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**FILED**  
Los Angeles Superior Court

APR 19 2010

7 Attorneys for Plaintiff, AMERICAN FREEDOM ALLIANCE

By John A. Clarke, Executive Officer/Clerk  
SHAUNYA WESLEY, Deputy

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

11 **AMERICAN FREEDOM ALLIANCE**, a  
12 nonprofit corporation;

13 Plaintiff,

14 vs.

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

21 Defendants.

Case No. BC423687

**BY FAX**

Assigned to: *The Hon. Terry A. Green*  
Dept. 14

**MOTION FOR ORDER GRANTING  
LEAVE TO FILE SECOND AMENDED  
COMPLAINT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF; DECLARATION  
OF WILLIAM J. BECKER, JR., IN  
SUPPORT THEREOF; EXHIBITS;  
[PROPOSED] SECOND AMENDED  
COMPLAINT; [PROPOSED] ORDER**

Complaint Filed: 10/14/09

Amended Complaint Filed: 11/19/09

Filed:

Trial Date: 2/14/2011

Date: 5/12/2010

Time: 8:45 a.m.

Dept.: 14

CI/CASE: BC423687 LEA/DEF#:  
RECEIPT #: CCH465880107  
DATE PAID: 04/19/10 04:20:28 PM  
PAYMENT: \$40.00  
RECEIVED:  
CHECK: 49.00  
CASH:  
CHANGE:  
CARD:

Page 1 of 1

Case No. BC423687

**MOTION FOR ORDER GRANTING LEAVE TO  
FILE SECOND AMENDED COMPLAINT**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 12, 2010, at 8:45 a.m., or as soon after that  
3 date as the matter can be heard, in Department "14" of the above-entitled court, located at 111 N.  
4 Hill St, Los Angeles, California 90012, Plaintiff AMERICAN FREEDOM ALLIANCE  
5 ("AFA"), will move the Court for leave to file a Second Amended Complaint.  
6

7 This motion is made on the grounds: (1) that Defendants have not answered the First  
8 Amended Complaint but have instead filed demurrers; (2) that Plaintiff has discovered facts to  
9 support adding an additional separate cause of action arising from the same general set of facts;  
10 and (3) that the Defendants' demurrers have identified some issues of pleading that can be re-  
11 solved economically via a Second Amended Complaint.

12 The Motion will be based on this notice of motion, on the attached memorandum of  
13 points and authorities; the proposed Second Amended Complaint; the attached Declaration of  
14 William J. Becker, Jr., in support thereof; the exhibits; all papers, pleadings, and records on file  
15 in this action and on any evidence presented at the hearing of the motion.  
16

17 DATED: April 19, 2010

THE BECKER LAW FIRM

18  
19 By: 

20 WILLIAM J. BECKER, JR., ESQ.  
21 Attorneys for Plaintiff, AMERICAN FREEDOM  
22 ALLIANCE  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. BACKGROUND**

3 On or about November 18, 2009, Plaintiff filed its First Amended Complaint ("FAC").  
4 The FAC alleges several causes of action, including breach of contract, fraud, and constitutional  
5 civil rights violations, against the Defendants California Science Center, California Science Cen-  
6 ter Foundation, and Jeffrey Rudolph (an individual). On or about January 19, 2010, Defendants  
7 filed their demurrers.  
8

9 The gravamen of Plaintiff's FAC is: Defendants entered into a contract on September 30,  
10 2009, with Plaintiff American Freedom Alliance (AFA) whose founder and President is Avi Da-  
11 vis. (FAC, ¶ 11.) Under that contract, Defendants agreed to provide the IMAX facility for AFA  
12 and Davis to show two films, one entitled "We Are Born of Stars," and the other entitled "Dar-  
13 win's Dilemma: The Mystery of the Cambrian Fossil Record." (FAC, ¶¶ 13,14.)  
14

15 Without lawful cause, Defendants unilaterally breached the contract on October 6, 2009,  
16 by giving written notice to Plaintiff that the AFA's film showing event would be canceled.  
17 (FAC, ¶¶ 21,22.) As alleged in more detail in the FAC, the Defendants' explanation for the can-  
18 cellation was false and misleading. In addition, Defendants' true reason for cancelling the show-  
19 ing was unlawfully discriminatory, i.e. a denial of public accommodations (theater) to a person  
20 or group on the basis of that actual or perceived religious beliefs.  
21

22 **II. LEGAL ARGUMENT**

23 **A. A Timely Motion to Amend a Complaint Should be Liberally Permitted if It**  
24 **Does Not Result in Undue Prejudice to the Defendants**

25 This Court may grant leave to amend a pleading at any time to achieve substantial justice.  
26 The court may, in furtherance of justice, and on any terms as may be proper, allow a party to  
27

1 amend any pleading ... "Code of Civil Procedure § 473 subd. a(1) (emphasis added); see Code of  
2 Civil Procedure § 576 (court may permit amendments to pleadings at any time). California  
3 judicial policy favors permitting amendments to pleadings. See *Nestle v. Santa Monica* (1972) 6  
4 Cal.3d 920, 939, 101 Cal.Rptr. 568 (noting "the general rule ... of liberal allowance of amend-  
5 ments"); *Mabie v. Hyatt* (1998) 61 Cal.App.4<sup>th</sup> 581, 596, 71 Cal.Rptr.2d 657 ("If discovery and  
6 investigation develop factual grounds justifying a timely amendment to a pleading, leave to  
7 amend must be liberally granted"); see also *Berman v. Bromberg* (1997) 56 Cal.App.4th 936,  
8 945, 65 Cal.Rptr.2d 777 (right to amend pleadings "to correct inadvertent misstatements of facts  
9 or erroneous allegations of terms").

11 New legal theories may be introduced in amendments to the complaint so long as the  
12 proposed amendments "relate to the same general set of facts" of the situation. *Atkinson v. Elk*  
13 *Corp.* (2003) 109 Cal.App.4th 739, 761, 135 Cal.Rptr.2d 433 (citation omitted); see *Board of*  
14 *Trustees of Leland Stanford Jr. University v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163,  
15 57 Cal.Rptr.3d 755 (affirming liberality of rule: "it is a rare case in which a court will be justified  
16 in refusing a party leave to amend [a] pleading"); *Jaimez v. DAIHHS USA, Inc.* (2d Dist. 2010)  
17 181 Cal.App.4th 1286, 1308, 105 Cal.Rptr.3d 443 (same).

19 **B. Plaintiff Seeks Leave To Add The Name of An Individual Party Plaintiff.**

20 Plaintiff seeks to amend the FAC by adding the name of Plaintiff's President, Adrian  
21 (Avi) Davis. Mr. Davis is the founder and president of AFA. Mr. Davis, in both his individual  
22 capacity and as the president of AFA, was responsible for negotiating the agreement with Defen-  
23 dants to rent the theater and stood to incur the loss of funds when the agreement was breached by  
24 Defendants. (FAC, ¶ 11.) Were AFA to encounter some legal difficulties as an organization, Mr.  
25 Davis would still have standing to pursue this lawsuit because Mr. Davis had a personal stake  
26  
27

**MOTION FOR ORDER GRANTING LEAVE TO  
FILE SECOND AMENDED COMPLAINT**

1 invested in it. *See Vaughn v. Dame Construction Co.* (1990) 223 Cal.App.3d 144, 147-148, 272  
2 Cal.Rptr. 261 (party with personal interest in outcome has standing).

3 If there is no statute of limitations bar, then a court should permit amending the complaint  
4 to add a party plaintiff who has standing based on the same corpus of facts. *See Diliberti v. Stage*  
5 *Call Corp.* (1992) 4 Cal.App.4th 1468, 1470-1471. Here, the amendment to add Mr. Davis is  
6 offered just a few months after the initial Complaint was filed and prior to a hearing on Defen-  
7 dants' demurrer to the FAC. There is no reason to deny Plaintiff's motion to amend to add Mr.  
8 Davis as a party plaintiff.  
9

10 **C. Plaintiff Seeks Leave To Add The Legal Status of Individual Party Defen-**  
11 **dant.**

12 Plaintiff seeks to clarify its complaint by expressly alleging its causes of action against  
13 Defendant Jeffrey Rudolph, in his official capacity and in his individual capacity. "California  
14 allows great liberality in the amendment of pleadings, particularly when the only change is a  
15 substitution of parties without alteration of the substantive grounds of the suit." *Olsen v. Lock-*  
16 *heed Aircraft Corp.* (1966) 237 Cal.App.2d 737, 741(citations omitted). "[I]f one has been sued  
17 in individual capacity whereas his true liability, if any, is in representative capacity, amendment  
18 of the complaint to that effect may be permitted." *Sealite, Inc. v. Finster* (1957) 149 Cal.App.2d  
19 612, 618, 309 P.2d 51 (citation omitted). Courts generally permit amending complaints to allege  
20 a different status for the same individual defendant. 59 Am. Jur. 2d *Parties* § 256 (online ed.  
21 2010).  
22  
23

24 The Eleventh Amendment to the Constitution offers protection only from suits against a  
25 state officer in his or her official capacity; suits against state officials in their individual capaci-  
26 ties are afforded no such protection. *Scheuer v. Rhoades*, 416 U.S. 232, 238 (1974). Claims  
27

1 against state officers in their official capacities are, in effect, claims against the entity of which  
2 the officer is an agent. But “[p]ersonal-capacity suits, . . . , seek to impose individual liability  
3 upon a government officer for actions taken under color of state law. Thus, ‘[o]n the merits, to  
4 establish personal liability in a § 1983 action, it is enough to show that the official, acting under  
5 color of state law, caused the deprivation of a federal right.’” *Hafer v. Melo*, 502 U.S. 21, 25  
6 (1991) (quoting *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)). Officers sued in their individ-  
7 ual capacities are liable under § 1983 for damages resulting from deprivations of an individual’s  
8 federally-protected rights. *Hafer*, 502 U.S. at 30-31.

10 The FAC is ambiguous as to whether Plaintiff is suing RUDOLPH in his individual or  
11 official capacities as president of the California Science Center and president/CEO of the Cali-  
12 fornia Science Center Foundation. Defendants have entered appearances on Rudolph’s behalf in  
13 his official capacity only. Plaintiff now wishes to clarify the allegations of the Complaint and to  
14 assert its theories against RUDOLPH in both his official and individual capacities. These claims  
15 are not forbidden by the Eleventh Amendment and are not subject to dismissal. The fact that  
16 RUDOLPH may have acted in the scope and course of his employment in causing the depriva-  
17 tion of the Plaintiffs’ rights does not transform these claims into “official-capacity” claims.  
18 “[S]tate officials, sued in their individual capacities, are ‘persons’ within the meaning of § 1983.  
19 The Eleventh Amendment does not bar such suits, nor are state officers absolutely immune from  
20 personal liability under § 1983 solely by virtue of the ‘official’ nature of their acts.” *Hafer*, 502  
21 U.S. at 31.

24 Thus, Rudolph can be held personally liable for damages resulting from any deprivation  
25 of federal rights he caused. It does not matter that he was acting as a state official in doing so; if  
26 he acted under color of state law and caused a deprivation of rights, he is answerable for that un-  
27

1 der § 1983. A state official does not have to be acting in his own, personal interest in order to be  
2 sued and held liable in his individual capacity.

