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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
MAR 18 2011
John A. ...
By GLORIETTA ROBINSON, Deputy

SUPERIOR COURT OF THE 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

**CALIFORNIA SCIENCE CENTER'S
SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS AND
EVIDENCE IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE SUMMARY
ADJUDICATION** [Cal. Rules of Court, Rule
3.1350, subd. (h)]

[Notice of Motion; Memorandum of Points and
Authorities in Support Thereof; Appendix of
Non-California Authorities; Declaration of
Cheyrl Tateishi and Declaration of Allan Ono;
Declaration of Jeffrey Rudolph and Proposed]
Order filed concurrently herewith]

Date: June 1, 2011
Time: 8:45 a.m.
Dept: 14
Judge: The Honorable Terry A. Green
Trial Date: July 25, 2011
Action Filed: October 14, 2009

11/12/09

Pursuant to California Code of Civil Procedure section 437c, subdivision (b) and California Rule of Court, rule 3.1350, Defendants California Science Center ("Center") and Jeffrey Rudolph in his individual and official capacity as President and CEO of the Center ("Rudolph" and collectively, "Center Defendants") hereby submit, for purposes of these motion proceedings only, the following Separate Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment, or in the alternative, Summary Adjudication regarding American Freedom Alliance's ("AFA") claims asserted in its Third Amended Complaint.

Moving Party's Undisputed Material Facts and Supporting Evidence:

Opposing Party's Response and Supporting Evidence:

Issue No. 1:

The Center is Entitled to Judgment on AFA's First Cause of Action For Breach of Contract Because The Center Was Not a Party to The Contract

1. The California Science Center ("Center"), also known as the Sixth Agricultural Association, was created by the California State Legislature pursuant to Food and Agriculture Code, Division 3, Part 3.

Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-23]; (Food & Agr. Code, sections 3801, et seq.)

2. The Center is a state institution organized within the State and Consumer Services Agency and is deemed a tax-exempt organization as an instrumentality of this state in accordance with Section 23706 of the Revenue and Taxation Code.

1 [Food & Agr. Code, sections 3953 and 4101.]

2
3 3. Jeffrey Rudolph is the Center President and
4 CEO

5 Rudolph Decl., Para. 2

6
7 4. The Foundation is a non-profit, section
8 501(c)(3) organization that raises funds to
9 support exhibits and educational programs
10 featured at the California Science Center (the
11 "Science Center"), the West Coast's largest
12 interactive science center and museum.

13 Ono Decl., Ex. 30 [Rudolph Dep. Ex. 200]

14
15 5. In 1995, the Foundation and Science Center
16 also entered into a lease agreement regarding
17 the IMAX theater. The IMAX theater lease
18 does not incorporate any policies regarding the
19 subject matter of private events to be held at the
20 facility. The lease agreement requires the
21 Foundation to comply with all applicable state
22 and federal laws. A provision of the lease
23 disclaims any requirement that the Foundation
24 "acquire or show any specific film."

25 Ono Decl., Ex. 29 [Dep. Ex. 198 ("IMAX
26 Lease")] at § 7, 15; Ex. 9 [Pygin Dep. Tr.] at
27 148:7-148:21; Ex. 7 [Rudolph Dep. Tr.] at
28

1 160:2-162:8.

2 6. The IMAX Lease specifically disclaims the
3 creation of an agency or partnership
4 relationship.

5 Tateishi Decl. Para. 4; Ono Decl. Ex. 29
6 [Rudolph Dep. Ex. 198].
7

8 7. The Event Services Office, a department of
9 the Foundation, manages and arranges for the
10 use of areas within the California Science
11 Center for private events that occur after public
12 hours.

13
14 (Ono Decl., Ex. 7 [Rudolph Dep. Tr.] at
15 159:14-160:7, 163:15-164:9; Ex. 2 [Sion Dep.
16 Tr.] at 80:1-7, 386:16-387:14, 400:25-402:4;
17 Ex. 30 [Dep. Exh. 200, Rudolph Injunction
18 Decl.] at 2:22-26.)

19 8. The Foundation is solely responsible for the
20 operation of the IMAX theater.

21 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 1
22 (1/10/11)] at 71:19-72:4, 163:15-164:9; Ex. 29
23 [Dep. Ex. 198]; *see also id.*, Ex. 12 [Strom
24 Dep. Tr.] at 193:14-17 ["Q. And does the
25 Science Center have any involvement in the
26 booking of special events at the Science Center
27 IMAX theater, to your knowledge?" A. It does
28

1 not.”]; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2
2 (12/10/10)] at 386:15–387:12 [addressing
3 responsibility for leasing the IMAX for private
4 events].; Tateishi Decl. Para. 5.

5
6 9. The Center neither has the ability to
7 contract with third parties for rental of the
8 IMAX, nor has authority over the Foundation’s
9 contractual dealings with third parties seeking
10 to rent the IMAX facilities for private events.

11
12 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 1
13 (1/10/11)] at 71:19–72:4, 163:15–164:9; Ex. 29
14 [Dep. Ex. 198]; *see also id.*, Ex. 12 [Strom Dep.
15 Tr.] at 193:14–17 [“Q. And does the Science
16 Center have any involvement in the booking of
17 special events at the Science Center IMAX
18 theater, to your knowledge? A. It does not.”];
19 *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)] at
20 386:15–387:12 [addressing responsibility for
21 leasing the IMAX for private events]; Tateishi
22 Decl., Para. 5.

23
24 10. None of the agreements between the
25 Foundation and Science Center grant the
26 Foundation the right to contract on the Science
27 Center’s behalf.

1 Ono Decl., Ex. 29 [Dep. Ex. 198 (“IMAX
2 Lease”]; *id.*, Ex.28 [Dep. Ex. 194 (“Joint
3 Operation Agreement”)]; *see also id.*, Ex. 2
4 [Sion Dep. Tr., Vol. 2 (12/10/10)] at 398:16–
5 21.

6
7 11. On or about September 24, 2009,
8 employees at the Foundation were contacted by
9 AFA regarding scheduling a private fundraising
10 event at the California Science Center. Over
11 the next few days, the Foundation and AFA
12 arranged to book a private event at the IMAX
13 theater on October 25, 2009.

14 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol. 1
15 (12/8/10)] at 75:11–78:9, at 96:8-98:20; *id.*,
16 Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at
17 83:25-84:2.)

18
19 12. The Foundation—and not the Science
20 Center—is a named party on the Event Services
21 Agreement that pertains to the Event. Only
22 Foundation employees were involved in the
23 negotiations with AFA to host the Event.

24 Ono Decl., Ex. 15 [Dep. Ex. 16 (“Event Service
25 Agreement”)]; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2
26 (12/10/10)] at 402:5–403:9; Tateishi Decl., Para.
27 6;

1 13. The Foundation's Joe Peterson made it
2 clear that he intended to negotiate with
3 whomever it was that could put him into the
4 IMAX. Ono Decl. Ex. 11 [Peterson Dep. Tr. at
5 152:19-25, 153:1-8 - -

6 "It is a box that has the projector I want. It has
7 an IMAX. That's what I need. I could care
8 less whether it is California Science Center or
9 whomever."}]

10
11 14. On October 5, 2009, the same day that it
12 received an executed Event Price Estimate
13 from AFA, the Foundation became aware of
14 press releases that were issued relating to the
15 Event.

