

FILED
LOS ANGELES SUPERIOR COURT

DEC 21 2010

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BY J. LORENZ, DEPUTY

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DEC 13 2010
FILING WINDOW

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DIVISION

AMERICAN FREEDOM ALLIANCE,

Plaintiff,

v.

CALIFORNIA SCIENCE CENTER
FOUNDATION, et al.,

Defendants.

CASE NO. BC423687

[Hon. Terry A. Green, Dept. 14]

**[PROPOSED] ORDER REGARDING
VIDEO TAPE RECORDING OF
DEPOSITIONS OF DISCOVERY
INSTITUTE INDIVIDUALS**

DATE OF FILING
OF ORIGINAL
COMPLAINT:

October 14, 2009

TRIAL DATE:

June 13, 2011

12/27/10

1 **[PROPOSED] ORDER**

2 **Recitals**

3 a. Defendant California Science Center Foundation (the "Foundation") has
4 sought the deposition of certain individuals in Washington State associated with the Discovery
5 Institute ("DI"). Their names are John West, Robert Crowther, and Casey Luskin (the "DI
6 Deponents").

7 b. The DI Deponents agreed to appear and provide deposition testimony on or
8 about December 15 and 16, 2010.

9 c. The Foundation issued Notices of Deposition for the DI Deponents, indicating
10 that it may record the depositions by video.

11 d. The DI Deponents object to the recording by video due to their concerns that
12 such video may be given to and misused by opponents of Discovery Institute's work outside this
13 litigation.

14 e. Cal.Code Civ. P. §2025, *et seq.*, Cal.Code Civ. P. §2030.010(c) and Rule 26(c)
15 of the Washington Superior Court Civil Rules provide for and support issuing a protective order
16 protecting a witness's privacy in certain circumstances.

17 f. Based upon a request from the DI's counsel, the parties hereby stipulate to this
18 proposed order to permit depositions to proceed more expeditiously and with less expense by, among
19 other things, allowing the DI Deponents to be examined without obtaining commissions and
20 engaging in motion practice in Washington State.

21 1. **Use of Video Recordings of Depositions.** Neither the parties to this action nor their
22 attorneys shall post any video recordings of the depositions of DI deponents in this action ("Video
23 Recordings") on any web page or internet site, and the Video Recordings will not be transmitted by
24 or duplicated by any party to this litigation or their attorneys for any purpose other than for the
25 prosecution and/or defense of this litigation and must not be disclosed or distributed to any person
26 except as follows:

27 a. Relevant excerpts of the Video Recordings may be used at court proceedings
28 in this action or trial provided they are marked as "confidential" and sealed from public disclosure.

1 b. The Court may order further use of the Video Recordings, in court
2 proceedings, at trial, or otherwise, after a hearing on a properly noticed motion that may be brought
3 by any party. The DI deponents must be given a reasonable opportunity to respond to any such
4 noticed motion. Any party bringing a motion to require or allow further use of the Video Recordings
5 must first request such release from the subject DI Deponent in writing including suggestions as to
6 how the DI deponent's privacy will be protected in the context of the requested order.

7 c. After conclusion of the case, a DI Deponent may use or authorize use or
8 release of some or all of the Video Recording of his deposition. Authorization must be in writing to
9 be effective.

10 2. **Protecting Video Recordings.** The party or attorney ordering the Video Recording of
11 a DI Deponent must provide a copy of this order to the Videographer. The Videographer must
12 digitally mark each copy of each Video Recording that it produces with a digital watermark or other
13 marking device to uniquely identify the party or attorney to whom the copy of the Video Recording
14 was sent.

15 3. **Return and Destruction of Video.** The parties intend that within 30 days after this
16 case has concluded and all appeal periods have expired ("Destruction Deadline"), only the DI
17 Deponents will possess copies of the Video Recordings of their Depositions and all originals and
18 other copies, however stored, in the parties' or their counsels' possession will be destroyed.
19 Accordingly, by the Destruction Deadline the following must be performed:

20 a. the Party or Attorney(s) causing the deposition of the DI Deponents to be video
21 recorded must request and confirm that the videographer destroys the original video recording and all
22 copies and digitally stored versions in the videographer's possession and provides contact and copy
23 identifier information to counsel for the DI Deponents for anyone who acquired copies of the Video
24 Recording from the Videographer.

25 b. all Parties and Attorneys obtaining duplicates or copies of any Video
26 Recordings must ensure that the copies obtained and any duplicates thereof are destroyed, except to
27 the extent held by the DI Deponents.
28

1 c. provide to the DI Deponents a declaration, signed under penalty of perjury,
2 affirming that the obligations stated above have been fulfilled.

3 4. **Defense of DI Deponent's Privacy.** If at any time before the Destruction Deadline,
4 any copy, version or excerpt of any DI Deposition is released, posted on-line, or distributed in
5 violation of this order, the party or attorney responsible for the release must take all legal action
6 reasonably necessary to secure the elimination and destruction of all copies or portions thereof
7 improperly released, posted or distributed.

8 5. **No Limitation on Transcripts.** This Order shall have no application at all to written
9 transcripts of depositions of the DI Deponents, or any transcript—video, written, or otherwise—
10 relating to other depositions in this matter.