3 Here, Defendant Rudolph has been on notice of the allegations against him since at least  
4 the filing of the FAC. Clarifying the Complaint to allege Rudolph's capacity will have no subs-  
5 tantive effect on the factual bases for the causes of action alleged. Following the judicial policy  
6 favoring the amendment of pleadings to allow for a relevant decision on the substantive merits,  
7 this Court should permit this amendment.  
8

9 **D. Plaintiff Seeks Leave To Add A Cause Of Action For Violation Of The Un-**  
10 **ruh Act On Same Corpus of Facts With Additional Evidence Discovered.**

11 Plaintiff seeks to amend its complaint to add a California state law cause of action for un-  
12 lawful discrimination in public accommodations on the basis of Plaintiff's actual or perceived  
13 religion. A provision of the Unruh Act, *Civil Code* § 51, subd. b, guarantees freedom of use and  
14 access to business establishments of any kind, regardless of religion or other enumerated charac-  
15 teristic:  
16

17 (b) All persons within the jurisdiction of this state are free and equal, and no matter what  
18 their sex, race, color, religion, ancestry, national origin, disability, medical condition, mar-  
19 ital status, or sexual orientation are entitled to the full and equal accommodations, ad-  
20 vantages, facilities, privileges, or services in all business establishments of every kind  
21 whatsoever.

22 Under *Civil Code* § 51. 5, discrimination on the basis of actual or perceived religious be-  
23 liefs is prohibited:

24 (a) *No business establishment of any kind whatsoever shall discriminate* against, boycott  
25 or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this  
26 state on account of any characteristic listed or defined in *subdivision (b)* or (e) of Section  
27 51, or of the person's partners, members, stockholders, directors, officers, managers, su-  
perintendents, agents, employees, business associates, suppliers, or customers, because  
28 *the person is perceived to have one or more of those characteristics*, or because the per-  
son is associated with a person *who has, or is perceived to have, any of those characteris-*  
*tics.* Cal. Civ. Code § 51. 5 subd. a (emphasis added).

1 Defendants in this case offered a theater for public rental to show films to the public.  
2  
3 (FAC, ¶ 48.) A theater is a “business establishment” within the purview of the Unruh Act, specif-  
4 ically *Civil Code* § 51 and § 51. 5. *Nicholls v. Holiday Panay Marina, L.P.* (2009) 173  
5 Cal.App.4th 966, 972 (theater is public accommodation under disability law).

6 California law forbade Defendants from denying the use of the theater on arbitrary  
7 grounds, such as the user’s actual or perceived religion. “Theaters and like places of a public or  
8 quasi-public character are generally held to be included within the operation of statutes which  
9 forbid [unlawful] discrimination ...” *Suttles v. Hollywood Turf Club* (1941) 45 Cal.App.2d 283,  
10 285; see *Starkman v. Mann Theatres Corp.* (1991) 227 Cal.App.3d 1491 (theater deemed un-  
11 questionably a public accommodation).  
12

13 The Unruh Act expresses the state and national policy against arbitrary discrimination,  
14 and the Act is construed liberally to carry out its purpose. *Angelucci v. Century Supper Club*  
15 (2007) 41 Cal.4th 160, 167. The Act’s provisions are intended to actively create and preserve a  
16 nondiscriminatory environment in California business establishments by “banishing” or “eradi-  
17 cating” arbitrary, invidious discrimination by such establishments. *Isbister v. Boys’ Club of San-*  
18 *ta Cruz, Inc.* (1985) 40 Cal.3d 72, 75-76. “The Act stands as a bulwark protecting each person’s  
19 inherent right to ‘full and equal’ access to ‘all business establishments.’” *Angelucci, supra*, 41  
20 Cal.4<sup>th</sup> at 167 (citing *Civil Code* § 51, subd. (b) and *Isbister, supra*). “The Act, like the common  
21 law principles upon which it was partially based, imposes a compulsory duty upon business es-  
22 tablishments to serve all persons without arbitrary discrimination.” *Angelucci, supra*, 41 Cal.4th  
23 at 167 (citing *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 738 and *Warfield v. Peninsula*  
24 *Golf & Country Club* (1995) 10 Cal.4th 594, 607-608.  
25  
26  
27  
28

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1 In this case, Defendants initially entered into a contract under which Plaintiff could use  
2 Defendants' IMAX theater for a public showing of two films. When Defendants learned that  
3 Plaintiff would be presenting content relating to intelligent design, they (incorrectly) perceived it  
4 to be religious in nature, referring to AFA and The Discovery Institute as "creationist" groups.  
5 Defendants agreed among themselves to breach the contract and thereby block Plaintiff from us-  
6 ing the theater. Under the Unruh Act's express provisions, Defendants' conduct constituted dis-  
7 crimination on the basis of actual or perceived religion or religious beliefs.  
8

9 Exhibit "A" in support of this motion is a copy of e-mail messages exchanged among De-  
10 fendants, their employees and others. These e-mail messages refer to The Discovery Institute,  
11 who Defendants apparently believed was a publisher of or contributor to one of the films, as "cr-  
12 eationist." The term "creationism" refers to a religious belief system. The online dictionary of  
13 Random House defines creationism as "the doctrine that matter and all things were created ... by  
14 an omnipotent Creator ... the doctrine that the true story of the creation of the universe is as ...  
15 recounted in the Bible ... the doctrine that God immediately creates out of nothing a new human  
16 soul for each individual born."<sup>1</sup>  
17

18 The e-mails assert a link between Plaintiff AFA and the "creationist" Discovery Institute  
19 that implies a common set of religious beliefs. Another e-mail message pejoratively notes the  
20 "nature" of AFA and/or Discovery Institute. (FAC ¶ 26.) In the e-mail, Christina M. Sion, vice  
21 president, Food & Event Services at the Defendant Center, stated, "I would love to cancel them  
22 altogether," after others pointed out this religious link. (See Exhibit "A", collection of e-mails.)  
23  
24

25  
26 <sup>1</sup> Dictionary.com unabridged, based on the *Random House Dictionary* (2010),  
27 <http://dictionary.reference.com/browse/creationism>; see *McLean v. Arkansas Bd. of Ed.* (D.Ark.  
28 1982) 529 F.Supp. 1255, 1259, 1265-1266 (describing "creationism" as a religious Christian  
doctrine based upon the Bible).

1 Plaintiff thus has an adequate basis to allege that Defendants canceled and thereby  
2 breached the theater contract with AFA *because* Defendants thought either: (1) AFA and Mr.  
3 Davis hold "creationist" religious beliefs; or (2) AFA and Mr. Davis associate with persons or an  
4 organization that holds "creationist" religious beliefs; or (3) both. By breaching the event  
5 agreement, Defendants barred Plaintiff and Mr. Davis from using the public accommodation  
6 (theater) on the basis of actual or perceived religious beliefs or associations with persons holding  
7 certain religious beliefs. Therefore, Defendants' breach of the theater contract constituted a vi-  
8 olation of the Unruh Act, *Civil Code* §§ 51 and 51.5.

10 The Unruh Act cause of action against the Defendants arises from the same transaction  
11 and same corpus of facts as does the FAC. Defendants have been on notice of the essential facts  
12 pleaded, so adding the Unruh Act claim cannot prejudice Defendants – they already know the  
13 alleged facts, and the e-mail messages took place among Defendants and their employees.

15 **E. Plaintiff Seeks Leave To Add Causes Of Action For Constitutional and Civil  
16 Rights Violations, and for Civil Conspiracy.**

17 Plaintiff's proposed Second Amended Complaint also adds causes of action violations of  
18 First Amendment rights (speech and association), violation of Fourteenth Amendment rights  
19 (due process and equal protection), and conspiracy to violate such rights. These causes of action  
20 are based upon the same underlying facts as the breach of contract and Unruh Act cause of action  
21 (see above). The new claims are based on information obtained in discovery that demonstrates a  
22 need to assert these new claims.

24 Discovery has revealed facts giving rise to allegations of a civil conspiracy to deprive  
25 Plaintiff of constitutional rights. 42 U.S.C. § 1985 provides a constitutional right of action for  
26 conspiracy to interfere with civil rights, and 42 U.S.C. § 1986 provides a constitutional right of  
27

1 action for failure to prevent a conspiracy is actionable. Defendants CENTER and  
2 FOUNDATION are a private-public partnership. RUDOLPH serves as president of the  
3 CENTER and president/CEO of the FOUNDATION. Yet responses to discovery requests  
4 served on them indicate that they are taking a position that RUDOLPH can distinguish between  
5 his duties on behalf of each organization, and that employees of the FOUNDATION working at  
6 the CENTER are not also employees of the CENTER. By virtue of the symbiotic nature of these  
7 organizations, the fact that they both perform identical public functions, their close and joint  
8 nexus, their joint participation in the management and operation of the CENTER and their perva-  
9 sive entwinement, Plaintiff contends that any distinctions made between the two organizations is  
10 merely a fiction devised to avoid constitutional liability. However, if the two Defendants are  
11 separate, then the acts and omissions taken by each to deprive Plaintiffs of their First Amend-  
12 ment rights of speech and association would constitute civil conspiracy. *See People v. Beaumont*  
13 *Inv., Ltd.* (2003) 111 Cal.App.4th 102, 137, 3 Cal.Rptr.3d 429 (elements of civil conspiracy: (1)  
14 agreement to commit wrongful acts; (2) a conspirator's commission of said acts; and (3) damage  
15 resulting). A party harmed by a conspiracy "is entitled to damages from those defendants who  
16 concurred in the tortious scheme with knowledge of its unlawful purpose." *Wyatt v. Union Mort-*  
17 *gage Co.* (1979) 24 Cal.3d 773, 784, 157 Cal.Rptr. 392. The Second Amended Complaint alleges  
18 all necessary elements of conspiracy as well as the Defendants' violations of Plaintiffs' legal,  
19 civil and Constitutional rights.

20  
21  
22  
23 The freedom of association protected by the First Amendment includes the right to asso-  
24 ciate for the purpose of engaging in activities protected by the First Amendment, including  
25 speech, assembly, petition for the redress of grievances, and the exercise of religion. *Hart v. Cult*  
26 *Awareness Network*, 13 Cal. App. 4th 777 (2d Dist. 1993).

1 Discrimination against members of organizations violates both the First Amendment and  
2 the Equal Protection Clause. See *Widmar v. Vincent*, 454 U.S. 263 (1981) (exclusion of religious  
3 student club from university facilities invalid); *Healy v. James*, 408 U.S. 169 (1972) (university  
4 must recognize radical student groups willing to abide by reasonable rules).

5 A person may not be denied the right to contract with a public entity. See *O'Hare Truck*  
6 *Service, Inc. v. City of Northlake*, 518 U.S. 712 (1996) (independent government contractor, or  
7 regular provider of services protected by First Amendment against termination for refusing to  
8 support political party or its candidates unless political affiliation a reasonably appropriate re-  
9 quirement for effective performance of contract); *Labalokie v. Capital Area Intermediate Unit*,  
10 926 F. Supp. 503 (M.D. Pa. 1996) (termination of independent bus contractor subject to same  
11 First Amendment protection as public employees).