16 Ono Decl., Ex. 13 [Dep. Ex. 11]; *id.*, Ex. 33
17 [Dep. Ex. 29]; *id.*, Ex. 8 [Amege Dep. Tr.] at
18 49:10-53:23.

19
20 15. The Foundation Defendants believed that
21 these press releases improperly implied that the
22 California Science Center and the Smithsonian
23 Institution were sponsoring the Event.

24 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2
25 (1/11/11)] at 288:16-289-10; *id.*, Ex. 24 [Dep.
26 Ex. 165].
27

28

1 16. Because none of the press releases were
2 ever submitted to the Foundation's Event
3 Services Office, Foundation Defendants
4 believed that the press releases violated the
5 Event Services' Policies and Procedures. On
6 this basis, Rudolph made the decision to cancel
7 the Event.

8 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2
9 (1/11/11)] at 281:6-23; *id.*, Ex. 2 [Sion Dep.
10 Tr., Vol. 2 (12/10/10)] at 254:2-255:3; *id.*,
11 Ex. 9 [Pygin Dep. Tr.] at 75:12-77:7, 100:24-
12 103:1; *id.*, Ex. 6 [Bylsma Dep. Tr.] at 232:16-
13 21; *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)]
14 at 191:1-11

15
16 17. Foundation witnesses testified that
17 Rudolph made the decision to cancel the Event.
18 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10-
19 109:15; *id.*, Ex. 8 [Amega Dep. Tr.] at 155:16-
20 21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)]
21 at 355:10-356:8, 406:14-18; *id.*, Ex. 7
22 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at 98:10-
23 12; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 2
24 (1/11/11)] at 256:16-257:4 [testifying that
25 "[t]he decision to cancel the event was my
26 decision."]
27

1 18. In making the decision to cancel the
2 Event, Rudolph did not consult with any
3 employees of the Science Center.
4 Ono Decl. Ex. 7 [Rudolph Dep. Tr., Vol. 2
5 (1/11/11)] at 257:8–258:21, 260:23–261:10,
6 262:10–263:21; *id.*, Ex. 13 [Dep. Ex. 11]; *id.*,
7 Ex. 14 [Dep. Ex. 15]; *id.*, Ex. 31 [Dep. Ex.
8 205]

9
10 19. Jeff Rudolph testified that: “As President
11 of the California Science Center Foundation, I
12 chose to cancel the [AFA] event.”

13 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
14 Vol. 1 (1/10/11)] at 98:10–12; *see also* Ex. 7
15 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at
16 256:16–257:4 [testifying that “[t]he decision to
17 cancel the event was my decision.”]
18

1 **Issue No. 2:**

2 **The Center is Entitled to Judgment on AFA's First Cause of Action For**
3 **Breach of Contract Because AFA Neglected to File a Claim for Money Damages with the**
4 **California Victim's Compensation and Government Claim Board**
5

6 20. The California Science Center ("Center"),
7 also known as the Sixth Agricultural
8 Association, was created by the California State
9 Legislature pursuant to Food and Agriculture
10 Code, Division 3, Part 3.

11 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-
12 23]; (Food & Agr. Code, sections 3801, et seq.)

13 21. The Center is a state institution organized
14 within the State and Consumer Services
15 Agency and is deemed a tax-exempt
16 organization as an instrumentality of this state
17 in accordance with Section 23706 of the
18 Revenue and Taxation Code.

19 [Food & Agr. Code, sections 3953 and 4101.]
20

21 22. AFA's First Cause of Action for Breach of
22 Contract seeks money damages against the
23 Center.

24 Third Amended Complaint ("TAC"), paras. 29-
25 37.

26
27 23. The TAC does not contain any allegation
28

1 that AFA ever submitted a claim for damages
2 to the California Victim's Compensation and
3 Government Claims Board:
4 TAC.
5

6 24. AFA has not presented a claim against the
7 Center to the California Victim's
8 Compensation and Government Claims Board.
9 Ono Decl., para. 34; *id.*, Ex. 32;
10
11

1 **Issue 3:**

2 **The Center And Rudolph In His Official Center Capacity Are Entitled to Judgment on**
3 **AFA's Second, Third And Fourth Causes of Action Because They Possess Eleventh**
4 **Amendment Immunity**

5 25. The California Science Center ("Center"),
6 also known as the Sixth Agricultural
7 Association, was created by the California State
8 Legislature pursuant to Food and Agriculture
9 Code, Division 3, Part 3.
10 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-23];
11 (Food & Agr. Code, sections 3801, et seq.)
12

13 26. The Center is a state institution organized
14 within the State and Consumer Services
15 Agency and is deemed a tax-exempt
16 organization as an instrumentality of this state
17 in accordance with Section 23706 of the
18 Revenue and Taxation Code.
19 [Food & Agr. Code, sections 3953 and 4101.]
20

21 27. Jeffrey Rudolph is the Center President
22 and CEO
23 Rudolph Decl., Para. 2.
24

25 28. Nearly 90% of the Center's spending is
26 drawn from the State's General Fund.
27 Ono Decl., Ex. 10 Tateishi Dep. Tr., 36:23-25,
28 37:1-3];

1 29. The small remainder of the Center's
2 spending is based on reimbursements from
3 third parties or restricted purpose spending
4 authorized by the Legislature from a state
5 special fund known as the Exposition Park
6 Improvement Fund.

7 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 37:5-9];

8
9 30. If the Center were subject to a money
10 judgment, that judgment would be satisfied
11 from the money drawn from the State's General
12 Fund.

13 Rudolph Decl., Para. 2;

14 31. Money donations to the Center cannot be
15 held directly by the Center, but are sent to
16 Legislature controlled Exposition Park
17 Improvement Fund, and may be appropriated
18 back to the Center only by the Legislature.

19 Teteishi Decl., Para. 7;

20
21 32. Each of the Center's directors are required
22 to be appointed by the Governor of the State of
23 California.

24 [Food & Agr. Code, sections 3953, 3959, 3962
25 and 4101.]
26

1 Issue No. 4:

2 **The Center Defendants are Entitled to Judgment on AFA's Second, Third, Fourth and**
3 **Eighth Causes of Action Because There is No Evidence That the Center Defendants**
4 **Engaged in Any Discriminatory Conduct**

5 33. The California Science Center ("Center"),
6 also known as the Sixth Agricultural
7 Association, was created by the California State
8 Legislature pursuant to Food and Agriculture
9 Code, Division 3, Part 3.

10 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-
11 23]; [Food & Agr. Code, sections 3801, et seq.]
12

13 34. The Center is a state institution organized
14 within the State and Consumer Services
15 Agency and is deemed a tax-exempt
16 organization as an instrumentality of this state
17 in accordance with Section 23706 of the
18 Revenue and Taxation Code.

19 [Food & Agr. Code, sections 3953 and 4101.]
20

21 35. The Foundation is a non-profit, section
22 501(c)(3) organization that raises funds to
23 support exhibits and educational programs
24 featured at the California Science Center (the
25 "Science Center"), the West Coast's largest
26 interactive science center and museum.

