15 page; do you see that?

16 **A.** Yeah, I see that.

17 **Q.** And all of the handwriting on that page is yours; correct?

18 **A.** That's correct.

19 **Q.** I'd like you to turn to the final page of the exhibit.

20 (Document displayed)

21 **Q.** That page is entitled "Annual Meeting Registration Form."  
22 Do you see that?

23 **A.** Yeah, I see that.

24 **Q.** And that's a registration form that you were filling out  
25 for BioMax to be an exhibitor; correct?

## DALEIDEN - DIRECT / TROTTER

1 A. That's correct. This is the payment form that we filled  
2 out in February, 2014.

3 Q. At the bottom of that page on the right-hand side there is  
4 an area to put in payment information. Do you see where I am?

5 A. Yeah, I see that.

6 Q. And there is a checkmark next to "Visa;" do you see that?

7 A. Yes, I see that.

8 Q. And you made that "X;" correct?

9 A. Yes.

10 Q. And then underneath there is a card number ending in the  
11 numerals 6028. Do you see that?

12 A. Yeah, I see that.

13 Q. And that is the same card that we looked at earlier in  
14 Exhibit 140, which was the card that had the name of Phil  
15 Cronin; correct?

16 A. It's a CMP bank card, yes.

17 Q. But it had the name Phil Cronin. That's the same card?

18 A. It was a CMP card that was customized with the associate  
19 name Phil Cronin, that's correct.

20 Q. And then written in underneath the expiration date and  
21 card identification number is the name Phil Cronin; correct?

22 A. That's correct.

23 Q. And then a "Signature of Card Holder" underneath that;  
24 correct?

25 A. That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And you both wrote in the name Phil Cronin in the line  
2 "Name of Card Holder"; correct?

3 A. Yes.

4 Q. And then you signed the name Phil Cronin underneath;  
5 correct?

6 A. Yes, that's correct.

7 MS. TROTTER: I'd like to play -- I'd like to play  
8 from the videotaped deposition of Mr. Daleiden from April 16th,  
9 Page 234, Lines 3 through 12.

10 MR. LIMANDRI: No objection.

11 THE COURT: All right. Go ahead.

12 (Videotape played with audio in open court, not  
13 reported)

14 MS. TROTTER: I'd now like to play another clip, same  
15 deposition, Page 234, Line 19 through 235, Line 9.

16 DEFENSE COUNSEL: No objection.

17 THE COURT: All right. Go ahead.

18 (Videotape played with audio in open court, not  
19 reported)

20 MS. TROTTER: Ken, if you could pull back up that  
21 last page of Exhibit 370 that we were looking at?

22 And again enlarge the card information?

23 (Document displayed)

24 BY MS. TROTTER

25 Q. Now, Mr. Daleiden, Mr. Cronin never used the bank card

## DALEIDEN - DIRECT / TROTTER

1 that was used for the NAF registration; correct?

2 **A.** That's correct.

3 **Q.** You never gave him that card; correct?

4 **A.** That's correct. It was a Center for Medical Progress  
5 card.

6 **Q.** With Mr. Cronin's name?

7 **A.** Customized with Mr. Cronin as the associate on an employee  
8 or associate debit card on the Center for Medical Progress  
9 account.

10 **Q.** And you didn't tell Mr. Cronin that you were using this  
11 card that contained his name in order to register for a  
12 conference; correct?

13 **A.** Not that I remember.

14 **Q.** Now, focusing still on the NAF 2014 conference, when you  
15 got to the conference location, to the registration desk, you  
16 showed the identification with Robert Sarkis on it; correct?

17 **A.** Yes, at some point. I don't know that it was the first  
18 thing that I did at the registration desk, but at some point at  
19 the NAF check-in desk, yes, I showed the Robert Sarkis ID and  
20 received the badge that we had paid for two months beforehand.

21 **Q.** And, also, at the registration desk you had to sign a  
22 Confidentiality Agreement; correct?

23 **A.** We were asked to sign the NAF Confidentiality Agreement.  
24 I don't know to what degree it was a requirement, since it  
25 seems like not everybody who attended these meetings

## DALEIDEN - DIRECT / TROTTER

1 necessarily signed those.

2 Q. You signed one; correct?

3 A. I did sign one, that's correct.

4 Q. And Ms. Merritt signed one; correct?

5 A. Yes, I believe she did.

6 Q. And when the NAF representative who was manning the desk  
7 provided those Confidentiality Agreement forms to you and  
8 Ms. Merritt, you had a conversation with the staff at the desk  
9 in which they told you to keep everything, quote, super secret,  
10 close quote; correct?

11 A. As I remember that conversation, we were instructed by the  
12 NAF registration people that what the agreement meant was that  
13 we were supposed to sort of keep the location and the fact that  
14 the conference was going on at the hotel at that time secret,  
15 yes.

16 Q. Well, but the person told you to keep everything super  
17 secret; correct?

18 A. No, she didn't. What she told us was to be super secret,  
19 and she said this with reference to the name, the National  
20 Abortion Federation; that we should maybe say National  
21 Asparagus Foundation or National Association of Fortune Tellers  
22 if somebody asked.

23 So I understood that as sort of a location secrecy  
24 agreement that we should -- that nobody should be broadcasting  
25 on social media or calling in the public to have a protest or

1 something at the Westin Hotel while the meeting was going on.

2 **Q.** If you could turn in your binder to Exhibit 1012?

3 (Witness complied.)

4 **MS. TROTTER:** And, Your Honor, this exhibit is in  
5 evidence.

6 (Document displayed)

7 **BY MS. TROTTER**

8 **Q.** The first page of Exhibit 1012 is a Confidentiality  
9 Agreement for the 2014 NAF Annual Meeting signed by Brianna  
10 Baxter, using the name Brianna Allen; correct?

11 **A.** Yes, I see that.

12 **Q.** And then if you turn to the next page? That next page is  
13 the same agreement signed by Ms. Merritt using the name Susan  
14 Tennenbaum; correct?

15 **A.** Yeah, I see that.

16 **Q.** And then the last page of the exhibit is that same  
17 agreement signed by you, using the name Robert Sarkis; correct?

18 **A.** Yeah, I see that.

19 **Q.** At the very top of that page, there is a paragraph that  
20 sort of starts, the main language of the agreement that reads:

21 "It is NAF policy that all people attending its  
22 conferences (Attendees) sign this Confidentiality  
23 Agreement."

24 Correct?

25 **A.** Yes, I see that.

1 Q. And then it says:

2 "The terms of attendance are as follows."

3 Correct?

4 A. Yeah, I see that.

5 Q. And Item No. 1 is:

6 "Videotaping or Other Recording Prohibited."

7 Correct?

8 A. Yes, I see that.

9 Q. And it reads:

10 "Attendees are prohibited from making video,  
11 audio, photographic, or other recordings of the  
12 meetings or discussions at this conference."

13 Correct?

14 A. Yes, I see that.

15 Q. Now, after you signed this document that we're looking at,  
16 the Confidentiality Agreement, you and Ms. Merritt went back up  
17 to your hotel rooms where the NAF conference was being held;  
18 correct?

19 A. Yes, that's correct.

20 Q. And you, in fact, went up to speak with Ms. Baxter, who  
21 was using the name Brianna Allen; correct?

22 A. That's correct.

23 Q. And when you got to the hotel room, you told Ms. Baxter  
24 that she had to sign a Confidentiality Agreement in order to  
25 get into the NAF conference; correct?

## DALEIDEN - DIRECT / TROTTER

1 **A.** I don't remember that conversation very clearly, but I  
2 imagine that I could have said something like that to her.

3 **Q.** Well, I would like to read again from your deposition  
4 taken in October of 2015, Page 176, Line 25 through Page 177,  
5 Line 8.

6 **MR. LIMANDRI:** No objection.

7 **THE COURT:** All right. Go ahead.

8 **Q.** (As read:)

9 **"QUESTION:** And you and Ms. Tenn- -- and the person  
10 who represented themselves to be Tennenbaum went back  
11 up to the hotel room to speak with the person who  
12 represented themselves to be Allen?

13 **"ANSWER:** I believe we did.

14 **"QUESTION:** And you told her that in order to register  
15 for the conference and gain access, she had to go down  
16 and sign an NDA?

17 **"ANSWER:** I believe we did."

18 That was the testimony that you have gave under oath;  
19 correct?

20 **A.** That's correct.

21 **Q.** Now, in addition total NAF conference in 2014, you also  
22 attended the PPFA Forum in October, 2014; correct?

23 **A.** That's correct.

24 **Q.** And that was a conference that was held in Florida?

25 **A.** Yes, it was.

## DALEIDEN - DIRECT / TROTTER

1 Q. And you wore undercover cameras to this conference as  
2 well?

3 A. Yes, that's correct.

4 Q. And Mr. Lopez attended that conference with you?

5 A. Yes, that's correct.

6 MS. TROTTER: I'd like to play Exhibit 5281-B.

7 MR. LIMANDRI: No objection.

8 THE COURT: All right. Go ahead. It's admitted.

9 (Trial Exhibit 5281-B received in evidence)

10 (Videotape played with audio in open court, not  
11 reported)

12 MS. TROTTER: We can stop it there, Ken.

13 BY MS. TROTTER

14 Q. Mr. Daleiden, what we just looked at was a video of you  
15 and Mr. Lopez in a hotel room where the Forum conference was  
16 being held getting ready?

17 A. That's correct.

18 Q. And you were adjusting the hidden cameras to make sure  
19 that they would be operational?

20 A. That's correct.

21 Q. Now, once you actually went into the conference, to the  
22 PPFA conference, you had turned on the camera equipment before  
23 you entered; correct?

24 A. Yes. As you see in the video, they were running in the  
25 hotel room before we went down to the conference.

## DALEIDEN - DIRECT / TROTTER

1 Q. And you didn't -- you didn't turn them off at some point  
2 before you went down to the conference? You kept them running?

3 A. Not to my memory, no.

4 Q. And once you were in the conference, you believe that you  
5 were taping anyone that you came into contact with at the  
6 conference; correct?

7 A. The cameras actually recorded the space that we were --  
8 that we were operating in, that's correct.

9 Q. And even though there were not many people at the  
10 conference that were really of interest to you; correct?

11 A. No. I don't know that's correct. I think there were  
12 quite a few people of -- quite a few representatives of your  
13 clients and others who were of interest to our investigation at  
14 that meeting.

15 MS. TROTTER: I'd like to play Exhibit 6036.

16 MR. LIMANDRI: No objection.

17 THE COURT: All right. Go ahead. It's admitted.

18 (Trial Exhibit 6036 received in evidence)

19 (Videotape played with audio in open court, not  
20 reported)

21 BY MS. TROTTER

22 Q. Mr. Daleiden, you heard Mr. Lopez in that video that we  
23 just watched say that there was, quote, nothing for our cause?

24 A. Yes, I heard that.

25 Q. And he was telling you that he had met interesting people,

## DALEIDEN - DIRECT / TROTTER

1 but many of them were medical students; correct?

2 **A.** That's correct.

3 **Q.** That were not -- that were not involved in providing  
4 abortion services?

5 **A.** I don't know if he said all of that. I think he just said  
6 there were a lot of people he was meeting that he didn't feel  
7 like were -- were relevant. And I wasn't going to argue with  
8 my investigator there that morning. Yeah, it was 9:30 in the  
9 morning.

10 **Q.** And, but Mr. Lopez didn't turn off his camera during the  
11 time that he was interacting with these various people who he  
12 understood to be medical students; correct?

13 **A.** Not to my knowledge.

14 **Q.** Now, in order to go to the PPFA Forum, BioMax had to fill  
15 out a form online to register; correct?

16 **A.** Yes, that's correct.

17 **Q.** I'd like you to turn now to Exhibit 1910.

18 (Witness complied.)

19 **Q.** Exhibit 1910 are the terms and conditions that BioMax had  
20 to sign in order to be an exhibitor at the PPFA Forum  
21 conference; correct?

22 **A.** Yes, I believe that's what these are.

23 **MS. TROTTER:** Plaintiffs would move Exhibit 1910 into  
24 evidence.

25 **MR. LIMANDRI:** No objection.

1           **THE COURT:** It's admitted.

2           (Trial Exhibit 1910 received in evidence)

3           (Document displayed)

4   **BY MS. TROTTER**

5   **Q.** At the very top of the document, first page of  
6 Exhibit 1910; it says "Sponsor/Exhibitor/Advertisement Package  
7 Terms and Conditions;" correct?

8   **A.** Yes, I see that.

9   **Q.** In the very first numbered paragraph, in the second  
10 line -- this is the paragraph that has the heading:

11           "Purpose and Use of Sponsorship Support."

12           Do you see that?

13   **A.** Yes, I see that.

14   **Q.** In that paragraph it says:

15           "The exhibits and sponsored meetings must be  
16 educational and informative, emphasizing information  
17 about products and services useful to the registrants'  
18 practice and beneficial to the interests of their  
19 clients and patients."

20           Do you see that?

21   **A.** Yes, I see that.

22   **Q.** In the second -- I'm sorry. On Page 2 there is a section  
23 at the bottom. It's underneath a line that says "Exhibit  
24 Space." Do you see where I am?

25   **A.** Which page are you on?

## DALEIDEN - DIRECT / TROTTER

1 Q. It's on the second page of the exhibit.

2 A. Second page. Got it. I have it.

3 Q. There is a section at the bottom that has the heading  
4 "Exhibit Space." Do you see that?

5 A. Yes, I see that.

6 Q. At Paragraph 1, the sentence -- second sentence reads:

7 "PPFA reserves the right to award exhibit space  
8 only to those exhibitors whose exhibits will best meet  
9 the educational, scientific, or practice needs of  
10 conference attendees."

11 Do you see that?

12 A. Yes, I see that.

13 Q. And "exhibitors" would include BioMax; correct?

14 A. Yes, that's correct.

15 Q. At Paragraph 4 underneath where we were just looking, it  
16 says:

17 "All exhibit personnel must wear the official  
18 exhibit badge issued by Planned Parenthood Federation  
19 of America, Inc. (PPFA) and understand that such  
20 identification is required to gain entry into the  
21 exhibit hall."

22 Correct?

23 A. Yes, I see that.

24 Q. If you turn to the next page, I want to focus your  
25 attention on Paragraph 12, and the second sentence.

## DALEIDEN - DIRECT / TROTTER

1           "Exhibitors must show only products manufactured  
2           or represented by their company in the regular course  
3           of business."

4           Do you see that?

5   **A.**   Yes, I see that.

6   **Q.**   It goes on later, about the fourth line down in that  
7   paragraph:

8           "Exhibits must be of an educational character."

9           Correct?

10   **A.**   Yes, I see that.

11   **Q.**   Now, at the PPFA Forum conference, you recall attending a  
12   reception at that conference?

13   **A.**   I recall attending, I think, two different receptions at  
14   that conference.

15   **Q.**   Do you recall a reception that was held in an outdoor area  
16   at that conference?

17   **A.**   Yes.

18   **Q.**   And you recall that when you got to the doorway to go out  
19   to that reception, there was a person checking badges?

20   **A.**   I don't necessarily recall that he was checking badges. I  
21   recall somebody on a walkie-talkie who didn't seem to be paying  
22   much attention to who was going in and out. And I also recall  
23   there being multiple entrances to that reception.

24   **Q.**   The entrance that you went in, do you recall there being a  
25   person next to the person who had the walkie-talkie that was a

## DALEIDEN - DIRECT / TROTTER

1 staff person from Planned Parenthood?

2 **A.** Off the top of my head, no, I don't. As I recall, there  
3 was something odd about the way that we had to enter the  
4 reception at that time because the elevators were broken or  
5 there was something -- there was something going on with the  
6 different entrances, but I don't remember to that degree of  
7 detail.

8 **MS. TROTTER:** I'd like to play Exhibit 5218-A.

9 **MR. LIMANDRI:** No objection.

10 **THE COURT:** Admitted.

11 (Trial Exhibit 5218-A received in evidence)

12 **THE COURT:** Go ahead.

13 (Videotape played with audio in open court, not  
14 reported)

15 **MS. TROTTER:** Stop it there, Ken.