12  
13 **III. THE PROPOSED SECOND AMENDED COMPLAINT SO SUBSTANTIALLY**  
14 **REVISES THE CURRENT OPERATIVE COMPLAINT THAT TO INDICATE**  
15 **CHANGES BY PAGE, LINE AND PARAGRAPH NUMBERS WOULD BE**  
16 **IMPRACTICABLE.**  
17

18 Plaintiff is aware of the California Rules of Court requirement to specify the page, line  
19 and paragraph numbers of inserted and deleted information. However, the proposed amended  
20 complaint has undergone so substantial a revision that to perform such an undertaking would not  
21 well serve the Court's purpose in reviewing the changes.

22 Instead, Plaintiff has attached to the declaration of William J. Becker, Jr., a colored doc-  
23 ument showing all revisions.  
24

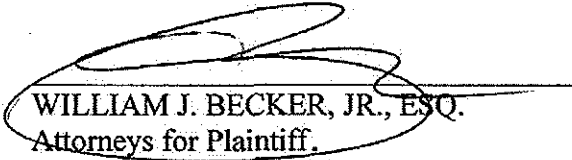
1 **IV. CONCLUSION**

2 Plaintiff respectfully requests this Court to issue an order permitting Plaintiff to file the  
3 Second Amended Complaint (1) adding a party plaintiff in privity with the existing Plaintiff; (2)  
4 clarifying the allegation of Defendant Rudolph's status; (3) adding an Unruh Civil Rights Act  
5 cause of action alleging unlawful discrimination on the basis of perceived religion, which is  
6 grounded on the same transaction and facts as alleged in the First Amended Complaint against  
7 the same Defendants; (4) adding a violation of the Equal Protection Clause because discrimina-  
8 tion against members of organizations violates both the First Amendment and the Equal Protec-  
9 tion Clause; (5) adding federal civil conspiracy causes of action; and (6) adding California con-  
10 stitutional claims that run parallel to the federal constitutional claims.

11  
12 DATED: April 19, 2010

**THE BECKER LAW FIRM**

13  
14  
15 By:

  
16 WILLIAM J. BECKER, JR., ESQ.  
Attorneys for Plaintiff.  
17 AMERICAN FREEDOM ALLIANCE

1                   **DECLARATION OF WILLIAM J. BECKER, JR., IN SUPPORT OF**

2                                   **PLAINTIFF'S AFA's MOTION FOR LEAVE**

3   **TO FILE AMENDED COMPLAINT**

4  
5           I, WILLIAM J. BECKER, JR., declare as follows:

6           1.       I am an attorney admitted to practice before all the courts in the State of  
7 California. I am counsel of record for Plaintiff AMERICAN FREEDOM ALLIANCE,  
8 Plaintiff herein ("Plaintiff"). The following facts and circumstances are personally known  
9 to me, and if called upon to do so, I could and would competently testify as to them.

10  
11           2.       This Declaration is made in support of AFA's Motion for Leave to File  
12 Amended Complaint.

13           3.       Attached hereto and incorporated herein by reference as Exhibit "A" is a  
14 true and correct copy of a series of e-mail exchanges obtained through discovery, Bates  
15 Stamped CSCF0000229-231.

16  
17           4.       Attached hereto and incorporated herein by reference as Exhibit "B" is a  
18 document showing the revisions made to the First Amended Complaint, submitted in lieu  
19 of reference to page, paragraph and line references.

20           5.       Effect of the Amendments: Plaintiff is seeking leave to (1) add a party  
21 plaintiff in privity with the existing Plaintiff; (2) clarify the allegation of Defendant  
22 Rudolph's status by alleging liability on the basis of both individual and official  
23 capacities; (3) add an Unruh Civil Rights Act cause of action for unlawful discrimination  
24 on the basis of perceived religion, which is grounded on the same transaction and facts as  
25 alleged in the First Amended Complaint against the same Defendants; (4) adding a  
26 violation of the Equal Protection Clause because discrimination against members of  
27  
28

1 organizations violates both the First Amendment and the Equal Protection Clause; (5)  
2 adding federal civil conspiracy causes of action; and (6) adding California constitutional  
3 claims that run parallel to the federal constitutional claims.

4  
5 6. Plaintiff has additionally deleted inessential factual allegations and  
6 commentary contained in the FAC.

7 7. Why the amendments are necessary and proper: Discovery responses and  
8 additional information learned during the course of discovery justifies adding additional  
9 constitutional claims, including claims related to right of association, conspiracy to  
10 deprive Plaintiff of constitutional rights, California parallel constitutional claims, and  
11 discrimination based on Defendants' business establishment status. It is necessary to  
12 vindicate Plaintiffs' rights as to each of these constitutional violations and would amount  
13 to a gross injustice if Plaintiff were denied the right to raise these important constitutional  
14 challenges.  
15

16  
17 8. Additionally, Plaintiff is a 501(c)(3) charitable organization with limited  
18 funding and resources founded and managed by a single individual, Avi Davis. It is  
19 Davis' only source of revenue and income. Any loss that devolves to AFA also devolves  
20 to Mr. Davis.

21  
22 9. When the facts giving rise to the amended allegations were discovered:  
23 Review of a substantial body of documents produced by Defendants has required the my  
24 exclusive attention for approximately two months. The legal theories giving rise to the  
25 proposed amendments became known to me in early April as I evaluated almost 2000  
26 pages of documents produced and other discovery responses, met and conferred with  
27 opposing counsel to learn their defense theories, e.g., their position that the individuals  
28

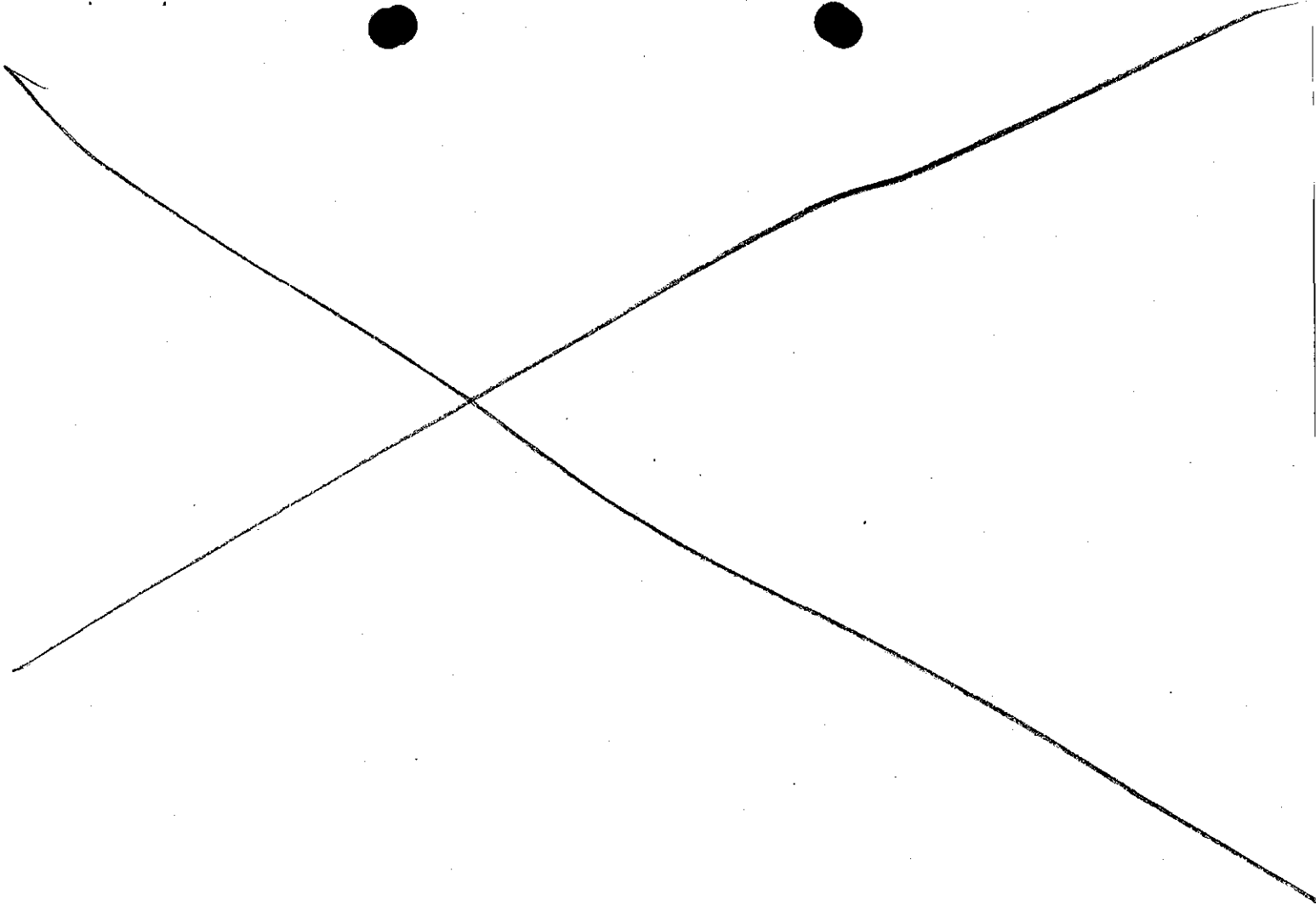
1 responsible for communicating their views to Defendant Jeffrey Rudolph that the event  
2 should be cancelled because of the perception that Plaintiff was a "creationist"  
3 organization are employees of Defendant California Science Center Foundation but not  
4 employees of Defendant California Science Center.  
5

6 10. Reasons why the request for amendment was not made earlier: I am a solo  
7 attorney, unstaffed, working full-time of several active constitutional cases in state and  
8 federal court locally and out of town. I began to recognize the need to amend the  
9 complaint in the course of opposing a pending motion by Defendants to compel  
10 documents and opposing their demurrers, which helped me focus on the issues in the  
11 case.  
12

13 I declare under penalty of perjury, under the laws of the State of California, that  
14 the foregoing is true and correct.  
15

16 Executed this 19<sup>th</sup> day of April, 2010, at Los Angeles, California.  
17

18   
19 William J. Becker, Jr., Declarant  
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EXHIBIT "A"

**Chris Sion**

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**From:** Chris Sion  
**Sent:** Monday, October 05, 2009 2:54 PM  
**To:** Shell Amega; William Harris  
**Cc:** Paula Wagner; Kristina Kurasz; Joe DeAmicis; Jeff Rudolph  
**Subject:** RE: Creationist organization implies that the Calif. Science Center is sponsoring Darwin film

Thanks so much, Shell. I am heading off to start setting up for the AAM reception tonight, but I would love to call them today so we can nip this in the bud. I will check in to see what everyone proposes. I am so bugged!!!

Thanks so much,  
Chris

---

**From:** Shell Amega  
**Sent:** Monday, October 05, 2009 2:41 PM  
**To:** Chris Sion; William Harris  
**Cc:** Paula Wagner; Kristina Kurasz; Joe DeAmicis; Jeff Rudolph  
**Subject:** RE: Creationist organization implies that the Calif. Science Center is sponsoring Darwin film

Thank you for this background Chris - I agree and think cancelling them would send the clearest message that we don't appreciate the way they misrepresented but the Science Center and the Smithsonian - but I agree, we need to hear back from Jeff and William first. I will keep everyone posted.

