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7 and Jeffrey Rudolph in his individual and official
8 capacity as President and CEO of the California
9 Science Center*

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUN 03 2011

John A. ... Officer/Clerk
By GLORIETTA ROBINSON Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 **AMERICAN FREEDOM ALLIANCE, a**
13 **nonprofit corporation,**

14 Plaintiff,

15 v.

16 **CALIFORNIA SCIENCE CENTER, a legal**
17 **entity of the State of California;**
18 **CALIFORNIA SCIENCE CENTER**
19 **FOUNDATION, a nonprofit corporation;**
JEFFREY RUDOLPH, an Individual, and
DOES 1 through 50, inclusive,

20 Defendants.

Case No. BC 423687

THE CENTER DEFENDANTS'
RESPONSE TO PLAINTIFF AMERICAN
FREEDOM ALLIANCE'S OBJECTIONS.
TO EVIDENCE RE: DEFENDANTS
CALIFORNIA SCIENCE CENTER'S
AND JEFFERY RUDOLPH'S (AS
PRESIDENT AND CEO OF THE
CENTER AND IN HIS INDIVIDUAL
CAPACITY) MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION

Date: June 9, 2011
Time: 8:45 a.m.
Dept: 14
Judge: The Honorable Terry A. Green
Trial Date: September 12, 2011
Action Filed: October 14, 2009

1 The California Science Center and Jeffrey Rudolph in his Individual and Official Capacity
 2 as President and CEO of the California Science Center (Center Defendants) submit the following
 3 responses to the Plaintiff American Freedom Alliance's (AFA) Objections to Evidence re: the
 4 Center Defendants' Motion for Summary Judgment or, in the Alternative, Summary
 5 Adjudication.

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>
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.	
Undisputed Material Fact No. 6: The IMAX Lease specifically disclaims the creation of an agency or partnership relationship.	
Tateishi Decl. Para. 4; Ono Decl. Ex. 29 [Rudolph Dep. Ex. 198].	Misstates/mischaracterizes the evidence. Paragraph 13.A. of the Lease Agreement states only that it shall not be construed as "constituting Foundation as the agent or partner" of the Center. It does not "disclaim the creation" of an agency or partnership, which can be created by conduct.
<u>Center Defendants' Response to Objection:</u> Center Defendants' Undisputed Material Fact 6 does not misstate or mischaracterize the evidence. The IMAX Theater lease (the Amended and Restated Lease), attached as Ono Decl. Exhibit 29, provides at paragraph 13A in full as follows: "This Amended and Restated Lease shall not be construed as Foundation as agent of Museum [defined as the Center] and the Museum shall not be liable for any debt, default, or miscarriage of Foundation, save and except pursuant to a written instrument executed or approved by Museum and the State Department of General Services and then only in accordance with the express terms thereof." The Center's fact number 6 statement that "The IMAX Lease specifically disclaims the creation of an agency or partnership relationship" is wholly accurate and consistent with the IMAX Theater lease.	

TT/9R/92

1 **Undisputed Material Fact No. 8: The Foundation is solely responsible for the operation**
2 **of the IMAX theater.**

3 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 1
4 (1110/11)] at 71:19-72:4, 163:1-5-164:9; Ex
5 .. 29 [Dep. Ex. 198]; see also *id.*, Ex. 12
6 [Strom Dep. Tr.] at 193:14-17 ["Q. And does
7 the Science Center have any involvement in
8 the booking of special events at the Science
9 Center IMAX theater, to your knowledge? A.
10 It does not."]; *id.*, Ex. 2 [Sion Dep. Tr., Vol.2
11 (12/10/10)] at 386:15-387:12 [addressing
12 responsibility for leasing the IMAX for
13 private events]; Tateishi Decl. Para. 5.

Irrelevant. (Evid. Code §§ 210, 350-351).
The evidence tendered has no tendency in
reason to prove or disprove the alleged fact
that the lease agreement confers sole
responsibility on the Foundation for the
operation of the IMAX Theater. Hearsay
(Evid. Code § 1200); lack of personal
knowledge (Evid. Code § § 702(a)). Legal
conclusion.

12 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 8
13 asserting that the Foundation is solely responsible for the operation of the IMAX Theater is
14 relevant to the issue of identifying the parties to the AFA Event contract. The fact is wholly
15 supported by the testimony of the Strom deposition, who testified that the Science Center
16 does not have any involvement in booking special events at the IMAX Theater.

17 **Undisputed Material Fact No. 12: The Foundation – and not the Science Center – is a**
18 **named party on the Event Services Agreement that pertains to the Event. Only**
19 **Foundation employees were involved in the negotiations with AFA to host the Event.**

20 Ono Decl., Ex. 15 [Dep. Ex. 16 ("Event
21 Service Agreement")]; *id.*, Ex. 2 [Sion Dep.
22 Tr., Vol. 2 (12/10/10)] at 402:5-403:9;
23 Tateishi Decl., Para.6

Lacks foundation. Hearsay (Evid. Code §
1200). Lacks personal knowledge.

24 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 12
25 is not based upon hearsay or otherwise lacking foundation. Foundation Vice President Chris
26 Sion was the principal person involved in the negotiation of the AFA Event Contract. She
27 has personal knowledge of the negotiations and her statements based upon that personal
28 knowledge are not hearsay. She further has personal knowledge of the fact that she is
employed by the Foundation and not the Center.

1 **Undisputed Material Fact No. 13: The Foundation's Joe Peterson made it clear that he**
2 **intended to negotiate with whomever it was that could put him into the IMAX.**

3 Ono Decl. Ex. 11 [Peterson Dep. Tr. at
4 152:19-25, 153:1-8 -- "It is a box that has the
5 projector I want. It has an IMAX. That's
6 what I need. I could care less whether it is
7 California Science Center or whomever."]

8 Immaterial. The alleged fact has no
9 significance in determining the outcome of
10 this case with regard to whether the Center
11 was a party to the contract with AFA.
12 Irrelevant. (Evid. Code §§ 210, 350-351).
13 The alleged fact has no tendency in reason to
14 prove or disprove whether the Center was a
15 party to the contract with AFA.

16 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 13
17 is not immaterial or irrelevant. The fact that AFA's Joe Peterson "could care less" whether he
18 was negotiating with the Center or the Foundation for the AFA Event Contract is relevant to
19 disprove that the Foundation was acting as the Center's ostensible agent and shows that AFA
20 did not detrimentally rely on any representation by the Center.

21 **Undisputed Material Fact No. 17: Foundation witnesses testified that Rudolph made the**
22 **decision to cancel the Event.**

23 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10-
24 109:15; *id.*, Ex. 8 [Ameqa Dep. Tr.] at
25 155:16-21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2
26 (12/10/10)] at 355:10-356:8, 406:14-18; *id.*,
27 Ex. 7 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at
28 98:10- 12; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol.
2 (1/11/11)] at 256:16-257:4 [testifying that
"[t]he decision to cancel the event was my
decision."]

Immaterial. The alleged fact has no
significance in determining the outcome of
this case with regard to whether the Center
was a party to the contract with AFA.
Irrelevant. (Evid. Code §§ 210, 350-351).
The alleged fact has no tendency in reason to
prove or disprove whether the Center was a
party to the contract with AFA.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 17
is not immaterial. That fact Foundation witnesses testified that Rudolph made the decision to
cancel the Event is relevant to show which entity entered into the Event Contract, and which
entity canceled the Event Contract.

1 **Undisputed Material Fact No. 19: Jeff Rudolph testified that: "As President of the**
2 **California Science Center Foundation, I chose to cancel the [AFA] event."**

3 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 1
4 (1/10/11)] at 98:10-12; *see also* Ex. 7
5 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at
6 256:16-257:4 [testifying that "[t]he decision
7 to cancel the event was my decision."]

