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1 William J. Becker, Jr., Esq. (SBN 134545)
2 **THE BECKER LAW FIRM**
3 11500 Olympic, Blvd., Suite 400
4 Los Angeles, California 90064
5 Phone: (310) 636-1018
6 Fax: (310) 765-6328
7 Attorneys for Plaintiff,
8 **AMERICAN FREEDOM ALLIANCE**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
AUG 18 2010
John A. Clarke/Executive Officer/Clerk
By Amber Lafleur-Clayton Deputy
AMBER LAFLEUR-CLAYTON

9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

11 **AMERICAN FREEDOM ALLIANCE**, a
12 nonprofit corporation;

13 Plaintiff,

14 vs.

15 **CALIFORNIA SCIENCE CENTER**, a legal
16 entity of the State of California;
17 **CALIFORNIA SCIENCE CENTER**
18 **FOUNDATION**, a nonprofit corporation;
19 **JEFFREY RUDOLPH**, an Individual; and
20 **DOES 1 through 50**, inclusive;

21 Defendants.

Case No. BC423687 **D-14**

THIRD AMENDED COMPLAINT

1. **BREACH OF CONTRACT**
2. **VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION (SPEECH) (42 U.S.C. § 1983)**
3. **VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION (ASSOCIATION) (42 U.S.C. § 1983)**
4. **VIOLATION OF THE FOURTEENTH AMENDMENT'S EQUAL PROTECTION CLAUSE**
5. **CONSPIRACY (42 U.S.C. § 1985(3))**
6. **FAILURE TO PREVENT VIOLATIONS AND CIVIL CONSPIRACY (42 U.S.C. § 1986)**
7. **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (CIVIL CODE §§ 51 and 51.5)**
8. **VIOLATION OF THE CALIFORNIA CONSTITUTION, ART. 1, §§ 2, 3 & 4**
9. **DECLARATORY RELIEF**

BY FAX

1 Plaintiff AMERICAN FREEDOM ALLIANCE (hereinafter "Plaintiff"), by and through
2 its attorneys of record herein, brings this Complaint against the above-named Defendants, and in
3 support thereof allege the following:

4 **I. PARTIES**

5 1. Plaintiff, American Freedom Alliance (hereinafter "AFA"), is and at all relevant
6 times was a nonprofit corporation duly organized and existing under the laws of California with
7 its principal place of business in Los Angeles, California. AFA is a non-political, non-partisan,
8 movement of concerned Americans that promotes networking, activism and education on a va-
9 riety of public issues, including the growth of Islam in Europe, the United States and Canada,
10 media bias, and academic freedom. AFA's conferences, programs, publications, websites and
11 networking groups develop tools and strategies to counter ideologies which underlie these
12 threats, including radical Islam, moral and cultural relativism, and academic and scientific ideo-
13 logical conflicts.

14 2. Defendant, California Science Center (hereinafter "CENTER"), is a department of
15 the State of California, located and doing business at 700 Exposition Park Drive, Los Angeles,
16 CA 90037. CENTER purports to "aspire to stimulate curiosity and inspire science learning in
17 everyone by creating fun, memorable experiences, because we value science as an indispensable
18 tool for understanding our world, accessibility and inclusiveness, and enriching people's lives."

19 3. Defendant, California Science Center Foundation (hereinafter "FOUNDATION"),
20 is and at all relevant times was a nonprofit corporation duly organized and existing under the
21 laws of California with its principal place of business in Los Angeles, California.

22 FOUNDATION raises funds to support exhibits and education programs featured at the
23 CENTER, and manage exhibitions and programs of scientific, educational and industrial interest.

24 4. Defendants CENTER and FOUNDATION together form a joint public-private
25 partnership ("PPP") venture entailing investment of significant capital in the venture by the
26 FOUNDATION, the private entity.

27 5. Defendant, Jeffrey Rudolph (hereinafter "RUDOLPH"), is an individual and at all
28 relevant times is and was the President and CEO of Defendant CENTER and the President of
29 Defendant FOUNDATION (see <http://www.californiasciencecenter.org/GenInfo/AboutUs/Governance/Bio/Bio.php>, accessed on November 16, 2009). RUDOLPH is sued in his
30 official capacity as an agent/employee of the CENTER and the FOUNDATION, and in his indi-

1 vidual capacity. On information and belief, RUDOLPH resides within the jurisdiction of this
2 Court and is subject to litigation in this venue.

3 6. The true names and capacities of Defendants sued herein as DOES 1 through 50,
4 inclusive, are unknown to Plaintiff, who therefore sues such Defendants by such fictitious names
5 pursuant to *Code of Civil Procedure* §474. Plaintiff alleges that each fictitiously named Defend-
6 ant acted or failed to act in such a manner that each has contributed in proximately causing the
7 damages to Plaintiff as herein alleged. Plaintiff will seek leave of Court to amend this Complaint
8 to set forth their true names and capacities when ascertained.

9 7. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants
10 sued herein, including those named herein as DOES, are the agents, servants, employees, licen-
11 sees, guarantees, invitees, or assignees of each other, and in doing the things herein alleged acted
12 within the course and scope of such agency, employment guaranty, assignment, license, invita-
13 tion and/or relationship and with the full knowledge and consent of the remaining Defendants.

12 **II. FACTS COMMON TO ALL ALLEGATIONS**

13 8. On or about September 30, 2009, Plaintiff DAVIS entered into a written contract
14 (hereinafter the "contract") on behalf of AFA and himself with Defendants CENTER and
15 FOUNDATION for an event titled "We Are Born of Stars IMAX Screening" scheduled for the
16 evening of Sunday, October 25, 2009, at the CENTER's IMAX Theatre in Los Angeles (hereinaf-
17 ter the "EVENT"). DAVIS agreed to pay Defendants an estimated \$4,310.00 due before October
18 20, 2009, as consideration for the use of the venue.

19 9. The contract consisted of three documents: (1) an "Event Letter of Agreement;"
20 (2) a document entitled "Event Policies and Procedures;" and (3) an "Event Price Estimate."
21 **(Attached hereto and incorporated by reference herein as Exhibit "A" are true and correct
22 copies of the three contract documents constituting the written contract.)**

23 10. The EVENT consisted of a screening of the IMAX film "We Are Born of the
24 Stars (3D)," which is described as the first Anaglyph single projector 3D film created for
25 IMAX/IMAX Dome projection. Using computer graphics, the film traces the development of life
26 from the formation of atomic nuclei in stars to the molecular structure of water and DNA, zoom-
27 ing the audience through the five-billion-year evolution of our solar system. It purports to ex-
28 press a positive view of evolutionary theory.

1 11. The EVENT also consisted of the screening of "Darwin's Dilemma: The Mystery
2 of the Cambrian Fossil Record" (hereinafter "Darwin's Dilemma" or the "Documentary"), a
3 documentary exploring one of the great mysteries in the history of life: the geologically-sudden
4 appearance of dozens of major complex animal types in the fossil record without any trace of the
5 gradual transitional steps Charles Darwin had predicted. The Documentary was produced and
6 released by Illustra Media, an independent film production company based in Los Angeles, and
7 features scientists speaking both for and against the modern theory of evolution, including Uni-
8 versity of California, Berkeley, paleontologist James Valentine, Cambridge University paleoeco-
9 logist Simon Conway Morris, philosopher of science Stephen C. Meyer, evolutionary biologist
Richard Sternberg, and biologist Jonathan Wells.

10 12. In the Documentary, some of these scientists, including Drs. Meyer, Wells, and
11 Sternberg, propose the scientific theory of intelligent design as an explanation for the explosion
12 of major groups of animal life in the Cambrian period. Its argument challenges evolutionary
13 theory on the claim that the fossil record suggests the appearance of life forms was abrupt, rather
14 than progressive. Regional premieres of the Documentary had previously been held at the Sam
Noble Oklahoma Natural History Museum and the Seattle Art Museum.

15 13. Drs. Meyer, Sternberg, and Wells are senior fellows at The Discovery Institute, a
16 non-profit, non-partisan public policy think tank based in Seattle, Washington. Although various
17 fellows of the Discovery Institute are featured in "Darwin's Dilemma," Discovery Institute did
18 not produce the film. Discovery Institute was not a party to the contract between the Plaintiff
and Defendants for the screening of "Darwin's Dilemma."

19 14. Plaintiff planned to sponsor a post-screening discussion of the Documentary with
20 Illustra Media's Lad Allen, who directed the film, mathematician David Berlinski (also a senior
21 Fellow at Discovery Institute), and Jonathan Wells. Discovery Institute helped organize and
22 publicize other regional screenings of the Documentary at the Sam Noble Oklahoma Natural
History Museum and the Seattle Art Museum.

23 15. Because two of its senior fellows (Berlinski and Wells) would be participating in
24 the EVENT, and because Discovery Institute had taken an active role in publicizing previous re-
25 gional premieres of the Documentary, on October 1, 2009, Discovery Institute issued a short
26 statement on its news blog, EvolutionNews.org, announcing the EVENT. This announcement
27 simply described the EVENT and noted that the EVENT was "Sponsored by the American Free-
28

1 dom Alliance.” It also noted that the EVENT “will be held on Sunday, October 25th in the
2 IMAX Theater of the prestigious California Science Center, which describes itself as ‘the West
3 Coast’s largest hands-on science center.’” The statement neither stated nor implied that the
4 CENTER was co-sponsoring the EVENT.

