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17 **UNITED STATES DISTRICT COURT,**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 PLANNED PARENTHOOD FEDERATION) Case No. 16-cv-00236 (WHO)
20 OF AMERICA, INC., et al.,)
21) Judge William H. Orrick, III
22 Plaintiffs,)
23 vs.) SPECIAL MOTION TO STRIKE
24) UNDER SECTION 425.16 OF THE
25 CENTER FOR MEDICAL PROGRESS, et) CALIFORNIA CODE OF CIVIL
26 al.,) PROCEDURE OF DEFENDANTS THE
27) CENTER FOR MEDICAL PROGRESS;
28 Defendants.) BIOMAX PROCUREMENT
) SERVICES, LLC; DAVID DALEIDEN
) and GERARDO ADRIAN LOPEZ
)
) Hearing Date: July 6, 2016
) Time: 2:00 p.m.

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NOTICE OF MOTION

TO PLAINTIFFS AND THEIR ATTORNEY(S) OF RECORD:

PLEASE TAKE NOTICE THAT on July 6, 2016, at 2:00 p.m. in Courtroom 2 of the Honorable William H. Orrick at the United States District Court for the Northern District of California, 17th Floor, 450 Golden Gate Ave., San Francisco, CA 94102, Defendants The Center for Medical Progress (“CMP”), BioMax Procurement Services, LLC (“BioMax”), David Daleiden (“Daleiden”), and Gerardo Adrian Lopez (“Lopez”) (collectively “Defendants”) respectfully bring a Special Motion To Strike Under Section 425.16 Of The California Code Of Civil Procedure of Defendants The Center For Medical Progress; Biomax Procurement Services, LLC; David Daleiden and Gerardo Adrian Lopez.

Pursuant to Section 425.16 of the California Code of Civil Procedure, Defendants respectfully request that this Court dismiss the state law claims of the First Amended Complaint of Plaintiffs Planned Parenthood Federation of America, Inc. (“PPFA”), Planned Parenthood: Shasta-Diablo, Inc. dba Planned Parenthood Northern California (“PPNC”); Planned Parenthood Mar Monte, Inc. (“PPMM”); Planned Parenthood of the Pacific Southwest (“PPPSW”); Planned Parenthood Los Angeles; Planned Parenthood/Orange and San Bernardino Counties, Inc. (“PPOSB”); Planned Parenthood of Santa Barbara, Ventura and San Luis Obispo Counties, Inc.; Planned Parenthood Pasadena and San Gabriel Valley, Inc.; Planned Parenthood Rocky Mountain (“PPRM”); Planned Parenthood Gulf Coast (“PPGC”); and Planned Parenthood Center for Choice (“PPCFC”) (collectively “Plaintiffs”) because Plaintiffs cannot demonstrate a probability of prevailing on those claims due to pleading deficiencies in their First Amended Complaint.

This motion is based on this Motion, the Request for Judicial Notice, the Declaration of David Daleiden, and the Declaration of Charles LiMandri filed herewith, the pleadings and papers on file herein, and upon such other matters as may be presented to the Court at the time of the hearing.

INTRODUCTION

1
2 In 2014 and 2015, Defendants Daleiden and Lopez attended abortion-related conferences
3 hosted by PPFa and the National Abortion Federation (“NAF”) as representatives of Defendant
4 BioMax. First Amended Complaint (“FAC”) at ¶¶ 61, 68, 80, 83, 102, 108, 118. Daleiden used an
5 assumed name. *Id.* at ¶ 31. During these conferences, Defendants had numerous conversations with
6 abortion providers to discuss fetal-organ procurement; they recorded those conversations. *Id.* at
7 ¶¶ 71, 90, 102, 108, 121. Daleiden also met with and recorded abortion providers in four other
8 venues, specifically, two restaurants and two abortion facilities. *Id.* at ¶¶ 76, 97, 110, 115;
9 Declaration of David Daleiden (“Daleiden Dec.”) at ¶¶ 2-5.

10 Beginning on July 14, 2015, Defendant CMP began releasing on the Internet a series of
11 videos using footage from these recordings. *Id.* at ¶¶ 6-9; FAC at ¶¶ 124, 128, 133, 137, 139. CMP
12 accompanied each video with a press release accusing Planned Parenthood of engaging in illegal
13 trafficking of aborted fetal parts. *Id.* at ¶ 125. From the first release, CMP’s videos generated
14 enormous public interest and led to multiple state and federal investigations. *Id.* at ¶¶ 131-32, 136,
15 146; Declaration of Charles LiMandri (“LiMandri Dec.”) at ¶ 2.

16 On January 14, 2016, Plaintiffs filed this lawsuit in an attempt to silence and punish CMP
17 and the other defendants for gathering information and publishing their findings.

LEGAL STANDARDS

18
19 California’s anti-SLAPP statute requires courts to conduct a two-step analysis. *Navellier v.*
20 *Sletten*, 29 Cal. 4th 82, 88-89 (2002). At the first step, the court considers whether the plaintiff’s
21 claims arise from conduct by the defendant that falls within the scope of the statute’s protections.
22 *Id.* The defendant “must make a threshold showing that the act or acts of which the plaintiff
23 complains were taken in furtherance of the defendant’s right of petition or free speech under the
24 United States or California Constitution[s] in connection with a public issue, as defined in
25 subsection (e) of the statute.” *Hilton v. Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2009)
26 (quotation marks, brackets, and ellipsis omitted). When the defendant makes this threshold
27 showing, the burden shifts to the plaintiff to “demonstrate that the complaint is both legally
28

1 sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable
2 judgment if the evidence submitted by the plaintiff is credited.” *Id.* (quotation omitted).

3 An anti-SLAPP motion “may be premised on legal deficiencies inherent in the plaintiff’s
4 claim, analogous to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).” *Rogers v.*
5 *Home Shopping Network, Inc.*, 57 F.Supp.2d 973, 976 (C.D. Cal. 1999). “If a defendant makes a
6 special motion to strike based on alleged deficiencies in the plaintiff’s complaint, the motion must
7 be treated in the same manner as a motion under Rule 12(b)(6) except that the attorney’s fee
8 provision of § 425.16(c) applies.” *Id.* at 983. “[D]istrict courts will . . . impose the requirements of
9 425.16(g) [the automatic stay of discovery] where the issues raised in an anti-SLAPP motion are
10 clean legal issues that render discovery irrelevant to the resolution of the motion.” *Nat’l Abortion*
11 *Fed’n v. Ctr. for Med. Progress*, Case No. 15-cv-03522-WHO, 2015 U.S. Dist. LEXIS 114851, at
12 *15 (N.D. Cal. Aug. 27, 2015) (citing cases). The anti-SLAPP statute applies to all state-law
13 claims, regardless of whether they arise under California law or the laws of another state. *See*
14 *United Tactical Sys., LLC v. Real Action Paintball, LLC*, Case No. 14-cv-04050, 2015 WL
15 6955086, at *7 (N.D. Cal. Nov. 10, 2015); *Liberty Synergistics Inc. v. Microflo Ltd.*, 718 F.3d 138,
16 154-55 (2d Cir. 2013); *Francis v. Wynn Las Vegas*, 557 F. App’x 662, 664 (9th Cir. 2014).

17 ARGUMENT

18 **I. All of Plaintiffs’ State-Law Claims Arise out of Alleged Conduct by Defendants That** 19 **Falls within the Scope of the Anti-SLAPP Statute’s Protections.**

20 At the first stage of the anti-SLAPP analysis, the Court must determine whether each claim
21 in the Complaint “is based on the defendant’s protected free speech or petitioning activity.”
22 *Navellier*, 29 Cal. 4th at 89. The anti-SLAPP statute defines “act in furtherance of a person’s right
23 of petition or free speech under the United States or California Constitution in connection with a
24 public issue” broadly as “any written or oral statement or writing made in a place open to the public
25 or a public forum in connection with an issue of public interest,” or “any other conduct in
26 furtherance of the exercise of the constitutional right of petition or the constitutional right of free
27 speech in connection with a public issue or an issue of public interest.” Cal. Civ. Pro. Code
28 § 425.16(e).

1 Here, all of Plaintiffs’ state-law claims arise out of Defendants’ undercover investigative
2 filming and/or Defendants’ publication of the findings of their undercover investigative journalism.
3 Both the Ninth Circuit and California courts have repeatedly held that such conduct falls within the
4 scope of the anti-SLAPP statute. “California courts have held that pre-publication or pre-
5 production acts such as investigating, newsgathering, and conducting interviews constitute conduct
6 that furthers the right of free speech.” *Doe v. Gangland Prods., Inc.*, 730 F.3d 946, 953 (9th Cir.
7 2013). Applying this rule, the Ninth Circuit has held that investigative filming and the publication
8 thereof falls within the scope of the anti-SLAPP statute. *See, e.g., id.* (“Plaintiff’s claims are based
9 on Defendants’ acts of interviewing Plaintiff for a documentary television show and broadcasting
10 that interview. These acts were in furtherance of Defendants’ right of free speech.”); *Greater L.A.*
11 *Agency on Deafness v. CNN, Inc.*, 742 F.3d 414, 423 (9th Cir. 2014) (holding that claims
12 implicated protected conduct because plaintiff’s “action arises directly from CNN’s decision to
13 publish . . . [and plaintiff] would have no reason to sue CNN absent the news videos on
14 CNN.com”). Similarly, California courts have held that allegedly unlawful undercover
15 investigative recordings of a doctor fall within the scope of the anti-SLAPP statute. *Lieberman v.*
16 *KCOP Television, Inc.*, 110 Cal. App. 4th 156, 166 (2003). And there can be no meaningful doubt
17 that speech regarding abortion and potentially illegal fetal tissue procurement relates to “an issue of
18 public interest.” Cal. Civ. Pro. Code § 425.16(e)(3), (4); *Bernardo v. Planned Parenthood Fed’n of*
19 *Am.*, 115 Cal. App. 4th 322, 358 (2004) (holding that speech regarding abortion fell within anti-
20 SLAPP statute because “abortion is one of the most controversial political issues in our nation”).
21 Defendants’ activity also spurred governmental investigations and therefore directly advances the
22 right to petition. *See* FAC ¶ 146; LiMandri Dec. at ¶ 2; *Dove Audio, Inc. v. Rosenfeld, Meyer &*
23 *Susman*, 47 Cal. App. 4th 777, 784 (1996). Thus, Plaintiffs cannot seriously dispute that all of their
24 claims arise from Defendants’ conduct that falls within the scope of section 425.16(b)(1).

25 Further, a court in a concurrent case concerning these exact same Defendants has already
26 ruled that their work on the Human Capital Project met the first prong of the anti-SLAPP analysis.
27 *See* Request for Judicial Notice, Ex. A. The ruling explicitly rejected the suggestion that CMP and
28 other defendants did not meet the first prong because they were not traditional-style journalists.

1 Finally, any suggestion that CMP does not warrant the protection of Cal. Civ. Proc. Code
2 § 425.16 because its publications were “misleading” or “fraudulent” is both legally and factually
3 invalid. “The very purpose of the First Amendment is to foreclose public authority from assuming a
4 guardianship of the public mind. . . . [T]he forefathers did not trust any government to separate the
5 truth from the false for us.” *Meyer v. Grant*, 486 U.S. 414, 419-20 (1988) (quotation omitted). The
6 allegations in the First Amended Complaint concerning the alleged misleading nature of CMP
7 videos (FAC ¶¶129, 133-34, 137, 139) are themselves extremely misleading and reliant on “heavily
8 edited” versions of statements by Planned Parenthood staff, as can be determined by comparing the
9 highlight videos with the full videos.

10 For example, Plaintiffs, point to a “single out-of-context statement Dr. Gatter made” about
11 wanting a Lamborghini as evidence of Defendants’ supposed misleading edits. FAC ¶ 134.
12 However, the exact context of this joking statement is the immediately preceding statement: “So let
13 me just figure out what others are getting and if this is in the ballpark, then it’s fine. If it still low,
14 then we can bump it up.” In the same exchange where Dr. Gatter said “we are not in this for the
15 money” – a statement that, contrary to Plaintiffs’ narrative of misleading omissions, *is included in*
16 *the shorter video* – she also expressed a fear of “lowball[ing]” because “you know in negotiations
17 the person who throws out the figure first is at a loss, right?”

18 In another example, Plaintiffs claim, “When Defendants cynically offer ‘participation
19 bonuses to doctors,’ related to fetal tissue donation, the staff member forcefully responds, ‘No
20 way.’” FAC ¶139. On the contrary, the staff member did not say, “No way.” Rather, she noted that
21 internally “it’s kind of a sore subject *because I would really like to be able to*, but it’s just really
22 hard to administer.” She notes that there are “some studies where there is room, we could
23 potentially have a bonus” but it is operationally difficult. She also states, “[W]e used to give,
24 bonuses and yeah, yeah, out of my department. I spent a good deal at the beginning of each month,
25 doing bonus reports for the prior month.” The contention that the PPGC staff member forcefully
26 rejected the suggestion of bonuses for doctors participating in fetal tissue procurement is false.

27 Plaintiffs also misleadingly cite snippets out of context from a report they commissioned
28 from Fusion GPS. FAC ¶137. The full report states that Fusion GPS “found no evidence that CMP

1 inserted dialogue not spoken by Planned Parenthood staff,” and its “analysis did not reveal
2 widespread evidence of substantive video manipulation.” With respect to specific video segments,
3 moreover, Fusion GPS did not “identif[y] any evidence of audio manipulation within the video
4 segments provided”; it reported that “[n]either internal nor expert analysis found any artifacts of
5 editing in or around this segment that would suggest the audio was inserted or manipulated using
6 technical tools”; and it concluded that “neither internal nor external analysis found evidence that
7 CMP inserted or manipulated this dialog post hoc.” Fusion GPS, Analysis of Center for Medical
8 Progress Videos (Aug. 25, 2015), [http://ppfa.pr-optout.com/ViewAttachment.aspx?
9 EID=mr9WXYw4u2IxYnni1dBRVvk3HDyuhhkPMnFMCvK5fVC8%3d](http://ppfa.pr-optout.com/ViewAttachment.aspx?EID=mr9WXYw4u2IxYnni1dBRVvk3HDyuhhkPMnFMCvK5fVC8%3d); *see also* Request for
10 Judicial Notice, Ex. B, Brief of *Amici Curiae* Susan B. Anthony List, Six Members of the United
11 States House of Representatives in support of Defendants-Appellants Urging Reversal in *Center for*
12 *Medical Progress, et al. v. National Abortion Federation, et al.*, (Doc. No. 27, 9th Cir. Case No.
13 16-15360).

14 The Defendants easily meet the first prong of C.C.P. § 425.16.

15 **II. Plaintiffs Do Not Have a Reasonable Probability of Prevailing on Any of Their State-**
16 **Law Claims, Because Defendants Are Entitled to Judgment as a Matter of Law on All**
17 **State-Law Claims in the Complaint.**

18 As Defendants described in detail in their Motion to Dismiss, the Complaint fails to
19 plausibly allege any state-law claims against Defendants. *See* Doc. 79. Defendants incorporate by
20 reference the arguments in their Motion to Dismiss, as summarized and expanded upon below.

21 **A. Plaintiffs Failed To Allege Sufficient Facts In Support Of Their Fourth and**
22 **Fifteenth Claims For Breach Of Contract.**

23 “[T]he elements of a cause of action for breach of contract are (1) the existence of a
24 contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and
25 (4) the resulting damages to the plaintiff.” *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821
26 (2011); *see also W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992). The Complaint’s
27 Fourth Claim, brought by PPFA alone, lacks factual allegations that Defendants have breached an
28 agreement with PPFA and that any alleged breach proximately caused damage to PPFA. The
Complaint’s Fifteenth Claim lacks factual allegations that Defendants’ breached their agreement

1 with PPGC and PPCFC and that any alleged breach proximately caused damage to these Plaintiffs.

2 **1. Plaintiffs have failed to allege facts sufficient to state a claim that**
3 **Defendants breached the PPFA exhibitor agreements.**

4 Plaintiffs allege that certain Defendants entered into written exhibitor agreements related to
5 registration for the PPFA conferences in Miami, Orlando, and Washington, D.C., and that in so
6 doing the Defendants “represented that BIOMAX was a legitimate biological specimen
7 procurement organization.” FAC ¶ 178. However, these written agreements, FAC, Exs. A-F, do not
8 contain any representations by any of the Defendants about the nature of BioMax. Moreover, even
9 if Defendants had so represented themselves, Plaintiffs do not point to any language in the
10 agreements that was breached by such a representation. Thus, Defendants did not breach the
11 agreements by allegedly misrepresenting the nature of BioMax.

12 Plaintiffs further allege that “Defendants agreed that their contributions to the conferences
13 would be useful to attendees and beneficial to the interests of their clients and patients” *Id.*
14 The language cited comes from Paragraph 1 of the agreements, however, which applies to
15 *sponsors*, not exhibitors. *See* FAC, Ex. B, ¶ 1 (addressing the “Purpose and Use of Sponsorship
16 Support,” and describing “[t]he purpose of PPFA’s sponsorship program”). Plaintiffs misstate the
17 contents of the agreements as they pertain to *exhibitors* such as BioMax. The portion of the three
18 exhibitor agreements that govern “Exhibit Space” state:

19 Exhibit space is limited. [PPFA/MeDC] reserves the right to award exhibit space only
20 to those Exhibitors whose exhibits will best meet the educational, scientific, or
21 practice needs of conference attendees. [PPFA/MeDC] may exclude Exhibitors whose
products or services are not consistent with PPFA policies or for any other reason
[PPFA/MeDC] deems in its best interest.

22 FAC, Exs. B and D at 2; FAC, Ex. F at 1. Thus, in signing the agreement, BioMax merely
23 acknowledged that PPFA or MeDC had the right to exclude it as an exhibitor if its exhibit was not
24 found to be sufficiently educational or informative or because the featured products or services
25 were inconsistent with PPFA’s purposes. Defendants did not breach this part of the agreement
26 because it did not require them to do, or not do, anything.

27 Finally, Plaintiffs allege that “Defendants violated numerous laws related to fraud, abuse,
28 privacy, and confidentiality,” in putative violation of the contractual obligation to “comply with

1 applicable laws related to fraud, abuse, privacy, and confidentiality.” FAC ¶ 179. But it is well
2 established that a putative contractual obligation to follow the law has no legal effect. *Landucci v.*
3 *State Farm Ins. Co.*, 65 F. Supp. 3d 694, 715 (N.D. Cal. 2014) (“In California, a promise to refrain
4 from unlawful conduct is unlawful consideration . . . [A] contract cannot be premised on a promise
5 to not break the law”); *Rao v. Covanys Corp.*, No. 06-C-5451, 2007 WL 3232492, at *4 (N.D. Ill.
6 Nov. 1, 2007) (“A party’s agreement to do or refrain from doing something that it is already legally
7 obligated to do or refrain from doing is not consideration.”). The putative contractual obligation to
8 “comply with applicable laws” is therefore “void as illegal.” *Landucci*, 65 F. Supp. 3d at 715.

9 Moreover, such an unspecific and conclusory allegation fails both under the federal
10 pleading standards as well as black letter contract law: “Facts alleging a breach, like all essential
11 elements of a breach of contract cause of action, must be pleaded with specificity.” *Levy v. State*
12 *Farm Mut. Auto. Ins. Co.*, 150 Cal. App. 4th 1, 5 (2007). Plaintiffs have failed to specify what
13 “applicable federal, state, [or] local laws and regulations” Defendants allegedly violated. Plaintiffs
14 have also failed to specify how such violations took place “*in performance of [Defendants’]*
15 *obligations pursuant to this Agreement.*” FAC, Exs. B-4, D-2, F-2 (emphasis added). Defendants
16 have not identified what obligations under the agreements that Defendants were performing or not
17 performing when they allegedly violated the unidentified laws. Moreover, to the extent that
18 Plaintiffs seek to impliedly incorporate by reference the other allegations in their Complaint, these
19 allegations, as stated elsewhere fail to state claims for violation of such other laws.

20 **2. Plaintiffs have failed to allege facts sufficient to state a claim that**
21 **Defendants breached the PPGC confidentiality agreement.**

22 Plaintiffs allege that the Defendants violated an agreement attached as Exhibit M to the
23 Complaint by disclosing “confidential oral communications” from Plaintiffs and using this
24 information for a purpose other than a “research transaction” as named in the agreement. Exhibit M
25 defines oral “Confidential Information” as “all oral information of the Disclosing Party, which in
26 either case is identified at the time of disclosure as being of a confidential or proprietary nature or
27 is reasonably understood by the Recipient to be confidential under the circumstances of the
28 disclosure.” FAC, Ex. M, ¶ 1. Plaintiffs have failed to allege, much less specify facts supporting

1 such an allegation, that any oral communications from PPGC or PPCFC to the Defendants were
2 identified at the time of disclosure as confidential or proprietary. *Cf.* Daleiden Dec. ¶ 9, long PPGC
3 video at 0:38-0:54 (Farrell: “I don’t think we’re going over anything too confidential just yet”).
4 They have also failed to allege, much less specify facts in support, that any oral communications
5 were reasonably understood by the Defendants to be confidential under the circumstances of the
6 disclosure. *Id.* at 2:15:03 – 2:15:54, 2:27:09-2:27:20 (enter public restaurant; Farrell: “Can I talk
7 more business?”). Plaintiffs have also failed to identify the particular oral communications at issue
8 that Defendants have allegedly disclosed and misused in violation of the PPGC agreement.

9 **3. Plaintiff PPFA has failed to allege reasonably foreseeable damages**
10 **proximately caused by the alleged breach.**

11 Damages are an essential element of pleading a claim for breach of contract. *W. Distrib.*,
12 841 P.2d at 1058. Plaintiffs’ breach of contract claim also fails because the damages they allegedly
13 sustained were not reasonably foreseeable. Plaintiffs allege that they were “forced to expend
14 additional extensive resources on security and IT services, property damage, and responding to
15 multiple state and federal investigations and inquiries.” These alleged damages are quintessential
16 “consequential damages.” *See Core-Mark Midcontinent Inc. v. Sonitrol Corp.*, Court of Appeals
17 No. 14-CA-1575, 2016 WL 611566, at *6-7 (Colo. App. Feb. 11, 2016). In a contract action, a
18 plaintiff can recover damages – whether “general” damages or “consequential” damages – only if
19 the plaintiff’s loss was “foreseeable as the probable result of the breach.” *Id.* at *7; *see also Erlich*
20 *v. Menezes*, 21 Cal. 4th 543, 550 (1999) (“Contract damages are generally limited to those within
21 the contemplation of the parties when the contract was entered into or at least reasonably
22 foreseeable by them at that time; consequential damages beyond the expectation of the parties are
23 not recoverable.” (internal citations omitted)); Cal. Civ. Code § 3301 (“No damages can be
24 recovered for a breach of contract which are not clearly ascertainable in both their nature and
25 origin.”). This test is more stringent than the proximate-cause requirement applicable to tort claims.
26 *Core-Mark*, 2016 WL 611566, at *7. Moreover, consequential damages, like those claimed by
27 Plaintiffs here, “must be so likely that ‘it can fairly be said’ both parties contemplated these
28 damages as the probable result of the wrong at the time the tort occurred.” *Vanderbeek v. Vernon*

1 *Corp.*, 50 P.3d 866, 870 (Colo. 2002).

