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7 Attorneys for the State of California

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 SAN FRANCISCO SUPERIOR COURT

10
11 **THE PEOPLE OF THE STATE OF
CALIFORNIA,**

12
13 Plaintiff,

14 v.

15 **DAVID ROBERT DALEIDEN and
SANDRA SUSAN MERRITT,**

16
17 Defendants.

Case No.

CRIMINAL COMPLAINT

Date:

Time:

Dept:

Judge:

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19 XAVIER BECERRA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, upon
20 oath of the undersigned, information and belief complain against the Defendants, DAVID
21 ROBERT DALEIDEN and SANDRA SUSAN MERRITT, for the crimes as follows:

22 COUNT 1

23 On April 6, 2014, in the County of San Francisco, in the State of California, defendants
24 DAVID DALEIDEN and SANDRA SUSAN MERRITT did commit a felony in violation of
25 Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
26 confidential communication, by means of an electronic amplifying and recording device,
27 eavesdrop and record the confidential communication between themselves and DOE 1.
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COUNT 2

On April 6, 2014, in the County of San Francisco, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 2.

COUNT 3

On April 7, 2014, in the County of San Francisco, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 3.

COUNT 4

On April 7, 2014, in the County of San Francisco, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 4.

COUNT 5

On April 8, 2014, in the County of San Francisco, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 5.

COUNT 6

On April 8, 2014, in the County of San Francisco, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a

1 confidential communication, by means of an electronic amplifying and recording device,
2 eavesdrop and record the confidential communication between themselves and DOE 6.

3 COUNT 7

4 On April 8, 2014, in the County of San Francisco, in the State of California, defendants
5 DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
6 Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
7 confidential communication, by means of an electronic amplifying and recording device,
8 eavesdrop and record the confidential communication between themselves and DOE 7.

9 COUNT 8

10 On April 8, 2014, in the County of San Francisco, in the State of California, defendants
11 DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
12 Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
13 confidential communication, by means of an electronic amplifying and recording device,
14 eavesdrop and record the confidential communication between themselves and DOE 8.

15 COUNT 9

16 On July 25, 2014, in the County of Los Angeles, in the State of California, defendants
17 DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
18 Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
19 confidential communication, by means of an electronic amplifying and recording device,
20 eavesdrop and record the confidential communication between themselves and DOE 9.

21 COUNT 10

22 On February 6, 2015, in the County of Los Angeles, in the State of California, defendants
23 DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of
24 Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a
25 confidential communication, by means of an electronic amplifying and recording device,
26 eavesdrop and record the confidential communication between themselves and DOE 10.

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COUNT 11

On February 6, 2015, in the County of Los Angeles, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 11.

COUNT 12

On May 22, 2015, in the County of El Dorado, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 12.

COUNT 13

On May 22, 2015, in the County of El Dorado, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 13.

COUNT 14

On May 22, 2015, in the County of El Dorado, in the State of California, defendants DAVID DALEIDEN and SANDRA SUSAN MERRITT, did commit a felony in violation of Penal Code section 632(a) in that each did intentionally and without the consent of all parties to a confidential communication, by means of an electronic amplifying and recording device, eavesdrop and record the confidential communication between themselves and DOE 14.

COUNT 15

On and between October 9, 2013 and July 22, 2015, in the Counties of San Francisco, El Dorado, and Los Angeles in the State of California, the crime of CONSPIRACY, in violation of Penal Code section 182(a)(1) a felony, was committed by DAVID ROBERT DALEIDEN AND

1 SANDRA SUSAN MERRITT, who did willfully and unlawfully conspire together to commit the
2 crime of Recording a Confidential Communications, 632(a) of the California Penal Code, a
3 felony, pursuant to and for the purpose of carrying out the objects and purposes of the aforesaid
4 conspiracy, defendants committed the following overt act(s):

5 1. On or about October 1, 2013, DAVID DALEIDEN accessed and took documents
6 from Stem Express email system using a password from a terminated Stem Express employee;

7 2. On October 11, 2013, DAVID DALEIDEN filed Biomax Procurement Services,
8 LLC, as a Business Entity in the State of California, with the Agent of process as Philip Cronin
9 and CEO as Susan Tennenbaum;