16 **BY MS. TROTTER**

17 **Q.** Mr. Daleiden, hopefully you can see. It looks like you  
18 are standing in an elevator. Maybe it's a mirrored elevator,  
19 so your image is there. Do you see yourself there?

20 **A.** Yeah, I see that.

21 **Q.** And this is the elevator at the hotel where the PPFA Forum  
22 conference was being held?

23 **A.** Yeah, that's correct.

24 **Q.** Okay.

25 **MS. TROTTER:** Please continue, Ken.

## DALEIDEN - DIRECT / TROTTER

1 (Videotape resumed, not reported.)

2 MS. TROTTER: Stop it there, Ken.

3 BY MS. TROTTER

4 Q. Mr. Daleiden, you saw that you were wearing a badge?

5 A. Yes, that's correct.

6 MS. TROTTER: Please continue.

7 (Videotape resumed, not reported.)

8 MS. TROTTER: Stop it there.

9 BY MS. TROTTER

10 Q. There was a gentleman on a walkie-talkie right there at  
11 the doorway. Is that the person you were referring to?

12 A. Yes, I think that's the guy I was referring to.

13 MS. TROTTER: Continue, Ken.

14 (Videotape resumed, not reported.)

15 MS. TROTTER: Stop there, Ken.

16 BY MS. TROTTER

17 Q. Did you see the woman that you just passed --

18 A. Yeah, I saw her.

19 Q. -- as you were exiting?

20 Did you understand that to be a Planned Parenthood staff  
21 person?

22 A. No, I did not.

23 Q. Okay. So you don't know one way or the other whether she  
24 was looking for badges as people were entering?

25 A. She looked like a regular conference attendee to me.

1 Q. To you, but you don't know whether she was checking  
2 badges?

3 A. I don't know her name, and I don't know her job title.

4 MR. MIHET: Your Honor, may I suggest for the record  
5 if we're going to pause the video at certain places, that we  
6 identify the frames where we're pausing?

7 THE COURT: That's a good idea.

8 MS. TROTTER: That's fine. Well, at this point it's  
9 stopped, the counter is 48455 for the record.

10 BY MS. TROTTER

11 Q. So that was the PPFA Forum conference; correct?

12 A. Yes. This was the Forum in Miami in 2014, in October.

13 Q. Now, you also attended the 2015 PPFA MeDC conference. We  
14 talked about that before?

15 A. That's correct.

16 Q. And that was in February 2015?

17 A. Yes.

18 Q. That as well was in Florida?

19 A. Yeah, that was in Orlando.

20 Q. I'd like you to turn to Exhibit 1915.

21 (Witness complied.)

22 A. All right.

23 Q. Exhibit 1915 are the terms and conditions that BioMax had  
24 to sign in order to be an exhibitor at the MeDC conference in  
25 2015; correct?

## DALEIDEN - DIRECT / TROTTER

1     **A.**    Yes, that's correct.

2                 **MS. TROTTER:**  Your Honor, plaintiffs would move  
3     Exhibit 1915 into evidence.

4                 **MR. LIMANDRI:**  No objection.

5                 **THE COURT:**  It's admitted.

6                 (Trial Exhibit 1915 received in evidence)

7                 (Document displayed)

8     **BY MS. TROTTER**

9     **Q.**    And do you recall, Mr. Daleiden, that the terms and  
10    conditions that were set forth in the MeDC terms and conditions  
11    were essentially the same as those that we looked at in the  
12    PPFA Forum?

13    **A.**    Yeah, I do recall that.

14    **Q.**    At the MeDC conference, when you checked in for the  
15    conference, you showed your Robert Sarkis photo ID; correct?

16    **A.**    Very briefly, yes.

17    **Q.**    And you received a badge when you got -- as part of the  
18    registration process?

19    **A.**    Yes.  We received the badges that we had previously paid  
20    for.

21    **Q.**    And you understood it was important for you to wear that  
22    badge in order to get into the conference spaces; correct?

23    **A.**    I don't know if I would say "important."  I think it was  
24    sort of the general rule that I -- you know, to this day I  
25    don't know to what degree that was enforced or not.

## DALEIDEN - DIRECT / TROTTER

1 Q. Well, in fact, you actually were asked to leave an exhibit  
2 space there at the conference because you had forgotten your  
3 badge; correct?

4 A. That may have happened, although it happened inside the  
5 exhibit space. So the -- the barrier was somewhat permeable,  
6 you could say.

7 Q. Well, let's see if we might take a look.

8 MS. TROTTER: I'd like to play Exhibit 5263-B.

9 MR. LIMANDRI: No objection.

10 THE COURT: Go ahead. It's admitted.

11 (Trial Exhibit 5263-B received in evidence)

12 (Videotape played with audio in open court, not  
13 reported),

14 MS. TROTTER: Let's stop it there. And for the  
15 record, we stopped at 9708.

16 BY MS. TROTTER

17 Q. You and Mr. Lopez at the beginning of the clip we're  
18 watching had a discussion when he realized he didn't have his  
19 badge; correct?

20 A. I believe that's more or less what happened, yeah.

21 Q. And you realized: I don't have my badge either, but I  
22 think they will let me in.

23 A. Yeah. I think I said -- that's basically what I said.

24 Q. So Mr. Lopez went away, presumably to get his badge;  
25 right?

## DALEIDEN - DIRECT / TROTTER

1 A. Yes, that's correct.

2 Q. But you believed you could get into the exhibit space  
3 without yours, and so you went in the opposite direction  
4 towards the exhibit space; correct?

5 A. Yes, I think so.

6 MS. TROTTER: Let's continue.

7 (Videotape resumed, not reported.)

8 MS. TROTTER: Let's stop. For the record, we're  
9 at -- the counter is 11219.

10 BY MS. TROTTER

11 Q. Now, Mr. Daleiden, what we're looking at is your camera  
12 view as you're walking towards the exhibit space and then  
13 entering the room; correct?

14 A. That's correct.

15 Q. And then you turned to your right and there was a woman  
16 sitting at a table against the wall that lifted up a badge;  
17 correct?

18 A. Correct. Yeah. I think that was Vikki Graziani.

19 Q. And you acknowledged she was lifting up the badge; right?

20 A. That's correct.

21 Q. Indicating to you that you didn't have your badge on;  
22 correct?

23 A. Correct.

24 MS. TROTTER: Let's continue.

25 (Videotape resumed, not reported.)

## DALEIDEN - DIRECT / TROTTER

1           **MS. TROTTER:** Let's stop it there. For the record,  
2 we stopped at 11899.

3 **BY MS. TROTTER**

4 **Q.** And so after -- well, first of all, you mentioned the  
5 person's name that was in the exhibit room. You understand  
6 that to be Vikki Graziani?

7 **A.** I believe so, yes.

8 **Q.** And you understand her to be a staff person with Planned  
9 Parenthood?

10 **A.** That's correct.

11 **Q.** Okay. And so after she -- Ms. Graziani raised up the  
12 badge to you, you turned around and exited the exhibit space;  
13 correct?

14 **A.** That's correct. I went to go wait right outside.

15           **MS. TROTTER:** I'd now like to play Exhibit 5263-C.

16           **MR. LIMANDRI:** No objection.

17           **THE COURT:** All right. It's admitted. Go ahead.

18 (Trial Exhibit 5263-C received in evidence)

19 (Videotape played with audio in open court, not  
20 reported)

21           **MS. TROTTER:** Let's stop there. Ken, let's stop  
22 there. We're at 18132 on the counter.

23 **BY MS. TROTTER**

24 **Q.** And so, Mr. Daleiden, what we've just watched is you  
25 approaching in the same hotel and going towards where Mr. Lopez

1 was coming down with both his badge and -- which he had on and  
2 your badge; correct?

3 **A.** That's correct.

4 **Q.** Okay. And that was in order for both of you to be able to  
5 enter the exhibit space?

6 **A.** That's correct.

7 **Q.** After the MeDC conference, you attended the 2015 PPFA  
8 National Conference in March of 2015; correct?

9 **A.** That's correct.

10 **Q.** And that was a conference that was held in Washington,  
11 D.C.?

12 **A.** That's correct.

13 **Q.** BioMax had a booth at that conference?

14 **A.** That's correct.

15 **Q.** As an exhibitor?

16 **A.** Yes.

17 **MS. TROTTER:** I'd like to play 6035.

18 **MR. LIMANDRI:** No objection.

19 **THE COURT:** All right. It's admitted. Go ahead.

20 (Trial Exhibit 6035 received in evidence)

21 (Videotape played with audio in open court, not  
22 reported)

23 **MS. TROTTER:** Let's stop there, Ken. And for the  
24 record, we've stopped where the counter reads 3802.

25

## DALEIDEN - DIRECT / TROTTER

1 **BY MS. TROTTER**

2 **Q.** Mr. Daleiden, that is you and Mr. Lopez sitting at the  
3 BioMax table at the PPFA National Conference in D.C.; correct?

4 **A.** At about 9:30 in the morning, after it just started  
5 snowing the night before, yes.

6 **Q.** And did you hear yourself in the clip say that you were,  
7 quote, sifting through a lot of people?

8 **A.** Yes, I heard myself say that.

9 **Q.** I'd like you to now turn in your binder to Exhibit 1920.

10 (Witness complied.)

11 **A.** All right.

12 **Q.** You recognize 1920 as the terms and conditions that BioMax  
13 had to sign in order to be an exhibitor at the PPFA National  
14 Conference in 2015?

15 **A.** Yeah, that's correct.

16 **MS. TROTTER:** Your Honor, plaintiffs would move  
17 Exhibit 1920 into evidence.

18 **MR. LIMANDRI:** No objection, Your Honor.

19 **THE COURT:** It's admitted.

20 (Trial Exhibit 1920 received in evidence)

21 (Document displayed)

22 **BY MS. TROTTER**

23 **Q.** Mr. Daleiden, you recall that the terms and conditions as  
24 set forth in Exhibit 1920 are basically identical to the other  
25 terms and conditions we've looked at that PPFA had; correct?

1 A. Yeah, I do.

2 Q. I'd now like to move to NAF 2015 and have you turn to  
3 Exhibit 217.

4 A. All right.

5 Q. Exhibit 217 is the registration form that BioMax filled  
6 out to be an exhibitor at the NAF 2015 conference; correct?

7 A. That's correct.

8 MS. TROTTER: Your Honor, plaintiffs would move  
9 Exhibit 217 into evidence.

10 MR. LIMANDRI: No objection.

11 THE COURT: It's admitted.

12 (Trial Exhibit 217 received in evidence)

13 (Document displayed)

14 BY MS. TROTTER

15 Q. The handwriting that's on the first page of the exhibit,  
16 which is a page that's headed "Annual Meeting Registration  
17 Form," that's your handwriting?

18 A. Yes, that's correct.

19 Q. And do you recall -- actually, let's turn to it.

20 The third page of the exhibit is a page that's "Exhibit  
21 Rules and Regulations," although the heading is a little  
22 screwy; do you see that?

23 A. Yeah, I see that.

24 Q. Do you recall the NAF 2015 rules and regulations being  
25 very similar to those from NAF 2014?

## DALEIDEN - DIRECT / TROTTER

1 A. Similarly extremely tiny print. Kind of confusing, but,  
2 yes, substantially similar.

3 Q. Okay. The signature block on that page has a company name  
4 BioMax Procurement Services?

5 A. That's correct.

6 Q. And then a printed name Susan Tennenbaum with a signature  
7 above it; correct?

8 A. That's correct.

9 Q. And all of that's your handwriting; correct?

10 A. That's correct.

11 Q. Now, for the NAF 2015 conference you received a badge in  
12 order to get into the various conference events; correct?

13 A. That's correct.

14 Q. And that badge had the name Robert Sarkis on it; correct?

15 A. That's correct.

16 Q. When we were looking at the documents with respect to the  
17 2014 NAF conference, you'll recall in addition to the Exhibitor  
18 Agreement there was a Confidentiality Agreement. Do you recall  
19 that?

20 A. That's correct.

21 Q. You didn't sign a Confidentiality Agreement for the NAF  
22 2015 conference; is that right?

23 A. That's correct.

24 Q. But you were asked to sign one; correct?

25 A. No. I don't know that I was asked to sign one. BioMax,

## DALEIDEN - DIRECT / TROTTER

1 as an exhibitor, was given most of our materials when we went  
2 to check-in by Nichelle Davis without asking for -- to sign  
3 anything or even asking for ID because she already knew us.

4 Then there were some -- there was some question about, you  
5 know, what had we signed or what had we not from some of the  
6 NAF registration people. And I assumed that Nichelle knew what  
7 she was doing and that we were already good to go. So I kind  
8 of waved them off and didn't end up signing the Confidentiality  
9 Agreement on-site in 2015.

10 **Q.** But you do recall a NAF representative asking you whether  
11 you, in fact, had signed a Confidentiality Agreement; correct?

12 **A.** I don't recall her exact words. I think it was kind of a  
13 confusing exchange after she had already handed me my badge.  
14 So I -- I got what I paid for, I felt, and I kind of waved her  
15 off.

16 **MS. TROTTER:** I'd like to now play Exhibit 6064.

17 **MR. LIMANDRI:** No objection.

18 **MS. TROTTER:** I'm sorry, Your Honor. Before we pull  
19 it up, my colleague reminds me this is NAF, and so we need to  
20 do a --

21 **THE COURT:** Okay. Mr. Kozina.

22 **MR. KOZINA:** I'm going to have to use the old  
23 fashioned way, Your Honor.

24 **THE COURT:** Mr. Millen, you'll just have to change  
25 seats I think.

## DALEIDEN - DIRECT / TROTTER

1 (Monitor turned away from the public gallery.)

2 **MS. TROTTER:** I'm sorry, Your Honor. Thank you.

3 I don't know if we've heard whether it's --

4 **THE COURT:** No, there is no objection to it. So go  
5 ahead.

6 **MS. TROTTER:** Okay. Thank you.

7 (Videotape played with audio)

8 **BY MS. TROTTER**

9 **Q.** Let's stop there. So, the counter is at 19614.

10 So Mr. Daleiden, you see the young woman there at the  
11 desk, that asked you whether you presented ID?

12 **A.** Yes, I saw her.

13 **Q.** And, and she then also asked you whether you had signed  
14 the confidentiality agreement.

15 **A.** Yeah, I heard that.

16 **Q.** Now, once at the NAF 2015 conference, you did have some  
17 specific people that you wanted to interact with, at the  
18 conference. Correct?

19 **A.** Um, yeah, I think that's accurate.

20 **Q.** And one of those people was a person by the name of  
21 Deborah VanDerhei?

22 **A.** Yes, that's correct.

23 **MS. TROTTER:** I would like to now play Exhibit  
24 5839-A.

25 **MR. LIMANDRI:** No objection.

## DALEIDEN - DIRECT / TROTTER

1           **THE COURT:** All right, does that remain NAF?

2           **MS. TROTTER:** Oh, I'm sorry. Thank you, Your Honor.  
3 Yes, it remains NAF? But I guess we're still --

4           **THE COURT:** Okay. All right. Go ahead. It's  
5 admitted.

6           (Trial Exhibit 5839-A received in evidence)

7           (Videotape played with audio, shown to Court and Jury,  
8 but not to courtroom gallery)

9           **MS. TROTTER:** Let's stop there. Ken, let's stop  
10 there.

11           Okay, for the record we have stopped at 36816.

12 **BY MS. TROTTER**

13 **Q.** Now, Mr. Daleiden, that's you and Ms. Merritt interacting  
14 at the NAF 2015 conference. Correct?

15 **A.** That's correct.

16 **Q.** And you're having a discussion about Ms. VanDerhei?

17 **A.** That's correct.

18 **Q.** And you told Ms. Merritt that you thought it would be a  
19 good time to interact with Ms. VanDerhei because she had been  
20 drinking. Or likely had been drinking. Correct?

21 **A.** Personally, in my experience, Deb VanDerhei was a  
22 difficult person for me to talk to. And so I felt like she  
23 would be more pleasant to talk to after she'd been drinking a  
24 little bit.