~Shell

---

**From:** Chris Sion  
**Sent:** Monday, October 05, 2009 2:20 PM  
**To:** Shell Amega; William Harris  
**Cc:** Paula Wagner; Kristina Kurasz; Joe DeAmicis; Jeff Rudolph  
**Subject:** RE: Creationist organization implies that the Calif. Science Center is sponsoring Darwin film

Hi Shell,

Thanks so much for bringing this to our attention - it's disturbing. This relates to a private IMAX screening (3<sup>rd</sup> party) that is being hosted by the American Freedom Alliance on October 25<sup>th</sup>. Joel Stromm called and asked if we would be a "partner" in this screening and I said no. A science center should not even be asked to partner w/ any group associated w/ debating Darwinism - it's not our place - and I reiterated how this is a private screening only and should be advertised as such. Where they came up w/ the verbiage especially about being a west coast affiliate of the Smithsonian etc is beyond me and was never discussed.

They have been a difficult group from the beginning but because Joel's wife, Holly, is on their board, I felt compelled to be helpful.

I can do one of two things - 1) I could call Joel and tell him that is outrageous and to ask this organization to remove all reference to our facility from their materials or 2) I could call the client directly and say the same. I'd love to cancel them actually all together - they have been an

1/6/2010

EXA

CSCF0000229

enormous pain.

Perhaps William would like to weigh in before I take action. Sorry - this is so frustrating!

Thanks so much,  
Chris

**From:** Shell Amega  
**Sent:** Monday, October 05, 2009 2:05 PM  
**To:** Jeff Rudolph; William Harris  
**Cc:** Paula Wagner; Kristina Kurasz; Joe DeAmicis; Chris Sion  
**Subject:** Creationist organization implies that the Calif. Science Center is sponsoring Darwin film  
**Importance:** High

Hi William and Jeff,

The Smithsonian institute called and was alarmed at the news release from a creationist organization, the Discovery Institute, below because it implied that the Science Center officially supports the creationist film that is set to screen on Oct. 25. It is also alarmed with the implication that the Smithsonian is involved and would like us to issue a correction statement on PR newswire as to what our role is and that we are just one of many Smithsonian affiliates on the west coast. They said that this group had booked at the Smithsonian to screen the film and the Smithsonian pulled the plug on the screening when they found out. Please advise on how you'd like us to proceed.

#### **Intelligent Design Film to Premiere at Smithsonian Institution Affiliated Science Center**

***Darwin's Dilemma: The Mystery of the Cambrian Fossil Record* will be screened Oct. 25th**

WASHINGTON, Oct. 5 /PRNewswire-USNewswire/ -- The debate over Darwin will come to the Smithsonian Institution's west coast affiliate on October 25th, with the premiere of *Darwin's Dilemma: The Mystery of the Cambrian Fossil Record*, a new intelligent design film which challenges Darwinian evolution. To view a trailer and clips from the film, please visit [www.darwinsdilemma.org](http://www.darwinsdilemma.org).

*Darwin's Dilemma* will be screened at 7 p.m. on Sunday, October 25th in the IMAX Theater at the California Science Center, a specially designated Smithsonian affiliation. Following the film will be a post-film discussion featuring Darwin skeptic Dr. David Berlinski, author of *The Devil's Delusion: Atheism and its Scientific Pretensions*, and leading intelligent design scientist Dr. Jonathan Wells, biologist and author of *Icons of Evolution*. The screening is sponsored and hosted by the American Freedom Alliance.

The hour-long documentary explores one of the great mysteries in the history of life: the sudden appearance of dozens of major complex animal types in the fossil record without any trace of the gradual transitional steps predicted by Darwin. Frequently described as "the Cambrian Explosion," the development of these new animal types required a massive increase in genetic information.

The film, shot on location at fossil digs in China and Canada, traces Darwin's own study of the fossil record and recreates the prehistoric world of the Cambrian era with state-of-the-art computer animation. *Darwin's Dilemma* also features interviews with leading evolutionary paleontologists such as Simon Conway Morris of Cambridge University and James Valentine of the University of California at Berkeley, as well as Dr. Stephen Meyer, Dr. Wells, and other intelligent design proponents.

Hi Shell,

Page 3 of 3

In 2005, the Discovery Institute premiered the film *The Privileged Planet* at the Smithsonian's Museum of Natural History.

Best regards,  
Shell

Shell Amega  
Vice President | Communications  
California Science Center  
(213) 744-7496  
[samega@cscmail.org](mailto:samega@cscmail.org)  
[www.californiasciencecenter.org](http://www.californiasciencecenter.org)

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1 9. A permanent injunction against Defendants, and each of them, enjoining Defendants  
2 from refusing to allow Plaintiff Plaintiffs access to the California Science Center for  
3 the ~~presentation~~ purpose of presenting events, including events presenting information  
4 concerning the theory of intelligent design;

5  
6 10. Reasonable attorneys' fees, costs and expenses pursuant to 42 U.S.C. section 1988  
7 and other applicable law;

8 11. Reasonable attorneys' fees, costs and expenses and other remedies pursuant to the  
9 Unruh Civil Rights Act, Civil Code §§ 51, et seq.;

10 ~~11-12.~~ Such other and further relief as the Court may deem just and proper.

11 DATED: ~~November 18~~ April 19, 2009

\_\_\_\_\_ **THE BECKER LAW FIRM**

12  
13  
14 By:

15 WILLIAM J. BECKER, JR., ESQ.  
16 Attorneys for Plaintiff Plaintiffs,  
17 AMERICAN FREEDOM ALLIANCE and  
18 ADRIAN (AVI) DAVIS

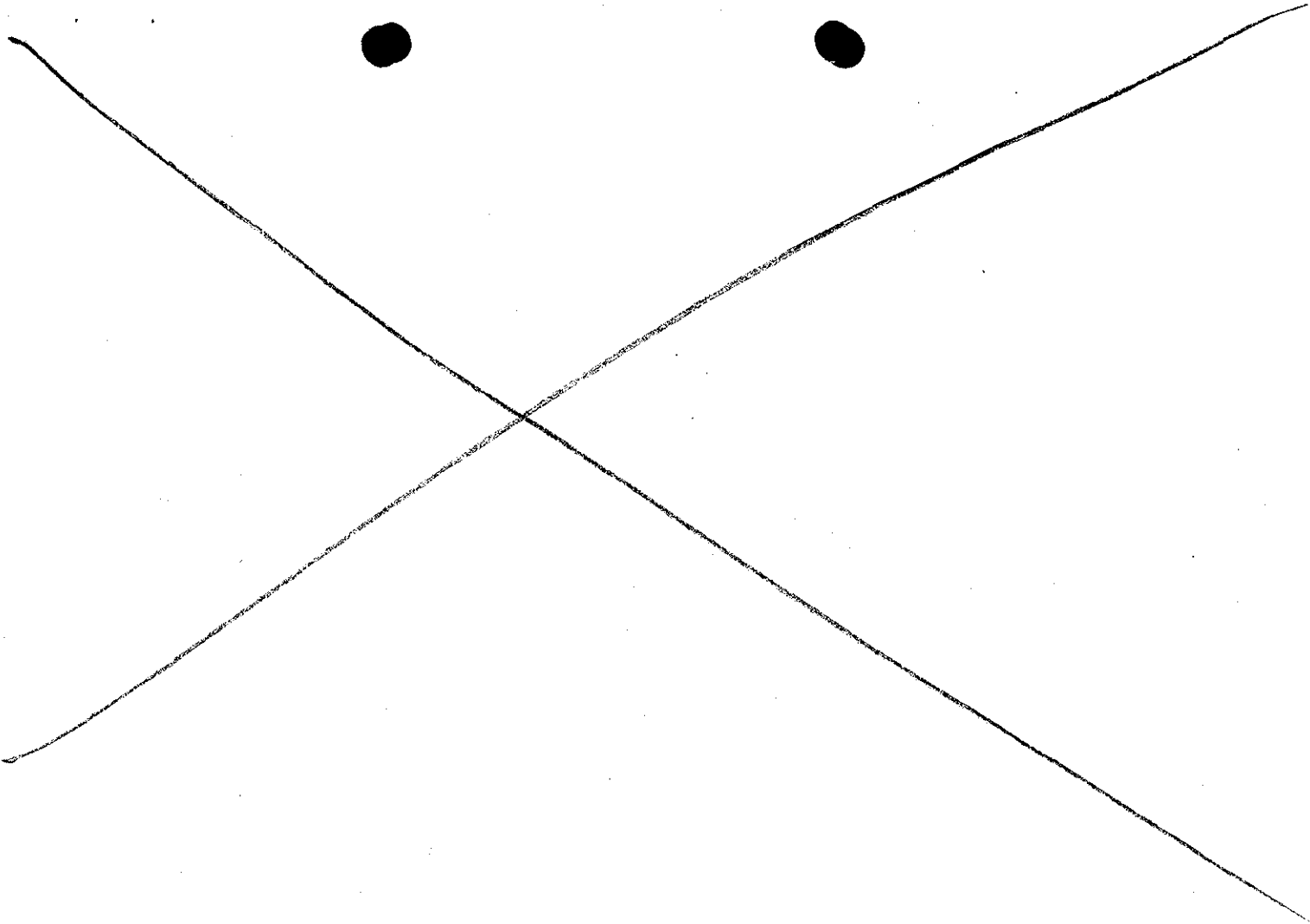


EXHIBIT "B"

1 William J. Becker, Jr., Esq. (SBN 134545)  
2 **THE BECKER LAW FIRM**  
3 11500 Olympic Blvd., Suite 400  
4 Los Angeles, California 90064  
5 Phone: (310) 636-1018  
6 Fax: (310) 765-6328

7 Attorneys for ~~Plaintiff~~, Plaintiffs,  
8 AMERICAN FREEDOM ALLIANCE and  
9 ADRIAN (AVI) DAVIS

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 AMERICAN FREEDOM ALLIANCE, a  
13 nonprofit corporation; and ADRIAN (AVI)  
14 DAVIS;

15 Plaintiff~~Plaintiffs~~,

16 vs.

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

23 Defendants.

Case No. BC423687

~~FIRST~~SECOND AMENDED  
COMPLAINT

1. BREACH OF CONTRACT
2. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
3. VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION (SPEECH) (42 U.S.C. SECTION § 1983)
4. VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION (ASSOCIATION) (42 U.S.C. § 1983)
5. CONSPIRACY (42 U.S.C. § 1985(3))
6. FAILURE TO PREVENT VIOLATIONS AND CIVIL CONSPIRACY (42 U.S.C. § 1986)
7. VIOLATION OF THE FOURTEENTH AMENDMENT'S EQUAL PROTECTION CLAUSE
8. VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (CIVIL CODE §§ 51 and 51.5)

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EXB

- 9. VIOLATION OF THE CALIFORNIA CONSTITUTION, ART. 1, §§ 2, 3 & 4
- 4.10. FRAUD (INTENTIONAL MISREPRESENTATION, DECEIT, CONCEALMENT AND DECEIT-)
- 5.11. INJUNCTIVE RELIEF
- 6.12. DECLARATORY RELIEF

PlaintiffPlaintiffs AMERICAN FREEDOM ALLIANCE and ADRIAN (AVI) DAVIS (hereinafter "PlaintiffPlaintiffs"), by and through ~~it~~their attorneys of record herein, bring this Complaint against the above-named Defendants, and in support thereof allege the following:

///  
///

**I. PARTIES**

1. Plaintiff, AMERICAN FREEDOM ALLIANCE, (hereinafter "Plaintiff")Plaintiff, American Freedom Alliance (hereinafter "AFA"). is and at all relevant times was a nonprofit corporation duly organized and existing under the laws of California with its principal place of business in Los Angeles, California. AFA is a non-political, non-partisan, movement of concerned Americans that promotes networking, activism and education on a variety of public issues, including the growth of Islam in Europe, the United States and Canada, media bias, and academic freedom. AFA's conferences, programs, publications, websites and networking groups develop tools and strategies to counter ideologies which underlie these threats, including radical Islam, moral and cultural relativism, and academic and scientific ideological conflicts.

