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CENTER FOUNDATION and JEFFREY
RUDOLPH, individually and in his official capacity
as President of the California Science Center
Foundation

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 15 2011

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

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT

AMERICAN FREEDOM ALLIANCE, a
nonprofit corporation;

Plaintiff,

v.

CALIFORNIA SCIENCE CENTER; a legal
entity of the State of California; CALIFORNIA
SCIENCE CENTER FOUNDATION, a
nonprofit corporation; JEFFREY RUDOLPH; an
individual; and DOES 1 through 50, inclusive;

Defendants.

CASE NO. BC 423687

Assigned to: Hon. Terry A. Green, Dept. 14

**DEFENDANTS CALIFORNIA SCIENCE
CENTER FOUNDATION'S AND JEFFREY
RUDOLPH'S (AS PRESIDENT OF THE
FOUNDATION AND IN HIS INDIVIDUAL
CAPACITY) SEPARATE STATEMENT IN
SUPPORT OF THEIR MOTION FOR
SUMMARY ADJUDICATION ON
AMERICAN FREEDOM ALLIANCE'S
CLAIMS ASSERTED UNDER THE UNITED
STATES CONSTITUTION AND
CALIFORNIA CONSTITUTION**

[Notice; Memorandum of Points and Authorities in
Support Thereof; Declaration of Jeremy S. Ochsenbein;
Declaration of Jeffrey N. Rudolph; Declaration of
Cynthia Pygin; Appendix of Non-California Authorities;
and [Proposed] Order filed concurrently herewith]

DATE OF FILING
OF ORIGINAL
COMPLAINT: October 14, 2009

DATE OF FILING
THIRD AMENDED
COMPLAINT: August 18, 2010

TRIAL DATE: July 25, 2011

HEARING DATE: June 1, 2011

HEARING TIME: 8:45 a.m.

HEARING PLACE: Dept. 14

JT/SI/EG

Pursuant to California Code of Civil Procedure § 437c, subdivision (b) and California Rule of Court, rule 3.1350, Defendants California Science Center Foundation and Jeffrey Rudolph (as President of the Foundation and in his individual capacity) (collectively, "Foundation Defendants") hereby submit, for purposes of these motion proceedings only, the following Separate Statement of Undisputed Material Facts in Support of Their Motion for Summary Adjudication regarding American Freedom Alliance's ("AFA") claims under the United States Constitution and California Constitution.

<i>Moving Party's Undisputed Material Facts and Supporting Evidence:</i>	<i>Opposing Party's Response and Supporting Evidence:</i>
I. The Foundation Defendants Are Entitled to Summary Adjudication Because They Are Not State Actors	
<p>1. Jeffrey Rudolph testified that: "As President of the California Science Center Foundation, I chose to cancel the [AFA] event."</p> <p>Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at 98:10-12; <i>see also id.</i>, Ex. 10 [Rudolph Dep. Tr.] at 256:13-257:4 [testifying that "[t]he decision to cancel the event was my decision."]</p>	
<p>2. The Foundation is a non-profit, section 501(c)(3) organization that raises funds to support exhibits and educational programs featured at the California Science Center (the "Science Center"), the West Coast's largest interactive science center and museum.</p> <p>Ochsenbein Decl., Ex. 32 [Dep. Ex. 200] ¶¶ 3, 6;</p>	

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<p>Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at 38:11-15.</p>	
<p>3. The Foundation designs and administers exhibits and educational programs featured at the Science Center. The Foundation is also responsible for contracting with private parties to use areas within the Science Center for private events.</p> <p>Ochsenbein Decl., Ex. 32 [Dep. Ex. 200], ¶ 6; Ex. 10 [Rudolph Dep. Tr.] at 39:17-40:15, 159:14-22.</p>	
<p>4. Pursuant to its lease, the Foundation is solely responsible for the operation of the IMAX theater.</p> <p>Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at 71:19-72:4, 163:15-164:9; Ex. 31 [Dep. Ex. 198]; <i>see also id.</i>, Ex. 4 [Strom Dep. Tr.] at 193:14-17 [“Q. And does the Science Center have any involvement in the booking of special events at the Science Center IMAX theater, to your knowledge? A. It does not.”]; <i>id.</i>, Ex. 5 [Sion Dep. Tr.] at 386:15-387:12 [addressing responsibility for leasing the IMAX for private events].</p>	
<p>5. The Foundation and Center have entered into</p>	

