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10 CENTER FOUNDATION and JEFFREY
11 RUDOLPH, individually and in his official capacity
12 as President of the California Science Center
13 Foundation

14 SUPERIOR COURT, STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES
16 CENTRAL DISTRICT

17 AMERICAN FREEDOM ALLIANCE, a
18 nonprofit corporation;

19 Plaintiff,

20 v.

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

26 Defendants.

27 CALIFORNIA SCIENCE CENTER
28 FOUNDATION, a nonprofit corporation;

Cross-Complainant,

v.

AMERICAN FREEDOM ALLIANCE; a
nonprofit corporation;

Cross-Defendant.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NOV 08 2010

John A. Clarke, Executive Officer/Clerk

By Rugena Lopez Deputy

CASE NO. BC 423687 1/10/10

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

**CROSS-COMPLAINT OF DEFENDANT
CALIFORNIA SCIENCE CENTER
FOUNDATION FOR**

1. **BREACH OF CONTRACT**
2. **BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING**
3. **FRAUD**

1 Defendant California Science Center Foundation for its cross-complaint against American
2 Freedom Alliance, a California non-profit corporation, alleges as follows:

3 I.

4 INTRODUCTION

5 1. In clear violation of the terms of its alleged contractual agreement with the California
6 Science Center Foundation ("Foundation"), Cross-Defendant American Freedom Alliance ("AFA")
7 coordinated with non-party the Discovery Institute to publicize an event that was scheduled to be held
8 at the California Science Center's IMAX theater on October 25, 2009 (the "Event"). This publicity
9 was not approved by the Cross-Complainant Foundation, as required by the alleged contract between
10 the Foundation and AFA. As a result, the Foundation cancelled the Event.

11 2. The Foundation provided AFA with a location to hold the Event after a previous
12 venue became unavailable. The Event was a private event, and the Foundation was aware that it
13 involved a screening of a film entitled "Darwin's Dilemma," which purports to be a movie
14 challenging the concept of evolution and promoting intelligent design as an alternative theory. The
15 Foundation was not concerned about the content of the film because it was, after all, to be show at a
16 private event. Rather, the Foundation saw an opportunity to assist AFA in finding a venue and
17 support the Foundation's own purpose of fundraising for the California Science Center. In an effort
18 to be helpful, the Foundation even made an adjustment to its standard payment terms and gave AFA a
19 discounted rate.

20 3. The Foundation has spent considerable resources to build its reputation in the
21 community and worldwide. To maintain this reputation, the Foundation is very attentive to ensure
22 that private groups do not appropriate the reputation of the Science Center for their own benefit for
23 private events that the California Science Center is not sponsoring. To this end, as part of its contract
24 governing private events, the Foundation requires "all promotional materials mentioning the
25 California Science Center" to be reviewed and approved before release.

26 4. Based upon information and belief, AFA and the Discovery Institute viewed the
27 chance to hold an event at the California Science Center as a potential source of publicity and
28 controversy. Thus, AFA coordinated publicity with the Discovery Institute, which released multiple

1 unapproved press releases with AFA's assistance, in clear violation of the alleged agreement between
2 AFA and the Foundation. Although the Foundation had previously declined to act as an event
3 sponsor, these press releases implied that the California Science Center and the Smithsonian
4 Institution were sponsoring the Event. One press release issued over news wires boldly declared:
5 "Smithsonian Institution Affiliated Science Center Will Premiere Intelligent Design Film."

6 5. After becoming aware of these unapproved press releases, the Foundation took action
7 to protect its reputation and cancelled the Event.

8 II.

9 THE PARTIES

10 6. Cross-Complainant California Science Center Foundation is a private, nonprofit,
11 section 501(c)(3) organization that raises funds to support exhibits and educational programs featured
12 at the California Science Center (the "Science Center"). The Foundation and the California Science
13 Center (the "Science Center")—which are separate entities—have a number of agreements that
14 control their relationship. The Foundation is responsible for managing and arranging for the use of
15 areas within the Science Center for private events that occur after hours. In the past, these private
16 events have included things such as wedding receptions, company events, and high school proms.

17 7. Cross-Defendant American Freedom Alliance is, on information and belief, a private,
18 non-profit organization located in Los Angeles, California. According to its website, the AFA is a
19 "non-political, non-partisan movement which promotes, defends and upholds Western values and
20 ideals." Among other things, AFA advertises that it "promotes networking, activism and education"
21 regarding "[t]he Islamic penetration of Europe," "Academic freedom," and "Missile Defense."

