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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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John A. Clarke, Executive Officer/Clerk
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SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DIVISION

13 AMERICAN FREEDOM ALLIANCE, a
14 nonprofit corporation;
15 Plaintiff,

16 v.

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

CASE NO. BC 423687

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

**DEFENDANTS CALIFORNIA SCIENCE
CENTER FOUNDATION'S AND JEFFREY
RUDOLPH'S OPPOSITION TO PLAINTIFF
AMERICAN FREEDOM ALLIANCE'S
MOTION FOR ORDER GRANTING LEAVE
TO FILE SECOND AMENDED
COMPLAINT; DECLARATION OF JAMES
L. ZELENAY, JR. IN SUPPORT THEREOF**

*[Appendix of Non-California Authorities, filed
concurrently]*

DATE OF FILING
OF COMPLAINT: October 14, 2009

DATE OF FILING
FIRST AMENDED
COMPLAINT: November 18, 2009

TRIAL DATE: February 14, 2011

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I. INTRODUCTION

Plaintiff American Freedom Alliance (“AFA” or “Plaintiff”) requests that the Court grant it leave to file a second amended complaint. Plaintiff filed this motion (the “Motion”) over five months after it filed the First Amended Complaint (“FAC”); over three months after the Defendants filed demurrers to the FAC; and on minimal notice in advance of the Court’s hearing on Defendants’ long-pending demurrers to the FAC. By filing the Motion so late, Plaintiff has acted in a dilatory and bad faith manner, and has provided no valid excuse for its delay in seeking leave. Further, Plaintiff has proposed amendments that are facially invalid and that expressly contradict its prior allegations and its own counsel’s express written stipulations with Defense counsel.

Plaintiff’s proposed Second Amended Complaint (“SAC”) would add six new causes of action against the California Science Center Foundation (the “Foundation”), the California Science Center (the “State Center”) and Jeffrey Rudolph (“Rudolph”) in his official capacity as President of the Foundation and CEO of the State Center (collectively, “Defendants”). In addition, it would materially change the capacity in which Rudolph is sued to include his individual capacity and add AFA’s President Adrian (Avi) Davis (“Davis”) as an additional Plaintiff.

By this Opposition, Defendants Foundation and Rudolph, in his official capacity as President of the Foundation, oppose Plaintiff’s Motion on the grounds that Plaintiff has not acted in good faith.¹ Furthermore, the Foundation and Rudolph specifically oppose the Motion with regard to modifying the capacity in which Rudolph has been sued on the grounds that this amendment is sought in bad faith, contradicts prior written stipulations by Plaintiff’s counsel, and is a sham amendment that inappropriately attempts to evade arguments raised in Defendants’ demurrers. Likewise, the Foundation and Rudolph specifically oppose the addition of Davis as a plaintiff on the grounds that it contradicts prior allegations in Plaintiff’s complaints and the exhibits thereto and that Plaintiff has not shown any valid basis to name Davis as a party since he is not a real party in interest

¹ Defendants Foundation and Rudolph, in his official capacity as President of the Foundation, oppose each and every new cause of action proposed to be added by Plaintiff in its Motion. Defendants reserve their right to bring additional substantive arguments against each of the new causes of action and other proposed amendments as part of their anticipated demurrers to the Second Amended Complaint to the extent that the Court allows Plaintiff any of the relief sought by the Motion.

1 in this litigation. Thus, while the Foundation and Rudolph oppose any amendment of the pleadings
2 previously filed by Plaintiff, to the extent that the Court grants Plaintiff any of the relief sought in its
3 Motion, the allegations concerning the individual capacity of Rudolph and the addition of Davis as a
4 plaintiff still should not be allowed.

5 II. BACKGROUND

6 This action arose after the Foundation cancelled a purely private event scheduled to be held
7 by Plaintiff on October 25, 2009 at the California Science Center (the "Event"). The Foundation's
8 Events Policies & Procedures, incorporated by reference into the alleged contract, include a provision
9 requiring "*all promotional materials* mentioning the California Science Center produced for [an]
10 event" to be reviewed and approved by the Foundation "prior to printing or broadcast." (FAC,
11 Exh. A, emphasis added). The Foundation cancelled the event after becoming aware of unauthorized
12 press releases issued in early October 2009 incorrectly implying that the Smithsonian Institution and
13 the California Science Center were co-sponsoring the Event. These press releases were not submitted
14 to the Foundation for approval as required by the Foundation's Events Policies & Procedures. Based
15 on this material breach of contract, the Foundation advised Plaintiff on October 6, 2009 that the event
16 was cancelled.

17 Plaintiff now contends that the unauthorized press release was published by the third party
18 Discovery Institute. Plaintiff has stated that it "did not authorize the Discovery Institute to promote
19 the EVENT, had no control over the Discovery Institute's operations or publicity and had no prior
20 knowledge that it would use information shared for promotional purposes." (FAC, ¶ 34.) However,
21 discovery obtained from both AFA and the Discovery Institute suggests significant coordination
22 between the two groups regarding the Event. By way of example, on September 30, 2009, Peter
23 Bylsma, representing AFA, informed John West of the Discovery Institute that "Avi says we are
24 locked in [with our contract with the Science Center Foundation] so we are ready to start publicizing
25 the event." (Zelenay Decl., Exh. A.) In a previous e-mail between Bylsma and Robert Crowther of
26 the Discovery Institute, Crowther states "[b]efore we begin aggressively promoting this I wanted to
27 confirm these dates are for sure, and that you all have contracts in place." (Zelenay Decl., Exh. B.)
28 Crowther further notes that "[o]nce we let the jinni [sic] out of the bottle it is likely all hell will break

1 loose.” (*Ibid.*) A number of other e-mail messages further substantiate a relationship between the
2 parties with regard to the planning and marketing of the Event. (See, e.g., Zelenay Decl., Exhs. C &
3 D.)

4 On October 14, 2009, Plaintiff filed its initial complaint in this action along with an
5 application for a temporary restraining order to enjoin Defendants from cancelling the Event, which
6 was denied by the Court. Plaintiff subsequently filed and served the FAC on November 18, 2009.
7 Defense counsel sent two emails to Plaintiff’s counsel on November 20, 2009, seeking clarification
8 that Rudolph was only being sued in his official capacity. (Zelenay Decl., Exh. F.) Plaintiff’s
9 counsel responded affirmatively. (*Ibid.*) Subsequently, on January 19, 2010, the Defendants filed
10 demurrers to the FAC, which were noticed for May 12, 2010, the first date available on the Court’s
11 calendar.

12 In March 2010, all parties met and conferred and discussed discovery issues and case
13 management. (Zelenay Decl., ¶ 7.) Because Defendants had filed demurrers which, if granted,
14 would significantly narrow the nature of Plaintiff’s claims and remedies and would dismiss all claims
15 that allowed the recovery of attorney’s fees, the parties determined that it would be provident to delay
16 mediation until after the demurrers were heard. (*Ibid.*) The parties also agreed to postpone the taking
17 of depositions in this action until after the Court had heard the demurrers and the parties had
18 mediated, in order to avoid potentially unnecessary costs. (*Ibid.*) At no time during or after these
19 discussions did Plaintiff state that it planned on amending its complaint or request a stipulation to do
20 so. (*Ibid.*)

21 In an effort to mediate before incurring substantial costs and following the hearing on the
22 demurrers – which would determine whether attorneys’ fees are still at issue in this case – and in
23 order to provide adequate time for discovery after mediation and before trial, the parties recently
24 submitted a joint *ex parte* application to continue the mediation deadline until after the demurrers
25 hearing and to postpone the trial date. (Zelenay Decl., ¶ 8.) While preparing the *ex parte* application,
26 the parties disagreed about the appropriate date for rescheduling trial. Defendants originally
27 suggested a March 2011 trial date in order to avoid conflicts with the holidays. (Zelenay Decl., Exh.
28 E.) However, Plaintiff stridently opposed a March 2011 trial date, stating “[t]his case can be readied

1 for trial in February [2011].” (*Ibid.*) The joint *ex parte* application, premised on allowing the parties
2 to wait until after the mediation to incur the potentially unnecessary costs and expenses of
3 depositions, requested a trial date in February 2011. (Zelenay Decl., ¶ 8.) By order of the Court, the
4 trial date was ultimately moved to February 14, 2011. (Zelenay Decl., ¶ 10.) At no time during those
5 very recent discussions did counsel for Plaintiff suggest that he contemplated an amended complaint
6 that would obviate the basis for the *ex parte* application. (Zelenay Decl., ¶¶ 7, 11.)

