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12 Rudolph in his individual and Official Capacity as  
13 President and CEO of the Science Center

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

MAR 25 2011

John A. C... Officer/Clerk

By GLORIETTA ROBINSON Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 **AMERICAN FREEDOM ALLIANCE, a**  
12 **nonprofit corporation,**  
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16 **CALIFORNIA SCIENCE CENTER, a legal**  
17 **entity of the State of California;**  
18 **CALIFORNIA SCIENCE CENTER**  
19 **FOUNDATION, a nonprofit corporation;**  
20 **JEFFREY RUDOLPH, an Individual, and**  
21 **DOES 1 through 50, inclusive,**  
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Plaintiff,

v.

Defendants.

Case No. BC 423687

**CALIFORNIA SCIENCE CENTER'S  
AND JEFFREY RUDOLPH'S, IN HIS  
INDIVIDUAL AND OFFICIAL  
CAPACITY AS PRESIDENT AND CEO  
OF THE CALIFORNIA SCIENCE  
CENTER, SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS AND  
EVIDENCE IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT OR, IN  
THE ALTERNATIVE, SUMMARY  
ADJUDICATION [Rules of Court, Rule  
3.1350, subd. (h)]**

**[Notice of Motion; Memorandum of Points and  
Authorities in Support Thereof; Appendix of  
Non-California Authorities; Declaration of  
Cheyrl Tateishi and Declaration of Allan Ono;  
Declaration of Jeffrey Rudolph and [Proposed]  
Order filed concurrently herewith]**

Date: June 9, 2011  
Time: 8:45 a.m.  
Dept: 14  
Judge: The Honorable Terry A. Green  
Trial Date: July 25, 2011  
Action Filed: October 14, 2009

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1 Pursuant to California Code of Civil Procedure section 437c, subdivision (b) and  
 2 California Rule of Court, rule 3.1350, Defendants California Science Center (“Center”) and  
 3 Jeffrey Rudolph in his individual and official capacity as President and CEO of the Center  
 4 (“Rudolph” and collectively, “Center Defendants”) hereby submit, for purposes of these motion  
 5 proceedings only, the following Separate Statement of Undisputed Material Facts in Support of  
 6 Their Motion for Summary Judgment, or in the alternative, Summary Adjudication regarding  
 7 American Freedom Alliance’s (“AFA”) claims asserted in its Third Amended Complaint.  
 8

<p>9 <i><b>Moving Party’s Undisputed Material Facts</b></i>  <p>10 <i><b>and Supporting Evidence:</b></i></p> </p>	<p><i><b>Opposing Party’s Response and Supporting</b></i>  <p><i><b>Evidence:</b></i></p> </p>
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11 **Issue No. 1:**  
 12 **The Center is Entitled to Judgment on AFA’s First Cause of Action For Breach of Contract**  
 13 **Because The Center Was Not a Party to The Contract**

14  
 15  
 16 1. The California Science Center (“Center”),  
 17 also known as the Sixth Agricultural  
 18 Association, was created by the California State  
 19 Legislature pursuant to Food and Agriculture  
 20 Code, Division 3, Part 3.  
 21 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-  
 22 23]; (Food & Agr. Code, sections 3801, et seq.)  
 23 2. The Center is a state institution organized  
 24 within the State and Consumer Services  
 25 Agency and is deemed a tax-exempt  
 26 organization as an instrumentality of this state  
 27 in accordance with Section 23706 of the  
 28 Revenue and Taxation Code.

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1 [Food & Agr. Code, sections 3953 and 4101.]

2  
3 3. Jeffrey Rudolph is the Center President and  
4 CEO

5 Rudolph Decl., Para. 2

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7 4. The Foundation is a non-profit, section  
8 501(c)(3) organization that raises funds to  
9 support exhibits and educational programs  
10 featured at the California Science Center (the  
11 "Science Center"), the West Coast's largest  
12 interactive science center and museum.

13 Ono Decl., Ex. 30 [Rudolph Dep. Ex. 200]

14  
15 5. In 1995, the Foundation and Science Center  
16 also entered into a lease agreement regarding  
17 the IMAX theater. The IMAX theater lease  
18 does not incorporate any policies regarding the  
19 subject matter of private events to be held at the  
20 facility. The lease agreement requires the  
21 Foundation to comply with all applicable state  
22 and federal laws. A provision of the lease  
23 disclaims any requirement that the Foundation  
24 "acquire or show any specific film."

25 Ono Decl., Ex. 29 [Dep. Ex. 198 ("IMAX  
26 Lease")] at § 7, 15; Ex. 9 [Pygin Dep. Tr.] at  
27 148:7-148:21; Ex.7 [Rudolph Dep. Tr.] at  
28

1 160:2-162:8.

2 6. The IMAX Lease specifically disclaims the  
3 creation of an agency or partnership  
4 relationship.

5 Tateishi Decl. Para. 4; Ono Decl. Ex. 29  
6 [Rudolph Dep. Ex. 198].

7  
8 7. The Event Services Office, a department of  
9 the Foundation, manages and arranges for the  
10 use of areas within the California Science  
11 Center for private events that occur after public  
12 hours.

13  
14 (Ono Decl., Ex. 7 [Rudolph Dep. Tr.] at  
15 159:14-160:7, 163:15-164:9; Ex. 2 [Sion Dep.  
16 Tr.] at 80:1-7, 386:16-387:14, 400:25-402:4;  
17 Ex. 30 [Dep. Exh. 200, Rudolph Injunction  
18 Decl.] at 2:22-26.)

19 8. The Foundation is solely responsible for the  
20 operation of the IMAX theater.  
21 Ono Decl., Ex. 7 [Rudolph Dep. Tr. , Vol. 1  
22 (1/10/11)] at 71:19-72:4, 163:15-164:9; Ex. 29  
23 [Dep. Ex. 198]; *see also id.*, Ex. 12 [Strom  
24 Dep. Tr.] at 193:14-17 ["Q. And does the  
25 Science Center have any involvement in the  
26 booking of special events at the Science Center  
27 IMAX theater, to your knowledge? A. It does  
28

1 not.”]; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2  
2 (12/10/10)] at 386:15–387:12 [addressing  
3 responsibility for leasing the IMAX for private  
4 events].; Tateishi Decl. Para. 5.

5  
6 9. The Center neither has the ability to  
7 contract with third parties for rental of the  
8 IMAX, nor has authority over the Foundation’s  
9 contractual dealings with third parties seeking  
10 to rent the IMAX facilities for private events.

11  
12 Ono Decl., Ex. 7 [Rudolph Dep. Tr. , Vol. 1  
13 (1/10/11)] at 71:19–72:4, 163:15–164:9; Ex. 29  
14 [Dep. Ex. 198]; *see also id.*, Ex.12 [Strom Dep.  
15 Tr.] at 193:14–17 [“Q. And does the Science  
16 Center have any involvement in the booking of  
17 special events at the Science Center IMAX  
18 theater, to your knowledge? A. It does not.”];  
19 *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)] at  
20 386:15–387:12 [addressing responsibility for  
21 leasing the IMAX for private events]; Tateishi  
22 Decl., Para. 5.

23  
24 10. None of the agreements between the  
25 Foundation and Science Center grant the  
26 Foundation the right to contract on the Science  
27 Center’s behalf.

