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14 *Attorneys for Plaintiffs the Center for Medical*  
 15 *Progress and David Daleiden*

16 **UNITED STATES DISTRICT COURT**  
 17 **CENTRAL DISTRICT OF CALIFORNIA**

18 THE CENTER FOR MEDICAL  
 19 PROGRESS, a California corporation, and  
 20 DAVID DALEIDEN, an individual,

21 Plaintiffs,

22 vs.

23 XAVIER BECERRA, in his official  
 capacity as Attorney General of California;  
 24 PLANNED PARENTHOOD  
 25 FEDERATION OF AMERICA, a New  
 York corporation; PLANNED  
 26 PARENTHOOD AFFILIATES OF  
 27 CALIFORNIA, a California corporation;  
 28 NATIONAL ABORTION FEDERATION,

Case No.

**COMPLAINT FOR DAMAGES,  
 DECLARATORY, AND  
 INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

1 a Missouri corporation; STEMEXPRESS, a  
2 California LLC; KAMALA HARRIS, an  
3 individual; JILL HABIG, an individual;  
4 BETH PARKER, an individual; BRIAN  
5 CARDWELL, an individual; REYE DIAZ,  
6 an individual; and DOES 1 through 10,  
7 inclusive,

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Defendants.

**JURISDICTION AND VENUE**

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1. This action arises under 42 U.S.C. § 1983; 42 U.S.C. § 1985(3); 42 U.S.C. § 1986, and the Supremacy Clause of the United States Constitution found at Article VI, Clause 2.

2. Federal question jurisdiction is conferred on this Court under 28 U.S.C. § 1331.

3. This action’s claims for damages, declaratory, and injunctive relief are all authorized by 42 U.S.C. §§ 1983, 1985, and 1986. Declaratory and injunctive relief are also authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court. Attorneys’ fees and costs are authorized by 42 U.S.C. § 1988.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that gave rise to this action’s claims occurred in this judicial district.

**INTRODUCTION**

5. This complaint seeks justice for a brazen, unprecedented, and ongoing conspiracy to selectively use California’s video recording laws as a political weapon to silence disfavored speech. David Daleiden became the first journalist ever to be criminally prosecuted under California’s recording law, not because of the *method* of video recording he utilized in his investigation—which is common in investigative journalism in this state—but because his investigation revealed and he published “shock[ing]” *content* that California’s Attorney General and the private party co-conspirators wanted to cover up. Defendants seek their “pound of flesh” from Mr. Daleiden and to chill other journalists from investigating and reporting on that same content.

6. This “shocking” content included video footage of leadership at Planned Parenthood Federation of America (PPFA), PPFA’s affiliates, and their fetal tissue trade partners StemExpress and others making multiple shocking and callous

1 admissions about exchanging fetal body parts for money on a per-specimen basis,  
2 sometimes using special abortion techniques to deliver living fetuses as intact as  
3 possible for harvesting, and knowingly blessing these practices at the highest levels  
4 of the professional abortion industry, despite federal and state laws forbidding these  
5 activities.

6 7. The Center for Medical Progress (CMP) captured these admissions  
7 through its undercover journalistic investigations, reported its findings to law  
8 enforcement, and then began to release the videos to the public in July 2015. The  
9 videos prompted two comprehensive, year-long Congressional investigations, one at  
10 the Senate Judiciary Committee and one at the House Energy & Commerce  
11 Committee's Select Investigative Panel. These two nationwide investigations  
12 reviewed tens of thousands of pages of primary source documents and conducted  
13 hundreds of hours of witness interviews, ultimately issuing dozens of criminal and  
14 regulatory referrals for PPFA, its affiliates, and its business partners in the fetal tissue  
15 trade to local, state, and federal law enforcement.

16 8. After CMP published its videos, Defendants met in secret with Kamala  
17 Harris in her individual capacity and in her capacity as the California Attorney  
18 General, seeking her aid in preventing further investigations of their fetal body parts  
19 trade and conspiring to silence the reporting of Mr. Daleiden and CMP by  
20 orchestrating the first and only prosecution of a journalist under California's video  
21 recording law, as well as creating new legislation with the intent to chill future  
22 speech containing similar investigations and messages that Mr. Daleiden and CMP  
23 pioneered.

24 9. Defendants' actions violated and continue to violate Mr. Daleiden's and  
25 CMP's free speech rights and Equal Protection rights under the First and Fourteenth  
26 Amendments. Mr. Daleiden and CMP bring this current action to hold accountable  
27 the private parties at Planned Parenthood, NAF, and elsewhere who spearheaded  
28 these constitutional violations, and Mr. Daleiden and CMP seek declaratory and

1 injunctive relief in order to vindicate the First Amendment rights of all Americans  
2 and ensure that Defendants are held to account for their discriminatory and invidious  
3 abuse of laws.

#### 4 **PARTIES**

5 10. Plaintiff David Daleiden is a citizen journalist with more than a decade  
6 of experience in conducting investigative research on the abortion industry. In 2013,  
7 Mr. Daleiden started the Center for Medical Progress (CMP) to pursue sophisticated,  
8 deep, and impactful investigative journalism projects pertaining to contemporary  
9 bioethical issues. Mr. Daleiden developed and executed the organization's first major  
10 initiative, the 30-month-long "Human Capital Project" investigation, documenting  
11 the illegal sale of human fetuses and their organs and tissues from abortions  
12 involving Planned Parenthood, the National Abortion Federation, StemExpress, and  
13 other organizations. Daleiden is a resident of Orange County, California.

14 11. Plaintiff CMP is a 501(c)3 non-profit organization based in Orange  
15 County, California. The organization consists of a group of citizen journalists  
16 dedicated to monitoring and reporting on medical ethics and advances. CMP opposes  
17 any interventions, procedures, and experiments that exploit the unequal legal status  
18 of any class of human beings. CMP envisions a world in which medical practice and  
19 biotechnology ally with and serve the goods of human nature and do not destroy,  
20 disfigure, or work against them.

21 12. Defendant Xavier Becerra is the current Attorney General of the State of  
22 California, and in that capacity leads the California Department of Justice. Becerra is  
23 sued only in his official capacity.

24 13. Defendant Planned Parenthood Federation of America (PPFA) is the  
25 largest provider of abortion services in America. PPFA is the parent organization that  
26 oversees approximately 49 affiliated franchises across the country, all of which are  
27 required by PPFA to perform abortions. In 2018, the most recent year for which  
28 numbers are available, the Planned Parenthood organization reported 345,672

1 abortions, approximately 40% of the total abortions performed in the United States.  
2 PPFA is a 501(c)(3) organization headquartered in New York and receives taxpayer  
3 funding.

4 14. Defendant Planned Parenthood Affiliates of California (PPAC) is the  
5 umbrella group for the seven Planned Parenthood franchises located in California.  
6 PPAC is a 501(c)(4) advocacy public policy, lobbying, and advocacy group,  
7 headquartered in California.

8 15. Defendant Beth Parker is General Counsel for several California  
9 Planned Parenthood affiliates, and through early 2018, was the Chief Legal Counsel  
10 of Defendant PPAC. Parker is a resident of California.

11 16. Defendant National Abortion Federation (NAF) is a membership-based  
12 trade organization for abortion providers. NAF members collectively provide 50% of  
13 the abortions performed nationwide. NAF members include individuals, Planned  
14 Parenthood affiliates, and independent abortion networks or clinics. Approximately  
15 50% of NAF's Board of Directors and membership consists of Planned Parenthood  
16 representatives and affiliates. Every year, NAF hosts a large tradeshow for its  
17 members. NAF is a 501(c)(3) organization incorporated in Missouri and  
18 headquartered in Washington, D.C.

19 17. Defendant StemExpress, LLC (StemExpress) is a human tissue and  
20 biologics procurement company that buys and transfers aborted human fetuses and  
21 their organs and tissues for valuable consideration. Since its founding in 2010,  
22 StemExpress has purchased and transferred aborted fetal tissue for valuable  
23 consideration from multiple Planned Parenthood affiliates, including affiliates of  
24 Defendant PPAC. StemExpress has also sponsored NAF trade shows. StemExpress  
25 is a Limited Liability Company organized and headquartered in California.

26 18. Defendant Kamala Harris is the junior U.S. Senator from California and  
27 was Attorney General of California from 2011 to 2017. Harris is sued only in her  
28 personal capacity. Harris is a resident of California.

1 19. Defendant Jill Habig was a political attaché in Defendant Harris’  
2 executive staff and served as Special Assistant Attorney General and Special Counsel  
3 to the Attorney General from 2013 to 2016. From 2016 to 2017, Habig served as  
4 Harris’ campaign manager for U.S. Senate. Habig is sued only in her personal  
5 capacity. Habig is a resident of California.

6 20. Defendant Brian Cardwell is a California Department of Justice Agent.  
7 Cardwell is sued in his personal capacity. Cardwell is a resident of California.

8 21. Defendant Reye Diaz is a California Department of Justice Agent. Diaz  
9 is sued in his personal capacity. Diaz is a resident of California.

10 22. The names and capacities of Defendants named herein Does 1 through  
11 10 are unknown or not yet confirmed. Plaintiffs are informed and believe and thereon  
12 allege that each of the Doe defendants is responsible in some manner for the  
13 occurrences herein alleged, and that Plaintiffs’ damages as herein alleged were  
14 proximately caused by their conduct. Plaintiffs will ask leave to amend this  
15 Complaint to show the true names and capacities of each Doe Defendant at such time  
16 as the same has been ascertained. Plaintiffs allege on information and belief that  
17 Defendants, and each of them, were agents of each other, and that each defendant  
18 gave consent to, ratified, and/or authorized the conduct of each other defendant.

## 19 **FACTUAL BACKGROUND**

### 20 **The Proud American History of Undercover Investigative Journalism**

21 23. “Investigative journalism has long been a fixture in the American  
22 press.” *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1189 (9th Cir. 2018)  
23 (“*ALDF v. Wasden*”) (citing Brooke Kroeger,<sup>1</sup> *Undercover Reporting: An American*  
24 *Tradition*, IRE J. 20 (Spring 2014)).

25 24. “[O]ver and over again, ‘going undercover’ has proved to be an  
26 indispensable tool in the high-value, high-impact journalism of changing systems and  
27 righting wrongs.” BROOKE KROEGER, UNDERCOVER REPORTING: THE TRUTH ABOUT

28 <sup>1</sup> Professor of Journalism at NYU’s Arthur L. Carter Journalism Institute.

1 DECEPTION 8 (2012). “[U]ndercover reporting has also been at the forefront of  
2 important published and broadcast efforts to create awareness, correct widespread  
3 misconceptions, provoke outrage, and give a human face—whether that face inspires  
4 horror or compassion or a little of both—to any number of institutions and social  
5 worlds that otherwise would be ignored, misunderstood, or misrepresented for lack  
6 of open access.” *Id.* at 8–9. “Like almost no other reportorial approach, setting out  
7 deliberately to fool some of the people at least some of the time has repeatedly  
8 produced important, compelling and—this might be the key to the method’s enduring  
9 popularity—often riveting results.” *Id.* at 9.

### 10 **California’s Surreptitious Recording Regime**

11 25. In 1872, the California Legislature passed former Cal. Penal Code §  
12 640, which prohibited the tapping of telephone or other communication lines, except  
13 with the consent of one of the participants—making California a “one-party consent”  
14 jurisdiction with respect to recording telephone conversations.

15 26. In 1941, the California Legislature passed former Cal. Penal Code  
16 § 653h, which prohibited installing a dictograph—a hidden microphone transmitting  
17 sounds to another place—in a “house, room, apartment, tenement, office, shop,  
18 warehouse, store, mill, barn, stable, or other building, tent, vessel, railroad car,  
19 vehicle, mine or any underground portion thereof” without the consent of the  
20 owner/lessee of the property.

21 27. In 1963, the California Legislature passed former Cal. Penal Code  
22 § 653j, which prohibited generally recording the conversations of others unless at  
23 least one party to that conversation consented.

24 28. Former Section 653j, however, only applied to a “confidential  
25 communication,” defined as follows: “any communication carried on in  
26 circumstances as may reasonably indicate that any party to the communication  
27 desires it to be confined to the parties thereto, but excludes a communication made in  
28 a public gathering or in any legislative, judicial, executive, or administrative



1 proceeding open to the public, or in any other circumstance in which the parties to  
2 the communication may reasonably expect that the communication may be overheard  
3 or recorded.”

4 29. Finally, in 1967, the California Legislature replaced former Sections  
5 640, 653h, and 653j, with a comprehensive Invasion of Privacy Act, located at Cal.  
6 Penal Code § 630, et seq. The California Legislature determined that “advances in  
7 science and technology have led to the development of new devices and techniques  
8 for the purpose of eavesdropping upon private communications.” Cal. Penal Code  
9 § 630.

10 30. According to the California Legislature, generally the Invasion of  
11 Privacy Act converted California from a “one-party consent” jurisdiction, to a “two-  
12 party consent” jurisdiction. The Legislative Counsel’s Digest states: “With respect to  
13 recording . . . , prohibits such acts by any person so acting without consent of all  
14 parties to the communication, rather than limiting the prohibitions to persons . . .  
15 acting without the consent of any party to the communication.” Other aspects of prior  
16 law, however, were carried over into the new Invasion of Privacy Act.