27 Ono Decl., Ex. 30 [Dep. Ex. 200 ("Rudolph
28

1 Injunction Decl.”)] ¶¶ 3, 6; Ono Decl., Ex. 7
2 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at
3 38:11–15.

4
5 36. In 1995, the Foundation and Science
6 Center entered into a lease agreement regarding
7 the IMAX theater. The IMAX theater lease
8 does not incorporate any policies regarding the
9 subject matter of private events to be held at the
10 facility. The lease agreement requires the
11 Foundation to comply with all applicable state
12 and federal laws. A provision of the lease
13 disclaims any requirement that the Foundation
14 “acquire or show any specific film.”

15 Ono Decl., Ex. 29 [Dep. Ex. 198 (“IMAX
16 Lease”)] at § 7, 15; Ex. 9 [Pygin Dep. Tr.] at
17 148:7–148:21; Ex. 7 [Rudolph Dep. Tr.] at
18 160:2–162:8.

19
20 37. The Event Services Office, a department of
21 the Foundation, manages and arranges for the
22 use of areas within the California Science
23 Center for private events that occur after public
24 hours.

25
26 (Ono Decl., Ex. 7 [Rudolph Dep. Tr.] at
27 159:14-160:7, 163:15-164:9; Ex. 2 [Sion Dep.
28 Tr.] at 80:1-7, 386:16-387:14, 400:25-402:4; 15

1 Ex. 30 [Dep. Ex. 200, Rudolph Injunction
2 Decl.] at 2:22-26.)
3
4 38. The Foundation is solely responsible for
5 the operation of the IMAX theater.
6 Ono Decl., Ex. 7 [Rudolph Dep. Tr. , Vol. 1
7 (1/10/11)] at 71:19-72:4, 163:15-164:9; Ex. 29
8 [Dep. Ex. 198]; *see also id.*, Ex. 12 [Strom
9 Dep. Tr.] at 193:14-17 [“Q. And does the
10 Science Center have any involvement in the
11 booking of special events at the Science Center
12 IMAX theater, to your knowledge? A. It does
13 not.”]; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2
14 (12/10/10)] at 386:15-387:12 [addressing
15 responsibility for leasing the IMAX for private
16 events]; Tateishi Decl., Para 5;
17
18 39. On or about September 24, 2009,
19 employees at the Foundation were contacted by
20 AFA regarding scheduling a private fundraising
21 event at the California Science Center. Over
22 the next few days, the Foundation and AFA
23 arranged to book a private event at the IMAX
24 theater on October 25, 2009.
25 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol.
26 1 (12/8/10)] at 75:11-78:9, at 96:8-98:20; *id.*,
27 Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at
28 83:25-84:2.)

1 40. A provision in the Event Services
2 Policies and Procedures relates to the issuance
3 of press materials and publicity regarding
4 private events. This provision states:

5 **PROMOTIONAL MATERIALS:** It is
6 required that the Event Services Office
7 approve, for technical and factual accuracy,
8 *all* promotional materials mentioning the
9 California Science Center produced for
10 your event (including invitations, programs,
11 press releases, etc.) prior to printing or
12 broadcast. Please allow sufficient time for
13 this approval.

14 (Ono Decl., Ex. 15 [Dep. Ex. 16, contract]
15 at p. 6 ; Ex. 7 [Rudolph Dep. Tr.] at 217:25-
16 219:23; Ex 2 [Sion Dep. Tr.] at 226:16-
17 231:19.)

18
19 41. The Promotional Materials provision is
20 intended to ensure that the name of the
21 California Science Center is not
22 misappropriated by groups holding private
23 events at the Center.

24
25 (Ono Decl., Ex. 2 [Sion Dep. Tr.] at 102:18-
26 103:6 [provision is important “[t]o preserve the
27 name and reputation of the California Science
28 Center or California Science Center

1 Foundation”].)

2
3 42. Because the California Science Center and
4 the Foundation have a valuable interest in
5 maintaining a good reputation in the
6 community and worldwide, it tries to ensure
7 that private groups do not appropriate the
8 reputation of the Science Center for their own
9 benefit and for private events that the Science
10 Center is not sponsoring.

11
12 (Ono Decl., Ex. 7 [Rudolph Dep. Tr.] at 224:4-
13 20 [“If we do an event, it’s usually from the
14 beginning and the formation of an event and
15 the development of a program that we would
16 do that.”], 236:16-237:1 [“I have no objection
17 to any debate. I have concerns about whether
18 events are private or public and whether the
19 name of our institution is attached to an event
20 that is not our event in an inappropriate way.”],
21 291:5-293:3 [“the second issue was the
22 reputation of the California Science Center,
23 which is the most valuable thing we have is our
24 name and our reputation, and we protect that in
25 everything we do; at least we attempt to protect
26 that in everything we do is what I should
27 say”].)

28 43. AFA’s representatives were aware that the 18

1 contract contained a provision requiring
2 approval by the Event Services Office of all
3 promotional materials mentioning the
4 California Science Center before distribution to
5 the public.

6
7 Ono Decl., Ex. 2 [Sion Dep. Tr.] at 100:14-
8 102:10 [Sion told Davis “my request that we
9 see in advance a copy of any material that
10 included the name of the California Science
11 Center Foundation or the California Science
12 Center”]; Ex. 3 [Davis Dep. Tr.] at 53:2-55:16
13 [“I read that contract. I knew what we had to
14 do.”], 100:24-102:18 [“I understood that I had
15 to submit all of the publicity materials to Chris
16 Sion prior to it being publicized or released to
17 the public”]; Ex. 11 [Peterson Dep. Tr.] at 85:1-
18 87:1 [“I did have a conversation with Avi
19 saying the brochure that we were working on is
20 going to need to be reviewed by the
21 Foundation.”].)

22
23 44. Because it was a private event, Foundation
24 witnesses testified that they had no concerns
25 about the content or nature of the Event and
26 continued to negotiate with AFA.

27 Ono Decl. Ex. 7 [Rudolph Dep. Tr.,

28 Vol. 2 (1/11/11)] at 324:16–23; *id.*, Ex. 2 19

1 [Sion Dep. Tr.] at 406:1-9; *id.*, Ex. 22 [Dep.
2 Ex. 156].

3
4 45. On October 5, 2009, the same day that it
5 received an executed Event Price Estimate
6 from AFA, the Foundation became aware of
7 press releases that were issued relating to the
8 Event.

9 Ono Decl., Ex. 13 [Dep. Ex. 11]; *id.*,
10 Ex. 33 [Dep. Ex. 29]; *id.*, Ex. 8 [Amege Dep.
11 Tr.] at 49:10-53:23.

12 46. The Foundation Defendants believed that
13 these press releases improperly implied that the
14 California Science Center and the Smithsonian
15 Institution were sponsoring the Event.

16 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
17 Vol. 2 (1/11/11)] at 288:16-289-10; *id.*, Ex.
18 24 [Dep. Ex. 165].

19
20 47. Because none of the press releases were
21 ever submitted to the Foundation's Event
22 Services Office, Foundation Defendants
23 believed that the press releases violated the
24 Event Services' Policies and Procedures. On
25 this basis, Rudolph made the decision to cancel
26 the Event.