1 a joint operation agreement. The joint operation
2 agreement does not establish any restrictions on
3 the subject matter or content of private events
4 held at the Science Center.

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6 Ochsenbein Decl., Ex. 30 [Dep. Ex. 194]; *id.*,
7 Ex. 12 [Pygin Dep. Tr.] at 149:8-19; *id.*, Ex. 13
8 [Tateishi Dep. Tr.] at 56:2-13; *id.*, Ex. 10
9 [Rudolph Dep. Tr.] at 75:11-76:8.

10 6. The Foundation and Science Center have also
11 entered into a separate lease agreement regarding
12 the IMAX theater. The lease agreement requires
13 the Foundation to comply with all applicable
14 state and federal laws. However, the IMAX
15 theater lease does not incorporate any policies
16 regarding the subject matter of private events to
17 be held at the facility. A provision of the lease
18 disclaims any requirement that the Foundation
19 “acquire or show any specific film.”

20
21 Ochsenbein Decl., Ex. 31 [Dep. Ex. 198] at § 7,
22 15; Ex. 12 [Pygin Dep. Tr.] at 148:7-148:21; Ex.
23 10 [Rudolph Dep. Tr.] at 160:2-162:8.

24 7. The Foundation also provides services to the
25 Science Center pursuant to various services
26 contracts. There are also a number of agreements
27 pertaining to the lease of the Phase II building to
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1 the Science Center by the Foundation.

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3 Ochsenbein Decl., Ex. 12 [Pygin Dep. Tr.] at
4 146:19-147:2.

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6 8. Foundation employees are paid directly by the
7 Foundation for their work on behalf of the
8 Foundation. Foundation employees do not
9 receive public employee benefits and are not
10 classified as civil servants as a result of their
11 employment by the Foundation.

12 Pygin Decl., ¶ 3; Ochsenbein Decl., Ex. 5 [Sion
13 Dep. Tr.] at 398:4-15; *id.*, Ex. 4 [Strom Dep. Tr.]
14 at 192:13-16.

15
16 9. The Foundation's Board of Trustees currently
17 consists of 83 members. Nine of these members
18 are also members of the Board of Directors of the
19 Science Center.

20 Pygin Decl., ¶ 4; *see also* Ochsenbein Decl.
21 Ex. 10 [Rudolph Dep. Tr.] at 88:5-10 ["Q. There
22 are a hundred trustees; is that right? A. No. Q.
23 How many are there? A. There are authorized to
24 be a hundred. There are not -- the number is a
25 moving target. It's approximately 85 now."].

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27 10. The Science Center receives no funding from
28 the Foundation.

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Ochsenbein Decl., Ex. 13 [Tateishi Dep. Tr.] at 55:2-6.

11. Prior to engaging in any discussions with the Foundation, AFA negotiated with the Bridge to hold its Event there. AFA also considered holding its event at CityWalk and—if necessary—at the University of Southern California, where AFA’s event was ultimately held. AFA did contact the Foundation until after its Event at the Bridge was cancelled.

Ochsenbein Decl., Ex. 14 [Peterson Dep. Tr.] at 34:20-36:24, 51:16-53:6, 75:1-10, 194:3-196:16; *id.*, Ex. 6 [Davis Dep. Tr.] at 57:20-58:10, 104:22-105:23, 114:11-115:10; *id.*, Ex. 9 [Bylsma Dep. Tr.] at 52:7-54:21, 289:22-290:1; *id.*, Ex. 27 [Dep. Ex. 179]; TAC, ¶ 27.