17 31. One such aspect was the limitation of the statute to not apply in public  
18 gatherings. Both former Section 653j(c) and current Section 632(c) include the same  
19 definition of a “confidential communication.”

20 32. Further, in light of the conversion of California to a “two-party consent”  
21 jurisdiction, the California Legislature felt the need to add a new Section 633.5.  
22 According to a summary from a California legislator, Section 633.5 maintains the  
23 “one-party consent” rule if the recording is “reasonably believed to be necessary in  
24 investigation of crimes.” As stated by the Legislative Digest, under Section 633.5,  
25 the focus is on the *purpose* of the recording, and “private citizens may legally record  
26 a confidential communication if they reasonably believe it to be necessary in  
27 furtherance of an investigation into the crimes of extortion, kidnaping, bribery, any  
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1 violent felony to the person, or lewd or annoying phone calls.”<sup>2</sup>

2 33. Section 633.5 recognizes a protected purpose for surreptitious  
3 recordings in California. Since its passage, courts and the government have  
4 consistently understood Section 633.5 as concerning the purpose or motive of the  
5 party making the recording. For example, in 1997, the Ninth Circuit affirmed the  
6 grant of a defense motion for summary judgment on the following basis:

7 Even if Mr. Lipset might have reason to be skeptical of Mrs.  
8 Merdita’s account, he had no reason to doubt that recording her  
9 conversations with Mrs. Gensburg would “relate to” the  
10 commission by Mrs. Gensburg of the crime of extortion. It might  
11 relate by proving Mrs. Gensburg innocent, by proving her guilty,  
or by being indeterminate, but however the evidence turned out,  
it would be precisely for this statutorily permitted *purpose*.

12 *Gensburg v. Lipset*, No. 94-16939, 1997 U.S. App. LEXIS 16276377, at \*8-9 (9th  
13 Cir. June 30, 1997) (*italics added*).<sup>3</sup> Two years later, the California Attorney General  
14 issued an opinion, stating that “there is no violation of the Act’s provisions if the  
15 recording is made for a proper *purpose*.” 82 Cal. Op. Att’y Gen. 148, No. 99-403,  
16 1999 WL 566799 (1999) (*italics added*).

17 34. The California Supreme Court explicitly endorsed the purpose-based  
18 exception to the two-party consent rule in the 1991 case *Lubetzky v. State Bar*, and  
19 every California case applying the Penal Code section 633.5 defense also endorses  
20 this rule. *See, e.g., People v. Parra*, 165 Cal. App. 3d 874, 880 (1985) (“[The  
21 defendant’s] testimony of why he recorded the appellant’s voice was sufficient to  
22 except that recording from the prohibition of section 632.”) (*emphasis added*);  
23 *People v. Baker*, 88 Cal. App. 3d 115, 123 (1978) (verbal evidence of potential  
24 extortion sufficient to permit recording of confidential communication); *People v.*  
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26 <sup>2</sup> Under California law, Section 632 and 633.5 should be read together, and not as if  
27 Section 633.5 were an exception or defense to Section 632. *See Ex parte Hornef*, 154  
28 Cal. 355, 359–60 (1908); *People v. Gott*, 26 Cal. App. 4th 881, 886 (1994).

<sup>3</sup> Plaintiffs cite this opinion solely as historical background.

1 *Suite*, 101 Cal. App. 3d 680, 688–689 (1980) (university bomb threat permitted  
2 university to record “all incoming calls on their two emergency lines” in order to  
3 potentially gather evidence of criminality).

4 35. Minor amendments to California’s Invasion of Privacy Act have been  
5 made at least half-a-dozen times in the following years. But the next significant  
6 change did not occur until the “Planned Parenthood Amendment” of 2016, which in  
7 the wake of Plaintiffs’ publications about the trade in aborted fetal organs and tissues  
8 added Cal. Penal Code § 632.01, which law prohibited the publication of any  
9 “confidential communication” of a health care provider obtained in a manner that  
10 violated California Penal Code § 632.

### 11 **California Does Not Prosecute Newsgathering Under Its Recording Regime**

12 36. California is no stranger to undercover journalism methods that involve  
13 surreptitious recording. Both citizen journalists as well as journalists working for  
14 large news gathering companies have conducted undercover investigations  
15 repeatedly and openly in California.

16 37. For example, in 2008, NBC4 Los Angeles sent two reporters to work  
17 undercover as janitors for eight months at a Los Angeles elementary school and  
18 recorded other janitors falsifying records of flushing fountains daily to protect  
19 children from lead exposure.<sup>4</sup> The other janitors depicted did not consent to the  
20 recordings, and on information and belief, numerous recordings were made in  
21 settings where conversations with other janitors could not be overheard. NBC4  
22 published its findings and video evidence on the evening news and even received an  
23 Investigative Reporters and Editors award for their publication, which they entitled,  
24 “Contaminated Water.” California did not prosecute the two reporters, Joel Grover  
25 and Matt Goldberg.

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26 <sup>4</sup> *See* Grover, Joel et al., “Contaminated Water,” KNBC – Los Angeles, April 24,  
27 2008,  
28 [http://sites.dlib.nyu.edu/undercover/sites/dlib.nyu.edu.undercover/files/documents/up  
loads/editors/Contaminated-Water\\_KNBC\\_24Apr2008\\_0.pdf](http://sites.dlib.nyu.edu/undercover/sites/dlib.nyu.edu.undercover/files/documents/uploads/editors/Contaminated-Water_KNBC_24Apr2008_0.pdf).

1           38. Similarly, in 2012, a PETA investigator worked undercover at GCB, a  
2 company that bred and sold reptiles and rats in Lake Elsinore, California.<sup>5</sup> The PETA  
3 investigator recorded some of the company’s workers without their consent,  
4 including its manager, neglecting thousands of animals, many of them to death. On  
5 information and belief, conversations with these workers could not be overheard.  
6 PETA widely published the reports, but California did not prosecute the PETA  
7 investigator. On the basis of PETA’s widely reported investigation, the Riverside  
8 County District Attorney prosecuted several of the targets of the undercover  
9 investigation, including owners of the company.

10           39. In 2019, CBS Los Angeles sent reporters undercover at three pet stores  
11 in Santa Ana and San Diego County and recorded purebred or designer puppies  
12 being sold, months after AB 485 was passed prohibiting the sale of puppies, cats, or  
13 bunnies unless they come from a shelter or rescue organization.<sup>6</sup> The investigators  
14 recorded pet store staff without their consent, and on information and belief,  
15 conversations with these workers could not be overheard. CBS Los Angeles  
16 published results of its investigation on the evening news, but California did not  
17 prosecute the reporters from CBS LA.

18           40. These examples are only a few of the undercover investigations that  
19 have occurred in this state, but the State of California has not prosecuted any of these  
20 other undercover journalists for their undercover investigations.

### 21           **Daleiden’s and CMP’s Newsgathering Efforts in California**

22           41. In 2010, while working for an investigative journalism organization, Mr.  
23 Daleiden first learned of the allegations of violent crime relating to the supply chain  
24 of aborted fetal organs and tissues for experimentation. He reviewed news stories by

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25 <sup>5</sup> See <https://www.peta.org/features/rat-snake-investigation-california-dealer-warehouse/>

26 <sup>6</sup> See “2 On Your Side: Undercover Investigation Reveals Loophole in ‘Puppy Mill  
27 Ban Law’,” CBS Los Angeles, April 30, 2019,  
28 <https://losangeles.cbslocal.com/2019/04/30/puppy-mill-loophole-rescue-dogs/>

1 other journalists who went undercover in the guise of a company in the fetal  
2 marketing industry to investigate and report on the fetal tissue market. *See ABC*  
3 *News 20/20, Parts for Sale*, YOUTUBE (Mar. 8, 2000),  
4 <https://youtu.be/mltRMb5GDKE>. The news stories revealed that fetal organs and  
5 tissues were a profitable market, and tissue procurement companies supplied abortion  
6 providers with instruments to modify the abortion procedure to “harvest” higher  
7 quality and more valuable intact fetal parts destined for profitable sale.

8 42. Mr. Daleiden also reviewed a 2000 Congressional investigation into the  
9 fetal tissue market,<sup>7</sup> interviewed a Planned Parenthood former clinic director, and  
10 studied scientific literature and other reports on the experimental use of aborted fetal  
11 tissue and the process involved in obtaining fetal tissue that was intact enough for  
12 scientific experiment.

13 43. After this and other research over several years, Mr. Daleiden concluded  
14 that major abortion providers such as PPFA, its affiliates, NAF and its members, and  
15 companies like StemExpress were participating in the trafficking of fetal tissue  
16 against the law, including transferring fetal tissue for valuable consideration, making  
17 nonconsensual and experimental changes to patients’ abortion care, and committing  
18 partial-birth abortions and infanticide. On the basis of his research, Mr. Daleiden  
19 decided to conduct a thorough and thoughtful investigative journalism study using  
20 undercover video recording specifically for the purpose of gathering evidence of  
21 these violent crimes.

22 44. In January 2013, Mr. Daleiden founded CMP for investigative reporting  
23 on bioethical issues. CMP’s first major investigative project was to be a long-term,  
24 in-depth undercover journalism study to document and report on the procurement,  
25 transfer, and sale of aborted fetal tissue by major abortion providers such as PPFA,  
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27 <sup>7</sup> See *Fetal Tissue: Is it Being Sold in Violation of Fed. Law?: Hearing Before the*  
28 *Subcomm. on Health and Env’t of the H. Comm. on Commerce, 106th Cong. 54–56*  
*(2000) (testimony of Dean Alberty, Jr.)*.

1 its affiliates, and NAF, and tissue procurement companies such as StemExpress,  
2 Advanced Bioscience Resources (ABR), and others. For undercover video recording,  
3 the investigation utilized the journalistic technique of placing reporters undercover in  
4 the fetal tissue market to record prospective business conversations and to explore  
5 the marketplace and attitudes among marketplace participants. This journalistic  
6 technique is a common technique practiced by citizen and professional journalists  
7 throughout history.

8 45. As part of the uncover investigation, CMP formed a start-up tissue  
9 procurement company named BioMax Procurement Services, LLC (BioMax) in  
10 October 2013, and Mr. Daleiden and other CMP investigators started to network  
11 within the professional abortion industry as representatives of BioMax.

12 46. From 2013 to mid-2015, Mr. Daleiden and the undercover investigators  
13 he hired through CMP used undercover video to record conversations about  
14 harvesting fetal tissue for experimentation, including the kinds of payments,  
15 abortions, and fetuses that would have to be involved, with many upper-level  
16 leadership representatives of Planned Parenthood, NAF, StemExpress, and similar  
17 entities. As a veteran of investigative journalism, including specifically in California,  
18 Mr. Daleiden, CMP, and their colleagues were careful to record California  
19 conversations in places of public accommodation where third parties were present  
20 and could overhear. Additionally, Mr. Daleiden, CMP, and their colleagues made  
21 their recordings in California with the express purpose to gather evidence of violent  
22 crimes.

23 47. Mr. Daleiden and CMP recorded many shocking and concerning  
24 admissions from the abortion industry and fetal-parts-trading leadership with whom  
25 they met. In June 2013, Mr. Daleiden had a conversation at a stem cell trade show  
26 with Perrin Larton, the Procurement Manager of ABR, who told him that while  
27 generally the goal of her abortion providers was “not to have a live birth,” in some  
28 harvesting cases she had seen the fetus “just fall out” of the patient after only 3

1 minutes in the operating room. Mr. Daleiden, based on his own experience and  
2 understanding of the abortion industry and in the context of the conversation,  
3 understood Ms. Larton to be describing the occurrence of fetuses being delivered  
4 alive from abortion patients, prior to attempts to terminate the fetus. A few months  
5 later, CMP investigators met with Dr. Katharine Sheehan, the longtime medical  
6 director of Planned Parenthood in San Diego, California, who told them her Planned  
7 Parenthood affiliate had been working with ABR for over 10 years.

8 48. In 2014, Mr. Daleiden met with another abortion provider who was at  
9 that time the Senior Director of Medical Services for Defendant PPFA, who stated  
10 that she herself harvested fetal tissue from late-term abortions at Planned Parenthood  
11 Los Angeles and that she could use ultrasound guidance to change the fetus to a feet-  
12 first “breech” presentation, in order to pull the fetus out intact to harvest better heart,  
13 lung, liver, and brain specimens.

14 49. Mr. Daleiden also met with the longtime medical director of Planned  
15 Parenthood Los Angeles, who advised using a “less crunchy technique” of manual  
16 instead of electrical suction to get intact fetal tissue from abortions. Both providers  
17 confirmed that fetal tissue should be priced “per specimen”, and one provider joked,  
18 “I want a Lamborghini.”