5 16. Also on October 1, 2009, Discovery Institute posted a press release on its website
6 purporting to be “By: American Freedom Alliance” which similarly announced the EVENT and
7 noted that the EVENT would be “sponsored by the American Freedom Alliance.” The statement
8 neither stated nor implied that the CENTER was co-sponsoring the EVENT.

9 17. E-mails exchanged between Defendants’ employees indicate that they believed
10 Plaintiff’s EVENT should be cancelled due to a perception that it was a “creationist” event. For
11 example, on October 5, 2009, Shell Amega (“AMEGA”), vice president for Communications for
12 Defendant CENTER, wrote to Defendant RUDOLPH and others an e-mail with the subject
13 “Creationist organization implies that the Calif. Science Center is sponsoring Darwin film”:

14 “The Smithsonian institute (sic) called and was alarmed at the news release from a crea-
15 tionist organization, the Discovery Institute, below because it implied that the Science
16 Center officially supports the creationist film that is set to screen on Oct. 25. It is also
17 alarmed with the implication that the Smithsonian is involved and would like us to issue a
18 correction statement on PR newswire as to what our role is and that we are just one of
19 many Smithsonian affiliates on the west coast. They said that this group had booked at
20 the Smithsonian to screen the film and the Smithsonian pulled the plug on the screening
21 when they found out. Please advise on how you’d like us to proceed.”

22 (CSCS0000227, CSCS0000230, CSCF0000233, CSCF0000236, CSCF0000244). (Emphasis
23 added.) In an endorsement of secular materialism and as an example of hostility toward religion,
24 which, on information and belief, she believed intelligent design is, Christina M. Sion, Vice
25 President, Food & Event Services at the CENTER, (hereinafter “SION”) wrote:

26 “A science center should not even be asked to partner with any group associated with de-
27 bating Darwinism - it’s not our place.”

28 (CSCF0000227, CSCF0000229, CSCF0000233, CSCF0000243).

18. On October 6, 2009, Discovery Institute issued a second statement about the
EVENT, a short one-page press release, which again stated that “The screening is sponsored and
hosted by the American Freedom Alliance.” This statement also noted that the Documentary
would “Premiere at Smithsonian Affiliated California Science Center” This second statement
also neither stated nor implied that the CENTER was co-sponsoring the EVENT.

1 19. On October 6, 2009, SION wrote an e-mail to DAVIS stating that "we are cancel-
2 ing your event at the California Science Center." SION's e-mail stated:

3 "It has come to our attention that in a press release issued October 5, 2009 by
4 the American Freedom Alliance, it is inferred (sic) that the California Science
5 Center as [sic] a Smithsonian Institute affiliate is co-sponsoring the Darwin
6 Debates. Your event is a private event held on the California Science Center
7 property but is not affiliated in any way with the California Science Center or
8 the Smithsonian. This press release has damaged our relationship with the
9 Smithsonian and the reputation of the California Science Center. According to
10 the Event Policies and Procedures that you signed to reserve the date for the
11 event, you agreed to submit all promotional materials to the California Sci-
12 ence Center for review and approval prior to printing or broadcast. Because
13 you did not obtain this approval and the press release has had significant nega-
14 tive ramifications, we are canceling your event at the California Science Cen-
15 ter."

16 20. On October 8, 2009, CENTER Board of Trustees member and attorney Patrick
17 Dennis (hereinafter "DENNIS"), counsel of record for Defendant FOUNDATION herein, sent
18 another letter to DAVIS offering somewhat different reasons why the CENTER planned to can-
19 cel the EVENT. DENNIS's letter made no mention of any "damage" to the relationship of the
20 CENTER and the Smithsonian, or damage to the reputation of the CENTER. Instead, the letter
21 stated that Plaintiff had breached the CENTER's "Event Policies and Procedures," specifically a
22 provision entitled "Promotional Materials," which states that "It is required that the Event Ser-
23 vices Office approve, for technical and factual accuracy, all promotional materials mentioning
24 the California Science Center produced for your event (including invitations, programs, press
25 releases, etc.) prior to printing or broadcast." The provision says nothing concerning promotions
26 of the event by third parties nor requires the monitoring, oversight, management or control of
27 third-party promotions.

28 21. DENNIS cited the two October 1 statements and an October 5th statement as the
singular promotional materials allegedly constituting the CENTER's rationale for cancelling the
EVENT on the basis of a breach of contract.

22 22. Neither SION nor DENNIS informed AFA that considerable concern had been
23 expressed by CENTER employees and officials, FOUNDATION board members, and colleagues
24 in the scientific community outside the CENTER over the subject matter of intelligent design.
25 However, on October 6, 2009, Dan Lewis (hereinafter "LEWIS"), the Dibner Senior Curator of
26 Science and Technology at the Huntington Library in Pasadena, California, sent an e-mail to Ken
27

1 Phillips (hereinafter "PHILLIPS"), Defendant CENTER's Aerospace Curator, questioning the
2 screening of "Darwin's Dilemma" at the CENTER, and stating that "[s]ome of my USC col-
3 leagues are up in arms about this..." LEWIS' e-mail incorporated a thread of forwarded e-mails
4 he had received from various professors at the University of Southern California complaining of
5 the EVENT.

6 23. PHILLIPS then sent an e-mail to Defendant CENTER officials forwarding
7 LEWIS' e-mail and the e-mail thread it incorporated. PHILLIPS asked in his e-mail whether
8 "Darwin's Dilemma" was scheduled to be screened. The e-mail was delivered to the CENTER's
9 Senior Vice President for Exhibits, Diane Perlov (hereinafter "PERLOV"), the CENTER's Cura-
10 tor of Ecology Programs, Chuck Kopczak (hereinafter "KOPCZAK"), and the CENTER's Vice-
11 President of Marketing, Joe DeAmicis, (hereinafter "DEAMICIS").

12 24. At 11:19 a.m., less than an hour after PHILLIPS sent his e-mail, he received a re-
13 sponse from DEAMICIS stating that "the screening event was booked through the Events Dept.,
14 and they were unaware of the nature of the groups involved." The e-mail further stated that "It
15 has come to Jeff's attention and he is 'working on it'." Plaintiff is informed and believes that the
16 reference to "Jeff" was to Defendant RUDOLPH. Plaintiff is further informed and believes that
17 RUDOLPH was aware of the e-mail exchanges protesting the screening on the ground that it ad-
18 vocated intelligent design theory and that RUDOLPH discussed the matter with CENTER and
19 FOUNDATION employees, officers and agents prior to ordering the event cancelled.

20 25. IMAX movies can only be shown in IMAX theatres. An IMAX projector is re-
21 quired because the film is twice the size of conventional film stock and displays on an oversized
22 projection screen.

23 26. The CENTER's IMAX Theater was one of two IMAX theaters in the area that
24 could project both IMAX films and standard DVDs. Plaintiff were informed that an alternative
25 IMAX facility located at Universal City's CityWalk could not accommodate both the IMAX and
26 the conventional formats for the showing of both films. Plaintiff was additionally informed a
27 third IMAX facility at the Bridge Cinema IMAX at Howard Hughes Center was unavailable due
28 to the presentation of the IMAX film, "Where the Wild Things Are."

29 27. Therefore the CENTER's IMAX Theater was the only IMAX Theater available
30 on the evening of the EVENT. With the EVENT's cancellation at the CENTER IMAX Theater,
31 Plaintiff was unable to locate a suitable alternative venue for the showing of the two films. UI-

1 timately, Plaintiff presented the two films in the basement of Davidson Hall at the University of
2 Southern California. The film "We Are Born of the Stars (3D)," which required IMAX projec-
3 tion in order to run color, 3D and English subtitles to translate the Japanese narration, was pre-
4 sented in black and white, without 3D and without English subtitles, generating confusion among
5 audience members over why the film was shown at all and what its message was.

6 28. Plaintiff's ticket sales in the alternative venue fell far short of the projected sales
7 for the EVENT had it been presented at the CENTER, as originally planned, and Plaintiff's rev-
8 enue from the EVENT deprived Plaintiff of the profit it reasonably expected to realize.

9 **FIRST CAUSE OF ACTION**

10 **BREACH OF CONTRACT**

11 (Against Defendants CENTER and FOUNDATION)

12 29. Plaintiff hereby incorporates by reference all above-stated paragraphs.