2 Here, the damages allegedly sustained by Plaintiffs were not reasonably foreseeable at the
3 time of contracting, and thus they are not recoverable in a breach of contract action. Moreover,
4 such damages are all attributable to the acts of third parties and thus were not proximately caused
5 by the alleged breach.

6 **B. Plaintiffs' Fifth Claim Fails To State a Claim for Breach Of The National**
7 **Abortion Federation Agreements.**

8 In their Fifth Claim, Plaintiffs claim damages as third-party beneficiaries to agreements
9 allegedly entered into by Defendants and NAF. Plaintiffs fail to allege facts sufficient to show that
10 they are intended third-party beneficiaries of these contracts, to show specific breach, or to show
11 damages proximately caused by the alleged breach.

12 To be considered an intended third-party beneficiary, a party must show that the contract
13 was made *expressly* for his or her benefit, *i.e.*, "in an express manner; in direct or unmistakable
14 terms; explicitly; definitely; directly." *Schauer v. Mandarin Gems of Cal., Inc.*, 125 Cal. App. 4th
15 949, 957 (2005). "[A]n intent to make the obligation inure to the benefit of the third party must
16 have been clearly manifested by the contracting parties." *Id.* at 957-58. The terms of the
17 agreements for the NAF conferences show an intent to protect the interests of NAF, including
18 holding NAF, and only NAF, harmless for any loss, damage, or injury, granting NAF, and only
19 NAF, sole discretion for changes to the agreements and requiring NAF's, and only NAF's, consent
20 for disclosure of confidential information. FAC, Exs. G, K, I. None of the terms speak to
21 benefitting Plaintiffs, their staff or any other third party not affiliated with NAF. Therefore,
22 Plaintiffs cannot establish standing as third party beneficiaries of the NAF agreements.

23 Moreover, Plaintiffs allege that the Defendants were aware that the purpose of the
24 agreements was to benefit attendees of NAF meetings, and that the Plaintiffs, all corporate entities,
25 were "attendees" at the NAF meetings. However, both the allegations in the FAC and the
26 agreements themselves, attached as exhibits to the FAC contradict Plaintiffs' allegation that they
27 were corporate "attendees" of NAF meetings. Plaintiffs identify "attendees" at NAF meetings as
28 "clinicians, facility administrators, counselors, researchers, educators, and thought leaders in the

1 pro-choice field.” FAC ¶ 66. The NAF agreements state that “attendees” are the “people” who
2 attend the meetings. *See id.* at Exs. H, I, J, L (“It is NAF policy that all people attending its
3 conferences (Attendees) sign this confidentiality agreement.”). Thus, Plaintiffs lack standing as
4 third-party beneficiaries of the NAF agreements.

5 Even if Plaintiffs had such standing, the Fifth Claim would fail because Plaintiffs have
6 failed to plead specific facts alleging the breach. *Levy*, 150 Cal. App. 4th at 5. Plaintiffs allege “on
7 information and belief” that Defendants have disclosed information to unidentified third parties
8 without NAF’s consent and have not used information learned at NAF meetings in order to
9 enhance the quality and safety of services provided by NAF members and others. FAC ¶ 186. Such
10 allegations fall short of the specificity necessary to state a claim for breach of contract. *Levy*, 150
11 Cal. App. 4th at 5.

12 Finally, Plaintiffs have failed to allege any damages proximately caused by the alleged
13 breaches, as discussed above, Section II.A.3.

14 **C. Plaintiffs’ Sixth Cause of Action Fails to Allege a Claim for Trespass Under**
15 **Florida, District of Columbia, Colorado, or Texas Law.**

16 Plaintiffs’ Sixth Cause of Action alleges trespass arising from Defendants’ alleged entry
17 into PPFA meetings in Florida and the District of Columbia, and alleged entry into PPGC, PPCFC,
18 and PPRM facilities located in Texas and Colorado. FAC ¶¶ 190-96. It fails to state a claim.

19 **1. Plaintiffs fail to state a claim for trespass arising from Defendants’**
20 **alleged attendance at PPFA meetings in Florida and the District of**
21 **Columbia.**

22 To claim trespass under District of Columbia law, a plaintiff must show “an unauthorized
23 entry onto property that results in interference with the property owner’s possessory interest
24 therein.” *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1060 (D.C. 2014). Similarly, under
25 Florida law, a plaintiff must establish that the defendant engaged in “an unauthorized entry onto
26 another’s real property.” *Daniel v. Morris*, 181 So.3d 1195, 1199 (Fla. App. 2015).

27 First, Plaintiffs do not allege that Defendants entered any real property over which Plaintiffs
28 had a possessory interest. A trespass plaintiff must show that she has a possessory interest in the

1 property entered by the defendant. *See Greenpeace*, 97 A.3d at 1060; *Winselmann v. Reynolds*, 690
2 So.2d 1325, 1327 (Fla. App. 1997). Plaintiffs do not allege facts supporting an ownership or
3 possessory interest in the venues at which the PPFA meetings occurred. Plaintiffs fail to identify
4 the property over which they allege to have had a possessory interest, or describe the nature of their
5 rental agreements for such space. Plaintiffs make only the conclusory assertion, unsupported by
6 factual allegations, that they “possesse[d] a right to exclusive use of the real property [they leased]
7 for Planned Parenthood meetings.” FAC ¶ 190. A person who contracts to use space in a hotel does
8 not obtain a possessory interest in the property but rather a right to “mere use without the actual or
9 exclusive possession.” *Young v. Harrison*, 284 F.3d 863, 868 (8th Cir. 2002). Where a plaintiff
10 “had only . . . a right to the use of the subject property,” that plaintiff cannot maintain a trespass
11 action. *Winselmann*, 690 So.2d at 1327; *see also Greenpeace*, 97 A.3d at 1060; *Fortune v. United*
12 *States*, 570 A.2d 809, 811 (D.C. 1990). Plaintiffs’ conclusory allegations are insufficient.

13 Second, an entry onto land gives rise to a trespass claim only if that entry is “unauthorized.”
14 *Greenpeace*, 97 A.3d at 1060; *Daniel*, 181 So.3d at 1199. Plaintiffs admit that Defendants were
15 authorized to attend the PPFA National Conference, because Defendants had registered for the
16 conference, signed the agreement required for participation, and obtained the credentials necessary
17 to participate in the conferences. FAC ¶¶ 105-08, 120-21. Plaintiffs contend that this consent was
18 vitiated because Defendants allegedly misrepresented their identities and intentions in order to gain
19 entry to the meetings. FAC ¶ 193. Numerous courts have rejected trespass claims where the
20 defendants misrepresented their identities or intentions in order to conduct surreptitious filming on
21 businesses’ property. *See, e.g., Desnick v. Am. Broad. Cos.*, 44 F.3d 1345, 1351-53 (7th Cir. 1995);
22 *Baugh v. CBS, Inc.*, 828 F. Supp. 745, 757 (N.D. Cal. 1993); *Am. Transmission, Inc. v. Channel 7*
23 *of Detroit, Inc.*, 609 N.W.2d 607, 613-14 (Mich. App. 2000). These cases have recognized that
24 such scenarios do not implicate “the specific interests that the tort of trespass seeks to protect.”
25 *Desnick*, 44 F.3d at 1352; *see also Berger v. CNN, Inc.*, No. CV 94-46, 1996 WL 390528, at *5 (D.
26 Mont. Feb. 26, 1996).

27 Plaintiffs also assert that Defendants exceeded their consent at the PPFA meetings by
28 recording attendees. FAC ¶ 193. But Plaintiffs have not alleged that they conditioned their consent

1 on an agreement by Defendants not to record at the meetings. Nor did the
2 Sponsor/Exhibitor/Advertisement Package Terms and Conditions prohibit recordings. FAC, Ex. B.
3 Thus, the Complaint does not allege facts showing that Defendants exceeded Plaintiffs' consent.

4 Third, Plaintiffs have failed to allege that they sustained any cognizable injuries that were
5 proximately caused by Defendants' alleged trespass, for the reasons described in Part II.E below.

6 **2. Plaintiffs fail to state a claim for trespass at the Colorado or Texas**
7 **clinics.**

8 Plaintiffs' claims for trespass premised on Defendants' alleged entry into the two Planned
9 Parenthood clinics in Denver and Houston similarly fail. First, Defendants obtained the consent of
10 Plaintiffs' staff members at the facilities and did not exceed the conditions of consent during the
11 time that they were on the property. In Colorado, trespass is defined as "a physical intrusion upon
12 the property of another without the proper permission from the person legally entitled to possession
13 of that property." *Hoery v. United States*, 64 P.3d 214, 217 (Colo. 2003). Consent is a defense to a
14 trespass claim even when there was a mutual mistake of fact. *Corder v. Folds*, 292 P.3d 1177, 1180
15 (Colo. Ct. App. 2012). Under Texas law, "it is the plaintiff's burden to prove that the entry was
16 wrongful, and the plaintiff must do so by establishing that entry was unauthorized or without its
17 consent." *Envtl. Processing Sys., L.C. v. FPL Farming Ltd.*, 457 S.W.3d 414, 425 (Tex. 2015).

18 Plaintiffs concede that Defendants entered the clinics with consent from clinic staff. FAC
19 ¶ 193. For the reasons stated in the foregoing subsection, this consent was not invalid merely
20 because Defendants allegedly misrepresented their identities and/or intentions. Moreover, as
21 discussed above, this consent was not somehow retroactively vitiated by Defendants' alleged post-
22 visit disclosure of information that they allegedly agreed to keep confidential. *See id.* ("PPGC and
23 PPRM both conditioned their consent on Defendants' promise to keep all information
24 confidential."). As the court explained in *Baugh*, a defendant commits a trespass only if she
25 exceeds the plaintiff's consent *while on the premises*; later conduct cannot retroactively vitiate the
26 consent to the defendant's presence on the premises. *See Baugh*, 828 F. Supp. at 756-57; *see also*
27 *Desnick*, 44 F.3d at 1351-53; *Channel 7 of Detroit*, 609 N.W.2d at 613-14. Similarly, here, if
28 Defendants exceeded the scope of consent, they did so only by broadcasting the videos *after* they

1 left the property.

2 **D. Plaintiffs’ Eighth Cause of Action for Fraudulent Misrepresentation Fails**
 3 **Because Defendants’ Conduct Did Not Proximately Cause Plaintiffs’ Damages**
 4 **and Because Plaintiffs’ Fraudulent-Misrepresentation Claim Is Barred by the**
 5 **First Amendment.**

6 Plaintiffs’ Eighth Cause of Action raises a claim for fraudulent misrepresentation. FAC
 7 ¶¶ 204-10. A claim for fraudulent misrepresentation requires: “(a) misrepresentation (false
 8 representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to
 9 defraud, *i.e.*, to induce reliance; (d) justifiable reliance; and (e) resulting damage.” *Lazar v.*
 10 *Superior Ct.*, 12 Cal. 4th 631, 638 (1996) (quotation omitted). Moreover, Plaintiffs must allege a
 11 “complete causal relationship between the fraud or deceit and the plaintiff’s damages.” *City*
 12 *Solutions, Inc. v. Clear Channel Commc’ns*, 365 F.3d 835, 840 (9th Cir. 2004). “Even at the
 13 pleading stage, the complaint must show a cause and effect relationship between the fraud and
 14 damages sought; otherwise no cause of action is stated.” *Marble Bridge Funding Group v. Euler*
 15 *Hermes Am. Credit Indem. Co.*, Case No. 5:12-cv-02729-EJD, 2015 WL 971761, at *5 (N.D. Cal.
 16 Mar. 2, 2015) (internal citation omitted).

17 Plaintiffs allege that “[a]s a result of Defendants’ wrongful acts, PPFA, PPGC, PPCFC, and
 18 PPRM have suffered and/or will suffer economic harm and irreparable harm caused by the
 19 improper acquisition, use, and disclosure of Plaintiffs’ confidential information, including harm to
 20 the safety, security, and privacy of Plaintiffs and their staff, and harm caused by being forced to
 21 expend additional, extensive resources on security and IT services, property damages, and
 22 responding to multiple state and federal investigations and inquiries.” FAC ¶ 209. These facts are
 23 insufficient to allege proximate causation of injury.

24 In *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, the district court rejected a fraud theory
 25 nearly identical to that on which Plaintiffs here rely. 964 F. Supp. 956, 963 (M.D.N.C. 1997), *aff’d*
 26 *in pertinent part on other grounds*, 194 F.3d at 522. In *Food Lion*, the district court held that the
 27 plaintiff could not recover damages for lost profits resulting from ABC’s broadcast of undercover
 28 filming that depicted the plaintiff’s food-handling practices in a negative light. As the court
 explained, the plaintiff’s “lost sales and profits were the direct result of diminished consumer

1 confidence in the store. While these losses occurred after the *Prime Time Live* broadcast, the
2 broadcast merely provided a forum for the public to learn of activities which had taken place in
3 Food Lion stores.” *Id.* “[T]ortious activities may have enabled” ABC to capture plaintiff’s practices
4 on camera, “but it was the food handling practices themselves—not the method by which they were
5 recorded or published—which caused the loss of consumer confidence.” *Id.* Thus, ABC’s
6 misrepresentations to obtain access to the plaintiff’s facilities did not cause the plaintiff’s lost
7 profits and other publication injuries. Similarly, here, all of Plaintiff’s damages flow from
8 Defendants’ *publication* of recordings, not from any purported misrepresentations that occurred
9 before the recordings, so there is no proximate causation of the alleged damages.

10 In addition, the First Amendment bars Plaintiffs’ fraudulent-misrepresentation claim.
11 Where a plaintiff seeks damages resulting from a publication, he must satisfy the First Amendment
12 requirements that govern defamation claims, regardless of the cause of action raised. *See, e.g.,*
13 *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 55-56 (1988) (intentional infliction of emotional
14 distress claim premised on publication must satisfy First Amendment defamation standard); *Time,*
15 *Inc. v. Hill*, 385 U.S. 374, 387-88 (1967) (same for invasion of privacy); *Blatty v. N.Y. Times Co.*,
16 42 Cal. 3d 1033, 1042-43, 1044-46 (1986) (same for intentional interference with prospective
17 economic advantage). As the Court of Appeals held in the *Food Lion* case, a plaintiff cannot
18 “recover defamation-type damages under non-reputational tort claims, without satisfying the
19 stricter (First Amendment) standards of a defamation claim. . . . [S]uch an end-run around First
20 Amendment strictures is foreclosed by *Hustler*.” *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194
21 F.3d 505, 522 (4th Cir. 1999). In bringing claims against ABC, “Food Lion did not sue for
22 defamation, but focused on how ABC gathered its information through claims for fraud, breach of
23 duty of loyalty, trespass, and unfair trade practices.” *Id.* at 510. Because Food Lion did not bring a
24 defamation claim, Food Lion could recover damages for injuries attributable to the *publication* of
25 the videos only if Food Lion satisfied the First Amendment requirements for defamation actions,
26 *i.e.* false statements of fact made with actual malice. *Id.* at 524.

27 To satisfy the First Amendment, Plaintiffs must allege that Defendants’ publications
28 constituted false *assertions of fact*, as well as that Defendants made those publications with the

1 requisite malice. *Obsidian Fin. Grp., LLC v. Cox*, 740 F.3d 1284, 1288-91 (9th Cir. 2014).
2 Plaintiffs have not identified any false statements published by Defendants. Plaintiffs face a
3 significant obstacle in so doing, as CMP’s videos consist of recordings of Plaintiffs’ own staff
4 members. “The fact that a statement is true, or in this case accurately quoted, is an absolute defense
5 to a defamation action.” *Thomas v. Pearl*, 998 F.2d 447, 452 (7th Cir. 1993); *Smith v. Sch. Dist.*,
6 112 F. Supp. 2d 417, 429 (E.D. Pa. 2000); *Paterno v. Superior Ct.*, 163 Cal. App. 4th 1342, 1352
7 (2008) (rejecting “novel theory” of “defamation by omission;” “[m]edia defendants are liable for
8 calculated falsehoods, not for their failure to achieve some undefined level of objectivity”); *see also*
9 *LiMandri Dec.* at ¶¶ 3-6 (citing exhibits from report of the House of Representatives Select
10 Investigative Panel on Infant Lives showing, *inter alia*, per specimen payment for aborted fetal
11 tissue to abortion providers, including Plaintiff PPM). This deficiency fatally undermines
12 Plaintiffs’ fraudulent-misrepresentation claim because damages are an essential element of a fraud
13 claim. Plaintiffs do not allege any damages other than those flowing from CMP’s *publications*, and
14 Plaintiffs fail to satisfy the First Amendment requirements for claims of publication damages.

15 **E. Plaintiff Has Failed To State A Claim For Violation Of California Penal Code**
16 **§ 632.**

17 Plaintiffs’ Ninth Cause of Action, a claim under California Penal Code § 632, *see* FAC
18 ¶¶ 211-17, fails to state a claim for relief. As an initial matter Plaintiffs fail to allege that Defendant
19 Lopez attended the San Francisco NAF Conference or attended the meetings in California with
20 Gatter, Felczer, or Nucatola. Thus, this claim based on California law fails as to Lopez.

21 **1. Plaintiffs have failed to state a claim under Penal Code § 632 as to**
22 **recordings at the NAF Annual Meeting.**

23 California law proscribes non-consensual recording of a conversation *only if* that
24 conversation constitutes a “confidential communication.” Cal. Penal Code § 632(a). “[A]
25 conversation is confidential under section 632 if a party to that conversation has an objectively
26 reasonable expectation that the conversation is not being overheard or recorded.” *Flanagan v.*
27 *Flanagan*, 27 Cal. 4th 766, 776-77 (2002). “[A] communication is not confidential when the parties
28

1 may reasonably expect other persons to overhear it.” *Lieberman v. KCOP Television, Inc.*, 110 Cal.
2 App. 4th 156, 168 (2003).

3 Plaintiffs’ Complaint fails to plead facts giving rise to a plausible inference that the
4 allegedly recorded conversations at the San Francisco NAF conference fall within the definition of
5 “confidential communications.” All that Plaintiffs claim is that Defendants recorded unspecified
6 conversations that took place at the large conference. FAC ¶¶ 64-74, 212, 214. The Complaint
7 provides none of the details necessary to assess whether the conversation participants had “an
8 objectively reasonable expectation that the conversation [was] not being overheard or recorded.”
9 *Flanagan*, 27 Cal. 4th at 776.

10 To the extent that Plaintiffs rely on putative non-disclosure agreements, the California
11 Supreme Court has expressly rejected the notion that confidentiality depends on whether the
12 participants expected that “the conversation would not be divulged to anyone else.” *Id.* at 773
13 (quotation marks omitted). In assessing the confidentiality of a conversation, courts must “focus[]
14 on ‘simultaneous dissemination [of the conversation],’ not ‘secondhand repetition.’” *Id.* at 775
15 (quoting *Ribas v. Clark*, 38 Cal. 3d 355, 360 (1985)). Nothing in the non-disclosure agreements
16 affects whether third parties could overhear conversations at the meeting.

17 Further, limiting conference attendance to NAF members “and trusted others” again does
18 nothing to prevent these other attendees from overhearing conversations, let alone venue
19 employees and staff. Whether a third party can overhear a conversation has nothing to do with
20 whether that person is a NAF member, or whether they are “trusted.” Even at a limited-attendance
21 event, the reasonable expectation that third parties might overhear a conversation precludes the
22 conversation from being “confidential.” Moreover, “an expectation of a confidential
23 communication cannot be derived from the content of the communication for the purpose of this
24 statute [*i.e.*, § 632].” *Vera v. O’Keefe*, Civ. Case No. 10-cv-1422-L(MDD), 2012 WL 3263930, at
25 *5 n.3 (S.D. Cal. Aug. 9, 2012). The confidentiality of a conversation depends on whether it might
26 be overheard, not its topic.

27 In addition, Plaintiffs have failed to allege facts showing that they have standing to assert
28 the privacy interests of individuals under section 632. A claim by a corporation requires

1 “eavesdrop[ping] upon or record[ing] confidential communications of corporations.” *Ion Equip.*
2 *Corp. v. Nelson*, 110 Cal. App. 3d 868, 880 (1980). Plaintiffs must plead facts showing that the
3 allegedly recorded individuals were recorded while acting in their capacity as Plaintiffs’
4 employees. The Complaint fails to plead such facts. Plaintiffs only plead that their staff attended
5 the meetings (FAC ¶¶ 66, 212), not that all statements made by Plaintiffs’ staff attending the San
6 Francisco NAF Conference were made on behalf of their employers. *See Ion Equip. Corp.*, 110
7 Cal. App. 3d at 880. In fact, the descriptions of NAF conferences actually state that the conferences
8 are networking opportunities for individuals. FAC ¶ 66.

9 **2. Plaintiffs fail to allege a § 632 violation at the Nucatola and Gatter**
10 **meetings.**

11 Plaintiffs’ Ninth Claim for Relief refers solely to conversations at the 2014 NAF
12 conference. *See* FAC ¶¶ 212-14. To the extent, however, that Plaintiffs seek to rely on recorded
13 meetings with (1) Mary Gatter and Laurel Felczer, and (2) Deborah Nucatola, in southern
14 California, *see* FAC ¶¶ 75-76, 95-97, the Complaint fails to state a claim under § 632.

15 First, the Complaint fails to plead facts giving rise to a plausible inference that Gatter,
16 Felczer, or Nucatola were acting in their capacities as employees of the Plaintiffs who brought the
17 Ninth Cause of Action. *See Ion Equip. Corp.*, 110 Cal. App. 3d at 880. Plaintiffs PPFA, PPNC,
18 PPPSW, PPM, PPOSB, PPGC, PPCFC, and PPRM have not alleged that Gatter or Felczer are
19 employed by them. Although the Complaint alleges that Nucatola is an employee of PPFA, it does
20 not allege facts showing that she was acting in her capacity as a PPFA employee when recorded.
21 Plaintiffs allege essentially the opposite, stating that “Defendants parlayed the ‘professional’
22 relationships they [had] forged” to set up a networking lunch meeting. FAC ¶ 75-76. Plaintiffs have
23 not pled sufficient facts showing that PPFA has standing to bring this claim based on Defendants’
24 recording of Nucatola.