1 Ono Decl., Ex. 29 [Dep. Ex. 198 (“IMAX  
2 Lease”); *id.*, Ex.28 [Dep. Ex. 194 (“Joint  
3 Operation Agreement”)]; *see also id.*, Ex. 2  
4 [Sion Dep. Tr., Vol. 2 (12/10/10)] at 398:16–  
5 21.

6  
7 11. On or about September 24, 2009,  
8 employees at the Foundation were contacted by  
9 AFA regarding scheduling a private fundraising  
10 event at the California Science Center. Over  
11 the next few days, the Foundation and AFA  
12 arranged to book a private event at the IMAX  
13 theater on October 25, 2009.

14 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol. 1  
15 (12/8/10)] at 75:11–78:9, at 96:8-98:20; *id.*,  
16 Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at  
17 83:25-84:2.)

18  
19 12. The Foundation—and not the Science  
20 Center—is a named party on the Event Services  
21 Agreement that pertains to the Event. Only  
22 Foundation employees were involved in the  
23 negotiations with AFA to host the Event.

24 Ono Decl., Ex. 15 [Dep. Ex. 16 (“Event Service  
25 Agreement”)]; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2  
26 (12/10/10)] at 402:5–403:9; Tateishi Decl., Para.  
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13. The Foundation's Joe Peterson made it clear that he intended to negotiate with whomever it was that could put him into the IMAX. Ono Decl. Ex. 11 [Peterson Dep. Tr. at 152:19-25, 153:1-8 - - "It is a box that has the projector I want. It has an IMAX. That's what I need. I could care less whether it is California Science Center or whomever."]

14. On October 5, 2009, the same day that it received an executed Event Price Estimate from AFA, the Foundation became aware of press releases that were issued relating to the Event.

Ono Decl., Ex. 13 [Dep. Ex. 11]; *id.*, Ex. 33 [Dep. Ex. 29]; *id.*, Ex. 8 [Aomega Dep. Tr.] at 49:10-53:23.

15. The Foundation Defendants believed that these press releases improperly implied that the California Science Center and the Smithsonian Institution were sponsoring the Event.

Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at 288:16-289:10; *id.*, Ex. 24 [Dep. Ex. 165].

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1 16. Because none of the press releases were  
2 ever submitted to the Foundation's Event  
3 Services Office, Foundation Defendants  
4 believed that the press releases violated the  
5 Event Services' Policies and Procedures. On  
6 this basis, Rudolph made the decision to cancel  
7 the Event.

8 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2  
9 (1/11/11)] at 281:6-23; *id.*, Ex. 2 [Sion Dep.  
10 Tr., Vol. 2 (12/10/10)] at 254:2-255:3; *id.*,  
11 Ex. 9 [Pygin Dep. Tr.] at 75:12-77:7, 100:24-  
12 103:1]; *id.*, Ex. 6 [Bylsma Dep. Tr.] at 232:16-  
13 21; *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)]  
14 at 191:1-11

15  
16 17. Foundation witnesses testified that  
17 Rudolph made the decision to cancel the Event.  
18 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10-  
19 109:15; *id.*, Ex. 8 [Amega Dep. Tr.] at 155:16-  
20 21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)]  
21 at 355:10-356:8, 406:14-18; *id.*, Ex. 7  
22 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at 98:10-  
23 12; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 2  
24 (1/11/11)] at 256:16-257:4 [testifying that  
25 "[t]he decision to cancel the event was my  
26 decision."]

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1 18. In making the decision to cancel the  
2 Event, Rudolph did not consult with any  
3 employees of the Science Center.  
4 Ono Decl. Ex. 7 [Rudolph Dep. Tr., Vol. 2  
5 (1/11/11)] at 257:8–258:21, 260:23–261:10,  
6 262:10–263:21; *id.*, Ex. 13 [Dep. Ex. 11]; *id.*,  
7 Ex. 14 [Dep. Ex. 15]; *id.*, Ex. 31 [Dep. Ex.  
8 205]

9  
10 19. Jeff Rudolph testified that: “As President  
11 of the California Science Center Foundation, I  
12 chose to cancel the [AFA] event.”  
13 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,  
14 Vol. 1 (1/10/11)] at 98:10–12; *see also* Ex. 7  
15 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at  
16 256:16–257:4 [testifying that “[t]he decision to  
17 cancel the event was my decision.”]  
18

1 **Issue No. 2:**

2 **The Center is Entitled to Judgment on AFA's First Cause of Action For**  
3 **Breach of Contract Because AFA Neglected to File a Claim for Money Damages with the**  
4 **California Victim's Compensation and Government Claim Board**  
5

6 20. The California Science Center ("Center"),  
7 also known as the Sixth Agricultural  
8 Association, was created by the California State  
9 Legislature pursuant to Food and Agriculture  
10 Code, Division 3, Part 3.

11 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-  
12 23]; (Food & Agr. Code, sections 3801, et seq.)

13  
14 21. The Center is a state institution organized  
15 within the State and Consumer Services  
16 Agency and is deemed a tax-exempt  
17 organization as an instrumentality of this state  
18 in accordance with Section 23706 of the  
19 Revenue and Taxation Code.

20 [Food & Agr. Code, sections 3953 and 4101.]

21 22. AFA's First Cause of Action for Breach of  
22 Contract seeks money damages against the  
23 Center.

24 Third Amended Complaint ("TAC"), paras. 29-  
25 37.

26  
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28 23. The TAC does not contain any allegation

1 that AFA ever submitted a claim for damages  
2 to the California Victim's Compensation and  
3 Government Claims Board.  
4 TAC.

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6 24. AFA has not presented a claim against the  
7 Center to the California Victim's  
8 Compensation and Government Claims Board.  
9 Ono Decl., para. 34; *id.*, Ex. 32;

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1 **Issue 3:**

2 **The Center And Rudolph In His Official Center Capacity Are Entitled to Judgment on**  
3 **AFA's Second, Third And Fourth Causes of Action Because They Possess Eleventh**  
4 **Amendment Immunity**

5 25. The California Science Center ("Center"),  
6 also known as the Sixth Agricultural  
7 Association, was created by the California State  
8 Legislature pursuant to Food and Agriculture  
9 Code, Division 3, Part 3.  
10 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-23];  
11 (Food & Agr. Code, sections 3801, et seq.)  
12

13 26. The Center is a state institution organized  
14 within the State and Consumer Services  
15 Agency and is deemed a tax-exempt  
16 organization as an instrumentality of this state  
17 in accordance with Section 23706 of the  
18 Revenue and Taxation Code.  
19 [Food & Agr. Code, sections 3953 and 4101.]  
20

21 27. Jeffrey Rudolph is the Center President  
22 and CEO  
23 Rudolph Decl., Para. 2.  
24

25 28. Nearly 90% of the Center's spending is  
26 drawn from the State's General Fund.  
27 Ono Decl., Ex. 10 Tateishi Dep. Tr., 36:23-25,  
28 37:1-3];

1 29. The small remainder of the Center's  
2 spending is based on reimbursements from  
3 third parties or restricted purpose spending  
4 authorized by the Legislature from a state  
5 special fund known as the Exposition Park  
6 Improvement Fund.

