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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JAN 31 2011

John A. Clarke, Executive Officer/Clerk
BY Mary Flores, Deputy
Mary Flores

12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

14 **AMERICAN FREEDOM ALLIANCE**, a
15 nonprofit corporation;

16 Plaintiff,

17 vs.

18 **CALIFORNIA SCIENCE CENTER**, a legal
19 entity of the State of California; **CALIFOR-**
20 **NIA SCIENCE CENTER FOUNDATION**,
21 a nonprofit corporation; **JEFFREY RU-**
22 **DOLPH**, an Individual, and **DOES 1** through
23 **50**, inclusive;

24 Defendants.

Case No. BC423687

The Hon. Terry A. Green, Dept. 14

**PLAINTIFF AMERICAN FREEDOM
ALLIANCE'S REQUEST FOR JUDI-
CIAL NOTICE IN SUPPORT OF ITS
DEMURRER TO DEFENDANT CALI-
FORNIA SCIENCE CENTER FOUNDA-
TION'S AMENDED CROSS-
COMPLAINT; EXHIBITS**

[Notice Of Demurrer And Memorandum Of
Points And Authorities In Support Thereof
Filed Concurrently Herewith]

Complaint Filed: 10/14/2009
TAC Filed: 10/8/2010
Cross-Complaint 11/8/2010
Filed:

Hearing Date: 2/23/2011
Hearing Time: 8:45 a.m.
Hearing Dept.: 14

Trial: 6/13/2011

BY FAX

1 Pursuant to Section 430.30 of the California Code of Civil Procedure, Sections 452 and
2 453 of the California Evidence Code and California Rules of Court, rules 3.1113(l) and
3 3.1306(e), Plaintiff American Freedom Alliance requests that the Court take judicial notice of the
4 following document, which is attached as an exhibit hereto, in ruling on Plaintiff's Demurrer to
5 Defendant California Science Center Foundation's Amended Complaint.

<u>No.</u>	<u>Exhibit</u>
6 1	Certified Transcript from July 19, 2010
7 2	Request For Judicial Notice In Support Of Defendants California Science 8 Center Foundation And Jeffrey Rudolph's (As President Of The Founda- 9 tion And In His Individual Cap A City) Demurrer To Plaintiff's Third 10 Amended Complaint

11 **I. THE COURT MAY TAKE JUDICIAL NOTICE OF COURT RECORDS IN THIS
12 CASE.**

13 When ruling on a demurrer, the trial court must consider not only the complaint itself, but
14 also, "any matter of which the court is required to or may take judicial notice[.]" (Cal. Code. Civ.
15 Proc. § 430.30(a).) Further, "a pleading valid on its face may nevertheless be subject to demurrer
16 when matters judicially noticed by the court render the complaint meritless." (Del E. Webb Corp.
17 v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604.) Section 452 of the Evidence Code
18 provides that it is appropriate for a court to take judicial notice of "[r]ecords of ... any court in
19 this state" as well as "[f]acts and propositions that are not reasonably subject to dispute and are
20 capable of immediate and accurate determination by resort to sources of reasonably indisputable
21 accuracy." (Cal. Evid. Code § 452(d) & (h).) Judicial notice is mandated for matters that comport
22 with the requirements of Evid. Code §§ 452 and 453, provided that the requesting party: (1) gives
23 adequate notice to the adverse party; and (2) includes sufficient information to enable the Court
24 to take judicial notice. (See Cal. Evid. Code §§ 452, 453.)

25 **II. JUDICIAL NOTICE IS PROPERLY TAKEN OF THE CERTIFIED TRAN-
26 SCRIPT OF THE JULY 19, 2010, DEMURRER HEARING.**

27 California courts may take judicial notice of "[r]ecords of ... any court in this state."
28 (Cal.Evid. Code § 452(d)(2).) "It is settled that a court may take judicial notice of the contents
of its own records." (Dwan v. Dixon (1963) 216 Cal.App.2d 260, 265.) "The report of the offi-
cial reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when tran-

1 scribed and certified as being a correct transcript of the testimony and proceedings in the case, is
2 prima facie evidence of that testimony and proceedings.” (Cal. Code. Civ. Proc. § 273(a).)