25 **Q.** Okay. And so now I want to move from conferences to

1 lunches. Okay?

2 **A.** Okay.

3 **Q.** And we're going to go back in time to right after NAF  
4 2014, here in San Francisco.

5 After that conference, you sent an email to Deborah  
6 Nucatola to make contact with her. Correct?

7 **A.** Yes, that's correct.

8 **Q.** And I believe this is already in evidence, but if you  
9 could turn in your binder to 8021.

10 (Request complied with by the Witness)

11 (Document displayed)

12 **Q.** Exhibit 8021 is an email exchange between -- it's actually  
13 a thread. The final email is at the top of the first page and  
14 it's from you to Dr. Nucatola. Do you see that?

15 (Witness examines document)

16 **A.** Yeah, I see that.

17 **Q.** Dated July 14th, 2014. Right?

18 **A.** Yeah, I see that.

19 **Q.** Now, I would like you to turn to the second page.

20 (Document displayed)

21 (Request complied with by the Witness)

22 **Q.** And focus your attention on the email on that page from  
23 you to Dr. Nucatola. It's dated June 5, 2014, at 1:41 p.m.

24 Do you see where I am?

25 **A.** Um, yes, I see that.

## DALEIDEN - DIRECT / TROTTER

1 Q. And when I say "you," I mean you were using the name  
2 "Robert Sarkis" and an email address for -- that was used from  
3 BioMax. Right?

4 A. Yes, that's correct.

5 Q. And you wrote to Dr. Nucatola -- I'm going to focus on the  
6 second paragraph (As read):

7 "Perhaps we could do a lunch or dinner meeting with  
8 you, Susan, and me to talk about the affiliates who  
9 are ready for a dedicated procurement organization  
10 and what BioMax can provide to make that sort of  
11 exclusive contract attractive."

12 That's what you had written to Dr. Nucatola?

13 A. Yes, that's correct.

14 Q. And Dr. Nucatola agreed to meet with you for lunch?

15 A. Yes, she did.

16 Q. And you chose the restaurant, correct?

17 A. Yes, we did.

18 Q. And that was the Craft Restaurant, which is in the Century  
19 City area of Los Angeles. Correct?

20 A. That's correct.

21 Q. You made the reservation at the restaurant?

22 A. Yes, I did.

23 Q. And you even reserved a specific booth at the restaurant.  
24 Correct?

25 A. Yes, that's correct.

## DALEIDEN - DIRECT / TROTTER

1           **MS. TROTTER:** I would like to play Exhibit 5067-B.

2           **MR. LIMANDRI:** B?

3           **MS. TROTTER:** B as in boy.

4           **MR. LIMANDRI:** No objection.

5           **THE COURT:** And does this remain part of the NAF --  
6 hang on. Get that around. Thank you.

7           (Video screen moved into position for public viewing)

8           **THE COURT:** All right.

9           **MS. TROTTER:** Can we start again, Ken, please?

10          (Videotape played with audio)

11          (Trial Exhibit 5067-B received in evidence)

12           **MS. TROTTER:** Let's stop there. We stopped, and the  
13 counter reads 22819.

14          **BY MS. TROTTER**

15          **Q.** Mr. Daleiden, that is -- that video depicts you and  
16 Ms. Merritt arriving at the Craft Restaurant for the lunch with  
17 Dr. Nucatola. Correct?

18          **A.** That's correct.

19          **Q.** And you were checking in at the hostess stand there at the  
20 restaurant?

21          **A.** That's correct.

22          **Q.** And you let the hostess know that you had reserved a  
23 specific booth, No. 16, correct?

24          **A.** It might have been No. 13, but yes, we had reserved a  
25 specific booth.

## DALEIDEN - DIRECT / TROTTER

1 Q. And that booth was at the back of the restaurant.

2 Correct?

3 A. It is -- it was not the very back of the restaurant. You  
4 can actually go farther back in that restaurant than where we  
5 were. But it wasn't at the front of the restaurant.

6 Q. Let's -- let's clarify that. There was a private dining  
7 area that is at the very back of the restaurant (Indicating).  
8 You know that, right?

9 A. That's correct. Yeah.

10 Q. The booth that you reserved for the lunch with  
11 Dr. Nucatola was the last booth before you got -- before you  
12 got to the private dining room of the Craft Restaurant.

13 Correct?

14 A. It was the last booth -- booth. To clarify the geometry  
15 of it, though, that booth is -- directly behind that booth is  
16 the kitchen, which is where the waiters are coming in and out  
17 of, the whole time.

18 And then sort of adjacent to where the waiter entry and  
19 exit way is to the kitchen, there is a series of other regular  
20 tables for dining patrons that are a little bit -- set a little  
21 bit farther back than that booth, even. And then, those are  
22 directly adjacent to the private dining room.

23 So, that was what I was trying to say.

24 Q. Okay. But it's the last booth that is not in the private  
25 dining area.

## DALEIDEN - DIRECT / TROTTER

1 A. In the booth wing, yes. That's correct.

2 Q. Now, prior to the lunch with Dr. Nucatola, you had sent  
3 Ms. Merritt an email about the Craft Restaurant. Correct?

4 A. Yes, I believe I did.

5 MS. TROTTER: Let's pull up -- it's already  
6 admitted -- Exhibit 431.

7 (Document displayed)

8 BY MS. TROTTER

9 Q. It's also probably in your binder. But Exhibit 431 is an  
10 email from you to Ms. Merritt, copying Ms. Bettisworth. Right?

11 A. Yes, that's correct.

12 Q. I'm focusing now on the top email, which is the last in  
13 the thread. And it's dated July 17th, 2014. Correct?

14 A. That's correct.

15 Q. And the subject is the restaurant where you intended to  
16 meet with Dr. Nucatola, correct?

17 A. That's correct.

18 Q. And in the body of the email you provided Ms. Merritt a  
19 link to the restaurant's lunch menu, right?

20 A. That's correct.

21 Q. And a link to the restaurant's wine list. Right?

22 A. That's correct.

23 Q. And then you said to Ms. Merritt:

24 "If you could pre-select a bottle that you think  
25 would be good, that would be great."

## DALEIDEN - DIRECT / TROTTER

1 Right?

2 **A.** Yeah, I see that.

3 **Q.** So you wanted Ms. Merritt to pre-arrange or pre-select a  
4 bottle of wine that would be -- that you would have for the  
5 lunch with Dr. Nucatola. Correct?

6 **A.** Yeah. I was asking for her to, you know, choose ahead of  
7 time what brand or what bottle we would get, so that wouldn't  
8 be sort of -- so that we wouldn't be fumbling around trying to  
9 figure out what to order at that time.

10 **Q.** And you wanted to have Ms. Merritt pre-select a bottle of  
11 wine to be consumed at the lunch because you wanted  
12 Dr. Nucatola to be comfortable. Right?

13 **A.** I think I wanted all of us to be comfortable, but yeah.

14 **Q.** Including Dr. Nucatola, right?

15 **A.** Including our guest. Of course.

16 **Q.** And in fact, so, after this email, you in fact did meet  
17 with Dr. Nucatola for lunch at the Craft Restaurant on  
18 July 25th, 2014. Correct?

19 **A.** That's correct.

20 **Q.** And you were -- as I think we saw in the video clip that  
21 we looked at, you were able to sit in the booth that you had  
22 made reservations for at Craft. Correct?

23 **A.** That's correct.

24 **Q.** After the lunch with Dr. Nucatola, you sent an email to  
25 Mr. Rhomberg to update him. Correct?

1 (Document taken off display)

2 **A.** Um, I can't remember off the top of my head if I -- if I  
3 sent an email update to Albin or if he -- I think he may have  
4 emailed me first, asking how things went. And I sent him a  
5 reply. But I did, by email, communicate to Mr. Rhomberg the  
6 summary of what had happened; that's correct.

7 **Q.** Let's look at an exhibit that is already in evidence. It  
8 should be there in your binder. Exhibit 380.

9 (Document displayed)

10 (Witness examines document)

11 **Q.** Exhibit 380 is an email thread between you and  
12 Mr. Rhomberg. Correct?

13 **A.** Um, yes. That's correct.

14 **Q.** And let's start with the second page, which is the initial  
15 email.

16 (Document displayed)

17 **Q.** Because you just testified you didn't know which of you  
18 had initiated it.

19 So the first email in the thread is from Mr. Rhomberg to  
20 you. Correct?

21 **A.** That's correct.

22 **Q.** And that's dated July 25th, 2014?

23 **A.** That's correct.

24 **Q.** At 9:00 p.m., right?

25 **A.** That's correct.

1 Q. That's, in fact, the same day as the lunch occurred.  
2 Right?

3 A. That's correct.

4 Q. And Mr. Rhomberg wrote you:

5 "David,

6 "I hope that your luncheon went well today."

7 Do you see that?

8 A. Yeah, I see that.

9 Q. And so prior to the time of Mr. Rhomberg sending you this  
10 email, you had had some discussion, whether in writing or  
11 orally, with Mr. Rhomberg, about having a lunch meeting with  
12 Dr. Nucatola. Correct?

13 A. I think we had talked about it over the phone.

14 Q. I would like you to now turn to the first page of the  
15 exhibit.

16 (Document displayed)

17 Q. There is an email at the bottom from you, responding to  
18 Mr. Rhomberg. It's dated the following day, July 26, 2014.  
19 It's actually -- it's 12:08 a.m., so it might be right after  
20 midnight.

21 Do you see that?

22 A. Yeah, I don't know if that's an issue with -- perhaps the  
23 way it was produced through whatever discovery platform, you  
24 know, the -- the time zone might have changed on here. But it  
25 also wouldn't be unusual for me to send an email at midnight.

1 So...

2 **Q.** And you write to Mr. Rhomberg:

3 "Hi Albin! Yes, I'm completely exhausted and still  
4 processing everything."

5 Do you see that?

6 **A.** Yeah, I see that.

7 **Q.** And then you say:

8 "She bought it all hook line and sinker."

9 Do you see that?

10 **A.** Yeah, I see that.

11 **Q.** And the "she" that you are referring to is Dr. Nucatola.

12 Correct?

13 **A.** That's correct.

14 **Q.** And by saying "She bought it all hook line and sinker,"  
15 you were referring to the fact that you were representing  
16 yourself as Robert Sarkis of BioMax, a new fetal tissue  
17 procurement company. Correct?

18 **A.** Not exactly. I was primarily referring to the undercover  
19 scenario that we were presented as regards the kind of business  
20 plan or business model that BioMax was proposing. Which was a  
21 standard tissue procurement organization business model, where  
22 a middleman company would send in technicians to inside --  
23 embed inside a Planned Parenthood clinic to do all the work of  
24 harvesting body parts, and then make a per-volume payment to  
25 the Planned Parenthood clinic, based on the number of specimens

1 harvested.

2 That's what I was specifically referring to by what I felt  
3 that she bought all of, was this business model that runs  
4 directly contrary to the federal law in fetal tissue sales.

5 **Q.** Well, when you use the phrase "hook, line and sinker,"  
6 that is a phrase that you had used or heard before the time of  
7 sending this email. Correct?

8 **A.** That's a cliché.

9 **Q.** And it is a cliché that is designed to communicate that  
10 the person who's buying it hook, line and sinker has been duped  
11 in some way. Correct?

12 **A.** You know, I think that clichés -- I think the definition  
13 of a cliché is that it's a phrase that has sort of lost its  
14 meaning through over-use. So I was not using it for that  
15 specific of a meaning.

16 I was simply using it to communicate that I felt that  
17 Dr. Nucatola, as the senior director of medical services at  
18 PPFA, had completely accepted the undercover scenario of the  
19 BioMax business model that we were proposing, which I think is  
20 a -- is a business model that runs completely contrary to the  
21 federal law on fetal tissue transfers.

22 **Q.** I understand your point there. So you're -- you are  
23 testifying here today that you didn't mean "hook line and  
24 sinker" to mean that Dr. Nucatola was fooled, and thought that  
25 BioMax was a legitimate tissue procurement organization.

## DALEIDEN - DIRECT / TROTTER

1 A. Well, I mean, what I specifically --

2 Q. That's either a yes or no. You either -- you can  
3 disagree, but yes or no?

4 MR. MIHET: Objection, Your Honor. I think the  
5 witness should be allowed to answer the question as the  
6 witness --

7 THE COURT: Yeah, answer the question. But start  
8 directly with that. And then if you need to explain, go ahead.

9 THE WITNESS: All right.

10 So what I meant is what I wrote in this sentence  
11 (Indicating). In the full sentence, not just the phrase that  
12 you read, but the full sentence where I say (As read):

13 "She bought it all hook line and sinker, and admitted  
14 PP National knows the potential for  
15 illegality/unethics but has a don't ask don't tell  
16 policy, going so far as to choose to keep nothing in  
17 writing about fetal tissue because it's too  
18 dangerous. If something happens they want the  
19 affiliates to take the fall."

20 What I meant by that sentence, starting off with "hook  
21 line and sinker" is that I felt she had bought the illegal  
22 business model that BioMax was proposing undercover, and had  
23 gone on to -- because of accepting that scenario, had gone on  
24 to reveal all these other problems that PPFA was aware of with  
25 their fetal tissue programs.

1 **BY MS. TROTTER**

2 **Q.** Well, if it was Dr. Nucatola who was proposing all the  
3 things that you have just testified to, she wouldn't need to  
4 buy anything hook, line and sinker, correct? It would have  
5 already been her idea.

6 **MR. MIHET:** Objection. Misstates the testimony.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** There were a lot of ideas that  
9 Dr. Nucatola proposed to us during that lunch that I was very  
10 surprised by. So I -- I -- you know, I don't think that -- I  
11 don't think that proposing bad things in that conversation was  
12 a one-way street.

13 **BY MS. TROTTER**

14 **Q.** Now, an introduction -- you believed that an introduction  
15 that Dr. Nucatola could make of you and others at BioMax to  
16 others within Planned Parenthood would be useful. Correct?  
17 Based on her position.

18 **A.** I thought it would be a good networking opportunity, yes.

19 **Q.** And you thought that having her -- that is,  
20 Dr. Nucatola -- make the introduction would give you some  
21 legitimacy with others who weren't at all familiar with you or  
22 BioMax. Correct?

23 **A.** I don't know that I was thinking about that very  
24 consciously. I was primarily thinking that Dr. Nucatola is  
25 someone who knows a lot of people in the Planned Parenthood and

## DALEIDEN - DIRECT / TROTTER

1 abortion world. And particularly in the fetal tissue  
2 harvesting world within Planned Parenthood and -- and American  
3 abortion providers. And so she would be a very important node  
4 of networking.

5 Q. Now, in addition to the lunch that you had with  
6 Dr. Nucatola, you also had a lunch meeting with Dr. Mary  
7 Gatter. Correct?

8 A. That's correct.

9 Q. And you had met Dr. Gatter at the PPFA forum in 2014 in  
10 Miami. Correct?

11 A. Yes, that's correct.

12 Q. You didn't know Dr. Gatter prior to the time that you met  
13 her at the 2014 forum, correct?

14 A. That is correct. I may have seen her name on one or two  
15 research studies. But I certainly didn't have a face to  
16 connect it to, and I, you know, I -- I think we sort of -- I  
17 think we were introduced to her kind of by happenstance by  
18 Dr. Nucatola.

19 Q. And though you didn't know her prior to the forum, you  
20 videotaped that initial meeting that you had with her at the  
21 forum, when you met her.

22 A. Yes. I met her at a reception on the mezzanine level of  
23 the hotel.

24 Q. And you videotaped it.

25 A. That's correct. We videotaped that, those conversations.

## DALEIDEN - DIRECT / TROTTER

1 Q. I would like you to take a look now at Exhibit 683. And  
2 683 is already in evidence.

3 (Document displayed)

4 Q. And I would like you to turn to the third page of Exhibit  
5 683.

6 A. Okay.

7 Q. And there is an email from you to Dr. Gatter, and you copy  
8 a number of people, under at least the names "Susan  
9 Tennenbaum," Adrian Lopez and "Brianna Allen." Do you see  
10 that?

