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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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Science Center Foundation

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DIVISION

AMERICAN FREEDOM ALLIANCE, a
nonprofit corporation;

Plaintiff,

v.

CALIFORNIA SCIENCE CENTER, a legal
entity of the State of California; CALIFORNIA
SCIENCE CENTER FOUNDATION, a
nonprofit corporation; JEFFREY RUDOLPH, an
individual; and DOES 1 through 50, inclusive;

Defendants.

CASE NO. BC 423687

Assigned to: The Honorable Terry A. Green,
Dept. 14

**DEFENDANTS CALIFORNIA SCIENCE
CENTER FOUNDATION'S AND JEFFREY
RUDOLPH'S REPLY IN SUPPORT OF ITS
DEMURRERS TO PLAINTIFF AMERICAN
FREEDOM ALLIANCE'S FIRST
AMENDED COMPLAINT**

DATE OF FILING
COMPLAINT: October 14, 2009

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COMPLAINT: November 19, 2009

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I. INTRODUCTION

In responding to the instant Demurrers, Plaintiff American Freedom Alliance (“AFA” or “Plaintiff”) has provided no legal or factual arguments that could cure the deficiencies raised by defendants California Science Center Foundation (the “Foundation”) and Jeffrey Rudolph, in his official capacity as President of the Foundation (“Rudolph”) (collectively, the “Defendants”) in their demurrers. Plaintiff has provided no grounds by which this Court can conclude that the allegations in its First Amended Complaint state a valid cause of action as to its Second, Third, Fourth and Fifth Causes of Action. Further, Plaintiff has failed to set forth any scenario under which it could state sufficient facts that support valid causes of action. As such, the Court should grant Defendants’ Demurrers and dismiss with prejudice Plaintiff’s Second, Third, Fourth and Fifth Causes of Action.

II. ARGUMENT

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A. Plaintiff’s Fraud Claim Should Be Dismissed Because Plaintiff Has Not And Cannot State That It Actually Relied On Any Alleged Misrepresentation

Plaintiff’s claim for fraud cannot satisfy certain required elements for fraud,¹ most notably the element of actual reliance, which is a component of justifiable reliance. (*Buckland v. Threshold Enterprises, Ltd.* (2007) 155 Cal.App.4th 798, 808.) “[F]raud must be specifically pleaded,” which means: “(1) general pleading of the legal conclusion of fraud is insufficient; and (2) every element of the cause of action for fraud must be alleged in full, factually and specifically.” (*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331.)

“Actual reliance occurs when a misrepresentation is an immediate cause of [a plaintiff’s] conduct, which alters his legal relations[.]” (*Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 299, internal citation quotation marks omitted.) “[A]ctual reliance occurs only when the plaintiff reposes confidence in the *truth* [or *material completeness*] of the relevant representation, and acts upon this confidence.” (*Buckland, supra*, 155 Cal.App.4th at p. 808.) “The

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¹ “The elements of fraud . . . are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (*OCM Principal Opportunities Fund v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 845, citations and internal quotation marks omitted.)

1 plaintiff must allege the specifics of his or her reliance on the misrepresentation to show a bona fide
2 claim of actual reliance.” (*Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.)

3 Here, Plaintiff alleges that Defendants misrepresented the true reason for cancelling an event
4 to be held on October 25, 2009 at the California Science Center (the “Event”), in an attempt to induce
5 Plaintiff to accept a false basis for this cancellation. (First Amended Complaint (“FAC”) ¶ 67.) But
6 contemporaneous statements and the initiation of legal proceedings show that Plaintiff was not misled
7 by any alleged misrepresentation. Additionally, Plaintiff could not have relied upon the alleged
8 misrepresentations because the Foundation cancelled the Event, ending the parties’ relationship. In
9 essence, there was no act or forbearance on the part of the Plaintiff that it can claim was a result of
10 the alleged misrepresentation.

