

1 PETER D. LEPISCOPO, ESQ. C.S.B. #139583
2 BILL MORROW, ESQ. C.S.B. #140772
3 MICHAEL W. HEALY, California Certified Law Student #21880
4 LEPISCOPO & MORROW, LLP
2635 Camino del Rio South, Suite 100
San Diego, California 92108
Telephone: (619) 299-5343
Facsimile: (619) 299-4767

5 Attorneys for Petitioner,

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
DEC 01 2009
John A. Clarke, Executive Officer/C
By SHAUNNA WESLEY, De

8 SUPERIOR COURT OF CALIFORNIA

9 IN AND FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT:

10 STANLEY MOSK COURTHOUSE (HILL STREET)—UNLIMITED CIVIL CASE

11 DISCOVERY INSTITUTE,

12 Petitioner,

13 v.

14 CALIFORNIA SCIENCE CENTER, and
15 DOES 1 through 20, inclusive,

16 Respondents.

Case No.

BS128905

VERIFIED PETITION FOR WRIT OF
MANDAMUS AND DECLARATORY
RELIEF UNDER THE CALIFORNIA
PUBLIC RECORDS ACT

[Government Code, §§ 6250 *et seq.*]

I/C JUDGE:

DEPT:

TRIAL DATE: None set

20 COMES NOW petitioner, DISCOVERY INSTITUTE, and alleges as follows:

21 VENUE

22 1. As shown herein, this action is not subject to the provisions of Section 1812.10 or
23 2984.4 of the California Civil Code.

24 2. Venue is proper in this Court because the principle place of business of the
25 Respondent and the location of the public records are located in Los Angeles County.
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VERIFIED PETITION FOR WRIT OF MANDAMUS AND DECLARATORY RELIEF UNDER
THE CALIFORNIA PUBLIC RECORDS ACT

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6. Petitioner does not know the true names of respondents DOES 1-20, inclusive, and therefore sues them by those fictitious names. Petitioner is informed and believes, and on the basis of such information and belief alleges, that each of those respondents was in some manner legally responsible for the events and happenings alleged in this petition. Petitioner is further informed and believes, and on the basis of such information and belief alleges, that at all times mentioned in this petition, respondents were the agents and employees of their co-respondents, and in doing the things herein alleged were acting within the course and scope of such agency and employment.

SUMMARY OF PETITION

7. Succinctly summarized, this action results from the CSC's unlawful refusal to disclose certain public documents requested under a public documents request filed by Discovery Institute on October 9, 2009. Discovery Institute filed the public documents request with the CSC requesting public documents pertaining to the CSC's October 6, 2009 cancellation of its contract with the American Freedom Alliance ("AFA") that had authorized the screening of a pro-intelligent design video at the CSC's IMAX Theatre on October 25, 2009. On November 2, 2009, CSC disclosed 44 pages of documents in response to the public documents request, averring that those documents "*constitute all documents in the California Science Center's possession responsive to your request*" and that "*no documents have been withheld on the basis of privilege or an exception to the Public Records Act,*" except for some e-mail addresses and other personal information that were redacted. CSC's claims are not true, and in fact CSC withheld e-mails specifically covered by the public documents request that pertained to decision makers at the CSC who cancelled the contract with the AFA, as well as CSC's communications regarding the

1 Smithsonian Institution, a Designated Affiliate of CSC, and this matter.² Discovery Institute is
2 now filing this action because there is evidence that the CSC wrongfully refused to disclose
3 certain known public documents, as well as other likely yet-to-be uncovered public documents in
4 response to the public records request, thereby violating the California Public Records Act and
5 offending the statutory guarantee that “*access to information concerning the conduct of the*
6 *people's business is a fundamental and necessary right.*” (Government Code § 6250.)
7

8 **FACTUAL BACKGROUND**

9 **8.** Petitioner incorporates by reference paragraphs 1 through 7 of this petition, as
10 though fully set forth herein.