1 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2
2 (1/11/11)] at 281:6-23; *id.*, Ex. 2 [Sion Dep.
3 Tr., Vol. 2 (12/10/10)] at 254:2-255:3; *id.*,
4 Ex. 9 [Pygin Dep. Tr.] at 75:12-77:7, 100:24-
5 103:1]; *id.*, Ex. 6 [Bylsma Dep. Tr.] at 232:16-
6 21; *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1
7 (12/9/10)] at 191:1-11

8
9 48. Foundation witnesses testified that
10 Rudolph made the decision to cancel the Event.
11 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10-
12 109:15; *id.*, Ex. 8 [Aomega Dep. Tr.] at 155:16-
13 21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)]
14 at 355:10-356:8, 406:14-18; *id.*, Ex. 7
15 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at 98:10-
16 12; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 2
17 (1/11/11)] at 256:16-257:4 [testifying that
18 “[t]he decision to cancel the event was my
19 decision.”]

20
21
22
23 49. Jeff Rudolph testified that: “As President
24 of the California Science Center Foundation, I
25 chose to cancel the [AFA] event.”

26 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
27 Vol. 1 (1/10/11)] at 98:10-12; *see also* Ex. 7
28

1 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at
2 256:16–257:4 [testifying that “[t]he decision to
3 cancel the event was my decision.”]

4 50. Rudolph, in response to a question asking
5 for “the reason that factored into your decision
6 to cancel the contract for the AFA event,”
7 testified that “the press statements put out were
8 in violation of our policies and procedures that
9 were potentially harmful to the reputation of
10 the Science Center and to our relationship with
11 the Smithsonian. I believe that violated our
12 agreement, and . . . I felt that the best course of
13 action was to cancel the event.” The subject
14 matter of the Event was not a consideration in
15 his decision to cancel.

16
17 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
18 Vol. 2 (1/11/110)] at 281:6–23.

19 51. In their depositions, Foundation witnesses
20 denied the existence of a policy whereby the
21 advancement, promotion, or discussion of
22 intelligent design is prohibited.

23 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 154:9–16;
24 *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 1 (1/10/11)]
25 at 131:18–25, 169:19–170:22; *id.*, Ex. 2 [Sion
26 Dep. Tr.] at 66:15–67:13; *see also id.*, Ex. 7
27

1 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at 238:5-
2 15 ["Q. Sure. Do you believe it's
3 inappropriate for the California Science Center
4 to permit debates concerning the theory of
5 evolution?" MR. ONO: Vague and
6 ambiguous; incomplete hypothetical; calls for
7 speculation. MR. DENNIS: I join those. THE
8 WITNESS: My answer would be that I do not
9 think it it's inappropriate. I think that our
10 policies and practices and everything we've
11 done, including in this case, would have
12 allowed a private event to go ahead and debate
13 whatever they want, if it's a private event.""]

14
15
16
17 52. Beginning on October 5, 2009,
18 representatives of the Los Angeles County
19 Natural History Museum and other individuals
20 were engaged in e-mail discussion regarding
21 the Event. In these discussions, the participants
22 expressed concerns regarding the subject matter
23 of the Event. None of these e-mails reached
24 Rudolph until after the Event was cancelled.

25 Ono Decl., Ex. 18 [Dep. Ex. 35]

26
27 53. Rudolph testified that he "had a general
28 understanding" as to the nature of the Event

1 based on an October 1, 2009 e-mail from Chris
2 Sion.

3 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
4 Vol. 2 (1/11/11)] at 323:23–15; Ex. 19 [Dep.
5 Ex. 36.].
6

7 53.1 During discussions about scheduling the
8 Event, the Foundation Defendants were aware
9 that AFA planned to show the movie “Darwin’s
10 Dilemma” and that the Event involved a
11 discussion of Darwinism. AFA witnesses
12 testified that the Foundation was aware of the
13 subject matter of the Event. Joe Peterson
14 testified that the Foundation was aware of the
15 nature of the Event from the first meeting.
16

17 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol.
18 2 (12/10/10)] at 403:19–406:4; *id.*, Ex. 2 [Sion
19 Dep. Tr., Vol. 1 (12/8/10)] at 144:7–145:24;
20 *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at
21 152:1–153:2, 154:10–15; *id.*, Ex. 11 [Peterson
22 Dep. Tr.] at 76:16–77:10, 157:1–4.
23

24 54. AFA witness Joe Peterson testified that
25 Chris Sion was supportive of having a
26 “conservative” event and Avi Davis testified
27 that Foundation employees were “very, very
28 enthusiastic” about the Event, never expressing 24

1 concerns about the content.

2 Ono Decl., Ex. 11 [Peterson Dep. Tr.] at
3 76:16–77:10; *id.*, Ex. 3 [Davis Dep. Tr., Vol.
4 1 (12/9/10)] at 155:4–156:5.

5
6 55. AFA witnesses testified that the
7 Foundation employees, particularly Sion, were
8 aggressively trying to get the contract finalized
9 so the Event could take place.

10 Ono Decl., Ex. 3 [Davis Dep. Tr., Vol. 1 (Dec.
11 9, 2010)] at 154:16–19 [“Q. They were
12 encouraging you to get your contract in and
13 signed, right? A. They were encouraging us to
14 show two films for a fee at their facility.”], at
15 178:23–179:2 [“Chris Sion in this case was all
16 over us. She was determined that we were
17 going to do this event. She was absolutely
18 determined that we were -- MR. BECKER:
19 Avi, I’m going to stop you. You’re not --”];
20 *see also id.*, Ex. 11 [Peterson Dep. Tr.] at
21 147:9–148:6 [describing Sion as a “very
22 accommodating, wonderful person”]; *id.* Ex. 17
23 [Dep. Ex. 34] [Sion states on September 30 that
24 “it would be great to get this wrapped up
25
26
27

1 today.”]

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3 56. The Foundation orally agreed to modify its
4 standard payment terms in an effort to assist the
5 AFA.

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7 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol. 1
8 (12/8/10)] 224:18–225:10, 229:2–14; *id.*,
9 Ex.3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at
10 118:9–119:9; *id.* Ex. 19 [Dep. Ex. 36].

11
12 57. Chris Sion and Cynthia Pygin
13 recommended that Rudolph request a
14 correction rather than cancelling the Event.

15 Ono Decl., Ex. 21 [Dep. Ex. 38] *id.*,
16 Ex. 9 [Pygin Dep. Tr.] at 80:2–21, 83:19–84:6,
17 99:10–20; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 1
18 (12/8/10)] at 185:11–18.

19
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21 58. Foundation witnesses testified that the
22 Event was cancelled as a result of the
23 unapproved press releases.