7 III. ARGUMENT

8 A. Plaintiff Should Be Denied Leave To File The SAC Based On Its Lack Of Good Faith

9 Based on Plaintiff’s blatant contradictions and gamesmanship, the Court should deny
10 Plaintiff’s request for leave to file the proposed SAC. Section 473 of the Code of Civil Procedure
11 grants courts the discretion to grant or deny such leave. (Code Civ. Proc., § 473.) However, it is a
12 “fundamental principle . . . that a court is not required to tolerate a purported amended complaint
13 which . . . is not filed in good faith.” (*People v. Oken* (1959) 159 Cal.App.2d 456, 462.)

14 Here, Plaintiff’s request for leave to amend has not been filed in good faith. Plaintiff filed this
15 motion less than two weeks after the Court granted the parties’ joint *ex parte* application to modify
16 the case management schedule. Plaintiff’s proposal adds claims and parties and thereby materially
17 affects the representations in the *ex parte* application. Not once did Plaintiff ever inform Defendants
18 that Plaintiff was planning on filing a motion to amend its pleading, which would throw this entire
19 plan off-kilter. (Zelenay Decl., ¶¶ 7, 11.) Instead, Plaintiff signed onto an *ex parte* application,
20 requesting extraordinary relief to move the mediation and trial date, apparently all the while planning
21 on filing an amended complaint that – if allowed to be filed – necessarily means that there will still be
22 a question as to whether attorneys fees are at issue by the time the parties are to mediate in June. If
23 allowed, Plaintiff will file an amended pleading (adding in new claims containing attorneys’ fees),
24 Defendants will demur, and the hearing on the demurrer will not be for many months, a scenario that
25 Plaintiff indicates “would not be fruitful.” (Zelenay Decl., Exh. E.) ***This defeats and is contrary to***
26 ***the whole purpose of the parties’ previous joint request, signed by Plaintiff’s attorney just a few***
27 ***weeks ago.***

1 Plaintiff's counsel indicates as an excuse that "[t]he legal theories giving rise to the proposed
2 amendments become known to [him] in early April." (Becker Decl., ¶ 9.) Not only was this *before*
3 Plaintiff's counsel signed the joint request to move the mediation and trial date in this matter, but this
4 statement is simply not credible. By way of example, Plaintiff wants to add Davis as a plaintiff based
5 on its new claim that he was a party to the contract. (SAC, ¶ 9.) There is no new information that
6 was previously unavailable and suddenly became available to Plaintiff in April that could have
7 alerted Plaintiff to make that claim. Likewise, Defendants asked Plaintiff's counsel to clarify the
8 capacity in which Rudolph was sued just *two days after the filing of the FAC back in November*.
9 Plaintiff's counsel stated affirmatively in writing that Rudolph was sued only in his official capacity
10 (not his individual capacity as Plaintiff now tries to add as a purported "clarification"). (Zelenay
11 Decl., Exh. F.) Plaintiff has specifically known since the filing of the FAC in November about the
12 potential to make claims against Rudolph in his individual capacity and declined to do so. The
13 remaining causes of action proposed by Plaintiff are not based on any new factual information either
14 and could all have been raised earlier.

15 Despite Plaintiff's recent insistence that "[t]his case can be readied for trial in February
16 [2011]," (Zelenay Decl., Exh. E), this ill-timed request for leave now threatens a trial schedule that
17 was approved by the Court less than one month ago. If the Motion is granted and leave to amend is
18 given, this Court's decision regarding Defendants' pending demurrers will not resolve issues that will
19 need to be decided by subsequent demurrers on the new claims. In such a situation and then given
20 the Court's schedule, it seems unlikely that this case will go to trial in February 2011.

21 Further, Plaintiff has provided no rationale for bringing the Motion prior to the hearing on
22 Defendants' demurrers. The Court's ruling on the demurrers will likely determine whether some of
23 the new elements of the SAC are viable. Thus, some of the allegations in the proposed SAC may be
24 rejected by the Court in its ruling on the pending demurrers. Plaintiff's Motion is also an improper
25 attempt to influence the Court's decision on the demurrers. An amended complaint may not be used
26 to evade defects identified in a demurrer. (*Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 425
27 ["Under the sham pleading doctrine, plaintiffs are precluded from amending complaints to omit
28 harmful allegations, without explanation, from previous complaints to avoid attacks raised in

1 demurrers or motions for summary judgment”].) The Motion, which seeks to reverse Plaintiff’s prior
2 representations, constitutes a blatant attempt to influence the Court’s deliberation on Defendants’
3 demurrers. Plaintiff admits that it “recognize[d] the need to amend the complaint in the course of
4 opposing a pending motion by Defendants to compel documents and opposing their demurrers.”
5 (Becker Decl., ¶ 11.)

6 Because Plaintiff’s Motion for leave has not been filed in good faith, it should be denied. The
7 Motion contradicts the parties’ prior understanding that the pleading stage will be completed by the
8 time of the continued mediation, and that the Court’s rulings on the pending demurrers will finally
9 resolve the scope of the claims at issue in this case. If the Court allows Plaintiff to add new,
10 unrelated causes of action, Defendants will not have a chance to have their second round of
11 demurrers heard prior to the scheduled mediation. Thus, the relief requested by the Motion negates
12 the efforts taken by the parties in this action to continue the mediation and trial dates so as to allow
13 for a productive mediation process. For these reasons, the Court should deny Plaintiff’s proposed
14 amendments.

15 **B. Plaintiff’s Proposal To Amend The Complaint To Include Claims Against Jeffrey**
16 **Rudolph In His Individual Capacity Should Be Denied Because It Is Not Proposed In**
17 **Good Faith and Constitutes A Sham Amendment**

18 Plaintiff’s belated effort “to clarify its complaint,” by alleging the causes of action against
19 Rudolph in both his official capacity and his individual capacity, should be denied because it is
20 contrary to prior written statements by the Plaintiff and calculated to correct pleading defects
21 identified in Defendants’ demurrers. “[A] court is not required to accept an amended complaint that
22 is not filed in good faith, is frivolous or sham.” (*American Advertising and Sales Co. v. Mid-Western*
23 *Transport* (1984) 152 Cal.App.3d 875, 878, citing *Oken, supra*, 159 Cal.App.2d at p. 462.) “The
24 absence or presence of good faith . . . certainly bears on the exercise of the court’s discretion in
25 granting or denying leave to file an amended complaint, especially one which constitutes an about-
26 face from the position originally taken by the plaintiff.” (*Id.* at p. 879–80.)

27 “[A]ny inconsistencies with prior pleadings must be explained; if the pleader fails to do so,
28 the court may disregard the inconsistent allegations.” (*Vallejo Development Co. v. Beck*

1 *Development Co.* (1994) 24 Cal.App.4th 929, 946.) “The well-established rule is that a proposed
2 amendment which contradicts allegations in an earlier pleading will not be allowed in the absence of
3 ‘*very satisfactory evidence*’ upon which it is ‘*clearly shown that the earlier pleading is the result of*
4 *mistake or inadvertence.*” (*American Advertising, supra*, 152 Cal.App.3d at p. 879, emphasis
5 added.) Similarly, an amended pleading may not contradict prior stipulations by the amending party.
6 (*Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939.) An amended pleading should be
7 denied when “[t]he only evidence of mistake or inadvertence is [plaintiff’s] self-serving declaration.”
8 (*American Advertising, supra*, 152 Cal.App.3d at p. 879.)

9 The sham pleading doctrine also precludes a plaintiff “from amending complaints . . . to avoid
10 attacks raised in demurrers.” (*Deveny, supra*, 139 Cal.App. 4th. at p. 425.) “If a party files an
11 amended complaint and attempts to avoid the defects of the original complaint . . . by adding facts
12 inconsistent with those of previous pleadings, the court may take judicial notice of prior pleadings
13 and may disregard any inconsistent allegations.” (*Colapinto v. County of Riverside* (1991) 230
14 Cal.App.3d 147, 151.)