11 **9.** By way of background, the American Freedom Alliance (“AFA”), a non-profit
12 organization, contracted with the CSC for an event titled “*We Are Born of Stars IMAX Screening*”
13 (“*Born of the Stars*”) scheduled for Sunday, October 25, 2009, from 6-9 p.m. at the CSC’s IMAX
14 Theatre in Los Angeles (hereinafter referred to as the “*AFA Event*”). The contract between AFA
15 and Respondent CSC (“*AFA Contract*”) is one of the documents requested by Discovery Institute
16 (see Exh. 1) that CSC has failed to produce. However, a copy of the AFA Contract has been
17 separately obtained from documents filed in a pending action between AFA and the CSC for
18 breach of contract, a true and correct copy of which is attached hereto as Exhibit 7.
19

20 **10.** The organizers of the AFA Event planned to screen the IMAX film *Born of the*
21 *Stars*, and also to show the documentary “*Darwin’s Dilemma: The Mystery of the Cambrian*
22
23

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25 ² Indeed, not a single e-mail, letter, or other document that has been disclosed by the CSC mentioning the
26 Smithsonian Institution, even though the public documents request specifically requested documents referencing the
27 Smithsonian.
28

1 Fossil Record” (“Darwin’s Dilemma”). A digital video disk containing the film *Darwin’s*
2 *Dilemma* is attached hereto as Exhibit 3.

3 11. As to its scientific viewpoint and scientific content, *Darwin’s Dilemma* explores
4 the abrupt appearance of animal life in the fossil record and the challenge this scientific evidence
5 poses to Darwin’s theory of evolution. Some of these scientists, including Dr. Stephen Meyer, Dr.
6 Jonathan Wells, and Dr. Richard Sternberg, propose the scientific theory of intelligent design as an
7 alternative and, in their viewpoints, the superior scientific explanation for the “explosive”
8 appearance of major groups of animal life in the Cambrian period.

9
10 12. The AFA planned to sponsor a post-screening discussion of *Darwin’s Dilemma*
11 with Lad Allen (of Illustra Media) who directed the film, mathematician Dr. David Berlinski, and
12 molecular biologist Dr. Jonathan Wells. Unfortunately, this did not occur because on October 6,
13 2009, the CSC cancelled the AFA Event. As will be stated more fully below, the CSC’s written
14 cancellation of the AFA Event is one of the documents requested by Discovery Institute (see Exh.
15 1) that CSC has failed to produce. However, Discovery Institute has obtained a copy of the
16 October 6, 2009, written cancellation e-mail from Chris Sion of CSC to AFA, a true and correct
17 copy of which is attached hereto as Exhibit 5.

18
19 13. In its Mission Statement CSC purports to be a venue for *academic freedom*:
20

21 ***“The Science Center’s Mission: We aspire to stimulate curiosity and inspire***
22 ***science learning in everyone by creating fun, memorable experiences, because we***
23 ***value science as an indispensable tool for understanding our world, accessibility***
and inclusiveness, and enriching people’s lives.”³

24 However, contrary to this professed public commitment to openness and academic
25 “inclusiveness,” the documents that CSC did produce clearly evince a **viewpoint** based animus
26

27 ³ See: <http://www.californiasciencecenter.org/GenInfo/AboutUs/AboutUs.php>.
28

1 toward intelligent design in general and *Darwin's Dilemma* in particular, including a not-so-
2 hidden intolerance for viewpoints that support intelligent design, which are dismissed by labeling
3 them "*religious*." For example, in an e-mail sent by University of Southern California ("USC")
4 professor Hilary Schor on October 6, 2009 at 8:08 a.m. she writes:

5 *"I'm less troubled by the freedom of speech issues [i.e., the suppression of freedom of*
6 *speech] than why my tax dollars which support the California Science Center are being*
7 *spent on hosting **religious propaganda!**"*

