

1 GIBSON, DUNN & CRUTCHER LLP
2 PATRICK W. DENNIS, SBN 106796
3 JAMES L. ZELENAY, JR., SBN 237339
4 333 South Grand Avenue
5 Los Angeles, California 90071-3197
6 Telephone: (213) 229-7000
7 Facsimile: (213) 229-7520

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Los Angeles Superior Court

MAY 06 2010

John A. ... Executive Officer/Clerk
By *[Signature]* Deputy

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

9 SUPERIOR COURT, STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DIVISION

13 AMERICAN FREEDOM ALLIANCE, a
14 nonprofit corporation;

15 Plaintiff,

16 v.

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

22 Defendants.

CASE NO. BC 423687
[Hon. Terry A. Green, Dept. 14]

**DECLARATION OF JAMES L. ZELENAY,
JR. IN SUPPORT OF DEFENDANT
CALIFORNIA SCIENCE CENTER
FOUNDATION'S MOTION TO COMPEL
FURTHER PRODUCTION OF
DOCUMENTS FROM PLAINTIFF
AMERICAN FREEDOM ALLIANCE**

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DECLARATION OF JAMES L. ZELENAY, JR.

I, James L. Zelenay, Jr., hereby declare:

1. I am an attorney duly licensed to practice before the courts of the State of California and before this Court. I am an associate at the law firm of Gibson, Dunn & Crutcher LLP (“GD&C”), and I am one of the attorneys of record for defendants California Science Center Foundation and Jeffrey Rudolph, in his official capacity as President of the California Science Center Foundation, in this action. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify hereto.

2. This declaration is filed in support of Defendant California Science Center Foundation’s Motion To Compel Further Production Of Documents From Plaintiff American Freedom Alliance.

3. On December 30, 2009, the California Science Center Foundation (the “Foundation”) served on Plaintiff American Freedom Alliance (“AFA”) its First Set of Requests For Production (the “Requests”). A true and correct copy of these Requests is attached hereto as Exhibit A.

4. The Requests seek a variety of information that the Foundation contends is relevant to this action, including, for example, “all documents, including but not limited to, all communications” regarding the event that the AFA had intended to hold at the California Science Center on October 25, 2009 (Req. No. 1); “all documents regarding [AFA’s] relationship with the Discovery Institute,” which AFA claims was the entity responsible for issuing the press release that the Foundation asserts led to its cancellation of AFA’s event (Req. No. 12); and “all documents regarding any communications with the Discovery Institute . . . regarding publicity or press release regarding the [California Science Center] event” (Req. No. 15). (Capitalizations omitted).

5. The Requests also seek information relating to AFA’s financial history. The Foundation propounded these requests because it contends that they relate to AFA’s claim of damages in this action, which the Foundation understands to be the lost profits/revenues/charitable donations that AFA claims it would have made had the Foundation not cancelled its event at the California Science Center. In light of this, the Foundation seeks information regarding AFA’s past events and charitable income, which may undermine AFA’s claims in this action as to what it would

1 have made had the event proceeded. Similarly, because Avi Davis, AFA's President, claimed earlier
2 in this action that the profits/revenues/charitable donations from the event were expected to pay for a
3 portion of AFA's budget and/or operating expenses, the Foundation also asked for information
4 regarding that as well.

5 6. The requests seeking information regarding AFA's financial history included the
6 following:

7 REQUEST NO. 57: All DOCUMENTS, including all COMMUNICATIONS,
8 REGARDING the revenue American Freedom Alliance has earned from
9 lectures and film screenings during the years 2007, 2008, and 2009.

10 REQUEST NO. 58: All DOCUMENTS, including all COMMUNICATIONS,
11 REGARDING the charitable donations American Freedom Alliance has
12 received during the years 2007, 2008, and 2009.

13 REQUEST NO. 61: All DOCUMENTS REGARDING the claim that "AFA has
14 an annual operating budget of \$350,000," as claimed in paragraph 27 of the
15 Declaration Of Adrian (Avi) Davis In Support Of Application And Order To
16 Show Cause And Temporary Restraining Order, filed October 14, 2009.

17 REQUEST NO. 62: All DOCUMENTS REGARDING the amount of American
18 Freedom Alliance's operating expenses in 2007, 2008, and 2009 that was paid
19 for by "revenues from events," as referred to in paragraph 27 of the Declaration
20 Of Adrian (Avi) Davis In Support Of Application And Order To Show Cause
21 And Temporary Restraining Order, filed October 14, 2009.

22 7. On February 12, 2010, AFA provided its responses and objections to the Foundation's
23 Requests, and produced documents to the Foundation in response to the Requests. A true and correct
24 copy of the relevant portions of the AFA's responses and objections is attached hereto as Exhibit B.

25 8. While the AFA stated that "[s]ubject to [its] objections and without waiving them, [it]
26 will comply" with a large number of the Requests, AFA asserted in response to Request Nos. 57-58
27 and 61-62 the following:

28 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff
further objects to this request to the extent it seeks information subject to any
privilege or immunity, including without limitation the attorney-client privilege
and/or the doctrine of work product immunity. Plaintiff further objects to this
request on the grounds that it is overly broad, not limited in scope, unduly
burdensome, and seeks documents beyond the scope of permissible discovery
and not relevant to the subject matter of this litigation or likely to lead to the
discovery of admissible evidence. Code of Civil Procedure § 2031.030(c)(1)

1 requires that each item requested be specifically described or that each category
2 of item be reasonably particularized. Plaintiff further objects to this request on
3 the grounds that it is duplicative of other requests and therefore unnecessarily
burdensome.

4 On the basis of these objections and without waiving them, Responding Party
cannot comply.

5 9. On February 26, 2010, counsel for the California Science Center informed counsel for
6 AFA that it appeared that AFA may have included in its document production documents that AFA
7 did not intend to produce. At that point, the Foundation ceased its review of the documents, and set
8 the disc containing the potentially inadvertently produced documents aside.

9 10. On March 2, 2010, counsel for AFA produced to the Foundation and the Science
10 Center a privilege log identifying the documents that AFA contends were inadvertently produced to
11 the Foundation and the Science Center. A true and correct copy of this privilege log is attached
12 hereto as Exhibit C.

13 11. Per the privilege log, AFA appears to be claiming as privileged or work product
14 communications that its counsel has had with members of the Discovery Institute or that included
15 members of the Discovery Institute. Specifically, the Foundation is informed and believes that John
16 West (identified in log entry numbers 7, 8, 9, 11, 13) and Casey Luskin (identified in log entry
17 numbers 10, 11, 13) are members of or affiliated with the Discovery Institute. The Foundation also
18 understands that Pete Lepiscopo (identified in log entry number 10) is an attorney for the Discovery
19 Institute.

20 12. On March 10, 2010, the Foundation sent AFA a meet and confer letter, identifying
21 what it contended were the deficiencies with AFA's responses and objections and the privilege log
22 that it provided. In that letter, the Foundation identified both of the issues that are now the subject of
23 the motion to compel. A true and correct copy of this letter is attached hereto as Exhibit D.

24 13. On March 16, 2010, counsel for the Foundation, AFA, and the Science Center met in
25 person to discuss these and other discovery issues. At that time, counsel for AFA informed counsel
26 for the Foundation and counsel for the Science Center that the Discovery Institute was acting as AFA
27 counsel's unretained consultant on issues of intelligent design, and that he believed communications
28 with them were privileged and/or protected by work product. Counsel for AFA refused to answer

1 whether a written retention agreement was in place between him and/or the AFA, on the one hand,
2 and the Discovery Institute on the other with respect to this consultant relationship.

3 14. Since that time, counsel for the Foundation and AFA have also exchanged email and
4 telephonic correspondence about the issues that are the subject of the motion to compel. The issue
5 regarding AFA's counsel's communications with the Discovery Institute remains unresolved.
6 Meanwhile, the AFA – after receiving a copy of the Foundation's motion – agreed to produce
7 documents relating to its financial history. The Foundation is yet to receive production of these
8 documents; however, AFA's counsel has stated that they are forthcoming upon an agreement by the
9 Foundation that it would use the documents only for purposes of this litigation – the Foundation has
10 stated that it would stipulate to this request.

11 15. Attached hereto as Exhibit E is a true and correct copy of a document bearing Bates
12 number AFA 0000156, produced by AFA.

13 16. Attached hereto as Exhibit F is a true and correct copy of a document bearing Bates
14 number AFA 0000221, produced by AFA.

15 17. Attached hereto as Exhibit G is a true and correct copy of a document bearing Bates
16 number DI 00604, produced by the Discovery Institute.

17 18. Attached hereto as Exhibit H is a true and correct copy of a document bearing Bates
18 number AFA 0000148, produced by AFA.

19 19. Attached hereto as Exhibit I is a true and correct copy of a document bearing Bates
20 number AFA 0000446, produced by AFA.

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22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct.

24 Executed this 6th day of May, 2010 at Los Angeles, California.

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27 James L. Zelenay, Jr.
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1 GIBSON, DUNN & CRUTCHER LLP
PATRICK W. DENNIS, SBN 106796
2 JAMES L. ZELENAY, JR., SBN 237339
MATTHEW C. WICKERSHAM, SBN 241733
3 333 South Grand Avenue
Los Angeles, California 90071-3197
4 Telephone: (213) 229-7000
Facsimile: (213) 229-7520
5

6 Attorneys for Defendants,
CALIFORNIA SCIENCE CENTER FOUNDATION
& JEFFREY RUDOLPH, in his official capacity
7 as President of the CALIFORNIA SCIENCE
CENTER FOUNDATION
8

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10 SUPERIOR COURT, STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12 CENTRAL DIVISION

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14 AMERICAN FREEDOM ALLIANCE,
15 Plaintiff,
16 v.
17 CALIFORNIA SCIENCE CENTER
FOUNDATION et al.,
18 Defendants.

