

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

November 2, 2016

**VIA EMAIL**

The Honorable Tony Rackauckas  
District Attorney, County of Orange  
401 Civic Center Drive West  
Santa Ana, California 92701

Dear District Attorney Rackauckas:

On October 7, 2015, the U.S. House of Representatives passed H. Res. 461, which created the Select Investigative Panel (the “Panel”) and empowered it to conduct a full and complete investigation regarding the medical practices of abortion providers and the practices of entities that procure and transfer fetal tissue.

Over the course of our investigation, we have uncovered documents that indicate DV Biologics, LLC (“DaVinci”), DaVinci Biosciences, LLC (“DVB”), two related firms that procured fetal tissue from a Planned Parenthood affiliate that performs abortions and transferred it to research customers, and Planned Parenthood Orange and San Bernardino Counties (“PPOSBC”), violated various provisions of state law, including but not limited to the California Sales and Use Tax Law.

**History & Business Models of DaVinci & DVB**

DaVinci Biosciences, LLC, was founded as a for-profit corporation. DaVinci filed its incorporation papers with the California Secretary of State on December 19, 2007.<sup>1</sup> It originally was located at [REDACTED].<sup>2</sup> As of this August 2016, however, it had moved to [REDACTED].<sup>3</sup> DVB was also founded as a for-profit

<sup>1</sup> California Secretary of State, Business Entity Detail, <http://kepler.sos.ca.gov> (last visited Oct. 21, 2016).

<sup>2</sup> *Id.*

<sup>3</sup> Letter from [REDACTED], Vice President of Operations, DaVinci Biosciences, LLC, to Panel staff, Aug. 10, 2016.

corporation and filed its incorporation papers with the California Secretary of State on March 16, 2009.<sup>4</sup> DVB was originally located at the same Yorba Linda location as DaVinci.<sup>5</sup> The counsel for both entities informed the Panel that “DVB is a subsidiary of DaVinci Biosciences, LLC.”<sup>6</sup>

Both entities received aborted fetal tissue from the same source. The counsel for both told the Panel, “DVB received fetal tissue exclusively from its parent company, DaVinci. DaVinci itself received fetal tissue exclusively from Planned Parenthood of Orange and San Bernardino Counties. At this time, the Panel has not evidence that DaVinci paid money to Planned Parenthood for the donated tissue.”<sup>7</sup>

Documents produced to the Panel from other firms in the fetal tissue industry pursuant to subpoenas demonstrate that the industry norm is for companies, be they for-profit or non-profit, to pay California-based abortion clinics for fetal tissue. For example, StemExpress, LLC, another for-profit tissue procurement firm, paid Planned Parenthood affiliates in California an average of \$50 per-specimen obtained.<sup>8</sup> Advanced Bioscience Resources, Inc., a non-profit tissue procurement business, paid facility fees of \$55 or \$60 per month (depending upon the year) to the Planned Parenthood affiliates and clinics from which it obtained fetal tissue.<sup>9</sup> From 2010 through 2015, StemExpress paid a total of \$135,880 to California-based Planned Parenthood affiliates for fetal tissue specimens.<sup>10</sup> Over the same time period, Advanced Biosciences Resources, Inc. paid a total of \$328,225 to California-based Planned Parenthood affiliates for fetal tissue specimens.<sup>11</sup>

The contractual agreement between DVB and PPOSBC show that the firm provided PPOSBC “with a sterile container, including storage media, for each” fetal tissue specimen the Planned Parenthood affiliate obtained.<sup>12</sup> On each day DVB was scheduled to obtain fetal tissue, PPOSBC workers would, “following retrieval, store each [fetal tissue] Specimen in a separate container” and “notify DVB’s “designated contact. . . that Specimen is ready for pick-up . . . .”<sup>13</sup>

Documents produced by DVB show that PPOSCB workers performed the following tasks:

- Discussed tissue donation with women awaiting abortions

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<sup>4</sup> California Secretary of State, Business Entity Detail, <http://kepler.sos.ca.gov> (last visited Oct. 21, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> Letter from R. Joseph Burby, IV, Bryan Cave LLP, to Rep. Marsha Blackburn, Chair, Select Investigative Panel, Jan. 29, 2016, at 1 [hereinafter Burby letter].

<sup>7</sup> *Id.* at 3.