24 Ono Decl. Ex. 2 [Sion Dep. Tr., Vol. 1
25 (12/8/10)] at 118:18–120:8; *id.*, Ex. 2 [Sion
26 Dep. Tr., Vol. 2 (12/10/10)] at 327:13–18,
27 328:24–329:2; *id.*, Ex. 9 [Pygin Dep. Tr.] at

1 100:24-103:1; *id.*, Ex.7 [Rudolph Dep. Tr.,
2 Vol. 2 (1/11/11)] at 302:19-303:19; *see also id.*
3 Ex. 16 [Dep. Ex. 32] [Amege expresses belief
4 that AFA violated the Promotional Materials
5 provision.]; *id.* Ex. 4 [Dep. Ex. 37] [indicating
6 unapproved press releases were reason for
7 cancellation]; *id.*, Ex. 4 [Pisano Dep. Tr.] at
8 41:19-43:1 ["Q. Al right. The e-mail
9 continues referring to your conversation, quote:
10 "Had a chat to him about the screening of the
11 I.D. film at CSC's IMAX." The next sentence:
12 "They had, in fact, canceled the event as not
13 being" - I'm sorry - "as being not in line with
14 their mission to educate the public about
15 science, so it is not going ahead, we do not
16 need to send a letter or respond any further, "
17 period. There are the word apparently of John
18 Long in an e-mail. Does he have it correct here
19 that Dr. Rudolph told you that they canceled
20 the event because it was not in line with their
21 mission? MR. ZELENAY: Objection. Vague.
22 Calls for hearsay. MR. STAUBER: Same
23 objection. Subject to that, Dr. Pisano, you can
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11/12/08

1 answer. THE WITNESS: No. . . . BY MR.
2 STEVENS: Q. And your answer is that John
3 Long has it incorrect, is that right? MR.
4 STAUBER: Counsel, the answer was "No,"
5 unequivocally "No." BY MR. STEVENS: Q.
6 I'm asking if that's what you mean by
7 incorrect. A. That is correct."]; *id.*, Ex. 5
8 [Long Dep. Tr.] at 96:5-24 ["Q. The next
9 sentence says, "They had in fact canceled the
10 event as not being in-line with their mission to
11 educate the public about science." And I'll
12 stop there. Is that what Dr. Pisano told you?
13 MR. ONO: Calls for hearsay. THE
14 WITNESS: No, she did not tell me that. That
15 was something that I was surmising. It's purely
16 from me. BY MR. STEVENS: Q. Well, what
17 did Dr. Pisano tell you? A. From memory, she
18 just told me that they had canceled it. She
19 didn't actually give me a reason. Q. So you
20 added that fact that it was not in line with their
21 mission? That was from your own surmise?
22 A. I was guessing it, yes. Q. You didn't
23 actually know? A. I didn't.
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1 59. Cynthia Pygin testified that she never
2 discussed the subject matter of the Event with
3 Rudolph prior to his decision to cancel.
4 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at
5 69:8-20, 78:7-14.
6

7 60. In their depositions, AFA's witnesses
8 were unable to identify any specific evidence of
9 discriminatory intent on the part of the
10 Foundation Defendants except for the
11 cancellation itself. When asked whether there
12 was "anything . . . upon which you're basing
13 your belief that the real reason for the
14 cancellation . . . was that [the Foundation] did
15 not want to have an open debate on intelligent
16 design," Peter Bylsma answered "No."
17 Ono Decl., Ex. 3 [Davis. Dep. Tr., Vol. 1
18 (12/9/10)] at 144:21-147:16 [Q. You
19 understand there's an allegation in this lawsuit
20 that you've made that the basis for the
21 cancellation was the content of the program,
22 don't you sir? A. Absolutely. Q. Okay. And
23 what do you base that allegation on? . . . The
24 fact is that we know that nothing we did
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1 regarding our performance of the contract
2 could have led to an accusation of violation.
3 Nothing. We performed our part of the
4 contract -- we signed it, we prepared our
5 materials, we were going to submit it. Nothing
6 we did was possibly -- could possibly have
7 done it. The only reason for that film to be
8 canceled was because the people who owned
9 that cinema didn't want it shown and were not
10 happy about the content; *id.*, Ex. 3 [Davis Dep.
11 Tr., Vol. 2 (1//11)] at 355:5-364:8 [discussing
12 reasons for believing "intense outside pressure"
13 causes the cancellation]; *id.*, Ex. 6 [Bylsma
14 Dep. Tr.] at 265:19-266:9 ["Q. Is there
15 anything else that you're relying on in terms of
16 telling me that you believe the real reason for
17 the cancellation was that the Foundation didn't
18 want to have that open debate other than what's
19 in [the cancellation e-mail]? MR. BECKER:
20 And whatever I may have discussed with you
21 in confidence. Q. I don't want to know what
22 Mr. Becker discussed with you. So I'm not
23 asking for that. So is there anything, other than
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1 what Mr. Becker may have told you, upon
2 which you're basing your belief that the real
3 reason for the cancellation by the Science
4 Center Foundation was that they did not want
5 to have an open debate on intelligent design?
6 A. No."], at 272:21-273:3 ["Q. Okay. What
7 I'm after is, did anybody show you or tell you
8 anything that was either a document or a
9 conversation specifically from the California
10 Science Center Foundation or the Science
11 Center itself that when you read it or heard
12 about it, you said 'Yeah, that' - 'that - that tells
13 me they cancelled for content'? A. No."]; *id.*,
14 Ex. 11 [Peterson Dep. Tr.] at 153:14-158:3
15 ["Q. I was trying to clarify because your
16 answer before talked about the Smithsonian.
17 So I was trying to understand what facts you
18 believe there are to support a view that the
19 Foundation engaged some [*sic*] sort of
20 discriminatory act that it wasn't -- A. Well,
21 the discriminatory act was cancelling the event.
22 Birds of a feather flock together. They are all
23 cut from the same cloth. And the Smithsonian

1 in particular I had come to find out about – I
2 forget the name of the scientist who had
3 basically had his whole career torpedoed
4 because he dared to say something positive
5 about intelligent design.” . . . Q. But do you
6 have any other facts to support the view that the
7 Foundation engaged in some sort of
8 discriminatory conduct? Were there any
9 conversations you had with Foundation
10 employees that imply that to you or anything
11 like that? A. I had no conversations with
12 Foundation employees. We did ask Joel Strom
13 what went on in the board meeting. . . . But he
14 didn’t really have any information about the
15 detail.” . . . Q. Yes. I was just going to ask is
16 there anything else, any other facts that lead
17 you to that conclusion? . . . THE WITNESS:
18 So – okay. I would just say that, if you listen to
19 the news sources that I like to listen to [they]
20 talk about how Darwinian evolution is
21 promulgated throughout the public school
22 system and so on. It is hostile towards
23 opposing viewpoints. Anybody on the street
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will tell you that. . . . Q. BY MR. ZELENAY:

Yes. It's - I am just trying to understand for myself where your view comes from with respect that issue. But if you don't have anything further to add in terms of the actual facts that lead you -- . . . A. Because I can say there is plenty of evidence there that it is much more than just DI's press release that drove the California Science Center to execute this blatant act of discrimination against us."]

TT/12/88

1 **Issue No. 5:**

2 **Jeffrey Rudolph in His Official Center Capacity is Entitled to Judgment on AFA's Second,**
3 **Third, and Fourth Causes of Action Because AFA Does Not Face the Threat of Future**
4 **Injury From Rudolph in His Official Capacity Necessary to Support Injunctive Relief**

5 61. In 1995, the Foundation and Science
6 Center entered into a lease agreement regarding
7 the IMAX theater. The IMAX theater lease
8 does not incorporate any policies regarding the
9 subject matter of private events to be held at the
10 facility. The lease agreement requires the
11 Foundation to comply with all applicable state
12 and federal laws. A provision of the lease
13 disclaims any requirement that the Foundation
14 "acquire or show any specific film."
15 Ono Decl., Ex. 29 [Dep. Ex. 198 ("IMAX
16 Lease")] at § 7, 15; Ex. 9 [Pygin Dep. Tr.] at
17 148:7-148:21; Ex. 7 [Rudolph Dep. Tr.] at
18 160:2-162:8.