3 Exhibit 1 is a certified transcript from this Court’s hearing on demurrers to the Plaintiffs
4 Second Amended Complaint on July 19, 2010. The Court has previously taken judicial notice of
5 it in connection with the Defendant California Science Center Foundation’s Demurrer to Plain-
6 tiff’s Third Amended Complaint. Exhibit 2 is the request for judicial notice identical to this one
7 filed by the Defendant California Science Center Foundation.

7 **III. CONCLUSION**

8 For the above reasons, the Court is respectfully requested to take judicial notice of the
9 documents identified.

10 DATED: January 28, 2011

THE BECKER LAW FIRM

11 By:

12 
13 WILLIAM J. BECKER, JR., ESQ.
14 Attorneys for Plaintiff,
15 AMERICAN FREEDOM ALLIANCE



EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 14

HON. TERRY A. GREEN, JUDGE

AMERICAN FREEDOM ALLIANCE,

PLAINTIFF,

VS.

CALIFORNIA SCIENCE CENTER, ET AL.,

DEFENDANTS.

)
)
)
) NO. BC423687
)
)
)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JULY 19, 2010

APPEARANCES:

FOR THE PLAINTIFF: LAW OFFICES OF WILLIAM BECKER
BY: WILLIAM BECKER, ESQ.
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FOR DEFENDANT
RUDOLPH: GIBSON DUNN & CRUTCHER, LLP
BY: PATRICK DENNIS, ESQ.
JAMES ZELENAY, ESQ.

FOR THE CENTER: 333 SOUTH GRAND AVENUE
LOS ANGELES, CA 90071
CALIFORNIA DEPARTMENT OF JUSTICE
BY: ALLAN ONO, DEPUTY
1300 I STREET
SACRAMENTO, CA 95814

ROY H. PITLUK, RPR, CSR #10239
OFFICIAL REPORTER

COPY

EX1

1 THE FOUNDATION, THERE IS A -- I'M GOING TO
2 READ OFF THE COMPLAINT BECAUSE THERE WERE ISSUES ABOUT
3 NUMBERING. NO. 1, BREACH OF CONTRACT.

4 I WOULD OVERRULE THAT. I PROPOSE TO
5 OVERRULE; THAT HAS TO HAVE A FOUNDATION.

6 HOW ABOUT RUDOLPH?

7 WELL, OKAY, AS TO THE FOUNDATION, I
8 WOULD -- LET'S TALK FOUNDATION. FOUNDATION, I'M GOING
9 TO OVERRULE THAT.

10 AS TO NO. 2, BREACH OF COVENANT OF GOOD
11 FAITH AND FAIR DEALING, I DON'T THINK THAT'S A CAUSE OF
12 ACTION. THAT'S A CAUSE OF ACTION IF YOU HAVE A SPECIAL
13 RELATIONSHIP, LIKE AN INSURANCE CONTRACT. BUT IN YOUR
14 GARDEN-VARIETY CONTRACT, YOU'RE RIGHT, THAT EVERY --
15 EVERY -- EVERY CONTRACT HAS AN IMPLIED PROVISION OF GOOD
16 FAITH AND FAIR DEALING; THE JURY IS TOLD THAT, AND IF
17 YOU BREACH THAT, YOU BREACH THE CONTRACT AND THEREFORE
18 NOTHING ELSE HAPPENED.

19 NOT TRUE IN CERTAIN KINDS OF CONTRACTS
20 WHERE YOU HAVE A SPECIAL RELATIONSHIP, PRIME EXAMPLE
21 BEING INSURANCE CONTRACTS.

22 SO AS TO THE SECOND CAUSE OF ACTION, I
23 WOULD -- I WOULD SUSTAIN THAT WITHOUT LEAVE.

24 NOW, MOVING ON TO THREE, FOUR, SIX, SEVEN
25 AND NINE, THESE ARE INTERESTING. THESE ARE VERY
26 INTERESTING ISSUES.

27 THEY ARE CONSTITUTIONAL ISSUES. AND THE
28 DEFENSE POINTS OUT -- WE ALL LEARN IN LAW SCHOOL THAT

1 THE COURT: IT'S NOT A CAUSE OF ACTION.

2 MR. BECKER: I THINK THE SPECIAL RELATIONSHIP
3 WAS THE TORT -- ASSERTION OF A TORT REMEDY. IF YOU'RE
4 ASSERTING A CONTRACT REMEDY, THE DEFENDANT'S ARGUMENT
5 WAS THAT IT DUPLICATES A BREACH OF CONTRACT.