19 50. Mr. Daleiden also met and discussed fetal tissue harvesting with Dr.  
20 DeShawn Taylor, who had also worked at PPLA, and Dr. Jennefer Russo, at the time  
21 the medical director of Planned Parenthood of Orange & San Bernardino Counties.  
22 Dr. Taylor suggested using labor induction to deliver intact fetuses for organ  
23 harvesting, and stated that when it came to addressing signs of life in the fetus after  
24 delivery, “You gotta pay attention to who’s in the room.” Dr. Russo identified  
25 DaVinci Biosciences, LLC as the company to which PPOSBC provided fetal tissue,  
26 and she commented on the method of changing the fetus’ presentation, stating that,  
27 “We like to do that too” and that “we try” to provide intact fetuses. Dr. Russo stated  
28 that due to a shortage at that time, PPOSBC was not using the drug digoxin to kill the

1 fetus before doing the abortions.

2       51. Mr. Daleiden and CMP also met with the founder of StemExpress, who  
3 stated that the company frequently obtained intact fetuses and shipped them back to  
4 the StemExpress laboratory “in its entirety.” Mr. Daleiden obtained StemExpress  
5 advertisements, endorsed by a California Planned Parenthood medical director,  
6 advertising “financial profits” and “fiscal growth” to abortion clinics that worked  
7 with StemExpress.

8       52. Throughout the undercover investigation and beginning in October  
9 2013, Mr. Daleiden communicated with the late Holly O’Donnell, a procurement  
10 technician at StemExpress from December 2012 to April 2013, who procured tissue  
11 for StemExpress in multiple Planned Parenthood clinics in California. Ms.  
12 O’Donnell stated she observed aborted fetuses with hearts that were still beating and  
13 that StemExpress sometimes took fetal tissue without patient consent, and she  
14 provided documentation that StemExpress paid bonuses based on the number of type  
15 of fetal organs harvested.

16       53. Mr. Daleiden and CMP reported their findings and provided their  
17 evidence to multiple law enforcement agencies throughout the undercover project  
18 and prior to the public release of any video reports. In September 2014, Mr. Daleiden  
19 and CMP made their first report to law enforcement, and through intermediaries  
20 provided information to the Maricopa County, Arizona, District Attorney’s Office  
21 regarding StemExpress, other Arizona tissue procurement organizations, Planned  
22 Parenthood, and other abortion clinics. In May 2015, Mr. Daleiden and CMP made a  
23 report in person to the El Dorado County Sheriff’s Office about the evidence of  
24 violent crimes at StemExpress, Planned Parenthood, and NAF clinics. Mr. Daleiden  
25 and CMP also made a report to the Orange County District Attorney’s office in June  
26 2015. Between March and July 2015, prior to any public video release, Mr. Daleiden  
27 and CMP also made reports to the Attorneys General of Arizona, Texas, Michigan,  
28 and Oklahoma, and attempted to provide the evidence from the undercover project to



1 other law enforcement agencies through appropriate intermediaries.

2 54. On June 24, 2015, David Daleiden attended an in-person meeting with  
3 various members of Congress to explain the results of CMP's investigation. At that  
4 meeting, Daleiden reported crimes he believed had been committed by PPFA,  
5 various Planned Parenthood affiliates, StemExpress, Advanced Bioscience  
6 Resources, Novogenix Laboratories, DaVinci Biosciences, and DV Biologics, and  
7 explained the need for government oversight and vigorous enforcement of laws and  
8 regulations governing the experimental use of aborted fetuses and fetal tissue.

### 9 **The Publication of, and Reaction to, CMP's Undercover Videos**

10 55. Having successfully obtained damning evidence of wrongdoing in the  
11 fetal tissue procurement industry, CMP began publishing its evidence on July 14,  
12 2015. CMP republished the public professional profile information of the individuals  
13 investigated, but CMP did not publish personally identifying information such as  
14 home contact information. None of CMP's publications called for illegal action or  
15 violence in any way. The publications only called for official investigations and legal  
16 accountability for the criminal actors involved.

17 56. Both government officials and the public responded vigorously to the  
18 videos. The very next day, on July 15, 2015, the U.S. House of Representatives  
19 Energy and Commerce Committee and Judiciary Committee began investigations  
20 into illegal fetal tissue procurement practices. Two weeks later, on August 14, 2015,  
21 the House Oversight and Government Reform Committee began its own  
22 investigation. Then, on October 7, 2015, the U.S. House of Representatives voted to  
23 create a special "Select Investigative Panel" on illegal fetal tissue procurement  
24 practices, to consolidate the three House investigations into one. The U.S. Senate  
25 initiated its own investigation, conducted by the Senate Judiciary Committee.

26 57. On July 27, 2015, in direct response to CMP's undercover videos,  
27 Cecile Richards, the CEO of PPFA went on *This Week with George Stephanopoulos*  
28 and stated: "But what I really want to make clear, George, is Planned Parenthood has

1 broken no laws.” Nevertheless, the governmental investigations continued apace.

2 58. As a result, the defendants engaged in an all-out war to censor and  
3 remove the content that CMP had published, and chill future journalistic efforts to  
4 investigate the abortion industry and to ensure that the industry complies with all  
5 applicable laws.

6 59. First, on July 27, 2015, StemExpress—the purchaser of fetal tissue from  
7 multiple Planned Parenthood affiliates in California—filed suit against CMP in Los  
8 Angeles, California, Superior Court seeking to enjoin the publication of CMP’s  
9 undercover video of StemExpress and information about its involvement in fetal  
10 tissue harvesting with Planned Parenthood. *See* Complaint, *StemExpress LLC, v The*  
11 *Ctr. for Med. Progress*, No. BC589145 (Cal. Super., Jul. 27, 2015). StemExpress  
12 was not successful in obtaining its injunction, and ultimately dismissed its claims.

13 60. On July 31, 2015, the National Abortion Federation filed a thirteen-  
14 count lawsuit in the U.S. District Court for the Northern District of California, also  
15 seeking to enjoin CMP from publishing any information or videos from NAF’s  
16 annual tradeshows. *See* Complaint, *Nat’l Abortion Fed’n v. Ctr. for Med. Progress*,  
17 No. 3:15-cv-3522 (N.D. Cal., Jul. 31, 2015), 2015 WL 4591870. NAF was not  
18 successful in enjoining already-published videos discussing NAF’s involvement in  
19 fetal tissue transfers.

20 61. On January 14, 2016, PPFA and its California affiliates filed a  
21 substantially similar federal lawsuit as the NAF lawsuit against CMP in the U.S.  
22 District Court for the Northern District of California, but without seeking an  
23 injunction on publication. *See* Complaint, *Planned Parenthood Fed’n of Am. v. Ctr.*  
24 *for Med. Progress*, No. 3:16-cv-236 (N.D. Cal., Jan. 14, 2016), 2016 WL 159573.

25 62. On January 15, 2016, the first version of the “Planned Parenthood  
26 Amendment” to California’s Invasion of Privacy Act., Cal. Penal Code § 632.01, was  
27 introduced.

28 63. On January 25, 2016, Planned Parenthood secured the indictment of

1 David Daleiden by a grand jury in Harris County, Texas. The indictment included a  
2 misdemeanor charge of offering to purchase body parts and a felony charge of  
3 tampering with a driver's license for fraudulent purposes during his undercover  
4 investigative efforts. *See* Indictment, *People v. Daleiden*, No. 2071353 (Tex. Super.,  
5 Jan. 25, 2016). Two judges ultimately dismissed the indictments, and the Harris  
6 County ADA in charge of the grand jury was fired.

7 64. On April 5, 2016, the California Department of Justice raided Mr.  
8 Daleiden's home, and seized his computers used to publish the undercover videos.

9 65. On August 31, 2016, the "Planned Parenthood Amendment" was  
10 passed by both the California Assembly and Senate. It was signed into law by  
11 California Governor Brown on September 30, 2016, and went into effect on January  
12 1, 2017.

13 66. On March 28, 2017, AG Becerra filed a criminal complaint against  
14 Daleiden, listing fourteen counts of violating Cal. Penal Code § 632, and one count  
15 of criminal conspiracy, Cal. Penal Code § 182(a). The fourteen recording counts  
16 concerned eight individuals recorded at the NAF 2014 tradeshow held at a hotel in  
17 San Francisco, recordings of Planned Parenthood officials at restaurants in Los  
18 Angeles and Pasadena, and a recording of StemExpress leadership at a restaurant in  
19 El Dorado Hills. The prosecution was assigned to Deputy Attorney General Johnette  
20 Jauron.

### 21 **Federal and State Investigations into Planned Parenthood**

22 67. In December 2016 and January 2017, respectively, the U.S. Senate and  
23 House investigations published their final reports.<sup>8</sup> Both the U.S. House and Senate  
24 investigations concluded that Planned Parenthood had committed systemic violations  
25 of the law. *See* SENATE REPORT at 44–53; HOUSE REPORT at 134–35. The House  
26

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27 <sup>8</sup> MAJ. STAFF OF S. COMM. ON THE JUD., 114TH CONG., HUM. FETAL TISSUE RES.:  
28 CONTEXT AND CONTROVERSY 114-27 (Comm. Print. 2016); SELECT INVESTIGATIVE  
PANEL OF THE ENERGY & COMMERCE COMM., U.S. H.R., FINAL REP. (2016)

1 Panel and Senate Committee then issued numerous criminal and regulatory referrals  
2 to federal, state, and local law enforcement entities, including for several abortion  
3 providers and fetal tissue procurement companies. Both investigative bodies noted  
4 that their findings were consistent with CMP's undercover videos, which were "the  
5 impetus for" the investigations. *See* SENATE REPORT at 8, 55; HOUSE REPORT at 415.

6 68. In December 2016, the Texas Health & Human Services Division issued  
7 a Final Notice of Termination to Planned Parenthood, terminating its enrollment in  
8 the Texas Medicaid program. According to the Texas HHS, the termination was  
9 based on two factors: (1) footage of the BioMax visit to Planned Parenthood's  
10 Houston clinic establishing that it would modify procedures in order to sell tissue;  
11 and (2) the U.S. House investigation's conclusion that Planned Parenthood had  
12 repeatedly lied to it.

13 69. In subsequent litigation, a panel of the Fifth Circuit upheld Texas's  
14 termination of Planned Parenthood's enrollment in the Texas Medicaid program. As  
15 stated by that panel, "based on the [CMP] videos, [] the Provider Plaintiffs at a  
16 minimum violated federal standards regarding fetal tissue research and standards of  
17 medical ethics by allowing doctors to alter abortion procedures to retrieve tissue for  
18 research purposes or allowing the researchers themselves to perform the procedures."  
19 *Planned Parenthood of Greater Texas Family Planning & Preventative Health*  
20 *Servs., Inc v. Smith*, 913 F.3d 551, 568 (5th Cir. 2019), *reh'g en banc granted*, 914  
21 F.3d 994 (5th Cir. 2019).

22 70. In October 2016, the Orange County, California District Attorney  
23 initiated a civil prosecution against the sister companies of DV Biologics and  
24 DaVinci Biosciences for illegally re-selling fetal tissue obtained from PPOSBC. *See*  
25 *Complaint, The People of the State of California v. DV Biologics, LLC*, No. 30-2016-  
26 00880665-CU-BT-CJC (Cal. Super., Oct. 11, 2016).

27 71. The Orange County, California, Superior Court ultimately entered  
28 judgment in favor of California. As part of a stipulated judgment, the companies

1 admitted to selling fetal body parts obtained from PPOSBC for valuable  
2 consideration against the law, and agreed to a \$7.8 million settlement. The Orange  
3 County District Attorney’s office credited CMP’s investigative journalism with  
4 prompting the case, stating “In September 2015, the OCDA opened an investigation  
5 into DaVinci Biosciences and DV Biologics after a complaint was submitted by the  
6 Center for Medical Progress regarding the illegal sale of aborted fetal tissue by both  
7 companies.”

8 72. However, the Attorneys General of California, both current AG  
9 Defendant Xavier Becerra and former AG Defendant Kamala Harris, have not  
10 meaningfully investigated Planned Parenthood and its associates for fetal tissue  
11 trafficking.

12 73. Other criminal referrals issued by the U.S. House and Senate  
13 investigations remain pending. However, although law enforcement generally refuse  
14 to comment on, or even confirm, active investigations – in a rare move, the U.S.  
15 Department of Justice confirmed that it had an active investigation based on the  
16 referrals made to it.<sup>9</sup>

### 17 **Defendants Conspire to Violate Daleiden and CMP’s Constitutional Rights**

18 74. Since the publication of CMP’s videos, Defendants have conspired to  
19 suppress Plaintiffs’ videos and speech from the public and worked to target Mr.  
20 Daleiden for his speech.

21 75. PPFA, PPAC, their affiliates, NAF, StemExpress, and the individuals  
22 affiliated with the organizations were motivated to suppress CMP videos and CMP  
23 and Daleiden’s other speech about the Defendants, in order to conceal their  
24 involvement in fetal trafficking and silence any critical or scrutinizing speech about  
25 their fetal tissue transfers.

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26 <sup>9</sup> See Fandos, Nicholas, “Justice Dept. Investigating Fetal Tissue Transfers by  
27 Planned Parenthood and Others,” The New York Times, December 8, 2017  
28 <https://www.nytimes.com/2017/12/08/us/politics/planned-parenthood-fetal-tissue-transfers-federal-investigation.html>.

