

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.	)	November 12, 2019
	)	7:34 a.m.

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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*Official Reporters - US District Court*

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## PROCEEDINGS

P R O C E E D I N G S

November 12, 2019

7:34 a.m.

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

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

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

(Counsel greet the Court)

**THE COURT:** Please be seated.

So I'm afraid we have lost a juror to the flu. I got a call this morning, while some of you might still have been sleeping. And, and she sounded quite under the weather. So it's Juror No. 27. And she said "Maybe I can come tomorrow," and I said "Thank you very much." But, we will proceed without her.

So I will acknowledge receiving the defendants' Rule 50 motions as you anticipated filing them. And so they are -- they are there on the record.

And I think the only other information -- only other thing to deal with, unless somebody has any final edits for typos, is the agreed-upon facts on the law enforcement contacts. And those, Mr. LiMandri, you know, I posted what we were going to -- what I thought they were. And then, then read them.

And then when you made a pitch a few -- whenever it was that you made your pitch that there were a couple of errors

## PROCEEDINGS

1 there, you also said that you were just correcting them for  
2 your purposes. But we never read them to the jury. So it's  
3 evidence that was never presented to the jury. So you can't  
4 argue from those.

5 **MR. LIMANDRI:** I understand. And I wasn't intending  
6 to. But the point was made that maybe I should do something  
7 more formal, since we thought there was an error.

8 I did put it on the record, and I believe it was probably  
9 sufficient. Others thought that I should do something more  
10 formal.

11 **THE COURT:** I see.

12 **MR. LIMANDRI:** I don't plan to argue from it. Thank  
13 you, Your Honor.

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

15 So with that -- oh, Mr. Ramallo.

16 **MR. RAMALLO:** I'll just -- good morning, Your Honor.

17 **THE COURT:** Good morning.

18 **MR. RAMALLO:** Oscar Ramallo. I just have one item on  
19 the jury instructions, for consistency. And it's on Page 72.

20 **THE COURT:** Okay.

21 **MR. RAMALLO:** Line 16 to 17, which begins:

22 "PPCSC contends that Tram Nguyen..."

23 **THE COURT:** Yes.

24 **MR. RAMALLO:** And we just would like the Court to  
25 strike that line.

## PROCEEDINGS

1           **THE COURT:** Strike the entire line?

2           **MR. RAMALLO:** Strike the entire line, yes.

3           **THE COURT:** So are you talking about striking the  
4 entire paragraph? Or just that phrase?

5           What are you asking?

6           **MR. RAMALLO:** So we would strike:

7           "PPCSC contends that Tram Nguyen, and PPGC/PPCFC  
8 contends that Jackie Krugler, were illegally recorded  
9 inside the exhibitor hall by David Daleiden and  
10 Adrian Lopez."

11          **THE COURT:** So you would like that out of this,  
12 altogether.

13          **MR. RAMALLO:** Correct.

14          **THE COURT:** Okay.

15          **MR. RAMALLO:** And that's all I have, Your Honor.

16          **THE COURT:** I assume there is no objection to that.

17          **MR. LIMANDRI:** No, Your Honor.

18          **THE COURT:** Okay. Was there any other matter that we  
19 ought to take up before the jury?

20          Ms. Dhillon?

21          **MS. DHILLON:** Your Honor, I have just one. It's one  
22 of the jury instructions that changed on Friday -- or  
23 yesterday, actually. Page 43, Breach of Contract - Breach of  
24 the NAF Agreements.

25          **THE COURT:** Yes.

## PROCEEDINGS

1           **MS. DHILLON:** And I believe there's -- to me, it's an  
2 inconsistency and confusion. Your Honor had changed the  
3 instruction Paragraph 2 to say:

4           "I have determined that plaintiffs are possible  
5 third-party beneficiaries."

6           And then the conclusion directs the jury to award nominal  
7 damages. And I -- I'm struggling with the concept of not  
8 determining standing, which is an Article III jurisdictional  
9 requirement, and yet ordering a verdict. That seems incorrect  
10 to me, Your Honor.

11           **THE COURT:** So you think I should just take out the  
12 word "possible," do you?

13           **MS. DHILLON:** Well, it's wrong, respectfully. But  
14 I -- I guess it's incredibly confusing. And I would say if  
15 Your Honor intends to stick with "possible," then I think the  
16 directed verdict is inappropriate.

17           **THE COURT:** Fair enough. So my view on this is that  
18 the issue of fourth-party beneficiary is something that I can  
19 deal with post-trial, one way or the other. I think the other  
20 arguments that you made were not well-taken.

21           And so for that reason, maybe the smartest thing to do is  
22 to take out "possible." And then I'll address the fourth-party  
23 beneficiary argument later on.

24           Mr. Ramallo, what's your perspective on this instruction?

25           **MR. RAMALLO:** I agree with the Court's proposal.



## PROCEEDINGS

1           **THE COURT:** Okay. All right. So we'll take -- I'll  
2 strike "possible."

3           Anything else?

4           (No response)

5           **THE COURT:** All right. So if I am of strong voice,  
6 we will go through the instructions and the verdict form, take  
7 a break, and then we will start with the plaintiffs' closing.  
8 Thank you.

9           (Recess taken from 7:39 a.m. to 8:05 a.m.)

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

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

13          **THE COURT:** All right. Are we ready for the jury?

14          **MS. DHILLON:** Yes.

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

16          **THE COURT:** Let's get moving.

17          (The following proceedings were held in the presence  
18 of the Jury)

19          **THE COURT:** All right. Please be seated, everybody.  
20 Good morning, ladies and gentlemen. Welcome. As you  
21 know, one of your fellow jurors has succumbed to the flu. And  
22 she sounded just terrible this morning. So she will not be  
23 joining us for the rest of the trial.

24          So today what's going to happen is in a moment I'm going  
25 to give you the instructions. And I'll describe for you what

**JURY INSTRUCTIONS**

1 the verdict is -- what the issues are that you're going to be  
2 asked to decide.

3 The lawyers will then give you their perspective on what  
4 you've heard, and how you should fill out the verdict form. It  
5 will start with the plaintiffs giving their -- their closing.  
6 It will be followed by each of the defendants giving theirs.  
7 And then the plaintiffs have -- get the last word. That's the  
8 way that trials are set up. So they'll then come in for that.

9 Then I'll come back to you with final instructions on how  
10 you deliberate.

11 So my expectation is that today it's -- it's going to take  
12 a while to go through the instructions and the verdict form.  
13 Don't be daunted by them. I think the parties have worked very  
14 hard to make them as clear as possible, but there's a lot.

15 So I'll go through those. The plaintiffs will do their  
16 closing. And we'll get through some of the defendants today,  
17 but then tomorrow the remaining defendants will go, and then  
18 the plaintiffs' closing.

19 So with that, let's begin. And let's go to the first  
20 instruction, on Page 7.

21 You'll see there's a handy index for you, a table of  
22 contents, so that you can refer to them eventually.

**JURY INSTRUCTIONS**

23  
24 **BY THE COURT**

25 All right. Members of the jury, now that you have heard

**JURY INSTRUCTIONS**

1 all of the evidence, it is my duty to instruct you on the law  
2 that applies to this case.

3 A copy of these instructions will be sent to the jury room  
4 for you to consult during your deliberations.

5 It's your duty to find the facts from all the evidence in  
6 the case. To those facts you will apply the law as I give it  
7 to you. You must follow the law as I give it to you, whether  
8 you agree with it or not. And you must not be influenced by  
9 any personal likes or dislikes, opinions, prejudices or  
10 sympathy. This includes personal beliefs about abortion. Your  
11 verdict should be based on the law and facts, and not whether  
12 you agree with one side or the other on abortion. That means  
13 that you must decide the case solely on the evidence before  
14 you. You will recall that you took an oath to do so.

15 Please do not read into these instructions or anything  
16 that I may say or do or have said or done that I have an  
17 opinion regarding the evidence or what your verdict should be.

18 The claims and defenses in this case concern the  
19 strategies chosen and employed by the defendants, and I limited  
20 the evidence accordingly. I need to emphasize what this case  
21 is not about. It is not about the truth of whether plaintiffs  
22 profited from the sale of fetal tissue or otherwise violated  
23 the law in securing tissue for those programs. It is not about  
24 whether any plaintiff actually engaged in illegal conduct. It  
25 is not about whether abortion is good or bad. Those issues are

**JURY INSTRUCTIONS**

1 a matter of dispute between the parties in the world outside  
2 this courtroom. In this courtroom your job is to consider the  
3 evidence related to the claims and defenses in this case in  
4 accordance with the instructions that I give you.

5 When a party has the burden of proving any claim or  
6 affirmative defense by a preponderance of the evidence, it  
7 means you must be persuaded by the evidence that the claim or  
8 affirmative defense is more probably true than not true.

9 You should base your decision on all of the evidence,  
10 regardless of which party presented it.

11 When a party has the burden of proving any claim or  
12 defense by clear and convincing evidence, it means that the  
13 party must present evidence that leaves you with a firm belief  
14 or conviction that it is highly probable that the factual  
15 contentions of the claim or defense are true.

16 This is a higher standard of proof than proof by a  
17 preponderance of the evidence, but it does not require proof  
18 beyond a reasonable doubt.

19 You should decide the case as to each party separately.  
20 There are multiple plaintiffs in this trial. You should decide  
21 the case of each plaintiff separately as if it were a separate  
22 lawsuit. Each plaintiff is entitled to separate consideration  
23 of its own claims. There are multiple defendants in this  
24 trial. You should decide the case against each defendant  
25 separately as if it were a separate lawsuit. Each defendant is

## JURY INSTRUCTIONS

1 entitled to separate consideration of his or her own defenses.

2 Unless otherwise stated, the instructions apply to all  
3 parties.

4 The evidence you are to consider in deciding what the  
5 facts are consists of:

6 The sworn testimony of any witness;

7 The exhibits that are admitted into evidence;

8 Any facts to which the lawyers have agreed; and

9 Any facts that I may instruct you to accept as proved.

10 In reaching your verdict, you may consider only the  
11 testimony and exhibits received into evidence. Certain things  
12 are not evidence, and you may not consider them in deciding  
13 what the facts are. I will list them for you:

14 Arguments and statements by lawyers are not evidence. The  
15 lawyers are not witnesses. What they may say in their opening  
16 statements, closing arguments and at other times is intended to  
17 help you interpret the evidence, but it is not evidence. If  
18 the facts as you remember them differ from the way the lawyers  
19 have stated them, your memory of them controls.

20 Questions and objections by lawyers are not evidence.

21 Attorneys have a duty to their clients to object when they  
22 believe a question is improper under the rules of evidence.

23 You should not be influenced by the objection or by the Court's  
24 ruling on it.

25 Testimony that's excluded or stricken, or that you are

**JURY INSTRUCTIONS**

1 instructed to disregard, is not evidence and must not be  
2 considered. In addition, some evidence may be received only  
3 for a limited purpose; when I instruct you to consider certain  
4 evidence only for a limited purpose, you must do so and you may  
5 not consider that evidence for any other purpose.

6 And anything that you may see or hear when the Court was  
7 not in session is not evidence. You are to decide the case  
8 solely on the evidence received at trial.

9 Some evidence in this case has been admitted only for a  
10 limited purpose.

11 Where I instructed you that an item of evidence was  
12 admitted only for a limited purpose, you must consider it only  
13 for that limited purpose and not for any other purpose.

14 Evidence may be direct or circumstantial. Direct evidence  
15 is direct proof of a fact, such as testimony by a witness about  
16 what that witness personally saw or heard or did.

17 Circumstantial evidence is proof of one or more facts from  
18 which you could find another fact. You should consider both  
19 kinds of evidence. The law makes no distinction between the  
20 weight to be given to either direct or circumstantial evidence.  
21 It is for you to decide how much weight to give to any  
22 evidence.

23 There are rules of evidence that control what can be  
24 received into evidence. When a lawyer asks a question or  
25 offers an exhibit into evidence and a lawyer on the other side

## JURY INSTRUCTIONS

1 thinks that it's not permitted by a rules of evidence, that  
2 lawyer may object. If I overruled the objection, the question  
3 was answered or the exhibit received. If I sustained the  
4 objection, the question could not be answered, and the exhibit  
5 could not be received. Whenever I sustained an objection to a  
6 question, you must ignore the question and must not guess what  
7 the answer might have been.

8 Sometimes I ordered that evidence be stricken from the  
9 record and that you disregard or ignore that evidence. That  
10 means when you are deciding the case, you must not consider the  
11 stricken evidence for any purpose.

12 In deciding the facts in this case, you may have to decide  
13 which testimony to believe and which testimony not to believe.  
14 You may believe everything a witness says, or part of it, or  
15 none of it.

16 In considering the testimony of any witness, you may take  
17 into account:

18 The opportunity and ability of the witness to see or hear  
19 or know the things testified to;

20 The witness's memory;

21 The witness's manner while testifying;

22 The witness's interest in the outcome of the case, if any;

23 The witness's bias or prejudice, if any;

24 Whether other evidence contradicted the witness's  
25 testimony;

**JURY INSTRUCTIONS**

1           The reasonableness of the witness's testimony in light of  
2 all the evidence; and

3           Any other factors that bear on believability.

4           Sometimes a witness may say something that is not  
5 consistent with something else he or she said. Sometimes  
6 different witnesses will give different versions of what  
7 happened. People often forget things or make mistakes in what  
8 they remember. Also, two people may see the same event but  
9 remember it differently. You may consider these differences,  
10 but do not decide that testimony is untrue just because it  
11 differs from other testimony.

12           However, if you decide that a witness has deliberately  
13 testified untruthfully about something important, you may  
14 choose not to believe anything that witness said. On the other  
15 hand, if you think the witness testified untruthfully about  
16 some things but told the truth about others, you may accept the  
17 part you think is true and ignore the rest.

18           The weight of the evidence as to a fact does not  
19 necessarily depend on the number of witnesses who testify.  
20 What is important is how believable the witnesses were, and how  
21 much weight you think their testimony deserves.

22           During the trial you have heard witnesses and others  
23 express views about what the law is. Your duty is to follow my  
24 instructions on the law, not what others may have said it is,  
25 including statements in the 20/20 video.



## JURY INSTRUCTIONS

1           You have heard testimony from David Cohen, Gregory Regan,  
2 Michael New, Paul Zimmer, and Jonathan Perkins who testified to  
3 opinions and the reasons for their opinions. This opinion  
4 testimony is allowed, because of the education or experience of  
5 these witnesses.

6           Such opinion testimony should be judged like any other  
7 testimony. You may accept it or reject it, and give it as much  
8 weight as you think it deserves, considering the witness's  
9 education and experience, the reasons given for the opinion,  
10 and all the other evidence in the case.

11           Certain charts and summaries not admitted into evidence  
12 have been shown to you in order to help explain the contents of  
13 books, records, documents, or other evidence in the case.  
14 Charts and summaries are only as good as the underlying  
15 evidence that supports them. You should, therefore, give them  
16 only such weight as you think the underlying evidence deserves.

17           Certain charts and summaries have been admitted into  
18 evidence to illustrate information brought out in trial.  
19 Again, charts and summaries are only as good as the testimony  
20 or other admitted evidence that supports them. You should,  
21 therefore, give them only such weight as you think the  
22 underlying evidence deserves.

23           The parties have agreed to certain facts I read to you  
24 during the course of trial. You must therefore treat these  
25 facts as having been proved.

## JURY INSTRUCTIONS

1           A deposition is the sworn testimony of a witness taken  
2 before trial. The witness is placed under oath to tell the  
3 truth and the lawyers for each party may ask questions. The  
4 questions and answers are recorded.

5           The depositions of several witnesses and parties were  
6 taken in this action. You should consider their video  
7 deposition testimony, presented to you in court in lieu of live  
8 testimony, insofar as possible, in the same way as if the  
9 witness had been present to testify.

10           Where deposition testimony is read from the transcript  
11 instead of presented by video, do not place any significance on  
12 the behavior or tone of voice of any person reading the  
13 questions or answers.

14           Under the law, a corporation is considered to be a person.  
15 It can only act through its employees, agents, directors, or  
16 officers. Therefore, a corporation (including a limited  
17 liability corporation) is responsible for the acts of its  
18 employees, agents, directors and officers performed within the  
19 scope of authority.

20           All parties are equal before the law and a corporation is  
21 entitled to the same fair and conscientious consideration by  
22 you as any party.

23           An agent is a person who performs services for another  
24 person under an express or implied agreement and who is subject  
25 to the other's control or right to control the manner and means

## JURY INSTRUCTIONS

1 of performing the services. The other person is called a  
2 principal.

3 An agent is acting within the scope of authority if the  
4 agent is engaged in the performance of duties which were  
5 expressly or impliedly assigned to the agent by the principal.

6 Defendants Center for Medical Progress and BioMax are  
7 corporations. Corporations are responsible for the acts of  
8 their employees and agents within the scope of their employment  
9 or authorization.

10 Conduct is within the scope of employment or authorization  
11 if:

12 It is reasonably related to the kinds of tasks that the  
13 employee or agent was employed to perform; or

14 It is reasonably foreseeable in light of the employer's  
15 business or the agent's or employee's job responsibilities.

16 A business entity is liable for the acts of an individual  
17 who is its ostensible agent, even if the ostensible agent was  
18 not an employee of the entity and even if the entity did not  
19 give the individual actual authority to act on its behalf.

20 To establish an individual is an ostensible agent of an  
21 entity, a plaintiff must prove all of the following:

22 No. 1. That the entity intentionally or carelessly  
23 created the impression that the individual was the entity's  
24 employee or agent;

25 No. 2. That the plaintiff reasonably believed that the

## JURY INSTRUCTIONS

1 individual was the entity's employee or agent; and

2 No. 3. That the plaintiff was harmed because it  
3 reasonably relied on its belief.

4 If a corporation owns another company, it is called a  
5 "parent corporation." The company owned by the corporation is  
6 called a "subsidiary" of the parent corporation.

7 A subsidiary is the agent of its parent corporation if the  
8 parent goes beyond providing general policy and direction to  
9 its subsidiary and takes over the subsidiary's day-to-day  
10 operations in carrying out that policy.

11 The First Amendment is not a defense to the claims in this  
12 case for the jury to consider. Defendants' argument that they  
13 were citizen journalists was admissible as context for the  
14 defendants' case, not as a legal defense.

15 The Fifth Amendment of the United States Constitution  
16 affords every person the right to decline to answer questions  
17 if he or she believes that the answers may tend to incriminate  
18 them. However, in civil cases, you are permitted, but not  
19 required, to draw the inferences that the witness held  
20 information would have been unfavorable to the defendant.

21 In this case, defendant Troy Newman exercised his right  
22 under the Fifth Amendment not to incriminate himself and did  
23 not answer any substantive questions asked by plaintiffs during  
24 his deposition. Accordingly, he did not testify in this trial.  
25 For claims based on California law, you may not consider that,

## JURY INSTRUCTIONS

1 or speculate about why Newman invoked the Fifth Amendment and  
2 refused to answer. For claims based on Federal law, and the  
3 laws of Florida, Maryland, and the District of Columbia, you  
4 may make an adverse inference from the fact that Newman invoked  
5 the Fifth Amendment and refused to answer questions.

6 Any inference you may draw should be based upon all of the  
7 facts and circumstances in this case as you find them.

8 If a witness who asserts the Fifth Amendment is associated  
9 closely enough with a defendant, you may, but are not required  
10 to, draw an adverse inference against the defendant. Whether a  
11 witness is sufficiently closely associated depends on the  
12 entire circumstances of his or her relationship with the  
13 defendant. For example, a witness who is a past or present  
14 employee, officer or agent of a party may be, but is not  
15 necessarily, associated with that party to justify an adverse  
16 inference. Likewise, a co-conspirator may be sufficiently  
17 associated with a party to permit the drawing of an inference  
18 adverse to the party if the co-conspirator refuses to testify.

19 In this case, non-parties Brianna Baxter and Annamarie  
20 Bettisworth Davin exercised their rights under the Fifth  
21 Amendment not to incriminate themselves in response to  
22 deposition questions and will not testify in this trial.

23 If you determine these non-parties are associated closely  
24 enough with a defendant, you may, but are not required to, draw  
25 an adverse inference against the defendant. For claims based

## JURY INSTRUCTIONS

1 on California law, you may not consider that, or speculate  
2 about why, Baxter or Davin invoked the Fifth Amendment and  
3 refused to answer. For claims based on Federal law, and the  
4 laws of Florida, Maryland, and the District of Columbia, you  
5 may make an adverse inference from the fact that Baxter or  
6 Davin invoked the Fifth Amendment and refused to answer  
7 questions.

8 During trial, you have heard that defendants consulted  
9 lawyers when carrying out their activities against plaintiffs.  
10 Consulting with lawyers is not a defense to any of plaintiffs'  
11 claims. You may not speculate as to whether defendants  
12 accurately described their plans to their lawyers, whether  
13 their lawyers told defendants their conduct was lawful or not,  
14 and whether defendants' lawyers provided correct advice. You  
15 should base your verdict solely on the law I have given you and  
16 the evidence presented in this case, not on whether defendants  
17 consulted with lawyers.

18 Throughout these instructions, you will be asked to  
19 determine whether conduct is a "substantial factor" in causing  
20 harm.

21 A substantial factor in causing harm is a factor that a  
22 reasonable person would consider to have contributed to the  
23 harm. It must be more than a remote or trivial factor. It  
24 does not have to be the only cause of the harm.

25 So now we move into the claims. The trespass claims.

## JURY INSTRUCTIONS

1 Plaintiff PPFA contends that defendants Daleiden, Lopez,  
2 BioMax, and CMP trespassed at the 2014 Forum in Miami, Florida;  
3 at the 2015 MeDC meeting in Orlando, Florida; and the 2015  
4 National Conference in Washington, D.C.

5 I have already determined that these defendants trespassed  
6 at each of these locations. Because I determined that these  
7 defendants trespassed, the law assumes that PPFA has been  
8 harmed and PPFA is entitled to an award of nominal damages such  
9 as one dollar for each trespass.

10 PPFA is also entitled to actual damages for the trespasses  
11 if PPFA proves the following:

- 12 1. That PPFA was actually harmed; and
- 13 2. That a defendant's entry was a substantial factor in  
14 causing PPFA's harm.

15 Plaintiff PPRM claims that Daleiden, Merritt, BioMax, and  
16 CMP trespassed at the PPRM Stapleton Health Center in Colorado.  
17 I have already determined that these defendants trespassed at  
18 this location. Because I determined that these defendants  
19 trespassed, the law assumes that PPRM has been harmed. PPRM  
20 does not seek damages from that trespass, but PPFA contends  
21 that it may recover damages for amounts PPFA spent as a result  
22 of the trespass at PPRM.

23 PPFA may be entitled to actual damages for the trespasses  
24 at PPRM, if PPFA proves the following:

- 25 No. 1. That PPRM was actually harmed; and

## JURY INSTRUCTIONS

1           No. 2. That a defendant's entry was a substantial factor  
2 in causing PPFA to incur costs for the trespass at PPRM.

3           A party who voluntarily reimburses the expenses of another  
4 may not be awarded those amounts as damages unless the party  
5 had an obligation to pay those expenses.

6           And ladies and gentlemen, as I go through this with the  
7 different acronyms that are used, I'll just remind you that in  
8 the Preliminary Instruction No. 2, there is a list of all of  
9 the parties and their acronyms, so if you get confused you can  
10 go back to that.

11           Moving on. Plaintiff PPGC/PPCFC claims that Daleiden,  
12 Merritt, BioMax, and CMP trespassed at the PPGC/PPCFC  
13 Prevention Park Health Center in Texas. I have already  
14 determined that these defendants trespassed at this location.  
15 Because I determined that these defendants trespassed, the law  
16 assumes that PPGC/PPCFC has been harmed and that PPGC/PPCFC is  
17 entitled to an award of nominal damages such as one dollar for  
18 each trespass.

19           PPGC/PPCFC is also entitled to actual damages for trespass  
20 if it proves the following:

- 21           1. That PPGC/PPCFC was actually harmed; and
- 22           2. That a defendant's entry was a substantial factor in  
23 causing PPGC/PPCFC harm.

24           Breach of contract claims. I will now instruct you on the  
25 law you must apply to plaintiffs' breach of contract claims.



## JURY INSTRUCTIONS

1 Plaintiffs have brought three different sets of breach of  
2 contract claims.

3 The first set concerns claims for breach of the PPFA  
4 Exhibitor Terms and Conditions. I have already found that  
5 defendants Daleiden, BioMax and CMP breached certain provisions  
6 in these agreements. Plaintiffs allege defendants Daleiden,  
7 BioMax and CMP breached additional provisions that I have not  
8 ruled on. Defendants deny that they breached these additional  
9 provisions.

10 The second set of claims concerns claims for breach of the  
11 NAF Agreements. I have already found that defendants Daleiden,  
12 BioMax, CMP, Merritt and Lopez breached various NAF Agreements.

13 The third set concern the claim for breach of the PPGC  
14 NDA. Defendants deny breaching the PPGC NDA.

15 In deciding what the words of a contract meant to the  
16 parties, you should consider the whole contract, not just  
17 isolated parts. You should use each part to help you interpret  
18 the others, so that all the parts make sense when taken  
19 together.

20 You should assume that the parties intended the words in  
21 their contract to have their usual and ordinary meaning unless  
22 you decide that the parties intended the words to have a  
23 special meaning.

24 I will now discuss the first set of breach of contract  
25 claims involving the breach of the PPFA Exhibitor Terms and

## JURY INSTRUCTIONS

1 Conditions. These contracts relate to the following meetings:  
2 the 2014 North American Forum on Family Planning (the "2014  
3 Forum Agreement"), the 2015 MeDC Conference (the "MeDC  
4 Agreement") and the 2015 PPFA National Conference (the "2015  
5 National Conference Agreement"). These contracts were entered  
6 into by PPFA, Daleiden, and BioMax, and CMP.

7 I will now explain to you the provisions of these  
8 agreements that I have already determined have been breached by  
9 Daleiden, BioMax, and CMP.

10 Educational Nature Promises.

11 The 2014 Forum Agreement and the MeDC Agreement both  
12 contain provisions in which Daleiden, BioMax, and CMP promised  
13 that their conference exhibits would be "educational and  
14 informative, emphasizing information about products and  
15 services useful to the registrants' practices and beneficial to  
16 the interests of their clients and patients." Both of these  
17 agreements also require that exhibits be "of an educational  
18 nature."

19 Show Products Promises.

20 The 2015 National Conference Agreement contains a  
21 provision in which Daleiden, BioMax, and CMP promised to "show  
22 only products manufactured or represented by their company in  
23 the regular course of business."

24 Because I determined that these defendants breached these  
25 provisions, the law assumes that PPFA has been harmed and PPFA

## JURY INSTRUCTIONS

1 is entitled to an award of nominal damages such as one dollar  
2 for each breach.

3 PPFA is also entitled to actual damages for these breaches  
4 from these defendants if PPFA proves the following:

- 5 1. That PPFA was harmed by the breach, and
- 6 2. That these defendants' breach of contract was a  
7 substantial factor in causing it harm.

8 The 2014 Forum Agreement, the 2015 MeDC Agreement, and the  
9 2015 National Conference Agreement each contain the following  
10 provision: The signatories promised that they would "comply  
11 with all applicable federal, state, and local laws and  
12 regulations in performance of its respective obligations  
13 pursuant to this agreement, including, without limitation, laws  
14 related to fraud, abuse, privacy, discrimination, disabilities,  
15 samples, confidentiality, false claims and prohibition of  
16 kickbacks."

17 Plaintiffs contend that defendants Daleiden, BioMax, and  
18 CMP breached these provisions in each of the contracts.  
19 Daleiden, BioMax, and CMP deny that they breached the  
20 agreements in this manner.

21 In order to recover damages for breach of this provision  
22 in the PPFA Exhibitor Terms and Conditions from these  
23 defendants concerning compliance with laws concerning fraud and  
24 privacy, PPFA must prove all of the following:

- 25 1. That these defendants violated an applicable law

## JURY INSTRUCTIONS

1 concerning fraud or privacy in performing their perspective  
2 (sic) obligations under the contracts;

3 2. That PPFA was harmed by the violation, and

4 3. That defendants' violation was a substantial factor in  
5 causing PPFA harm.

6 If you decide that these defendants breached this  
7 provision in the contracts but also that PPFA was not harmed by  
8 the breach, PPFA is still entitled to an award of nominal  
9 damages, such as one dollar.

10 I will now discuss the second set of breach of contract  
11 claims, involving the breach of the NAF Agreements. The  
12 plaintiffs bringing these claims are PPFA and PPNorCal. These  
13 claims are asserted against defendants Daleiden, Lopez,  
14 Merritt, BioMax, and CMP.

15 I have determined that plaintiffs are third-party  
16 beneficiaries of the 2014 NAF Agreement and Confidentiality  
17 Agreement and the 2015 NAF Agreement and Confidentiality  
18 Agreement. I will refer to these agreements as the "NAF  
19 Agreements."

20 I have found that defendants breached the NAF Agreements  
21 by misrepresenting their identities, recording private  
22 conversations, and disclosing confidential information.  
23 Plaintiffs also claim that defendants' breach of these  
24 agreements caused harm for which defendants should pay.

25 To recover damages for breach of the NAF Agreements from a

## JURY INSTRUCTIONS

1 defendant, a plaintiff must prove all of the following:

2 1. That a plaintiff was harmed by defendants' breach of  
3 contract; and

4 2. That the defendant's breach of contract was a  
5 substantial factor in causing plaintiff's harm.

6 If you decide that the plaintiffs were not harmed by any  
7 breach of the NAF Agreements, plaintiffs are still entitled to  
8 an award of nominal damages, such as one dollar.

9 I will now discuss the third set of breach of contract  
10 claims involving the alleged breach of the PPGC nondisclosure  
11 agreement. I will refer to this agreement as the "PPGC NDA."  
12 The plaintiff bringing this claim is PPGC. This claim is  
13 brought against defendants Daleiden, BioMax, and CMP.

14 Plaintiff PPGC claims that these defendants breached the  
15 confidentiality provisions of the PPGC NDA. The NDA contains  
16 the following language regarding confidentiality:

17 "Subject to the limitations set forth in Paragraph 2,  
18 all information disclosed by the Disclosing Party to  
19 the Recipient shall be deemed to be 'Confidential  
20 Information.' In particular, 'Confidential  
21 Information' shall be deemed to include all written  
22 information of the Disclosing Party, and all oral  
23 information of the Disclosing Party, which in either  
24 case is identified at the time of disclosure as being  
25 of a confidential or proprietary nature or is

## JURY INSTRUCTIONS

1           reasonably understood by the Recipient to be  
2           confidential under the circumstances of the  
3           disclosure..."

4           The Court has already determined that the general language  
5           "all information disclosed" is modified by the next sentences,  
6           such that the NDA does not cover "all information disclosed,"  
7           but only covers the information identified in (i) and (ii).  
8           The confidentiality must be determined by objectively looking  
9           at the totality of the circumstances such as the context and  
10          location of the discussion.

11          PPGC claims that defendants' breach of this contract  
12          caused harm to PPGC. Defendants deny they breached the PPGC  
13          NDA or that any breach caused harm to PPGC.

14          To recover damages for breach of the PPGC NDA from a  
15          defendant, PPGC must prove all of the following:

- 16          1. That PPGC and the defendant entered into a contract;
- 17          2. That PPGC did all, or substantially all, of the  
18          significant things that the contract required it to do; and
- 19          3. That a defendant (a) failed to do something that the  
20          contract required defendant to do or (b) did something that the  
21          contract prohibited defendant from doing;
- 22          4. That PPGC was harmed; and
- 23          5. That a defendant's breach of contract was a  
24          substantial factor in causing PPGC harm.

25          If you decide that the defendants breached this contract

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1 but also that PPGC was not harmed by the breach, PPGC is still  
2 entitled to an award of nominal damages, such as one dollar.

3 Now the fraud claims.

4 Plaintiffs PPFA, PPGC, PPCFC and PPPSGV contend they were  
5 defrauded by defendants Daleiden, Merritt, Lopez, BioMax, and  
6 CMP. In addition, plaintiffs contend that defendants Rhomberg  
7 and Newman conspired with the other defendants to commit fraud.  
8 Defendants deny that they defrauded plaintiffs.

9 A plaintiff may establish fraud in two different ways  
10 relevant to this case: (1) Intentional Misrepresentation and  
11 (2) False Promise. A plaintiff need only establish one of  
12 these forms of fraud in order to prevail on a claim for fraud.  
13 I will now instruct you on the elements of each form of fraud.

14 To establish a claim for intentional misrepresentation  
15 against a defendant, a plaintiff must prove all of the  
16 following:

- 17 1. That the defendant represented to plaintiff that a  
18 fact was true;
- 19 2. That the defendant's representation was false;
- 20 3. That the defendant knew that the representation was  
21 false when he made it, or that he made the representation  
22 recklessly and without regard for its truth;
- 23 4. That the defendant intended that the plaintiff rely on  
24 the representation;
- 25 5. That the plaintiff reasonably relied on defendant's

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1 representation;

2 6. That the plaintiff was harmed; and

3 7. That the plaintiff's reliance on defendant's  
4 representation was a substantial factor in causing its harm.

5 As to the allegedly fraudulent statements made in  
6 Washington, D.C., plaintiffs must prove each of these elements  
7 by clear and convincing evidence. As to allegedly fraudulent  
8 statements made in any location besides Washington, D.C.,  
9 plaintiffs must prove each of the elements by a preponderance  
10 of the evidence.

11 Plaintiffs contend the defendants made three general  
12 categories of false statements of fact: Defendants' use of  
13 fake names; defendants' provision of fake identifications; and  
14 statements suggesting BioMax was a legitimate tissue  
15 procurement organization. Statements suggesting that BioMax  
16 was a legitimate tissue procurement organization include:  
17 Defendants and other CMP personnel portraying themselves as  
18 having relevant job titles, such as "procurement technician,"  
19 "CEO," and "Procurement Manager and Vice President of  
20 Operations"; representations that defendants had education or  
21 relevant experience in the tissue procurement industry; oral  
22 representations that BioMax actually engaged in tissue  
23 procurement; and distributing brochures and business cards that  
24 stated or suggested that BioMax engaged in tissue procurement.