2. Plaintiff, Adrian (Avi) Davis (hereinafter "DAVIS"). is an individual and the president of AFA, residing at all relevant times within the County of Los Angeles, California.

3. Defendant, California Science Center (hereinafter "CENTER"), is a department of the State of California, located and doing business at 700 Exposition Park Drive, Los Angeles,

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1 CA 90037. CENTER purports to "aspire to stimulate curiosity and inspire science learning in  
2 everyone by creating fun, memorable experiences, because we value science as an indispensable  
3 tool for understanding our world, accessibility and inclusiveness, and enriching people's lives."

4 4.4. Defendant, California Science Center Foundation (hereinafter "FOUNDATION")  
5 is and at all relevant times was a nonprofit corporation duly organized and existing under the  
6 laws of California with its principal place of business in Los Angeles, California.

7 FOUNDATION raises funds to support exhibits and education programs featured at the  
8 CENTER, and manage exhibitions and programs of scientific, educational and industrial interest.

9 5. Defendants CENTER and FOUNDATION together form a joint public-private  
10 partnership ("PPP") venture entailing investment of significant capital in the venture by the  
11 FOUNDATION, the private entity.

12 2. Defendant, CALIFORNIA SCIENCE CENTER, Jeffrey Rudolph (hereinafter  
13 "CENTER") is a department of the State of California, located and doing business at 700 Expositi-  
14 tion Park Drive, Los Angeles, CA 90037.

15 3. Defendant, CALIFORNIA SCIENCE CENTER FOUNDATION, (hereinafter  
16 "FOUNDATION") is and at all relevant times was a nonprofit corporation duly organized and  
17 existing under the laws of California with its principal place of business in Los Angeles, Califor-  
18 nia.

19 4.6. Defendant, JEFFREY RUDOLPH, (hereinafter "RUDOLPH"), is an individual  
20 and at all relevant times is and was the President and CEO of Defendant CENTER and the Presi-  
21 dent of Defendant FOUNDATION (see [http://www.californiasciencecenter.org/GenInfo/](http://www.californiasciencecenter.org/GenInfo/AboutUs/Governance/Bio/Bio.php)  
22 AboutUs/Governance/Bio/Bio.php, accessed on November 16, 2009).- RUDOLPH is sued in his  
23 official capacity as an agent/employee of the CENTER and the FOUNDATION, and in his indi-  
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1 vidual capacity. On information and belief, RUDOLPH resides within the jurisdiction of this  
2 Court and is subject to litigation in this venue.

3 5.7. The true names and capacities of Defendants sued herein as DOES 1 through 50,  
4 inclusive, are unknown to Plaintiff~~Plaintiffs~~, who therefore sues such Defendants by such ficti-  
5 tious names pursuant to Code of Civil Procedure §474. Plaintiff~~alleges~~Plaintiffs allege that each  
6 fictitiously named Defendant acted or failed to act in such a manner that each has contributed in  
7 proximately causing the damages to Plaintiff~~Plaintiffs~~ as herein alleged. Plaintiff~~Plaintiffs~~ will  
8 seek leave of Court to amend this Complaint to set forth their true names and capacities when  
9 ascertained.

10  
11 6.8. Plaintiff~~is~~Plaintiffs are informed and believes~~believe~~, and thereon alleges~~allege~~,  
12 that each of the Defendants sued herein, including those named herein as DOES, are the agents,  
13 servants, employees, licensees, guarantes, invitees, or assignees of each other, and in doing the  
14 things herein alleged acted within the course and scope of such agency, employment guaranty,  
15 assignment, license, invitation and/or relationship and with the full knowledge and consent of the  
16 remaining Defendants.

17  
18 **II. FACTS COMMON TO ALL ALLEGATIONS**

19 7. Plaintiff is a non-political, non-partisan, movement of concerned Americans that  
20 promotes networking, activism and education on a variety of public issues, including the growth  
21 of Islam in Europe, the United States and Canada, media bias, and academic freedom. Plaintiff's  
22 conferences, programs, publications, websites and networking groups develop tools and strate-  
23 gies to counter ideologies which underlie these threats, including radical Islam, moral and cultur-  
24 al relativism, and academic and scientific ideological conflicts.

1           8. ~~Defendant CENTER is a department of the State of California that purports to~~  
2 ~~“aspire to stimulate curiosity and inspire science learning in everyone by creating fun, memora-~~  
3 ~~ble experiences, because we value science as an indispensable tool for understanding our world,~~  
4 ~~accessibility and inclusiveness, and enriching people's lives.”~~

5           9. ~~Defendant FOUNDATION raises funds to support exhibits and education pro-~~  
6 ~~grams featured at the CENTER, and manage exhibitions and programs of scientific, educational~~  
7 ~~and industrial interest.~~

8           10. ~~Defendants CENTER and FOUNDATION together form a joint public-private~~  
9 ~~partnership (“PPP”) venture entailing investment of significant capital in the venture by the~~  
10 ~~FOUNDATION, the private entity. The PPP business arrangement has been described as a form~~  
11 ~~of private involvement in the financing of public functions, which “has become an increasingly~~  
12 ~~pervasive and significant means of underwriting projects and events in which the general public~~  
13 ~~has an important interest and from which the state derives substantial benefits. This is true espe-~~  
14 ~~cially in the context of dwindling public resources available for certain activities for which the~~  
15 ~~government may be reluctant to exercise its powers to tax the entire citizenry.” People for Ethical~~  
16 ~~Treatment of Animals v. Giuliani, 105 F.Supp.2d 294, 328 (S.D.N.Y., 2000). “Thus, the pri-~~  
17 ~~rate entities which participate in such joint ventures with the state become critical members of~~  
18 ~~the “public” whose particular interests must be given special weight in any evaluation of the~~  
19 ~~rules and management pertaining to the public-private enterprise. In this context, the private enti-~~  
20 ~~ties’ interest in the commercial success of the venture in accordance with the regulations adopted~~  
21 ~~for its management takes heightened importance and must be considered along with the interests~~  
22 ~~of the government and weighed against the interests of the persons whose access to public ex-~~  
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1 ~~pression may be somewhat curtailed by the limitations imposed in connection with the partner-~~  
2 ~~ship's enterprise." Id. At 328-329.~~

3 ~~11.9.~~ On or about September 30, 2009, Plaintiff's President Avi Davis (hereinafter  
4 "Plaintiff DAVIS") entered into a written contract (hereinafter the "contract") on Plaintiff's be-  
5 half of AFA and himself with Defendants, CENTER and each of them, FOUNDATION for an  
6 event titled "We Are Born of Stars IMAX Screening" scheduled for the evening of Sunday, Oc-  
7 tober 25, 2009, at the CENTER's IMAX Theatre in Los Angeles (hereinafter the "EVENT").  
8 DAVIS agreed to pay Defendants an estimated \$4,310.00 due before October 20, 2009, as con-  
9 sideration for the use of the venue.

11 ~~12.10.~~ The contract consisted of three documents: (1) an "Event Letter of Agreement;"  
12 (2) a document entitled "Event Policies and Procedures;" and (3) an "Event Price Estimate."  
13 **(Attached hereto and incorporated by reference herein as Exhibit "A" are true and correct**  
14 **copies of the three contract documents constituting the written contract.)**

16 ~~13.11.~~ The EVENT consisted of a screening of the IMAX film "We Are Born of the  
17 Stars (3D)," which is described as the first Anaglyph single projector 3D film created for  
18 IMAX/IMAX Dome projection. Using computer graphics, the film traces the development of life  
19 from the formation of atomic nuclei in stars to the molecular structure of water and DNA, zoom-  
20 ing the audience through the five-billion-year evolution of our solar system. It purports to ex-  
21 press a positive view of evolutionary theory.

23 ~~14.12.~~ The EVENT also consisted of the screening of "Darwin's Dilemma: The Mystery  
24 of the Cambrian Fossil Record" (hereinafter "Darwin's Dilemma" or the "Documentary"), a do-  
25 cumentary exploring one of the great mysteries in the history of life: the geologically-sudden ap-  
26 pearance of dozens of major complex animal types in the fossil record without any trace of the  
27  
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1 gradual transitional steps Charles Darwin had predicted. The Documentary was produced and  
2 released by Illustra Media, an independent film production company based in Los Angeles, and  
3 features scientists speaking both for and against the modern theory of evolution, including Uni-  
4 versity of Cal, Berkeley, paleontologist James Valentine, Cambridge University paleoecologist  
5 Simon Conway Morris, philosopher of science Stephen C. Meyer, evolutionary biologist Richard  
6 Sternberg, and biologist Jonathan Wells.

7  
8 ~~15-13.~~ In the Documentary, some of these scientists, including Drs. Meyer, Wells, and  
9 Sternberg, propose the scientific theory of intelligent design as a an explanation for the explosion  
10 of major groups of animal life in the Cambrian period. Its argument challenges evolutionary  
11 theory on the claim that the fossil record suggests the appearance of life forms was abrupt, rather  
12 than progressive. Regional premieres of the Documentary had previously been held at the Sam  
13 Noble Oklahoma Natural History Museum and the Seattle Art Museum.

14  
15 ~~16-14.~~ Drs. Meyer, Sternberg, and Wells are senior fellows at the Discovery Institute, a  
16 non-profit, non-partisan public policy think tank based in Seattle, Washington. Although various  
17 fellows of the Discovery Institute are featured in "Darwin's Dilemma," Discovery Institute did  
18 not produce the film. Discovery Institute was not a party to the contract between the ~~Plain-~~  
19 ~~tiff~~Plaintiffs and Defendants for the screening of "Darwin's Dilemma."

20  
21 ~~17-15.~~ ~~Plaintiff~~Plaintiffs planned to sponsor a post-screening discussion of the Documen-  
22 tary with Illustra Media's Lad Allen, who directed the film, mathematician David Berlinski (also  
23 a senior Fellow at Discovery Institute), and Jonathan Wells. Discovery Institute helped organize  
24 and publicize other regional screenings of the Documentary at the Sam Noble Oklahoma Natural  
25 History Museum and the Seattle Art Museum.