22 III.

23 FACTUAL ALLEGATIONS

24 8. The Science Center is the West Coast's largest interactive science center and museum.
25 Located in Exposition Park in downtown Los Angeles, the Science Center is a jewel of Southern
26 California and is currently the one of the largest tourist attractions in the state and the most-attended
27 museum in Southern California, attracting on average 1.4 million guests each year. The Science
28 Center "aspires to stimulate curiosity and inspire science learning in everyone by creating fun,

1 memorable experiences, because we value science as an indispensable tool for understanding our
2 world, accessibility and inclusiveness, and enriching people's lives." (California Science Center
3 Mission Statement, at www.californiasciencecenter.org.)

4 9. As one of its responsibilities, the Foundation operates the Event Service Department.
5 This department allows private groups to hold private events after hours at the Science Center, such
6 as wedding receptions, proms, or company special events. In addition to scheduling and arranging
7 for the holding of these private events, the Event Service Department also requires that all contracting
8 parties agree to comply with the Event Services' Policies and Procedures. Among other terms in the
9 Event Services' Policies and Procedures is the following regarding publicity:

10 **PROMOTIONAL MATERIALS:** It is required that the Event Services Office
11 approve, for technical and factual accuracy, *all* promotional materials mentioning the
12 California Science Center produced for your event (including invitations, programs,
13 press releases, etc.) prior to printing or broadcast. Please allow sufficient time for this
14 approval. (Emphasis added.)

15 10. On or about September 23, 2009, employees of the Foundation were contacted by
16 representatives of AFA regarding scheduling a private event at the Science Center's IMAX theater,
17 which is leased by the Foundation. Over the course of the next few days, the Foundation and AFA
18 arranged for booking the Science Center for a private event on October 25, 2009. During that time,
19 the Foundation was aware that AFA planned to show the movie "Darwin's Dilemma," a movie
20 challenging the theory of evolution and suggesting intelligent design as an alternative theory.

21 11. On October 5, 2009, the Foundation received a signed Event Price Estimate from AFA
22 for the booking of the Science Center for \$3,900. AFA also agreed to abide by the Event Services'
23 Policies and Procedures. A copy of the Event Price Estimate and Event Services' Policies and
24 Procedures is attached hereto as Exhibit A.

25 12. The Event Services' Policies and Procedures included the term relating to publicity
26 identified above. The purpose of this provision is to ensure that the name of the California Science
27 Center, and the Foundation, is not misappropriated by groups holding private events at the Center.
28

1 13. On October 5, 2009, the same day that the Foundation received a signed Event Price
2 Estimate from AFA, the Foundation became aware of press releases that were issued over the PR
3 Newswire relating to the Event. These press releases improperly implied that the California Science
4 Center and the Smithsonian Institution were sponsoring the AFA's private Event. Even Joe Peterson
5 ("Peterson") of AFA—who was apparently out of the loop regarding AFA's coordinating publicity
6 with the Discovery Institute—recognized the press releases were misleading, noting:

7 "Whoever at [sic] wrote the copy on the Discovery Institute press releases should
8 have his head examined . . . I thought the problem was buried in the text of the
9 documents . . . NOT THE HEADLINES. Talk about waving a red flag in front of a
10 bull. It seems like they were deliberately trying to screw this up!!!"

11 (AFA 0002258.) None of the press releases were ever submitted to the Foundation or the
12 Foundation's Event Services Office, in direct violation of the Event Services' Policies and
13 Procedures—part of the contract.

14 14. As a result of these violations of AFA's agreement to abide by the publicity provision
15 of the Event Policies and Procedures, and the fact that the press releases falsely appropriated the
16 Science Center's name and reputation, the Foundation notified AFA on October 6—one day after it
17 had received the signed Event Price Estimate from AFA—that it was cancelling the Event.

18 15. In its various complaints, AFA states that, because the press releases were issued by
19 the Discovery Institute, a non-profit organization located in Seattle, Washington, which AFA claims
20 is an "independent third-party," the cancellation was improper.

21 16. Beginning as early as May 2009, however, AFA and the Discovery Institute were
22 collaborating to co-sponsor an event in Los Angeles relating to intelligent design. Throughout the
23 following months, AFA and the Discovery Institute discussed possible locations, agendas, potential
24 speakers, and publicity.