25 Plaintiffs contend the following defendants presented fake



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1 identifications to plaintiffs' registration staff at  
2 conferences or desk staff at offices to gain entry into the  
3 following locations:

4 The Forum (October 11 through 13, 2014): Daleiden.

5 MeDC (February 26 through 28, 2015): Daleiden.

6 PPFA National Conference (March 18 through 20, 2015):  
7 Daleiden.

8 PPGC (April 9, 2015): Daleiden and Merritt.

9 Plaintiffs contend that defendants used fake names and  
10 misrepresented the nature of BioMax at the following locations  
11 to the following individuals:

12 Association of Reproductive Healthcare Professionals  
13 (ARHP) conference (Colorado: September 19 through 21, 2013):  
14 Merritt and BioMax in person to NAF representatives (Sandy  
15 Fulkerson and Jennifer Hart).

16 Pre-NAF 2014 (November 2013 through April 2014):  
17 Daleiden and BioMax's communications regarding  
18 registration.

19 BioMax's 2014 NAF registration.

20 NAF 2014 (California: April 5 through 8, 2014):

21 Daleiden, Merritt, and BioMax's misrepresentations to NAF  
22 regarding registration, check-in, and NAF Confidentiality  
23 Agreement.

24 Daleiden, Merritt, and BioMax in person to Dr. Deborah  
25 Nucatola of PPFA.

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1 Nucatola lunch (California: July 25, 2014):

2 Daleiden, Merritt, and BioMax in person to Dr. Deborah  
3 Nucatola of PPFA.

4 Defendants also made similar representations in emails to  
5 set up the lunch.

6 Pre-Forum (August to September 2014)

7 Daleiden and BioMax's communications regarding  
8 registration, including to Vikky Graziani.

9 BioMax's 2014 Forum registration and Exhibitor Agreement.

10 The Forum (Florida: October 11 through 13, 2014):

11 Daleiden, Lopez and BioMax's misrepresentations to PPFA  
12 regarding registration and check-in.

13 Daleiden, Lopez, and BioMax in person to Dr. Deborah  
14 Nucatola of PPFA, Dr. Mary Gatter of PPPSGV, Dr. Savita Ginde  
15 of PPRM, and Karen Shea of PPFA.

16 Gatter lunch (California: February 6, 2015):

17 Daleiden, Merritt and BioMax in person to Dr. Mary Gatter  
18 and Laura Felczer of PPPSGV.

19 Defendants also made similar representations in emails to  
20 set up the lunch.

21 Pre-MeDC (February 2015):

22 Daleiden and BioMax's communications regarding  
23 registration, including to Vikky Graziani.

24 BioMax's 2015 MeDC registration and exhibitor agreement.

25 MeDC (Florida: February 26 through 28, 2015):

## JURY INSTRUCTIONS

1 Daleiden, Lopez and BioMax's misrepresentations to PPFA  
2 regarding registration and check-in.

3 Daleiden, Lopez, and BioMax in person to Vikky Graziani of  
4 PPFA, Kate Carlucci of PPFA, June Gupta of PPFA, Dr. Jennefer  
5 Russo of PPOSBC, Bonnie Smith of PPGC, Dr. Mary Gatter of  
6 PPPSGV, Dr. Deborah Nucatola of PPFA.

7 Pre-PPFA National Conference (February 2015):

8 Daleiden, Lopez and BioMax's communications regarding  
9 registration.

10 BioMax's 2015 PPFA National Conference registration and  
11 Exhibitor Agreement.

12 PPFA National Conference (Washington, D.C., : March 18  
13 through 20, 2015):

14 Daleiden Lopez and BioMax's misrepresentations to PPFA  
15 regarding registration and check-in.

16 Daleiden, Lopez and BioMax in person to Jen Castle of  
17 PPFA, Kristin Flood of PPFA, Deborah VanDerhei of PPFA, Janet  
18 Fils-Amie of PPFA, Anne-Marie Grewer of PPFA, Dr. Carolyn  
19 Westhoff of PPFA, Tran Nguyen of PPCFC, Jackie Krugler of  
20 PPGC/PPCFC.

21 Pre-PPRM Site Visit (October 2014 through April 2015):

22 Daleiden and BioMax's communications with Dr. Savita Ginde  
23 and J.R. Johnston regarding BioMax.

24 PPRM (Colorado: April 7, 2015):

25 Daleiden, Merritt and BioMax in person to Dr. Savita

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1 Ginde, J.R. Johnstone, and other PPRM staff.

2 Pre-PPGC Site Visit (March through April 2015):

3 Daleiden and BioMax's communications with Melissa Farrell  
4 and Tram Nguyen concerning BioMax.

5 BioMax's PPGC NDA.

6 PPGC Site Visit (Texas: April 9, 2015):

7 Daleiden, Merritt and BioMax's communications to  
8 registration desk staff.

9 Daleiden, Merritt and BioMax in person to Melissa Farrell,  
10 Tran Nguyen, and other PPGC/PPCFC lab staff.

11 Pre-NAF 2015 (March through April 2015):

12 Daleiden and BioMax's communications regarding  
13 registration.

14 BioMax's 2015 NAF registration.

15 NAF 2015 (Maryland: April 18 through 21, 2015):

16 Daleiden, Merritt, Lopez, and BioMax's misrepresentations  
17 to NAF regarding registration, check-in, and NAF  
18 Confidentiality Agreement.

19 Daleiden, Merritt and Lopez in person to Deborah VanDerhei  
20 of PPFA, Jen Castle of PPFA, Dr. Deborah Nucatola of PPFA, Tram  
21 Nguyen of PPCFC, Jackie Krugler of PPGC/PPCFC, Dr. Ann  
22 Schutt-Aine of PPCFC.

23 Defendants deny that they made any fraudulent  
24 misrepresentations.

25 To establish a claim for false promise against a

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1 defendant, a plaintiff must prove all of the following:

2 That plaintiff -- that defendant made a promise to  
3 plaintiff;

4 That defendant did not intend to perform this promise when  
5 he made it;

6 That defendant intended that plaintiff rely on this  
7 promise;

8 That plaintiff reasonably relied on defendant's promise;

9 That defendant did not perform the promised act;

10 That plaintiff was harmed; and

11 That plaintiff's reliance on defendant's promise was a  
12 substantial factor in causing its harm.

13 As to allegedly false promises made in Washington, D.C.,  
14 plaintiffs must prove each of these elements by clear and  
15 convincing evidence. As to allegedly false promises made in  
16 any location besides Washington, D.C., plaintiffs must prove  
17 each of the elements by the preponderance of the evidence.

18 Plaintiffs allege that defendants did not intend to  
19 perform the following promises:

20 1. Defendants Daleiden, BioMax, and CMP promised in the  
21 2014 Forum Agreement that:

22 BioMax's conference exhibits would be "educational and  
23 informative, emphasizing information about products and  
24 services useful to the registrants' practice and beneficial to  
25 the interests of their clients and patients."

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1 BioMax's exhibits would be "of an educational nature."

2 They would "comply with all applicable federal, state, and  
3 local laws and regulations in performance of its respective  
4 obligations pursuant to this agreement, including, without  
5 limitation, laws related to fraud, abuse, privacy,  
6 discrimination, disabilities, samples, confidentiality, false  
7 claims and prohibition of kickbacks."

8 No. 2. Defendants Daleiden, BioMax, and CMP promised in  
9 the 2015 MeDC Agreement that:

10 BioMax's conference exhibits would be "educational and  
11 informative, emphasizing information about products and  
12 services useful to the registrants' practice and beneficial to  
13 the interests of their clients and patients."

14 BioMax's exhibits would be "of an educational nature."

15 They would "comply with all applicable federal, state and  
16 local laws and relying assumptions in performance of its  
17 respective obligations pursuant to this Agreement, including,  
18 without limitation, laws related to fraud, abuse, privacy,  
19 discrimination, disabilities, samples, confidentiality, false  
20 claims and prohibition of kickbacks."

21 No. 3. Defendants Daleiden, BioMax, and CMP promised in  
22 the 2015 National Conference Agreement that:

23 BioMax would "show only products manufactured or  
24 represented by their company in the regular course of  
25 business."

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1           They would "comply with all applicable federal, state and  
2 local laws and regulations in performance of its respective  
3 obligations pursuant to this Agreement including, without  
4 limitation, laws related to fraud, abuse, privacy,  
5 discrimination, disabilities, samples, confidentiality, false  
6 claims and prohibition of kickbacks."

7           Defendants Daleiden, BioMax and CMP promised in the PPGC  
8 NDA:

9           "Recipient shall maintain the Disclosing Party's  
10 Confidential Information strictly confidential, shall not use  
11 the Confidential Information for any purpose other than to  
12 evaluate, negotiate and consummate the Transaction and shall  
13 not disclose any third party or use any Confidential  
14 Information for any other purpose following the date of  
15 disclosure of such Confidential Information."

16           Defendants deny that they made any false promises.

17           A plaintiff relied on defendant's misrepresentation or  
18 false promise if:

19           The misrepresentation or false promise substantially  
20 influenced the plaintiff to act; and

21           The plaintiff would probably not have acted in the same  
22 way without the misrepresentation or false promise.

23           It is not necessary for a misrepresentation or false  
24 promise to be the only reason for the plaintiff's conduct.

25           In determining whether the plaintiff's reliance on the

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1 representation or promise was reasonable, the plaintiff must  
2 first prove that the matter was material. A matter is material  
3 if a reasonable person would find it important in determining  
4 his or her choice of action.

5 If you decide that the matter is material, you must then  
6 decide whether it was reasonable for the plaintiff to rely on  
7 the representation or promise. In making this decision, take  
8 into consideration the plaintiff's intelligence, knowledge,  
9 education and experience.

10 However, it is not reasonable for anyone to rely on a  
11 representation or promise that is preposterous. It is also not  
12 reasonable for anyone to rely on a representation or promise if  
13 facts that are within its observation show that it is obviously  
14 false.

15 When a defendant makes a false statement or promise, the  
16 plaintiff does not have any duty to investigate whether the  
17 defendant was telling the truth to the plaintiff.

18 In determining whether a plaintiff's reliance on a  
19 defendant's false representation was reasonable, you should not  
20 consider whether a hypothetical reasonable person would have  
21 conducted more investigation of the defendant than the  
22 plaintiff did. A plaintiff's reliance on a defendant's false  
23 representation is reasonable, unless the defendants'  
24 misrepresentation would be so obviously false or preposterous  
25 to someone with the same information and intelligence as the



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1 plaintiff that the plaintiff would have needed to purposefully  
2 close his eyes to avoid discovering the truth.

3 Defendants are responsible for a representation that was  
4 not made directly to plaintiffs if they made the representation  
5 to another person, intending or reasonably expecting that it  
6 would be repeated to plaintiffs. This instruction does not  
7 apply to alleged fraudulent conduct occurring in Florida.

8 RICO claims.

9 Plaintiffs PPFA, PPGC, PPCFC, PPOSBC, and PPPSGV claim  
10 that all defendants are liable to them under the RICO statute.

11 I will now instruct you on the limits of plaintiffs' RICO  
12 claim. As relevant here, there are two different ways to  
13 violate RICO: (1) conducting the affairs of an enterprise  
14 through a pattern of racketeering or (2) conspiring to do so.  
15 Plaintiffs allege both theories.

16 RICO refers to the Racketeer Influenced and Corrupt  
17 Organization Act. This does not mean, however, that RICO is  
18 limited to organized crime. When Congress enacted RICO, it  
19 wanted to reach persons who use legitimate and illegitimate  
20 enterprises to commit racketeering.

21 The word "racketeering" has certain implication in our  
22 society. Use of that term in this statute and in this  
23 courtroom should not be regarded as having anything to do with  
24 your determination of whether plaintiffs have established the  
25 elements of the claim. The term is only a term used by

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1 Congress to describe the statute.

2 The RICO claim asserted by plaintiffs in this case is a  
3 civil claim subject to the civil burden of proof of  
4 preponderance of the evidence.

5 Plaintiffs first allege that each of the defendants  
6 conducted or participated in the conduct of the affairs of an  
7 enterprise through a pattern of racketeering activity.

8 Plaintiffs must prove each of the following elements by a  
9 preponderance of the evidence:

10 First, there was an ongoing enterprise with some sort of  
11 formal or informal framework for carrying out its objectives  
12 consisting of a group of persons associated together for a  
13 common purpose of engaging in a course of conduct;

14 Second, the defendant was employed by or associated with  
15 the enterprise;

16 Third, the defendant conducted or participated, directly  
17 or indirectly, in the conduct of the affairs of the enterprise  
18 through a pattern of racketeering activity. To conduct or  
19 participate means that the defendant had to be involved in the  
20 operation or management of the enterprise; and

21 Fourth, the defendants' conduct or participation in the  
22 enterprise was the cause of plaintiffs' damages.

23 An enterprise need not be a formal entity such as a  
24 corporation and need not have a name, regular meetings, or  
25 established rules.

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1           An "enterprise" is a group of people who have associated  
2 together for a common purpose of engaging in a course of  
3 conduct over a period of time. This group of people, in  
4 addition to having a common purpose, must have an ongoing  
5 organization, either formal or informal. The personnel in the  
6 enterprise, however, may change and need not be associated with  
7 the enterprise for the entire period of its existence. The  
8 group does not have to be a legally recognized entity, such as  
9 partnership or corporation. The group may be organized for a  
10 legitimate and lawful purpose, or it may be organized for an  
11 unlawful purpose. The name of the organization itself is not  
12 an element of the claim and does not have to be proved.

13           Plaintiffs must prove that the enterprise had at least the  
14 three following structural features: (1) a purpose, (2)  
15 relationships among those associated with the enterprise, and  
16 (3) longevity sufficient to permit these associates to pursue  
17 the enterprise's purpose.

18           It is not necessary that the enterprise have any  
19 particular or formal structure, but it must have sufficient  
20 organization that its members functioned and operated in a  
21 coordinated manner in order to carry out the alleged common  
22 purpose or purposes of the enterprise. Such a group need not  
23 have a hierarchical structure or a "chain of command";  
24 decisions may be made on an ad hoc basis and by any number of  
25 methods. Members of the group need not have fixed roles;

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1 different members may perform different roles at different  
2 times. The group need not have a name, regular meetings, dues,  
3 established rules and regulations, disciplinary procedures, or  
4 induction or initiation ceremonies. While the group must or  
5 would function as a continuing unit and remain in existence  
6 long enough to pursue a course of conduct, you may nonetheless  
7 find that the enterprise element is satisfied by finding a  
8 group whose associates engage in spurts of activity punctuated  
9 by periods of inactivity.

10 With regard to the element that the defendant must have  
11 associated with or been employed by the enterprise:

12 It is required that at some time during the relevant time  
13 period, the defendant was employed by, or associated with, the  
14 enterprise. It is not required, however, that the defendant  
15 have been employed by, or associated with, the enterprise for  
16 the entire time that the enterprise existed.

17 A person cannot be associated with or employed by an  
18 enterprise if he or she does not know of the enterprise's  
19 existence or the nature of its activities. Thus, in order to  
20 prove this elements, element, plaintiffs must prove that the  
21 defendant was connected to the enterprise in some meaningful  
22 way and that the defendant knew of the existence of the  
23 enterprise and of the general nature of its activities.

24 With regard to the corporate defendants, CMP and BioMax:  
25 A corporation is considered to know of all material facts for

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1 which its employees acquire knowledge of or receives notice of  
2 while acting within the scope of the employee's employment.

3 With regard to the element that the defendant conducted or  
4 participated in the conduct of the enterprise through that  
5 pattern of racketeering activity:

6 To conduct or participate in the conduct of the enterprise  
7 means that the defendant must have played some part in the  
8 operation or management of the enterprise. Plaintiffs are not  
9 required to prove that the defendant was a member of upper  
10 management. An enterprise is operated not only by those in  
11 upper management, but also those lower down in the enterprise  
12 who act under the direction of upper management. The defendant  
13 need not have participated in, or been aware of, all of the  
14 enterprise's activities; it is sufficient if he or she was  
15 involved in the operation or management of some of the  
16 enterprise's activities.

17 A pattern of racketeering activity requires:

18 First, at least two separate acts of racketeering were  
19 committed, though two separate racketeering acts are not  
20 necessarily enough to establish a pattern of racketeering;

21 Second, the acts of racketeering had a relationship to  
22 each other which posed a threat of continued criminal activity;  
23 and

24 Third, the acts of racketeering embraced the same or  
25 similar purposes, results, participants, victims, or methods of

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1 commission, or were otherwise interrelated by distinguishing  
2 characteristics.

3 Sporadic, widely separated, or isolated criminal acts do  
4 not form a pattern of racketeering activity.

5 The RICO statute defines a racketeering act to be any of a  
6 long list of specified crimes.

7 The pattern of racketeering plaintiffs allege in this case  
8 consists of violations of the federal false identification  
9 statute.

10 As I mentioned in the previous instruction, a pattern of  
11 racketeering requires at least two acts of racketeering. The  
12 two contemplated racketeering acts may be of the same type, for  
13 example, two acts of producing a false identification; or, the  
14 two acts may be of different predicates, for example, one act  
15 of producing a false identification and one act of transfers a  
16 false identification. Regardless of whether it is two  
17 racketeering acts of the same type or two racketeering acts of  
18 two different types, in order to satisfy this element, you must  
19 unanimously conclude that, for at least two specific acts of  
20 racketeering, the defendant in question either committed those  
21 particular predicate acts or conspired for someone to commit  
22 those particular predicate acts.

23 I will now instruct you on the definition of each of these  
24 racketeering activities that the defendants are alleged to have  
25 committed.

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1 Plaintiffs allege that the defendants committed the  
2 predicate act of invoicing 28 U.S.C. Section 1028(a)(1). To  
3 prove a violation of that statute, plaintiffs must prove all of  
4 the following:

5 First, the defendant knowingly produced, or caused to be  
6 produced, a false identification document;

7 Second, the defendant produced the false identification  
8 document without lawful authority; and

9 Third, the false identification document was or appeared  
10 to be issued by or under authority of a State of the United  
11 States.

12 "Produce" includes to alter, authenticate, or assemble.

13 The phrase "false identification document" means a  
14 document of a type intended or commonly accepted for the  
15 purpose of identification of individuals that:

16 Is not issued by or under the authority of a governmental  
17 entity or was issued under the authority of a governmental  
18 entity but was subsequently altered for purposes of deceit; and

19 Appears to be issued by or under the authority of a State.

20 In addition, plaintiffs allege that defendants committed  
21 the predicate act of violating 28 U.S.C. Section 1028(a)(2).  
22 To prove a violation of that statute, plaintiffs must prove all  
23 of the following:

24 First, the defendant knowingly transferred a false  
25 identification document;

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1           Second, the defendant knew that the false identification  
2 document was produced without lawful authority; and

3           Third, the false identification document was or appeared  
4 to be issued by or under authority of a State of the United  
5 States.

6           The phrase "false identification document" means a  
7 document of a type intended or commonly accepted for the  
8 purposes of identification of individuals that:

9           Is not issued by or under the authority of a governmental  
10 entity or was issued under the authority of a governmental  
11 entity but was subsequently altered for purposes of deceit;

12           And appears to be issued by or under the authority of a  
13 State.

14           I said that plaintiffs alleged two bases for its RICO  
15 claim. Plaintiffs' second basis alleges a conspiracy to  
16 violate RICO. Plaintiffs allege that each of the defendants  
17 knowingly and intentionally conspired with at least one other  
18 person to conduct or to participate in the conduct of the  
19 affairs of the enterprise in violation of RICO.

20           A conspiracy for purposes of RICO is a kind of criminal  
21 partnership - an agreement of two or more persons to commit one  
22 more crimes. The crime of conspiracy is the agreement to do  
23 something unlawful; it does not matter whether the crime agreed  
24 upon was committed.

25           For a conspiracy to have existed, it is not necessary that



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1 the conspirators made a formal agreement or that they agreed on  
2 every detail of the conspiracy. An informal understanding is  
3 enough. It is not enough, however, that they simply met,  
4 discussed matters of common interest, acted in similar ways, or  
5 perhaps helped one another.

6 One becomes a member of a conspiracy by willfully  
7 participating in the unlawful plan with the intent to advance  
8 or further some object or purpose of the conspiracy, even if  
9 the person does not have full knowledge of all the details of  
10 the conspiracy. Furthermore, one who willfully joins an  
11 existing conspiracy is as responsible for it as the  
12 originators. On the other hand, one who has no knowledge of a  
13 conspiracy but happens to act in a way which furthers some  
14 object or purpose of the conspiracy, does not thereby become a  
15 conspirator. Similarly, a person does not become a conspirator  
16 merely by associating with one or more persons who are  
17 conspirators, nor merely by knowing that a conspiracy exists.

18 A conspiracy may continue for a long period of time and  
19 may include the performance of many transactions. One may join  
20 a conspiracy after it is already in progress. It is not  
21 necessary that all members of the conspiracy join it at the  
22 same time, and one may become a member of a conspiracy without  
23 full knowledge of all the details of the unlawful scheme or the  
24 names, identities, or locations of all the other members.

25 Events that occurred before a conspirator joined a

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1 conspiracy may be considered by you to prove the nature and  
2 scope of the conspiracy at the time the person joined.

3 It is no defense that a person's participation in a  
4 conspiracy was minor or for a short period of time.

5 Plaintiffs must prove each of the following elements of a  
6 conspiracy to violate RICO by a preponderance of the evidence:

7 First, the alleged enterprise was or would be established;

8 Second, the defendant knowingly agreed that either the  
9 defendant or another person would be associated with the  
10 enterprise, and

11 Third, the defendant knowingly agreed that either the  
12 defendant or another person would conduct or participate,  
13 directly or indirectly, in the conduct of the affairs of the  
14 enterprise through a pattern of racketeering activity. For  
15 purposes of conspiracy, it is not necessary for plaintiffs to  
16 prove that the defendant actually committed a pattern of  
17 racketeering activity; rather, the element is satisfied if the  
18 defendant agreed that a pattern of racketeering activity would  
19 be committed.

20 Plaintiffs must prove that the defendant agreed to  
21 participate in the conspiracy with the knowledge and intent  
22 that at least one member of the racketeering conspiracy would  
23 intentionally commit, or cause, or aid and abet the commission  
24 of, two or more racketeering acts. That one member could be  
25 one of the defendants or another person. You must agree on at

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1 least two acts of racketeering the defendants understood would  
2 be committed. But plaintiffs are not required to prove that  
3 the defendants personally committed, or agreed to personally  
4 commit, two or more racketeering acts. Nor is there any  
5 requirement that the defendant actually conspired to operate or  
6 manage the enterprise himself or herself.

7 Plaintiffs must prove that the defendant joined the  
8 conspiracy knowing the conspiracy's purpose and intending to  
9 facilitate it. The defendant must also have been aware of the  
10 essential nature and scope of the enterprise and intended to  
11 participate in it.

12 In your consideration of plaintiffs' conspiracy claim, you  
13 should first determine whether the alleged conspiracy existed.  
14 If you conclude that a conspiracy existed as alleged, you  
15 should then determine whether each defendant knowingly became a  
16 member of that conspiracy.

17 If you find that the defendant in question conducted or  
18 participated in the affairs of a racketeering enterprise  
19 through a pattern of racketeering, or conspired to do so, you  
20 must also determine whether each plaintiff has proved by a  
21 preponderance of the evidence that the violation caused that  
22 plaintiff an injury to its business or property before you may  
23 find for that plaintiff. This requirement will be satisfied if  
24 the damages are caused by the predicate acts or if the damages  
25 are caused by the pattern of acts as a whole, or both. In

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1 either case, you must find that there was some direct  
2 relationship between the jury that plaintiff has asserted and  
3 the alleged violation by the defendant in question.

4 Now we go to the recording claims.

5 Certain plaintiffs have brought claims against certain  
6 defendants under the laws of California, Florida, and Maryland,  
7 and under Federal law, for secretly recording individuals whom  
8 plaintiffs contend were their employees and contractors. I  
9 will now provide you a summary of each recording for which you  
10 will be asked to determine whether the recording violated the  
11 law.

12 You should apply Federal law to every claim. If a  
13 recording occurred in California, Florida, or Maryland, you  
14 should apply both the law of the state where the recording  
15 occurred and Federal law. If the recording occurred outside of  
16 California, Florida, or Maryland, you should apply only Federal  
17 law.

18 So first: California, for California and Federal Law.

19 The NAF annual meeting held in San Francisco, California,  
20 from April 5 through 8, 2014.

21 PPNorCal contends that Dr. Leslie Drummond-Hay was  
22 illegally recorded in the exhibitor hall by David Daleiden and  
23 Sandra Merritt.

24 PPFa contends Dr. Deborah Nucatola was illegally recorded  
25 on two separate instances in the exhibitor hall: In the first

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1 encounter, by Sandra Merritt, and Brianna Baxter. In the  
2 second encounter, by David Daleiden, Sandra Merritt, and  
3 Brianna Baxter.

4 Lunch in Los Angeles, on July 25, 2014.

5 PPFA contends that Dr. Deborah Nucatola was illegally  
6 recorded during lunch at Craft by both David Daleiden and  
7 Sandra Merritt.

8 Lunch in Pasadena, California, on February 6, 2015.

9 PPPSGV contends Dr. Mary Gatter and Laurel Felczer were  
10 illegally recorded during lunch at a/k/a Bistro by both David  
11 Daleiden and Sandra Merritt.

12 Florida, for Florida and Federal Law.

13 National Medical Conference/North American Forum on Family  
14 Planning in Miami, Florida, from October 11 through 13, 2014.

15 PPFA contends that Dr. Deborah Nucatola was illegally  
16 recorded on two separate occasions: One, during at an outdoor  
17 reception by both Adrian Lopez and David Daleiden. The other,  
18 during an indoor reception by both Adrian Lopez and David  
19 Daleiden.

20 PPFA contends that Karen Shea was illegally recorded at an  
21 outdoor reception by both David Daleiden and Adrian Lopez.

22 PPCCC contends that Dr. Virginia Siegfried was illegally  
23 recorded at an outdoor reception by both David Daleiden and  
24 Adrian Lopez.

25 PPRM contends that Dr. Savita Ginde was illegally recorded

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1 inside the exhibitor hall by David Daleiden.

2 PPFA's Medical Director's Council Annual Meeting in  
3 Orlando, Florida, from February 26 through 28, 2015.

4 PPFA contends that June Gupta was illegally recorded on  
5 two separate occasions at the conference: The first during a  
6 PPFA-hosted dinner by both David Daleiden and Adrian Lopez, and  
7 the second in the exhibitor hall by both David Daleiden and  
8 Adrian Lopez.

9 PPFA contends that Dr. Deborah Nucatola was illegally  
10 recorded on two instances: The first during an outdoor  
11 reception by both David Daleiden and Adrian Lopez, and the  
12 second inside the exhibitor hall by both David Daleiden and  
13 Adrian Lopez.

14 PPFA contends that Deborah VanDerhei was illegally  
15 recorded inside the exhibitor hall by both David Daleiden and  
16 Adrian Lopez.

17 PPPSGV contends that Dr. Mary Gatter was illegally  
18 recorded at an outdoor reception by both David Daleiden and  
19 Adrian Lopez.

20 PPOSBC contends that Dr. Jennefer Russo was illegally  
21 recorded at a PPFA-hosted dinner by David Daleiden and Adrian  
22 Lopez.

23 PPGC contends that Bonnie Smith was illegally recorded  
24 inside the exhibitor hall by David Daleiden.

25 PPPSW contends that Dr. Son Nguyen and Dr. Tom Moran were

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1 illegally recorded inside the exhibitor hall by David Daleiden  
2 and Adrian Lopez.

3 Maryland, for Maryland and Federal Law.

4 The NAF annual meeting held in Baltimore, Maryland, from  
5 April 18 through 21, 2015.

6 PPFA contends that Dr. Deborah Nucatola was illegally  
7 recorded in a meeting room by David Daleiden.

8 PPFA contends that Dr. Deborah VanDerhei and Jen Castle  
9 were illegally recorded in a refreshment area by David Daleiden  
10 and Sandra Merritt.

11 PPCFC contends that Tram Nguyen and Dr. Ann Schutt-Aine,  
12 and PPGC/PPCFC contends that Jackie Krugler, were illegally  
13 recorded on two occasions. The first was at a reception in the  
14 exhibitor hall by Adrian Lopez. The second was at another  
15 reception by David Daleiden.

16 Other Jurisdictions for Federal Law.

17 PPFA National Conference in Washington, D.C. from March 18  
18 through 20, 2015.

19 PPFA contends that Dr. Carolyn Westhoff was illegally  
20 recorded inside the exhibitor hall by David Daleiden and Adrian  
21 Lopez.

22 PPFA contends that Jen Castle was illegally recorded  
23 inside the exhibitor hall by David Daleiden and Adrian Lopez.

24 PPFA contends that Kristin Flood was illegally recorded  
25 inside an evening reception by David Daleiden and Adrian Lopez.

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1 PPFA contends that Janet Fils-Amie and Anne-Marie Grewer  
2 were illegally recorded inside the exhibitor hall by David  
3 Daleiden and Adrian Lopez.

4 PPGC contends that Melaney Linton was illegally recorded  
5 inside the exhibitor hall by David Daleiden and Adrian Lopez.

6 PPRM Stapleton Health Center Visit in Colorado on April 7,  
7 2015.

8 PPRM contends that Dr. Savita Ginde and J.R. Johnstone  
9 were illegally recorded over a period of hours inside the PPRM  
10 Health Center by David Daleiden and Sandra Merritt.

11 PPGC Prevention Park Health Center Visit in Texas on  
12 April 9, 2015.

13 PPGC contends that Melissa Farrell was illegally recorded  
14 over a period of 7 hours inside the PPGC health center by David  
15 Daleiden and Sandra Merritt.

16 PPGC contends that two receptionists were illegally  
17 recorded at the reception desk inside the PPGC Health Center by  
18 Sandra Merritt.

19 The California recording claims.

20 Plaintiffs PPFA, PPPSGV, PPNorCal, and PPGC/PPCFC alleged  
21 that defendants Daleiden, Merritt, BioMax and CMP violated  
22 Section 632 of the California Penal Code during meetings and/or  
23 conferences that occurred in California by recording  
24 confidential conversations. To prove a violation, plaintiffs  
25 must show that a defendant did all of the following:



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1           1. That the defendant intentionally recorded one of the  
2 plaintiffs' employees or contractors by using an electronic  
3 device;

4           2. That the person recorded had a reasonable expectation  
5 that the conversation was not being overheard or recorded; and

6           3. That the defendant did not have the consent of all  
7 parties to the conversation to record it.

8           A conversation is confidential where the recorded party  
9 had a reasonable expectation that others are not listening-in  
10 to the conversation or recording it.

11           If you find a violation, I may award statutory damages.  
12 You must also determine whether the plaintiff is entitled to  
13 actual damages. A plaintiff is entitled to actual damages if  
14 the plaintiff proves the following:

15           First, that plaintiff was harmed by the recording; and

16           Second, that the defendant's conduct was a substantial  
17 factor in causing plaintiff's harm.

18           A corporation may prove a violation of Section 632 if a  
19 defendant recorded one of its employees or contractors in her  
20 capacity as a corporate employee or contractor. An employee or  
21 contractor is recorded in her capacity as a corporate employee  
22 or contractor if the employee or contractor is recorded  
23 discussing internal matters of the corporation or if the  
24 defendant targeted her for recording because she could disclose  
25 information about the corporation's internal matters.

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1 Defendants assert that they were permitted to record  
2 plaintiffs in California by California Penal Code Section  
3 633.5.

4 To establish an affirmative defense under Section 633.5, a  
5 defendant has the burden of proving all of the following:

6 (1) That defendant believed that the person being recorded  
7 committed or intended to commit a violent felony against a  
8 person;

9 (2) That, biased on the information the defendant had  
10 before defendants conducted their first recording in  
11 California, the defendant's belief that the person being  
12 recorded committed or intended to commit a violent felony  
13 against a person was reasonable; and

14 (3) That defendants purpose for recording the  
15 communication was to obtain evidence that the person being  
16 recorded committed or intended to commit a violent felony  
17 against a person.

18 In determining whether a defendant's belief was  
19 reasonable, you may not rely on information that the defendant  
20 learned only after they began recording in California.

21 In determining whether a person had a reasonable  
22 expectation of privacy in a conversation, it is not relevant  
23 whether the content of the communication is sensitive or  
24 confidential.

25 In determining whether a defendant had a reasonable belief

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1 the person being recorded committed or intended to commit a  
2 violent felony against a person, you may not consider the  
3 content of the recorded conversation itself.

4 The Florida Recording Claims.

5 Plaintiffs PPFA, PPRM, PPOSBC, PPPSGV, PPPSW, PPRM, PPCCC  
6 and PPGC/PPCFC allege that defendants Daleiden, Lopez, BioMax,  
7 and CMP have violated a Florida statute known as Section 934.03  
8 of Title XLVII (the Florida Criminal Procedural Law) during  
9 conferences that occurred in Florida.

10 To prove a violation, plaintiffs must show that each  
11 defendant did one of the following acts:

12 (1) intentionally recorded or procured any other person to  
13 record any private oral communication; or

14 (2) intentionally disclosed to any other person the  
15 contents of any recorded private oral communication, knowing or  
16 having reason to know that the contents were obtained through  
17 the recording of an oral communication in violation of the  
18 statute.

19 However, it is lawful to do any of the foregoing acts if  
20 all parties to the communication have given prior consent to  
21 the interception.

22 An oral communication means a communication uttered by a  
23 person who has a subjective expectation that the communication  
24 is not subject to interception under circumstances justifying  
25 such expectation, and whose expectation was objectively

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1 reasonable.

2 If you find a violation, I may award statutory damages.  
3 You must also determine whether the plaintiff is entitled to  
4 actual damages. A plaintiff is entitled to actual damages if  
5 the plaintiff proves the following:

6 First, that plaintiff was harmed by the recording; and

7 Second, that the defendant's conduct was a substantial  
8 factor in causing plaintiff's harm.

9 A corporation may prove a violation of Florida criminal  
10 procedure law if a defendant recorded one of its employees or  
11 contractors in her capacity as a corporate employee or  
12 contractor. An employee or contractor is Florida her capacity  
13 as a corporate employee or contractor if the employee or  
14 contractor is recorded discussing internal matters of the  
15 corporation or if the defendant targeted her for recording  
16 because she could disclose information about the corporation's  
17 internal matters.