11 **1. Plaintiff Was Not Misled By Any Of The Alleged Misrepresentations**

12 Plaintiff’s fraud claim fails because Plaintiff cannot allege reliance upon the truth or material
13 completeness of any of Defendant’s alleged misrepresentations. (*Buckland, supra*, 155 Cal.App.4th
14 at p. 808.) The record reflects that Plaintiff immediately questioned the Foundation’s reasons for
15 cancelling the Event and promptly filed a legal action against the Defendants based upon a claim that
16 Plaintiff believed the articulated basis for the cancellation was false. Further, in contemporaneous
17 statements filed in this action, Plaintiff admits that it did not rely upon the alleged
18 misrepresentations.² (Declaration of Adrian (Avi) Davis in Support of Application and Order to
19 Show Cause and Temporary Restraining Order (“Davis Decl.”) at 12:18–13:1 [“It is AFA’s belief
20 that contractual issues were not at the root of the cancellation of its contract with Defendants.”].) In
21 its opposition, Plaintiff does not refute or explain how these facts can possibly be reconciled with its
22 allegation that it was misled.

23 Plaintiff filed the original Complaint in this action on October 14, 2009, long before the date
24 of the Event and shortly after Defendants cancelled the event on October 6, 2009. In its original

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26 ² The Court may take judicial notice of statements made by Plaintiff in affidavits or in pleadings
27 filed previously in this matter. (Cal. Evid. Code § 452(d).) “[A] pleading valid on its face may
28 nevertheless be subject to demurrer when matters judicially noticed by the court render the complaint
meritless.” (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)
Plaintiff does not question the Foundation’s reliance on these statements.

1 Complaint, Plaintiff repeatedly alleged that the reasons for cancellation proffered by Defendants were
2 pretextual. (*See, e.g.*, Compl., ¶ 23 [noting “the pretext upon which the event was cancelled (failure
3 to submit promotional materials for review”].) Simultaneously, Plaintiff moved for a temporary
4 restraining order, arguing the cancellation violated Plaintiff’s constitutional rights. (*See* Plaintiff’s
5 Memorandum of Points and Authorities in Support of its Application and Order to Show Cause and
6 Temporary Restraining Order at 3:23–25 [“Plaintiff further contends that the explanations given for
7 the cancellation of the event are pretextual in nature”].) On October 8, 2009, Plaintiff’s President,
8 Avi Davis, stated his belief that Defendants’ basis for cancellation was false. (Davis Decl., Ex. G
9 [“Avi Davis said the cancellation had nothing to do with contract issues.”].)

10 Plaintiff’s Opposition to the Demurrers makes no attempt to rebut these facts because it
11 cannot. Because Plaintiff admits that it did not rely on the truth or material completeness of any
12 alleged misrepresentation or omission made by the Defendants, the cause of action for fraud cannot
13 stand and must be dismissed with prejudice. (*Buckland, supra*, 155 Cal.App.4th at pp. 807–08
14 [sustaining demurrer where plaintiff “concede[d] she suspected respondents’ packaging and
15 marketing was false or misleading, and she bought respondents’ products solely to pursue litigation
16 upon the vindication of her suspicions”].)

17 **2. Even If Plaintiff Could Show That It Was Misled, Plaintiff Has Not Taken Or**
18 **Failed To Take Any Action In Reliance Upon the Alleged Misrepresentations**

19 Plaintiff’s conclusory allegations concerning reliance in the FAC are inadequate to support a
20 claim of fraud. (*See Wilhelm, supra*, 186 Cal.App.3d at p. 1331.) Plaintiff points to allegations in the
21 FAC that “Plaintiff was induced to, and did, cancel the EVENT and expend time, money and
22 additional resources to locate a new venue and produce the Event at the new location with[in] a
23 matter of a few days.” (FAC ¶ 74.) But Plaintiff could not have cancelled the Event because, as also
24 alleged in the FAC, the October 6, 2009 e-mail from the Foundation had already cancelled the Event.
25 Additionally, Plaintiff’s acts to secure a new venue were taken in reliance on the fact that the event
26 was cancelled and were required by the duty to mitigate damages, which applies regardless of
27 Plaintiff’s belief as to the merits of the cancellation. (*Brandon & Tibbs v. George Kevorkian*
28 *Accountancy Corp.* (1990) 226 Cal.App.3d 442, 460.)