25 Nor did Plaintiffs plead sufficient facts to show that the Nucatola meeting was a
26 “confidential communication” under Penal Code § 632. Communications made in a public
27 restaurant do not satisfy the requirements of “confidential communications” under that section. *See*
28 *Wilkins v. Nat’l Broad. Co.*, 71 Cal. App. 4th 1066, 1080 (1999). The only objective facts alleged

1 in the Complaint are that Nucatola “sat with her back to the corner wall of the restaurant” in a
 2 position to observe others and “the music and ambient noise in the restaurant were very loud.” FAC
 3 ¶ 76. The Complaint does not allege that Nucatola observed the presence of others and lowered her
 4 voice or curbed the conversation because of the presence of others. The music and ambient noise
 5 described in the FAC occur at many crowded locations, but those factors do not create a reasonable
 6 expectation of privacy in these very public venues.

7 **F. Plaintiffs’ Claim for Violation of California Penal Code § 634 Fails to State a**
 8 **Claim.**

9 Plaintiffs’ Tenth Claim is premised on the Defendants’ alleged trespass onto NAF’s leased
 10 property at the 2014 NAF conference held in San Francisco. FAC ¶ 215-19. As an initial matter,
 11 Plaintiffs fail to allege that Defendant Lopez attended the San Francisco NAF Conference or
 12 attended the meetings in California with Gatter, Felczer, or Nucatola. Thus, this claim based on
 13 California law fails as to Lopez.

14 California Penal Code § 634 makes it a criminal offense for any person to “trespass[] on
 15 property for the purpose of committing any act, or attempting to commit any act, in violation of
 16 Section . . . 632 . . .” California Penal Code § 637.2 states: “[a]ny person who has been injured by a
 17 violation of this chapter [sections 630 to 638.53] may bring an action against the person who
 18 committed the violation. . . .”

19 For the reasons stated above, *supra* Part II.E.2, Plaintiffs have failed to allege “any act in
 20 violation of Section 632,” so this claim likewise fails to state a claim for relief. Moreover,
 21 Plaintiffs’ Tenth Claim also fails because Plaintiffs were not injured by the alleged violation and
 22 because they have failed to allege facts sufficient to show a trespass under California law.

23 **1. Plaintiffs Do Not Have Standing to Bring a Claim Under Penal Code**
 24 **Section 634 Because The Alleged Trespass Was Against NAF.**

25 Even if Plaintiffs had stated a valid claim under section 632, Plaintiffs would lack standing
 26 to bring a claim under section 634 because no trespass was committed against Plaintiffs.

27 Only the National Abortion Federation could bring a claim for trespass by Defendants at the
 28 2014 NAF annual conference in San Francisco. *See Smith v. Cap Concrete, Inc.*, 133 Cal. App. 3d

1 769, 774 (1982) (“An action for trespass may technically be maintained only by one whose right to
2 possession has been violated.”); *see also* FAC ¶ 219 (“NAF possessed a right to exclusive use of
3 the real property they leased for the 2014 NAF conference held in San Francisco in 2014.”).
4 Second, within the Invasion of Privacy Act, claims must be brought by the party whose rights were
5 violated, not merely by parties who suffered alleged tangential injuries.

6 Here, Plaintiffs’ inability to stand in the shoes of NAF is clear in the insufficiency of its
7 pleadings. They offer no facts regarding the property over which they allege NAF to have had a
8 possessory interest. Plaintiffs allege only that “NAF possessed a right to exclusive use of the real
9 property it leased for the 2014 NAF conference held in San Francisco in 2014.” *Id.* at ¶ 219. At no
10 point in the FAC do Plaintiffs identify the real property where the NAF conference was held within
11 San Francisco or the nature of the “real property” NAF purportedly “leased” for the meeting.
12 Absent identification of the site of the meeting and the nature of the possessory interest, Plaintiffs
13 cannot state that NAF had any interest in the property, let alone a possessory interest with exclusive
14 control necessary to sustain a trespass claim.

15 **2. Plaintiffs Do Not Plead Sufficient Facts to Allege Trespass Under the**
16 **California Penal Code.**

17 Penal Code section 637.2 creates a cause of action for persons injured by “a violation” of
18 any provision of the chapter. Thus, in bringing a claim under Penal Code § 634, a litigant must first
19 plead that there has been a violation of that, a criminal statute, an element of which is the
20 commission of a criminal trespass. Consequently, to maintain that Defendants committed trespass
21 against NAF, Plaintiffs must also plead the existence of any of the aggravating factors that must be
22 present for criminal trespass under California law, but they have not done so. *See, e.g.*, Cal. Pen.
23 Code §§ 601, 602, 602.5, 602.8.

24 In addition, Plaintiffs have failed to allege that NAF had a possessory property interest in
25 the hotels at which the NAF meetings occurred. To maintain a trespass action, a plaintiff must
26 show that it has a “possessory interest in the property” at issue. *Cap Concrete*, 133 Cal. App. 3d at
27 775. As noted above, a person who contracts to use space in a hotel does not obtain a possessory
28 interest in the property but rather a right to “mere use without the actual or exclusive possession.”

1 *Young v. Harrison*, 284 F.3d 863, 868 (8th Cir. 2002) (collecting cases). Therefore, Plaintiffs have
2 failed to allege violation of Cal. Pen. Code § 634.

3 **G. Plaintiffs’ Eleventh and Twelfth Claims for Violation of State Wiretapping**
4 **Laws Fail to State a Claim for Relief.**

5 Plaintiffs bring claims under Florida Statutes Section 934, and Maryland Annotated Code,
6 Section 10-402, based on recordings made at the PPFA conferences in Florida and the NAF
7 conference in Maryland. For the same reasons set out in Section II.F.1, *supra*, Plaintiffs have failed
8 to allege facts sufficient to show that they have standing to bring this claim on behalf of staff
9 members who attended the NAF meeting in Maryland. Moreover, Plaintiffs have failed to allege
10 that Defendants recorded any of the Plaintiffs’ staff at either PPFA meeting in Florida. *See* FAC
11 ¶¶ 90, 102.

12 Even if Plaintiffs had alleged that Defendants recorded some of their staff members, Florida
13 law prohibits recording oral communications only when “uttered by a person exhibiting an
14 expectation that such communication is not subject to interception under circumstances justifying
15 such expectation and does not mean any public oral communication uttered at a public
16 meeting” Fla. Stat. § 934.02. This means that “for an oral conversation to be protected under
17 section 934.03 *the speaker must have an actual subjective expectation of privacy, along with a*
18 *societal recognition that the expectation is reasonable.*” *State v. Smith*, 641 So.2d 849, 852 (Fla.
19 1994) (quotation marks and citations omitted) (emphasis added).

20 Similarly, Maryland law prohibits recording “oral communications” from a “private
21 conversation.” Md. Code Ann., Cts. & Jud. Proc. §§ 10-401(13)(i), 10-402(a)(1). Plaintiffs must
22 have “both a subjectively and objectively reasonable expectancy of privacy.” *Hawes v. Carberry*,
23 103 Md. App. 214, 220 (1995). Maryland has adopted the federal standard emerging from the
24 Fourth Amendment to the United States Constitution for “reasonable expectation of privacy” for
25 purposes of the Maryland Wiretap Act. *Fearnow v. Chesapeake & Potomac Tel. Co.*, 104 Md. App.
26 1, 33 (1995) (“*Fearnow I*”); *compare Katz v. United States*, 389 U.S. 347 (1967).

27 The FAC does not identify any specific conversations that it contends were recorded, nor
28 does it provide any allegations regarding the individual participants in or circumstances of the

1 conversations necessary to assess whether the participants “had both a subjectively and objectively
2 reasonable expectancy of privacy.” *Hawes*, 103 Md. App. at 220; *Smith*, 641 So.2d at 852
3 (requiring “an actual subjective expectation of privacy, along with a societal recognition that the
4 expectation is reasonable”). Merely alleging that Defendants “surreptitiously taped conversations
5 with attendees” (FAC ¶ 122) or conclusorily alleging that Defendants “surreptitiously and illegally
6 recorded private conversations” (FAC ¶¶ 90, 102) does not state a plausible claim for relief under
7 the Florida or Maryland statutes. Federal Rule of Civil Procedure 8(a)(2) requires a plaintiff to
8 plead facts showing “more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft*
9 *v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiffs have not pleaded any facts giving rise to the plausible
10 inference that any conversations were unlawfully recorded. Thus, Plaintiffs’ Complaint asserts
11 nothing more than the “sheer possibility” that the Defendants recorded conversations with
12 individuals who had a “reasonable expectation of privacy.” *Fearnow v. Chesapeake & Potomac*
13 *Tel. Co.*, 342 Md. 363, 376 (1996) (“*Fearnow II*”); *Smith*, 641 So. 2d at 852.

14 Instead of making the requisite factual allegations supporting the objective and subjective
15 reasonableness of an expectation of privacy in conversations, Plaintiffs effectively claim that *all*
16 conversations occurring at NAF and PPFA meetings were necessarily clothed with an objectively
17 and subjectively reasonable expectation of privacy. *See* FAC ¶¶ 228, 234. This view cannot be
18 squared with the text of either the Florida or Maryland law or the respective Supreme Courts’
19 interpretations of the statutes. *Fearnow II*, 342 Md. 363; *Smith*, 641 So. 2d at 852.

20 According to Plaintiffs, its staff members’ expectation of privacy at the Baltimore NAF
21 conference was reasonable because (1) all attendees had executed non-disclosure agreements;
22 (2) NAF’s security program acted to ensure that communications made during the meeting would
23 be restricted to “NAF members and trusted others;” and (3) “the nature and the subject matter of
24 the conferences were highly sensitive.” FAC ¶ 234. Similarly, its staff members’ expectation of
25 privacy at the PPFA conferences was reasonable, according to Plaintiffs, because: (1) all attendees
26 had executed agreements stating that their interests were consistent with those of Plaintiffs;
27 (2) Plaintiff PPFA’s security program acted to ensure that communications made during the
28 meeting would be restricted to “conference participants and trusted others;” and (3) “the nature and

1 subject matter of the conferences were highly sensitive.” FAC ¶ 228. None of these points suffices
2 to allege the participants’ subjective or objective, reasonable expectation of privacy in every
3 conversation that took place.

4 Florida has specifically rejected the proposition that even closed business dealings meet the
5 test for “reasonable expectation of privacy” for section 934. *Cohen Bros., L.L.C. v. ME Corp., S.A.*,
6 872 So. 2d 321, 324-25 (Fla. Dist. Ct. App. 2004); *Morningstar v. State*, 428 So. 2d 220, 221 (Fla.
7 1982); *Jatar v. Lamaletto*, 758 So. 2d 1167, 1169 (Fla. Dist. Ct. App. 2000). Importantly, the PPGA
8 agreements that allegedly state that Defendants agreed that their interests were consistent with
9 those of Plaintiffs fall far short of establishing that Plaintiffs’ staff had a “reasonable expectation of
10 privacy” in their communications with exhibitors. Instead, the agreements notably lack any
11 definitions or delineations of privacy or confidentiality.

12 Similarly, the execution of the NAF agreements in Maryland is irrelevant to the “reasonable
13 expectation of privacy” analysis. *Stewart v. Evans*, 351 F.3d 1239, 1244 (D.C. Cir. 2003) (“Fourth
14 Amendment [reasonable expectation of privacy] does not prohibit the obtaining of information
15 revealed to a third party . . . even if the information is revealed on the assumption that it will be
16 used only for a limited purpose and the confidence placed in the third party will not be betrayed.”).

17 In fact, the only reasonable inference to draw from the actual allegations in the Complaint
18 and its exhibits is that the individuals recorded *could not* have had a reasonable expectation of
19 privacy. Under the federal standard, which Maryland has adopted, courts have routinely rejected
20 unlawful recording claims under facts closely analogous to those alleged in the Complaint. *See*
21 *Fearnow I*, 104 Md. App. at 33.

22 **H. Plaintiffs’ Thirteenth and Fourteenth Causes of Action Fail to State a Claim for** 23 **Invasion of Privacy Under Common Law or the California Constitution.**

24 **1. Plaintiffs Lack Standing To Bring Counts Thirteen and Fourteen on** 25 **Behalf of their Staff.**

26 In support of their assertion of standing to bring this claim on behalf of their staff, Plaintiffs
27 offer a conclusory recital of the elements of associational standing. FAC ¶ 239. Plaintiffs’
28 associational-standing allegation fails for several reasons. First, Plaintiffs cannot assert

1 associational standing on behalf of their employees. Associational standing “has no application to a
2 corporation’s standing to assert the interests of its employees.” *Region 8 Forest Serv. Timber*
3 *Purchasers Council v. Alcock*, 993 F.2d 800, 810 n.15 (11th Cir. 1993). “Associational standing is
4 reserved for organizations that ‘express the[] collective views and protect the [] collective interests’
5 of their members.” *Fleck & Assocs. v. City of Phoenix*, 471 F.3d 1100, 1109 (9th Cir. 2006)

6 Second, both the claims raised and the relief sought by Plaintiffs “require[] the
7 participation” of Plaintiffs’ individual employees. *Associated Gen. Contractors of Am. v. Cal.*
8 *Dep’t of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013). Privacy claims almost inherently require the
9 participation of that person whose privacy was allegedly invaded. “It is well settled that the right of
10 privacy is purely a personal one; it cannot be asserted by anyone other than the person whose
11 privacy has been invaded, that is, plaintiff must plead and prove that *his* privacy has been invaded.”
12 *Ass’n for L.A. Deputy Sheriffs v. L.A. Times Commc’n, LLC*, 239 Cal. App. 4th 808, 821 (2015);
13 *see also Hendrickson v. Cal. Newspapers, Inc.*, 48 Cal. App. 3d 59, 62 (1975).

14 Plaintiffs also lack associational standing to raise common-law and constitutional privacy
15 torts – even to the extent that they seek injunctive relief – because resolving the underlying merits
16 of those claims depends on fact-intensive, situation-specific inquiries that “require[] the
17 participation of individual members in the lawsuit.” *Associated Gen.*, 713 F.3d at 1194. Where, as
18 here, resolving the merits involves fact-bound inquiries that differ among an organization’s
19 members, the organization lacks associational standing to bring the claims. *See Spindex Physical*
20 *Therapy USA, Inc. v. United Healthcare of Ariz., Inc.*, 770 F.3d 1282, 1293 (9th Cir. 2014). Thus,
21 Plaintiffs lack standing.

22 **2. Plaintiffs Have Failed to Allege Sufficient Facts Establishing The** 23 **Elements of Common Law Intrusion.**

24 “A privacy violation based on the common law tort of intrusion has two elements. First, the
25 defendant must intentionally intrude into a place, conversation, or matters as to which the plaintiff
26 has a reasonable expectation of privacy. Second, the intrusion must occur in a manner highly
27 offensive to a reasonable person.” *Hernandez v. Hillside, Inc.*, 47 Cal. 4th 272, 286 (2009).

28 First, the Complaint lacks allegations that could give rise to the plausible inference that the

1 unspecified Planned Parenthood staff had a reasonable expectation of privacy in the allegedly
2 recorded conversations, and in fact undercuts any such inference. Plaintiffs allege that the “nature
3 and subject matter of the conferences were highly sensitive.” FAC ¶¶ 240, 246. However, “highly
4 sensitive” is different from private. “The expectation of limited privacy in a communication . . . is
5 reasonable only to the extent that the communication conveys information private and personal to
6 the declarant.” *Med. Lab. Mgmt. Consultants v. Am. Broad. Cos.*, 306 F.3d 806, 816 (9th Cir.
7 2002); Restatement (Second) of Torts § 652A, cmt. B. Here, Plaintiffs have specifically alleged
8 that the recorded conversations dealt with business arrangements and the development of
9 professional contacts. FAC ¶¶ 69, 71, 80, 90, 192. Indeed, the Thirteenth and Fourteenth Claims
10 specifically identify them as “private *business* conversations.” *Id.* at ¶¶ 241, 247 (emphasis added).
11 Further, Plaintiffs assert standing to bring statutory claims for unlawfully recording their
12 employees, which standing assumes that the Plaintiffs have a “possessory interest” in the
13 communication. *Smoot v. United Transp. Union*, 246 F.3d 633, 640 (6th Cir. 2001). Such
14 commercial conversations cannot support invasion of privacy claims. Speakers generally have little
15 or no reasonable expectation of privacy in conversations with relative strangers on business topics.

16 Second, the Complaint provides little if any detail regarding “the extent to which other
17 persons had access to the subject place, and could see or hear the plaintiff” *Hernandez*, 47 Cal.
18 4th at 287. Courts focus heavily on facts regarding the physical space in which the alleged intrusion
19 occurred, including “the physical layout of the area intruded upon, its relationship to the [location]
20 as a whole, and the nature of the activities commonly performed in such places.” *Id.* at 290.

21 Plaintiffs allege general circumstances at both NAF and PPGA conferences, including the
22 existence of purported non-disclosure agreements, to claim Plaintiffs’ staff could be deemed to
23 have a reasonable expectation of privacy in all conversations that took place at the conferences. As
24 noted above, this theory finds no support in the law.

25 Finally, the Complaint fails to plausibly aver that the alleged intrusions occurred in a
26 manner highly offensive to a reasonable person. The conversations did not take place in enclosed or
27 intimate settings. The subject matter was not personal. Defendants did not invite the revelation of
28 personal secrets, details of private life, or similar confidences. The circumstances of the recordings

1 were not “highly offensive” to a reasonable person.

2 **3. Plaintiffs’ allegations fail to state a claim for violation of the right to**
3 **privacy under the California Constitution.**

4 A claim based upon the California constitutional right to privacy has three elements: (1) the
5 claimant must possess a legally protected privacy interest; (2) the claimant’s expectation of privacy
6 must be objectively reasonable; and (3) the invasion of privacy complained of must be serious in
7 both its nature and scope. Further, “[i]f the claimant establishes all three required elements, the
8 strength of that privacy interest is balanced against countervailing interests.” *Cnty. of L.A. v. L.A.*
9 *Cnty. Emp. Relations Comm’n*, 56 Cal. 4th 905, 926 (2013).

10 Plaintiffs’ Fourteenth Claim tracks word-for-word its Thirteenth Claim for common law
11 intrusion. Thus, Plaintiffs have failed to specify the legally protected privacy interest they believe
12 was invaded, yet again, as noted above. Plaintiffs have also failed to allege facts showing that the
13 alleged invasions of privacy were “sufficiently serious in their nature, scope, and actual or potential
14 impact to constitute an *egregious* breach of the social norms underlying the privacy right.” *Id.* at
15 929 (emphasis added). Recording business conversations in open settings at a professional
16 conference without the participants’ consent falls far short of being an egregious breach of social
17 norms. Also, where the defendant is a private actor, he is not required to establish a “compelling
18 interest” to justify the invasion, but only one that is “legitimate” or “important.” *Pettus v. Cole*, 49
19 Cal. App. 4th 402, 440 (1996). California law recognizes such a competing interest in the practice
20 of newsgathering: “[T]he constitutional protection of the press does reflect the strong societal
21 interest in effective and complete reporting of events, an interest that may – as a matter of tort law
22 – justify an intrusion that would otherwise be considered offensive.” *Shulman v. Grp. W Prods.,*
23 *Inc.*, 18 Cal. 4th 200, 236 (1998). Plaintiffs have not met the threshold of the California
24 Constitution Art. I, § 1.

25 **CONCLUSION**

26 For the reasons set forth above, Defendants respectfully request that this Court strike the
27 state law claims in the First Amended Complaint and award reasonable attorneys’ fees and costs
28 pursuant to Cal. Civ. Proc. Code §425.16.

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Respectfully submitted,

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/s/ Charles S. LiMandri
Counsel for Defendant Gerardo Adrian Lopez

*Attorneys for Defendant
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16 **ATTESTATION PURSUANT TO CIVIL L.R. 5.1(i)(3)**

17 As the filer of this document, I attest that concurrence in the filing was obtained from the
18 other signatories.

/s/ Catherine Short
*Counsel for Defendants
David Daleiden, CMP, and BioMax*

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on this 5th day of May, 2016, I filed the foregoing Motion to Strike, as
23 well as all declarations and exhibits in support thereof, electronically through the CM/ECF system,
which caused counsel to be served by electronic means.

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

25 Executed this 5th day of May, 2016, at Ojai, California.

/s/ Catherine Short
*Counsel for Defendants
David Daleiden, CMP, and BioMax*

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11 **UNITED STATES DISTRICT COURT,**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 PLANNED PARENTHOOD FEDERATION) Case No. 16-cv-00236 (WHO)
14 OF AMERICA, INC., et al.,)
Plaintiffs,) Judge William H. Orrick, III
15 vs.)
16 CENTER FOR MEDICAL PROGRESS, et) DECLARATION OF DAVID
17 al.,) DALEIDEN IN SUPPORT OF SPECIAL
18 Defendants.) MOTION TO STRIKE UNDER
SECTION 425.16 OF THE
CALIFORNIA CODE OF CIVIL
PROCEDURE
19)
20) Hearing Date: July 6, 2016
Time: 2:00 P.M.

21 _____
22 _____

1 I, David Daleiden, hereby declare:

2 1. I am over the age of 18 years and am a Defendant in this action. I have actual
3 knowledge of the following facts and if called upon to testify thereto could and would do so
4 competently. This declaration is being submitted in support of Defendants Center for Medical
5 Progress, BioMax Procurement Services, David Daleiden, and Adrian Lopez’s Special Motion to
6 Strike under Section 425.16 of the California Code of Civil Procedure.

7 2. I am an investigative citizen journalist, and the founder and director of The Center
8 for Medical Progress (“CMP”). CMP is a California not-for-profit corporation and 501(c)3 formed
9 for the purpose of monitoring and reporting on medical ethics and advances with an especial
10 concern for contemporary bioethical issues that impact human dignity, such as induced abortion,
11 the use/disposal of aborted fetal tissue, and fetal organ harvesting. To this end, CMP seeks to
12 educate and inform the public and thereby serve as a catalyst for reform of unethical and inhumane
13 practices. CMP carries out its work by means of investigative journalism that complies with all
14 applicable laws.

15 3. For several years, I have been researching fetal tissue and organ procurement
16 practices. I inaugurated the Human Capital Project at CMP to investigate, document, and report on
17 the procurement, transfer, and sale of fetal tissue. These practices include the for-profit sale of fetal
18 tissue, the altering of abortion procedures to obtain fetal tissue for research, the commission of
19 partial-birth abortions, and the killing of babies born alive following abortion procedures, all of
20 which are violations of federal and/or state laws.