18 Maryland Recording Claims.

19 Plaintiffs PPFA and PPGC/PPCFC contend that defendants  
20 Daleiden, Merritt, Lopez, BioMax, and CMP violated Section  
21 10-402 of the Courts and Judicial Proceedings Article of the  
22 Maryland Annotated Code during conferences that occurred in  
23 Maryland.

24 To prove a violation, plaintiffs must show that each  
25 defendant did one of the following acts:

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1 Intentionally recorded or procured any other person to  
2 record any private oral communication, or

3 Intentionally disclosed to any other person the contents  
4 of any recorded prior (sic) oral communication, knowing or  
5 having reason to know that the contents were obtained through  
6 the recording of an oral communication in violation of the  
7 statute.

8 An oral communication means a communication made by a  
9 person who had the subjective belief that the conversation was  
10 private, and that subjective belief was objectively reasonable.

11 However, it is lawful to do any of the foregoing acts if  
12 all parties to the communication have given prior consent to  
13 the interception.

14 If you find a violation, I may award statutory damages.  
15 You must also determine whether the plaintiff is entitled to  
16 actual damages. A plaintiff is entitled to actual damages if  
17 the plaintiff proves the following:

18 First, that plaintiff was harmed by the recording; and

19 Second, that the defendant's conduct was a substantial  
20 factor in causing plaintiff's harm.

21 A corporation may prove a violation of Maryland law if a  
22 defendant recorded one of its employees or contractors in her  
23 capacity as a corporate employee or contractor. An employee or  
24 contractor is recorded in her capacity as a corporate employee  
25 or contractor if the employee or contractor is recording

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1 discussing internal matters of the corporation or if the  
2 defendant targeted her for recording because she could disclose  
3 information about the corporation's internal matters.

4 Federal Recording Claims.

5 Plaintiffs PPFA, PPGC/PPCFC, PPNorCal, PPOSBC, PPPSGV,  
6 PPPSW, PPRM and PPCCC allege that defendants Daleiden, Merritt,  
7 Lopez, BioMax, and Center for Medical Progress violated 18 U.S.  
8 Code Section 2511, the federal law against unlawful recording.  
9 To prove that the defendant violated this statute, plaintiffs  
10 must prove that the defendant did one of the following acts:

11 Intentionally intercepted or procured any other person to  
12 intercept or endeavor to intercept, any private oral  
13 communication; or

14 Intentionally disclosed, or endeavored to disclose, to any  
15 other person the contents of any private oral communication,  
16 knowing or having reason to know that the information was  
17 obtained through the interception of an oral communication in  
18 violation of this subsection; or

19 Intentionally used, or endeavored to use, the contents of  
20 any private oral communication, knowing or having reason to  
21 know that the information was obtained through the interception  
22 of an oral communication in violation of this subsection.

23 An oral communication means a communication uttered by a  
24 person who has a subjective expectation that the communication  
25 is not subject to interception under circumstances justifying

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1 such expectation, and whose expectation was objectively  
2 reasonable.

3 To "intercept" an oral communication means to acquire the  
4 contents of that communication through the use of any  
5 electronic, mechanical, or other device.

6 However, a party to an intercepted communication who  
7 consents to the interception does not violate this statute  
8 unless such communication is intercepted for the purpose of  
9 committing any criminal or tortious act in violation of the  
10 Constitution or laws of the United States or of any State.  
11 Here, plaintiffs claim defendants used the recordings to  
12 violate civil RICO.

13 If you find that one or more defendant violated this  
14 statute, you must then determine whether the violation caused  
15 harm to each plaintiff.

16 If you find a violation, I may award statutory damages.  
17 You must also determine who the plaintiff is entitled to actual  
18 damages. A plaintiff also entitled to actual damages if the  
19 plaintiff proves the following:

20 First, that plaintiff was harmed by the recording.

21 And second, that the defendant's conduct was a substantial  
22 factor in causing plaintiff's harm.

23 A person may record for both lawful purpose and an  
24 unlawful purpose at the same time. The existence of a unlawful  
25 purpose does not negate the unlawful purpose. If you find that

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1 the defendant had both a lawful and unlawful purpose for  
2 recording, you should find the defendant acted with an unlawful  
3 purpose in violation of the federal recording statute.

4 A corporation may prove a violation of Federal law if a  
5 defendant recorded one of its employees or contractors in her  
6 capacity as a corporate employee or contractor. An employee or  
7 contractor is recorded in her capacity as a corporate employee  
8 or contractor if the employee or contractor is recorded  
9 discussing internal matters of the corporation or if the  
10 defendant targeted her for recording because she could disclose  
11 information about the corporation's internal matters.

12 We're getting there.

13 Okay. Moving on to conspiracy.

14 Plaintiffs claim that defendants Daleiden, Lopez, Merritt,  
15 BioMax, Center for Medical Progress, Rhomberg, and Newman  
16 conspired to commit trespass, fraud and recording in violation  
17 of federal and state laws and that the conspiracy harmed one or  
18 more plaintiffs.

19 A conspiracy is an agreement by two or more persons to  
20 commit a wrongful act. Such an agreement may be made orally or  
21 in writing or may be implied by the conduct of the parties. If  
22 you find that one defendants committed a wrongful act that  
23 harmed a plaintiff, then you must determine whether other  
24 defendants that did not commit the wrongful act are also  
25 responsible for the harm.



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1           A defendant is responsible if a plaintiff proves both of  
2 the following:

3           1. That the defendant was aware that another defendant or  
4 person planned to commit a wrongful act; and

5           2. That the defendant agreed with the other defendant or  
6 person and intended that the wrongful act be committed.

7           Mere knowledge of a wrongful act without cooperation or an  
8 agreement to cooperate is insufficient to make a defendant  
9 responsible for the harm. A conspiracy may be inferred from  
10 circumstances, including the nature of the acts done, the  
11 relationships between the parties, and the interests of the  
12 alleged co-conspirators. Plaintiffs are not required to prove  
13 that each defendant personally committed a wrongful act or that  
14 he or she knew all the details of the agreement or the  
15 identities of all the other participants.

16           If you decide that the defendant joined the conspiracy to  
17 commit fraud, trespass or illegally record, then he or she is  
18 responsible for all acts done as part of the conspiracy,  
19 whether the acts occurred before or after he or she joined the  
20 conspiracy.

21           So now we're moving on to damages.

22           It is the duty of the Court to instruct you about the  
23 measure of damages. By instructing you on damages, the Court  
24 does not mean to suggest for which party your verdict should be  
25 rendered.

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1           If you find for a plaintiff on one or more of its claims,  
2 you must determine that plaintiffs' damages. A plaintiff has  
3 the burden of proving damages by a preponderance of the  
4 evidence. Damages means the amount of money that will  
5 reasonably and fairly compensate the plaintiff for any injury  
6 you find was caused by the defendant.

7           It is for you to determine what damages, if any, have been  
8 proved. Your award must be based upon evidence and not upon  
9 speculation, guesswork or conjecture.

10          Plaintiffs have a duty to use reasonable efforts to  
11 mitigate damages. To "mitigate" means to avoid or reduce  
12 damages.

13          The defendants have the burden of proving by a  
14 preponderance of the evidence:

15           That a plaintiff failed to use reasonable efforts to  
16 mitigate damages; and

17           The amount by which damages would have been mitigated.

18          This instruction applies to plaintiffs' fraud, trespass,  
19 California recording, Florida recording, Maryland recording,  
20 Federal recording, and RICO claims.

21          For each of these claims in which a defendant has been  
22 found liable, either by me or you, you must determine the  
23 damages for each plaintiff that was caused by the conduct  
24 giving rise to liability.

25          Plaintiffs have the burden of proving damages. Damages

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1 means the amount of money that will reasonably and fairly  
2 compensate each plaintiff for any injury you find was caused by  
3 the defendants. It is for you to determine what damages, if  
4 any, have been proved. Your award must be based on evidence  
5 and not on speculation, guesswork, or conjecture.

6 The amount of damages must include an award for each  
7 category of harm that was caused by the defendants' wrongful  
8 conduct, even if the particular harm could not have been  
9 anticipated. The plaintiff does not have to prove the exact  
10 amount of damages that will provide reasonable compensation for  
11 the harm. However, you must not speculate or guess in awarding  
12 damages.

13 You may award plaintiffs damages to reimburse them for  
14 expenses that were directly caused by defendants' acts. These  
15 expenses may include the cost of security for staff members  
16 after plaintiffs became aware of defendants' recordings, costs  
17 to investigate intrusions, and costs to implement  
18 access-security measures to prevent intrusions in the future.  
19 Any damages based on money spent by plaintiffs must have been  
20 for expenses that were reasonably incurred in light of the  
21 defendants' actions.

22 This instruction applies to plaintiffs' claims for breach  
23 of the NAF Agreement, breach of the PPFA Exhibitor Agreements  
24 and breach of the PPGC NDA.

25 For each of these claims in which a defendant has been

**JURY INSTRUCTIONS**

1 found liable, either by me or by you, you must also decide how  
2 much money will reasonably compensate the plaintiff for the  
3 harm caused by the breach. This compensation is called  
4 damages. The purpose of such damages is to put plaintiff in as  
5 good a position as it would have been if the defendant had  
6 performed as promised.

7 To recover damages for any harm the plaintiff must prove  
8 that when the contract was made, both parties knew or could  
9 reasonably have foreseen that the harm was likely to occur in  
10 the ordinary course of events as a result of the breach of  
11 contract.

12 The plaintiff must also prove the amount of damages  
13 according to the following instructions. It does not have to  
14 prove the exact amount.

15 You may award plaintiffs' damages to reimburse them for  
16 expenses that were directly caused by defendants' acts. These  
17 expenses may include the costs of security for staff members  
18 after plaintiffs became aware of defendants' recordings, costs  
19 to investigate intrusions, and costs to implement  
20 access-security measures to prevent intrusions in the future.  
21 Any damages based on money spent by plaintiffs must have been  
22 for expenses that were reasonably incurred in light of  
23 defendants' actions.

24 Plaintiffs seek damages under more than one cause of  
25 action. You will be asked to decide whether defendants are

## JURY INSTRUCTIONS

1 liable to plaintiffs under the following causes of action:  
2 Trespass, Breach of PPFA Exhibitor Terms and Conditions; Breach  
3 of NAF Agreements; breach of PPGC NDA; Fraud; RICO, Recording  
4 (California law); Recording (Florida law); Recording Maryland  
5 law); Recording (Federal law).

6 In the verdict form you will be asked to determine the  
7 amount of damages, if any, you award to each plaintiff for each  
8 cause of action. For each cause of action enter the entire  
9 amount of damages in each category that plaintiff is entitled  
10 to under that cause of action, even if you awarded the same  
11 category of damage under a different cause of action. After  
12 you complete your deliberations, I will remove any duplicate  
13 damages from any final award to plaintiffs.

14 The arguments of the attorneys are not evidence of  
15 anything, but including of damages. Your award must be based  
16 on your reasoned judgment applied to the testimony of the  
17 witnesses and the other evidence that has been admitted during  
18 the trial.

19 If you find for a plaintiff or plaintiffs, you must not  
20 take into account any consideration of the attorney fees or  
21 court costs in deciding the amount of the plaintiffs' damages.  
22 I will decide the matter of attorney fees and court costs, if  
23 any, later.

24 And now the final section, Punitive Damages.

25 If you decide that a defendants' fraud, trespass or

## JURY INSTRUCTIONS

1 violation of the Maryland or Federal recording statutes caused  
2 harm, you must also decide whether that conduct justifies an  
3 award of punitive damages based on this instruction. A  
4 separate instruction I will give governs the award of punitive  
5 damages for the Florida recording claim. The purposes of  
6 punitive damages are to punish a wrongdoer for the conduct that  
7 harmed the plaintiff and to discourage similar conduct in the  
8 future.

9 You may award punitive damages against a defendant who is  
10 a natural person, i.e. a human being, only if a plaintiff  
11 proves by clear and convincing evidence that the defendant  
12 engaged in that conduct with malice, oppression, or fraud.

13 You may award punitive damages against a defendant that is  
14 a corporate entity only if a plaintiff proves that the  
15 corporation acted with malice, oppression, or fraud. To do  
16 this, a plaintiff must prove one of the following by clear and  
17 convincing evidence:

18 One, that the malice, oppression or fraud was conduct of  
19 one or more officers, directors or managing agents of the  
20 entity defendant, who acted on behalf of the entity defendant;  
21 or

22 Two, that the conduct constituting malice, oppression or  
23 fraud was authorized by one or more officers, directors or  
24 managing agents of the entity defendant; or

25 Three, that one or more officers, directors or managing

## JURY INSTRUCTIONS

1 agents of the entity defendant knew of the conduct constituting  
2 malice, oppression, or fraud and adopted or approved that  
3 conduct after it occurred.

4 "Malice" means that a defendant acted with intent to cause  
5 injury or that a defendants' conduct was despicable and was  
6 done with a willful and knowing disregard of the rights or  
7 safety of another. A defendant acts with knowing disregard  
8 when the defendant is aware of the probable dangerous  
9 consequences of his conduct and deliberately fails to avoid  
10 those consequences.

11 "Oppression" means that a defendant's conduct was  
12 despicable and subjected the plaintiff to cruel and unjust  
13 hardship in knowing disregard of its rights.

14 "Despicable conduct" is conduct that is so vile, base or  
15 contemptible that it would be looked down and despised by  
16 reasonable people.

17 "Fraud" means that a defendant intentionally  
18 misrepresented or concealed a material fact and did so  
19 intending to harm a plaintiff.

20 An employee is a "managing agent" if he or she exercises  
21 substantial independent authority and judgment in his or her  
22 corporate decision making such that his or her decisions  
23 ultimately determine corporate policy.

24 There is no fixed formula for determining the amount of  
25 punitive damages, and you are not required to award any

## JURY INSTRUCTIONS

1 punitive damages. If you decide to award punitive damages, you  
2 should consider all of the following factors separately for  
3 each defendant in determining the amount:

4 How reprehensible was that defendant's conduct? In  
5 deciding how reprehensible a defendant's conduct was, you may  
6 consider, among other things:

7 Whether the conduct caused physical harm;

8 Whether the defendant disregarded the health or safety of  
9 others;

10 Whether the plaintiff was financially weak or vulnerable  
11 and the defendant knew plaintiff was financially weak or  
12 vulnerable and took advantage of it;

13 Whether the defendant's conduct involved a pattern or  
14 practice; and

15 Whether the defendant acted with trickery or deceit.

16 (B) Is there a reasonable relationship between the amount  
17 of punitive damages and plaintiffs' harm?

18 (C) In view of that defendant's financial condition, what  
19 amount is necessary to punish him and discourage wrongful  
20 conduct -- future wrongful conduct? You may not increase the  
21 punitive award above an amount that is otherwise appropriate  
22 merely because a defendant has substantial financial resources.

23 So now under Florida law, if you find that defendants have  
24 violated Section 934.03 and award compensatory damages, you  
25 must also decide whether punitive damages are warranted as



## JURY INSTRUCTIONS

1 punishment to one or more of the defendants and as a deterrent  
2 to others.

3 Punitive damages are warranted against defendants if you  
4 find by clear and convincing evidence that the defendant was  
5 guilty of intentional misconduct or gross negligence, which was  
6 a substantial cause of injury to the plaintiffs. Under those  
7 circumstances you may in your discretion award punitive damages  
8 against defendants. If clear and convincing evidence does not  
9 show such conduct by any defendant, punitive damages are not  
10 warranted against defendant.

11 "Intentional misconduct" means that the defendant had  
12 actual knowledge of the wrongfulness of his or her conduct and  
13 that there was a high probability of injury or damage to  
14 plaintiffs and, despite that knowledge, he or she intentionally  
15 pursued that course of conduct, resulting in injury or damages.

16 "Gross negligence" means that the defendant's conduct was  
17 so reckless or wanting in care that it constituted a conscious  
18 disregard or indifference to the life, safety, or rights of  
19 persons exposed to such conduct.

20 "Clear and convincing evidence" differs from  
21 "preponderance of the evidence" in that it is more compelling  
22 and persuasive. Clear and convincing evidence is evidence that  
23 is precise, explicit, lacking in confusion, and of such weight  
24 that it produces a firm belief or conviction, without  
25 hesitation, about the matter in issue.

## JURY INSTRUCTIONS

1           If you decide that punitive damages are warranted against  
2 one or more of the defendants, then you must decide the amount  
3 of punitive damages, if any, to be assessed as punishment  
4 against the defendants and as a deterrent to others. This  
5 amount would be in addition to the compensatory damages you  
6 have previously awarded.

7           In making this determination, you should consider the  
8 following:

9           (One) The nature, extent and degree of misconduct and the  
10 related circumstances, including the following:

11           Whether the wrongful conduct was motivated solely by  
12 unreasonable financial gain;

13           Whether the unreasonably dangerous nature of the conduct,  
14 together with the high likelihood of injury resulting from the  
15 conduct, was actually known by defendants;

16           Whether, at the time of plaintiffs' damage, the defendants  
17 had a specific intent to harm plaintiffs and the conduct of  
18 defendants did, in fact, harm plaintiffs; and

19           The financial resources of defendants.

20           However, you may not award an amount that would  
21 financially destroy defendants.

22           You may in your discretion decline to assess punitive  
23 damages. You may assess punitive damages against one defendant  
24 and not the others or against more than one defendant.

25           Punitive damages may be assessed against different defendants

## JURY INSTRUCTIONS

1 in different amounts.

2 All right. So those are the instructions that I'm going  
3 to give you now. As I told you, I'll give you closing  
4 instructions at the end to talk about your deliberation.

5 But now before we take a break, I want to just show you  
6 what the verdict form is going to look like. I have confidence  
7 that the lawyers will give you some sense of how they think you  
8 should fill this out, but I just want to -- I want you to see  
9 it first, and I want to go through -- I'm not going to go  
10 through line by line, but I will give you a sense of what  
11 you've got.

12 So when you go back to your deliberations, you will have  
13 this verdict form and it asks you to answer a lot of -- answer  
14 all the questions that were laid out for you in the Jury  
15 Instructions. So let's go to Section A.

16 (Document displayed)

17 So Section A -- pull that down if you would a little bit.

18 So this is the first claim, and it's just going to walk  
19 through each of the claims. Section A is Trespass. And you'll  
20 see the first question is:

21 "In what amount, if any, was PPFA damaged by  
22 defendants Daleiden, Lopez, BioMax and CMP's  
23 trespasses at the 2014 Forum, 2015 MeDC Conference,  
24 and the 2015 National Conference?

25 Then the next line shows you the instructions that are

## JURY INSTRUCTIONS

1 relevant to this particular question that you're asked to  
2 answer.

3 And then you are asked to answer the damage category for  
4 infiltration damages, and then for PPFA, and then the security  
5 damages, if any, that you would award as actual damages in  
6 accordance with the instructions.

7 And then the next question:

8 "Did any defendant conspire with Daleiden, Lopez,  
9 BioMax, or CMP to trespass at the conferences?"

10 And you would answer Yes or No with respect to  
11 Mr. Rhomberg and Mr. Newman.

12 (Document displayed)

13 And then it goes on in similar fashion:

14 "In what amount, if any, was PPFA damaged by the  
15 named defendants?"

16 "Was there a conspiracy?"

17 And then it goes on to the PPGC, PPCFC on the next page.

18 And that then takes you -- let's go to Section B.

19 (Document displayed)

20 So Section B starts the Breach of Contract questions.

21 And, again, because some of the issues have been determined, it  
22 starts off, it asks you specific -- the specific question:

23 "Did any defendant breach the 2014 Forum  
24 Exhibitor Agreement by violating an applicable law  
25 concerning fraud or privacy in performing their

## JURY INSTRUCTIONS

1           respective obligations under the contract?"

2           Answer Yes or No as to each of the defendants.

3           And then continue in that fashion.

4           When it comes to question No. 4 on Page 6, the -- again,  
5 there are going to be references to the instructions that will  
6 help you determine, as there is in all of these, where the  
7 instructions talk about these questions and there are damages,  
8 again, categories of infiltration and security.

9           And again in Section C, the questions go on in similar  
10 fashion.

11           So let's go on to Page 9, Section E for Fraud.

12           (Document displayed)

13           So in this section of the verdict form you're asked in the  
14 beginning for intentional misrepresentation:

15                   "Did any defendant commit fraud or conspire to  
16 commit fraud through intentional misrepresentation?"

17                   "If Yes, as to which plaintiffs?"

18           So if you -- so you answer with respect to, for example,  
19 Mr. Daleiden, you answer Yes or No.

20           If you answered No, then you would go on to Section B,  
21 Ms. Merritt.

22           If you answered Yes, you need to make a determination as  
23 to which plaintiffs you found that he had committed the  
24 intentional misrepresentation. And then you would proceed in  
25 that fashion.

## JURY INSTRUCTIONS

1 (Document displayed)

2 On Page 11 you would find the damage categories similar to  
3 what we've discussed before and, again, the reference to the  
4 instructions.

5 (Document displayed)

6 The next page is the "False Promise Fraud." Again, it  
7 refers you to the instruction. And then you answer  
8 individually for each defendant, as the instructions instruct.

9 (Document displayed)

10 The next page you would write in the damages, if any, that  
11 were caused.

12 And the same is true with the PPGC NDA.

13 And let's go to Page 16, which is the RICO.

14 (Document displayed)

15 Again the same structure applies. The question:

16 "Did any defendant violate RICO or conspire to  
17 violate RICO?"

18 If you check No for all of those, you would skip this  
19 section. If you answer Yes, then you need to do it  
20 individually, as I described.

21 Then you would move to the next question, which is the  
22 damages question. And, again, the instructions tell you where  
23 to go to look for the relevant law on the subject.

24 Moving on to Section G, this is the Recording claims,  
25 starting here with the California Penal Code. And you'll see

## JURY INSTRUCTIONS

1 that you're going to be asked whether there is a violation as  
2 to each of the specific recordings that were listed in the --  
3 in the instructions. So do this individually per recording,  
4 per defendant. And refer to the instructions as appropriate.

5 And you'll be asked for the damages, again, consistent  
6 with the others. If there are any, write down what you would  
7 be awarding.

8 And there is a question at the end of that section on  
9 whether there is a conspiracy; and if so, you just answer that  
10 individually per defendant, referring back to the instructions.

11 Then the same is true for the next section, which is the  
12 Recording under Florida law. Again, all of the different  
13 recordings that I described in the instructions are listed, and  
14 you just determine those individually by recording and by  
15 individual.

16 Let's go on to Page 27.

17 (Document displayed)

18 The Recording Maryland law. Same thing. Each of the  
19 recordings is listed and you make the determination as to  
20 whether it was in violation of the law or not.

21 And there is a Damages section and the question on whether  
22 there is a conspiracy in Federal law. Same thing.

23 And then if, and only if, you have found that there is  
24 liability by one or more of the defendants in accordance with  
25 the instructions on the -- and in accordance with all of the

## JURY INSTRUCTIONS

1 instructions that I have provided you, then you would go on to  
2 the Punitive Damages section and answer the question, which is  
3 on Page 42:

4 "Do you find by clear and convincing evidence  
5 that at least one of the defendants is liable for  
6 punitive damages?"

7 And then if you say No, you're done. If you say Yes, then  
8 you continue on in accordance with the instructions and make an  
9 individual determination per defendant.

10 And once that's done and you've agreed on everything and  
11 answered all of the questions, then the presiding juror would  
12 date and sign the form and get it and alert the Court and we  
13 will proceed. But I will give you more instructions on how to  
14 do the deliberations at the end of the arguments.

15 So that is -- those are all the instructions and a sense  
16 of how the verdict form is going to work.

17 So we're going to now take a 15-minute break and then when  
18 we come back, we'll start with the plaintiffs' closing.

19 (Jury exits the courtroom at 10:02 a.m.)

20 **THE COURT:** All right. And we will take our lunch  
21 break after the plaintiffs' closing, just so you know.

22 **MR. LIMANDRI:** How late will we go today, Your Honor,  
23 do you know?

24 **THE COURT:** I'm thinking around 3:00 o'clock. Just  
25 depending on how you are --- how the defendants' closings are



## CLOSING ARGUMENT / TROTTER

1 breaking.

2 So, and I -- you can tell me at some break if you think  
3 the next person is going to go really long, but I would like to  
4 go until about 3:00 o'clock.

5 **MR. LIMANDRI:** I see. Your Honor, will the jury get  
6 one set of written Jury Instructions or multiple sets?

7 **THE COURT:** They are going to get multiple sets. I'm  
8 going to give them each a copy of the verdict form because it's  
9 just so large.

10 **MR. LIMANDRI:** Understood. Thank you, Your Honor.

11 **MS. TROTTER:** Your Honor, just in terms of  
12 plaintiffs' closing, it actually will be split between myself  
13 and Mr. Kamras.

14 **THE COURT:** I'll look forward to it.

15 **MS. TROTTER:** Thank you.

16 (Whereupon there was a recess in the proceedings  
17 from 10:12 a.m. until 10:19 a.m.)

18 **THE COURT:** All right. Please be seated everybody.  
19 Ms. Trotter, when you're ready.

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

21 **CLOSING ARGUMENT**

22 **MS. TROTTER:** Members of the Jury, this case is about  
23 the defendants' plan to use any means, including illegal means,  
24 to destroy Planned Parenthood.

25 Those were the words that I spoke to you, it's been almost

## CLOSING ARGUMENT / TROTTER

1 six weeks ago, when I gave Planned Parenthood's opening  
2 statement. And the evidence that you've seen in this case,  
3 both the testimony from the witness stand and the various  
4 exhibits, be they audio recordings, video recordings or paper  
5 exhibits, proved exactly that.

6 As you've heard from defendants' own security expert,  
7 Jonathan Perkins, the defendants' plan was a calculated scene  
8 (air quotes) and it spanned a long period of time.

9 (Document displayed)

10 It began in 2012 when Mr. Daleiden met with Mr. Newman in  
11 Kansas near Operation Rescue's headquarters to discuss what  
12 became known as the CMP Project. And the last infiltration of  
13 Planned Parenthood was in April 2015, when the defendants  
14 recorded at the NAF Annual Meeting in Baltimore, Maryland.

15 Before we take a closer look at the evidence that's been  
16 presented during the trial, I want to go over the claims that  
17 you don't have to worry about because they have already been  
18 decided.

19 (Document displayed)

20 Trespass. His Honor has found trespass. His Honor has  
21 found that the defendants illegally trespassed every time they  
22 entered a Planned Parenthood facility or conference as BioMax  
23 representatives.

24 What are those facilities and conferences? Well,  
25 defendant Daleiden, Merritt, CMP and BioMax trespassed at the

## CLOSING ARGUMENT / TROTTER

1 PPGC and PPRM clinics and offices.

2 Defendants Daleiden, Lopez, CMP and BioMax trespassed at  
3 every PPFA Conference they attended: The Forum Conference, the  
4 MeDC, and PPFA's National Conference.

5 So the only two remaining questions for you as to trespass  
6 is:

7 One, are defendants Rhomberg and Newman liable for  
8 trespass as co-conspirators?

9 And, two, damages.

10 Breach of the NAF Exhibitor Agreements. His Honor as  
11 found breach of the NAF Exhibitor Agreements; that defendants  
12 Daleiden, CMP and BioMax breached those agreements. And the  
13 only remaining question for you is damages.

14 Breach of the NAF Confidentiality Agreements. You will  
15 recall these are the one-page agreements that attendees sign  
16 when they actually showed up for the NAF conferences. His  
17 Honor has found that defendants Daleiden, CMP and BioMax  
18 breached those agreements. And the only remaining question  
19 there for you is damages.

20 Breach of the PPFA Exhibitor Agreements. And there are  
21 three of those. The three go along with the three PPFA  
22 conferences at issue in this case: MeDC, Forum and the  
23 National Conference. And His Honor has found that defendants  
24 Daleiden, CMP and BioMax breached those agreements with respect  
25 to the two clauses that you see before you on your screens.

## CLOSING ARGUMENT / TROTTER

1           And the only remaining questions for you as to the breach  
2 of the PPFA Exhibitor Agreements is:

3           One, whether the defendants breached any other clauses of  
4 those agreements.

5           And, again, damages.

6           So let's talk about the evidence that you've seen and  
7 heard during the case.

8           The defendants claim they were citizen journalists trying  
9 to uncover, quote, the truth, but that's not consistent, ladies  
10 and gentlemen, with the evidence that you saw during the trial.

11           First of all, you saw that nothing that these defendants  
12 told you from the stand or otherwise was their intent in  
13 engaging in the CMP Project is to be believed. Why? Because  
14 each of them have been demonstrated to be liars.

15           Now, the whole case, in fact, is sort of rooted in lies  
16 and misrepresentations. The defendants lied to Planned  
17 Parenthood and NAF and others about who they were and what  
18 their purpose was so that they could infiltrate conferences and  
19 clinics and surreptitiously tape everybody that they came into  
20 contact with.

21           They created the fake company BioMax, with the fake  
22 company brochures, and the fake company business cards, and the  
23 fake company website. They made and used fake driver's  
24 licenses and they lied to Planned Parenthood, to NAF, to banks,  
25 when they opened bank cards with fake names or unauthorized

## CLOSING ARGUMENT / TROTTER

1 real names. They lied to the Secretary of State when BioMax  
2 was formed as an LLC with the fake name Susan Tennenbaum as the  
3 signatory. And they lied to the IRS.

4 But, ladies and gentlemen, more egregiously, the  
5 defendants lied to you when they took the witness stand here.

6 Let's start with Mr. Daleiden.

7 (Document displayed)

8 He told you on that witness stand, having sworn an oath,  
9 he told you that he understood that NAF Confidentiality  
10 Agreement, that one-page document that was handed to him when  
11 he came to register for the NAF Conference in person, that  
12 one-page document that the first numbered paragraph says that  
13 the attendee who signs the document agrees not to videotape or  
14 record in any other respect at the conference, what did  
15 Mr. Daleiden say from that stand? He said that he thought that  
16 that whole agreement was, quote, basically a location secrecy  
17 agreement. A location secrecy agreement for which the only  
18 obligation on him was that he not let protestors know where the  
19 location of the NAF Conference was being held.

20 There is absolutely nothing on that agreement that says  
21 anything of the kind.

22 And, Members of the Jury, you're going to have the  
23 exhibits that were introduced and admitted into evidence with  
24 you to be able to take a look at when you are in your  
25 deliberations, and you should take a close look at that

## CLOSING ARGUMENT / TROTTER

1 agreement.

2 That lie alone that Mr. Daleiden said from that stand is  
3 enough for you to disregard anything that says about what his  
4 intent was with respect to the CMP Project.

5 Mr. Daleiden also lied to you and he told you from that  
6 stand that he was never asked to sign the NAF Confidentiality  
7 Agreement in 2015. That was the conference that was in  
8 Maryland.

9 But then -- and that's his testimony there on the screen.

10 And then we played this tape.

11 (Videotape played in open court, not reported)

12 Confronted with the footage from his own camera that he  
13 had pressed on record when he was approaching the registration  
14 desk, he had to change his story.

15 **"QUESTION:** So, Mr. Daleiden, you see the young woman  
16 there at the desk that asked you whether you presented  
17 ID?

18 **"ANSWER:** Yes, I saw her.

19 **"QUESTION:** And then she also asked you whether you  
20 had signed the Confidentiality Agreement?

21 **"ANSWER:** Yeah, I heard that."

22 He lied to her and he lied to you on the stand and told  
23 you he was never asked to sign that agreement.

24 Mr. Daleiden lied on the stand about BioMax being  
25 suspended. You may recall during his lawyer's examination of

## CLOSING ARGUMENT / TROTTER

1 him on the stand, he told you that BioMax had been an active  
2 LLC except for a short period of time this year, 2019. He  
3 described it as a three-day period of time.

4 I gave him an opportunity during my cross-examination of  
5 him on that question to correct his testimony. I said:

6 **"QUESTION:** During your counsel's examination of you,  
7 you testified that this was a three-day period of time  
8 where BioMax's status was suspended earlier this year;  
9 do you recall that testimony?

10 **"ANSWER:** Yes, I believe it was approximately three  
11 days.

12 **"QUESTION:** In fact, Mr. Daleiden, BioMax was  
13 suspended by the State of California two years ago in  
14 2017; correct?

15 **"ANSWER:** No, I don't believe that's correct."

16 (Document displayed)

17 But then we provided Mr. Daleiden this document from the  
18 California Secretary of State, which shows that BioMax, in  
19 fact, was suspended by the Secretary of State in October of  
20 2017 and by the Franchise Tax Board in May of 2018 and not  
21 revived until just this year, just this past summer in July.  
22 And he finally had to concede that, in fact, BioMax had been  
23 suspended since October of 2017.

24 Mr. Daleiden finally, ladies and gentlemen, on the stand  
25 lied to you about BioMax paying its taxes.

## CLOSING ARGUMENT / TROTTER

1 (Document displayed)

2 This was his testimony when his lawyer was questioning him  
3 on the stand.

4 **"QUESTION:** Okay. And throughout the course of its  
5 life, has BioMax paid taxes to the State of  
6 California?

7 **"ANSWER:** Yes. BioMax has paid approximately six  
8 years of LLC taxes to the State of California.

9 **"QUESTION:** So from the year 2013 through the present;  
10 is that correct?

11 **"ANSWER:** That's correct."

12 But the actual State of California records show that the  
13 Center for Medical Progress, CMP, paid six years of back taxes,  
14 interest and penalties for BioMax in July of this year, 2019.

15 (Document displayed)

16 BioMax had never previously paid a dime of taxes to the  
17 Secretary of State or to the Franchise Tax Board. Why?  
18 Because BioMax was not a real company and, therefore, no taxes  
19 had been paid.

20 Members of the Jury, you saw and heard over and over and  
21 over again in this trial that nothing that Mr. Daleiden says  
22 can be trusted.

23 Nor is defendant Sandra Merritt credible.

24 (Document displayed)

25 She told the same lies as Mr. Daleiden did to Planned



## CLOSING ARGUMENT / TROTTER

1 Parenthood and to NAF at the conferences and the clinics and  
2 the lunches, where she represented herself to be a person by  
3 the name of Susan Tennenbaum, and represented herself to be the  
4 CEO of BioMax, and represented BioMax to be a legitimate tissue  
5 procurement company. She lied about that, just as Mr. Daleiden  
6 had.