10 3. On and between November 27, 2013 and March 27, 2014, individuals who
11 represented themselves as Biomax employees corresponded with employees of the National
12 Abortion Federation (NAF) using the email address of biomaxprocurementservices@gmail.com
13 and susan@biomax.com, to apply for exhibit space at the San Francisco NAF conference as
14 Brianna Allen and Susan Tennenbaum;

15 4. On February 5, 2014, DAVID DALEIDEN and SANDRA SUSAN MERRITT signed
16 an Exhibitor Agreement listing Susan Tennenbaum as CEO of BioMax, Robert Sarkis as Vice
17 President, and a \$3235 registration fee paid using Philip Cronin's VISA card;

18 5. On and between April 5, 2014 and April 8, 2014, defendants DAVID DALEIDEN
19 and SANDRA SUSAN MERRITT posed as BioMax employees to gain access to the NAF
20 conference in San Francisco, where they secretly video recorded conference speakers, vendors
21 and attendees;

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Affidavit in Support of Arrest Warrant
City and County of San Francisco

I, BRIAN CARDWELL, declare:

That I am a California Peace Officer per California Penal Code section 830.1, employed as a Special Agent by the California Department of Justice (DOJ), Bureau of Investigation (BI), eCrime Unit (eCU), and I allege and state the following:

I. Summary of Probable Cause

On December 2, 2015, the CA DOJ received a request to investigate whether David DALEIDEN, his organization, the Center for Medical Progress (CMP), and any co-conspirators, broke California laws regarding the surreptitious audio/video recordings of healthcare and biomedical services employees in California. DALEIDEN alleged publicly and to law enforcement that the employees were transferring aborted fetal tissue for profit in violation of California law. Special Agents from BI initiated an investigation into DALEIDEN and his co-conspirators.

During the course of this investigation, agents from BI learned that DALEIDEN created a phony fetal tissue procurement company, BioMax Procurement Services (BioMax), for the sole purpose of gaining access to various conferences hosted by Planned Parenthood, the National Abortion Federation (NAF) and others affiliated with women's healthcare services. DALEIDEN created a website, www.biomaxps.com, misrepresenting the company as a legitimate biomedical research service. He, and at least two others, used fraudulently created California driver's licenses (CDLs) in the name of Robert Sarkis (DALEIDEN), Susan Tennenbaum (Sandra MERRITT) and Briana Allen (Briana BAXTER) to obtain a BioMax vendor booth at the NAF conference in San Francisco, California, April 5 through April 8, 2014. While at the San Francisco conference, DALEIDEN, posing as Robert Sarkis, and MERRITT, posing as Susan Tennenbaum, used covert video/audio equipment to secretly record conversations they initiated with eight conference attendees.

From July 2014, through September 2015, DALEIDEN and MERRITT exploited the vetting procedures and connections they made as BioMax representatives to induce meetings with six individual healthcare and biomedical research providers in Los Angeles, California, and El Dorado, California. DALEIDEN and MERRITT, while wearing concealed audio/video digital recording devices, secretly recorded the meetings they initiated under false pretenses. Several of the secretly filmed video segments were edited and subsequently released for public viewing via CMP's website in July of 2015. Immediately afterward, several of the healthcare providers who had been named and identified in the edited videos, began receiving personal death threats.

The relevant identifying information for the 14 victims is contained in the "Confidential Attachment" incorporated herein. Declarant requests that the "Confidential Attachment" be ordered sealed pursuant to California Rule of Court 243.1(d) in order to protect the confidential personal information of the individuals. (See generally Pen. Code, §§ 293.5 and 964)

II. DOJ Investigation

A. The Sham Corporation: BioMax Procurement Services

DALEIDEN has admitted that in October of 2013, he communicated via FaceBook with Holly O'DONNELL, a recently terminated employee of Placerville biotech firm StemExpress.¹ O'DONNELL gave DALEIDEN the password to her former employer's email account. DALEIDEN admitted using the password to access the StemExpress internal system and take documents, read emails and download attachments containing confidential data. That stolen confidential data was subsequently published online and appears to be the source for manufactured promotional materials proffered by DALEIDEN in the name of BioMax Procurement Services.

Through their attorney, NAF provided DOJ emails regarding the registration BioMax Procurement Services submitted for the 2014 NAF Conference in San Francisco. In those emails, representatives using the emails biomaxprocurementservices@gmail.com and susan@biomaxps.com communicated the request to exhibit at the conference as a vendor. A February 7, 2014 email introduces Robert Sarkis as the new BioMax VP of Operations, with an associated email of bob@biomaxps.com.

