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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff,**	**CASE NOS.: 2502505/17006621**
DAVID ROBERT DALEIDEN; SANDRA SUSAN MERRITT, **Defendants.**	**DEFENDANT DALEIDEN'S OPPOSITIO TO THE PEOPLE'S MOTIONS IN LIMINE**

Defendant **DAVID ROBERT DALEIDEN ("Daleiden") his** counsel, hereby submits his reply to the Attorney General's Motions in Limine[1].

I.
INTRODUCTION

Mr. Daleiden is not charged with violating the National Abortion Foundation's policies and procedures. Yet the Attorney General's (AG) statement of facts refers to nothing more than these policies and procedures. The AG wants this case presented as if NAF's policies and

[1] Mr. Daleiden also joins in the opposition filed by Ms. Merritt.

procedures transformed the entire St. Francis Hotel into a private confessional, such that every word uttered by any attendee was confidential without regard to the facts and intentions surrounding the conversations between the Does and the Defendants. There is no dispute that novelty identifications and a legally organized company, BioMax, were employed to enter the conference. The only dispute is whether the Defendants purposely recorded confidential communications or whether these conversations in public spaces where anyone could overhear them were reasonably intended by the Does, not by NAF, to be confined to themselves and the Defendants. In addition, the Defendants will assert the affirmative defense that they sought evidence of violent crimes pursuant to Penal Code section 633.5.

MOTION IN LIMENE NO. 1: Reciprocal Discovery

This motion will be answered in more detail in our reply to the AG's motion to compel discovery. However, the AG has done everything possible to prevent discovery on their part. The AG did not provide the identities of AG personnel who spoke to Derek Foran shortly before a search warrant was issued for Mr. Daleiden's home. The AG did not provide phone logs that would identify AG personnel that Foran spoke to after he researched California law on manufacturing driver's licenses. The AG also failed to provide any evidence of communications between NAF attorney Andrea Laks and AG personnel on April 6, 2016, concerning coordination of review of new videos. April 6, 2016 is the day after a search warrant was served on Mr. Daleiden's home. The AG provided nothing more than a declaration from DAG Jauron concerning her knowledge of the case after April 6, 2016.

Reciprocal discovery hinges on witnesses a party intends to call at trial: " 'inten[t] to call' " means that " 'all witnesses [a party] reasonably anticipates it is likely to call' " must be disclosed. (*Izazaga* v. *Superior Court* (1991) 54 Cal.3d 356, at p. 375 & fn. 11; PC 1054.3(a)(1) However, ["[t]here is no rule of law that would require the defense to disclose evidence gathered by an investigator who may tentatively be called by the defense for impeachment purposes"]; see *Izazaga*, *supra*, 54 Cal.3d at p. 377, fn. 14.)

Section 1054.7 identifies the time limits for the disclosures: "The disclosures required

under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred." (Pen. Code, § 1054.7 [emphasis added]; see *Magallan* v. *Superior Court* (2011) 192 Cal.App.4th 1444, 1458 [discussing statute].)

MOTION IN LIMENE NO. 2: Irrelevant Testimony Designed to Elicit Emotional Response

While a trial court has great latitude in limiting testimony at trial, it does not extend to limiting witnesses and attorney's descriptions of relevant evidence by issuing a gag order designed to prevent witnesses and attorneys from truthfully presenting evidence.

> As the high court explained in *Holmes v. South Carolina* (2006) 547 U.S. 319 [164 L. Ed. 2d 503, 126 S. Ct. 1727] (Holmes), a capital case: " '[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials.' [Citations.] This latitude, however, has limits. 'Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." ' [Citation.] This right is abridged by evidence rules that 'infring[e] upon a weighty interest of the accused' and are ' "arbitrary" or "disproportionate to the purposes they are designed to serve." ' [Citation.]" (*Holmes, supra*, 547 U.S. at pp. 324–325.)
>
> "While the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury. [Citations.] Plainly referring to rules of this type, we have stated that the

> Constitution permits judges 'to exclude evidence that is "repetitive … , only marginally relevant" or poses an undue risk of "harassment, prejudice, [or] confusion of the issues." ' [Citations.]

(People v. Gonzales (2012) 54 Cal.4th 1234, 1258-1259.)

