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FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES

MAR 17 2011

John A. Graffie, Executive Officer/Clerk _, Deputy Shaunya Wesley

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT

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

DEFENDANT CALIFORNIA SCIENCE CENTER FOUNDATION'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY ADJUDICATION AS TO AFA'S BREACH OF CONTRACT CLAIM ON THE GROUND THAT NO CONTRACT EVER FORMED BETWEEN THE FOUNDATION AND AFA

[Notice; Memorandum of Points and Authorities in Support Thereof; Declaration of Christopher A. Nowlin; Declaration of Lori Matsunaga; Declaration of Christina Sion; and [Proposed] Order filed concurrently herewith)

DATE OF FILING OF ORIGINAL

COMPLAINT: October 14, 2009

DATE OF FILING OF THIRD AMENDED

COMPLAINT:

August 18, 2010

TRIAL DATE:

July 25, 2011

HEARING DATE: HEARING TIME:

June 1, 2011 8:45 a.m.

HEARING PLACE:

Dept. 14

Pursuant to California Code of Civil Procedure § 437c, subdivision (b) and California Rule of Court, rule 3.1350, Defendant California Science Center Foundation ("the Foundation") hereby submits, for purposes of these motion proceedings only, the following Separate Statement of Undisputed Material Facts in Support of Its Motion for Summary Adjudication regarding American Freedom Alliance's ("AFA") claim for breach of contract on the ground that no contract ever formed between AFA and the Foundation.

Moving Party's Undisputed Material Facts and Supporting Evidence:

Opposing Party's Response and Supporting

Evidence:

I. The Foundation Is Entitled To Summary Adjudication On AFA's Breach of Contract Claim Because No Legally Binding Contract Ever Formed Between The Foundation And AFA

1. The Foundation is a non-profit, section

501(c)(3) organization that raises funds to
support exhibits and educational programs

featured at the California Science Center, the

West Coast's largest interactive science center
and museum.

(Declaration of Christopher A. Nowlin ("Nowlin
Decl."), Ex. 20 [Dep. Ex. 200 ("Rudolph
Injunction Decl.")] at ¶¶ 3, 6; Ex. 9 [J. Rudolph
Dep. Tr.] at 38:11-15.)

2. The Foundation designs and administers exhibits and educational programs featured at the Science Center. The Foundation is also responsible for permitting private parties access to areas within the Science Center for after-hours