CASE NO. BC423687
[Hon. Terry A. Green, Dept. 14]
**DEFENDANT CALIFORNIA SCIENCE
CENTER FOUNDATION'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
PLAINTIFF AMERICAN FREEDOM
ALLIANCE**
DATE OF FILING
OF COMPLAINT: October 14, 2009
DATE OF FILING
OF FIRST AMENDED
COMPLAINT: November 19, 2009
TRIAL DATE: NOT SET

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24 PROPOUNDING PARTY: Defendant, CALIFORNIA SCIENCE CENTER FOUNDATION
25 RESPONDING PARTY: Plaintiff, AMERICAN FREEDOM ALLIANCE
26 SET NUMBER: One
27 TO PLAINTIFF AMERICAN FREEDOM ALLIANCE AND ITS ATTORNEYS OF RECORD:
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1 Pursuant to Section 2031.010 *et seq.* of the California Code of Civil Procedure, Defendant
2 California Science Center Foundation ("Defendant") requests that Plaintiff American Freedom
3 Alliance ("Plaintiff") produce for inspection and copying at the offices of Gibson, Dunn & Crutcher
4 LLP, located at 333 South Grand Avenue, Los Angeles, California 90071-3197, on February 3, 2010,
5 at 9:00 a.m., each and all of the tangible items described below, which are in the actual or
6 constructive possession, custody or control of Plaintiff. Defendant further demands that Plaintiff also
7 serve a written response under oath to these requests pursuant to California Code of Civil Procedure
8 Section 2031.250.

9 The original of each document (or a legible copy if the original is not within your possession,
10 custody, or control) shall be identified and produced at the above-stated date, time, and place unless
11 complete and legible copies of each document are received at the offices of Gibson, Dunn & Crutcher
12 LLP, 333 South Grand Avenue, Los Angeles, California, 90071-3197, on or prior to the specified
13 production date. Any such production of copies is without prejudice to the Defendant's right to
14 inspect and copy the original of each document at a future date.

15 DEFINITIONS

16 As used herein, the following terms shall have the meanings indicated below:

17 A. "CSC EVENT" shall mean and refer to the event titled "We Are Born of Stars IMAX
18 Screening" that was scheduled for the evening of Sunday, October 25, 2009, at the California Science
19 Center in Los Angeles by American Freedom Alliance.

20 B. "USC EVENT" shall mean and refer to the event hosted by American Freedom
21 Alliance that occurred on October 25, 2009 at the University of Southern California.

22 C. "AND," "AND/OR" and "OR" shall be construed as conjunctive or disjunctive to
23 ensure the provision of additional information or more complete answers and to avoid the questions
24 herein being considered ambiguous, inaccurate, or confusing.

25 D. "COMMUNICATION" shall mean the transfer of any information from one PERSON
26 to another PERSON, whether such transfer is written, oral, electronic, or otherwise.

1 E. "DOCUMENT" shall have the same meaning as the term "writings," defined in § 250
2 of the California Evidence Code. The term DOCUMENT is used herein as broadly as allowed under
3 the California Code of Civil Procedure and includes, for example and without limitation, the
4 following items: all manners of correspondence; COMMUNICATIONS; memoranda; summaries;
5 statements; records; reports; books; diagrams; photographs; specifications; sketches; contracts;
6 forecasts; plans; appraisals; orders; bills; invoices; checks; statistical statements; books of account;
7 studies; graphs; charts; accounts; indexes; data sheets; data processing cards; analytical records;
8 brochures; lists; periodicals; pamphlets; circulars; trade letters; newspaper clippings; press releases;
9 projections; copies; marginal notations; drawings; tape recordings; calendars; diaries; telegrams;
10 emails; notes; working papers; drafts; reports and/or opinions of consultants; records, reports,
11 summaries and/or minutes of meetings and conferences; records, reports, and/or summaries of
12 interviews; records, reports, and/or summaries of negotiations; records, reports, and/or summaries of
13 telephone conversations; and records, reports, and/or summaries of personal conversations.

14 "DOCUMENT" includes every copy of a DOCUMENT that is not identical to the original, whether
15 because of notes made on or attached to such copy, or otherwise; and all other handwritten, typed,
16 printed, recorded or graphic matter or sound reproductions, however produced or reproduced, and
17 whether copies or originals, as well as any electronically stored documents, recordings, or files
18 (including those stored on laptop computers), such as, for example, e-mails, and other documents
19 stored on audiotape, magnetic tape, computer disks, computer hard-drives, CD-ROMS, videotapes, or
20 optical forms of storage.

21 F. "INVOLVED IN," "INVOLVED WITH," or "INVOLVING" shall include, without
22 limitation, participating in, contributing to, included in, engaging in, employing, affecting, relating to,
23 occupying, implicated in, and/or entailed by.

24 G. "REGARDING" shall include, without limitation, embodying, evidencing,
25 constituting, referencing, referring to, involving, relating to, pertaining to, connected with, about,
26 concerning, mentioning, discussing, and/or describing.
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1 H. "YOU" and/or "YOUR" shall mean plaintiff American Freedom Alliance, and any of
2 its predecessor or successor constituent corporate entities, assigns, and any affiliated entities, in all
3 departments, divisions, or segments, and any and all individuals acting or purporting to act on its or
4 their behalf including, without limitation, its or their former and current officers, directors,
5 employees, owners, representatives, attorneys, accountants, investigators, consultants, and agents.

6 **INSTRUCTIONS**

7 1. In producing DOCUMENTS and things, YOU are requested to furnish all
8 DOCUMENTS or things in YOUR possession, custody or control, or known or available to YOU,
9 regardless of whether such DOCUMENTS or things are possessed directly by YOU or any of YOUR
10 predecessor or successor constituent corporate entities, assigns, and any affiliated entities, agents,
11 limited partners, officers, directors, employees, representatives, consultants, or investigators, or by
12 YOUR attorneys or their agents, employees, representatives, consultants, or investigators.

13 2. All DOCUMENTS should be produced in the same order as they are kept or
14 maintained by YOU in the ordinary course of business, or the DOCUMENTS should be organized
15 and labeled to correspond to the categories of the DOCUMENTS requested below. If the requested
16 documents are maintained in a file, the file folder is included in the request.

17 3. If YOU claim that the attorney-client privilege, or any other privilege, is applicable to
18 any DOCUMENT, with respect to that DOCUMENT:

- 19 a. State the date of the DOCUMENT;
- 20 b. Identify the author(s) of the DOCUMENT;
- 21 c. Identify the PERSON(S) who received the DOCUMENT;
- 22 d. Identify the PERSON(S) having custody or control of the DOCUMENT; and
- 23 e. Provide a general description of that DOCUMENT and sufficient further
24 information to explain the claim of privilege and permit adjudication of the
25 propriety of that claim.

1 4. If production of any requested DOCUMENT is objected to on the grounds that
2 production is unduly burdensome, describe the burden or expense involved in producing the proposed
3 discovery.

4 5. With respect to any and all DOCUMENTS requested herein that are claimed to have
5 been destroyed or are otherwise no longer in YOUR possession, custody or control, furnish a list with
6 the following information for each such DOCUMENT:

- 7 a. the nature, source and date of the DOCUMENT;
- 8 b. a description of the DOCUMENT'S subject matter;
- 9 c. the name and address of each recipient of the original or a copy of the
10 DOCUMENT, together with the date or the approximate date when each
11 recipient received the DOCUMENT;
- 12 d. all names and addresses of all other persons to whom the contents of the
13 DOCUMENT have been disclosed, the date such disclosure took place, and the
14 names of such disclosure;
- 15 e. the date the DOCUMENT was destroyed, the person who ordered or
16 authorized such destruction; the reason for the DOCUMENT'S destruction and
17 the policy or authority for the same; and
- 18 f. the custodian of the DOCUMENT on the date of destruction.

19 I. For DOCUMENTS that exist in electronic form (even if they also exist in hard copy),
20 the DOCUMENTS must be produced in their existing electronic format or in another electronic
21 format that preserves any metadata associated with the DOCUMENTS.

22 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

23 **REQUEST NO. 1:**

24 All DOCUMENTS, including but not limited to, all COMMUNICATIONS, REGARDING
25 the CSC EVENT.

1 **REQUEST NO. 2:**

2 All DOCUMENTS, including but not limited to, all COMMUNICATIONS, REGARDING
3 the USC EVENT.

4 **REQUEST NO. 3:**

5 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
6 any attempts, successful or otherwise, to schedule a screening of the film "Darwin's Dilemma" at a
7 location other than the California Science Center, before YOU scheduled the CSC EVENT.

8 **REQUEST NO. 4:**

9 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
10 any attempts, successful or otherwise, to schedule a screening of the film "Darwin's Dilemma" at a
11 location other than the California Science Center, after YOU scheduled the CSC EVENT.

12 **REQUEST NO. 5:**

13 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
14 any attempts, successful or otherwise, to schedule a screening of the film "We Are Born of Stars" at a
15 location other than the California Science Center, before YOU booked the CSC EVENT.