1 In its Opposition, Plaintiff presents two arguments. First, Plaintiff presents a protracted
2 dissertation on statutory construction arguing that evidence of reliance is not required in deceit
3 claims. The California Supreme Court has disagreed, noting that “[i]t is settled that a plaintiff, to
4 state a cause of action for deceit based on a misrepresentation, must plead that he or she actually
5 relied on the misrepresentation.” (*Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1088.)

6 Next, Plaintiff suggests that it relied on the alleged misrepresentations by “not taking further
7 action . . . to secure the venue.”³ (Plaintiff’s Opposition to Demurrers of California Science Center
8 Foundation and Jeffrey Rudolph (“Opposition”) at 15:14–18.) However, the “loss of opportunities . .
9 . does not amount to a change of position.” (*Carlson v. Richardson* (1968) 267 Cal.App.2d 204,
10 208.) While courts have recognized limited situations where forbearance can serve as a basis for
11 reliance in a fraud claim, (*see, e.g., Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 170, 173
12 [finding reliance when a stockholder decided to hold stock because of “a fraudulent quarterly
13 financial report that grossly overreported earnings and profits”]), none of these situations apply to this
14 case where Plaintiff cannot show that its legal position was changed as a result of any of its alleged
15 inactions. Courts are reluctant to permit fraud claims premised on misrepresentations resulting in the
16 cancellation of a contract. (*See Hunter v. Up-Right, Inc.* (1993) 6 Cal.4th 1174, 1179, 1186 [denying
17 a fraud claim against employer who convinced an employee to resign].) Even if forbearance was
18 applicable, Plaintiff’s immediate attempt to obtain a temporary restraining order to hold the Event
19 directly contradicts Plaintiff’s assertion that it took no further action. Thus, Plaintiff’s argument of
20 reliance by forbearance is neither consistent with its attempt to obtain a temporary restraining order,
21 nor is it supported by precedent. Plaintiff’s fraud claim should be dismissed with prejudice.

22 **B. Plaintiff’s Claim That Defendants Were Acting Under Color of State Law Fails**
23 **As A Matter Of Law, And Its Section 1983 Claim Should Be Dismissed**

24 To succeed on its Section 1983 claim, Plaintiff must make the threshold showing that
25 Defendants acted under color of state law. (*See Lugar v. Edmondson Oil Co.* (1982) 457 U.S. 922,

26 ³ Because this allegation was not disclosed in the FAC, the Court should not base its decision on
27 this claim. Nevertheless, Defendants address the inadequacy of this allegation to demonstrate that
28 there is no reasonable possibility that Plaintiff can cure the defect by amendment. (*See Schnall v.*
Hertz Corp. (2000) 78 Cal.App.4th 1144, 1151.)

1 935.) It has failed to do so. Instead, it has simply listed the state action tests and made conclusory,
2 unsupported assertions that the private, nonprofit Foundation was engaged in state action.⁴
3 (Opposition at p. 8–9.)

4 Plaintiff's state action argument relies principally on the symbiotic relationship test first
5 enunciated by the United States Supreme Court in *Burton v. Wilmington Parking Authority* (1961)
6 365 U.S. 715. Plaintiff seems to believe that under this test it can claim that the Foundation was a
7 state actor simply by alleging that it leased property from the Center. Additionally, it suggests that
8 just because one court found that a particular "public-private partnership" was engaged in state
9 action, any private entity participating in such a "partnership" automatically becomes a state actor.⁵
10 These conclusions are legally inaccurate, and they evince a fundamental misunderstanding of the
11 symbiotic relationship test.

12 The *Burton* decision has been refined and narrowed over time. More recent Supreme Court
13 decisions require proof of a close nexus between the State and the allegedly unconstitutional conduct.
14 The Supreme Court has stated that a "[s]tate normally can be held responsible for a private decision
15 only when it has exercised coercive power or has provided such significant encouragement, either
16 overt or covert, that the choice must in law be deemed to be that of the State." (*Blum v. Yaretsky*
17 (1982) 457 U.S. 991, 1004.) Absent such direct state encouragement or coercion of the allegedly
18 unconstitutional conduct, the Supreme Court has held that the acts of private organizations "do not
19

20 ⁴ Plaintiff claims, without support, that it has pled sufficient facts "under virtually all of the six
21 tests the United States Supreme Court has formulated for finding state action." (Opposition at p. 8.)
22 Plaintiff has failed, however, to sufficiently allege state action under any of these tests. For instance,
23 it has not alleged facts demonstrating the sort of pervasive entwinement that was present in the
Brentwood Academy decision, where the private statewide athletic association was composed of
nearly all public schools and its leadership was completely controlled by public school officials. (*See*
Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n (2001) 531 U.S. 288.)