15 Here, Plaintiff has not provided any satisfactory evidence that its prior pleading was based
16 upon a good faith mistake or inadvertence. Instead, Plaintiff’s purported “clarification” constitutes an
17 “about-face” from previous stipulations by Plaintiff. Plaintiff states that because the FAC is
18 ambiguous as to the capacity of Rudolph, the proposed SAC clarifies that AFA “assert[s] its theories
19 against RUDOLPH in both his official and individual capacities.” (Motion at p. 6) However, on
20 November 20, 2009, two days after filing the FAC, Plaintiff clearly indicated to Defendants that
21 Rudolph was being sued *only* in his official capacity. (Zelenay Decl., Exh. F; see also Plaintiff’s
22 Oppositions to Defendants’ Demurrers at p. 1, fn. 1.) Subsequent correspondence and filings have
23 been equally clear, at each point along the way, that counsel here only represented Mr. Rudolph in his
24 official capacity. Now, five months after confirming Rudolph’s status in the litigation in writing,
25 Plaintiff seeks to amend its pleading, while providing no justification beyond a bald statement that
26 the FAC is ambiguous. (Motion at p. 5.) Where no evidence of mistake is provided beyond a mere
27 statement, an amended pleading should be denied. (See *American Advertising, supra*, 152
28 Cal.App.3d at p. 879.)

1 “In determining whether a suit is an individual- or official-capacity suit, the court must
2 consider the ‘essential nature’ of the proceeding.” (*Eaglesmith v. Ward* (9th Cir. 1995) 73 F.3d 857,
3 859.) In *Eaglesmith*, the panel relied upon stipulations and prior correspondence in holding that the
4 suit was brought against the defendant solely in his official capacity. (*Ibid.* [holding that stipulation
5 “clearly indicates that Eaglesmith brought this suit against Ward in his official capacity” and also
6 relying upon “correspondence between Ward’s and Eaglesmith’s counsel indicating that Ward’s
7 agreement to the stipulation was explicitly conditioned upon the inclusion of the phrase, ‘in his
8 official capacity,’ after Ward’s name”].) The evidence here clearly indicates that Plaintiff’s claims
9 have been brought against Rudolph solely in his official capacity.

10 Further, the proposed “clarification” is a blatant attempt to avoid the issues raised in the
11 demurrers filed by the Defendants. Both the Foundation and the State Center filed demurrers on
12 January 19, 2010 to the claims filed pursuant to 42 U.S.C. § 1983, which are scheduled to be heard
13 concurrently with this Motion. (Zelenay Decl., ¶ 13.) The Foundation’s demurrer argues that if the
14 Foundation is subject to § 1983, it is immunized from suit. (Foundation’s Demurrer at p. 11.)
15 Similarly, the State Center’s demurrer argues that Eleventh Amendment immunity applies. (State
16 Center’s Demurrer at p. 9.) As noted by Plaintiff, the Eleventh Amendment immunity does not apply
17 to officers who are sued in their individual capacity. (Motion at p. 5) When viewed in conjunction
18 with the Plaintiff’s previous stipulation regarding the status of Rudolph, it is abundantly clear that
19 this proposed amendment is an attempt to evade the deficiencies discussed in the demurrers and
20 should be denied. (See *Deveny, supra*, 139 Cal.App.4th. at p. 425.) It is the classic “sham”
21 amendment, asserted in light of a defeating argument in demurrer, and in contradiction to prior
22 allegations and written stipulations.

23 **C. Plaintiff’s Proposal To Add Adrian Davis As A Plaintiff Should Be Denied Because It Is**
24 **Inconsistent With Prior Complaints And Because Davis Is Not A Real Party In Interest**

25 The Court should deny Plaintiff leave to add Davis as an additional plaintiff. The factual
26 allegations supporting the addition of Davis are inconsistent with prior pleadings. Additionally,
27 Davis is not a real party in interest and has no standing to sue.

28

1 **1. Plaintiff's Proposal To Add Davis As A Plaintiff Is Inconsistent With Prior**
2 **Pleadings**

3 Plaintiff's proposal to add Davis as an additional plaintiff should be denied because it is
4 inconsistent with Plaintiff's prior complaints. As already noted, "any inconsistencies with prior
5 pleadings must be explained." (*Vallejo Development, supra*, 24 Cal.App.4th at p. 946.) Further, "as
6 a matter of law, allegations in a complaint must yield to contrary allegations contained in exhibits to a
7 complaint." (*Ibid.*) Additionally, "[c]ourts are understandably suspicious of a party's belated claim
8 of mistaken admission of facts where the party has had unrestricted access to the facts, presumptive
9 knowledge of what occurred, and several opportunities to present the correct facts." (*American*
10 *Advertising, supra*, 152 Cal.App.3d at p. 879.)

11 Here, Plaintiff's proposed SAC states that "Plaintiff DAVIS entered into a written contract . . .
12 on behalf of AFA and himself with Defendants." (SAC, ¶ 9, emphasis added.) However, the FAC
13 states that "Plaintiff's President Avi Davis . . . entered into a written contract . . . on Plaintiff's behalf
14 with Defendants." (FAC, ¶ 11, emphasis added.) Plaintiff's explanation for the change is
15 purportedly based on the fact that Davis "was responsible for negotiating the agreement with
16 Defendants . . . and stood to incur the loss of funds when the agreement was breached." (Motion at
17 p. 4.) However, these unrelated facts do not change the underlying factual allegation that Davis was,
18 in fact, not a party to the contract with the Foundation.

19 The proposed changes to the parties of the contract also conflict with the written contract, an
20 exhibit to both the FAC and the proposed SAC. (FAC, Exh. A; SAC, Exh. A) The text of the Event
21 Letter of Agreement demonstrates that the contract was between AFA and the Foundation. Davis,
22 with the title Senior Fellow, is listed solely as a contact for AFA. (FAC, Exh. A.; SAC, Exh. A.)
23 Any allegation in the SAC that Davis was a party to the contract would be contrary to the exhibits
24 attached to Plaintiff's own pleadings. Plaintiff has made no attempt to reconcile these contradictions
25 and any such explanation cannot overcome the fundamental presumption that Plaintiff knew when it
26 first initiated this litigation whether Davis was a party to the contract. Because the proposed
27 amendment contradicts the allegations of the previous complaints and the exhibits thereto, Plaintiff
28 should be denied leave to add Davis as an additional plaintiff.

1 **2. Davis Is Not A Real Party In Interest And Has No Standing To Sue**

2 As a separate and independent ground to deny leave to amend, Davis should not be added as a
3 plaintiff because he is not a real party in interest and lacks standing to sue. Leave to amend may be
4 denied when the amended complaint does not sufficiently state a cause of action. (*Congleton v. Nat'l*
5 *Union Fire Insurance Co. of Pittsburgh, PA* (1987) 189 Cal.App.3d 51, 62, citing 5 Witkin, Cal
6 Procedure (3d ed. 1985) § 1121, p. 541.) A complaint filed by someone other than the real party in
7 interest fails to state a cause of action. As an agent to a disclosed principal, Davis has no personal
8 interest in the contract, and lacks standing to be named as a plaintiff.

9 The Third Restatement on Agency clearly states that an agent acting on behalf of a disclosed
10 principal is not a party to a contract. “When an agent acting with actual or apparent authority makes
11 a contract on behalf of a disclosed principal, (1) the principal and the third party are parties to the
12 contract; and (2) the agent is not a party to the contract unless the agent and third party agree
13 otherwise.” (Rest.3d Agency, § 6.01 (2006).)

14 That is also the law in California. “[A]n agent for a party to a contract not made with or in the
15 name of the agent is not a real party in interest with standing to sue on the contract.” (*Powers v.*
16 *Ashton* (1975) 45 Cal.App.3d 783, 789; see also *Epic Communications, Inc. v. Richwave Technology,*
17 *Inc.* (2009) 179 Cal.App.4th 314, 334 [“Nor does an agent ordinarily have a cause of action based
18 upon some third person's violation of his principal's rights”].) “Without some breach of a duty owed
19 to him, [the agent] has no power to sue on the principal's claim.” (*Epic Communications, supra*, 179
20 Cal.App.4th at p. 334, citing Code Civ. Proc., § 367 [suit to be brought in name of real party in
21 interest]; Civ. Code, § 1559 [power to sue on contract of which plaintiff is an express third party
22 beneficiary], emphasis in original.)

23 Here, the FAC clearly indicates that Davis entered into the contract as an agent acting on
24 behalf of a disclosed principal, AFA. (FAC, ¶ 11 [noting that Davis “entered into a written contract .
25 . . . on [AFA’s] behalf.”] Furthermore, the signed contract identifies Davis as an employee of AFA,
26 using the title Senior Fellow. (FAC, Exh. A; SAC, Exh. A.) Contemporary e-mail messages reflect
27 the Foundation’s understanding that Davis was acting as an agent for AFA. (Zelenay Decl., Exh. G;
28 see also Exh. H [email from Davis indicating that AFA is “the only signatory to the contract”].)