NAF also provided DOJ additional conference materials submitted by BioMax Procurement Services as part of the registration process for the NAF conference. An Exhibitor Agreement signed on February 5, 2014, with the name Susan Tennenbaum, CEO of BioMax Procurement Services, was supported by two photocopied California Driver's Licenses in the names of Susan Tennenbaum and Robert Daoud Sarkis. The conference registration, purchased as a commercial firm with an exhibit booth and attendance at extra educational events, documents payment of \$3235 from the Visa card of Phillip Cronin.

Article of Incorporation for BioMax, L.L.C., were filed in California on October 11, 2013, with a registered Agent of Process as Philip Cronin. Phillip Cronin provided DOJ emails regarding the early development of the BioMax idea from DALEIDEN. In those emails, Cronin agreed to act as Agent of Process for BioMax until Daleiden told him he could resign in

¹ Daleiden Dep. 286:8-288:12, Dec. 30, 2015, StemExpress LLC, et al. v. Daleiden, et al., Case No.BC589145 (Ca. Sup. Ct.)

anticipation of the next phase of his project. The first such email on August 26, 2013, came from david.daleiden@gmail.com. In that email, DALEIDEN introduced himself and asked Cronin to participate as Agent of Process in his new corporation. After several additional emails and meetings, Cronin agreed to serve as agent after receiving the representation from an individual named Katie Short that "David & Co. don't expect there to be anything served, because their corporation is not actually going to be conducting any business. They are going to toy with conducting business, but stop well short of signing any contracts or the like." Cronin filed a resignation as Agent of Process on July 7, 2015 at the instigation of DALEIDEN, who sent an email on July 3, 2015, telling Cronin that he "may wish to resign now because the project was drawing to a close."

According to the internet domain history of the website Biomaxps.com, it was created from the same IP address as the CMP website through registrar BlueHost on September 2, 2013. The website registrant setting, a Domain Privacy Service, was changed to David Daleiden on Elkhorn Blvd in Sacramento on October 5, 2015. The privacy setting was replaced on October 24, 2015.

During the investigation, DOJ BI agents served a search warrant at DALEIDEN's residence at 8400 Edinger P107, Huntington Beach, California, and discovered printed paper copies of the same fake CDL's that were presented by BioMax to NAF for the 2014 conference. Also in the residence was promotional documentation for BioMax, BioMax Procurement Services business cards in the name of Robert Sarkis and Susan Tennenbaum, sophisticated recording equipment, and several thousand gigabytes of digital evidence.

Because DALEIDEN's attorney has claimed that material subject to attorney client privilege would be intermingled within all but the video recordings, all evidence seized by search warrant on April 5, 2016 was forensically acquired and imaged, but not searched. I have reviewed only those video files acquired from the digital evidence seized from DALEIDEN's residence, just over 2,300 video files, and I have determined that there are fourteen (14) victims of DALEIDEN's and MERRITT's conduct within California: recording a confidential conversation without knowledge or consent, a felony, in violation of Penal Code section 632.

B. Eight San Francisco Victims

On August 29, 2016, I extracted just over 2,300 video files from the digital evidence seized from DALEIDEN's residence, and started reviewing the videos in an attempt to identify individuals who were surreptitiously recorded by DALEIDEN and MERRITT. On September

15, 2016, I completed reviewing the videos and identified several victims who DALEIDEN and or MERRITT secretly recorded. I personally viewed the video files I was authorized to access.²

In reviewing the digital video evidence, I saw several individuals who appear to have been recorded without their knowledge in the sequestered conference area at the April 2014 NAF Conference in San Francisco at the Westin St. Francis hotel. Using the names the victims used to introduce themselves in the recordings, and in reviewing the file names themselves, I was able to identify and locate eight individuals.

I reviewed a video file which appeared to have been taken of a conversation with DOE 1 at the NAF conference on April 6, 2014. On January 9, 2017, I talked with DOE 1 regarding the April 2014 NAF Conference in San Francisco. She stated that she remembered talking with Robert Sarkis at the BioMax booth in the vendor area of the conference. She said that she did have an expectation of privacy in the conversation in that she would not have had it in public. She did not know she was being recorded and did not consent to it.