24 ⁵ The defendant private entity in the case on which Plaintiff principally relies actually conceded
25 that it was engaged in state action. (*People for the Ethical Treatment of Animals v. Giuliani*,
26 (S.D.N.Y. 2000) 105 F.Supp.2d 294, 304.) In *PETA*, two of the five members of the committee that
27 rejected the plaintiff's painted cow design were public officials. (*Id.* at p. 301.) Additionally, the
28 review committee was established by the City, and the criteria it utilized when evaluating submitted
designs were imposed by the City. (*Id.* at p. 299.) These facts highlight a significant degree of
governmental control over the review process and involvement in the allegedly unconstitutional
action. This is absent in this case.

1 become acts of government by reason of their significant or even total engagement in performing
2 public contracts.” (*Rendell-Baker v. Kohn* (1982) 457 U.S. 830, 841 [holding that a private charter
3 school was not a state actor even though it received over 90% of its funds from the State and was
4 subject to numerous state regulatory requirements].) Plaintiff has merely shown that the Center and
5 the Foundation entered into a contractual relationship that, like all contracts, provides the parties with
6 mutual benefits. Plaintiff has not alleged, and cannot, that the State directly encouraged or coerced
7 the Foundation into cancelling Plaintiff’s event at the Center. The Supreme Court has emphatically
8 held that a private entity’s mere contract with a public authority will not transform it into a state
9 actor. (*Id.*)

10 In addition to ignoring more recent Supreme Court decisions, Plaintiff misreads the *Burton*
11 decision. In *Burton*, the Court did not hold that any private lessee of public property is engaged in
12 state action with respect to activity on that property. In fact, the Court warned of such a broad and
13 unintended interpretation of its holding by stating that the conclusions “drawn from the facts and
14 circumstances of this record are by no means declared as universal truths on the basis of which every
15 state leasing agreement is to be tested.” (*Id.* at p. 725.)

16 The critical consideration in *Burton* was that in the public-private arrangement before the
17 Court, “profits earned by discrimination not only contribute to, but also are indispensable elements in,
18 the financial success of a governmental agency.” (*Burton, supra*, 365 U.S. at p. 724.) A Plaintiff
19 asserting state action under the symbiotic relationship test must, therefore, allege and ultimately
20 prove that a governmental entity knowingly received a financial benefit from the private actor’s
21 allegedly unconstitutional conduct. (*See Parks Sch. of Bus., Inc. v. Symington* (9th Cir. 1995) 51 F.3d
22 1480, 1486; *see also Stark v. Seattle Seahawks* (W.D. Wash. June 22, 2007) 2007 U.S. Dist. LEXIS
23 45510, *14–15 [holding that proving state action required tying the public Stadium Authority’s
24 profits to the allegedly unconstitutional pat-down searches conducted by private security guards at the
25 public stadium].) As one court has stated, “the symbiotic relationship must involve the alleged
26 constitutional violation.” (*Nat’l Broad. Co., Inc. v. Communications Workers of Am., AFL-CIO* (11th
27 Cir. 1988) 860 F.2d 1022, 1027.) A bare assertion that the state has received some “public benefit”
28 will not suffice. (*Parks Sch., supra*, 51 F.3d at p. 1486.) Importantly, *Burton* also requires that a

1 plaintiff demonstrate that the profits received from the allegedly unconstitutional conduct constitute
2 an indispensable element in the public entity's financial success. (*Burton, supra*, 365 U.S. at p. 724;
3 *see also Gallagher v. Neil Young Freedom Concert* (10th Cir. 1995) 49 F.3d 1442, 1453.)