16 **REQUEST NO. 6:**

17 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
18 any attempts, successful or otherwise, to schedule a screening of the film "We Are Born of Stars" at a
19 location other than the California Science Center, after YOU booked the CSC EVENT.

20 **REQUEST NO. 7:**

21 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
22 the film "Darwin's Dilemma."

23 **REQUEST NO. 8:**

24 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
25 the film "We Are Born of Stars."

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1 **REQUEST NO. 9:**

2 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
3 the California Science Center Foundation.

4 **REQUEST NO. 10:**

5 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
6 the California Science Center.

7 **REQUEST NO. 11:**

8 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
9 Jeffrey Rudolph.

10 **REQUEST NO. 12:**

11 All DOCUMENTS REGARDING YOUR relationship with the Discovery Institute.

12 **REQUEST NO. 13:**

13 All DOCUMENTS REGARDING any COMMUNICATIONS with the Discovery Institute,
14 or any employee, affiliate, member, officer, director, fellow, or contributor thereof, REGARDING
15 the CSC EVENT.

16 **REQUEST NO. 14:**

17 All DOCUMENTS REGARDING any publicity or press releases REGARDING the CSC
18 EVENT.

19 **REQUEST NO. 15:**

20 All DOCUMENTS REGARDING any COMMUNICATIONS with the Discovery Institute,
21 or any employee, affiliate, member, officer, director, fellow, or contributor thereof, REGARDING
22 publicity or press releases REGARDING the CSC EVENT.

23 **REQUEST NO. 16:**

24 All DOCUMENTS REGARDING any COMMUNICATIONS with the Discovery Institute,
25 or any employee, affiliate, member, officer, director, fellow, or contributor thereof, REGARDING
26 the USC EVENT.

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1 **REQUEST NO. 17:**

2 All DOCUMENTS REGARDING any COMMUNICATIONS with the Discovery Institute,
3 or any employee, affiliate, member, officer, director, fellow, or contributor thereof, REGARDING
4 the California Science Center.

5 **REQUEST NO. 18:**

6 All DOCUMENTS REGARDING any COMMUNICATIONS with the Discovery Institute,
7 or any employee, affiliate, member, officer, director, fellow, or contributor thereof, REGARDING
8 the California Science Center Foundation.

9 **REQUEST NO. 19:**

10 All DOCUMENTS REGARDING any COMMUNICATIONS with the Discovery Institute,
11 or any employee, affiliate, member, officer, director, fellow, or contributor thereof, REGARDING
12 Jeffrey Rudolph.

13 **REQUEST NO. 20:**

14 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
15 contracts YOU entered into relating to the CSC EVENT.

16 **REQUEST NO. 21:**

17 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
18 contracts you entered into relating to the USC EVENT.

19 **REQUEST NO. 22:**

20 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARDING
21 the damages that YOU claim in the instant action.

22 **REQUEST NO. 23:**

23 All DOCUMENTS REGARDING COMMUNICATIONS between Avi Davis and Joel Strom
24 REGARDING the CSC EVENT, including but not limited to all COMMUNICATIONS between Avi
25 Davis and Joel Strom REGARDING the CSC EVENT.

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1 **REQUEST NO. 24:**

2 All DOCUMENTS REGARDING COMMUNICATIONS between Avi Davis and the
3 Discovery Institute (or any employee, affiliate, member, officer, director, fellow, or contributor
4 thereof) REGARDING the CSC EVENT, including but not limited to all COMMUNICATIONS
5 between Avi Davis and the Discovery Institute (or any employee, affiliate, member, officer, director,
6 fellow, or contributor thereof) regarding the CSC EVENT.

7 **REQUEST NO. 25:**

8 All DOCUMENTS REGARDING the organizational structure of the American Freedom
9 Alliance, including but not limited to the members of its board, employees, and membership.

10 **REQUEST NO. 26:**

11 All DOCUMENTS REGARDING YOUR projections for the anticipated fundraising
12 associated with the CSC EVENT.

13 **REQUEST NO. 27:**

14 All DOCUMENTS REGARDING YOUR projections for the anticipated fundraising
15 associated with the USC EVENT.

16 **REQUEST NO. 28:**

17 All DOCUMENTS REGARDING fundraising YOU obtained associated with the USC
18 EVENT.

19 **REQUEST NO. 29:**

20 All DOCUMENTS REGARDING any fundraiser held by YOU in 2008 and 2009.

21 **REQUEST NO. 30:**

22 All DOCUMENTS, including but not limited to all COMMUNICATIONS, between YOU,
23 including but not limited to any members of YOUR board of directors, and any member of the
24 Discovery Institute REGARDING the CSC EVENT.

25 **REQUEST NO. 31:**

26 All DOCUMENTS, including but not limited to all COMMUNICATIONS, between YOU
27 and the press REGARDING the CSC EVENT.

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1 **REQUEST NO. 32:**

2 All DOCUMENTS, including but not limited to all COMMUNICATIONS, between YOU
3 and the press REGARDING cancellation of the CSC EVENT.

4 **REQUEST NO. 33:**

5 All DOCUMENTS REGARDING blog or website postings on the internet by YOU
6 REGARDING the CSC EVENT, including but not limited to all such blog or website postings and all
7 COMMUNICATIONS regarding such blog or website postings.

8 **REQUEST NO. 34:**

9 All DOCUMENTS REGARDING blog or website postings on the internet by YOU
10 REGARDING cancellation of the CSC EVENT, including but not limited to all such blog or website
11 postings and all COMMUNICATIONS regarding such blog or website postings.

12 **REQUEST NO. 35:**

13 All DOCUMENTS REGARDING blog or website postings on the internet REGARDING the
14 CSC EVENT, including but not limited to all such blog or website postings and all
15 COMMUNICATIONS regarding such blog or website postings.

16 **REQUEST NO. 36:**

17 All DOCUMENTS REGARDING blog or website postings on the internet REGARDING
18 cancellation of the CSC EVENT, including but not limited to all such blog or website postings and all
19 COMMUNICATIONS regarding such blog or website postings.

20 **REQUEST NO. 37:**

21 All DOCUMENTS REGARDING any emails or mailings to members of American Freedom
22 Alliance or the Discovery Institute REGARDING the CSC EVENT.

23 **REQUEST NO. 38:**

24 All DOCUMENTS REGARDING any emails or mailings to members of American Freedom
25 Alliance or the Discovery Institute REGARDING cancellation of the CSC EVENT.

26 **REQUEST NO. 39:**

27 All DOCUMENTS REGARDING expenses incurred in booking the CSC EVENT.
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1 **REQUEST NO. 40:**

2 All DOCUMENTS REGARDING the formation of the American Freedom Alliance, its
3 charter, and its organizational DOCUMENTS.

4 **REQUEST NO. 41:**

5 All DOCUMENTS, including all COMMUNICATIONS, REGARDING YOUR planning of
6 the CSC EVENT.

7 **REQUEST NO. 42:**

8 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the "follow up
9 discussion" that YOU intended on having at the CSC EVENT, as referred to in paragraph 6 of the
10 Declaration Of Adrian (Avi) Davis In Support Of Application And Order To Show Cause And
11 Temporary Restraining Order, filed October 14, 2009.

12 **REQUEST NO. 43:**

13 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that "AFA
14 entered into a contract with Defendants for the purpose of securing their IMAX theater," as referred
15 to in paragraph 6 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To
16 Show Cause And Temporary Restraining Order, filed October 14, 2009.

17 **REQUEST NO. 44:**

18 All DOCUMENTS, including all COMMUNICATIONS, REGARDING Illustra Media,
19 including, but not limited to, all COMUNICATIONS with Illustra Media or any employee, affiliate,
20 member, officer, director, fellow, or contributor thereof.

21 **REQUEST NO. 45:**

22 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the relationship
23 between Illustra Media and the Discovery Institute.

24 **REQUEST NO. 46:**

25 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the "post-screening
26 discussion" that YOU intended on having at the CSC EVENT, as referred to in paragraph 11 of the
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1 Declaration Of Adrian (Avi) Davis In Support Of Application And Order To Show Cause And
2 Temporary Restraining Order, filed October 14, 2009.

3 **REQUEST NO. 47:**

4 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
5 “Discovery Institute had helped organize and publicize the other regional screenings of the
6 Documentary,” as referred to in paragraph 11 of the Declaration Of Adrian (Avi) Davis In Support Of
7 Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

8 **REQUEST NO. 48:**

9 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “short statement
10 on [Discovery Institute’s] newsblog,” referred to in paragraph 12 of the Declaration Of Adrian (Avi)
11 Davis In Support Of Application And Order To Show Cause And Temporary Restraining Order, filed
12 October 14, 2009.

13 **REQUEST NO. 49:**

14 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
15 “neither I nor anyone else at AFA authorized the Discovery Institute to promote the event,” found in
16 paragraph 13 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To
17 Show Cause And Temporary Restraining Order, filed October 14, 2009.

18 **REQUEST NO. 50:**

19 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “draft of a press
20 release” provided to the Discovery Institute referred to in paragraph 13 of the Declaration Of Adrian
21 (Avi) Davis In Support Of Application And Order To Show Cause And Temporary Restraining
22 Order, filed October 14, 2009.