21 4. In the process of gathering information about these illegal activities, I also became
22 aware of and gathered information on other issues surrounding these practices, issues that are a
23 topic of discussion and debate among abortion providers themselves at their gatherings. These
24 issues include the difficulties of disposing of fetal tissue both legally and economically; the
25 practical difficulties of fetal tissue procurement and ways abortion providers can, in their own
26 words, “facilitate the process;” the fear of late-term abortion providers that babies will be born
27 alive during an abortion procedure; the steps sometimes taken by abortion providers to make sure a
28 baby is dead before it is taken from the womb; the stigma abortion providers, particularly late-term

1 abortion providers, frequently feel is attached to their work; the mental and emotional toll both the
2 stigma and their work exacts from them; and the perceived harms caused by laws regulating
3 abortions and abortion providers and how these laws can be circumvented.

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

10 6. On July 14, 2015, CMP released on the Internet two videos of my lunch meeting
11 with Dr. Deborah Nucatola. One video, lasting well over two hours, contained the entire
12 conversation with Nucatola and can be found at:
13 <https://www.youtube.com/watch?v=H4UjIM9B9KQ>. The other video was a shorter summary
14 version of the highlights from the conversation, available at <https://youtu.be/jjxwVuozMnU>. The
15 videos at these links have not changed since they were uploaded on July 14, 2015.


16 7. On July 21, 2015, CMP released on the Internet two more videos—a 73-minute
17 video containing all of the conversation with Dr. Mary Gatter during our lunch meeting, found at
18 <https://www.youtube.com/watch?v=vwAGsjoorvk>, and a shorter highlights summary, at
19 https://youtu.be/MjCs_gvImyw. The videos at these links have not changed since they were
20 uploaded on July 21, 2015.

21 8. On July 30, 2015, CMP released on the Internet two more videos, a longer video
22 containing all of the recorded conversation with Dr. Savita Ginde of Planned Parenthood Rocky
23 Mountains (PPRM), found at <https://www.youtube.com/watch?v=wV2U9unI1NM>, as well as a
24 shorter summary version found at <https://youtu.be/GWQuZMvcFA8>. The videos at these links have
25 not changed since they were uploaded on July 30, 2015.

26 9. On August 4, 2015, CMP released on the Internet two more videos, a shorter
27 highlight video, found at <https://youtu.be/egGUEvY7CEg>, and a longer video, found at
28 https://www.youtube.com/watch?v=MCiD9_ICt44, containing all of the recorded conversation

1 with Melissa Farrell Planned Parenthood Gulf Coast with the exception of one half-hour video file
2 that was inadvertently not uploaded to the CMP website. The videos at these links have not
3 changed since they were uploaded on August 4, 2015. When it came to my attention that a file was
4 missing, I immediately had it uploaded, and it can be found at
5 <https://www.youtube.com/watch?v=wISHuLTKhYE>. The video at this link has not changed since
6 it was uploaded on August 30, 2015.

7
8 I declare under penalty of perjury under the laws of the United States that the foregoing is
9 true and correct. Executed this 5th day of May, 2016, in Orange County, California.

10 
11 _____
12 David Daleiden

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

15 PLANNED PARENTHOOD FEDERATION)
16 OF AMERICA, INC., et al.,)

17 Plaintiffs,)

18 vs.)

19 CENTER FOR MEDICAL PROGRESS, et)
20 al.,)

21 Defendants.)

) Case No. 16-cv-00236 (WHO)
)
) Judge William H. Orrick, III
)
) DECLARATION OF CHARLES S.
) LIMANDRI, ESQ. IN SUPPORT OF
) DEFENDANTS' SPECIAL MOTION
) TO STRIKE UNDER SECTION 425.16
) OF THE CALIFORNIA CODE OF
) CIVIL PROCEDURE
)
) Hearing Date July 6, 2016
) Time: 2:00 P.M.

1 I, Charles S. LiMandri, hereby declare:

2 1. I am an attorney at law duly licensed to practice in the State of California and in the
3 Northern District of California, and am co-counsel for Defendants The Center for Medical Progress
4 (“CMP”) and BioMax Procurement Services, LLC (“BioMax”) in this action and in the action
5 *StemExpress, LLC, et al. v. The Center for Medical Progress, et al.*, No. BC589145 (Cal. Super.
6 Ct., 2015) (“StemExpress action”). As such, I have personal knowledge of the matters set forth
7 below and could and would testify thereto if called upon to do so.

8 2. The release of the videos by CMP generated a tremendous amount of public and
9 media interest and prompted several state investigations. The videos incited a congressional debate
10 that, according to contemporaneous news reports, nearly shut down the federal government. It
11 resulted, after several different committees held hearings, in the formation of the House of
12 Representatives Select Investigative Panel on Infant Lives (“Panel”) to investigate the fetal tissue
13 procurement practices revealed in the videos. One such contemporaneous news report, a true and
14 correct copy of which is attached hereto as Exhibit 1, is available on-line at:
15 [https://www.washingtonpost.com/news/post-politics/wp/2015/09/27/boehner-there-will-be-no-](https://www.washingtonpost.com/news/post-politics/wp/2015/09/27/boehner-there-will-be-no-government-shutdown-select-committee-will-probe-planned-parenthood/)
16 [government-shutdown-select-committee-will-probe-planned-parenthood/](https://www.washingtonpost.com/news/post-politics/wp/2015/09/27/boehner-there-will-be-no-government-shutdown-select-committee-will-probe-planned-parenthood/).

17 3. To date the Panel has held two hearings. At the second of these hearings, the topic
18 of which was “The Pricing of Fetal Tissue,” the Panel released exhibits and a report that “focus[ed]
19 on a particular Procurement Business that offers fetal tissue for sale to researchers. . . .” (italics
20 omitted). The panel report, in its “C” exhibits, found “that all possible management guidance,
21 tasks, and responsibilities are undertaken by the [procurement business] procurement tech
22 employee and that no tasks are performed by the abortion clinic. Thus, the costs of tissue
23 acquisition are entirely born by entities other than [sic] the abortion clinic.” A true and correct copy
24 of the report, attached hereto as Exhibit 2, is available on-line at:
25 <http://docs.house.gov/meetings/IF/IF04/20160420/104822/HHRG-114-IF04-20160420-SD003.pdf>


26 4. Notwithstanding its above finding, the Panel provided exhibits (the “D” exhibits)
27 “show[ing] the monthly payments from the [procurement business] to several abortion clinics.”
28 Those exhibits show per-specimen payments for “POCs” (“products of conception”) made by a

1 tissue procurement business to Planned Parenthood Mar Monte (“PPMM”), one of the plaintiffs in
2 this case. A true and correct copy of the exhibits, attached hereto as Exhibit 3, is available on-line
3 at: [http://docs.house.gov/meetings/IF/IF04/20160420/104822/HHRG-114-IF04-20160420-](http://docs.house.gov/meetings/IF/IF04/20160420/104822/HHRG-114-IF04-20160420-SD004.pdf)
4 [SD004.pdf](http://docs.house.gov/meetings/IF/IF04/20160420/104822/HHRG-114-IF04-20160420-SD004.pdf).

5 5. During the televised hearing, minority members of the Panel identified the tissue
6 procurement business as StemExpress, LLC. The Panel’s Exhibit B.2 shows that StemExpress is a
7 fetal tissue business partner with some of the Plaintiffs.

8 6. The Panel’s “D” exhibits, showing per-specimen payments by StemExpress for
9 “POCs,” are identifiable as being Plaintiff PPMM’s invoices. This is because the list of abortion
10 clinics on the invoice precisely match the names and locations of the abortion clinics within
11 PPMM, available on-line here: <https://www.plannedparenthood.org/health-center/CA>

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is
14 true and correct. Executed this 5th day of May, 2016, in Rancho Santa Fe, California.

15
16
17 
18 Charles S. LiMandri, Esq.

Post Politics

Boehner: There will be no government shutdown; select committee will probe Planned Parenthood

Campaign 2016

×

State of the 2016 race

>

By **Wesley Lowery and Mike DeBonis** September 27, 2015

In his first major interview since announcing his pending resignation, House Speaker John A. Boehner vowed Sunday that there will be no government shutdown at the end of the month — adding that he will impanel a select committee to investigate Planned Parenthood after "undercover" videos renewed outrage among conservatives about government funding for the women's health provider.

"The Senate is expected to pass a continuing resolution next week," Boehner told "Face the Nation" moderator John Dickerson. "We'll also take up a select committee to investigate these horrific videos that we've seen from abortion clinics that we've seen in several states."

House Democrats and Planned Parenthood were quick to decry the formation of the new select committee.

"House Republicans already have three standing committees with subpoena power conducting one-sided, biased attacks against Planned Parenthood, so it is unclear why they need a fourth," Rep. Elijah Cummings, the ranking Democrat on the House Oversight and Government Reform Committee, said in a statement provided to The Washington Post on Sunday. "House Republicans either have no confidence in their sitting chairmen, or they are willing to waste millions of taxpayer dollars just to placate extremists within their own party."

In a statement on Sunday, Dawn Laguens, executive vice president of Planned Parenthood Federation of America, called the move to impanel a select committee a "five-ring circus."

Exhibit 1

"We will, of course, cooperate with any fact-finding inquiry — even though these investigations are all based on false and discredited claims, without a shred of evidence of wrongdoing by Planned Parenthood," Laguens said. "This is really an attempt of to ban abortion and defund Planned Parenthood. It's an assault on every woman whose breast cancer was caught early because of Planned Parenthood and every woman who has made her own decision about whether and when to have a child."

[What John Boehner told me the night before he said he was quitting]

Earlier this year, anti-abortion activists released secret video recordings of conversations with Planned Parenthood officials about the use of fetal tissue for medical research. The recordings of the frank conversations outraged many who oppose legalized abortion, who said the videos raised new questions about whether Planned Parenthood was profiting from the sale of fetal tissue.

The Daily Trail newsletter

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A daily briefing of what's happening on the campaign trail.

In light of the videos, many Republicans have vowed to defund Planned Parenthood, and a group of conservative lawmakers said they would refuse to vote for any spending bill that included funding for the organization. Those vows stirred speculation that the government could shut down temporarily over the funding disagreement, but Boehner's announcement that he will resign from Congress is widely expected to have limited the chances of a shutdown.

"The commitment has been made that there will not be any way that a shutdown will occur," Rep. John Fleming (R-La.) told [The Post](#) last week.

[Here's what happens if Congress ends funding for Planned Parenthood]

The announcement of a select committee was first made on Friday by Rep. Marsha Blackburn (R-Tenn.), prompting immediate scorn from House Democrats.

"House Republicans are planning yet another taxpayer-funded Select Committee to burn more of the millions of taxpayer dollars they've already spent playing politics — this time with the goal of taking lifesaving preventative care away from millions of American women," House Minority Leader Nancy Pelosi (D-Calif.) said in a statement on Saturday. "Make no mistake: House Republicans have renewed their war on women's health. With this Committee, Republicans are trying to make it easier to shut down the government and harder for millions of women to access the lifesaving health care they need. Hard-working families deserve better than a taxpayer-funded Republican Committee fixated on dismantling women's health."

Wesley Lowery is a national reporter covering law enforcement and justice for the Washington Post. He previously covered Congress and national politics. 🐦 Follow @WesleyLowery

Mike DeBonis covers Congress and national politics for The Washington Post. He previously covered D.C. politics and government from 2007 to 2015. 🐦 Follow @mikedebonis

The Post Recommends

Alleged Hastert abuse victim sues for additional \$1.8 million he claims he's owed

The man claims the former House speaker agreed to pay \$3.5 million to compensate for the abuse and keep the matter quiet but only paid him \$1.7 million.

Kenya: Former first lady dies in London hospital

Former Kenyan first lady Lucy Kibaki, prominent for charities and her quick temper, died Tuesday.

Ohio man calmly tells 911: 'I just shot and killed my wife'

A suburban Cincinnati man called 911 and gave his address, and when the dispatcher asked what she could help him with, he replied calmly: "I just shot and killed my wife."

HEARING ON THE *PRICING OF FETAL TISSUE*

Background

Congress Passed H. Res. 461

On October 7, 2015, the U.S. House of Representatives passed H. Res. 461, which created the Select Panel on Infant Lives and empowered the panel to investigate issues including “Federal funding and support of abortion providers,” as well as all “relevant matters with respect to fetal tissue procurement.” The Panel Chairman, Congressman Marsha Blackburn, has scheduled a hearing to explore information about the pricing of the tissue and whether abortion clinics and middleman businesses were making a profit from the transfer of fetal tissue.

The release of videos last summer raised the question of whether abortion clinics and middleman tissue procurement businesses were profiting from the sale of baby body parts, organs and tissues. To profit from the acquisition or transfer of fetal tissue violates Title 42 USC §289 g-2, which prohibits the transfer of any fetal tissue for valuable consideration that exceeds the reasonable costs associated with the procurement.

History of the Prohibition of Profiting from Fetal Tissue Sales

On March 10, 1993, the House debated two competing amendments to H. R. 4 the National Institutes of Health Revitalization Act of 1993. Amendments, one offered by Mr. Bliley and one by Mr. Waxman focused on safeguards for the donation of fetal tissue for transplantation and for research. The House passed the Waxman Amendment to H.R. 4, the National Institutes of Health Revitalization Act of 1993. That Amendment includes the provisions codified as 42 USC 289 g-2(a) and (e)³:

42 USC §289 g-2(a) states “It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for **valuable consideration if the transfer affects interstate commerce.”**

42 USC §289 g-2(e)(3) “The term “valuable consideration**” does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.”**

During Floor debate it was repeated over and over by supporters of the Waxman Amendment that fetal “tissue may not be sold.”¹ Mrs. Morella expressed her support for the legislation because “fetal tissue could not be sold.”² Mr. Waxman himself said:

This amendment that I am offering as a substitute would enact the most important safeguards, and those are the safeguards to prevent any sale of fetal tissue for any

¹ 139 Cong. Rec. 1099 (1993) (statement of Rep. John Edward Porter in support of the Waxman Amendment).

² Id. (statement of Rep. Connie Morella in support of HR 4 and the Waxman Amendment).

purpose, just not for the purpose of research. It would be abhorrent to allow for a sale of fetal tissue and a market to be created for that sale.³

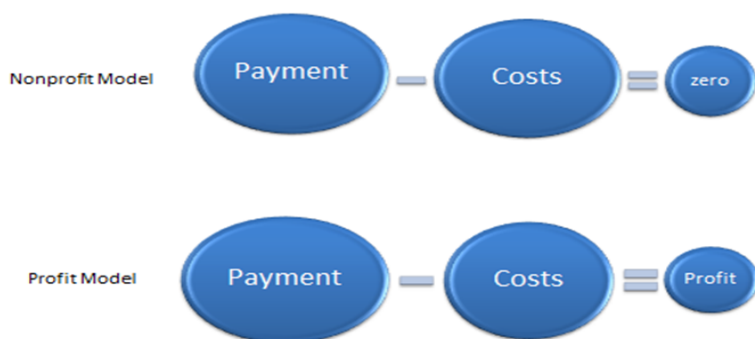
The floor debate corroborates Committee Report language. The Report of the National Institutes of Health Revitalization Act of 1993 from the Committee on Energy and Commerce stated:

Section 498B prohibits the purchase of human fetal tissue as well as the solicitation or acceptance of directed fetal tissue donations.⁴

The Committee prohibition on the sale of fetal tissue is described as making the transfer of fetal tissue parallel with donation of other organs under the Organ Procurement and Transplantation Act.⁵ But the Committee Report adds, “Indeed the Committee has dealt with fetal tissue more restrictively”⁶ The Committee intent is to disallow payment for procurement of any organs.

The intent of the statute is best understood through a simple contrast between two modes of transferring fetal tissue from one entity to another. With the first, an abortion clinic (AC) or middleman Procurement Business (PB) transfers tissue to a researcher, and the researcher may reimburse the AC or PB for its reasonable costs incurred by the transportation, processing, preservation, and quality control of the tissue. With the second, the payment from the researcher exceeds those reasonable costs, enabling the AC or PB to make a profit and thus violates the statute.

This is graphically explained below:



The factual scenario presented by the Select Panel on April 20, 2016, will focus on a particular *Procurement Business* that offers fetal tissue for sale to researchers through a website procurement page or through phone orders. The *Procurement Business* assigns its employees to

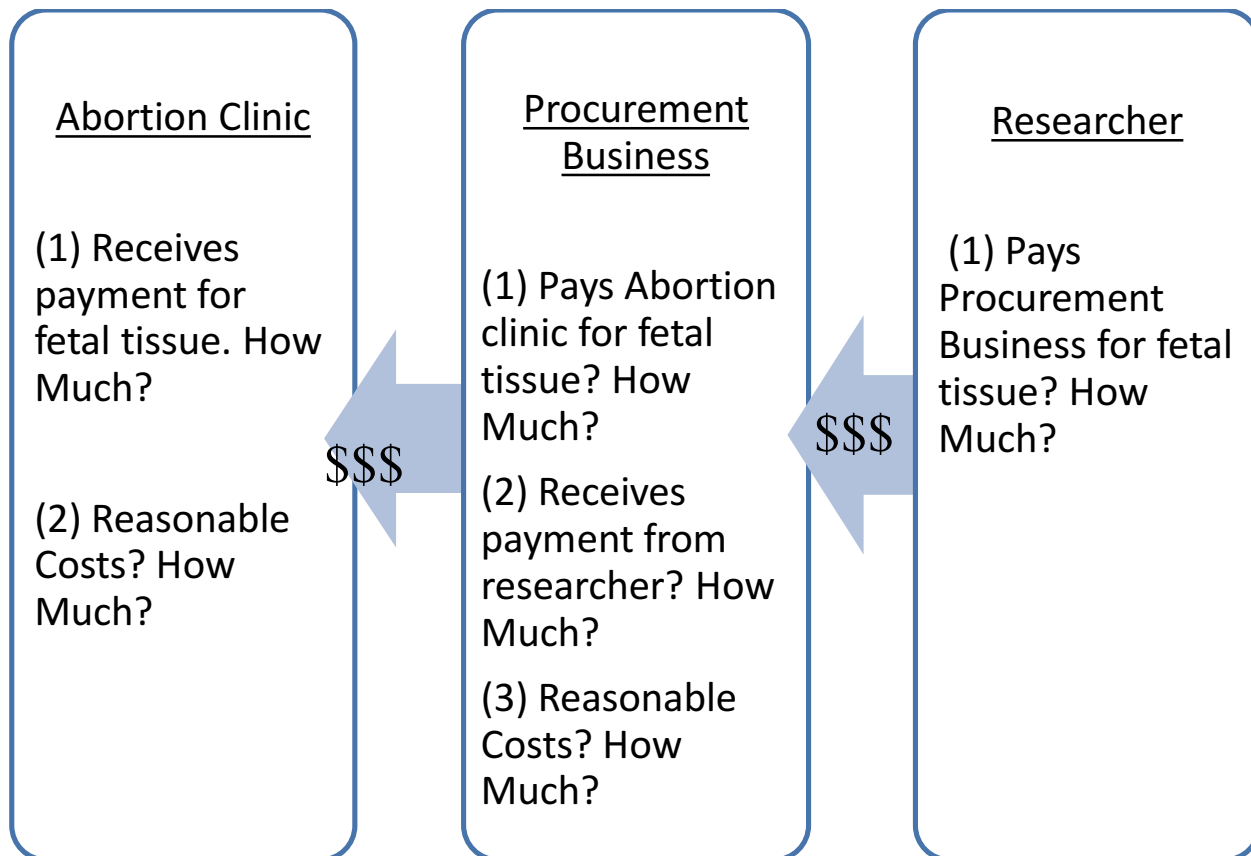
³ Id. (statement of Rep. Henry Waxman).

⁴ H.R. Rep. No. 103-28 at 76 (1993).

⁵ Pub. L. No. 98-507, 98 Stat. 2339 (1984).

⁶ H.R. Rep. No. 103-28 at 76 (1993).

a group of abortion clinics to procure fetal tissue and then ships the tissue to customers. The *Procurement Business* pays the abortion clinics a fee *per item of tissue* that its employees procure. The next graphic shows the transfer of payments and raises the question of, “How much are the reasonable costs that would offset the payments?”



If the payments from the *Procurement Business* to the Abortion Clinic exceed the reasonable costs incurred by the clinic, then the Abortion Clinic has a profit and violates the statute. If the payments from the researcher/customer exceed the reasonable costs incurred by the *Procurement Business*, then the *Procurement Business* has a profit and violates the statute.

How the Procurement Business Markets its Product

Both the *Procurement Business* company brochure and its website marketed itself to abortion clinics as a way to improve the profitability of the abortion clinic. Below are graphic samples of these materials. The company brochure was distributed at a national abortion trade association conference.

Exhibit B3

Partnerships [redacted] 6/14/16, 3:11 PM

[redacted]

Sign In Register My Account Create Wishlist Order 0 Items - \$0

Select Language [dropdown]

Enter Product or Catalog Number [input] [search]

home products & bioservices about [redacted]

become a provider get involved news contact

Partnerships

Easy to Implement Program + Financial Profits

[redacted] promotes global biomedical research while also providing a financial benefit to your clinic. By partnering with [redacted], not only are you offering a way for your clients to participate in the unique opportunity to facilitate life-saving research, but you will also be contributing to the fiscal growth of your own clinic. The stem cell rich blood and raw materials that are usually discarded during procedures can, instead, be expedited through [redacted] to research laboratories with complete professionalism and source anonymity.