4 Plaintiff has failed to allege that the Center or the State of California received any financial
5 benefit or profited in a legally relevant way from Defendant's decision to cancel the contract. The
6 facts before this Court are completely distinct from those in *Burton*, in which the private restaurant
7 asserted that its business would have been damaged if it served blacks. (*Burton, supra*, 365 U.S. at
8 p. 724.) Its discrimination, therefore, increased its profits that ultimately flowed to the public parking
9 authority. The Center, on the other hand, has received no financial benefit whatsoever from the
10 Foundation's cancellation of Plaintiff's event. If anything, the Center lost out on the \$4,310 that
11 Plaintiff promised to pay in consideration for use of its venue (FAC ¶ 11.) Without proof that the
12 State profited from Defendants' allegedly unconstitutional act, Plaintiff cannot rely on *Burton's*
13 symbiotic relationship test to support a finding of state action.

14 In sum, Plaintiff has simply not pled facts sufficient to support its assertion that Defendants
15 acted under color of state law. Plaintiff has only shown that the Center and the Foundation are parties
16 to existing contracts from which they receive mutual benefits. Followed to its logical conclusion,
17 Plaintiff's argument would attribute state action to any private entity in contract with the government.
18 This is not the law, and it would dramatically blur the distinction between the public and private
19 spheres. The facts pled by Plaintiff do not support a finding of state action under any of the existing
20 tests, and Defendants respectfully request that that this court dismiss with prejudice Plaintiff's
21 Section 1983 claim.

22 **C. The Demurrer As To The Cause Of Action For Breach of Covenant Of Good**
23 **Faith And Fair Dealing Should Be Sustained Because There Is No Special**
24 **Relationship Alleged**

25 The demurrer should also be sustained as to Plaintiff's claim for the breach of the implied
26 covenant of good faith and fair dealing. Plaintiff has no basis to bring an action for breach of this
27 implied covenant, either in tort or in contract.

1 An action for a tortious breach of the covenant of good faith and fair dealing may not be
2 pursued under the alleged facts. Unless there is a special relationship with fiduciary characteristics,
3 no cause of action exists for tortious breach of an implied covenant of good faith and fair dealing.
4 Beyond certain identified relationships, “[c]ourts have consistently declined to expand liability for
5 this tort into other types of contract-based disputes.” (*Martin v. U-Haul Company of Fresno* (1988)
6 204 Cal.App.3d 396, 413.) Plaintiff does not allege a special relationship in the FAC or its
7 opposition.

8 An action for breach of the covenant of good faith and fair dealing sounding in contract is
9 superfluous. Plaintiff notes, and Defendants do not dispute, that California recognizes a cause of
10 action for the breach of the covenant of good faith and fair dealing sounding in contract. However,
11 “[i]f the allegations do not go beyond the statement of a mere contract breach and, relying on the
12 same alleged acts, simply seek the same damages or other relief already claimed in a companion
13 contract cause of action, they may be disregarded as superfluous as no additional claim is actually
14 stated.” (*Careau & Co. v. Security Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395 [limiting
15 the claim to “those limited cases where a breach of a consensual contract term is not claimed or
16 alleged”].) Plaintiff provides no precedent to support maintaining the cause of action in conjunction
17 with an equivalent breach of contract claim.

18 Because there is no special relationship to justify a claim for tortious breach of the covenant
19 of good faith and fair dealing and such a claim sounding in contract is redundant, Defendants
20 demurrer should be granted.

21 **D. Plaintiff’s Claim For Injunctive Relief Has Not Been, And Cannot Be,**
22 **Adequately Alleged**

23 Having failed to allege the lack of an adequate legal remedy or that irreparable harm would
24 result if an injunction was not granted, Plaintiff’s claim for injunctive relief should be denied. (*See*
25 *Writers Guild of America, West, Inc. v. City of Los Angeles* (2000) 77 Cal.App.4th 475, 479.)
26 Paragraphs 80 and 81 of the FAC contain conclusory allegations that do not constitute an adequate
27 pleading of facts sufficient to support a claim for injunctive relief. (*See E.H. Renzel Co. v.*
28

1 *Warehousemen's Union I.L.A. 38-44* (1940) 16 Cal.2d 369, 373. [holding a “complaint for an
2 injunction which alleges only general conclusions” does not state a cause of action].)