19
20 62. The Event Services Office, a department of
21 the Foundation, manages and arranges for the
22 use of areas within the California Science
23 Center for private events that occur after public
24 hours.

25 (Ono Decl., Ex. 7 [Rudolph Dep. Tr.] at
26 159:14-160:7, 163:15-164:9; Ex. 2 [Sion Dep.
27 Tr.] at 80:1-7, 386:16-387:14, 400:25-402:4;

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1 Ex. 30 [Dep. Ex. 200, Rudolph Injunction
2 Decl.] at 2:22-26.)

3
4 63. The Foundation is solely responsible for
5 the operation of the IMAX theater.

6 Ono Decl., Ex. 7 [Rudolph Dep. Tr. , Vol. 1
7 (1/10/11)] at 71:19–72:4, 163:15–164:9; Ex. 29
8 [Dep. Ex. 198]; *see also id.*, Ex.12 [Strom Dep.
9 Tr.] at 193:14–17 [“Q. And does the Science
10 Center have any involvement in the booking of
11 special events at the Science Center IMAX
12 theater, to your knowledge? A. It does not.”];
13 *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)] at
14 386:15–387:12 [addressing responsibility for
15 leasing the IMAX for private events]. (Tateishi
16 Decl., Para. 5.)

17
18 64. None of the agreements between the
19 Foundation and Science Center grant the
20 Foundation the right to contract on the Science
21 Center’s behalf.

22 Ono Decl., Ex. 29 [Dep. Ex. 198 (“IMAX
23 Lease”]; *id.*, Ex. 28 [Dep. Ex. 194 (“Joint
24 Operation Agreement”)]; *see also id.*, Ex. 2
25 [Sion Dep. Tr., Vol. 2 (12/10/10)] at 398:16–
26 21.

27
28 65. On or about September 24, 2009,

35

1 employees at the Foundation were contacted by
2 AFA regarding scheduling a private fundraising
3 event at the California Science Center. Over
4 the next few days, the Foundation and AFA
5 arranged to book a private event at the IMAX
6 theater on October 25, 2009.

7 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol. 1
8 (12/8/10)] at 75:11–78:9, at 96:8-98:20; *id.*,
9 Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at
10 83:25-84:2.)

11
12 66. The Foundation—and not the Science
13 Center—is a named party on the Event Services
14 Agreement that pertains to the Event. Only
15 Foundation employees were involved in the
16 negotiations with AFA to host the Event.

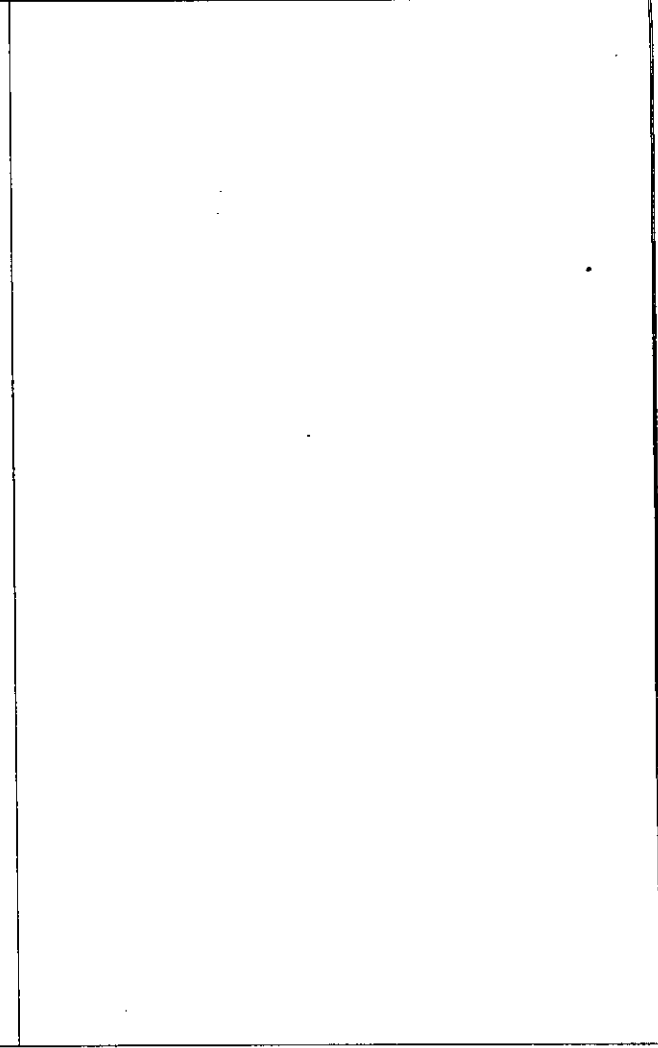
17 Ono Decl., Ex. 15 [Dep. Ex. 16 (“Event Service
18 Agreement”)]; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2
19 (12/10/10)] at 402:5–403:9.

20
21 67. AFA seeks an injunction prohibiting
22 Rudolph, in his official Center capacity, from
23 refusing to allow AFA access to hold private
24 events, including events concerning intelligent
25 design.

26 TAC, Prayer, Paras. 8, 9.

27
28 68. Rudolph, in his official Science Center 36

1 capacity, lacks the ability to contract with AFA
2 for any future private events at the Science
3 Center.
4 Ono Decl., Ex. 7 [Rudolph Dep. Tr. , Vol. 1
5 (1/10/11)] at 71:19–72:4, 163:15–164:9; Ex. 29
6 [Dep. Ex. 198]; *see also id.*, Ex.12 [Strom Dep.
7 Tr.] at 193:14–17 [“Q. And does the Science
8 Center have any involvement in the booking of
9 special events at the Science Center IMAX
10 theater, to your knowledge? A. It does not.”];
11 *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)] at
12 386:15–387:12 [addressing responsibility for
13 leasing the IMAX for private events]. (Tateishi
14 Decl., Para. 5.)
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1 **Issue 6:**

2 **Jeffrey Rudolph, In His Individual Capacity, is Entitled To Judgment On AFA's Second,**
3 **Third and Fourth Causes of Action Because He Possesses Qualified Immunity**

4 69. Jeff Rudolph testified that: "As President
5 of the California Science Center Foundation, I
6 chose to cancel the [AFA] event."

7
8 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
9 Vol. 1 (1/10/11)] at 98:10-12; *see also* Ex. 7
10 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at
11 256:16-257:4 [testifying that "[t]he decision to
12 cancel the event was my decision."]

13
14 70. Rudolph, in response to a question asking
15 for "the reason that factored into your decision
16 to cancel the contract for the AFA event,"
17 testified that "the press statements put out were
18 in violation of our policies and procedures that
19 were potentially harmful to the reputation of
20 the Science Center and to our relationship with
21 the Smithsonian. I believe that violated our
22 agreement, and . . . I felt that the best course of
23 action was to cancel the event." The subject
24 matter of the Event was not a consideration in
25 his decision to cancel.

26 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2
27 (1/11/110)] at 281:6-23.