Your Clinic can Advance Biomedical Research

- Financially Profitable
- Easy to Implement Plug-in Solutions
- Medical Director Oversight
- IRB Certified Consents

Partnering with Obstetrical-Care Clinics

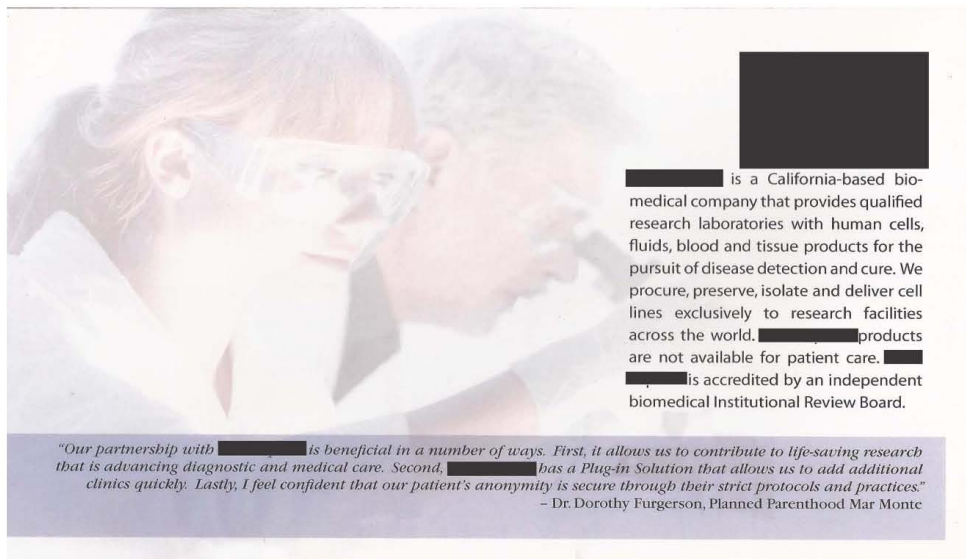
[redacted]



Exhibit B2



Your clinic can advance biomedical research.
Financially Profitable • Easy to Implement Plug-in Solution • Medical Director Oversight • IRB Certified Consents



██████████ is a California-based biomedical company that provides qualified research laboratories with human cells, fluids, blood and tissue products for the pursuit of disease detection and cure. We procure, preserve, isolate and deliver cell lines exclusively to research facilities across the world. ██████████ products are not available for patient care. ██████████ is accredited by an independent biomedical Institutional Review Board.

"Our partnership with ██████████ is beneficial in a number of ways. First, it allows us to contribute to life-saving research that is advancing diagnostic and medical care. Second, ██████████ has a Plug-in Solution that allows us to add additional clinics quickly. Lastly, I feel confident that our patient's anonymity is secure through their strict protocols and practices."
- Dr. Dorothy Furgerson, Planned Parenthood Mar Monte

The Procurement Business Abortion Clinic Acquisition

From its inception in 2010, the *Procurement Business* was very successful at acquiring new abortion clinics from which to procure fetal tissue. In a business magazine article and in sworn legal documents, the *Procurement Business* CEO explained that the business started out in 2010 with three clinics and within two years had 30 clinics. The next milestone was achieved in 2015 when the *Procurement Business* had nearly 100 abortion clinics. During 2014 and 2015 the *Procurement Business* sought a co-marketing relationship with a national abortion clinic trade association. The contract, if ratified, would have given the *Procurement Business* over 250 abortion clinics from which to procure fetal tissue for resale. The contract was never ratified due to several factors, including the public release of the videotapes in 2015. The graph below shows the dramatic growth in the number of abortion clinics.

Exhibit B4



Revenue Growth

Along with the growth in the number of abortion clinics, the *Procurement Business* experienced significant growth in income. The company was featured in several business articles and was listed as one of the fastest growing companies in the nation.

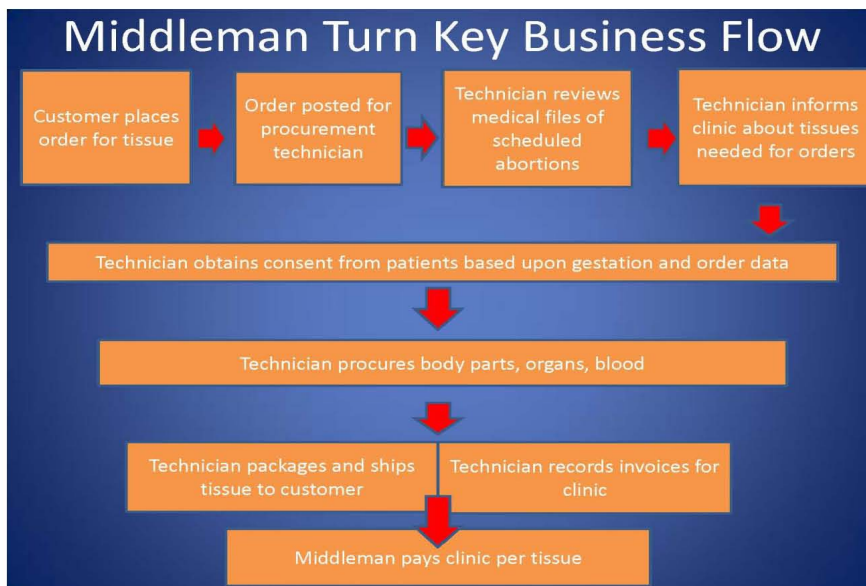
Exhibit B5



The Procurement Business offers a Turnkey or Plug in Service for Abortion Clinics

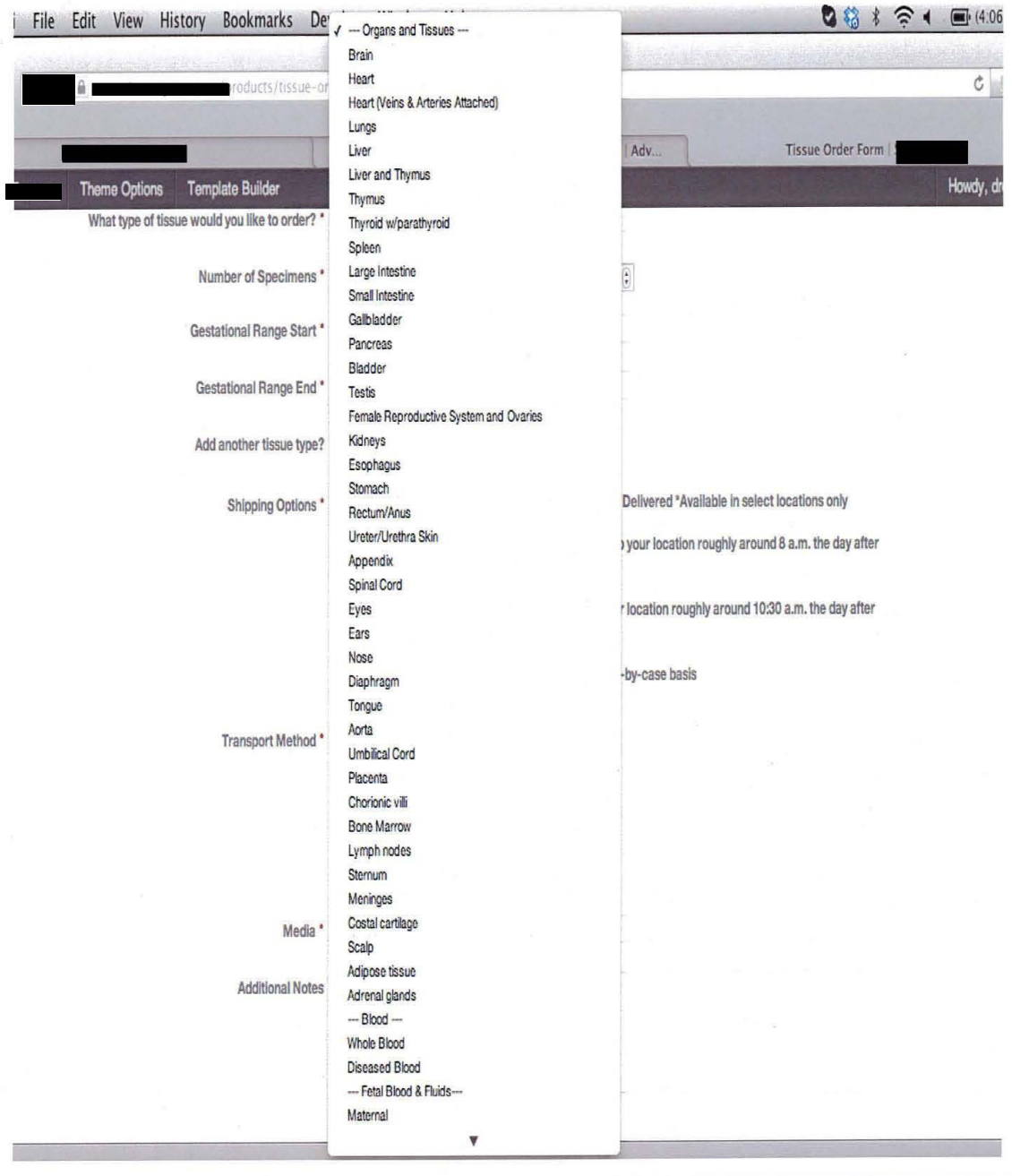
The *Procurement Business* marketed itself as a way for clinics to make additional income by allowing the *Procurement Business* procurement technicians to take fetal tissues and organs from aborted babies immediately after the abortion was completed. The Select Panel investigation reveals that every conceivable task is performed by the Procurement business employees that are assigned to one or more clinics. The first step in the process is for the researcher to make an online order. The screen grab below shows the view that the researcher or customer would have when ordering. After selecting particular baby parts, the next step would be to select the gestational period and finally the method of shipment.

Exhibit C1



The Chart below is a website screen grab of the Procurement Business order form for fetal organs.

Exhibit C3



Daily Tasks Performed by the Procurement Tech

The **work day of the procurement tech** is best understood by a review of the “C” Exhibits in particular C16 (included in the Appendix).

- 1) First thing in the morning the tissue tech gets an email like the one at C4. She reads the orders for certain baby body parts and the gestation period. Now she knows what she needs to harvest that day.
- 2) Then she checks in with the Abortion Clinic Assistant Manager and informs the staff what she will be procuring that day. Described at C9.
- 3) Then the procurement tech reviews the private medical files of the patients for that day to learn their names and the gestation time of their baby. She records the gestations on the gestation tracking log at C5.
- 4) Next the procurement tech approaches the patients waiting to be prepped for their abortion. She doesn't have much time so she must match her orders for the day with patients who are at the right gestation time. She asks for the patients by name. Then she convinces them to consent to donate saying that her donation is all about cures of Diabetes and Parkinson's and Heart Disease. Exhibit C8.
- 5) After the abortion the procurement tech collects the baby's remains and procures the body parts she needs. She carries all of her supplies with her. Described at Exhibit C13. Her shipping supplies are described at Exhibit C12.
- 6) The tissue tech then arranges for delivery: a courier, Fed EX.
- 7) She gets an hourly wage and a bonus for each tissue.

The Exhibit “C” group of documents taken as a whole represents the comprehensive role and tasks undertaken by the *Procurement Business* employee, the procurement technician. Understanding these documents as a group is critical to the analysis of whether the abortion clinics had any responsibility or tasks at all related to the fetal tissue. In fact, it is hard to conceive of the abortion clinics doing anything at all other than being paid per tissue for the work performed by the *Procurement Business*.

The “C” documents show, in great detail, that all possible management guidance, tasks, and responsibilities are undertaken by the PB procurement tech employee and that that no tasks are performed by the abortion clinic. Thus, the costs of tissue acquisition are entirely born by entities other than the abortion clinic.

Exhibit C1 *This is the daily work flow of the PB procurement tech procuring fetal tissue inside Abortion Clinics*

Exhibit C 2 *This is a list of the tasks performed by the PB procurement Tech inside the Abortion Clinics*

Exhibit C 3 *Web site screen grab of how to order any fetal tissue you want*

Exhibit C 4 *Website and phone orders sent to procurement tech via email inside abortion clinics*

Exhibit C 5 *Form the procurement tech uses to check gestation periods so that patients can be matched with orders.*

Exhibit C 6 *Work instructions on procurement given to the procurement tech by the PB for work performed inside the abortion clinic.*

Exhibit C 7 *Procurement Kit provided by the PB*

Exhibit C 8 *PB guidance on obtaining patient consent by procurement tech*

Exhibit C 9 *PB directs tissue tech to tell the abortion clinic manager what is being procured that day.*

Exhibit C 10 *PB Guidance to the procurement tech on keeping track of tissues procured*

Exhibit C 11 *PB Guidance on procurement tech responsibility to obtain disease screening*

Exhibit C 12 *PB Guidance to procurement tech regarding supplies for shipping to customers*

Exhibit C 13 *Supplies inventory that the PB provides for the procurement tech*

Exhibit C 14 *Copy of compensation plan for the procurement tech*

Exhibit C 15 *Copy of the IRB documents provided by the PB for the benefit of the customer*

Payments from Procurement Business to Abortion Clinic (includes blood)

The chart below summarized the flow of payments between the entities described above. The full exhibits are included in the Appendix.

D Exhibits

August 2010 \$11,365
 Jan/Feb 2011 \$ 9,060
 January 2014 \$ 6,010

Payments from Researcher/Customer to Procurement Business

E Exhibits

Fetal Brains-1 each \$3,340
 Human Fetal Tissue 10@595.00 each \$5,950
 Upper and Lower Limbs with hands and feet . . . \$890
 Baby Skull matched to upper and lower limbs . . . \$595
 Fetal Brains \$2,230

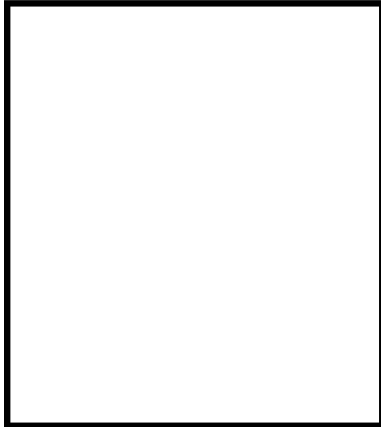
Payments from One Customer to the Procurement Business for one Year

Exhibit F

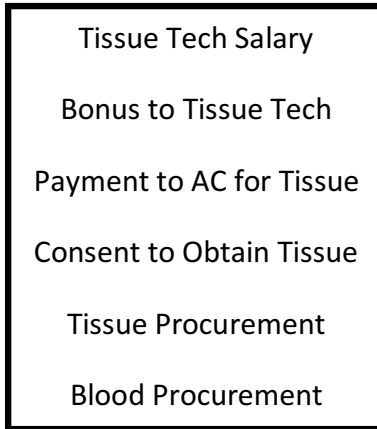
38 Fetal Brains totaling \$22,610
 12 Fetal Hearts totaling \$7,140
 3 Fetal Upper/Lower Limbs totaling \$2,670
 5 Fetal Livers totaling \$2,975
 12 Fetal Pancreases totaling \$7,140
 For an annual total of: **\$42,535**

Who Bears the Reasonable Cost of Tissue Procurement?

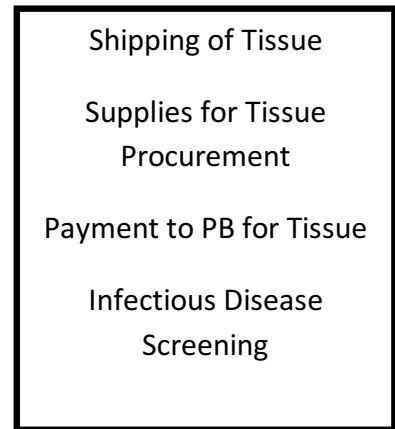
Abortion Clinic



Procurement Business



Customer



If the Abortion Clinic has no reasonable costs to be reimbursed, it raises an inference that it sold the human fetal tissue for a profit.

Hearing on the Pricing of Fetal Tissue

Annotated Index of Documents

Issue

Does the acquisition of fetal tissue by a middleman procurement business (PB) from abortion clinics (ACs) for resale to customers (C) violate the prohibition against profiting from the sale?

I. *Exhibit A – Rule of Law* *Tab A*

Title 42 USC §289 g-2(a) – Requires that no profit be made on acquisition or transfer of fetal tissue.

II. *Exhibit A-1 – Graphic of Statute: Profit and non Profit* *Tab A*

Show the simplicity of nonprofit and profit model.

III. *Exhibits B1- 6 -- Business Model of the Middleman Procurement Business* *Tab B*

The Documents in Exhibit B show the business model of the Procurement Business, its own marketing statements about the product it offers to Abortion Clinics, its marketing trajectory, and its growth since its inception. These document show that the PB constantly sought additional abortion clinics as a source of fetal tissue.

Exhibit B 1 *This is the business model the hearing will discuss*

Exhibit B 2 *This is the company Brochure used to market the PB to Abortion Clinics*

Exhibit B 3 *PB website promoting partnership agreements with Abortion Clinics.*

Exhibit B 4 *Chart showing growth of the PB in number of Abortion Clinics*

Exhibit B 5 *Chart showing growth of PB revenue*

Exhibit B 6 *This is the Contact between the PB and a national abortion organization to acquire an additional 400 clinics.*

IV. Exhibit C1-14 The Turnkey Business Product the PB placed inside of Abortion Clinics Tab C

The “C” documents show, in great detail, that all possible management guidance, tasks, and responsibilities are undertaken by the PB procurement tech employee and that that no tasks are performed by the abortion clinic. Thus, that costs of tissue acquisition are entirely born by entities other than the abortion clinic.

Exhibit C 1 *This is the daily work flow of the PB procurement tech procuring fetal tissue inside Abortion Clinics*

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Exhibit C 14 *The compensation plan for the procurement tech*

Exhibit C 15 *Copy of the IRB document provided by the PB for the benefit of the customer*

Exhibit C 16 *Food and Drug Administration regulations on IRBs*

Exhibit C 17 *List of tasks performed by procurement tech*

V. **Exhibit D1-3 Payments from the PB to Abortion Clinics for Fetal Tissue**

Exhibits D 1-3 *These documents show the monthly payments from the PB to several abortion clinics*

VI. Exhibit E 1-4 Payments from customers to the PB

Exhibits E 1-4 *These document show payments from customers to the PB*

VII. Exhibit F Payments from a customer to the PB

Exhibit F *This document shows annual payments from a single customer to the PB*

VIII. Exhibit G Reasonable Costs Associated with fetal tissue procurement

Exhibit G *This graphic shows who bears the reasonable costs associated with fetal tissue procurement.*

IX. Exhibit H Rep. Waxman quote

Exhibit H *This graphic is a quote from Rep. Waxman during the floor debate over H.R. 4.*

Exhibit A1

Understanding 42 USC § 289g-2

To profit under Title 42 USC § 289g-2, the transfer of any fetal tissue for valuable consideration must exceed the reasonable costs associated with the procurement.

The statute reads in part:

§ 289g-2(a): It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any fetal tissue for **valuable consideration** if the transfer affects interstate commerce.

§ 289g-2(e)(3): The term **“valuable consideration”** does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

Exhibit A2

Title 42 USC § 289g-2 requires that the transfer of fetal tissue not result in a profit.

Two Models

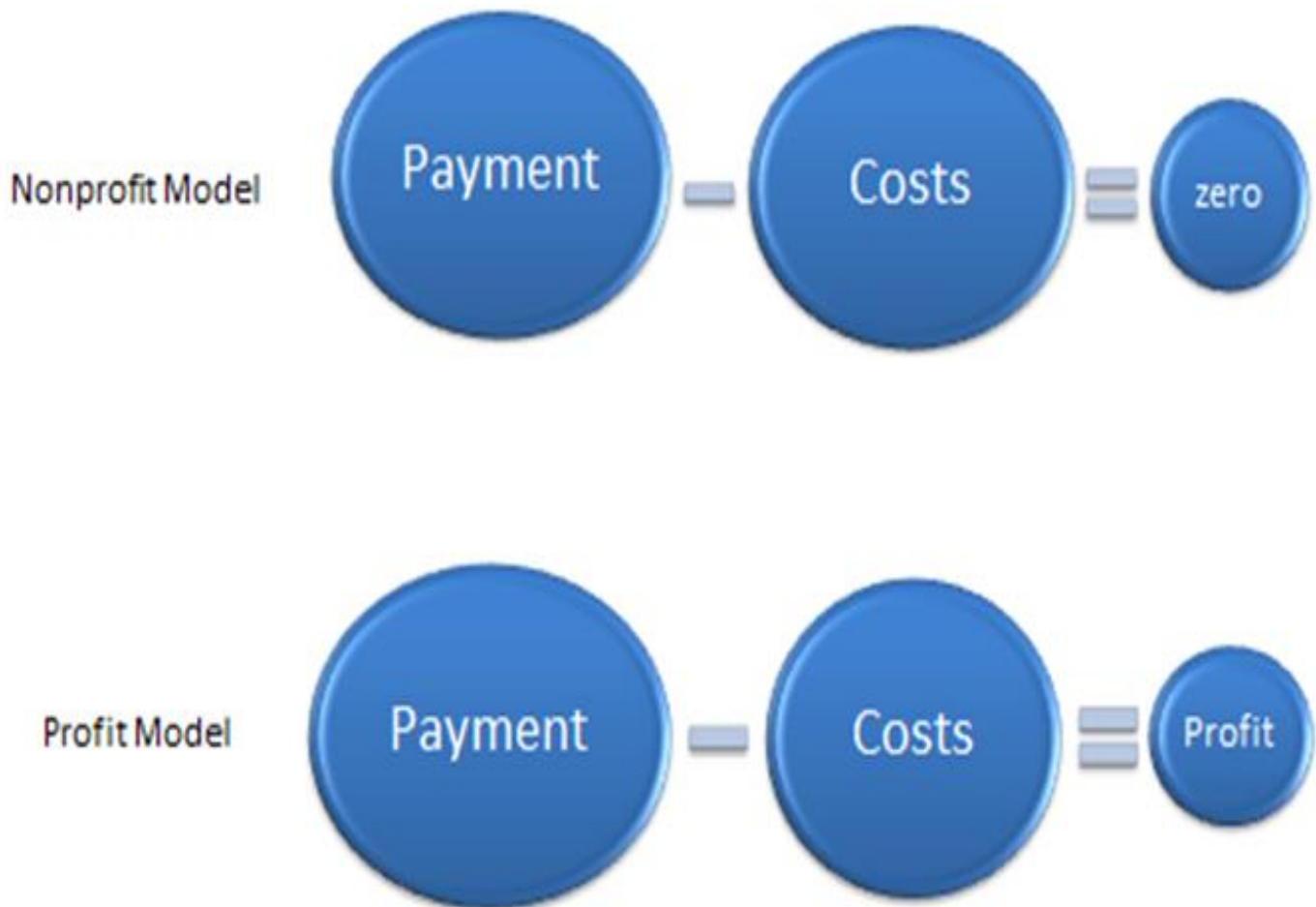


Exhibit B1

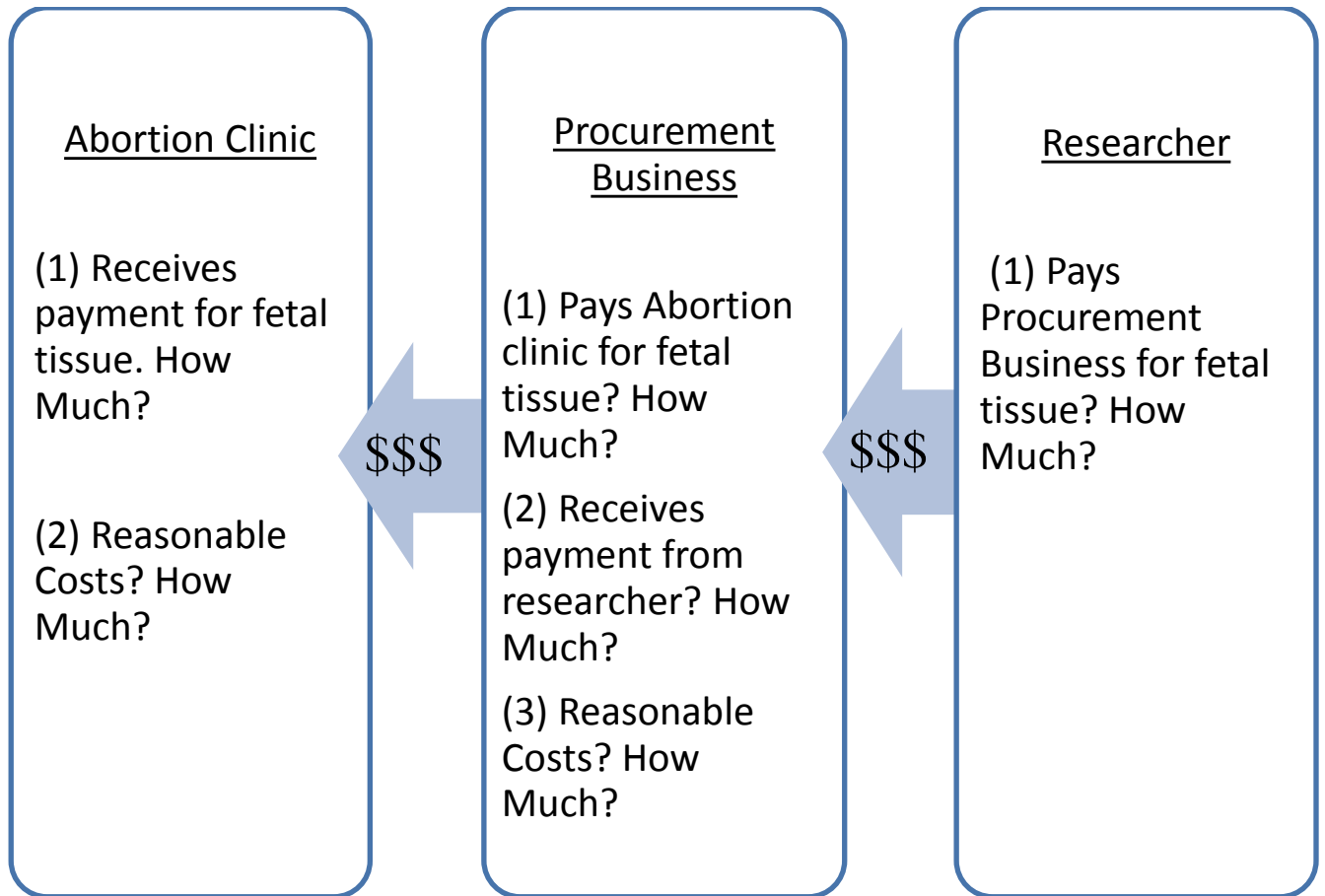


Exhibit B2



Your clinic can advance biomedical research.