23 **REQUEST NO. 51:**

24 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “press release”
25 referred to in paragraph 14 of the Declaration Of Adrian (Avi) Davis In Support Of Application And
26 Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.
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1 **REQUEST NO. 52:**

2 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the "short 1-page
3 press release" referred to in paragraph 15 of the Declaration Of Adrian (Avi) Davis In Support Of
4 Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

5 **REQUEST NO. 53:**

6 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that "none
7 of these publications promoting the event was authorized by me or anyone else affiliated with AFA,"
8 as stated in paragraph 15 of the Declaration Of Adrian (Avi) Davis In Support Of Application And
9 Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

10 **REQUEST NO. 54:**

11 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the October 6, 2009
12 email from Christina Sion referred to in paragraph 16 of the Declaration Of Adrian (Avi) Davis In
13 Support Of Application And Order To Show Cause And Temporary Restraining Order, filed October
14 14, 2009.

15 **REQUEST NO. 55:**

16 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that "AFA
17 had no control or approval over [the Discovery Institute's] publicity activities," as stated in paragraph
18 18 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To Show Cause
19 And Temporary Restraining Order, filed October 14, 2009.

20 **REQUEST NO. 56:**

21 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the letter from
22 Patrick Dennis referred to in paragraph 21 of the Declaration Of Adrian (Avi) Davis In Support Of
23 Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

24 **REQUEST NO. 57:**

25 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the revenue
26 American Freedom Alliance has earned from lectures and film screenings during the years 2007,
27 2008, and 2009.

1 **REQUEST NO. 58:**

2 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the charitable
3 donations American Freedom Alliance has received during the years 2007, 2008, and 2009.

4 **REQUEST NO. 59:**

5 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that the
6 “event was intended to raise the funds that would act as a cash infusion to bring it back from the
7 brink, as claimed in paragraph 24 of the Declaration Of Adrian (Avi) Davis In Support Of
8 Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

9 **REQUEST NO. 60:**

10 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that the
11 “AFA has performed all of the conditions, covenants and promises required under the terms of the
12 Contract,” as claimed in paragraph 25 of the Declaration Of Adrian (Avi) Davis In Support Of
13 Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

14 **REQUEST NO. 61:**

15 All DOCUMENTS REGARDING the claim that “AFA has an annual operating budget of
16 \$350,000,” as claimed in paragraph 27 of the Declaration Of Adrian (Avi) Davis In Support Of
17 Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

18 **REQUEST NO. 62:**

19 All DOCUMENTS REGARDING the amount of American Freedom Alliance’s operating
20 expenses in 2007, 2008, and 2009 that was paid for by “revenues from events,” as referred to in
21 paragraph 27 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To
22 Show Cause And Temporary Restraining Order, filed October 14, 2009.

23 **REQUEST NO. 63:**

24 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that “the
25 revenue from the Darwin Debates was projected to bring in approximately \$30,000.00,” as stated in
26 paragraph 27 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To
27 Show Cause And Temporary Restraining Order, filed October 14, 2009.

1 **REQUEST NO. 64:**

2 All DOCUMENTS REGARDING the August 19, 2009 annual Board meeting referred to in
3 paragraph 28 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To
4 Show Cause And Temporary Restraining Order, filed October 14, 2009.

5 **REQUEST NO. 65:**

6 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that the
7 CSC EVENT was "likely to generate" \$30,000 (\$11,750 from ticket sales, with 470 IMAX seats x
8 \$25 each; and \$17,500 from a pre-event reception, with 70 people x \$250 each) as claimed in
9 paragraph 29 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To
10 Show Cause And Temporary Restraining Order, filed October 14, 2009.

11 **REQUEST NO. 66:**

12 All DOCUMENTS, including all COMMUNICATIONS, REGARDING attendance
13 (including, but not limited to prospective attendance) for the CSC EVENT.

14 **REQUEST NO. 67:**

15 All DOCUMENTS, including all COMMUNICATIONS, REGARDING attendance
16 (including, but not limited to prospective attendance) for the USC EVENT.

17 **REQUEST NO. 68:**

18 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
19 "without the success of the first fundraising event . . . the remaining events could not take place" as
20 claimed in paragraph 29 of the Declaration Of Adrian (Avi) Davis In Support Of Application And
21 Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

22 **REQUEST NO. 69:**

23 All DOCUMENTS reflecting the number of people who indicated they would attend the CSC
24 EVENT.

25 **REQUEST NO. 70:**

26 All DOCUMENTS reflecting the number of people who indicated they would attend the USC
27 EVENT.

1 **REQUEST NO. 71:**

2 All DOCUMENTS REGARDING the “pre-event reception” that was to occur at the CSC
3 EVENT, as referred to in paragraph 29 of the Declaration Of Adrian (Avi) Davis In Support Of
4 Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

5 **REQUEST NO. 72:**

6 All DOCUMENTS REGARDING the pre-event reception that occurred at the USC EVENT.

7 **REQUEST NO. 73:**

8 All DOCUMENTS REGARDING ticket sales for the CSC EVENT.

9 **REQUEST NO. 74:**

10 All DOCUMENTS REGARDING ticket sales for the USC EVENT.

11 **REQUEST NO. 75:**

12 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that the
13 “\$30,000 that the October 25th CENTER event was likely to generate . . . would be absolutely
14 necessary to continue operations of the organization,” as claimed in paragraph 29 of the Declaration
15 Of Adrian (Avi) Davis In Support Of Application And Order To Show Cause And Temporary
16 Restraining Order, filed October 14, 2009.

17 **REQUEST NO. 76:**

18 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “radio
19 advertising” that Mr. Davis claimed would be necessary as a result of the cancellation of the CSC
20 EVENT in paragraph 32 of the Declaration Of Adrian (Avi) Davis In Support Of Application And
21 Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

22 **REQUEST NO. 77:**

23 All DOCUMENTS, including all COMMUNICATIONS, REGARDING publicity
24 REGARDING the CSC EVENT.

25 **REQUEST NO. 78:**

26 All DOCUMENTS, including all COMMUNICATIONS, REGARDING publicity
27 REGARDING the USC EVENT.

28

1 **REQUEST NO. 79:**

2 All DOCUMENTS, including all COMMUNICATIONS, REGARDING marketing
3 REGARDING the CSC EVENT.

4 **REQUEST NO. 80:**

5 All DOCUMENTS, including all COMMUNICATIONS, REGARDING marketing
6 REGARDING the USC EVENT.

7 **REQUEST NO. 81:**

8 All DOCUMENTS, including all COMMUNICATIONS, REGARDING advertising
9 REGARDING the CSC EVENT.

10 **REQUEST NO. 82:**

11 All DOCUMENTS, including all COMMUNICATIONS, REGARDING advertising
12 REGARDING the USC EVENT.

13 **REQUEST NO. 83:**

14 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the "Is the (Real)
15 News Dead" conference, referred to in paragraph 32 of the Declaration Of Adrian (Avi) Davis In
16 Support Of Application And Order To Show Cause And Temporary Restraining Order, filed October
17 14, 2009.

18 **REQUEST NO. 84:**

19 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that the
20 film "We Are Born Of Stars" "can only be screened in the IMAX format," as claimed in paragraph
21 37 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To Show Cause
22 And Temporary Restraining Order, filed October 14, 2009.

23 **REQUEST NO. 85:**

24 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that "of
25 the three IMAX cinemas situated in Los Angeles, the one located at the CENTER is the only one
26 available on Sunday night, October 25th," as claimed in paragraph 37 of the Declaration Of Adrian
27
28

1 (Avi) Davis In Support Of Application And Order To Show Cause And Temporary Restraining
2 Order, filed October 14, 2009.

3 **REQUEST NO. 86:**

4 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
5 “contractual issues were not at the root of the cancellation of [American Freedom Alliance’s] contract
6 with THE Defendants,” as claimed in paragraph 40 of the Declaration Of Adrian (Avi) Davis In
7 Support Of Application And Order To Show Cause And Temporary Restraining Order, filed October
8 14, 2009.

9 **REQUEST NO. 87:**

10 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that “the
11 CENTER . . . canceled the contract because it does not agree with ‘Darwin’s Dilemma’s’ basic
12 premise,” as claimed in paragraph 40 of the Declaration Of Adrian (Avi) Davis In Support Of
13 Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

14 **REQUEST NO. 88:**

15 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
16 “Defendants CENTER and FOUNDATION together form a joint public-private partnership,” as
17 alleged in paragraph 10 of American Freedom Alliance’s First Amended Complaint in the instant
18 action.

19 **REQUEST NO. 89:**

20 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “contract”
21 referred to in paragraph 11 of American Freedom Alliance’s First Amended Complaint in the instant
22 action.

23 **REQUEST NO. 90:**

24 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “post-screening
25 discussion” referred to in paragraph 17 of American Freedom Alliance’s First Amended Complaint in
26 the instant action.
27
28

1 **REQUEST NO. 91:**

2 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “post-screening
3 discussion” that occurred in connection with the USC EVENT.

4 **REQUEST NO. 92:**

5 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “short statement
6 on [Discovery Institute’s] news blog” referred to in paragraph 18 of American Freedom Alliance’s
7 First Amended Complaint in the instant action.

8 **REQUEST NO. 93:**

9 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “press release on
10 [Discovery Institute’s] website” referred to in paragraph 19 of American Freedom Alliance’s First
11 Amended Complaint in the instant action.

12 **REQUEST NO. 94:**

13 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “second
14 statement about the EVENT” issued by the Discovery Institute, as referred to in paragraph 20 of
15 American Freedom Alliance’s First Amended Complaint in the instant action.

16 **REQUEST NO. 95:**

17 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that “the
18 CENTER’s IMAX Theater was one of two IMAX theatres in the area that could project both IMAX
19 films and standard DVD’s,” as claimed in paragraph 28 of American Freedom Alliance’s First
20 Amended Complaint in the instant action.