13 30. The contract's Policies and Procedures provide that it is "required that the Event
14 Services Office approve, for technical and factual accuracy, all promotional materials mention-
15 ing the California Science Center produced for your event (including invitations, programs, press
16 releases, etc.) prior to printing or broadcast." The contract states nothing concerning promotions
17 of the event by third parties nor requires the monitoring, oversight, management or control of
18 third-party promotions. Nevertheless, although Plaintiff was not responsible for generating the
19 Discovery Institute's publicity, the expressed reason given for cancelling the EVENT, as alleged
20 above in paragraph 21, was that Plaintiff had failed to obtain prior approval from the CENTER
21 to publicize it. The expressed reason for cancelling the event was thus based on language in the
22 contract that Defendants had no reasonable basis for believing that Plaintiff was responsible for
23 breaching. Rather, it was contrived by Defendants as a pretext for cancelling the event when the
24 real reason for cancelling it derived from hostility to the viewpoints expressed in "Darwin's Di-
25 lemma" and advocated by Msrs. Wells, Berlinki and Ladd. By asserting a breach of contract
26 argument, Defendants sought to shroud themselves within a cloak of plausible deniability for vi-
27 olating Plaintiff's constitutional rights.

28 31. Defendants CENTER and FOUNDATION breached the contract attached hereto
as Exhibit "A" by repudiating it less than two weeks prior to the scheduled EVENT, resulting in
immediate hardship to Plaintiff.

1 32. Plaintiff and the Discovery Institute are separate organizations and are not affili-
2 ated in any manner. The Discovery Institute had agreed to provide two of its senior fellows as
3 speakers at the EVENT and to supply a copy of the "Darwin's Dilemma" DVD for the screening.
4 Plaintiff did not authorize the Discovery Institute to promote the EVENT, had no control over
5 the Discovery Institute's operations or publicity and had no prior knowledge that it would use
6 information shared for promotional purposes.

7 33. Assuming, *arguendo*, that the publicity generated by the Discovery Institute could
8 be imputed to Plaintiff, the pretext for cancelling the EVENT (failure to submit promotional ma-
9 terials for review) is based on an immaterial provision of the contract, any violation of which
10 could easily have been cured by contacting the Discovery Institute and requesting that the infor-
11 mation be corrected or removed from its website. However, Plaintiff was not required under the
12 "Event Policies and Procedures" to police third parties who promoted the EVENT. Plaintiff had
13 not promoted the EVENT prior to the notification of its cancellation and therefore did not breach
14 the contract.

15 34. Moreover, the justification for cancelling the EVENT relies on the language of
16 the "Event Policies and Procedures," which provides that all promotional materials mentioning
17 the CENTER produced for the EVENT required Event Services Office approval "*for technical*
18 *and factual accuracy.*" (Emphasis added.) Nothing contained in the press releases was material-
19 ly inaccurate or justified cancellation of the EVENT.

20 35. As the provision of the contract cited by counsel for the FOUNDATION makes
21 clear, the purpose of the approval requirement is to ensure "technical and factual accuracy." In
22 cancelling the EVENT on this pretext, Defendants did not cite any technically or factually inac-
23 curate information contained in the Discovery Institute publicity. Thus, the purpose of the provi-
24 sion was not frustrated by Plaintiff.

25 36. The cancellation of the EVENT constitutes a rescission and repudiation of the
26 contract by Defendants and a willful failure to perform by Defendants, and each of them. Even
27 if Plaintiff had promoted the EVENT with the information alleged to have been inaccurate in the
28 Discovery Institute promotional material, such a breach would have been immaterial and thus an
illegitimate basis for cancelling the EVENT.

 37. As a direct and proximate result of the Defendants' breach, Plaintiff has sustained
harm and is entitled to recover compensatory damages according to proof at trial, including,

1 without limitation, costs and expenses incurred in preparation for the EVENT at the CENTER's
2 IMAX facility, loss of reasonably anticipate revenue from the EVENT, additional costs and ex-
3 penses associated with locating, booking, advertising and presenting the EVENT at an alternative
4 venue and lost opportunity.

5 **SECOND CAUSE OF ACTION**

6 **VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT**
7 **AS APPLIED THROUGH THE FOURTEENTH AMENDMENT TO THE**
8 **UNITED STATES CONSTITUTION**
9 **(42 U.S.C. SECTION 1983)**

10 (Against Defendants CENTER, FOUNDATION, RUDOLPH and DOES 1 though 50, Inclusive)

11 38. Plaintiff hereby incorporates by reference all above-stated paragraphs.

12 39. Defendant CENTER and Defendant FOUNDATION are a private-public partner-
13 ship (PPP). Together, they are responsible for the management of the CENTER and public
14 events occurring there. As a department of the State of California by statute, Defendant
15 CENTER acted under color of law when it cancelled the EVENT and breached its contract with
16 Plaintiff, thereby discriminating against Plaintiff for the content of expressions concerning intel-
17 ligent design to have been presented at its EVENT and viewpoints regarding intelligent design to
18 have been expressed at the EVENT.

19 40. Defendant FOUNDATION'S actions are attributable to the State of California in
20 that the CENTER and the FOUNDATION engaged in a symbiotic relationship in providing pub-
21 lic access to the CENTER for events. The State of California has so insinuated itself into a posi-
22 tion of interdependence with the FOUNDATION that the CENTER and the FOUNDATION are
23 joint participants in the cancellation of the EVENT, which, because the EVENT was to be open
24 to the general public, the FOUNDATION's actions in cancelling the EVENT were not private in
25 nature. The contractual agreement between the CENTER and the FOUNDATION, coupled with
26 the significant regulation and control over the EVENT that was exercised by the CENTER, cre-
27 ated a sufficient link between the CENTER and the FOUNDATION, placing the
28 FOUNDATION's activities under the umbrella of state action sufficient to satisfy the require-
ments of 42 U.S.C. § 1983. Thus, Defendant FOUNDATION also acted under color of law
when it cancelled the EVENT and breached its contract with Plaintiff, thereby discriminating
against Plaintiff for the content of expressions concerning intelligent design to have been pre-

1 sented at its EVENT and viewpoints regarding intelligent design to have been expressed at the
2 EVENT.

3 41. On information and belief, Defendants FOUNDATION, CENTER and
4 RUDOLPH have instituted a policy whereby the advancement, promotion or discussion of intel-
5 ligent design is prohibited at the CENTER's facilities. This policy is based upon a belief that
6 intelligent design is a theory derived from theistic argument and not competent scientific evi-
7 dence, and therefore does not fit within its "scientific mission."

8 42. The CENTER's IMAX Theater facility is a public forum, and the EVENT spon-
9 sored by Plaintiff was to have been open to the public. By their conduct, Defendants, and each
10 of them, prevented Plaintiff from staging an EVENT involving a topic of significant interest and
11 concern to members of the public. Plaintiff sought to present a discussion of life's origin from
12 the perspectives of evolutionary and intelligent design theories in the public forum, a right which
13 was denied to Plaintiff.

14 43. The documentary, "Darwin's Dilemma," is critical of the modern neo-Darwinian
15 theory of evolution and promotes an alternative explanation of intelligent design. After screen-
16 ing the documentary, Plaintiff had planned to host a panel discussion with noted scientists, math-
17 ematician Dr. David Berlinski and biologist Dr. Jonathan Wells, who question neo-Darwinian
18 evolution and support intelligent design theory as a scientific explanation for the origin of life.
19 Wells appears in the film.

20 44. The EVENT's cancellation was triggered by pressure from the Smithsonian,
21 which has a long history of discriminating against academic freedom for intelligent design pro-
22 ponents. Smithsonian officials complained to Defendants CENTER, FOUNDATION and
23 RUDOLPH that the press release distorted the Smithsonian's relationship with them and made
24 clear that it wished to distance itself from any association with the EVENT. These communica-
25 tions were consistent with the Smithsonian's history of content/viewpoint-based discrimination
26 against intelligent design, a fact that would have been known to Defendants.

27 45. The press release mentioned by SION in her e-mail was released not by Plaintiff
28 but by the Discovery Institute, a think tank widely known as the nation's leading organization
advocating intelligent design. While Discovery Institute's press releases clearly stated that "The
screening is sponsored and hosted by the American Freedom Alliance" and did not imply spon-
sorship by the CENTER, it also noted that "The debate over Darwin will come to California on

1 October 25th, when the Smithsonian Institution's west coast affiliate premieres 'Darwin's Di-
2 lemma: The Mystery of the Cambrian Fossil Record,' a new intelligent design film which chal-
3 lenges Darwinian evolution." The Discovery Institute's press release also stated that the docu-
4 mentary "explores one of the great mysteries in the history of life: the sudden appearance of doz-
5 ens of major complex animal types in the fossil record without any trace of the gradual transi-
6 tional steps predicted by Darwin."

6 46. The CENTER has hosted events supporting evolution theory in the past, including
7 panel discussions hosting pro-evolution speakers such as Michael Shermer and Michael S. Fan-
8 selow, and hosts exhibits promoting evolution. The CENTER has listed a book on its website by
9 a speaker at the CENTER titled, "Why Darwin Matters: The Case Against Intelligent Design."