1 71. Because it was a private event,
2 Foundation witnesses testified that they had no
3 concerns about the content or nature of the
4 Event and continued to negotiate with AFA.
5 Ono Decl. Ex. 7 [Rudolph Dep. Tr.,
6 Vol. 2 (1/11/11)] at 324:16-23; *id.*, Ex. 2
7 [Sion Dep. Tr.] at 406:1-9; *id.*, Ex. 22 [Dep.
8 Ex. 156].
9

10 72. The Foundation Defendants believed that
11 these press releases improperly implied that the
12 California Science Center and the Smithsonian
13 Institution were sponsoring the Event.
14 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
15 Vol. 2 (1/11/11)] at 288:16-289-10; ; *id.*, Ex.
16 24 [Dep. Ex. 165].

17 73. Because none of the press releases were
18 ever submitted to the Foundation's Event
19 Services Office, Foundation Defendants
20 believed that the press releases violated the
21 Event Services' Policies and Procedures. On
22 this basis, Rudolph made the decision to cancel
23 the Event.
24 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
25 Vol. 2 (1/11/11)] at 281:6-23; *id.*, Ex. 2 [Sion
26 Dep. Tr., Vol. 2 (12/10/10)] at 254:2-255:3;
27

1 *id.*, Ex. 9 [Pygin Dep. Tr.] at 75:12–77:7,
2 100:24–103:1]; *id.*, Ex. 6 [Bylsma Dep. Tr.] at
3 232:16–21; *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1
4 (12/9/10)] at 191:1–11

5
6 74. Foundation witnesses testified that
7 Rudolph made the decision to cancel the Event.
8 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10–
9 109:15; *id.*, Ex. 8 [Amege Dep. Tr.] at 155:16–
10 21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)]
11 at 355:10–356:8, 406:14–18; *id.*, Ex. 7
12 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at 98:10–
13 12; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 2
14 (1/11/11)] at 256:16–257:4 [testifying that
15 “[t]he decision to cancel the event was my
16 decision.”]

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20 75. In their depositions, AFA’s witnesses were
21 unable to identify any specific evidence of
22 discriminatory intent on the part of the
23 Foundation Defendants except for the
24 cancellation itself. When asked whether there
25 was “anything . . . upon which you’re basing
26 your belief that the real reason for the
27 cancellation . . . was that [the Foundation] did
28 not want to have an open debate on intelligent

40

1 design," Peter Bylsma answered "No."
2
3 Ono Decl., Ex. 3 [Davis. Dep. Tr., Vol. 1
4 (12/9/10) at 144:21-147:16 [Q. You
5 understand there's an allegation in this lawsuit
6 that you've made that the basis for the
7 cancellation was the content of the program,
8 don't you sir? A. Absolutely. Q. Okay. And
9 what do you base that allegation on? . . . The
10 fact is that we know that nothing we did
11 regarding our performance of the contract
12 could have led to an accusation of violation.
13 Nothing. We performed our part of the
14 contract -- we signed it, we prepared our
15 materials, we were going to submit it. Nothing
16 we did was possibly -- could possibly have
17 done it. The only reason for that film to be
18 canceled was because the people who owned
19 that cinema didn't want it shown and were not
20 happy about the content; *id.*, Ex. 3 [Davis Dep.
21 Tr., Vol. 2 (1//11)] at 355:5-364:8 [discussing
22 reasons for believing "intense outside pressure"
23 causes the cancellation]; *id.*, Ex. 6 [Bylsma
24 Dep. Tr.] at 265:19-266:9 ["Q. Is there
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1 anything else that you're relying on in terms of
2 telling me that you believe the real reason for
3 the cancellation was that the Foundation didn't
4 want to have that open debate other than what's
5 in [the cancellation e-mail]? MR. BECKER:
6 And whatever I may have discussed with you
7 in confidence. Q. I don't want to know what
8 Mr. Becker discussed with you. So I'm not
9 asking for that. So is there anything, other than
10 what Mr. Becker may have told you, upon
11 which you're basing your belief that the real
12 reason for the cancellation by the Science
13 Center Foundation was that they did not want
14 to have an open debate on intelligent design?
15 A. No."]; at 272:21–273:3 [“Q. Okay. What
16 I’m after is, did anybody show you or tell you
17 anything that was either a document or a
18 conversation specifically from the California
19 Science Center Foundation or the Science
20 Center itself that when you read it or heard
21 about it, you said ‘Yeah, that’ – ‘that – that tells
22 me they cancelled for content’? A. No.”]; *id.*,
23 Ex. 11 [Peterson Dep. Tr.] at 153:14–158:3

1 ["Q. I was trying to clarify because your
2 answer before talked about the Smithsonian.
3 So I was trying to understand what facts you
4 believe there are to support a view that the
5 Foundation engaged some some [sic] sort of
6 discriminatory act that it wasn't -- A. Well,
7 the discriminatory act was cancelling the event.
8 Birds of a feather flock together. They are all
9 cut from the same cloth. And the Smithsonian
10 in particular I had come to find out about -- I
11 forget the name of the scientist who had
12 basically had his whole career torpedoed
13 because he dared to say something positive
14 about intelligent design." . . . Q. But do you
15 have any other facts to support the view that the
16 Foundation engaged in some sort of
17 discriminatory conduct? Were there any
18 conversations you had with Foundation
19 employees that imply that to you or anything
20 like that? A. I had no conversations with
21 Foundation employees. We did ask Joel Strom
22 what went on in the board meeting. . . . But he
23 didn't really have any information about the
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1 detail." . . . Q. Yes. I was just going to ask is
2 there anything else, any other facts that lead
3 you to that conclusion? . . . THE WITNESS:
4 So – okay. I would just say that, if you listen to
5 the news sources that I like to listen to [they]
6 talk about how Darwinian evolution is
7 promulgated throughout the public school
8 system and so on. It is hostile towards
9 opposing viewpoints. Anybody on the street
10 will tell you that. . . . Q. BY MR. ZELENAY:
11 Yes. It's – I am just trying to understand for
12 myself where your view comes from with
13 respect that issue. But if you don't have
14 anything further to add in terms of the actual
15 facts that lead you -- . . . A. Because I can say
16 there is plenty of evidence there that it is much
17 more than just DI's press release that drove the
18 California Science Center to execute this
19 blatant act of discrimination against us."']
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24 76. In their depositions, Foundation witnesses
25 denied the existence of a policy whereby the
26 advancement, promotion, or discussion of
27 intelligent design is prohibited.
28

11/12/99

1 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 154:9-16;
2 *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 1 (1/10/11)]
3 at 131:18-25, 169:19-170:22; *id.*, Ex. 2 [Sion
4 Dep. Tr.] at 66:15-67:13; *see also id.*, Ex. 7
5 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at 238:5-
6 15 ["Q. Sure. Do you believe it's
7 inappropriate for the California Science Center
8 to permit debates concerning the theory of
9 evolution?" MR. ONO: Vague and
10 ambiguous; incomplete hypothetical; calls for
11 speculation. MR. DENNIS: I join those. THE
12 WITNESS: My answer would be that I do not
13 think it it's inappropriate. I think that our
14 policies and practices and everything we've
15 done, including in this case, would have
16 allowed a private event to go ahead and debate
17 whatever they want, if it's a private event."]