25 17. AFA and the Discovery Institute consistently communicated and collaborated on the
26 Event up to, and even after, its cancellation. For example, on September 21, 2009, Peter Bylsma
27 ("Bylsma"), representing AFA, contacted John West ("West") of the Discovery Institute, stating:
28 "Avi [Davis, President of AFA] suggested I write to get contact information from you for the DI

1 public relations counsel, with whom I would like to *coordinate our efforts.*" (DI 00695, emphasis
2 added.) On September 28, 2009, Robert Crowther ("Crowther") of the Discovery Institute wrote to
3 Bylsma: "Before we begin *aggressively promoting* this I wanted to confirm that these dates are for
4 sure." (DI 00521, emphasis added.) Likewise, on September 30, 2009, Bylsma forwarded a press
5 release to West, noting "Avi says we are locked in [to our contract with the Foundation] so we are
6 ready to start publicizing the event." (DI 00592.)

7 18. When holding the Event at the Science Center became a possibility, AFA and the
8 Discovery Institute started to discuss the fact that it provided additional opportunities for publicity.
9 West noted that holding the Event at the Science Center "has the potential for some fun publicity."
10 (DI 00631.) In another e-mail, West tells Bylsma that "[t]he national media might get interested
11 because the California Science Center is the west coast affiliate of the Smithsonian." (AFA
12 0000148.) This was one of the terms that was expressly false and misleading about the press
13 releases. And even after the cancellation, AFA indicated that "it looks like we have some publicity
14 opportunities out of this." (AFA 0000446.)

15 19. AFA was cognizant that its publicity efforts might impacts its alleged contractual
16 relationship with the Foundation. In an e-mail to Bylsma, Crowther of Discovery Institute requested
17 confirmation of the dates before "aggressively promoting" the Event "so that the venues [sic] can't
18 just boot you out because they get complaints." He further noted in his email to the AFA: "*Once we*
19 *let the jinni [sic] out of the bottle it's likely all hell will break loose.*" (AFA 0000221.) In an earlier
20 e-mail, West notes: "I cautioned Avi that he needs to sign a contract before he announces it." (DI
21 00625.) And in a later email, Avi Davis admits that the Discovery Institute warned AFA that a
22 cancellation might happen due to the Discovery Institute's publicity. (AFA 0003211.)

23 20. AFA also publicized the Event on its own website, again without obtaining approval
24 from the Foundation's Event Services Department.

1 **IV. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Breach of Contract)**

4 21. The Foundation repeats, realleges and incorporates by reference in this paragraph the
5 allegations contained in Paragraphs 1 through 20 above, inclusive.

6 22. AFA alleges in its Complaint that AFA and the Foundation entered into a contract
7 regarding the Event. AFA signed an Event Price Estimate regarding the booking of the Science
8 Center for \$3,900 for the Event. As part of this alleged contract, AFA agreed to abide by the Event
9 Services' Policies and Procedures.

10 23. The Foundation fulfilled, or was prepared to fulfill, all of the requirements set forth in
11 the alleged contract regarding the Event.

12 24. AFA materially breached the alleged contract when it coordinated with the Discovery
13 Institute to issue publicity, which included the press releases regarding the Event, without obtaining
14 the prior approval of the Events Services Office as required under the Event Services' Policies and
15 Procedures. AFA also materially breached the alleged contract by issuing publicity on its own
16 website without obtaining approval from the Foundation.

17 25. As a result of AFA's breach of the alleged contract, the Foundation suffered damages
18 to be proved at trial.

19 **SECOND CAUSE OF ACTION**

20 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

21 26. The Foundation repeats, realleges and incorporates by reference in this paragraph the
22 allegations contained in paragraphs 1 through 25 above, inclusive.

23 27. In every contract or agreement there is an implied promise of good faith and fair
24 dealing. This means that each party will not do anything to unfairly interfere with the right of any
25 other party to receive the benefits of the contract.

26 28. Even if AFA was not responsible for the press releases made by the Discovery
27 Institute or the failure to obtain prior approval for the press releases was not a material breach, AFA
28 violated its duty to act fairly and in good faith. That is, even if AFA's conduct did not violate the

1 plain terms of the alleged agreement between AFA and the Foundation, it certainly violated the
2 covenant of good faith and fair dealing.

3 29. AFA entered into the alleged contract while coordinating publicity with the Discovery
4 Institute, which—to AFA’s knowledge—intended to publicize the Event in a manner that took
5 advantage of the name of the California Science Center and its relationship to the Smithsonian.

6 30. Based upon information and belief, AFA was fully aware that such use of the
7 California Science Center name would impact the Foundation and was contrary to the terms of their
8 contractual relationship and the interests of the Foundation.

9 31. The Foundation fulfilled, or was prepared to fulfill, all of the requirements set forth in
10 the alleged contract regarding the Event.

11 32. The Foundation is entitled to damages to be proved at trial.