1 ~~18.16.~~ Because two of its senior fellows (Berlinski and Wells) would be participating in  
2 the EVENT, and because Discovery Institute had taken an active role in publicizing previous re-  
3 gional premiers of the Documentary, on October 1, 2009, Discovery Institute issued a short  
4 statement on its news blog, EvolutionNews.org, announcing the EVENT. This announcement  
5 simply described the EVENT and noted that the EVENT was "Sponsored by the American Free-  
6 dom Alliance." It also noted that the EVENT "will be held on Sunday, October 25th in the  
7 IMAX Theater of the prestigious California Science Center, which describes itself as 'the West  
8 Coast's largest hands-on science center.'" The statement neither stated nor implied that the  
9 CENTER was co-sponsoring the EVENT.  
10

11 ~~19.17.~~ Also on October 1, 2009, Discovery Institute posted a press release on its website  
12 erroneously purporting to be "By: American Freedom Alliance" which similarly announced the  
13 EVENT and noted that the EVENT would be "sponsored by the American Freedom Alliance."  
14 The statement neither stated nor implied that the CENTER was co-sponsoring the EVENT.  
15

16 18. E-mails exchanged between Defendants' employees indicate that they believed  
17 Plaintiffs' event should be cancelled due to a perception that it was a "creationist" event. For  
18 example, on October 5, 2009, Shell Omega ("AMEGA"), vice president for Communications for  
19 Defendant CENTER, wrote to Defendant RUDOLPH and others an e-mail with the subject "Cr-  
20 reationist organization implies that the Calif. Science Center is sponsoring Darwin film":  
21

22 "The Smithsonian institute called and was alarmed at the news release from a creationist  
23 organization, the Discovery Institute, below because it implied that the Science Center of-  
24 ficially supports the creationist film that is set to screen on Oct. 25. It is also alarmed with  
25 the implication that the Smithsonian is involved and would like us to issue a correction  
26 statement on PR newswire as to what our role is and that we are just one of many Smith-  
27 sonian affiliates on the west coast. They said that this group had booked at the Smithso-  
28 nian to screen the film and the Smithsonian pulled the plug on the screening when they  
found out. Please advise on how you'd like us to proceed."

1 (CSCS0000227, CSCS0000230, CSCF0000233, CSCF0000236, CSCF0000244). (Emphasis  
2 added.) In an endorsement of secular materialism and as an example of hostility toward religion,  
3 which, on information and belief, she believed intelligent design is, Christina M. Sion, Vice  
4 President, Food & Event Services at the CENTER, (hereinafter "SION") wrote:

5 "A science center should not even be asked to partner with any group associated with de-  
6 bating Darwinism - it's not our place."

7 (CSCF0000227, CSCF0000229, CSCF0000233, CSCF0000243).

8 20.19. On October 6, 2009, Discovery Institute issued a second statement about the  
9 EVENT, a short one-page press release, which again stated that "The screening is sponsored and  
10 hosted by the American Freedom Alliance." This statement also noted that the Documentary  
11 would "Premiere at Smithsonian Affiliated California Science Center" This second statement  
12 also neither stated nor implied that the CENTER was co-sponsoring the EVENT.

13 21.20. On October 6, 2009, Christina M. Sion, Vice President, Food & Event Services at  
14 the CENTER, (hereinafter "SION") SION wrote an e-mail to DAVIS stating that "we are cancel-  
15 ling your event at the California Science Center." SION's e-mail stated:

16 "It has come to our attention that in a press release issued October 5, 2009 by  
17 the American Freedom Alliance, it is inferred (sic) that the California Science  
18 Center as [sic] a Smithsonian Institute affiliate is co-sponsoring the Darwin  
19 Debates. Your event is a private event held on the California Science Center  
20 property but is not affiliated in any way with the California Science Center or  
21 the Smithsonian. This press release has damaged our relationship with the  
22 Smithsonian and the reputation of the California Science Center. According to  
23 the Event Policies and Procedures that you signed to reserve the date for the  
24 event, you agreed to submit all promotional materials to the California  
25 Science Center for review and approval prior to printing or broadcast. Be-  
26 cause you did not obtain this approval and the press release has had significant  
27 negative ramifications, we are canceling your event at the California Science  
28 Center."

29 22.21. On October 8, 2009, CENTER Board of Trustees member and attorney Patrick  
30 Dennis (hereinafter "DENNIS"), counsel of record for Defendant FOUNDATION herein, sent

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1 another letter to DAVIS offering somewhat different reasons why the CENTER planned to can-  
2 cel the EVENT. DENNIS's letter made no mention of any "damage" to the relationship of the  
3 CENTER and the Smithsonian, or damage to the reputation of the CENTER. Instead, the letter  
4 stated that Plaintiff Plaintiffs had breached the CENTER's "Event Policies and Procedures," spe-  
5 cifically a provision entitled "Promotional Materials," which states that "It is required that the  
6 Event Services Office approve, for technical and factual accuracy, all promotional materials  
7 mentioning the California Science Center produced for your event (including invitations, pro-  
8 grams, press releases, etc.) prior to printing or broadcast." The provision says nothing concern-  
9 ing promotions of the event by third parties nor requires the monitoring, oversight, management  
10 or control of third-party promotions.

12 23-22. DENNIS cited the two October 1 statements and an alleged-October 5th statement  
13 as the singular promotional materials allegedly constituting the CENTER's rationale for cancel-  
14 ling the EVENT on the basis of a breach of contract.

16 24-23. Neither SION nor DENNIS mentioned informed AFA that considerable concern  
17 had been expressed by CENTER employees and officials, FOUNDATION board members, and  
18 colleagues in the scientific community outside the CENTER over the subject matter of intelligent  
19 design. However, on October 6, 2009, Dan Lewis (hereinafter "LEWIS"), the Dibner Senior Cu-  
20 rator of Science and Technology at the Huntington Library in Pasadena, California, sent an e-  
21 mail to Ken Phillips (hereinafter "PHILLIPS"), Defendant CENTER's Aerospace Curator, ques-  
22 tioning the screening of "Darwin's Dilemma" at the CENTER, and stating that "[s]ome of my  
23 USC colleagues are up in arms about this...." LEWIS' e-mail incorporated a thread of for-  
24 warded e-mails he had received from various professors at the University of Southern California  
25 complaining of the EVENT.  
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1           25-24. PHILLIPS then sent an e-mail to Defendant CENTER officials forwarding  
2 LEWIS' e-mail and the e-mail thread it incorporated. PHILLIPS asked in his e-mail whether  
3 "Darwin's Dilemma" was scheduled to be screened. The e-mail was delivered to the CENTER's  
4 Senior Vice President for Exhibits, Diane Perlov (hereinafter "PERLOV"), the CENTER's Cura-  
5 tor of Ecology Programs, Chuck Kopczak (hereinafter "KOPCZAK"), and the CENTER's Vice-  
6 President of Marketing, Joe DeAmicis, (hereinafter "DEAMICIS").  
7

8           26-25. At 11:19 a.m., less than an hour after PHILLIPS sent his e-mail, he received a re-  
9 sponse from DEAMICIS stating that "the screening event was booked through the Events Dept.,  
10 and they were unaware of the nature of the groups involved." The e-mail further stated that "It  
11 has come to Jeff's attention and he is 'working on it'." ~~Plaintiff is~~ Plaintiffs are informed and be-  
12 lieves ~~believe~~ that the reference to "Jeff" was to Defendant RUDOLPH. ~~Plaintiff is~~ Plaintiffs are  
13 further informed and believes that RUDOLPH was aware of the e-mail exchanges protesting the  
14 screening on the ground that it advocated intelligent design theory and that RUDOLPH discussed  
15 the matter with CENTER and FOUNDATION employees, officers and agents prior to ordering  
16 the event cancelled.  
17

18           27-26. IMAX movies can only be shown in IMAX theatres. An IMAX projector is re-  
19 quired because the film is twice the size of conventional film stock and displays on an oversized  
20 projection screen.  
21

22           28-27. The CENTER's IMAX Theater was one of two IMAX theaters in the area that  
23 could project both IMAX films and standard DVD's. ~~Plaintiff was~~ Plaintiffs were informed that  
24 an alternative IMAX facility located at Universal City's CityWalk could not accommodate both  
25 the IMAX and the conventional formats for the showing of both films. ~~Plaintiff was~~ Plaintiffs  
26 were additionally informed a third IMAX facility at the Bridge Cinema IMAX at Howard  
27  
28

1 88-129. Plaintiffs desire a further judicial determination of the rights and duties of  
2 the respective parties under the United States Constitution and and the California Constitution a  
3 judicial declaration that the Defendants engaged in content and viewpoint discrimination by pre-  
4 venting PlaintiffPlaintiffs from addressing the topic of intelligent design in a public forum.

5  
6 **PRAYER**

7 WHEREFORE, PlaintiffPlaintiffs prays for judgment against Defendants, and each of  
8 them, as follows:

- 9 1. General damages according to proof;
- 10 2. Special damages according to proof;
- 11 3. Contract damages according to proof at trial and for interest accrued thereon;
- 12 4. Punitive and exemplary damages on the Fourth Cause of Action for Fraud;
- 13 5. A declaration of rights declaring Defendants' actions, policies or practices to be un-  
14 constitutional as a violation of the U.S.-United States Constitution and the California  
15 Constitution;
- 16 6. A declaration that the cancellation of the EVENT and breach of the contract by De-  
17 fendants violated the United States Constitution; and the California Constitution;
- 18 7. A declaration that the Defendants engaged in content and viewpoint discrimination by  
19 preventing PlaintiffPlaintiffs from addressing the topic of intelligent design in a pub-  
20 lic forum;
- 21 8. A preliminary injunction against Defendants, and each of them, enjoining Defendants  
22 from refusing to allow PlaintiffPlaintiffs access to the California Science Center for  
23 the presentationpurpose of presenting events, including events presenting information  
24 concerning the theory of intelligent design;
- 25
- 26
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Formal  
Formal

1 Hughes Center was unavailable due to the presentation of the IMAX film, "Where the Wild  
2 Things Are."

3 29-28. Therefore the CENTER's IMAX Theater was the only IMAX Theater available  
4 on the evening of the EVENT. With the EVENT's cancellation at the CENTER IMAX Theater,  
5 ~~Plaintiff was~~Plaintiffs were unable to locate a suitable alternative venue for the showing of the  
6 two films. Ultimately, ~~Plaintiff~~Plaintiffs presented the two films in the basement of Davidson  
7 Hall at the University of Southern California. The film "We Are Born of the Stars (3D)," which  
8 required IMAX projection in order to run color, 3D and English subtitles to translate the Japa-  
9 nese narration, was presented in black and white, without 3D and without English subtitles, ge-  
10 nering confusion among audience members over why the film was shown at all and what its  
11 message was.  
12

13  
14 30-29. ~~Plaintiff's~~Plaintiffs' ticket sales in the alternative venue fell far short of the pro-  
15 jected sales for the EVENT had it been presented at the CENTER, as originally planned, and  
16 ~~Plaintiff's~~Plaintiffs' revenue from the EVENT deprived ~~Plaintiff~~Plaintiffs of the profit it reason-  
17 ably expected to realize.

18 **FIRST CAUSE OF ACTION**

19 **BREACH OF CONTRACT**

20 (Against All Defendants)

21  
22 31-30. ~~Plaintiff realleges~~Plaintiffs reallege paragraphs 1 through 3033, and ~~incorporate~~  
23 sincorporate them herein by this reference.

