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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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CLERK OF THE COURT  
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14 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **SAN FRANCISCO SUPERIOR COURT**

16 **THE PEOPLE OF THE STATE OF CALIFORNIA**  
17 **Plaintiff,**

18 **vs.**

19 **DAVID ROBERT DALEIDEN and**  
20 **SANDRA SUSAN MERRITT,**  
21 **Defendants.**

Case No.: 17006621

**DEFENDANT SANDRA SUSAN MERRITT'S MOTION TO RECUSE THE ATTORNEY GENERAL FOR CONFLICT OF INTEREST AND TO DISMISS CRIMINAL COMPLAINT FOR SELECTIVE PROSECUTION; AND**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

**Date: August 6, 2018**  
**Time: 9:00 a.m.**  
**Dept.: 23**  
**Judge: Christopher C. Hite**

22 **DEFENDANT SANDRA SUSAN MERRITT'S**  
23 **MOTION TO RECUSE THE ATTORNEY GENERAL FOR CONFLICT OF INTEREST**  
24 **AND TO DISMISS CRIMINAL COMPLAINT FOR SELECTIVE PROSECUTION**

25 **TO THE ABOVE-ENTITLED COURT, AND TO THE ATTORNEY GENERAL OF**  
26 **THE STATE OF CALIFORNIA:**

27 **PLEASE TAKE NOTICE** that on August 6, 2018, at 9:00 a.m., in Department 23 of the  
28 above-entitled court, or as soon thereafter as the matter may be heard, Defendant SANDRA SUSAN MERRITT will move this Court to recuse the Attorney General Xavier Becerra, as well

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11 **SAN FRANCISCO SUPERIOR COURT**

12 **THE PEOPLE OF THE STATE OF**  
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17 **Defendants.**

**Case No.: 17006621**

**DEFENDANT SANDRA SUSAN**  
**MERRITT'S MOTION TO RECUSE THE**  
**ATTORNEY GENERAL FOR CONFLICT**  
**OF INTEREST AND TO DISMISS**  
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**MEMORANDUM OF POINTS AND**  
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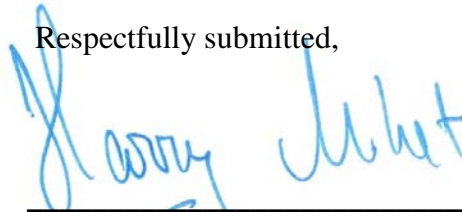
1 as the Office of the Attorney General, for a conflict of interest under *People v. Superior Court*  
2 (*Greer*), 19 Cal. 3d 255 (1977), and further, to dismiss the criminal charges brought against Ms.  
3 Merritt in the Amended Criminal Complaint filed on August 24, 2017, on the basis of the Attorney  
4 General's improper, selective and discriminatory prosecution. Ms. Merritt files  
5 contemporaneously herewith her Memorandum of Points and Authorities. Further in support  
6 hereof, Ms. Merritt relies on all court documents filed in this case to date, the documents attached  
7 to the Memorandum of Points and Authorities, and she intends to present evidence and argument  
8 at the hearing on this motion.

9 Respectfully submitted

10 SANDRA SUSAN MERRITT,  
11 By Counsel.

12 DATED: July 23, 2018

13 Respectfully submitted,



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**  
2 **OF MOTION TO RECUSE THE ATTORNEY GENERAL AND**  
3 **TO DISMISS COMPLAINT FOR SELECTIVE PROSECUTION**

4 Defendant Sandra Susan Merritt (“Merritt”), by and through her counsel, respectfully  
5 moves this Court to recuse Attorney General Xavier Becerra, for a conflict of interest under *People*  
6 *v. Superior Court (Greer)*, 19 Cal. 3d 255 (Cal. 1977), and further, to dismiss the criminal charges  
7 brought against Ms. Merritt in the Amended Criminal Complaint filed on August 24, 2017 based  
8 on the Attorney General’s improper selective prosecution. In support thereof, Ms. Merritt states  
9 the following:

10  
11 **STATEMENT OF FACTS**

12 **A. Merritt’s Journalistic Endeavors.**

13 Merritt is an investigative journalist who resides in the County of Santa Clara, California.  
14 Her investigative work has focused on the abortion industry, and she has spent many years  
15 researching industry practices. Her research revealed that abortion providers were doing business  
16 with fetal tissue procurement companies. Her research further revealed that, as part of those  
17 business dealings, abortion providers, such as Planned Parenthood, would alter abortion  
18 procedures so as to obtain an intact fetus from which organs could be harvested for sale to  
19 procurement companies. Her research also revealed that, to obtain the intact fetuses, abortion  
20 providers were willing to perform “partial birth abortions,” or would use techniques that would  
21 result in a live fetus being removed from the mother and then killed and dissected.

22 Ms. Merritt performed investigative work for the Center for Medical Progress’ (“CMP”)  
23 Human Capital Campaign. Her work revolved around gathering information, including  
24 conversations with abortion providers related to the harvesting and selling of the body parts of  
25 aborted fetuses.

26 During her work with CMP, Ms. Merritt attended abortion conferences as an exhibitor, and  
27 met with Planned Parenthood representatives to discuss potential business transactions.

1 Specifically, on July 25, 2014, Ms. Merritt met with Planned Parenthood [REDACTED]  
2 [REDACTED] in public, at a Southern California restaurant. At that meeting, Ms. Merritt  
3 discussed a potential business transaction with [REDACTED] that would have involved the purchase  
4 of fetal tissue specimens from Planned Parenthood.

5 Also, on February 6, 2015, Ms. Merritt met publicly with Planned Parenthood physician  
6 [REDACTED] and a colleague at a Pasadena restaurant. They discussed a potential business  
7 transaction with Planned Parenthood which would have involved the purchase of fetal tissue  
8 specimens from Planned Parenthood.

9 Ms. Merritt's above-mentioned endeavors were intended to gather information to be used  
10 in CMP's video reports evidencing criminal abortion industry practices in harvesting, selling and  
11 profiting from baby body parts. CMP published these video reports on its website, on YouTube  
12 and on Facebook.

13 The reports drew appropriate public outrage and moral indignation at Planned Parenthood's  
14 practices, as well as swift legal action. At least two entities in California have been successfully  
15 prosecuted, forced to pay almost \$8 million in penalties, and shuttered permanently in connection  
16 with their unlawful baby parts transactions. Several states and the federal government have moved  
17 to defund Planned Parenthood to varying degrees. And the United States Congress has conducted  
18 an investigation resulting in the referral of Planned Parenthood to law enforcement agencies for  
19 criminal prosecution in connection with its illegal profiteering from aborted baby body parts.

20 Instead of indicting and prosecuting Planned Parenthood for its documented criminal  
21 conduct, the California Attorney General has brought this unprecedented criminal action against  
22 the newsgatherers – **the first such action of its kind**. The unlawful and discriminatory reasons for  
23 this action are documented in this motion.

24  
25 **B. The Attorney General's Quid Pro Quo with Planned Parenthood**  
26 **Demonstrates Not Only an Unavoidable Conflict of Interest, But Even**  
27 **More, A Discriminatory Intent in the Prosecution Against Ms. Merritt.**

28 From the first instance of investigation through the present, the Attorney General's Office  
has maintained an ongoing financial, political, and close working relationship with executive

1 officers and employees of various Planned Parenthood entities, who are among the alleged victims  
2 in this prosecution. At a minimum, these strong and ongoing ties raise serious concerns over  
3 conflicts of interest that, as discussed below, “would render it unlikely that [Defendants Daleiden  
4 and Merritt] would receive a fair trial.” (Cal. Penal Code § 1424.)<sup>1</sup>

5 Moreover, both Attorney General Becerra and his predecessor who initiated this  
6 prosecution, now-U.S. Senator Kamala Harris, have had (and continue to have) a symbiotic  
7 relationship with Planned Parenthood. The evidence herein, as well as that to be presented by co-  
8 defendant Mr. Daleiden, meets the constitutional standards discussed in *Murgia v. Municipal*  
9 *Court*, 15 Cal. 3d 286 (Cal. 1975) and its progeny. As demonstrated below, the relationship  
10 between Planned Parenthood and the Attorney General’s office, including the control that Planned  
11 Parenthood has exhibited in this criminal prosecution, resembles a business partnership. What is  
12 more, numerous and well-publicized violations of Penal Code Section 632 by others similarly  
13 situated have gone **unprosecuted**. (*See* Declaration of Horatio G. Mihet, attached hereto.) **Neither**  
14 **the Attorney General nor any other law enforcement body in California has ever prosecuted**  
15 **a newsgatherer for the type of violations alleged in this prosecution.** (*See id.*)

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16  
17  
18 <sup>1</sup> Penal Code Section 1424 applies expressly to disqualification of district attorneys but  
19 provides a useful framework. This Section provides, in pertinent part, as follows:

20 (a)(1) Notice of a motion to disqualify a district attorney from performing an  
21 authorized duty shall be served on the district attorney and the Attorney General at  
22 least 10 court days before the motion is heard. The notice of motion shall contain a  
23 statement of the facts setting forth the grounds for the claimed disqualification and  
24 the legal authorities relied upon by the moving party and shall be supported by  
25 affidavits of witnesses who are competent to testify to the facts set forth in the  
26 affidavit. The district attorney or the Attorney General, or both, may file affidavits  
27 in opposition to the motion and may appear at the hearing on the motion and may  
28 file with the court hearing the motion a written opinion on the disqualification issue.  
The judge shall review the affidavits and determine whether or not an evidentiary  
hearing is necessary. The motion may not be granted unless the evidence shows  
that **a conflict of interest exists that would render it unlikely that the defendant  
would receive a fair trial**. An order recusing the district attorney from any  
proceeding may be reviewed by extraordinary writ or may be appealed by the  
district attorney or the Attorney General. The order recusing the district attorney  
shall be stayed pending any review authorized by this section. If the motion is  
brought at or before the preliminary hearing, it may not be renewed in the trial court  
on the basis of facts that were raised or could have been raised at the time of the  
original motion.

§ 1424 (emphasis added).