11 6. **Inadvertent Disclosure.** If any copy or excerpt of a Video Recording is disclosed to
12 any person other than in the manner authorized by this Order, the party responsible for the disclosure
13 must seasonably bring all pertinent facts relating to such disclosure to the attention of counsel for the
14 DI Deponents and, without prejudice to any other rights and remedies of the DI Deponents, make
15 every reasonable effort to prevent further disclosure by it or by the person who was the recipient of
16 such material.

17 7. **Enforcement.** If any party causes or allows any copy or excerpt of a Video
18 Recording to be disclosed in violation of this Order, then in addition to any other relief the Court may
19 deem just and equitable, the Video Recording, including both its video and audio tracts shall be
20 deemed inadmissible for any purpose in this case. The Court shall order an award of the reasonable
21 attorneys' fees to the prevailing party or the DI deponent who prevails on a motion for violation of
22 this order.

23 8. **Continuing Jurisdiction.** All persons subject to the terms of this Order agree that
24 this Court shall retain jurisdiction over them for the purpose of enforcing this Order.
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12/27/10

ENTRY OF THE FOREGOING ORDER is hereby jointly requested.


William J. Becker Jr., SBN 134545
Attorney for Plaintiff, AMERICAN
FREEDOM ALLIANCE

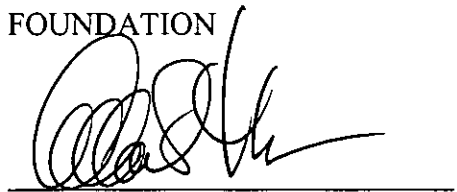
Dated this 10 day of December, 2010.


Kyle D. Netterfield, WSBA 27101
Attorney for DISCOVERY
INSTITUTE

Dated this 10 day of December, 2010.


James L. Zelenay, SBN 237339
Attorney for Defendants,
CALIFORNIA SCIENCE CENTER
FOUNDATION & JEFFREY RUDOLPH,
in his capacity as President of the
CALIFORNIA SCIENCE CENTER
FOUNDATION

Dated this 10 day of December, 2010.


Allan S. Ono, SBN 130763
Attorney for Defendant,
CALIFORNIA SCIENCE CENTER
& JEFFREY RUDOLPH, in his capacity as President
and CEO of the CALIFORNIA SCIENCE CENTER

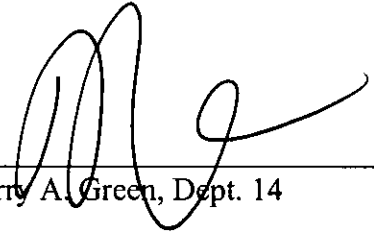
Dated this 10 day of December, 2010.

12/27/10

[PROPOSED] ORDER

This matter comes before the Court on the Joint Motion of the parties herein. The Court finds that good cause exists for this agreed Order to preserve and maintain privacy of the individuals of the Discovery Institute whom the California Science Center Foundation seeks to depose, and to facilitate efficiency for taking the depositions of these individuals.

Entered this 21 day of Dec 2010.



Hon. Terry A. Green, Dept. 14

CERTIFICATE OF SERVICE

I, Hannah Kim, declare as follows:

I am employed in Los Angeles, California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071. On December 13, 2010, I served the following documents:

**[PROPOSED] ORDER REGARDING VIDEO TAPE RECORDING
OF DEPOSITIONS OF DISCOVERY INSTITUTE INDIVIDUALS**

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

VIA PDF & U.S. MAIL

William J. Becker, Jr.
The Becker Law Firm
11500 Olympic Blvd, Suite 400
Los Angeles, CA 90064
Tel: (310) 636-1018
Fax: (310) 765-6328
e-mail: bbeckerlaw@gmail.com

VIA PDF & U.S. MAIL

Allan S. Ono
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
e-mail: allan.ono@doj.ca.gov

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

VIA PERSONAL SERVICE

Richard W. Stevens
1225 I Street, N.W.
Suite 1290
Washington, DC 20005
Tel: (202) 842-0300
Fax: (413) 383-2944
e-mail: legalriter@cox.net

VIA PDF & U.S. MAIL

Kyle D. Netterfield
Ellis, Li & McKinstry PLLC
2025 First Avenue, Penthouse A
Seattle, WA 98121-3125
Tel: 206.682.0565
e-mail: knetterfield@elmlaw.com

Counsel for Discovery Institute

Counsel for Plaintiff American Freedom Alliance

☒

BY MAIL: I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party 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.

1 ☐

BY FACSIMILE: From facsimile machine telephone number (213) 229-7520, on the 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.

3 ☒

BY PDF FORMAT: I caused each such document to be transmitted by PDF Format, to the parties and e-mail addresses indicated above.

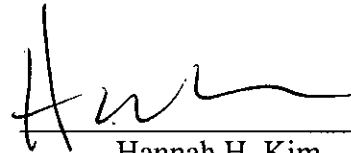
5 ☐

BY PERSONAL SERVICE: I placed a true copy in a sealed envelope addressed to each person[s] named at the address[es] shown and by personally handing a true and correct copy of the above mentioned documents at 333 South Grand Avenue, Los Angeles, California 90071.

7 ☐

BY NEXT DAY 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 Next Day Mail. Pursuant to that practice, envelopes placed for collection at designated locations during designated hours with a fully completed airbill, under which all delivery charges are paid by Gibson, Dunn & Crutcher, that same day in the ordinary course of business.

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 13, 2010, at Los Angeles, California.



Hannah H. Kim

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