12. In making the decision to cancel the Event, Rudolph did not consult with any employees of the Science Center.

Ochsenbein Decl. Ex. 10 [Rudolph Dep. Tr.] at 257:8-258:21, 260:23-261:10, 262:10-263:21; *id.*, Ex. 15 [Dep. Ex. 11]; *id.*, Ex. 24 [Dep. Ex. 15]; *id.*, Ex. 33 [Dep. Ex. 205]

13. Rudolph is paid by the Science Center for his

1 work as President and CEO of the Science
2 Center. He is paid by the Foundation for his
3 work as President of the Foundation. Rudolph
4 keeps separate track of his time spent on
5 Foundation business and time working for the
6 Science Center.

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8 Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at
9 30:13-19, 33:20-23; Rudolph Decl. Exs. 1, 2.

10 14. On October 5, 2009, Harold Closter of the
11 Smithsonian Institution contacted Shell Amega, a
12 Foundation employee, regarding a press release
13 discussing the Event. Prior to that time, the
14 Foundation was unaware of that any press
15 releases or other publicity relating to the Event
16 had been released. Mr. Closter did not ask the
17 Foundation to cancel the Event, only requesting
18 that the Foundation "issue a correction
19 statement."
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21 Ochsenbein Decl., Ex. 15 [Dep. Ex. 11]; *id.*,
22 Ex. 11 [Amega Dep. Tr.] at 49:10-53:23.

23 15. Rudolph did not consult with representatives
24 of the Smithsonian prior to cancelling the Event.

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26 Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at
27 280:3-7.
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1 16. Beginning on October 5, 2009,
2 representatives of the Los Angeles Country
3 Natural History Museum and other individuals
4 engaged in e-mail discussion regarding the
5 Event. In these discussions, the participants
6 expressed concerns regarding the subject matter
7 of the Event. None of these e-mails reached
8 Rudolph until after the Event was cancelled. Nor
9 was Rudolph contacted by employees of the
10 Natural History Museum until after the
11 cancellation.

12
13 Ochsenbein Decl., Ex. 20 [Dep. Ex. 35 (Sion)];
14 *see id.*, Ex. 10 [Rudolph Dep. Tr.] at 275:8–
15 275:25 [“Q. Do you recall speaking to Dr. Jane
16 Pisano of the Natural History Museum on or
17 about October 8 regarding the cancellation? A. I
18 do. Did you initiate a telephone call or did she?
19 A. She did. Q. Do you recall what she
20 discussed with you during that telephone call?
21 A. Generally, without giving specific language, I
22 do. Q. What was discussed? A. My
23 recollection is that she called to discuss the event,
24 expressed to me that staff members of hers had
25 talked to her and she was calling me regarding
26 that. I believe that I told her that the event has
27 already been canceled, so I’m not sure there’s
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1 anything to talk about, and that was about the
2 extent of the discussion.”]; *id.*, Ex. 8 [Long Dep.
3 Tr.] at 56:14–17 [“Q. Did you personally contact
4 anyone at the Science Center about the showing
5 of Darwin’s Dilemma in October 2009? A. No,
6 I didn’t.”].

7 17. The Foundation’s Board of Trustees were
8 not consulted prior to Rudolph’s decision to
9 cancel the Event and never voted on whether to
10 cancel the Event.

11
12 Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at
13 95:9–96:8; *see also id.*, Ex. 4 [Strom Dep. Tr.] at
14 192:17–24 [“Q. There’s also been testimony
15 about a Board meeting that occurred at the
16 Foundation, I believe on October 7; isn’t that
17 correct? A. Correct. Q. And to your
18 knowledge, that Board meeting occurred after the
19 AFA event was canceled; isn’t that right? A.
20 Correct.”].