10 47. The Smithsonian's opposition to and discrimination against intelligent design is a
11 matter of public record. In 2005, the pro-intelligent design Discovery Institute contracted with
12 the Smithsonian to show a pro-intelligent design film entitled "The Privileged Planet." The
13 Smithsonian issued a disclaimer against the EVENT, stating that "the content of the film is not
14 consistent with the mission of the Smithsonian Institution." At that time, the same Smithsonian
15 spokesman – Randall Kremer – objected to "The Privileged Planet" purportedly because the film
16 made an inappropriate "philosophical conclusion." Yet the Smithsonian made no complaints
17 when showing Carl Sagan's "Cosmos" in 1996, stating a different philosophical perspective that
18 "The Cosmos is all that is, or ever was, or ever will be."

17 48. In 2004, Smithsonian-affiliated research biologist Richard Sternberg allowed a
18 peer-reviewed scientific article to be published in "Proceedings of the Biological Society of
19 Washington," a Smithsonian-related publication. The article was authored by Dr. Stephen C.
20 Meyer of the Discovery Institute, and much like the "Darwin's Dilemma" documentary, argues
21 that "purposive or intelligent design as a causally adequate--and perhaps the most causally ade-
22 quate--explanation for the origin of the complex specified information required to build the
23 Cambrian animals." The Smithsonian-affiliated Biological Society of Washington (BSW) repu-
24 diated Meyer's pro-intelligent design article, claiming it "does not meet the scientific standards
25 of the 'Proceedings,'" and the Smithsonian launched a campaign to intimidate and harass those
26 responsible for the publication of this article.

26 49. Despite the fact that Meyer's article was properly peer-reviewed and published,
27 Dr. Sternberg subsequently experienced retaliation by his co-workers and superiors at the Smith-

1 sonian, including transfer to a hostile supervisor, removal of his name placard from his door,
2 deprivation of workspace, subjection to work requirements not imposed on others, restriction of
3 specimen access, and loss of his keys. Smithsonian officials also tried to smear Dr. Sternberg's
4 reputation and even investigated his religious and political affiliations in violation of his privacy
5 and First Amendment rights. According to an investigation by the U.S. Office of Special Coun-
6 sel (OSC), these efforts were aimed at creating "a hostile work environment... with the ultimate
7 goal of forcing [Sternberg]... out of the [Smithsonian]." A 2006 Congressional investigation by
8 the staff of U.S. Congressmen Mark Souder confirmed that the Smithsonian embarked on a cam-
9 paign to punish, intimidate, and harass Richard Sternberg for allowing a pro-intelligent design
10 article to be published in its journal. The Congressional staff investigation concluded that
11 "Smithsonian's top officials permit the demotion and harassment of [a] scientist skeptical of
12 Darwinian evolution" and "officials explicitly acknowledged in e-mails their intent to pressure
13 Sternberg to resign because of his role in the publication of the Meyer paper and his views on
14 evolution." The findings of this investigation contain striking conclusions about the intolerance
15 of the Smithsonian towards scientists who doubt Darwinism.

14 50. In light of the fact that Sternberg, Meyer, and Wells are all featured in the "Dar-
15 win's Dilemma" documentary advocating intelligent design, it follows that Smithsonian officials
16 would oppose the EVENT and seek to distance itself from it.

17 51. On information and belief, the anti-intelligent design Smithsonian had monitored
18 the Discovery Institute's website or had been contacted by others within a network of intelligent
19 design opponents and pressured the CENTER into silencing Plaintiff's message by canceling the
20 contract. In fact, on October 5, 2009, Smithsonian Affiliates Director Harold A. Closter (herein-
21 after "CLOSTER") wrote to AMEGA (Defendant CENTER's Director of Development, Phase II
22 Capital Project Launchings, Exhibitions, Science Center Executive Leadership) relating a prior
23 conversation between them in which they purportedly discussed a "press release" and expressing
24 the concern that the press release distorted the relationship between the Smithsonian and the
25 CENTER. In the e-mail, he stated, "We are concerned that [the EVENT] not be represented as a
26 Smithsonian event or program or anything with which we have any involvement.

27 52. CLOSTER's communication was consistent with the Smithsonian's history of
28 content/viewpoint-based discrimination against intelligent design, a fact that would have been
known to Defendants.

1 53. By reason of the aforementioned policy, acts and omissions engaged in under col-
2 or of state law, Defendants have violated the Free Speech Clause of the First Amendment of the
3 United States Constitution, which has been held to be incorporated and made applicable to the
4 states and their political subdivisions by the Fourteenth Amendment of the United States Consti-
5 tution, and 42 U.S.C. section 1983. Defendants' actions and policies as alleged in this Complaint
6 deprived Plaintiff and the general public of the right to free speech as guaranteed by the U.S.
7 Constitution.

8 54. In addition to the concerns expressed by the anti-intelligent design Smithsonian,
9 Defendants were in communication with colleagues from the Huntington Library, USC and Oc-
10 cidental College, who contacted Defendants through e-mail exchanges, including the aforemen-
11 tioned e-mails from LEWIS and SCHOR, protesting the event. RUDOLPH, SION and other
12 CENTER and FOUNDATION employees, officers and agents were aware of the e-mails, but
13 concealed from Plaintiff their knowledge of them or the controversy that had developed.

14 55. Defendants, and each of them, targeted Plaintiff for presenting intelligent design
15 as part of the EVENT, and thus sought to discriminate against Plaintiff on the basis of legitimate
16 viewpoints and the content of the message to be expressed at the EVENT.

17 56. As a direct and proximate result of Defendants' violation of the Speech Clause,
18 Plaintiff has suffered irreparable harm, including the infringement of Plaintiff's constitutional
19 rights.

20 57. As a further direct and proximate result of Defendants' violation of the Speech
21 Clause, Plaintiff is entitled to recover damages according to proof and reasonable attorneys' fees
22 and costs pursuant to 42 U.S.C. § 1988 should it prevail on this cause of action.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF THE RIGHT TO ASSOCIATION CLAUSE OF THE FIRST 25 AMENDMENT AS APPLIED THROUGH THE FOURTEENTH AMENDMENT TO 26 THE UNITED STATES CONSTITUTION (42 U.S.C. SECTION 1983)**

27 (Against Defendants CENTER, FOUNDATION, RUDOLPH and DOES 1 through 50, Inclusive)

28 58. Plaintiff hereby incorporates by reference all above-stated paragraphs.

59. The First Amendment protects the rights of groups to associate for the purpose of
engaging in the expressive activities protected by the First Amendment. Freedom to engage in

1 association for the advancement of beliefs and ideas is an inseparable aspect of both freedom of
2 speech and the liberty assured by the Due Process Clause of the Fourteenth Amendment.

3 60. AFA is a group that associates and assembles in order to express particular politi-
4 cal and social messages and viewpoints.

5 61. Defendants' policy and practices of singling out and excluding groups from dis-
6 cussing intelligent design or debating intelligent design and Darwin's theory of evolution pre-
7 vented Plaintiff from attracting donors to the planned IMAX event and denied Plaintiff the op-
8 portunity to collect donations at the prized facility, thereby effectively preventing Plaintiff from
9 associating in such a way to achieve its mission and goals.

10 62. By virtue of Defendants' cancellation of Plaintiff's event and misrepresentations,
11 deceit and concealment of the true reasons for cancelling it, Plaintiff was deprived of its right to
12 associate for the purpose of engaging in activities protected by the First Amendment, including
13 speech.

14 63. As a direct and proximate result of Defendants' conduct, Plaintiff lost its First
15 Amendment freedom and was thereby irreparably injured. Plaintiff additionally suffered damag-
16 es, according to proof.

17 64. No legitimate state interest exists to justify this limitation of AFA's right to free
18 association.

19 **FOURTH CAUSE OF ACTION**

20 **VIOLATION OF THE FOURTEENTH**

21 **AMENDMENT'S EQUAL PROTECTION CLAUSE**

22 (Against Defendants CENTER, FOUNDATION, RUDOLPH and DOES 1 through 50, Inclusive)

23 65. Plaintiff hereby incorporates by reference all above-stated paragraphs.

24 66. By leasing its IMAX theater to members of the public, Defendants opened up a
25 public forum to assembly or speaking by some groups while denying it to Plaintiff. Under their
26 policies, Defendants have allowed other citizens and organizations to access the IMAX Theater,
27 but prevented Plaintiff from accessing it solely because of Plaintiffs' interest in presenting in-
28 formation concerning intelligent design to the public. Plaintiff was discriminated against on the
basis of perceived religious speech represented by the subject of intelligent design. Plaintiff was
treated differently in that Defendants cancelled the EVENT on the basis of its content and the

1 viewpoints it was to present concerning intelligent design while allowing other groups other con-
2 tent and viewpoints concerning matters of interest in society.

3 67. Defendants' enforcement of their policies intentionally treats Plaintiff differently
4 than other similarly-situated organizations based on the viewpoint of its expression.

5 68. Defendants actually promote the opposing viewpoint by allowing individuals and
6 organizations that promote Darwin's theory of evolution to participate in the CENTER's mis-
7 sion, while disallowing Plaintiff. For example, its bookstore/gift shop contains not a single book
8 that discusses intelligent design, but is heavily stocked with books about Darwin and the theory
9 of evolution.