8 Immaterial. The alleged fact that Rudolph
9 testified to the subordinate fact has no
10 significance in determining the outcome of
11 this case with regard to whether the Center
12 was a party to the contract. Objection is also
13 made on the ground that the only proof of
14 this alleged material fact is the statement of
15 the only witness to the fact. (Code Civ.
16 Proc., §437c (e); *see Overland Plumbing, Inc.*
17 *v Transamerica Ins. Co.* (1981) 119
18 Cal.App.3d 476, 483 [trial court did not
19 abuse its discretion by failing to reject
20 declarations of sole witness to facts for
21 reasons of credibility]).

22 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 19
23 is not immaterial. The fact that Foundation President Rudolph made the decision to cancel
24 the AFA private Event is relevant to the issue of whether the Center was a party to the Event
25 Contract, and whether the Center took any action with regard to the cancelation. Code of
26 Civil Procedure section 437c(e) does not apply when there fact is not solely based on a single
27 witness's affirmation (see Sept. Stmt. 48 [Pygin, Amega and Sion all testified that Rudolph
28 made the decision to cancel the AFA Event].) (*Chee v. Amanda Goldt Property Management*
(2006) 143 Cal.App.4th 1360, 1370 [Code Civ. Proc. 437c, subd. (e) inapplicable when there
are more than one witness to a fact].) Even if the fact was based solely on a single person's
testimony, the court has discretion to grant summary judgment in reliance on that fact.
(*Butcher v. Gay* (1994) 29 Cal.App.4th 388, 404-405.) *Overland Plumbing, Inc. v.*
Transamerica Ins. Co. (1981) 119 Cal.App.3d 476, 483, does not apply because (a) that case
involved the introduction of a declaration, not deposition testimony, (b) Rudolph was not the
sole witness to the fact that he alone as President of the Foundation made the decision to
cancel the event, (c) the court confirmed that the court has discretion to admit the testimony
of a "sole" witness is discretionary, and (d) the court in fact admitted the declaration of a sole

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witness.

ISSUE NO. 3: THE CENTER AND RUDOLPH IN HIS OFFICIAL CENTER CAPACITY ARE ENTITLED TO JUDGMENT ON AFA'S SECOND, THIRD AND FOURTH CAUSES OF ACTION BECAUSE THEY ENGAGED IN DISCRIMINATORY CONDUCT. IMMUNITY.

Undisputed Material Fact No. 28: Nearly 90% of the Center's spending is drawn from the State's General Fund.

Ono Decl., Ex. 10 Tateishi Dep. Tr., 36:23-25, 37:1-3]

Immaterial. The alleged fact and its supporting evidence have no significance in determining the outcome of this case with regard to whether the Center and Rudolph enjoy immunity under the Eleventh Amendment. The source of the Center's spending does not determine whether a state agency or a state official enjoys protection against constitutional liability under the Eleventh Amendment.

Center Defendants' Undisputed Material Fact 28 is not immaterial. The fact is relevant to whether the Center is an arm of the state possessing Eleventh Amendment sovereign immunity. More importantly, AFA conceded that the Center does possess Eleventh Amendment sovereign immunity, and therefore the objection is moot.

Undisputed Material Fact No. 29: The small remainder of the Center's spending is based on reimbursements from third parties or restricted purpose spending authorized by the Legislature from a state special fund known as the Exposition Park Improvement Fund.

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

Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether the Center and Rudolph enjoy immunity under the Eleventh Amendment. The source of the Center's spending does not determine whether a state agency or a state official enjoys protection against constitutional

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liability under the Eleventh Amendment.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 29 is not immaterial. The fact is relevant to whether the Center is an arm of the state possessing Eleventh Amendment sovereign immunity. More importantly, AFA conceded that the Center does possess Eleventh Amendment sovereign immunity, and therefore the objection is moot.

DEFENDANTS' ISSUE NO. 4: THE CENTER DEFENDANTS ARE ENTITLED TO JUDGMENT ON AFA'S SECOND, THIRD, FOURTH AND EIGHTH CAUSES OF ACTION BECAUSE THERE IS NO EVIDENCE THAT THE CENTER DEFENDANTS ENGAGED IN ANY DISCRIMINATORY CONDUCT.

Undisputed Material Fact No. 43: AFA's representatives were aware that the contract contained a provision requiring approval by the Event Services Office of all promotional materials mentioning the California Science Center before distribution to the public.

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

Immaterial. The alleged fact and its supporting evidence have no significance in determining the outcome of this case with regard to whether the Center Defendants engaged in discriminatory conduct. Irrelevant. (Evid. Code §§ 210, 350-351). The alleged fact and its supporting evidence have no tendency in reason to prove or disprove whether the Center Defendants engaged in discriminatory conduct.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 43 is not immaterial. It is relevant for the proposition that AFA was aware of its contractual obligation to seek pre-approval of promotional materials, which is the provision that AFA is alleged to have breached.

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1 **Undisputed Material Fact No. 44: Because it was a private event, Foundation witnesses**
2 **testified that they had no concerns about the content or nature of the Event and**
3 **continued to negotiate with AFA.**

4 Ono Decl. Ex. 7 [Rudolph Dep. Tr., Vol. 2
5 (1/11/11)] at 324:16-23; *id.*, Ex. 2 [Sion Dep.
6 Tr.] at 406:1-9; *id.*, Ex. 22 [Dep.
7 Ex. 156].

8 Irrelevant as to whether Foundation witnesses
9 gave such testimony. (Evid. Code §§ 210,
10 350-351). The alleged fact constitutes the
11 *evidence* supporting the subordinate *fact* to
12 which the Foundation witnesses testified (i.e.,
13 that they had no concerns, etc.), not the fact
14 itself. On the same basis, this alleged fact is
15 vague and ambiguous. Irrelevant. (Evid.
16 Code §§ 210, 350-351). The evidence
17 tendered has no tendency in reason to prove
18 or disprove whether the Defendants engaged
19 in discriminatory conduct.

20 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 44
21 is not immaterial or irrelevant. The fact is relevant to show that Foundation employees
22 involved with the AFA Event proceeded with the AFA Event regardless of the content of
23 event, at least until AFA is alleged to have breached the Event Contract. The fact is relevant
24 to disprove AFA's assertion of a discriminatory motive.

25 **Undisputed Material Fact No. 45: On October 5, 2009, the same day that it received an**
26 **executed Event Price Estimate from AFA, the Foundation became aware of press**
27 **releases that were issued relating to the Event.**

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

Immaterial. The alleged fact and its
supporting evidence have no significance in
determining the outcome of this case with
regard to whether the Center Defendants
engaged in discriminatory conduct.
Irrelevant. (Evid. Code §§ 210, 350-351).
The alleged fact and its supporting evidence
have no tendency in reason to prove or
disprove whether the Center Defendants

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	engaged in discriminatory conduct. Irrelevant. (Evid. Code §§ 210, 350-351). The alleged fact constitutes the <i>evidence</i> supporting the subordinate <i>fact</i> to which the Foundation witnesses testified (i.e., that they had no concerns, etc.), not the fact itself. On the same basis, this alleged fact is vague and ambiguous. The evidence tendered has no tendency in reason to prove or disprove whether the Defendants engaged in discriminatory conduct.
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Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 45 is not immaterial or irrelevant. The fact that Foundation employees became aware that unapproved press releases relating to the Event were issued is material on the claimed issue of discriminatory conduct. This is particularly true where the Foundation claims that this constituted a breach of contract and was the reason the AFA Event was cancelled.

Undisputed Material Fact No 46: The Foundation Defendants believed that these press releases improperly implied that the California Science Center and the Smithsonian Institution were sponsoring the Event.

Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at 288:16-289-10; <i>id.</i> , Ex. 24 [Dep. Ex. 165].	Immaterial. The alleged fact and its supporting evidence have no significance in determining the outcome of this case with regard to whether the Center Defendants engaged in discriminatory conduct. Irrelevant. (Evid. Code §§ 210, 350-351). The alleged fact and its supporting evidence have no tendency in reason to prove or disprove whether the Center Defendants engaged in discriminatory conduct.
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Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 46 is not immaterial. The fact is relevant to explain the valid, non-discriminatory reason for the

1 AFA Event cancellation and tends to disprove AFA's contention that the AFA Event was
 2 canceled due to the event's content. This is particularly true where the Foundation claims that
 3 this constituted a breach and reason for the cancellation.

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 5 **Undisputed Material Fact No 47.1: In its interrogatory responses, AFA suggests that**
 6 **documents and testimony from Chris Sion and documents obtained from the National**
 7 **History Museum of Los Angeles County demonstrates the existence of a policy whereby**
 8 **the advancement, promotion or discussion of intelligent design is prohibited, noting that**
 9 **the "unanimity of position suggests a policy."**

10 Ono Decl., Ex. 34, [See AFA Responses to
 11 Special Interrogatory No. 5.]

12 Immaterial. The alleged fact and its
 13 supporting evidence have no significance in
 14 determining the outcome of this case with
 15 regard to whether the Foundation Defendants
 16 cancelled AFA's event on the basis of an
 17 intentionally discriminatory motive.
 Irrelevant as to whether "AFA suggests" the
 alleged subordinate fact. The asserted "fact"
 is a preemptive reference to Plaintiff's
 anticipated evidence in opposition to a fact
 that has not been asserted. Lacks foundation
 as to the nature of a "policy."

18 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact
 19 47.1 is not immaterial nor lacks foundation. The fact is relevant to describe AFA's position
 20 in the litigation, as it is AFA's response to an interrogatory. AFA's apparent objection to the
 21 use of the term "policy" is not well taken, given that it was AFA that used the word "policy"
 22 in its response to the subject interrogatory.

23 **Undisputed Material Fact No. 48: Foundation witnesses testified that Rudolph made the**
 24 **decision to cancel the Event.**

25 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10-
 26 109:15; *id.*, Ex. 8 [Ameqa Dep. Tr.] at
 27 155:16- 21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2
 28 (12/10/10)] at 355:10-356:8, 406:14-18; *id.*,
 Ex. 7 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at

Irrelevant as to whether Foundation
 witnesses gave such testimony. (Evid. Code
 §§ 210, 350-351). The alleged fact constitutes
 the *evidence* supporting the subordinate *fact*
 to which the Foundation witnesses testified

1 98:10- 12; *id.*, Ex. 7 [Rudolph Dep. Tr.,
2 Vol.2 (1//11/11)] at 256:16-257:4 [testifying
3 that “[t]he decision to cancel the event was
4 my decision.”]

(i.e., that they had no concerns, etc.), not the
fact itself. On the same basis, this alleged
fact is vague and ambiguous. The evidence
tendered has no tendency in reason to prove
or disprove whether the Defendants engaged
in discriminatory conduct.

6 Center Defendants’ Response to Objection: Center Defendants' Undisputed Material Fact 48
7 is not immaterial. That fact Foundation witnesses testified that Rudolph made the decision to
8 cancel the Event is relevant to show which entity entered into the Event Contract, and which
9 entity canceled the Event Contract.

10 **Undisputed Material Fact No. 49: Jeff Rudolph testified that: “As President of the
11 California Science Center Foundation, I chose to cancel the [AFA] event.”**

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

17 Immaterial. The alleged fact that Rudolph
18 testified to the subordinate fact has no
19 significance in determining the outcome of
20 this case with regard to whether Defendants
21 engaged in discriminatory conduct.
22 Objection is also made on the ground that the
23 only proof of this alleged material fact is the
24 statement of the only witness to the fact.
25 Code Civ. Proc., §437c(e); *see Overland*
26 *Plumbing, Inc. v Transamerica Ins. Co.*
27 (1981) 119 Cal.App.3d 476, 483 [trial court
28 did not abuse its discretion by failing to reject
declarations of sole witness to facts for
reasons of credibility].

24 Center Defendants’ Response to Objection: Center Defendants' Undisputed Material Fact 49
25 is not immaterial. The fact that Foundation President Rudolph made the decision to cancel
26 the AFA private Event is relevant to the issue of whether the Center was a party to the Event
27 Contract, and whether the Center took any action with regard to the cancelation. Code of
28 Civil Procedure section 437c(e) does not apply when there fact is not solely based on a single

1 witness's affirmation (see Sept. Stmt. 48 [Pygin, Amega and Sion all testified that Rudolph
 2 made the decision to cancel the AFA Event].) (*Chee v. Amanda Goldt Property Management*
 3 (2006) 143 Cal.App.4th 1360, 1370 [Code Civ. Proc. 437c, subd. (e) inapplicable when there
 4 are more than one witness to a fact].) Even if the fact was based solely on a single person's
 5 testimony, the court has discretion to grant summary judgment in reliance on that fact.
 6 (*Butcher v. Gay* (1994) 29 Cal.App.4th 388, 404-405.) *Overland Plumbing, Inc. v.*
 7 *Transamerica Ins. Co.* (1981) 119 Cal.App.3d 476, 483, does not apply because (a) that case
 8 involved the introduction of a declaration, not deposition testimony, (b) Rudolph was not the
 9 sole witness to the fact that he alone as President of the Foundation made the decision to
 10 cancel the event, (c) the court confirmed that the court has discretion to admit the testimony
 11 of a "sole" witness is discretionary, and (d) the court in fact admitted the declaration of a sole
 12 witness.

13 **Undisputed Material Fact No. 50: Rudolph, in response to a question asking for "the**
 14 **reason that factored into your decision to cancel the contract for the AFA event,"**
 15 **testified that "the press statements put out were in violation of our policies and**
 16 **procedures that were potentially harmful to the reputation of the Science Center and to**
 17 **our relationship with the Smithsonian. I believe that violated our agreement, and ... I**
 18 **felt that the best course of action was to cancel the event." The subject *matter of the***
 19 ***Event was not a consideration in his decision to cancel.***

20 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2
 21 (1/11/11) at 281:6-23.

22 Irrelevant as to whether Rudolph gave such
 23 testimony. (Evid. Code §§ 210, 350-351).
 24 The alleged fact constitutes the *evidence*
 25 supporting the subordinate *fact* to which
 26 Rudolph testified (i.e., that he believed the
 27 press releases violated the Event Policies and
 28 Procedures, etc.), not the fact itself. On the
 same basis, this alleged fact is vague and
 ambiguous. The evidence tendered has no
 tendency in reason to prove or disprove
 whether the Defendants engaged in
 discriminatory conduct.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 50
 is not irrelevant. The fact that Foundation President Rudolph made the decision to cancel the

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1 AFA private Event is relevant to the issue of whether the Center was a party to the Event
2 Contract, and whether the Center took any action with regard to the cancelation.

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4 **Undisputed Material Fact No. 51: *In their depositions, Foundation witnesses denied the***
5 ***existence of a policy whereby the advancement, promotion, or discussion of intelligent***
6 ***design is prohibited.***

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

Irrelevant as to whether Foundation
witnesses gave such testimony. (Evid. Code
§§ 210, 350-351). The alleged fact
constitutes the *evidence* supporting the
subordinate *fact* to which Foundation
witnesses testified (i.e., that no such policy
exists). The evidence tendered has no
tendency in reason to prove or disprove
whether the Defendants engaged in
discriminatory conduct.

21 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 51
22 is not irrelevant. The fact is relevant to show that the Foundation was not discriminated
23 against AFA when the Foundation cancelled the AFA Event, as well as to show that there is
24 no substantial danger that AFA will be discriminated against in the future.