11 A. Yes, I see that.

12 Q. And this email is dated December 11th, 2014?

13 A. Yes, that's correct.

14 Q. And in the second paragraph of the email, you write  
15 (As read):

16 "Please find a welcome letter attached from our  
17 founder and CEO, Susan Tennenbaum, who is cc'd on  
18 this email."

19 Do you see that?

20 A. Yeah, I see that.

21 Q. And you say:

22 "I've also included one of our brochures."

23 Right?

24 A. Yes.

25 Q. Those are the brochures that we've looked at previously?

1     **A.**    That's correct.

2     **Q.**    In fact, the letter, the welcome letter which was attached  
3     that you said was from Sandra Merritt under the name "Susan  
4     Tennenbaum" was a letter you wrote.

5             **MR. MIHET:**  Objection.  Objection, mischaracterizes  
6     the document and the testimony.

7             **THE COURT:**  Yeah, overruled.  You can answer.

8             **THE WITNESS:**  Could I get that question one more  
9     time?

10    **BY MS. TROTTER**

11    **Q.**    So let me make sure we're oriented to the right spot.

12             In the paragraph that I just read, in your email to  
13    Dr. Gatter, you said:

14             "Please find a welcome letter attached..."

15             Do you see that?

16    **A.**    Yeah.

17    **Q.**    And there was a letter that was purportedly from Susan  
18    Tennenbaum that was attached to your email to Dr. Gatter.  
19    Right?

20    **A.**    That's correct.

21    **Q.**    And that letter, though, was not written by Ms. Merritt.  
22    It was written by you.  Correct?

23    **A.**    That's correct.  I wrote it.

24             **MS. TROTTER:**  Okay.  Let's reduce that down, Ken.  
25

1 BY MS. TROTTER

2 Q. And in your email exchange, if you go to the second page  
3 of the exhibit, you wrote Dr. Gatter that Susan, meaning Susan  
4 Tennenbaum, felt that a lunch meeting with the three of you  
5 would be most productive.

6 Do you see that?

7 A. Yeah, I see that.

8 Q. Now, you ultimately did have lunch with Dr. Gatter, right?

9 A. Yes, we did.

10 Q. Prior to the lunch with Dr. Gatter, you sent Ms. Merritt  
11 an email with the subject line "Goals for the meeting."

12 Correct? You recall that?

13 A. Vaguely.

14 Q. Okay.

15 A. I'm sure I will recall it more if -- when I see the  
16 document.

17 Q. If you turn in your binder to Exhibit 372. This is  
18 already in evidence.

19 (Document displayed)

20 (Request complied with by the Witness)

21 Q. Exhibit 372 is an email that you wrote to Mrs. Merritt on  
22 February 3rd, 2015. Do you see that?

23 A. Yes, I see that.

24 Q. And the subject line reads "Goals for meeting." Right?

25 A. Yeah.

## DALEIDEN - DIRECT / TROTTER

1 Q. And the meeting that you are referring to there is the  
2 upcoming lunch meeting that you planned on having with  
3 Dr. Gatter. Correct?

4 A. Yes. That's the subject line.

5 Q. Okay. And then you -- but the subject line, when you  
6 refer to a "meeting," it was that meeting. Correct? With  
7 Dr. Gatter.

8 A. Yes. This is specifically in reference to the lunch  
9 meeting.

10 Q. And you sent this email to Ms. -- Mrs. Merritt, because  
11 she was going to accompany you to that lunch meeting with  
12 Dr. Gatter. Correct?

13 A. That's correct.

14 Q. And you would be using the name "Robert Sarkis," and she  
15 would be using the name "Susan Tennenbaum." Right?

16 A. That's correct.

17 Q. And you wanted to -- in advance of the meeting with  
18 Dr. Gatter, you wanted Ms. Merritt to know, you know, what you  
19 intended to accomplish at the lunch with Dr. Gatter.

20 Correct?

21 A. That's correct. I should -- actually, I should correct  
22 that slightly.

23 Specifically, I -- I wanted Mrs. Merritt to know what  
24 points and what themes we wanted to touch on in the  
25 conversation with Dr. Gatter. We can't control what somebody

## DALEIDEN - DIRECT / TROTTER

1 else says, and, you know, we can't ultimately control the  
2 outcome.

3 But this was to -- for our purposes, for the two of us as  
4 undercover investigators, these are the five, six main points  
5 that we wanted to touch on in our conversation, and make sure  
6 that we covered each of them.

7 Q. And in fact, after you sent this email to Mrs. Merritt,  
8 you and Mrs. Merritt actually did have lunch with Dr. Gatter.

9 A. Yes, we did.

10 Q. And you recall at that lunch, Dr. Gatter brought along a  
11 person by the name of Laurel Felczer.

12 A. Yeah, I remember that.

13 Q. And you recall that Ms. Felczer was introduced by  
14 Dr. Gatter to you and Ms. Merritt as the lead clinician. Do  
15 you recall that?

16 A. Yes, that's correct.

17 Q. And you didn't know anything about Ms. Felczer before you  
18 met her at lunch. Correct?

19 A. Only that she was a business associate or, you know,  
20 co-practitioner with Dr. Gatter.

21 Q. And as with Dr. Nucatola and that lunch, you chose the  
22 restaurant for the lunch with Dr. Gatter. Correct?

23 A. That's correct.

24 Q. I would like you to take a look at an exhibit that is  
25 already admitted, 683.

## DALEIDEN - DIRECT / TROTTER

1 (Request complied with by the Witness)

2 (Document displayed)

3 **Q.** And just looking at the first page of 683, there's an  
4 email, it's in the top half of the page, from you, using the  
5 "Robert Sarkis" name to Dr. Gatter, dated January 30th, 2015,  
6 at 2:15 p.m.

7 Do you see where I am?

8 **A.** Yeah, I see that.

9 **Q.** And in that email, you write to Dr. Gatter:

10 "Just to confirm, we have lunch at noon reserved at  
11 a/k/a Bistro in Pasadena on Friday, 2/6."

12 Meaning February 6th. Correct?

13 **A.** Yes, that's correct.

14 **Q.** And just as you did with Dr. Nucatola's lunch, you  
15 reserved the exact booth that you wanted to sit in for the  
16 lunch with Dr. Gatter. Correct?

17 **A.** Yes, I believe that's correct. It may not have been a  
18 reservation. It may have been a request when we arrived there,  
19 because we had been told previously you can't specifically  
20 reserve, but you can request it once you arrive.

21 **MS. TROTTER:** I would like to now to play and have  
22 introduced, admitted into evidence, Exhibit 5105-A.

23 **MR. LIMANDRI:** No objection.

24 **THE COURT:** All right, go ahead. It is admitted.

25 (Trial Exhibit 5105-A received in evidence)

## DALEIDEN - DIRECT / TROTTER

1 (Videotape played with audio)

2 **MS. TROTTER:** Let's stop there. For the record, I  
3 stopped the exhibit playing at counter 17658.

4 **BY MS. TROTTER**

5 **Q.** Mr. Daleiden, what we've just seen is you entering the  
6 a/k/a Bistro restaurant with Ms. Merritt. Correct?

7 **A.** Yeah, that's correct.

8 **Q.** And then approaching the host/hostess desk at that  
9 restaurant. Correct?

10 **A.** That's correct.

11 **Q.** And then asking the host for Table 5. Correct?

12 **A.** Yes.

13 **MS. TROTTER:** Let's continue.

14 (Videotape played with audio)

15 **MS. TROTTER:** Let's stop there. For the record, I  
16 stopped at 19648.

17 **BY MS. TROTTER**

18 **Q.** Mr. Daleiden, the host who met you at the front of the  
19 restaurant took you to a booth that presumably is Table 5,  
20 towards the back of the restaurant. Correct?

21 **A.** Yes, that's correct.

22 **Q.** And you noted to the host as you were approaching that  
23 booth, that it was rather empty in the restaurant. Correct?

24 **A.** There were -- yeah, there were two people sitting at the  
25 bar, and that was all I saw on that side at that time.

## DALEIDEN - DIRECT / TROTTER

1 Q. And the -- the host told you that given the time of year,  
2 that was actually pretty typical for the restaurant. Correct?

3 A. I think at that -- at the time that we arrived, yeah,  
4 that's what he said.

5 Q. So when -- when you arrived, there was no one seated in  
6 the booth next to Table 5, correct?

7 A. Not that I remember.

8 Q. When Dr. Gatter arrived, there was still no one sitting at  
9 the booth adjacent to Table 5. Correct?

10 A. You know, I don't remember, off the top of my head. I  
11 would have to watch the -- the video to know for certain, at  
12 the time that she arrived.

13 MS. TROTTER: Your Honor, I'm not sure when we  
14 typically take the next break. I can continue on, but I'm at a  
15 natural breaking point. But it's up to you.

16 THE COURT: Well, if you're at a natural breaking  
17 point, we will naturally break.

18 So ladies and gentlemen, we will break for about ten  
19 minutes. And then we will be back.

20 (Jury excused)

21 (The following proceedings were held outside of the  
22 presence of the Jury)

23 THE COURT: All right. We are in recess.

24 (Recess taken from 11:12 a.m. to 11:28 a.m.)

25 THE COURT: Ready to go?

## DALEIDEN - DIRECT / TROTTER

1           **MS. TROTTER:** Yes, Your Honor.

2           **THE COURT:** Get the jurors.

3           (The following proceedings were held in the presence  
4           of the Jury)

5           **THE COURT:** All right. Please be seated, everybody.  
6           Ms. Trotter?

7           **MS. TROTTER:** Thank you, Your Honor.

8           **BY MS. TROTTER**

9           **Q.** Mr. Daleiden, before the break, we had covered  
10          conferences, various conferences and lunches. I now want to  
11          move to visits to Planned Parenthood affiliate offices,  
12          clinics. And I want to start with Planned Parenthood Rocky  
13          Mountain.

14          You met a doctor by the name of Dr. Savita Ginde from  
15          Planned Parenthood Rocky Mountain at the Planned Parenthood  
16          forum in Miami in October, 2014. Correct?

17          **A.** That's correct.

18          **Q.** I would like you to take a look at Exhibit 578 in your  
19          binder.

20          **A.** I don't think I have a 578, Ms. Trotter.

21          **Q.** Okay. We're going to see if we can rectify that quickly.

22          **THE COURT:** Okay.

23          **MS. TROTTER:** Your Honor, may I approach?

24          **THE COURT:** You may.

25          **MR. LIMANDRI:** I don't have it.

## DALEIDEN - DIRECT / TROTTER

1           **THE COURT:** Do you have a copy to show Mr. LiMandri?

2           **MS. TROTTER:** Your Honor, can we put it up on the  
3 screen just at counsel table?

4           **THE COURT:** Yeah.

5           (Document displayed to counsel only)

6           **MR. LIMANDRI:** That's fine, Your Honor. No  
7 objection.

8           **THE COURT:** All right. 578 is admitted.

9           (Trial Exhibit 578 received in evidence)

10          (Document displayed)

11 **BY MS. TROTTER**

12 **Q.** Mr. Daleiden, Exhibit 578 is an email that you sent to  
13 Dr. Ginde after you had met her at the forum. Correct?

14 **A.** That's correct.

15 **Q.** And you told her in the email that -- focusing on the  
16 first paragraph, last sentence, you said (As read):

17           "We would like to look into fetal specimen  
18 procurement at PPRM locations."

19 Right?

20 **A.** Yes.

21 **Q.** And "PPRM" there is referring to Planned Parenthood Rocky  
22 Mountain. Correct?

23 **A.** Yes, that's correct.

24 **Q.** And you go on to say to Dr. Ginde:

25           "Please find attached one of our brochures..."

1 That's a BioMax brochure, correct?

2 **A.** That's correct.

3 **Q.** (As read)

4 "And the welcome letter from our founder & CEO, Susan  
5 Tennenbaum..."

6 Correct?

7 **A.** That's correct.

8 **Q.** And that welcome letter again was authored by you,  
9 correct?

10 **A.** That's correct.

11 **Q.** Now, after sending this email in 578 to Dr. Ginde, you had  
12 various communications with Dr. Ginde and other staff members  
13 at PPRM about setting up a visit to the offices and clinics.  
14 Correct?

15 **A.** That's correct.

16 **Q.** And in fact, those discussions and communications occurred  
17 over a several-month period. Correct?

18 **A.** That's correct.

19 **Q.** I would like to now have you take a look at what hopefully  
20 is in your binder as Exhibit 8023.

21 **A.** Okay.

22 **Q.** Exhibit 8023 contains an email thread between yourself,  
23 using the name "Robert Sarkis," and Dr. Ginde and others at  
24 PPRM. Correct?

25 **A.** That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And all of -- these communications were for the purposes  
2 of setting up a visit to PPRM by BioMax. Correct?

3 A. Could you ask me that question one more time?

4 Q. Sure. The emails that are contained in Exhibit 8023 are  
5 for purposes of setting up a visit to PPRM.

6 A. Yeah, that's correct.

7 Q. Okay. And in fact, you did, after this email exchange,  
8 meet with Dr. Ginde and her staff at the PPRM facility in  
9 Stapleton, Colorado. Correct?

10 A. That's correct.

11 Q. And that was in April of 2015, correct?

12 A. Yes, I believe that was April 7th, 2015.

13 MS. TROTTER: And apparently I didn't actually move  
14 this into evidence, Your Honor. Plaintiffs would move into  
15 evidence Exhibit 8023.

16 MR. LIMANDRI: No objection.

17 THE COURT: It is admitted.

18 (Trial Exhibit 8023 received in evidence)

19 (Document displayed)

20 BY MS. TROTTER

21 Q. Now, Mr. Daleiden, when you visited the PPRM offices and  
22 clinic, you were wearing hidden video cameras, correct?

23 A. That's correct.

24 Q. And you videotaped the entire visit. Correct?

25 A. That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. Including your interactions with Dr. Ginde?

2 A. Yes, that's correct.

3 Q. And including interactions with a person named J. R.  
4 Johnstone?

5 A. Yes, that's correct.

6 Q. And any other staff at PPRM that you came into contact  
7 with. Correct?

8 A. That's correct.

9 Q. You videotaped in an office setting at PPRM. Correct?

10 A. That's correct.

11 Q. And you also videotaped in clinical settings at PPRM,  
12 correct?

13 A. In the -- in the pathology lab of the clinic, that's  
14 correct.

15 Q. And you published excerpts of the video that you took at  
16 PPRM on Center for Medical Progress's website and on YouTube,  
17 correct?

18 A. That's correct.

19 Q. Now, I want to move to PPGC. You met a woman by the name  
20 of Tram Nguyen at -- from PPGC at the PPFA national conference  
21 in March, 2015. Correct?

22 A. Yes, that's correct.

23 Q. And at that same conference, you also met another person  
24 from PPGC named Melaney Linton. Correct?

25 A. Yes, that's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And you recorded both of those people with your hidden  
2 video camera at the PPFA national conference. Correct?

3 A. Yes, that's correct.

4 Q. And both Ms. Nguyen and Ms. Linton gave you -- at the  
5 national conference, gave you the name Melissa Farrell as the  
6 person at PPGC to contact regarding research. Correct?

7 A. That's correct.

8 Q. And after the PPFA national conference, you then emailed  
9 Ms. Nguyen who you had met, and Ms. Farrell, whose name you had  
10 been given, to follow up. Correct?

11 A. That's correct.

12 Q. And Ms. Farrell agreed to have a meeting with you and  
13 others from BioMax, correct?

14 A. That's correct.

15 Q. I would like you to take a look in your binder at Exhibit  
16 653.

17 (Request complied with by the Witness)

18 A. I have it.

19 Q. Exhibit 653 contains an email exchange between you and  
20 Melissa Farrell of PPGC prior to the time that you actually  
21 made a visit to their offices. Correct?

22 A. That's correct.

23 Q. There is an email on the first -- actually --

24 **MS. TROTTER:** Your Honor, we would move Exhibit 653  
25 into evidence.

1           **MR. LIMANDRI:** No objection.

2           **THE COURT:** It is admitted.