21 **REQUEST NO. 96:**

22 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that “the
23 CENTER’s IMAX Theater was the only IMAX Theater available on the evening of the EVENT,” as
24 claimed in paragraph 29 of American Freedom Alliance’s First Amended Complaint in the instant
25 action.

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1 **REQUEST NO. 97:**

2 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
3 “[w]ith the EVENT’s cancellation at the CENTER IMAX Theater, Plaintiff was unable to locate a
4 suitable alternative venue for the showing of the two films,” as claimed in paragraph 29 of American
5 Freedom Alliance’s First Amended Complaint in the instant action.

6 **REQUEST NO. 98:**

7 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
8 “Plaintiff’s ticket sales in the alternative venue fell far short of the projected sales for the EVENT had
9 it been presented at the CENTER, as originally planned, and Plaintiff’s revenue from the EVENT
10 deprived Plaintiff of the profit it reasonably expected to realize,” as claimed in paragraph 30 of
11 American Freedom Alliance’s First Amended Complaint in the instant action.

12 **REQUEST NO. 99:**

13 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that “the
14 real reason for cancelling the event derived from hostility to the viewpoints expressed in ‘Darwin’s
15 Dilemma’ and advocated by Mssrs. Wells, Berlinki and Ladd,” as alleged in paragraph 32 of
16 American Freedom Alliance’s First Amended Complaint in the instant action.

17 **REQUEST NO. 100:**

18 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
19 “Defendants sought to shroud themselves with a cloak of plausible deniability for violating Plaintiff’s
20 constitutional rights,” as alleged in paragraph 32 of American Freedom Alliance’s First Amended
21 Complaint in the instant action.

22 **REQUEST NO. 101:**

23 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the “immediate
24 hardship” from cancellation of the CSC EVENT, as alleged in paragraph 33 of American Freedom
25 Alliance’s First Amended Complaint in the instant action.

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1 **REQUEST NO. 102:**

2 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the "costs and
3 expenses incurred in preparation for the EVENT at the CENTER's IMAX facility," as alleged in
4 paragraph 39 of American Freedom Alliance's First Amended Complaint in the instant action.

5 **REQUEST NO. 103:**

6 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the "loss of
7 reasonably anticipate (sic) revenue from the EVENT," as alleged in paragraph 39 of American
8 Freedom Alliance's First Amended Complaint in the instant action.

9 **REQUEST NO. 104:**

10 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the "additional costs
11 and expenses associated with locating, booking, advertising and presenting the EVENT at an
12 alternative venue and lost opportunity," as alleged in paragraph 39 of American Freedom Alliance's
13 First Amended Complaint in the instant action.

14
15
16 DATED: December 30, 2009

GIBSON, DUNN & CRUTCHER LLP

17
18 By: _____

19 James L. Zelenay, Jr.

20 Attorneys for Defendants,
21 CALIFORNIA SCIENCE CENTER FOUNDATION
22 and JEFFREY RUDOLPH, in his official capacity
23 as President of the California Science Center Foundation
24
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1 **CERTIFICATE OF SERVICE**

2 I, Zella Shigg, declare as follows:

3 I am employed in Los Angeles, California; I am over the age of eighteen years and am not a
4 party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071. On
December 30, 2009, I served the following document:

5 **DEFENDANT CALIFORNIA SCIENCE CENTER FOUNDATION'S FIRST SET OF**
6 **REQUESTS FOR PRODUCTION TO PLAINTIFF AMERICAN FREEDOM ALLIANCE**

7 by placing a copy thereof in an envelope addressed to each of the persons named below at the address
8 shown:

9 William J. Becker, Jr.
10 The Becker Law Firm
11 11500 Olympic Blvd, Suite 400
12 Los Angeles, CA 90064
Tel: (310) 636-1018
Fax: (310) 765-6328

Allan S. Ono, Esq.
Deputy Attorney General
Natural Resources Law Section
Office of the Attorney General
300 S. Spring Street, 11th Floor
North Tower
Los Angeles, CA 90013
Fax: (213) 897-2802

14 Counsel for Plaintiff American Freedom Alliance Counsel for defendants California Science Center
15 and Jeffrey Rudolph, in his official capacity as
16 President and CEO of the California Science
Center

17 BY MAIL: I placed a true copy in a sealed envelope addressed as indicated above, on
18 the above-mentioned date. I am familiar with the firm's practice of collection and
19 processing correspondence for mailing. It is deposited with the U.S. Postal Service on
20 that same day in the ordinary course of business. I am aware that on motion of party
21 served, service is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.

22 BY PERSONAL SERVICE: I placed a true copy in a sealed envelope addressed to
23 each person[s] named at the address[es] shown and giving same to a messenger for
personal delivery before 5:00 p.m. on the above-mentioned date.

24 BY FACSIMILE: From facsimile machine telephone number (213) 229-7520, on the
25 above-mentioned date, I served a full and complete copy of the above-referenced
document[s] by facsimile transmission to the person[s] at the number[s] indicated.

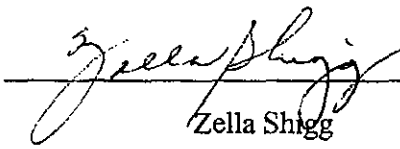
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BY OVERNIGHT MAIL: I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for delivery by overnight mail. Pursuant to that practice, envelopes placed for collection at designated locations during designated hours are delivered to the overnight mail service with a fully completed airbill, under which all delivery charges are paid by Gibson, Dunn & Crutcher LLP, that same day in the ordinary course of business.

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

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the foregoing document was printed on recycled paper. This Declaration of Service was executed by me on December 30, 2009, at Los Angeles, California.



Zella Shigg

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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, AMERICAN FREEDOM ALLIANCE

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; **CALIFOR-**
17 **NIA SCIENCE CENTER FOUNDATION**,
18 a nonprofit corporation; **JEFFREY RU-**
19 **DOLPH**, an Individual, and **DOES 1** through
20 **50**, inclusive;

21 Defendants.

Case No. BC423687

**PLAINTIFF'S RESPONSES TO
DEFENDANT CALIFORNIA SCIENCE
CENTER FOUNDATION'S FIRST SET
OF REQUESTS FOR PRODUCTION**

22 **RESPONDING PARTY:** Plaintiff, AMERICAN FREEDOM ALLIANCE

23 **PROPOUNDING PARTY:** Defendant, CALIFORNIA SCIENCE CENTER FOUNDATION

24 **SET NO.:** ONE

25 Pursuant to California Code of Civil Procedure § 2031, Plaintiff, Alliance Defense Fund
26 (hereinafter "AFA"), hereby objects and responds to Defendant, California Science Center
27 Foundation's, First Set of Requests for Production ("Requests") as follows:
28

1 to object to the use of any such document or the subject matter thereof during subsequent pro-
2 ceedings.

3 **GENERAL OBJECTION NO. 5:**

4 Plaintiff objects to Defendant's requests and the accompanying definitions and instruc-
5 tions to the extent they seek to alter or place any obligations on Plaintiff that are greater than that
6 permitted by applicable California law.

7 **GENERAL OBJECTION NO. 6:**

8 Plaintiff objects to each and every request to the extent that they seek information already
9 within Defendant's possession, or in the possession of individuals or entities other than Plaintiff
10 and equally available to Defendant, on the grounds that such requests are unduly burdensome
11 and oppressive.
12

13 **GENERAL OBJECTION NO. 7:**

14 To the extent the requests seek "all" documents, Plaintiff objects to such requests as over-
15 ly broad, unduly burdensome, oppressive and duplicative. When appropriate to produce docu-
16 ments, Defendant will produce only such documents or information as are available with reason-
17 able efforts and that are sufficient to provide the information sought by the request.
18

19 **GENERAL OBJECTION NO. 8:**

20 Plaintiff objects to each and every request to the extent that they are vague and ambi-
21 guous, overbroad, unduly burdensome, assume facts not in evidence, and seek documents that
22 are not relevant to the subject matter of this litigation and not reasonably calculated to lead to the
23 discovery of admissible evidence.
24

25 **GENERAL OBJECTION NO. 9:**

1 Plaintiff objects to the Definitions and Instructions to the extent they purport to call for
2 the production of any electronically stored information in any format other than as a TIFF image.
3 In producing electronically stored information, if any, in response to these Requests, Plaintiff
4 will produce the electronically stored information in the form of TIFF images. This is a form that
5 is reasonably usable. Should Defendant request that any particular document also be produced in
6 some other format, Plaintiff is willing to meet and confer with Defendant about such matter.
7

8 **GENERAL OBJECTION NO. 10:**

9 Plaintiff objects to the Requests to the extent they seek electronically stored information
10 from sources that are not reasonably accessible because of undue burden or expense, and Plain-
11 tiff will not search such electronically stored information absent agreement of the parties or court
12 order.