7 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 37:5-9];  
8

9 30. If the Center were subject to a money  
10 judgment, that judgment would be satisfied  
11 from the money drawn from the State's General  
12 Fund.

13 Rudolph Decl., Para. 2;

14 31. Money donations to the Center cannot be  
15 held directly by the Center, but are sent to  
16 Legislature controlled Exposition Park  
17 Improvement Fund, and may be appropriated  
18 back to the Center only by the Legislature.

19 Teteishi Decl., Para. 7;

20  
21 32. Each of the Center's directors are required  
22 to be appointed by the Governor of the State of  
23 California.

24 [Food & Agr. Code, sections 3953, 3959, 3962  
25 and 4101.]  
26

1 **Issue No. 4:**

2 **The Center Defendants are Entitled to Judgment on AFA's Second, Third, Fourth and**  
3 **Eighth Causes of Action Because There is No Evidence That the Center Defendants**  
4 **Engaged in Any Discriminatory Conduct**

5 33. The California Science Center ("Center"),  
6 also known as the Sixth Agricultural  
7 Association, was created by the California State  
8 Legislature pursuant to Food and Agriculture  
9 Code, Division 3, Part 3.

10 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-  
11 23]; [Food & Agr. Code, sections 3801, et seq.]  
12

13 34. The Center is a state institution organized  
14 within the State and Consumer Services  
15 Agency and is deemed a tax-exempt  
16 organization as an instrumentality of this state  
17 in accordance with Section 23706 of the  
18 Revenue and Taxation Code.

19 [Food & Agr. Code, sections 3953 and 4101.]  
20

21 35. The Foundation is a non-profit, section  
22 501(c)(3) organization that raises funds to  
23 support exhibits and educational programs  
24 featured at the California Science Center (the  
25 "Science Center"), the West Coast's largest  
26 interactive science center and museum.

27 Ono Decl., Ex. 30 [Dep. Ex. 200 ("Rudolph  
28

1 Injunction Decl.”)] ¶¶ 3, 6; Ono Decl., Ex. 7  
2 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at  
3 38:11–15.  
4

5 36. In 1995, the Foundation and Science  
6 Center entered into a lease agreement regarding  
7 the IMAX theater. The IMAX theater lease  
8 does not incorporate any policies regarding the  
9 subject matter of private events to be held at the  
10 facility. The lease agreement requires the  
11 Foundation to comply with all applicable state  
12 and federal laws. A provision of the lease  
13 disclaims any requirement that the Foundation  
14 “acquire or show any specific film.”

15 Ono Decl., Ex. 29 [Dep. Ex. 198 (“IMAX  
16 Lease”)] at § 7, 15; Ex. 9 [Pygin Dep. Tr.] at  
17 148:7–148:21; Ex. 7 [Rudolph Dep. Tr.] at  
18 160:2–162:8.  
19

20 37. The Event Services Office, a department of  
21 the Foundation, manages and arranges for the  
22 use of areas within the California Science  
23 Center for private events that occur after public  
24 hours.  
25

26 (Ono Decl., Ex. 7 [Rudolph Dep. Tr.] at  
27 159:14–160:7, 163:15–164:9; Ex. 2 [Sion Dep.  
28 Tr.] at 80:1–7, 386:16–387:14, 400:25–402:4; 15

1 Ex. 30 [Dep. Ex. 200, Rudolph Injunction  
2 Decl.] at 2:22-26.)  
3  
4 38. The Foundation is solely responsible for  
5 the operation of the IMAX theater.  
6 Ono Decl., Ex. 7 [Rudolph Dep. Tr. , Vol. 1  
7 (1/10/11)] at 71:19-72:4, 163:15-164:9; Ex. 29  
8 [Dep. Ex. 198]; *see also id.*, Ex. 12 [Strom  
9 Dep. Tr.] at 193:14-17 [“Q. And does the  
10 Science Center have any involvement in the  
11 booking of special events at the Science Center  
12 IMAX theater, to your knowledge? A. It does  
13 not.”]; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2  
14 (12/10/10)] at 386:15-387:12 [addressing  
15 responsibility for leasing the IMAX for private  
16 events]; Tateishi Decl., Para 5;  
17  
18 39. On or about September 24, 2009,  
19 employees at the Foundation were contacted by  
20 AFA regarding scheduling a private fundraising  
21 event at the California Science Center. Over  
22 the next few days, the Foundation and AFA  
23 arranged to book a private event at the IMAX  
24 theater on October 25, 2009.  
25 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol.  
26 1 (12/8/10)] at 75:11-78:9, at 96:8-98:20; *id.*,  
27 Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at  
28 83:25-84:2.)

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40. A provision in the Event Services Policies and Procedures relates to the issuance of press materials and publicity regarding private events. This provision states:

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

(Ono Decl., Ex. 15 [Dep. Ex. 16, contract] at p. 6 ; Ex. 7 [Rudolph Dep. Tr.] at 217:25-219:23; Ex 2 [Sion Dep. Tr.] at 226:16-231:19.)

41. The Promotional Materials provision is intended to ensure that the name of the California Science Center is not misappropriated by groups holding private events at the Center.

(Ono Decl., Ex. 2 [Sion Dep. Tr.] at 102:18-103:6 [provision is important “[t]o preserve the name and reputation of the California Science Center or California Science Center

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Foundation”].)

42. Because the California Science Center and the Foundation have a valuable interest in maintaining a good reputation in the community and worldwide, it tries to ensure that private groups do not appropriate the reputation of the Science Center for their own benefit and for private events that the Science Center is not sponsoring.

(Ono Decl., Ex. 7 [Rudolph Dep. Tr.] at 224:4-20 [“If we do an event, it's usually from the beginning and the formation of an event and the development of a program that we would do that.”], 236:16-237:1 [“I have no objection to any debate. I have concerns about whether events are private or public and whether the name of our institution is attached to an event that is not our event in an inappropriate way.”], 291:5-293:3 [“the second issue was the reputation of the California Science Center, which is the most valuable thing we have is our name and our reputation, and we protect that in everything we do; at least we attempt to protect that in everything we do is what I should say”].)

43. AFA’s representatives were aware that the 18

1 contract contained a provision requiring  
2 approval by the Event Services Office of all  
3 promotional materials mentioning the  
4 California Science Center before distribution to  
5 the public.

6  
7 Ono Decl., Ex. 2 [Sion Dep. Tr.] at 100:14-  
8 102:10 [Sion told Davis “my request that we  
9 see in advance a copy of any material that  
10 included the name of the California Science  
11 Center Foundation or the California Science  
12 Center”]; Ex. 3 [Davis Dep. Tr.] at 53:2-55:16  
13 [“I read that contract. I knew what we had to  
14 do.”], 100:24-102:18 [“I understood that I had  
15 to submit all of the publicity materials to Chris  
16 Sion prior to it being publicized or released to  
17 the public”]; Ex. 11 [Peterson Dep. Tr.] at 85:1-  
18 87:1 [“I did have a conversation with Avi  
19 saying the brochure that we were working on is  
20 going to need to be reviewed by the  
21 Foundation.”].)

22  
23 44. Because it was a private event, Foundation  
24 witnesses testified that they had no concerns  
25 about the content or nature of the Event and  
26 continued to negotiate with AFA.