3           (Trial Exhibit 653 received in evidence)

4           (Document displayed)

5           **BY MS. TROTTER**

6           **Q.** On the first page of Exhibit 653, there is an email from  
7 Ms. Farrell to you. It's dated April 1, 2015, at 3:05 p.m.

8           Do you see where I am?

9           **A.** Yeah, I see that.

10          **Q.** And she writes (As read):

11                 "Robert,

12                 "In advance of our visit, I'd like to also request  
13                 signatures on the attached confidentiality  
14                 agreement."

15          Do you see that?

16          **A.** Yeah, I see that.

17          **Q.** And then you responded to Ms. Farrell's email and you  
18 copied Susan Tennenbaum. And you wrote (As read):

19                 "Hi Missy,

20                 "Please find attached the executed agreement. Susan  
21                 and I will follow up at the start of the week with  
22                 some basic agenda items to discuss."

23          Do you see that?

24          **A.** Yeah, I see that.

25          **Q.** I would like you to take a look now at an exhibit that's

## DALEIDEN - DIRECT / TROTTER

1 already admitted, Exhibit 447.

2 (Document displayed)

3 (Witness examines document)

4 **Q.** Exhibit 447 is the confidentiality agreement that you  
5 signed and returned to PPGC. Correct?

6 **A.** Yes.

7 **Q.** I would like you to go to the last page of that exhibit.

8 (Document displayed)

9 **Q.** And take a look at the signature block under the word  
10 "RECIPIENT." That contains the name "Susan Tennenbaum" and a  
11 signature, correct?

12 **A.** That's correct.

13 **Q.** And that's your handwriting.

14 **A.** Yes, it is.

15 **Q.** In the second paragraph -- if you would go back to the  
16 first page of the exhibit.

17 (Document displayed)

18 **Q.** The second paragraph on the first page of the exhibit, not  
19 the numbered paragraphs but above that, begins:

20 "For purposes of this agreement..."

21 Do you see where I am?

22 **A.** Yeah, I see that.

23 **Q.** It says (As read):

24 "For purposes of this agreement, the 'purpose' for  
25 which confidential information shall be disclosed, is

## DALEIDEN - DIRECT / TROTTER

1           for the use and evaluation of confidential  
2           information in connection with scientific research  
3           programs..."

4           Do you see that?

5   **A.**    Yeah, I see that.

6   **Q.**    You wrote in the words "scientific research programs,"  
7           correct?

8   **A.**    Yes. I'm the one who wrote in those words, to  
9           specifically limit the scope of what would be confidential  
10          under this agreement.

11   **Q.**    Under that, in the numbered Paragraph 1 -- well, actually,  
12          before I ask you that, when you say that you wrote in  
13          "scientific research programs" in order to limit the subject  
14          matters of the agreement, did you discuss with Ms. Farrell that  
15          you were writing that in, such as to limit anything?

16   **A.**    No, she never asked me what I meant by that. I was kind  
17          of surprised, but she never asked about it.

18   **Q.**    And you didn't tell her.

19   **A.**    No. She told us at the beginning of the site visit that  
20          nothing was going to be confidential, anyway. So I just  
21          dropped the subject and never went -- never considered it  
22          again.

23   **Q.**    Well, before you got to the site visit, you had already  
24          signed, filled in the information, and returned this to PPGC.  
25          Correct?

## DALEIDEN - DIRECT / TROTTER

1 A. Yes, that's correct.

2 Q. And so prior to the time that you signed and returned  
3 Exhibit 447 to PPGC, you didn't tell Ms. Farrell or anyone at  
4 PPGC that you were writing in "scientific research programs" in  
5 order to limit anything. Correct?

6 A. Well, I -- I mean, what I told her is what this agreement  
7 says. That the purpose of any confidential disclosures would  
8 be solely for scientific research programs. Not for abortion  
9 programs, and not for -- wholesaling of fetal tissue for  
10 specific scientific research, is what this says right here.

11 Q. Let me see if I understand your testimony. Are you saying  
12 that you had a conversation with Ms. Farrell prior to the time  
13 that you returned this agreement, 447, in which you told her  
14 specifically: This doesn't cover things related to abortion?

15 A. No, no. I'm saying that that is the plain words of this  
16 agreement, as it's written. That this clearly doesn't cover  
17 abortion practice at Planned Parenthood Gulf Coast.

18 Q. Now, I just want to focus on whether you had  
19 communications with Ms. Farrell, prior to the time that you  
20 returned this agreement, signed, to her, about any of the  
21 content of it.

22 Did you have any oral communications, whether in person or  
23 by phone, with Ms. Farrell or anyone at PPGC about anything  
24 contained in this agreement?

25 A. Not prior to returning it, no.

## DALEIDEN - DIRECT / TROTTER

1 Q. Okay. You would agree, Mr. Daleiden, that research could  
2 include things related to abortion. Correct?

3 A. It certainly could. But a research program would be a  
4 specific program for a specific purpose.

5 Q. You understood that Ms. Farrell was, in fact, the head of  
6 research of PPGC. Correct?

7 A. Yes.

8 Q. And that was the person that you were intending to meet  
9 with. Correct?

10 A. That's correct.

11 Q. And you understood that she was employed at Planned  
12 Parenthood Gulf Coast. Correct?

13 A. Yes, I did.

14 Q. And you understood that Planned Parenthood Gulf Coast,  
15 amongst its services, includes abortion services. Correct?

16 A. Yes, I did.

17 Q. Now, after you returned Exhibit 447 to PPGC, you later  
18 then did an actual visit to PPGC's offices. Correct?

19 A. That's correct.

20 Q. And you were there at PPGC for several hours. Correct?

21 A. That's correct.

22 Q. And you had video, video equipment on you?

23 A. That's correct.

24 Q. That was hidden, correct?

25 A. That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And you taped in the lobby of PPGC?

2 A. Um, if you can call that a lobby. It was almost like a --  
3 yes, it was a lobby. It was not a waiting room, it was --  
4 yeah, "lobby" is the correct word, yeah.

5 Q. And you continued taping after you went into a secure  
6 hallway to Ms. Farrell's office. Correct?

7 A. Um, I don't know what you mean by "secured hallway" but  
8 like, continued taping in the hallway, yes.

9 Q. Well, do you recall, after leaving the lobby area of  
10 PPGC's offices, Ms. Farrell guiding you through a door?  
11 Through a closed door.

12 A. Yes.

13 Q. And do you recall, prior to Ms. Farrell opening that door,  
14 her swiping a card in order to get entry into that door?

15 A. That sounds correct.

16 Q. Once you got to Ms. Farrell's office, you continued to  
17 tape in Ms. Farrell's office. You didn't turn off the camera,  
18 right?

19 A. That's correct.

20 Q. Later, during your PPGC visit, you were taken into a  
21 laboratory/clinic space by Ms. Nguyen, who you had met  
22 previously at a PPFA conference. Correct?

23 A. That's correct.

24 Q. And you taped in that area. Correct?

25 A. That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And the door to that area, prior to the time that  
2 Ms. Nguyen let you in there with her, had been a locked door.  
3 Correct?

4 A. I don't really remember off the top of my head, sitting  
5 here today, but I, you know, would not really question anything  
6 that's on the camera.

7 Q. And during the PPGC visit, Ms. Merritt was with you that  
8 entire time. Correct?

9 A. Yes, I believe so.

10 Q. And she was using the name "Susan Tennenbaum," correct?

11 A. Yes, that's correct.

12 Q. While you were in Ms. Farrell's office, you discussed  
13 information regarding PPGC's prior contracts that it had with  
14 various entities. Correct?

15 A. We discussed prior contracts for supplying fetal tissue,  
16 that's correct.

17 Q. And Ms. Farrell discussed with you information regarding  
18 those contracts? At least, at a high level?

19 A. Yes. That's correct.

20 Q. Ms. Farrell also discussed with you information regarding  
21 Planned Parenthood's medical standards and guidelines.  
22 Correct?

23 A. Um, yes, that's correct.

24 Q. And you recorded all of those communications with  
25 Ms. Farrell. Correct?

## DALEIDEN - DIRECT / TROTTER

1 A. Yes, that's correct.

2 Q. And you've claimed that you've released to the public the  
3 entire tape of your visit to PPGC. Correct?

4 A. Um, I -- I believe my exact words more or less have always  
5 been that we released the full tape of the conversation that we  
6 had with Melissa Farrell and with Tram Nguyen. We did not  
7 release any bathroom breaks that Susan or I took while we were  
8 in the clinic.

9 Q. Now, when you arrived at PPGC in the lobby area, you had  
10 to sign in at the front desk. Correct?

11 A. Um, I don't know that we had to sign in. We had to check  
12 in, but I don't think we signed anything.

13 Q. You had to show a photo ID, correct?

14 A. We were specifically requested to show identification.  
15 And the sign on the desk said "Show identification."

16 So, I don't know that -- to what degree there was a  
17 photographic requirement for it. And I don't believe that they  
18 ever specified that.

19 Q. You showed the photo ID with the name "Robert Sarkis" that  
20 we've looked at already. Correct?

21 A. Yes, that is the identification that I showed.

22 Q. And Ms. Merritt showed the identification with the name  
23 "Susan Tennenbaum." Correct?

24 A. Yes, that's correct.

25 Q. While you were at the PPGC offices, you called

## DALEIDEN - DIRECT / TROTTER

1 Mr. Rhomberg from those offices. Correct?

2 A. Yes, that's correct.

3 Q. And when you called Mr. Rhomberg from the PPGC offices,  
4 you used your "Robert Sarkis" name in that phone conversation  
5 with Mr. Rhomberg. Correct?

6 A. Yes, that's correct.

7 MS. TROTTER: I would like to play something that's  
8 already been admitted. Exhibit 6103.

9 MR. LIMANDRI: No objection.

10 THE COURT: Go ahead.

11 (Videotape played with audio)

12 BY MS. TROTTER

13 Q. The videotape that we just watched, that's of your call to  
14 Mr. Rhomberg from PPGC. Correct?

15 A. That's correct.

16 Q. And you used the name "Robert Sarkis," correct?

17 A. Yes, that's correct.

18 Q. And Mr. Rhomberg knew that your legal name was "David  
19 Daleiden." Correct?

20 A. That's correct.

21 Q. Troy Newman was aware of your visits to PPGC and PPRM,  
22 correct?

23 A. Well, he was certainly aware after the fact, when I was  
24 getting ready to release the videos. I don't know that he was  
25 necessarily aware specifically of where we were going to be

1 doing site visits beforehand.

2 I would have to -- I would have to look at the -- at the  
3 emails that we produced from that time if there was -- if there  
4 was anything that I sent to him immediately afterward or -- um,  
5 but I don't recall specifically -- I do recall specifically  
6 talking with Mr. Rhomberg over the phone at some point, that --  
7 you know, that we were going to be doing site visits. I don't  
8 recall having a similar conversation with Mr. Newman.

9 **MS. TROTTER:** One moment, Your Honor.

10 (Off-the-Record discussion between counsel)

11 **MS. TROTTER:** Not to -- we'll come back to this  
12 exhibit that I want to be able to show you.

13 **THE WITNESS:** Okay.

14 **BY MS. TROTTER**

15 **Q.** While we're waiting for that, let's just move on to  
16 another topic.

17 You testified, beginning yesterday, about the individuals  
18 who worked with you on the project being independent  
19 contractors of CMP. Do you recall that?

20 **A.** Yeah.

21 **Q.** And you had each of the individuals who were independent  
22 contractors doing the taping work sign confidentiality  
23 agreements. Correct?

24 **A.** Yes, that's correct.

25 **Q.** You believe that the work that you were engaged in needed

1 to be kept confidential. Correct?

2 **A.** Until the release of the project, that's correct.

3 **Q.** You also had at least some of the donors to the Center for  
4 Medical Progress sign confidentiality agreements before you  
5 would share what you believed to be confidential information  
6 with them. Correct?

7 **A.** Some potential donors, I'm not sure how many, how many of  
8 those that signed non-disclosure agreements before a discussion  
9 about the -- about the confidential undercover plan, how many  
10 of those converted to actual donors after that.

11 But I know that for some potential donors, that was a  
12 practice, where we would ask to sign an NDA before talking  
13 about the details of the project.

14 **Q.** And you wrote or typed the word "Confidential" on the top  
15 of many of your project roadmaps and proposals, correct?

16 **A.** Yes, I specifically flagged specific confidential  
17 information that had never been made public before. I  
18 specifically tagged certain items as confidential so that  
19 people who had signed confidentiality agreements would know  
20 that they were covered under that agreement.

21 **Q.** And you included amongst the things that you believed to  
22 be confidential prior to the release all of the videotapes that  
23 you and all of the people who worked with you on the project  
24 took. Correct?

25 **A.** Um, I -- off the top of my head, I would have to see the,

## DALEIDEN - DIRECT / TROTTER

1 you know, the exact language of the confidentiality or  
2 non-disclosure language that we used in those agreements. But  
3 I do believe that it specifically called out intellectual  
4 property of the Center for Medical Progress, including video  
5 recordings, as information that was meant to be protected as  
6 our confidential information under those agreements.

7 **Q.** But even setting aside the agreements that you had with  
8 the independent contractors, your position was: Prior to the  
9 time of any public release of any videos, you believed the  
10 videos should be kept -- kept confidential. Correct?

11 **A.** Pursuant to how we memorialize that in the contractual  
12 agreements by which those videos were created.

13 **Q.** Mr. Newman is no longer on the board of Center for Medical  
14 Progress. Is that right?

15 **A.** That's correct.

16 **Q.** And one of the reasons that Mr. Newman is no longer on the  
17 board of Center for Medical Progress is because you believed he  
18 was sharing information that he should not have been. Correct?

19 **A.** That's correct.

20 **Q.** In 2015, after you released -- well, let's actually  
21 establish a time period.

22 The very first video of the project was released  
23 July 14th, 2015. Correct?

24 **A.** Yes, that's correct.

25 **Q.** That was the video that had Dr. Nucatola in it, correct?

1     **A.**    That's correct.

2     **Q.**    In 2015, after you released the first video, you learned  
3     that Mr. Newman had been sharing some of CMP's -- what you  
4     believed to be confidential information with people outside of  
5     CMP.  Correct?

6     **A.**    In general, yes.  I don't know if I -- if at that time I  
7     thought about it specifically as a violation of the -- of the  
8     non-disclosure agreements versus just a -- sort of a violation  
9     of basic professional, like, trust and comity.  But yes, in  
10    general, that was my position.

11    **Q.**    And some of that information that you were concerned that  
12    Mr. Newman had disclosed to people outside of CMP included  
13    unpublished videotapes that had been taken.  Correct?

14    **A.**    Would you ask me that question one more time?

15    **Q.**    Part of the information that you viewed as confidential,  
16    that you believed Mr. Newman had improperly disclosed to people  
17    outside of CMP, were unpublished preview videos.

18            **MR. MIHET:**  Objection.  Vague.

19            **THE COURT:**  Overruled.

20            If you know, you can answer.

21            **THE WITNESS:**  Yeah.  I -- I -- I -- at that time, I  
22    was thinking about it, and upset about it, primarily from the  
23    lens of obviously, unpublished work product that CMP was  
24    working on or that was in production at that time was obviously  
25    being prepared for public release.  So it's not like it was --

## DALEIDEN - DIRECT / TROTTER

1 it was never going to be made public. And certainly, certain  
2 previews would be shared with, you know, with news media, or  
3 certain previews might be embargoed and things like that, ahead  
4 of time.

5 But, so, what I was, I think, primarily upset about was I  
6 felt that Mr. Newman was sharing that information and those  
7 preparations outside of the lane of the -- of the news media  
8 that I was communicating with. So I saw it more as a -- like I  
9 said, I saw it more as a -- I saw it primarily at that time as  
10 like a professional violation, or a violation of my trust and  
11 direction of -- you know, how and in what order stuff was to be  
12 released, and where.

13 I didn't look at it at that moment as a violation of the  
14 confidentiality agreements, because I was looking at this  
15 information as stuff that was going to be sort of imminently  
16 released, but -- so it was more of a, I guess, a procedural  
17 violation, I would say, that I was really upset about at the  
18 time, as opposed to a substantial: Oh my gosh, this  
19 information -- you know, the information was going to get out,  
20 certainly.