6 THE COURT: THEY'RE RIGHT.

7 MR. BECKER: NOT FROM MY UNDERSTANDING OR
8 READING OF PASQUIN (PHONETIC) OR THE OTHER CASES, WHAT
9 YOU'RE LOOKING FOR -- WHY ELSE WOULD BE THIS BE A THEORY
10 OF IMPLIED COVENANT IF --

11 THE COURT: IT'S A WAY OF BREACHING A CONTRACT.
12 IT'S A WAY YOU BREACH A CONTRACT. YOU CAN BREACH A
13 CONTRACT ANY NUMBER OF WAYS. THAT'S ONE OF THEM.

14 MR. BECKER: IF YOU BREACH IT BY ITS EXPRESS
15 TERMS, YOU BREACHED THE CONTRACT. IF YOU BREACHED IT BY
16 IMPLIED TERMS, YOU BREACHED THE CONTRACT. LET'S DO AWAY
17 WITH THE THEORY BECAUSE IT'S -- YOU KNOW --

18 THE COURT: THE THEORY HAS LIABILITY AND
19 SPECIAL RELATIONSHIP CASES AND INSURANCE CASES.

20 MR. BECKER: WELL, THE THEORY IN THIS CASE WAS
21 THAT A.F.A. WAS DEPRIVED OF THE BENEFITS THAT IT
22 ANTICIPATED PRODUCING ITS EVENT WITH, THE MESSAGE THAT I
23 INTEND TO PRODUCE, AND WAS EXPRESSING ITS FIRST
24 AMENDMENT ON A VIEWPOINT.

25 SO, THAT BENEFIT WAS -- WAS DEPRIVED -- IT
26 WAS DEPRIVED OF THE BENEFIT. I'VE GOT THE CELL PHONE
27 BUZZING ME ON MY CHEST HERE.

28 BUT, YOUR HONOR, I'M NOT GOING TO WASTE

1 THE COURT'S TIME ON THAT ISSUE. IT SEEMS TO ME THAT IT
2 IS A LEGAL THEORY. IT HAS BEEN USED AS A LEGAL THEORY
3 IN CONTRACT CASES.

4 THE COURT: IT IS A LEGAL THEORY. IT IS NOT A
5 CAUSE OF ACTION.

6 MR. BECKER: THEN I ASSUME THE COURT WILL ALLOW
7 JURY INSTRUCTION ON THAT ISSUE AS A LEGAL THEORY FOR
8 BREACH OF CONTRACT.

9 THE COURT: TO THE EXTENT IT'S -- YEAH, I THINK
10 THERE WAS A JURY INSTRUCTION.

11 MR. BECKER: THAT'S ALL I HAVE TO ARGUE ON
12 THAT.

13 THE COURT: AS TO RUDOLPH, I WAS -- I WOULD
14 PROPOSE HE WOULD STAND IN THE SHOES OF THE FEDERATION --
15 FOUNDATION. IT'S NOT STAR TREK. IT'S IN THE SHOES OF
16 THE FOUNDATION. BECAUSE HE OCCUPIES BOTH HATS, AND I
17 SEE A FACTUAL SYMBIOTIC ISSUE HERE.

18 ALTHOUGH HE IS NOT -- NOT A CONTRACTING
19 PARTY THOUGH. RIGHT? AGAIN, WE HAVE TO GET AWAY FROM
20 THE INDIVIDUALS. HE'S NOT A CONTRACTING PARTY. HE
21 CLEARLY IS NOT A CONTRACTING PARTY. HE AND DAVIS ARE
22 THE CONTRACTING PARTIES.

23 MR. BECKER: SURE HE WOULD NOT BE A CONTRACTING
24 PARTY BECAUSE HE STANDS AS AN OFFICIAL OF THE STATE
25 AGENCY THAT HAS THE FOUNDATION ACTING AS ITS AGENT.
26 HE'S SIMPLY --

27 THE COURT: HE DOESN'T BELONG HERE IN A BREACH
28 OF CONTRACT.

EXHIBIT 2