Financially Profitable • Easy to Implement Plug-in Solution • Medical Director Oversight • IRB Certified Consents

Advancing BioMedical Research Together

Join the [REDACTED] partner program that fiscally rewards clinics for contributing to the advancement of life-saving research — with a solution that is easy to incorporate into your clinic practices. [REDACTED] is a California-based biomedical company that provides human tissue products ranging from fetal to adult tissues and healthy to diseased samples to many of the leading research institutions in the world. Our IRB approved protocols and consents protect you as well as donor's privacy in accordance with HIPAA guidelines.

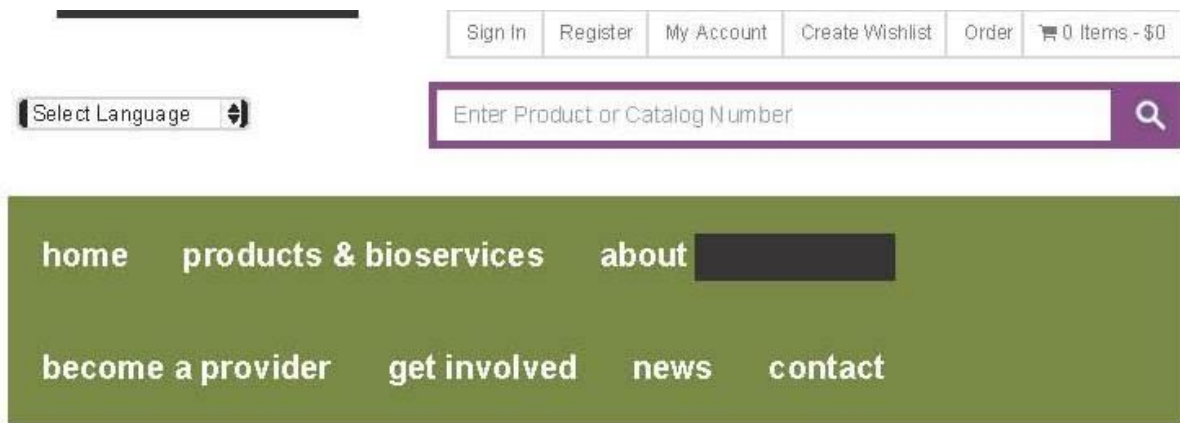
Partnering with Obstetrical-Care Clinics

Cell-free fetal DNA circulates in maternal blood throughout pregnancy. Noninvasive, stem cell free methods to obtain fetal DNA are being used for earlier detection of genetic diseases as well as reproductive decision-making. Research pioneers who develop noninvasive diagnostic technologies rely on the blood samples that are collected from hospitals and clinics throughout the United States.



Easy to Implement Program + Financial Profits

[REDACTED] promotes global biomedical research while also providing a financial benefit to your clinic. By partnering with [REDACTED], not only are you offering a way for your clients to participate in the unique opportunity to facilitate life-saving research, but you will also be contributing to the fiscal growth of your own clinic. The stem cell rich blood and raw materials that are usually discarded during obstetrical procedures can, instead, be expedited through [REDACTED] to research laboratories with complete professionalism and source anonymity.

Exhibit B3

Partnerships

Easy to Implement Program + Financial Profits

██████████ promotes global biomedical research while also providing a financial benefit to your clinic. By partnering with ██████████, not only are you offering a way for your clients to participate in the unique opportunity to facilitate life-saving research, but you will also be contributing to the fiscal growth of your own clinic. The stem cell rich blood and raw materials that are usually discarded during procedures can, instead, be expedited through ██████████ to research laboratories with complete professionalism and source anonymity.

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Cell-free fetal DNA circulates in maternal blood throughout pregnancy. Noninvasive, stem cell free methods to obtain fetal DNA are being used for earlier detection of genetic diseases as well as reproductive decision-making. Research pioneers who develop noninvasive diagnostic technologies rely on the blood samples that are collected from hospitals and clinics throughout the United States.

Advancing Biomedical Research Together

Join the ██████████ partner program that fiscally rewards clinics for contributing to the advancement of life-saving research – with a solution that is easy to incorporate into your clinic practices. ██████████ is a California-based biomedical company that provides human tissue products ranging from fetal to adult tissues and healthy to diseased samples to many of the leading research institutions in the world. Our IRB approved protocols and consents protect you as well as donor's privacy in accordance with HIPAA guidelines.

Exhibit B4

PROCUREMENT BUSINESS' CLINIC GROWTH STRATEGY

Number of partnerships with abortion clinics

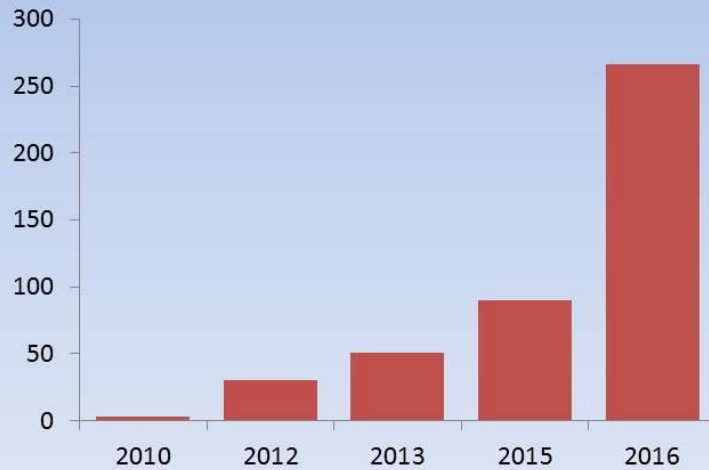


Exhibit B5

PROCUREMENT BUSINESS' REVENUE GROWTH

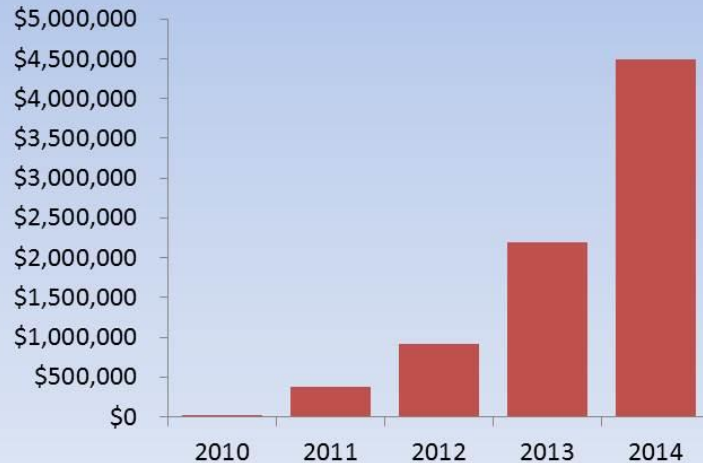


Exhibit B6

[Excerpt of a draft contract between the PB and the abortion trade association.]

PARTNERSHIP AGREEMENT

This Partnership Agreement (this "Agreement") is entered into as of March 25, 2015 ("Effective Date"). between [PB] . . . and the [abortion trade association] . . .

[The PB] agrees to make a donation to the [abortion trade association] in the amount of US \$10,000 and undertake the activities listed in Appendix B . . .

[Abortion trade association's] Commitment

For the aforementioned sum mentioned in the section marked "Payment for Services," [the trade association] commits to performing the following for one year to assist [the PB] in presenting its collection program to [association] members:

- Create and disseminate to [association] members correspondence from [the association's] Group Purchasing Manager about [the PB] and the collection program twice yearly at the request of [the PB].
- Create a content section on [the association's] members-only website dedicated to [the PB], including a link to a [PB] email address for contacts and collection program information.
- Disseminate to [association] members the name and contact information of [the PB's] collection program representative who is available to answer questions about the [PB] collection program and participation on an ongoing basis.
- Provide a cover letter for [the association's] President and CEO pertaining to the [PB] collection program which [the PB] can use to accompany marketing materials for [association] members.
- Include a [PB] marketing brochure regarding [the PB's] collection program in each [association] membership welcome packet.
- Invite select [association] members to join [association] on a conference call paid for by the [PB] to discuss [the PB]'s collection program and the benefits of member participation at least once a year.
- Provide mailing list for [PB] to send out marketing materials to [association] members regarding the background of [the PB], its collection program, and benefits of member participation in the program.
- Provide assistance to [the PB] in gathering testimonials from existing program participants from among [association] members.
- Provide one complimentary exhibit space at [association's] Annual Meeting in the spring for [the PB] with up to 3 complimentary exhibitor registrations and up to 4 invitations to the member luncheons. In addition, the opportunity to create a bag insert that will be given to every attendee at registration.
- Supply [the PB] with a quarterly updated list of members.

Exhibit B6

APPENDIX B

[PB's] Commitment

[The PB] commits to performing the following for one year to market its collection services to [association] members:

- Conduct a webinar for [association] members with a question and answer forum discussing member participation in the [PB] collection program at the launch and yearly thereafter.
- Create and produce a marketing brochure detailing [the PB's] collection service program. This brochure shall include [PB] contact information. [The PB] will supply a copy of the brochure to [the association] to include in their membership welcome packets.
- Create and produce marketing "slicks" on the background of [the PB], its capabilities, and highlight participation benefits.
- Provide, at no charge to [the association], informative sessions or meetings that present the collection program.
- Develop client success stories on how [the PB] brought a value added service to participating members. This will help to inform members about [the PB's] offerings.
- Commit to attending [the association's] Annual Meeting in April of each year.
- Pursue all leads from [the association], introducing [the PB] and what [the PB's] capabilities are.

Exhibit C1

Middleman Turnkey Business Flow

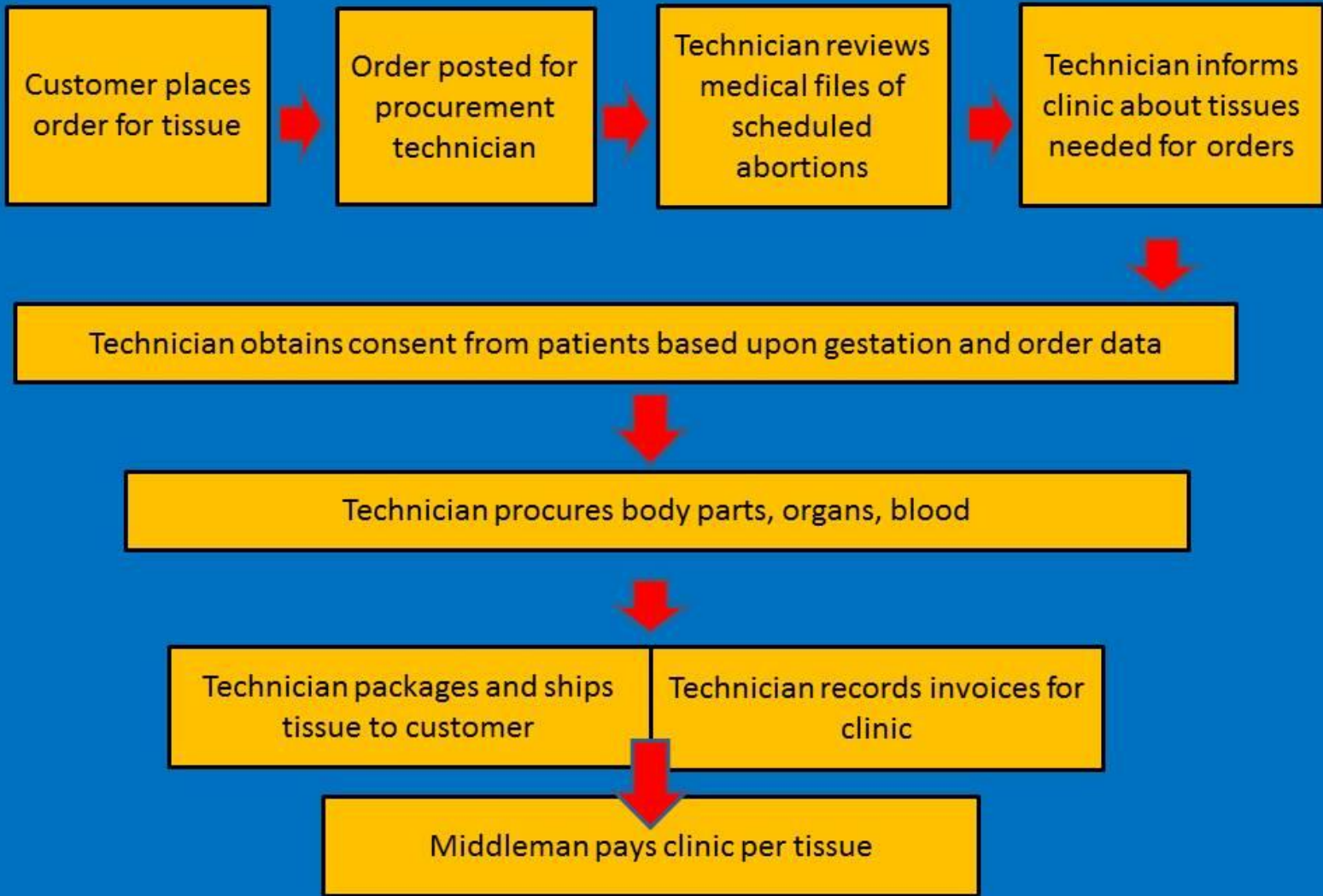


Exhibit C2

WORKFLOW OF THE PROCUREMENT BUSINESS

- 1) Customer orders fetal tissue on-line. Exhibit C3.
- 2) Procurement business obtains Institutional Review Board approval. Exhibit C15.
- 3) Tissue technicians review the current researcher order list. Exhibit C4.
- 4) Tissue technicians discuss with the clinic the type of tissue being sought. Exhibit C9.
- 5) Review the schedule of abortions to match orders to gestational information and patient information. Exhibits C5, C7.
- 6) Tissue technicians obtain consent from women awaiting their procedure. Exhibit C8.
- 7) Procure blood and perform any tests on patients. Exhibits C6, C7, C10, C11.
- 8) Procurement business provides materials to tissue technicians. Exhibit C13.
- 9) Tissue technicians package and ship tissue to researcher using portable packaging materials. Exhibit C12.
- 10) Tissue technicians compensated per-tissue sample obtained. Exhibit C14.

Exhibit C3

The image shows a screenshot of a web browser displaying a 'Tissue Order Form'. A dropdown menu is open, listing various organs and tissues. The background page includes a navigation bar with 'Theme Options' and 'Template Builder', and several form fields with labels like 'Number of Specimens', 'Gestational Range Start', 'Gestational Range End', 'Add another tissue type?', 'Shipping Options', 'Transport Method', 'Media', and 'Additional Notes'. The browser's address bar shows a URL starting with 'https' and 'products/tissue-or'. The system tray at the top right shows icons for network, Bluetooth, and battery, along with the time '4:06'.

--- Organs and Tissues ---

- Brain
- Heart
- Heart (Veins & Arteries Attached)
- Lungs
- Liver
- Liver and Thymus
- Thymus
- Thyroid w/parathyroid
- Spleen
- Large Intestine
- Small Intestine
- Gallbladder
- Pancreas
- Bladder
- Testis
- Female Reproductive System and Ovaries
- Kidneys
- Esophagus
- Stomach
- Rectum/Anus
- Ureter/Urethra Skin
- Appendix
- Spinal Cord
- Eyes
- Ears
- Nose
- Diaphragm
- Tongue
- Aorta
- Umbilical Cord
- Placenta
- Chorionic villi
- Bone Marrow
- Lymph nodes
- Sternum
- Meninges
- Costal cartilage
- Scalp
- Adipose tissue
- Adrenal glands
- Blood ---
- Whole Blood
- Diseased Blood
- Fetal Blood & Fluids ---
- Maternal

Theme Options Template Builder

What type of tissue would you like to order? *

Number of Specimens *

Gestational Range Start *

Gestational Range End *

Add another tissue type?

Shipping Options *

Transport Method *

Media *

Additional Notes

Delivered *Available in select locations only

your location roughly around 8 a.m. the day after

location roughly around 10:30 a.m. the day after

-by-case basis

Adv... Tissue Order Form | Howdy, dr

Exhibit C4

From: [REDACTED]
Subject: Updated Task Assignment: Procurement Schedule Wednesday 3/20/13
Date: March 20, 2013 at 9:00 AM
To: [REDACTED]

The following task has been updated on the [REDACTED] web office site.

TASK NAME: Procurement Schedule Wednesday 3/20/13
ASSIGNED BY: [REDACTED]
PROJECT: Procurement Schedule
CATEGORY: Procurement Schedule
PRIORITY: 2-Normal
STATUS: 1-Not Started
ASSIGNED TO: [REDACTED]

VISIBLE TO: Everyone

DETAILS:

Liver & Thymus (same donor)/16-20wks/RPMI/Wet Ice/HIV,HBSAG,HCV,CMV/FedEx
Priority Overnight/Mass General Hospital ([REDACTED])

1 SPEC=

IMPORTANT: Please document PO#0005446200 in the reference section

Liver & Thymus (Same donor)/16-20wks/RPMI /Wet Ice/ HIV,HBSAG,HCV/FedEx Priority
Overnight/UMASS ([REDACTED])

1 SPEC=

IMPORTANT: Please document PO#0006147108 in the reference section.

Liver/18-22wks/RPMI/Wet Ice/FedEx Priority Overnight/ UCLA ([REDACTED])

IMPORTANT: Please document PO#1559NQA55800 in the reference section.

2 SPEC=

This used to be researcher- UCLA: [REDACTED]

Liver, Thymus & Skin (Same donor)/16-20wks/RPMI /Wet Ice/ HIV,HBSAG,HCV/FedEx
Priority Overnight/HARVARD ([REDACTED])

1 SPEC=

**IMPORTANT: Use FedEx account #431793989. Note: THE LIVER AND THYMUS SHIP
TO [REDACTED] AT UMASS AND THE SKIN SHIPS TO [REDACTED] AT HARVARD. SHIP
ALL TISSUE UNDER HARVARD'S FEDEX NUMBER.**

**[REDACTED] Research Specialist Melton Group, HHMI/Harvard Dept
of Stem Cell and Regenerative Biology, 7 Divinity Avenue-Fairchild 360, Cambridge,
MA 02138, email-[REDACTED] Phone: [REDACTED]

PROCURE ON WEDNESDAY ONLY- Pancreas/14wks/HEPES with antibiotic/Gel Pack/HIV,
HBSAG, HCV/FedEx Priority Overnight/UMASS ([REDACTED])

2 SPEC=

IMPORTANT: Use gel packs that are NOT frozen but just chilled.

IMPORTANT: Please document PO#0006147108 in the reference section.

Brain /16-18wks/Complete but can be in piecest/Use Client Supplied Media/Wet
Ice/HIV,HBSAG,HCV/Use Clients FedEx Priority Overnight/Temple Univ ([REDACTED])

1 SPEC=

Note: Media contains anti-fungal/anti-mycotic and antibiotics

Researcher: [REDACTED]

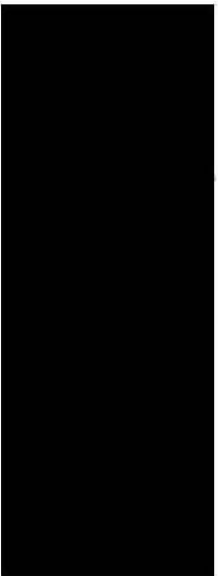
Mid Brain/10+wks/RPMI/Wet Ice//HIV, HBSAG/FedEx Priority Overnight/University
of Illinois at Chicago (Qu-Yang)

1 SPEC=

Researcher: [REDACTED] or [REDACTED]

Brain/14+wks /2cm in width\Whole brain In-tact or one whole Hemis intact/Drw

Exhibit C5



Gestation Tracking Log

Name	Date	Location				
Number of Appointments Scheduled	<11.6wks	12-13.6wks	14-15.6wks	16-17.6wks	18-19.6wks	Total
Number of Appointments Kept	<11.6wks	12-13.6wks	14-15.6wks	16-17.6wks	18-19.6wks	Total
Number of Consents Signed	Blood			Tissue		
Number of Consent with Non Procurable Tissues – No Identifiable Organs*						
Number of Consents with Procurable Tissues but no Researcher*						

* High request organs such at Liver, Thymus, Pancreas, Heart

Exhibit C6

	Work Instruction	Page 5 of 7
	Procurement Kit 1	VERSION #: 1.0
Document Control Number		Effective Date: 12 May 2015

Maternal Blood Collection

There are 3 tubes in the Procurement Kit 1: two 10ml EDTA and one 5ml Z serum sep. clot activator blood collection tube. All 3 tubes must be filled with maternal blood.