1           **1. Attorney General Becerra’s and Former Attorney General Kamala**  
2           **Harris’ Strong Political Ties to Planned Parenthood and the**  
3           **Abortion Industry Demonstrate a Strong Likelihood of Loyalty for**  
4           **Each Other, Causing A Conflict of Interest in Prosecuting This**  
5           **Case.**

6           Recently, CALmatters.org published an article on its website picturing Attorney General  
7           Becerra speaking at his primary election party sponsored by Planned Parenthood, standing in front  
8           of a poster that reads, “I STAND WITH PLANNED PARENTHOOD.”<sup>2</sup> Attorney General Becerra  
9           has not kept his ties with Planned Parenthood a secret: In a YouTube video published on May 25,  
10          2018 on the California Department of Justice’s YouTube channel, the Attorney General assures  
11          his viewers at a press conference that his Office is “united” with Planned Parenthood, among others,  
12          and he expresses that this unity was “important to say.”<sup>3</sup> Further, in a recently published video on  
13          YouTube channel belonging to Attorney General Becerra, Planned Parenthood received special  
14          thanks from Attorney General Becerra at his election victory party, sponsored and hosted by  
15          Planned Parenthood.<sup>4</sup>

16          In addition, the evidence uncovered in discovery in this case thus far demonstrates that  
17          Planned Parenthood employees were working very closely with then-Attorney General Kamala  
18          Harris’ Office to obtain evidence against Mr. Daleiden and Ms. Merritt, and even directed the  
19          Attorney General’s investigators in their investigation. The author of the Investigation Report BI-  
20          LA2015-00057 (dated Dec. 3, 2015), Special Agent Jesus Mejia,<sup>5</sup> explains that **Beth Parker,**  
21          **Chief Counsel for Planned Parenthood Affiliates of California** “stated that **Planned**  
22          **Parenthood would like the computers used to produce the videos seized.**”<sup>6</sup> Fulfilling Planned

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23          <sup>2</sup> Laurel Rosenhall, *California Election 2018: Updates and Analysis, Becerra to face a*  
24          *Republican in California attorney general race*, CALmatters.org (June 6, 2018 1:13 AM),  
25          [https://calmatters.org/articles/blog/becerra-to-face-a-republican-in-california-attorney-general-](https://calmatters.org/articles/blog/becerra-to-face-a-republican-in-california-attorney-general-race/)  
26          *race/*. (See **Exhibit A**, attached hereto).

27          <sup>3</sup> California Dept. of Justice, *AG Becerra Joins CA Legislative Women’s Caucus, Planned*  
28          *Parenthood, in Opposing Title X Rollback* (published May 25, 2018),  
29          <https://www.youtube.com/watch?v=X4DusJY2pmk> (quote begins at 1:25 minute mark; Planned  
30          Parenthood representative speaks at 10:58 minute mark).

31          <sup>4</sup> Xavier Becerra, *Xavier Becerra Thanks Supporters On 2018 Primary Election Night*  
32          (published June 6, 2018) <https://www.youtube.com/watch?v=26OmIYxgrXI&feature=youtu.be>.

33          <sup>5</sup> Discovery Document, Bates # AGODAL001392-1395, attached hereto as **Exhibit B**.

34          <sup>6</sup> *Id.* (emphasis added).

1 Parenthood’s request, a search warrant was then obtained and executed at Mr. Daleiden’s home,  
2 and his computers and electronics were seized.<sup>7</sup> That a **private** entity could provide instruction or  
3 legal advice to the Attorney General’s investigators regarding what evidence to seize **on behalf**  
4 **that private entity is unheard of and unseemly.**

5 While Planned Parenthood’s ability to instruct and influence SA Mejia is shockingly  
6 improper, the instruction can hardly be surprising when considering the close relationship  
7 evidenced in discovery documents between Planned Parenthood representatives and the personnel  
8 in the Attorney General’s Office. For example, the following communications and reports indicate  
9 that the Attorney General’s office was attempting to interject itself into seemingly every ongoing  
10 police investigation that had anything to do with Planned Parenthood:

11 On **August 4, 2015**, by email, John Marsh, Chief of Department of Justice, Bureau of  
12 Investigation, informed Sara Campbell regarding communications with an alleged Planned  
13 Parenthood victim of threats (Heather Estes, CEO of PPNorCal): “As a reminder **this is the**  
14 **Attorney General reaching out** on behalf of California to ensure the Doctors involved in  
15 California are safe.”<sup>8</sup>

16 In his Report No. 1, dated **August 14, 2015**, James Hirt, Special Agent Supervisor (SAS),  
17 Cal. Dept. of Justice (DOJ), Bureau of Investigation (BI), regarding “Planned Parenthood Threats,”  
18 noted that he had been instructed to contact two Planned Parenthood employees that allegedly  
19 received threats, despite the fact that the San Francisco Police Department was already handling  
20 one matter (concerning Heather Estes) and the Pasadena Police Department was handling the other  
21 (concerning ██████████). The same report covers another incident involving Planned Parenthood  
22 Thousand Oaks, which was already being handled by the Ventura County Sheriff’s Department  
23 and the Pasadena City Attorney’s Office.<sup>9</sup> Similarly on **October 1, 2015**, SAS Michael Casperson  
24 of the Cal. DOJ-BI, was instructed to look into an arson incident at Planned Parenthood Thousand  
25

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26 <sup>7</sup> See Discovery Document, Bates ## 1402-23, attached hereto as **Exhibit C** (Report #14,  
27 dated 4-6-16 with attachments, including Search Warrant).

28 <sup>8</sup> See Discovery documents, Bates ## AGODAL 2378-2381, attached as **Exhibit D**  
(emphasis added).

<sup>9</sup> See Discovery documents, Bates ## AGODAL 2748, 2750, 2752, attached as **Exhibit E.**



1 Oaks, even though that was already being handled by the Ventura County Sheriff's Department  
2 (VCSD).<sup>10</sup> Not likely coincidence, a VCSD supplemental report (dated **December 30, 2015**)  
3 concerning the arson incident includes Sr. Deputy M. Marco's summary of an interview with the  
4 arson suspect (Alvaro Perez), in which the suspect told him and Sergeant Dean Worthy that the  
5 act was not a political act of violence but one directed to get a Planned Parenthood employee's  
6 (Rosa's) attention, because they had been in a relationship but were having problems. Detective  
7 Worthy is noted as having told the suspect that the FBI and the DOJ were involved, and that "**some**  
8 **think this was a political act of violence and vandalism.**" Another supplemental report authored  
9 by Sergeant Worthy states that on **December 2, 2015**, he drafted a script for Rosa Rodriguez to  
10 use when speaking with Alvaro Perez, because she agreed to assist the police with investigation  
11 of him as the arson suspect. The script oddly contained the following question: "I'm trying to  
12 understand why you did that. Was it to get my attention, or because of your feelings about Planned  
13 Parenthood?"<sup>11</sup> The precise verbiage of the script matches that of the suspect's words in an  
14 interview that allegedly occurred after the script was written, which raises the question of an error  
15 in the report dates. In any event, both supplemental reports make it clear that the investigators  
16 involved were looking to attach a motive to the arson that the suspect explicitly disclaimed, but  
17 which was later lodged against Ms. Merritt and Mr. Daleiden to support the alleged Planned  
18 Parenthood victims' desire for anonymity.

19 Other communications between Planned Parenthood (and possible affiliated abortion  
20 providers) and the Attorney General's Office demonstrate the Attorney General's concerted efforts  
21 to be closely involved with Planned Parenthood, even outside any law enforcement investigation:

22 On **December 10, 2015**, Carole Joffe, PhD, a Professor in the Advancing New Standards  
23 in Reproductive Health program in the department of obstetrics, gynecology, and reproductive  
24 sciences at U.C. San Francisco's Bixby Center for Global Reproductive Health, emailed Jill Habig,  
25 Special Assistant to the Attorney General, to thank her (and her colleagues) for meeting with  
26

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27  
28 <sup>10</sup> See Discovery documents, Bates ## AGODAL 2754-56, attached as **Exhibit F**.

<sup>11</sup> See Discovery documents, Bates ## AGODAL 2555-59, 2563-64, attached as **Exhibit G**.

1 Professor Joffe and her “provider colleagues.”<sup>12</sup> Then, in **March 2016**, the Attorney General  
2 received an invitation to Planned Parenthood’s 53<sup>rd</sup> Anniversary Dinner, “Fearless Voices,” in  
3 which Professor Joffe was the featured speaker, and Planned Parenthood provided the Attorney  
4 General with a complimentary ticket to the dinner (valued at \$175).<sup>13</sup>

5 The Attorney General’s Office appears to have formed a close-knit circle with Planned  
6 Parenthood representatives for strategizing on various legal and political issues in which Planned  
7 Parenthood was/is actively involved. The entities appear to regularly assist each the other. For  
8 example, in **February 2016**, Jill Habig provided Beth Parker (Planned Parenthood) with a copy  
9 of the Attorney General’s Office’s legal brief in a case challenging California’s Reproductive  
10 FACT Act, and summarized the arguments made therein.<sup>14</sup> When the Reproductive FACT Act  
11 was challenged in the *National Institute of Family and Life Advocates v. Becerra* (“NIFLA”) case  
12 and went before the Ninth Circuit Court of Appeals, Jill Habig again consulted with and discussed  
13 amicus briefing with Planned Parenthood representatives.<sup>15</sup> Likewise, Jill Habig again consulted  
14 with Beth Parker in **March 2016** regarding public statements that the Attorney General’s Office  
15 intended to make to reporters concerning the impact of “TRAP laws in other states,” and  
16 specifically concerning a Texas law that was then in litigation, noting to Beth Parker that she had  
17 been thinking about how to communicate the message “that pro-choice leadership isn’t guaranteed  
18 forever.” For this purpose, Jill Habig asked for, and Beth Parker provided, zip code analyses to see  
19 how many women from outside California came to California for abortions.<sup>16</sup>

20 The pièce de résistance came in **March 2016**, when Jill Habig became the liaison to  
21 Planned Parenthood’s Beth Parker for aiding the drafting of legislation that specifically  
22 criminalized actions that Planned Parenthood wanted to prevent – the further release of any more  
23 videos by Mr. Daleiden. On **March 8, 2016**, Beth Parker sent to Jill Habig proposed legislation  
24

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25 <sup>12</sup> See Discovery documents, Bates ## AGODAL 2340-41, attached as **Exhibit H**.

26 <sup>13</sup> See Discovery documents, Bates ## AGODAL 2103-05, 2110, attached as **Exhibit I**.

27 <sup>14</sup> See Discovery documents, Bates # AGODAL 2180, attached as **Exhibit J**.

28 <sup>15</sup> See Discovery documents, Bates ## AGODAL 2150-53, attached as **Exhibit K**.

<sup>16</sup> See Discovery documents, Bates ## AGODAL 2142-43, 2488-90, 2491-93  
(numbered/redacted and unnumbered/unredacted), attached as **Exhibit L**.