The AG vaguely requests an order prohibiting the use of certain terms and references to the Langendorff perfusion apparatus and experimental procedure and descriptions of the very abortions for fetus harvesting research that Mr. Daleiden was investigating. "Specifically, the People request an order prohibiting the defense from using phrases such as "baby body parts," descriptions of failed abortions or partial birth abortions, the Langendorff machine, or graphic images of fetuses unless they are somehow connected to the facts of this case."

Dr. Theresa Deisher testified that only live hearts, hearts that have not contracted into *rigor mortis*, may be placed on the Langerdorff perfusion machine in order to maintain their function. Dr. Deisher testified that only a live, beating heart can be properly preserved and transported in a potassium solution for a brief period before being attached to the Langendorff apparatus. She testified that in order to obtain beating hearts babies would have been born alive before their hearts were harvested. Dr. Forrest Smith testified that common 2nd-trimester abortion procedures in which cervical preparation is accomplished with large doses of Misoprostol, practiced by the Does in this case, would result in babies born alive. The Stanford studies admitted into evidence at the preliminary hearing described purchasing numerous fetal hearts from StemExpress—with whom many of the Does worked and which Mr. Daleiden was investigating at the NAF 2014 tradeshow—and placing them on the Langendorff perfusion machine where they continued to beat. Hearts harvested from babies born alive are properly described as "baby body parts".

The AG essentially seeks a gag order at trial concerning testimony and public statements that would prevent both defendants and their counsel from characterizing the evidence as they see fit.

"[G]agging of publication has been considered acceptable only in 'exceptional cases.'" *CBS Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., in chambers) (quoting *Near v. Minnesota*, 283 U.S. 697, 716 (1931).

"Even where questions of allegedly urgent national security, see *N.Y. Times Co. v. United States*, 403 U.S. 713 (1971) (per curiam), or compet-ing constitutional interests, *Nebraska Press Ass'n*., 427 U.S., at 559, are concerned, we have imposed this 'most extraordinary remed[y' only where the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures. "

Id. (quoting Nebraska Press Ass'n, 427 U.S. at 562).

There are obviously no issues of "urgent national security" here—only NAF's desire to prevent the candid statements of its members about fetal-tissue procurement and sale from being made known to the public.

Likewise, the videos which describe partial birth abortions and changes in abortion procedure which cause extreme unnecessary pain as described by Dr. Smith through the use of large doses of the drug misoprostol is evidence of felony battery against women.

This testimony and the words and physical evidence that accompany them are entirely relevant to the defense under section 633.5

In *KNSD Channels 7/39 v. Superior Court* (1998) 63 Cal.App.4th 1200, a news organization requested a copy of an audiotape placed in evidence in a case where an elderly man was murdered for the five dollars in his pocket. The trial court denied the request because of the publicity surrounding the case. The Court of Appeal characterized the issue:

"We are presented with the issue of whether the public, through the news media, has a right to obtain copies of evidence introduced and played for the jury in a criminal trial. Absent a showing that providing such access threatens the integrity of the evidence, we conclude that the answer to this question is 'yes'; accordingly, we grant the petition and issue the writ." (*KNSD Channels 7/39 v. Superior Court* (1998) 63 Cal.App.4th 1200.)

The Court of Appeal looked to the common law right of access to court materials:

> The fundamental notion of public access to court proceedings is grounded in the common law of England and the United States. (*Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 569 [100 S. Ct. 2814, 2823, 65 L. Ed. 2d 973] ["at the time when our organic laws were adopted, criminal trials both here and in England had long been presumptively open"].) Based on this history of openness, the public's right of access to such court proceedings is now recognized as an integral part of the freedoms of speech and press guaranteed under the First Amendment to the United States Constitution. (*Id*. at pp. 575-581 [100 S. Ct. at pp. 2826-2829].) Similarly, the California Constitution, article I, section 2, subdivision (a), and section 15 provide for a right of access to judicial proceedings. (See also Pen. Code, § 686.)

(KNSD Channels 7/39 v. Superior Court (1998) 63 Cal.App.4th 1200, 1202-1203*.)*

This right is not absolute but can only be overcome by a sufficient showing of exceptional circumstances and good cause:

> California also recognizes the presumption of accessibility of judicial records in criminal cases and allows a trial court limited authority to preclude such access. "[W]here there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. In this regard the term 'public policy' means anything which tends to undermine that sense of security for individual rights, whether of personal liberty or private property, which any citizen ought to feel has a tendency to be injurious to the public or the public good." (*Craemer v. Superior Court* (1968) 265 Cal. App. 2d 216, 222 [71 Cal. Rptr. 193]; cf. *Estate of Hearst* (1977) 67 Cal. App. 3d 777, 785 [136 Cal. Rptr.