After the liver has been procured, use the items in the venipuncture collection kit, which will be either a leur-lok to collect from an existing IV or a needle and hub to collect the blood sample.

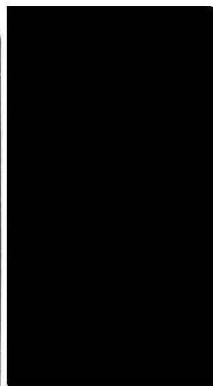
- Follow the clinic protocol for sterile blood collection.
 - Fill the red 5ml Z serum sep. clot activator blood collection tube first and follow with the two 10ml EDTA tubes
 - Once the blood is procured, all 3 tubes can go into the second biohazard bag.
 - Seal the biohazard bag.
- If a failed blood draw occurs, can accept the liver tissue with a minimum of 2ml of maternal blood collected into the 5ml Z serum sep. clot activator blood collection tube. If the clinic is unable to procure any maternal blood for the tissue sample, is unable to accept the tissue.

Filling out the Procurement Form

The sections of the Procurement Form that need to be filled out by the clinic are highlighted. The clinic is responsible for providing the following information:

- Date- date of procurement
- Time- time of procurement in military time
- Gest- gestation in weeks and days. For example: *18.3wks*
- Sex- sex of the fetus. *F* for female, *M* for male or *Unk* for unknown
- Donor age- age of the patient who consented to donate tissue and blood
- Height- in feet and inches. For example *5'3"*
- Weight- in pounds. For example *145 lbs*
- Ethnicity- ethnicity of the patient
- Smoker?- answer *yes* or *no*

<h1 style="margin: 0;">Work Instruction</h1> <h2 style="margin: 0;">Procurement Kit 1</h2>	<p>Page 6 of 7</p> <p>VERSION #: 1.0</p>
<p>Document Control Number [REDACTED]</p>	<p>Effective Date: 12 May 2015</p>



Researcher Procurement Form

DATE

Delivery Instructions: Billed/Recipient Billed/[REDACTED]

Ship To:

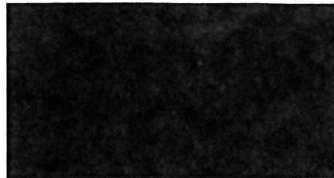
Name: [REDACTED] C/O: [REDACTED] Address: [REDACTED] Address 2: [REDACTED] City: [REDACTED] Country: [REDACTED]	Email: Email 2: [REDACTED] Email 3: [REDACTED] Phone #: [REDACTED] Cell Phone: [REDACTED] Alt. Phone #: [REDACTED]
--	---

FedEx Account: [REDACTED] Tracking #: [REDACTED]

Local Delivery: AM PM Deliver By: [REDACTED]

ID#	TIME	PATIENT#	SPEC#	GEST	SPECIMEN	SEX	COMMENTS
	14:00		6306	18.3wks Liver		M	Donor age: 23 Height: 5'3" Weight: 145lbs Ethnicity: Hispanic Smoker? NO
	14:15		31187B	Maternal Blood		F	2EDTA, 1 Z Serum Sep

Exhibit C8



Consenting Patients

It's important to connect with the patient, be compassionate as well as offering them an opportunity to make a difference in our future.

Blood and Tissue

I work with a company that assists researchers in finding cures for many debilitating diseases like cancer, diabetes and many other. The law in the state of California requires that the tissue from your procedure be incinerated. Would you be willing to give your consent to donate blood and the tissue from your procedure to research? Participation is completely anonymous.

Blood Only

I work with a company that assists researchers in finding cures for many debilitating diseases like cancer, diabetes and many other. Would you be willing to give your consent to donate a blood sample to research? Participation is completely anonymous.

Exhibit C8

INFORMED CONSENT TO PARTICIPATE IN A CLINICAL RESEARCH STUDY

Study Title: Tissue Procurement for Non-therapeutic Research

Sponsor: [REDACTED]

Protocol Number: 101-01

Protocol Date: January 24, 2011

Principal Investigator: [REDACTED]

24-Hour Phone Number: [REDACTED]

Client Information for Informed Consent
**DONATION OF ABORTED PREGNANCY TISSUE FOR MEDICAL RESEARCH,
EDUCATION, OR TREATMENT**

Research using donated tissue and blood is currently underway to uncover the causes of and ultimately find cures for things like: Heart Disease, Diabetes, Parkinson's Disease, Sickle Cell Anemia, Leukemia, Lymphoma, Cancer, Spinal Cord Disease, and many more. Tissue can be obtained as a result of donation of pregnancy tissue after an abortion. Before you give your consent to donate pregnancy tissue and/or a blood sample, read each of the following statements. If there is any statement you do not understand, or if you have any questions, someone will discuss them with you. Your participation is entirely voluntary.

Before this consent was ever offered to me, I had previously decided to have an abortion and signed an informed consent document.

I agree to donate the tissue from the abortion and/or miscarriage, and a blood sample if needed, as a bodily gift to be used for the advancement of medical science. I also agree that a sample of my blood may be taken after the abortion and that it may be used for research and routine testing for AIDS, hepatitis, or other infectious agents. I understand that, if there is testing, the results will be confidential unless the law requires that they be disclosed. The benefits of consenting to donation today include furthering medical research in finding cures for diseases like diabetes, leukemia, lymphoma, Parkinson's disease and more. The risks to this donation are minimal in that your abortion procedure will not change in any way; your health information will be protected at all times; and most blood donors have only minor discomfort from the needle stick, although some people may have a light-headed feeling, an upset stomach, bruising, or pain where the needle stick was. The alternative to this donation is to refuse consent.

Protocol Number: 101-01

Subject Initials _____

BioMed IRB Approved

Consent Date: March 19, 2013

Exhibit C8

I understand the donation is made without any restriction regarding who might receive the donated tissue or for what research purpose it might be used. I have not been informed of the identity of any individual who will receive the tissue that I am donating, and I understand that cells derived from the donation may be stored for years.

If you choose to participate, you will have your blood drawn by a trained phlebotomist or nurse. The amount is small, usually 10-60ml which is about 1-3 tablespoons. You will have no responsibilities once you leave the clinic.

In accordance with federal laws (HIPAA), your personal identifying information will be protected and not connected with your donation once the procedure is completed. Your health information related to this study, may be used or disclosed in connection with this research study, including, but not limited to, your age, ethnicity, medical history, and number of previous pregnancies or abortions. All of this information will NOT be connected to your name or any other personal identifier.

Protocol Number: 101-01

Consent Date: March 19, 2013

BioMed IRB Approved

Subject Initials _____

Page 2 of 4

Exhibit C8

CONSENT

You have the right to withdraw your donation at any time while in the clinic. Since your donation is completely ANONYMOUS, you cannot withdraw your donation once you leave the clinic as it will no longer be possible to know which donation was yours.

I understand there will be no payment to me for the donated tissue or for any product, process or service that may result from this donation.

I understand the method, timing or procedure of abortion cannot and will not be substantively altered for the purpose of obtaining the tissue. I understand that I may refuse to donate pregnancy tissue, and this will not affect my current medical care or my ability to get any future medical services at this clinic.

I understand that, if I have any questions about my donation, I can contact [REDACTED]

By signing below, I agree to donate tissue and/or blood as described above.

Signature: _____ Date: _____

Witness: _____ Date: _____

Protocol Number: 101-01

Consent Date: March 19, 2013

BioMed IRB Approved

Subject Initials _____

Exhibit C9

Clinic Procedures and Policies

As a representative of [REDACTED] you are required to act in a professional manner and follow all clinic policies. Please take note the following procedures and policies are **extremely important** regarding our presence in the clinics:

1. **Communication with the Assistant Manager and HSS's** – Upon arrival, inform the staff clearly what you are procuring for the day. Just as important, you must inform the Assistant Manager and HSS's when you have completed your work. This will insure they do not continue to consent and draw unnecessary blood samples. In addition, please **notify the Assistant Manager upon departure** of the clinic and remember to thank them for their assistance.

2. **Cell Phone Use** – It is essential we follow clinic rules with respect to cell phone use. **Please DO NOT pull your cell phones out in the hallways for ANY reason.** While we realize our cell phones are critical to our internal communication, we need to follow the etiquette set by the clinic. If you receive a text or call, step to an appropriate private area or into the nearest unoccupied room to read the text or answer your phone. Phones should always be on vibrate while in the clinics.

3. **Perfume Free Policy** – All clinics have a Perfume Free Policy, Please refrain from applying perfume or any fragrance prior to or when you are in the clinic.

4. **General Clinic Etiquette:**
 - ◆ Calm demeanor
 - ◆ Sensitive to Patients' Privacy and Situation
 - ◆ Professional at all Times
 - ◆ Respectful to Patients and Clinic Staff
 - ◆ Maintain Confidentially for Patient Information



Exhibit C10



Daily ID Numbering System

The Daily ID Numbering System allows us to track the number of bloods draws or tissue collections from a clinic. This is [REDACTED] Internal Tracking System, therefore it's important to number them properly and sequentially.

Blood Collection –

- ID Numbering for Blood Collections are always identified with a B on the end of the sequential number, i.e. 01B, 02B, 03B, etc.
- Start at 01B each day and sequentially number additional blood collections throughout the day, i.e. 01B, 02B, 03B, etc.
- IMPORTANT NOTE: We collect blood for multiple researchers. The ID# relates to the number of blood collections at the clinic NOT the researcher. For instance, let's say you draw the first 5 bloods for one researcher and then start getting bloods for another researcher, the first 5 bloods are 01B to 05B, then you would start numbering the second researcher at 06B. You would NOT start from 01B again. In addition, if you were alternating draws for different researchers, one may have 01B and 03B, and the other would be 02B and 04B.

Exhibit C11



Tissue Collection and Infectious Disease Screening (HIV, HBSAG, HCV, etc.) –

Tissue Collection:

- ID Numbering for Tissue Collections are identified as a sequential number, i.e. 01, 02, 03, etc. This relates to each case. For instance, if you procure multiple organs from a single case, they would all be identified as the same POC number.
- Start at 01 each day and sequentially number additional tissue collections throughout the day, i.e. 01, 02, 03, etc. Number only the cases you collect tissue.

Infectious Disease Screening (HIV, HBSAG, HCV, etc.):

- ID Numbering for Infectious Disease Screening are identified as the same ID # in conjunction with the tissue it relates to. For instance, if you procure a tissue sample identified as ID #01 and the researcher requests Infectious Disease Screening on this patient, the blood test is the same ID #.
- **IMPORTANT:** Infectious Disease Screening relates to tissue collection only, therefore they are NOT identified with a B at the end of the ID number.

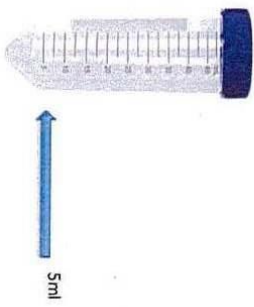
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Packaging Tissue

After the liver is identified and separated from other tissue, place it in the 50ml conical tube provided in the kit.

Separate the liver from the other fetal tissue. It can be in pieces or damaged but the combined volume must equal more than 5ml. The 5ml mark is clearly identifiable and visible on the conical tube.



Remove and dispose of the parafilm from around the opening of the 50ml conical tube with the RPMI media.

Place the liver tissue into the conical tube with the RPMI media and screw the top on tightly.

Wrap the conical tube with parafilm to prevent any leakage.

- Remove the paper backing from the parafilm.
 - Hold the parafilm down against the lid and with the other hand stretch the parafilm.
 - Stretch the parafilm around the lid of the conical tube in a clockwise direction.
 - Push the end of the parafilm into the conical tube to create a seal.
- Place the conical tube into a biohazard bag and seal the bag.

Assembling the kit for shipment

The items of the kit should be reassembled in the same placement as they were when the kit was received.

- Place the specimens inside of the plastic bag liner
 - One sealed biohazard bag with the 50ml conical tube (containing RPMI and the liver specimen)
 - One sealed biohazard bag with 3 tubes of maternal blood (two 10ml EDTA and one 5ml Z serum sep. clot activator blood collection tube)
 - 2 chilled gel packs
- Seal the plastic bag liner by tying it in a knot
- Place the tied plastic bag inside of the Styrofoam box
- Place the Styrofoam lid on the Styrofoam box
- Adhere a biohazard sticker on opposite sides of the Styrofoam box so they seal the top of the box to the bottom.
- Place Styrofoam box inside the cardboard box
- Place completed Procurement Form on top of the Styrofoam box
- Tape the cardboard box shut
- Adhere the FedEx shipping label to the top of the cardboard box

Once the package is ready for shipment call FedEx (1 800 GoFedEx or 1 800 463 3339) to schedule a pick up or drop the package off at the nearest FedEx location by 16:30 on the day of procurement.

Exhibit C13

Supply Inventory- North Clinic: by Supply Inventory

Supply Inventory- North Clinic: by Supply Inventory (44 items)

Product	Volume Shipped	Quantity on Hand	Activity Type	Date Modified	Activity Notes	Modified By
Blood Tube (4 items)						
5ml Red Top Vacuettes for Marshall	50 per Flat	45	Supplies Received	Friday, January 11, 2013 2:40 PM PST	Received	
ACD-A Tubes	100 per flat	100	Supplies Received	Friday, January 11, 2013 2:40 PM PST	ACD tubes received	
EDTA Tubes	100 per flat	0	Supplies Received	Friday, January 11, 2013 2:41 PM PST	EDTA tubes received	
Streck Tubes	100 per flat	39	Supplies Shipped	Wednesday, January 23, 2013 10:40 AM PST	sent 1 flat	
Phlebotomy Misc. (14 items)						
20 Gauge Needles	Box of 100	200	Supplies Received	Friday, January 11, 2013 2:42 PM PST	Needles received	
21 Gauge Needles	Box of 100	100	Supplies Received	Friday, January 11, 2013 2:43 PM PST	Needles received	
Alcohol Prep Pads	1 box	30	Supplies Received	Friday, January 18, 2013 8:22 AM PST	1 box received	
Band Aids	Box of 25	75	Supplies Received	Friday, January 11, 2013 2:43 PM PST	Band-aids received	
Bio Hazard Labels Rolls	Roll of 50	80	Supplies Received	Friday, January 11, 2013 2:47 PM PST	Supplies received	
Bio Hazard Ziploc Bags	Bag of 25	60 bags	Supplies Shipped	Monday, January 21, 2013 2:07 PM PST	sent 1 bag	
Blood Tube Packing Sleeves	Shipped as requested	22	Supplies Received	Friday, January 11, 2013 2:48 PM PST	Bags received	
Cotton Balls	Bag of 100	100	Supplies Shipped	Monday, October 01, 2012 11:13 AM PST	Sent 1 ziploc bag of cotton balls	
Gel Ice Packs	Shipped as requested	9	Supplies Shipped	Tuesday, May 22, 2012 3:06 PM PST	sent via courier	
Needle Hubs w/ Safeties	Bag of 50	100	Supplies Received	Friday, January 18, 2013 8:22 AM PST	Received	
Labels (Blood)	Roll of 200	120 labels	Supplies Shipped	Tuesday, April 24, 2012 9:58 AM PST	shipped via courier	
Surgical Tape(Micropore)	1 roll	2 roll	Supplies Shipped	Monday, January 21, 2013 2:07 PM PST	sent 1 roll	

Exhibit C13

Supply Inventory- North Clinic: by Supply Inventory

Product	Volume Shipped	Quantity on Hand	Activity Type	Date Modified	Activity Notes	Modified By
Tourniquet	Shipped as requested	5				
Ziploc Bags (Regular)	Box of 54	50	Supplies Shipped	Tuesday, October 16, 2012 12:18 PM PST	sent 1 box ziploc	
Shipping (11 items)						
Box Liners	Roll of 100	180	Supplies Shipped	Tuesday, April 24, 2012 9:59 AM PST	shipped via courier	
Bubble Wrap	Small roll	7 pouches	Supplies Requested	Thursday, January 24, 2013 9:22 AM PST	1 roll please	
Cardboard Only (Large)	Shipped as requested	8	Supplies Requested	Thursday, January 24, 2013 9:21 AM PST	3 please	
Cardboard Only (Small)	Shipped as requested	6	Supplies Requested	Thursday, January 24, 2013 9:21 AM PST	4 please	
FedEx Pouches	Bag of 25	18	Supplies Shipped	Tuesday, June 05, 2012 2:31 PM PST	shipped via courier	
Shipping Kit (Large)	Shipped as requested	0	Supplies Shipped	Tuesday, October 25, 2011 11:58 AM PST	10 large shipping kits sent via courier on 10/20/11	
Shipping Kit (Small)	Shipped as requested	0	Supplies Shipped	Tuesday, October 25, 2011 11:58 AM PST	10 small boxes sent via courier on 10/20/11.	
Shipping Labels	Roll of 100	0	Supplies Shipped	Wednesday, February 15, 2012 12:09 PM PST	Supplies shipped via courier 2-15-12	
Shipping Tape	0	0.5	Supplies Requested	Thursday, January 24, 2013 9:19 AM PST	1 roll please	
Styrofoam Only (Large)	Shipped as requested	9	Supplies Requested	Thursday, January 24, 2013 9:20 AM PST	3 large styrofoams please	
Styrofoam Only (Small)	Shipped as requested	6	Supplies Requested	Thursday, January 24, 2013 9:20 AM PST	4 small styrofoams	
Special Projects - Researcher Provided Supplies (5 items)						
Ariosa Collection Kits	10	1				
Ariosa Preprinted Labels	20	10	Supplies Received	Friday, September 14, 2012 9:37 PM PST	1 set of 20 Ariosa pre-printed labels.	
Ariosa Shipping Kits	10	2				
Natera Collection Kits	10 kits	5 Kits	Supplies Received	Thursday, August 09, 2012 9:20 AM PST	39 Natera kits	
Sequenom Labels	Bag of 100	50	Supplies Received	Friday, January 18, 2013 8:27 AM PST	Labels received	
Tissue Procurement (10 items)						

Exhibit C14

Procurement Technician Compensation Policy for Tissue and Blood Procurement Effective 01/01/2013

Procurement Fees

- Procurement Technicians are compensated at a rate of \$10.00 per hour plus a per tissue or blood bonus as outlined in the table below:

Tissue Bonus Structure			
# Specimens	Category A*	Category B*	Category C
1-10 Specimens	\$35/Tissue	\$15/Tissue	\$10/Blood
11-20 Specimens	\$45/Tissue	\$20/Tissue	\$15/Blood
21-30 Specimens	\$55/Tissue	\$25/Tissue	\$20/Blood
31-40 Specimens	\$65/Tissue	\$30/Tissue	\$25/Blood
41-50 Specimens	\$75/Tissue	\$35/Tissue	\$30/Blood

*Blood Samples may be obtained with these specimens in which case Category C bonus does not apply.

Please refer to the Procurable Specimens by Category dated 01/01/2013 for a detailed listing of Tissues.

Two or More Procurement Technicians working in Unison

- Procurement Technicians often work in unison so procurements are split equality between the technicians.

For example, if two technicians are working together at the same clinic, and two maternal bloods are procured, each technician would receive \$5 for the Blood Procurement.

Exhibit C14



**Procurable Specimens by Category
Effective 01/01/2013**

Category A*

Brain
Heart
Lungs
Liver
Thymus
Thyroid w/parathyroid
Liver
Spleen
Large Intestine
Small Intestine
Gallbladder
Pancreas
Bladder
Testis
Ovaries
Esophagus
Stomach
Rectum/Anus
Ureter/Urethra
Appendix
Spinal Cord
Spinal Column
Eyes
Diaphragm
Lymph nodes
Sternum
Adipose tissue
Lymph nodes
All Muscle tissue
All Bone structures

Category B*

Kidneys
Adrenal glands
Ear
Decidua
Chorionic Villi
Umbilical Cord
Placenta
Amniotic Fluid
Large Intestine
Small Intestine
Skin
Nose
Tongue
Scalp

Category C

Maternal Blood
Post Surgery Blood
Umbilical Cord Blood
Trisomy Blood

*Note: Blood Samples may be obtained with these specimens in which case Category C bonus does not apply



Exhibit C15



IRB Meeting Date: February 3, 2015	Expiration Date: February 5, 2016
BIOMED IRB CONTINUAL APPROVAL NOTIFICATION	

Study Title: Tissue Procurement for Non-therapeutic Research

Sponsor: [REDACTED]

Protocol Number: 101-01

Protocol Dates: January 24, 2011
Amendment # 1 dated January 24, 2011

Principal Investigator: [REDACTED]
Approved Facilities:

BioMed IRB has approved the above referenced study as having satisfied the criteria for continuing research at the February 3, 2015 meeting. This approval is effective from February 5, 2015.

The IRB committee has determined that the risk assessment for this study is Minimal. The IRB has determined that continuing review of this study will occur annually.

Approximately thirty days before February 5, 2016, you will be required to complete a Continuing Review Report Form. Continual review is the responsibility of the Principal Investigator. If you do not receive this form, please contact the IRB office immediately. The Continual Review Report Form must be received by the due date to allow ample time for ongoing review before the study's expiration date.

IRB approval is granted conditional on your adherence to the following requirements:

- The information submitted to the IRB is true and correct.
- Research will be conducted in accordance with the approved protocol.
- All materials used to recruit study subjects must be pre-approved by the IRB.
- Additional safeguards will be followed when vulnerable subjects, such as children or minors, are participants in the study.

The investigator agrees to report the following information to the IRB:

- Serious Adverse Events occurring at your site should be reported within ten (10) calendar days from the date of discovery by the investigator.
- Serious Adverse Events (IND Safety Reports) occurring at other sites should be reported no later

Exhibit C16

TITLE 21--FOOD AND DRUGS
CHAPTER I--FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
SUBCHAPTER A--GENERAL
PART 56 INSTITUTIONAL REVIEW BOARDS

Subpart D--Records and Reports
Sec. 56.115 IRB records.