I reviewed a video file which appeared to have been taken of a conversation with DOE 2 at the NAF conference on April 6, 2014. On November 10, 2016, I contacted DOE 2 and informed him that I believed he had been surreptitiously filmed at the April 2014 NAF Conference in San Francisco. I asked DOE 2 if he recalled meeting DALEIDEN who represented himself as Robert Sarkis, an employee of BioMax. DOE 2 said he did not remember the conversation, but felt the conference was a private place where he could discuss matters in private with other conference attendees. He had no knowledge of the recording and did not consent to it having been taken.

I reviewed a video file which appeared to have been taken of a conversation with DOE 3 at the NAF conference on April 6, 2014. On November 10, 2016, I contacted DOE 3 and informed her about the investigation. I told DOE 3 that I believed she was surreptitiously recorded by DALEIDEN at the NAF conference hosted in San Francisco CA in April 2014. I asked DOE 3 if she recalled meeting DALEIDEN who represented himself as Robert Sarkis, an employee of BioMax. DOE 3 stated a man approached her at the conference who told her he worked for a fetal tissue procurement company, but she did not recall his name. DOE 3 said she absolutely felt the conversation was confidential, and that is why conference attendees are vetted before being allowed into a NAF conference, so attendees do not have to worry about issues such as being secretly recorded. DOE 3 stated she did not know she was being recorded and believed the conference was a private place where conference attendees could communicate privately.

² I am aware of the provisions of Penal Code section 633.5 under which recording is authorized under limited circumstances, and I did not observe any of those enumerated circumstances to be present.

I reviewed a video file which appeared to have been taken of a conversation with DOE 4 at the NAF conference on April 6, 2014. On November 16, 2016, I talked with DOE 4, an employee of a California medical clinic, regarding the investigation. I asked DOE 4 if she recalled speaking with DALEIDEN, who posed as Robert Sarkis, an employee of BioMax. DOE 4 stated she was at the NAF conference hosted in San Francisco, CA in April 2014, and recalled talking to DALEIDEN. DOE 4 stated DALEIDEN approached her at previous conferences and inquired about tissue procurement. DOE 4 stated she felt all the conversations she had with DALEIDEN, including the one in San Francisco, were confidential. DOE 4 stated she did not know DALEIDEN was recording her and did not give him permission to do so.

I reviewed a video file which appeared to have been taken of a conversation with DOE 5 at the NAF conference on April 6, 2014. On November 17, 2016, I talked with DOE 5 and informed her about the investigation. I asked DOE 5 if she recalled speaking with DALEIDEN, who posed as Robert Sarkis, an employee of BioMax. DOE 5 stated she was at the NAF conference in San Francisco in April 2014, and recalled talking with DALEIDEN and MERRITT at the BioMax booth. DOE 5 said DALEIDEN was interested in fetal tissue procurement, and she believed the conversation was private. DOE 5 said she did not give DALEIDEN permission to record her and already knew about the recording because video of her had been released on the internet. DOE 5 said after the video release, individuals protested at her facility, with her name written on signs. For her safety, DOE 5 had to hire security.

I reviewed a video file which appeared to have been taken of a conversation with DOE 6 at the NAF conference on April 6, 2014. On November 16, 2016, I talked with DOE 6 regarding the investigation. I asked DOE 6 if he recalled speaking with DALEIDEN, who posed as Robert Sarkis, an employee of BioMax. DOE 6 stated he was at the NAF conference hosted in San Francisco, CA in April 2014, and recalled talking to DALEIDEN at the BioMax booth. DOE 6 stated DALEIDEN approached him at several conferences, and at times was assertive with his questioning. DOE 6 stated he did not give DALEIDEN permission to record him and felt the conversation he had with DALEIDEN in San Francisco was confidential.

I reviewed a video file which appeared to have been taken of a conversation with DOE 7 at the NAF conference on April 6, 2014. On November 10, 2016, I contacted DOE 7, and informed her that I believed she had been surreptitiously filmed at the April 2014 NAF Conference in San Francisco. I asked DOE 7 if she recalled meeting DALEIDEN who represented himself as Robert Sarkis, an employee of BioMax. DOE 7 said she did not remember him, but that she felt the conference was a private place where she could discuss matters in private with other conference attendees. She did not know the video had been taken and did not give her permission for the conversation to be recorded.