821] [in a civil case, the trial court may preclude public access to judicial records "under exceptional circumstances and on a showing of good cause"].)

(*Id. at pp.* 1203-1204.)

That good cause is often the deprivation of a defendant's right to a fair trial. Here the defendants support access to the video tapes in order to protect their rights to a fair trial. In order to defend against the constant clamor from Planned Parenthood and the Attorney General that the Does' own words without editorial statements have somehow been manipulated and falsely edited.

It is the Attorney General who seeks gag orders not to protect their right to a fair trial but simply to protect Planned Parenthood from the publicity that would ensue when the videos are released.

The Court of Appeal went on to note that once the audiotape had already been played in open court any interest in its suppression virtually disappears:

> However, where the evidence to which access is sought has already been presented to the jury, a defendant's interest in precluding access to it is diminished, if not ameliorated altogether. (E.g., *United States v. Mitchell* (D.C. Cir. 1976) 551 F.2d 1252, 1261 [179 App.D.C. 293] ["it suffices to note that once an exhibit is publicly displayed, the interests in subsequently denying access to it necessarily will be diminished"], reversed on other grounds in *Nixon v. Warner Communications, Inc., supra*, 435 U.S. at p. 603 [98 S. Ct. at p. 1315]; *Application of National Broadcasting Co., Inc., supra*, 635 F.2d at p. 952.) Further, once the evidence is presented in open court before the jury, the public's interest in access to that evidence is particularly clear. (See *Oklahoma Publishing Co. v. District Court* (1977) 430 U.S. 308, 310 [97 S. Ct. 1045, 1046, 51 L. Ed. 2d 355] [". . . the First and Fourteenth Amendments will not permit a state court to

prohibit the publication of widely disseminated information obtained at court proceedings which were in fact open to the public"], and cases cited therein.) *(KNSD Channels 7/39 v. Superior Court ,supra*, 63 Cal.App.4th 1200, 1204.)

The defendants' attorneys must also be allowed access to the video tapes after they have been placed in evidence and to play and comment upon them. In *Berndt v. Cal. Dep't of Corr. (N.D.Cal*. Aug. 9, 2004, No. C03-3174 TEH) 2004 U.S.Dist.LEXIS 15896 an attorney wrote letters urging that the application of a woman seeking a job as a warden be denied. The woman had already been appointed as a warden and was a defendant in this case. The woman sought an order prohibiting the attorney from publishing any further extra-judicial statements about her.

The District Court denied the request stating:

> [I]n *Gentile [v. State Bar of Nevada,* 501 U.S. 1030, 115 L. Ed. 2d 888, 111 S. Ct. 2720 (1991] the attorney for a criminal defendant held a press conference several hours after his client was indicted. *Id.* at 1033. Six months later, his client was acquitted of all charges. *Id.* The Nevada Supreme Court reprimanded the attorney for violating Nevada's Supreme Court Rule 177 because they found that his comments created "a substantial likelihood of materially prejudicing an adjudicative proceeding." *Id.* at 1032.
>
> On appeal, a very divided U.S. Supreme Court reversed the Nevada Supreme Court's decision that recommended a private reprimand for Mr. Gentile. *Id.* at 1058. However, the Court upheld the lesser standard of "substantial likelihood of material prejudice" for reviewing prior restraints on attorney speech. *Id.* at 1062-76.

*(Berndt v. Cal. Dep't of Corr. (N.D.Cal. Aug. 9, 2004, No. C03-3174 TEH) 2004 U.S.Dist.LEXIS 15896, at *7.)*

There is no substantial likelihood that after the use of the terms objected to by the AG and the production of videos in open court to the public will create a substantial likelihood of

prejudice to the prosecution's case.

"'The Supreme Court has stated that 'the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury' *Elrod v. Burns,* 427 U.S. 347, 96 S. Ct. 2673, 2690," (*California First Amendment Coalition v. Lungren* (N.D.Cal. Aug. 9, 1995, No. C 95-0440-FMS) 1995 U.S.Dist.LEXIS 11655, at *29.)