7 But perhaps the most egregious lie was by Ms. Merritt to  
8 you from that witness stand, and it's been a lie. Because this  
9 trial lasted over a six-week period, so I want to take you back  
10 a bit when Ms. Merritt was on the stand.

11 You may recall during her counsel's examination of her,  
12 she -- he showed a video clip, video footage from the NAF 2014  
13 Conference that was here in San Francisco. He showed her that  
14 video clip and Ms. Merritt spun out a long story about what  
15 that video showed.

16 And she said: Oh, well, you saw -- she was there at the  
17 NAF Conference, herself and Brianna Baxter, both posing under  
18 fake names as representatives of BioMax. And what she told you  
19 that the video showed was that Brianna Baxter had come and had  
20 picked up Ms. Merritt's Susan Tennenbaum badge from the NAF  
21 registration desk.

22 Why is that important? Well, that implies that if you go  
23 to the NAF registration desk and you just give them a name,  
24 they will give you a badge. You don't have to show any ID.  
25 You don't have to sign a Confidentiality Agreement. You don't

## CLOSING ARGUMENT / TROTTER

1 have to do any of that. That's why she told you that.

2 She said that the tape showed that Brianna Baxter went and  
3 picked up Ms. Merritt's Susan Tennenbaum badge from the NAF  
4 registration desk, and then came and found Ms. Merritt. You'll  
5 recall the video showed her being outside, outdoors, outside  
6 the hotel. And that Ms. Baxter gave her that badge.

7 And then she continued with the story. She said she took  
8 that badge, that was her fake name badge, and put in it her  
9 purse. And then she told you she then walked. And you may  
10 recall in the footage, it was down a long hallway where the NAF  
11 Conference was being held and seminar. You may have seen doors  
12 through the long hallway. She walked all the way into the  
13 exhibit area and she testified on that stand that nobody  
14 checked her badge.

15 And she didn't even stop there. She said that was  
16 consistent with what her experience had been at NAF. She said  
17 it had been her experience that she couldn't tell if the NAF  
18 Conference space was private or public, because it seemed like  
19 people were just coming and going all -- at all times with no  
20 badges on. That was her testimony.

21 But then my colleague, Ms. Mayo, was able to cross-examine  
22 Ms. Merritt on the stand. And we played for you a longer  
23 segment of that same video footage that showed the 15 seconds  
24 prior to what Ms. Merritt's counsel showed you. Ms. Merritt  
25 then admitted that her prior testimony about her badge being

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1 placed in the purse was false.

2 (Document displayed)

3 **"QUESTION:** So, Mrs. Merritt, your original testimony  
4 about your badge being in your purse was false. Isn't  
5 that right?

6 **"ANSWER:** About my badge being put in my purse?

7 **"QUESTION:** Yes.

8 **"ANSWER:** It appears so, now that I can see more of  
9 the video."

10 Ms. Merritt's counsel got back up and asked her had she  
11 falsely testified on purpose. And what did she say?

12 **"ANSWER:** I falsely testified because I didn't  
13 remember the events really. I was relying on what I  
14 saw in the video."

15 But remember, Members of the Jury, it wasn't just  
16 testimony about what she had seen on the videotape. She told  
17 you all that stuff about somebody else getting the badge, her  
18 putting it in her purse, walking down the hall, nobody  
19 checking. And then she drew a conclusion that she spun out  
20 from that story; that that was all consistent with what her  
21 experience had been at NAF because people don't check badges at  
22 NAF.

23 She didn't say, when she saw the video tape when it was  
24 being played by her counsel: You know, I don't quite recall.  
25 It looks like I put my badge in my purse. I don't quite

## CLOSING ARGUMENT / TROTTER

1 remember. It looks like I didn't have a badge on when I went  
2 into the exhibit hall.

3 She testified definitively to you that that was her badge  
4 and that she wasn't bearing a badge into the exhibit hall.

5 (Document displayed)

6 Her counsel then asked her:

7 **"QUESTION:** Were you trying to pull a fast one over  
8 Planned Parenthood and over the Court and the jury?

9 **"ANSWER:** I was not."

10 But, Members of the Jury, in light of all of the lies that  
11 Ms. Merritt has told, wasn't she trying to pull a fast one over  
12 you, just like she had pulled a fast one over Planned  
13 Parenthood and NAF?

14 (Document displayed)

15 Mr. Rhomberg. In opening statement you may recall  
16 Ms. Short got up here and referred at the very beginning of her  
17 opening statement remarks to Mr. Rhomberg as  
18 "Mr. What's-His-Name-Over-There."

19 Mr. Rhomberg got on this stand under oath before you and  
20 tried to play along with that theme by claiming he, quote,  
21 didn't remember. Quote, couldn't swear. Quote, couldn't be  
22 certain about his knowledge and involvement with the Center for  
23 Medical Progress and its project.

24 But you saw the evidence. Mr. Rhomberg is not  
25 Mr. What's-His-Name. Mr. Rhomberg was intimately involved with

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1 the Center for Medical Progress and its project.

2 Mr. Rhomberg suggested from the stand that he only knew  
3 after the fact that Mr. Daleiden had gone undercover.

4 (Document displayed)

5 **"QUESTION:** Here, you know that Mr. Daleiden did go  
6 undercover; right?

7 **"ANSWER:** Yes. In -- when you say "undercover" --  
8 well, I certainly know after the fact; I know. I  
9 mean, that's evident from -- simply the fact that I'm  
10 sitting here."

11 But what did the evidence show?

12 (Document displayed)

13 This is an email that Mr. Rhomberg, he has the email  
14 address kolbe333 sent to Mr. Daleiden two days before the NAF  
15 Conference was to be held here in San Francisco. And what did  
16 he say in that email? He said:

17 "Be sure to get adequate 'context' video. The  
18 hotel, the setting, the check-in procedure to the  
19 hotel itself, and to the conference, the wrap-up, the  
20 exit, the check-out, the outside weather."

21 Not only did he know about the undercover tactics and the  
22 infiltration of NAF, he was giving instructions to Mr. Daleiden  
23 about what to capture during the filming and recording.

24 Not only did Mr. Rhomberg know in advance about the  
25 undercover tactics, he was giving the instructions. And it

## CLOSING ARGUMENT / TROTTER

1 wasn't just with respect to the NAF Conference.

2 (Document displayed)

3 He told you during the trial, from that witness stand,  
4 that he couldn't remember if he knew about Mr. Daleiden's lunch  
5 at Craft Restaurant with Mr. Newman. He didn't know if he knew  
6 about it in advance.

7 He said: We'll see there. I don't remember. I know he  
8 was, of course, doing these projects. I don't remember. I  
9 didn't pay for lunch. So forth.

10 But the very same day of the lunch with Dr. Nucatola that  
11 Mr. Daleiden and Ms. Merritt went to and filmed Dr. Nucatola at  
12 Craft restaurant, that very same day Mr. Rhomberg emailed  
13 Mr. Daleiden.

14 (Document displayed)

15 What did he say?

16 "David, I hope your luncheon went well today.

17 You're probably tired. If you have a few minutes, let  
18 me know by email or phone about the next steps."

19 He knew about the lunch. He knew to follow up that same  
20 day and ask how it went. And, yet, he gets on the stand and  
21 tells you: I don't remember if I knew about it in advance.

22 But perhaps, ladies and gentlemen, most egregiously,  
23 Mr. Rhomberg got on that stand under oath and told you he  
24 didn't know Mr. Daleiden was using a fake name.

25 (Document displayed)

## CLOSING ARGUMENT / TROTTER

1       **"ANSWER:** No, I don't think I knew he was using a fake  
2       name."

3       But then we played this video.

4       (Videotape played in open court, not reported)

5       In the face of that video, Mr. Rhomberg had to admit: Oh,  
6       yeah. Well, maybe I did know that name.

7       Do you hear the chuckle from Mr. Daleiden when he says,  
8       "This is Robert Sarkis." There wasn't, like, a responsive,  
9       "Robert Sarkis, who is that?" He obviously knew that  
10      Mr. Daleiden had used a fake name that he was using when he  
11      infiltrated the PPGC clinic. That's where he was calling him  
12      from. And, yet, he got on the stand and told you he didn't  
13      know that Mr. Daleiden was using a fake name.

14      So the defendants' story about what their intent was with  
15      this whole Center for Medical Progress Project is not to be  
16      believed. Their claim that they were merely journalists is not  
17      to be believed.

18      But in any event, His Honor has already instructed you  
19      this morning that even if they were journalists, they would  
20      still have to follow the law.

21      (Document displayed)

22      His Honor read to you this instruction. "First  
23      Amendment."

24             "The First Amendment is not a defense to the  
25      claims in this case. Defendants' argument that they

## CLOSING ARGUMENT / TROTTER

1           were citizen journalists was admissible as context for  
2           the defendants' case, not as a legal defense."

3           But even as context, Members of the Jury, the defendants'  
4 claim that they were merely acting as journalists is simply not  
5 true. The defendants' true motives are clear.

6           And you'll remember some of these statements perhaps from  
7 my opening statement.

8           (Document displayed)

9           But they are clear in the defendants' own words.

10          Mr. Rhomberg's goal was to, quote, Destroy the evil Planned  
11 Parenthood Empire.

12          Mr. Rhomberg's goal was to, quote, End mass prenatal  
13 murder, close quote.

14          Mr. Rhomberg's goal was to, "Defeat the demonic Planned  
15 Parenthood."

16          Mr. Newman's goal was to, quote, Finish off Planned  
17 Parenthood and end abortion.

18          Mr. Newman wanted to, quote, Take down Planned  
19 Parenthood's Empire.

20          Mr. Newman wanted to, quote, Destroy Planned Parenthood's  
21 death machine.

22          Mr. Daleiden believes that abortion is, quote,  
23 industrial-scale killing.

24          Mr. Daleiden's goal, it's in his project proposal for CMP  
25 was, quote, to ignite public outrage.



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1           And with these goals in mind, the defendants were  
2 activists; activists, not journalists.

3           And how is that made abundantly clear?

4           (Document displayed)

5           Well, take a look this email that you saw during the case.  
6 This is from Mr. Daleiden to Mr. Lopez in advance of the MeDC  
7 meeting, about the MeDC meeting plan. And as part of that  
8 email, he provided Mr. Lopez, quote, target lines.

9           Journalists don't have target lines. They follow the  
10 facts and report on the facts wherever the facts take them.  
11 Target lines are lines that activists will use that have an  
12 agenda.

13           Now, Members of the Jury, His Honor has told you, sort of  
14 repeatedly, probably beginning in jury selection and all the  
15 way through the trial, that this case is not about being  
16 pro-life or pro-choice. His Honor has told you this case is  
17 not about whether abortion is good or bad. It is about the  
18 strategies chosen and employed by the defendants.

19           You may recall during Mr. Daleiden's testimony when I was  
20 examining him, I asked him about people who were pro-life, who  
21 he was seeking donations from to support the CMP Project? And  
22 I asked him specifically about a gentleman named Greg  
23 Pfundstein, who Mr. Daleiden admitted was strongly pro-life and  
24 who he had sought financial contributions for the CMP Project.  
25 But Mr. Pfundstein was against it. Why? Because he disagreed

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1 with the tactics and strategies. Not the ultimate goal, but  
2 the tactics and strategies that CMP and Mr. Daleiden were going  
3 to employ.

4 What did Mr. Daleiden say in response to Mr. Pfundstein's  
5 objection?

6 (Document displayed)

7 He said in response to my question:

8 **"QUESTION:** Not everyone that was approached to donate  
9 to CMP was in favor of the tactics."

10 That's what I asked him.

11 He talked about certain people, including Mr. Pfundstein,  
12 having a, quote, sort of idiosyncratic moral theology problem.  
13 That's how he dismissed Mr. Pfundstein.

14 Mr. Daleiden was even harsher about these folks during his  
15 testimony in his deposition, which we played for you. It was  
16 this testimony.

17 (Videotape played in open court, not reported)

18 Mr. Daleiden dismisses a person who is strongly pro-life,  
19 who he has approached for funding, as foolish and parochial,  
20 and he didn't want to be involved with anyone like that.

21 You'll recall, Members of the Jury, that even Phil Cronin,  
22 Phillip Cronin you saw by videotape deposition. He didn't come  
23 live to the trial. Phillip Cronin was the retired attorney who  
24 agreed to serve for a period of time as BioMax's registered  
25 Agent for Service of Process. His name was written on that

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1 form that was turned into the Secretary of State.

2 Phillip Cronin told you in his videotaped deposition  
3 testimony that you saw that he is definitely pro-life. He's a  
4 pro-life supporter, and he agreed to serve as Agent for Service  
5 of Process.

6 (Document displayed)

7 But what else did he tell you? He said when he learned,  
8 it was after this lawsuit had been filed, that Mr. Daleiden had  
9 opened up a bank card with his name on it without his knowledge  
10 or authorization and had signed his name, forged his name on  
11 this document that you see before you as payment for the NAF  
12 Conference, what did Mr. Cronin tell you? Pro-life though he  
13 is. He was completely surprised and flabbergasted. That  
14 wasn't what he agreed to. And he said "not at all, that wasn't  
15 what I agreed to."

16 So, Members of the Jury, let's now look more deeply at the  
17 strategies chosen and employed by the defendants, that even the  
18 pro-life community, all of them didn't agree with.

19 As I told you before, the defendants used a sophisticated  
20 calculating scheme and it has spanned a long period of time.

21 (Document displayed)

22 It began with Mr. Daleiden's meeting with Mr. Newman in  
23 2012. You'll recall that in January, late January 2013  
24 Mr. Daleiden emailed a roadmap document. That's what he  
25 referred to it as. And this was a roadmap document laying out

## CLOSING ARGUMENT / TROTTER

1 certain of the steps for the upcoming -- it wasn't called CMP  
2 yet at the time, but upcoming project.

3 And part of that document talked about parking a domain  
4 and temporary website for a fake company. That fake company,  
5 Members of the Jury, is -- what became BioMax. He had already  
6 plotted and planned that he needed to park the domain in  
7 advance so that if anyone looked and saw when -- where the  
8 domain -- or when the domain had been registered, it wouldn't  
9 be like it had just gotten registered the same day he  
10 infiltrated a conference. It was pre-planned. It was  
11 occurring in early 2013.

12 In March 2013 Mr. Daleiden and Mr. Rhomberg and Mr. Newman  
13 filed the Articles of Incorporation for CMP. And Mr. Daleiden  
14 specifically said he chose the name Center for Medical Progress  
15 for a particular reason. He said, you may recall the email,  
16 to, quote, fly under the radar. He didn't want anybody to  
17 associate Center for Medical Progress with being pro-life or  
18 anti-choice or any of that. It was all part of the scheme.

19 April 2013, Mr. Daleiden submits the 501(c)(3) form for  
20 tax exempt status for the Center for Medical Progress to the  
21 IRS. And Mr. Newman and Mr. Rhomberg are listed as Board  
22 members and officers of CMP on that form.

23 July, 2013. Mr. Daleiden recruited Ms. Merritt to join  
24 him in this project and operation, and particularly to be part  
25 of the infiltration team.

## CLOSING ARGUMENT / TROTTER

1           Before the ARHP meeting, which was going to be held in the  
2 fall, Mr. Daleiden provided Ms. Merritt and Brianna Baxter with  
3 field worker vocabulary. You may recall seeing that document.  
4 It had a specific list of terms to use and not use, lest you be  
5 suspected of being someone who was pro-life or anti-choice.

6           (Document displayed)

7           August 28th, 2013. Ms. Short emails Mr. Cronin, who is  
8 the person who eventually became the registered agent for  
9 BioMax and referred to BioMax as, quote, a corporation which is  
10 not actually going to be conducting any business.

11           That exhibit is in evidence and you'll be able to take a  
12 look it. It's Exhibit 582.

13           The first contact between the defendants and the abortion  
14 provider community, you'll recall, Members of the Jury, was in  
15 September of 2013. So at this point we're well over nine  
16 months. We're going up on a year since the initial meeting  
17 between Mr. Daleiden and Mr. Newman. And this was the first  
18 time they actually made in-roads into the reproductive health  
19 community. It was at the ARHP in Colorado. And Mr. Daleiden  
20 by this point had recruited both Ms. Merritt and Ms. Baxter.  
21 They went under false names, Tennenbaum and Allen. They went  
22 under a false company. They said they were with BioMax, which  
23 was a -- they called it at that time a new start-up company  
24 that was involved in tissue procurement.

25           And, importantly, at that conference, Ms. Merritt and

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1 Ms. Baxter were able to meet two NAF representatives. And that  
2 was important because that became kind of the foundation for  
3 the later infiltration.

4 So after the ARHP conference, the defendants emailed back  
5 and forth. Its principally Mr. Daleiden, though, he's using  
6 email addresses for Ms. Allen, because they don't even know the  
7 Sarkis name. He hasn't appeared as Sarkis at the ARHP  
8 conference, so he's pretending to be the fake name, Brianna  
9 Allen. And he's emailing with the NAF folks that he's met in  
10 order to follow up and get invited to the NAF Conference that  
11 was to be held here in San Francisco in April of 2014.

12 And, in fact, after much back-and-forth and filling out  
13 the registration paperwork for NAF for exhibitors, there was  
14 actually the attendance by Mr. Daleiden posing as Sarkis,  
15 Ms. Merritt posing as Tennenbaum, and Ms. Baxter posing as  
16 Allen. And they all went to the NAF Conference here in  
17 San Francisco. And, importantly, it was there that they first  
18 met PPFA.

19 And after that meeting with Dr. Nucatola at the NAF  
20 Conference here in San Francisco, there were a bunch of emails  
21 that went back and forth between Mr. Daleiden, posing sometimes  
22 under his name Sarkis and sometimes sending things purportedly  
23 on behalf of Susan Tennenbaum, et cetera, but ultimately what  
24 they were able to do was to set up a lunch with Dr. Nucatola.  
25 And that lunch was July 25th -- I'm going to let Ken catch up

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1 with me here. That was July 25th, 2014.

2 (Document displayed)

3 Now, you may recall just this interesting exchange that  
4 Mr. Daleiden had with Ms. Merritt in advance of the  
5 Dr. Nucatola lunch, where he sent her an email and told her  
6 pre-select a bottle of wine. It's one thing, sort of get ready  
7 for the lunch.

8 The other thing that was interesting though was  
9 Mr. Daleiden, you may recall, when you saw the footage of them  
10 actually entering the Craft Restaurant, he actually ordered a  
11 specific table. It was a booth, you may recall from the  
12 footage, that was at the very back of the restaurant by the  
13 wall. By the back wall. And that was a specific table that  
14 Mr. Daleiden had reserved for the Nucatola lunch.

15 After the Nucatola lunch, there are a bunch of emails that  
16 go from BioMax to PPFA, because they have now made in-roads  
17 with Dr. Nucatola in order to get an invite to exhibit at  
18 PPFA's Forum conference. And they were able to do that, and  
19 that Forum, PPFA Forum was held in October of 2014 in Miami.

20 And at that conference Mr. Daleiden and Mr. Lopez, posing  
21 under their fake names as representatives of BioMax, met  
22 Dr. Ginde, who was the doctor with PPRM, and Dr. Gatter, who  
23 they would later -- the defendants would later have lunch with  
24 and tape.

25 And, of course, at all of the conferences and all of the

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1 lunches the defendants are wearing their hidden cameras and  
2 they are taping people without their knowledge and without  
3 their consent.

4 So after the -- after the Forum meeting, they meet  
5 Dr. Gatter and then have communications with her by email and  
6 set up a lunch with Dr. Gatter. And that lunch is February 6th  
7 of 2015. And you'll recall that there were two people from  
8 Planned Parenthood at that lunch, Dr. Gatter and a woman by the  
9 name of Laurel Felczer, who was a lead clinician.

10 After that, the defendants were able to -- through all of  
11 the contacts they had made, they were able to register as  
12 exhibitors for the MeDC Conference in Orlando in February of  
13 2015. And then they were able to register for the March 2015  
14 National Conference that PPFA held in D.C.

15 And, again, Mr. Lopez and Mr. Daleiden went there and at  
16 that conference they actually met Tram Nguyen. You may recall  
17 seeing her by videotape deposition. She is the person who  
18 works for PPGC.

19 And then after some back-and-forth with Ms. Nguyen, they  
20 actually -- it was David Daleiden, posing as Mr. Sarkis, has  
21 some interaction about doing a clinic visit, an office visit to  
22 PPGC. And PPGC said: Sure, we'll arrange for that, but you  
23 have to sign a Non-Disclosure Agreement before the visit.

24 (Document displayed)

25 And he actually signs that document in April of 2015,



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1 April 4th. And then there are two site visits that are within  
2 days of each other, you'll see here, in early April; PPRM in  
3 Colorado and PPGC in Texas. Again, surreptitious recording  
4 occurring at all of these things.

5 And then finally the last, as I mentioned when I gave you  
6 the shortened version of this, the last surreptitious recording  
7 of PPFA staff and Planned Parenthood staff as a whole was at  
8 the April NAF meeting in Baltimore. And CMP then released the  
9 first video featuring Dr. Nucatola on July 14th, 2015.

10 So what does that -- all of that that we've shown you,  
11 it's been on two slides, what does that show you? It shows a  
12 long period of time of sophisticated planning and  
13 implementation of this scheme, what their own expert called a  
14 calculated scheme.

15 So now let's move to Planned Parenthood's claims in this  
16 case. I talked to you at the beginning about the claims you  
17 don't have to worry about, but let's talk about the claims for  
18 which you will be asked to make decisions.

19 Let's start with Fraud. And you were read this Jury  
20 Instruction.

21 (Document displayed)

22 Of course, His Honor has let you know you'll have the Jury  
23 Instructions in the deliberation room, but I want to first  
24 focus on the first three elements, because there really is no  
25 real dispute about the facts underlying the first three

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1 elements.

2 You've seen all the evidence of the defendants' using fake  
3 names, falsely representing who they were by name, by  
4 affiliation, by background, using fake IDs, driver's licenses  
5 to get into conferences and clinics. Those were all false  
6 representations made to Planned Parenthood and to others.

7 False statements that BioMax was a legitimate TPO. They  
8 used all sorts of means to make those false statements. It was  
9 the brochures that you saw, the BioMax brochure with all the  
10 false statements.

11 Had a false statement everywhere from Susan Tennenbaum,  
12 which isn't Ms. Merritt's real name, and her being CEO, which  
13 isn't real, and BioMax being a tissue procurement organization,  
14 which isn't real. None of that was real. And so there really  
15 is no real dispute that the defendants made false  
16 representations to plaintiffs.

17 Those are the first three elements.

18 (Document displayed)

19 So now let's move to the fourth element, and that is that  
20 the defendants intended that Planned Parenthood rely on the  
21 representation. Well, that really also is not -- can't be  
22 subject to much dispute, Members of the Jury.

23 You heard testimony, including from the defendants  
24 themselves, that they knew they had to use fake identities and  
25 a fake company in order to get Planned Parenthood and the other

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1 people who were at the conference to talk to them. So they  
2 intended through that conduct to have Planned Parenthood rely  
3 on the misrepresentations they were making.

4 The next element: That the plaintiff reasonably relied on  
5 the defendants' misrepresentations.

6 Well, the Court has importantly instructed you this  
7 morning that Planned Parenthood did not have any duty to  
8 investigate whether the defendants were telling the truth or  
9 concealing information.

10 (Document displayed)

11 And you actually were read this Jury Instruction:

12 "You should not consider whether a hypothetical  
13 reasonable person would have conducted more  
14 investigation of the defendant than the plaintiff  
15 did."

16 The only question is: Were the misrepresentations so  
17 obviously false and preposterous such that Planned Parenthood  
18 would have to purposefully close its eyes in order not to  
19 discover it?

20 Well, Members of the Jury, you saw the evidence. These  
21 folks had BioMax with a website that they had parked. They had  
22 parked the domain months before. They had registered BioMax  
23 with the California Secretary of State as an LLC. They had the  
24 brochures that they had printed. They had the whole backstory  
25 that Mr. Daleiden coached Ms. Merritt and Mr. Lopez and others

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1 with about who they were and who the competition was, the other  
2 tissue procurement organizations.

3 They had all of this planning, all of these things that  
4 they did in order to make sure that people were actually  
5 fooled. And you know what? They were successful. They were  
6 successful with a whole bunch of people. They were successful  
7 with the California Secretary of State signing the fake name  
8 Susan Tennenbaum. A lot of people were -- were duped by the  
9 defendants.

10 So nothing was so obviously false or preposterous such  
11 that Planned Parenthood had any duty to investigate. Because,  
12 in fact, as you saw from all of the evidence --

13 If you can go back to the prior slide, Ken.

14 (Document displayed)

15 All of the evidence, I won't go through it all. You'll  
16 see it here on the screen. I've touched on all of it as we've  
17 gone through the timeline. There were all these things that  
18 they did in order to convince Planned Parenthood and everybody  
19 else that they came into contact with that they were legit, and  
20 Planned Parenthood believed them.

21 So let's -- so that's fraud, intentional  
22 misrepresentation.

23 You'll also see in the Jury Instructions and the verdict  
24 form that the defendants committed another type of fraud, and  
25 His Honor read you the instructions for fraud based on false

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1 promise.

2 (Document displayed)

3 And these are the promises. They are the promises that  
4 were in the actual agreements that BioMax and the other  
5 defendants entered into:

6 That the exhibits would be educational;

7 That the defendants would comply with the laws as it  
8 relates to fraud and privacy and confidentiality.

9 And then they also made the false promise to PPGC when  
10 they signed that NDA before the clinic visit that they wouldn't  
11 disclose PPGC's confidential information, even though they knew  
12 at the time that they were going to tape Missy Farrell, the  
13 Director of Research. They taped her for seven hours, and that  
14 they were going to release the footage on YouTube. They knew  
15 that before they went in. And, yet, they made that false  
16 promise to Missy Farrell and to PPGC.

17 So, ladies and gentlemen, we've talked about the evidence  
18 that Mr. Daleiden and Ms. Merritt and Mr. Lopez and Center for  
19 Medical Progress and BioMax committed fraud directly, by direct  
20 misrepresentations and false promises to Planned Parenthood.

21 But what about Mr. Rhomberg and Mr. Newman? Mr. Rhomberg  
22 and Mr. Newman are liable for fraud as co-conspirators. In  
23 fact, they are liable for fraud, trespass and the recording  
24 claims of Planned Parenthood as co-conspirators.

25 As I said before, Ms. Short referred to, at the beginning

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1 of this case, Mr. Rhomberg as "What's-His-Name-Over-There."

2 She said to you during opening statement that you would be  
3 asking yourselves, quote, Why is he in this case?

4 Well, you saw the evidence as to why he's in this case.  
5 Mr. Rhomberg was part of the conspiracy with Mr. Daleiden and  
6 Ms. Merritt and Lopez and BioMax and CMP to commit fraud and  
7 trespass and illegal recording.

8 So let's look at the conspiracy elements.

9 (Document displayed)

10 "A defendant is responsible as a conspirator  
11 where the defendant is aware that another person is  
12 planning to commit a wrongful act and the defendant  
13 agreed."

14 The plaintiffs, Planned Parenthood, are not required to  
15 prove that each defendant personally committed a wrongful act.  
16 We don't have to show that Mr. Rhomberg and Mr. Newman went to  
17 the NAF Conference, or that he or she knew all of the details  
18 of the agreement, or the identities of all of the other  
19 participants. It wouldn't matter if Mr. Rhomberg had never met  
20 Ms. Merritt before this lawsuit was filed. None of that is  
21 what's relevant.

22 What's relevant is his awareness and his agreement.

23 So let's look at that with respect to Mr. Rhomberg first.

24 (Document displayed)

25 What are the facts? You know that Mr. Rhomberg was an

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1 officer and a Board member of the Center for Medical Progress  
2 during the entire time of the infiltration and recording. He,  
3 in fact, was the Chief Financial Officer of CMP.

4 CMP had quarterly Board meetings. You saw the evidence I  
5 showed you earlier in closing about Mr. Rhomberg directing  
6 Mr. Daleiden about what footage to take at the NAF Conference.  
7 I mean, he got into the details there.

8 You saw the email from Mr. Rhomberg to Mr. Daleiden after  
9 the lunch with Deborah Nucatola when he asked:

10 "How did lunch go today? What are the next  
11 steps?"

12 You saw the call that Mr. Daleiden placed to Mr. Rhomberg  
13 from PPGC's offices in which Mr. Daleiden referred to himself  
14 as Robert Sarkis.

15 (Document displayed)

16 Here are some of the other evidence that you have saw  
17 during the trial about Mr. Rhomberg.

18 There was this email from Mr. Daleiden to Mr. Rhomberg  
19 that Mr. Rhomberg read from the stand and the email contained  
20 the statement, quote:

21 "Infiltration was successful and BioMax is now a  
22 known and trusted entity to many key individuals."

23 (Document displayed)

24 And, finally, there is this email from July 20th, 2015.  
25 This is less than a week after the first video featuring

## CLOSING ARGUMENT / TROTTER

1 Dr. Nucatola was released, where Mr. Rhomberg in this email  
2 actually implored Mr. Daleiden to remember his, quote,  
3 knowledge and intentions over the past two and a half years.

4 He's referring to the two and a half years of the long  
5 con, the long timeline of the infiltration and the taping of  
6 Planned Parenthood personnel at conferences and clinics and  
7 lunches.

8 What about Mr. Newman? Mr. Newman was also a  
9 co-conspirator, and he was aware of Mr. Daleiden's plan to use  
10 false identities and infiltrate Planned Parenthood conferences  
11 and clinics and to record people without their consent. You  
12 have direct evidence of this, and you also have evidence that  
13 you may find due to the adverse inferences that His Honor told  
14 you that you may consider.

15 So let's look at that evidence with respect to Mr. Newman.

16 (Document displayed)

17 Mr. Newman wrote a book called "Abortion Free" and in the  
18 book there is a section about sending people into clinics, a  
19 team into clinics with a hidden video camera. It talks about  
20 you need a team that's good at role playing and has specialized  
21 video cameras that are undetectable.

22 Mr. Newman knows a lot about infiltration and the hidden  
23 video tactics that Mr. Daleiden and others employed.

24 (Document displayed)

25 Mr. Newman met with Mr. Daleiden before the project, first



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1 project proposal was written. He met with him in 2012 to  
2 discuss the project and the concept.

3 Mr. Newman, like Mr. Rhomberg, was a director and officer  
4 of CMP. In fact, he was the secretary. He was the one that  
5 attended the quarterly Board meetings. It was his  
6 responsibility to actually take minutes of those CMP Board  
7 meetings.

8 (Document displayed)

9 And the roadmap, this is what we talked about before.  
10 This is the first roadmap in early 2013 that spoke about  
11 parking the domain for the fake company. It also talked about  
12 surveillance and gotcha tapings and undercover stings.  
13 Mr. Daleiden shared all of that with Mr. Newman at the very  
14 beginning of the project.

15 And he consulted. Mr. Newman consulted on the project  
16 from the beginning. How do we know? Well, he wrote this  
17 email.

18 (Document displayed)

19 July 10th of 2015 before the first Nucatola -- Dr.  
20 Nucatola video was released by CMP. He wrote this email to a  
21 variety of people and said:

22 "For the past three years Operation Rescue has  
23 had the privilege of consulting on an ongoing  
24 undercover investigation."

25 He's referring to the CMP Project. And he's saying that

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1 he consulted on the project for three years.

2 (Document displayed)

3 And you'll recall again that His Honor read to you that  
4 there were several adverse inferences that you are permitted --  
5 not required, but permitted -- to consider concerning  
6 Mr. Newman. And one of those adverse inferences is that  
7 Mr. Newman understood that BioMax was a front organization that  
8 was designed to provide a cover story for Mr. Daleiden and  
9 Ms. Merritt and Mr. Lopez and others to be able to tape  
10 surreptitiously Planned Parenthood's doctors and staff.

11 Another adverse inference is that Mr. Newman understood  
12 that Mr. Daleiden and others lied about BioMax so that they  
13 could tape Planned Parenthood's doctors and staff without  
14 raising suspicions.

15 Another adverse inference, that Mr. Newman knew that  
16 Mr. Daleiden and Ms. Merritt, Ms. Bettisworth-Davin and Brianna  
17 Baxter were using false names in order to infiltrate  
18 conferences and clinics of abortion providers because they  
19 wouldn't get in if they used their real names.

20 Mr. Newman knew that the CMP actors who were posing as  
21 BioMax representatives and employees carried concealed video  
22 cameras, just like he talked about in his book, "Abortion  
23 Free," and taped Planned Parenthood doctors and staff.

24 And Mr. Newman knew about the CMP videos. He knew that  
25 they were being taped and the people that were being taped were

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1 not aware and not told that they were taped.

2 And he knew that the plan was to create short videos,  
3 taking some of the footage and post those short videos online.  
4 And Mr. Newman, in fact, reviewed those videos before they were  
5 released.

6 (Document displayed)

7 And finally, Members of the Jury, you'll see this. You'll  
8 have access to this document. Mr. Newman early on -- this is  
9 in May of 2013 -- wrote to Mr. Daleiden copying Mr. Rhomberg  
10 and he said:

11 "David. Consider getting an anonymous email  
12 address that only we know about."

13 And he said:

14 "And I will deny under waterboarding."

15 Okay? So those are the things that you know about  
16 Mr. Rhomberg and Mr. Newman and their involvement as  
17 co-conspirators in the trespass and the fraud and the illegal  
18 recording.

19 So let's take a look at the verdict form on Fraud. And  
20 His Honor showed you portions of the verdict form, but I just  
21 want to go through 1-A. We won't go through all of them, but I  
22 want you to be able to see it and I want to go through it a bit  
23 with you.

24 (Document displayed)

25 So let's just start with Mr. Daleiden. So the first

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1 question is:

2 "Did any defendant commit fraud or conspire to  
3 commit fraud through intentional misrepresentation?"

4 And what you would do is you would go to A, and David  
5 Daleiden is there, and you would check "Yes" because you've  
6 seen all of the evidence of the misrepresentations.

7 And then you're asked:

8 "As to which plaintiffs?"