1 (AB 1671) that would amend Penal Code Section 632, and those amendments would specifically  
2 ensure that each act of disseminating a confidential communication obtained in violation of Section  
3 632 would have a specific fine “per violation.” The two further discussed, in person and by email,  
4 a Supreme Court case that would be a “potential obstacle” to Planned Parenthood’s goals. Others  
5 in the Attorney General’s office then worked together to set up a meeting between Planned  
6 Parenthood representatives and the Attorney General, and the meeting was set for **March 23, 2016**,  
7 with the following to attend: Kathy Kneer, Sue Dunlap, Celinda Vazquez, Dr. Jennifer Rosso, and  
8 Ana Sandoval. Then, on **March 29, 2016**, Christina Romero, Planned Parenthood’s Legislative  
9 Director, and Robert Sumner, Cal. DOJ Special Counsel for Legislation, conversed by email, with  
10 Robert Sumner inquiring as to Planned Parenthood’s legislative priorities to see if he could be  
11 “helpful where [he could].”<sup>17</sup>

12 From the March 23, 2016 meeting with the Attorney General, Jill Habig followed up with  
13 Ana Sandoval, Sue Dunlap, and Celinda Vazquez, sending them a list of “action items” so that  
14 they “could keep track as **we move forward.**” Action item No. 4 discusses legislation and states  
15 they are **consulting** with their “legislative affairs folks on this.” Action item No. 2, and all items  
16 after No. 6 are redacted, to which Defendant Merritt **objects.**<sup>18</sup> Jill Habig next spoke at a Planned  
17 Parenthood Public Affairs Meeting on **April 7, 2016.**<sup>19</sup> Shortly thereafter, on April 8, 2016, Beth  
18 Parker emailed Robert Sumner another draft of AB 1671.<sup>20</sup>

19 Further discussion regarding AB 1671 took place between Christina Romero and Sandy  
20 Uribe, Committee Counsel for the Assembly on Public Safety, regarding legal concerns and  
21 opinions pertaining to AB 1671. Christina Romero said of AB 1671, “**This is Planned**  
22

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23  
24 <sup>17</sup> See Discovery documents, Bates ## 2147-49, 1981, 2177, 1985-86, **1991**, 2191, 2281-84,  
2147-49, attached as **Exhibit M.**

25 Ms. Merritt’s counsel notes that **Doc. # 1991** contains an improper redaction to which  
26 Defendant Merritt **OBJECTS** and seeks to have that redaction removed, because there is no work  
product privilege that would attach to communications with third-parties.

27 <sup>18</sup> See Discovery documents, Bates # AGODAL 1983-84, attached as **Exhibit N** (emphasis  
added) (**OBJECTION**; no applicable privilege).

28 <sup>19</sup> See Discovery documents, Bates # AGODAL 1980, attached as **Exhibit O.**

<sup>20</sup> See Discovery documents, Bates ## AGODAL 2297-98, attached as **Exhibit P.**

1 **Parenthood’s number one priority bill in California because of all the suffering our staff has**  
2 **endured through the video attacks we have sustained.”** These emails were shared with Robert  
3 Sumner on **April 14, 2016**, and Christina Romero asked Robert Sumner not to “share” the  
4 information, likely because Sandy Uribe raised concerns about the proposed legislation.<sup>21</sup> Later,  
5 on **May 20, 2016**, at the request of Sarah Huchel, a consultant in the California Senate, Robert  
6 Sumner provided Deborah Rotenberg (an inquiring Planned Parenthood employee) with an old  
7 Attorney General Opinion. In Sarah Huchel’s request, she referred to the **Center for Medical**  
8 **Progress** as a “**second favorite subject**” of hers and Robert “Robbie” Sumner.<sup>22</sup>

9         The partnership between the Attorney General’s Office and Planned Parenthood described  
10 above, including the instructions given by Beth Parker to an investigator for the Attorney General’s  
11 Bureau of Investigation regarding computers to be seized, demonstrates at the very least a conflict  
12 of interest that requires recusal of the Attorney General’s Office. The Attorney General’s Office  
13 ceded control of its investigation to a private party. The Attorney General’s Office has further  
14 maintained a close-knit relationship with Planned Parenthood that raises serious questions as to  
15 whether the Attorney General’s Office can make impartial decisions without interference by a  
16 contaminating loyalty that it has to a private party. The financial contributions and public  
17 statements described below, together with the legal and political relationship summarized above,  
18 reinforce Ms. Merritt’s loss of confidence that the Attorney General’s Office was and is capable  
19 of investigating and prosecuting her case impartially.

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26  
27 <sup>21</sup> See Discovery documents, Bate ## AGODAL 2192-95, attached as **Exhibit Q** (emphasis  
added).

28 <sup>22</sup> See Discovery documents, Bate ## AGODAL 2309-10, attached as **Exhibit R** (emphasis  
added).

1           **2. Attorney General Becerra’s and Former Attorney General Kamala**  
2           **Harris’ Solid Financial Ties to Planned Parenthood and the**  
3           **Abortion Industry Demonstrate a Strong Likelihood of Loyalty for**  
4           **Each Other, Causing A Conflict of Interest in Prosecuting This**  
5           **Case.**

6           Attorney General Becerra<sup>23</sup> and former Attorney General Kamala D. Harris (now Senator  
7           Harris)<sup>24</sup> have been recipients of substantial donations from Planned Parenthood during their  
8           political campaigns. In various years since 1998, Attorney General Becerra received  
9           approximately \$5,000 in donations from Planned Parenthood or its employees (and \$500 from the  
10          National Abortion and Reproductive Rights Action League (NARAL)).<sup>25</sup> Likewise, Senator Harris  
11          received approximately \$7,500 in donations from Planned Parenthood or its employees.<sup>26</sup> Further,  
12          “both attorneys general received thousands of additional funds from other pro-choice groups allied  
13          with Planned Parenthood during their congressional campaigns.”<sup>27</sup> For example, the Center for  
14          Responsive Politics compiled data showing that Senator Harris received \$39,855 in total from  
15          “Abortion Policy/Pro-Abortion Rights” groups.<sup>28</sup> Likewise, Attorney General Becerra, when  
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18          <sup>23</sup> Attorney General Becerra formerly served in the United States House of Representatives  
19          from approximately Jan. 1993 to Jan. 2017.

20          <sup>24</sup> Senator Harris now serves in the United States Senate, after having served as California’s  
21          Attorney General from approximately Jan. 2011 to Jan. 2017.

22          <sup>25</sup> See **Exhibit S**, attached hereto (Federal Election Commission (FEC) filings, available at  
23          <http://www.fec.gov>).

24          <sup>26</sup> See **Exhibit T**, attached hereto (FEC filings, available at <http://www.fec.gov> and other  
25          various sources); see also Kate Scanlon, *California AG who charged pro-life filmmakers accepted*  
26          *thousands of dollars from Planned Parenthood*, The Blaze (Mar 29, 2017 5:13 PM),  
27          [http://www.theblaze.com/news/2017/03/29/california-ag-who-charged-pro-life-filmmakers-](http://www.theblaze.com/news/2017/03/29/california-ag-who-charged-pro-life-filmmakers-accepted-thousands-of-dollars-from-planned-parenthood/)  
28          [accepted-thousands-of-dollars-from-planned-parenthood/](http://www.theblaze.com/news/2017/03/29/california-ag-who-charged-pro-life-filmmakers-accepted-thousands-of-dollars-from-planned-parenthood/) [hereinafter, “Scanlon”].

29          <sup>27</sup> Scanlon, *supra* note 266.

30          <sup>28</sup> See Bill McMorris, *Dems Behind CMP Charges Received \$47,000 From Planned*  
31          *Parenthood Supporters*, Washington Free Beacon (March 29, 2017 1:30 P.M.),  
32          [http://freebeacon.com/politics/dems-behind-cmp-charges-received-47000-planned-parenthood-](http://freebeacon.com/politics/dems-behind-cmp-charges-received-47000-planned-parenthood-supporters/)  
33          [supporters/](http://freebeacon.com/politics/dems-behind-cmp-charges-received-47000-planned-parenthood-supporters/) (citing Center for Responsive Politics, *Abortion Policy/Pro-Abortion Rights: Top*  
34          *Recipients*, Open Secrets.org, [http://www.opensecrets.org/industries/recips.php?ind=Q15](http://www.opensecrets.org/industries/recips.php?ind=Q15&cycle=2016&recipdetail=S&mem=N&ortorder=U)  
35          &cycle=2016&recipdetail=S&mem=N&ortorder=U (select “Senate Candidates” for the year  
36          2016)).

1 serving in the House of Representatives “received more than \$7,600 from Planned Parenthood and  
2 NARAL, which also gives him a 100 percent rating on pro-choice positions.”<sup>29</sup>

3 Moreover, Senator Harris, as the former Attorney General, “spearheaded an investigation  
4 into The Center for Medical Progress,” and “[e]mails obtained by the Washington Times in  
5 September showed that Harris’ office also collaborated with Planned Parenthood to draft  
6 legislation criminalizing the recording or distribution of a private conversation with a health care  
7 provider, targeting The Center for Medical Progress.”<sup>30</sup> Not only has Planned Parenthood boasted  
8 in its own press release that it is the **sponsor** of the aforementioned legislation, AB 1671,<sup>31</sup> but  
9 further, Senator Harris also engaged in a supportive campaign for Planned Parenthood, with a  
10 petition on her own website.<sup>32</sup>

11 The political campaign activities and campaign funding, together with the **joint work**  
12 **effort** to draft legislation to criminalize more activities of Mr. Daleiden and Ms. Merritt after-the-  
13 fact, clearly demonstrate not only a conflict of interest, but also discriminatory intent behind this  
14 ongoing prosecution. On these bases, both recusal and dismissal are required.

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17 <sup>29</sup> McMorris, *supra* (citing *Rating Group: NARAL, Pro-Choice America, Vote Smart*,  
18 <https://votesmart.org/interest-group/1016/rating/4759#.WQoKmOXyuUl> (last visited May 11,  
2018)).

19 <sup>30</sup> Scanlon, *supra* note 26; *see also* Alexandra DeSanctis, *California Governor Signs Bill to*  
20 *Criminalize Whistleblowing*, National Review (Sept. 30, 2016),  
21 [http://www.nationalreview.com/corner/440611/california-whistleblower-law-governor-brown-](http://www.nationalreview.com/corner/440611/california-whistleblower-law-governor-brown-signs-bill-criminalizing-whistleblowing)  
22 [signs-bill-criminalizing-whistleblowing](http://www.nationalreview.com/corner/440611/california-whistleblower-law-governor-brown-signs-bill-criminalizing-whistleblowing) (emails obtained through public records request show  
23 Attorney General Harris’ office colluded with Planned Parenthood to draft AB 1761 “to protect  
24 [Planned Parenthood] from criminal prosecution”); Bradford Richardson, *Kamala Harris teamed*  
25 *up with Planned Parenthood to target David Daleiden*, Washington Times (Sept. 27, 2016),  
[http://www.washingtontimes.com/news/2016/sep/27/kamala-harris-planned-parenthood-teamed-](http://www.washingtontimes.com/news/2016/sep/27/kamala-harris-planned-parenthood-teamed-up-on-legi/)  
26 [up-on-legi/](http://www.washingtontimes.com/news/2016/sep/27/kamala-harris-planned-parenthood-teamed-up-on-legi/) (emails between the Attorney General’s office and Planned Parenthood demonstrate  
27 collaboration to draft AB 1671 (criminalizing secret recording and dissemination of  
28 communications with health care providers)).

<sup>31</sup> *See* Press Release, Planned Parenthood Action Funds, CA, *AB 1671 Moves to State Senate!*  
(June 1, 2016), attached as **Exhibit U**.

<sup>32</sup> *See* Kamala Harris, Senator, *Add Your Name to Defend Planned Parenthood*, attached as  
**Exhibit V** (formerly available at [http://www.kamalaharris.org/landing/engagement-160108-](http://www.kamalaharris.org/landing/engagement-160108-planned-parenthood/)  
planned-parenthood/ (page no longer exists but attachment shows page as viewed when last visited  
May 3, 2017)).

