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California Science Center Foundation's Statement Regarding Resolution of Legal Dispute with AFA

The California Science Center Foundation has settled a long-running legal dispute with the American Freedom Alliance ("AFA"). The settlement agreement explicitly states that no party admits fault or liability, and the settlement is a means to avoid the costs of further proceedings. As part of the settlement, the Foundation and AFA agreed to a joint statement that the Foundation would invite the AFA back to hold its private event, and the AFA would decline that invitation. The Foundation is satisfied with the terms of the settlement, which includes a cost of defense payment from the Foundation's insurer, to avoid the expense of further litigation.

The dispute arose out of unapproved press releases that had been issued relating to a private event that the AFA had intended to hold at the California Science Center's IMAX Theater. The press releases, for which AFA was responsible, falsely implied that the Foundation or the Science Center were sponsors of the AFA's event. They were not, and as a result of these false and misleading press releases, the Foundation cancelled the AFA's event.

The AFA then sued the Foundation and the Science Center for breach of contract and violation of the First Amendment, claiming that the Foundation's cancellation was based upon the purported content of the AFA's program. This was not the case, and the evidence demonstrated that the Foundation was right. Indeed, the fact that the Foundation booked the AFA's event in the first place affirmatively demonstrated the lack of merit to AFA's argument.

Through discovery, evidence was revealed that undermined AFA's claims. For instance, although the AFA asserted that the offending press releases were issued by an entirely independent third party (the Discovery Institute), it was uncovered that the AFA and the Discovery Institute actually had been secretly coordinating the publicity efforts and were intentionally trying to make the publicity that led to the cancellation as provocative and controversial as possible. One email among Discovery Institute individuals talked about "letting the jinnie out of the bottle" when "all hell will break lose." The Foundation was certainly entitled to cancel the AFA's private event.

The Foundation also brought cross-claims of its own against AFA, asserting breach of contract and fraud, and claiming that the AFA entered into their agreement with the Foundation without any intent on ever complying with the agreement and seeking Foundation approval prior to issuing any press releases (which was a term of the contract). Quite the contrary, the Foundation alleged, the AFA was actually coordinating with the Discovery Institute to issue offending press materials the whole time.

In July 2011, after almost two years of litigation and fending off numerous frivolous positions by AFA and its counsel, the Foundation and AFA settled the matter. In addition to the payment by the Foundation's insurer, the settlement also includes a small

payment by the Foundation, to again avoid further proceedings and return the Foundation's focus to the important work that it has at hand – rather than be distracted by AFA's meritless litigation.

Unfortunately, it appears that neither the AFA nor the Discovery Institute have learned from their mistakes and false and misleading press releases continue to be issued. For instance, although the Discovery Institute's August 29, 2011 press release states that the "state-run Science Center" paid a settlement amount, the reality is that the Science Center did not pay a dime. Likewise, although the Discovery Institute contends that it was "dragged into the case," the fact of the matter is that the Discovery Institute knowingly and inappropriately issued offending and false press releases leading to the lawsuit. The court in Seattle agreed with the Foundation's discovery position, and forced the Discovery Institute to turn over its embarrassing emails. And although the Discovery Institute touts the fact that the joint statement includes the Foundation's inviting AFA back to hold its event, they ignore the fact that AFA declined such invitation.

The cancellation was never about the content of the program, as indicated by the fact that the Foundation was willing to have the event in the first place. It was about the false and misleading press releases that the Discovery Institute and AFA issued. Unfortunately, it appears that neither the Discovery Institute nor AFA have learned their lesson.