9 So let's talk about that a moment. Let's start with PPFA.  
10 The important thing to remember is that there were three  
11 conferences that PPFA sponsored that were infiltrated: MeDC,  
12 Forum and the National Conference. And the defendants got into  
13 those conferences by making misrepresentations to PPFA. That's  
14 what allowed them to sign up through the Exhibitor Agreements,  
15 because they were pretending to be with a legitimate tissue  
16 procurement organization. Otherwise, they wouldn't have been  
17 exhibitors. So that alone are -- that alone, those are  
18 misrepresentations to PPFA.

19 But also they introduced themselves to PPFA staff who  
20 were -- who were convinced that they were actually legitimate  
21 and who they surreptitiously recorded. And they made  
22 misrepresentations to all of them. And those include  
23 Dr. Nucatola, Dr. Gupta and Jennifer Castle.

24 PPGC -- so you would check off PPFA just based on that  
25 today, "Yes."

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1 PPGC. There is the clinic visit. They misrepresented  
2 themselves as a legitimate company, BioMax, and they were,  
3 therefore, invited into the PPGC clinic. And so they committed  
4 intentional misrepresentations. PPGC relied reasonably and let  
5 them in. And while there they recorded, because they convinced  
6 her they were legitimate, Tram Nguyen, who you saw by videotape  
7 deposition. And they also taped PPGC's Bonnie Smith during  
8 their infiltration.

9 PPOSBC. They introduced themselves and misrepresented who  
10 they were to this affiliate's staff person Jennifer Russo, who  
11 you heard about during the trial.

12 And, finally, PPPSGV. That's the facility that  
13 Dr. Gatter, who you saw live here on the stand, is affiliated  
14 with as the medical director, and Laurel Felczer. They were  
15 both taped because defendants had misrepresented who they were  
16 at the lunch at a/k/a Bistro. And so you would check "Yes" as  
17 to all of those plaintiffs. And then you would move down the  
18 form to the rest of the defendants.

19 Okay. So now let's turn to RICO. Now, Members of the  
20 Jury, you may have heard the term RICO prior to this trial and  
21 you may have associated it with organized crime or the Mafia or  
22 drug cartels. But as Your Honor -- as His Honor told you, this  
23 case involves civil RICO. And this case involves -- the  
24 underlying law that is at issue is a law that prohibits the  
25 making, transfer and use of fraudulent government IDs, which

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1 you've actually seen in this case.

2 So I want to walk through the evidence that you've heard  
3 in light of the elements of RICO that His Honor instructed you  
4 on.

5 (Document displayed)

6 And so these are the four sort of basic elements. My  
7 colleague, Mr. Kamras, is going to talk to you about the fourth  
8 element, and that is the damages caused by the RICO violation.  
9 So I'm going to focus on the first three.

10 So let's move to the first two elements, which I've sort  
11 of combined:

12 "All defendants participated in an ongoing  
13 enterprise consisting of a group associated together  
14 for a common purpose of engaging in a course of  
15 conduct."

16 So let's break that up. Let's start with all the  
17 defendants.

18 What's the evidence? Well, the evidence is that  
19 Mr. Daleiden created Center for Medical Progress with  
20 Mr. Rhomberg and Mr. Newman as Board members and officers, and  
21 that Mr. Newman and Rhomberg consulted and advised throughout  
22 the CMP Project.

23 Ms. Merritt and Mr. Lopez were independent contractors of  
24 CMP, but they were also active participants in the transfer and  
25 use of the false IDs. And so they directly participated in

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1 that.

2 Common purpose of engaging in a course of conduct. What's  
3 the evidence that you saw? All of the defendants worked with  
4 Mr. Daleiden in a course of conduct of infiltrating Planned  
5 Parenthood's conferences and clinics with fake identities and  
6 with fake names.

7 Ongoing enterprise. Center for Medical Progress you  
8 heard, Members of the Jury, continues to this day. You may  
9 recall that Mr. Daleiden from the stand told you, in fact, that  
10 they -- CMP released a video as recently as this past summer  
11 containing some of the footage that had been taped during that  
12 time period of 2014 and 2015, a video they hadn't previously  
13 released.

14 It was an ongoing enterprise throughout the time period  
15 from 2013 all the way through the release of the first video  
16 and thereafter.

17 So let's now turn to element three.

18 (Document displayed)

19 "The defendants directly or indirectly were  
20 involved in the operation or management of the  
21 enterprise through a pattern of racketeering  
22 activity."

23 So what do we mean when we're referring to "pattern of  
24 racketeering activity"? We're talking about the making,  
25 transfer and use of the fake California driver's licenses. And

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1 you saw those in evidence during the trial.

2 Mr. Daleiden made or purchased fake IDs for himself, for  
3 Ms. Merritt in the name of Susan Tennenbaum, for Ms. Baxter in  
4 the name of Brianna Allen, and for Ms. Bettisworth-Davin in the  
5 name of Wagner. This is racketeering activity, and it's a  
6 pattern of it. It's not one. It's not two. It's not three.  
7 It's four IDs.

8 The fake IDs were used by the defendants numerous times.  
9 I showed you the timeline. The infiltration at NAF in 2014  
10 here in San Francisco, all the way through all the conferences  
11 and clinics and the lunches, all the way through April of 2015  
12 at the NAF Conference in Maryland. That shows even more of a  
13 pattern of racketeering activity.

14 And Mr. Rhomberg, Mr. Newman and Mr. Lopez knew that  
15 Mr. Daleiden and others were using their fake names to  
16 infiltrate, and you've seen that evidence, and this all is  
17 racketeering activity.

18 (Document displayed)

19 The defendants' scheme is likely to continue. What is the  
20 evidence that?

21 Well, Mr. Rhomberg and Mr. Daleiden and Mr. Newman have  
22 all been involved in some form of undercover operations for  
23 over a decade.

24 Part of Mr. Daleiden's scheme, you've seen in the evidence  
25 presented in this trial, has been to recruit anti-abortion



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1 activists who are not well known, like Ms. Merritt, and to  
2 carry out the scheme with them using fake names. And the  
3 defendants' ultimate goal -- it was their goal before the  
4 beginning of the CMP Project, it is their goal today -- is to  
5 destroy Planned Parenthood. That hasn't changed.

6 And so all that this shows is a pattern of racketeering  
7 activity that's likely to continue into the future.

8 So let's go to the verdict form on RICO.

9 (Document displayed)

10 This one is a bit simpler than the one you saw on Fraud.  
11 You're asked the question:

12 "Did any defendant violate RICO or conspire to  
13 violate RICO?"

14 And you'll check the box by the defendant A through G.

15 So let's now turn to the Federal recording claim.

16 (Document displayed)

17 Now, this claim, this law applies to all of the Planned  
18 Parenthood taping victims you saw evidence of during the trial.  
19 And here is a screenshot of all of those folks. And you saw  
20 individuals, some of them came and testified before you live at  
21 trial.

22 And His Honor provided you the Jury Instructions this  
23 morning.

24 (Document displayed)

25 The Federal recording law covers intercepted

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1 communications, oral communications.

2 And "intercepted" means acquiring through the use of any  
3 electronic, mechanical or other device.

4 Really, no dispute about that. It's not disputed that the  
5 defendants wore the hidden video cameras and were recording  
6 people.

7 (Document displayed)

8 And "oral communication" means:

9 "One. The person taped thought the conversation  
10 was not being recorded."

11 There is really no dispute about that. The defendants  
12 didn't say that they were wearing hidden video cameras. They  
13 actually hid the equipment. No one was told they were being  
14 recorded. And you saw all the evidence and heard from the  
15 witnesses who testified before you they didn't know that they  
16 were being recorded.

17 And:

18 "It was reasonable for that person to think the  
19 conversation was not being recorded."

20 Well, there is no evidence that it would be unreasonable.  
21 If you're having what you think is a one-on-one conversation  
22 with somebody and they were wearing a hidden video camera, why  
23 would you think you were being recorded?

24 It wasn't like, you know, where you've had the experience,  
25 you walk into a place where there are actually cameras or

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1 there's a sign. It may say "Smile, you're on camera" or it  
2 says "By entering this place you agree to be video recorded."  
3 There was nothing of the sort here.

4 So let's look at the elements in terms of the evidence.

5 (Document displayed)

6 What do we know? The defendants recorded  
7 indiscriminately. They turned on their cameras when they  
8 entered a conference, clinic or lunch. They didn't turn them  
9 off until after leaving.

10 The defendants misrepresented themselves as professionals  
11 in the medical industry. That's how they got into the  
12 conferences. That's how they got people to talk to them. The  
13 cameras were hidden.

14 They didn't have consent to tape.

15 And the evidence showed that none of the Planned  
16 Parenthood doctors or staff would have spoken to them if they  
17 had known that the defendants were not who they said they were  
18 and if they had known that they were being recorded.

19 So let's talk about the other evidence, starting with the  
20 lunches.

21 (Document displayed)

22 Were the communications private, according to the  
23 evidence? Well, yeah. Dr. Gatter and Dr. Nucatola only agreed  
24 to the lunches after they had met BioMax representatives at  
25 conferences and then emailed with them back and forth to set up

## CLOSING ARGUMENT / TROTTER

1 the lunches. They believed that the defendants were who they  
2 said they were.

3 Mr. Daleiden specifically chose for both of those lunches  
4 specific booths in the back. You'll recall the Craft  
5 Restaurant where the Dr. Nucatola lunch was, it was the last  
6 table in the dining area.

7 (Document displayed)

8 The Gatter lunch was actually held in the Pasadena  
9 restaurant. You may recall this footage that we want to play  
10 with you, and you'll recall that Mr. Daleiden actually  
11 commented to the host about how empty it was. There was no one  
12 else around.

13 (Videotape played in open court, not reported)

14 So in that empty restaurant where Mr. Daleiden and  
15 Ms. Merritt, posing as BioMax representatives, met with  
16 Dr. Gatter and Ms. Felczer, Dr. Gatter and Ms. Felczer thought  
17 that they were having a private communication.

18 Now, let's talk waiters.

19 (Document displayed)

20 Defense counsel during this trial asked a lot of questions  
21 of a lot of witnesses about waiters in various places. And I  
22 would like you to just think about how many times you  
23 personally have gone to restaurants and had private  
24 conversations. And how quickly the waiters who were at the  
25 restaurants are moving back and forth doing their jobs, waiting

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1 on tables, going to the back, getting food, serving beverages.  
2 They are going back and forth to do their job, not to listen to  
3 your conversation. And how even if the waitstaff is there at  
4 the table and they heard you talking, it would only be the  
5 small snippets of the conversation in the few seconds while  
6 they are doing what they are doing to serve you at your table.

7 You may recall that when Dr. Gatter got on the stand, she  
8 was asked to review a videotape of that same luncheon that we  
9 just saw the set-up for in that video and to underline the  
10 words that she heard whenever waitstaff was present at the  
11 table.

12 Question:

13 **"QUESTION:** And could you read which words it was that  
14 you heard being spoken that you underlined during the  
15 time that waitstaff was present at the table?

16 **"ANSWER:** The main thing at that time -- thank you  
17 very much -- the main thing is that..."

18 That's -- those were the words that were being spoken by  
19 Dr. Gatter during the time that the waitstaff was there. She  
20 said "thank you very much" because they were actually pouring a  
21 glass, and then they were gone.

22 So they were getting, at most, a snippet of the  
23 conversation, which they can't -- don't even know the context  
24 of what she's talking about. Those were private  
25 communications, even when there are waiters that are present.

## CLOSING ARGUMENT / TROTTER

1 So let's talk about the conferences.

2 (Document displayed)

3 I'm not going to go through all of these because you've  
4 seen a lot of evidence of this during trial, but there is  
5 really no question that the conferences were private. They  
6 required pre-registration. They were held above ground level  
7 generally. They required photo ID of attendees. There were  
8 guards that were stationed at the doors. NAF had the  
9 Confidentiality Agreements, et cetera. They were all private.

10 Now, despite that clear evidence about conference privacy,  
11 Mr. Daleiden got on the witness stand and compared the NAF  
12 Conference to a movie theater.

13 (Document displayed)

14 This was the question:

15 **"QUESTION:** I'm going to start with the 2014 NAF --  
16 National Abortion Federation meeting here in  
17 San Francisco. Did you understand that the National  
18 Abortion Federation conferences were private? Did you  
19 consider them to be private?

20 **"ANSWER:** No. I considered them to be open to -- open  
21 to members of the public, maybe the same way that a  
22 movie theater is open to members of the public."

23 Does that make any sense based on the evidence? That the  
24 NAF Conference and the PPFA Forum and MeDC and National  
25 Conferences were open, like a movie theater is open to the

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1 public? No.

2 And, in fact, Mr. Daleiden admitted under oath that the  
3 NAF gathering was a, quote, highly specific, select gathering.  
4 Typically the same crowd of people who all know each other  
5 anyway. Not a public movie theater.

6 Ms. Merritt testified that the atmosphere at the  
7 conferences was one "of colleagues exchanging information and  
8 presumably sharing information with other colleagues."  
9 Colleagues, professionals, not a public setting like a movie  
10 theater.

11 In addition to waiters, defense counsel asked, with  
12 respect to the conferences, a lot of questions about people  
13 passing by. You may recall tape being played of the exhibit  
14 hall and somebody walking out and the tape being stopped and:  
15 Did you see that person? The young person there? And, This  
16 person? None of that matters.

17 What matters is that at the conferences these were private  
18 conferences. They were safe spaces for abortion service  
19 providers to have safe conversations about abortion-related  
20 topics.

21 The defendants misrepresented themselves as being part of  
22 that community. That's why they were let in. They taped the  
23 entire conversations of everybody that they came into contact  
24 with, including sensitive information related to abortion. And  
25 they never told anyone that they were taping.

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1 But even if the passers-by mattered, which it doesn't, you  
2 saw the tapes. In most instances there were no people that  
3 were passing by. There were shots of a sole person standing at  
4 the exhibit table speaking to Mr. Daleiden or Ms. Merritt or  
5 Mr. Lopez.

6 Let's talk about the clinics.

7 (Document displayed)

8 The evidence showed the clinics, and the entry to the  
9 clinics and the offices was restricted.

10 The clinics only agreed, PPGC and PPRM, to site visits  
11 from the defendants after meeting them at conferences and  
12 having numerous emails. In fact, PPGC required them to sign a  
13 Non-Disclosure Agreement. All of those facts are undisputed.

14 You may recall from the tape of their visit to PPRM that  
15 the gentleman, Mr. Johnstone, as soon as Mr. Daleiden and  
16 Ms. Merritt walked in the front door, he was right there to  
17 greet them. They weren't given free reign there. These were  
18 private settings.

19 And all of this shows that the people that were being  
20 recorded by the defendants didn't think they were being  
21 recorded. They thought they were having private  
22 communications.

23 So let's talk now about PPFA and the affiliates being the  
24 ones who are suing in this case rather than the individual  
25 employees who were taped.



## CLOSING ARGUMENT / TROTTER

1 (Document displayed)

2 His Honor showed you or read to you a Jury Instruction  
3 about Corporation as Plaintiff. And this -- again, this is  
4 only as it relates to the Federal recording law.

5 "A corporation can sue for the unauthorized  
6 taping of an employee or contractor if the defendant  
7 targeted her for recording because she could disclose  
8 information about the corporation's internal matters."

9 Well, in fact, perhaps unwittingly, Mr. Daleiden actually  
10 proved that through his own testimony.

11 He testified to you:

12 **"ANSWER:** I sought out certainly specific officers or  
13 specific people in specific leadership roles with the  
14 plaintiffs."

15 Now, finally, His Honor read to you this instruction for  
16 the Federal Recording Statute violation.

17 (Document displayed)

18 And, again, this element does not apply for any of the  
19 state recording claims. This is only the Federal claim. And  
20 this element is that the defendants' purpose in recording was  
21 to commit a tortious or criminal act.

22 And what did the evidence show here?

23 (Document displayed)

24 "The defendants used the recordings to violate  
25 civil RICO."

## CLOSING ARGUMENT / TROTTER

1           And you've seen the evidence of the defendants' motives:  
2 To destroy Planned Parenthood. And the recordings were made to  
3 try to achieve that goal.

4           You've seen the evidence of the defendants' RICO scheme,  
5 the fake IDs and the fraud. And the recordings were all made  
6 in order to further that RICO enterprise.

7           Now, ladies and gentlemen, in addition to the Federal  
8 recording claims, you've heard about the state law recording  
9 claims. I'm not going to go through all that evidence because  
10 it's very similar evidence to what we focused on already.

11           But I do want to focus just a moment on the California  
12 recording law for two additional points.

13           (Document displayed)

14           One is to focus you in on this part of the instructions  
15 for violation of the California statute. And you'll see that  
16 the key here, the key question is whether:

17                   "A conversation is confidential where the  
18 recorded party had a reasonable expectation that  
19 others are not listening in to the conversation or  
20 recording it."

21           You heard a lot of questions from defense counsel in this  
22 case about whether people could overhear conversations. That's  
23 not what the standard is. That's not what's relevant.

24           The question is whether there are other people who are  
25 listening in or recording. And you've seen the evidence in the

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1 case that indicates that that didn't occur with respect to any  
2 of the recordings, whether at lunches or conferences or  
3 otherwise.

4 And, again, I ask you to think about the evidence you've  
5 seen and apply your own common sense and experience to that.

6 Now, the last point on the California recording law is the  
7 defendants' claimed defense that they had a right to record in  
8 California because of their supposed belief that Planned  
9 Parenthood -- it was particularly the persons that they were  
10 recording from Planned Parenthood had committed or intended to  
11 commit a violent felony against a person.

12 I want to talk to you about the testimony and evidence  
13 about that, but let's be clear on what the law is and where it  
14 applies.

15 (Document displayed)

16 It only applies as a defense to the California recording  
17 claims, not to any other state or the Federal law. And it can  
18 only apply to recordings in California. That's the NAF 2014  
19 conference, the Nucatola lunch and the Gatter lunch.

20 To establish this defense the defendants, Mr. Daleiden and  
21 Ms. Merritt, would have to show -- they would have to prove to  
22 you that prior to the time that they started recording in  
23 California --

24 Ken, if you can go to the next slide?

25 (Document displayed)

## CLOSING ARGUMENT / TROTTER

1           That is, prior to April 2014, that was when the first  
2 recording in California took place, they would have to prove to  
3 you that they believed that every single person that they  
4 recorded in California had committed or intended to commit a  
5 violent felony against a person.

6           That's the first thing they would have to prove to you.

7           The second thing they would have to prove to you is that  
8 their belief was reasonable.

9           And the third thing they would have to prove to you was  
10 that the purpose in them making the recording was in order to  
11 gather evidence of the commission of that violent felony.

12           Well, what is their supposed evidence? Let's move to why  
13 this defense doesn't apply.

14           (Document displayed)

15           You'll recall this exhibit that the defendants put before  
16 you. And you'll recall that Mr. LiMandri put this up when  
17 Mr. Daleiden was on the stand and was responding to  
18 Mr. LiMandri's questions.

19           This document that was prepared by the defendants purports  
20 to lay out all of the things that Mr. Daleiden supposedly knew  
21 that -- that he says were the basis for his belief that there  
22 were violent felonies being committed.

23           But when we look at the evidence we find three things.

24           (Document displayed)

25           Many of the sources are unreliable and not credible.

## CLOSING ARGUMENT / TROTTER

1 Most of them have no connection whatsoever to Planned  
2 Parenthood.

3 And many of them are not in Mr. Daleiden's project  
4 proposal that he created in 2013. And we'll talk a bit about  
5 why that's significant.

6 So let's go through the things on the exhibit.

7 (Document displayed)

8 And let's start with the first three things. And you'll  
9 see that it begins with Dean Alberty and it ends with the light  
10 bulb at the end.

11 Let's talk about the first three items, because they  
12 really relate to the same events.

13 You may recall that this relates to Dean Alberty's  
14 testimony before Congress about a couple of tissue procurement  
15 organizations that he had been employed by. And that he had  
16 also given an interview to 20/20, and you actually saw the  
17 20/20 report, that centered on the same allegations he had made  
18 that were part of his Congressional testimony. And the Life  
19 Dynamics investigative report is based on that same  
20 information.

21 So these first three items on the exhibit all relate to  
22 the same events.

23 So let's talk about Dean Alberty and Mr. Daleiden's  
24 supposed reliance on that Congressional testimony.  
25 Mr. Daleiden told you that he read the entire Congressional

## CLOSING ARGUMENT / TROTTER

1 testimony transcript. He called Mr. Alberty a whistleblower.  
2 That's what he told you it was.

3 (Document displayed)

4 And he said that was the foundation of him even beginning  
5 to embark on what became the CMP Project. And that was his  
6 testimony about the Congressional hearing that occurred in  
7 March 2000, but which he read about in 2010.

8 (Document displayed)

9 And you'll recall that, though, on cross-examination  
10 Mr. Daleiden admitted that Mr. Alberty, who was sort of the  
11 beginning of this thing, the foundation for the whole plan had  
12 been shown to be a liar.

13 You'll recall that Mr. Alberty, when he was taped on the  
14 20/20 video, said that he was aware that there were prices  
15 charged by the TPO that he worked for that represented, quote,  
16 greed. And he said that abortions had been changed to get  
17 better tissue.

18 And he actually was asked by the ABC reporter: Why should  
19 we believe you and what you're saying? And he said:

20 "I will stand by my statements til the day I  
21 die."

22 That's what he said on the 20/20 video.

23 But after 20/20 was taped, Mr. Alberty was called before  
24 Congress to testify, and he changed his statements. He said:  
25 Well, in fact, I don't have any evidence that there were any

## CLOSING ARGUMENT / TROTTER

1 excessive or illegal fees that would show greed. I don't  
2 really know that there were any changes ever made to abortion  
3 procedures when I was working for the tissue procurement  
4 organizations.

5 And when he was challenged by that, by the Congress people  
6 about those inconsistencies, he said:

7 "When I was under oath, I told the truth.

8 Anything I said on the video when I'm not under oath,  
9 that's a different story."

10 That was his excuse for lying on 20/20.

11 Now, Mr. Daleiden knew, because he read the whole  
12 Congressional transcript. He knew that Mr. Alberty had changed  
13 his story before Congress.

14 (Document displayed)

15 And, in fact, he was asked this question by me.

16 **"QUESTION:** You're aware that Mr. Alberty had  
17 contradictions between statements he made on videotape  
18 and sworn statements?"

19 And Mr. Daleiden admitted:

20 **"ANSWER:** Yes, I was aware of that."

21 But it's not just about what Mr. Daleiden didn't tell you  
22 that Mr. Alberty had been shown to be lying. It was -- it's  
23 about what he did tell you.

24 Remember the thing that supposedly launched the whole  
25 investigation by Mr. Daleiden was supposedly a lack of

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1 follow-up to the Congressional hearing. He said there was this  
2 big Congressional hearing and nothing had happened.

3 And this is what he, Mr. Daleiden, said: Nobody had  
4 really followed up.

5 And he went further than that. I asked him a question  
6 about news, news about what had happened after the hearing.  
7 And he said: Zero follow-up whatsoever.

8 But that wasn't true. In fact, Mr. Daleiden was aware  
9 that there was follow-up.

10 I asked him this question. I don't have it on a slide,  
11 but I'm going to read it to you:

12 **"QUESTION:** Now, Mr. Daleiden, you knew from the  
13 Congressional hearing transcript that you reviewed  
14 that this matter that the hearing was the subject of  
15 was referred to the FBI and the Department of Justice.  
16 You recall reading that in the transcript?

17 **"ANSWER:** I do recall reading about some kind of --  
18 some kind of referral, a lower case r, referral. I  
19 don't recall the level of formality that it was at or  
20 anything like that."

21 So Mr. Daleiden knew at the time that he read that  
22 Congressional hearing transcript that was supposedly the  
23 impetus for this whole thing that Mr. Alberty had admitted to  
24 lying and that the whole matter had been referred to the  
25 Department of Justice.



## CLOSING ARGUMENT / TROTTER

1           And remember Mr. Daleiden first telling you that he  
2 couldn't find any news reports about any follow-up? On  
3 cross-examination, though, he admitted that he had seen  
4 follow-up in the news.

5           (Document displayed)

6           **"QUESTION:** So in none of the extensive research that  
7 you conducted did you find any reference to the fact  
8 that the FBI had found no violations of law as a  
9 result of its investigation?

10          **"ANSWER:** I remember finding a news article from -- I  
11 feel like it was around, like, 2007 or 2008, I  
12 remember the date being, describing a -- describing a  
13 declination of prosecution from a U.S. Attorney's  
14 Office in Kansas."

15          That's where the TPO at issue in 20/20 and the Alberty  
16 testimony was based. "Declination of prosecution" meaning the  
17 U.S. Attorney declined or determined not to prosecute.

18          Now, in fairness that wasn't all that Mr. Daleiden said in  
19 that answer. He went on to talk about it being confusing and  
20 there were serious sworn allegations that had been made and all  
21 of that, and that he was focused on Mr. Alberty not recanting  
22 everything that he had said on the 20/20 video.

23          But here is what Mr. Daleiden is asking you to believe.  
24 He's saying maybe Mr. Alberty was -- had admitted he was lying  
25 about profiting from fetal tissue. Maybe he was lying when he

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1 claimed to have knowledge that any doctor had changed abortion  
2 procedures.

3 But this other thing that he said he never recanted that.  
4 But think about that argument. He's saying, yes, this man  
5 admitted lying on national television to ABC, but I'm still  
6 going to believe him on the points he didn't admit were lies.

7 Compare that to the reaction of Republican Congressman  
8 Burr, which Mr. Daleiden also read in the Congressional  
9 transcript.

10 (Document displayed)

11 Mr. Burr, Congressman Burr said to Mr. Alberty, quote:

12 (As read)

13 "I have found there to be so many inconsistencies in  
14 your testimony between that and tapes and testimony  
15 prior to this, whether they were under oath or not  
16 under oath, your credibility as far as this member is  
17 concerned, is shot."

18 Ladies and gentlemen, like Congressman Burr said, the  
19 credibility on all of the first three things on Mr. Daleiden's  
20 investigation exhibit is shot. Because the foundation is  
21 Mr. Alberty.

22 Next we have this book *Beyond Abortion* by Suzanne Rini.  
23 What do we know about Ms. Rini? She's pro-life, she's not a  
24 scientist, she's not a doctor. The studies in her book are 30  
25 years or more old.

## CLOSING ARGUMENT / TROTTER

1           And there is no evidence, you've heard no evidence linking  
2 anything in that book to Planned Parenthood. It's not a  
3 credible or even a relevant source.

4           Next we have *Circulation*, you see that under "Literature."  
5 You may recall *Circulation* was the publications Daleiden  
6 testified about that had the Stanford research study in it  
7 about fetal tissue. And you will remember that Mr. Daleiden  
8 admitted under cross-examination that the article in  
9 *Circulation* didn't mention Planned Parenthood at all.

10           You will also remember that Mr. Daleiden admitted that in  
11 the article, itself, it referred to a body at Stanford called  
12 the Institutional Review Board or IRB. And Mr. Daleiden  
13 admitted he was aware throughout this whole time period that  
14 IRBs like existed at Stanford and every other major university,  
15 they are designed to make sure that the scientific researchers  
16 are actually complying with all laws and all ethical  
17 guidelines.

18           And that's important, because you have to remember that in  
19 order to think that there's some illegal activity going on, and  
20 not just illegal activity but violent felonies being committed,  
21 that Mr. Daleiden and the other defendants were purportedly  
22 going to be researching, they would have to believe that major  
23 universities like Stanford and others who were involved in  
24 scientific research are somehow involved and turning a blind  
25 eye to getting human tissue which has been obtained illegally.

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1 Does that make sense? Does it make sense that you could  
2 really rely on particularly, you know, Rini's book, and Alberty  
3 who has recanted, and this to believe that these major  
4 universities would be associated with that?

5 I mean, literally, to determine that somehow tissue is  
6 coming from what they call, quote, "born-alive fetuses" who  
7 presumably are born alive and then murdered? Does that make  
8 sense to you? Is it reasonable for Mr. Daleiden to believe  
9 that? It's simply not reasonable.

10 And Mr. Daleiden's conversations with Ms. Deisher -- and  
11 you'll see the Stanford experiments there, it's on the second  
12 line, all of that is rooted in the *Circulation* article. And  
13 none of it is credible or reliable.

14 Now I'm going to skip over a few things and go to this  
15 project proposal. You will see it on the last line there. And  
16 this is important, because everything that goes before the  
17 project proposal, those are supposed to be things that  
18 Mr. Daleiden knew before he wrote the project proposal in early  
19 2013.

20 And I now want to show you a page from the project  
21 proposal. It's in evidence, and you'll have it back in the  
22 jury room.

23 (Document displayed)

24 **MS. TROTTER:** This is the project proposal that  
25 Mr. Daleiden sent out to potential donors. He was trying to

## CLOSING ARGUMENT / TROTTER

1 raise money. And he talked about, he wanted to make sure, that  
2 the project proposal was very clear and very detailed because  
3 he was trying to raise money for CMP. And he wanted to  
4 persuade donors that his project was actually worthwhile and  
5 would bear fruit. And he said that everything on that chain  
6 that you saw in the defendants' exhibit, 7129, everything  
7 before the project proposal, he knew about.

8 But let's look at it. And you'll see, here is a page from  
9 it, Page 2 of 14. It's 14 pages long. You'll see footnotes.  
10 There are footnotes on several of the pages where he's citing  
11 sources, including, you'll see, Suzanne Rini's book that we  
12 talked about.

13 But what's missing from the detailed project proposal?

14 (Document displayed)

15 **MS. TROTTER:** Let's go back to the slide.

16 You know what's missing? The first three things that we  
17 already blacked out, Alberty and the Congressional testimony  
18 and 20/20 and the -- and the Life Dynamics. All of that. None  
19 of that is in there.

20 The CDC statistics that are there under "Literature,"  
21 that's not in the project proposal.

22 Dr. Ronald Berman. You'll see that all of this is  
23 supposed to be information he had before writing the proposal.  
24 That's not there.

25 The Grantham Collection video. That's not cited in the

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1 project proposal.

2 The 1,200 Too Many report and research for Live Action,  
3 that's not in the project proposal.

4 Katherine Sheehan witness testimony. That's not in the  
5 project proposal.

6 It is simply not credible that Mr. Daleiden was  
7 purportedly relying on all of those things, all of those things  
8 that he supposedly knew before he put pen to paper for his  
9 detailed project proposal. And yet we're supposed to believe  
10 now, years after the fact, as the defendants are constructing  
11 this defense about violent felonies as being the excuse for  
12 going in and recording people without their permission, we are  
13 supposed to believe that all of that, all of those things were  
14 things that he was relying upon. Simply not credible.

15 Now, what does this "News Media Reports" refer to? Well,  
16 it turns out, Mr. Daleiden told you on the stand that he didn't  
17 remember what the original source for that reference was.

18 (Document displayed)

19 **MS. TROTTER:** He was asked the question: What  
20 specific news media reports are you referring to there?

21 Eventually he answers:

22 "So I don't remember the original source of that  
23 report. It was reprinted in a couple of different  
24 advocacy organizations."

25 Again, not credible, not reliable, not a reasonable basis

## CLOSING ARGUMENT / TROTTER

1 to believe that Planned Parenthood was involved in some  
2 commission of violent felonies.

3 (Document displayed)

4 **MS. TROTTER:** Let's talk about Advanced Bioscience  
5 Resources. You see that there. And I'm going to talk about  
6 that in the context of Perrin Larton and Linda Tracy, who you  
7 actually saw, they testified during the trial. And they are  
8 with ABR.

9 Mr. Daleiden testified that Ms. Larton had told him that  
10 on occasion, a fetus had come out intact during an abortion.  
11 You may recall his testimony about that. But there is  
12 absolutely no evidence that what Ms. Larton was describing to  
13 Mr. Daleiden had anything to do with Planned Parenthood.

14 And what else did Ms. Larton tell Mr. Daleiden during that  
15 same conversation? Well, she told him about -- because he was  
16 posing to be a graduate student researcher, she told him about  
17 all the things he would have to do in order to get fetal  
18 tissue, because it was highly regulated. He would have to have  
19 his university sign off. There'd be to have a formal study;  
20 they'd have to approve it. And all of those steps would have  
21 to be there in order for him to obtain fetal tissue.

22 What did Mr. Daleiden say when it came to fetal tissue  
23 when he was questioned by his lawyer?

24 (Document displayed)

25 **MS. TROTTER:** His lawyer asked him:

## CLOSING ARGUMENT / TROTTER

1            "If someone wanted to purchase one or more body  
2            parts..."

3            That's the language he used.

4            "...and they're willing to pay that price, they would  
5            be able to presumably obtain it from one of these  
6            companies that is in this business?"

7            And Mr. Daleiden answered:

8            "That's correct."

9            Well, that's just -- that's not -- that doesn't comport  
10           with what Mr. Daleiden knew about the IRBs that are regulating  
11           universities' research. You don't get to just order fetal  
12           tissue from a website. You have to go through an approval  
13           process. And it's the same thing that Ms. Larton said.

14           (Document displayed)

15           **MS. TROTTER:** Now let's go forward, Ken, to the slide  
16           for the verdict form on California reporting.

17           (Document displayed)

18           **MS. TROTTER:** So this is another section of the  
19           verdict form. And I'm just showing you a small portion of it,  
20           because I just want to give you an example so you'll know what  
21           your -- what you're doing when you get in the jury room.

22           So this is on the California claims. And again, the 633.5  
23           defense about the violent felonies doesn't apply to any other  
24           recording law. Just the one in California.

25           So 1(a), so the first question is: Answer yes or no as to



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1 whether plaintiff Planned Parenthood has established the  
2 recording violated -- that -- has established the recording  
3 violated Penal Code 632.

4 Okay. And then so you would -- this is PPNorCal via  
5 Dr. Drummond-Hay, at the NAF 2014 conference.

6 Violation? Yes.

7 And then, after you get to that line, then you have to  
8 decide whether there is a 633.5 defense. You actually have to  
9 check for each defendant, Daleiden and Merritt, that the  
10 defense doesn't apply.

11 And then you'll go through all of the other recordings  
12 where there are claims under California law. It's the only  
13 time that you will see that construct.

14 For the rest of the recordings and other jurisdictions,  
15 you're not going to see a defense. It will just be: Was there  
16 a violation or not?

17 Now, I want to close, members of the jury, with focusing  
18 you in -- I want to segue from we were talking about 633.5 and  
19 the fact that it only applies to California recording claims.