1           76. As referenced above, PPFA and its affiliates were aware of and involved  
2 in altering abortion procedures to obtain more marketable specimens for its tissue  
3 procurement partners such as StemExpress, which specimens PPFA and its affiliates  
4 transferred for valuable consideration to StemExpress.

5           77. Approximately 50% of NAF’s Board of Directors and membership  
6 consists of Planned Parenthood representatives and affiliates. NAF engaged in a  
7 mutually beneficial relationship with StemExpress whereby StemExpress financially  
8 sponsored NAF trade shows, and NAF promoted StemExpress to its members and  
9 connected StemExpress with sources of fetal tissue.

10           78. NAF, PPFA, PPFA affiliates, and StemExpress all had a joint interest in  
11 suppressing CMP’s videos and chilling any future attempts to investigate the fetal  
12 trafficking industry.

13           79. After CMP released the first video featuring a PPFA provider’s  
14 admissions about per-specimen fetal tissue payments, using intact D&E abortions to  
15 get whole fetuses, and PPFA’s knowledge and approval of these practices, PPFA  
16 began communicating with the California Attorney General’s office—then led by  
17 Defendant Kamala Harris—about Plaintiffs, their undercover videos, and their  
18 reporting on the co-conspirators’ fetal tissue programs.

19           80. On July 17, 2015—three days after CMP released its first video—Kathy  
20 Kneer, CEO of Defendant PPAC, emailed a letter to Defendant Harris, and falsely  
21 informed her that the California affiliates’ fetal tissue transfer programs were legal,  
22 falsely stating that the payments the affiliates were receiving were for  
23 “administrative and transportation costs,” when in fact all transportation was handled  
24 by the tissue procurement companies.

25           81. On July 21, 2015—the day CMP released its second video in which a  
26 senior Planned Parenthood abortion provider admitted that Planned Parenthood  
27 “didn’t have to do anything” to allow fetal tissue wholesaler Novogenix  
28 Laboratories, LLC to come into its clinic and harvest fetal tissue and yet “there was

1 compensation for this”—Defendant Beth Parker, General Counsel for PPAC,  
2 emailed Defendant Jill Habig, Special Assistant to Kamala Harris (a political  
3 appointee), again falsely claiming that the California affiliates’ fetal tissue transfer  
4 programs were legal. In the email, Ms. Parker stated “A second video was released  
5 today. We [Planned Parenthood] believe we are fully compliant with all federal and  
6 state laws and are investigating the situation. Please feel free to reach out to me if  
7 you have any questions or concerns.”

8 82. On August 6, 2015, outside special counsel for several California  
9 Planned Parenthood entities, Matthew Umhofer (“Mr. Umhofer”), brought a senior  
10 Planned Parenthood abortion provider to the Pasadena Police Department to file a  
11 criminal complaint against Daleiden concerning the recording made of that person  
12 and an associate in that city. On information and belief, the provider agreed to file a  
13 criminal complaint against Daleiden solely due to the content of the videos and the  
14 desire to suppress the content of the videos. During her police interview, the  
15 provider did not complain of any threats resulting from the videos. The provider told  
16 the Pasadena detectives concerning Mr. Daleiden: “Vindictive is his middle name,  
17 this guy.” The provider stated the true motives the co-conspirator Defendants have  
18 for seeking to enforce the California video recording law against Mr. Daleiden and  
19 Mr. Daleiden alone: “I appreciate your time looking into this, because *if we could*  
20 *brand them as criminals*, that would be a plus for me, I think. Because they’ve  
21 thrown out charges against us that we’re criminals” (emphasis supplied).

22 83. At the time she made this complaint to the Pasadena Police Department,  
23 the provider knew that Planned Parenthood had sold fetal tissue for valuable  
24 consideration and knew that the conversation with Mr. Daleiden in Pasadena had  
25 been overheard by others present. Defendant PFFA, Defendant PPAC, and the  
26 provider knew that the conversation was public and recording it was not a violation  
27 of Penal Code § 632, that the report was not being made in good faith, and that the  
28 only reason for their report was to try to silence Plaintiffs’ speech, yet the co-

1 conspirator Defendants tasked the provider and Mr. Umhofer with making this report  
2 anyway. The provider has since admitted under oath that the conversation was not  
3 confidential and could have been overheard.

4 84. The Pasadena City Attorney did not act on the provider's complaint, and  
5 the Pasadena Police Department referred the complaint to the Los Angeles County  
6 District Attorney's Office. That office also took no action.

7 85. On or around August 7 through August 10, Supervising Deputy  
8 Attorney General Peter Williams in the Financial Fraud and Special Prosecutions  
9 unit of Defendant Harris' office, sent an 8-page memo to Nathan Barankin, Harris'  
10 Chief Deputy Attorney General, on the subject of prosecuting the "Planned  
11 Parenthood Videos." Defendant Harris, Defendant Habig, and the co-conspirator  
12 Defendants were already at this time working to deploy Williams' office to prosecute  
13 Mr. Daleiden in retaliation for the content of his videos. Defendant Becerra has  
14 refused to produce this memo. On information and belief, Williams questioned the  
15 viability and good faith of enforcement action against Plaintiffs under Penal Code §  
16 632, and continued to believe there was no basis for enforcement, even as Planned  
17 Parenthood and the political apparatus of Defendant Harris' executive office  
18 continued to press Williams—a civil servant, not a political appointee—to use Penal  
19 Code § 632 against Daleiden. Williams left his 15-year career at the Department of  
20 Justice in January 2016, at the same time that the investigation of Plaintiffs under the  
21 video recording law, long sought by the Defendants, was being pursued.

22 86. On August 14, 2015, Defendant Habig emailed Larry Wallace,  
23 Defendant Harris' appointed Director of Law Enforcement in charge of the Division  
24 of Law Enforcement, including the Bureau of Investigation; Gerald Engler,  
25 Defendant Harris' appointed Chief of the Criminal Division, in charge of  
26 prosecutions; and Nathan Barankin, Defendant Harris' appointed Chief Deputy  
27 Attorney General. Defendant Habig provided them with the contact information of  
28 the provider who made the police report to the Pasadena Police Department and



1 stated that Defendant Parker was checking with other providers before sending  
2 additional names. Later the same day, Defendant Habig emailed the same individuals  
3 with contact information for Heather Saunders-Estes (Ms. Saunders-Estes), at the  
4 time the CEO of Planned Parenthood Northern California, one of Defendant  
5 StemExpress' suppliers. Defendant Habig falsely stated that Ms. Saunders-Estes  
6 "received threats." Special Agent Supervisor (SAS) James Hirt followed up with Ms.  
7 Saunters-Estes, who denied reporting any actual threats to her safety.

8 87. On August 31, 2015, Ms. Habig emailed Director Larry Wallace and  
9 John Marsh, the Assistant Chief of the Division of Law Enforcement over the Bureau  
10 of Investigation, asking about the "scope" of the investigation by the Pasadena Police  
11 Department. The co-conspirator Defendants were eager for an excuse to use the  
12 powers of the Attorney General's office to silence Plaintiffs' speech, and they were  
13 frustrated that there was no evidence whatsoever to tie Plaintiffs to threats of  
14 violence or vandalism.

15 88. On September 2, 2015, Ms. Habig emailed John Marsh and Larry  
16 Wallace again, pressing them on what information they had learned from Ms.  
17 Saunders-Estes and stating she had "received information about a clinic vandalism  
18 incident" in Thousand Oaks, CA. Ms. Habig wrote that "ordinarily an isolated  
19 vandalism incident would not be a matter of huge concern but if there are attempts to  
20 threaten the safety of clinic personnel or patients, that would of course be a different  
21 story." Defendant Habig and the co-conspirator Defendants desperately tried to  
22 connect and continue to propound false links between Plaintiffs and alleged incidents  
23 of violence at Planned Parenthood clinics.

24 89. The same day, on September 2, 2015, Planned Parenthood's attorney  
25 Mr. Umhofer brought another provider to the Los Angeles Police Department to  
26 make a police report against Mr. Daleiden for recording a meeting with her on July  
27 25, 2014, even though Defendant PPFA, Defendant PPAC, and that provider knew  
28 the conversation was not confidential and could be overheard. The Los Angeles

1 Police Department refused to take the complaint because “due to the area in which  
2 [the other provider] was being recorded at (in a public restaurant) the conversation  
3 could be easily overheard by other people” and thus was not confidential and the  
4 recording was not a violation of Cal. Penal Code § 632.

5 90. On September 24, 2015, a pro-Planned Parenthood advocacy arm of The  
6 Feminist Majority Foundation emailed Defendant Habig a list of what the Feminist  
7 Majority Foundation claimed were “anti-abortion extremist actions immediately  
8 preceding and following the release of CMP videos.” The email did not provide any  
9 examples of either violent acts or statements by Mr. Daleiden or CMP that called for  
10 any such violence or dangerous acts whatsoever. Even with help, the co-conspirator  
11 Defendants could neither find nor convincingly invent any facts to link Plaintiffs to  
12 violent activity, and even their outside political allies could not provide any useful  
13 information to them. The Defendants’ conspiracy to silence Plaintiffs’ speech was  
14 growing more desperate.

15 91. By October 13, 2015, a desperate Defendant Parker emailed Defendant  
16 Habig about how she was advising Planned Parenthood clinics nationwide to file  
17 criminal reports against peaceful protesters. Defendant Parker asked Defendant  
18 Habig to advise her “if your office thinks we should be doing anything else.”

19 92. Throughout November 2015, Defendant Habig and Ms. Parker  
20 continued to exchange phone calls. On information and belief, the co-conspirator  
21 Defendants were frustrated that they could not find a credible reason to silence  
22 Plaintiffs’ speech and were trying to brainstorm a way to harness the power of  
23 California law enforcement to stop Mr. Daleiden and CMP from continuing to speak  
24 about what their investigative journalism had uncovered regarding fetal part  
25 trafficking involving Defendants.

26 93. From the fall of 2015 to the present, Defendant PFFA has knowingly  
27 provided Defendant NAF with artificially elevated numbers of “threat” incidents at  
28 Planned Parenthood locations. Defendant NAF then takes Defendant PFFA’s

1 concocted, false reporting and uses it to artificially and falsely expand NAF's own  
2 reporting of "violence and harassment" at abortion clinics, including using peaceful  
3 picketing and prayer activity to pad their numbers. The co-conspirator Defendants  
4 then used these contrived numbers to try to sell a false narrative to the public and to  
5 California law enforcement alleging that Plaintiffs were responsible for Defendants'  
6 own fabricated increase in threats and physical violence to abortion providers.

7 94. On December 3, 2015, Defendant Habig connected Defendant Parker  
8 with Special Agent Supervisor Michael Casperson (SAS Casperson). Defendant  
9 Parker emailed SAS Casperson a Planned Parenthood-constructed chronology of Mr.  
10 Daleiden's citizen journalism work. SAS Casperson, in turn, shared the information  
11 with Agent Daniel Torres and Agent Jesus Mejia. The three then interviewed Ms.  
12 Parker on the phone, during which Ms. Parker instructed the agents that "Planned  
13 Parenthood would like the computers used to produce the videos seized." With  
14 Defendant Habig's support, Defendant Parker clearly told Agents Casperson, Torres,  
15 and Mejia the purpose of the investigation Planned Parenthood was demanding: to  
16 stop Plaintiffs from being able to publish their investigative speech. Agents  
17 Casperson, Torres, and Mejia did nothing to prevent the developing conspiracy  
18 between Planned Parenthood and the CA Attorney General to selectively apply Penal  
19 Code § 632 to silence Plaintiffs.

20 95. On January 5, 2016, Agent Torres forwarded the Planned Parenthood-  
21 constructed chronology of Mr. Daleiden's citizen journalism work to Deputy  
22 Attorney General Cyrena Shirley, the prosecutor assigned to investigate Mr.  
23 Daleiden after Peter Williams left the office. On January 7, 2016, Agents Torres and  
24 Mejia interviewed the providers who had filed the disregarded reports at the  
25 Pasadena and Los Angeles Police Departments, at the offices of Attorney Umhofer.  
26 Agents Torres and Mejia knew that the providers' conversations with Plaintiffs at the  
27 restaurants were not confidential because they had been overheard by many others  
28 present. Then, on January 22, 2016, Agents Torres and Mejia met with the Los

1 Angeles Police Department to obtain its report documenting its determination that it  
2 would not take the second provider's complaint because the recording did not violate  
3 Cal. Penal Code § 632. Again, knowing that there was no underlying violation of the  
4 California video recording law, and that the co-conspirators were engaged in a sham,  
5 selective application of the law solely to silence the Plaintiffs' free speech, the  
6 Agents nevertheless did nothing to prevent or help prevent the conspiracy.

7 96. On January 15, 2016, the first version of the "Planned Parenthood  
8 Amendment" to California's Invasion of Privacy Act., Cal. Penal Code § 632.01, was  
9 introduced. Then, between February and April 2016, Ms. Parker and Ms. Habig  
10 began working closely on it, preparing revisions to it.