21 18. Except for fees paid pursuant to contractual
22 relationships between the Foundation and
23 Science Center, the Foundation receives no
24 revenue from the Science Center.

25
26 Pygin Decl., ¶ 5.

27 19. The Foundation—and not the Science
28

1 Center—is a named party on the Event Services
2 Agreement that pertains to the Event. Only
3 Foundation employees were involved in the
4 negotiations with AFA to host the Event.
5

6 Ochsenbein Decl., Ex. 17 [Dep. Ex. 16]: *id.*,
7 Ex. 5 [Sion Dep. Tr.] at 402:5–403:9.

8 20. None of the agreements between the
9 Foundation and Science Center grant the
10 Foundation the right to contract on the Science
11 Center’s behalf.
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13 Ochsenbein Decl., Ex. 31 [Dep. Ex. 198]; *id.*,
14 Ex. 31 [Dep. Ex. 194]; *see also id.*, Ex. 5 [Sion
15 Dep. Tr.] at 398:16–21 [noting witness lacked
16 “the authority to enter into contracts on behalf of
17 the California Science Center”].
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19 21. There are separate position descriptions for
20 the President of the Foundation and President and
21 CEO of the Science Center. The position
22 description for the President and CEO of the
23 Science Center indicates that the individual “may
24 accept employment and remuneration” from the
25 Foundation. The position description for the
26 President of the Foundation makes no reference
27 to the Science Center. The Foundation is under
28 no legal obligation to hire the President of the

1 Science Center.

2
3 Ochsenbein Decl., Ex. 28 [Dep. Ex. 190]; *id.*,
4 Ex. 29 [Dep. Ex. 191].

5 22. In its discovery responses, AFA has provided
6 a list of facts allegedly connecting the
7 Foundation and the Science Center. These
8 include, *inter alia*, “work[ing] together jointly to
9 secure necessary funding for building
10 construction and exhibit fabrication,” pooling
11 resources for efficiency, coordination regarding
12 exhibits and the revenue from special exhibits,
13 the Foundation’s operation of gift centers in the
14 Science Center, and other contractual terms.

15
16 Moving party reserves all of its objections on this
17 evidence, including objections on the grounds
18 that it is hearsay, lacks foundation, is not
19 properly authenticated, is improper opinion, and
20 is irrelevant.

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22 Ochsenbein Decl., Ex. 2.; *see also id.*, Ex. 3
23 [responding to interrogatory requesting “all facts
24 supporting or otherwise related to the contention
25 made in your Third Amended Complaint that
26 ‘Defendant Foundation’s actions are attributable
27 to the State of California’”].
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1 Tr.] at 83:25-84:2.

2 25. During discussions about scheduling the
3 Event, the Foundation Defendants were aware
4 that AFA planned to show the movie "Darwin's
5 Dilemma" and that the Event involved a
6 discussion of Darwinism. AFA witnesses
7 testified that the Foundation was aware of the
8 subject matter of the Event. Joe Peterson
9 testified that the Foundation was aware of the
10 nature of the Event from the first meeting.

11
12 Ochsenbein Decl., Ex. 5 [Sion Dep. Tr.] at
13 144:7-145:24, 403:19-406:4; *id.*, Ex. 6 [Davis
14 Dep. Tr.] at 152:1-153:2, 154:10-15; *id.*, Ex. 14
15 [Peterson Dep. Tr.] at 76:16-77:10, 157:1-4.

16 26. Because it was a private event, Foundation
17 witnesses testified that they had no concerns
18 about the content or nature of the Event and
19 continued to negotiate with AFA.

20
21 Ochsenbein Decl. Ex. 10 [Rudolph Dep. Tr.] at
22 324:16-23; *id.*, Ex. 5 [Sion Dep. Tr.] at 406:1-9;
23 *id.*, Ex. 24 [Dep. Ex. 156].