(a) An institution, or where appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

- (1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.
 - (2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.
 - (3) Records of continuing review activities.
 - (4) Copies of all correspondence between the IRB and the investigators.
 - (5) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, a member of governing panel or board, stockholder, paid or unpaid consultant.
 - (6) Written procedures for the IRB as required by 56.108 (a) and (b).
 - (7) Statements of significant new findings provided to subjects, as required by 50.25.
- (b) The records required by this regulation shall be retained for at least 3 years after completion of the research, and the records shall be accessible for inspection and copying by authorized representatives of the Food and Drug Administration at reasonable times and in a reasonable manner.
- (c) The Food and Drug Administration may refuse to consider a clinical investigation in support of an application for a research or marketing permit if the institution or the IRB that reviewed the investigation refuses to allow an inspection under this section.

Exhibit C17

January 3, 2011

Protocol Number: [REDACTED]

Protocol Date: January 24, 2011

Study Title: Tissue Procurement for Non-therapeutic Research

Sponsor: [REDACTED]

Primary Investigator: [REDACTED]

Standard Operating Procedure

1. Purpose

This SOP covers Tissue Procurement for Non-therapeutic Research.

This protocol describes the set up, equipment and procedures for procuring cadaverous tissue to use in non-therapeutic research.

2. Scope

This applies to all procurements for non-therapeutic research.

3. Prerequisites

The day before surgery:
Check WebOffice for researcher requests;
Determine your location for the next day;
Call the clinic to verify how many surgeries are scheduled.

4. Responsibilities

It is the procurement technician's responsibility to bring the general and medical supplies listed in this SOP to each clinic. The clinic staff will identify donors. It is the procurement technician's responsibility to retrieve the tissue and package it appropriately for the given researcher. It is also the procurement technician's responsibility to update WebOffice so everyone is aware what tissue has been obtained and for whom.

5. Equipment

General supplies:
Current blank RPR (Researcher Procurement Record)
logs Pre-printed FedEx forms

[REDACTED]

Exhibit C17

General supplies:

Current blank RPR (Researcher Procurement Record) logs
Pre-printed FedEx forms

Medical supplies:

Scrubs
RPMI
Hepes Solution with antibiotic added
Petri dishes
Shipping boxes
Personal instruments to procure
Conical tubes
Mini urine specimen cups
Cold packs

6. Procedure

On the day of surgery, the following steps are taken to procure tissue from POC: Arrive at the clinic and change into scrubs.

Inform the consenting staff of which gestations to consent. Place chucks down.

Set up the light box, instruments, RPMI, Hepes, petri dishes and tubes or cups. Set up enough blood draw bags for the day.

Get out the sequential numbering labels.

Print a copy of the day's Procurement Schedule.

Follow along with the chart flow so you know what gestations to expect.

If required, initiate blood draw from clinic staff. We do NOT want a patient label on the blood tube. Give the clinic staff the blood bags and correct blood tubes for the given researcher. If these are blood samples to accompany the tissue sample, number them in order as soon as complete. See the SOP "Maternal Blood Samples for Infectious Disease Testing" for specific guidance on those blood samples.

Once a consenting donor has undergone surgery, procure the specimen(s) on the petri dish and light box.

With minimal manipulation after isolating the specimen(s), move the petri dish to the packaging room and carefully transfer the specimen(s) to the appropriate container (conical tube or mini urine specimen cup). Add the researchers media of choice and seal with parafilm.

Keep track of time, gestation, fetal foot size or sono report and date.

Package the specimens and blood tubing for shipment once all specimens have a number. Be sure to place them on ice or cold packs.

Note the specimen numbers on the

RPR log. For delivery:

If the specimen is local courier, be sure to call the courier once you know you have obtained an appropriate specimen.

If the specimen is going by FedEx, be sure to know the local cut-off times for your closest FedEx office. Each FedEx location is listed under "contacts" in WebOffice. Always know which FedEx you will be dropping off at and consider traffic. Log on to www.fedex.com with your assigned log on and password. Print shipping label and affix to box.

All instruments must be sterilized once you are done for the day.

Clean the area(s) thoroughly and discard all unused POC in the appropriate receptacle. Gather your supplies to leave and change out of your scrubs.

Exhibit C17

7. Cautions

Health and Safety Warnings

All blood and tissue should be handled with standard Biohazard care. Gloves and other personal protective equipment should be worn at all times when handling blood or tissue. Meticulous care should be taken while using sharp dissecting instruments. Immediately report any injury to [REDACTED]

Interferences

Care should be taken to preserve the longevity of the equipment. This includes dissecting tools, light boxes, packaging supplies and media. Gentle handling of specimens is essential to quality control. Do not move or manipulate the tissue any more than is absolutely necessary. Ensure proper printer functioning first thing in the day, and contact [REDACTED] immediately if there are printer problems.

If you have an excellent sample with no researcher listed on today's schedule, please contact [REDACTED] immediately, and they will work to call researchers who may be interested even though they are not currently scheduled.

8. References

- Researcher Procurement Record
- MSDS for RPMI
- MSDS for Hepes
- MSDS for Antibiotic
- SOP "Blood Samples for Infectious Disease"
- HIPAA
- Biohazard
- Presentation

I agree to conduct this clinical study in accordance with the design and specific provisions of this protocol; deviations from the protocol are acceptable only with a mutually agreed upon protocol amendment with the IRB approval. I also agree to report all information or data in accordance with the protocol, and in particular I agree to report serious adverse experiences as defined in this protocol.

[REDACTED]

Signature of Principal Investigator

3/17/2011

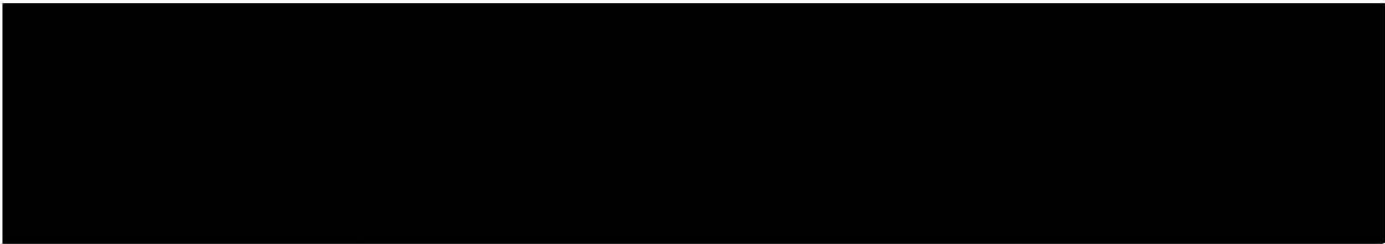
Date

[REDACTED]

Printed Name of Principal Investigator



Exhibit D1



9/5/12



Invoice Number: [redacted]

Please include the invoice number on all payments to [redacted]

For August 2012 sample collections.

Fresno (FL)
38 POCs x \$55.00 = \$2090.00 ✓
49 Bloods x \$10.00 = \$490.00 ✓

Sacramento, "B" Street (BC)
68 POCs x \$55.00 = \$3740.00 ✓
80 Blood x \$10.00 = \$800.00 ✓

Fruitridge (FR)
0 POCs x \$55.00 = 0
0 Bloods x \$10.00 = 0

San Jose (SJ)
65 POCs x \$55.00 = \$3575.00 ✓
63 Bloods x \$10.00 = \$630.00 ✓

Mountain View (MV)
0 POCs x \$55.00 = 0
0 Bloods x \$10.00 = 0

Seaside (SS)
0 POCs x \$55.00 = 0
0 Bloods x \$10.00 = 0

N. Highlands (NH)
0 POCs x \$55.00 = 0
0 Bloods x \$10.00 = 0

Stockton (NC)
0 POCs x \$55.00 = 0
0 Bloods x \$10.00 = 0

Eastland Plaza (EP)
0 POCs x \$55.00 = 0
4 Bloods x \$10.00 = \$40.00

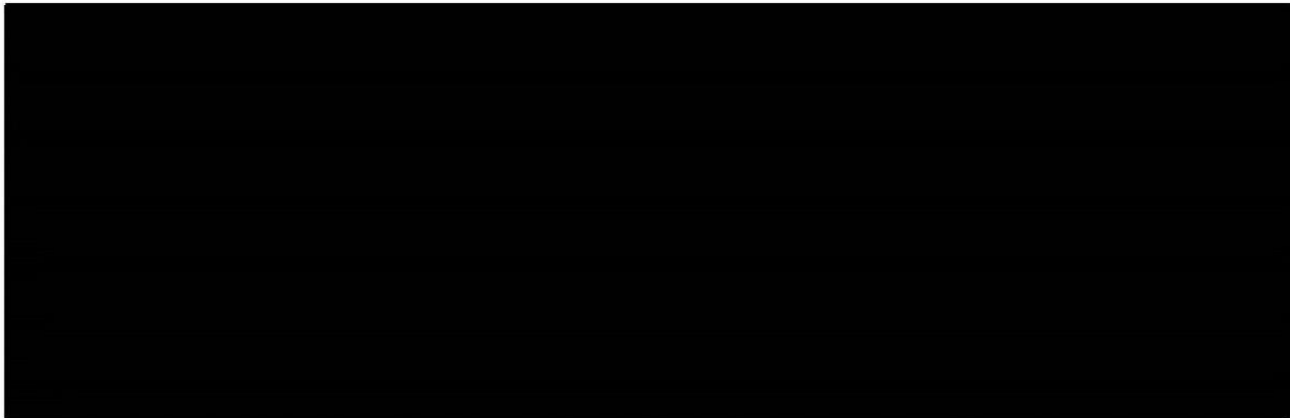
Total = \$11,365.00

Please remit payment to:




ENTERED
9/11/12


Exhibit D2



March 14, 2011



Invoice Number: 

Please include the invoice number on all payments to 

For January and February 2011 sample collections:

Stockton (NC)

1 POC's x \$55.00 = \$55.00

121 Bloods x \$10.00 = \$1210.00

Sacramento, "B" Street (BC)

27 POC's x \$55.00 = \$1485.00

327 Blood's x \$10.00 = \$3270.00

Fresno (FL)

12 POC's x \$55.00 = \$660.00

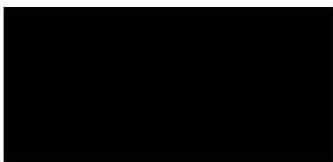
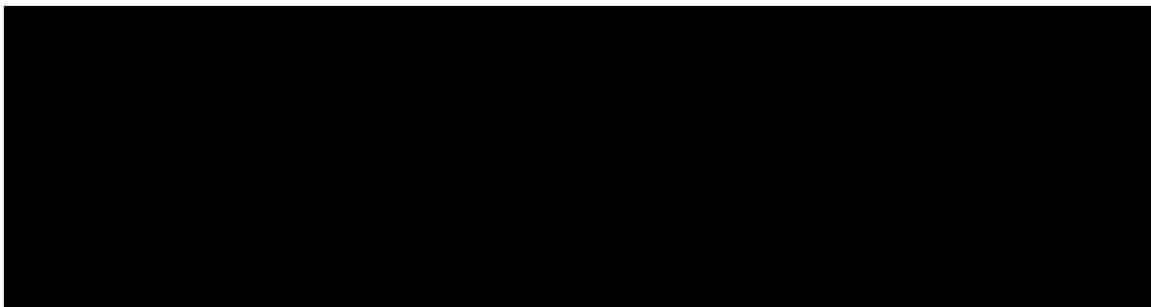
238 Bloods x \$10.00 = \$2380.00

Total = \$9060.00


Please remit payment to:




Exhibit D3



February 17, 2014

Invoice Number: 

Please include the invoice number on all payments to 
Payments are due and payable within 30 days.

For January 2014 sample collections.

- | | |
|--|---|
| ✓ Fresno (FL)
1 POCs x \$55.00 = \$55
5 POC's x \$35.00 = \$175
68 Bloods x \$10.00 = \$680 | ✓ Sacramento, "B" Street (BC)
18 POCs x \$55.00 = \$990
0 POCs x \$35.00 = \$0
40 Bloods x \$10.00 = \$400 |
| Fruitridge (FR)
0 POCs x \$55.00 = \$0
0 Bloods x \$10.00 = \$0 | ✓ San Jose (SJ)
25 POCs x \$55.00 = \$1375
0 POCs x \$35.00 = \$0
74 Bloods x \$10.00 = \$740 |
| ✓ Mountain View (MV)
2 POCs x \$55.00 = \$110
0 Bloods x \$10.00 = \$0 | ✓ Seaside (SS)
7 POCs x \$55.00 = \$385
0 POC x \$35.00 = \$0
8 Bloods x \$10.00 = \$80 |
| N. Highlands (NH)
0 POCs x \$55.00 = \$0
0 Bloods x \$10.00 = \$0 | ✓ Stockton (NC)
13 POCs x \$55.00 = \$715
1 POC x \$35.00 = \$35
27 Bloods x \$10.00 = \$270 |
| Eastland Plaza (EP)
0 POCs x \$55.00 = \$0
0 Bloods x \$10.00 = \$0 | Total = \$6010.00 |

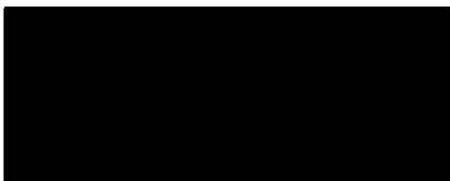


Exhibit E1

Redacted

PURCHASE ORDER

Winter Closure Warning: [Redacted] will be closed for Winter Break from Monday, December 22, 2013 through January 4, 2014. [Redacted] will reopen on Monday, January 3, 2014. No staff will be here to receive deliveries during this closure unless they have made special arrangements with you to be here to receive this shipment. If you cannot deliver by Friday, December 19, 2013 please reconfirm your order to arrive as soon as possible on or after Monday January 3, 2014.

DATE	PURCHASE ORDER NO.
14-NOV-2014	60836838
PAGE NO.	REVISION NO.
Page 1 of 1	0

To:

United States
ATTN : [Redacted]

Ship To:

Redacted

ORDER PLACED WITH	PO# Destination	FREIGHT	VENDOR: If freight not included in price, prepay and add	DELIVERY DATE 19-NOV-2014	TERMS N30
ITEM NUMBER	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	5231 4 Human Fetal Brains As described in Invoice # 5231	1	EACH	3,340.00	3,340.00
TAXABILITY			Authorized Signature	Direct questions to	ESTIMATED TAX: 292.25
Exempt because items are for resale. California Sellers Permit: [Redacted]	Exempt as purchase on behalf of U.S. Government	Exempt because use is exempted.	Redacted	Redacted	TOTAL: 3,632.25
			Chief Procurement Officer		
<small>Unless specifically stated otherwise, [Redacted] is subject to Sales Tax. Suppliers should invoice for taxable items. If a Supplier does not have the authority to collect California Sales Tax, [Redacted] will advise the tax and remit to the State Board of Equalization in the form of Use Tax. California Revenue and Taxation Code, Section 11662, require withholding for payments made to nonresidents of California for income earned in California related to independent contractor services, rent, and royalty distributions. For more information on this requirement reference http://www.ftb.ca.gov/forms/2011/1011.pdf.</small>					

Exhibit E2

Redacted

PURCHASE ORDER

DATE	PURCHASE ORDER NO.
25-SEP-2014	60762875
PAGE NO.	REVISION NO.
Page 1 of 1	0

To: /

Ship To:

United States
ATTN : **Redacted**

Redacted

ORDER PLACED WITH	FOB Destination	FREIGHT	VENDOR: If freight not included in price, prepay and add	DELIVERY DATE 27-SEP-2014	TERMS N30		
ITEM NUMBER	DESCRIPTION			QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	#FT0101F Human Fetal Tissue: Gestation requirements: 12-20 weeks			10	EACH	595.00	5,950.00
2	#PKG0100 Packaging- Gel Pack or Wet Ice			10	EACH	15.00	150.00
3	#SD00103 Local Delivery Flat Rate - 101 to 150 miles			10	EACH	225.00	2,250.00

TAXABILITY			Authorized Signature	Direct questions to	ESTIMATED TAX:	730.64
Exempt because items are for resale. California Sellers Permit: Redacted	Exempt as purchase on behalf of U.S. Government	Exempt because use is exempted.	Redacted	Redacted	TOTAL:	9,080.64
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Chief Procurement Officer			

Unless specifically stated otherwise, **Redacted** is subject to Sales Tax. Suppliers should invoice for taxable items. If a Supplier does not have the authority to collect California Sales Tax, **Redacted** will accrue the tax and remit to the State Board of Equalization in the form of Use Tax.
California Revenue and Taxation Code, Section 18662, require withholding for payments made to nonresidents of California for income earned in California related to independent contractor services, rent, and royalty distributions. For more information on this requirement reference <https://www.ftb.ca.gov/forms/2012/12,1017.pdf>.

Exhibit E3

Redacted

PURCHASE ORDER

DATE	PURCHASE ORDER NO.
09-FEB-2015	60891260
PAGE NO.	REVISION NO.
Page 1 of 1	0

To:

Ship To:

United States
ATTN : **Redacted**

Redacted

ORDER PLACED WITH	FOB Destination	FREIGHT	VENDOR: If freight not included in price, prepay and add	DELIVERY DATE 09-FEB-2015	TERMS N30
ITEM NUMBER	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	FT0101F Human Fetal Tissue (Estimate 5251) - Gestation requirements: 18-19 weeks - - upper and lower limbs with hands and feet	1	EACH	890.00	890.00
2	FT0101F Human Fetal Tissue (Estimate 5251) - Calvarium - Matched to upper and lower limbs	1	EACH	595.00	595.00
TAXABILITY			Authorized Signature	Direct questions to	ESTIMATED TAX: 129.95
Exempt because items are for resale, California Sellers Permit:	Exempt as purchase on behalf of U.S. Government	Exempt because use is exempted.	Redacted	Redacted	TOTAL: 1,614.95
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Chief Procurement Officer		

Unless specifically stated otherwise, **Redacted** is subject to Sales Tax. Suppliers should invoice for taxable items. If a supplier does not have the authority to collect California Sales Tax, **Redacted** will accrue the tax and remit to the State Board of Equalization in the form of Use Tax.

California Revenue and Taxation Code, Section 18662, require withholding for payments made to nonresidents of California for income earned in California related to independent contractor services, rent, and royalty distributions. For more information on this requirement reference https://www.ftb.ca.gov/forms/2012/12_1017.pdf.

Exhibit E4

Okay to Pay Invoice [Redacted]

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[Redacted]

Initiator = [Redacted]

Invoice

Date	Invoice #
01/19/2012	1439
Terms	Due Date
Due on receipt	01/19/2012

Bill To: [Redacted]

Purpose: the tissues are used for RNA extraction to perform genome-wide gene expression of brains exposed to environmental stressors

Ship Via	Researcher	Shipping
FedEx	[Redacted]	[Redacted]

Description	Qty	Price	Amount Due
01/14/2012			
• Fetal Brain Procurement Project: 5-24 wks - exposed to environmental factors, e.g. seizure, infection, hypoxia, alcohol, smoking, drug abuse. HIV Testing, Snap Freezing, Shipped on Dry Ice. Sample to be provided intact or in 4 parts/tube (anterior, middle, posterior cortex, and brain stem) POC #01, 02, 04, 05	4:00	715.00	2,860.00
• Fedex Priority Overnight	1:00	85.00	85.00
Subtotal: 01/14/2012 = \$2,945.00			
01/17/2012			
• Fedex Priority Overnight	1:00	85.00	85.00
• Fetal Brain Procurement Project: 5-24 wks - exposed to environmental factors, e.g. seizure, infection, hypoxia, alcohol, smoking, drug abuse. HIV Testing, Snap Freezing, Shipped on Dry Ice. Sample to be provided intact or in 4 parts/tube (anterior, middle, posterior cortex, and brain stem) POC #01, 02, 03	3:00	715.00	2,145.00
Subtotal: 01/17/2012 = \$2,230.00			
01/19/2012			
• Credit for 1/14/12 Samples - Fetal Brain Procurement Project: 5-24 wks - exposed to environmental factors, e.g. seizure, infection, hypoxia, alcohol, smoking, drug abuse. HIV Testing, Snap Freezing, Shipped on Dry Ice. Sample to be provided intact or in 4 parts/tube (anterior, middle, posterior cortex, and brain stem) POC #01, 02, 04, 05	-4	715.00	-2,860.00
• Credit for 1/14/12 - Fedex Priority Overnight	-1	85.00	-85.00
Subtotal: 01/19/2012 = \$ -2,945.00			
Total			\$2,230.00

[Redacted]

X [Redacted] Administrator [Redacted] 01/27/2012

[Handwritten Signature]

Exhibit G

Who Bears the Reasonable Cost of Tissue Procurement?

<u>Abortion Clinic</u>	<u>Procurement Business</u>	<u>Customer</u>
	Tissue Tech Salary Bonus to Tissue Tech Payment to AC for Tissue Consent to Obtain Tissue Tissue Procurement Blood Procurement	Shipping of Tissue Supplies for Tissue Procurement Payment to PB for Tissue Infectious Disease Screening

Explanation: The AC has **no costs** so the payments from the PB to the AC are pure profit. All costs are born by the PB or the Customer. The payments from the Customer to the PB exceed its cost by a factor of 300 to 400 percent.

Exhibit H

REP. HENRY WAXMAN

ON THE SALE OF FETAL TISSUE

“This amendment that I am offering as a substitute would enact the most important safeguards, and those are the safeguards to prevent any sale of fetal tissue for any purpose, just not for the purpose of research. It would be abhorrent to allow for a sale of fetal tissue and a market to be created for that sale.”

-139 Cong. Rec. H1131 (Mar. 10, 1993)

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**UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA**

PLANNED PARENTHOOD FEDERATION)
OF AMERICA, INC., et al.,)

Plaintiffs,

vs.

CENTER FOR MEDICAL PROGRESS, et)
al.,)

Defendants.)

) Case No. 16-cv-00236 (WHO)
)
) Judge William H. Orrick, III
)
) [Proposed] Order granting Defendants'
) Motion to Strike Under Section 425.16 of
) the California Code of Civil Procedure
)
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[PROPOSED] ORDER

Defendants Center for Medical Progress, and BioMax Procurement Services, David Daleiden, and Gerardo Adrian Lopez (“Defendants”) have moved to Strike Under Section 425.16 of the California Code of Civil Procedure.

Having considered the arguments and papers submitted, the Court hereby grants Defendants’ Motion to Strike Under Section 425.16 of the California Code of Civil Procedure.

IT IS SO ORDERED.

Dated: May ____, 2016

William H. Orrick