25 **Undisputed Material Fact No. 52: Beginning on October 5, 2009,**
26 **representatives of the Los Angeles Country [sic] Natural History Museum and other**
27 **individuals were engaged in e-mail discussion regarding the Event In these discussions,**
28 **the participants expressed concerns regarding the subject matter of the Event. None of**
these e-mails reached Rudolph until after the Event was cancelled.

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

Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether Defendants engaged in discriminatory conduct. Irrelevant. (Evid. Code §§ 210, 350-351). The alleged fact has no tendency in reason to prove or disprove whether Defendants engaged in discriminatory conduct

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 52 is not immaterial nor irrelevant. The fact is relevant to show that whatever views a third party (Los Angeles County Natural History Museum) may have had on intelligent design, such views are wholly irrelevant to Rudolph's decision to cancel the AFA Event because he did not see those emails until after he had already canceled the AFA Event. It is relevant to rebut AFA's contention that Rudolph's decision to cancel the AFA Event was influenced by the views contained in the emails.

Undisputed Material Fact No. 53: Rudolph testified that he "had a general understanding" as to the nature of the Event based on an October 1, 2009 e-mail from Chris Sion.

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

Irrelevant as to whether Rudolph gave such testimony. (Evid. Code §§ 210, 350-351). The alleged fact constitutes the *evidence* supporting the subordinate *fact* to which Rudolph testified (i.e., he had a general understanding as to the nature of the Event based on an October 1, 2009, e-mail.), not the fact itself. On the same basis, this alleged fact is vague and ambiguous. The evidence tendered has no tendency in reason to prove or disprove whether the Defendants engaged in discriminatory conduct.

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1 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 53
2 is not immaterial. The fact is relevant to show that he understood the nature of the AFA
3 Event before the contract was signed, and therefore it tends to disprove AFA's contention that
4 Rudolph intended to discriminate against AFA based on the group's viewpoint.

5 **Undisputed Material Fact No. 53.1: During discussions about scheduling the Event, the
6 Foundation Defendants were aware that AFA planned to show the movie "Darwin's
7 Dilemma" and that the Event involved a discussion of Darwinism. AFA witnesses
8 testified that the Foundation was aware of the subject matter of the Event. Joe Peterson
9 testified that the Foundation was aware of the nature of the Event from the first
10 meeting.**

11 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol.
12 2 (12/10/10)] at 403:19-406:4; *id.*, Ex. 2
13 [Sion Dep. Tr., Vol. 1 (12/8/10)] at 144:7-
14 145:24; *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1
15 (12/9/10)] at 152:1-153:2, 154:10-15; *id.*,
16 Ex.; 11 [Peterson Dep. Tr.] at 76:16-'-
17 77:10, 157:1-4.

Vague and ambiguous as to the meaning of
"subject matter" and "nature."

18 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact
19 53.1 is not vague and ambiguous as to the meaning of "subject matter" or "nature." The fact
20 clearly states that the "the film involved a discussion of Darwinism" and that the Foundation
21 was aware of this "subject matter" and the "nature" of the Event. Plainly, "subject matter"
22 and "nature" refer to the fact that the Event would screen the film Darwin's Dilemma and
23 involve a discussion of Darwinism.

24 **Undisputed Material Fact No. 54: AFA witness Joe Peterson testified that Chris Sion
25 was supportive of having a "conservative" event and Avi Davis testified that Foundation
26 employees were "very, very enthusiastic" about the Event, never expressing concerns
27 about the content.**

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

Irrelevant as to whether Peterson and Davis
gave such testimony. (Evid. Code §§ 210,
350-351). The alleged facts constitute the
evidence supporting the subordinate *facts* to
which they testified (i.e., that Sion supported
a conservative event and was enthusiastic

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about it), not the fact itself. On the same basis, this alleged fact is vague and ambiguous. The evidence tendered has no tendency in reason to prove or disprove whether the Defendants engaged in discriminatory conduct.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 54 is not irrelevant or vague and ambiguous. The fact is relevant to show that the Foundation employees involved in negotiating the contract with AFA were actively trying to finalize the AFA Event Contract. That fact tends to disprove AFA's contention that the Foundation had a policy of discrimination against intelligent design groups. The fact tends to disprove AFA's contention that the Foundation acted discriminatorily with regard to AFA itself. AFA does not identify anything specific that it contends is vague and ambiguous about this fact, and so the Center Defendants cannot respond to that objection.

Undisputed Material Fact No. 55: AFA witnesses testified that the Foundation employees, particularly Sion, were aggressively trying to get the contract finalized so the Event could take place.

Ono Decl., Ex. 3 [Davis Dep. Tr., Vol. 1 (Dec. 9, 2010)] at 154:16-19 ["Q. They were encouraging you to get your contract in and signed, right? A. They were encouraging us to show two films for a fee at their facility."], at 178:23-179:2 ["Chris Sion in this case was all over us. She was determined that we were going to do this event. She was absolutely determined that we were -- MR. BECKER: A vi, I'm going to stop you. You're not--"]; *see also id.*, Ex.11 [Peterson Dep. Tr.] at 147:9-148:6 [describing Sion as a "very accommodating, wonderful person"]; *id.* Ex. 17 [Dep. Ex. 34] [Sion states on September

Irrelevant as to whether AFA witnesses gave such testimony. (Evid. Code §§ 210, 350-351). The alleged fact constitute the *evidence* supporting the subordinate *fact* to which they testified (i.e., that the Foundation was aggressively trying to get the contract finalized so the Event could take place), not the fact itself. On the same basis, this alleged fact is vague and ambiguous. The evidence tendered has no tendency in reason to prove or disprove whether the Defendants engaged in discriminatory conduct. The alleged fact mischaracterizes the evidence.

1 so it is not going ahead, we do nto need to
2 send a letter or respond any further,” period.
3 There are the word apparently of John Long
4 in an e-mail. Does he have it correct here
5 that Dr. Rudolph told you that they canceled
6 the event because it was not in line with their
7 mission? MR. ZELENAY: Vague. Calls
8 for hearsay. MR. STAUBER: Same
9 objection, subject to that, Dr. Pisano, you can
10 answer. THE WITNESS: No ... BY MR.
11 STEVENS: Q. And your answer is that John
12 Long has it incorrect, is that right? MR.
13 STAUBER: Counsel, the answer was “No,”
14 unequivocally “No.” BY MR. STEVENS: Q.
15 I’m asking if that’s what you meant by
16 incorrect. A. That is correct.”] *id.*, Ex. 5
17 [Long Dep. Tr.] at 96:5-24 [“Q. The next
18 sentence says, “They had in fact canceled the
19 event as not being in-line with their mission
20 to educate the public about science.” And I’ll
21 stop there. Is that what Dr. Pisano told you?
22 MR. ONO: Calls for hearsay. THE
23 WITNESS: No, she did not tell me that. That
24 was something that I was surmising. It’s
25 purely from me. BY MR. STEVENS: Q.
26 Well, what did Dr. Pisano tell you? A. From
27 memory, she just told me that they had
28 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.

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Q. You didn't actually know? A. I didn't.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 58 is not irrelevant. The fact is relevant to show that the AFA Event was canceled for a non-discriminatory reason, namely, the false and misleading press releases issued about the AFA Event and the AFA Event was not canceled because of the event's content.

Undisputed Material Fact No. 59: Cynthia Pygin testified that she never discussed the subject matter of the Event with Rudolph prior to his decision to cancel.

Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 69:8-20, 78:7-14.

Irrelevant as to whether Pygin gave such testimony. (Evid. Code §§ 210, 350-351). The alleged fact constitutes the *evidence* supporting the subordinate *fact* to which Pygin testified (i.e., that she never discussed the subject matter of the Event with Rudolph prior to his decision to cancel).