11 97. On March 8, 2016, Defendant Parker emailed Defendant Habig seeking  
12 reinforcement of her and Planned Parenthood's control of the prosecution. In that  
13 respect, she complained about not being informed that the prior assigned prosecutor  
14 had left his position, and that the case was now assigned to Deputy Attorney General  
15 Cyrena Shirley. Defendant Parker also asked to participate in the witness interview  
16 with Dr. Jennefer Russo of PPOSBC. That same day, Defendant PPAC's then-CEO,  
17 Kathy Kneer, emailed Defendant Habig to set up an in-person meeting with  
18 Defendant Harris. The meeting was to include PPAC's Ana Sandoval, Sue Dunlap  
19 and Celinda Vazquez from PPLA, Sheri Bonner from Planned Parenthood Pasadena,  
20 and Dr. Russo, all as representatives of Defendant PPAC.

21 98. On March 15, 2016, Agent Casperson interviewed Dr. Russo by phone  
22 with Defendant Parker on the line as well, and Dr. Russo became a witness in the  
23 criminal investigation. At the same time, Planned Parenthood and the Attorney  
24 General's office were attempting to include Dr. Russo in their in-person meeting  
25 with Defendant Harris, and the Orange County District Attorney's office was  
26 investigating PPOSBC's business partners DaVinci Biosciences and DV Biologics  
27 for the criminal sale of fetal tissue provided by Dr. Russo.

28 99. On March 23, 2016, Defendant Harris and Defendant Habig met in

1 person with several representatives of Defendant PPAC at the Attorney General's  
2 office in Los Angeles. At this meeting, Defendants discussed Planned Parenthood's  
3 political agenda in the state of California, and within this discussion provided false  
4 information to Defendant Harris about Mr. Daleiden and CMP's videos and speech,  
5 in order to lobby Defendant Harris to apply Penal Code § 632 to silence Mr.  
6 Daleiden and CMP's speech. At the time of the meeting, the patronage relationship  
7 between Defendants PPAC and PPFA with Defendant Harris was longstanding.  
8 PPFA is one of the top twelve campaign contributors to Defendant Harris, donating  
9 over \$80,000.00 in direct campaign contributions to Defendant Harris' political  
10 campaigns for Attorney General and Senator, along with other abortion lobbying  
11 groups. It was because of their special relationship, rather than the elements of Penal  
12 Code § 632, that the Defendants sought to punish the content of Plaintiffs' speech  
13 and attempt to silence it.

14 100. On March 28, 2016, Defendant NAF communicated with Agent Torres  
15 to encourage the co-conspirator's selective enforcement of the California video  
16 recording law. Defendant NAF's Communications Director, Melissa Fowler, gave  
17 false information to Agent Torres about NAF's 2014 trade show in San Francisco.  
18 Defendant NAF falsely told the Attorney General's office that all conversations at  
19 the trade show were private and confidential. Fowler has testified under oath that  
20 NAF attendees were on notice in 2014 that they could be filmed at the trade show,  
21 that cameras were visibly present in the crowded trade show, and that participants'  
22 conversations could be easily overheard in the exhibit hall and breakout rooms of the  
23 conference. Defendant NAF made these false statements to law enforcement in order  
24 to support the co-conspirator Defendants' selective application of Penal Code § 632  
25 against the Plaintiffs in order to silence their speech.

26 101. On April 5, 2016, the California Department of Justice raided Mr.  
27 Daleiden's home, effecting Ms. Parker's earlier instructions that "the computers used  
28 to produce the videos [be] seized." That same day, Defendant Habig emailed Planned

1 Parenthood a list of 8 “Action Items” from the March 23 meeting.

2 102. The search warrant for the raid on Daleiden’s home was issued under  
3 Cal. Penal Code § 632, as well as Cal. Pen Code § 182 (conspiracy to commit a  
4 crime), Cal. Penal Code § 115(a) (concerning filing a forged instrument, *i.e.*, the  
5 BioMax articles of incorporation), and Cal. Penal Code § 470a and Cal. Veh. Code  
6 § 4463(a)(1) (both concerning fraudulent use of counterfeit driver’s licenses).  
7 Defendant Reye Diaz signed the search warrant affidavit for Mr. Daleiden’s home.

8 103. The issuance of this search warrant caused controversy among career  
9 agents in the California Department of Justice. The members of that team tasked with  
10 investigating, preparing, and serving the search warrant, including Defendants  
11 Cardwell and Diaz, believed the warrant was not supported by probable cause, was  
12 not being sought in good faith, and should not issue. One Special Agent ended up  
13 taking a leave of absence due to stress, and Agent Donohue left the California  
14 Department of Justice. Nevertheless, neither Defendants Cardwell or Diaz did  
15 anything to prevent or help prevent the conspiracy to deprive Plaintiffs of their First  
16 and Fourteenth Amendment rights from being realized. To the contrary, they both  
17 participated directly in the conspiracy.

18 104. On May 24, 2016, the head of Defendant StemExpress was interviewed  
19 by Defendant Cardwell. Through its head, Defendant StemExpress made false  
20 statements to Defendant Cardwell about StemExpress leadership’s conversation with  
21 Plaintiffs in the Sacramento area that was video recorded. StemExpress falsely  
22 represented to Defendant Cardwell that the conversation was confidential, knowing  
23 instead that it had been overheard by many others present, with others so close that  
24 StemExpress’s general counsel accidentally bumped a nearby stranger while talking  
25 with Plaintiffs. Defendant StemExpress made these false statements to Defendant  
26 Cardwell in order to promote the co-conspirator Defendants’ selective prosecution to  
27 silence Mr. Daleiden and CMP.

28 105. On November 8, 2016, AG Harris was elected to the U.S. Senate, and

1 left her position as the California Attorney General on January 3, 2017. On January  
2 24, 2017, the California Legislature accepted Governor Brown’s appointment of  
3 Xavier Becerra as California Attorney General.

4 106. On March 28, 2017, AG Becerra filed a criminal complaint against  
5 Daleiden, listing fourteen counts of violating Cal. Penal Code § 632, and one count  
6 of criminal conspiracy, Cal. Penal Code § 182(a). The fourteen recording counts  
7 concerned eight individuals recorded at the NAF 2014 tradeshow in San Francisco,  
8 and the recordings at locations in Los Angeles, Pasadena, and Sacramento. The  
9 prosecution was assigned to Deputy Attorney General Johnette Jauron. Defendant  
10 Cardwell signed the arrest warrant affidavit for Mr. Daleiden.

11 107. On August 20, 2018, Mr. Daleiden filed a motion to dismiss the  
12 prosecution as a constitutionally invalid invidious selective prosecution. Mr.  
13 Daleiden argued that never before had Cal. Penal Code § 632 been applied to  
14 criminally prosecute undercover video reporting for newsgathering purposes, even in  
15 cases where a journalist had actually filmed arguably private conversations.

16 108. In response, on August 31, 2018, Defendant Xavier Becerra, through  
17 DAG Jauron, admitted for the first time in public that he was prosecuting Plaintiffs  
18 because “several of those recordings were edited to enhance their shock value, and  
19 published online,” and “as a result of the above, Defendants are culpable to a greater  
20 extent” than other journalists. This was the first time Mr. Daleiden had notice from  
21 the Attorney General’s office of the true purpose of the prosecution. The Superior  
22 Court denied the motion, without prejudice to its refiling at a later date.

### 23 **Mr. Daleiden and CMP Discover Evidence of the Conspiracy**

24 109. Defendant Xavier Becerra, Defendant PFFA, and other co-conspirator  
25 Defendants have actively worked to conceal from Plaintiffs the evidence of their  
26 conspiracy to violate civil rights. Immediately after demurrers were filed and  
27 adjudicated in the fall of 2017, Mr. Daleiden sought discovery from Defendant  
28 Becerra as to how the extremely unusual—indeed, lone in history—prosecution came

1 to be. Defendant Becerra resisted the discovery requests and produced documents  
2 only slowly, haphazardly, and in a piecemeal fashion. On top of that, the productions  
3 were riddled with numerous and extensive redactions making the substance of the  
4 Attorney General’s email productions impossible to follow.

5 110. Throughout the first part of 2018, Mr. Daleiden continued to press for  
6 intelligible discovery from Defendant Becerra.

7 111. When Mr. Daleiden sought the notes and recordings made by the  
8 Special Agent investigators to back up their Investigative Reports, Defendant  
9 Becerra astonishingly claimed that no such notes whatsoever existed. On information  
10 and belief, one or more of the notes, recordings, and other memorialization of the  
11 Bureau of Investigation’s work on this case were destroyed in order to cover up the  
12 co-conspirator Defendants’ violation of Plaintiffs’ civil rights.

13 112. In the summer of 2018, Plaintiffs also first obtained documents from  
14 Defendants PPFA and NAF showing how the Defendants had falsely and artificially  
15 inflated the number of so-called “security incidents” at their clinics in order to  
16 fabricate a narrative of Plaintiffs’ speech as violent and dangerous.

17 113. On October 5, 2018, Daleiden moved to dissolve the publishing  
18 injunction entered in the lawsuit *Nat’l Abortion Fed’n v. Ctr. for Med. Progress*, No.  
19 3:15-cv-3522 (N.D. Cal., Jul. 31, 2015). Daleiden argued that the pending criminal  
20 prosecution superseded the injunction. Further, because the prosecution was initiated  
21 by a complaint on information, and not an indictment, a Preliminary Hearing would  
22 be held, and he needed the ability to use enjoined materials in that hearing. In  
23 response, NAF’s lead attorney Derek Foran argued that no action was needed by the  
24 District Court because Defendant National Abortion Federation would ensure that  
25 the Superior Court sealed the materials:

26  
27 FORAN: *There is going to be motion practice over this. I guarantee it,*  
28 *100 percent. The attorney general’s going to move for a protective*  
*order with respect to the discrete number of videos that are subject to*



1 this Court's injunction that are in any way relevant in the criminal case.  
2 *That's going to happen in advance of the preliminary hearing. NAF is*  
3 *going to be heard on that motion. I can guarantee the Court that. We*  
4 *will go in.* There's going to be certain restrictions that the attorney  
5 general's going to seek with respect to the manner and mode and means  
6 in which this material is published in court. *And the attorney general is*  
7 *going to seek a prohibition on David Daleiden turning around and*  
8 *making another preview video—*

9 JUDGE ORRICK: So, what you're telling me is that maybe this  
10 problem will be addressed—

11 FORAN: That's exactly right. The Court may never have to deal  
12 with anything because *it's going to be put in front of Judge Hite. I*  
13 *guarantee it.*

14 Foran's confident guarantees to a federal judge of what the Attorney General of  
15 California would do on PPFA's and NAF's behalf at a future criminal hearing,  
16 shocked Plaintiffs. These guarantees provide further insight into how Defendant  
17 NAF and Defendant PPFA closely directed and oversaw Defendant Becerra's  
18 selective prosecution throughout the process, going to far as to leverage, in advance,  
19 the Attorney General's "guaranteed" actions in a civil proceeding by a different  
20 court.

21 114. The Attorney General dutifully followed Defendant NAF's direction,  
22 and on December 20, 2018, filed a motion to prevent the public from seeing video  
23 evidence presented at Daleiden's forthcoming public preliminary hearing.

24 115. On January 22, 2019, Defendant NAF sent an extraordinary letter to the  
25 Superior Court titled "Nonparty NAF's Statement in Support of Sealing Confidential  
26 Materials Subject to Federal Preliminary Injunction." The Superior Court issued an  
27 order rejecting the letter, and the same day, DAG Jauron sent the Court a request for  
28 reconsideration of the propriety of NAF's letter brief.

116. On January 25, 2019, Planned Parenthood filed its own letter brief,  
seeking to formally intervene in the criminal prosecution. On February 11, 2019,  
DAG Jauron told the Superior Court at a hearing that she believed the third parties

1 had a right to intervene.

2 117. On January 28, 2019, the Superior Court addressed DAG Jauron's  
3 insistence that Defendant NAF and PPFA's positions be adopted *in toto* in order to  
4 prevent information being revealed at the Preliminary Hearing about their fetal tissue  
5 programs: "that is up to the discussion between the AG and whether they want to  
6 proceed and whoever they're proceeding on behalf of."

7 118. On February 14, 2019, the Superior Court denied the motions to  
8 intervene, but granted Planned Parenthood the right to file briefs and be heard under  
9 Marsy's Law. It also granted much of the relief Planned Parenthood sought, and  
10 began relying on evidence submitted only by Planned Parenthood—not the Attorney  
11 General. The Superior Court denied NAF's motion to intervene, and held that it  
12 could not be heard under Marsy's Law, but also granted the relief *it* requested—  
13 limiting Mr. Daleiden's actions and statements to defend himself at the Preliminary  
14 Hearing based on the preliminary injunction entered in the lawsuit *Nat'l Abortion*  
15 *Fed'n v. Ctr. for Med. Progress*, No. 3:15-cv-3522 (N.D. Cal., Jul. 31, 2015).