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

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2 Ochsenbein Decl., Ex. 15 [Dep. Ex. 11]; *id.*,
3 Ex. 11 [Amega Dep. Tr.] at 49:10–53:23; *id.*,
4 Ex. 10 [Rudolph Dep. Tr.] at 183:2–184:1.

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6 28. The Foundation Defendants believed that
7 these press releases improperly implied that the
8 California Science Center and the Smithsonian
9 Institution were sponsoring the Event.

10
11 Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at
12 288:16–289-10; ; *id.*, Ex. 26 [Dep. Ex. 165].

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14 29. Because none of the press releases were ever
15 submitted to the Foundation’s Event Services
16 Office, Foundation Defendants believed that the
17 issuance of these press releases violated the
18 Event Services’ Policies and Procedures. On this
19 basis, Rudolph made the decision to cancel the
20 Event.

21
22 Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at
23 281:6–23; *id.*, Ex. 5 [Sion Dep. Tr.] at 254:2–
24 255:3; *id.*, Ex. 12 [Pygin Dep. Tr.] at 75:21–77:7,
25 100:24–103:1]; *id.*, Ex. 9 [Bylsma Dep. Tr.] at
26 232:16–21; *id.*, Ex. 6 [Davis Dep. Tr.] at 191:1–
27 11

28
29 30. Shell Amega testified that she used the term
“creationist” in an e-mail “[b]ecause [she] was

1 conveying Harold [Closter's] concerns and so
2 [she] used his terminology.”

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4 Ochsenbein Decl., Ex. 11 [Amege Dep. Tr.] at
5 64:10-16.

6 31. Foundation witnesses testified that Rudolph
7 made the decision to cancel the Event.

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9 Ochsenbein Decl., Ex. 12 [Pygin Dep. Tr.] at
10 108:10-109:15; *id.*, Ex. 11 [Amege Dep. Tr.] at
11 155:16-21; *id.*, Ex. 5 [Sion Dep. Tr.] at 355:10-
12 356:8, 406:14-18; *id.*, Ex. 10 [Rudolph Dep. Tr.]
13 at 98:9-12, 256:13-257:4 [testifying that “[t]he
14 decision to cancel the event was my decision.”]

15 32. When asked what AFA's allegation that the
16 Foundation's cancellation of the Event was based
17 on the content of the program, Avi Davis
18 answered:

19
20 The fact is that we know that nothing we
21 did regarding our performance of the
22 contract could have led to an accusation
23 of violation. Nothing. We performed
24 our part of the contract. We signed it.
25 We prepared our materials. We were
going to submit it. Nothing we did was
possibly -- could possibly have done it.
The only reason for that film to be
canceled was because the people who
owned that cinema didn't want it shown
and were not happy about the content.”

26 Ochsenbein Decl., Ex. 6 [Davis. Dep. Tr.] at
27 144:21-147:16 [Q. You understand there's an
28

1 allegation in this lawsuit that you've made that
2 the basis for the cancellation was the content of
3 the program, don't you sir? A. Absolutely. Q.
4 Okay. And what do you base that allegation on?
5 . . . The fact is that we know that nothing we did
6 regarding our performance of the contract could
7 have led to an accusation of violation. Nothing.
8 We performed our part of the contract -- we
9 signed it, we prepared our materials, we were
10 going to submit it. Nothing we did was possibly
11 -- could possibly have done it. The only reason
12 for that film to be canceled was because the
13 people who owned that cinema didn't want it
14 shown and were not happy about the content";
15 *see also id.*, Ex. 6 [Davis Dep. Tr.] at 355:5–
16 364:8 [discussing reasons for believing “intense
17 outside pressure” causes the cancellation].

18 33. When asked whether there was “anything . . .
19 upon which you're basing your belief that the
20 real reason for the cancellation . . . was that [the
21 Foundation] did not want to have an open debate
22 on intelligent design,” Peter Bylsma answered
23 “No.”