27 Ono Decl. Ex. 7 [Rudolph Dep. Tr.,  
28 Vol. 2 (1/11/11)] at 324:16-23; *id.*, Ex. 2 19

1 [Sion Dep. Tr.] at 406:1-9; *id.*, Ex. 22 [Dep.  
2 Ex. 156].  
3

4 45. On October 5, 2009, the same day that it  
5 received an executed Event Price Estimate  
6 from AFA, the Foundation became aware of  
7 press releases that were issued relating to the  
8 Event.

9 Ono Decl., Ex. 13 [Dep. Ex. 11]; *id.*,  
10 Ex. 33 [Dep. Ex. 29]; *id.*, Ex. 8 [Amega Dep.  
11 Tr.] at 49:10-53:23.

12 46. The Foundation Defendants believed that  
13 these press releases improperly implied that the  
14 California Science Center and the Smithsonian  
15 Institution were sponsoring the Event.

16 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,  
17 Vol. 2 (1/11/11)] at 288:16-289-10; ; *id.*, Ex.  
18 24 [Dep. Ex. 165].  
19

20 47. Because none of the press releases were  
21 ever submitted to the Foundation's Event  
22 Services Office, Foundation Defendants  
23 believed that the press releases violated the  
24 Event Services' Policies and Procedures. On  
25 this basis, Rudolph made the decision to cancel  
26 the Event.  
27

1 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2  
2 (1/11/11)] at 281:6-23; *id.*, Ex. 2 [Sion Dep.  
3 Tr., Vol. 2 (12/10/10)] at 254:2-255:3; *id.*,  
4 Ex. 9 [Pygin Dep. Tr.] at 75:12-77:7, 100:24-  
5 103:1]; *id.*, Ex. 6 [Bylsma Dep. Tr.] at 232:16-  
6 21; *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1  
7 (12/9/10)] at 191:1-11

8  
9 47.1 In its interrogatory responses, AFA  
10 suggests that documents and testimony from  
11 Chris Sion and documents obtained from the  
12 National History Museum of Los Angeles  
13 County demonstrates the existence of a policy  
14 whereby the advancement, promotion or  
15 discussion of intelligent design is prohibited,  
16 noting that the “unanimity of position suggests  
17 a policy.”  
18  
19

20  
21 Ono Decl., Ex. 34, [See AFA Responses to  
22 Special Interrogatory No. 5.]

23 48. Foundation witnesses testified that  
24 Rudolph made the decision to cancel the Event.

25  
26 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10-  
27 109:15; *id.*, Ex. 8 [Aomega Dep. Tr.] at 155:16-

1 21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)]  
2 at 355:10–356:8, 406:14–18; *id.*, Ex. 7  
3 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at 98:10–  
4 12; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 2  
5 (1//11/11)] at 256:16–257:4 [testifying that  
6 “[t]he decision to cancel the event was my  
7 decision.”]  
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10 49. Jeff Rudolph testified that: “As President  
11 of the California Science Center Foundation, I  
12 chose to cancel the [AFA] event.”  
13 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,  
14 Vol. 1 (1/10/11)] at 98:10–12; *see also* Ex. 7  
15 [Rudolph Dep. Tr., Vol. 2 (1//11/11)] at  
16 256:16–257:4 [testifying that “[t]he decision to  
17 cancel the event was my decision.”]  
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19 50. Rudolph, in response to a question asking  
20 for “the reason that factored into your decision  
21 to cancel the contract for the AFA event,”  
22 testified that “the press statements put out were  
23 in violation of our policies and procedures that  
24 were potentially harmful to the reputation of  
25 the Science Center and to our relationship with  
26 the Smithsonian. I believe that violated our  
27 agreement, and . . . I felt that the best course of  
28 action was to cancel the event.” The subject

1 matter of the Event was not a consideration in  
2 his decision to cancel.

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4 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,  
5 Vol. 2 (1/11/110)] at 281:6–23.

6 51. In their depositions, Foundation witnesses  
7 denied the existence of a policy whereby the  
8 advancement, promotion, or discussion of  
9 intelligent design is prohibited.

10 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 154:9–16;  
11 *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 1 (1/10/11)]  
12 at 131:18–25, 169:19–170:22; *id.*, Ex. 2 [Sion  
13 Dep. Tr.] at 66:15–67:13; *see also id.*, Ex. 7  
14 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at 238:5–

15 15 [“Q. Sure. Do you believe it’s  
16 inappropriate for the California Science Center  
17 to permit debates concerning the theory of  
18 evolution?” MR. ONO: Vague and  
19 ambiguous; incomplete hypothetical; calls for  
20 speculation. MR. DENNIS: I join those. THE  
21 WITNESS: My answer would be that I do not  
22 think it it’s inappropriate. I think that our  
23 policies and practices and everything we’ve  
24 done, including in this case, would have  
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allowed a private event to go ahead and debate whatever they want, if it's a private event.”]

52. Beginning on October 5, 2009, representatives of the Los Angeles Country Natural History Museum and other individuals were engaged in e-mail discussion regarding the Event. In these discussions, the participants expressed concerns regarding the subject matter of the Event. None of these e-mails reached Rudolph until after the Event was cancelled.

Ono Decl., Ex. 18 [Dep. Ex. 35]

53. Rudolph testified that he “had a general understanding” as to the nature of the Event based on an October 1, 2009 e-mail from Chris Sion.

Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at 323:23–15; Ex. 19 [Dep. Ex. 36.].

53.1 During discussions about scheduling the Event, the Foundation Defendants were aware that AFA planned to show the movie “Darwin’s Dilemma” and that the Event involved a discussion of Darwinism. AFA witnesses testified that the Foundation was aware of the subject matter of the Event. Joe Peterson

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1 testified that the Foundation was aware of the  
2 nature of the Event from the first meeting.

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4 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol.  
5 2 (12/10/10)] at 403:19–406:4; *id.*, Ex. 2 [Sion  
6 Dep. Tr., Vol. 1 (12/8/10)] at 144:7–145:24;  
7 *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at  
8 152:1–153:2, 154:10–15; *id.*, Ex. 11 [Peterson  
9 Dep. Tr.] at 76:16–77:10, 157:1–4.

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11 54. AFA witness Joe Peterson testified that  
12 Chris Sion was supportive of having a  
13 “conservative” event and Avi Davis testified  
14 that Foundation employees were “very, very  
15 enthusiastic” about the Event, never expressing  
16 concerns about the content.

17 Ono Decl., Ex. 11 [Peterson Dep. Tr.] at  
18 76:16–77:10; *id.*, Ex. 3 [Davis Dep. Tr., Vol.  
19 1 (12/9/10)] at 155:4–156:5.

20  
21 55. AFA witnesses testified that the  
22 Foundation employees, particularly Sion, were  
23 aggressively trying to get the contract finalized  
24 so the Event could take place.

25 Ono Decl., Ex. 3 [Davis Dep. Tr., Vol. 1 (Dec.  
26 9, 2010)] at 154:16–19 [“Q. They were  
27 encouraging you to get your contract in and  
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1 signed, right? A. They were encouraging us to  
2 show two films for a fee at their facility.”], at  
3 178:23–179:2 [“Chris Sion in this case was all  
4 over us. She was determined that we were  
5 going to do this event. She was absolutely  
6 determined that we were -- MR. BECKER:  
7 Avi, I’m going to stop you. You’re not --”];  
8 *see also id.*, Ex.11 [Peterson Dep. Tr.] at  
9 147:9–148:6 [describing Sion as a “very  
10 accommodating, wonderful person”]; *id.* Ex. 17  
11 [Dep. Ex. 34] [Sion states on September 30 that  
12 “it would be great to get this wrapped up  
13 today.”]