<sup>8</sup> See Services Agreement between StemExpress, LLC, and Planned Parenthood Mar Monte, Apr. 1, 2010, at 1 [STEM\_HOUSE.SELECT\_0167 – STEM\_HOUSE.SELECT\_0169]; Services Agreement between StemExpress, LLC, and Planned Parenthood Shasta Pacific, May 15, 2012, at 1 [STEM.HOUSE.SELECT\_0170 – STEM.HOUSE.SELECT\_0172]; Services Agreement between StemExpress, LLC, and Planned Parenthood of Santa Barbara, Ventura & San Luis Obispo Counties, Oct. 23, 2013, at 1.

<sup>9</sup> Advanced Bioscience Resources, Inc., “Statement of Facility Fees, Jan. 2010 – Oct. 2015.”

<sup>10</sup> Panel analysis of invoices from Planned Parenthood Mar Monte and Planned Parenthood Shasta Pacific to Stem Express, LLC.

<sup>11</sup> Panel analysis of invoices from Planned Parenthood San Jose, Planned Parenthood Riverside, and Planned Parenthood to Advance Bioscience Resources, Inc.[date?]

<sup>12</sup> Specimen Donation Agreement between DaVinci Biosciences, LLC, and Planned Parenthood of Orange and San Bernardino Counties, Sep. 23, 2008, at 1, attachment # TK . [hereinafter DVB Agreement] [DVB\_00001613].

<sup>13</sup> *Id.* at 2 [DVB-00001614].

- Obtained consent from the patients to donate human fetal tissue
- Procured fetal tissue of between a gestational period of 5-20 weeks
- Stored the signed consent forms
- Collected the fetal tissue samples, washed the samples, and transferred them to a sterile container with the gestational age written on the container, and
- Stored the samples on wet ice<sup>14</sup>

DaVinci and DVB sold the fetal tissue to researchers, educational institutions, and pharmaceutical companies. DaVinci “focused on the research and development of cell-based therapeutics targeting neurodegenerative and autoimmune diseases, while DVB supplied human biological tools to academic institutions and pharmaceutical companies for research purposes.”<sup>15</sup>

DVB has an online catalog through which researchers can select from among 338 different types of cells and add the desired product to their “cart.”<sup>16</sup> The prices range dramatically: bone marrow mononuclear cells sell online for \$50;<sup>17</sup> cardiomyocytes for \$850;<sup>18</sup> skeletal muscle progenitor cells for \$900;<sup>19</sup> glioblastoma multiforme cell (uncultured) FFPE block for \$1,200;<sup>20</sup> and synovial tissue FFPE block for \$1,750.<sup>21</sup>

The DVB Website catalogue states that customers can “Order anytime, 24 hours a day, 365 days a year by email or fax. If your order arrives outside our normal business hours, it will be quickly processed at the beginning of the next business day.”<sup>22</sup> All orders to North America “are shipped from DV Biologics headquarters in Southern California and freight is pre-paid and added to your invoice as a separate item unless customers references their own separate shipping account and vendor.”<sup>23</sup> International orders are shipped from DV Biologics headquarters in Southern California every Monday unless specially requested to be shipped on another date.<sup>24</sup>

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<sup>14</sup> DaVinci Biosciences, LLC, “Characterization of Human Fetal Stem Cells and Determination of Research and Therapeutic Tool Potential,” undated.

<sup>15</sup> *Id.*

<sup>16</sup> *See*: DV Biologics, LLC, “LIFEBank Products,” <http://www.dvbiologics.com/products> (last visited Oct. 21, 2016).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> DV Biologics, LLC, Website, <http://www.dvbiologics.com/ordering-information> (last visited Oct. 25, 2016).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

## **Potential Criminal Violations on the Part of DaVinci & DVB**

### California Revenue and Tax Code

A provision of the California Revenue and Tax Code states:

[E]very retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted . . . shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the [California State Equalization Board].<sup>25</sup>

A publication put out by the State Board of Equalization (“SBE”) states that provision applies to corporations, individuals, Limited Liability Companies, Limited Liability Partnerships, Limited Partnerships, partnerships, married co-owners, registered domestic partnerships, and organizations.<sup>26</sup>

The law defines a “retailer engaged in business in” California as “Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.”<sup>27</sup>

There is an exemption for the sale of human blood and human body parts.<sup>28</sup> DVB is not a tissue or blood bank rather it sells fetal tissue cells, cell lines, and other products directly to customers. SBE recently collected nearly \$82,000 for unpaid sales taxes for a non-profit organization that saves dogs, draws blood from those dogs, and sells the white blood cells, plasma, and red blood cells for transfusions into other canines.<sup>29</sup>

The statute defines tangible personal property as “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.”<sup>30</sup> Thus, cells and cell lines are tangible personal property under the California Sales and Use Tax.