1 Likewise, a review of the contract demonstrates no express intention to benefit Davis. The only
2 mention of Davis in the written contract is as a contact person. Without an express intention to make
3 Davis a third-party beneficiary, he is not a real party in interest. (Civ. Code, § 1559 [a contract must
4 be “expressly for the benefit of a third person” to be enforced by that person]; *Lucas v. Hamm* (1961)
5 56 Cal.2d 583, 590 [“The effect of [Section 1559] is to exclude enforcement by persons who are only
6 incidentally or remotely benefited”].)

7 In its Motion, Plaintiff argues that Davis has standing to pursue the lawsuit because he has a
8 “personal stake invested in [AFA],” citing *Vaughn v. Dame Construction Co.* (1990) 223 Cal.App.3d
9 144. (Motion at p. 4–5.) In *Vaughn*, the plaintiff initiated a suit for defective construction and
10 subsequently sold the property. (223 Cal.App.3d at p. 146.) The court there held that “[a]s the
11 person who sustained the damage, the cause of action was vested in plaintiff and she is therefore the
12 real party in interest entitled to maintain the present action.” (*Id.* at p. 149.)

13 The facts of *Vaughn* are easily distinguishable from this case. Unlike the plaintiff in *Vaughn*,
14 Davis was never a party to the contract between AFA and the Foundation. (FAC, Exh. A) Davis
15 does not hold any legal rights that were damaged or breached by the alleged wrongful conduct of the
16 Defendants. This lack of standing is not remedied by Plaintiff’s conclusory and unsupported
17 statements that “[a]ny loss that devolves to AFA also devolves to Mr. Davis.” (Becker Decl., ¶ 8; see
18 also Motion at 4:21-25 [stating that Davis “stood to incur the loss of funds when the agreement was
19 breached by Defendants”].) Simply because Davis may have been financially impacted by the Event
20 cancellation does not vest him with the legal standing to state a cause of action. By this argument,
21 any employee or officer of any corporation could sue any time that anyone breached a contract with
22 that corporation. This is not the law. Davis is not a real party in interest and should not be included
23 as a plaintiff in this litigation.

24 Finally, all of the other claims made by Plaintiff in either the proposed SAC or in the
25 operative FAC are factually based on the alleged breach of contract by the Defendants. Because
26 Davis is not a real party in interest to the contract, he has no basis to assert any of the remaining
27 claims. Therefore, as Plaintiff has failed to show a valid reason to add Davis as a plaintiff, leave to
28 amend should be denied.

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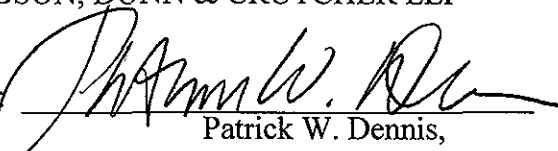
IV. CONCLUSION

For the foregoing reasons, Defendants Foundation and Rudolph, in his official capacity as President of the Foundation, respectfully request that the Court deny Plaintiff's Motion requesting leave to file a second amended complaint. In the event that the Court grants any part of the Motion, then Defendants specifically request that the Court deny the proposed amendment concerning the capacity in which Rudolph has been sued because it is made in bad faith, specifically contradicts prior written stipulations made to Defendants, and constitutes a sham amendment that attempts to evade attacks on the pleadings made in Defendants' demurrers. Similarly, the proposed amendment naming Davis as a plaintiff should be denied because it is inconsistent with the prior complaints and exhibits thereto, and Plaintiff has not provided any valid reason for why Davis can be named as a real party in interest to this litigation.

DATED: April 29, 2010

GIBSON, DUNN & CRUTCHER LLP

By



Patrick W. Dennis,

Attorneys for Defendants CALIFORNIA SCIENCE CENTER FOUNDATION and JEFFREY RUDOLPH in his official capacity as President of the California Science Center Foundation

100856838_2.DOC

DECLARATION OF JAMES L. ZELENAY, JR.

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

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

2. This declaration is filed in support of Defendants California Science Center Foundation’s and Jeffrey Rudolph’s Opposition to Plaintiff American Freedom Alliance’s Motion for Order Granting Leave to File Second Amended Complaint (the “Motion”). This opposition is submitted solely on behalf of the Foundation and Rudolph, in his official capacity as President of the Foundation.

3. Attached hereto and incorporated herein by reference as Exhibit A is a true and correct copy of an e-mail exchange produced by the Discovery Institute, Bates Stamped DI 00643. The subject line of the e-mail is “PUBLICITY FOR DARWINS DILEMMA.”

4. Attached hereto and incorporated herein by reference as Exhibit B is a true and correct copy of an e-mail exchange produced by the Discovery Institute, Bates Stamped DI 00521.

5. Attached hereto and incorporated herein by reference as Exhibit C are true and correct copies of e-mail exchanges produced by the American Freedom Alliance, Bates Stamped AFA 0000096-0000098, 0000148, 0000345-0000347, 0001421-0001422, and 0002856.

6. Attached hereto and incorporated herein by reference as Exhibit D are true and correct copies of e-mail exchanges produced by the Discovery Institute, Bates Stamped DI 00475-00481, 00595-00597, 00625, 00647-00650, and 00654-00657.

7. In March 2010, the parties met and conferred to discuss discovery issues. During this meeting, the parties also discussed potential case scheduling and management matters. At that time, the parties discussed the potential of filing a stipulation or some form of joint relief requesting that

1 the Court move the mediation deadline and trial date, in light of the selected mediator's lack of
2 availability following the hearing on the demurrers until late June, so that the mediation could occur
3 after the hearing on the demurrers (scheduled for May 12) – at which time Plaintiff's claims
4 involving attorneys' fees would be ruled upon – and the parties could refrain from incurring the costs
5 of taking depositions until after the mediation (if still necessary). My understanding of this
6 discussion was that it was all premised upon the proposition that it did not make sense to conduct the
7 mediation prior to the hearing on the demurrers (because a ruling on the demurrers would determine
8 the scope of the claims at issue in the case, including whether claims involving attorneys' fees were
9 still at issue, informing the mediation discussion), and the parties desired to avoid incurring the costs
10 and expenses of depositions prior to the mediation occurring. Not once during this time did
11 Plaintiff's counsel indicate that Plaintiff intended on filing a motion to file an amended complaint,
12 adding in new claims involving attorneys fees, which throw the entire premise of this plan off-kilter.

13 8. On April 5, 2010, pursuant to the parties' discussion in March, the parties filed a Joint
14 *Ex Parte* Application to Continue Mediation Conference Date, Final Status Conference Date, And
15 Trial Date In Light Of Pending Demurrers and Mediator's Availability (the "Joint Application"). The
16 Joint Application requested that the Mediation Conference be moved to June 31, 2010 and the Final
17 Status Conference and that the trial be moved from January 24, 2010 to February 7, 2011. The Joint
18 Application, like the parties' discussion, was premised on allowing the parties to wait until after the
19 mediation to incur the potentially unnecessary costs and expenses of depositions.

20 9. Attached hereto and incorporated by reference as Exhibit E are true and correct copies
21 of e-mail exchanges among counsel for the parties..

22 10. On April 6, 2010, this Court granted the Joint Application. The Court set a new
23 mediation conference date of June 30, 2010. The Court set a new trial date of February 14, 2011.

24 11. Prior to filing the *ex parte* application to move the trial date, Plaintiff never indicated
25 that it would request leave to file an amended complaint.
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1 12. Attached hereto and incorporated by reference as Exhibit F are true and correct copies
2 of e-mail exchanges between counsel for the parties addressing the capacity by which Jeffrey
3 Rudolph was named in the First Amended Complaint.

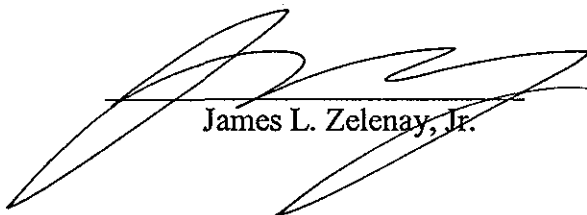
4 13. Defendants Foundation and Rudolph, in his official capacity as President of the
5 Foundation, filed a demurrer to the First Amendment Complaint on January 19, 2010. On the same
6 day, Defendants California Science Center and Rudolph, in his official capacity as CEO of the
7 California Science Center, also filed a demurrer to the First Amended Complaint. Both demurrers are
8 scheduled to be heard by this Court on May 12, 2010.