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 59 is not irrelevant. The fact is relevant to disprove AFA's allegation that Rudolph's decision to cancel the AFA Event was influenced by other Foundation officials, including Pygin.

Undisputed Material Fact No. 60: In their depositions, AFA's witnesses were unable to identify any specific evidence of discriminatory intent on the part of the Foundation Defendants except for the cancellation itself. When asked whether there was "anything ... upon which you're basing your belief that the real reason for the cancellation ... was that [The Foundation] did not want to have an open debate on intelligent design," Peter Bylsma answered "No."

Ono Decl., Ex. 3 [Davis. Dep. Tr., Vol. 1 [12/9/10] at 144:21-147:16 [Q. You understand there's an allegation in this lawsuit that you've made that the basis for the cancellation was the content of the program, don't you sir? A. Absolutely. Q. Okay. And what do you base that allegation on? ... The fact is that we know nothing we did regarding our performance of the contract

Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether Center Defendants engaged in discriminatory conduct. Irrelevant. (Evid. Code §§ 210, 350-351). The alleged fact has no tendency in reason to prove or disprove the alleged fact that Center Defendants engaged in discriminatory conduct.

1 could have led to an accusation of violation.
2 Nothing. We performed our part of the
3 contract – we signed it, we prepared our
4 materials, we were going to submit it.
5 Nothing we did was possibly – could
6 possibly have done it. The only reason for
7 that film to be canceled was because the
8 people who owned that cinema *didn't* want it
9 shown and were not happy about the content;
10 *id.*, Ex. 3 [Davis Dep. Tr., Vol. 2 (1/11/11)]
11 at 355:5-364:8 [discussing reasons for
12 believing “intense outside pressure” causes
13 the cancellation]; *id.*, Ex. 6 [Bylsma Dep. Tr.]
14 at 265:19-266:9 [“Q. Is there anything else
15 that you’re relying on in terms of telling me
16 that you believe the real reason for ‘the
17 cancellation was that the Foundation didn’t
18 want to have that open debate other than
19 what’s in [the cancellation e-mail]? MR.
20 BECKER: And whatever I may have
21 discussed with you in confidence. Q. I don’t
22 want to know what Mr. Becker discussed
23 with you. So I’m not asking for that. So is
24 there anything, other than - what Mr. Becker
25 may have told you, upon which you’re basing
26 your belief that the real reason for the
27 cancellation by the Science Center
28 Foundation was that they did not want to
have an open debate on intelligent design? A.
No.”], at 272:21-273:3 [“Q. Okay. What I’m
after is, *did* anybody show you or tell you

1 anything that was either a document or a
2 conversation specifically from the California
3 Science Center Foundation or the Science
4 Center itself that when you read it or heard
5 about it, you said 'Yeah, that' - 'that- that
6 tells me they cancelled for content'? A.
7 No."]; *id.*, Ex. 11 [Peterson Dep. Tr.] at
8 153:14-158:3 ["Q. I was trying to clarify
9 because your answer before talked about the
10 Smithsonian. So I was trying to understand
11 what facts you believe there are to support a
12 view that the Foundation engaged some [sic]
13 sort of discriminatory act that it wasn't-- A.
14 Well, the discriminatory act was cancelling
15 the event. Birds of a feather flock together.
16 They are all cut from the same cloth. And the
17 Smithsonian in particular I had come to find
18 out about - I forget the name of the scientist
19 who had basically had his whole career
20 torpedoed because he dared to say something
21 positive about intelligent design." ... Q. But
22 do you have any other facts to support the
23 view that the Foundation engaged in some
24 sort of discriminatory conduct? Were there
25 any conversations you had with the
26 Foundation employees that imply that to you
27 or anything like that? A. I had no
28 conversations with Foundation employees.
We did ask Joel Strom what went on in the
board meeting ... But he *didn't* really have
any information about the detail." ... Q. Yes.

1 I was just going to ask is there anything else,
2 any other facts that lead you to that
3 conclusion? ... THE WITNESS: So – okay.
4 I would just say that, if you listen to the news
5 sources that I like to listen to [they] talk about
6 how Darwinian evolution is promulgated
7 throughout the public school system and so
8 on. It is hostile towards opposing
9 viewpoints. Anybody on the street will tell
10 you that.... Q. BY MR. ZELENAY: Yes.
11 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 that there is much
17 more than just DI's press release that drove
the California Science Center to execute this
blatant act of discrimination against us.”

18 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 60
19 is not immaterial. The fact is relevant is to show that none of AFA's witnesses who were
20 involved in interacting with the Foundation concerning the AFA Event are aware of no
21 evidence to support AFA's speculation that “the real reason” the AFA Event was canceled
was in fact to discriminate against AFA based on its viewpoint.

22 **ISSUE NO. 5: JEFFREY RUDOLPH IN HIS OFFICIAL CENTER CAPACITY IS**
23 **ENTITLED TO JUDGMENT ON AFA'S SECOND, THIRD, AND FOURTH CAUSES**
24 **OF ACTION BECAUSE AFA DOES NOT FACE THE THREAT OF FUTURE**
25 **INJURY FROM RUDOLPH IN HIS OFFICIAL CAPACITY NECESSARY TO**
SUPPORT INJUNCTIVE RELIEF

26 **Undisputed Material Fact No. 66: The Foundation – and not the Science Center – is a**
27 **named party on the Event Services Agreement that pertains to the Event. Only**
Foundation employees were involved in the negotiations with AFA to host the Event.

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

Lacks foundation. Misstates and mischaracterizes the evidence.

Center Defendants’ Response to Objection: Center Defendants’ Undisputed Material Fact 66 does not lack foundation. The fact is supported by the testimony of Ms. Sion, who is the Foundation employee primarily responsible for negotiating this and other event service contracts on behalf of the Foundation. As the person who negotiated the AFA Contract, she has personal knowledge of the facts asserted.

ISSUE NO. 6: JEFFREY RUDOLPH, IN HIS INDIVIDUAL CAPACITY, IS ENTITLED TO JUDGMENT ON AFA’S SECOND, THIRD, AND FOURTH CAUSES OF ACTION BECAUSE HE POSSESSES QUALIFIED IMMUNITY.

Undisputed Material Fact No. 69: Jeff Rudolph testified that: “As, President of the California Science Center Foundation, I chose to cancel the [AFA] event.”

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

Immaterial. The alleged fact that Rudolph testified to the subordinate fact has no significance in determining the outcome of this case with regard to whether Rudolph is entitled to qualified immunity. Objection is also made on the ground that the only proof of this alleged material fact is the statement of the only witness to the fact. (Code Civ. Proc., §437c(e); see *Overland Plumbing, Inc. v Transamerica Ins. Co.* (1981) 119 Cal.App.3d 476, 483 [trial court did not abuse its discretion by failing to reject declarations of sole witness to facts for reasons of credibility]).

Center Defendants’ Response to Objection: Center Defendants’ Undisputed Material Fact 69 is not immaterial. The fact that Foundation President Rudolph made the decision to cancel the AFA private Event is relevant to the issue of whether the Center was a party to the Event Contract, and whether the Center took any action with regard to the cancelation. Code of Civil Procedure section 437c(e) does not apply when there fact is not solely based on a single

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1 witness's affirmation (see Sept. Stmt. 48 [Pygin, Amega and Sion all testified that Rudolph
 2 made the decision to cancel the AFA Event].) (*Chee v. Amanda Goldt Property Management*
 3 (2006) 143 Cal.App.4th 1360, 1370 [Code Civ. Proc. 437c, subd. (e) inapplicable when there
 4 are more than one witness to a fact].) Even if the fact was based solely on a single person's
 5 testimony, the court has discretion to grant summary judgment in reliance on that fact.
 6 (*Butcher v. Gay* (1994) 29 Cal.App.4th 388, 404-405.) *Overland Plumbing, Inc. v.*
 7 *Transamerica Ins. Co.* (1981) 119 Cal.App.3d 476, 483, does not apply because (a) that case
 8 involved the introduction of a declaration, not deposition testimony, (b) Rudolph was not the
 9 sole witness to the fact that he alone as President of the Foundation made the decision to
 10 cancel the event, (c) the court confirmed that the court has discretion to admit the testimony
 11 of a "sole" witness is discretionary, and (d) the court in fact admitted the declaration of a sole
 12 witness.