10 69. Defendants have granted the use of their public forum to people whose views they
11 find acceptable, but have denied it to Plaintiff, whose interest in intelligent design they find un-
12 acceptable. By doing the things alleged herein, Defendants have engaged in a process of select-
13 ing which issues are worth discussing or debating in their public facilities. By the actions herein
14 alleged, Defendants have failed to afford all points of view an equal opportunity to be heard.

15 70. As a direct and proximate result of the aforementioned acts, policies, practices,
16 customs, and/or omissions, engaged in under the color of state law, Defendants have deprived
17 Plaintiff of the equal protection rights guaranteed under the Equal Protection Clause of the Four-
18 teenth Amendment to the United States Constitution and 42 U.S.C. § 1983, by censoring Plain-
19 tiff's speech while allowing other groups to lease the IMAX theater, thereby treating Plaintiff
20 differently from other similarly situated groups, based solely on the content and viewpoint of its
21 message.

22 71. Defendants have no compelling or legitimate reason justifying their disparate
23 treatment of Plaintiff. The policies, and Defendants' enforcement thereof, therefore violate the
24 Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. As a
25 direct and proximate result, Plaintiff is entitled to the equitable and legal relief set forth herein.

26 **FIFTH CAUSE OF ACTION**

27 **CONSPIRACY**

28 (42 U.S.C. § 1985)

29 (Against Defendants CENTER, FOUNDATION, RUDOLPH and DOES 1 through 50, Inclusive)

30 72. Plaintiff hereby incorporates by reference all above-stated paragraphs.

1 73. 42 U.S.C. § 1985, subd. (3), provides in pertinent part that “If two or more per-
2 sons in any State ... conspire ... for the purpose of depriving, either directly or indirectly, any
3 person or class of persons of the equal protection of the laws, or of equal privileges and immuni-
4 ties under the laws ... in any case of conspiracy set forth in this section, if one or more persons
5 engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy,
6 whereby another is ... deprived of having and exercising any right or privilege of a citizen of the
7 United States, the party so ... deprived may have an action for the recovery of damages occa-
8 sioned by such injury or deprivation, against any one or more of the conspirators.”

9 74. The U.S. Supreme Court has held that “under the Equal Protection Clause, not to
10 mention the First Amendment itself, government may not grant the use of a forum to people
11 whose views it finds acceptable, but deny use to those wishing to express less favored or more
12 controversial views. And it may not select which issues are worth discussing or debating in pub-
13 lic facilities. There is an ‘equality of status in the field of ideas,’ and government must afford all
14 points of view an equal opportunity to be heard. Once a forum is opened up to assembly or
15 speaking by some groups, government may not prohibit others from assembling or speaking on
16 the basis of what they intend to say. Selective exclusions from a public forum may not be based
17 on content alone, and may not be justified by reference to content alone.” *Police Dept. of City of*
18 *Chicago v. Mosley* (1972) 408 U.S. 92, 96.

19 75. Plaintiff, an educational charitable organization, consists of a class of persons en-
20 gaged in sponsoring conferences, publishing opinions, distributing information and creating net-
21 working groups to identify threats to Western civilization and to motivate, educate and unite citi-
22 zens in support of that cause. It identifies itself as a “movement of concerned Americans advanc-
23 ing the values and ideals of Western civilization.” Plaintiff promotes networking, activism and
24 education in the following areas: (1) the Islamic penetration of Europe; (2) academic freedom;
25 (3) media bias; and (4) missile defense. Its conferences programs, publications, websites and
26 networking groups develop tools and strategies to counter ideologies which underlie these
27 threats, including radical Islam, moral and cultural relativism, appeasement and excessive em-
28 phasis on multiculturalism.

 76. Plaintiff aims to build a “national alliance of people of faith,” involving writers,
academics and thinkers from around the world, who join together through seminars, conferences,

1 publications and activist networks, to promote and protect moral values, democracy and free-
2 dom. Plaintiff therefore is within the class of persons advocating for religious values.

3 77. In keeping with its mission, Plaintiff sought to kick off a series of events under
4 the title "The Darwin Debates" by hosting a fundraising event at Defendants' IMAX theater in-
5 volving the subject of intelligent design. Intelligent design is frequently misrepresented as a the-
6 ory based on religious "creationism," the belief that life's origin is described in the book of Gen-
7 esis. At least one court has declared intelligent design to be an expression of a religious view-
8 point ["ID aspires to change the ground rules of science to make room for religion, specifically,
9 beliefs consonant with a particular version of Christianity." *Kitzmiller v. Dover Area Sch. Dist.*
10 (2005) 400 F.Supp.2d 707, 720.] On information and belief, Defendants either shared this view
11 of intelligent design or, lacking sufficient information to guide their knowledge of the subject,
12 acted on the suspicion that intelligent design is religious in nature. On the basis of such a belief
13 or suspicion, Defendants willfully, knowingly and with callous indifference entered into an
14 agreement and conspired to do an unlawful act in an unlawful way by violating Plaintiff's rights
15 guaranteed by the United States Constitution and the California Constitution, to wit, by discrimi-
16 nating against Plaintiff as a business supporting people of faith and/or who ascribe to and identi-
17 fy with religion and religious values, and by discriminating against Plaintiff on the basis of the
18 viewpoints to be expressed at the EVENT and the content of the EVENT relating to intelligent
19 design .

20 78. Defendants entered into an agreement and conspired to violate Plaintiff's rights
21 guaranteed by the United States Constitution and the California Constitution for the purpose of
22 depriving, either directly or indirectly, Plaintiff of the equal protection of the laws, or of equal
23 privileges and immunities under the laws. Specifically, Defendants targeted Plaintiff on the basis
24 of Plaintiff's intent to showcase the topic of intelligent design, viewed by them to be a religious,
25 rather than scientific, concept, through the screening of "Darwin's Dilemma," and thereby inten-
26 tionally discriminated against Plaintiff on the basis of religion, as well as on the basis of the
27 viewpoints to be expressed at the EVENT and the content of the EVENT relating to intelligent
28 design.

79. Defendants entered into an agreement and conspired to violate Plaintiff's rights
guaranteed by the United States Constitution and the California Constitution and furthered their
conspiracy by the action of cancelling Plaintiff's right to gather and assemble and to express itself

1 on the topics of intelligent design and Darwin's theory of evolution and by concealing the true
2 reasons for the cancellation.

3 80. Defendants' conspiracy amounted to class-based, invidious discriminatory animus
4 in the form of a hostility toward the perceived religious nature of the topic of intelligent design
5 as well as the goals of Plaintiff to market to people of faith, the objective of which conspiracy
6 was to deprive Plaintiff of the equal enjoyment of rights secured by the law to all.

7 81. As a result and proximate cause of the conspiracy perpetrated by Defendants and
8 furthered by the cancellation of the event, Plaintiff was deprived of its constitutional rights and
9 was therefore irreparably injured. Plaintiff's First Amendment rights of speech and association
10 have been chilled and have caused Plaintiff fear and apprehension that its members will be un-
11 able to exercise such rights in the future in state and county facilities.

12 82. Defendants acted willfully, wantonly, recklessly and with callous indifference by
13 violating Plaintiff's rights guaranteed by the United States Constitution and the California Con-
14 stitution by conspiring to deprive it of those rights.

15 83. As a direct and proximate result of the Defendants' violations of Plaintiff's rights,
16 Plaintiff has suffered and will continue to suffer direct and consequential damages, including but
17 not limited to, the loss of liberty and the loss of Plaintiff's right to present events at public facili-
18 ties exploring intelligent design and other subjects.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO PREVENT VIOLATIONS**

21 **AND CIVIL CONSPIRACY**

22 **(42 U.S.C. § 1986)**

23 (Against Defendants CENTER, FOUNDATION, RUDOLPH and DOES 1 through 50, Inclusive)

24 84. Plaintiff hereby incorporates by reference all above-stated paragraphs.

25 85. Defendants had personal knowledge of the events described herein.

26 86. Defendants did, with the purpose and intent of willfully, knowingly and with cal-
27 lous indifference, deprive Plaintiff of rights protected by the United States Constitution and the
28 California Constitution, by conspiring to cancel the EVENT and the contract and by erroneously
claiming that Plaintiff was responsible for breaching the contract.

87. Defendants had the ability and authority to prevent the violation of Plaintiff's
rights protected under the United States Constitution and the California Constitution.

1 88. Defendants failed to act in any way to prevent the alleged violations and the civil
2 conspiracy effected contrary to Plaintiff's rights protected under the United States Constitution
3 and the California Constitution.

4 89. Defendants acted willfully, wantonly, recklessly and with callous indifference by
5 failing to prevent the violation of Plaintiff's rights guaranteed by the United States Constitution
6 and the California Constitution but instead conspired to deprive it of its constitutional rights.

7 90. As a direct and proximate result of the Defendants' willfully, wantonly, recklessly
8 and with callous indifference failing to prevent the violation of Plaintiff's rights guaranteed by
9 the United States Constitution and the California Constitution, Plaintiff has suffered and will
10 continue to suffer direct and consequential damages, including but not limited to, the loss of lib-
11 erty and the loss of Plaintiff's right to present events at public facilities exploring intelligent de-
12 sign and other subjects.

