

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CIVIL MINUTES

Date: August 21, 2015	Time: 35 minutes 10:01 a.m. to 10:29 a.m. 12:20 p.m. to 12:27 p.m.	Judge: WILLIAM H. ORRICK
Case No.: 15-cv-03522-WHO	Case Name: National Abortion Federation v. Center for Medical Progress	

Attorney for Plaintiff: Linda E. Shostak, Christopher Robinson, and Derek F. Foran
Attorney for Defendants: John Sauer, Catherine W. Short, Carly Gammill, Edward L. White, III

Deputy Clerk: Jean Davis

Court Reporter: Pam Batalo

PROCEEDINGS

The Court describes that this hearing was set to resolve pending discovery disputes. Defendants then filed an anti-SLAPP motion and argue that it requires an automatic stay of discovery. The Court reminds the parties that it found good cause to grant discovery on August 3 because it was necessary for the preliminary injunction motion, and that it has determined that plaintiff was entitled to a TRO because, among other reasons, it was likely to prevail on the merits. The Court sees no merit in the automatic stay argument because there are a multitude of factual issues to resolve in order to decide the anti-SLAPP motion and it is well settled a stay of discovery is only appropriate in this circumstance when the motion can be decided on purely legal issues regarding the sufficiency of the pleadings. A stay would conflict with Rule 56 as well as the Court's prior Order under Rule 26.

Defendants have not raised any specific objections to the discovery propounded. The Court has reviewed the discovery and finds it to be narrow and appropriate and directs that it should be responded to, with documents produced by August 25, 2015. The Court directs that the depositions of Newman, Daleiden, and a corporate representative of the Center for Medical Progress/Biomax Procurement Services, LLC, of three and one-half hours duration each, will be conducted by September 4, 2015. Named parties and client representatives of each side may attend the depositions. The Court requires that the parties meet and confer in the Attorney Lounge on the 18th floor immediately after the hearing to resolve any lingering disputes or scheduling issues, and to report back to the Court when the discussion is concluded.

The Court sets the following briefing schedule as to the Motion to Dismiss and Motion to Strike: opposition due September 21, 2015, reply due on October 1, 2015.

The Court addresses concerns raised in the hearing and by the parties' joint discovery statement concerning the protective order. The Court is sensitive to the concerns of both sides to protect the privacy rights of individuals involved. The Court directs that the NAF personal identifying information may be redacted, but the redaction of names should be done in such a way that those individuals are identified in a consistent, recognizable manner: i.e, "Witness One, Two" and so forth. Noticed witnesses by NAF will be identified, and the defendant may challenge any of the redactions by the procedure set out in Section 7 of the proposed protective order. Parties heard as to the basis of redacting the names of staff, volunteers, and contractors of the defendants. The Court is inclined to believe that an agreement can be reached that will protect individual privacy concerns raised by defendants and will not preclude the plaintiffs from obtaining appropriate information necessary to prosecute their case. This is an issue that the parties should include in meet and confer.

The Court cautions counsel regarding inadvertent non-compliance with the local rules and the standing orders of the Court. Any counsel who has not read both the rules and standard orders at this point is directed to do so today. Counsel are further cautioned that they and their clients should be mindful of the sensitive issues involved in this case and should conduct themselves circumspectly and in full compliance with all orders of the Court regarding disclosure of the sensitive information to which they have access.

The Court reviews various portions of the proposed Protective Order which may be problematic and which should be addressed by the parties during their meet and confer session.

Defense oral motion requesting an automatic stay based upon their argument in the discovery letter is denied. A written order will be forthcoming.

The parties are dismissed at 10:29 a.m. with instruction to discuss and reach agreement on the Protective Order and an agreed-upon plan concerning discovery issues. Counsel are directed to alert the Courtroom Deputy when agreement has been reached so they may return and advise the Court of the terms of the agreement.

Parties return at 12:20 p.m. and announce that an agreement has been reached concerning protective order. The protective order will be drafted, reviewed, and ready for submission to the Court by Monday, August 24, 2015.

Defense counsel advises the Court that all individual defendants plan to invoke their Fifth Amendment privilege to refrain from self-incrimination. Parties intend to brief the issue of whether the Fifth Amendment privilege may be invoked by the corporate entities and have agreed upon a briefing schedule. Defense opening brief to be filed by **August 31, 2015**; plaintiff response to be filed by **September 7, 2015**; and defense reply brief to be filed by **September 10, 2015**, with hearing to be scheduled at the Court's convenience.

The parties agree that the hearing on October 9, 2015 for the Motion to Strike, the Motion to Dismiss, and the motion for a preliminary injunction shall be taken off calendar. The parties agree that the Temporary Restraining Order (as modified, if at all, by the pending motions to clarify) will remain in effect until such time as the Court decides the now tabled motion for a

preliminary injunction. The pending motions to clarify the TRO will go forward as scheduled on September 1, 2015.

The parties have further agreed that the three individuals who are known only by alias identities, and whose identities remain protected at this time by agreement of the parties, will be bound by the TRO as if they were named parties to the suit. This agreement will be confirmed by defense counsel to plaintiff's counsel on Monday after consultation with the individuals involved.