1           **C. Numerous Unprosecuted, Similarly Situated Journalistic**  
2           **Investigations Demonstrate a Discriminatory Effect in the Prosecution**  
3           **Against Ms. Merritt and Mr. Daleiden.**

4           The myriad of undercover journalistic investigations which have **not** suffered prosecution  
5 at the hands of the Attorney General (or district attorneys), and which do not fall within the  
6 exceptions to Section 632 found in Section 632.5,<sup>33</sup> boast loudly of discriminatory prosecution in  
7 the cases brought against Ms. Merritt and Mr. Daleiden. CBS News **routinely** engages in  
8 undercover investigations, filming those investigated for alleged fraud, and airing the stories  
9 publicly. Most recently, for example, CBS2 Los Angeles Reporter David Goldstein aired an  
10 undercover investigation concerning air-conditioning repair companies that commit fraud, using  
11 hidden cameras to expose the alleged fraud.<sup>34</sup> Mr. Goldstein has not been criminally prosecuted  
12 for using hidden video cameras in this undercover investigation. Likewise, David Goldstein  
13 investigated, with hidden cameras and video recordings, a doctor alleged to have been fraudulently  
14 issuing handicap parking placards.<sup>35</sup> Again, Mr. Goldstein has not been criminally prosecuted for  
15 using hidden video cameras in this undercover investigation. (*See* Declaration of Horatio G. Mihet,  
16 attached hereto).

17           CBS is not the only journalistic enterprise that has engaged in undercover investigations,  
18 exposing fraud with hidden cameras. Fox 11 Los Angeles also recently exposed the operation of

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19 <sup>33</sup> Section 632.5 provides, in pertinent part:  
20 Sections 631, 632, 632.5, 632.6, and 632.7 do not prohibit one party to a  
21 confidential communication from recording the communication for the purpose of  
22 obtaining evidence reasonably believed to relate to the commission by another party  
23 to the communication of the crime of **extortion, kidnapping, bribery, any felony**  
24 **involving violence against the person**, including, but not limited to, **human**  
**trafficking**, as defined in Section 236.1, or a **violation of Section 653m**, or  
**domestic violence** as defined in Section 13700. . . .

Cal. Penal Code § 633.5.

25 <sup>34</sup> David Goldstein, *Caught on Camera: Air-Conditioning Repairmen Inflate Fees to Fix*  
26 *Simple Problem*, CBSLA (May 22, 2018, 11:25 PM),  
<https://losangeles.cbslocal.com/2018/05/22/air-conditioning-repair-fix-simple-problem/>.

27 <sup>35</sup> David Goldstein, *Caught on Video: Doctor Asks for Cash for Handicapped Placard Before*  
28 *Exam*, CBSLA.com (Feb. 10, 2017, 11:19 PM)  
<https://losangeles.cbslocal.com/2017/02/10/caught-on-video-doctor-asks-for-cash-for-handicapped-placard-even-before-exam/>.

1 illegal marijuana dispensaries with the use of hidden cameras.<sup>36</sup> Likewise, numerous other  
2 journalists have gone “undercover” and have used hidden cameras in California to obtain evidence  
3 of and expose criminal activity. However, none of these journalists have been criminally  
4 prosecuted under California Penal Code sections 632(a) and 182(a)(1), as Defendants Merritt and  
5 Daleiden. The further examples set forth below demonstrate the routine use of hidden cameras in  
6 undercover journalistic endeavors in California, and the failure to prosecute them:

7       **NBC4 Los Angeles:** In May 2013, NBC4 Los Angeles revealed its undercover  
8 investigation demonstrating, via hidden cameras among other tools, that Jiffy Lube employees in  
9 various California locations regularly cheated Jiffy Lube customers. That report used hidden  
10 cameras to record confidential communications between undercover reporters and Jiffy Lube  
11 employees and is available on the station’s website.<sup>37</sup>

12       **Mercy for Animals:** Mercy for Animals (“MFA”) boasts of **six** undercover investigations  
13 in California that included secret video recordings:

14       1)       **2015, Foster Farms (California):** As explained by MFA, “Bob Barker, former  
15 host of The Price Is Right, narrates an undercover video exposing birds scalded alive at Foster  
16 Farms—certified as ‘humane’ by American Humane Association—and workers maliciously  
17 punching and throwing chickens, and ripping out their feathers for fun.”<sup>38</sup>

18       2)       **2014, Reichardt Duck Farm (Petaluma, Cal.):** As explained by MFA,  
19 “Following the undercover investigation, MFA immediately alerted law enforcement authorities  
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21  
22

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23 <sup>36</sup> *Illegal pot dispensaries brazenly operating in East L.A.; unlicensed, no taxes, no*  
24 *regulations*, Fox 11 Los Angeles (published June 4, 2018)  
<https://www.youtube.com/watch?v=FxwB6fNLFUA>.

25 <sup>37</sup> Joel Grover, et al., “*You Were Robbed*”: *NBC4 I-Team Exposes New “Tricks and Tactics”*  
26 *at Jiffy Lube Stores*, NBC Los Angeles (Published Tuesday, May 14, 2013),  
[http://www.nbclosangeles.com/news/local/You-Were-Robbed-NBC4-I-Team-Exposes-New-](http://www.nbclosangeles.com/news/local/You-Were-Robbed-NBC4-I-Team-Exposes-New-Tricks-and-Tactics-at-Jiffy-Lube-Stores-207304771.html)  
27 [Tricks-and-Tactics-at-Jiffy-Lube-Stores-207304771.html](http://www.nbclosangeles.com/news/local/You-Were-Robbed-NBC4-I-Team-Exposes-New-Tricks-and-Tactics-at-Jiffy-Lube-Stores-207304771.html).

28 <sup>38</sup> *Undercover Investigations, Mercy for Animals*,  
<http://www.mercyforanimals.org/investigations> (scroll down to “Past Investigations” under  
“Chicken” and scroll right to 2015 investigation video of Foster Farms, with descriptive text).



1 to violations of California’s anti-cruelty laws and presented them with a detailed legal complaint  
2 and meticulously compiled evidence of the violations.”<sup>39</sup>

3           **3) 2012, Ontario Livestock Sales (Ontario, Cal.):** As explained by MFA, “Hidden-  
4 camera footage secretly recorded by an MFA undercover investigator working at Ontario  
5 Livestock Sales outside of Los Angeles, California, reveals: . . . workers throwing, beating,  
6 stomping on and kicking animals in the face and body. . . . workers grabbing, dragging and  
7 throwing animals by their heads, necks, ears, horns, tails, and legs . . .” Further, Mercy for Animals  
8 explained that it alerted law enforcement of its undercover investigation, and “[a]s a result of  
9 MFA’s investigation, and a follow up investigation by law enforcement, seven employees and the  
10 auction’s owner have been charged with a total of 21 counts of animal cruelty.”<sup>40</sup>

11           **4) 2011, Illegal Slaughter Operation (Los Angeles, Cal.):** As explained by MFA,  
12 “Hidden-camera footage obtained by Mercy For Animals has led to the arrest of Roberto Celedon  
13 for three felony and 10 misdemeanor criminal charges related to his illegal slaughter operation in  
14 Los Angeles County, California.”<sup>41</sup>

15           **5) 2008, Norco Ranch (California):** As explained by MFA, “Just weeks before  
16 California voted on Proposition 2 to give egg-laying hens enough room to walk, stand, and stretch  
17 their limbs, MFA released this startling footage from inside the state’s largest egg producer. Prop  
18 2 passed with overwhelming support, making California the first state to ban battery cages.”<sup>42</sup>

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21 <sup>39</sup> *Ducks in Despair*, Mercy for Animals, <http://ducks.mercyforanimals.org/readmore.php>  
22 (last visited May 11, 2018); *see also Ducks in Despair*, Mercy for Animals,  
23 [http://ducks.mercyforanimals.org/?\\_ga=1.74268050.1472969329.1490993529](http://ducks.mercyforanimals.org/?_ga=1.74268050.1472969329.1490993529) (investigation  
24 video) (last visited May 11, 2018).

25 <sup>40</sup> *Auction Atrocities*, Mercy for Animals,  
26 [http://auction.mercyforanimals.org/?\\_ga=1.81624343.1472969329.1490993529](http://auction.mercyforanimals.org/?_ga=1.81624343.1472969329.1490993529) (investigation  
27 video located at same link) (last visited May 11, 2018).

28 <sup>41</sup> *Cruel Cuts, Illegal Slaughter Exposed in Los Angeles*, Mercy for Animals,  
<http://www.mercyforanimals.org/caslaughter> (investigation video located at same link) (last  
visited May 11, 2018).

<sup>42</sup> *See Undercover Investigations*, Mercy for Animals,  
<http://www.mercyforanimals.org/investigations> (scroll down to “Past Investigations” under “Eggs”  
and scroll right to 2008 investigation video of Norco Ranch, with descriptive text) (last visited  
April 11, 2018).

1           6)     **2008, Gemperle Enterprises (California):** As explained by MFA, “Covert  
2 footage recorded at one of the nation’s largest egg producers uncovered hens left to suffer from  
3 untreated injuries and infections and workers roughly cramming birds into cages, tearing birds out  
4 of cages by their fragile wings, kicking, stomping, and throwing them, and hurling them into ‘kill  
5 carts.’”<sup>43</sup>

6           **Compassion Over Killing:** Compassion Over Killing (“COK”) also openly describes its  
7 two undercover investigations in California, displaying its undercover videos on its website:

8           1)     **February 2017, Lamb Slaughterhouse, Superior Farms (Dixon, Cal.):** “This  
9 video filmed by a Compassion Over Killing undercover investigator offers the first hidden-camera  
10 look inside a US lamb slaughterhouse. At Superior Farms . . . COK documented egregious cruelty  
11 to young lambs and alarming food labeling practices.”<sup>44</sup>

12          2)     **March-April 2015, Turkey Hatchery, Foster Farms (Fresno, Cal.):** “In 2015, a  
13 Compassion Over Killing investigator wore a hidden camera while working behind the closed  
14 doors of a California turkey hatchery owned by Foster Farms — one of the top poultry producers  
15 in the U.S.”<sup>45</sup>

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24           <sup>43</sup>     *See Undercover Investigations, Mercy for Animals,*  
25 <http://www.mercyforanimals.org/investigations> (scroll down to “Past Investigations” under “Eggs”  
26 and scroll right to 2008 investigation video of Gemperle Enterprises, with descriptive text) (last  
visited May 11, 2018).

27           <sup>44</sup>     Compassion Over Killing, <http://cok.net/inv/> (scroll to CA: Lamb Slaughterhouse) (last  
visited May 11, 2018).

28           <sup>45</sup>     Compassion Over Killing, <http://cok.net/inv/> (scroll to CA: Turkey Hatchery) (last visited  
May 11, 2018).