I reviewed a video file which appeared to have been taken of a conversation with DOE 8 at the NAF conference on April 6, 2014. On January 19, 2017, I talked with DOE 8 regarding the April 2014 NAF Conference in San Francisco. DOE 8 vaguely remembered having a conversation with DALEIDEN at the BioMax booth, and stated it was a private conversation among her peers, and not a conversation she would have had in public. She did not know she was being recorded and did not give anyone permission to record it.

C. Three Los Angeles Victims

I reviewed video obtained from the seized digital evidence in which DALEIDEN and MERRITT can be seen utilizing undercover audio/video recording devices during a meeting with DOE 9 at a restaurant on July 25, 2014. In the video, DALEIDEN and MERRITT posed as Sarkis and Tennenbaum, employees of BioMax, and met with physician DOE 9 at the Kraft restaurant, 10100 Constellation Blvd., Century City, CA.

On September 2, 2015, DOE 9 reported to Los Angeles Police Department in Report Number 15-916205, that she realized the meeting had been recorded after she began receiving numerous death threats via email. DOE 9 believed she received death threats because excerpts of the video were released for public viewing on CMP's website on July 14, 2015. On December 18, 2015, agents from BI interviewed DOE 9 who stated she believed the conversation at the restaurant was confidential, and the video was taken without her knowledge or consent.

I reviewed video obtained from the seized digital evidence in which DALEIDEN and MERRITT can be seen utilizing undercover audio/video recording devices during a meeting with physician DOE 10 and clinician DOE 11 on February 6, 2015. In the video, DALEIDEN and MERRITT posed as Sarkis and Tennenbaum, met with DOE 10 and DOE 11 at the Bistro restaurant, One Colorado, 41 Hugus Alley, Pasadena, CA.

On August 25, 2015, clinicians DOE 10 and DOE 11 reported to the Pasadena Police Department in Report Number 15-011054, that they had been secretly recorded by DALEIDEN. DOE 10 and DOE 11 did not learn the meeting was recorded until CMP released edited portions of the video on their website in July of 2015. At the restaurant meeting initiated by Biomax, DOE 10 and DOE 11 believed they were meeting Robert Sarkis, VP of BioMax, regarding biomedical tissue donations. Unbeknownst to DOE 10 and DOE 11, the meeting was secretly recorded without their permission via audio and video. Pasadena Detective Edgar Sanchez conducted follow-up into copies of two fake CDL's presented to DOE 10 and DOE 11 in the name of Sarkis and Tennenbaum. Detectives independently showed DOE 10 and DOE 11 photo lineups of DALEIDEN and MERRITT, who positively identified them as the two posing as BioMax representatives Sarkis and Tennenbaum.

D. The El Dorado Conduct

On May 21, 2015, DALEIDEN reported to the El Dorado County Sheriff's Department (EDSO) that Placerville biotech company StemExpress was selling human fetal tissue for profit. In Report EG 1506682, DALEIDEN admitted to secretly recording employees of Planned Parenthood, and provided to EDSO a thumbdrive of documents stolen from StemExpress which he claimed proved his allegation that StemExpress transferred fetal tissue for profit. During the meeting, Detective Prencipe specifically inquired about the consent of the employees he recorded. DALEIDEN responded that his surreptitious recordings had occurred in "1 party consent" states, and that he knew California was a two party consent state for recording. After an investigation including at least four separate employee interviews, the El Dorado Sheriff's Department determined that there was no violation of California law by StemExpress.

I reviewed video obtained from the digital evidence seized from DALEIDEN in which DALEIDEN and MERRITT can be seen utilizing undercover audio/video recording devices during a meeting with three StemExpress employees on May 22, 2015, one day after DALEIDEN reported the allegation about StemExpress to El Dorado. In the video, DALEIDEN and MERRITT posed as Sarkis and Tennenbaum, and met with DOE 12, DOE 13 and DOE 14. The meeting took place at Bistro 33, 4364 Town Center Boulevard, El Dorado Hills, CA.

On July 19, 2015, according to EDSO Report EG 1506163, DOE 12 reported receiving multiple death threats over the course of the previous week. She told EDSO that StemExpress is a Placerville biotech company specializing in transferring biomedical research specimens. Although StemExpress had no affiliation with Planned Parenthood, her business was named as having conducted stem cell research in allegations released on the CMP website.

