

EXHIBIT B

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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**

19 NORTHLAND FAMILY PLANNING
20 CLINIC, INC.,

21 Plaintiff,

22 vs.

23 CENTER FOR BIO-ETHICAL
24 REFORM, *et al.*,

25 Defendants.

Case No.: 8:11-cv-00731-JVS-AN

**DECLARATION OF GREGG
CUNNINGHAM**

Date: June 4, 2012

Time: 1:30 pm

Courtroom: 10C

Hon. James V. Selna

26 I, Gregg Cunningham, make this declaration pursuant to 28 U.S.C. § 1746
27 and based on my personal knowledge and upon information and belief where
28 noted.

1 1. I am an adult resident of the State of California, a citizen of the
2 United States, and a Defendant in this case.

3 2. I am the Executive Director of the Center for Bio-Ethical Reform
4 (“CBR”), which is also a Defendant in this case.

5 3. In my capacity as Executive Director of CBR, I was the person
6 responsible for creating, producing, and publishing CBR’s “Angel of Light”
7 video, which is the video that the Northland Family Planning Clinic is claiming
8 violates its copyright in this case. I will hereinafter refer to the “Angel of Light”
9 video as the CBR Video. The CBR Video in its pre-release version and then final
10 form was previously marked as Exhibits 5 and 6 to the Bullis Deposition.

11 4. Neither Don Cooper nor Seth Gruber, both of whom are named
12 defendants in this case, had any authority to create, produce, or publish the CBR
13 Video. At all times, Mr. Cooper and Mr. Gruber were working under my
14 direction and control as the Executive Director of CBR. In fact, Seth is simply an
15 intern at CBR.

16 5. Additionally, Todd Bullis, who is also a named defendant in this
17 case, had no role whatsoever in the creation or production of the CBR Video.
18 Upon my urging and insistence that the CBR Video did not infringe any copyright
19 because it was quintessential “fair use,” Mr. Bullis permitted CBR to post the
20 video on Pro-LifeTube, which he had owned and operated at the time. In fact, at
21 the time, Mr. Bullis and I were discussing whether he would consider selling the
22 website to CBR. We were finalizing our discussions when we both received
23 letters on or about March 21, 2011 from Northland’s counsel demanding that we
24 take down the CBR Video from the website. I urged Mr. Bullis not to do so since
25 CBR would soon be purchasing the website and this would then become our issue

1 alone. Mr. Bullis obliged my request and subsequently sold the website to CBR
2 for \$6,000. As a result of the sale, which was finalized in mid-April 2011, Mr.
3 Bullis no longer has any control over the Pro-LifeTube website.

4 6. The idea for the CBR Video was introduced to me by Eric Holmberg
5 sometime in January 2011. Mr. Holmberg sent me a link to a concept video that
6 was briefly posted on YouTube. Upon information and belief, the video was
7 removed within 24 hours, and I have never seen that video posted anywhere else.
8 The video produced by Mr. Holmberg was previously marked as Exhibit 39 to the
9 Holmberg Deposition.

10 7. Mr. Holmberg had no other involvement with the CBR Video. The
11 CBR Video was created and produced by CBR. All of the editing and every
12 posting of the CBR Video were done under my supervision, direction, and
13 control. All abortion video segments originated from the CBR video archives,
14 and the musical score was sourced from an anonymous (name not disclosed by
15 the source) public domain score. There was no cost to CBR to produce the video.

16 8. During the creation of the CBR Video, there was a first, rough cut,
17 proof-of-concept mockup. The refined version of the CBR Video was circulated
18 briefly in various forms during production for the purpose of soliciting comments
19 before editing was finalized for posting on Pro-LifeTube and abortionNO.org,
20 which is CBR's main website.

21 9. AbortionNo.org and the Pro-LifeTube channel websites are focused
22 entirely on an anti-abortion, pro-life message and publish only anti-abortion, pro-
23 life content.

24 10. The CBR Video was made exclusively for nonprofit, non-
25 commercial, educational, and parodic purposes. There was no consideration or

1 anything of any value received for the video. We did not sell, license, or publish
2 the video commercially. The CBR Video was posted on Pro-LifeTube and at
3 abortionNO.org for nonprofit, non-commercial, educational, and parodic purposes
4 only, and CBR's use of the video is exclusively for nonprofit, non-commercial,
5 educational parody. CBR's critical parody is available only for viewing on the
6 internet. It employs a minimalist approach to production and is not offered for
7 download or sale on any distribution medium.

8 11. The CBR Video makes "fair use" of portions of the Northland
9 "Everyday Good Woman Choose Abortion" video (hereinafter "Northland Video")
10 in that it transforms the Northland Video by adding graphic images of aborted
11 fetuses to certain parts of the Northland Video, a jarring music score, a scripture
12 citation to 2 Corinthians 11:13-14, which warns viewers that Satan masquerades
13 as "an angel of light," and an introduction quoting George Orwell, which
14 condemns the use of lies to obscure murder, so as to criticize, comment upon,
15 disparage, parody, mock, and disagree with the message conveyed by the
16 Northland Video.

17 12. The creation, production, and posting of the CBR Video were all
18 done for nonprofit, non-commercial, educational, and parodic purposes. In fact,
19 using graphic video imagery makes it exceedingly difficult to solicit donations for
20 pro-life work. Consequently, creating, producing, and posting the CBR Video is
21 inimical to our interests as a non-profit in that it actually makes it more difficult
22 to solicit donations to fund our work. But the Northland Video is so deceptive
23 that I, as the Executive Director of CBR, thought it was necessary to rebut this
24 deception with video that exposed it in ways that words could not. Nonetheless,
25 CBR has not directly solicited donations for the CBR Video. Any requests for

1 donations remotely related to the video were made after Northland filed this
2 lawsuit and for the sole purpose of helping us defray the costs associated with this
3 litigation.