16 119. On May 13, 2019, Mr. Daleiden was contacted by an attorney, Jason  
17 Davis, who on information and belief represents one of the California Department of  
18 Justice agents. Davis provided Mr. Daleiden with excerpts from an intake report  
19 about the Special Agent Defendants. The Special Agent Defendants believed the  
20 warrant was not supported by probable cause, was not being sought in good faith,  
21 and should not issue. One Special Agent ended up taking a leave of absence due to  
22 stress.

23 120. A Preliminary Hearing was held between September 3 and 18, 2019.  
24 During the pendency of that Preliminary Hearing, Planned Parenthood repeatedly  
25 lied to the press about the contents of CMP's exposé.

26 121. At the Preliminary Hearing, Defendant Cardwell testified that when he  
27 was tasked by Defendant Becerra to investigate the undercover video footage, he was  
28 not given any instructions to investigate the elements of the crime of Penal Code §

1 632 or its limits drawn by Penal Code §633.5. Defendant Cardwell did not  
2 investigate the circumstances of the videos to determine whether or not there was  
3 evidence that they were of “confidential communications” under Penal Code § 632.  
4 Defendant Cardwell testified that in investigating the case and preparing his affidavit  
5 for the arrest warrant for Mr. Daleiden, he did not actually watch any of the  
6 undercover videos of the conversations in their entirety. Defendant Cardwell testified  
7 that he simply “perused the videos, like fast-forward.” Defendant Becerra instructed  
8 him simply to identify faces and names of Defendant PPFA and Defendant NAF  
9 individuals, in order to plug them into Defendant Becerra’s selective and bad faith  
10 criminal complaint.

11 122. At the Preliminary Hearing, Defendant Becerra, through DAG Jauron,  
12 declared falsely that “there is no definition of confidentiality in Penal Code § 632.”  
13 In fact, Penal Code § 632(c) defines “confidential communication” for the core  
14 purposes of the recording law. Defendant Becerra did not even attempt to apply the  
15 rule of law in to Daleiden’s and CMP’s selective prosecution, but instead agreed to  
16 lend his law enforcement powers to the political use of the co-conspirator  
17 Defendants.

18 123. Defendant Cardwell also testified that he did not consider the safe  
19 harbor provisions of Penal Code § 633.5 in his investigation. The co-conspirator  
20 Defendants actively worked to erase from their investigation and prosecution of Mr.  
21 Daleiden any consideration of the elements of Penal Code § 633.5 and the evidence  
22 demonstrating his protected purpose in recording under Penal Code § 633.5, with the  
23 explicit intent of depriving Plaintiffs of their protections, rights, privileges, and  
24 immunities under Penal Code § 633.5.

25 124. Following that Preliminary Hearing, the Superior Court dismissed  
26 counts 4 and 8 (the NAF tradeshow), 9 (the Los Angeles restaurant), and 12, 13, and  
27 14 (the Sacramento restaurant). Remaining are counts relating to six individuals  
28 recorded at the NAF tradeshow and two counts relating to the restaurant meeting in

1 Pasadena.

2 125. The Superior Court found “grave concerns with [the] credibility” of  
3 Defendant StemExpress after Defendant StemExpress’ representative contradicted  
4 her sworn declaration from a previous matter on the witness stand at the Preliminary  
5 Hearing. On information and belief, the co-conspirator Defendants agreed to give  
6 false testimony against Mr. Daleiden at the Preliminary Hearing in order to support  
7 the silencing of his speech and the ongoing selective prosecution.

### 8 **This Court’s Role in Preventing Injustice**

9 126. Federal courts will abstain from adjudicating a dispute when there are  
10 ongoing state criminal proceedings, that implicate important state interests, and  
11 provide an adequate opportunity to raise federal defenses. *Cook v. Harding*, 879 F.3d  
12 1035, 1039 (9th Cir. 2018).

13 127. Such abstention is “an extraordinary and narrow exception to the  
14 general rule that federal courts ‘have no more right to decline the exercise of  
15 jurisdiction which is given, than to usurp that which is not given.’” *Id.* at 1038. And  
16 federal courts will not abstain when the state prosecution was brought in “bad faith.”  
17 *Younger v. Harris*, 401 U.S. 37, 54 (1971). Such “bad faith” exists when a  
18 prosecution is brought in retaliation for, or to chill, constitutionally protected speech.  
19 *Cullen v. Fliegner*, 18 F.3d 96, 103–04 (2d Cir. 1994); *Phelps v. Hamilton*, 59 F.3d  
20 1058, 1065 n.12 (10th Cir. 1995); *see also Masterpiece Cakeshop Inc. v. Elenis*, ---  
21 F.Supp.3d ---, 2019 WL 8638852, at \*10 (D. Colo. 2019) (noting how conspicuous  
22 timing was evidence of bad faith).

23 128. In a brief filed in the criminal prosecution of Mr. Daleiden on August  
24 31, 2018, DAG Jauron stated that California was prosecuting Plaintiff Daleiden  
25 precisely because of the content of his constitutionally protected speech.  
26 Nevertheless, the Superior Court has refused to dismiss the made-to-order  
27 prosecution. Plaintiffs therefore bring this lawsuit in federal court to vindicate their  
28 federal constitutional rights.

**FIRST CLAIM FOR RELIEF**

**Free Speech—Overbreadth of Cal. Penal Code § 632**

**42 U.S.C. § 1983**

**(by Daleiden and CMP against Becerra)**

1  
2  
3  
4  
5 129. Plaintiffs incorporate by reference all allegations contained in the above  
6 paragraphs.

7 130. Cal. Penal Code § 632 is unconstitutional on its face under the First  
8 Amendment.

9 131. A statute that prohibits substantially more speech than the First  
10 Amendment permits is unconstitutionally overbroad even though the State could  
11 lawfully punish some of the conduct targeted by the statute. *See United States v.*  
12 *Stevens*, 559 U.S. 460, 473 (2010); *Animal Legal Def. Fund v. Wasden*, 878 F.3d  
13 1184, 1195 (9th Cir. 2018).

14 132. The act of image capture—the recording of audio or video—is not only  
15 a necessary predicate to certain speech, it is speech itself. As a result, there is a First  
16 Amendment right to film matters of public interest. *See ALDF v. Wasden*, 878 F.3d  
17 1184, 1203–05 (9th Cir. 2018).

18 133. Even if the State may be able to lawfully limit the creation of certain  
19 recordings, Cal. Penal Code § 632 regulates substantially more speech than the First  
20 Amendment permits.

21 134. Specifically, Cal. Penal Code § 632, has been interpreted to cover  
22 communications completely independent of whether their content is substantively  
23 “confidential,” “private,” or “secret”—or of public interest. *Flanagan v. Flanagan*,  
24 27 Cal.4th 766, 774 (2002). Rather, “under section 632 ‘confidentiality’ . . .  
25 require[s] nothing more than the existence of a reasonable expectation by one of the  
26 parties that no one is ‘listening in’ or overhearing the conversation.” *Id.* at 772–73.  
27 Thus, Cal. Penal Code § 632 criminalizes protected speech. Intentionally or not, the  
28 law chills and criminalizes the recording of matters of public interest in public places

1 or places of public accommodation.

2 135. Cal. Penal Code § 632 criminalizes not just the protected speech of  
3 Plaintiffs, but of any person or group that would seek to record matters of public  
4 interest in a similar manner, including other journalists, internet bloggers,  
5 whistleblowers, or any person concerned about publicizing matters of public interest.

6 136. Because Cal. Penal Code § 632 categorizes so much protected speech as  
7 “criminal,” it is unconstitutionally overbroad.

8 137. Plaintiffs are entitled to an injunction. Defendant Becerra is acting and  
9 threatening to act under color of state law to deprive Plaintiffs of their constitutional  
10 rights. Plaintiffs will suffer irreparable injury and will continue to suffer real and  
11 immediate threat of irreparable injury as a result of the existence, operation,  
12 enforcement, and threat of enforcement of the challenged statute. Plaintiffs have no  
13 plain, adequate, or speedy remedy at law. Plaintiffs are refraining from further  
14 constitutionally protected activities solely for fear of prosecution under the statute.

15 138. Plaintiffs are entitled to prospective relief enjoining Defendant Becerra  
16 from enforcing Cal. Penal Code § 632 in its entirety because it is facially overbroad  
17 or, in the alternative, as applied to Plaintiffs who film matters of public interest in  
18 public places or places of public accommodation.

19 139. An actual and immediate controversy exists between Plaintiffs and  
20 Defendant Becerra. Plaintiffs contend that the challenged statute is unconstitutional.  
21 Defendant believes the statute is constitutional. Plaintiffs are therefore entitled to a  
22 declaration of rights with respect to this controversy. Without such a declaration,  
23 Plaintiffs will be uncertain of their rights and responsibilities under the law.

24 140. Plaintiffs are entitled to declaratory relief in the form of this Court  
25 ruling that Cal. Penal Code § 632 is unconstitutionally overbroad and unenforceable  
26 in any situation or, in the alternative, is unconstitutional as applied to Plaintiffs who  
27 film matters of public interest in public places or places of public accommodation.

28 141. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to

1 declaratory relief and temporary, preliminary, and permanent injunctive relief  
2 invalidating and restraining enforcement of Cal. Penal Code § 632.

3 142. Plaintiffs found it necessary to engage the services of private counsel to  
4 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
5 attorneys' fees pursuant to 42 U.S.C. § 1988.

## 6 **SECOND CLAIM FOR RELIEF**

### 7 **Free Speech—Content & Viewpoint Discrimination of Cal. Penal Code § 632.01**

#### 8 **42 U.S.C. § 1983**

#### 9 **(by Daleiden and CMP against Becerra)**

10 143. Plaintiffs incorporate by reference all allegations contained in the above  
11 paragraphs.

12 144. Cal. Penal Code § 632.01 is unconstitutional on its face under the First  
13 Amendment.

14 145. The most important function of the First Amendment is to protect  
15 against laws that target certain messages or speech because of their “ideas, subject  
16 matter, or content.” *Police Dept of Chi. v. Mosley*, 408 U.S. 92, 95–96 (1972).

17 146. “As a general rule, laws that by their terms distinguish favored speech  
18 from disfavored speech on the basis of the ideas or views expressed are content-  
19 based.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 643 (1994).

20 147. Together, Cal. Penal Code §§ 632 and 632.01 limit the ability to create  
21 images relating to a particular activity: healthcare. A regulation prohibiting the  
22 recording or publishing of images or sounds from a certain type of activity—e.g.,  
23 criminal activity in the healthcare industry—is content-discriminatory.

24 148. Even if the speech in question is not generally protected speech—for  
25 example, if the speech in question is merely cast as publication of unlawful  
26 recordings—the State still may not make a content-based distinction. *R.A.V. v. City*  
27 *of St. Paul*, 505 U.S. 377, 380 (1992). That is to say, content-based distinctions are  
28 impermissible even for speech that is generally unprotected.

1 149. By its plain text, the Planned Parenthood Amendment of 2016, Cal.  
2 Penal Code § 632.01, is an explicit content-based regulation. It singles out recordings  
3 of the activities of healthcare providers for special, discriminatory treatment.

4 150. In addition, the legislative history of the statute, including statements  
5 made by the law's sponsors and drafters, make clear that the purpose of the statute  
6 was and is to interfere with and suppress the message of pro-life groups. Legislators  
7 were targeting the speech and expressive activities of certain individuals for  
8 discriminatory treatment.

9 151. The law singles out speech about healthcare and limits the ability of  
10 activists and journalists to engage in political speech that is of the utmost public  
11 concern.

12 152. By singling out the healthcare industry for protection against political  
13 speech that may be harmful to its profits, the Planned Parenthood Amendment must  
14 be treated as a content- and viewpoint-based regulation. In practice, the law ensures  
15 that only one side of the debate about certain healthcare facilities is raised.

16 153. The Planned Parenthood Amendment, as a content- and viewpoint-  
17 based regulation that is neither justified by a compelling interest nor narrowly  
18 tailored, violates Plaintiffs' First Amendment rights.

19 154. Plaintiffs are entitled to an injunction. Defendant Becerra is acting and  
20 threatening to act under color of state law to deprive Plaintiffs of their constitutional  
21 rights. Plaintiffs will suffer irreparable injury and will continue to suffer real and  
22 immediate threat of irreparable injury as a result of the existence, operation,  
23 enforcement, and threat of enforcement of the challenged statute. Plaintiffs have no  
24 plain, adequate, or speedy remedy at law. Plaintiffs are refraining from further  
25 constitutionally protected activities solely for fear of prosecution under the statute.

26 155. Plaintiffs are entitled to prospective relief enjoining Defendant Becerra  
27 from enforcing Cal. Penal Code § 632.01 to remedy the deprivations suffered as a  
28 result of the violations of their First Amendment rights.



1 156. An actual and immediate controversy exists between Plaintiffs and  
2 Defendant Becerra. Plaintiffs contend that the challenged statute is unconstitutional.  
3 Defendant believes the statute is constitutional. Plaintiffs are therefore entitled to a  
4 declaration of rights with respect to this controversy. Without such a declaration,  
5 Plaintiffs will be uncertain of their rights and responsibilities under the law.