21 But it was the -- it was the people that he was sending it  
22 to at the time that he was sending it to, without any direction  
23 or -- or reference to my leadership and direction of it that  
24 was -- that was very bothersome for me.

25

1 **BY MS. TROTTER**

2 **Q.** And he was doing that without your permission, correct?

3 **A.** Correct.

4 **Q.** Or knowledge.

5 **A.** He was doing without my permission or knowledge.

6 **Q.** And you weren't happy about that.

7 **A.** I was not happy about it.

8 **Q.** And in fact, you took Mr. Newman off the board of CMP in  
9 2015 as a result of that?

10 **A.** Well, his term expired at the end of the year. So we  
11 determined to let it -- let it expire, and not bring him on for  
12 another term after that.

13 **Q.** You have just testified about unpublished videos that you  
14 intended to later publish. Do you recall that?

15 **A.** Yes, or drafts of un- -- unpublished drafts of videos that  
16 were being prepared for publication.

17 **Q.** During the time period when you were actually recording  
18 the videos, so not -- let's actually cut it off. Let's say  
19 during the time period prior to May of 2015. Okay? During  
20 that time period, prior.

21 **A.** Okay.

22 **Q.** When you were making recordings, you viewed those  
23 recordings that were being made as confidential information and  
24 property of Center for Medical Progress. Correct?

25 **A.** I viewed the video files as confidential -- or as

## DALEIDEN - DIRECT / TROTTER

1 proprietary intellectual property of the Center for Medical  
2 Progress. That's correct.

3 **Q.** Prior to releasing the Center for Medical Progress videos  
4 to the public, you directed that the faces of some of the  
5 people in the videos be blurred. Correct?

6 **A.** That's correct.

7 **Q.** Including the faces of some of the waiters, correct, who  
8 were at restaurants?

9 **A.** I don't know that I directed the waiter faces to be  
10 blurred. I think I directed the faces of the undercover  
11 investigators to be blurred.

12 **Q.** You blurred the faces of patients in the clinical  
13 settings, correct?

14 **A.** Yes, we blurred the faces of patients in clinical  
15 settings, if they showed up. But, you know, we didn't -- we  
16 didn't spend much time or have any intention of filming in  
17 spaces with patients. So those were very few and far between.

18 **Q.** You just testified that you blurred the faces of certain,  
19 at least, of the undercover folks. Correct?

20 **A.** Of the undercover investigators, that's correct.

21 **Q.** Including Ms. Merritt?

22 **A.** Yes, that's correct.

23 **Q.** I would like you to take a look at Exhibit 324.

24 **A.** I don't think I have a 324, Ms. Trotter.

25 I do, I do, I have it.

1 Q. Okay. Exhibit 324 contains an email from you to a Ryan  
2 Gonzalez. Correct?

3 A. Yes. I see that.

4 MS. TROTTER: Your Honor, plaintiffs would move  
5 Exhibit 324 into evidence.

6 MR. LIMANDRI: No objection.

7 THE COURT: It's admitted.

8 (Trial Exhibit 324 received in evidence)

9 (Document displayed)

10 BY MS. TROTTER

11 Q. Now, Ryan Gonzalez, to whom you sent this email, was a  
12 person involved in providing some editing production services  
13 for the videos. Correct?

14 A. That's correct.

15 Q. This email is dated June 22, 2015. Correct?

16 A. Yes, that's correct.

17 Q. The first video was released publicly on July 14th, 2015.  
18 Correct?

19 A. That's correct.

20 Q. So, less than a month after this email. Correct?

21 A. Yes, that's correct.

22 Q. In the -- there is some text where you say -- it's the  
23 second line of the text of your email, says:

24 "For this week, we need to basically finish these  
25 videos."

## DALEIDEN - DIRECT / TROTTER

1 Do you see where I am?

2 **A.** Yeah, I see that.

3 **Q.** And there are some numbered items there. And I want to  
4 focus on No. 2.

5 (Document displayed)

6 **Q.** (As read)

7 "DN full footage."

8 Do you see that?

9 **A.** Yes, I see that.

10 **Q.** And the "DN" is referring to Deborah Nucatola?

11 **A.** Yes.

12 **Q.** That's Dr. Nucatola?

13 **A.** That's correct.

14 **Q.** And then there are some bullet points underneath that.  
15 And it says, the second bullet point:

16 "Blur out actors' faces, others besides Deb."

17 Do you see that?

18 **A.** Yeah, I see that.

19 **Q.** And you were directing Mr. Gonzalez, as part of his  
20 production work, to blur out, for example, Ms. Merritt's face  
21 on this video. Correct?

22 **A.** That's correct.

23 **Q.** And this was a video that you were, though, preparing for  
24 public release. Correct?

25 **A.** That's correct.

## DALEIDEN - DIRECT / TROTTER

1 Q. And so you wanted Ms. Merritt's face to be blurred out and  
2 not be recognized by the public when the video was released.

3 Correct?

4 A. That's correct.

5 Q. No. 6 on that same email, it says:

6 "MG full footage."

7 Do you see where I am?

8 A. Yeah, I see that.

9 Q. And "MG" refers to Dr. Mary Gatter. Correct?

10 A. Uh, that's correct.

11 Q. And there are five bullet items underneath that. And by  
12 those, you were directing Mr. Gonzalez with respect to his  
13 production work on that footage. Correct?

14 A. That's correct.

15 Q. And the third bullet point is:

16 "Blur out Susan/Robert faces..."

17 That's where it starts, correct?

18 A. Yeah.

19 Q. And that's referring to or you're directing Mr. Gonzalez  
20 to blur out Ms. Merritt's face, correct?

21 A. That's correct.

22 Q. And to blur out your face, correct?

23 A. That's correct.

24 Q. So that when this footage was released to the public,  
25 neither Ms. Merritt nor you could be recognized. Correct?

## DALEIDEN - DIRECT / TROTTER

1 A. Well, I mean, I would always sort of be recognized,  
2 because I released the project to the public, and was -- was,  
3 um, representing it to the public, publicly.

4 But yes, it was to -- it was to -- to, um, maintain  
5 Ms. Merritt's anonymity after the project release, and also to  
6 maintain as much anonymity as we could about the actual  
7 undercover investigators.

8 Q. Including your participation in the investigation, right?

9 A. To the degree that it was possible, I think -- I mean, I  
10 think probably for -- for my appearances, as it were, on the  
11 published undercover footage, I think it may be more to not  
12 have it be a distraction. Because this footage really isn't  
13 about me; it's about your clients, frankly.

14 Q. In any event, you directed Mr. Gonzalez to blur out your  
15 face.

16 A. Yes. That's correct.

17 Q. If you could take a look at Exhibit 332.

18 (Request complied with by the Witness)

19 A. Okay.

20 Q. Exhibit 332 is an email, another email that you wrote to  
21 Mr. Gonzalez. Correct?

22 A. That's correct.

23 MS. TROTTER: Your Honor, plaintiffs would move  
24 Exhibit 332 into evidence.

25 MR. LIMANDRI: No objection.

1           **THE COURT:** It's admitted.

2           (Trial Exhibit 332 received in evidence)

3           (Document displayed)

4           **BY MS. TROTTER**

5           **Q.** In this email that's in Exhibit 332, Mr. Daleiden, you  
6           were directing Mr. Gonzalez to blur out any patients in the  
7           full footage of the Colorado clinic taping. Correct?

8           **A.** That's correct.

9           **Q.** Earlier today, you testified that your intention by the  
10           project was not to target individuals, but to target entities  
11           like particular Planned Parenthood affiliates or PPFA. Do you  
12           recall that?

13           **A.** Yeah, I don't know that I even would use the word  
14           "targeted" necessarily. I mean, if there is any targeting in a  
15           broad sense, meaning who was the project directed to be about,  
16           it's directed to be about Planned Parenthood. And to -- in  
17           some respects, NAF, as well, as a -- as, you know, as an  
18           entity, as an organization. It's really not about individual  
19           people as people.

20           **Q.** Well, you recall using the word "targeting" or "target" in  
21           communications that you had with your team members, correct?

22           **A.** Yeah, "target" in the sense of "goal."

23           **Q.** You didn't blur out Dr. Nucatola's face in the video that  
24           you released of her, correct?

25           **A.** No.

## DALEIDEN - DIRECT / TROTTER

1 Q. You didn't block out or blur out Dr. Gatter's face in the  
2 video that you released. Correct?

3 A. No.

4 Q. Nor did you blur out or block out Dr. Ginde's face.  
5 Correct?

6 A. No; they were all representatives of Planned Parenthood,  
7 necessary to provide the authenticity of the footage and of the  
8 statements that they were making on behalf of Planned  
9 Parenthood.

10 (Document taken off display)

11 Q. I would like you to turn to Exhibit 68.

12 (Request complied with by the Witness)

13 Q. Do you have Exhibit 68?

14 A. Yes, I do.

15 Q. Okay. The first page of Exhibit 68 is an email from you  
16 to Mr. Rhomberg? Correct?

17 A. Yes, that's correct.

18 Q. Dated May 7th, 2015?

19 (Witness examines document)

20 A. Yes, that's correct.

21 **MS. TROTTER:** And since I don't recall whether this  
22 is in evidence, plaintiffs would move Exhibit 68 into evidence.

23 **MR. LIMANDRI:** No objection.

24 **THE COURT:** It's admitted.

25 (Trial Exhibit 68 received in evidence)

1 (Document displayed)

2 **BY MS. TROTTER**

3 **Q.** The cover email indicates that there is an attachment.  
4 Correct?

5 **A.** That's correct.

6 **Q.** And if you turn to the first, the next page of the  
7 exhibit, it says:

8 "CONFIDENTIAL - ROADMAP FOR PROJECT RELEASE IN JUNE  
9 2015."

10 Do you see that?

11 **A.** Yes, I see that.

12 **Q.** I would like you to turn to the fourth page of the  
13 attachment. It's Page 4 of 6.

14 Now, to be clear, the roadmap that you were sending to  
15 Mr. Rhomberg was a roadmap for the release of videos that were  
16 taken as part of the Center for Medical Progress project.  
17 Correct?

18 **A.** Yes. This is a roadmap for the release, the public  
19 release of the project.

20 **Q.** On Page 4 of the roadmap, about one third of the way down  
21 the page, it says:

22 "CMP believes..."

23 That's the way the line starts. Do you see where I am?

24 **A.** Yeah, I see that.

25 **Q.** It says (As read):

## DALEIDEN - DIRECT / TROTTER

1 "CMP believes at least two focus group sessions would  
2 be very helpful to develop and then test messaging  
3 and would trust Kellyanne Conway and the polling  
4 company, inc., to do this."

5 Do you see that?

6 **A.** Yeah, I see that.

7 **Q.** And in fact, there were at least two focus group sessions  
8 that CMP had related to the release of the videos. Correct?

9 **A.** Um, yeah, sort of. They were -- they were ultimately not  
10 done prior to the release of the videos. They were done after  
11 the release of the videos, a couple months afterwards.

12 But had the resources been there, this was an idea that  
13 was, you know, was part of the -- part of the roadmap to try to  
14 do some -- to try to do some focus-group type testing early on.

15 **Q.** There is a subheading on the same page that reads:

16 "Pitching the Story and Controlling Media Narrative."

17 Do you see that?

18 **A.** Yes, I do.

19 **Q.** And the second-to-last sentence begins:

20 "What can be more challenging..."

21 Do you see where I am?

22 **A.** Yes, I see that.

23 **Q.** It says (As read):

24 "What can be more challenging is maintaining control  
25 over the media narrative once coverage has begun, and

## DALEIDEN - DIRECT / TROTTER

1 not surrendering it to either the MSM or the Enemy."

2 Do you see that?

3 **A.** Yeah, I see that.

4 **Q.** And by "MSM," what did you mean?

5 **A.** By that I meant the establishment legacy media, or  
6 mainstream media.

7 **Q.** Mainstream media, right?

8 **A.** That's what the initials or acronym stands for, yes.

9 **Q.** And by "Enemy," you were referring to Planned Parenthood,  
10 correct?

11 **A.** I think by "Enemy," I meant Planned Parenthood and their  
12 political allies as an opponent.

13 **Q.** Underneath that section, there's a subsection that has the  
14 heading "Pro-Life Coalition."

15 Right?

16 **A.** Yes.

17 **Q.** And it reads (As read):

18 "CMP would like to release the Human Capital Project  
19 in coalition with other major pro-life groups,  
20 especially AUL, NRLC, Operation Rescue, SBA List, and  
21 Life Dynamics."

22 Correct?

23 **A.** Yes, I see that.

24 **Q.** And all of those groups that are listed are pro-life  
25 groups. Correct?

## DALEIDEN - DIRECT / TROTTER

1 A. That's correct.

2 Q. I would like to have you take a look at Exhibit 122.

3 (Request complied with by the Witness)

4 Q. Exhibit 122 is an email exchange between -- well,  
5 actually, it's just an email from you to Mr. Newman?

6 Is that right?

7 A. I believe it's to both Albin and Troy.

8 Q. Okay. Yes. I was on the wrong exhibit.

9 122. Correct? Is that where we are, just to make sure?

10 (Witness examines document)

11 A. Yes, this is 122.

12 Q. This is an email that you sent to Mr. Rhomberg and  
13 Mr. Newman. Correct?

14 A. That's correct.

15 MS. TROTTER: Your Honor, plaintiffs would move  
16 Exhibit 122 into evidence.

17 MR. LIMANDRI: No objection.

18 THE COURT: All right. It's admitted.

19 (Trial Exhibit 122 received in evidence)

20 (Document displayed)

21 BY MS. TROTTER

22 Q. This email that you wrote to Mr. Rhomberg and Mr. Newman  
23 is dated July 2nd, 2015. Correct?

24 A. That's correct.

25 Q. So this is twelve days prior to the release of the first

1 video that had Dr. Nucatola in it. Correct?

2 **A.** That's correct.

3 **Q.** And you start the email with (As read):

4 "Thanks for the call and the thoughts today guys."

5 Do you see that?

6 **A.** Yeah, I see that.

7 **Q.** And so you had had a call on this date, July 2nd, with

8 Mr. Rhomberg and Mr. Newman. Correct?

9 **A.** That's correct.

10 **Q.** And that call was about the release of the videos.

11 Correct?

12 **A.** That's correct.

13 **Q.** If you can take a look at Exhibit 37.

14 (Request complied with by the Witness)

15 **A.** All right. I have it.

16 **Q.** Exhibit 37 is an email thread, and it has a couple of

17 emails on it. But it's between you and Mr. Newman and

18 Mr. Rhomberg. Correct?

19 (Witness examines document)

20 **A.** I believe that this is -- this is me replying to an email

21 that I initially received just from Mr. Newman, and I replied

22 to it as an email to Mr. Newman and Mr. Rhomberg. And it is an

23 email to the rest of the board.

24 **MS. TROTTER:** Your Honor, plaintiffs would move

25 Exhibit 37 into evidence.

1           **MR. LIMANDRI:** No objection.

2           **THE COURT:** It's admitted.

3           (Trial Exhibit 37 received in evidence)

4           (Document displayed)

5   **BY MS. TROTTER**

6   **Q.** The email to which you were responding is in the bottom  
7 half of the first page. Correct?

8   **A.** That's correct.

9   **Q.** From Mr. Newman, on May 22, 2015. Do you see that?

10   **A.** Yeah.

11   **Q.** And Mr. Newman wrote to you (As read):

12           "As I'm thinking about getting the whole PLM keyed  
13           into this I was wondering how you want me to frame my  
14           involvement?"

15           Do you see that?

16   **A.** Yeah, I see that.

17   **Q.** And by "PLM," you understood Mr. Newman to be referring to  
18 pro-life movement. Correct?

19   **A.** That's correct.

20   **Q.** I would like you to take a look at Exhibit 103.

21           (Request complied with by the Witness)

22           (Document taken off display)

23   **Q.** Exhibit 103 contains a thread of emails in which you were  
24 a participant. Correct?