20 (Document taken off display)

21 **MS. TROTTER:** When you're thinking about that, I want  
22 you to consider the other evidence, though, that proves that  
23 Mr. Daleiden and the other defendants were not doing taping out  
24 of a true and reasonable belief that they were gathering  
25 evidence of any crimes, much less, violent crimes. Instead,

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1 they were working on this project to further their main  
2 objective, which is to destroy Planned Parenthood, and to end  
3 abortion.

4 The defendants argue they wanted to find crimes and report  
5 them. But what did the evidence show you?

6 Let's look at what the defendants reported to law  
7 enforcement during the full year they were surreptitiously  
8 taping from April 2014 at NAF through April 2015 at NAF in  
9 Baltimore. And all the conferences and lunches and clinics in  
10 between.

11 (Document displayed)

12 **MS. TROTTER:** His Honor read to you during the trial  
13 a stipulation of the parties as to facts related to  
14 Mr. Daleiden's contacts with law enforcement. Let's take a  
15 look at them.

16 In September of 2014, Mr. Daleiden provided information to  
17 Maricopa County, Arizona District Attorney's Office. First of  
18 all, question: Why there? There were no taping things in  
19 Arizona that we've heard about during the trial.

20 But perhaps more importantly, it's regarding StemExpress,  
21 other tissue procurement organizations, and various non-Planned  
22 Parenthood abortion clinics.

23 That was in September, 2014. Remember that this is almost  
24 a year after his meeting in 2012 with Mr. Newman. And they've  
25 done all sorts of taping. They've gone to NAF 2014. There's

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1 no mention of any recordings that they -- evidence they  
2 gathered at that. There's no mention of the lunch with  
3 Dr. Nucatola and any evidence they gathered from the three-hour  
4 lunch meeting at Craft that they recorded. There's no mention  
5 of Planned Parenthood at all.

6 Ask yourselves: What's the true intent of the recordings?  
7 If that's the contact with law enforcement and that's the  
8 information given.

9 Next, March 19, 2015. Mr. Daleiden spoke on the phone  
10 with officials from the Oklahoma AG's office re: non-Planned  
11 Parenthood organizations in Oklahoma. Remember, again, have  
12 you seen anything about people in Oklahoma being taped in this  
13 case? No.

14 And what else is important? By this time, March, the  
15 Gatter lunch has even occurred. There's no mention of the  
16 Nucatola lunch or the Gatter lunch or NAF 2014. No mention of  
17 Planned Parenthood.

18 May, 2015. Orange County District Attorney's Office.  
19 Well, at least that's in California. Orange County is in  
20 southern California. But what information was provided?  
21 Information about DaVinci Biosciences. Another company, DV  
22 Biologics, and various non-Planned Parenthood abortion clinics.  
23 Again, no mention of Planned Parenthood or the taped lunch with  
24 Dr. Nucatola or the evidence gathered from the Dr. Gatter  
25 lunch. No mention of Planned Parenthood.

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1           And finally, May 2015, El Dorado County, California,  
2 Sheriff's office and El Dorado County, District Attorney's  
3 office, re StemExpress. Mr. Rhomberg was also in attendance at  
4 that meeting. No mention of Planned Parenthood, evidence  
5 gathered at the Dr. Nucatola lunch, evidence gathered at either  
6 of the NAF conferences in 2014 or 2015, or at any of the  
7 clinics, PPGC, PPRM. Remember, all of that taping is occurring  
8 during this entire period.

9           Looking for evidence of crimes? Really? Why wouldn't you  
10 be reporting what you're finding? It makes no sense.

11           Members of the jury, doesn't this tell you that the whole  
12 violent crimes -- gathering crimes thing is a smokescreen?

13           (Document taken off display)

14           **MS. TROTTER:** The defendants' plan here was not to  
15 find crimes. And it was not about journalism. It was a plan  
16 to use any means, including illegal means, to try to destroy  
17 Planned Parenthood.

18           When you see the verdict form, you're going to see that  
19 there were claims that I didn't really discuss with you in  
20 detail in the interest of time, including the PPGC  
21 non-disclosure agreement, where the defendants went in and  
22 taped Missy Farrell for seven hours in her office. I haven't  
23 discussed in detail the trespass and other contract claims.

24           But Planned Parenthood asks you to consider all of the  
25 evidence that you have heard in this case, and return a verdict

1 in its favor on all of those claims as well.

2 This is not about abortion. This is not about pro-life or  
3 pro-choice. It is about the strategies that these defendants  
4 (Indicating) chose to engage in and employ and implement, and  
5 the acts they committed to try to achieve their ultimate goal.

6 Planned Parenthood just asks you for a just verdict in its  
7 favor. Planned Parenthood asks you to hold these defendants  
8 (Indicating) accountable for their conduct, and to compensate  
9 Planned Parenthood for the damages that it suffered.

10 My colleague (Indicating) will later speak to you about  
11 the specifics of that harm and those damages. And I thank you  
12 for your attention.

13 **THE COURT:** Mr. Kamras.

14 **MR. KAMRAS:** Thank you, Your Honor.

15 **CLOSING ARGUMENT**

16 **BY MR. KAMRAS**

17 July 14th, 2015, CMP releases its first video of the Human  
18 Capital Project. The video that will immediately thrust  
19 Dr. Nucatola into the national spotlight. Viewed millions of  
20 times on YouTube. Dr. Nucatola was in Chicago doing a hotel  
21 site visit for the upcoming Planned Parenthood forum, the same  
22 conference that a year before, the defendants had infiltrated.  
23 Within hours of the video's release, she is inundated with  
24 threats.

25 Planned Parenthood security cordons her in the hotel.

1 Arranges for an immediate flight back to Los Angeles, where she  
2 is met with armed 24-hour security. They stay with her for the  
3 next four weeks.

4 Imagine what she was thinking. Am I safe? Who can I  
5 trust?

6 Defendants' campaign is relentless. Week after week,  
7 defendants release videos, each one spotlighting, highlighting  
8 a new doctor or staff member of Planned Parenthood.

9 July 21, 2015. Dr. Gatter, at Planned Parenthood  
10 Pasadena/San Gabriel Valley, in southern California.

11 July 30, 2015. Dr. Ginde at Planned Parenthood of the  
12 Rocky Mountains in Colorado.

13 August 4th, 2015. Missy Farrell at Planned Parenthood  
14 Gulf Coast in Texas, and others.

15 March, 2016. Dr. Russo at Planned Parenthood Orange and  
16 San Bernardino Counties.

17 The story is the same in each case. A video is released,  
18 a doctor or staff is targeted, armed guards are hired. Maybe  
19 the doctor's home security is fortified, or she moves  
20 altogether.

21 Some doctors are so shaken at the possibility that they  
22 were taped that they monitor their online profile for  
23 identifying information. Is their address online? Their  
24 license plate? Their car's make and model? Are you safe? Who  
25 can you trust? Is anyone taping you?

1           That's what defendants took, members of the jury. The  
2 safety, security, privacy, and trust that come from controlling  
3 your name, your image, your identity. And that's what  
4 plaintiffs resolved to themselves to restore.

5           You will recall Mr. Galloway's testimony, Planned  
6 Parenthood Federation of America's chief operating officer,  
7 about those hours, days and weeks after the first tape was  
8 released.

9           (Document displayed)

10           **MR. KAMRAS:** The initial reaction by Planned  
11 Parenthood was shock and confusion. It was a crisis.

12           What Planned Parenthood learned in the first days was as  
13 concerning as what it did not know. It learned that the  
14 infiltration was sophisticated, calculated. It knew that the  
15 defendants had used fake company, and repeatedly, fake names  
16 and fake IDs. It knew that there were multiple people  
17 involved.

18           It knew that the infiltration had occurred over a period  
19 of at least one year, at that point. It knew that the  
20 defendants had infiltrated conferences and clinics, and even  
21 targeted specific doctors.

22           It suspected, given the length and the complexity of the  
23 con, that defendants were well-resourced. And in fact, they  
24 were. Remember, Mr. Daleiden acknowledged having raised  
25 \$120,000 for his project.

1 But what Planned Parenthood didn't know, that was equally  
2 concerning.

3 (Document taken off display)

4 **MR. KAMRAS:** Who else might be involved? What other  
5 fake companies might there be? What other conferences,  
6 clinics, and events might they infiltrate?

7 As Ms. Trotter explained, this was a long, calculated and  
8 sophisticated con where defendants exploited the networked  
9 community of abortion doctors, partners, and supporters.

10 What other networks already had been compromised? What  
11 might still be compromised?

12 Might defendants or people working with them embed  
13 themselves as future employees? Might they have solicited  
14 additional contractors (indicating quotation marks)? Maybe  
15 some like defendant Lopez, whose name who not have been known  
16 to Planned Parenthood. Maybe others who, like defendants  
17 Daleiden and Merritt, had procured and used fake  
18 identification.

19 (Document displayed)

20 **MR. KAMRAS:** Mr. Galloway:

21 "So this was clearly something that was well-planned,  
22 well-organized, and what we did not know is how  
23 well-resourced. We did know that there was a message  
24 of -- that these videos would be released week after  
25 week after week after week. Again, so the -- part of



1           what we were trying to figure out is how do we  
2           protect ourselves and when is the end?"

3           Where are you safe? Who can you trust?

4           The answer in the first instance was Kroll, a security  
5 consulting firm that had previously worked with Planned  
6 Parenthood for physical security, and knew Planned Parenthood's  
7 operations.

8           Planned Parenthood had a conference to take place in ten  
9 days. It had more than ten conferences scheduled in the next  
10 six months. Some including the Forum, which included more than  
11 a thousand attendees. Others were smaller, but still provided  
12 an opportunity for infiltration.

13           Kroll started work almost immediately, as both  
14 Mr. Galloway and Mr. Minow testified. The purpose was to  
15 prevent these defendants (Indicating) and unknown conspirators  
16 from being embedded somehow. That is, from additional  
17 infiltration.

18           And while Kroll was addressing that short-term emergency  
19 work, Planned Parenthood had also hired Thacher to think bigger  
20 picture.

21           (Document taken off display)

22           **MR. KAMRAS:** The problem, as Mr. Minow testified,  
23 wasn't only that these defendants and their conspirators might  
24 infiltrate further, but also that the defendants had undermined  
25 the very thing that Planned Parenthood conferences had intended

1 to provide. A safe and secure place where Planned Parenthood  
2 doctors and staff could freely and openly discuss developments  
3 in healthcare, including abortion.

4 (Document displayed)

5 **MR. KAMRAS:** Mr. Minow's testimony:

6 **"QUESTION:** Now, Mr. Breen asked you whether  
7 defendants damaged any property while they infiltrated  
8 the conference. Did they do any damage to PPFA's  
9 sense of security?

10 **"ANSWER:** Absolutely. You know, I think that our  
11 attendees had a sense of trust that was broken and  
12 that, you know, we went to great lengths to ensure  
13 that we were working our best to restore that sense of  
14 trust and faith with the Planned Parenthood family and  
15 our supporters through our work of revising our  
16 practices and bringing on these vendors to ensure,  
17 guard against any future infiltrations."

18 Thatcher's job was to fix what defendants had broken: That  
19 sense of trust and faith.

20 (Document taken off display)

21 **MR. KAMRAS:** To assess PPFA's current practices, and  
22 put into place a comprehensive access security program to  
23 prevent future infiltration, but which did not divert, on a  
24 going-forward basis, money and time unnecessarily from  
25 healthcare.

1           That system, required only because of defendants' conduct,  
2 was comprised of three basic components. First, a system of  
3 collecting data on event attendees prior to their arrival.  
4 Second, a combination of physical security and equipment at  
5 events. And third, managing data for future use.

6           The total amount that PPFA incurred to prevent these  
7 future infiltrations including by defendants, and to restore a  
8 sense of safety and security was, as you saw from Mr. Regan,  
9 \$489,165.

10           (Document displayed)

11           **MR. KAMRAS:** Meanwhile, at the same time that PPFA  
12 was working to prevent these additional infiltrations by  
13 instituting access security measures, it had -- it and various  
14 affiliates were attending to immediate security risks resulting  
15 from the release of the videos.

16           PPFA, itself, incurred \$92,477 for personal security  
17 costs.

18           (Document displayed)

19           **MR. KAMRAS:** Including for Dr. Nucatola and Dr. Ginde  
20 of PPRM.

21           You will recall that PPFA also made security grants to  
22 additional affiliates where doctors and staff had been recorded  
23 by defendants such as PP Michigan. Those grant agreements were  
24 entered into as part of a program instituted by PPFA for the  
25 benefit of its affiliates, and, once entered into, were

1 obligatory.

2 (Document displayed)

3 **MR. KAMRAS:** More broadly, PPFA paid for essential  
4 monitoring to determine whether any of the Planned Parenthood  
5 doctors and staff who were recorded were receiving additional  
6 threats, to ensure that additional security or other measures  
7 did not need to be taken.

8 Some doctors and staff did need additional protection,  
9 however.

10 (Document displayed)

11 **MR. KAMRAS:** After CMP released its video  
12 highlighting Dr. Gatter, she needed personal security, and even  
13 had to sell her house and move to a home that could be better  
14 fortified. She used Reputation.com to limit the amount of  
15 identifying information that might be found on the internet.

16 Dr. Gatter was the medical director at PPPSGV. And you  
17 will recall its CEO, Sherri Bonner, testifying why she thought  
18 that security was necessary, because Dr. Gatter was targeted  
19 and featured with her face all over the internet.

20 (Document displayed)

21 **MR. KAMRAS:** (As read)

22 "And medical providers who do reproductive  
23 healthcare, including abortions, are -- are -- you  
24 know, they have been killed."

25 (Document displayed)

1           **MR. KAMRAS:** Likewise, Missy Farrell, the director of  
2 research at PPGC felt she needed personal security. She fled  
3 her house for the first week, installed a home security system  
4 with multiple cameras, and then reinstalled them later when she  
5 moved.

6           Dr. Schutt-Aine, also of PPGC, who knew she had been  
7 recorded but for which no tape had yet been released, also made  
8 adjustments to home security.

9           Following the release of a video featuring Dr. Russo, and  
10 even before receiving any threats, she was also provided  
11 personal security. It was enough of a risk that her identity  
12 had been so publicly exposed. She also upgraded her home  
13 security. And, like Dr. Gatter, both she and PPOSBC's CEO were  
14 required to monitor their online profile.

15           (Document displayed)

16           **MR. KAMRAS:** All in the security damages total  
17 \$141,048.

18           It is your role, members of the jury, to determine whether  
19 defendants' strategies, their lies, their infiltration, caused  
20 these damages.

21           (Document taken off display)

22           **MR. KAMRAS:** There is a legal doctrine referred to as  
23 "causation." And you may recall that His Honor read  
24 instructions to you describing this doctrine. And of course,  
25 you will have those instructions with you when you deliberate.

1 Defendants will tell you that Planned Parenthood's damages  
2 must be directly caused by defendants' acts. That's correct.  
3 It's in the jury instructions, Nos. L3 and L4, which you will  
4 have with you.

5 (Document displayed)

6 **MR. KAMRAS:** The relevant language is the same in  
7 both:

8 "You may award plaintiffs damages to reimburse them  
9 for expenses that were directly caused by defendants'  
10 acts. These expenses may include the costs of  
11 security for staff members after plaintiffs became  
12 aware of defendants' recordings, costs to investigate  
13 intrusions, and costs to implement access security  
14 measures to prevent intrusions in the future."

15 Those descriptions should sound familiar, because they are  
16 precisely the categories of damages that Planned Parenthood is  
17 seeking.

18 Defendants will tell you that in fact, plaintiffs' case is  
19 all about reputation, and that the damages sought are to repair  
20 reputation. They will point you to Mr. Galloway's testimony, I  
21 suspect, that defendants impaired Planned Parenthood's mission  
22 and brand. And as much as we have all heard -- too much, I  
23 think -- about Reputation.com, I imagine defendants will point  
24 it out one more time.

25 In fact, there were damages to Planned Parenthood's

1 reputation. But as the Court has made clear, that is not what  
2 this case is about.

3 You will have with you in the jury room all of the  
4 invoices for infiltration and security damages. None of them  
5 concern reputation. Witness after witness made that clear.

6 (Document taken off display)

7 **MR. KAMRAS:** Now, just as Ms. Trotter discussed with  
8 you certain claims, I'm going to walk through some of them as  
9 well, focusing your attention not on liability, but instead, on  
10 damages.

11 The first claim I'll discuss is for fraud.

12 (Document displayed)

13 **MR. KAMRAS:** Ms. Trotter already discussed at length  
14 the long con. The relevant question for causation and damages  
15 is whether plaintiffs' reliance on defendant's representation  
16 was a substantial factor in causing its harm.

17 That phrase "substantial factor" you may recall comes up  
18 repeatedly throughout the instructions, and it has its own  
19 instruction.

20 (Document displayed)

21 **MR. KAMRAS:** (As read)

22 "A substantial factor in causing harm is a factor  
23 that a reasonable person would consider to have  
24 contributed to the harm. And while it must be more  
25 than a remote or trivial factor, it does not have to

1           be the only cause of the harm."

2           In other words, the fraud, itself, need not have been the  
3 only cause of plaintiffs' harms, so long as it was one cause.  
4 And here, it unquestionably was.

5           Take first the costs to investigate infiltrations and to  
6 implement access security measures to prevent infiltrations in  
7 the future. What Mr. Regan and others identified as  
8 infiltration damages.

9           How did those arise? What caused them? As Ms. Trotter  
10 recounted, defendants produced and transferred fake  
11 identification as part of an ongoing scheme in violation of the  
12 RICO statute. Defendants lied time and again about their  
13 identities, their front company, and their purposes.  
14 Defendants signed and breached Planned Parenthood agreements.  
15 Defendants trespassed into Planned Parenthood conferences and  
16 clinics, all in an effort to gain access to and surreptitiously  
17 record Planned Parenthood's doctors and staff, including at  
18 PPFA's conferences.

19           (Document taken off display)

20           **MR. KAMRAS:** The infiltration damages were incurred  
21 directly, as a result, both to stop defendants and others with  
22 whom they are acting from further infiltration, and to restore  
23 the sense of security and trust that defendants, themselves,  
24 have broken. You heard Mr. Galloway and Mr. Minow testify to  
25 exactly that.



1           The fraud was also a substantial factor in causing the  
2 security damages. The attempt to defraud was not just to gain  
3 access to the conferences and clinics, but also, of course,  
4 Planned Parenthood doctors and staff at conferences, at  
5 clinics, at lunches. All the while, recording them. And all  
6 the while, with the intent of releasing these recordings. None  
7 of that is disputed.

8           The resulting recordings identified these doctors and  
9 staff; posting their images, their names, their identities,  
10 their locations all on the internet; and required that Planned  
11 Parenthood provide various forms of personal security.

12           So what exactly is the amount of damages? For this, you  
13 will have with you and can turn to Mr. Regan's slides that he  
14 testified about. That's Trial Exhibit 8072.

15           (Document displayed)

16           **MR. KAMRAS:** Again, here on the left, you'll see the  
17 verdict form. And on the right is Mr. Regan's -- one of  
18 Mr. Regan's slides.

19           (Document displayed)

20           **MR. KAMRAS:** And the verdict form will have  
21 categories, as you see on the left column, "Damage Category,"  
22 "Infiltration," and in other cases "Security." And then in the  
23 second column it will have the plaintiff that is seeking those  
24 damages. And then in the far right column there will be a  
25 blank where you'll fill in the number that you agree upon.

1           Here, for infiltration damages, you can turn to  
2 Mr. Regan's slide. And you see the number is \$489,165.

3           And for the remaining, again, one of Mr. Regan's slides  
4 which categorizes -- summarizes the category "Security," by  
5 plaintiff, and provides the specific numbers for each of those  
6 plaintiffs.

7           What about RICO?

8           (Document displayed)

9           **MR. KAMRAS:** Another claim that Ms. Trotter  
10 discussed.

11           Here, the causation requirement will be satisfied, as you  
12 can see in the instruction, if the damages are caused by the  
13 predicate acts, or if the damages are caused by the pattern of  
14 acts as a whole, or both.

15           As you will recall from Ms. Trotter, the predicate acts  
16 are Mr. Daleiden's production and transfer, even use of fake  
17 IDs, his transfer to Ms. Merritt and other conspirators for use  
18 in the ongoing fraudulent scheme.

19           And as the evidence has made clear, Mr. Daleiden would not  
20 have been able to infiltrate the Planned Parenthood conferences  
21 and clinics and otherwise gain access to doctors and staff  
22 without the use of those fake IDs, and the pattern of acts as a  
23 whole that constituted the RICO scheme.

24           What, then, are these damages? The same as the damages  
25 for fraud.

1 (Document displayed)

2 **MR. KAMRAS:** Don't worry about awarding the same  
3 damages multiple times. As His Honor instructed you, you  
4 should award the entire amount of damages that you believe to  
5 be appropriate in each category that each plaintiff is entitled  
6 to under each cause of action. And after you have rendered  
7 your verdict, His Honor will remove any duplicate damages.

8 (Document taken off display)

9 **MR. KAMRAS:** Beyond fraud and RICO, there are three  
10 categories of claims, as Ms. Trotter described. Trespass,  
11 breach of contract, and the recordings claims. Much like  
12 Ms. Trotter, I'm going to touch on one of each, rather than all  
13 of the claims, in the interest of time.

14 You will have the instructions, of course, for all.

15 First, trespass.

16 (Document displayed)

17 **MR. KAMRAS:** As you know, the Court has already  
18 determined that defendants CMP, BioMax, Daleiden and Lopez  
19 trespassed at the PFFA conferences.

20 (Document displayed)

21 **MR. KAMRAS:** And as Ms. Trotter explained, defendants  
22 Rhomberg and Newman conspired to commit the same trespass.

23 The only remaining question is how those trespasses were a  
24 substantial factor in causing PFFA's harm, and if so, how much.

25 For all the reasons that I've already discussed, those

1 trespasses were a substantial factor in causing PPFA's harm.  
2 The trespasses, the unauthorized entry into PPFA's conferences,  
3 were the infiltrations that the infiltration damages addressed.  
4 And it was at those conferences that doctors and staff were  
5 recorded, and where defendants made the connections necessary  
6 to continue their scheme of surreptitious recording.

7 (Document displayed)

8 **MR. KAMRAS:** Here, then, the damages are the same,  
9 except that because the trespass was as to PPFA's conferences,  
10 plaintiffs are only seeking infiltration damages along with the  
11 security damages incurred by PPFA, itself, relating to taping  
12 victims recorded, at least in part, at a PPFA conference.

13 All that again is set forth in the verdict form. And  
14 here, you'll see on the left there are the categories that  
15 you've now been familiar with, Infiltration and Security. And  
16 then under the Plaintiff, there's the plaintiffs. And where  
17 further information is required, that is set forth.

18 Next, breach of contract.

19 (Document displayed)

20 **MR. KAMRAS:** Specifically, breach of the PPFA  
21 exhibitor terms and conditions. Here, we've excerpted two key  
22 clauses from the PPFA 2014 Forum agreement. And these clauses  
23 are similar in each of the agreements for each of the PPFA  
24 conferences.

25 The Court has already determined that defendants CMP,

1 BioMax and Daleiden breached the top clause here. And as  
2 Ms. Trotter explained, we believe the evidence has shown that  
3 they also breached the lower clause, which requires compliance  
4 with law.

5 Those breaches were, again, a substantial factor in  
6 causing Planned Parenthood harm.

7 Regarding the education clause and similar provisions,  
8 doctors and staff go to these conferences to learn and to be  
9 with community.

10 Defendants' exhibiting of fake services with a fake  
11 company, which are the complete opposite of education, broke  
12 the trust that attendees had in being open to learning new  
13 things from new people, from interacting with, in a way that  
14 was helpful to their work.

15 Both the education clause and the separate clause  
16 requiring broadly that defendants comply with the law,  
17 including fraud and privacy, resulted in the same damages as  
18 does the fraud claim that we previously discussed.

19 (Document displayed)

20 **MR. KAMRAS:** Infiltration and security.

21 However, because these verdicts -- excuse me -- because  
22 these agreements were with PPFA, not affiliates, the damages  
23 sought are those that were incurred by PPFA relating to  
24 infiltration and security for doctors and staff recorded, at  
25 least in part, at the PPFA conferences.

1 (Document taken off display)

2 **MR. KAMRAS:** The final category of claims are the  
3 recording claims. And here, I briefly discuss an example of  
4 the federal wiretapping claim or the federal recording statute.

5 The main difference in damages -- and this is, of course,  
6 a similar, you know charts that you've seen before -- the main  
7 difference in damages is that the only damages sought for the  
8 recording claims are the security costs for doctors and staff  
9 who were recorded, rather than the infiltration damages also.

10 And that's why you see on the left, on the damage category  
11 there's no indication for infiltration damages, and it's only  
12 the security damages.

13 We've discussed now compensatory damages. And there are  
14 some cases where those damages are all that is appropriate.  
15 But there are other cases -- and this is one -- where you may,  
16 and we submit, must, go further.

17 The last category of damages about which I'll speak are  
18 punitive damages.

19 (Document displayed)

20 **MR. KAMRAS:** What are punitive damages? Their  
21 purpose is to punish, and discourage future wrongful conduct.

22 (Document displayed)

23 **MR. KAMRAS:** They are permitted upon a finding of  
24 liability for fraud, trespass, and also unlawful recording in  
25 violation of federal, Maryland, and Florida law.

1           The standards differ somewhat between the jurisdictions,  
2 and you will have those instructions. But in any -- in either  
3 event, the punitive damages are appropriate here. Indeed, they  
4 are compelled by the facts.

5           Why? Because in their effort to destroy Planned  
6 Parenthood, defendants lied. They lied to Planned Parenthood  
7 and they lied to you. They engaged in, as the jury  
8 instructions state, a pattern or practice of trickery or  
9 deceit.

10          More, they indiscriminately recorded doctors, staff, and  
11 others, and put people's lives at risk.

12          They disregarded the health or safety of others.

13          And quite simply, members of the jury, if you don't stop  
14 them, they intend to continue.

15          The only exception is Mr. Lopez, who, while involved in  
16 the scheme, and who therefore should be held to account through  
17 compensatory damages, is now in the Navy, and appears to have  
18 moved on in life. As to the rest of the defendants, we ask  
19 that you award punitive damages.

20          (Document taken off display)

21           **MR. KAMRAS:** When I stand here and I ask you to award  
22 those punitive damages, I think of Dr. Nucatola. A doctor who,  
23 in training, witnessed a horrible tragedy. A patient that died  
24 after a poorly-performed abortion. And a doctor that  
25 afterwards dedicated herself to making it safe for women to

1 access healthcare, including abortion, as is their legal right.

2 Her life changed forever on July 14th, 2015, when, without  
3 her knowledge or consent, defendants released a video of her,  
4 immediately making her the national face of abortion. A  
5 household name. A position that, as we have heard from NAF  
6 director of security Michelle Davidson, and from Professor  
7 Cohen, is inherently dangerous.

8 Dr. Nucatola hadn't been secret about being an abortion  
9 provider. But after the release of the video spotlighting her,  
10 she testified she felt as if everyone knew what she did. And  
11 more, they knew her name, where she worked, what she looked  
12 like.

13 Defendants didn't break Dr. Nucatola.

14 (Document displayed)

15 **MR. KAMRAS:** As she testified, she wasn't damaged in  
16 the sense of being unable to do the work that she pledged  
17 herself to do nearly 17 years before. But they robbed her of  
18 her sense of security and safety, privacy and trust.

19 And as Dr. Nucatola testified, that damage can never be  
20 undone.

21 (Document displayed)

22 **MR. KAMRAS:** When I stand here before you, members of  
23 the jury, I think of Dr. Gatter from PPPSGV.

24 (Document displayed)

25 **MR. KAMRAS:** A trailblazer, having been admitted to



1 and graduating from Harvard Medical School at a time when few  
2 women did, who served in the Peace Corps, and a doctor whose  
3 life also changed forever when, on July 21, 2015, defendants  
4 released a video of her as well.

5 When I stand here before you, I think of Missy Farrell of  
6 PPGC, and Dr. Ginde of PPRM, both heads of research at their  
7 respective Planned Parenthood affiliates.

8 (Document displayed)

9 **MR. KAMRAS:** Here's Missy Farrell, in her own words.

10 (Portion of audio recording played in open court, not  
11 reported)

12 **MR. KAMRAS:** Dr. Ginde, PPRM's former medical  
13 director, had two young children. She had to relocate also.  
14 She was not here to testify, but you will recall the testimony  
15 of PPRM's general counsel, Mr. Paul, recalling the threats that  
16 she also received.

17 (Document displayed)

18 **MR. KAMRAS:** When I stand here before you, I think of  
19 Dr. Moran who, when asked why he testified voluntarily,  
20 notwithstanding the risks to abortion providers, replied:  
21 Because someone had to stand up to the bullies.

22 And that is what I'm asking you to do. I'm asking you to  
23 stand up to the liars and the frauds, to the people who lied to  
24 Planned Parenthood's doctors and staff, to hundreds of  
25 strangers at conferences, to the state and federal government,

1 and to you, who in pursuit of their agenda to end abortion, all  
2 abortion, think nothing of the doctors who they targeted and  
3 exploited with no regard to the consequences that would follow,  
4 that they knew would follow.

5 (Document displayed)

6 **MR. KAMRAS:** I'm asking you to stand up to  
7 Mr. Daleiden, the mastermind of the scheme, whose goals  
8 included maximum negative impact on Planned Parenthood, who  
9 aimed to ignite public outrage.

10 I'm asking you to stand up to Troy Newman --

11 (Document displayed)

12 **MR. KAMRAS:** -- CMP's secretary, who, in his own  
13 words recorded in documents, aimed to finish off Planned  
14 Parenthood, end abortion, and put them in jail.

15 Mr. Newman, whose organization Operation Rescue operates a  
16 website, which depicted the names, photographs, and address of  
17 abortion providers, including Dr. Nucatola and Dr. Gatter.

18 (Document displayed)

19 **MR. KAMRAS:** And note, ladies and gentlemen, where  
20 the images of Drs. Nucatola and Dr. Gatter come from. They  
21 should look familiar. Each of them are from the tapes that  
22 defendants surreptitiously recorded at the lunches.

23 I'm asking you to stand up to Albin Rhomberg, CMP's chief  
24 financial officer. A man who would stop at little to destroy  
25 what he says is the evil empire. A man who delighted in the

1 fraud. Who, when Mr. Daleiden reported on his lunch with  
2 Dr. Nucatola and Ms. Merritt, replied "Delicious!" A man who  
3 then continued to judge Dr. Nucatola and strip her of her  
4 dignity as he mocked her views, her thoughts, her motivations.

5 (Document taken off display)

6 **MR. KAMRAS:** I'm asking you to stand up to Sandra  
7 Merritt, the purported CEO of BioMax, who was by Mr. Daleiden's  
8 side at the lunches with Drs. Nucatola and Gatter, at PPGC and  
9 PPRM clinics, and at each of the NAF conferences.

10 And I'm asking you to stop -- stand up to and to stop CMP  
11 and BioMax.

12 (Document displayed)

13 **MR. KAMRAS:** The goals of CMP's members continue to  
14 be the same as they were back in 2013. CMP's members continue  
15 to stand by the methods they used in their enterprise.

16 (Document taken off display)

17 **MR. KAMRAS:** And remember, CMP was formed to oversee  
18 multiple projects, not just this one.

19 CMP has continued to release illegally-recorded footage,  
20 including as recently as this summer.

21 (Document displayed)

22 **MR. KAMRAS:** CMP and BioMax, today, are both still  
23 existing and active companies. Companies with financing.

24 (Document displayed)

25 **MR. KAMRAS:** In 2013, CMP expected to obtain

1 donations of at least \$280,000, just through 2015. And did, in  
2 fact, receive at least \$120,000 prior to the video release in  
3 July, 2015.

4 (Document displayed)

5 **MR. KAMRAS:** In 2015, donations poured in after the  
6 release of the videos. The, quote, vast majority of which was  
7 after the release. After. So that CMP along with Mr. Daleiden  
8 and the other defendants can continue their plan to destroy  
9 Planned Parenthood and end access to abortion care regardless  
10 of the collateral damage that they cause.

11 The risks that abortion providers face are real. And  
12 what's more, they are common knowledge.

13 (Document displayed)

14 **MR. KAMRAS:** Defendants' own security expert  
15 acknowledged that these statistics of abortion violence are  
16 publicly tracked by the California Department of Justice.  
17 Those statistics include attempted murder, criminal threat with  
18 the intent to terrorize, arson, battery, assault, bomb scares  
19 and other forms of violence.

20 Defendants' statics expert, Professor New, did not dispute  
21 that providers face threats to theirs lives. When asked about  
22 NAF's reporting of eight murders and 26 attempted murders of  
23 abortion providers, he replied (As read):

24 "That statistic sounds correct."

25 (Document displayed)

1           **MR. KAMRAS:** Defendants knew this history. Both  
2 Professor Cohen and Professor New acknowledged that violence  
3 would be known to anyone with even a passing knowledge.

4           (Document displayed)

5           **MR. KAMRAS:** Mr. Daleiden certainly knew this. When  
6 he trained CMP's actors, he trained them to discuss violence  
7 against abortion providers.

8           Mr. Rhomberg has been a part of the pro-life movement his  
9 entire life, and certainly knew about the history of violence  
10 against abortion providers.

11          Mr. Newman advocated for that violence, according to the  
12 adverse inference that you are permitted to draw. Mr. Newman  
13 coauthored the book "*Their Blood Cries Out*, which reflects his  
14 belief that, as he put it:

15                 "...the United States government has abrogated its  
16                 responsibility to execute convicted murderers,  
17                 including abortionists."

18          Notwithstanding this history, and defendants' knowledge of  
19 it, they disregarded the rights of others.

20          (Document displayed)

21          **MR. KAMRAS:** They taped everyone, regardless of who  
22 they were. Not just doctors. The receptionists, staff,  
23 speakers and guests.

24          And in the videos they released, they intentionally  
25 included the faces and names of Planned Parenthood doctors and

1 staff.

2 (Document displayed)

3 **MR. KAMRAS:** But they took great effort to protect  
4 their own privacy. Mr. Daleiden blurred the faces of the CMP  
5 actors, as he testified:

6 "...to maintain as much anonymity as we could about  
7 the actual undercover investigators."