6 157. Plaintiffs are entitled to declaratory relief in the form of this Court  
7 ruling that Cal. Penal Code § 632.01 is unconstitutional and unenforceable in any  
8 situation.

9 158. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
10 declaratory relief and temporary, preliminary, and permanent injunctive relief  
11 invalidating and restraining enforcement of Cal. Penal Code § 632.01.

12 159. Plaintiffs found it necessary to engage the services of private counsel to  
13 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
14 attorneys' fees pursuant to 42 U.S.C. § 1988.

15 **THIRD CLAIM FOR RELIEF**

16 **Equal Protection & Due Process—The Daleiden Amendment: Section 632.01**

17 **42 U.S.C. § 1983**

18 **(By Daleiden and CMP against Becerra)**

19 160. Plaintiffs incorporate herein by reference all other paragraphs of this  
20 complaint as if those allegations were set out explicitly herein.

21 161. Cal. Penal Code § 632.01 is unconstitutional on its face under the  
22 Fourteenth Amendment.

23 162. The Equal Protection Clause of the Fourteenth Amendment provides,  
24 “No State shall . . . deny to any person within its jurisdiction the equal protection of  
25 the laws.”

26 163. When a statute is enacted based on improper motives, including animus  
27 towards a particular group of people or a particular person, the Equal Protection and  
28 Due Process Clauses of the Fourteenth Amendment are violated. *See, e.g., U.S. Dep’t*

1 *of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

2 164. The motivating purpose behind Cal. Penal Code § 632.01 was animus  
3 towards pro-life groups, and specifically animus towards Plaintiffs.

4 165. There was *no other purpose* behind Cal. Penal Code § 632.01 than to  
5 harm a politically unpopular group and shelter a single, very politically well-  
6 connected industry from public critique.

7 166. Cal. Penal Code § 632.01 targets pro-life groups and serves no rational,  
8 non-animus-motivated purpose. The legislative history of this law is replete with  
9 derogatory and false statements about Plaintiffs.

10 167. Defendant Becerra is acting and threatening to act under color of state  
11 law to deprive Plaintiffs of their constitutional rights. Plaintiffs will suffer irreparable  
12 injury and will continue to suffer real and immediate threat of irreparable injury as a  
13 result of the existence, operation, enforcement, and threat of enforcement of the  
14 challenged statute. Plaintiffs have no plain, adequate, or speedy remedy at law.  
15 Plaintiffs are refraining from further constitutionally protected activities solely for  
16 fear of prosecution under the statute.

17 168. Plaintiffs are entitled to prospective relief against Becerra to remedy the  
18 Equal Protection and Due Process violations, since they intend to investigate and  
19 report on biomedical issues in the future.

20 169. An actual and immediate controversy exists between Plaintiffs and  
21 Defendant Becerra. Plaintiffs contend that the challenged statute is unconstitutional.  
22 Defendant believes the statute is constitutional. Plaintiffs are therefore entitled to a  
23 declaration of rights with respect to this controversy. Without such a declaration,  
24 Plaintiffs will be uncertain of their rights and responsibilities under the law.

25 170. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
26 declaratory relief and temporary, preliminary, and permanent injunctive relief  
27 invalidating and restraining enforcement of Cal. Penal Code § 632.01.

28 171. Plaintiffs found it necessary to engage the services of private counsel to

1 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
2 attorneys’ fees pursuant to 42 U.S.C. § 1988.

3 **FOURTH CLAIM FOR RELIEF**

4 **Equal Protection & Due Process—Invidious & Selective Prosecution**

5 **42 U.S.C. § 1983**

6 **(By Daleiden against Becerra, PPFA, PPAC,**

7 **Parker, NAF, StemExpress, Harris, and Habig)**

8 172. Mr. Daleiden incorporates herein by reference all other paragraphs of  
9 this complaint as if those allegations were set out explicitly herein.

10 173. 42 U.S.C. § 1983 provides citizens with a cause of action against  
11 “[e]very person who . . . subjects, or causes to be subjected, any citizen of the United  
12 States or other person within the jurisdiction thereof to the deprivation of any rights,  
13 privileges, or immunities secured by the Constitution.

14 174. The Equal Protection and Due Process Clause generally prohibit  
15 invidious and selective prosecutions, such as prosecutions based on an unjustifiable  
16 standard such as race, religion, or other arbitrary classification directed so  
17 exclusively against a particular class of persons. *United States v. Armstrong*, 517  
18 U.S. 456, 464 (1996).

19 175. Never before has California applied Cal. Penal Code § 632 to prosecute  
20 similarly situated journalists, activists, or advocates. Journalists in California have  
21 engaged in numerous undercover operations utilizing the same exact techniques that  
22 Mr. Daleiden used during the Human Capital Project investigation.

23 176. This prosecution was rejected by the LAPD, the Pasadena City  
24 Attorney, the El Dorado County District Attorney, and the Los Angeles District  
25 Attorney due to the fact that the recordings were of conversations that “could be  
26 easily overheard by other people,” and therefore there were no legitimate grounds to  
27 prosecute Mr. Daleiden.

28 177. The purpose of this prosecution is the infringement of Daleiden’s First

1 Amendment rights in order to punish politically disfavored speech. Indeed, the  
2 prosecutor’s sole criterion to distinguish Mr. Daleiden’s video recordings from those  
3 of other undercover reporters in California was rooted in the *content* of his video  
4 publications, not the time-honored method by which the videos were obtained:  
5 “Moreover, several of those recordings were edited to enhance their shock value, and  
6 published online along with the victims’ personal identifying information. Not  
7 surprisingly, the edited videos incited anger and violence both to the victims  
8 themselves and to the community at large.” In fact, CMP’s publications did *not*  
9 include personally identifying information—only publicly available professional  
10 profile information, mainly of licensed professionals who are required to make that  
11 information publicly accessible—nor did the videos call (expressly or otherwise) for  
12 violent or illegal action. CMP’s publications were thus wholly protected speech.

13 178. Defendants, acting under color of state law, exceeded their legal  
14 authority and duties by influencing and coercing the manner in which the California  
15 Department of Justice Bureau of Investigation agents investigated Mr. Daleiden, and  
16 by allowing their decision-making process to be influenced by or controlled by  
17 Defendants Planned Parenthood and the National Abortion Federation.

18 179. Defendants and Defendants’ co-conspirators also knowingly and  
19 willfully conspired and/or agreed among themselves to deprive Daleiden of his rights  
20 to record evidence of criminality under Penal Code § 633.5 by ignoring this key  
21 element of the California recording law, suppressing information about it from  
22 magistrates, instructing the California Department of Justice investigators to ignore  
23 this element, and knowingly and willfully taking every step in their application of  
24 Penal Code § 632 against Mr. Daleiden with complete disregard for the conduct  
25 protected under § 633.5.

26 180. Defendants Planned Parenthood, their affiliates and employees, utilized  
27 illegal means to influence their representatives in government, including but not  
28 limited to, falsely denying their clinic’s illegal practices, fraudulently concealing

1 their clinics' and co-conspirators' illegal conduct in their abortion and fetal tissue  
2 programs from law enforcement, falsely claiming that their providers were being  
3 subjected to threats of physical harm, and falsely claiming Plaintiffs were responsible  
4 for such threats.

5 181. The private party defendants here used their direct connection and  
6 patronage relationships to AG Harris and AG Becerra to commence the underlying  
7 prosecution of Mr. Daleiden, seeking to punish the content of Mr. Daleiden and  
8 CMP's speech content. Planned Parenthood and other abortion groups have donated  
9 tens of thousands of dollars to the political campaigns of AG Harris and AG Becerra  
10 and provided significant other political assistance. It was this special patronage  
11 relationship and the political interests and viewpoints it was built around, rather than  
12 any element of Penal Code § 632 or body of jurisprudence, that led Defendants  
13 Harris and Becerra to seek to punish the content of Plaintiffs' speech.

14 182. Defendant Planned Parenthood was not content merely to cause the  
15 prosecution of Daleiden, but also required that AG Harris and AG Becerra illegally  
16 turn the prosecution over to their direct control. Despite violating due process,  
17 Planned Parenthood solicited and caused the entire prosecution to be turned over  
18 from the supervisory direction of the Attorney General, to the supervisory authority  
19 of Planned Parenthood, including specifically its in-house counsel Beth Parker, such  
20 that they had and continue to have effective control over all discretionary decision-  
21 making authority over it. The right to petition the government does not include the  
22 right to puppeteer the prosecution of another's message based on its content, or to  
23 entirely take over the direction of a criminal prosecution to such a degree that your  
24 attorneys can confidently and repeatedly guarantee to a judge that the Attorney  
25 General is about to do specific acts for your benefit in another legal proceeding.

26 183. As a proximate result of the wrongful acts herein alleged, Plaintiffs have  
27 diverted and expended substantial resources to address the consequences of  
28 Defendants' violation of Daleiden's constitutional rights, thereby suffering pecuniary

1 loss compensable under 42 U.S.C. § 1983.

2 184. Defendants and Defendants' co-conspirators did the acts and things  
3 herein alleged pursuant to, and in furtherance of, the conspiracy and the above-  
4 alleged agreement. In doing the things herein alleged, Defendants acted with malice,  
5 oppression, willfulness, and wantonness with the intent to cause injury to Plaintiffs,  
6 thereby warranting an assessment of punitive damages in an amount appropriate to  
7 punish Defendants and deter others from engaging in similar misconduct. On this  
8 basis, Plaintiffs seek monetary damages from all non-immune parties (all except  
9 Attorney General Becerra).

10 185. Daleiden is entitled to an injunction. Defendants are acting and  
11 threatening to act under color of state law to deprive Daleiden of his constitutional  
12 rights. Daleiden will suffer irreparable injury and will continue to suffer real and  
13 immediate threat of irreparable injury as a result of the selective prosecution.  
14 Daleiden has no plain, adequate, or speedy remedy at law. Daleiden is refraining  
15 from further constitutionally protected activities solely for fear of further selective  
16 prosecutions.

17 186. Pursuant to 42 U.S.C. §§ 1983 and 1988, Daleiden is entitled to  
18 declaratory relief and temporary, preliminary, and permanent injunctive relief  
19 invalidating and restraining selective prosecution against Plaintiff Daleiden.

20 187. Daleiden found it necessary to engage the services of private counsel to  
21 vindicate their rights under the law. Daleiden is therefore entitled to an award of  
22 attorneys' fees pursuant to 42 U.S.C. § 1988.

23 **FIFTH CLAIM FOR RELIEF**

24 **Violation of 42 U.S.C. § 1985(3)**

25 **(By Daleiden against Becerra, PPFA, PPAC, Parker, NAF, StemExpress,**  
26 **Harris, and Habig)**

27 188. Plaintiff Daleiden incorporates herein by reference all other paragraphs  
28 of this complaint as if those allegations were set out explicitly herein.

1 189. This federal claim for relief is brought against Defendants pursuant to  
2 its intentional and willful violations of Daleiden’s civil rights under 42 USC § 1985.

3 190. 42 U.S.C. § 1985(3) provides citizens with a cause of action against  
4 private conspiracies to violation constitutional rights. Section 1985(3) provides, in  
5 pertinent part, that: “If two or more persons...conspire...on the premises of another,  
6 for the purpose of depriving...any person...of the equal protection of the laws, or of  
7 equal privileges and immunities under the laws, or for the purpose of preventing or  
8 hindering the constituted authorities...from giving or securing to all persons...the  
9 equal protection of the laws[;]...the party so injured or deprived may have an action  
10 for the recovery of damages occasioned by such injury or deprivation....”

11 191. The Defendants, and each of them, did conspire with one another for the  
12 purpose of depriving, either directly or indirectly, Plaintiff Daleiden, a member of the  
13 journalistic and pro-life community, of the equal protection of the laws, and of equal  
14 privileges and immunities under the laws.

15 192. The Defendants, and each of them, did conspire with one another for the  
16 purpose of depriving, either directly or indirectly, Plaintiff Daleiden, a member of his  
17 own class of one, of the equal protection of the laws, and of equal privileges and  
18 immunities under the laws.

19 193. Defendants conspired with those acting under color of state law to  
20 inappropriately influence who law enforcement investigated and the very details of  
21 how law enforcement conducted its investigations into Mr. Daleiden and CMP,  
22 leading to the unprecedented criminal prosecution of Mr. Daleiden in an effort to  
23 violate his First Amendment rights.

24 194. Defendants and Defendants’ co-conspirators also knowingly and  
25 willfully conspired and/or agreed among themselves to deprive Mr. Daleiden and  
26 CMP of their rights to record evidence of criminality under Penal Code § 633.5, and  
27 to prevent or hinder the State of California from protecting these rights, by ignoring  
28 this key element of the California recording law, suppressing information about it

1 from magistrates, instructing the California Department of Justice investigators to  
2 ignore this element, and knowingly and willfully taking every step in their  
3 application of Penal Code § 632 against Mr. Daleiden with complete disregard for  
4 the conduct protected under § 633.5.