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17 56. The Foundation orally agreed to modify its  
18 standard payment terms in an effort to assist the  
19 AFA.

20 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol. 1  
21 (12/8/10)] 224:18–225:10, 229:2–14; *id.*,  
22 Ex.3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at  
23 118:9–119:9; *id.* Ex. 19 [Dep. Ex. 36].  
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25 57. Chris Sion and Cynthia Pygin  
26 recommended that Rudolph request a  
27

1 correction rather than cancelling the Event.

2 Ono Decl., Ex. 21 [Dep. Ex. 38 ] *id.*,  
3 Ex. 9 [Pygin Dep. Tr.] at 80:2–21, 83:19–84:6,  
4 99:10–20; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 1  
5 (12/8/10)] at 185:11–18.  
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8 58. Foundation witnesses testified that the  
9 Event was cancelled as a result of the  
10 unapproved press releases.

11 Ono Decl. Ex. 2 [Sion Dep. Tr., Vol. 1  
12 (12/8/10)] at 118:18–120:8; *id.*, Ex. 2 [Sion  
13 Dep. Tr., Vol. 2 (12/10/10)] at 327:13–18,  
14 328:24–329:2; *id.*, Ex. 9 [Pygin Dep. Tr.] at  
15 100:24–103:1; *id.*, Ex.7 [Rudolph Dep. Tr.,  
16 Vol. 2 (1/11/11)] at 302:19–303:19; *see also id.*  
17 Ex. 16 [Dep. Ex. 32] [Amega expresses belief  
18 that AFA violated the Promotional Materials  
19 provision.]; *id.* Ex. 4 [Dep. Ex. 37] [indicating  
20 unapproved press releases were reason for  
21 cancellation]; *id.*, Ex. 4 [Pisano Dep. Tr.] at  
22 41:19–43:1 [“Q. Al right. The e-mail  
23 continues referring to your conversation, quote:  
24 “Had a chat to him about the screening of the  
25 I.D. film at CSC's IMAX.” The next sentence:  
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1 “They had, in fact, canceled the event as not  
2 being” – I’m sorry – “as being not in line with  
3 their mission to educate the public about  
4 science, so it is not going ahead, we do not  
5 need to send a letter or respond any further, “  
6 period. There are the word apparently of John  
7 Long in an e-mail. Does he have it correct here  
8 that Dr. Rudolph told you that they canceled  
9 the event because it was not in line with their  
10 mission? MR. ZELENAY: Objection. Vague.  
11 Calls for hearsay. MR. STAUBER: Same  
12 objection. Subject to that, Dr. Pisano, you can  
13 answer. THE WITNESS: No. . . . BY MR.  
14 STEVENS: Q. And your answer is that John  
15 Long has it incorrect, is that right? MR.  
16 STAUBER: Counsel, the answer was “No,”  
17 unequivocally “No.” BY MR. STEVENS: Q.  
18 I’m asking if that’s what you mean by  
19 incorrect. A. That is correct.”]; *id.*, Ex. 5  
20 [Long Dep. Tr.] at 96:5–24 [“Q. The next  
21 sentence says, “They had in fact canceled the  
22 event as not being in-line with their mission to  
23 educate the public about science.” And I’ll

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stop there. Is that what Dr. Pisano told you?  
MR. ONO: Calls for hearsay. THE  
WITNESS: No, she did not tell me that. That  
was something that I was surmising. It's purely  
from me. BY MR. STEVENS: Q. Well, what  
did Dr. Pisano tell you? A. From memory, she  
just told me that they had canceled it. She  
didn't actually give me a reason. Q. So you  
added that fact that it was not in line with their  
mission? That was from your own surmise?  
A. I was guessing it, yes. Q. You didn't  
actually know? A. I didn't.  
59. Cynthia Pygin testified that she never  
discussed the subject matter of the Event with  
Rudolph prior to his decision to cancel.  
Ono Decl., Ex. 9 [Pygin Dep. Tr.] at  
69:8-20, 78:7-14.  
60. In their depositions, AFA's witnesses  
were unable to identify any specific evidence of  
discriminatory intent on the part of the  
Foundation Defendants except for the  
cancellation itself. When asked whether there  
was "anything . . . upon which you're basing

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1 your belief that the real reason for the  
2 cancellation . . . was that [the Foundation] did  
3 not want to have an open debate on intelligent  
4 design,” Peter Bylsma answered “No.”  
5 Ono Decl., Ex. 3 [Davis. Dep. Tr., Vol. 1  
6 (12/9/10)] at 144:21–147:16 [Q. You  
7 understand there’s an allegation in this lawsuit  
8 that you’ve made that the basis for the  
9 cancellation was the content of the program,  
10 don’t you sir? A. Absolutely. Q. Okay. And  
11 what do you base that allegation on? . . . The  
12 fact is that we know that nothing we did  
13 regarding our performance of the contract  
14 could have led to an accusation of violation.  
15 Nothing. We performed our part of the  
16 contract -- we signed it, we prepared our  
17 materials, we were going to submit it. Nothing  
18 we did was possibly -- could possibly have  
19 done it. The only reason for that film to be  
20 canceled was because the people who owned  
21 that cinema didn’t want it shown and were not  
22 happy about the content; *id.*, Ex. 3 [Davis Dep.  
23 Tr., Vol. 2 (1//11)] at 355:5–364:8 [discussing

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reasons for believing "intense outside pressure" causes the cancellation]; *id.*, Ex. 6 [Bylsma Dep. Tr.] at 265:19-266:9 ["Q. Is there anything else that you're relying on in terms of telling me that you believe the real reason for the cancellation was that the Foundation didn't want to have that open debate other than what's in [the cancellation e-mail]? MR. BECKER: And whatever I may have discussed with you in confidence. Q. I don't want to know what Mr. Becker discussed with you. So I'm not asking for that. So is there anything, other than what Mr. Becker may have told you, upon which you're basing your belief that the real reason for the cancellation by the Science Center Foundation was that they did not want to have an open debate on intelligent design? A. No."], at 272:21-273:3 ["Q. Okay. What I'm after is, did anybody show you or tell you anything that was either a document or a conversation specifically from the California Science Center Foundation or the Science Center itself that when you read it or heard

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1 about it, you said 'Yeah, that' – 'that – that tells  
2 me they cancelled for content'? A. No.”]; *id.*,  
3 Ex. 11 [Peterson Dep. Tr.] at 153:14–158:3  
4 [“Q. I was trying to clarify because your  
5 answer before talked about the Smithsonian.  
6 So I was trying to understand what facts you  
7 believe there are to support a view that the  
8 Foundation engaged some [*sic*] sort of  
9 discriminatory act that it wasn't -- A. Well,  
10 the discriminatory act was cancelling the event.  
11 Birds of a feather flock together. They are all  
12 cut from the same cloth. And the Smithsonian  
13 in particular I had come to find out about – I  
14 forget the name of the scientist who had  
15 basically had his whole career torpedoed  
16 because he dared to say something positive  
17 about intelligent design.” . . . Q. But do you  
18 have any other facts to support the view that the  
19 Foundation engaged in some sort of  
20 discriminatory conduct? Were there any  
21 conversations you had with Foundation  
22 employees that imply that to you or anything  
23 like that? A. I had no conversations with