13 **Undisputed Material Fact No. 70: Rudolph, in response to a question asking for "the**
 14 **reason that factored into your decision to cancel the contract for the AFA event,"**
 15 **testified that "the press statements put out were in violation of our policies and**
 16 **procedures that were potentially harmful to the reputation of the Science Center and to**
 17 **our relationship with the Smithsonian. I believe that violated our agreement, and ... I**
 18 **felt that the best course of action was to cancel the event." The subject matter of the**
 19 **Event was not a consideration in his decision to cancel.**

20 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2
 21 (1/11/11) at 281:6-23.

22 Irrelevant as to whether Rudolph gave such
 23 testimony. (Evid. Code §§ 210, 350-351).
 24 The alleged fact constitutes the *evidence*
 25 supporting the subordinate *fact* to which
 26 Rudolph testified (i.e., that he believed the
 27 press releases violated the Event Policies and
 28 Procedures, etc.), not the fact itself. On the
 same basis, this alleged fact is vague and
 ambiguous. The evidence tendered has no
 tendency in reason to prove or disprove
 whether Rudolph is entitled to qualified
 immunity.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 70
 is not immaterial. The fact is relevant to show Foundation President Rudolph's non-

1 discriminatory explanation for why the AFA Event Contract was canceled. It tends to
2 disprove AFA's contention that Rudolph canceled the AFA Event Contract for a
3 discriminatory reason.

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5 **Undisputed Material Fact No. 71: Because it was a private event, Foundation witnesses testified that they had no concerns about the content or nature of the Event and continued to negotiate with AFA.**

6 Ono Decl. Ex. 7 [Rudolph Dep. Tr.,
7 Vol. 2 (1/11/11)] at 324:16-23; *id.*, Ex. 2
8 [Sion Dep. Tr.] at 406:1-9; *id.*, Ex. 22 [Dep.
9 Ex. 156].

Irrelevant as to whether Foundation witnesses gave such testimony. (Evid. Code §§ 210, 350-351). The alleged fact constitutes the *evidence* supporting the subordinate *fact* to which the Foundation witnesses testified (i.e., that they had no concerns, etc.), not the fact itself. On the same basis, this alleged fact is vague and ambiguous. The evidence tendered has no tendency in reason to prove or disprove whether Rudolph is entitled to qualified immunity.

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16 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 71
17 is not irrelevant. The fact is relevant to show that Foundation employees involved with the
18 AFA Event proceeded with the AFA Event regardless of the content of event, at least until
19 AFA is alleged to have breached the Event Contract. The fact is relevant to disprove AFA's
20 assertion of a discriminatory motive.

21 **Undisputed Material Fact No. 72: The Foundation Defendants believed that these press releases improperly implied that the California Science Center and the Smithsonian Institution were sponsoring the Event.**

22
23 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2
24 (1/11/11)] at 288:16-289-10; *id.*, Ex. 24 [Dep.
25 Ex. 165].

Immaterial. The alleged fact and its supporting evidence have no significance in determining the outcome of this case with regard to whether Rudolph possesses qualified immunity. Irrelevant. (Evid. Code §§ 210, 350-351). The evidence tendered has

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no tendency in reason to prove or disprove whether Rudolph is entitled to qualified immunity.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 72 is not irrelevant. The fact is relevant to explain the non-discriminatory reason for the AFA Event cancelation and tends to disprove AFA's contention that the AFA Event was canceled due to the event's content. This is particularly true where the Foundation claims that this constituted a breach and reason for the cancellation.

Undisputed Material Fact No. 73: Because none of the press releases were [sic] ever submitted to the Foundation's Event Services Office, Foundation Defendants believed that the press releases violated the Event Services' Policies and Procedures. On this basis, Rudolph made the decision to cancel the Event.

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

Immaterial. The alleged fact and its supporting evidence have no significance in determining the outcome of this case with regard to whether Rudolph possesses qualified immunity. Irrelevant. (Evid. Code §§ 210, 350-351). The alleged fact has no tendency in reason to prove or disprove whether Rudolph possesses qualified immunity. Vague and ambiguous as to the meaning of "Foundation Defendants."

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 73 is not immaterial. The fact is relevant to explain the valid, non-discriminatory reason for the AFA Event cancelation and tends to disprove AFA's contention that the AFA Event was canceled due to the event's content. This is particularly true where the Foundation claims that this constituted a breach and reason for the cancellation.

Undisputed Material Fact No. 74: Foundation witnesses testified that Rudolph made the decision to cancel the Event.

Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10-109:15; *id.*, Ex. 8 [Amege Dep. Tr.] at

Irrelevant as to whether Foundation witnesses gave such testimony. (Evid. Code §§ 210,

85/125/11

1 155:16-21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2
2 (12/10/10)] at 355:10-356:8, 406:14-18; *id.*,
3 Ex. 7 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at
4 98:10-12; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol.
5 2 (1/11/11)] at 256:16-257:4 [testifying that
6 “[t]he decision to cancel the event was my
7 decision.”]

350-351). The alleged fact constitutes the
evidence supporting the subordinate *fact* to
which Foundation witnesses testified (i.e.,
that Rudolph made the decision to cancel the
Event), not the fact itself. On the same basis,
this alleged fact is vague and ambiguous.
The evidence tendered has no tendency in
reason to prove or disprove whether Rudolph
is entitled to qualified immunity.

9 Center Defendants’ Response to Objection: Center Defendants’ Undisputed Material Fact 74
10 is not immaterial. The fact that multiple witnesses testified that it was Rudolph who made the
11 decision to cancel the AFA Event is relevant to who canceled the AFA Event, and who was or
12 was not involved in the decision to cancel the AFA Event.

13 **Undisputed Material Fact No. 75: In their depositions, AFA’s witnesses were unable to**
14 **identify any specific evidence of discriminatory intent on the part of the Foundation**
15 **Defendants except for the cancellation itself. When asked whether there was “anything**
16 **... upon which. You’re basing your belief that the real reason for the cancellation ... was**
17 **that [the Foundation] did not want to have an open debate on intelligent design,” Peter**
18 **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
20 lawsuit that you’ve made that the basis for
21 the cancellation was the content of the
22 program, don’t you sir? A. Absolutely. Q.
23 Okay. And what do you base that allegation
24 on? ... The
25 fact is that we know that nothing we did
26 regarding our performance of the contract
27 could have led to an accusation of violation.
28 Nothing. We performed our part of the
contract-- we signed it, we prepared our

Immaterial. The alleged fact has no
significance in determining the outcome of
this case with regard to whether Center
Defendants engaged in discriminatory
conduct. Irrelevant. (Evid. Code §§ 210,
350-351). The evidence tendered has no
tendency in reason to prove or disprove
whether Rudolph is entitled to qualified
immunity.