25           (Witness examines document)

1   **A.**   In part, yeah.  It looks like a lot of emails were  
2   forwarded to me.  But its most sort of recent, this is an email  
3   between me and Mr. Newman, it looks like.

4           **MS. TROTTER:**  Your Honor, plaintiffs would move  
5   Exhibit 103 into evidence.

6           **MR. LIMANDRI:**  No objection.

7           **THE COURT:**  It's admitted.

8           (Trial Exhibit 103 received in evidence)

9           (Document displayed)

10   **BY MS. TROTTER**

11   **Q.**   On the second page of Exhibit 103, there is an email dated  
12   July 10th, 2015, from Mr. Newman.  Do you see where I am?

13           (Witness examines document)

14   **A.**   Yes, I see that.

15   **Q.**   And Mr. Newman writes (As read):

16           "Dear Friends of Life,

17           "For the past three years Operation Rescue has had

18           the privilege of consulting on an undercover

19           investigation into the abortion cartel."

20           Do you see that?

21   **A.**   Yeah, I see that.

22   **Q.**   On the first page of the exhibit at the very top is a  
23   response that you made to an earlier email from Mr. Newman.  Do  
24   you see that?

25   **A.**   Yeah, I see that.

## DALEIDEN - DIRECT / TROTTER

1 Q. And that is dated July 12th, 2015?

2 A. Yeah.

3 Q. That is two days before the first video was released.

4 Correct?

5 A. That's correct.

6 Q. And you write to Mr. Newman, in the second sentence:

7 "Looks like you got everybody in the leadership  
8 email."

9 Do you see that?

10 A. Yeah, I see that.

11 Q. And the leadership that you were referring to in that line  
12 is leadership within the pro-life movement. Correct?

13 A. That's correct.

14 Q. You have already testified the first video, July 14, 2015.

15 After the first video, CMP then released one video per  
16 week thereafter, for the next seven weeks. Correct?

17 A. I don't know if it was exactly seven or eight or nine. I  
18 do know that as -- once we got up to around seven or eight or  
19 nine, I believe there were some gaps in the weeks. But yeah,  
20 for approximately the first two months, it was one video a  
21 week. They came out on Tuesdays.

22 Q. And that essentially continued through the summer of 2015.

23 A. That's correct.

24 Q. At least that long. But the end of the summer wasn't the  
25 last video that CMP released. Correct?

## DALEIDEN - DIRECT / TROTTER

1 A. That's correct. I think we continued to release footage,  
2 um, on a somewhat-regular basis into October. And then  
3 periodically, we've had some other releases since then.

4 Q. You released two videos in February of 2016. Correct?

5 A. I don't know if one of them might have been at the  
6 beginning of March, rather than the end of February. But  
7 around that time, there were approximately two videos released,  
8 that's correct.

9 Q. And you released a video in April of 2016. Correct?

10 A. Yes, I believe so. I don't know that that was necessarily  
11 a new undercover footage release versus just a sort of  
12 commentary on contemporary issues going on there with some of  
13 the topics that this investigation had -- had kind of brought  
14 into the public conversation.

15 But yes, there was a video that we released at that time.

16 Q. And you released another video in July of 2017. Correct?

17 A. I know that we released several videos in the summer of  
18 2017. I couldn't tell you the exact months, sitting here  
19 today.

20 Q. And even as recently as this past summer, 2019, you  
21 released additional video footage. Correct?

22 A. Um, yes.

23 Q. You've released a total of 17 videos containing footage of  
24 Planned Parenthood Federation of America or Planned Parenthood  
25 affiliate employees and contractors. Correct?

1 **A.** Depending on how you -- how you count it, there's been, I  
2 think, approximately 17 formal releases spotlighting particular  
3 undercover footage.

4 And then there's probably been several other releases,  
5 like I mentioned of the one in April, 2016, that is more sort  
6 of a commentary on the ongoing public discussion of the  
7 revelations about your clients.

8 And then like, for example, the most recent one this  
9 summer in 2019 I think is just some raw footage that was raw  
10 undercover footage that was released in conjunction with an  
11 op-ed that I published, and realized that the unreleased  
12 undercover footage was somewhat relevant to the issues being  
13 discussed in the op-ed. So, things like that.

14 So depending on how you count, there are -- that number 17  
15 could change.

16 **Q.** Now, you previously testified, I think it was yesterday,  
17 BioMax was formed in the fall of 2013.

18 **A.** That's correct.

19 **Q.** Phil Cronin resigned as agent of service of process in  
20 July of 2015?

21 **A.** Yes, that's correct.

22 **Q.** And after Mr. Cronin's resignation from BioMax as agent  
23 for service of process, there weren't any further documents  
24 that BioMax filed with the Secretary of State for a number of  
25 years. Correct?

1     **A.**    Can you ask me that question again?

2     **Q.**    After Mr. Cronin -- well, let me withdraw that.  When  
3     Mr. Cronin resigned as agent for service of process in July of  
4     2015, that was through a formal filing that was made with the  
5     Secretary of State.  Correct?

6     **A.**    That's correct.

7     **Q.**    After that filing was made with the Secretary of State,  
8     there weren't any further filings that BioMax made with the  
9     Secretary of State until the summer of this year, 2019.  
10    Correct?

11    **A.**    That's correct.

12    **Q.**    I would like to you take a look at Exhibit 8027.

13    **A.**    All right.  I have it.

14    **Q.**    Exhibit 8027 is the index of the filings made by BioMax  
15    Procurement Services, LLC with the California Secretary of  
16    State; correct?

17    **A.**    Yes, that's correct.

18            **MS. TROTTER:**  Your Honor, plaintiffs would move  
19    Exhibit 8027 into evidence.

20            **MR. LIMANDRI:**  I'm going to object on relevance and  
21    403 as to some of the contents of this document, Your Honor.

22            **THE COURT:**  All right.  We'll take it up after the  
23    end of the day.

24            (Brief pause.)

25

## DALEIDEN - DIRECT / TROTTER

1 BY MS. TROTTER

2 Q. Mr. Daleiden, the Center for Medical Progress is still  
3 operational; correct?

4 A. Yes, that's correct.

5 Q. You still serve as the Chief Executive Officer?

6 A. That's correct.

7 Q. You still receive a salary?

8 A. Yes, I do.

9 Q. At the inception of Center for Medical Progress you  
10 anticipated conducting multiple projects, not just a single  
11 project; correct?

12 A. Multiple investigative reporting projects and other news  
13 media type projects, yes.

14 Q. And that's still part of your plan; correct?

15 A. Definitely.

16 Q. Mr. Gonzalez, we saw his name on some exhibits that we  
17 looked at earlier today, he's been a video editor/production  
18 person for Center for Medical Progress since 2014; correct?

19 A. That's correct.

20 Q. And Mr. Gonzalez is still working on video editing for  
21 Center for Medical Progress; correct?

22 A. We're still a client of his, that's correct. He does  
23 free-lance work.

24 Q. And he was doing video editing for Center for Medical  
25 Progress at least as recently as April 2019; correct?

## DALEIDEN - DIRECT / TROTTER

1 A. We have remained a client throughout 2019, that's correct.

2 Q. Center for Medical Progress has a Twitter account;  
3 correct?

4 A. Yes, that's correct.

5 Q. And Center for Medical Progress has posted content on that  
6 Twitter account as recently as yesterday; correct?

7 A. I believe that's correct.

8 Q. I'd like you to take a look at Exhibit 24.

9 (Witness complied.)

10 Q. I believe it may be the very first exhibit in your binder.

11 A. All right. I have it.

12 Q. And the first page -- this may be in evidence, but since I  
13 don't know, I'm just going to ask you: The first page is an  
14 email from you to Mr. Newman; correct?

15 A. Yes, that's correct.

16 Q. And that's dated March 20th, 2013?

17 A. Yes, that's correct.

18 MS. TROTTER: Plaintiffs would move, Your Honor, this  
19 document into evidence, Exhibit 24.

20 Actually, I believe it's already in evidence --

21 MR. LIMANDRI: It's already in.

22 MS. TROTTER: -- now that I read further.

23 BY MS. TROTTER

24 Q. I'd like you to turn to the second page.

25 (Document displayed)

1 Q. And I want to turn your attention to the second paragraph  
2 under the heading "Abstract."

3 And there is a clause that begins the third line up from  
4 the end of that paragraph that reads:

5 "This project aims to ignite public outrage  
6 against the abortion industry, permanently damage  
7 Planned Parenthood's brand, and prompt defunding and  
8 criminal prosecutions."

9 Correct?

10 A. Yes, that's correct.

11 Q. And you have those same goals today; correct?

12 A. I wouldn't actually -- so first answer, I wouldn't  
13 describe all the things that are listed in here as goals, or at  
14 least not goals in the same sense or on the same line because,  
15 for example, you can say the project aims to do something,  
16 like, you know, rally public pressure for a certain policy  
17 change to happen and that, you know, is a very direct goal.

18 But prompting defunding or prompting certain things, I  
19 don't know that that can be described properly as a goal. It  
20 might be better described as, like, an advantage or a -- you  
21 know, a possible outcome, but that's not something that either  
22 the video release or CMP as an organization is really properly  
23 set up to do directly.

24 So I wouldn't call those goals, but in terms of wanting  
25 to -- wanting to draw public attention and bring public

**DALEIDEN - CROSS / LIMANDRI**

1 pressure to bear for the sort of policy changes that would  
2 address criminal fetal trafficking and, hopefully, prompt the  
3 appropriate responses from the appropriate public authorities  
4 for activity like that, that's definitely still something that  
5 Center for Medical Progress wants to do.

6 **Q.** Mr. Daleiden, as you sit here today, you would like  
7 legalized induced abortion to be ended in this country;  
8 correct?

9 **A.** As I sit here today, personally I don't think that a  
10 medical professional should be allowed to intentionally kill a  
11 child in the womb. That's my belief.

12 **Q.** And that's what you believe abortion is; correct?

13 **A.** I believe that legalized induced abortion, as it's  
14 practiced in our country, is a license for medical  
15 professionals to kill children in the womb, and I'm not okay  
16 with that.

17 **MR. JONNA:** No further questions, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MR. LIMANDRI**

20 **Q.** Good afternoon, Mr. Daleiden.

21 **A.** Good afternoon.

22 **Q.** A couple of introductory questions, and we're going to  
23 cover a little bit of ground that was covered regarding your  
24 background. Then we want to show a short video before the end  
25 of the day. So move kind of quickly.

## DALEIDEN - CROSS / LIMANDRI

1 Tell us, why did you do this project?

2 **A.** So I did this project because I wanted to document and  
3 expose the plaintiffs' in this case participation in the  
4 harvesting and sale of aborted fetal organs and tissues for  
5 profit, against the law.

6 **Q.** What made you decide that somebody had to do this?

7 **A.** This issue first came across my radar in the year -- back  
8 in the year 2010, in the summer of 2010. I came across some of  
9 the information that had come out about the same topic of fetal  
10 trafficking back in, I think it was the year 2000. There had  
11 been sort of an early expose done on it; that this was before  
12 the age of YouTube, or news media or social media. So it had  
13 kind of been swept under the rug very quickly.

14 But there was an initial Congressional investigation that  
15 was done in March of 2000. There was a Congressional hearing.  
16 And there was sworn testimony of that Congressional hearing  
17 from one of the middleman company's harvesting technicians, who  
18 was embedded inside of a Planned Parenthood clinic in Kansas,  
19 who said that he had seen fetuses delivered alive inside that  
20 clinic, late-term fetuses, age six months, and that had been  
21 killed and sometimes killed through organ harvesting.

22 He described sometimes cutting open the fetus's chest and  
23 he would see the heart was still beating while he was doing the  
24 harvesting --

25 **MS. TROTTER:** Objection, Your Honor. 403.

## DALEIDEN - CROSS / LIMANDRI

1           **THE COURT:** So let's stay at the high level. And  
2 you're going to show, I think, one of the videos.

3           **MR. LIMANDRI:** Yes.

4 **BY MR. LIMANDRI**

5 **Q.** About this particular Congressional investigation, did you  
6 have an opportunity to review the transcript of that testimony?

7 **A.** Yes, I did. I read the whole transcript in the summer of  
8 2010.

9 **Q.** About that time did you become aware of a video that had  
10 been done concerning that same topic, done by ABC, a 20/20  
11 segment?

12 **A.** Yes, I did.

13 **Q.** Okay. Did that -- how did that segment and Congressional  
14 testimony influence your thinking regarding your plans for this  
15 project?

16 **A.** So there was a -- through the Congressional transcript, I  
17 learned that ABC's 20/20 program had actually done their own --  
18 their own news story on the topic of fetal trafficking right at  
19 that same time, in March of 2000, and they had both done  
20 interviews with whistleblowers, including one of the  
21 individuals who testified at the Congressional hearing.

22           They also did interviews with some of the principals of  
23 the Planned Parenthood clinic in Kansas and the middleman  
24 companies who were harvesting and selling body parts from  
25 inside of it.

## DALEIDEN - CROSS / LIMANDRI

1           And they also did -- the ABC 20/20 producers did their own  
2 undercover investigation as well with participants in that  
3 fetal organ trafficking ring.

4           **MR. LIMANDRI:** Your Honor, at this time I'd like to  
5 play that video that he just described. It's Exhibit 4006.

6           **THE COURT:** All right.

7           So, ladies and gentlemen, you're about to see a video that  
8 was a report from ABC. The taping in the restaurant that's  
9 shown in the video occurred in a different state than the ones  
10 that are involved in this case. That state has very different  
11 laws concerning taping than the ones at issue here.

12           So I'm going to instruct you at the end of the case on the  
13 relevant laws that apply in this case. The fact that ABC taped  
14 in a restaurant in another state should not impact your  
15 decision in this case.

16           This video also is not admitted for the truth of any of  
17 the statements in the video, but they do go to the state of  
18 mind of Mr. Daleiden.

19           **MR. LIMANDRI:** Thank you, Your Honor.

20           **THE COURT:** All right.

21           (Videotape played in open court, not reported)

22           **MR. LIMANDRI:** We don't have the audio. Start over  
23 and queue the audio.

24           **THE CLERK:** Audio is on.

25           **MR. LIMANDRI:** Still no audio.

## PROCEEDINGS

1 (Videotape played with audio in open court, not  
2 reported)

3 **MR. LiMANDRI:** Your Honor, would this be a good time  
4 to break for the day? I know we have five minutes, but I would  
5 want to go into some background. It seems to me this would be  
6 a good breaking point. We can discuss some other matters.

7 **THE COURT:** All right. So, ladies and gentlemen, we  
8 will end today and come back tomorrow.

9 After tomorrow, you have a week of thinking about other  
10 things. I will speak with you longer tomorrow about this, but  
11 between now and then just remember the admonitions and have a  
12 good afternoon.

13 (Jury exits the courtroom at 12:53 p.m.)

14 **THE COURT:** All right. You can step down  
15 Mr. Daleiden.

16 (Witness steps down.)

17 **THE COURT:** Please be seated everybody.

18 **MR. LiMANDRI:** I would like to move that into  
19 evidence, Your Honor, if I may.

20 **THE COURT:** It is admitted.

21 (Trial Exhibit 4006 received in evidence)

22 **THE COURT:** So, Exhibit 8027.

23 **MR. LiMANDRI:** Yes.

24 **THE COURT:** I know what the -- why Mr. LiMandri made  
25 the objection. Why is it relevant that he is the currently

## PROCEEDINGS

1 the Agent for --

2 **MR. LIMANDRI:** If I can explain the circumstances.

3 As I recall, and there might be others here who are more  
4 directly involved, this was during the litigation when this  
5 change was made. And I think it was just a few months back  
6 when we learned that there was a problem with the corporate  
7 status of BioMax and that it would not be able to appear in  
8 court. We could not appear on its behalf, but there were  
9 motion being filed, motions pending. And there was a lot of  
10 activity, a lot of a rush to get people in Sacramento to  
11 expedite getting their -- reinstated. I think they were  
12 temporarily suspended.

13 So my recollection is that it was at that time, in order  
14 to make that happen so that I could fulfill my obligations to  
15 the client and the Court in getting papers filed and making  
16 court appearances, that we went on the paperwork. And it was  
17 an exigent circumstance.