On May 24, 2016, I interviewed DOE 12 regarding her meeting with DALEIDEN and MERRITT on May 22, 2015. She confirmed that the audio/video recording of this meeting was done without her consent. She stated that she realized DALEIDEN had secretly recorded her conversation at Bistro 33 when she recognized his voice in the edited videos released by CMP. She stated that she recognized his face in an interview he gave on the Bill O'Reilly show, and recognized many of the same questions he posed to the other secretly recorded victims.

On November 2, 2016, I contacted DOE 13 regarding the meeting she had with DALEIDEN on May 22, 2015, which DALEIDEN secretly recorded. I informed DOE 13 that I reviewed a statement she had made and wanted to discuss the meeting she had with DALEIDEN and MERRITT. DOE 13 stated she initially met DALEIDEN, posing as Robert Sarkis, and MERRITT, posing as Susan Tennenbaum, at an earlier women's health conference in Baltimore, Maryland. The two presented themselves as employees of BioMax Procurement Services, and

expressed interest in collaborating with StemExpress. DOE 13 stated she told DOE 12 about the possible collaboration and coordinated a meeting with DALEIDEN and MERRITT.

DOE 13 stated on May 22, 2015, at around 4:30 PM, DOE 12, herself and DOE 13, met who they believed to be Sarkis and Tennenbaum from BioMax, at Bistro 33, located at 4364 Town Center Boulevard, El Dorado Hills, California. DOE 13 stated the restaurant was not crowded and they were seated in an area of the restaurant that contained no other customers. DOE 13 told me she did not believe other customers could overhear or record their conversation, and believed the conversation was confidential. DOE 13 said she did not give DALEIDEN or MERRITT permission to record their meeting.

On November 7, 2016, I spoke with former StemExpress employee DOE 14, who said he and DOE 12 and DOE 13 believed they were meeting Robert Sarkis of BioMax to discuss the possibility of BioMax working with StemExpress. The meeting occurred on May 22, 2015 at around 4:30 PM, when DOE 12, DOE 13 and himself met the people he believed to be Robert Sarkis (DALEIDEN) and Susan Tennenbaum (MERRITT) to discuss the possibility of BioMax working with StemExpress with tissue procurements. The meeting was held at restaurant Bistro 33 in El Dorado Hills and, at the time, the restaurant was sparsely populated with customers. DOE 14 said the booth they were seated in was away from other customers and he believed other patrons could not overhear their conversation. DOE 14 said he believed the meeting was private and that no one could have recorded their discussion. DOE 14 said he did not give DALEIDEN or MERRITT permission to record their meeting. I told DOE 14 that I watched an unedited video of the meeting, which I located on DALEIDEN's computer, and noted that when a customer was eventually seated in a booth next to their booth, DOE 14 mentioned to DOE 12 that someone was sitting behind her in an effort to keep the conversation private.

III. Conclusion

I assert there is probable cause to believe that DALEIDEN and MERRITT entered into an agreement to create a fictitious business for the sole purpose of gaining access to individuals employed in the healthcare and biomedical research industry to surreptitiously record private meetings in violation of Penal Code section 182/632, a felony. Additionally, I assert there is probable cause to believe that DALEIDEN and MERRITT, on 14 separate occasions in the counties of San Francisco, Los Angeles and El Dorado, did covertly record confidential conversations with individuals who had an expectation of privacy in their conversation in violation of California Penal Code section 632(a), a felony.

Therefore, I request that a warrant be issued ordering the arrest of David DALEIDEN and Susan MERRITT for the attached alleged felony violations charged in the accompanying Felony Complaint.

I declare under penalty of perjury under the laws of the state of CA that the foregoing is true and correct to the best of my knowledge.

Brian Cardwell

Brian Cardwell
Special Agent

COURT ORDER

Based upon a review of the above declaration this Court finds that there exists an overriding interest that overcomes the right of public access to the record; the overriding interest supports sealing the record; a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest.

Therefore it is ordered that the following portion of the declaration identified as the "Confidential Attachment" be sealed and not be made part of the public record until further order of this Court or any other competent court.

DATED: 3/28/17 JUDGE: Carol Yaggy
CAROL YAGGY