1 materials, we were going to submit it.
2 Nothing we did was possibly -- could
3 possibly have done it. The only reason for
4 that film to be canceled was because the
5 people who owned that cinema didn't want it
6 shown and were not happy about the content;
7 *id.*, Ex. 3 [Davis Dep. Tr., Vol. 2 (1//11)] at
8 355:5-364:8 [discussing reasons for believing
9 "intense outside pressure" causes the
10 cancellation]; *id.*, Ex. 6 [Bylsma Dep. Tr.] at
11 265:19-266:9 ["Q. Is there anything else that
12 you're relying on in terms of telling me that
13 you believe the real reason for the
14 cancellation was that the Foundation *didn't*
15 want to have that open debate other than
16 what's in [the cancellation e-mail]? MR.
17 BECKER: And whatever I may have
18 discussed with you in confidence. Q. I don't
19 want to know what Mr. Becker discussed
20 with you. So I'm not asking for that. So is
21 there anything, other than what Mr. Becker
22 may have told you, upon which you're basing
23 your belief that the real reason for the
24 cancellation by the Science Center
25 Foundation was that they did not want to
26 have an open debate on intelligent design? A.
27 No."], at 272:21-273:3 ["Q. Okay. What I'm
28 after is, did anybody show you or tell you
anything that was either a document or a
conversation specifically from the California
Science Center Foundation or the Science

1 Center itself that when you read it or heard
2 about it, you said 'Yeah, that' – 'that – that
3 tells me they cancelled for content'? A.
4 No.”]; *id.*, Ex. 11 [Peterson Dep. Tr.] at
5 153:14-158:3 [“Q. I was trying to clarify
6 because your answer before talked about the
7 Smithsonian. So I was trying to understand
8 what facts you believe there are to support a
9 view that the Foundation engaged some some
10 [sic] sort of discriminatory at that it wasn't –
11 A. Well, the discriminatory act was
12 cancelling the event. Birds of a feather flock
13 together. They are all cut from the same
14 cloth. And the Smithsonian in particular I
15 had come to find out about – I forget the
16 name of the scientist who had basically had
17 his whole career torpedoed because he dared
18 to say something positive about intelligent
19 design.” ... Q. But do you have any other
20 facts to support the view that the Foundation
21 engaged in some sort of discriminatory
22 conduct? Were there any conversations you
23 had with the Foundation employees that
24 imply that to you or anything like that? A. I
25 had no conversations with Foundation
26 employees. We did ask Joel Strom what
27 went on in the board meeting ... But he
28 didn't really have any information about the
29 detail.” ... Q. Yes. I was just going to ask is
30 there anything else, any other facts that lead
31 you to that conclusion? ... THE WITNESS:

1 So – okay. I would just say that, if you listen
 2 to the news sources that I like to listen to
 3 [they] talk about how Darwinian evolution is
 4 promulgated throughout the public school
 5 system and so on. It is hostile towards
 6 opposing viewpoints. Anybody on the street
 7 will tell you that.... Q. BY MR. ZELENAY:
 8 Yes. It's – I am just trying to understand for
 9 myself where your view comes from with
 10 respect that issue. But if you don't have
 11 anything further to add in terms of the actual
 12 facts that lead you -- ...A. Because I can say
 13 there is plenty of evidence that there is much
 14 more than just DI's press release that drove
 the California Science Center to execute this
 blatant act of discrimination against us.”]

15 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 75
 16 is not immaterial. The fact is relevant is to show that none of AFA's witnesses who were
 17 involved in interacting with the Foundation concerning the AFA Event are aware of no
 18 evidence to support AFA's speculation that “the real reason” the AFA Event was canceled
 19 was in fact to discriminate against AFA based on its viewpoint.

20 **Undisputed Material Fact No. 76: In their depositions, Foundation witnesses denied the**
 21 **existence of a policy whereby the advancement, promotion, or discussion of intelligent**
 22 **design is prohibited.**

23 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 154:9-
 24 16; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 1
 25 (1/10/11)] at 131:18-25, 169:19-170:22; *id.*,
 26 Ex. 2 [Sion Dep. Tr.] at 66:15-67:13; *see also*
 27 *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 2
 28 (1/11/11)] at 238:5-15 [“Q. Sure. Do you
 believe it's inappropriate for the California
 Science Center to permit debates concerning

Irrelevant as to whether Foundation witnesses
 gave such testimony. (Evid. Code §§ 210,
 350-351). The alleged fact constitutes the
evidence supporting the subordinate *fact* to
 which Foundation witnesses testified (i.e.,
 that no such policy exists). The evidence
 tendered has no tendency in reason to prove
 or disprove whether Rudolph is entitled to

1 the theory of evolution?" MR. ONO: Vague
2 and ambiguous; incomplete hypothetical;
3 calls for speculation. MR. DENNIS: I join
4 those. THE WITNESS: My answer would be
5 that I do not think it it's [sic] inappropriate. I
6 think that our policies and practices and
7 everything we've done, including in this case,
8 would have allowed a private event to go
9 ahead and debate whatever they want, if it's a
private event.""]

qualified immunity.

10 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 76
11 is not irrelevant. The fact is relevant to show that the Foundation was not discriminated
12 against AFA when the Foundation cancelled the AFA Event, as well as to show that there is
13 no substantial danger that AFA will be discriminated against in the future.

14 **Undisputed Material Fact No. 77: Beginning on October 5, 2009, representatives of the**
15 **Los Angeles County [sic] Natural History Museum and other individuals were engaged**
16 **in e-mail discussion regarding the Event. In these discussions, the participants expressed**
17 **concerns regarding the subject matter of the Event. None of these e-mails reached**
18 **Rudolph until after the Event was cancelled.**

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

20 Immaterial. The alleged fact and its
21 supporting evidence have no significance in
22 determining the outcome of this case with
23 regard to whether Rudolph is entitled to
24 qualified immunity. Irrelevant. (Evid. Code
§§ 210, 350-351). The evidence tendered has
no tendency in reason to prove or disprove
whether Rudolph is entitled to qualified
immunity.

25 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 52
26 is not immaterial nor irrelevant. The fact is relevant to show that whatever views a third party
27 (Los Angeles County Natural History Museum) may have had on intelligent design, such
28 views are wholly irrelevant to Rudolph's decision to cancel the AFA Event because he did

1 not see those emails until after he had already canceled the AFA Event. It is relevant to rebut
2 AFA's contention that Rudolph's decision to cancel the AFA Event was influenced by the
3 views contained in the emails.

4
5 **Undisputed Material Fact No. 78: Rudolph testified that he "had a general
6 understanding" as to the nature of the Event based on an October 1, 2009 e-mail from
7 Chris 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 Irrelevant as to whether Rudolph gave such
12 testimony. (Evid. Code §§ 210, 350-351).
13 The alleged fact constitutes the *evidence*
14 supporting the subordinate *fact* to which
15 Rudolph testified (i.e., he had a general
16 understanding as to the nature of the Event
17 based on an October 1, 2009, e-mail.), not the
18 fact itself. On the same basis, this alleged
19 fact is vague and ambiguous. The evidence
20 tendered has no tendency in reason to prove
21 or disprove whether Rudolph is entitled to
22 qualified immunity.

23 Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 78
24 is not immaterial. The fact is relevant to show that he understood the nature of the AFA
25 Event before the contract was signed, and therefore it tends to disprove AFA's contention that
26 Rudolph intended to discriminate against AFA based on the group's viewpoint.