9 14. Attached hereto and incorporated by reference as Exhibit G are true and correct copies
10 of documents produced by the Foundation, Bates Stamped. CSCF 0000152 and 0000198-0000200.

11 15. Attached hereto and incorporated by reference as Exhibit H is a true and correct copy
12 of a document produced by the Foundation, Bates Stamped CSCF 0000275.

13
14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct.

16 Executed this 29th day of April, 2010 at Los Angeles, California.

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19 
20 James L. Zelenay, Jr.

>>>> supporters). You could have a table to promote Biola and the MASR
>>>> program
>>>> at the event. I think this would provide great exposure, as the
>>>> event is
>>>> likely to be high profile.
>>>>
>>>> DI is very pleased with this event coming together, and we would
>>>> love it
>>>> if you would be able to help promote it.
>>>>
>>>> We are trying to nail down everything in the next day or so.
>>>>
>>>> If you have any questions, please give me a call at
>>>>
>>>> John
>>>>
>>
>
>

From: John West <jwest@discovery.org>
Date: September 30, 2009 3:09:07 PM PDT
To: Robert Crowther <rob@discovery.org>
Subject: REVISED AFA Press Release

Rob, Peter has fixed his press release. Send THIS one to

----- Forwarded Message

From: Peter Bylsma <pbylsma@gmail.com>
Date: Wed, 30 Sep 2009 14:51:36 -0700
To: John West <jwest@discovery.org>
Subject: Re: PUBLICITY FOR DARWINS DILEMMA

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

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

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

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

John

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

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

----- End of Forwarded Message

Robert Crowther

From: Robert Crowther
Sent: Monday, September 28, 2009 1:42 PM
To: 'Peter Bylsma'
Subject: October event confirmations

Peter,

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

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

Regardless, this will be a lot of fun.

Thanks,

Rob

Robert L. Crowther, II
Director of Communications
Center for Science & Culture
rob@discovery.org
206-292-0401 x107
web: discovery.org/csc/
blog: evolutionnews.org
podcast: idthefuture.com

EXB ✓



AFA ALBATROSS <albatrossatafa@gmail.com>

Fwd: DARWINS DILEMMA PUBLICITY

1 message

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

Wed, Feb 10, 2010 at 7:19 AM

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

From: **Peter Bylsma** <pbbylsma@gmail.com>
Date: Wed, Sep 23, 2009 at 8:25 AM
Subject: Re: DARWINS DILEMMA PUBLICITY
To: Robert Crowther <rob@discovery.org>

Hi Rob

Thanks for the note. Glad to hear you are busy! I appreciate your help on all this. Here is where we stand: we are still at the mercy of National Amusements regarding final confirmation of the event at The Bridge Cinema here due to the possible release of Where The Wild Things Are that might conflict with our date and time at the venue. So it is all on hold for the moment, but not for long. I am also waiting for the press release approval from my side and will send that as soon as I get it, which probably will be timed with confirmation by National Amusements which I really hope comes today.

It is great to hear your PR firm will handle Berlinski's media relations which will be well timed for the second week of October as you mentioned. So far, I have had a chat with Biola about their support, and they will be happy to do a feature with David in their print and on line media timed to the event. I am planning on getting the information out to the calendar listings for the Times and LA Weekly and the Journal as soon as we get confirmation. Where your PR folks with Berlinski can come in most effectively would be booking him on local talk radio with phoners, e.g., Hugh Hewitt, Kevin James, Dennis Prager and John and Ken. We also have a tentative commitment to support from the Jewish Journal here in which a feature on David and the issue would be very helpful. There are few on line conservative news outlets we can probe as well, e.g., Fleishmann, Red County, LA Insight. They are more likely listings instead of features. I welcome your input and support and will provide recommendations for those media contacts under separate cover. BTW who is your PR firm?

I would certainly also appreciate your support with Illustra since I have no contacts there. If they would distribute the release to their lists that would be helpful. Finally, I am planning to coordinate with National Amusements and IMAX to get them to distribute to their lists, so let me know if that works for you guys. We should pitch LA Times and LA Weekly just to be comprehensive in our efforts....who knows, right? So you and I should coordiante who contacts them Lefties.

Thanks again for your support Rob. I will be in touch very soon.
Peter

On Tue, Sep 22, 2009 at 4:28 PM, Robert Crowther <rob@discovery.org> wrote:

Hi Peter, I apologize for not getting back to you sooner. We have a great number of events in the next few weeks, books releasing, websites launching and only a few of us to handle everything. Please do keep me in the loop on everything. I would like to see the releases and any other copy that goes out just to make sure we're all on the same page, and also so we can echo your efforts as needed. If you do anything publicity related please do CC me as much as possible. I can follow up with Illustra or Biola as needed.

AFA 0000096

As far as media, our PR firm will be pitching media for interviews with David Berlinski primarily, and we'll be reaching out to print reporters as well. Most of that will probably not pick up until early October. If you have any So Cal media contacts that you think would be interested in covering any of this, or interested in interviewing David by all means reach out to them. Or, I can contact them if you'd like. Just let me know.

Is there anything specific you need from us right away on the publicity front?

Rob

Robert L Crowther, II

Director of Communications

Center for Science & Culture

rob@discovery.org

206-292-0401 x107

web: discovery.org/csc/

blog: evolutionnews.org

podcast: idthefuture.com

From: Peter Bylsma [mailto:pbylsma@gmail.com]

Sent: Monday, September 21, 2009 2:39 PM

To: Robert Crowther

Subject: DARWINS DILEMMA PUBLICITY

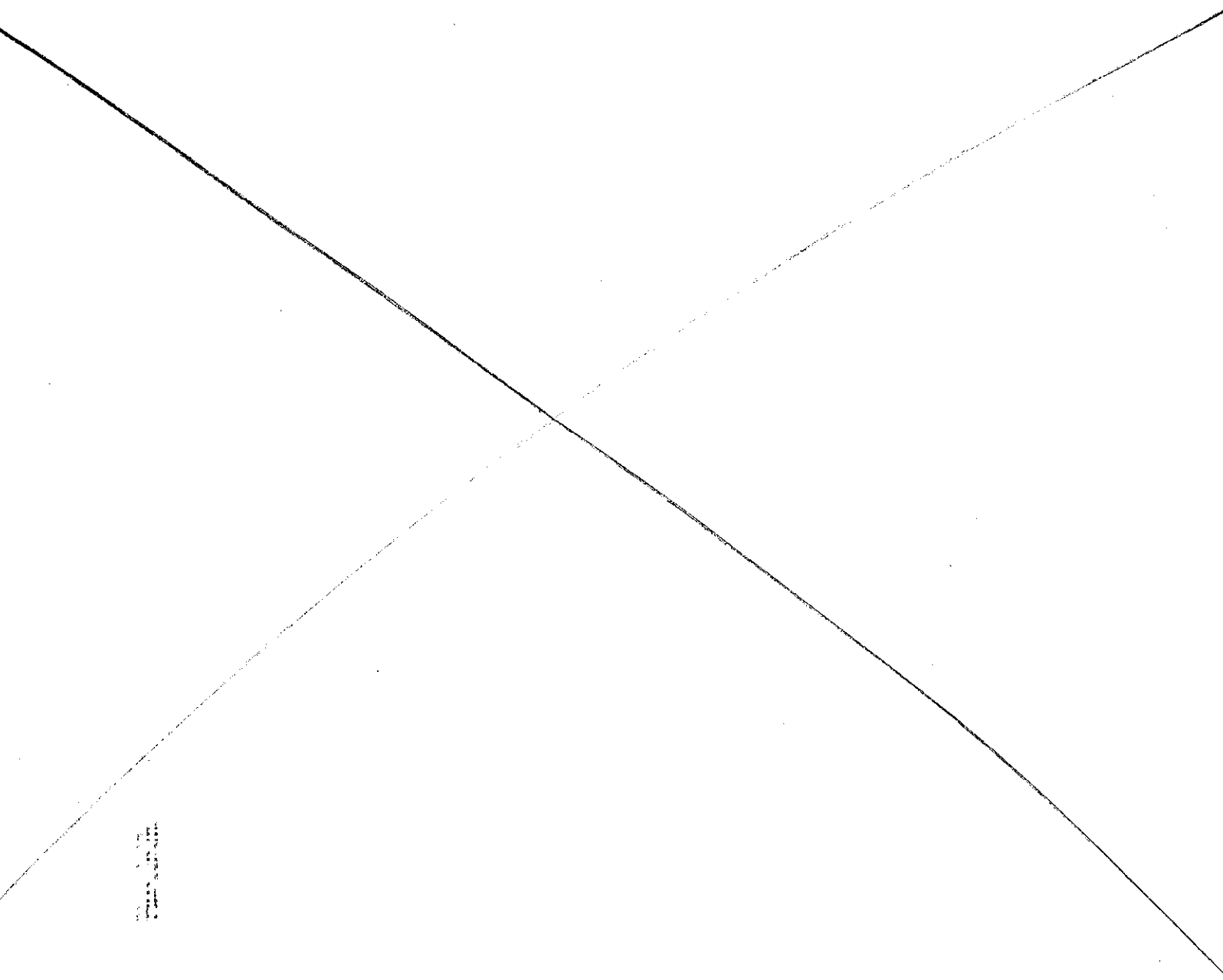
Hi Rob

You have probably just gotten John's email on publicity for the Darwin's screening next month so I am