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1	Event Price Estimate]; Declaration of Christina
2	Sion ("Sion Decl."), ¶ 5, Ex. 1 [Copy of initial
3 4	Event Price Estimate].)
5	8. The Event Policies and Procedures attached to
6	the September 25 e-mail contained a provision
7	mandating that "[a] 50% deposit, credited
8	towards the rental cost, is required with the
9	signed Event Price Estimate to secure an event
10	date."
11	(Matsunaga Decl., ¶ 7, Ex. 3 [Copy of Event
12	Policies and Procedures]); Sion Decl., ¶ 6, Ex. 2
13	[Copy of Event Policies and Procedures].)
14	9. The Foundation and AFA subsequently agreed
15	to some additional terms after September 25. For
16	example, they agreed that AFA would cover
17	certain shipping and distribution costs associated
18	with AFA's films. Additionally, to accommodate
19	an AFA request, the Foundation was willing to
20	allow AFA to extend the deadline for the
21	submission of its 50% deposit to October 15,
22	with the balance of the fee being due on October
23	20.
24	(Nowlin Decl., Ex. 8 [A. Davis Dep. Tr.] at
25	214:9-216:12; Ex. 16 [Dep. Ex. 29]; Sion Decl., ¶
26	7, Ex. 3.)
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1	1	(Nowlin Decl., Ex. 14 [Dep. Ex. 16]; Ex. 15
2		[Dep. Ex. 19] at ¶ 6, Decl. Ex. A.; Ex. 4 [AFA's
3		Third Amended Complaint] at ¶ 9, Ex. A.)
5		13. The Revised Event Price Estimate included a
6		provision stating that AFA's "specific date and
7		time will not be held beyond the [sic] October 2,
8		2009 without receipt of the signed invoice and
9		sales agreement."
10		(Nowlin Decl., Ex. 14 [Dep. Ex. 16]; Ex. 15
11		[Dep. Ex. 19] at ¶ 6, Decl. Ex. A.); Ex. 4 [AFA's
12		Third Amended Complaint] at ¶ 9, Ex. A.)
13		14. The Revised Event Price Estimate did not
14		purport to incorporate any of the terms of the
15		Event Letter of Agreement.
16		(Nowlin Decl., Ex. 14 [Dep. Ex. 16]; Ex. 15
17		[Dep. Ex. 19] at ¶ 6, Decl. Ex. A; Ex. 4 [AFA's
18		Third Amended Complaint] at ¶ 9, Ex. A.)
19		15. The Revised Event Price Estimate contained
20		a provision stating that "by signing this
21		agreement you are agreeing to the terms and
22		conditions that are incorporated herein and with
23		the Event Policies and Procedures."
24		
25		(Nowlin Decl., Ex. 14 [Dep. Ex. 16]; Ex. 15
26		[Dep. Ex. 19] at ¶ 6, Decl. Ex. A.; Ex. 4 [AFA's
27		Third Amended Complaint] at ¶ 9, Ex. A.)
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1		16. The Event Policies and Procedures sent to
2		AFA by the Foundation on October 1, 2009
3	1	contained a provision declaring that "[a] 50%
5		deposit, credited towards the rental cost, is
6		required with the signed Event Price Estimate to
7		secure an event date."
8		(Nowlin Decl., Ex. 14 [Dep. Ex. 16]; Ex. 15
9		[Dep. Ex. 19] at ¶ 6, Decl. Ex. A.; Ex. 4 [AFA's
10		Third Amended Complaint] at ¶ 9, Ex. A.)
11		17. Neither the Revised Event Price Estimate nor
12		the Event Policies and Procedures contained
13		terms mentioning any sort of agreement to allow
14		AFA to proceed under an adjusted payment
15		schedule under which it could make its 50%
16		deposit after returning the signed Revised Event
17		Price Estimate.
18		(Nowlin Decl., Ex. 14 [Dep. Ex. 16]; Ex. 15
19	_	[Dep. Ex. 19] at ¶ 6, Decl. Ex. A.; Ex. 4 [AFA's
20		Third Amended Complaint] at ¶ 9, Ex. A.)
21		18. Both the Revised Event Price Estimate and
22 23		the Event Letter of Agreement required that AFA
24		return the signed contract documents by October
25		2 for an event date to be secured.
26		(Nowlin Decl., Ex. 14 [Dep. Ex. 16]; Ex. 15
27		[Dep. Ex. 19] at ¶ 6, Decl. Ex. A; Ex. 4 [AFA's
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$\frac{1}{2}$	Third Amended Complaint] at ¶ 9, Ex. A.)	
3	19. AFA President Avi Davis has acknowledged	
4	that he did not believe that a final, binding	·
5	contract would be entered into until AFA signed	
6	and returned the contract documents to the	·
7	Foundation.	
8	(Nowlin Decl., Ex 8 [A. Davis Dep. Tr.] at	
. 9	24:13-25:9; 26:5-27:12; 88:2-89:4; 190:3-	
10	191:12.) Ex. 15 [Dep. Ex. 19] at ¶ 6, Decl. Ex.	
11	A.)	
12	20. AFA has repeatedly acknowledged that the	
13	contract consisted of three documents, one of	
14	which was the Event Letter of Agreement.	
15	(Nowlin Decl., Ex. 15 [Dep. Ex. 19] at ¶ 6, Decl.	
16	Ex. A.; Ex. 4 [AFA's Third Amended Complaint]	·
17	at ¶9, Ex. A.)	
18		
19	21. On October 5, when the Foundation had still	
20	yet to receive any signed contract documents	
21	from AFA, Foundation employee Lori	
22	Matsunaga sent an e-mail to Avi Davis stating	
23	that the contract documents had to be received by	
24	the Foundation on that day.	
25	(Nowlin Decl., Ex. 16 [Dep. Ex. 29] at p.1.)	
26	22. The Foundation received a copy of the	
27	Revised Event Price Estimate signed by AFA	
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2	President Avi Davis on the afternoon of October	
3	5, 2010.	
4	(Nowlin Decl., Ex. 16 [Dep. Ex. 29]; Ex. 14	
5	[Dep. Ex. 16]; Ex. 15 [Dep. Ex. 19] at ¶ 6, Decl.	·
6	Ex. A, Ex. 4 [AFA's Third Amended Complaint]	
7	at ¶ 9, Ex. A; Matsunaga Decl., ¶ 8)	
8	23. AFA has not produced any evidence that	
9	anyone from AFA ever signed the Event Letter of	
10	Agreement and sent it to the Foundation.	
11	(Nowlin Decl., Ex. 8 [A. Davis Dep. Tr.] at	
12	32:25-33:15, 209:3-210:1, 211:18-213:20; Ex. 6	
13	[AFA's Supplemental Responses and Objections	
.14	to the Foundation's First Set of Form	
15	Interrogatories] at p. 9, Response to Form	
16	Interrogatory 17.1, number 2; Ex. 5 [AFA's	
17	Supplemental Responses and Objections to the	
18	Foundation's Second Set of Requests for	•
19	Admissions] at p. 3, Suppl. Resp. to RFA No. 2.)	
20	24. AFA has never produced a signed copy of	
21	the Event Letter of Agreement in response to any	
22	of the Foundation's discovery demands in this	
23	litigation.	
24		•
25	(Nowlin Decl., Ex. 8 [A. Davis Dep. Tr.] at	
26	211:18-213:20.)	
27		