8 He didn't extend this basic courtesy to anyone else. Not  
9 to Planned Parenthood's doctors, not to their staff. In so  
10 doing, the defendants disregarded dangerous consequences of  
11 their actions.

12 Recall the first witness in the trial.

13 (Document displayed)

14 **MR. KAMRAS:** I know it's some time ago. (As read)  
15 "Given the long history of anti-abortion violence in  
16 this country and the fact that doctors have been  
17 targeted and murdered, I believe there was, at  
18 minimum, recklessness and ambivalence about the  
19 possibility that those in these videos could be  
20 harmed, and I think that was done with a disregard  
21 for the safety of those who were videotaped.

22 "And so I'm happy to clarify that. I agree that  
23 there was no direct direction in the videos that  
24 anyone viewing them should harm the individuals who  
25 were seen, but certainly those videos have put these

1 individuals at risk."

2 (Document taken off display)

3 **MR. KAMRAS:** Members of the jury, it is entirely  
4 within your discretion to decide the amount of punitive  
5 damages. There are a number of factors to consider. They are  
6 set forth in the instructions. Including how the amount of  
7 punitive damages relates to the amount of compensatory damages.

8 Frequently, juries that award punitive damages do so as  
9 some multiple of compensatory damages. The key point for you  
10 to determine is what is appropriate to both punish defendants  
11 for their conduct, and deter them from future such behavior.

12 After I conclude, and perhaps the lunch break, you will  
13 hear from counsel for defendants. And then Ms. Trotter or I  
14 will have one further opportunity to speak with you.

15 In the interim, I'll ask you to remember the same thing  
16 that Ms. Trotter did: This is not a case about whether you're  
17 pro-life or pro-choice. It's certainly not about the First  
18 Amendment or journalism.

19 As you heard His Honor say time and again throughout  
20 trial, this case is about the strategies and tactics employed  
21 by the defendants. Those strategies were to lie, to trespass,  
22 to breach agreements, and to indiscriminately record people  
23 without their permission, and ultimately to put at risk the  
24 lives of Planned Parenthood's doctors and staff, and to rob  
25 them of their sense of security and safety, privacy, and trust.

## PROCEEDINGS

1           On behalf of Planned Parenthood's doctors and its staff,  
2 thank you for your time and attention this morning and  
3 throughout the duration of the trial.

4           **THE COURT:** All right. Ladies and gentlemen, we are  
5 going to break for lunch until 1:30. And then we will be back  
6 with the defendants' closing statements. And then we will  
7 break at about 3:00, and continue on tomorrow morning.

8           So please remember, you have heard, now, just one side of  
9 people's perspectives of the evidence. You are about to hear  
10 the other side. So keep an open mind. Don't talk, even now,  
11 about your perspectives on this, because you haven't heard  
12 everything yet. But you will soon enough be able to do that.

13           All right. We will be in recess until 1:30. I think  
14 there may be something waiting for you in the jury room.

15           (Jury excused)

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

18           **THE COURT:** All right, we will be in recess.

19           **MR. LIMANDRI:** Your Honor, if I may?

20           **THE COURT:** Hang on just a sec.

21           Please be seated, everybody.

22           **MR. LIMANDRI:** Put an objection on the record. I  
23 wasn't going to read any of the law enforcement stipulation,  
24 but I will have to now, as the Court had read it, as opposed to  
25 the corrections I asked the Court to make.



## PROCEEDINGS

1 But with those corrections in mind, we do object to the  
2 plaintiffs, after we made corrections, to read from two  
3 paragraphs that we'd indicated were not correct. I mean, we're  
4 here supposed to be telling the truth about stuff. And we made  
5 it clear that those were incorrect.

6 We weren't going to try to read corrected versions of  
7 those paragraphs, but I certainly didn't expect them to read  
8 and emphasize the incorrect aspects of those.

9 So I do want to object. And when I do read portions of  
10 it, it'll be only those that the Court read that indicate that  
11 there were reports regarding Planned Parenthood affiliates, and  
12 Planned Parenthood Federation of America.

13 Okay.

14 **THE COURT:** All right. Thank you, Mr. LiMandri.

15 **MR. LIMANDRI:** Thank you.

16 **THE COURT:** Thank you, Mr. LiMandri. Can you tell me  
17 what the order is of defense?

18 **MR. LIMANDRI:** Yes, Your Honor; I'm happy to do that.

19 Mr. Breen's going to do an introductory presentation. I  
20 believe about ten minutes is the idea. And then I'm supposed  
21 to do 50 minutes on certain aspects of it.

22 Ms. Dhillon will be 50 minutes. Mr. Jonna is going to do  
23 20 minutes. And then I understand that it will be -- Katie  
24 Short will be doing, I believe, 20 minutes, and then I believe  
25 Mr. Kozina will be doing 15 minutes. And the wrap-up will be

## PROCEEDINGS

1 Mr. Mihet with 20 minutes. And that should be three hours.

2 If I might ask, Your Honor, since there are seven  
3 defendants, if we went over a little bit, I hate to see  
4 Mr. Kozina -- Mr. Mihet be cut short. Is that going to be a  
5 problem if it's like three hours and ten minutes?

6 **THE COURT:** I do want you to stick to three hours.  
7 And I know that Mr. Mihet will want to get up, and he will have  
8 lots to say. So everybody else just needs to watch the time  
9 that they're doing.

10 I don't -- I'm not -- you can divide the time any way you  
11 want to do it. But I am going to hold each side to the three  
12 hours.

13 **MR. LIMANDRI:** Understood. Thank Your Honor.

14 **THE COURT:** Okay. Thank you all. We will be back at  
15 1:30.

16 (Luncheon recess was taken at 12:47 p.m.)  
17  
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## PROCEEDINGS

1 AFTERNOON SESSION

1:38 p.m.

2 ---000---

3 (Proceedings held in open court, outside  
4 the presence and hearing of the jury.)

5 **THE COURT:** Mr. Breen, are you ready to go?

6 **MR. BREEN:** Your Honor, I would be, except that I  
7 wanted to follow up on this issue of the law enforcement  
8 contacts.

9 We believe that this was an intentional false  
10 representation, a fraud on this Court and on the jury, a focus  
11 of the plaintiffs' argument to lead -- mislead the jury  
12 intentionally that the El Dorado County District Attorney and  
13 the Orange County District Attorney were not told about Planned  
14 Parenthood clinics.

15 And, Your Honor, during the break, we were able to print  
16 out some of our discovery documents, which were the reports  
17 from the Center for Medical Progress, from David Daleiden, to  
18 both of those District Attorney's, and these reports were  
19 produced to plaintiffs. They were produced in the StemExpress  
20 case, at least as to StemExpress as well, and they are rife  
21 with references to Planned Parenthood. And so we -- we want to  
22 put that on the record.

23 We also would like an opportunity to be able to enter  
24 these particular reports into evidence, be able to argue from  
25 them, because right now we don't have anything we can argue

## PROCEEDINGS

1 from.

2 The plaintiff's counsel has significantly -- they have  
3 gone after the credibility of our clients and, with all due  
4 deference, they told the biggest falsehood in court today.

5 And that's at least our position. We would like extra  
6 time to be able to argue it. We would like to be able to enter  
7 these into evidence so we have something to argue from. We  
8 would like an extra ten minutes so we can address the issue  
9 with the jury.

10 **THE COURT:** All right. No.

11 I'm happy to look at anything, of course, you want me to  
12 look at. Not now, but after court today.

13 But my recollection of this, Mr. Breen, is that I filed on  
14 ECF my understanding of what the parties had -- there was  
15 dispute over some of the matters, and I filed on ECF what  
16 appeared to be the parties' position.

17 And if -- and you all -- maybe you missed it. I don't  
18 know. But that was what was said to the jury.

19 And then Mr. LiMandri, when he did identify the problem,  
20 said, you know: I'm not -- I'm not going to do anything with  
21 respect to the jury on this.

22 The plaintiffs, I think, have a different perspective  
23 about what the facts are.

24 **MR. BREEN:** And, Your Honor, as I understand, we just  
25 looked at the document that Your Honor had provided. That was,

## PROCEEDINGS

1 as I understand it, the plaintiffs' language, not ours.

2 But as well, at least as I read the stipulation as Your  
3 Honor had proposed, there was no mention in the El Dorado  
4 referral about non-Planned Parenthood, that it was somehow  
5 excluding Planned Parenthood clinics.

6 As well, Your Honor, we -- Mr. LiMandri, as I recall his  
7 statement, was: I'm not going to read this to the jury.

8 That is a far cry from: The plaintiffs are going to take  
9 what -- a statement that they know is absolutely false, and is  
10 false repeatedly all throughout these documents, and then  
11 emphasize it as a point in a case where they are accusing our  
12 clients of lying.

13 **THE COURT:** Okay. So, Mr. Jonna, I would prefer to  
14 hear -- speak briefly.

15 **MR. JONNA:** Sure. Very briefly.

16 What is probably more concerning is the fact that we filed  
17 a correction to the stipulation addressing those very points,  
18 and that was the focus of Ms. Trotter's presentation. It was  
19 the two points that we told the Court and counsel were not  
20 accurate.

21 She deliberately chose to focus on those two points.  
22 That's way more concerning, and something has to be done about  
23 that.

24 **THE COURT:** Ms. Bomse, you're up.

25 **MS. BOMSE:** Ms. Trotter's presentation was exactly

## PROCEEDINGS

1 accurate, consistent with what the jury has been told the  
2 evidence has shown in this case.

3 You're exactly correct, Your Honor, that the plaintiffs do  
4 have a different perspective and never made any  
5 misrepresentations to the jury.

6 And, as a matter of fact, the language of the stipulation,  
7 the parties did submit competing stipulations. The language of  
8 the defendants' stipulation simply stated that the defendants  
9 went to the El Dorado and various other law enforcement about  
10 abortion clinics. There was no call-out of Planned Parenthood.  
11 Whereas, in other approaches to law enforcement there  
12 specifically was.

13 But in any event, the evidence -- we all knew what the  
14 evidence was, and plaintiffs' presentation was consistent with  
15 that evidence.

16 **THE COURT:** All right. So if you would, Mr. Breen,  
17 submit the information that you have to the plaintiffs and to  
18 me. I'll take a look at it.

19 Say nothing about it today, and I'll look at it overnight  
20 and see whether there is any correction that needs to be made.

21 **MR. BREEN:** Yes, Your Honor. So we'll file that on  
22 the docket?

23 **THE COURT:** File it on the docket at your earliest  
24 opportunity.

25 **MR. BREEN:** Yes, Your Honor. Thank you.



## CLOSING ARGUMENT / BREEN

1 (Document displayed)

2 They wanted to protect the brand.

3 But what is it that hurt the brand? The very words spoken  
4 by Planned Parenthood personnel on those videos is what hurt  
5 the brand.

6 (Document displayed)

7 At the end of this trial the judge read a stipulation, an  
8 agreed fact to you, that what is shown on the videos are the  
9 words of the Planned Parenthood personnel.

10 Now, Planned Parenthood could have tried to dispute this  
11 issue, but when push came to shove here at trial, a place where  
12 you need hard evidence to back up your claims, they had  
13 nothing. This is what so outraged the public. The true words  
14 of Planned Parenthood's top abortion doctors and other  
15 personnel.

16 Now, a handful of people were so incensed that they  
17 allegedly wrote or called in threats. But we don't know those  
18 few people. They are strangers. They are not in court. They  
19 are not even known to anyone here.

20 Now, remember, you heard testimony from Dr. Deborah  
21 Nucatola. And Cecile Richards, the president and CEO of  
22 Planned Parenthood at the time, apologized to the nation for  
23 what Dr. Nucatola said on that video. Cecile Richards wouldn't  
24 have issued a public apology unless it was something very  
25 serious to apologize for.



## CLOSING ARGUMENT / BREEN

1           You remember seeing that video of Dr. Nucatola as waiter  
2 after waiter after waiter walked by and she talked about  
3 crushing above and crushing below to get more valuable fetal  
4 tissue, where she talked about changing the presentation of a  
5 fetus from vertex to breech.

6           You want to know why the people of the country were  
7 outraged? That's why.

8           Now, our country was founded on a radical idea. It was  
9 put simply in three little words, "We, the people."

10          We, the people, run things; not some king, not some group  
11 of nobles. But in order to run things we, the people, need  
12 information. And at critical times we, the people, need the  
13 information that only undercover journalism can provide.

14          Undercover journalists take on assumed identities. They  
15 develop cover stories. They train for their roles. Sometimes  
16 they secure meetings with key people. Sometimes they go to  
17 conferences. Sometimes they do site visits with their  
18 investigative subjects. Sometimes even take jobs with their  
19 investigative subjects.

20          But because of undercover investigations, we, the people,  
21 sometimes become outraged and laws are changed. Businesses are  
22 picketed or boycotted, and sometimes the wrong-doers are even  
23 sent to jail as a result of undercover investigations.

24          But no matter the outcome, we, the people, don't then turn  
25 around and blame the messenger for the content of the message.

## CLOSING ARGUMENT / BREEN

1 Essentially here where there is no challenge as to the truth of  
2 the content of the message. We don't hold the journalists to  
3 account because some crazies outside this courtroom do things  
4 with the information. We don't hold them to account for that.

5 Now, ladies and gentlemen, I think it's clear, and Planned  
6 Parenthood made the point, there was no way for the public to  
7 know what was going on in this shady business of selling and  
8 buying human fetal organs and tissues except through undercover  
9 work.

10 Planned Parenthood's own witnesses volunteered they  
11 wouldn't have talked to BioMax and Robert Sarkis, as David  
12 Daleiden's undercover persona, if they had known they were  
13 undercover.

14 Now, there are going to be other attorneys that will come  
15 after me and address the details of the claim. There is a lot  
16 of it and you saw that, but I want to flag a few items for you  
17 as you're going through to just think about.

18 First of all, there is some recording claims that are  
19 California, Florida and Maryland law. We call them two-party  
20 consent states. Take a look where David and the team decided  
21 to do their undercover filming. You saw exhibit halls of  
22 abortion trade shows, some with thousands of attendees. You  
23 saw crowded evening receptions where everyone had a drink in  
24 hand. You saw restaurants where waitstaff and other patrons  
25 are present.

## CLOSING ARGUMENT / BREEN

1           But isn't it true that when you can be overheard, it's a  
2 place of the type where you could be overheard. That's not a  
3 private or a confidential setting. If you want privacy or  
4 confidential, you duck into an office. You pull someone aside.  
5 You go to an alcove. You do something to get away from people.

6           Now, did you hear during the testimony there were some  
7 Planned Parenthood witnesses that even tried the incredible  
8 claim that because the settings were so loud because of all the  
9 people around, that they somehow were turned into private and  
10 confidential settings. That turns privacy and confidentiality  
11 on its head. It doesn't make common sense.

12           Now, as well, Ms. Trotter and Mr. Kamras talked about the  
13 intent of David and the investigators. You saw there were two  
14 site visits in Texas and Colorado. Those are states without  
15 the taping laws of California and Maryland and Florida.

16           Well, if David and his investigators didn't care about  
17 following the state taping laws in California, Florida and  
18 Maryland, then why only do site visits in Colorado and Texas?  
19 Except that they were trying to follow the law.

20           Now, here is another point. Think about the context of  
21 the conversations. In most of them Planned Parenthood staffers  
22 are talking to near complete strangers. Not just strangers,  
23 but vendors looking to give them money for fetal tissue and  
24 organs. What expectation of privacy do you have talking to a  
25 complete stranger?

## CLOSING ARGUMENT / BREEN

1           Also, they talked about the invoices. And you heard our  
2 damages expert talk about the fact Planned Parenthood gave you  
3 no hard data of the before. They only gave you the after. And  
4 if you don't have the data from before, you can't compare the  
5 after. You have no way of knowing were they actually harmed?  
6 What were they spending on security? That's something they  
7 should have brought before you. They had to bring before you,  
8 but they didn't.

9           Now, in terms of looking at the invoices, one set of  
10 invoices was dealing with members of the public that were  
11 reacting to the message. Should those folks be prosecuted,  
12 sued, jailed, whatever? As appropriate, yes. But they are  
13 strangers to this process here. You don't make the messenger  
14 accountable because the message got some people inflamed.

15           (Document displayed)

16           Now, as well, I want to go to Mr. Minow. He confirmed for  
17 you they have had repeated instances of trying to infiltrate in  
18 the past. And then he also confirmed for you it was an  
19 organization called Live Action that literally exists to  
20 infiltrate Planned Parenthood.

21           And he further admitted to you they were going to use  
22 assumed names. And you had other witnesses that testified for  
23 you that they knew about David Daleiden from '09. They had his  
24 picture on his publicly available website. And they apparently  
25 did nothing.

## CLOSING ARGUMENT / BREEN

1 (Document displayed)

2 The CEO of Planned Parenthood Rocky Mountain said it best.  
3 She realized it was trivial to figure out these guys were  
4 scamming us, and there were some red flags, and there were  
5 simple steps that could have been done. Use lookbooks. Check  
6 for valid proper government identification.

7 Now, there was some sporadic testimony, you heard it  
8 argued, that they thought there might have been other BioMaxes.  
9 But that's a fantastic tale made up for litigation. They  
10 didn't provide a single piece of hard evidence. Not an email,  
11 not a report, not anything somehow saying they were fearing  
12 another BioMax.

13 Remember, we saw by 11:00 o'clock on that first day they  
14 knew BioMax was a front company. Daleiden was in charge. And  
15 they knew all the conferences that they had taped at that are  
16 the subject of this lawsuit.

17 Planned Parenthood staff weren't scared of more BioMaxes.  
18 They were scared of losing their jobs.

19 (Document displayed)

20 You have this email here from Vicki Cowart. She's saying:  
21 Why didn't you guys do a simple Google search? Why did you let  
22 these guys into my facility?

23 So they got extensive consultants. So be it. That wasn't  
24 a damage caused by David and the investigators. Maybe they  
25 exposed a hole, but they didn't cause any damage. They didn't

## CLOSING ARGUMENT / BREEN

1 hurt anything.

2 Ladies and gentlemen, when we started this case, we told  
3 you you could keep your views on abortion, and that is still  
4 very much true. This case is something far beyond abortion.  
5 It's about the market in the body parts and organs of aborted  
6 fetuses.

7 And to that issue, there is no dispute that David Daleiden  
8 and his investigators knew there were grave problems in that  
9 industry. There was no way of getting at those problems  
10 without going undercover. And, obviously, as you've seen and  
11 heard, they uncovered some troubling and very difficult truths.  
12 Truths so bad the president and CEO of Planned Parenthood had  
13 to apologize.

14 So, ladies and gentlemen, this is not a case of fraud or  
15 racketeering. This is a case of undercover journalism. And  
16 we, the people, need that information. You need that  
17 information. You may not like seeing that information. It may  
18 be difficult or whatever. But we don't want to stop the flow  
19 of information.

20 A verdict for the defense continues the flow of  
21 information from undercover journalists. Verdicts for the  
22 plaintiffs shuts that down.

23 Thank you.

24 **THE COURT:** Mr. LiMandri.

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

## CLOSING ARGUMENT / LIMANDRI

CLOSING ARGUMENT

1  
2           **MR. LIMANDRI:** Good afternoon, ladies and gentlemen.

3 I have the privilege of giving this closing argument on behalf  
4 of David Daleiden and some of the defendants in the case.

5           Now, I'm going to be talking about the recording claims  
6 and the issues of causation and damages.

7           My colleague, Ms. Dhillon, will be talking about issues  
8 relating to the contract claims and the fraud and RICO claims,  
9 and some of the other attorneys will be talking about the  
10 conspiracy issue.

11           First, I want to go through some of the basic background  
12 that you heard here in court regarding my client.

13           David Daleiden was himself basically a child of a crisis  
14 pregnancy. So you can understand how he would identify with  
15 this issue particularly.

16           He also began working for Live Action in 2008, and since  
17 then he has always acted in the capacity as a citizen  
18 journalist. This was not his first project in doing that.  
19 Live Action did have various investigative stories published, a  
20 regular blog post and in the *Weekly Standard*. And he, himself,  
21 has been a prolific writer throughout his career.

22           In the Live Action work that he was involved with, there  
23 were multi-state undercover audits of Planned Parenthood.  
24 Whether they were complying with mandatory reporting laws, for  
25 example.

## CLOSING ARGUMENT / LIMANDRI

1           And when he was at Live Action, he started his work in  
2 terms of investigation and extensive research on born alive  
3 infants and infanticide. As Mr. Breen just pointed out, these  
4 are very serious issues and ones that deserve a deep dive into  
5 them.

6           (Document displayed)

7           Now, you heard Ms. Trotter talk about what she called lies  
8 that were told both in the course of the undercover  
9 investigation and here in court.

10          Well, of course, in any undercover investigation, by  
11 virtue of the fact you're undercover, you're going to have to  
12 conceal your identity to try to get the full truth told by the  
13 people you're investigating so that can eventually be made  
14 known to the public, all of it, in terms of who you are and  
15 what you were doing, and who the other side was and what they  
16 have been doing in secret. So there is no surprise there.

17          And in terms of the lies she told, Ms. Trotter said were  
18 told by Mr. Daleiden in court, quite frankly, I was rather  
19 surprised that they would focus on those relatively minor  
20 issues.

21          For example, whether or not he believed that one of the  
22 Confidentiality Agreements, the way it was written, was limited  
23 to keeping secret the location. Well, that's how he read it.  
24 But more important, that's what he was told by the people there  
25 at the conference. They didn't want protestors showing up on



## CLOSING ARGUMENT / LIMANDRI

1 the scene. And he did not make that public. There were no  
2 protestors brought on the scene.

3 He was asked whether he was requested to sign an  
4 agreement. Well, he forgot. They showed him on the video, he  
5 remembered.

6 Now, he produced the video, for Pete's sake. So,  
7 obviously, if he remembered, he would have told them. There is  
8 hundreds of hours of videos.

9 And there is a Jury Instruction His Honor read to you this  
10 morning called Credibility of Witnesses. And there are  
11 innocent failures of recollection at time, but that's not a big  
12 deal. But that's all they had to focus on after he was on the  
13 stand for days, talking about these very serious issues.

14 Then they brought up BioMax. He said: Look, I have been  
15 checking the website. I understood that when they notified me,  
16 that we had only been suspended for a few days.

17 They went down there and pulled a hard copy out of the  
18 file of some state bureaucrat and said: No, look, you were  
19 suspended long before.

20 Well, he didn't know that, but he brought everything  
21 current.

22 This is not a tax court. You're not being asked to decide  
23 those issues. But that's the best they have to give you in the  
24 way of impeachment, to call my client a liar.

25 And, quite frankly, it's rather pathetic, given the very

## CLOSING ARGUMENT / LIMANDRI

1 serious issues that you're being asked to decide, including  
2 those that are reflected on this exhibit label: What led David  
3 to investigate Planned Parenthood?

4 Again, beginning with Dean Alberty. He did not recant the  
5 fact that as someone who procures tissues and organs, that he  
6 procured beating hearts from born alive infants. He did not  
7 recant that because he did that himself. What he did was  
8 clarify: Yeah, I said they were selling them for profit  
9 because that's what I was told and that's what's I understood.  
10 I wasn't personally involved in that end of it.

11 He didn't do the invoicing. He didn't collect the money.  
12 So he said: I can't say for sure that's what was happening.  
13 That's what he told Congress under oath. Okay. He wasn't  
14 recanting the stuff that he saw personally and he participated  
15 in, which goes directly to the issue of whether there were born  
16 alive infants and whether their tissue and organs were  
17 harvested.

18 So what you see here on this roadmap is largely  
19 undisputed. You go to the 20/20 video, what you saw. Okay?

20 And they tried to cast doubt on Mr. Alberty, but what  
21 about the doctor that was shown, saying that he was trying to  
22 see if he could earn up to \$50,000 a week. Okay?

23 I mean, that's evidence that you saw, that you heard; that  
24 there was people, obviously, making huge profits selling and  
25 buying fetal tissue, which is not legal.

## CLOSING ARGUMENT / LIMANDRI

1           And you also saw the person at the end from the tissue  
2 procurement company saying: Yeah, we change the procedures.  
3 We give them special syringes and it might prolong the abortion  
4 procedure. So it wasn't being done for the benefit of the  
5 woman, for any medical reason, for any legitimate purpose, but  
6 only for financial motives. None of that can be disputed, and  
7 you saw it for yourself.

8           The Life Dynamics investigative report, the "Beyond  
9 Abortion: Chronicle of Fetal Experimentation." All of that  
10 provided a great deal of additional information to Mr. Daleiden  
11 that he reasonably relied on to formulate his belief that there  
12 was a violent crime against a person; namely, fetuses being  
13 born alive and then having their tissue and organs harvested.

14           And that goes as well for the published studies from  
15 "Beyond Abortion."

16           And he began his extensive scientific literature research  
17 around the same year, 2010, when he became aware of the 20/20  
18 video and Dean Albery's Congressional testimony. And that did  
19 bring him in touch with what was going on with ABR at that  
20 time, who had a history of working with Planned Parenthood  
21 Mar Monte.

22           So as much as Planned Parenthood wants to distance itself  
23 from what was going on in this fetal tissue industry, it came  
24 to Mr. Daleiden's attention as early as 2010 that they were  
25 involved.

## CLOSING ARGUMENT / LIMANDRI

1           And in terms of the literature icon there, the CDC itself  
2 published data on infants that survived abortions and then died  
3 or were killed. That's certainly reliable. It's government  
4 information. None of that is disputed. Most of this is not  
5 disputed. In fact, Planned Parenthood didn't come into court  
6 with one witness that would refute anything that David Daleiden  
7 said about his reasonable belief that babies were born alive.

8           The artificial placenta study he talked about made clear  
9 that babies are born alive and then placed in this artificial  
10 environment to see how long they would survive and ended up  
11 drowning to death.

12           In terms of his research into Planned Parenthood and  
13 StemExpress and their contacts, in looking at StemExpress it  
14 became clear to him that they were profiting because in -- that  
15 the clinics were profiting because they said in their  
16 literature they returned a portion of the research fees to --  
17 the fees that are collected from researchers to the clinics  
18 from which they obtained the tissue and organs.

19           And he learned that StemExpress was specifically working  
20 with Planned Parenthood Mar Monte here in Northern California,  
21 and they were competing with organizations like ABR. The woman  
22 who started StemExpress left ABR, Kate Dyer, to form an  
23 organization and compete with them. So there was a market that  
24 was actively trading in fetal tissue and organs.

25           He learned that Dr. Berman, who was a medical director at

## CLOSING ARGUMENT / LIMANDRI

1 StemExpress, was also an abortion doctor at Planned Parenthood.  
2 So, obviously, there is a conflict of interest there. He's got  
3 an incentive to get as many harvestable body parts as possible  
4 so that StemExpress can sell them at huge profits.

5 And he saw that there was an actual drop-down menu. They  
6 made it sound like it's complicated in order to order these  
7 baby body parts. But you'll see when you take a look in a  
8 minute here at Exhibit 24, the menu is reprinted there in CMP's  
9 project proposal.

10 You just can decide what gestation fetus you want and  
11 which organs. It's quite remarkable how they are openly  
12 marketing the trafficking of fetal body parts in that manner.

13 So he knew all of this, including from Dr. Katharine  
14 Sheehan, who was with Planned Parenthood as a medical director  
15 in San Diego, her sworn testimony that at least one percent of  
16 fetuses were born intact. Well, Planned Parenthood does over  
17 300,000 abortions a year. That's -- you know, one percent is  
18 3,000 right there. And that was sworn testimony that she gave.

19 He learned from Dr. Theresa Deisher and Dr. William  
20 Hurlbut, who is a medical doctor -- Dr. Theresa Deisher is a  
21 world famous stem cell researcher -- that, in fact, they were  
22 using this Langendorff perfusion, which means they had to  
23 remove the heart from the fetus while it was still beating to  
24 place it on this machine to keep it beating.

25 So there is really a mountain of information that he had

## CLOSING ARGUMENT / LIMANDRI

1 to form his reasonable belief that babies were born alive and  
2 to encourage him to adopt these strategies and methods to do  
3 this undercover operation, which he began in good stead in  
4 2013.

5 So looking at Exhibit 24, which is one you saw previously,  
6 and I'm going to have to go through kind of quickly because I'm  
7 limited to here to 50 minutes in time, and I've got a lot I  
8 want to cover.

9 If we go to Page 2 of 14.

10 (Document displayed)

11 You'll see on that page -- go to the next page there.

12 It's not a very good picture, but there is a picture of a fetus  
13 right there that they are experimenting on as part of this  
14 fetal trafficking.

15 If we go to Page 4 of 14 of the same Exhibit 24.

16 (Document displayed)

17 There you'll see the -- right -- if you keep going down  
18 the page, there is these menu of fetal tissue and organs that  
19 StemExpress actually used. And, again, you could choose how  
20 you want to order it and shipped and everything else, and it  
21 lists the various body parts.

22 Go to the very next page of the same exhibit, Page 5.

23 (Document displayed)

24 You'll see here that he lists -- let me see. This should  
25 have been highlighted, but it actually -- is that Page 5? Can

## CLOSING ARGUMENT / LIMANDRI

1 we go up a little bit? Okay.

2 All right. I'll have to check my highlighted copy, but  
3 let's see. I think this talks about "Circulation" magazine.  
4 There we go. That's what I'm looking at, the second half of  
5 the column at the bottom.

6 Okay. So Ms. Trotter asked about "Circulation" magazine,  
7 the Journal of the American Heart Association. And it states  
8 right in there:

9 "In brief, human fetal hearts were collected  
10 after elective abortion by a commercial vendor  
11 (StemExpress, Placerville) who got their fetal tissue  
12 and organs from Planned Parenthood Mar Monte. And  
13 fetal hearts underwent Langendorff perfusion. This  
14 was before being apparently masticated by Stanford  
15 researchers. Langendorff perfusion is a technique to  
16 preserve the heart for transplantation or study in  
17 which a whole beating heart is excised and attached to  
18 a nutrient tap outside the body."

19 Now, Ms. Trotter said, you know, why wasn't he putting all  
20 this information in the project prospective or project  
21 proposal? Well, here it is. I mean, how much more information  
22 do you need than that?

23 Let's go to the next page, Pages 7 and 8 of the same  
24 exhibit, please.

25 Let's go up further. "Potential Violations," bottom of

## CLOSING ARGUMENT / LIMANDRI

1 the page.

2 (Document displayed)

3 So this lists on this page and on the next page, the  
4 bottom of this page, the various Federal. It goes on to list  
5 the state violations that were being documented.

6 So, obviously, from the outset the purpose was, in fact,  
7 to document that there were violations of law, both state and  
8 Federal taking place.

9 So if you go to the next page, you'll see more of those.

10 (Document displayed)

11 Again, listed out. You'll have this exhibit in evidence,  
12 24, if you want to look at it more closely. I'm going to move  
13 through it quickly.

14 The next Page 9. There is only two more pages I want to  
15 look at. Page 9, unfortunately, is kind of faint, but that's  
16 actually the picture that was shown in the 20/20 video listing  
17 not just various organs, but also prices for the organs.  
18 You'll see a fetal brain there listed at \$900.

19 I apologize for the poor quality of the picture, but it's  
20 taken off the video.

21 Again, all this was -- was given to the people that wanted  
22 to see whether this was a legitimate project to support.

23 And, finally, Page 11 of the same exhibit, and then we'll  
24 be done with this exhibit.

25 (Document displayed)



## CLOSING ARGUMENT / LIMANDRI

1           And this actually lists the goals. There was no goal here  
2 that shows any illegal, no unlawful purpose. The fact our  
3 clients are trying to stop criminal activity is a very laudable  
4 goal, and the fact that they are here creating public outrage  
5 in order to create pressure, controlled pressure on public  
6 officials to do their job because, apparently, it was not done  
7 after the -- after the 20/20 video in 2010 and after the  
8 testimony of Dean Alberty. So more had to be done at this  
9 point.

10           But it was also to initiate, you see under number five:

11                   "Criminal prosecution of clinics and  
12                   wholesalers."

13           And number six:

14                   "Initiate regulatory proceedings against clinics  
15                   and doctors that were violating the law and expose  
16                   these ghoulish procedures as well."

17           Which is what they did.

18           So this -- from the inception, this project was intended  
19 to expose illegal activities. And my clients clearly had a  
20 reasonable belief that babies were being born alive and either  
21 fetal tissue and organs were harvested. And the fact that they  
22 wanted to advocate for policy change is a perfectly acceptable  
23 goal and one that would be expected.

24           They formed Center for Medical Progress in 2013. It was  
25 funded as a non-profit by donations. Okay? It was on a

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1 shoestring budget.

2       You heard Mr. Kamras say they raised \$120,000. That's a  
3 large amount when you're trying to expose illegal activities of  
4 a corporation that's worth over a billion dollars.

5       No, they are a very small operation. I think that's one  
6 of the reasons why Planned Parenthood got so enraged that, in  
7 fact, this small group, this relatively young man in his 20s  
8 was able to put together this undercover operation and bring  
9 these atrocities to light.

10       And, in fact, Mr. Daleiden did share all of his research  
11 with the rest of the members of the team so they were, in fact,  
12 aware of it. It was undisputed they were independent  
13 contractors. They didn't coordinate all the work. Only  
14 Mr. Daleiden knew what everybody was doing.

15       And when they attended the conference, ISSCR conference in  
16 June 2013, he met Perrin Larton and Linda Tracy of ABR.

17       And Perrin Larton testified here and admitted -- we have a  
18 slide --

19       (Document displayed)

20       -- where she actually testified:

21               "The fetus will be in the vagina before they --  
22 when they begin the procedure and that it comes out  
23 intact."

24       And she said that can happen as often as every couple of  
25 months.

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1 Well, what does that tell you? If the fetus comes out  
2 intact before there was an opportunity to do anything to kill  
3 it or terminate, whatever word you want to use, it's going to  
4 be more likely born alive. And they don't deny that. And  
5 that's information that Mr. Daleiden uncovered, again, before  
6 the first recording was done in California in April 2014.

7 He also went to the ARHP conference where he met Ruth  
8 Arick. And there was a two-minute video that I want to play.  
9 It was actually 12 minutes when you heard in it court. I'm  
10 going to play a total of five minutes of video and audio  
11 recordings combined. This is almost half of it.