1 Despite these animal rights groups' publicized and notorious investigations,<sup>46</sup> openly  
2 described on public websites, spokespersons for both Mercy for Animals and Compassion Over  
3 Killing have reportedly stated that no criminal charges have been filed against them.<sup>47</sup>

4 Moreover, as of July 17, 2018, legal research of published and unpublished caselaw has  
5 not revealed that criminal charges were ever filed against **similar undercover activities** under  
6 section 632 of the California Penal Code (hereinafter, § 632).<sup>48</sup> Of the ten criminal prosecutions  
7 for violations of § 632 that are reported on Westlaw (dates ranging from 1978 to 2016), four also  
8 involved other serious crimes, and one involved the defendant taping his own sexual activity and  
9 sexual intercourse with multiple women.<sup>49</sup> Moreover, from those ten cases found, five cases listed

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11 <sup>46</sup> People for the Ethical Treatment of Animals ("PETA") has also conducted similar  
12 investigations, which PETA has publicized on its website: *See Investigation Reveals Hell on Earth*  
13 *for Animals at California Dealer Warehouse*, PETA [http://www.peta.org/features/rat-snake-](http://www.peta.org/features/rat-snake-investigation-california-dealer-warehouse/)  
14 *investigation-california-dealer-warehouse/* (last visited May 11, 2018) (Undercover investigation  
15 "victory" claimed, where Mitch Behm, owner of Global Captive Breeders, LLC (GCB), and David  
16 Delgado, GCB's former manager, pleaded guilty to criminal charges of animal cruelty); *Prominent*  
17 *Hollywood Trainer Fails Animals: A PETA Exposé*, PETA,  
18 <http://investigations.peta.org/hollywood-trainer-fails-animals/> (last visited May 11, 2018) (Based  
19 on PETA's evidence and complaint, PETA claims the U.S. Department of Agriculture investigated  
20 and cited Birds & Animals Unlimited for violating the federal Animal Welfare Act).

21 <sup>47</sup> Cassy Fiano, *California is Actually OK with Undercover Journalism – As Long as It's*  
22 *Focused on Animal Abuse*, Live Action News (March 30, 2017, 07:00 AM),  
23 [http://liveaction.org/news/california-actually-ok-undercover-journalism-as-long-as-focused-on-](http://liveaction.org/news/california-actually-ok-undercover-journalism-as-long-as-focused-on-animal-abuse/)  
24 *animal-abuse/*.

25 <sup>48</sup> Lawsuits brought by private parties have been excluded. *See, e.g., Safari Club Int'l v.*  
26 *Rudolph*, No. 14-56236, 2017 U.S. App. LEXIS 2416 (9th Cir. Feb. 10, 2017, Amended) (criminal  
27 case *not* found against defendant Rudolph, although civil plaintiffs presented prima facie case for  
28 violation of § 632 and defendant's activities were "akin to newsgathering"); *Vera v. O'Keefe, III*,  
Civ. No. 10-cv-1422, 2012 WL 3263930 (S.D. Cal. Aug. 9, 2012) (criminal case *not* found against  
named defendants (journalists who secretly taped ACORN employee), although court found  
genuine dispute of material fact as to reasonableness of civil plaintiff's expectation of privacy  
under § 632); *Lieberman v. KCOP Television, Inc.*, 110 Cal. App. 4th 156 (Cal. Ct. App. 2003)  
(criminal case *not* found against defendant station or television reporters of defendant in  
undercover investigation, although civil plaintiff presented prima facie case of defendant's  
violation of Cal. Penal Code § 632).

<sup>49</sup> Five (5) criminal appellate cases were found, listing the Attorney General's office as  
counsel, which did **not** involve **investigative journalism**:

- *People v. Cotton*, No B260222, 2016 WL 3595545 (Cal. Ct. App. June 27, 2016) (discusses original prosecution in 1998 for violation of § 632, together with stalking, forced oral copulation, assault with a taser, making terrorist threats, and misdemeanor vandalism);

1 the Attorney General’s office as counsel (see footnote 49, *supra*); four of those five decisions were  
2 decided prior to Ms. Harris serving as the Attorney General (beginning in 2011), and the fifth  
3 decision (*People v. Cotton*, decided in 2016) involved charges against a defendant from 1998.  
4 **Critically, none of the ten cases involved public interest news gathering and reporting, as this**  
5 **case does, and as do the numerous non-prosecuted cases described above.**

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- 8 • *People v. Strother*, No. C044615, 2004 WL 882100 (Cal. App. Apr. 26, 2004) (together  
9 with violating § 632, defendant prosecuted for committing a lewd act upon a child under  
10 the age of 14, under Cal. Penal Code sec. 288(a));
  - 11 • *People v. McCallister*, No. E029538, 2002 WL 1724003 (Cal. Ct. App. July 25, 2002)  
12 (after reports of stalking and intimidation of witnesses, the district attorney’s office began  
13 an investigation of defendant private investigator (who had been hired in a domestic  
14 dispute), and defendant prosecuted under § 632, among other charges);
  - 15 • *People v. Drennan*, 84 Cal. App. 4<sup>th</sup> 1349 (2000) (school superintendent prosecuted under  
16 § 632 for taking still shots with video camera in another school official’s office; conviction  
17 reversed);
  - 18 • *People v. Wyrick*, 77 Cal. App. 3d 903 (1978) (defendant (an attorney) played recorded  
19 conversation for police detective and was prosecuted thereafter).

20 Five (5) criminal appellate cases were found, not involving the Attorney General’s office  
21 as counsel, and which did **not** involve **investigative journalism**:

- 22 • *August v. Avara*, No. B232996, 2012 WL 4815521 (Cal. Ct. App. Oct. 10, 2012) (a civil  
23 case; mentions arrest of August after airport police called by Avara for alleged violation  
24 of § 632 in recording alleged harassment and discrimination by employment supervisor,  
25 but criminal case opinion not found on Westlaw);
- 26 • *Hernandez v. Cty. of Riverside*, No. E047635, 2009 WL 3526907 (Cal. Ct. App. Oct. 30,  
27 2009) (civil case mentions criminal case, in which defendant Hernandez was charged with  
28 violation of § 632 in custody case after defendant attempted to prove child concealment  
with a recorded telephone conversation; defendant pleaded guilty to lesser offense of  
disturbing the peace).
- *People v. Valenta*, Case No. SC065793 (mentioned in *Valenta v. King*, no. F042088, 2003  
WL 22255727 (Cal. Ct. App. Oct. 2, 2003), stating district attorney prosecuted Valenta for  
violating § 632 in a criminal case; criminal case ultimately dismissed for prosecutorial  
misconduct in handling certain evidence; unable to find criminal case on Westlaw);
- *People v. Zuber*, No. C032200, 2002 WL 169660 (Cal. Ct. App. Feb. 4, 2002) (defendant  
prosecuted for rape and raping an unconscious person, together with violation of § 632);
- *People v. Gibbons*, 215 Cal. App. 3d 1204 (Ct. App. 1989) (defendant prosecuted for  
secretly recording sexual activity and sexual intercourse with several women in his  
residence).

Note: Five (5) other administrative cases were found involving employment or professional  
license decisions based upon allegations involving violations of § 632.

1 **LAW AND ARGUMENT**

2 Ms. Merritt moves to recuse the Attorney General and the Attorney General’s Office under  
3 *People v. Superior Court (Greer)*, 19 Cal. 3d 255 (Cal. 1977). Moreover, the evidence presented  
4 also mandates recusal under the standard of Penal Code Section 1424.

5 Further, Ms. Merritt moves to dismiss the Amended Complaint in this case based upon the  
6 Attorney General’s improper selective and discriminatory prosecution of Ms. Merritt and Mr.  
7 Daleiden, pursuant to *Murgia v. Municipal Court*, 15 Cal. 3d 286 (Cal. 1975) and its progeny.

8 **A. The Attorney General and His Office Should Be Recused Due to The**  
9 **Severe and Ongoing Conflict of Interest Engendered by The Political**  
10 **and Financial Ties to Planned Parenthood.**

11 **1. The Mere Appearance of Impropriety Will Suffice to Disqualify**  
12 **the Attorney General and His Office.**

13 In *People v. Superior Court (Greer)*, the California Supreme Court considered whether it  
14 could “recuse a prosecutor” “on the basis of a determination that a district attorney’s conflict of  
15 interest may bias him against a defendant.” 19 Cal. 3d at 266. In so doing, the Court explained a  
16 prosecutor’s duties:

17 A fair and impartial trial is a fundamental aspect of the right of accused  
18 persons not to be deprived of liberty without due process of law. . . .

19 . . . The prosecutor is a public official vested with considerable discretionary  
20 power to decide what crimes are to be charged and how they are to be prosecuted.  
21 . . . In all his activities, his duties are **conditioned** by the fact that he **‘is the**  
22 **representative not of any ordinary party to a controversy, but of a sovereignty**  
23 **whose obligation to govern impartially is as compelling as its obligation to**  
24 **govern at all;** and whose interest, therefore, in a criminal prosecution is not that it  
25 shall win a case, but that **justice shall be done.** . . .

26 Thus not only is a judicial requirement of prosecutorial impartiality  
27 reconcilable with executive discretion in criminal cases, it is precisely because the  
28 prosecutor enjoys such broad discretion that the public he serves and those he  
29 accuses may **justifiably demand** that he perform his functions with the **highest**  
30 **degree of integrity and impartiality, and with the appearance thereof.** . . . This  
31 advantage of public prosecution is **lost** if those exercising the discretionary duties  
32 of the district attorney are subject to **conflicting personal interests which might**  
33 **tend to compromise their impartiality.** In short, the prosecuting attorney “‘is the  
34 representative of the public in whom is lodged a discretion which is **not to be**  
35 **controlled by the courts, or by an interested individual.**”

36 *Id.* at 266-67 (bold emphasis added; italics in original) (citations omitted). As further noted by the  
37 Court,

1 [t]he preservation of prosecutorial impartiality is **perhaps most important during**  
2 **the charging process**, the phase of a criminal proceeding when the prosecutor’s  
3 discretion is most apparent. . . . Surely an essential aspect of [the safeguard of the  
4 charging process] must be the prosecutor’s freedom from any personal or emotional  
5 involvement in a controversy which **might bias** his objective exercise of judgment.

6 *Id.* at 267 n.8. Under this standard, public officials must “‘avoid, as much as possible, **the**  
7 **appearance of impropriety.**” *Id.* at 268 (quoting *People v. Rhodes*, 12 Cal. 3d 180, 185 (1974))  
8 (emphasis added). Thus, the Court held that,

9 a trial judge may exercise his power to disqualify a district attorney from  
10 participating in the prosecution of a criminal charge when the judge determines that  
11 the attorney suffers from a conflict of interest which **might prejudice him** against  
12 the accused and thereby affect, **or appear to affect**, his ability to impartially  
13 perform the discretionary functions of his office.

14 *Id.* at 269 (emphasis added). Importantly, bad faith on the prosecutor’s part is **not** required to  
15 disqualify him. *Id.* at 270 n.11.