AFA 000097

writing to say hello and get things started. I will have a release ready tomorrow and will send that to you for your review and use. I am also wondering if there you guys coordinate with Illustra or if there is someone in addition to us with whom we should work. I have reached out to Biola too to ensure we get both an email out to their folks and exploit their media, which includes daily print and internet, a radio show and some other vehicles; and I will be in touch with IMAX and National Amusements. I think that covers it for now Rob. I sure appreciate your support and look forward to working with you on this one.

Sincerely
Peter



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AFA 0000098



AFA ALBATROSS <albatrossatafa@gmail.com>

Fwd: FYI Biola to send email on Monday

1 message

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

Wed, Feb 10, 2010 at 9:19 AM

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

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

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

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

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

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

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

John

AFA 0000148



AFA ALBATROSS <albatrossatafa@gmail.com>

Fwd: DI PACKS

1 message

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

Wed, Feb 10, 2010 at 9:29 AM

----- Forwarded message -----
From: **Casey Luskin** <cluskin@discovery.org>
Date: Thu, Sep 3, 2009 at 1:26 PM
Subject: RE: DI PACKS
To: Peter Bylsma <pbbylsma@gmail.com>

Thanks Peter, I'll call you today.

Sincerely,

Casey

From: Peter Bylsma [mailto:pbbylsma@gmail.com]
Sent: Thursday, September 03, 2009 2:23 PM
To: Casey Luskin
Subject: Re: DI PACKS

Yes Casey I am looking forward to talking with you. Please call me at your convenience at 310-795-8532
Peter Bylsma

On Thu, Sep 3, 2009 at 1:36 PM, Casey Luskin <cluskin@discovery.org> wrote:

Dear Mr. Bylsma,

Greetings, my name is Casey Luskin and I work at Discovery Institute helping people who are concerned about how to deal with the topic of teaching evolution in public schools. My co-worker Eleanor McCallie forwarded me your e-mail and said that you were interested in this topic. In any case, I'd be happy to speak with you briefly about this matter on the phone and send you some packets of information about how to deal with this issue in public schools. Is there a way I could contact you on the phone in the near future? Thank you for your itme.