13 In making this objection, Plaintiff believes that there may be, and hereby identifies,
14 sources of such electronically stored information that is not reasonably accessible as back-up
15 tapes and legacy data.
16

17 **GENERAL OBJECTION NO. 11:**

18 In responding to these Requests, Plaintiff will produce documents (if any) on a rolling
19 basis.
20

21 **SPECIFIC RESPONSES AND OBJECTIONS**

22 **REQUEST NO. 1:**

23 All DOCUMENTS, including but not limited to, all COMMUNICATIONS, REGARD-
24 ING the CSC EVENT.

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1 RESPONSE TO REQUEST NO. 1:

2 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
3 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
4 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
5 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
6 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
7 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
8 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
9 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
10 ther objects to this request on the grounds that it is duplicative of other requests and therefore
11 unnecessarily burdensome.
12

13 Subject to these objections and without waiving them, Responding Party will comply.
14

15 REQUEST NO. 2:

16 All DOCUMENTS, including but not limited to, all COMMUNICATIONS, REGARD-
17 ING the USC EVENT.

18 RESPONSE TO REQUEST NO. 2:

19 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
20 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
21 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
22 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
23 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
24 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
25 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
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1 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
2 ther objects to this request on the grounds that it is duplicative of other requests and therefore
3 unnecessarily burdensome.

4 Subject to these objections and without waiving them, Responding Party will comply.

5 REQUEST NO. 3:

6 All DOCUMENTS, including but not limited to all COMMUNICATIONS, REGARD-
7 ING any attempts, successful or otherwise, to schedule a screening of the film "Darwin's Dilem-
8 ma" at a location other than the California Science Center, before YOU scheduled the CSC
9 EVENT.
10

11 RESPONSE TO REQUEST NO. 3:

12 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
13 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
14 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
15 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
16 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
17 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
18 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
19 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
20 ther objects to this request on the grounds that it is duplicative of other requests and therefore
21 unnecessarily burdensome.
22

23 Subject to these objections and without waiving them, Responding Party will comply.

24
25 ///

1 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
2 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
3 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
4 ther objects to this request on the grounds that it is duplicative of other requests and therefore
5 unnecessarily burdensome.

6 Subject to these objections and without waiving them, Responding Party will comply.

7
8 REQUEST NO. 57:

9 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the revenue
10 American Freedom Alliance has earned from lectures and film screenings during the years 2007,
11 2008, and 2009.

12 RESPONSE TO REQUEST NO. 57:

13 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
14 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
15 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
16 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
17 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
18 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
19 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
20 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
21 ther objects to this request on the grounds that it is duplicative of other requests and therefore
22 unnecessarily burdensome.

23
24
25 On the basis of these objections and without waiving them, Responding Party cannot
26 comply.

1 REQUEST NO. 58:

2 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the charitable
3 donations American Freedom Alliance has received during the years 2007, 2008, and 2009.

4 RESPONSE TO REQUEST NO. 58:

5 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
6 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
7 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
8 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
9 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
10 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
11 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
12 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
13 ther objects to this request on the grounds that it is duplicative of other requests and therefore
14 unnecessarily burdensome.
15

16
17 On the basis of these objections and without waiving them, Responding Party cannot
18 comply.

19 REQUEST NO. 59:

20 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
21 the "event was intended to raise the funds that would act as a cash infusion to bring it back from
22 the brink," as claimed in paragraph 24 of the Declaration Of Adrian (Avi) Davis In Support Of
23 Application And Order To Show Cause And Temporary Restraining Order, filed October 14,
24 2009.
25

26 RESPONSE TO REQUEST NO. 59:

1 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
2 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
3 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
4 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
5 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
6 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
7 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
8 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
9 ther objects to this request on the grounds that it is duplicative of other requests and therefore
10 unnecessarily burdensome.

11
12 Subject to these objections and without waiving them, Responding Party cannot comply
13 because it is unaware of the existence of any such documents and believes that they do not exist.

14
15 REQUEST NO. 60:

16 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
17 the "AFA has performed all of the conditions, covenants and promises required under the terms
18 of the Contract," as claimed in paragraph 25 of the Declaration Of Adrian (Avi) Davis In Support
19 Of Application And Order To Show Cause And Temporary Restraining Order, filed October 14,
20 2009.

21
22 RESPONSE TO REQUEST NO. 60:

23 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
24 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
25 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
26 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
27
28

1 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
2 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
3 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
4 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
5 ther objects to this request on the grounds that it is duplicative of other requests and therefore
6 unnecessarily burdensome.
7

8 Subject to these objections and without waiving them, Responding Party will comply.

9 REQUEST NO. 61:

10 All DOCUMENTS REGARDING the claim that "AFA has an annual operating budget
11 of \$350,000," as claimed in paragraph 27 of the Declaration Of Adrian (Avi) Davis In Support
12 Of Application And Order To Show Cause And Temporary Restraining Order, filed October 14,
13 2009.
14

15 RESPONSE TO REQUEST NO. 61:

16 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
17 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
18 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
19 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
20 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
21 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
22 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
23 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
24 ther objects to this request on the grounds that it is duplicative of other requests and therefore
25 unnecessarily burdensome.
26
27
28

1 Subject On the basis of these objections and without waiving them, Responding Party
2 cannot comply.

3 REQUEST NO. 62:

4 All DOCUMENTS REGARDING the amount of American Freedom Alliance's operating
5 expenses in 2007, 2008, and 2009 that was paid for by "revenues from events," as referred to in
6 paragraph 27 of the Declaration Of Adrian (Avi) Davis In Support Of Application And Order To
7 Show Cause And Temporary Restraining Order, filed October 14, 2009.

8
9 RESPONSE TO REQUEST NO. 62:

10 Plaintiff incorporates by reference the foregoing General Objections. Plaintiff further ob-
11 jects to this request to the extent it seeks information subject to any privilege or immunity, in-
12 cluding without limitation the attorney-client privilege and/or the doctrine of work product im-
13 munity. Plaintiff further objects to this request on the grounds that it is overly broad, not limited
14 in scope, unduly burdensome, and seeks documents beyond the scope of permissible discovery
15 and not relevant to the subject matter of this litigation or likely to lead to the discovery of ad-
16 missible evidence. Code of Civil Procedure § 2031.030(c)(1) requires that each item requested
17 be specifically described or that each category of item be reasonably particularized. Plaintiff fur-
18 ther objects to this request on the grounds that it is duplicative of other requests and therefore
19 unnecessarily burdensome.
20

21 On the basis of these objections and without waiving them, Responding Party cannot
22 comply.
23

24 REQUEST NO. 63:

25 All DOCUMENTS, including all COMMUNICATIONS, REGARDING the claim that
26 "the revenue from the Darwin Debates was projected to bring in approximately \$30,000.00," as
27

American Freedom Alliance vs. California Science Center, et al. LASC Case No. BC 423687

PLAINTIFF'S PRIVILEGE LOG IN RESPONSE TO REQUEST FOR

LOG IDENTIFYING THE DOCUMENTS AFA INADVERTENTLY PRODUCED

<u>Log No.</u>	<u>Bates No.</u>	<u>Document</u>	<u>Author</u>	<u>Recipient</u>	<u>Privilege</u>
1	550	E-mail undated (e-mail signature only)	William J. Becker, Jr.	N/A	Attorney-Client Confidentiality
2	874	E-mail 11/9/2009	William J. Becker, Jr.	Avi Davis; Joe Peterson	Attorney-Client Confidentiality
3	975-976	E-mail 11/24/2009	William J. Becker, Jr.	Joe Peterson	Attorney-Client Confidentiality
4	1141	E-mail 11/17/2009	Joe Peterson	William J. Becker, Jr.; Avi Davis	Attorney-Client Confidentiality
5	1351-1353	E-mail 10/9/09	Avi Davis	William J. Becker, Jr.	Attorney-Client Confidentiality
6	1433-1436	E-mail 11/23/2009	William J. Becker, Jr.	Peter Bylsma	Attorney-Client Confidentiality
7	1725-1727	E-mail 10/14/2009	William J. Becker, Jr.	Avi Davis, Peter Bylsma, Joe Peterson, Barak Lurie, Clark Gross, John West	Attorney-Client Confidentiality; Attorney Work Product Doctrine
8	1728-1731	E-mail 10-14-2009	William J. Becker, Jr.	Avi Davis, Peter Bylsma, Joe Peterson, Barak Lurie, Clark Gross, John West	Attorney-Client Confidentiality; Attorney Work Product Doctrine
9	2061-2062	E-mail 10/12/2009	Joe Peterson	William J. Becker, Jr., Avi Davis, Peter Bylsma, Barak Lurie, Clark Gross, John West	Attorney-Client Confidentiality; Attorney Work Product Doctrine
10	2063-2068	E-mail 1/14/2010	Pete Lepiscopo	William J. Becker, Jr., Avi Davis, Peter Bylsma, Barak Lurie, Clark Gross, Casey Luskin	Attorney-Client Confidentiality; Attorney Work Product Doctrine
11	2069-2075	E-mail 10/13/2009	William J. Becker, Jr.	Joe. Peterson; Avi Davis; Casey Luskin; John West; Peter Bylsma	Attorney-Client Confidentiality; Attorney Work Product Doctrine

EW

12	2076-2083	E-mail 10/13/09	William J. Becker, Jr.	Avi Davis, Joe Peterson	Attorney-Client Confidentiality
13	2084-2103	E-mail 10/13/2009	William J. Becker, Jr.	Joe, Peterson; Avi Davis; Casey Luskin; John West; Peter Bylsma, Casey Luskin, Clark Gross	Attorney-Client Confidentiality; Attorney Work Product Doctrine
14	2104-2106	E-mail 10/15/2009	William J. Becker, Jr.	Avi Davis, Joe Peterson, Clark Gross, Peter Bylsma	Attorney-Client Confidentiality
15	2107-2109	E-mail 10/15/2009	Joe Peterson	Avi Davis, William J. Becker, Jr., Clark Gross, Peter Bylsma	Attorney-Client Confidentiality
16	2110-2112	E-mail 10/15/2009	Joe Peterson	Avi Davis, William J. Becker, Jr., Clark Gross, Peter Bylsma	Attorney-Client Confidentiality
17	2113-2116	E-mail 10/15/2009	William J. Becker, Jr.	Avi Davis, Joe Peterson, Clark Gross, Peter Bylsma	Attorney-Client Confidentiality
18	3088-3090	E-mail 10/15/2009	Joe Peterson	William J. Becker, Jr.	Attorney-Client Confidentiality
19	3173-3184	E-mail 10/11/2009	William J. Becker, Jr.	Avi Davis, Joe Peterson	Attorney-Client Confidentiality
20	3349-3358	E-mail 10/12/2009	Joe Peterson	Avi Davis, William J. Becker, Jr.	Attorney-Client Confidentiality

Two documents were inadvertently Bates numbered 1141. Document 1141 dated 11/17/2009 is withheld on the basis of the attorney-client confidentiality privilege. Document 1141 dated 10/12/2009 from Avi Davis to Joe Peterson has been produced.