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**2. The Attorney General’s Long-Time, Entangled Relationship  
with Planned Parenthood Representatives Raises Strong  
Suspicions of a Disabling Conflict of Interest.**

The Court’s decision in *People v. Eubanks* (“*Eubanks*”), 14 Cal. 4<sup>th</sup> 580 (1996) provides a helpful  
analogy for the type of conflict at issue in the Attorney General’s prosecution of Ms. Merritt and  
Mr. Daleiden. In *Eubanks*, the Court considered a conflict of interest question under Section 1424,  
and upheld the trial court’s ruling that the prosecutor suffered a disabling conflict when the alleged  
corporate victim contributed approximately \$13,000 for investigation costs. *Id.* at 584, 588. In so  
doing, the Court discussed how the standard in Section 1424 is distinguishable from the standard  
set forth in *Greer*, but regardless, the evidence and argument presented herein by Ms. Merritt  
demonstrate that either standard for recusal is met.

In *Eubanks*, the Court considered whether, under Section 1424,

**financial assistance** to the prosecutor’s office may indeed disqualify the district  
attorney from acting further in a case, **if the assistance is of such a character and**  
**magnitude** “as to render it unlikely that defendant will receive fair treatment during  
all portions of the criminal proceedings.”

*Id.* at 584 (quoting *People v. Connor*, 34 Cal. 3d 141, 148 (1983) (emphasis added). In *Eubanks*,  
the Court held that the trial court had not abused its discretion in finding a conflict because the

1 alleged victim had contributed a substantial amount to pay a bill previously incurred by the  
2 prosecutor (for a third-party expert). *Id.* at 585-86, 588. As the Court explained, “[n]o private  
3 citizen, however personally aggrieved, may institute criminal proceedings independently [citation],  
4 and the prosecutor’s own discretion is not subject to judicial control at the behest of persons other  
5 than the accused.” *Id.* at 588-89 (second alteration in original) (citation omitted). The Court  
6 quoted its decision in *Greer* regarding the prosecutor’s duty of impartiality and the importance  
7 thereof, *id.* at 589-90, and added that a prosecutor should not have, or be **“under the influence of**  
8 **others who have, an axe to grind against the defendant . . .”** *Id.* at 590 (emphasis added).

9 This is the precise situation contaminating Ms. Merritt’s and Mr. Daleiden’s cases—  
10 Planned Parenthood has an obvious axe to grind against both Ms. Merritt and Mr. Daleiden because  
11 they exposed Planned Parenthood’s illegal activities. Planned Parenthood’s damage control and  
12 retaliation is evidenced by Beth Parker’s early injection into the Attorney General’s investigation,  
13 where she (a private party, not specifically named in the Amended Complaint as a victim) informed  
14 SA Mejia that Planned Parenthood wanted **not** the videos seized from Mr. Daleiden, but they  
15 wanted the **actual computers** on which the videos were possibly created. And with a search  
16 warrant in hand, that is exactly what the Attorney General obtained. This smacks of Planned  
17 Parenthood being given control to direct the Attorney General’s investigation that a private party  
18 should never have. The strong, close ties that Planned Parenthood representatives developed with  
19 the Attorney General’s Office gave Planned Parenthood the opportunity to grind its proverbial axe.

20 As explained in *Eubanks*, Section 1424 “allows disqualification **only** when conflict  
21 ‘render[s] it unlikely that the defendant would receive a fair trial,’ (§ 1424), whereas *Greer* allows  
22 disqualification even when the conflict might **merely ‘appear to affect’ the prosecutor’s**  
23 **fairness.”** *Eubanks*, 14 Cal. 4<sup>th</sup> at 591 (alteration in original) (emphasis added). At a minimum, the  
24 evidence in this case (for recusal under *Greer*) demonstrates the appearance of improper influence  
25 by Planned Parenthood on the Attorney General’s Office: From Attorney General Becerra’s press  
26 conference lauding his Office’s unity with Planned Parenthood (*see* FN 3); to Planned  
27 Parenthood’s hosting a party for him on the 2018 Primary Election night (*see* FN 4); to former-  
28 Attorney General Harris’ Office interjecting itself into three local law enforcement investigations

1 (San Francisco P.D., Pasadena P.D., and the Ventura County Sheriff’s Dept.) because they had  
2 heard of threats or incidents without being contacted by the local law enforcement entities (*see* FN  
3 8-11); to organized meetings between the Attorney General’s employees and Planned Parenthood  
4 representatives; to “Action Item” list distributions and unprecedented collaboration efforts with  
5 high level Planned Parenthood representatives (with Jill Habig expressing “we move forward”).

6 All of this took place during the same time frame that legislation was being drafted to target  
7 Ms. Merritt and Mr. Daleiden. And, at the same time, Mr. Daleiden’s residence was searched (with  
8 Beth Parker seeking possession of the computers seized therefrom) (*see* FN 5, 6, 17-18); the  
9 Attorney General received complimentary tickets to Planned Parenthood functions (*see* FN 11-  
10 12); and the Attorney General and Planned Parenthood collaborated on legal briefs in various cases  
11 involving Planned Parenthood and their political agenda (*see* FN 14-16).

12 The demonstrated loyalty of the Attorney General’s Office in their communications and  
13 collaborations with Planned Parenthood representatives, together with the receipt of large  
14 donations by both Attorney Generals’ political campaigns, and in particular, Senator Harris’ public  
15 petition drive efforts for Planned Parenthood, cannot be ignored. (*See* FN 25-26, 32.) The Attorney  
16 General’s Office’s investigation, resulting in a contaminated prosecution, gives off not only an  
17 appearance of impropriety, but a stench impossible to ignore or rectify. This mandates recusal even  
18 under Section 1424, because it is a disabling conflict. Far too close is the relationship between the  
19 two entities; an objective person would strongly suspect that the relationship has to have  
20 engendered a loyalty by the Attorney General’s Office to Planned Parenthood that would cause  
21 the Attorney General and his Office—even unwittingly—to act partially rather than impartially.  
22 The danger of loyalty to Planned Parenthood in this case cannot be questioned or overstated.

23 The *Greer* standard allows recusal where the prosecutor’s further participation “would be  
24 unseemly, would *appear* improper, or would tend to reduce public confidence in the impartiality  
25 and integrity of the criminal justice system.” *Id.* The Court was quick to explain, regarding the  
26 Section 1424 standard, that the analysis

27 should **not** be taken as suggesting the potential for loss of public confidence in the  
28 criminal justice system is either unimportant or unimaginable. To the contrary, the  
practice of the district attorney here—soliciting and accepting the victim’s



1 underwriting of significant investigative costs—could, especially if replicated on a  
2 wide scale, raise **an obvious question as to whether the wealth of the victim has**  
3 **an impermissible influence on the administration of justice.** A system in which  
4 **affluent victims, including prosperous corporations,** were assured of prompt  
5 attention from the district attorney’s office, while crimes against the poor went  
unprosecuted, would neither deserve nor receive the confidence of the public. **Even**  
**the appearance of such impropriety would be highly destructive of the public**  
**trust.** Under section 1424, however, such apprehensions, alone, are no longer a  
ground for recusal of the district attorney.

6 *Id.* at 592-93. In this case, mere appearance controls the outcome, and demands recusal. Planned  
7 Parenthood and its affiliates are certainly affluent, and the blatant quid pro quo that has been  
8 occurring between the Attorney General’s Office and Planned Parenthood representatives raises  
9 this obvious question – is it possible that with all the **comradery and collaboration** between the  
10 Attorney General and the employer of the alleged victims, that Ms. Merritt and Mr. Daleiden could  
11 obtain a fair trial? The answer is a resounding NO! At the core of this prosecution, there is a  
12 serious appearance of impropriety.

13 The Court in *Eubanks* provided an example of an impermissible conflict for a prosecutor:  
14 where “**institutional arrangements link the prosecutor too closely to a private party,** for  
15 example **a victim,** who in turn has a personal interest in the defendant’s prosecution and  
16 conviction.” *Id.* at 596. Importantly, “[t]he tie that binds the prosecutor to an interested person  
17 **may be compelling** though it derives from the prosecutor’s **institutional objectives** and  
18 obligations.” *Id.* In other words, the conflict need not be personal to the Attorney General—  
19 although here, it is. *Id.* In *Eubanks*, the Court agreed that the “trial court correctly focused on the  
20 potential for bias arising out of **a sense of obligation** to Borland [the victim], rather than on any  
21 potential ‘prejudice’ to be found in the fact of investigatory assistance itself.” *Id.* at 599. Under  
22 the specific facts in *Eubanks*, the Court held that “a conflict is demonstrated . . . only by showing  
23 the private financial contributions are of a **nature and magnitude** likely to put the prosecutor’s  
24 discretionary decision-making **within the influence or control of an interested party. In each**  
25 **case, the trial court must consider the entire complex of facts** surrounding the conflict to  
26 determine whether the conflict makes fair and impartial treatment of the defendant unlikely.” *Id.*

27 Here, there has been far more than financial contributions and fundraising. As detailed  
28 above, this Court must consider the nature and the magnitude of financial contributions, **together**

1 **with** “the entire complex of facts surrounding the conflict.” The sheer weight of the  
2 conglomeration of evidence described herein is more than sufficient to require recusal. Planned  
3 Parenthood has a strong interest in the outcome of this criminal prosecution and they have been  
4 hopelessly entwined in it since the beginning.

5 The concerns are even more startling when considering Chief Justice George’s concurrence  
6 in *Eubanks*, where he was of the opinion that recusal was required **as a matter of law** on the facts  
7 of that case. *Id.* a 601. Among other reasons that the Chief Justice thought recusal should be  
8 mandated, (and which are pertinent to the totality of the circumstances in Ms. Merritt’s and Mr.  
9 Daleiden’s case), he opined that the victim stood to benefit from a criminal prosecution of its  
10 competitor for several reasons. Among others, it would help the victim in its own civil action and  
11 it would “constitute a major disruption and distraction” for one of the victim’s primary business  
12 competitors. *Id.* at 602. Thus, the victim would consider the solicited funds a “prudent investment,”  
13 regardless that no conviction may come, and the district attorney “could ‘reimburse’ Borland for  
14 paying the incurred debt simply by exercising discretion to continue or extend the criminal  
15 investigation for longer than it otherwise would.” *Id.* at 602-03.

16 Just like in *Eubanks*, Planned Parenthood here is embroiled in ongoing civil litigation in  
17 federal court, of which this Court is aware. Further, Planned Parenthood’s position is akin to a  
18 business rival of Ms. Merritt and Mr. Daleiden. Ms. Merritt and Mr. Daleiden are investigative  
19 journalists who publicly exposed Planned Parenthood’s illegal activity – which is surely bad for  
20 Planned Parenthood’s business. That said, Planned Parenthood has not been secretive about its  
21 negative feelings regarding Mr. Daleiden’s and Ms. Merritt’s journalistic activities. Planned  
22 Parenthood, no doubt, sees their strong relationship with, and financial contributions to, the  
23 Attorney General as a “prudent investment.”