This political case is all about the videos recorded by the defendants. There are hundreds of hours of videos. The AG has filed charges concerning some of the videos featuring the Does who appear in them many, many more videos were recorded. Some of them involve the federally enjoined videos, others were not the subject of any injunction. Many of the witnesses that the defendants intend to call will be shown videos not previously shown that will establish that the defendants never intended to record confidential communications and did seek evidence of violent felonies. These videos are currently being curated. Nothing is more relevant to this case than the videos. The failure of a trial court to allow a defendant to play an audiotape of his telephone call to police that supported his testimony that he was not the person who committed two robberies was found to require reversal.

"Appellant was the sole defense witness. His credibility was a matter of the utmost importance to his defense. The actual tape recording of the conversation with the police operator was of substantial probative value to the defense as it may have shed light on appellant's testimony." (*People v. Miles* (1985) 172 Cal.App.3d 474, 479 [218 Cal.Rptr. 378].)

The most important defenses to the charges filed against the defendants are the affirmative defenses that they did not purposely record confidential communications and they did intend to gather evidence of violent felonies within the meaning of Penal Code section 633.5. The videos and most of the witnesses to be called will establish these defenses and are crucial to their defense.

MOTION IN LIMINE NO. 3: Victims Referred to as Does

In an effort to create a star chamber proceeding the AG requests that the Does be allowed to testify anonymously at trial. Our Supreme Court stated unequivocally in *Alvarado v. Superior*

Court, 23 Cal. 4th 1121, that a trial court may not order concealment of a witness's identity at trial. (*Id*. at pp. 1149, 1152.) The AG's reference to victims of sex crimes is inapposite.

In this Court's Preliminary Hearing Order, the Court distinguished *Alvarado v. Superior Court* "because we are at the preliminary hearing stage, *not trial*; and most importantly, the defendants in our case have been given the actual names of the Does." (PX Order p. 14 [emphasis added].)

MOTION IN LIMINE NO. 4: Limit State of Mind Evidence

The cross-examination of Mr. Daleiden at the preliminary hearing consisted entirely of attacks on his credibility, his profession and his character. This Court recognized that his state of mind both before and after the production of the videos was relevant to his credulity and his character. He testified that his discovery of the *Chris Wallace 20/20 video* in 2010 was the catalyst for his deep dive into the state of the fetal organs for sale industry. He studied the subject for three years before launching his Human Capital Project in 2013. What he found in those three years could not be more relevant to his state of mind, his credibility, his character, and his professionalism.

This Court has already recognized Mr. Daleiden's right to fully explain his state of mind for the purposes of explicating the bases for his exploration of his pursuit of evidence of violent felonies during the abortions in which mature fetal organs were sought by StemExpress, ABR, and Davinci Biologics for resale to medical researchers. He also testified that Planned Parenthood clinics worked closely with these companies in order to fulfill their requests for specific organs and tissues for which Planned Parenthood clinics received compensation. He also testified that he presented the evidence that he had found to many law enforcement agencies and to the United States Congress. This Court has previously ruled that officials from El Dorado County may testify regarding Mr. Daleiden's report to them. However, this Court preliminarily excluded the testimony of former five term Orange County District Attorney Tony Rackauckas who actually acted on Mr. Daleiden's evidence and shut down Da Vinci Biosciences and DV Biologics. Mr. Rackauckas has provided a declaration that is offered as an additional offer of

proof supporting his testimony.

Mr. Rackauckas declares that Mr. Daleiden provided him with evidence of violent crimes and that his office specifically found evidence of "infanticide, of partial birth abortions, of felony battery and of the illegal sales of fetal tissues and organs." (Declaration of Tony Rackauckas attached as Exhibit A.)

The AG has denied that Mr. Daleiden found or reasonably believed that he would find evidence of violent crimes. The statute, section 633.5 only requires that a defendant made reasonable good faith efforts to investigate violent crimes." Several decisions of the Court of Appeal have examined the relationship between Penal Code sections 632 and 633.5. All have concluded -- correctly -- that the latter exempts from the former an unconsented recording made with the requisite reasonable belief although the recording fails to capture the anticipated evidence (*People v. Parra* (1985) 165 Cal.App.3d 874, 880-881 [212 Cal.Rptr. 53]) or the initial purpose of the recording is self-protection rather than to gather evidence for use in a criminal prosecution (*People v. Ayers* (1975) 51 Cal.App.3d 370, 377 [124 Cal.Rptr. 283]). (See also *People v. Montgomery* (1976) 61 Cal.App.3d 718, 731 [132 Cal.Rptr. 558]; *People v. Strohl* (1976) 57 Cal.App.3d 347 [129 Cal.Rptr. 224].)" (*Lubetzky v. State Bar* (1991) 54 Cal.3d 308, 321 [285 Cal.Rptr. 268, 815 P.2d 341].)