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requests “to the extent they call for the production of trade secrets, proprietary business information, confidential commercial information, or protected information of third parties.” AFA asserts this objection, even though it has not moved for a protective order and there is no indication that any such information is even at issue.

Indeed, it is wholly and completely unclear from AFA’s objections and responses whether AFA has simply asserted the General Objections as a matter of course, or has actually withheld any documents on the basis of its General Objections. As part of our meet and confer session, please inform us of whether AFA has withheld any documents pursuant to the General Objections, and – if so – what types of documents were withheld and why. If AFA has not withheld any documents based upon its General Objections, we will need a confirmation of that in writing by you.

Objections To Individual Requests

AFA also asserts a series of similar objections in response to each individual document request and responds to all but a few by asserting that “[s]ubject to these objections and without waiving them, Responding Party will comply.” Again, it is wholly unclear from AFA’s objections and responses whether it is simply asserting these objections as a matter of course or whether it has actually withheld any documents from production on the basis of the boilerplate objections asserted in response to each of the requests.

Please inform us during our meet and confer session whether AFA has withheld documents from production on the basis of the objections it has asserted in response to each request, and – if so – what types of documents were withheld and why. Further, if no documents were withheld on the basis of such objections, we will need that confirmed in writing by you.

Insufficient Responses To Individual Requests

AFA provides a number of responses to certain groups of requests that are insufficient. These are discussed to the extent possible by category.

Documents Relating To AFA’s Claim Of Damages

A number of the Foundation’s document requests seek information relevant to the claim of damages that AFA asserts in this action. Many of these requests directly quote

2010/03/10 10:00 AM

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statements made by AFA or Avi Davis under penalty of perjury or in the Complaint, and simply request that AFA provide the basis for these sworn statements or allegations. For instance, in Request No. 65, the Foundation asks that AFA produce:

All documents, including all communications, regarding the claim that the CSC Event was “likely to generate” \$30,000 (\$11,750 from ticket sales, with 470 IMAX seats x \$25 each; and \$17,500 from a pre-event reception, with 70 people x \$250 each), as claimed in paragraph 29 of the Declaration of Adrian (Avi) Davis In Support Of Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

In response, AFA simply states that it “objects . . . on the grounds that [this request] prematurely seeks the analysis and conclusions of an expert witness” and contends that AFA “cannot comply.” Response No. 65. *See also* Response Nos. 98, 103. This (and other similar responses) are inappropriate. These requests seek information plainly relevant to AFA’s claim of damages, and AFA cannot avoid production simply because an expert may later opine regarding damages, or may base his or her opinion on documents that were generated at the time of the events in question. Indeed, given Mr. Davis’s very specific calculations outlined above, contained in a sworn declaration submitted to the Court in this case, we expect that there would be some documents to back this up. AFA must immediately produce all documents responsive to Requests Nos. 65, 98, and 103.

Similarly, the Foundation asked for a number of other documents relating to AFA’s financial history – also relevant to AFA’s claim of damages and assertion that the cancelled event at the Science Center was what was going to keep AFA solvent and viable. For instance, in Request No. 61, the Foundation seeks:

All documents regarding the claim that “AFA has an annual operating budget of \$350,000,” as claimed in paragraph 27 of the Declaration of Adrian (Avi) Davis In Support Of Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

AFA simply states in response that it “cannot comply.” *See* Response No. 61. *See also* Response Nos. 57, 58, 62. This is also inappropriate and not a recognized objection. The Foundation is entitled to this information, which goes directly to AFA’s alleged previous success and the extent of damages that AFA claims in this action.

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Documents Relating To AFA's Claims of First Amendment Violations

There are also a number of document requests propounded by the Foundation that go to the heart of AFA's allegation that the Foundation cancelled AFA's event due to some sort of bias against the theory of Intelligent Design, rather than because there was a breach of contract by AFA and the Discovery Institute. For instance, Document Request No. 87 seeks:

All documents, including all communications, regarding the claim that "the Center cancelled the contract because it does not agree with 'Darwin's Dilemma's' basic premise," as claimed in paragraph 40 of the Declaration of Adrian (Avi) Davis In Support Of Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.

In response to this and other similar requests, AFA again states that it "cannot comply," this time allegedly because "the request seeks a replication of the Responding Party's own record of documentation . . . [and] seeks documents that only the Responding Party can produce." See Response No. 87. See also Response Nos. 86, 88, 99, 100. This is not a proper objection. AFA must produce all responsive documents in its possession, custody, and control. To the extent AFA does not have any documentation to support these statements then it must acknowledge that in its response and not hide behind an objection.

Individual Insufficient Responses

There are also a number of other individual requests for which AFA's responses are wholly insufficient and must be remedied.

- Request No. 20 – This request seeks "All documents, including but not limited to, all communications, regarding contracts you entered into relating to the CSC Event." In response, AFA states that it "has already produced the contract, which was attached to the First Amended Complaint." This is insufficient. The Foundation is clearly entitled to the production of "all" documents, including all communications, relating to contracts entered into regarding the CSC Event, not just the contract between AFA and the Foundation itself. Indeed, the communications between the parties leading up to the contract's signing in this case may be highly relevant.

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- Request No. 21 – This request seeks “All documents, including but not limited to all communications, regarding contracts you entered into relating to the USC Event.” In response, AFA asserts that it “believes it has a copy of the contract but after a diligent search has been unsuccessful in locating it. A copy of the contract can be obtained from USC, and Responding Party will attempt to obtain it and produce it.” This is insufficient. The Foundation is entitled to all contracts that AFA entered into relating to the USC Event, as well as all documents relating to those contracts.
- Request No. 44 – This request seeks “All documents, including all communications, regarding Illustra Media, including, but not limited to, all communications with Illustra Media or any employee, affiliate, member, officer, director, fellow, or contributor thereof.” In response, AFA asserts that it “will comply by producing communications relating to the events at the California Science Center and USC.” The Foundation, however, is entitled to all of the documents requested – including all of those regarding Illustra Media, which allegedly produced Darwin’s Dilemma and was responsible for its distribution (including through AFA at the Science Center). Further, a point of dispute in this action is the connection between and among Illustra Media, the Discovery Institute, and AFA. Accordingly, AFA must produce all of these documents.
- Request No. 45 – This request seeks “All documents, including all communications, regarding the relationship between Illustra Media and the Discovery Institute.” In response, AFA asserts that it “cannot comply with this request” because it “it is vague and ambiguous as to the meaning of ‘relationship between Illustra Media and the Discovery Institute.’” This is nothing other than frivolous. It is clear that this request seeks all documents regarding any relationship – formal, contractual, or informal – between the Discovery Institute and Illustra Media. These documents must be produced.
- Request No. 47 – This request seeks “All documents, including all communications, regarding the claim that ‘Discovery Institute had helped organize and publicize the other regional screenings of the Documentary,’ as referred to in paragraph 11 of the Declaration of Adrian (Avi) Davis In Support Of Application And Order To Show Cause And Temporary Restraining Order, filed October 14, 2009.” In response, AFA asserts that it cannot comply with this

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request “because the information is a matter of public record, equally available to Propounding Party on the Internet, and Plaintiff is not required to copy every article of information on the Internet.” The Foundation does not contend that AFA must go out and search the internet in response to this request. There is no dispute, however, that AFA must produce those documents in its own possession, custody, or control – whether or not publicly available – that relate to the Discovery Institute’s promotion of Darwin’s Dilemma.

Attachments

Many of the documents that AFA has produced in response to the Foundation’s document requests fail to include attachments to those documents. Please confirm with your client that it has produced not only all relevant, responsive documents, but also all attachments to those documents, such as attachments to emails. We expect to receive such confirmation from you in writing.

Privilege Log

Finally, the privilege log that AFA produced allegedly identifying documents inadvertently produced suggests that AFA has improperly withheld documents – and now seeks to withhold additional documents – on the basis of inappropriate claims of privilege. For instance, in the privilege log that AFA has provided, which likely relates to only a small portion of the documents that AFA has actually withheld on privilege grounds, AFA contends that communications between AFA (or its counsel) and members of the Discovery Institute (or its counsel) are privileged or protected by the work product doctrine.

The Discovery Institute, however, is, allegedly, an independent third party – indeed, it may be *the* critical third party in this case. AFA cannot contend that it and its counsel’s communications with this third party are protected from disclosure on the basis of attorney client privilege or attorney work product claims.