24 In sum, the Attorney General and his Office should be recused. As the California Supreme  
25 Court explained in *People v. Vasquez*, 39 Cal. 4<sup>th</sup> 47, 57 (2006) (trial court erred in denying recusal  
26 motion under Section 1424):

27 [W]here the record on the recusal motion indicates that the conduct of any deputy  
28 district attorney assigned to the case, **or of the office as a whole**, would likely be

1 influenced by the personal interest of the district attorney or an employee, the  
2 motion is properly granted.

3 *Id.* at 57 (citing *People v. Connor*, 34 Cal. 3d at 148-49). The sheer number of Attorney General’s  
4 attorneys and employees who have been tasked to work on this case thus far, demonstrate that the  
5 conflict is not just isolated to one or two attorneys. In fact, demonstrating the wide-spread influence,  
6 CMP is (sarcastically) a “favorite subject” in the Attorney General’s Office. Thus, the Office as a  
7 whole should be recused.

8 **B. The Amended Complaints Should Be Dismissed Because the Evidence**  
9 **Demonstrates Discriminatory Intent and Discriminatory Purpose,**  
10 **Amounting to Improper Selective Prosecution in Violation of The**  
11 **Equal Protection Clause.**

12 A defendant may move, pre-trial, to have her case dismissed based upon selective  
13 prosecution. The Supreme Court of California recognized the pre-trial, procedural necessity of a  
14 motion to dismiss for selective prosecution in *Murgia v. Municipal Court for the Bakersfield*  
15 *Judicial Dist. of Kern Cty.*, 15 Cal. 3d 286 (1975):

16 [B]ecause a claim of discriminatory prosecution generally rests upon evidence  
17 completely extraneous to the specific facts of the charged offense, we believe the  
18 issue should not be resolved upon evidence submitted at trial, but instead should be  
19 raised, as defendants have done here, through a pretrial motion to dismiss. Although  
20 no clear California statutory authority provides for such a pretrial motion to dismiss,  
21 we have no doubt in light of the constitutional nature of the issue as to the trial  
22 court’s authority to entertain such a claim.

23 *Id.* at 294, n.4. In *Murgia*, the court considered “whether the *prosecution* is constitutionally free to  
24 select *only* these defendants and prosecute them *only* because they are members of a certain class,  
25 i.e., members or supporters of a particular union.” *Id.* at 290-91. Prosecutors are not so free:  
26 “[A]llegations of a conscious policy of selective enforcement directed against members or  
27 supporters of a particular labor organization are clearly sufficient to support a claim of invidious  
28 discrimination which is *prima facie* invalid under the equal protection clause.” *Id.* at 301. Under  
*Murgia*, where a defendant has been singled out for prosecution based upon invidious criteria,  
dismissal of the charges is appropriate because “the prosecution would not have been pursued  
except for the discriminatory design of the prosecuting authorities.” *Id.* at 298. “[T]he equal  
protection clause is violated if a criminal prosecution is ‘deliberately based upon an unjustifiable

1 standard such as race, religion, **or other arbitrary classification.**” *Id.* at 290 (quoting *Oyler v.*  
2 *Boles*, 368 U.S. 448, 456 (1962)) (emphasis added).

3 In *Murgia*, the Court found that the prosecution against defendants was “at least  
4 presumptively unjustifiable and invidious” where defendants had alleged selective prosecution  
5 against them as members of their union, the United Farm Workers Union (“UFW”), which  
6 infringed upon their constitutional right to freedom of association. *Id.* at 302. The *Murgia* court  
7 specifically noted that discriminatory prosecution is also prohibited ““on the basis of the exercise  
8 of protected First Amendment activities, whether done as an individual or, as in this case, **as a**  
9 **member of a group unpopular with the government.**”” *Id.* at 302 (quoting *United States v. Falk*,  
10 479 F.2d 616, 620 (7<sup>th</sup> Cir. 1973)) (emphasis added). If such a prosecution “would not have been  
11 pursued [but for the exercise of a defendant’s constitutional right], the prosecution itself is  
12 improper and may not be maintained.” *Id.* at 298, n.6. Even a state’s compelling interest in  
13 prosecuting serious criminal conduct does not justify discriminatory enforcement, absent a  
14 showing of “the *necessity* of singling out for discriminatory treatment only a portion of those who  
15 commit serious crimes.” *See id.* at 304 (emphasis added). The state failed to do so in *Murgia*. *Id.*

16 The Supreme Court of California clarified and affirmed its *Murgia* decision in *Baluyut v.*  
17 *Superior Court*, 12 Cal. 4<sup>th</sup> 826 (1996). In so doing, the court quoted the United States Supreme  
18 Court: ““It is appropriate to judge selective prosecution claims according to ordinary equal  
19 protection standards. . . . Under our prior cases, these standards require petitioner to show both  
20 that the passive enforcement system had a discriminatory effect and that it was motivated by a  
21 discriminatory purpose.”” *Baluyut v. Superior Court*, 12 Cal. 4<sup>th</sup> at 836 (quoting *Wayte v. United*  
22 *States*, 470 U.S. 598, 608 (1985)) (internal citations omitted). In *United States v. Armstrong*, the  
23 United States Supreme Court considered, in part, the elements of a selective prosecution claim. As  
24 the Court there explained, “[t]o establish discriminatory effect in a race case, the claimant must  
25 show that similarly situated individuals of a different race were not prosecuted.” 517 U.S. 456,  
26 465 (1996). A showing of discriminatory purpose “is that the government selected the course of  
27 action ‘at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable  
28 group.”” *Baluyut v. Superior Court*, 12 Cal. 4<sup>th</sup> at 837 (quoting *Wayte v. United States*, 470 U.S. at

1 610). In other words, as to purpose, although being “aware that the likely impact of [government’s]  
2 passive enforcement policy [is a prosecution of a specific group], a showing of ‘discriminatory  
3 purpose’ required more.” *Id.* at 837. However, “[w]hen the equal protection claim is based on an  
4 overtly discriminatory classification, . . . , discriminatory intent need not be shown.” *Id.* at 836 n.7  
5 (citing *Wayte v. United States*, 470 U.S. at 608 n.10). Notably, the intent required “need not be to  
6 ‘punish’ the defendant for membership in a protected class or for the defendant’s exercise of  
7 protected rights.” *Id.* at 833.

8       Upon such requisite showing, a claim for discriminatory prosecution “‘should not . . . be  
9 tried before the jury . . . but should be treated as an application to the court for a dismissal or  
10 quashing of the prosecution upon constitutional grounds.’” *Murgia v. Municipal Court*, 15 Cal. 3d  
11 at 293, n.4 (quoting *People v. Utica Daw’s Drug Co.*, 16 App. Div. 2d 12, 225 N.Y.S. 2d 128, 131  
12 (1962)) (alteration in original).

13               **1. Ms. Merritt and Mr. Daleiden Have Suffered A Discriminatory**  
14               **Effect, In That They Are the Only Investigative Journalists to**  
15               **Be Criminally Prosecuted, Despite Routine Undercover**  
16               **Investigative Journalism By Others.**

17       Investigative undercover journalism using hidden video cameras is not a new phenomenon  
18 in California. It occurs frequently, and it has been occurring for a long time. Yet criminal  
19 prosecutions under California Penal Code § 632 are few and far between, and **none** of those few  
20 prosecutions have involved incidents of investigative journalism. Moreover, of the ten reported  
21 cases of criminal prosecution involving violations of § 632, none of them have been brought by  
22 the Attorney General’s office while either Ms. Harris or Mr. Becerra have served as Attorney  
23 General (with the case at bar excluded). Against that backdrop, there are numerous undercover  
24 investigations that have been set forth in section C of the Statement of Facts, above. Undercover  
25 news clips showing the public that their favorite business entities have been cheating the average  
26 wage-earner are lauded. These investigations have resulted in law enforcement investigating and  
27 prosecuting the targets of the undercover investigations – the actual criminals. Significantly, those  
28 conducting the investigative journalism endeavors have all escaped criminal prosecution by  
authorities. Every last one of them, except for Ms. Merritt and Mr. Daleiden. They are the very

1 first and only journalists prosecuted for attempting to unearth criminal business practices, which  
2 in this case happens to pertain to the illegal sale of human body parts for profit by the abortion  
3 industry, and specifically Planned Parenthood. Ms. Merritt and Mr. Daleiden are clearly being  
4 prosecuted because of their pro-life convictions, their First Amendment speech and expression,  
5 and their association in opposing Planned Parenthood’s illegal abortion practices. This showing is  
6 all that is required to show discriminatory effect – that “similarly situated individuals . . . were not  
7 prosecuted.” *United States v. Armstrong*, 517 U.S. at 465.

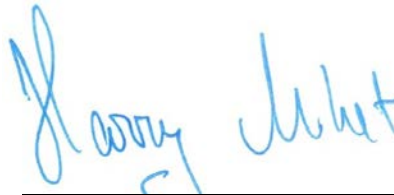
8 **2. The Attorney General’s Office Began the Criminal**  
9 **Investigation and Prosecution Against Ms. Merritt and Mr.**  
10 **Daleiden with Discriminatory Intent.**

11 It certainly is an understatement to say that Ms. Merritt’s and Mr. Daleiden’s goals were  
12 unpopular with both Attorney Generals. Ms. Merritt and Mr. Daleiden exposed the wrongdoings  
13 of Planned Parenthood, the very organization which has generously donated (as an organization as  
14 well as individual employees) to both Senator Harris’ political campaign and Attorney General  
15 Becerra’s political campaigns. For all the reasons and evidence demonstrated above, the second  
16 prong of discriminatory intent has been met, demonstrating the Attorney General’s discriminatory  
17 intent to bring and prosecute the charges against Ms. Merritt and Mr. Daleiden for the improper  
18 purpose of silencing their investigative journalism efforts and First Amendment speech and  
19 expression. That the Attorney General’s Office collaborated with Planned Parenthood to draft  
20 legislation that specifically targeted Mr. Daleiden’s release of any more video footage speaks  
21 volumes of the discriminatory intent with which the investigation began. In essence, Ms. Merritt  
22 and Mr. Daleiden are sitting in seats similar to that of the business competitors/defendants in  
23 *Eubanks*, and there is strong evidence demonstrating that the Attorney General injected the weight  
24 of the Office into the cases at bar at the behest of Planned Parenthood. In fact, the evidence shows  
25 that the Attorney General’s Office has gone beyond the call of duty (and truly beyond the pale) to  
26 ensure that Planned Parenthood’s political interests are served. Attorney General Becerra’s most  
27 recent sentiments about his **unity** with Planned Parenthood indicate that their relationship is  
28 expected to continue.

1           Moreover, although investigative reporting for the purpose of exposing criminal conduct  
2 has not been prosecuted in the past, the evidence demonstrates that the Attorney General’s Office  
3 has chosen to target Ms. Merritt’s and Mr. Daleiden’s activities, due to its loyalty to its ally and  
4 collaborative partner, Planned Parenthood. The Attorney General’s loyalty to Planned Parenthood  
5 (past and present) has recently been made clear again: **Attorney General Becerra “Stands with  
6 Planned Parenthood.”** The aligned goal of both Planned Parenthood and the Attorney General’s  
7 “pro-choice leadership” Office is to silence Ms. Merritt’s and Mr. Daleiden’s pro-life speech. The  
8 discretionary authority of the Office of the Attorney General has been used for that improper  
9 purpose in investigating and prosecuting Ms. Merritt and Mr. Daleiden. As such, all charges should  
10 be dismissed against Ms. Merritt and Mr. Daleiden under *Murgia* and its progeny.