24
25 Ochsenbein Decl., Ex. 9 [Bylsma Dep. Tr.] at
26 265:19–266:9 [“Q. Is there anything else that
27 you're relying on in terms of telling me that you
28

1 believe the real reason for the cancellation was
2 that the Foundation didn't want to have that open
3 debate other than what's in [the cancellation e-
4 mail]? MR. BECKER: And whatever I may have
5 discussed with you in confidence. Q. I don't
6 want to know what Mr. Becker discussed with
7 you. So I'm not asking for that. So is there
8 anything, other than what Mr. Becker may have
9 told you, upon which you're basing your belief
10 that the real reason for the cancellation by the
11 Science Center Foundation was that they did not
12 want to have an open debate on intelligent
13 design? A. No."]; *see also id.*, at Ex. 10 at
14 272:21-273:3 ["Q. Okay. What I'm after is, did
15 anybody show you or tell you anything that was
16 either a document or a conversation specifically
17 from the California Science Center Foundation or
18 the Science Center itself that when you read it or
19 heard about it, you said 'Yeah, that' -- 'that --
20 that tells me they cancelled for content'? A.
21 No."].

22 34. When asked for facts that support the view
23 that the Foundation engaged in discriminatory
24 conduct, Joe Peterson testified:

25 Well, the discriminatory act was
26 cancelling the event. Birds of a feather
27 flock together. They are all cut from the
28 same cloth. And the Smithsonian in
particular I had come to find out about –

1 I forget the name of the scientist who
2 had basically had his whole career
3 torpedoed because he dared to say
4 something positive about intelligent
5 design." . . . I had no conversations with
6 Foundation employees. We did ask Joel
7 Strom what went on in the board
8 meeting. . . . But he didn't really have
9 any information about the detail. . . . So
10 - okay. I would just say that, if you
11 listen to the news sources that I like to
12 listen to [they] talk about how Darwinian
13 evolution is promulgated throughout the
14 public school system and so on. It is
15 hostile towards opposing viewpoints.
16 Anybody on the street will tell you that.
17 . . . Because I can say there is plenty of
18 evidence there that it is much more than
19 just DI's press release that drove the
20 California Science Center to execute this
21 blatant act of discrimination against us.

22 Ochsenein Decl., Ex. 14 [Peterson Dep. Tr.] at
23 153:14-158:3 ["Q. I was trying to clarify
24 because your answer before talked about the
25 Smithsonian. So I was trying to understand what
26 facts you believe there are to support a view that
27 the Foundation engaged some some [sic] sort of
28 discriminatory act that it wasn't -- A. Well, the
29 discriminatory act was cancelling the event.
30 Birds of a feather flock together. They are all cut
31 from the same cloth. And the Smithsonian in
32 particular I had come to find out about -- I forget
33 the name of the scientist who had basically had
34 his whole career torpedoed because he dared to
35 say something positive about intelligent design.
36 . . . Q. But do you have any other facts to
37 support the view that the Foundation engaged in
38 some sort of discriminatory conduct? Were there

1 any conversations you had with Foundation
2 employees that imply that to you or anything like
3 that? A. I had no conversations with Foundation
4 employees. We did ask Joel Strom what went on
5 in the board meeting. . . . But he didn't really
6 have any information about the detail. . . . Q.
7 Yes. I was just going to ask is there anything
8 else, any other facts that lead you to that
9 conclusion? . . . THE WITNESS: So -- okay. I
10 would just say that, if you listen to the news
11 sources that I like to listen to [they] talk about
12 how Darwinian evolution is promulgated
13 throughout the public school system and so on. It
14 is hostile towards opposing viewpoints.
15 Anybody on the street will tell you that. . . . Q.
16 BY MR. ZELENAY: Yes. It's -- I am just
17 trying to understand for myself where your view
18 comes from with respect that issue. But if you
19 don't have anything further to add in terms of the
20 actual facts that lead you -- . . . A. Because I can
21 say there is plenty of evidence there that it is
22 much more than just DI's press release that drove
23 the California Science Center to execute this
24 blatant act of discrimination against us."].