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Foundation employees. We did ask Joel Strom  
what went on in the board meeting. . . . But he  
didn't really have any information about the  
detail." . . . Q. Yes. I was just going to ask is  
there anything else, any other facts that lead  
you to that conclusion? . . . THE WITNESS:  
So – okay. I would just say that, if you listen to  
the news sources that I like to listen to [they]  
talk about how Darwinian evolution is  
promulgated throughout the public school  
system and so on. It is hostile towards  
opposing viewpoints. Anybody on the street  
will tell you that. . . . Q. BY MR. ZELENAY:  
Yes. It's – I am just trying to understand for  
myself where your view comes from with  
respect that issue. But if you don't have  
anything further to add in terms of the actual  
facts that lead you -- . . . A. Because I can say  
there is plenty of evidence there that it is much  
more than just DI's press release that drove the  
California Science Center to execute this  
blatant act of discrimination against us."]

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1 **Issue No. 5:**

2 **Jeffrey Rudolph in His Official Center Capacity is Entitled to Judgment on AFA's Second,**  
3 **Third, and Fourth Causes of Action Because AFA Does Not Face the Threat of Future**  
4 **Injury From Rudolph in His Official Capacity Necessary to Support Injunctive Relief**

5 61. In 1995, the Foundation and Science  
6 Center entered into a lease agreement regarding  
7 the IMAX theater. The IMAX theater lease  
8 does not incorporate any policies regarding the  
9 subject matter of private events to be held at the  
10 facility. The lease agreement requires the  
11 Foundation to comply with all applicable state  
12 and federal laws. A provision of the lease  
13 disclaims any requirement that the Foundation  
14 "acquire or show any specific film."  
15 Ono Decl., Ex. 29 [Dep. Ex. 198 ("IMAX  
16 Lease")] at § 7, 15; Ex. 9 [Pygin Dep. Tr.] at  
17 148:7-148:21; Ex. 7 [Rudolph Dep. Tr.] at  
18 160:2-162:8.

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20 62. The Event Services Office, a department of  
21 the Foundation, manages and arranges for the  
22 use of areas within the California Science  
23 Center for private events that occur after public  
24 hours.

25 (Ono Decl., Ex. 7 [Rudolph Dep. Tr.] at  
26 159:14-160:7, 163:15-164:9; Ex. 2 [Sion Dep.  
27 Tr.] at 80:1-7, 386:16-387:14, 400:25-402:4;  
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1 Ex. 30 [Dep. Exh. 200, Rudolph Injunction  
2 Decl.] at 2:22-26.)

3  
4 63. The Foundation is solely responsible for  
5 the operation of the IMAX theater.  
6 Ono Decl., Ex. 7 [Rudolph Dep. Tr. , Vol. 1  
7 (1/10/11)] at 71:19–72:4, 163:15–164:9; Ex. 29  
8 [Dep. Ex. 198]; *see also id.*, Ex.12 [Strom Dep.  
9 Tr.] at 193:14–17 [“Q. And does the Science  
10 Center have any involvement in the booking of  
11 special events at the Science Center IMAX  
12 theater, to your knowledge? A. It does not.”];  
13 *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)] at  
14 386:15–387:12 [addressing responsibility for  
15 leasing the IMAX for private events]. (Tateishi  
16 Decl., Para. 5.)

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18 64. None of the agreements between the  
19 Foundation and Science Center grant the  
20 Foundation the right to contract on the Science  
21 Center’s behalf.  
22 Ono Decl., Ex. 29 [Dep. Ex. 198 (“IMAX  
23 Lease”]; *id.*, Ex. 28 [Dep. Ex. 194 (“Joint  
24 Operation Agreement”)]; *see also id.*, Ex. 2  
25 [Sion Dep. Tr., Vol. 2 (12/10/10)] at 398:16–  
26 21.

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28 65. On or about September 24, 2009, 35

1 employees at the Foundation were contacted by  
2 AFA regarding scheduling a private fundraising  
3 event at the California Science Center. Over  
4 the next few days, the Foundation and AFA  
5 arranged to book a private event at the IMAX  
6 theater on October 25, 2009.

7 Ono Decl., Ex. 2 [Sion Dep. Tr., Vol. 1  
8 (12/8/10)] at 75:11–78:9, at 96:8-98:20; *id.*,  
9 Ex. 3 [Davis Dep. Tr., Vol. 1 (12/9/10)] at  
10 83:25-84:2.)

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12 66. The Foundation—and not the Science  
13 Center—is a named party on the Event Services  
14 Agreement that pertains to the Event. Only  
15 Foundation employees were involved in the  
16 negotiations with AFA to host the Event.

17 Ono Decl., Ex. 15 [Dep. Ex. 16 (“Event Service  
18 Agreement”)]; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2  
19 (12/10/10)] at 402:5–403:9.

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21 67. AFA seeks an injunction prohibiting  
22 Rudolph, in his official Center capacity, from  
23 refusing to allow AFA access to hold private  
24 events, including events concerning intelligent  
25 design.

26 TAC , Prayer, Paras. 8, 9.

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28 68. Rudolph, in his official Science Center 36

1 capacity, lacks the ability to contract with AFA  
2 for any future private events at the Science  
3 Center.  
4 Ono Decl., Ex. 7 [Rudolph Dep. Tr. , Vol. 1  
5 (1/10/11)] at 71:19-72:4, 163:15-164:9; Ex. 29  
6 [Dep. Ex. 198]; *see also id.*, Ex.12 [Strom Dep.  
7 Tr.] at 193:14-17 [“Q. And does the Science  
8 Center have any involvement in the booking of  
9 special events at the Science Center IMAX  
10 theater, to your knowledge? A. It does not.”];  
11 *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)] at  
12 386:15-387:12 [addressing responsibility for  
13 leasing the IMAX for private events]. (Tateishi  
14 Decl., Para. 5.)  
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1 **Issue 6:**

2 **Jeffrey Rudolph, In His Individual Capacity, is Entitled To Judgment On AFA's Second,**  
3 **Third and Fourth Causes of Action Because He Possesses Qualified Immunity**

4 69. Jeff Rudolph testified that: "As President  
5 of the California Science Center Foundation, I  
6 chose to cancel the [AFA] event."

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8 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,  
9 Vol. 1 (1/10/11)] at 98:10-12; *see also* Ex. 7  
10 [Rudolph Dep. Tr., Vol. 2 (1//11/11)] at  
11 256:16-257:4 [testifying that "[t]he decision to  
12 cancel the event was my decision."]

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14 70. Rudolph, in response to a question asking  
15 for "the reason that factored into your decision  
16 to cancel the contract for the AFA event,"  
17 testified that "the press statements put out were  
18 in violation of our policies and procedures that  
19 were potentially harmful to the reputation of  
20 the Science Center and to our relationship with  
21 the Smithsonian. I believe that violated our  
22 agreement, and . . . I felt that the best course of  
23 action was to cancel the event." The subject  
24 matter of the Event was not a consideration in  
25 his decision to cancel.