12 THIRD CAUSE OF ACTION

13 (Fraud)

14 33. The Foundation repeats, realleges and incorporates by reference in this paragraph the
15 allegations contained in paragraphs 1 through 32 above, inclusive.

16 34. In contractual dealings, “[a] promise made without any intention of performing it”
17 constitutes actual fraud. Cal. Civ. Code § 1572.

18 35. When AFA and the Foundation entered into the alleged contract to hold the Event,
19 AFA promised to abide by the Event Services’ Policies and Procedures, including the provision
20 governing the approval of promotional materials.

21 36. The Foundation entered into the alleged contract to hold the Event on the basis of
22 AFA’s promise to comply with the Event Services’ Policies and Procedures.

23 37. The promotional materials provision was an important component of the agreement,
24 allowing the Foundation to ensure that the good-will it has developed for the California Science
25 Center’s name is not misappropriated.

26 38. Based upon the plain language of the agreement, AFA was aware or should have been
27 aware that the release of promotional materials was important to the alleged contract and that the
28

1 Foundation might take action if unapproved promotional materials were released before or after the
2 contract was formed.

3 39. Unbeknownst to the Foundation, AFA had no intention of fulfilling its obligation to
4 obtain prior approval of promotional materials. In fact, AFA had already begun coordinating
5 promotion for the Event before it even delivered a signed Event Price Estimate to the Foundation.

6 40. On September 30, 2009, five days before the Foundation received the signed Event
7 Price Estimate, AFA forwarded a press release to the Discovery Institute and indicated that “we are
8 ready to start publicizing the event.” (DI 00604.) This press release had not been approved by the
9 Foundation.

10 41. On that same day, Bylsma and Peterson discussed delivering an unapproved press
11 release to various media outlets. (AFA 0001421.) In the e-mail, Bylsma states: “A copy of the press
12 release is attached. You may distribute everywhere you like.” *Ibid.*

13 42. Later that day, West forwarded an e-mail announcing the Event to a representative of
14 Biola University. (AFA 0000093.) On information and belief, Bylsma was aware of this e-mail,
15 which was not approved by the Foundation. The e-mail specifically referenced the California
16 Science Center and included information regarding the Event, including information on purchasing
17 tickets. Additionally, the e-mail included a link to a page on AFA’s website regarding the Event.

18 43. An unapproved press release was posted on the Discovery Institute’s website dated
19 October 1, 2009. The release, which is attributed to AFA, specifically mentions the California
20 Science Center.

21 44. On October 5, 2009, a press release announcing the Event was sent out to the
22 California newswire. This release, which had not been approved by the Foundation, specifically
23 referenced the California Science Center. That same day, an unapproved press release for the Event
24 was sent out through the Washington D.C. newswire, announcing, “Intelligent Design Film to
25 Premiere at Smithsonian Affiliated Science Center.” The press release indicated that “[t]he debate
26 over Darwin will come to the Smithsonian Institution’s west coast affiliate.”

27 45. On the same day, an unapproved announcement of the Event appeared on AFA’s
28 website, specifically referencing the California Science Center.

1 **CERTIFICATE OF SERVICE**

2 I, Janet Faragher, declare as follows:

3 I am employed in Los Angeles, California; I am over the age of eighteen years and am not a party to
4 this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071. On November 8, 2010,
I served the following documents:

5 **CROSS-COMPLAINT OF DEFENDANT CALIFORNIA SCIENCE CENTER**
6 **FOUNDATION**

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

8 William J. Becker, Jr.
9 The Becker Law Firm
10 11500 Olympic Blvd, Suite 400
11 Los Angeles, CA 90064
12 Tel: (310) 636-1018
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15 Counsel for Plaintiff American Freedom Alliance

Counsel for Defendants California Science Center
and Jeffrey Rudolph, in his official capacity as
President and CEO of the California Science Center

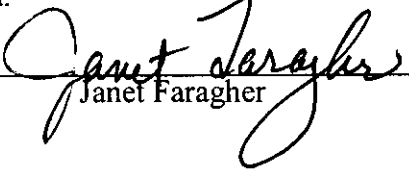
16 **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on
17 the above-mentioned date. I am familiar with the firm's practice of collection and
18 processing correspondence for mailing. It is deposited with the U.S. Postal Service on
19 that same day in the ordinary course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

22 **BY PDF FORMAT:** I caused each such document to be transmitted by PDF format, to the
23 parties and email addresses listed above.

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

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

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
28 and correct and that the foregoing document was printed on recycled paper. This Declaration of Service was
executed by me on November 8, 2010, at Los Angeles, California.


Janet Faragher