25 35. In their depositions, Foundation witnesses
26 denied the existence of a policy whereby the
27 advancement, promotion, or discussion of
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1 intelligent design is prohibited.
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3 Ochsenbein Decl., Ex. 12 [Pygin Dep. Tr.] at
4 154:9-16; *id.*, Ex. 10 [Rudolph Dep. Tr.] at
5 131:18-25, 169:19-170:22; *id.*, Ex. 5 [Sion Dep.
6 Tr.] at 66:15-67:13; *see also id.*, Ex. 10 [Rudolph
7 Dep. Tr.] at 238:5-15 ["Q. Sure. Do you believe
8 it's inappropriate for the California Science
9 Center to permit debates concerning the theory of
10 evolution? MR. ONO: Vague and ambiguous;
11 incomplete hypothetical; calls for speculation.
12 MR. DENNIS: I join those. THE WITNESS:
13 My answer would be that I do not think it's
14 inappropriate. I think that our policies and
15 practices and everything we've done, including
16 in this case, would have allowed a private event
17 to go ahead and debate whatever they want, if it's
18 a private event.""]

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

1 Ochsenbein Decl., Ex. 20 [Dep. Ex. 35 (Sion)]

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

6
7 Ochsenbein Decl., Ex. 10 [Rudolph Dep. Tr.] at
8 323:23–15; *id.*, Ex. 21 [Dep. Ex. 36 (Sion)].

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

15
16 Ochsenbein Decl., Ex. 14 [Peterson Dep. Tr.] at
17 76:16–77:10; *id.*, Ex. 6 [Davis Dep. Tr.] at
18 155:4–156:5.

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

23
24 Ochsenbein Decl., Ex. 6 [Davis Dep. Tr.] at
25 154:16–19 [“Q. They were encouraging you to
26 get your contract in and signed, right? A. They
27 were encouraging us to show two films for a fee
28

1 at their facility.”], 177:22–179:2 [“Chris Sion in
2 this case was all over us. She was determined
3 that we were going to do this event. She was
4 absolutely determined that we were -- MR.
5 BECKER: Avi, I’m going to stop you. You’re
6 not --”]; *see also id.*, Ex. 14 [Peterson Dep. Tr.]
7 at 147:9–148:6 [describing Sion as a “very
8 accommodating, wonderful person”]; *id.* Ex. 19
9 [Dep. Ex. 34] [Sion states on September 30 that
10 “it would be great to get this wrapped up today.”]

11 40. The Foundation orally agreed to modify its
12 standard payment terms in an effort to assist the
13 AFA and in response to a request by AFA.
14
15 Ochsenbein Decl., Ex. 5 [Sion Dep. Tr.] 224:18–
16 225:10, 229:2–14; *id.*, Ex. 6 [Davis Dep. Tr.] at
17 118:9–119:9; *id.* Ex. 21 [Dep. Ex. 36 (Sion)].

18 41. Chris Sion and Cynthia Pygin recommended
19 that Rudolph request a correction relating to an
20 unapproved press release rather than cancelling
21 the Event.
22
23 Ochsenbein Decl., Ex. 23 [Dep. Ex.38 (Sion)];
24 *id.*, Ex. 12 [Pygin Dep. Tr.] at 80:2–21, 83:19–
25 84:6, 99:10–20; *id.*, Ex. 5 [Sion Dep. Tr.] at
26 185:11–18.

27 42. Foundation witnesses testified that the Event
28

1 was cancelled as a result of the unapproved press
2 releases.