12 So if we can do the Ruth Arick audio, if you have that  
13 queued up.

14 But this was at the ARHP conference. There was online  
15 sign-up and there was no vetting to speak of. There was no  
16 security at the conference. And this was the first one that, I  
17 believe, he attended where he got this kind of information.

18 Let me know when you're ready. Okay? So this is the  
19 audio you heard.

20 (Audiotape played in open court, not reported.)

21 Okay. So what you have from that is an admission that you  
22 dilate the cervix so that it's easier to have a whole, intact  
23 delivery. They are not using Digoxin, so they are not  
24 poisoning the fetus, so it's not likely to be dead before its  
25 born. And they alter the procedure, even at the risk to the

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1 woman. And, of course, that's not acceptable by any standards  
2 of ethics.

3 And they even talk about it being potential malpractice.  
4 And I'm not sure they are not disclosing risks of that nature.

5 Before I leave that topic, Mr. Daleiden also spoke to  
6 Holly O'Donnell, worked for StemExpress and other StemExpress  
7 insiders.

8 (Document displayed)

9 And, again, before he decided to do the undercover  
10 operation, here you have here a list of everybody that we're  
11 putting on the scales.

12 Now, the scales of justice, as you know, as long as we  
13 read the Jury Instruction, it's preponderance of the evidence  
14 in this case. It's a civil case. Except for the fraud,  
15 punitive damages and such can be clear and convincing, which is  
16 a higher standard than preponderance of the evidence.

17 But here all of the evidence is very heavily weighted when  
18 you look at what our client had to consider, including the last  
19 person he spoke to is moral theologian Dr. Janet Smith.  
20 Different people understanding they have different views about  
21 using undercover techniques where you have to misrepresent your  
22 identity and misrepresent why you're there. But if you're  
23 doing it to save human lives and to stop the type of atrocities  
24 that we're talking about here, it's fully justifiable.

25 At least that's the information that he received from the

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1 moral theologian and he believed, and I think most people would  
2 agree with that.

3 But regardless of whether everyone agrees with undercover  
4 techniques or not, there is no question that Mr. Daleiden and  
5 the other defendants had reasonable beliefs that babies were,  
6 in fact, being born alive.

7 So it wasn't until, though, they went to law enforcement  
8 with this information before they went public with these videos  
9 in July 2015. And Ms. Trotter made it sound like -- my  
10 understanding of what she was saying was that Planned  
11 Parenthood really wasn't at all a focus of the reporting to law  
12 enforcement.

13 (Document displayed)

14 But His Honor did read to you various places that he  
15 Mr. Daleiden did go to report. And from what His Honor read,  
16 let me just refer to -- and this is all before the release of  
17 the videos in July 2015. He spoke with officials from Maricopa  
18 County, Arizona District Attorney's Office, Arizona Attorney  
19 General's Office regarding not just StemExpress, but Planned  
20 Parenthood Federation of America.

21 He also spoke with Michigan Attorney General's Office  
22 regarding StemExpress, Planned Parenthood Federation of  
23 America, Planned Parenthood Mid/South Michigan and Northland  
24 Family Planning.

25 And he also, again before the videos were released, spoke

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1 with officials from the Texas Attorney General's Office  
2 regarding StemExpress, Planned Parenthood Gulf Coast, a party  
3 in this case, Planned Parenthood for Choice, Planned Parenthood  
4 Federation of America, and the list goes on.

5 So Planned Parenthood and its affiliates was very much not  
6 just a part of the investigation, but part of the reporting to  
7 law enforcement.

8 And, again, if any of the defendants felt that what they  
9 were doing was unlawful, who in their right mind would go to  
10 law enforcement and say: Look what we have been doing. We  
11 want you to investigate it.

12 Obviously, they want an investigation of the people that  
13 were committing serious crimes, but that was the plaintiffs in  
14 this case, not the defendants.

15 After the videos were released, after they reported to  
16 multiple law enforcement and government entities, there were  
17 death threats even to my client, David Daleiden. He didn't go  
18 out and hire private security. He didn't sue anybody. He  
19 didn't overreact. But we have plenty of evidence that the  
20 plaintiffs did all of those things.

21 With regard to the Human Capital Project and these videos,  
22 there is no question they tended to generate new information,  
23 as Mr. Breen pointed out, so as to stop illegal action and  
24 cause necessary change. There was simply no other way to get  
25 this done. The 20/20 videos had not done the job so more had

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1 to be done in that regard.

2 Human Capital Project videos were not altered. That's not  
3 even disputed. You heard a stipulation read by the Court and,  
4 again, the Jury Instructions says stipulations are facts you're  
5 supposed to accept; that the words spoken on those videos were  
6 spoken by the Planned Parenthood people depicted on them. They  
7 were actually spoken.

8 Mr. Breen pointed out the public reacted to what they  
9 heard the plaintiffs say on those videos. If they were just  
10 there talking about sports or the weather, nobody would have  
11 cared. If all Planned Parenthood was talking about was  
12 contraception and pap smears, nobody cared. If they were just  
13 talking about abortion, legal abortion generally, nobody would  
14 have cared. But they were talking about illegal activities and  
15 that's what people reacted to.

16 And the full-length videos were made available online so  
17 that people can see them and see what was said in context so  
18 that there would be no question they weren't taking statements  
19 out of context.

20 What news reporting agency does that? Puts all of the  
21 footage that they take so people can see it in context? My  
22 clients did, so there would be no question that what they're  
23 reporting was both truthful and accurate.

24 Even the plaintiffs' expert Mr. Cohen admitted that  
25 abortionists themselves regularly engaged in these types of

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1 techniques by using disguises, using fake names to conceal  
2 their identities. He had no problem with that at all. Okay?  
3 How is that any different than what my clients were doing for  
4 this honorable purpose of disclosing illegal activities?

5 Other of the plaintiffs who were depicted on the videos  
6 that are subjects of this litigation, like Dr. Nucatola,  
7 Dr. Gatter, Mr. Dunn, who all had security hired, they had very  
8 public profiles before the videos were released. They were not  
9 at all embarrassed about letting people know who they were and  
10 what they did.

11 And Dr. Ginde, who again they hired security for, sought  
12 to capitalize by the attention she's gotten on the video.  
13 She's even written a book about it. She's trying to make money  
14 from it. But, yet, they are making it sound like these  
15 people's lives have been devastated.

16 Dr. Nucatola basically wouldn't admit she did anything  
17 wrong, even after the president of Planned Parenthood Cecile  
18 Richard apologized for what she said.

19 Now, again, His Honor read a Jury Instruction that the  
20 strategies chosen employed by the defendants are of  
21 consideration. Okay?

22 (Document displayed)

23 And Ms. Trotter pointed out that Phil Cronin was surprised  
24 that his name was used on a debit card. Not that he had any  
25 personal financial liability, because it was a debit card that



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1 CMP had to pay for.

2 But it was also brought up, and not by her, in his  
3 testimony that he's a former Assistant U.S. Attorney and a  
4 Federal prosecutor. He had no problem supporting this  
5 undercover operation and doing what he could to bring to light  
6 what was actually brought to light. Okay?

7 And, again, Mr. Perkins, who also headed up an FBI team  
8 and law enforcement on RICO investigations and claims, had no  
9 problem in coming here to court to testify on behalf of the  
10 defendants regarding various issues.

11 Okay. I want to talk specifically about the recording  
12 claims, and then we need to talk about some of the Jury  
13 Instructions.

14 All of the videos, as you saw, were in a public setting.  
15 My client avoided specifically private settings, even when he  
16 stood to get good information from private settings, because he  
17 researched the law and wanted to make sure it was going to be  
18 in restaurants. It was going to be in crowded exhibit halls.  
19 It was going to be outside around pools where there was a lot  
20 of people mingling for receptions. So there would be no  
21 question it's a public setting.

22 And when you see the Jury Instruction I want to focus on  
23 in a minute, it does talk about overhearing as being one of the  
24 requirements. And I'll point that out specifically in a  
25 moment.

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1           There was no disclosure of private facts by anybody.  
2 Nobody was talking about their personal life. No disclosure of  
3 trade secrets. Nothing said by anyone off the record.

4           And, again, as Mr. Breen pointed out, the only clinics  
5 they went into was where you don't need permission from the  
6 other side to record it. They were very careful about that.  
7 That was in Texas and Colorado.

8           And you can see in the videos, there was always people  
9 mingling around that were in a position to overhear. So they  
10 used the idea of a movie theater. Actually, movie theaters  
11 people talk with hushed tones, but in all these settings there  
12 was a lot of loud conversations.

13           On Jury Instruction No. 24 it says "a corporation is a  
14 person."

15           (Document displayed)

16           That's important because when it talks about recording a  
17 person, okay, if you're doing that to prevent a violent felony.  
18 And this is a Jury Instruction we'll get to, specifically  
19 states that "a corporation is considered a person."

20           So these people that Mr. Daleiden was recording  
21 represented these corporations that were engaged in these --  
22 these activities.

23           Okay. That takes us to the Nucatola lunch. Again, she  
24 made no secrets about her being an abortionist. She's the  
25 medical director for Planned Parenthood Federation of America.

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1 She helped write their medical standards and guidelines. She  
2 helps set the standard for Planned Parenthood.

3 You heard her full lunch video. I just want to play two  
4 and a half minutes of that -- it's in evidence, and it's  
5 Exhibit 5070 -- to remind you what took place at that time and  
6 in that setting.

7 5070. And remember, you saw David walking down a line of  
8 booths. One video in this case was extremely busy. Extremely  
9 easy to overhear. In fact, you could hear Dr. Nucatola talking  
10 at the table as he was approaching it while he was still some  
11 distance away.

12 Do we have that ready to go?

13 (Videotape played in open court, not reported)

14 So why did people get upset while she's cavalierly eating  
15 lunch talking about harvesting hearts and lungs and livers or  
16 muscle, and even being willing to convert the baby to breech  
17 position, feet first, so they have a better chance to get the  
18 head out intact, the calvarium, because the brain is the most  
19 fragile and the most valuable. That's what people reacted to  
20 and that had to be brought to light, if there is any hope of  
21 stopping these types of practices. Obviously, that was not a  
22 private setting. It was a public setting.

23 I'm going to go ahead now to the lunch with Dr. Gatter.  
24 It was also a very heavy trafficked area. The restaurant was  
25 never empty.

## CLOSING ARGUMENT / LIMANDRI

1 (Document displayed)

2 Exhibit 683 is a slide where she talks about and admits  
3 that it was a per specimen pricing that they used for this.

4 And as Mr. Daleiden pointed out, the specimen pricing is  
5 such that it doesn't bear any relation to the cost of it. I  
6 mean, the more specimens that you procure, the more money  
7 you're going to make. And so it's not a proper way, in order  
8 to do this type of pricing.

9 And when asked about what was discussed at that lunch --  
10 we've got a couple of slides from the trial transcript. We can  
11 show them.

12 When I asked Dr. Gatter these questions, what was the  
13 comment, she said, "I want a Lamborghini."

14 "And was that within the context of discussing the  
15 price that BioMax would be paying for fetal tissue,  
16 correct?"

17 She said it was. And she could say it's joking, but is  
18 that an appropriate topic to joke about? And why would they be  
19 doing pricing? It's only supposed to cover their costs.

20 We go to the next slide.

21 Also, dealing with that same lunch with Dr. Gatter, she  
22 basically is admitting that she talked about -- do we have  
23 another one?

24 (Document displayed)

25 **MR. LIMANDRI:** She talked about not being the first

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1 person to make an offer because you're at a disadvantage. Why  
2 would you be even talking in those terms if you only want to  
3 recover your costs?

4 And she was asked if, in fact, she'd had any threats, when  
5 she did the police report.

6 (Document displayed)

7 **MR. LIMANDRI:** Here's the question, I said:

8 "Do you want to be the first person make an offer?

9 Do you remember saying that?"

10 She said "Yes."

11 When asked when she went to the police that she'd had any  
12 direct threats, the only thing she could come up with was an  
13 old friend wrote her and said she hopes: God kicks you in the  
14 butt. I mean, is that the type of threat where you're going to  
15 have to go out and spend thousands of dollars on security  
16 because an old friend said he hopes God kicks you in the butt?  
17 These were the only type of threats that we were told that they  
18 received.

19 And the only security expert you heard from, Jonathan  
20 Perkins, who said, you know, these are not proper threat  
21 assessments. These are not what you do to go spend thousands  
22 of dollars. We had -- Mr. Galloway who apparently was new  
23 there, and was very concerned about what had happened, not  
24 having dealt with it before, so was willing to spend as much  
25 money as possible without doing any real threat assessment.

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1           Okay. In terms of the jury instructions, I'm going to  
2 just read off page numbers I'd like you to pay attention to if  
3 you could, because I'm down to about 13 minutes here.

4           For example, jury instruction on Page 73, the California  
5 recording claims. There only had to be a reasonable  
6 expectation, okay, --

7           (Document displayed)

8           **MR. LIMANDRI:** -- that the conversation was -- there  
9 had to be a reasonable expectation the conversation was not  
10 being overheard. So it's not just a matter of whether or not  
11 you think someone's listening in. You have to have a  
12 reasonable expectation of not being overheard.

13           All of these conversations were in a place where it could  
14 be overheard.

15           Let's go to Page 75.

16           (Document displayed)

17           **MR. LIMANDRI:** Even if you were to find a violation  
18 of 632, the exception is a violent felony against a person.  
19 That's where you see that language. This is on Page 75 of the  
20 jury instructions the Court read you.

21           And again, what was the evidence? It was videographic,  
22 audiographic, sworn testimony, expert testimony, scientific  
23 literature, eyewitnesses.

24           Every type of evidence that could have been brought to  
25 bear that these things actually happened was brought into court

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1 and un rebutted. Okay? So this is not situation where they're  
2 off on some wild goose chase and didn't find anything. The  
3 evidence -- it's not only beyond a preponderance of the  
4 evidence; it's real clear and compelling.

5 But we don't need that type of evidence where the scales  
6 are more than tipped in our clients' favor. And it goes to  
7 show they had a lawful purpose, which bears on these other jury  
8 instructions.

9 Page 78 of the jury instructions. Florida recording  
10 claims.

11 (Document displayed)

12 **MR. LIMANDRI:** If the plaintiffs are going to hope to  
13 prevail on this type of claim, they have to show that they had  
14 an objectively reasonable expectation of privacy. How could  
15 they do that in these public settings?

16 And the defendants had to have -- uh -- did not have  
17 reason to know that they were violating the laws. They  
18 researched the laws. They believed that they were perfectly  
19 within their rights to do those videos, in this manner, in  
20 these settings.

21 On Page 80 is a Maryland recording claim, same as Florida,  
22 I'm not going to cover that.

23 Page 82, federal recording claims. I'll just point out  
24 that they had to be done for the purpose of violating RICO.

25 (Document displayed)

## CLOSING ARGUMENT / LIMANDRI

1           **MR. LIMANDRI:** RICO, it's a racketeering law, for  
2 Pete's sake. This is an undercover operation. These people on  
3 a shoestring budget, not trying to make money, working off of  
4 donations. And they're certainly not doing it for the purpose  
5 of violating RICO. So that doesn't apply. The federal  
6 recording claims don't apply, because there's no unlawful  
7 purpose.

8           As to trespass, they were invited on the property. No  
9 dispute. They didn't break anything; they didn't take  
10 anything; they didn't injure anybody. There's simply no  
11 causation or damages.

12           On every one of the plaintiffs' claims, ladies and  
13 gentlemen, they have to show causation, and damages. We'll  
14 talk about damages in a minute. Conspiracy will be covered  
15 more by others. But suffice it to say there was never an  
16 intent on the part of any of the defendants to break any laws.

17           And as far as causation goes, Mr. Breen nailed it when he  
18 said that Mr. Galloway, you know, the COO of PPFA, admitted  
19 that the harm was to the brand. He said that three times. But  
20 yet, that's not a recoverable item of damages. The only thing  
21 on the verdict forms and the jury instructions that they can  
22 recover for is infiltration and security expenses. Not damage  
23 to their brand.

24           They're mad because they got a black eye in the public  
25 eye, and it hurt their reputation. But they can't recover for



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1 that. And they can't recover for what third parties may have  
2 done. Okay?

3 Jury Instruction 69, under RICO, requires a direct  
4 relationship between the injury and the defendants' alleged  
5 violation.

6 (Document displayed)

7 **MR. LIMANDRI:** There isn't one, because it was always  
8 the Planned Parenthood and the other plaintiffs responding to  
9 what they think other people, third parties might do.

10 Okay. I need to talk about damages. Very important in  
11 this case. Because again, no suggestion that my clients  
12 actually did any property damage or injured or took anything.

13 And as far as the inferences against Troy Newman, his  
14 attorney will tell you they only apply to him, and no one else.  
15 And Mr. Daleiden said that he had a parting of the ways with  
16 Mr. Newman, and did not invite him to stay on the board. But  
17 it's clear that the goals of Planned -- the goals of CMP were  
18 always peaceful goals, and always to bring about change through  
19 lawful processes.

20 The plaintiffs' prior security measures were irrefutably,  
21 completely inadequate. If they had just used the lookbook, if  
22 it ever existed, if it does exist -- like, they should have  
23 brought it into court, and they didn't. But they had  
24 Mr. Daleiden's picture, they said, since 2009. They knew who  
25 he was; they knew of the prior infiltrations. They had no

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1 problem getting everybody's picture and showing them to you  
2 here in court.

3 Why didn't they just have them at the conference tables?  
4 Or the clinics? It would have cost nothing. They said that  
5 was their policy and procedures.

6 Why didn't they do a Google search just of the new  
7 exhibitors? There was only two or three or whatever, at each  
8 conference. It wouldn't have taken any time at all.

9 You heard the evidence on Exhibit 7117, the red flag  
10 exhibit, that when the Planned Parenthood person did it, it  
11 pulled up right away.

12 (Document displayed)

13 **MR. LIMANDRI:** David Daleiden doesn't exist -- well,  
14 David Daleiden does, but Robert Sarkis doesn't exist anywhere.  
15 And BioMax only has a P.O. box, and no physical location.

16 So there were plenty of red flags. They just ignored it.  
17 It wouldn't have cost them anything. But they were motivated  
18 by greed to get as much money as they could from exhibitors.  
19 And they were motivated by greed to get this new company in,  
20 that could pay for fetal tissue and organs.

21 And they didn't care about anything else, until the videos  
22 came out. Because they had prior infiltrations, they knew who  
23 these people were. They didn't take step one. But they went  
24 out and spent hundreds of thousands of dollars to basically  
25 come to the same conclusion as what you see in their red

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1 flag -- here, Exhibit 7117. That they could have simply looked  
2 these people up.

3 Got seven minutes, so I need to run through some more jury  
4 instructions on the damages.

5 The plaintiffs have to show that it was reasonable for  
6 them to incur these expenses, ladies and gentlemen. And that  
7 the money that they spent, they are entitled to have my clients  
8 pay. Even though they're a \$1.6 billion company, they expect  
9 my clients to pay for the compensatory, and eventually,  
10 punitive damages.

11 But under exhibit -- under the jury instruction on Page  
12 88, they have to show that these are reasonable and necessary  
13 damages, and you can't speculate as to the amount.

14 Well, they're asking you to speculate. You know why?  
15 Because they did not tell you what they spent on security  
16 before the videos were released. So you don't know what the  
17 delta is, what's the additional amount they were spending,  
18 because you don't know what they spent before. So they have  
19 not met their burden of proof on any of their damages.

20 And in fact, what they want are upgrades. They went out  
21 and bought scanners. They've been available for a decade.  
22 They could have bought them before. They have them now. But  
23 the jury instruction on contracts, when you look at it, says  
24 they've got to be put back in the position they were in before  
25 the contract was entered into.

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1 Well, they didn't have scanners before. But now they want  
2 to buy scanners and have a new enhanced vetting system, and  
3 they want the defendants to pay for them. That's better than  
4 the position they were in. These are upgrades.

5 And even their damages expert, Mr. Regan, said that if, in  
6 fact, there'd been no infiltration, there would be no damages.  
7 Okay, well, they could have stopped it if they had taken the  
8 simple steps they knew were available.

9 Under Page 89, again, they had a duty to mitigate their  
10 damages.

11 (Document displayed)

12 **MR. LIMANDRI:** They could have used a lookbook. They  
13 could have used a Google search. They didn't do that.

14 Now, they put up these humongous damages, 600,000,  
15 whatever the total for Mr. Regan's charts. But His Honor read  
16 you the jury instruction on Page 21 that summaries are only as  
17 good as the information on which they are based. And Mr. Regan  
18 admits they did not have any historical costs.

19 And Mr. Zimmer, the defense economist, told you that is  
20 just very basic. It's not disputed. You can't figure out what  
21 your incremental additional costs are unless you had a  
22 baseline. They didn't produce that. It was their job. Just  
23 like it was their job to bring in the lookbook, it was their  
24 job to bring in the historical costs.

25 Instead, all we know is they made a bunch of voluntary

## CLOSING ARGUMENT / LIMANDRI

1 upgrades. They spent a lot of money on security they probably  
2 didn't need to spend.

3 Thank God, nobody was injured. But these threats really  
4 were pretty bogus. Someone mentioned an electric chair and  
5 tweets it to somebody they know, and all of a sudden that's  
6 what they bring in as a supposed threat? That's not a credible  
7 threat.

8 And the next tweet says something like "Hey, drawn and  
9 quartering." They haven't done that for five hundred years,  
10 okay? But they're saying they are entitled to hundreds of  
11 thousands of dollars in security expenses over that.

12 And it supposedly was in the context of Dr. Nucatola, and  
13 she said she wasn't concerned. She had emails, Mr. Perkins,  
14 said, where she said she was just fine about the whole thing,  
15 she didn't think she did anything wrong, and she didn't admit  
16 she did anything wrong.

17 Got three minutes and 55 seconds left.

18 On Pages 95 and 96 of the jury instructions -- well,  
19 before I get to that, they asked for reimbursement for grants.  
20 On Page 36 of the jury instructions, it says if you don't have  
21 a legal obligation to pay something, you're not entitled to  
22 reimbursement, if you pay it voluntarily.

23 (Document displayed)

24 **MR. LIMANDRI:** PFFA apparently issued some grants to  
25 some of its -- not subsidiaries, but to some of its affiliates.

## CLOSING ARGUMENT / LIMANDRI

1 And they admit they didn't have to do it. The affiliates said  
2 they weren't legally required to do it. But yet, they want the  
3 defendants to pay for it. They're not entitled to that money.

4 Okay, I need to talk about punitive damages, only because  
5 they did. It's held to a higher clear-and-convincing-evidence  
6 standard, which is higher than beyond a reasonable doubt.

7 (Document displayed)

8 **MR. LIMANDRI:** And you need to show despicable  
9 conduct, or malice, or oppression, or fraud in this context.

10 I mean, this is just ludicrous. These are people -- the  
11 defendants took risks to expose great injustices, so that it  
12 would stop. And now they want you, as a jury, the conscience  
13 of the community, to punish them and deter others. That's the  
14 main thing.

15 They want to make an example of these defendants so no one  
16 else ever dares to find out their secrets again. They got away  
17 with it, to the extent they were doing this in 2010. They want  
18 to get away with it now, in doing it when it was exposed in  
19 2015. And they're not entitled to that. And you, as the  
20 conscience of the community, should not allow it.

21 The slide of Melissa Fowler, if you have that, she was  
22 specifically asked if the purpose of the confidentiality  
23 agreements was, in fact, to conceal criminal activity.

24 (Document displayed)

25 **MR. LIMANDRI:** And she said:

## CLOSING ARGUMENT / LIMANDRI

1 "No. I don't believe its purpose is to conceal  
2 criminal activity..."

3 But that's what this trial is all about. That's how  
4 they're using those agreements. Now, she was a communications  
5 person for NAF.

6 They want to conceal criminal activity. And they even  
7 want you to use a threat of punitive damages to stop them --  
8 stop anybody from ever being able to show -- do that again.  
9 And they want to destroy these defendants, financially.

10 By the way, in that Jury Instruction 97 and 98, you have  
11 to show what the defendants' financial capacity is to pay  
12 punitive damages, if you can get them. They put on no evidence  
13 of that. All the evidence is it would financially destroy  
14 these defendants.

15 So they can't meet their burden of proof, which is a very  
16 high one for punitive damages. Clear and convincing evidence  
17 of despicable conduct, in coming up with an amount that would  
18 be appropriate.

19 Okay, to finish up, talking about -- What Planned  
20 Parenthood had an opportunity to do, ladies and gentlemen, when  
21 the videos came out was to clean up their act, and make sure  
22 whatever rogue people in their affiliates were doing these  
23 things did not continue to act out of greed, and violate the  
24 law.

25 Instead, Planned Parenthood decided to turn all their fury

## CLOSING ARGUMENT / LIMANDRI

1 on these defendants. Instead of taking the opportunity to do  
2 what I'd like to think they must have done, to comply with the  
3 law and make themselves a better organization. They're now  
4 safer and more secure because they implemented all these  
5 measures that they want our clients to pay for. But, in fact,  
6 what they should have just done is turned their fury on the  
7 people that were violating the law.

8 Now, as for the verdict form -- I've got, like, 30 seconds  
9 left. All you have to do is answer "No" to every question, and  
10 zero as to every amount.

11 If you want to put a dollar for trespass, or nominal  
12 damages, you can do that. But as to the breach of contract,  
13 the evidence was our clients paid thousands of dollars for  
14 every conference they attended. Planned Parenthood kept that  
15 money, so that should more than compensate them for nominal  
16 damages.

17 The only place where you would answer "Yes" on the verdict  
18 form would be in Section G on Pages 18 and 19: If you found  
19 there was a violation of the recording claim, video, answer  
20 "Yes" as to the 633.5 defense for violence against a person.

21 The last thing I'm going to do is show a 30-second clip.  
22 I'm over my time just a little bit, but it's Exhibit 4006.  
23 It's from the 20/20 video. And it's Gloria Feldt, the  
24 president of Planned Parenthood at the time. And this is what  
25 she had to say, and then I'll be done. Exhibit 4006.



## PROCEEDINGS

1 (Videotape played with audio)

2 **MR. LIMANDRI:** You can stop there. Over my time.

3 My clients took Gloria Feldt at her word, ladies and  
4 gentlemen, that people who are doing these things should be  
5 investigated and brought to justice. Okay. We're asking you  
6 to take them at their word and do the same.

7 Thank you very much, ladies and gentlemen, for your  
8 attention and for your jury service in this case.

9 Thank you, Your Honor.

10 **THE COURT:** Thank you, Mr. LiMandri.

11 **MS. DHILLON:** Your Honor, I wonder if we could  
12 commence tomorrow, because I'll be interrupted in the middle of  
13 a topic if --

14 **THE COURT:** I don't want you to do that.

15 **MS. DHILLON:** Thank you.

16 **THE COURT:** Okay.

17 So ladies and gentlemen, we will stop for today. Please  
18 remember the admonitions.

19 Tomorrow morning we will finish up with the closing  
20 statements of the defendants. And the plaintiffs will come  
21 back and give you their perspective. I'll give you the final  
22 instructions, and late in the morning the case will be yours.

23 And until then, follow all the admonitions. Don't do any  
24 research; don't talk to anybody about this. And come back  
25 tomorrow.

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1           And I'll look forward to seeing you at the same time, a  
2 little before 8:00. Thank you.

3           (Jury excused)

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

6           **THE COURT:** All right. Please be seated, everybody.  
7 Mr. Jonna?

8           **MR. JONNA:** Yes, Your Honor, thank you.

9           Very briefly, we heard in Mr. Kamras's closing argument  
10 that they're not going to be seeking punitive damages against  
11 Mr. Lopez.

12           **THE COURT:** Yeah.

13           **MR. JONNA:** So I would just ask, I think it would be  
14 appropriate if we removed his name from the -- from Page 43 of  
15 the verdict form.

16           **THE COURT:** I think either that, or we'll scratch it.  
17 One way or another, I think that's an excellent idea.

18           **MR. JONNA:** Okay, thank you.

19           **THE COURT:** All right.

20           **THE COURT:** Ms. Bomse, do you have --

21           **MS. BOMSE:** Just briefly, Your Honor.

22           My understanding was from the discussion prior to defense  
23 opening -- doing their closings, that the Court is going to  
24 look at additional material that defendants want to put in.  
25 And I just would like to put on the record that obviously, had

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1 more material come in, plaintiffs would have cross-examined on  
2 that. So there's lots of problems with the idea of looking at  
3 new evidence.

4 **THE COURT:** I understand the concerns that you have.  
5 I also understand what Mr. Breen was saying. And I'm going to  
6 just see what he's got. And then we will deal with it in the  
7 morning.

8 And if there's anything else that you want me to consider  
9 with respect to the -- you know the specific things that  
10 Ms. Trotter referred to. If there's -- if you have specific  
11 information about that one way or the other, and want to  
12 provide it, that's fine. If you don't, that's also fine.

13 I'm well aware of where we are in the case.

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

15 **THE COURT:** And I'm well aware of how all of that  
16 information came in. But I'm going to look at what Mr. Breen  
17 has.

18 **MS. BOMSE:** Understood.

19 **MR. BREEN:** Thank you, Your Honor.

20 **THE COURT:** Mr. Mihet.

21 **MR. MIHET:** Your Honor, I asked our colleagues on the  
22 other side if they wouldn't mind sharing the demonstrative, the  
23 PowerPoint presentation that they showed the jury, to us. If  
24 I'm supposed to be responding to their closing argument, I  
25 think it would be fair and courteous for me to have access to

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1 that. We would certainly be willing to share the slides that  
2 we've shown with them.

3 But they're unwilling to do that, and I would hope that  
4 Your Honor would ask them to do that. It would really help me  
5 to respond to their argument, which is what my closing is  
6 supposed to be.

7 **THE COURT:** To -- to which demonstrative are you --

8 **MR. MIHET:** The slides that they showed in their  
9 closing argument, Your Honor. They had a number of slides. A  
10 few of them were problematic, and I'd like to have them and to  
11 be able to refer to them tomorrow when I speak with the -- with  
12 the jury. I don't have a photographic memory.

13 So it's my contention that some of their slides were  
14 inaccurate. And I want to be able to point to that, but I  
15 don't have the slides. So they were shown to the jury. I  
16 don't think it's -- it's proper for them to -- to refuse to  
17 share them with us.

18 **THE COURT:** All right. I'm happy to hear from any of  
19 the plaintiffs before I --

20 **MS. TROTTER:** Your Honor, I don't think we're under  
21 an obligation to share our -- to provide a copy. And Mr. Mihet  
22 told me, when I asked "Where are yours," that he didn't have  
23 any. So --

24 **MR. MIHET:** We're happy to provide the ones that  
25 we've already used and shown to the jury. And I don't have any

## PROCEEDINGS

1 for tomorrow yet, but when I do, I'm happy to provide them.

2 **THE COURT:** You will, and you'll also have the  
3 transcript --

4 **MS. TROTTER:** The transcript.

5 **THE COURT:** -- that will -- that will repeat exactly  
6 what was there. So it's not like the old days where there is  
7 a, like, a poster board, and you could just take the poster  
8 board over and say: Well, you know, see this? And work with  
9 that.

10 These are -- I don't -- I don't see that I'm going to be  
11 able to require the plaintiffs to provide the slides that were  
12 used. You have all the same evidence.

13 **MR. MIHET:** The problem is that the transcript  
14 doesn't reflect what the words were on the screen. And the  
15 words on the screen are not part of the evidence in this case.  
16 Those are demonstratives that were created for the jury. The  
17 jury has seen those.

18 And tomorrow, in my closing, I'm entitled to say: Now,  
19 yesterday they showed you this slide, and this, and this and  
20 this (Indicating) is inaccurate. I mean, that's what a closing  
21 argument is, is a response to the other side's closing. And  
22 I'm hampered because I don't have the evidence.

23 I don't have the -- the transcript isn't going to say what  
24 was on the screen. Only the PowerPoint presentation shows what  
25 was on the screen, Judge.

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1           **THE COURT:** So Mr. Mihet, you are a powerful  
2 advocate. And I am quite confident that you're going to be  
3 able to respond directly to the points that were made, and with  
4 slides of your own that will underscore the case that you have.  
5 But I'm not going to require anything further.

6           **MR. MIHET:** Thank you.

7           **THE COURT:** All right.

8           **MS. TROTTER:** Thank you.

9           **THE COURT:** Ms. Mayo.

10           **MS. MAYO:** Your Honor, we worked with counsel for  
11 defendants to put on a single flash drive (Indicating) the  
12 agreed versions of all of the video clips that went into  
13 evidence, and were shown to the jury. And so I wanted to hand  
14 that over to the Court.

15           **THE COURT:** Great. Okay.

16           It's now handed to Ms. Davis.

17           (Item handed up to the Court)

18           **MS. YAMAMOTO:** Your Honor, this is Dorothy Yamamoto  
19 on behalf of BioMax.

20           Just for clarification, the files are labeled differently.  
21 So one folder says "Defendants' Video Exhibits" and the other  
22 says "Admitted Video Exhibits," with the implication that one  
23 folder is not admitted. The Admitted Video Exhibits is  
24 actually the plaintiffs' videos.

25           So, just for clarification, in case the filing is

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1 confusing.

2           **THE COURT:** Well, and -- so, should we correct that  
3 overnight so that it's just -- there's -- at this point,  
4 there's no such thing as a defendants' exhibit or a plaintiffs'  
5 exhibit. They're just exhibits.

6           **MS. YAMAMOTO:** I agree.

7           **THE COURT:** So they shouldn't be --

8           **MS. MAYO:** We're happy to correct it, if that will  
9 make them happy.

10           **THE COURT:** Let's fix it, and just call it "Video  
11 Exhibits" or something like that.

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

13           (Item handed down)

14           **THE COURT:** Okay. So I am really hoping -- well, no,  
15 I guess I have to deal with this other issue. So 7:30 it is.  
16 The Court will see you in the morning.

17           (Whereupon at 2:53 p.m. further proceedings were  
18 adjourned until Wednesday, November 13, 2019, at  
19 7:30 a.m.)

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I N D E X

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CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Debra L. Pas*

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Debra L. Pas, CSR 11916, CRR, RMR, RPR

*Belle Ball*

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Belle Ball, CSR 8785, CRR, RDR

Tuesday, November 12, 2019