11 **SEVENTH CAUSE OF ACTION**

12 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

13 ***(CIVIL CODE §§ 51 and 51.5)***

14 (Against Defendants CENTER, FOUNDATION, RUDOLPH and DOES 1 through 50, Inclusive)

15 91. Plaintiff hereby incorporates by reference all above-stated paragraphs.

16 92. California Civil Code §§ 51, et seq., the Unruh Civil Rights Act ("Unruh Act")
17 guarantees equal access for all citizens to the accommodations, advantages, facilities, privileges
18 and services of all business establishments of any kind whatsoever. Defendants CENTER and
19 FOUNDATION operate a "business establishment" within the meaning of the Unruh Act, to wit,
20 a public science center containing exhibits, programs and events open to the public, including
21 theater facilities for lease by groups and individuals.

22 93. Plaintiff, an educational charitable organization, consists of a class of persons en-
23 gaged in sponsoring conferences, publishing opinions, distributing information and creating net-
24 working groups to identify threats to Western civilization and to motivate, educate and unite citi-
25 zens in support of that cause. It identifies itself as a "movement of concerned Americans advanc-
26 ing the values and ideals of Western civilization." Plaintiff promotes networking, activism and
27 education in the following areas: (1) the Islamic penetration of Europe; (2) academic freedom;
28 (3) media bias; and (4) missile defense. Its conferences programs, publications, websites and
networking groups develop tools and strategies to counter ideologies which underlie these

1 threats, including radical Islam, moral and cultural relativism, appeasement and excessive em-
2 phasis on multiculturalism.

3 94. Plaintiff aims to build a “national alliance of people of faith,” involving writers,
4 academics and thinkers from around the world, who join together through seminars, conferences,
5 publications and activist networks, to promote and protect moral values, democracy and free-
6 dom. Plaintiff therefore is within the class of persons advocating for religious values.

7 95. In keeping with its mission, Plaintiff sought to kick off a series of events under
8 the title “The Darwin Debates” by hosting a fundraising event at Defendants’ IMAX theater in-
9 volving the subject of intelligent design. Intelligent design is frequently misrepresented as a the-
10 ory based on religious “creationism,” the belief that life’s origin is described in the book of Gen-
11 esis. At least one court has declared intelligent design to be an expression of a religious view-
12 point [“ID aspires to change the ground rules of science to make room for religion, specifically,
13 beliefs consonant with a particular version of Christianity.” *Kitzmiller v. Dover Area Sch. Dist.*
14 (2005) 400 F.Supp.2d 707, 720.] On information and belief, Defendants either shared this view
15 of intelligent design or, lacking sufficient information to guide their knowledge of the subject,
16 acted on the suspicion that intelligent design is religious in nature. On the basis of such a belief
17 or suspicion, Defendants willfully, knowingly and with callous indifference entered into an
18 agreement and conspired to do an unlawful act in an unlawful way by violating Plaintiff’ rights
19 guaranteed by the United States Constitution and the California Constitution. Defendants target-
20 ed Plaintiff on the basis of Plaintiff’s intent to showcase the topic of intelligent design, viewed
21 by them to be a religious, rather than scientific, concept, through the screening of “Darwin’s Di-
22 lemma,” and thereby intentionally discriminated against Plaintiff on the basis of religion.

23 96. Defendants have discriminated against Plaintiff on the basis of religion by black-
24 listing them and all other groups interested in promoting intelligent design, and refuse to contract
25 with any person in this state on account of their perception that intelligent design constitutes reli-
26 gious speech, all in violation of the Unruh Act.

27 97. Defendants are also violating the Unruh Act by denying access to Plaintiff based
28 on its interest in debating the question of life’s origin in their presentation on intelligent design,
believing it to be “creationism” and on that basis a religious concept. Defendants’ denial of ac-
cessibility to Plaintiff deprives it and its members of full and equal access to Defendants’ facili-
ties, goods and services. Defendants’ violations are ongoing inasmuch as they will continue to

1 refuse any citizen the right to lease their facilities as long as the purpose for which the facilities
2 are used or leased involve promoting intelligent design.

3 98. Defendants' actions constitute intentional discrimination against Defendants on
4 the basis of Defendants' perceived religious speech.

5 99. The actions of Defendants were and are in violation of the Unruh Act, and there-
6 fore Plaintiff is entitled to injunctive relief remedying the discrimination.

7 100. Plaintiff is also entitled to statutory minimum damages pursuant to California
8 Civil Code § 52 for each and every offense.

9 101. Plaintiff is also entitled to reasonable attorneys' fees and costs.

10 **EIGHTH CAUSE OF ACTION**

11 **VIOLATION OF THE CALIFORNIA CONSTITUTION, ART. 1, §§2 (SPEECH), 3**
12 **(ASSOCIATION) AND 4 (RELIGION)**

13 (Against Defendants CENTER, FOUNDATION, RUDOLPH and DOES 1 though 50, Inclusive)

14 102. Plaintiff hereby incorporates by reference all above-stated paragraphs.

15 103. Under Art. 1, § 2, of the California Constitution, every person may freely speak,
16 write and publish his or her sentiments on all subjects, being responsible for the abuse of this
17 right. A law may not restrain or abridge liberty of speech or press.

18 104. Defendants, and each of them, have violated Plaintiff' right to express themselves
19 by presenting public discussions concerning intelligent design. Defendants have violated Plain-
20 tiff' speech rights by denying them a forum within which to exercise said rights.

21 105. Under Art. 1, § 3, of the California Constitution, the people have the right to as-
22 semble freely to consult for the common good.

23 106. By virtue of Defendants' cancellation of Plaintiff's event and misrepresentations,
24 deceit and concealment of the true reasons for cancelling it, Plaintiff was deprived of its right to
25 associate for the purpose of engaging in activities protected by Art. 1, § 2, including speech.

26 107. Under Art. 1, § 4. The free exercise and enjoyment of religion without discrimina-
27 tion or preference are guaranteed. Defendants' belief that Plaintiff was promoting "creationism"
28 or "creation science" formed the foundation of their decision to cancel the EVENT, because it
did not fall within its "scientific" mission. Defendants' decision to cancel the EVENT and the
contract with Plaintiff based on the perception that Plaintiff was engaged in religious speech ac-
tivity, regardless of whether or not it can be apprehended as religious in nature, deprived Plaintiff

1 of their right to discuss intelligent design. Defendants were motivated in their actions by the
2 false understanding that intelligent design is religious speech. Therefore they violated Plaintiff's
3 rights.

4 108. As a direct and proximate result of Defendants' unconstitutional policies, acts and
5 omissions, Plaintiff is entitled to the equitable and legal relief set forth herein.

6 **NINTH CAUSE OF ACTION**

7 **DECLARATORY RELIEF**

8 (Against Defendants CENTER, FOUNDATION, RUDOLPH and DOES 1 though 50, Inclusive)

9 109. Plaintiff hereby incorporates by reference all above-stated paragraphs.

10 110. An actual controversy has arisen between Plaintiff and Defendants in that Plaintiff
11 contends that, as a direct and proximate result of Defendants' conduct and actions, it has been
12 prejudiced and harmed as the result of Defendants' actions manifesting hostility toward view-
13 points it wished to present and the content of the messages and expressions relating to intelligent
14 design theory.

15 111. Plaintiff desires a judicial determination of the rights and duties of the respective
16 parties under the United States Constitution and a judicial declaration that the cancellation of the
17 EVENT and breach of the contract by Defendants violated the United States Constitution and the
18 California Constitution.

19 112. Plaintiff desires a further judicial determination of the rights and duties of the re-
20 spective parties under the United States Constitution and the California Constitution a judicial
21 declaration that the Defendants engaged in content and viewpoint discrimination by preventing
22 Plaintiff from addressing the topic of intelligent design in a public forum.

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
25 follows:


- 26 1. General and nominal damages according to proof;
- 27 2. Special damages according to proof;
- 28 3. Contract damages according to proof at trial and for interest accrued thereon;
4. Punitive and exemplary damages on the Fourth Cause of Action for Fraud;

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5. A declaration of rights declaring Defendants' actions, policies or practices to be unconstitutional as a violation of the United States Constitution and the California Constitution;
6. A declaration that the cancellation of the EVENT and breach of the contract by Defendants violated the United States Constitution and the California Constitution;
7. A declaration that the Defendants engaged in content and viewpoint discrimination by preventing Plaintiff from addressing the topic of intelligent design in a public forum;
8. A preliminary injunction against Defendants, and each of them, enjoining Defendants from refusing to allow Plaintiff access to the California Science Center for the purpose of presenting events, including events presenting information concerning the theory of intelligent design;
9. A permanent injunction against Defendants, and each of them, enjoining Defendants from refusing to allow Plaintiff access to the California Science Center for the purpose of presenting events, including events presenting information concerning the theory of intelligent design;
10. Reasonable attorneys' fees, costs and expenses pursuant to 42 U.S.C. section 1988 and other applicable law;
11. Reasonable attorneys' fees, costs and expenses and other remedies pursuant to the Unruh Civil Rights Act, *Civil Code* §§ 51, et seq.;
12. Such other and further relief as the Court may deem just and proper.