3
4 Ochsenbein Decl. Ex. 5 [Sion Dep. Tr.] at
5 118:18–120:8, 327:13–18, 328:24–329:2; *id.*, Ex.
6 12 [Pygin Dep. Tr.] at 100:24–103:1; *id.*, Ex.10
7 [Rudolph Dep. Tr.] at 302:19–303:19; *see also*
8 *id.* Ex. 19 [Dep. Ex. 32] [Amege expresses belief
9 that AFA violated the Promotional Materials
10 provision.]; *id.* Ex. 22 [Dep. Ex. 37 (Sion)]
11 [indicating unapproved press releases were
12 reason for cancellation]; *id.*, Ex. 7 [Pisano Dep.
13 Tr.] at 41:19–43:1 [“Q. All right. The e-mail
14 continues referring to your conversation , quote:
15 ‘Had a chat to him about the screening of the I.D.
16 film at CSC’s IMAX.’ The next sentence: ‘They
17 had, in fact, canceled the event as not being’ –
18 I’m sorry – ‘as being not in line with their
19 mission to educate the public about science, so it
20 is not going ahead, we do not need to send a
21 letter or respond any further,’ period. These are
22 the words apparently of John Long in an e-mail.
23 Does he have it correct here that Dr. Rudolph
24 told you that they canceled the event because it
25 was not in line with their mission? MR.

26 ZELENEY: Objection. Vague. Calls for
27 hearsay. MR. STAUBER: Same objection.
28

1 Subject to that, Dr. Pisano, you can answer. THE
2 WITNESS: No. . . . BY MR. STEVENS: Q.
3 And your answer is that John Long has it
4 incorrect, is that right? MR. STAUBER:
5 Counsel, the answer was 'No,' unequivocally
6 'No.' BY MR. STEVENS: Q. I'm asking if
7 that's what you mean by incorrect. A. That is
8 correct."]; *id.*, Ex. 8 [Long Dep. Tr.] at 96:5-24
9 ["Q. The next sentence says, 'They had in fact
10 canceled the event as not being in line with their
11 mission to educate the public about science.'
12 And I'll stop there. Is that what Dr. Pisano told
13 you? MR. ONO: Calls for hearsay. THE
14 WITNESS: No, she did not tell me that. That
15 was something that I was surmising. It's purely
16 from me. BY MR. STEVENS: Q. Well, what
17 did Dr. Pisano tell you? A. From memory, she
18 just told me that they had canceled it. She didn't
19 actually give me a reason. Q. So you added that
20 fact that it was not in line with their mission?
21 That was from your own surmise? A. I was
22 guessing it, yes. Q. You didn't actually know?
23 A. I didn't."]

24 43. Cynthia Pygin testified that she never
25 discussed the subject matter of the Event with
26 Rudolph prior to his decision to cancel.
27
28

1 Ochsenbein Decl., Ex. 12 [Pygin Dep. Tr.] at
2 69:8-20, 78:7-14.

3 44. In an e-mail dated October 7, 2009, Peterson
4 states: "Whomever at [sic] wrote the copy on the
5 Discovery institute press releases should have his
6 head examined . . . I thought the problem was
7 buried in the text of the documents . . . NOT THE
8 HEADLINES. Talk about waving a red flag in
9 front of a bull. It seems like they were
10 deliberately trying to screw this up!!!"

11
12 Ochsenbein Decl., Ex. 25 [Dep. Ex. 163],
13 emphasis in the original.

14 45. In its interrogatory responses, AFA suggests
15 that documents and testimony from Chris Sion
16 and documents obtained from the Natural History
17 Museum of Los Angeles County demonstrate the
18 existence of such a "policy," noting that the
19 "unanimity of position suggests a policy."
20


21 Moving party reserves all of its objections on this
22 evidence, including objections on the grounds
23 that it is hearsay, lacks foundation, is not
24 properly authenticated, is improper opinion, and
25 is irrelevant.

26
27 Ochsenbein Decl., Ex. 3.
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