

ORIGINAL

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

EXEMPT FROM FILING FEE
GOVERNMENT CODE § 6103
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NOV 08 2010

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

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

13 **AMERICAN FREEDOM ALLIANCE, a**
14 **nonprofit corporation,**
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Plaintiff,

v.

CALIFORNIA SCIENCE CENTER, a legal
entity of the State of California;
CALIFORNIA SCIENCE CENTER
FOUNDATION, a nonprofit corporation;
JEFFREY RUDOLPH, an Individual, and
DOES 1 through 50, inclusive,
Defendants.

Case No. BC 423687

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

**DEFENDANTS CALIFORNIA SCIENCE
CENTER'S AND JEFFREY RUDOLPH'S
(IN HIS INDIVIDUAL AND OFFICIAL
CAPACITY AS PRESIDENT AND CEO
OF THE CALIFORNIA SCIENCE
CENTER) ANSWER TO THE
REMAINING PORTIONS OF PLAINTIFF
AMERICAN FREEDOM ALLIANCE'S
UNVERIFIED THIRD AMENDED
COMPLAINT**

ORIGINAL
COMPLAINT FILED: October 14, 2009

THIRD AMENDED
COMPLAINT FILED: August 18, 2010

DEMURRER TO THIRD AMENDED
COMPLAINT'S FIFTH, SIXTH AND
SEVENTH CAUSES OF ACTION
SUSTAINED: October 8, 2010

DEFENDANTS CALIFORNIA SCIENCE CENTER'S AND JEFFREY RUDOLPH'S ANSWER TO THE
REMAINING PORTIONS OF PLAINTIFF AMERICAN FREEDOM ALLIANCE'S UNVERIFIED THIRD
AMENDED COMPLAINT

(BC 423687)

BT/ST/TT

1 Defendants California Science Center and Jeffrey Rudolph, in his individual and official
2 capacity as President and CEO of the California Science Center (“Defendants”) by and through
3 their attorneys of record, answer the portions of unverified Third Amended Complaint of Plaintiff
4 American Freedom Alliance that survived the Court’s Order dated October 8, 2010, sustaining
5 Defendants’ Demurrer to the Fifth, Sixth and Seventh Causes of Action as follows:

6 Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendants deny
7 generally and specifically each and every allegation and cause of action in Plaintiff’s Third
8 Amended Complaint. Defendants further deny that Plaintiff has sustained any injury, damage or
9 loss by reason of any act or omission of the Defendants, or at all, and further deny that Plaintiff is
10 entitled to any relief against or affecting any of the Defendants.

11 In addition, Defendants allege the following affirmative defenses:

12 **FIRST AFFIRMATIVE DEFENSE**

13 (Failure to State a Claim – All Causes of Action)

14 The Third Amended Complaint and each and every cause of action therein fails to state a
15 claim upon which relief can be granted or facts sufficient to constitute a cause of action.

16 **SECOND AFFIRMATIVE DEFENSE**

17 (Unclean Hands – All Causes of Action)

18 Plaintiff is barred in equity from claiming or recovering any relief set forth in the Third
19 Amended Complaint and each and every cause of action alleged therein because of its conduct
20 under the doctrine of unclean hands.

21 **THIRD AFFIRMATIVE DEFENSE**

22 (Immunity – All Causes of Action)

23 Plaintiff is barred from claiming or recovering any relief set forth in the Third Amended
24 Complaint and each and every cause of action alleged therein against Defendants on the grounds
25 that Defendants are immune from liability, including, but not limited to, pursuant to Government
26 Code Section 821, et. seq., the Eleventh Amendment to the United States Constitution and the
27 doctrine of qualified immunity. 2

FILED

1 **FOURTH AFFIRMATIVE DEFENSE**

2 (Failure to Mitigate – All Causes of Action)

3 Plaintiff is barred from claiming or recovering any relief set forth in the Third Amended
4 Complaint and each and every cause of action alleged therein by reason of having failed to
5 exercise reasonable care and diligence to mitigate any alleged damages.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 (No Privity of Contract - Breach of Contract Claim)

8 Plaintiff is barred from claiming or recovering any damages or other relief on the grounds
9 that Defendants are not parties to the contract, alleged in the Third Amended Complaint.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 (Breach by Plaintiff – Breach of Contract Claim)

12 Plaintiff is barred from claiming or recovering any relief on the grounds that Plaintiff
13 breached its contract, if any, with Defendants and that by reason of such breach, Defendants have
14 been excused from performing any duties or obligations set forth in said contract.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 (Failure of Consideration – Breach of Contract Claim)

17 Plaintiff is barred from claiming or recovering any relief based on Plaintiff's cause of
18 action for breach of contract on the grounds of failure of consideration.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 (Adequate Legal Remedy – Injunctive Relief)

21 Plaintiff is barred from claiming or obtaining injunctive relief on the grounds that
22 adequate legal remedies exist.

23 **NINTH AFFIRMATIVE DEFENSE**

24 (Waiver – All Causes of Action)

25 Plaintiff is barred from claiming or recovering any relief set forth in the Third Amended
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1 Complaint and each and every cause of action alleged therein on the grounds that Plaintiff's
2 conduct was such that it constituted a waiver.

3 **TENTH AFFIRMATIVE DEFENSE**

4 (Equitable Estoppel – All Causes of Action)

5 Plaintiff is barred from claiming or recovering any relief set forth in the Third Amended
6 Complaint and each and every cause of action alleged therein under the doctrine of Equitable
7 Estoppel.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 (Additional Affirmative Defenses)

10 Defendants may not currently be aware of all affirmative defenses that may be available to
11 them. Defendants expressly reserve the right to amend this Answer to assert additional
12 affirmative defenses should discovery and/or further factual investigation give rise to same.

13 Dated: November 8, 2010

Respectfully Submitted,

14 EDMUND G. BROWN JR.
15 Attorney General of California

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17
18 BY 

ALLAN S. ONO

19 Deputy Attorney General
20 *Attorneys for Defendants*
21 *California Science Center and Jeffrey*
Rudolph in his individual and official
capacity as President and CEO of the
California Science Center

22 LA2009604304

DECLARATION OF SERVICE BY ELECTRONIC & U.S. MAIL

Case Name: **American Freedom Alliance v. California Science Center, et al.**

Case No.: **BC 423687**

I declare:

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

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

On November 8, 2010, I served the attached DEFENDANTS CALIFORNIA SCIENCE CENTER'S AND JEFFREY RUDOLPH'S (IN HIS INDIVIDUAL AND OFFICIAL CAPACITY AS PRESIDENT AND CEO OF THE CALIFORNIA SCIENCE CENTER) ANSWER TO THE REMAINING PORTIONS OF PLAINTIFF AMERICAN FREEDOM ALLIANCE'S UNVERIFIED THIRD AMENDED COMPLAINT by transmitting a true copy via ELECTRONIC MAIL. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

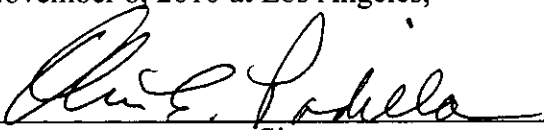
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333 South Grand Avenue
Los Angeles, CA 90071-3197

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 8, 2010 at Los Angeles, California.

Olivia C. Padilla

Declarant


Signature