26 Ono Decl., Ex. 7 [Rudolph Dep. Tr., Vol. 2  
27 (1/11/110)] at 281:6-23.

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1 71. Because it was a private event,  
2 Foundation witnesses testified that they had no  
3 concerns about the content or nature of the  
4 Event and continued to negotiate with AFA.  
5 Ono Decl. Ex. 7 [Rudolph Dep. Tr.,  
6 Vol. 2 (1/11/11)] at 324:16-23; *id.*, Ex. 2  
7 [Sion Dep. Tr.] at 406:1-9; *id.*, Ex. 22 [Dep.  
8 Ex. 156].  
9

10 72. The Foundation Defendants believed that  
11 these press releases improperly implied that the  
12 California Science Center and the Smithsonian  
13 Institution were sponsoring the Event.

14 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,  
15 Vol. 2 (1/11/11)] at 288:16-289-10; ; *id.*, Ex.  
16 24 [Dep. Ex. 165].

17 73. Because none of the press releases were  
18 ever submitted to the Foundation's Event  
19 Services Office, Foundation Defendants  
20 believed that the press releases violated the  
21 Event Services' Policies and Procedures. On  
22 this basis, Rudolph made the decision to cancel  
23 the Event.

24 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,  
25 Vol. 2 (1/11/11)] at 281:6-23; *id.*, Ex. 2 [Sion  
26 Dep. Tr., Vol. 2 (12/10/10)] at 254:2-255:3;  
27

1 *id.*, Ex. 9 [Pygin Dep. Tr.] at 75:12–77:7,  
2 100:24–103:1]; *id.*, Ex. 6 [Bylsma Dep. Tr.] at  
3 232:16–21; *id.*, Ex. 3 [Davis Dep. Tr., Vol. 1  
4 (12/9/10)] at 191:1–11

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6 74. Foundation witnesses testified that  
7 Rudolph made the decision to cancel the Event.  
8 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 108:10–  
9 109:15; *id.*, Ex. 8 [Amege Dep. Tr.] at 155:16–  
10 21; *id.*, Ex. 2 [Sion Dep. Tr., Vol. 2 (12/10/10)]  
11 at 355:10–356:8, 406:14–18; *id.*, Ex. 7  
12 [Rudolph Dep. Tr., Vol. 1 (1/10/11)] at 98:10–  
13 12; *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 2  
14 (1/11/11)] at 256:16–257:4 [testifying that  
15 “[t]he decision to cancel the event was my  
16 decision.”]

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20 75. In their depositions, AFA’s witnesses were  
21 unable to identify any specific evidence of  
22 discriminatory intent on the part of the  
23 Foundation Defendants except for the  
24 cancellation itself. When asked whether there  
25 was “anything . . . upon which you’re basing  
26 your belief that the real reason for the  
27 cancellation . . . was that [the Foundation] did  
28 not want to have an open debate on intelligent 40

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1 design," Peter Bylsma answered "No."  
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3 Ono Decl., Ex. 3 [Davis. Dep. Tr., Vol. 1  
4 (12/9/10] at 144:21-147:16 [Q. You  
5 understand there's an allegation in this lawsuit  
6 that you've made that the basis for the  
7 cancellation was the content of the program,  
8 don't you sir? A. Absolutely. Q. Okay. And  
9 what do you base that allegation on? . . . The  
10 fact is that we know that nothing we did  
11 regarding our performance of the contract  
12 could have led to an accusation of violation.  
13 Nothing. We performed our part of the  
14 contract -- we signed it, we prepared our  
15 materials, we were going to submit it. Nothing  
16 we did was possibly -- could possibly have  
17 done it. The only reason for that film to be  
18 canceled was because the people who owned  
19 that cinema didn't want it shown and were not  
20 happy about the content; *id.*, Ex. 3 [Davis Dep.  
21 Tr., Vol. 2 (1//11)] at 355:5-364:8 [discussing  
22 reasons for believing "intense outside pressure"  
23 causes the cancellation]; *id.*, Ex. 6 [Bylsma  
24 Dep. Tr.] at 265:19-266:9 ["Q. Is there  
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1 anything else that you're relying on in terms of  
2 telling me that you believe the real reason for  
3 the cancellation was that the Foundation didn't  
4 want to have that open debate other than what's  
5 in [the cancellation e-mail]? MR. BECKER:  
6 And whatever I may have discussed with you  
7 in confidence. Q. I don't want to know what  
8 Mr. Becker discussed with you. So I'm not  
9 asking for that. So is there anything, other than  
10 what Mr. Becker may have told you, upon  
11 which you're basing your belief that the real  
12 reason for the cancellation by the Science  
13 Center Foundation was that they did not want  
14 to have an open debate on intelligent design?  
15 A. No.], at 272:21–273:3 [“Q. Okay. What  
16 I’m after is, did anybody show you or tell you  
17 anything that was either a document or a  
18 conversation specifically from the California  
19 Science Center Foundation or the Science  
20 Center itself that when you read it or heard  
21 about it, you said ‘Yeah, that’ – ‘that – that tells  
22 me they cancelled for content’? A. No.”]; *id.*,  
23 Ex. 11 [Peterson Dep. Tr.] at 153:14–158:3

1 ["Q. I was trying to clarify because your  
2 answer before talked about the Smithsonian.  
3 So I was trying to understand what facts you  
4 believe there are to support a view that the  
5 Foundation engaged some some [sic] sort of  
6 discriminatory act that it wasn't -- A. Well,  
7 the discriminatory act was cancelling the event.  
8 Birds of a feather flock together. They are all  
9 cut from the same cloth. And the Smithsonian  
10 in particular I had come to find out about -- I  
11 forget the name of the scientist who had  
12 basically had his whole career torpedoed  
13 because he dared to say something positive  
14 about intelligent design." . . . Q. But do you  
15 have any other facts to support the view that the  
16 Foundation engaged in some sort of  
17 discriminatory conduct? Were there any  
18 conversations you had with Foundation  
19 employees that imply that to you or anything  
20 like that? A. I had no conversations with  
21 Foundation employees. We did ask Joel Strom  
22 what went on in the board meeting. . . . But he  
23 didn't really have any information about the  
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1 detail." . . . Q. Yes. I was just going to ask is  
2 there anything else, any other facts that lead  
3 you to that conclusion? . . . THE WITNESS:  
4 So – okay. I would just say that, if you listen to  
5 the news sources that I like to listen to [they]  
6 talk about how Darwinian evolution is  
7 promulgated throughout the public school  
8 system and so on. It is hostile towards  
9 opposing viewpoints. Anybody on the street  
10 will tell you that. . . . Q. BY MR. ZELENAY:  
11 Yes. It's – I am just trying to understand for  
12 myself where your view comes from with  
13 respect that issue. But if you don't have  
14 anything further to add in terms of the actual  
15 facts that lead you -- . . . A. Because I can say  
16 there is plenty of evidence there that it is much  
17 more than just DI's press release that drove the  
18 California Science Center to execute this  
19 blatant act of discrimination against us."]  
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24 76. In their depositions, Foundation witnesses  
25 denied the existence of a policy whereby the  
26 advancement, promotion, or discussion of  
27 intelligent design is prohibited.  
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1 Ono Decl., Ex. 9 [Pygin Dep. Tr.] at 154:9–16;  
2 *id.*, Ex. 7 [Rudolph Dep. Tr., Vol. 1 (1/10/11)]  
3 at 131:18–25, 169:19–170:22; *id.*, Ex. 2 [Sion  
4 Dep. Tr.] at 66:15–67:13; *see also id.*, Ex. 7  
5 [Rudolph Dep. Tr., Vol. 2 (1/11/11)] at 238:5–  
6 15 [“Q. Sure. Do you believe it’s  
7 inappropriate for the California Science Center  
8 to permit debates concerning the theory of  
9 evolution?” MR. ONO: Vague and  
10 ambiguous; incomplete hypothetical; calls for  
11 speculation. MR. DENNIS: I join those. THE  
12 WITNESS: My answer would be that I do not  
13 think it it’s inappropriate. I think that our  
14 policies and practices and everything we’ve  
15 done, including in this case, would have  
16 allowed a private event to go ahead and debate  
17 whatever they want, if it’s a private event.”]