The AG castigates Mr. Daleiden as an agent provocateur who sought only to damage Planned Parenthood.

Mr. Rackauckas testimony would be extremely relevant to Mr. Daleiden's credibility and character concerning his search for violent crimes. In addition, there is probably no greater expert on what constitutes evidence of all crimes than the five term District Attorney of Orange County, Tony Rackauckas.

"A defendant is entitled to expert testimony that supports his character, and the exclusion of such an expert can lead to reversal of any conviction. In light of the foregoing, the jury might well have been swayed by expert opinion testimony that neither Grafton nor Palomo was the 'type of person' to commit the charged acts. The pair claimed to be romantically involved and

were charged with far fewer crimes than the other two defendants. Dr. Mitchell's testimony would have lent credence to Grafton's and Palomo's personal denials of guilt. We therefore consider it reasonably probable that erroneous exclusion of the proffered testimony affected the judgment. (*People v. Watson, supra*, 46 Cal.2d 818, 836.)

Insofar as it upholds the convictions against defendants Grafton and Palomo, the judgment of the Court of Appeal is reversed." (*People v. Stoll* (1989) 49 Cal.3d 1136, 1162-1163.

MOTION IN LIMINE NO. 5: Exclude Testimony of Theresa Deisher, Ph.D.

This Court has already allowed Dr. Deisher to testify as an expert at the preliminary hearing. Nothing has changed concerning her expertise or the relevance of her testimony concerning the section 633.5 defense. Her testimony established that hearts provided by StemExpress to Stanford researchers were alive and beating when they were placed on the Langendorff perfusion machine.

The failure to allow Dr. Deisher's testimony would almost certainly be reversible error. (*People v. Stoll, supra*, at pp. 1162-1163.)

MOTION IN LIMINE NO. 6: Request for ruling allowing evidence of anti-abortion violence at clinics and meetings.

This request is actually an attempt to put Mr. Daleiden and Ms. Merritt on trial for threats and violence perpetrated by other people. The defendants never threatened anyone and face no such charges in the information. There is no nexus between the defendants and any threats or violence and therefore the AG has no basis for putting on evidence of uncharged crimes. (See *People v. Demetrulias* (2006) 39 Cal.4th 1, 15.)

MOTION IN LIMINE NO. 7: Define Which Violent Felony the Affirmative Defense Relies On

The defense has already stated that Mr. Daleiden was investigating infanticide, partial birth abortion and felony battery. Mr. Rackauckas has stated that he found evidence of these

crimes in Mr. Daleiden's materials. There is no requirement that the defendants describe the evidence sought with any greater specificity before trial. This request impinges on defense strategy and work product and should not be granted. (See, *Facebook, Inc. v. Superior Court (Touchstone)* (2020) 10 Cal.5th 329, 357 fn. 14.)

MOTION IN LIMINE NO. 8: Potential Sentence That May Be Imposed.

The defense has no intention to discuss punishment in the presence of the jury and no admonition from this Court is required.

MOTION IN LIMINE NO. 9: Restating the Standard of Proof.

In this request the AG seeks to restrict the defense in closing argument. No such a priori restrictions are allowed.

In *People v. Molina*, 126 Cal. 505, 508 [59 P. 34], the court said:

> "In the leading case of *Tucker v. Henniker*, 41 N.H. [317] 323, it is said: 'The right of discussing the merits of the cause, both as to the law and facts, is unabridged. The range of discussion is wide. He may be heard in argument upon every question of law. In his addresses to the jury it is his privilege to descant upon the facts proved or admitted in the pleadings; to arraign the conduct of parties; impugn, excuse, justify, or condemn motives, as far as they are developed in the evidence; assail the credibility of witnesses, when it is impeached by direct evidence, or by the inconsistency or incoherence of their testimony, their manner of testifying, their appearance on the stand, or by circumstances. His illustrations may be as various as the resources of his genius; his argumentation as full and profound as his learning can make it; and he may, if he will, give play to his wit, or wings to his imagination.'"
>
> It has been our experience that trial courts give generous recognition to this rule of procedure.