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21 77. Beginning on October 5, 2009,
22 representatives of the Los Angeles County
23 Natural History Museum and other individuals
24 were engaged in e-mail discussion regarding
25 the Event. In these discussions, the participants
26 expressed concerns regarding the subject matter
27 of the Event. None of these e-mails reached
28

1 Rudolph until after the Event was cancelled.

2
3 Ono Decl., Ex. 18 [Dep. Ex. 35]

4 78. Rudolph testified that he “had a general
5 understanding” as to the nature of the Event
6 based on an October 1, 2009 e-mail from Chris
7 Sion.

8 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,
9 Vol. 2 (1/11/11)] at 323:23–15; Ex. 19 [Dep.
10 Ex. 36].

11
12 79. Foundation witnesses testified that the
13 Event was cancelled as a result of the
14 unapproved press releases.

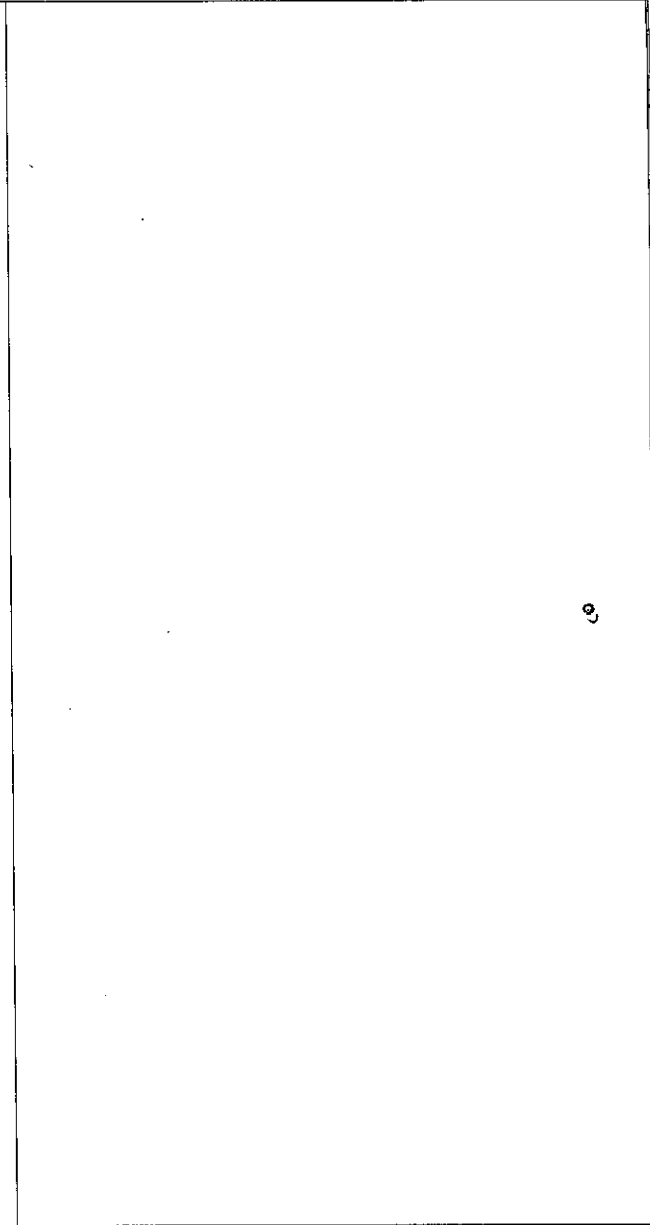
15
16 Ono Decl. Ex. 2 [Sion Dep. Tr., Vol. 1
17 (12/8/10)] at 118:18–120:8; *id.*, Ex 2 [Sion
18 Dep. Tr., Vol. 2 (12/10/10)] at 327:13–18,
19 328:24–329:2; *id.*, Ex. 9 [Pygin Dep. Tr.] at
20 100:24–103:1; *id.*, Ex.7 [Rudolph Dep. Tr.,
21 Vo. 2 (1/11/11)] at 302:19–303:19; *see also id.*
22 Ex. 16 [Dep. Ex. 32] [Amega expresses belief
23 that AFA violated the Promotional Materials
24 provision.]; *id.* Ex. 20 [Dep. Ex. 37] [indicating
25 unapproved press releases were reason for
26 cancellation]; *id.*, Ex. 4 [Pisano Dep. Tr.] at
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1 41:19-43:1 ["Q. Al right. The e-mail
2 continues referring to your conversation ,
3 quote: "Had a chat to him about the screening
4 of the I.D. film at CSC"s IMAX." The next
5 sentence: "They had, in fact, canceled the event
6 as not being" - I'm sorry - "as being not in line
7 with their mission to educate the public about
8 science, so it is not going ahead, we do not
9 need to send a letter or respond any further, "
10 period. There are the word apparently of John
11 Long in an e-mail. Does he have it correct here
12 that Dr. Rudolph told you that they canceled
13 the event because it was not in line with their
14 mission? MR. ZELENAY: Objection. Vague.
15 Calls for hearsay. MR. STAUBER: Same
16 objection. Subject to that, Dr. Pisano, you can
17 answer. THE WITNESS: No. . . . BY MR.
18 STEVENS: Q. And your answer is that John
19 Long has it incorrect, is that right? MR.
20 STAUBER: Counsel, the answer was "No,"
21 unequivocally "No." BY MR. STEVENS: Q.
22 I'm asking if that's what you mean by
23 incorrect. A. That is correct."]; *id.*, Ex. 5
24 [Long Dep. Tr.] at 96:5-24 ["Q. The next
25 sentence says, "They had in fact canceled the
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event as not being in-line with their mission to
educate the public about science.” And I’ll
stop there. Is that what Dr. Pisano told you?
MR. ONO: Calls for hearsay. THE
WITNESS: No, she did not tell me that. That
was something that I was surmising. It’s purely
from me. BY MR. STEVENS: Q. Well, what
did Dr. Pisano tell you? A. From memory, she
just told me that they had canceled it. She
didn’t actually give me a reason. Q. So you
added that fact that it was not in line with their
mission? That was from your own surmise?
A. I was guessing it, yes. Q. You didn’t
actually know? A. I didn’t.



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Issue No. 7:
The Center Defendants Are Entitled to Judgment on AFA's Ninth Cause of Action For Declaratory Relief Because Such Requested Relief is Moot in the Absence of Underlying Constitutional Violations

80. AFA requests judicial declarations that "the cancellation of the EVENT and breach of the contract violated the United States Constitution and the California Constitution" and that "the Defendants engaged in content and viewpoint discrimination by preventing Plaintiff from addressing the topic of intelligent design in a public forum." TAC, Paras. 111 and 112.

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Issue 8:

AFA's Eighth Cause of Action Cannot Support a Claim for Money Damages

81. AFA appears to seek money damages for the alleged violation of the California Constitution.
TAC, Para. 108

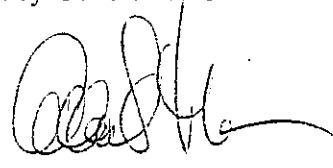
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Issue No. 9:	
Punitive Damages Are Not Recoverable Against the Center	
82. AFA's Third Amended Complaint seeks punitive damages. . . . TAC, Prayer, Para. 4.	

Dated: March 18, 2011

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California



By _____
ALLAN S. ONO
Deputy Attorney General
*Attorneys for California Science Center and
Jeffrey Rudolph in His individual and
Official Capacity as President and CEO of
the Science Center*

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