3 A plaintiff must plead “[f]acts concerning the irreparable injury which . . . *will result* to the
4 complainant” unless an injunction is granted. (*Id.*, emphasis added.) Plaintiff argues that deprivation
5 of free speech constitutes an irreparable injury (Opposition at p. 16), but provides no facts to show
6 that this harm *will result* in the future. To rectify this obvious deficiency, Plaintiff presents facts that
7 were not contained in the FAC.⁶ Even these new facts do not support the proposition that “any of the
8 alleged illegal activities [are] likely to occur.” (*Choice-in-Education League v. Los Angeles Unified*
9 *School Dist.* (1993) 17 Cal.App.4th 415, 431.) Unlike in *Bantam Books, Inc. v. Sullivan* (1963) 372
10 U.S. 58) as cited by Plaintiff, there are no facts to demonstrate a systematic and deliberate attempt to
11 suppress speech. (*Id.* at pp. 66–67.) Even the recently added facts in the opposition brief do not
12 support the contention that the alleged discrimination would occur in the future.

13 Further, Plaintiff’s deficiencies are not cured by its repeated reference to language from the
14 Supreme Court’s plurality opinion of *Elrod v. Burns* (1976) 427 U.S. 347, 373, that: “The loss of
15 First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable
16 injury.” This language has been taken out of context by Plaintiff and does not apply to this situation.
17 In *Elrod*, the Court affirmed the use of injunctive relief because “injury [to First Amendment rights]
18 was both threatened and occurring at the time of respondents’ motion[.]” (*Id.* at p. 374.) No such
19 threatened or ongoing injury has been alleged here. Further, subsequent courts have made clear that
20 this language does not excuse a plaintiff from satisfying the necessary elements for injunctive relief.
21 (*Sundance Saloon, Inc. v. City of San Diego* (1989) 213 Cal.App.3d 807, 817 [holding that *Elrod*
22 does not “support the proposition that simply because an ordinance affects the right of free speech, its
23 enforcement results invariably in such a deprivation of rights that no consideration need be given to
24 the degree of deprivation caused or the effect of enjoining the enforcement of the ordinance”]; *see*
25 *also Chaplaincy of Full Gospel Churches v. England* (D.C. Cir. 2006) 454 F.3d 290, 301

26 _____
27 ⁶ While these new facts are also outside the scope of the demurrer, Defendants address them to
28 demonstrate that the deficiencies identified in the demurrer cannot be cured by amendment. (*See Schnall, supra*, 78 Cal.App.4th at p. 1151.)

1 ["constru[ing] *Elrod* to require movants to do more than merely allege a violation of freedom of
2 expression in order to satisfy the irreparable injury prong of the preliminary injunction frame-work.
3 Rather, . . . movants must show that their First Amendment interests are either threatened or in fact
4 being impaired at the time relief is sought"].) Plaintiff cannot simply claim that any First
5 Amendment violation constitutes irreparable injury without alleging any facts that could show that
6 the injury is currently being threatened or likely to occur again. Because Plaintiff has alleged no facts
7 that could support the issuance of injunctive relief, including the lack of any irreparable injury, the
8 claim for injunctive relief should be dismissed.


9 Unable to demonstrate irreparable harm, Plaintiff proceeds to argue any deficiencies are mere
10 formalities because the request for injunctive relief could have been plead as a remedy. However,
11 regardless of the form of pleading, Plaintiff's failure to plead facts showing future irreparable injury
12 precludes any injunctive relief. (*See E.H. Renzel Co., supra*, 16 Cal.2d at p. 373.)

13 **III. CONCLUSION**

14 For the foregoing reasons, the Foundation and Mr. Rudolph, in his official capacity as
15 President of the California Science Center Foundation, respectfully request that the Court grant the
16 instant Demurrers and dismiss with prejudice the Second, Third, Fourth, and Fifth Causes of Action
17 included within Plaintiff's FAC.

18 DATED: May 5, 2010

GIBSON, DUNN & CRUTCHER LLP

19
20 By: 
21 Patrick W. Dennis

22 Attorneys for Defendants,
23 CALIFORNIA SCIENCE CENTER FOUNDATION
24 and JEFFREY RUDOLPH in his official capacity as
25 President of the California Science Center Foundation

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