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10 CALIFORNIA SCIENCE CENTER
11 FOUNDATION and JEFFREY RUDOLPH in his
12 official capacity as President of the California
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ORIGINAL

FILED

LOS ANGELES SUPERIOR COURT

JAN 19 2010

JOHN A. CLARKE CLERK
BY NANCY ALVAREZ, DEPUTY

14 SUPERIOR COURT, STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16 CENTRAL DIVISION

17 AMERICAN FREEDOM ALLIANCE, a
18 nonprofit corporation;

19 Plaintiff,

20 v.

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

26 Defendants.

CASE NO. BC 423687

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

**DEFENDANTS CALIFORNIA SCIENCE
CENTER FOUNDATION'S AND JEFFREY
RUDOLPH'S NOTICE OF DEMURRER
AND DEMURRER TO PLAINTIFF
AMERICAN FREEDOM ALLIANCE'S
FIRST AMENDED COMPLAINT**

**[Memorandum of Points and Authorities in
Support Thereof; and Appendix of Non-
California Authorities, filed concurrently
herewith]**

DATE OF FILING
COMPLAINT:

October 14, 2009

DATE OF FILING
FIRST AMENDED
COMPLAINT:

November 19, 2009

TRIAL DATE:

None.

Hearing Date:
Hearing Time:
Hearing Location:

May 12, 2010
8:45 a.m.
Dept. 14

CIT/CASE: BC423687 LEA/REF#: 0310
RECEIPT #: 034951233039
DATE PAID: 08/21/10 11:27:31 AM
PAYMENT: \$710.00
RECEIVED: 0310
CHECK: 710.00
CASH: 0.00
CHANGE: 0.00
CARD: 0.00

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NOTICE OF DEMURRER

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

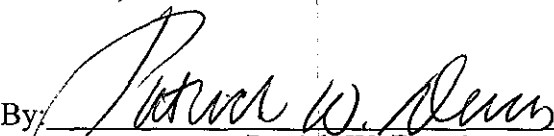
PLEASE TAKE NOTICE that on May 12, 2010 at 8:45 a.m., or as soon thereafter as this matter may be heard in Department 14 of the above-entitled Court, the Honorable Terry A. Green presiding, Defendants California Science Center Foundation (the "Foundation") and Jeffrey Rudolph, in his official capacity as President of the Foundation ("Rudolph"), will and hereby do demur to the First Amended Complaint (the "FAC") of Plaintiff American Freedom Alliance ("AFA" or "Plaintiff"), pursuant to section 410.10 of the California Code of Civil Procedure, on the grounds that the Second, Third, Fourth, and Fifth Causes of Action asserted against the Foundation and Rudolph fail to state facts sufficient to constitute a cause of action.

The Demurrer is based on this Notice of Demurrer and Demurrer, the accompanying Memorandum of Points and Authorities in support thereof, all records and pleadings on file with the Court in this matter, all matters of which the Court may take judicial notice, and all further evidence and argument that may be presented in Reply to any Opposition on this Demurrer or at the hearing on this Demurrer.

DATED: January 19, 2010

GIBSON, DUNN & CRUTCHER LLP

By


Patrick W. Dennis

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

1 **DEMURRER**

2 The Foundation and Rudolph demur to Plaintiff's Second, Third, Fourth, and Fifth Causes of
3 Action of the FAC on the following grounds:

4 **Demurrer to Second Cause of Action for**
5 **Breach of Implied Covenant of Good Faith and Fair Dealing**

6 1) Plaintiff's Second Cause of Action for Breach of Implied Covenant of Good Faith and
7 Fair Dealing fails to state facts sufficient to constitute a cause of action. (Cal Civ. Proc. Code §§
8 430.10(e), 430.30.) Plaintiff fails to state a valid cause of action for this claim as a tort because no
9 special relationship has been, nor can be, alleged between Plaintiff and the demurring defendants, and
10 any action in contract must be dismissed as superfluous to the breach of contract claim.

11 **Demurrer to Third Cause of Action for**
12 **Violation of the First Amendment of the United States Constitution**

13 2) Plaintiff's Third Cause of Action for Violation of the First Amendment of the United
14 States Constitution fails to state facts sufficient to constitute a cause of action. (Cal Civ. Proc. Code
15 §§ 430.10(e), 430.30.) Plaintiff does not allege, and cannot allege, a valid cause of action because
16 Plaintiff fails to allege that any person subjected it to improper conduct under color of state law or
17 that any of the demurring defendants is a "person" subject to suit under 42 U.S.C. § 1983.

18 **Demurrer to Fourth Cause of Action for**
19 **Fraud (Intentional Misrepresentation, Concealment and Deceit)**

20 3) Plaintiff's Fourth Cause of Action for Fraud (Intentional Misrepresentation,
21 Concealment and Deceit) fails to state facts sufficient to constitute a cause of action. (Cal Civ. Proc.
22 Code §§ 430.10(e), 430.30.) Plaintiff has not sufficiently alleged, and cannot allege, the elements of
23 actual reliance, justifiable reliance, or intent to induce reliance.

24 **Demurrer to Fifth Cause of Action for**
25 **Injunctive Relief**

26 4) Plaintiff's Fifth Cause of Action for Injunctive Relief fails to state facts sufficient to
27 constitute a cause of action. (Cal Civ. Proc. Code §§ 430.10(e), 430.30.) Plaintiff has not properly
28

1 alleged, and cannot allege, that there is an inadequate legal remedy or that irreparable harm would
2 result if an injunction is not granted.

3 The Foundation and Rudolph respectfully request that the Court sustain this Demurrer without
4 leave to amend and award such other relief as the Court may deem necessary and proper.

5 DATED: January 19, 2010

GIBSON, DUNN & CRUTCHER LLP

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7 By: 

Patrick W. Dennis

8
9 Attorneys for Defendants,
10 CALIFORNIA SCIENCE CENTER FOUNDATION
and JEFFREY RUDOLPH in his official capacity as
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