21 77. Beginning on October 5, 2009,  
22 representatives of the Los Angeles Country  
23 Natural History Museum and other individuals  
24 were engaged in e-mail discussion regarding  
25 the Event. In these discussions, the participants  
26 expressed concerns regarding the subject matter  
27 of the Event. None of these e-mails reached  
28

1 Rudolph until after the Event was cancelled.

2  
3 Ono Decl., Ex. 18 [Dep. Ex. 35]

4 78. Rudolph testified that he “had a general  
5 understanding” as to the nature of the Event  
6 based on an October 1, 2009 e-mail from Chris  
7 Sion.

8 Ono Decl., Ex. 7 [Rudolph Dep. Tr.,  
9 Vol. 2 (1/11/11)] at 323:23–15; Ex. 19 [Dep.  
10 Ex. 36.].

11  
12 79. Foundation witnesses testified that the  
13 Event was cancelled as a result of the  
14 unapproved press releases.

15  
16 Ono Decl. Ex. 2 [Sion Dep. Tr., Vol. 1  
17 (12/8/10)] at 118:18–120:8; *id.*, Ex 2 [Sion  
18 Dep. Tr., Vol. 2 (12/10/10)] at 327:13–18,  
19 328:24–329:2; *id.*, Ex. 9 [Pygin Dep. Tr.] at  
20 100:24–103:1; *id.*, Ex.7 [Rudolph Dep. Tr.,  
21 Vo. 2 (1/11/11)] at 302:19–303:19; *see also id.*  
22 Ex. 16 [Dep. Ex. 32] [Amege expresses belief  
23 that AFA violated the Promotional Materials  
24 provision.]; *id.* Ex. 20 [Dep. Ex. 37] [indicating  
25 unapproved press releases were reason for  
26 cancellation]; *id.*, Ex. 4 [Pisano Dep. Tr.] at  
27  
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1 41:19-43:1 ["Q. Al right. The e-mail  
2 continues referring to your conversation ,  
3 quote: "Had a chat to him about the screening  
4 of the I.D. film at CSC"s IMAX." The next  
5 sentence: "They had, in fact, canceled the event  
6 as not being" - I'm sorry - "as being not in line  
7 with their mission to educate the public about  
8 science, so it is not going ahead, we do not  
9 need to send a letter or respond any further, "  
10 period. There are the word apparently of John  
11 Long in an e-mail. Does he have it correct here  
12 that Dr. Rudolph told you that they canceled  
13 the event because it was not in line with their  
14 mission? MR. ZELENAY: Objection. Vague.  
15 Calls for hearsay. MR. STAUBER: Same  
16 objection. Subject to that, Dr. Pisano, you can  
17 answer. THE WITNESS: No. . . . BY MR.  
18 STEVENS: Q. And your answer is that John  
19 Long has it incorrect, is that right? MR.  
20 STAUBER: Counsel, the answer was "No,"  
21 unequivocally "No." BY MR. STEVENS: Q.  
22 I'm asking if that's what you mean by  
23 incorrect. A. That is correct."]; *id.*, Ex. 5  
24 [Long Dep. Tr.] at 96:5-24 ["Q. The next  
25 sentence says, "They had in fact canceled the  
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event as not being in-line with their mission to educate the public about science.” And I’ll stop there. Is that what Dr. Pisano told you?  
MR. ONO: Calls for hearsay. THE WITNESS: No, she did not tell me that. That was something that I was surmising. It’s purely from me. BY MR. STEVENS: Q. Well, what did Dr. Pisano tell you? A. From memory, she just told me that they had canceled it. She didn’t actually give me a reason. Q. So you added that fact that it was not in line with their mission? That was from your own surmise? A. I was guessing it, yes. Q. You didn’t actually know? A. I didn’t.

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**Issue No. 7:  
The Center Defendants Are Entitled to Judgment on AFA's Ninth Cause of Action For  
Declaratory Relief Because Such Requested Relief is Moot in the Absence of Underlying  
Constitutional Violations**

80. AFA requests judicial declarations that  
“the cancellation of the EVENT and breach of  
the contract violated the United States  
Constitution and the California Constitution”  
and that “the Defendants engaged in content  
and viewpoint discrimination by preventing  
Plaintiff from addressing the topic of intelligent  
design in a public forum.”  
TAC, Paras. 111 and 112.

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**Issue 8:**

**AFA's Eighth Cause of Action Cannot Support a Claim for Money Damages**

81. AFA appears to seek money damages for the alleged violation of the California Constitution.  
TAC, Para. 108



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**Issue No. 9:**

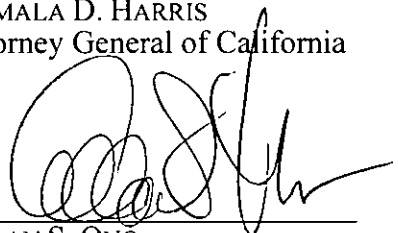
**Punitive Damages Are Not Recoverable Against the Center**

82. AFA's Third Amended Complaint seeks  
punitive damages. .  
TAC, Prayer, Para. 4.

Dated: March 23, 2011

Respectfully Submitted,

KAMALA D. HARRIS  
Attorney General of California



By  
ALLAN S. ONO  
Deputy Attorney General  
*Attorneys for California Science Center and  
Jeffrey Rudolph in his individual and  
Official Capacity as President and CEO of  
the Science Center*

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**DECLARATION OF SERVICE BY MESSENGER**

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

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; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.


On March 25, 2011, I caused the attached CALIFORNIA SCIENCE CENTER'S AND JEFFREY RUDOLPH'S, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY AS PRESIDENT AND CEO OF THE CALIFORNIA SCIENCE CENTER, SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS AND EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION to be personally served by Ace Messenger Service by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:

William J. Becker, Jr., Esq.  
The Becker Law Firm  
11500 Olympic Boulevard, Suite 400  
Los Angeles, CA 90064

James L. Zelenay Jr., Esq.  
Gibson, Dunn & Crutcher LLP  
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 March 25, 2011, at Los Angeles, California.

Olivia Padilla  
Declarant

  
Signature