The SBE publication further states that California companies can pass along the amount of sales tax to customers, provided the business lists a separate amount for sales tax reimbursement on its receipts or invoices, or if the sales agreement “specifically calls for the addition of sales tax

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<sup>25</sup>Cal. Rev. & Tax Code § 6203.

<sup>26</sup> Cal. State Bd. of Equalization, “Your California Seller’s Permit: Your Rights and Responsibilities under the Sales and Use Tax Law,” Pub. 72, May 2014, at 1. [hereinafter Pub.. 72].

<sup>27</sup> Cal. State Bd. of Equalization, “Laws, Regulations & Annotations, Sales and Use Tax Law, Chapter 3. The Tax,” <https://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutl/6203.html> (last visited Oct. 25, 2016).

<sup>28</sup> Cal. Rev. & Tax Code § 33 (“Human whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, shall be exempt from taxation for any purpose.”).

<sup>29</sup> Chris Haire, “Greyhound Dog Rescue Hemopet Fights to Stay Open after \$82,000 Tax Bill,” *Orange County Register*, Oct. 10, 2016, <http://www.ocregister.com/articles/blood-731674-hemopet-greyhounds.html> (last visited Oct. 27, 2016).

<sup>30</sup> Cal. Rev. & Tax Code § 6016.

reimbursement.”<sup>31</sup> If the business includes sales tax reimbursement in its prices, companies “must inform the buyer that tax is included” by making one of the following statements on a price tag or in an advertisement: “All prices of taxable items include sales tax reimbursement computed to the nearest mill,” or “The price of this item includes sales tax reimbursement to the nearest mill.”<sup>32</sup> Neither of those statements are on DVB’s website.

Under the California Revenue and Tax Code,

Internet sales are treated just like sales made at retail stores, by sales representatives, over the telephone, or by mail order. If your business is located in California, retail sales of tangible personal property that you make over the Internet to California customers are generally taxable unless the sales qualify for a specific tax exemption or exclusion . . . and you are required to register for a permit and report and pay tax to the same extent as any other retailer in California.<sup>33</sup>

As previously noted, DVB sold its products through the Internet. It should, therefore, have collected tax on sales made to California customers. Ten invoices produced by DVB show the firm did not charge tax to Applied StemCell, Inc., a California-based company (“Applied StemCell”). Applied StemCell filed its incorporation papers with the California Secretary of State on February 13, 2008.<sup>34</sup> Applied StemCell “is a leading stem cell and gene editing company . . .”<sup>35</sup> The invoices are listed in the chart below, and copies are attached to this letter.

<b>DATE</b>	<b>INVOICE NUMBER</b>	<b>TOTAL COST</b>	<b>SALES TAX CHARGED</b>
February 12, 2013	437	\$ 82.00	\$ 0.00
October 1, 2013	618	\$ 450.00	\$ 0.00
October 7, 2013	622	\$1,570.00	\$ 0.00
March 6, 2014	754	\$4,016.99	\$ 0.00
August 13, 2014	869	\$ 592.99	\$ 0.00
August 18, 2014	871	\$ 856.99	\$ 0.00
November 24, 2014	954	\$ 410.00	\$ 0.00
December 22, 2014	999	\$ 82.00	\$ 0.00
January 12, 2015	1021	\$ 114.00	\$ 0.00
February 24, 2015	1077	\$1,250.00	\$ 0.00

<sup>31</sup> Pub. 72 at 5.

<sup>32</sup> *Id.*

<sup>33</sup> Cal. State Bd. of Equalization, “Publication 109 Internet Sales,” <https://www.boe.ca.gov/formspubs/pub109/> (last visited Oct. 26, 2016).

<sup>34</sup> Online at <http://kepler.sos.ca.gov/> (last visited Oct. 27, 2016).

<sup>35</sup> Applied StemCells, Inc. website, <http://www.appliedstemcell.com/> (last visited Oct. 27, 2016).

Based on the facts outlined above and the supporting documentation, I urge your office to conduct a thorough investigation into whether DVB violated the statute, and, if you agree that such violations occurred, to take all appropriate action. If you have any questions about this request, please contact T. March Bell at (202) 226-907, [March.Bell@mail.house.gov](mailto:March.Bell@mail.house.gov).

Sincerely yours,



Marsha Blackburn  
Chair  
Select Investigative Panel

Attachment(s)

cc: The Honorable Jan Schakowsky  
Ranking Member  
Select Investigative Panel

The Honorable Vern Pierson  
El Dorado County District Attorney