18 As I recall the situation, that's how it came about. I  
19 know that that was a situation several months ago where  
20 BioMax's corporate status was at issue. I think it's a  
21 misdemeanor for an attorney to appear if the client's corporate  
22 status is suspended. So that's why we did what we had to do to  
23 make sure that they were brought into compliance so that we can  
24 fulfill our obligations to the client and the Court.

25 That's my recollection. Now, I can go back and retrack

## PROCEEDINGS

1 the exact timing, but that's the only reason I could think of  
2 at this time why that change was made.

3 **THE COURT:** Ms. Trotter.

4 **MS. TROTTER:** So, Your Honor, first of all, you know,  
5 BioMax wasn't brought in in this calendar year. I mean, BioMax  
6 has been a party since this litigation began.

7 What this reflects, we believe, you know, there is this  
8 dispute about what is BioMax, and is it fake and so forth. And  
9 what this reflects and what we intend to show is that BioMax  
10 essentially had no good standing in the State of California  
11 during the time period when the filing was due, which was 2017.  
12 Allowed it to lapse, because there was no intention at any  
13 point in time of BioMax doing business. And the later -- the  
14 filing of the form in July of 2019 was literally, you know,  
15 within -- well, probably two months of the initial trial date  
16 in the matter. And so it was clearly just -- it was in order  
17 to change the record before we are trying this case to a jury.

18 We think we're entitled to establish that, in fact, it had  
19 lapsed and, you know, there was this effort then to, quote,  
20 correct it, but in order to change what are the facts in the  
21 case.

22 That's plaintiffs' position. And we have to prove that  
23 up.

24 **MR. LIMANDRI:** Well, I could tell you, 36 years of  
25 practice this is about the third or fourth time I can recall

## PROCEEDINGS

1 where a client has represented -- particularly when I was doing  
2 insurance defense and the carrier had retained me, the  
3 insured's corporate status lapses and now we're frantic because  
4 we can't appear.

5 So this has happened more than once, and the attorney has  
6 to do what they can to make sure that the corporate status is  
7 brought into compliance or else we can't -- we'll be defaulted.  
8 And, again, it's a misdemeanor for the attorney to appear  
9 without what that happening.

10 So, yeah, we were frantic when we found out that it had  
11 lapsed, but it was an honest situation and it happens. I said  
12 it's happened about three times in 36 years. There was nothing  
13 sinister or regular about it. But it would certainly be a 403  
14 issue, and it's a litigation issue. You ruled on that.

15 This was to bring it into compliance, to make a court  
16 appearance. And under the Motion in Limine, I think it would  
17 be inappropriate to try to raise it for some type of unfair  
18 advantage. There is nothing that was done that would have  
19 changed the status of the case. It was just an administrative  
20 matter that needed to be attended to on an exigent basis.

21 **THE COURT:** So my concern was somewhat of a different  
22 one, which is, I didn't -- I don't think it's appropriate to  
23 have Mr. LiMandri's involvement as an Agent for Service of  
24 Process be part of the consideration that the jury would make  
25 in this case.

## PROCEEDINGS

1           **MS. TROTTER:** We can redact that part of the  
2 document.

3           **THE COURT:** Well, and another thing you might agree  
4 to do is just stipulate on the timing; that they lapsed in  
5 such-and-such a date and became active again in such-and-such a  
6 date and then leave it there. Then you can make whatever  
7 arguments you want to make about it.

8           **MS. TROTTER:** That would be acceptable to plaintiffs,  
9 Your Honor.

10          **MR. LiMANDRI:** That would be acceptable to the  
11 defense, too.

12          **THE COURT:** Okay.

13          **MR. LiMANDRI:** It's a matter of record.

14          **THE COURT:** All right.

15          **MR. LiMANDRI:** The other matter, I was surprised  
16 Ms. Trotter introduced Exhibit 103 and went directly to Page 2  
17 and a paragraph where the very next sentence she read from it  
18 says:

19                 "The results show Gosnell-like activity at the  
20 highest levels of Planned Parenthood Federation of  
21 America" --

22          **MS. TROTTER:** I'm sorry, counsel. Where are you?

23          **MR. LiMANDRI:** Exhibit 103, Page 2, about four lines  
24 into it.

25          **MS. TROTTER:** Okay. Yeah.

## PROCEEDINGS

1           **MR. LIMANDRI:** It seems to me for -- that document is  
2 in evidence. That section was read from. It should be fair  
3 game for me to ask my client what he meant by "Gosnell-like  
4 activity," without going into a full-length discussion of the  
5 Gosnell case.

6           I mean, that document is in evidence. It was shown,  
7 displayed to the jury. We had nothing to do with that.

8           When I stipulated to admissibility, I didn't even know  
9 that was an issue that was in this document, but it is. The  
10 jury saw it. And I think I should be able to get a very brief  
11 description from my client of what he meant by that.

12           **MS. TROTTER:** Your Honor, that was clear, it's an  
13 error on our part. We should have asked for a redaction.

14           And I certainly did not read from that, bring any  
15 attention to that. And so we would ask for the Court's  
16 permission to redact that line and the rest of document remain  
17 in evidence.

18           **MR. LIMANDRI:** It was displayed. And I believe it  
19 was enlarged with the section that was displayed and read from.  
20 So the jury saw it. You can't unring that bell.

21           And mistakes do happen in trial. And I'm sure it was good  
22 faith, but nonetheless it has occurred and I think we're  
23 entitled to give a brief explanation of what was meant by that.

24           **MS. TROTTER:** In addition, Your Honor, the author of  
25 that is not Mr. Daleiden. So the witness, who this document

## PROCEEDINGS

1 was entered into evidence through their testimony of it, was  
2 not the author of this particular email.

3 **THE COURT:** All right.

4 **MR. MIHET:** Your Honor, if I may. This is critical.  
5 The part that they did show the jury and emphasize by blowing  
6 up was the first paragraph. And the last sentence that they  
7 read to the jury, Judge, says:

8 "Now we are now ready to release the shocking  
9 evidence to the public."

10 Your Honor, they are arguing to the jury that this is  
11 ginned up outrage and ginned up shock.

12 The same document explains why these defendants thought  
13 this was shocking. And to deny -- now having opened the door  
14 to deny now the chance to explain what was in the very next  
15 line, giving context to what the word "shocking" meant, I think  
16 would be profoundly prejudicial.

17 They had the document. They admitted it into evidence,  
18 Your Honor. You -- you cannot now exclude what is clearly in  
19 context.

20 **THE COURT:** Well, I think I can.

21 (Laughter.)

22 **MR. MIHET:** You cannot fairly exclude what clearly is  
23 in context.

24 **THE COURT:** So we dealt with Dr. -- or whatever he  
25 was -- Gosnell in the Motion in Limine. There were, on both

## PROCEEDINGS

1 sides of this case, outrageous things that had have occurred  
2 that we are keeping out. And we are keeping this out.

3 So I saw that the moment that we turned to Page 2.  
4 Ms. Trotter moved away from it quickly. The jury has no idea  
5 about Gosnell. And for the reasons that I decided before,  
6 we're not going to go into it.

7 **MR. LIMANDRI:** The document, though, is in evidence.  
8 They used it. How are we supposed to -- I'm going to follow  
9 your orders.

10 I mean, ordinarily I would say I can argue anything to the  
11 jury in closing. I'm not going to run afoul on that. But how  
12 do you propose we use it? Just leave it as is?

13 **THE COURT:** Yeah. Just don't refer to Gosnell. I  
14 think it's -- that doesn't seem hard to me.

15 **MR. MIHET:** Well, your Honor, if we were to question  
16 Mr. Daleiden on this page, can we show it the same way that  
17 it was shown without directing his attention to the word  
18 "Gosnell" --

19 **THE COURT:** As long as there is nothing that is  
20 mentioned with respect to Gosnell. In accordance with my  
21 orders then, if the page has been shown, that's there, but  
22 don't -- don't come through the back door.

23 **MR. MIHET:** Right. May we tell Mr. Daleiden nothing  
24 else other than to avoid the word "Gosnell" if we refer to this  
25 document? I don't want him --

## PROCEEDINGS

1           **THE COURT:** I don't want to have any description that  
2 is remotely close to the description that I read before with  
3 respect to Gosnell. It should be really clear. I don't think  
4 I have to clarify much further, do I?

5           **MR. MIHET:** No. I just don't want -- because we're  
6 not permitted to speak with him about his testimony. So if we  
7 to ask him a question about this document, I don't want him to  
8 go into an area that Your Honor has precluded.

9           So if you would give me the ability to just simply mention  
10 to him: Hey, if we ask you about 103, don't mention the word  
11 "Gosnell." I think that would helpful us to comply with your  
12 order.

13           **THE COURT:** Mr. LiMandri can have that specific  
14 conversation, if you're at all concerned, if you're going to go  
15 into it. And you're, of course, entitled to because it is in  
16 evidence, but not with respect to Gosnell.

17           **MR. MIHET:** Thank you.

18           **MR. LiMANDRI:** If I am going to ask him about this, I  
19 will represent to the Court the only thing I would tell the  
20 client is to remember he can't mention Gosnell under any  
21 circumstances.

22           **THE COURT:** Okay. Or anything related to what he  
23 did, what Gosnell did.

24           **MR. LiMANDRI:** Right.

25           **THE COURT:** So that's the -- that was the order.

## PROCEEDINGS

1           **MR. LiMANDRI:** There was another doctor. We became  
2 aware of Doug Karpen, who did similar things, which was not  
3 part of your order.

4           Again, I don't want you to get mad at me tomorrow if he  
5 says in terms of his research he found out about that guy in  
6 Texas was doing similar things.

7           **THE COURT:** Well, I haven't ruled on that person. I  
8 don't know what he did. I know that you're not going to --  
9 that you will be closely following the many orders that I've  
10 made and the rulings that I've made with respect to what  
11 evidence comes in and out.

12           **MS. TROTTER:** And to be clear, that person, whoever  
13 this person is, is not a name that was ever mentioned at any  
14 deposition or anything. So I have no idea who that is.

15           And presuming that's someone like Gosnell, that's  
16 problematic to raise.

17           **MR. LiMANDRI:** Okay.

18           **THE COURT:** I agree.

19           Mr. Millen.

20           **MR. MILLEN:** Thank you, Your Honor.

21           Your Honor, I think that the testimony that Ms. Trotter  
22 brought out today kind of had another effect. I know there's  
23 an opening the door briefing. This is a little sort of related  
24 to that, but it's new because of today.

25           I appreciate at the beginning of the case the Court only

## PROCEEDINGS

1 knew the pleadings and some declarations and it made its  
2 decision that what Mr. Daleiden knew prior to beginning, you  
3 know, that could come in. That's why we just saw this video.

4 But the Court was also clear that anything that happened  
5 to confirm or corroborate his beliefs that came as the fruit of  
6 these investigations was not coming in. And I appreciate that  
7 was you're probably doing your best to balance everyone's  
8 interests. I get that.

9 What's happened today though -- and this is particularly  
10 in regard to the punitive damages claim that they are  
11 bringing -- is that they have brought out testimony which  
12 implies that Mr. Daleiden, when he's doing these  
13 investigations, is coming up fruitless. That he's doing this.  
14 He's recording lots of people that have nothing to say. He's  
15 recording people who don't even -- don't even know what this  
16 field of medicine is, that they're a transgender person. And  
17 Mr. Daleiden is finding this needle in a haystack. And I  
18 appreciate he clarified it; just looking for a person, not the  
19 investigation. But there is this sense of you record everybody  
20 and you shouldn't be doing this.

21 And I can understand a good attorney like Ms. Trotter in  
22 closing saying: You know, folks, he started out trying to get  
23 stuff and look at all the evidence he got that really didn't  
24 make any difference at all. That's bad faith. He should have  
25 stopped immediately. He should have stopped because he could

## PROCEEDINGS

1 see. You go to these conferences. You talk to 100 people.  
2 Hardly anybody knows anything.

3 And so the point, Your Honor, is given that argument, for  
4 us not to be able to put on evidence of Mr. Daleiden's  
5 successes; that Mr. Rhomberg, who is on the Board and who is --  
6 knows this is going on, one reason Mr. Rhomberg doesn't say,  
7 "Stop it all, it's going nowhere," is because there is success  
8 that comes out of it.

9 And so for Mr. Daleiden to not be able to let the jury  
10 know: I was successful. That should play into your -- at  
11 least I thought I was successful. In my mind I thought I was  
12 successful. That should play into your decision.

13 So I'm asking the Court to reconsider that.

14 **THE COURT:** Well, I don't think there is any secret  
15 that Mr. Daleiden thinks he was successful. And I think his  
16 testimony already has shown that that's the case.

17 I think Ms. Trotter's examination was going to a different  
18 point, which was that the defendants were taking the recordings  
19 of everybody who was there, and some he didn't know and some he  
20 did. And he's explained why he thought that was necessary.  
21 And I think that's fair game for argument.

22 But we're not going to -- again, in addition to that, I  
23 have instructed the jury a few times, and I'm confident I will  
24 a few times more, that the truth of the -- what was found or  
25 not found is still hotly debated and people are in disagreement

## PROCEEDINGS

1 about it and that's not their job.

2 So I'm still where I was.

3 **MR. MILLEN:** Thank you for letting me make the  
4 record.

5 **THE COURT:** Absolutely.

6 Mr. Breen, I'm going to ask you if you want to make an  
7 argument about the opening the door, I was told that you were  
8 the guy, and I've read the -- I've read the letters. I was  
9 going to spend some more time with them, but I know that  
10 Mr. LiMandri wants to prepare for his cross-examination, so I  
11 could hear you now and then rule in the morning.

12 **MR. BREEN:** Your Honor, I thought we would address  
13 the plaintiffs' submission in detail tomorrow morning.

14 **THE COURT:** Well, it's a question of how much detail  
15 you're intending to go into.

16 **MR. BREEN:** It was only eight pages.

17 **THE COURT:** I have been here before with you. I know  
18 how -- how well you can articulate things.

19 If there is going to be -- if you've got news for me  
20 coming out of this or, you know, things that I really need to  
21 think about and you know what that news is now, I would do it  
22 now.

23 If you want to wait and just be thoroughly prepared  
24 tomorrow morning to make a record, that's fine too.

25 **MR. BREEN:** Your Honor, when I got up at 5:00 o'clock

## PROCEEDINGS

1 this morning, I saw the filing was in my mailbox, so...

2           **THE COURT:** Okay. So you and I are getting up at  
3 about the same time these days.

4 All right. I'll see everybody tomorrow morning.

5           **MS. TROTTER:** Thank you, Your Honor.

6 (Whereupon at 1:11 p.m. further proceedings were  
7 adjourned until Wednesday, October 23, 2019 at  
8 7:30 a.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

Tuesday, October 22, 2019 - Volume 12

PLAINTIFFS' WITNESSESPAGE VOL.DALEIDEN, DAVID

(RECALLED)

2153 12

Direct Examination Resumed by Ms. Trotter

2153 12

Cross-Examination by Mr. LiMandri

2300 12

- - -

EXHIBITS

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
37		2291	12
68		2285	12
103		2292	12
122		2289	12
217		2232	12
243		2167	12
324		2280	12
332		2284	12
363		2179	12
370		2206	12
426		2162	12
549		2170	12
578		2259	12
653		2264	12
891-A		2147	12
1813		2147	12
1910		2220	12
1915		2226	12
1920		2231	12
3621		2173	12
4006		2304	12

E X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
5067-B		2239	12
5081-B		2192	12
5081-c		2197	12
5105-A		2255	12
5218-A		2223	12
5263-N		2227	12
5263-C		2229	12
5281-B		2217	12
5839-A		2236	12
6035		2230	12
6036		2218	12
6107		2147	12
6129		2147	12
8023		2261	12

- - -

CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Debra L. Pas*

---

Debra L. Pas, CSR 11916, CRR, RMR, RPR

*Belle Ball*

---

Belle Ball, CSR 8785, CRR, RMR, RPR

Tuesday, October 22, 2019