27 **Undisputed Material Fact No. 79: Foundation witnesses testified that the Event was
28 cancelled as a result of the unapproved press releases.**

Ono Decl. Ex. 2 [Sion Dep. Tr., Vol. 1
(12/8/10)] at 118:18-120:8; *id.*, Ex 2 [Sion
Dep. Tr., Vol. 2 (12/10/10)] at 327:13-18,
328:24-329:2; *id.*, Ex. 9 [Pygin Dep. Tr.] at
100:24-103:1; *id.*, Ex.7 [Rudolph Dep. Tr.,
Vo. 2 (1/11/11)] at 302:19-303:19; *see also*
id. Ex. 16 [Dep. Ex. 32] [Ameqa expresses

Irrelevant as to whether Foundation witnesses
gave such testimony. (Evid. Code §§ 210,
350-351). The alleged fact constitutes the
evidence supporting the subordinate *fact* to
which Foundation witnesses testified (i.e.,
that that the Event was cancelled as a result
of the unapproved press releases). The

1 belief that AFA violated the Promotional
2 Materials provision.]; *id.* Ex. 20 [Dep. Ex.
3 37] [indicating unapproved press releases
4 were reason for cancellation]; *id.*, Ex. 4
5 [Pisano Dep. Tr.] at 41:19-43:1 [Q. Al right.
6 (sic) The e-mail continues referring to your
7 conversation, quote: "Had a chat to him about
8 the screening of the I.D. film at CSC's
9 IMAX." The next sentence: "They had, in
10 fact, canceled the event as not being" – I'm
11 sorry – "as being not in line with their
12 mission to educate the public about science,
13 so it is not going ahead, we do not need to
14 send a letter or respond any further," period.
15 There are the word (sic) apparently of John
16 Long in an e-mail. Does he have it correct
17 here that Dr. Rudolph told you that they
18 canceled the event because it was not in line
19 with their mission? MR. ZELENAY:
20 Vague. Calls for hearsay. MR. STAUBER:
21 Same objection, subject to that, Dr. Pisano,
22 you can answer. THE WITNESS: No ... BY
23 MR. STEVENS: Q. And your answer is that
24 John Long has it incorrect, is that right? MR.
25 STAUBER: Counsel, the answer was "No,"
26 unequivocally "No." BY MR. STEVENS: Q.
27 I'm asking if that's what you meant by
28 incorrect. A. That is correct."] *id.*, Ex. 5
[Long Dep. Tr.] at 96:5-24 ["Q. The next
sentence says, "They had in fact canceled the
event as not being in-line with their mission

evidence tendered has no tendency in reason
to prove or disprove whether Rudolph is
entitled to qualified immunity.

1 to educate the public about science.” And I’ll
 2 stop there. Is that what Dr. Pisano told you?
 3 MR. ONO: Calls for hearsay. THE
 4 WITNESS: No, she *did* not tell me that. That
 5 was something that I was surmising. It’s
 6 purely from me. BY MR. STEVENS: Q.
 7 Well, what *did* Dr. Pisano tell you? A. From
 8 memory, she just told me that they had
 9 canceled it. She didn’t actually give me a
 10 reason. Q. So you added that fact that it was
 11 not in line with their mission? That was from
 12 your own surmise? A. I was guessing it, yes.
 13 Q. You didn’t actually know? A. I didn’t.

13 Center Defendants’ Response to Objection: Center Defendants’ Undisputed Material Fact 79
 14 is not irrelevant. The fact is relevant to show that the AFA Event was canceled for a non-
 15 discriminatory reason, namely, the false and misleading press releases issued about the AFA
 16 Event and the AFA Event was not canceled because of the event’s content.

17 **ISSUE NO. 7: THE CENTER DEFENDANTS ARE ENTITLED TO JUDGMENT ON**
 18 **AFA’S NINTH CAUSE OF ACTION FOR DECLARATORY RELIEF BECAUSE**
 19 **SUCH REQUESTED RELIEF IS MOOT IN THE ABSENCE OF UNDERLYING**
 20 **CONSTITUTIONAL VIOLATIONS.**

21 **Undisputed Material Fact No. 80: AFA requests judicial declarations that**
 22 **“the cancellation of the EVENT and breach of the contract violated the United States**
 23 **Constitution and the California Constitution” and that “the Defendants engaged in**
 24 **content and viewpoint discrimination by preventing Plaintiff from addressing the topic**
 25 **of intelligent design in a public forum.”**

26 TAC, Paras. 111 and 112.

27 Immaterial. The alleged fact has no
 28 significance in determining the outcome of
 this case with regard to whether AFA’s
 request for declaratory relief is moot.
 Irrelevant as to whether AFA’s request for
 declaratory relief is moot. (Evid. Code §§
 210, 350-351). The alleged fact constitutes
 the pleading allegation and, as such, is not a

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material fact. The evidence tendered has no tendency in reason to prove or disprove whether relief is moot.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 80 is not immaterial. The fact is relevant to show the injunctive relief that AFA is seeking in this case, which is relevant to whether the relief sought can be provided, if ordered, by Rudolph in his official and/or individual Center capacities.

ISSUE NO. 8: AFA'S EIGHTH CAUSE OF ACTION CANNOT SUPPORT A CLAIM FOR MONEY DAMAGES.

Undisputed Material Fact No. 81: AFA appears to seek money damages for the alleged violation of the California Constitution.

TAC, Para. 108

Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether AFA'S Eighth Cause of Action can support a claim for money damages. Irrelevant. (Evid. Code §§ 210, 350-351). The alleged fact has no tendency in reason to prove or disprove whether AFA'S Eighth Cause of Action can support a claim for money damages.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 81 is not immaterial nor irrelevant. The fact is relevant to show the type of relief requested by AFA, which is relevant to the legal issue of whether AFA is entitled to that type of relief. In this case, AFA claims to seek money damages for violation of the California Constitution, but Supreme Court case law holds that money damages are not available. The fact that AFA concedes in its Opposition that money damages are not available in this case even if AFA proves a violation of the California Constitution makes this objection moot.

ISSUE NO. 9: PUNITIVE DAMAGES ARE NOT RECOVERABLE AGAINST THE CENTER

Undisputed Material Fact No. 82: AFA's Third Amended Complaint seeks punitive damages.

TAC, Prayer, Para. 4.

Immaterial. The alleged fact and its

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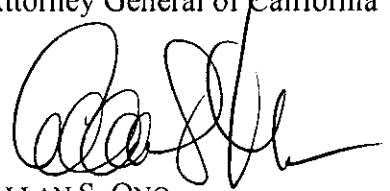
supporting evidence have no significance in determining the outcome of this case with regard to whether punitive damages are recoverable against the Center. Irrelevant. (Cal.Ev.Code §§ 210, 350-351). The alleged fact and its supporting evidence have no tendency in reason to prove or disprove whether punitive damages are recoverable against the Center.

Center Defendants' Response to Objection: Center Defendants' Undisputed Material Fact 82 is not immaterial nor irrelevant. The fact is relevant to the issue of whether AFA is entitled to recover punitive damages from the Center. The fact is relevant to show that the operative complaint contains some type of prayer for punitive damages, even though its "Fourth Cause of Action for Fraud" was dismissed on demurrer. The Center Defendants asked AFA to voluntarily strike that prayer after the Fourth Cause of Action was dismissed, but AFA refused.

Dated: June 3, 2011

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California



ALLAN S. ONO
Deputy Attorney General
*Attorneys for Defendants California
Science Center and Jeffrey Rudolph in his
individual and official capacity as
President and CEO of the California
Science Center*

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DECLARATION OF SERVICE BY ELECTRONIC & U.S. MAIL

Case Name: **American Freedom Alliance v. California Science Center, et al.**
Case No.: **BC 423687**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 3, 2011, I served the attached THE CENTER DEFENDANTS' RESPONSE TO PLAINTIFF AMERICAN FREEDOM ALLIANCE'S OBJECTIONS TO EVIDENCE RE: DEFENDANTS CALIFORNIA SCIENCE CENTER'S AND JEFFERY RUDOLPH'S (AS PRESIDENT AND CEO OF THE CENTER AND IN HIS INDIVIDUAL CAPACITY) MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION by transmitting a true copy via ELECTRONIC MAIL. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

William J. Becker, Jr. Esq.
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 3, 2011, at Los Angeles, California.

Olivia C. Padilla

Declarant



Signature