5 195. As a result of Defendants' wrongful, discriminatory infringement of  
6 Plaintiffs' civil rights, Plaintiff Daleiden has suffered both general and consequential  
7 damages in an amount exceeding the jurisdiction of this court, subject to proof at  
8 trial, including but not limited to the damage to reputation, property, business, trade,  
9 profession and occupation, physical and bodily injury, including but not limited to,  
10 anxiety, humiliation, shock, emotional distress, mental anguish and related mental  
11 and physical injury, and any and all attorneys' fees, costs and expenses incurred in  
12 prosecuting this action.

13 196. At the time the defendants engaged in the conduct alleged herein, they  
14 were guilty of intentional conduct, conscious disregard of the Plaintiff Daleiden's  
15 rights, malice, fraud, and/or oppression. Defendants possessed the full knowledge as  
16 to the rights and interests of Plaintiff Daleiden described herein, and Defendants  
17 acted in reckless indifference to and with wanton disregard of Plaintiffs' rights in  
18 doing the acts described herein. By reason of these acts, Plaintiff Daleiden is entitled  
19 to punitive and exemplary damages against the Defendants in an amount according  
20 to proof at the time of trial.

21 197. Daleiden has been greatly and irreparably damaged by reason of  
22 Defendants' conduct, and unless Defendants are enjoined by this court, they will  
23 continue their violations of Daleiden's rights, further irreparably harming him.

24 198. As a result of the wrongful conduct of Defendants as herein alleged,  
25 Daleiden is entitled to a temporary, preliminary and permanent injunction to prevent  
26 great and irreparable injury resulting from the infringement and violation of his  
27 rights, from the likelihood that he will be unable to respond in damages, and from the  
28 difficulty or impossibility to ascertain the exact amount of personal bodily injury and



1 property damage has, and will in the future, sustain. These ongoing and continuing  
2 injuries sustained by Daleiden cannot be fully compensated in damages and Daleiden  
3 is without an adequate remedy at law without the imposition of the requested  
4 equitable injunctive relief.

5 199. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff Daleiden is entitled to  
6 declaratory relief and temporary, preliminary, and permanent injunctive relief  
7 invalidating and restraining further actions of the conspirators.

8 200. Plaintiff Daleiden found it necessary to engage the services of private  
9 counsel to vindicate their rights under the law. Plaintiff Daleiden is therefore entitled  
10 to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

11 **SIXTH CLAIM FOR RELIEF**

12 **Violation of 42 U.S.C. § 1986**

13 **(by Daleiden against Defendants Cardwell and Diaz)**

14 201. Plaintiffs incorporate herein by reference all other paragraphs of this  
15 complaint as if those allegations were set out explicitly herein.

16 202. This federal claim for relief is brought under 42 U.S.C. 1986 against the  
17 above Defendants pursuant to their neglect and refusal to prevent or aid in preventing  
18 the wrongs conspired to be done under section 1985 as alleged in Plaintiffs' Fifth  
19 Claim for Relief.

20 203. On information and belief, Defendants Cardwell and Diaz ("CA DOJ  
21 Defendants") knew and know that Defendants Planned Parenthood, the National  
22 Abortion Federation, and their co-conspirators were and are conspiring to target Mr.  
23 Daleiden and CMP with content-based, selective application and selective  
24 prosecution of Penal Code § 632 in order to silence Plaintiffs' speech. The CA DOJ  
25 Defendants also knew and know that the Planned Parenthood Defendants were and  
26 are conspiring with the California Attorney General to deprive Mr. Daleiden and  
27 CMP of their rights, privileges, and immunities under § 633.5.

28 204. The CA DOJ Defendants have done nothing to aid in preventing the

1 violations of Mr. Daleiden’s and CMP’s rights through the conspiracy of the other  
2 Defendants, even though as eyewitnesses to and instrumentalities of the conspiracy  
3 they have the power to aid in preventing its continued fruition.

4 205. Plaintiffs first learned of the CA DOJ Defendants’ neglect on May 13,  
5 2019.

6 206. As a result of the CA DOJ Defendants’ wrongful neglect, Plaintiffs have  
7 suffered both general and consequential damages in an amount exceeding the  
8 jurisdiction of this court, subject to proof at trial, including but not limited to the  
9 damage to reputation, property, business, trade, profession and occupation, physical  
10 and bodily injury, including but not limited to, anxiety, humiliation, shock, emotional  
11 distress, mental anguish and related mental and physical injury, and any and all  
12 attorneys’ fees, costs and expenses incurred in prosecuting this action.

13 207. Plaintiff Daleiden found it necessary to engage the services of private  
14 counsel to vindicate their rights under the law. Plaintiff Daleiden is therefore entitled  
15 to an award of attorneys’ fees pursuant to 42 U.S.C. § 1988.

16 **SEVENTH CLAIM FOR RELIEF**

17 **Declaratory Relief—Purpose of Recording Under Sections 632 and 633.5**

18 **(By Daleiden and CMP against Becerra)**

19 208. Plaintiffs incorporate herein by reference all other paragraphs of this  
20 complaint as if those allegations were set out explicitly herein.

21 209. “In a case of actual controversy within its jurisdiction . . . any court of the  
22 United States may declare the rights and other legal relations of any interested party  
23 seeking such declaration . . .” 28 U.S.C. § 2201.

24 210. Plaintiff CMP is a group of citizen journalists dedicated to monitoring and  
25 reporting on medical ethics and advances. Plaintiff Daleiden is a citizen journalist  
26 with more than a decade of experience in conducting investigative research on the  
27 abortion industry, and the founder and CEO of Plaintiff CMP. Together Plaintiffs  
28 engage in investigative journalism, including undercover work that sometimes

1 requires surreptitious recording that relies on the “statutorily permitted purpose” of  
2 recording conversations that they reasonably believe to “relate [to] proving [the  
3 recorder] innocent, by proving her guilty, or by being indeterminate.” *Gensburg v.*  
4 *Lipset*, No. 94-16939, 1997 U.S. App. LEXIS 16276377, at \*8-9 (9th Cir. June 30,  
5 1997); *see also* 82 Cal. Op. Att’y Gen. 148, No. 99-403, 1999 WL 566799 (1999)  
6 (same); Legislative History (same).

7       211. Since 2015, when CMP published its last exposé, Plaintiffs have refrained  
8 from recording surreptitiously in California. Despite previously believing that the  
9 Invasion of Privacy Act was clear, and that they were in compliance with it, its  
10 clarity has subsequently been erased through threatened and actual civil and criminal  
11 litigation by StemExpress, Planned Parenthood, the National Abortion Federation,  
12 and the California Attorney General.

13       212. Plaintiffs are “uncertain and insecure regarding [their] right *vel non* to  
14 videotape and audiotape” conversations in compliance with Cal. Penal Code § 633.5.  
15 Because doing so is Plaintiffs’ business, however, Plaintiffs “will continue to  
16 participate in such [recording] activities” in the future, hopefully in compliance with  
17 the law. But without declaratory relief regarding the status of the law, the uncertainty  
18 creates “a ‘brooding presence,’ which cast[s] an adverse effect on [their] legitimate  
19 interests as [] citizen[s] of the United States.” *Fordyce v. City of Seattle*, 55 F.3d 436,  
20 440 (9th Cir. 1995).

21       213. As explained above, there is at least a “a genuine threat of enforcement of  
22 a disputed state criminal statute” because the California Attorney General has in fact  
23 brought an enforcement action. *Steffel v. Thompson*, 415 U.S. 452, 475 (1974). The  
24 California Attorney General explained that it chose to prosecute Plaintiffs based on  
25 the content of their speech, and therefore there is a likelihood that Plaintiffs may be  
26 prosecuted again. Plaintiffs intend to continue publishing material that is “edited to  
27 enhance [its] shock value” (where such edits are done in fair and industry standard  
28 ways), in order to compete in a difficult marketplace. Plaintiffs further intend to

1 continue publishing “personally identifying [but publicly available online, work  
2 contact] information” of the individuals investigated. Therefore, there is a likelihood  
3 that Plaintiffs could face litigation again in the future.

4 214. Because of Defendant Becerra’s admitted and demonstrated purpose to  
5 deny the protections of Section 633.5, “the threatened enforcement” of Section 633.5  
6 still “implicates First Amendment rights”—namely the right to record—and so “the  
7 inquiry tilts dramatically toward a finding of standing.” *LSO, Ltd. v. Stroh*, 205 F.3d  
8 1146, 1155 (9th Cir. 2000).

9 215. In light of the above controversy, Plaintiffs are entitled to a declaration of  
10 rights with respect to this controversy. Without such a declaration, Plaintiffs will be  
11 uncertain of their rights and responsibilities under the law.

## 12 **EIGHTH CLAIM FOR RELIEF**

### 13 **Supremacy Clause: Preemption of Cal. Penal Code §§ 632, 632.01**

#### 14 **(By Daleiden and CMP against Becerra)**

15 216. Plaintiffs incorporate herein by reference all other paragraphs of this  
16 complaint as if those allegations were set out explicitly herein.

17 217. Article VI, paragraph 2, of the U.S. Constitution provides, “the Laws of  
18 the United States ... shall be the supreme Law of the Land ... any Thing in the  
19 Constitution or Laws of any State to the Contrary notwithstanding.”

20 218. State laws that conflict with or frustrate the purposes of federal laws are  
21 preempted.

22 219. A state law is preempted when it “stands as an obstacle to the  
23 accomplishment and execution of the full purposes and objectives of Congress.”  
24 *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461  
25 U.S. 190, 204 (1983).

26 220. The operation, existence, and enforcement of Cal. Penal Code §§ 632  
27 and 632.01 violate the Supremacy Clause because they conflict with federal law by  
28 undermining the objectives of the False Claims Act.

1 221. Because one of the core purposes of the False Claims Act, 31 U.S.C.  
2 §§ 3729 and 3730, is to provide incentives and protections for private persons to  
3 surreptitiously uncover fraud against the federal government, Cal. Penal Code §§ 632  
4 and 632.01 are preempted.

5 222. In California there is at least one healthcare facility that has a contract  
6 with the federal government to provide healthcare services on behalf of the federal  
7 government.

8 223. Cal. Penal Code §§ 632 and 632.01 drastically undermine the federal  
9 goal of discovering fraud against the federal government by criminalizing the very  
10 conduct that has produced at least one False Claims Act case in the healthcare  
11 industry. More specifically, Cal. Penal Code § 632.01 was passed to protect Planned  
12 Parenthood from investigation, even though Planned Parenthood has been the subject  
13 of multiple successful False Claims Act cases.

14 224. An actual and immediate controversy exists between Plaintiffs and  
15 Defendant Becerra. Plaintiffs contend that the challenged statute is unconstitutional.  
16 Defendant believes the statute is constitutional. Plaintiffs are therefore entitled to a  
17 declaration of rights with respect to this controversy. Without such a declaration,  
18 Plaintiffs will be uncertain of their rights and responsibilities under the law.

19 225. Plaintiffs are entitled to a judgment declaring that Cal. Penal Code  
20 §§ 632 and 632.01 are preempted. Such a declaration is appropriate and necessary in  
21 order to determine the rights and obligations of the parties. Plaintiffs are entitled to  
22 declaratory relief in the form of this Court ruling that Cal. Penal Code §§ 632 and  
23 632.01 are unconstitutional.

24 **PRAYER**

25 Plaintiffs ask this Court to enter judgment against Defendants and provide the  
26 following relief:

- 27 1. A preliminary and permanent injunction forbidding Defendants and any  
28 person acting in concert with them from enforcing Cal. Penal Code § 632

- 1           against Daleiden for his actions and conduct related to the Human Capital
- 2           Project investigation;
- 3           2. A preliminary and permanent injunction forbidding Defendants and any
- 4           person acting in concert with them from enforcing Cal. Penal Code §
- 5           632.01 against Daleiden for his actions and conduct related to the Human
- 6           Capital Project investigation;
- 7           3. A declaration that any prosecution against Daleiden and CMP for violating
- 8           Cal. Penal Code § 632 violates Daleiden’s and CMP’s free-speech rights,
- 9           due process rights, and equal protection rights;
- 10          4. A declaration that any prosecution against Daleiden and CMP for violating
- 11          Cal. Penal Code § 632.01 violates Daleiden’s and CMP’s free-speech
- 12          rights, due-process rights, and equal-protection rights;
- 13          5. An award of compensatory damages against Defendants, including but not
- 14          limited to damages for lost work time, lost profits, expenses cause by
- 15          Defendants’ unconstitutional actions, as well as damages for the
- 16          humiliation, emotional distress, inconvenience, and reputational damages
- 17          caused by Defendants’ unconstitutional actions;
- 18          6. An award of punitive damages in an amount to be determined at jury
- 19          against Defendants for their unconstitutional actions;
- 20          7. An award of nominal damages to each Plaintiff against each Defendant;
- 21          8. An award of costs, expenses, and attorneys’ fees for this action pursuant to
- 22          42 U.S.C. § 1988;
- 23          9. An award of pre-judgment and post-judgment interest;
- 24          10. An ordering issuing the requested injunctive relief without requiring a
- 25          bond or other security from Plaintiffs;
- 26          11. Any other relief that the Court deems equitable and just under the
- 27          circumstances.

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**JURY DEMAND**

Plaintiffs demand a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,

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