AFA 0000345

Sincerely,

Casey Luskin

~~~~~  
**Support Academic Freedom in 2009! Visit:**

Sign the Academic Freedom Petition: <http://www.academicfreedompetition.com>

Celebrate Academic Freedom Day (Feb 12, 2009): <http://www.academicfreedomday.com>

**Contact:**

Discovery Institute

208 Columbia St.

Seattle, WA 98104

E-mail: [cluskin@discovery.org](mailto:cluskin@discovery.org)

Voice: (206) 292-0401 ext. 119

Fax: (206) 682-5320

**Discovery Web:**

Discovery Institute Home: <http://www.Discovery.org>

Intelligent Design: <http://www.IntelligentDesign.org>

Evolution News and Views Blogsite: <http://www.EvolutionNews.org>

ID the Future Podcast: <http://www.IDtheFuture.com>

AFA 0000346

----- Forwarded Message

**From:** Peter Bylsma <[pbbylsma@gmail.com](mailto:pbbylsma@gmail.com)>  
**Date:** Mon, 31 Aug 2009 10:35:16 -0700  
**To:** Eleanor McCallie <[eleanor@discovery.org](mailto:eleanor@discovery.org)>  
**Subject:** DI PACKS

Hello Eleanor

Avi and I had a very good meeting with a group of orthodox Jewish clergy last week to get their support for our event series in October. They are going to support the event and push to get ID discussed in their schools here in LA and, hopefully, through their network in the state and eventually nationally. I regret though I have not done my job well enough because they knew very little about DI! So I thought it would be useful, if it is not too much trouble and at your convenience, if you could send us three or four DI "introductory packs," (since Avi has distributed the three copies of Signature you graciously sent to others involved in the event series) e.g., a copy of Stephen's book, a copy of Priviledged Planet and background info on the Institute. Whatever you have around, so to speak, would work great to give them an idea of who you guys are and why you are supporting the events.

It sounds like things are coming together well and we are busy planning for the events and venues so appreciate your support. I am sure I will be in touch shortly with an update on all the stuff.

Sincerely  
Peter

----- End of Forwarded Message

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AFA 0000347

Joe Peterson

Wednesday, February 10, 2010 6:11 PM

**Subject: Re: DO YOU WANT TO SEND THIS?**

**Date:** Wednesday, September 30, 2009 4:14 PM

**From:** Joe Peterson <joepeterson@exceleration-pm.com>

**To:** Peter Bylsma <pbbylsma@gmail.com>, Avi Davis <isdev@ix.netcom.com>

Peter,

Cool. I will blind copy you and Avi with whomever I send this to so you'll know where it has gone. I do suggest making the attachment a pdf, just in case someone doesn't have MS Word....

ALSO, I made a change to your middle paragraph and turned the separate events in to bullets which to me are a bit more readable...see what you think.

Attached are both the pdf and the word file. The word file has clickable links if you like..

Thanks.

Joe Peterson

exceleration  
project management

310-490-7734 cell  
310-397-5777 office  
310-397-7789 fax  
310-861-5243 efax

<http://www.exceleration-pm.com>

on 9/30/09 2:56 PM, Peter Bylsma at pbbylsma@gmail.com wrote:

> A copy of the press release is attached. You may distribute everywhere  
> you  
> like. I will get this into the USC and UCLA media outlets. Do you want to  
> send it with a note to Woodbury events calendar? I think the address is  
> publicity@woodbury.edu. We can probably offer a phoner with Stephen

Meyer for  
> the on line or print newspaper if we want to pursue it.  
> Peter  
>



**FOR IMMEDIATE RELEASE**

<http://www.americanfreedomalliance.org>

**FOR INFORMATION, CONTACT:**  
Peter Byjama at 310-725-6532

**"DARWIN'S DILEMMA" PREMIERE MARKS 150<sup>TH</sup> ANNIVERSARY  
WITH FOCUS ON CONTROVERSY OVER EVOLUTION  
AND INTELLIGENT DESIGN**

**AMERICAN FREEDOM ALLIANCE EVENT SERIES HIGHLIGHTS**  
**THE DEBATE AT FILM DEBUT SCREENING OCTOBER 25**

LOS ANGELES, CA – Highlighting the continuing controversy over the origins of life on earth, the American Freedom Alliance will premiere "Darwin's Dilemma: The Mystery of the Cambrian Explosion" at the California Science Center in Los Angeles on Sunday October 25 at 7:00 pm. The event will feature a panel discussion with filmmakers and leading proponents of the movement to examine the scientific inconsistencies of the famous British naturalist's theories proposed in his work, *On the Origin of Species*, first published exactly 150 years ago. The event is open to the public and admission is \$25.

The screening of "Darwin's Dilemma: The Mystery of the Cambrian Explosion" will be preceded by an exclusive premiere screening of the extraordinary IMAX film "We Are Born of Stars" Produced in 1985 as the first IMAX 3D film, "We Are Born of Stars" has recently been re-mastered. The new version will premiere in Los Angeles at the event.

The screenings will kick off a series of non-partisan events titled "The Darwin Debates: A Forum for Dialogue" focusing on the controversial debate between Darwinian evolutionists and Intelligent Design advocates. The events will include

- a lecture by David Berlinski, a renowned scholar and critic of Darwinian theory on Tuesday, October 27, "The Western World,";
- an internet radio show featuring a debate between scientist and author Guillermo Gonzales and Carlos Celis, author of *The Universe-Order Without Design* on Wednesday, October 28, and;

**Subject: Some idea for changes**

**Date:** Friday, September 18, 2009 2:01 PM

**From:** Avi Davis <isdev@ix.netcom.com>

**Reply-To:** isdev@ix.netcom.com

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

**Cc:** Joe Peterson\_info <info@excleration-pm.com>

Hi Peter and Joe:

I spoke with John West . He says he is inclined to keep the screening on Sunday, Octobewr 18 because he thinks he can get Biola University behind the screening ( they have a very large mailing list) and could also manage to get their own PR company behind it. In addition Ilustra will heavily promote it .

He feels that we definitely need to use Berlinski while he is here. I afgree with him. He suggested that in order to release the pressure on ourselves that we move the Tuesday night debate to Tuesday, December 1st, when Steve Meyer might be available. I need to check withthe Saban Theater and Michael Shermer if they would be available then too. But if they ARE this might be an ideal solution. He feels very confident that with the combination of publicity vehicles ( including Biola, Ilustra, IMAX and National Amusements) we could could fill the theater of the 18th.

In place of the Tuesday night debate in October , HJohn said that we should try to feature Berlinski alone, which I am happy to do if we can find a synagogue to handle it.

The topic we came up with for that lecture is: **An Agnostic Challenges Richard Dawkins and the New Atheists**

That could be great.

Let me know what you think

Avi

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

Ochsenbein, Jeremy S.

---

**From:** William Becker [bbeckerlaw@gmail.com]  
**Sent:** Tuesday, March 23, 2010 11:18 AM  
**To:** Zelenay Jr., James L.  
**Cc:** Allan Ono; Eric Katz; Dennis, Patrick W.  
**Subject:** Re: AFA v. CSC: Ex Parte Application To Move Dates

We won't agree to March and I don't think the judge will either. That's a year away. This case can be readied for trial in February. I will review this later today.

Sincerely,

Bill

-----  
WILLIAM J. BECKER, JR., ESQ  
The Becker Law Firm  
11500 Olympic Blvd., Suite 400  
Los Angeles, CA 90064  
Tel: (310) 636-1018  
Toll Free: (866) 649-6057  
Fax: (310) 765-6328

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On Tue, Mar 23, 2010 at 11:10 AM, Zelenay Jr., James L. <[JZelenay@gibsondunn.com](mailto:JZelenay@gibsondunn.com)> wrote:

All -- Attached is a draft of the joint ex parte application to submit to Judge Green to move the mediation conference date and the trial date. One thing to call your attention to -- we have proposed a new trial date in March (rather than February), so that we're all not jammed over the holidays. If this, or anything else presents any issues, please let me know.

Thanks.

<<100835342\_3.DOCX>>

=====  
This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.  
=====

**Ochsenbein, Jeremy S.**

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**From:** William Becker [bbeckerlaw@gmail.com]  
**Sent:** Sunday, February 28, 2010 4:08 PM  
**To:** Lunceford Tricia  
**Cc:** Allan Ono; Eric Katz; Zelenay Jr., James L.; Dennis, Patrick W.  
**Subject:** Re: American Freedom Alliance vs. California Science Center/California Science Center Foundation LASC Case No. BC423687

Tricia,

Defendants have demurrers set for hearing on May 12. Mediating the case before the hearing would not be fruitful. The judge set June 1 as the deadline to mediate. Meanwhile, my client is not available until May 16 and I would like to have him present if possible.

Let us know what happens with the judge's calendar. If necessary, we will ask the court to extend the deadline. TY.

Sincerely,

Bill

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WILLIAM J. BECKER, JR., ESQ  
The Becker Law Firm  
11500 Olympic Blvd., Suite 400  
Los Angeles, CA 90064  
Tel: (310) 636-1018  
Toll Free: (866) 649-6057  
Fax: (310) 765-6328

cc: All Counsel

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On Fri, Feb 26, 2010 at 12:11 PM, Lunceford Tricia <[TLunceford@jamsadr.com](mailto:TLunceford@jamsadr.com)> wrote:

Mr. Becker,

I talked to the judge and the Claimant on the arbitration that is taking most of his May. The Claimant thinks it will NOT move, BUT the judge thinks it will. I have no time to offer you from April 26 to June 18 *unless* a case moves, which, they always do but right now, just not sure which one.

However, the arbitration for May has a deadline of next week and if that deadline is not met, I can vacate the dates. So if you can tell your judge you have a mediator and are simply working on dates, we can continue to see how things play out.



May I ask why the tight timeframe from May 16-June 1<sup>st</sup>?

Thank you ~

*Tricia Lunceford*

*ADR Specialist*

714-937-8251 - *direct line*

---

**From:** William Becker [mailto:[bbeckerlaw@gmail.com](mailto:bbeckerlaw@gmail.com)]

**Sent:** Thursday, February 25, 2010 1:10 PM

**To:** Lunceford Tricia

**Subject:** American Freedom Alliance vs. California Science Center/California Science Center Foundation LASC Case No. BC423687

Tricia,

I have obtained consent from all counsel for use of Judge Taylor's services in connection with the case identified in the subject line. I would like to know his rates and his availability between May 12 and June 1. I would prefer a date between May 16 and June 1 when my client is available to participate.

The mediation is ordered to be completed by June 1.