DATED: August 18, 2009

THE BECKER LAW FIRM

By: 
WILLIAM J. BECKER, JR., ESQ.
Attorneys for Plaintiff,
AMERICAN FREEDOM ALLIANCE

- 1 8. A preliminary injunction against Defendants, and each of them, enjoining Defendants
- 2 from refusing to allow Plaintiff access to the California Science Center for the pur-
- 3 pose of presenting events, including events presenting information concerning the
- 4 theory of intelligent design;
- 5 9. A permanent injunction against Defendants, and each of them, enjoining Defendants
- 6 from refusing to allow Plaintiff access to the California Science Center for the pur-
- 7 pose of presenting events, including events presenting information concerning the
- 8 theory of intelligent design;
- 9 10. Reasonable attorneys' fees, costs and expenses pursuant to 42 U.S.C. section 1988
- 10 and other applicable law;
- 11 11. Reasonable attorneys' fees, costs and expenses and other remedies pursuant to the
- 12 Unruh Civil Rights Act, *Civil Code* §§ 51, et seq.;
- 13 12. Such other and further relief as the Court may deem just and proper.

14 DATED: August 18, 2009

THE BECKER LAW FIRM

15 By: 

16 WILLIAM J. BECKER, JR., ESQ.
17 Attorneys for Plaintiff,
18 AMERICAN FREEDOM ALLIANCE
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**California Science Center
Event Letter of Agreement**

Event Name: American Freedom Alliance

Event Date: Sunday, October 25, 2009

Company Name: American Freedom Alliance

Contact: Avi Davis

Title: Senior Fellow

Address: American Freedom Alliance 11500 W. Olympic Blvd. Suite 400, LA, 90064

Phone: 310-444-3086

Status:

The California Science Center Foundation has extended a courtesy hold to American Freedom Alliance until Friday, October 2, 2009. Without the group's signed Event Letter of Agreement, availability can not be guaranteed after this date.

Terms of Agreement

By signing this agreement, the group agrees to the following terms and conditions:

- The Event Price Estimate
- The California Science Center Foundation Policies and Procedures

Payment Schedule:

Payment is due according to the following schedule. Failure of the Group to deliver payment according to the schedule may result in the cancellation of this agreement by the California Science Center Foundation at any time. Group understands that in the event of a cancellation, the deposit shall be retained or returned according to the cancellation policy defined in the Policies and Procedures. You will not forfeit your deposit if you move your event to a different available event date.

- 10/15/09 - 50% deposit (\$2,155) due
- 10/20/09 - Balance (\$2,155) due CREDIT CARD ONLY

If you would like to proceed with booking your event at the California Science Center, please sign below and return. By signing this agreement you are agreeing to the terms and conditions that are incorporated herein and with the Event Policies & Procedures. For your convenience, we also accept Visa, MasterCard, and American Express. Your date has been put on a courtesy hold, but your specific date and time will not be held beyond October 2, 2009 without receipt of the signed price estimate and sales agreement. You will not forfeit your deposit if you move your event to a different available event date. Final payment is due October 20, 2009.

Approved and Accepted:

Group name:

**California Science Center Foundation
700 State Drive, Los Angeles, CA 90037
PH: 213-744-7523 FAX: 213-744-2078**

By: _____

By: Lori Matsunaga

Print: _____

Print: Lori Matsunaga

Date: _____

Date: _____

ENA

Event Services Department
 700 State Drive
 Los Angeles, CA 90037
 Fax: 213-744-2078

10/01/09

Event Price Estimate

To: Avi Davis
 Senior Fellow
 American Freedom Alliance
 11500 W. Olympic Blvd., Suite 400
 Los Angeles, CA 90064

Event Name: "We Are Born of Stars IMAX Screening"
Event Date(s): Sunday, October 25, 2009
Event Time: from 6:00 PM-9:00 PM
Guest Count: 450 guests
Invoice #: CR0252

<u>Start</u>	<u>End</u>	<u>Location</u>	<u>Description</u>	<u>Price</u>
5:30 PM	7:00 PM	IMAX Theater Lobby or 2 nd Floor	Reception for 50 guests	\$500
7:00 PM	9:00 PM	IMAX Theater	We Are Born of Stars -IMAX 2 screenings Darwins Dilemma - DVD Panel Discussion	\$3,400
9:00 PM	10:00 PM	IMAX Theater	Event load out	included

Sub-Total: \$3,900

<u>Additional Items:</u>	<u>Quantity</u>		
A/V		Projector and Tech for DVD 1 Mic and spot for panel discussion	included
Shipping / Distribution		Costs from IMAX	\$410

Sub-Total:

<u>Optional Items:</u>	<u>Quantity</u>		
Outside Caterer Fee		\$1000 if other than Kensington	tbd
Outside Liquor Fee		\$1000 if other than Kensington	tbd
Hosted self-parking		\$10 per car	tbd

Total: \$4,310

Additional time in the IMAX Theater past 9:00 pm is \$500 per hour.

If you would like to proceed with booking your event at the California Science Center, please sign below and return. By signing this agreement you are agreeing to the terms and conditions that are incorporated herein and with the Event Policies & Procedures. For your convenience, we also accept Visa, MasterCard, and American Express. Your date has been put on a courtesy hold, but your specific date and time will not be held beyond the October 2, 2009 without receipt of the signed invoice and sales agreement. You will not forfeit your deposit if you move your event to a different available event date. **Final payment is due October 20, 2009.**

 Authorized Signature

10-1-09

 Date

EVENT POLICIES AND PROCEDURES

To assure your event functions smoothly at the California Science Center, please review the following policies and procedures. Once a client's Event Price Estimate is signed and the Science Center's Events Department has received a deposit, an Event Manager will handle scheduling and be the liaison between the client and the Science Center. By signing the Event Price Estimate, you are acknowledging your agreement with these policies and procedures.

REQUESTS: Requests to reserve space for a special event at the California Science Center may be accepted up to two years in advance of the event date. Only two holds per potential client are allowed at any one time. A potential client's requested date will be held for 10 business days, by the end of which time the Science Center requires a signed contract and deposit. If a signed contract and deposit have not been received within 10 business days, the date will be released to others by the California Science Center. If a definite request from a second potential client has been received for a date on hold prior to the expiration of the 10 day period, the Science Center will contact the potential client for a right of first refusal. The client then has to 3 business days to sign a contract and make the deposit.

RATES: Rental rates include event space and California Science Center standard staffing as applicable (determined by the Science Center's Event Manager) -- public safety officers, an event manager, floor staff, a house engineer, janitorial services, an exhibit technician, or coat check staff. Rental of the IMAX Theater includes theater staff only. The time period for an event is three hours. Additional time will be charged on a per hour basis and will be quoted in your Event Price Estimate. Clients will be asked to sign an overtime contract if guests are in the California Science Center more than 15 minutes past the end of the contracted event time. Overtime will be billed on a net-30 day basis. Three hours of set-up/staging time and two hours of teardown time are complementary. Set-up/staging times are determined by the Science Center's Event Manager.

DEPOSITS AND FINAL PAYMENTS: A 50% deposit, credited towards the total rental cost, is required with the signed Event Price Estimate to secure an event date. This deposit is 100% refundable if your event is cancelled over 180 days before the event date, 50% refundable if cancelled between 180-90 days before the event date, and is not refundable if cancelled less than 90 days before the event date. A deposit will not be forfeited if the event is moved to a different available event date within one year (10 business days advanced notice required). Final payment is due 10 days before the event to prevent cancellation of your booking and is not refundable. You are liable for any vendor costs associated with your event's cancellation or date change.

NOTIFICATIONS: If the need to cancel your event should arise, the Event Services Office requests immediate written notification, regardless of any refund opportunity.

START/END TIMES: The Donald P. Loker Conference Center and the Wallis Annenberg Building are available for rent 24 hours a day, seven days a week. Events within the main visitor circulation or gallery spaces are available for rent from 6:00 P.M. to 1:00 A.M. and from 7:00 A.M. to 9:30 A.M. in most cases.

AVAILABLE FURNITURE AND EQUIPMENT: The California Science Center has furniture and equipment that will be available on a first come, first served basis for your event. Such equipment includes tables, chairs, portable staging equipment and A/V equipment. Please see your Event Manager for availability. The California Science Center can not be held responsible for equipment malfunction, damage, or non-availability on the day of your event.

INSURANCE: All clients and outside caterers are required to provide a certificate of public liability and property damage insurance in the amount of \$2,000,000, naming the California Science Center, the California Science Center Foundation and the State of California as additional insured for the term of your event (including setup, event, & teardown time). Please provide the Science Center's Event Manager evidence of your insurance coverage at least two weeks before your event date. Live performers must be covered by additional insurance.