11  
12 DATED: July 23, 2018

13  
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1                                    **DECLARATION OF HORATIO G. MIHET**

2                    I, Horatio G. Mihet, am a licensed Florida attorney, admitted *Pro Hac Vice* in the above-  
3 captioned case, and I declare under penalty of perjury pursuant to the laws of California that the  
4 following is true and correct:

- 5                    1. I, with Nicolai Cocis, Esq., represent Sandra Susan Merritt in the above-captioned case.
- 6                    2. **Exhibit A**, attached hereto, is a true and correct copy of an internet news article: Laurel  
7                    Rosenhall, *California Election 2018: Updates and Analysis, Becerra to face a*  
8                    *Republican in California attorney general race*, CALmatters.org (June 6, 2018 1:13  
9                    AM),    [https://calmatters.org/articles/blog/becerra-to-face-a-republican-in-california-](https://calmatters.org/articles/blog/becerra-to-face-a-republican-in-california-attorney-general-race/)  
10                   [attorney-general-race/](https://calmatters.org/articles/blog/becerra-to-face-a-republican-in-california-attorney-general-race/). As reported by CALMatters.org, this article pictures Attorney  
11                   General Becerra in speaking at a Sacramento election party sponsored by Planned  
12                   Parenthood in front of a large sign which states, “I Stand with Planned Parenthood.”
- 13                    3. **Exhibit B**, attached hereto, contains true and correct copies of documents received in  
14                    discovery from the Attorney General, Bates ## AGODAL001392-1395, and which  
15                    contain a report of the California Department of Justice, Division of Law Enforcement,  
16                    Bureau of Investigation (“Cal. DOJ-BI”), Report No. 1, Investigation No. BI-LA2015-  
17                    00057, dated Dec. 3, 2015.
- 18                    4. **Exhibit C**, attached hereto, contains true and correct copies of documents received in  
19                    discovery from the Attorney General, Bates ## AGODAL 1402-23, and which contain  
20                    a report of the Cal. DOJ-BI, Report No. 14, Investigation No. BI-LA2015-0057, dated  
21                    April 6, 2016, with attachments, including search warrant documents for the residence  
22                    of Defendant David Daleiden.
- 23                    5. **Exhibit D**, attached hereto, contains true and correct copies of documents received in  
24                    discovery from the Attorney General, Bates ## AGODAL 2378-81, and which contain  
25                    email correspondence between Cal. DOJ employees, dated from Aug. 14, 2015 to Oct.  
26                    2, 2015.
- 27                    6. **Exhibit E**, attached hereto, contains true and correct copies of documents received in  
28                    discovery from the Attorney General, Bates ## AGODAL 2748, 2750, 2752, and which



1 contain a report of the Cal. DOJ-BI, Report No. 1, Investigation No. BI-LA2015-  
2 LEAD0025, dated Oct. 14, 2015.

3 7. **Exhibit F**, attached hereto, contains true and correct copies of documents received in  
4 discovery from the Attorney General, Bates ## AGODAL 2754-56, and which contain  
5 a report of the Cal. DOJ-BI, Report No. 2, Investigation No. BI-LA2015-LEAD0025,  
6 dated Oct. 14, 2015.

7 8. **Exhibit G**, attached hereto, contains true and correct copies of documents received in  
8 discovery from the Attorney General, Bates ## AGODAL 2555-59, and ##2563-64,  
9 and which contain pertinent portions of a Ventura County Sheriff's Department Report,  
10 (Narrative/Supplemental Reports, RB No. 152044743, dated Dec. 30, 2015 and Dec.  
11 11, 2015, respectively)).

12 9. **Exhibit H**, attached hereto, contains true and correct copies of documents received in  
13 discovery from the Attorney General, Bates ## AGODAL 2340-2341, and which  
14 contain email correspondence between a Cal. DOJ employee and a non-party of the  
15 above-captioned case, dated from Aug. 28, 2015 to Dec. 11, 2015.

16 10. **Exhibit I**, attached hereto, contains true and correct copies of documents received in  
17 discovery from the Attorney General, Bates ## AGODAL 2103-05, 2110, and which  
18 contain pertinent portions of an invitation to Planned Parenthood's 53<sup>rd</sup> Anniversary  
19 Dinner.

20 11. **Exhibit J**, attached hereto, is a true and correct copy of a document received in  
21 discovery from the Attorney General, Bates # AGODAL 2180, and which contains  
22 email correspondence between a Cal. DOJ employee and, *inter alia*, an employee of  
23 Planned Parenthood, dated from Feb. 16, 2016 to Feb. 17, 2016.

24 12. **Exhibit K**, attached hereto, contains true and correct copies of documents received in  
25 discovery from the Attorney General, Bates ## AGODAL 2150-53, and which contain  
26 email correspondence between Cal. DOJ employees and Planned Parenthood  
27 employees, dated from Feb. 2, 2016 to April 20, 2016.

28 13. **Exhibit L**, attached hereto, contains true and correct copies of documents received in

1 discovery from the Attorney General, Bates ## AGODAL 2142-43, 2488-2490, 2491-  
2 93 (both numbered/redacted and altered, unnumbered/unredacted of the same  
3 documents), dated March 3-4, 2016.

4 14. **Exhibit M**, attached hereto, contains true and correct copies of documents received in  
5 discovery from the Attorney General, Bates ## 2147—49, 1981, 2177, 1985-86, 1991,  
6 2191, 2281-84, and which contain email correspondence between Cal. DOJ employees  
7 and Planned Parenthood employees, dated March 8-9, 17, and 29, 2016.

8 15. **Exhibit N**, attached hereto, contains true and correct copies of documents received in  
9 discovery from the Attorney General, Bates ## AGODAL 1983-84, and which contain  
10 email correspondence between a Cal. DOJ employee and Planned Parenthood  
11 employees, dated April 5, 2016.

12 16. **Exhibit O**, attached hereto, is a true and correct copy of a document received in  
13 discovery from the Attorney General, Bates # AGODAL 1980, and which contains a  
14 Planned Parenthood Public Affairs Meeting Agenda, dated April 7, 2016.

15 17. **Exhibit P**, attached hereto, contains true and correct copies of documents received in  
16 discovery from the Attorney General, Bates ## AGODAL 2297-98, and which contain  
17 email correspondence between a Cal. DOJ employee, a Cal. Legislative Counsel  
18 employee, and a Planned Parenthood employee, dated April 5-6, and 8, 2016, regarding  
19 AB1671.

20 18. **Exhibit Q**, attached hereto, contains true and correct copies of documents received in  
21 discovery from the Attorney General, Bates ## AGODAL 2192-95, and which contain  
22 email correspondence between a Planned Parenthood employee, a Cal. DOJ employee,  
23 and an Assembly Committee employee, dated April 12 – 14, 2016, regarding AB1671.

24 19. **Exhibit R**, attached hereto, contains true and correct copies of documents received in  
25 discovery from the Attorney General, Bates ## AGODAL 2309-10, and which contain  
26 email correspondence between a Planned Parenthood employee, a Cal. DOJ employee,  
27 and a Senate Committee employee, dated May 20-24, 2016.

28 20. **Exhibit S**, attached hereto, contains true and correct Federal Election Commission

1 (FEC) filings by Becerra for Congress that document political contributions, dated from  
2 various years between 1998 and 2014, which were obtained from the FEC website,  
3 <http://www.fec.gov>.

4 21. **Exhibit T**, attached hereto, contains true and correct FEC filings by Kamala Harris for  
5 Senate that document political contributions, dated from various years between 2015-  
6 16, which were obtained from the FEC website, available at <http://www.fec.gov>; and  
7 documentation obtained through internet research from OpenSecrets.org, Center for  
8 Responsive Politics, which evidences funds received by Kamala Harris from Pro-  
9 Abortion Rights groups.

10 22. **Exhibit U**, attached hereto, is a true and correct copy of a Press Release, obtained from  
11 Planned Parenthood Action Funds, CA website, [www.ppactionca.org](http://www.ppactionca.org), titled *AB 1671*  
12 *Moves to State Senate!*, dated June 1, 2016, regarding Planned Parenthood's  
13 sponsorship of AB 1671.

14 23. **Exhibit V**, attached hereto, is a true and correct copy of a petition drive by Senator  
15 Kamala Harris, titled, *Add Your Name to Defend Planned Parenthood*, which was  
16 formerly available at [http://www.kamalaharris.org/landing/engagement-160108-](http://www.kamalaharris.org/landing/engagement-160108-planned-parenthood/)  
17 [planned-parenthood/](http://www.kamalaharris.org/landing/engagement-160108-planned-parenthood/), and which was last visited (and screen shot taken) on May 21,  
18 2017. This website appears to be no longer an active.

19 24. My firm's research identified no cases in which an investigative journalist was  
20 criminally prosecuted by The People of the State of California (whether by a District  
21 Attorney or the Attorney General) under section 632 of the California Penal Code, as  
22 of July 17, 2018. Legal research through Westlaw of published and unpublished  
23 caselaw has not revealed that criminal charges were ever filed against any undercover  
24 investigative journalists.

25 Executed on July 23, 2018 at Naples, Florida.

26   
27 \_\_\_\_\_  
28 Horatio G. Mihet

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Cal. Code Civ. P. 1013(a), I hereby certify that, on July 23, 2018, I served the  
3 forgoing *Defendant Sandra Susan Merritt's Motion to Recuse The Attorney General For Conflict*  
4 *of Interest And To Dismiss Criminal Complaint For Selective Prosecution; And Memorandum of*  
5 *Points And Authorities In Support*, on the following parties/entities via the following methods:

6 Johnette Jauron  
7 Deputy Attorney General  
8 California Department of Justice  
9 455 Golden Gate Avenue, Suite 11000  
10 San Francisco, CA 94102  
11 Johnette.Jauron@doj.ca.gov

Steve Cooley  
Brentford J. Ferreira  
Steve Cooley & Associates  
5318 E. 2<sup>nd</sup> Street, #399  
Long Beach, CA 90803  
Steve.Cooley@stevecooley.com  
Bjferreira47@hotmail.com

12 Attorney for the State of California

Attorneys for Defendant David Daleiden

13 [Via Electronic Mail at the email addresses shown above, pursuant to their agreement to receive  
14 electronic service].

15 I further certify that I am over the age of 18 and not a party to this action.

16 Dated: July 23, 2018

17 \_\_\_\_\_  
18 Horatio G. Mihet\*  
19 Liberty Counsel  
20 P.O. Box 540774  
21 Orlando, FL 32854  
22 Tel: (407) 875-1776  
23 Fax: (407) 875-0770  
24 hmihet@lc.org  
25 \* Admitted Pro Hac Vice

26 *Attorney for Defendant Merritt*