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## [Countersuit in AFA v. CSC](#) [3]



A lawsuit over the canceled screening of a creationist film took a twist recently with the filing of a cross-complaint that charges the plaintiff with breach of contract, violation of the covenant of good faith and fair dealing, and fraud.

In 2009, the American Freedom Alliance, a Los Angeles-based organization that describes itself as "a movement of concerned Americans advancing the values and ideals of Western civilization," arranged to screen *Darwin's Dilemma* — [characterized](#) [4] by the *Los Angeles Times* (December 29, 2009) as "a feature-length documentary that criticizes Darwin and promotes intelligent design" — at the California Science Center. Helping to promote the event was the Discovery Institute, which issued a press release touting the screening. However, the terms of the rental contract provide that all promotional materials for events at the CSC have to be submitted for approval before they are disseminated; the screening was accordingly canceled. The AFA filed suit, arguing that it is unfair to hold it responsible for the actions of a third party, contending that the contract issue was a "false pretext" for cancellation of the screening, and claiming that "a broad network of Darwin advocates" conspired with the CSC to cancel the screening.

The cross-complaint was filed by the California Science Center Foundation, a not-for-profit organization that provides support for the CSC (itself a department of the state of California) and a defendant in the case; the CSCF operates the Event Service Department, through which private groups such as the AFA are able to arrange to hold private events at the CSC. The cross-complaint [charges](#) [5] (PDF, pp. 5-6), "AFA and the Discovery Institute consistently communicated and collaborated on the Event up to, and even after, its cancellation. ... AFA was cognizant that its publicity efforts might impact[] its alleged contractual relationship with the Foundation. ... [The Discovery Institute's Robert Crowther] noted in his email to the AFA: '*Once we let the jinni [sic] out of the bottle it's likely all hell will break loose.*' ... And in a later email, [the AFA's] Avi Davis admits that the Discovery Institute warned AFA that a cancellation

might happen due to the Discovery Institute's publicity" (emphasis and "[sic]" in the original).

The CSCF's cross-complaint listed three causes of action. First, that the AFA "materially breached the alleged contract" (p. 7) by issuing publicity, both in coordination with the Discovery Institute and on its own, about the screening without seeking the approval of the CSCF, as required by the contract. Second, that the AFA's conduct in doing so violated "the covenant of good faith and fair dealing" (p. 7) even if it was not a material violation of the contract. Third, that because "AFA entered into the alleged agreement with the Foundation and agreed to seek pre-approval of any publicity materials, all the while coordinating with the Discovery Institute to promote the Event and never intending on planning to obtain such pre-approval and fulfill its obligations of the alleged contract" (p. 10), the AFA committed actual fraud. The CSCF is asking the court for compensatory and punitive damages. A jury trial is currently scheduled to begin on June 13, 2011.

Important documents from the case, *American Freedom Alliance v. California Science Center, California Science Center Foundation, Jeffrey Rudolph, et al.*, are [available](#) [6] on NCSE's website.

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