LIABILITIES: By signing the Event Price Estimate (EPE), clients agree to pay the cost of repair, restoration, replacement of damage done by you, your subcontractors, vendors, agents, or invitees to the California

Science Center, its equipment or exhibits. The California Science Center shall be held harmless for all claims arising out of use of the California Science Center and the California Science Center's property. Client assumes full responsibility for theft, loss or damage to any property and equipment brought to the California Science Center by you, your subcontractors, vendors, agents, or invitees. Contracts made directly with your vendors are solely between you and your vendor. Clients are to ensure that all vendors review and agree to comply with all requirements established by the California Science Center. The Client is also responsible to abide by all fire codes set forth by the City of Los Angeles' Fire Department. By signing the Event Price Estimate you acknowledge that the California Science Center is not responsible for policing your fire code adherence and is not responsible for the refunding of rental fees due to the closure of an event by a Fire Marshall.

LOSS OR DAMAGE: The California Science Center is not responsible for any damage or loss of articles placed or left in the California Science Center prior to, during or following an event.

EXCLUSIONS: The facility rental fees do not include the following services: parking, live science demonstrations, IMAX film screenings, food or beverage service, special tour requests, décor, more than three event walkthroughs, linens, radios, or a Fire Marshall's time. All of the above services will be called out individually in a client's contract if provided. Services may not always be available.

PAYMENT: 100% payment of the amount stated in the Event Price Estimate is due at least 10 days before the event. Payments can be made with Visa, MasterCard, American Express, check or money order payable to the California Science Center Foundation. All charges incurred during the event, i.e. damage, additional parking, event overtime, rentals, etc. will be billed after the event and are due net-30. A service charge of 1.5% per month will be billed on all accounts over 30 days. Any invoices not paid within 120 days of invoice date will be forwarded to a collection agency.

CHECKS RETURNED FOR INSUFFICIENT FUNDS: The Science Center will charge a \$35.00 processing fee for any check returned for insufficient funds. If a check is returned, a cashier's check or credit card payment will be required.

PARKING: Self-parking in the Science Center's parking lots is \$10.00 per car and \$25.00 per commercial van, limousine, or bus (subject to change). Clients are welcome to pre-pay for their guests or let guests pay on their own. Valet parking can also be arranged per car through the Exposition Park Manager's Office (Adrianna Vasquez at 213.744.7458). Consult in advance with the Science Center's Event Services Office for information about other parking arrangements. Specific parking spaces can not be reserved ahead of time.

EXHIBITS: We strive for 100% exhibit operation, but some exhibits are routinely removed or shut down for scheduled maintenance based on attendance and/or use. The Special Exhibits Gallery also closes periodically for varied amounts of time to remove and replace traveling exhibits. No discounts or refunds will be made for these closures.

MATERIAL EQUIPMENT: California Science Center personnel are not responsible for moving, setting up, or taking down any equipment that does not belong to the Science Center with the exception of banners. All requests for movement of Science Center owned furniture and equipment must go through the California Science Center's Event Manager. All non-Science Center items must be removed immediately following the event.

SET-UP & STAGING: Set-up/staging of events is only permitted to take place within the Donald P. Loker Conference Center and Wallis Annenberg Building or in the service hallways during Science Center operational hours (8:30 A.M. – 5:00 P.M. daily) provided express permission is granted from the Event Services Department. Rental of the Loker Conference Center for staging purposes is also subject to availability. Three hours of set-up/staging time and two hours of teardown time are complementary with your event rental. Set-up/staging times are determined by the Science Center's Event Manager.

TEARDOWN & CLEAN UP: Teardown and clean up must be completed within two hours after the event ends. The client and its sub-contractors (caterer, event co., décor co., etc.) are responsible for removal of all personal and company property within that time unless other arrangements are made in advance with the California Science Center's Event Manager. Teardown and clean up for events occurring before operational hours must be

completed by 8:00 A.M. The client and its sub-contractor's responsibilities for teardown and clean up include: returning the event area(s) to the condition immediately prior to the event, removal of all trash from the Science Center property (including catering trash).

DECORATIONS: No candles or open flames are permitted inside the Science Center unless a permit from the Fire Marshall is submitted to the Event Manager 2 weeks prior to the event. (Note: the Fire Marshall allows some types of candles and a diagram or sample should be submitted to the Fire Marshall for approval.) Absolutely no pins, nails, staples or tapes of any kind are permitted on any walls, ceilings or floors on the Science Center property. No pyrotechnics are permissible on Science Center property. **No helium balloons** (air-filled OK) are permissible inside the Science Center. No objects can be hung from the ceiling without express prior permission and assistance from the Science Center (additional fees may apply). Also, no glitter, sequins, confetti, fake snow, etc. is allowed on the Science Center property. Decorations are not allowed in the exhibit halls. The client is responsible for removing or causing the removal of all decorations immediately following the event. Nothing is allowed in the Big Lab fountain.

Only the Science Center can hang banners. The Science Center will hang (2) banners for free – additional banners will be hung for \$50.00 per banner. Banners will most likely not be taken down immediately after your event. If you need your banners returned, please arrange for a messenger to pick them up the following day. Clients must notify the Event Manager when the messenger is scheduled to arrive. Any banner, décor or printed materials left for more than one business day will be discarded.

SMOKE FREE FACILITY: The California Science Center is a smoke free facility. No smoking is permitted in this building or within 20 feet of its entrances.

MUSIC: Live music is allowed after the California Science Center has closed to the public for the duration of your event. More information can be obtained by speaking with the Event Manager in the Event Services Office.

1 William J. Becker, Jr., Esq. (SBN 134545)

THE BECKER LAW FIRM

2 11500 Olympic Blvd., Suite 400

3 Los Angeles, California 90064

4 Phone: (310) 636-1018

Fax: (310) 765-6328

5 Attorneys for Plaintiffs,

6 **AMERICAN FREEDOM ALLIANCE**

7
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10
11 **AMERICAN FREEDOM ALLIANCE**, a
12 nonprofit corporation;

13 Plaintiff,

14 vs.

15 **CALIFORNIA SCIENCE CENTER**, a legal
16 entity of the State of California;

17 **CALIFORNIA SCIENCE CENTER**

18 **FOUNDATION**, a nonprofit corporation;

19 **JEFFREY RUDOLPH**, an Individual, and

DOES 1 through 50, inclusive;

20 Defendants.

Case No. BC423687

*Assigned to: The Hon. Terry A. Green
Dept. 14*

**PROOF OF SERVICE OF THIRD
AMENDED COMPLAINT**

21 I am employed in the County of Los Angeles, State of California. I am over the age of 18
22 and not a party to the within action; my business address is: 11500 Olympic Blvd., Suite 400,
Los Angeles, California 90064. On August 18, 2010, I served the foregoing documents:

23 **THIRD AMENDED COMPLAINT**

24 The above-referenced document was served on:

25 Allan S. Ono, Esq.

26 Deputy Attorney General

27 Natural Resources Law Section

28 OFFICE OF THE ATTORNEY GENERAL

300 S. Spring Street, 11th Floor

Attorneys for Defendants, **California Sci-
ence Center** and **Jeffrey Rudolph in his
official capacity as president and CEO of
the California Science Center**

1 North Tower
Los Angeles, CA 90013
2 E-mail: allan.ono@doj.ca.gov

3 Patrick W. Dennis, Esq.
4 James Zelaney, Esq.
GIBSON, DUNN & CRUTCHER
5 Los Angeles Office
333 South Grand Avenue
6 Los Angeles, CA 90071-3197
7 E-mails: PDennis@gibsondunn.com;
JZelaney@gibsondunn.com
8

Attorneys for Defendants, **California Science Center Foundation** and **Jeffrey Rudolph** in his official capacity as **President of the California Science Center Foundation**

9 **BY E-MAIL:** I caused such document to be e-mailed as pdf attachments pursuant to agreement of counsel to the addressees shown above.

10 (State) I declare under penalty of perjury under the laws of the State of California that
11 the above is true and correct.

12 Executed on August 18, 2009, at Los Angeles, California.

13 *See Next Page*
14 _____
William J. Becker, Jr.

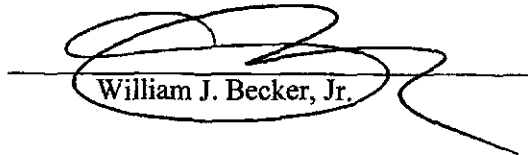
1 North Tower
Los Angeles, CA 90013
2 E-mail: allan.ono@doj.ca.gov

3 Patrick W. Dennis, Esq.
4 James Zelaney, Esq.
GIBSON, DUNN & CRUTCHER
5 Los Angeles Office
333 South Grand Avenue
6 Los Angeles, CA 90071-3197
7 E-mails: PDennis@gibsondunn.com;
JZelaney@gibsondunn.com

Attorneys for Defendants, **California Science Center Foundation** and **Jeffrey Rudolph** in his official capacity as **President of the California Science Center Foundation**

8
9 **BY E-MAIL:** I caused such document to be e-mailed as pdf attachments pursuant to agreement of counsel to the addressees shown above.
10 (State) I declare under penalty of perjury under the laws of the State of California that
11 the above is true and correct.

12 Executed on August 18, 2009, at Los Angeles, California.

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William J. Becker, Jr.