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2	12; Ex. 10 [C. Pygin Dep. Tr.] at 166:9-167:12;
3	Matsunaga Decl., ¶ 9; Sion Decl., ¶ 9)
4	28. Chris Sion, the Foundation's Vice President
5	of Food and Event Services and AFA's primary
6	point of contact in seeking to schedule its event
7	at the Center, testified that the Event Services
8	Department never received a signed copy of the
. 9	Letter of Agreement.
10	(Nowlin Decl., Ex. 7 [C. Sion Dep. Tr.] at 230:4-
11	12.)
12	29. Cynthia Pygin, the Foundation's Chief
13	Financial Officer and a Senior Vice President of
14	the organization, testified that the Foundation
15	never received a signed Event Letter of
16	Agreement and that it also did not receive a 50%
17	deposit when AFA submitted the signed Revised
18	Event Price Estimate.
19	(Nowlin Decl., Ex. 10 [C. Pygin Dep. Tr.] at
20	166:9-167:12.)
21 22	30. Avi Davis, the President of AFA and the
23	individual who signed the Revised Event Price
24	Estimate that was returned to the Foundation,
25	testified that he never signed the Event Letter of
26	Agreement.
27	(Nowlin Decl., Ex. 8 [A. Davis Dep. Tr.] at

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1 2		209:3-210:1.)
3		31. Avi Davis, the President of AFA and the
4		individual who signed the Revised Event Price
5		Estimate that was returned to the Foundation,
6		testified he did not know and could not recall
7		whether he ever signed and returned the Event
8		Letter of Agreement.
9		(Nowlin Decl., Ex. 8 [A. Davis Dep. Tr.] at
10		32:25-33:15; 211:18-213:8.)
11		32. AFA did not submit a 50% deposit when it
12		submitted its signed Revised Event Price
13		Estimate on October 5.
14		(Nowlin Decl., Ex. 8 [A. Davis Dep. Tr.] at
15 16		33:20-22; Ex. 10 [C. Pygin Dep. Tr.] at 166:9-
17		167:12; Ex. 16 [Dep. Ex. 29].)
18		33. No one from the Foundation ever conveyed
19		to any AFA representative that AFA's submittal
20		of only the signed Revised Event Price Estimate
21		was adequate to form a contract or confirmed that
22		AFA had locked in an event date by returning
23	-	only the one signed document.
24		(Matsunaga Decl., ¶ 10; Sion Decl., ¶ 10.)
25		34. Chris Sion from the Foundation sent AFA an
26		e-mail at 1:21 PM on October 6 informing AFA
27		that it would not be able to hold its event at the
28		12

Center.	
(Nowlin Decl., Ex. 7 [C. Sion Dep. Tr.] at	
385:14-386:2; Ex. 18 [Dep. Ex. 45].)	
DATED: March 17, 2011	GIBSON, DUNN & CRUTCHER LLP
	By: Pata W Done / (AN
	Patrick W. Dennis
	Attorneys for Defendants CALIFORNIA SCIENCE CENTER FOUNDATION and JEFFREY RUDOLPH
	individually and in his official capacity as President of the California Science Center Foundation
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