I will need to confer with my client regarding the rates before confirming with you. I anticipate this will take a day.

Sincerely,

Bill

-----  
WILLIAM J. BECKER, JR., ESQ  
The Becker Law Firm  
11500 Olympic Blvd., Suite 400  
Los Angeles, CA 90064  
Tel: (310) 636-1018  
Toll Free: (866) 649-6057  
Fax: (310) 765-6328

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On Wed, Feb 17, 2010 at 10:53 AM, Lunceford Tricia <[TLunceford@jamsadr.com](mailto:TLunceford@jamsadr.com)> wrote:

Mr. Becker,

Judge Taylor wanted me to pass along some detail about his experience. He stated that on the bench he handled a number of this kind of case. Some Constitutional cases he had that you might find interesting are:

1. First federal same-sex marriage decision: Smelt v. County of Orange, 861 F. Supp.2d 374 (C.D. Cal. 2005)
2. First impression interpretation of U.S. Constitution's provision for House of Representatives to judge own elections: Dornan v. Sanchez, 978 F. Supp. 1315 (C.D. Cal. 1997) and 955 F. Supp. 1210 (C.D. Cal 1997)
3. Construction of First Amendment's Establishment Clause: O'Connor v. State of California, 855 F. Supp. 303 (C.D. Cal. 1994)

Let me know if we can help you further.

*Respectfully,*

*Tricia*

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**Tricia Lunceford**  
ADR Specialist

JAMS, *The Resolution Experts*  
500 N. State College Blvd., **14th**  
**Floor**

Orange, CA 92868  
Email: [tlunceford@jamsadr.com](mailto:tlunceford@jamsadr.com)  
714.937.8251 (Direct Dial)  
714.939.8710 (Facsimile)

---

11/11/11

Ochsenbein, Jeremy S.

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**From:** Bill Becker [bbeckerlaw@gmail.com]  
**Sent:** Friday, November 20, 2009 11:02 AM  
**To:** Zelenay Jr., James L.  
**Cc:** Allan Ono; Dennis, Patrick W.  
**Subject:** Re: AFA vs. CSC re First Amended Complaint

Yes.

Bill Becker  
THE BECKER LAW FIRM

Sent from my iPhone

On Nov 20, 2009, at 10:49 AM, "Zelenay Jr., James L." <[JZelenay@gibsondunn.com](mailto:JZelenay@gibsondunn.com)> wrote:

Bill -- This email is to confirm our conversation of yesterday where you represented that in American Freedom Alliance's action against California Science Center, California Science Center Foundation, and Jeff Rudolph, the American Freedom Alliance is suing Mr. Rudolph in only his official capacity. As you represented, American Freedom Alliance is not suing Mr. Rudolph in his individual or personal capacity. As we discussed, this is critical to our ability to accept service of the complaint on Mr. Rudolph's behalf.

If this is incorrect in any fashion, please inform me immediately.

Sincerely,  
Jim Zelenay

---

**From:** William Becker [mailto:[bbeckerlaw@gmail.com](mailto:bbeckerlaw@gmail.com)]  
**Sent:** Wednesday, November 18, 2009 12:18 PM  
**To:** Allan Ono; Zelenay Jr., James L.; Dennis, Patrick W.  
**Subject:** AFA vs. CSC re First Amended Complaint

Gentlemen,

Please see attached FAC. Service copies to be mailed today.

EXFV

Sincerely,

Bill

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WILLIAM J. BECKER, JR., ESQ  
The Becker Law Firm  
11500 Olympic Blvd., Suite 400  
Los Angeles, CA 90064  
Tel: (310) 636-1018  
Toll Free: (866) 649-6057  
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Ochsenbein, Jeremy S.

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**From:** Bill Becker [bbeckerlaw@gmail.com]  
**Sent:** Friday, November 20, 2009 11:01 AM  
**To:** Allan Ono  
**Cc:** Zelenay Jr., James L.; Dennis, Patrick W.  
**Subject:** Re: AFA vs. CSC re First Amended Complaint

Yes.

Bill Becker  
THE BECKER LAW FIRM

Sent from my iPhone

On Nov 20, 2009, at 10:53 AM, "Allan Ono" <Allan.Ono@doj.ca.gov> wrote:

Bill:

This is my understanding as well--i.e. that Jeff Rudolph is being sued solely in his official capacity and not personally. Please confirm. I plan to send out the acknowledgment today and would appreciate a prompt confirmation.

Thanks.

Allan.

>>> "Zelenay Jr., James L." <JZelenay@gibsondunn.com> 11/20/2009 10:49 AM >>>

Bill -- This email is to confirm our conversation of yesterday where you represented that in American Freedom Alliance's action against California Science Center, California Science Center Foundation, and Jeff Rudolph, the American Freedom Alliance is suing Mr. Rudolph in only his official capacity. As you represented, American Freedom Alliance is not suing Mr. Rudolph in his individual or personal capacity. As we discussed, this is critical to our ability to accept service of the complaint on Mr. Rudolph's behalf.

If this is incorrect in any fashion, please inform me immediately.

Sincerely,  
Jim Zelenay

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**From:** William Becker [mailto:bbeckerlaw@gmail.com]  
**Sent:** Wednesday, November 18, 2009 12:18 PM  
**To:** Allan Ono; Zelenay Jr., James L.; Dennis, Patrick W.  
**Subject:** AFA vs. CSC re First Amended Complaint

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Sincerely,

Bill

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11/11/01

**Chris Sion**

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**From:** Chris Sion  
**Sent:** Wednesday, September 30, 2009 6:47 PM  
**To:** Lori Matsunaga  
**Cc:** 'isdev@ix.netcom.com'; 'Joseph C. Peterson'; 'Peter Bylsma'  
**Subject:** Amend Contract for 10/25/09

Hi Lori,

American Freedom Alliance has agreed to cover the \$410 in shipping and distribution costs from IMAX and \$500 for a reception in the IMAX lobby (2<sup>nd</sup> floor) for 50 guests from 5:30 - 7:00 PM. They plan to have the majority of their guest self pay for parking and may provide a list of some hosted VIPs that they will pay at \$10 per car. Could you kindly amend their contract and email to the people copied below.

Per the CSC Board President, Joel Stromm's, request - I agreed to adjust the payment terms to 50% deposit due 10/15/09 and final payment due 10/20/09 by credit card. We will confirm this event w/ Avi's signature on your adjusted Event Price Estimate tomorrow.

Thanks so much,  
Chris

Christina M. Sion  
Vice President, Food & Event Services  
California Science Center  
700 Exposition Park Drive  
Los Angeles, CA 90037  
Direct line: (213) 744-7493  
Fax: (213) 744-2078  
csion@cscmail.org  
www.californiasciencecenter.org

1/6/2010

EXG ✓

CSCF0000152



**Chris Sion**

---

**From:** Chris Sion.  
**Sent:** Thursday, October 01, 2009 2:24 PM  
**To:** 'Joe Peterson'; Lori Matsunaga  
**Cc:** Avi Davis; Peter Bylsma  
**Subject:** RE: Amend Contract for 10/25/09

Hi Everyone,

A little update - Our contact at IMAX is busy securing the film for shipping - sounds like we are on our way! I indicated you would like to screen it as soon as possible so she is working quickly.

Avi, I spoke to Lori about the panel discussion in the theater and she said that she suggested on your walk-through perhaps (3) or (4) stools (or I have chairs) for the panel discussion given there is not much space for a table. The plan would be to pass the podium microphone back and forth between the speakers. There would not be an ability to do an audience mic for Q&A but the guest can easily stand and direct their question to the speaker. We will this work?

Thanks so much,  
Chris

Christina M. Sion  
Vice President, Food & Event Services  
California Science Center  
700 Exposition Park Drive  
Los Angeles, CA 90037  
Direct line: (213) 744-7493  
Fax: (213) 744-2078  
csion@cscmail.org  
www.californiasciencecenter.org

---

**From:** Joe Peterson [mailto:joepeterson@exceleration-pm.com]  
**Sent:** Thursday, October 01, 2009 2:10 PM  
**To:** Lori Matsunaga; Chris Sion  
**Cc:** Avi Davis; Peter Bylsma  
**Subject:** Re: Amend Contract for 10/25/09

Lori,

Thanks!

Joe Peterson

**exceleration**  
project management

1/6/2010

CSCF0000198

310-490-7734 cell  
310-397-5777 office  
310-397-7789 fax  
310-861-5243 efax

<http://www.exceleration-pm.com>

on 10/1/09 1:59 PM, Lori Matsunaga at [lmatsunaga@cscmail.org](mailto:lmatsunaga@cscmail.org) wrote:

Per the request of Chris Sion, I have attached the revised event price estimate as well as the event sales agreement.

Thank you.

Lori

Lori Matsunaga  
Event Services Department  
California Science Center  
213-744-7523

---

**From:** Chris Sion  
**Sent:** Wednesday, September 30, 2009 6:47 PM  
**To:** Lori Matsunaga  
**Cc:** '[isdev@ix.netcom.com](mailto:isdev@ix.netcom.com)'; 'Joseph C. Peterson'; 'Peter Bylsma'  
**Subject:** Amend Contract for 10/25/09

Hi Lori,

American Freedom Alliance has agreed to cover the \$410 in shipping and distribution costs from IMAX and \$500 for a reception in the IMAX lobby (2nd floor) for 50 guests from 5:30 - 7:00 PM. They plan to have the majority of their guest self pay for parking and may provide a list of some hosted VIPs that they will pay at \$10 per car. Could you kindly amend their contract and email to the people copied below.

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Thanks so much,  
Chris  
Christina M. Sion  
Vice President, Food & Event Services  
California Science Center  
700 Exposition Park Drive  
Los Angeles, CA 90037  
Direct line: (213) 744-7493  
Fax: (213) 744-2078

1/6/2010

CSCF0000199

[cslon@cscmail.org](mailto:cslon@cscmail.org)

[www.californiasciencecenter.org](http://www.californiasciencecenter.org)

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1/6/2010

CSCF0000200

The latest note from Avi Davis regarding the screening - I will plan to stop by the end of the BOD so we can talk about next steps?

Thanks,  
Chris

—Original Message—

From: Avi Davis [mailto:isdev@ix.netcom.com]  
Sent: Tuesday, October 06, 2009 8:24 PM  
To: Chris Sion  
Cc: pbbylsma@gmail.com  
Subject: [Spam?] Re: Notice of Cancellation of Event 10/25/09

Chris:

I have been out of town today and will be so until Thursday. But I have been brought up to speed on all these matters.

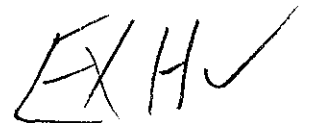
I will say now however that your position is misconceived.

These are the facts:

1. The release in question was not written nor distributed by AFA, who is the only signatory to the contract. It was neither previewed nor authorized by our organization. Since it is not of our doing, or that of any organization connected with the event, there are no grounds for the cancellation of the contract.
2. There is, in any event, nothing in the release which indicates any kind of "sponsorship" as claimed by the CSC and therefore this is a false basis upon which to cancel the contract.
3. Any notice of this event issued to the public by AFA will only name the IMAX Theater at the California Science Center as a VENUE for the screening of the two films and nothing more.

I respectfully request that you rescind this cancellation.

Avi Davis  
President  
American Freedom Alliance



CSCF0000275