4 13. The CBR Video criticizes, comments upon, disparages, parodies,
5 mocks, and disagrees with both the deceptive message and the deceptive manner
6 of Northland's staffer who narrates the Northland Video. Northland's consistent
7 theme is the lie that abortion is "normal." Every aspect of the staffer's attire,
8 demeanor, syntax, and intonation is calculated to reinforce this deception. The
9 same is true with the flowers on her desk, the soft background music, and the
10 framed art on her walls. CBR's Video comments upon, disparages, parodies,
11 mocks, and rebuts all this duplicity with an accusatory literary quote in its
12 introduction, jarring music in its score, and graphic imagery in its video
13 refutation.

14 14. The Northland Video is promotional, advertising material posted on
15 a business website to persuade prospective customers through deceit and
16 deception that abortion is normal and even virtuous. It is intended to de-
17 stigmatize abortion in the public mind and to gain a commercial advantage vis-a-
18 vis Northland's abortion industry competitors through false advertising. Upon
19 information and belief and based upon my reading of R.C.'s sworn deposition
20 testimony, the Northland Video is not sold as a product to consumers. In fact, the
21 Northland Video is publicly available on YouTube at the following URL:
22 http://www.youtube.com/watch?v=8LNCau39L_s, and it is currently posted on
23 Northland's official website at the following URL:
24 <http://www.northlandfamilyplanning.com/videos/everyday-good-women/>.

1 Consequently, the Northland Video can be viewed by the general public at any
2 time and at no cost.

3 15. Neither the CBR Video nor the video produced by Eric Holmberg is
4 posted on YouTube or Northland's website. In fact, upon information and belief,
5 the video produced by Eric Holmberg is not available anywhere to the public.

6 16. CBR used approximately 2 minutes and 2 seconds of the Northland
7 Video's 4 minute and 41 seconds of footage in CBR's 4 minute and 13 second
8 video. Thus, less than half of the CBR Video is comprised of content taken from
9 the Northland Video. This percentage is the content quantum minimally required
10 to meaningfully criticize, comment upon, disparage, parody, and rebut the most
11 deceptive elements of Northland's most misleading advertising claims.
12 Additionally, Northland has posted 16 minutes and 41 seconds of promotional
13 video on the video advertising page of its website. CBR's use of portions of the
14 Northland Video content comprises approximately 11% of all Northland
15 promotional video posted for viewing on Northland's website.

16 17. As noted previously, Northland's video is not marketed for sale.
17 CBR's use, therefore, has no effect on the potential market value of any of its
18 content. CBR's express purpose for producing the CBR Video was to expose
19 Northland's false claims and barbaric practices.

20 18. As the Northland abortion clinic's saleswoman was filming her
21 commercial advertisement, just down the hall, safely out of sight of the camera,
22 viable babies were being aborted, without benefit of anesthesia – babies so far
23 along in pregnancy that they would have been born alive had their mother's labor
24 been induced before killing them. The outrage here isn't merely the ages of the
25 babies they are aborting. Every abortion is horrific at any age. The real scandal

1 is that this abortionist, disguised as some sort of objective counselor, complete
2 with conservatively styled hair, starched blouse, and horn-rimmed glasses, looks
3 straight into the camera and tells lie after lie, for the purpose of tricking
4 vulnerable, desperate women – and young girls – into an unimaginably ruinous
5 mistake. Her manner is shrewdly calculated to be matter-of-fact and reassuring.
6 Her purpose is to disarm her victims and lure them into a carefully laid trap.

7 19. Our video is intended to criticize, comment upon, disparage, parody,
8 mock, and disagree with the Northland staffer’s manner as well as her message,
9 particularly her message that abortion is normal and “good.” The narrator
10 actually uses some variant of the word “good” eighteen times in four minutes to
11 describe abortion. Indeed, every production decision CBR made was intended as
12 an “abnormal” counterpoise to some corresponding production element in the
13 Northland Video. None of these criticisms would have worked without the use of
14 Northland’s most offensive production content.

15 20. In sum, the narrator in this abortion industry video was engaging in
16 speech which was both commercial and political. Selling abortion is about
17 reinforcing and exploiting maternal ignorance. It is about telling lies to perpetrate
18 business fraud. Keeping abortion legal is about deceptive political speech
19 intended to fabricate the fiction that abortion is a nominal evil best left to personal
20 discretion. It is about reinforcing and exploiting voter ignorance. Northland not
21 only demands the right to manipulate prospective victims (mothers and voters)
22 with unconscionable falsehoods, but they then have the effrontery to threaten
23 anyone who dares rebut their claims. All CBR has done is figuratively force open
24 the door down the hall from the Northland narrator’s office. The CBR Video
25 simply shows viewers the reality which Northland’s narrator struggles to distort.

1 Is abortion an expression of “love” or a vicious act of violence? The CBR Video
2 tacitly, if not jarringly, challenges viewers to decide whether they are going to
3 believe what they hear or what they see – with their own eyes. Con artists can
4 spin the facts, but the camera records the truth.

5 I declare (or certify, verify, or state) under penalty of perjury under the
6 laws of the United States of America that the foregoing is true and correct.

7 Executed on this 14th day of April, 2012.

8 A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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10
11 Gregg Cunningham

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