24 32-31. The contract's Policies and Procedures provides that it is "required that the Event  
25 Services Office approve, for technical and factual accuracy, all promotional materials mention-  
26 ing the California Science Center produced for your event (including invitations, programs, press  
27  
28

1 releases, etc.) prior to printing or broadcast.” The contract states nothing concerning promotions  
2 of the event by third parties nor requires the monitoring, oversight, management or control of  
3 third-party promotions. Nevertheless, although ~~Plaintiff was~~ Plaintiffs were not responsible for  
4 generating the Discovery Institute’s publicity, the expressed reason given for cancelling the  
5 EVENT, as alleged above in paragraph 21, was that ~~Plaintiff~~ Plaintiffs had failed to obtain prior  
6 approval from the CENTER to publicize it. The expressed reason for cancelling the event was  
7 thus based on language in the contract that Defendants had no reasonable basis for believing that  
8 ~~Plaintiff was~~ Plaintiffs were responsible for breaching. Rather, it was contrived by Defendants as  
9 a pretext for cancelling the event when the real reason for cancelling it derived from hostility to  
10 the viewpoints expressed in “Darwin’s Dilemma” and advocated by Mssrs. Wells, Berlinki and  
11 Ladd. By asserting a breach of contract argument, Defendants sought to shroud themselves with-  
12 in a cloak of plausible deniability for violating ~~Plaintiff’s~~ Plaintiffs’ constitutional rights.

13  
14  
15 33-32. Defendants, CENTER and each of them, FOUNDATION breached the contract at-  
16 tached hereto as Exhibit “A” by repudiating it less than two weeks prior to the scheduled  
17 EVENT, resulting in immediate hardship to ~~Plaintiff~~ Plaintiffs.

18 34-33. ~~Plaintiff~~ Plaintiffs and the Discovery Institute are separate organizations and are  
19 not affiliated in any manner. The Discovery Institute had agreed to provide two of its senior fel-  
20 lows as speakers at the EVENT and to supply a copy of the “Darwin’s Dilemma” DVD for the  
21 screening. ~~Plaintiff~~ Plaintiffs did not authorize the Discovery Institute to promote the EVENT,  
22 had no control over the Discovery Institute’s operations or publicity and had no prior knowledge  
23 that it would use information shared for promotional purposes.

24  
25 35-34. Assuming, *arguendo*, that the publicity generated by the Discovery Institute could  
26 be imputed to ~~Plaintiff~~ Plaintiffs, the pretext for cancelling the EVENT (failure to submit promo-  
27  
28

Format

1 tional materials for review) is based on an immaterial provision of the contract, any violation of  
2 which could easily have been cured by contacting the Discovery Institute and requesting that the  
3 information be corrected or removed from its website. However, ~~Plaintiff was~~ Plaintiffs were not  
4 required under the "Event Policies and Procedures" to police third parties who promoted the  
5 EVENT. ~~Plaintiff~~ Plaintiffs had not promoted the EVENT prior to the notification of its cancella-  
6 tion and therefore did not breach the contract.

7  
8 36-35. Moreover, the justification for cancelling the EVENT relies on the language of  
9 the "Event Policies and Procedures," which provides that all promotional materials mentioning  
10 the CENTER produced for the EVENT required Event Services Office approval "for technical  
11 and factual accuracy." (Underlining added for emphasis.) Nothing contained in the press releas-  
12 es was materially inaccurate or justified cancellation of the EVENT.

13  
14 37-36. As the provision of the contract cited by counsel for the FOUNDATION makes  
15 clear, the purpose of the approval requirement is to ensure "technical and factual accuracy." In  
16 cancelling the EVENT on this pretext, Defendants did not cite any technically or factually inac-  
17 curate information contained in the Discovery Institute publicity. Thus, the purpose of the provi-  
18 sion was not frustrated by ~~Plaintiff~~ Plaintiffs.

19  
20 38-37. The cancellation of the EVENT constitutes a rescission and repudiation of the  
21 contract by Defendants and a willful failure to perform by Defendants, and each of them. Even  
22 if ~~Plaintiff~~ Plaintiffs had promoted the EVENT with the information alleged to have been inaccur-  
23 ate in the Discovery Institute promotional material, such a breach would have been immaterial  
24 and thus an illegitimate basis for cancelling the EVENT.

25  
26 39-38. As a direct and proximate result of the Defendants' breach, ~~Plaintiff has~~ Plaintiffs  
27 have sustained and is entitled to recover compensatory damages according to proof at trial, in-  
28

1 cluding, without limitation, costs and expenses incurred in preparation for the EVENT at the  
2 CENTER's IMAX facility, loss of reasonably anticipate revenue from the EVENT, additional  
3 costs and expenses associated with locating, booking, advertising and presenting the EVENT at  
4 an alternative venue and lost opportunity.

5 ~~///~~

6 ~~///~~

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9  
10 **SECOND CAUSE OF ACTION**

11 **BREACH OF IMPLIED COVENANT OF**  
12 **GOOD FAITH AND FAIR DEALING**

13 (Against All Defendants)

14  
15 ~~40-39. Plaintiff realleges~~ Plaintiffs reallege paragraphs 1 through 39 ~~42, and incorporate~~  
16 sincorporate them herein by this reference.

17 ~~41-40.~~ In every contract or agreement there is an implied promise of good faith and fair  
18 dealing. This means that each party will not do anything to unfairly interfere with the right of any  
19 other party to receive the benefits of the contract.

20 ~~42-41.~~ Defendants violated their duty to act fairly and in good faith by cancelling the  
21 contract under the false pretext that Plaintiff Plaintiffs had breached the contract when the Dis-  
22 covery Institute publicized the EVENT and thereby damaged the CENTER's reputation and rela-  
23 tionship with the Smithsonian Institute.

24  
25 ~~43-42.~~ Plaintiff Plaintiffs did all or was were prepared to do all of the significant things  
26 that the contract required it to do. All conditions required for Defendants' performance had oc-  
27

1 curred or were promised and guaranteed to occur. Defendants unfairly interfered with Plain-  
2 tiff's Plaintiffs' right to receive the benefits of the contract, and ~~Plaintiff was~~ Plaintiffs were  
3 harmed by Defendants' conduct.

4 44.43. Plaintiff is Plaintiffs are therefore entitled to recover damages according to proof  
5 at trial.

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FOURTH CAUSE OF ACTION

**VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT  
AS APPLIED THROUGH THE FOURTEENTH AMENDMENT TO THE  
UNITED STATES CONSTITUTION (42 U.S.C. SECTION 1983)**

(42 U.S.C. SECTION 1983)

(Against All Defendants)

45.44. Plaintiff realleges Plaintiffs reallege paragraphs 1 through 4451, and incorporate-  
sincorporate them herein by this reference.

46.45. Defendant CENTER and Defendant FOUNDATION are a private-public partner-  
ship (PPP). Together, they are responsible for the management of the CENTER and public  
events occurring there. As a department of the State of California by statute, Defendant  
CENTER acted under color of law when it cancelled the EVENT and breached its contract with  
Plaintiff Plaintiffs, thereby discriminating against Plaintiff Plaintiffs for the content of expressions  
concerning intelligent design to have been presented at its EVENT and viewpoints regarding in-  
telligent design to have been expressed at the EVENT.

47.46. Defendant FOUNDATIONS'S FOUNDATION'S actions are attributable to the  
State of California in that the CENTER and the FOUNDATION engaged in a symbiotic relation-  
ship in providing public access to the CENTER for events. The State of California has so insi-  
nuated itself into a position of interdependence with the FOUNDATION that the CENTER and  
the FOUNDATION are joint participants in the cancellation of the EVENT, which, because the  
EVENT was to be open to the general public, the FOUNDATION'S actions in cancelling the  
EVENT were not private in nature. The contractual agreement between the CENTER and the  
FOUNDATION, coupled with the significant regulation and control over the EVENT that was

1 exercised by the CENTER, created a sufficient link between the CENTER and the  
2 FOUNDATION, placing the FOUNDATION's activities under the umbrella of state action suf-  
3 ficient to satisfy the requirements of 42 U.S.C. § 1983. Thus, Defendant FOUNDATION also  
4 acted under color of law when it cancelled the EVENT and breached its contract with Plain-  
5 ~~tiff~~Plaintiffs, thereby discriminating against PlaintiffPlaintiffs for the content of expressions con-  
6 cerning intelligent design to have been presented at its EVENT and viewpoints regarding intelli-  
7 gent design to have been expressed at the EVENT.  
8

9 47. On information and belief, Defendants FOUNDATION, CENTER and  
10 RUDOLPH have instituted a policy whereby the advancement, promotion or discussion of intel-  
11 ligent design is prohibited at the CENTER's facilities. This policy is based upon a belief that  
12 intelligent design is a theory derived from theistic argument and not competent scientific evi-  
13 dence, and therefore does not fit within its "scientific mission."  
14

15 48. The CENTER's IMAX Theater facility is a public forum, and the EVENT spon-  
16 sored by Plaintiff ~~was~~Plaintiffs were to have been open to the public. By their conduct, Defen-  
17 dants, and each of them, prevented PlaintiffPlaintiffs from staging an EVENT involving a topic  
18 of significant interest and concern to members of the public. PlaintiffPlaintiffs sought to present  
19 a discussion of life's origin from the perspectives of evolutionary and intelligent design theories  
20 in the public forum, a right which was denied to it.  
21

22 49. The documentary, "Darwin's Dilemma," is critical of the modern neo-Darwinian  
23 theory of evolution and promotes an alternative explanation of intelligent design. After screen-  
24 ing the documentary, PlaintiffPlaintiffs had planned to host a panel discussion with noted scien-  
25 tists, mathematician Dr. David Berlinski and biologist Dr. Jonathan Wells, who question neo-  
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1 Darwinian evolution and support intelligent design theory as a scientific explanation for the ori-  
2 gin of life. Wells appears in the film.

3 50. Intelligent design theory has become controversial because it is assumed by its  
4 opponents to be a repackaging of creationism theory and therefore based on religion rather than  
5 science. Opposition to it is generally manifested with irrational hostility, a product of ideological  
6 bias within the media, academia and the science community, which have demonized it to the  
7 point that its detractors will go to great lengths to suppress it from any public debate or discus-  
8 sion, even at the risk of violating the First Amendment. As Hilary Shor, USC professor of Eng-  
9 lish, Comparative Literature, Gender Studies and Law, (hereinafter "SCHOR") stated in an e-  
10 mail sent to PHILLIPS and others just hours before the cancellation of the EVENT, "I'm less  
11 troubled by the freedom of speech issues than why my tax dollars which support the California  
12 'Science' Center are being spent on hosting religious propaganda?(sic)" This sentiment, writ-  
13 ten by a law professor, sadly demonstrates a purposeful indifference to constitutional protections  
14 enshrined and safeguarded in the Bill of Rights.

15  
16  
17 51-50. The CENTER is a department of the State of California and an affiliate of the  
18 Smithsonian Institution. As relating above in paragraph 21, on October 6, 2009, SION, the vice  
19 president for Food & Event Services at the CENTER, e-mailed DAVIS, stating that the press re-  
20 lease "has damaged our relationship with the Smithsonian and the reputation of the California  
21 Science Center," without also explaining how the press release could possibly have had such an  
22 effect. The EVENT's cancellation appears to have been was triggered in part by pressure from  
23 the Smithsonian, which has a long history of discriminating against academic freedom for intel-  
24 ligent design proponents. In a Los Angeles Daily News article published October 8, 2009,  
25 Smithsonian spokesman Randal Kremer admitted that he spoke Smithsonian officials com-  
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1 plained to Defendants CENTER, FOUNDATION and RUDOLPH that the press release distorted  
2 its relationship with them and made clear that it wished to distance itself from any association  
3 with the EVENT. These communications were consistent with the CENTER after becoming  
4 “concerned by the inference ... [that] there was a showing of the [“Darwin’s Dilemma”] film at a  
5 Smithsonian branch.”Smithsonian’s history of content/viewpoint-based discrimination against  
6 intelligent design, a fact that would have been known to Defendants.