(People v. Travis (1954) 129 Cal.App.2d 29, 37-38.)

MOTION IN LIMINE NO. 10: Speaking Objections.

There is no need for an order that instructs the attorneys to avoid speaking objections or arguing motions in front of the jury. The Court has already allowed only one attorney for each defendant to make objections at the preliminary hearing.

MOTION IN LIMINE NO. 11: Admonishment of Defense Witnesses

The attorneys, not the witnesses, are required to follow this Court's orders on the motions in limine. The court should not insert itself into the interrogation of the witnesses.

MOTION IN LIMINE NO. 12: Defense Counsel to Voir Dire First

The defense has no objection to going first on voir dire.

MOTION IN LIMINE NO. 13 Juror Questions

This procedure is purely discretionary. It can cause confusion and error.

> The Judicial Council encourages trial court judges to allow jurors to submit written questions to witnesses; this practice is not new or unfamiliar. (See Cal. Rules of Court, rule 2.1033 ["A trial judge should allow jurors to submit written questions directed to witnesses. An opportunity must be given to counsel to object to such questions out of the presence of the jury"].) Unfortunately, this court has recently seen a couple of instances, such as the one in this case, where a juror's question has led to the erroneous admission of objectionable testimony. If written questions are to be submitted by jurors—particularly when the questions are directed to expert CSAAS witnesses—we urge trial judges (and the parties) to carefully evaluate each question to determine if the answer may lead to unintended consequences.
>
> (*People v. Lapenias* (2021) 67 Cal.App.5th 162, 166.)

The defense encourages the Court to forego this procedure.

MOTION IN LIMINE NO. 14: No Cameras in the Courtroom

This is a case of national importance on issues of great public interest. The Rittenhouse and Aubrey trials were televised because of the importance of the issues in those cases. The defense requests a pool camera in the courtroom at trial. A camera in the courtroom would also put an end to the controversy over the federal injunction as the videos admitted at trial would simultaneously be viewed by the entire nation.

MOTION IN LIMINE NO. 15: Request for Real-Time transcript access

The defense joins in this request.

Dated: February 18, 2022,

Respectfully submitted by,

_____

Steve Cooley

Siannah Collado

Brentford Ferreira

Brentford Ferreira

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is PMB #399, 318 E. 2nd Street, Long Beach, CA 90803

On February 18, 2022, I served the foregoing documents described as: DEFENDANT DALEIDEN'S OPPOSITION TO THE PEOPLE'S MOTIONS IN LIMINE on all interested parties in this action by email as follows:

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I declare under penalty of perjury, under the laws of the State of California that the above is true and correct. Executed February 18, 2022, at Long Beach, California.

Brentford Ferreira

Brentford Ferreira

EXHIBIT A

DECLARATION OF THE HON. TONY RACKAUCKAS

DECLARATION OF THE HONORABLE TONY RACKAUCKAS

I, Tony Rackauckas, am an attorney licensed to practice law in the State of California. I served as the Orange County District Attorney for five terms until 2019. I also served as a Superior Court Judge. I declare under penalty of perjury pursuant to the laws of the State of California that the following is true and correct:

1. In 2015, David Daleiden sent a complaint to my office accusing Planned Parenthood of Orange San Bernardino Counties together with Da Vinci Biosciences, LLC, and DV Biologics, LLC, of engaging in criminal conduct in the harvesting and sale of fetal organs and tissues.
2. Mr. Daleiden's complaint was brought to my attention, and we opened a criminal investigation. Evidence of many crimes was submitted by Mr. Daleiden. My office found evidence of infanticide, of partial birth abortions, of felony battery and of the illegal sales of fetal tissues and organs.
3. Our investigation found overwhelming evidence of illegal trafficking in fetal organs and tissues by Da Vinci Biosciences and DV Biologics. My office brought a civil action against Da Vinci and DV. That action led to an admission of guilt by these companies, a $7,800,000 settlement, and the dissolution of these purveyors of fetal organs.
4. Without Mr. Daleiden's evidence, this result would not have been possible.
5. Mr. Daleiden's investigative journalism provided a great public service.

/

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

Executed on January 18, 2022 at San Clemente, California

Tony Rackauckas

HON. TONY RACKAUCKAS