Nor can AFA attempt to avoid producing these documents by claiming – as you did during our last call – that members of the Discovery Institute have now been retained as “consultants” to AFA in this matter. Again, the Discovery Institute may be the critical alleged third party in this case, and courts have previously recognized that a party cannot attempt to shield communications with such a third party from discovery by claiming some sort of consultant relationship. *See, e.g., Jasper Constr. Co. v. Foothill Junior College Dist.*

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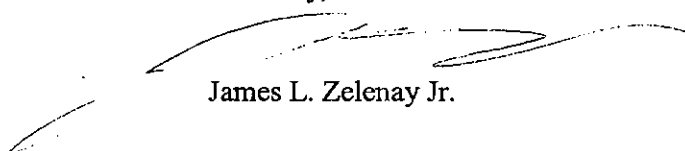
Of Santa Clara County, 91 Cal. App. 3d 1, 17 (1979) (“a litigant cannot silence a witness by having him reveal his knowledge to the litigant’s attorney”). That is exactly what AFA appears to be doing here.

Accordingly, unless this can be resolved through a meet and confer session, the Foundation intends to challenge AFA’s claim of privilege with respect to documents identified on its privilege log, as well as those documents not logged, that reflect communications that AFA or its counsel may have had with the Discovery Institute or its counsel.

Conclusion

If possible, we would like to meet and confer about these matters during our upcoming, in-person meet and confer session. If, however, that is too soon for you to meet and confer about these matters, we would appreciate it if AFA would return the courtesy that the Foundation and Science Center previously provided, and agree to an extension of four weeks for the Foundation to file any motion to compel. This extension should provide sufficient time for the parties to further meet and confer about the matters identified above.

Sincerely,



James L. Zelenay Jr.

JLZ/jlz
cc: Allan Ono, Office of the Attorney General



AFA ALBATROSS <albatrossatafa@gmail.com>

Fwd: Letter to Daily News

1 message

Peter Bylsma <pbbylsma@gmail.com>
To: albatrossatafa@gmail.com

Wed, Feb 10, 2010 at 9:37 AM

----- Forwarded message -----
From: Peter Bylsma <pbbylsma@gmail.com>
Date: Sun, Oct 11, 2009 at 11:19 AM
Subject: Re: Letter to Daily News
To: isdev@ix.netcom.com

This is great Avi. I have not seen it as of this morning. I have not heard from Bill B either
Peter

On Fri, Oct 9, 2009 at 6:24 PM, isdev@ix.netcom.com <isdev@ix.netcom.com> wrote:

My letter to the LA Daily News

Dear Sirs:

Your article **Cancellation of Darwin Film Causes Uproar** (10/09/09) made some important factual errors.

To begin, the American Freedom Alliance does not support any particular view of life's origins or development. It merely urges discussion and debate on the issue.
Second, the Darwin Debates, a series it will sponsor in late October, is balanced between competing views and each side will have the opportunity to present its own side of the issue.
Third, the Discovery Institute has no official or unofficial connection with AFA, save to recommend some of the speakers for the Debates. Nor did AFA have any knowledge of its press release which purportedly upset executives at the Smithsonian who then, assumingly, forced the hand of the California Science Center to cancel our event.
The cancellation of our contract because of the actions of a third party is not only a violation of California law, but a significant blow to freedom of speech in a public institution supported by tax dollars.
Such disgraceful conduct warrants condemnation and is not worthy of an institution that "value(s) science as an indispensable tool for understanding our world, accessibility and inclusiveness"

Avi Davis
President
American Freedom Alliance
(310) 254 5355 (mobile)
(310) 444 3085 (office)

isdev@ix.netcom.com
EarthLink Revolves Around You.

AFA 0000156



AFA ALBATROSS <albatrossatafa@gmail.com>

Fwd: October event confirmations

1 message

Peter Bylsma <pbbylsma@gmail.com>
To: albatrossatafa@gmail.com

Wed, Feb 10, 2010 at 9:51 AM

----- Forwarded message -----
From: Peter Bylsma <pbbylsma@gmail.com>
Date: Mon, Sep 28, 2009 at 1:51 PM
Subject: Re: October event confirmations
To: Robert Crowther <rob@discovery.org>

Rob since today has been a holiday tomorrow will allow me final confirmation. As far as I know the dates venues and times are all set. I appreciate your question about possible complaints and will address that with Avi; and I will be in touch tomorrow with you too.
Peter

On Mon, Sep 28, 2009 at 1:42 PM, Robert Crowther <rob@discovery.org> wrote:

Peter,

John West forwarded me the brochure that AFA has developed to help promote the upcoming events. I see that the dates are Oct. 25 for the film premiere at the California Science Center, and Oct. 27 for Berlinski's lecture at the Beverly Hills library. Before we begin aggressively promoting this I wanted to confirm that these dates are for sure, and that you all have contracts in place so that the venues can't just boot you out because they get complaints.

Once we let the jinni out of the bottle it's likely all hell will break loose and I just want to make sure everything (and everyone) is ready for that.

Regardless, this will be a lot of fun.

Thanks,

Rob

AFA 0000221

From: "Peter Bylsma" <pbbylsma@gmail.com>
Subject: Re: PUBLICITY FOR DARWINS DILEMMA
Date: September 30, 2009 2:51:36 PM PDT
To: "John West" <jwest@discovery.org>
▶ 1 Attachment, 46.5 KB

Excellent John sincere thanks for the revisions. It is attached with your changes. I will do the local low level distributions, e.g, Republican events and groups network, local blogs and on line calendars.
Peter

On Wed, Sep 30, 2009 at 2:38 PM, John West <jwest@discovery.org> wrote:
Peter,

Thanks! We will start promoting, and get the info. to the PR firm.

A couple of points about the press release: David Berlinski should be described as a critic of Darwinian theory rather than a proponent of intelligent design. Also, Jay Richards only agreed to appear as part of a foursome with Guillermo Gonzalez, Calle, and another non-scientist on the other side. So he shouldn't be portrayed as debating Calle one on one (something he didn't agree to).

John

On 9/30/09 2:08 PM, "Peter Bylsma" <pbbylsma@gmail.com> wrote:

Hi John

Avi says we are locked in so we are ready to start publicizing the event which is shaping up to be a good one. The release is attached. One priority is talk radio, which for LA is not a large universe but includes Michael Medved, especially for the week before the event. Please let me know how best to handle that regarding pitching the shows and scheduling some phone time with whomever is best and available during the next few weeks, e.g., Steve Meyer, whom I assume would be the best and most accessible. And also if that is what your PR firm will do. If that is the case, there is also a few print media who must be pitched especially the Jewish Journal; and there could be some feature pitching opportunities with college media. Also, I will begin distributing for events listings in print so appreciate your input on Biola and any other media here you recommend.
Peter



DARWINS DI...doc (46.5 KB)

DI 00604

ELG



AFA ALBATROSS <albatrossatafa@gmail.com>

Fwd: FYI Biola to send email on Monday

1 message

Peter Bylsma <pbbylsma@gmail.com>
To: albatrossatafa@gmail.com

Wed, Feb 10, 2010 at 9:19 AM

----- Forwarded message -----

From: Peter Bylsma <pbbylsma@gmail.com>
Date: Mon, Oct 5, 2009 at 7:12 AM
Subject: Re: FYI Biola to send email on Monday
To: John West <jwest@discovery.org>

John this is excellent and much appreciated! Please let me know if we get any hits too.
Peter

On Fri, Oct 2, 2009 at 5:33 PM, John West <jwest@discovery.org> wrote:
FYI:

Biola is supposed to send out an email about the Darwin's Dilemma early next week, probably on Monday.

DI will also be getting out an email to its supporters about it mid week.

A press release to the California wire and to Washington DC area media on the screening will also go out early next week from our PR firm. (The national media might get interested because the California Science Center is the west coast affiliate museum of the Smithsonian.)

John

AFA 0000148



AFA ALBATROSS <albatrossatafa@gmail.com>

Fwd: Talked again to Troy Anderson

1 message

Peter Bylsma <pbbylsma@gmail.com>
To: albatrossatafa@gmail.com

Wed, Feb 10, 2010 at 9:54 AM

----- Forwarded message -----
From: **Peter Bylsma** <pbbylsma@gmail.com>
Date: Thu, Oct 8, 2009 at 3:23 PM
Subject: Re: Talked again to Troy Anderson
To: John West <jwest@discovery.org>

I just spoke with Avi and it looks like we have some publicity opportunities out of this you and I should discuss. I think it would be appropriate to pitch Avi to the local talkers tomorrow, specifically John and Ken, Hugh Hewitt and Dennis Prager, to discuss either tomorrow or next week what has transpired here, and to send the information to the local conservative news sites and bloggers. I hope to have another venue lined up shortly too. It might work to pitch Mike Gallagher and even Glen Beck, especially if you know their producers, I do not - your thoughts are welcome.

On Thu, Oct 8, 2009 at 3:35 PM, John West <jwest@discovery.org> wrote:

A short while ago Troy Anderson told me that the Science Center issued a statement canceling the event and attributing it to contractual issues. Because this was not true, I went on record disputing this. I made clear that I was speaking for DI, not AFA, and that he needed to speak to you about your view. I did say I thought the AFA was the victim in this dispute. There probably will be a story in tomorrow's paper.

Troy also said that the Smithsonian initially denied contacting the California Science Center, and then the spokesperson inadvertently admitted that he had called the Science Center.

John

AFA 0000446

<https://mail.google.com/mail/?ui=2&ik=0c0f57b180&view=pt&search=inbox&th=126b90...> 2/11/2010