8       §2-51. The press release mentioned by SION in her e-mail was released not by Plain-  
9 tiffPlaintiffs but by the Discovery Institute, a think tank widely known as the nation’s leading  
10 organization advocating intelligent design. While Discovery Institute’s press releases clearly  
11 stated that “The screening is sponsored and hosted by the American Freedom Alliance” and did  
12 not imply sponsorship by the CENTER, it also noted that “The debate over Darwin will come to  
13 California on October 25th, when the Smithsonian Institution’s west coast affiliate premieres  
14 ‘Darwin’s Dilemma: The Mystery of the Cambrian Fossil Record,’ a new intelligent design film  
15 which challenges Darwinian evolution.” The Discovery Institute’s press release also stated that  
16 the documentary “explores one of the great mysteries in the history of life: the sudden appear-  
17 ance of dozens of major complex animal types in the fossil record without any trace of the gra-  
18 dual transitional steps predicted by Darwin.”

21       §3-52. The CENTER has hosted events supporting evolution theory in the past, including  
22 panel discussions hosting pro-evolution speakers such as Michael Shermer and Michael S. Fan-  
23 selow, and hosts exhibits promoting evolution. The CENTER has listed a book on its website by  
24 a speaker at the CENTER titled, “Why Darwin Matters: The Case Against Intelligent Design.”

25       §4-53. The Smithsonian’s opposition to and discrimination against intelligent design is a  
26 matter of public record. In 2005, the pro-intelligent design Discovery Institute contracted with  
27  
28

1 the Smithsonian to show a pro-intelligent design film entitled "The Privileged Planet." The  
2 Smithsonian issued a disclaimer against the EVENT, stating that "the content of the film is not  
3 consistent with the mission of the Smithsonian Institution." At that time, the same Smithsonian  
4 spokesman – Randall Kremer – objected to "The Privileged Planet" purportedly making an inap-  
5 propriate "philosophical conclusion." Yet the Smithsonian made no complaints when showing  
6 Carl Sagan's "Cosmos" in 1996, stating a different philosophical perspective that "The Cosmos  
7 is all that is, or ever was, or ever will be."  
8

9       §5.54. In 2004, Smithsonian-affiliated research biologist Richard Sternberg allowed a  
10 peer-reviewed scientific article to be published in "Proceedings of the Biological Society of  
11 Washington," a Smithsonian-related publication. The article was authored by Dr. Stephen C.  
12 Meyer of the Discovery Institute, and much like the "Darwin's Dilemma" documentary, argues  
13 that "purposive or intelligent design as a causally adequate--and perhaps the most causally ade-  
14 quate--explanation for the origin of the complex specified information required to build the  
15 Cambrian animals." The Smithsonian-affiliated Biological Society of Washington (BSW) repu-  
16 diated Meyer's pro-intelligent design article, claiming it "does not meet the scientific standards  
17 of the 'Proceedings,'" and the Smithsonian launched a campaign to intimidate and harass those  
18 responsible for the publication of this article.  
19

20       §6.55. Despite the fact that Meyer's article was properly peer-reviewed and published,  
21 Dr. Sternberg subsequently experienced retaliation by his co-workers and superiors at the Smith-  
22 sonian, including transfer to a hostile supervisor, removal of his name placard from his door, de-  
23 privation of workspace, subjection to work requirements not imposed on others, restriction of  
24 specimen access, and loss of his keys. Smithsonian officials also tried to smear Dr. Sternberg's  
25 reputation and even investigated his religious and political affiliations in violation of his privacy  
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1 and First Amendment rights. According to an investigation by the U.S. Office of Special Coun-  
2 sel (OSC), these efforts were aimed at creating “a hostile work environment... with the ultimate  
3 goal of forcing [Sternberg]... out of the [Smithsonian].” A 2006 Congressional staff investiga-  
4 tion by the staff of U.S. Congressmen Mark Souder confirmed that the Smithsonian embarked on  
5 a campaign to punish, intimidate, and harass Richard Sternberg for allowing a pro-intelligent de-  
6 sign article to be published in its journal. The Congressional staff investigation concluded that  
7 “Smithsonian’s top officials permit the demotion and harassment of [a] scientist skeptical of  
8 Darwinian evolution” and “officials explicitly acknowledged in e-mails their intent to pressure  
9 Sternberg to resign because of his role in the publication of the Meyer paper and his views on  
10 evolution.” The findings of this investigation contain striking conclusions about the intolerance  
11 of the Smithsonian towards scientists who doubt Darwinism:.

12  
13  
14 “The staff investigation has uncovered compelling evidence that Dr. Sternberg’s civil and  
15 constitutional rights were violated by Smithsonian officials. Moreover, the agency’s top  
16 officials—Secretary Lawrence Small and Deputy Secretary Sheila Burke—have shown  
17 themselves completely unwilling to rectify the wrongs that were done or even to genuine-  
18 ly investigate the wrongdoing. Most recently, Burke and Small have allowed NMNH of-  
19 ficials to demote Dr. Sternberg to the position of Research Collaborator, despite past as-  
20 surances from Burke that Dr. Sternberg was a “Research Associate in good standing” and  
21 would be given “full and fair consideration” for his request to renew his Research Asso-  
22 ciateship. The failure of Small and Burke to take any action against such discrimination  
23 raises serious questions about the Smithsonian’s willingness to protect the free speech  
24 and civil rights of scientists who may hold dissenting views on topics such as biological  
25 evolution.”  
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1           57-56. In light of the fact that Sternberg, Meyer, and Wells are all featured in the “Dar-  
2 win’s Dilemma” documentary advocating intelligent design, it follows that Smithsonian officials  
3 would oppose the EVENT and seek to distance itself from it.

4           58-57. On information and belief, the anti-intelligent design Smithsonian had monitored  
5 the Discovery Institute’s website or had been contacted by others within a network of intelligent  
6 design opponents and pressured the CENTER into silencing Plaintiff’s Plaintiff’s message by  
7 canceling the contract. In fact, on October 5, 2009, Smithsonian Affiliates Director Harold A.  
8 Closter (hereinafter “CLOSTER”) wrote to Shell Amega AMEGA (Defendant CENTER’s Direc-  
9 tor of Development, Phase II Capital Project Launchings, Exhibitions, Science Center Executive  
10 Leadership) relating a prior conversation between them in which they purportedly discussed a  
11 “press release” and expressing the concern that the press release distorted the relationship be-  
12 tween the Smithsonian and the CENTER. In the e-mail, he stated, “We are concerned that [the  
13 EVENT] not be represented as a Smithsonian event or program or anything with which we have  
14 any involvement.  
15

16  
17           59-58. CLOSTER’s communication was consistent with the Smithsonian’s history of  
18 content/viewpoint-based discrimination against intelligent design, a fact that would have been  
19 known to Defendants.

20  
21           60-59. By reason of the aforementioned policy, acts and omissions engaged in under col-  
22 or of state law, Defendants have violated the Free Speech Clause of the First Amendment of the  
23 United States Constitution, which has been held to be incorporated and made applicable to the  
24 states and their political subdivisions by the Fourteenth Amendment of the United States Consti-  
25 tution, and 42 U.S.C. section 1983. Defendants’ actions and policies as alleged in this Complaint  
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28

1 deprived PlaintiffPlaintiffs and the general public of the right to free speech as guaranteed by the  
2 U.S. Constitution.

3 61-60. In addition to the concerns expressed by the anti-intelligent design Smithsonian,  
4 Defendants were in communication with colleagues from the Huntington Library, USC and Oc-  
5 cidental College, who contacted Defendants through e-mail exchanges, including the aforemen-  
6 tioned e-mails from LEWIS and SCHOR, protesting the event. RUDOLPH, SCIONSON and  
7 other CENTER and FOUNDATION employees, officers and agents were aware of the e-mails,  
8 but concealed to PlaintiffPlaintiffs their knowledge of them or the controversy that had devel-  
9 oped.  
10

11 62-61. Defendants, and each of them, targeted PlaintiffPlaintiffs for presenting intelligent  
12 design as part of the EVENT, and thus sought to discriminate against PlaintiffPlaintiffs on the  
13 basis of legitimate viewpoints and the content of the message to be expressed at the EVENT.  
14

15 63-62. As a direct and proximate result of Defendants' violation of the Speech Clause,  
16 Plaintiff hasPlaintiffs have suffered irreparable harm, including the infringement of Plain-  
17 tiff-sPlaintiffs' constitutional rights.  
18 rights.

19 64-63. As a further direct and proximate result of Defendants' violation of the Speech  
20 Clause, Plaintiff isPlaintiffs are entitled to recover damages according to proof and reasonable  
21 attorneys fees and costs pursuant to 42 U.S.C. § 1988 should it prevail on this cause of action.  
22

23 **FOURTHFIFTH CAUSE OF ACTION**

24 **VIOLATION OF THE RIGHT TO ASSOCIATION CLAUSE OF THE FIRST**  
25 **AMENDMENT AS APPLIED THROUGH THE FOURTEENTH AMENDMENT TO**  
26 **THE UNITED STATES CONSTITUTION (42 U.S.C. SECTION 1983)**  
27  
28

**PROOF OF SERVICE**

1  
2 **STATE OF CALIFORNIA** )  
3 **COUNTY OF LOS ANGELES** ) **SS:**

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
5 and not a party to the within action; my business address is: 11500 Olympic Blvd., Suite 400,  
6 Los Angeles, California 90064. On May 19, 2010, I served the foregoing documents:

7 **MOTION FOR ORDER GRANTING LEAVE TO FILE SECOND AMENDED COM-**  
8 **PLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THE-**  
9 **REOF; DECLARATION OF WILLIAM J. BECKER IN SUPPORT THEREOF; EXHI-**  
10 **BITS; [PROPOSED] SECOND AMENDED COMPLAINT; [PROPOSED] ORDER**

11 The above-referenced document was served on:

12 Allan S. Ono, Esq.  
13 Deputy Attorney General  
14 Natural Resources Law Section  
15 OFFICE OF THE ATTORNEY GENERAL  
16 300 S. Spring Street, 11th Floor  
17 North Tower  
18 Los Angeles, CA 90013  
19 E-mail: allan.ono@doj.ca.gov

Attorneys for Defendants, **California  
Science Center and Jeffrey Rudolph in his  
official capacity as president and CEO of  
the California Science Center**

20 Patrick W. Dennis, Esq.  
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Attorneys for Defendants, **California  
Science Center Foundation and Jeffrey  
Rudolph in his official capacity as Presi-  
dent of the California Science Center  
Foundation**

28  **BY E-MAIL:** I caused such document to be e-mailed as pdf attachments pursuant to  
agreement of counsel to the addressees shown above.

(State) I declare under penalty of perjury under the laws of the State of California that  
the above is true and correct.

Executed on May 19, 2009, at Los Angeles, California.

**WILLIAM J  
BECKER JR**

Digitally signed by WILLIAM J BECKER JR  
DN: cn=WILLIAM J BECKER JR, o=THE  
BECKER LAW FIRM, ou,  
email=bbeckerlaw@gmail.com, c=US  
Date: 2010.04.19 15:37:22 -0700

William J. Becker, Jr.