8
9 (Exh. 4, p. 41; emphasis added.) In response to Ms. Schor's e-mail, Huntington Library curator
10 Dan Lewis then affirmatively forwarded Schor's comment to a curator at the CSC, Ken Phillips
11 stating:

12 *"Hey, is it true that the CSC is screening the **creationist** film 'Darwin's Dilemma' on*
13 *October 25? I'm curious how this came to pass as science. Some of my USC colleagues*
14 *are up in arms about it, as you can see below..."*⁴

15
16 (Exh. 4, p. 41; emphasis added.) After a fellow curator at a Los Angeles area museum showed
17 dismay that the CSC would rent its facilities to show a pro-intelligent design video, Mr. Phillips
18 expressed concern to various colleagues at the CSC that the CSC was renting its facilities to show
19 *Darwin's Dilemma*. Phillips stated:

20
21 *"I personally have a real problem with anything that elevates the concept of intelligent*
22 *design to a level that makes it appear as though it should be considered equally alongside*

23
24 ⁴ The film *Darwin's Dilemma* does not advocate creationism, although it does offer scientific critiques of
25 Darwinian evolution and suggests a possible alternative explanation is intelligent design, which is different from
26 creationism, to wit: much like Darwinian evolution, intelligent design is a **scientific** theory; contrariwise, creationism
27 is religious in origin (*see, e.g., Bible, Genesis 1*).

1 *Darwinian theory as a possible alternative to natural selection. In other words, I see us*
2 *getting royally played by the Center for Science and Culture resulting in long term damage*
3 *to our credibility and judgment for a very long time. ... No institute supporting an*
4 *essentially religious philosophy of creation is required to assure that appropriate critique*
5 *comes to bear on the Darwinian theory.”*

6
7 (Exh. 4, p. 40.)

8 **14.** Petitioner is further informed and believes and based on such information and
9 belief alleges that the e-mails produced by CSC (Exh. 4) clearly demonstrate that persons working
10 in or associated with CSC participated in the communications that led to the cancellation of the
11 AFA Event. However, CSC failed to disclose a single document reflecting the communications
12 from decision makers at CSC pertaining to the AFA event (i.e., while the CSC disclosed a few
13 communications to various decision makers, no responses from the decision makers were
14 included).

15
16 **15.** Petitioner is informed and believes and based on such information and belief
17 alleges that due to the foregoing persons’ positions (whether CSC employees, board members,
18 financial contributors, or influential scientists and academics in the Los Angeles area), they clearly
19 have the power to affect decisions made by the CSC, and that in this situation the result was the
20 cancellation of the AFA Event.

21
22 **16.** Petitioner is further informed and believes and based on such information and
23 belief alleges that CSC acted on this hidden agenda when on October 6, 2009, it cancelled the
24 AFA Event, which was due to intolerance for the scientific viewpoint expressed and scientific
25 content contained in *Darwin’s Dilemma*.

1 17. Petitioner is further informed and believes, and based on such information and
2 belief alleges that in addition to the e-mails disclosed in Exhibit 4, that decisive pressure may have
3 been brought upon CSC by the Smithsonian Institution, which has expressed concerns regarding
4 the scientific viewpoint expressed and content contained in *Darwin's Dilemma* and by the
5 scientific viewpoint expressed by those scientists who agree with intelligent design as a valid
6 scientific theory. However, at present it is impossible to definitively assess this question given the
7 CSC's refusal and failure to disclose all public documents pertaining to this matter.
8

9 18. Discovery Institute is further informed and believes that it is a fundamental
10 principle of First Amendment jurisprudence that when a governmental entity or sub-unit (such as
11 CSC) opens its facilities as a public forum, it is not constitutionally permissible to censor speech
12 based on viewpoint or content. *See, e.g., Lamb's Chapel v. Center Moriches Union Free School*
13 *District*, 508 U.S. 384 (1993); *Rosenberger v. Rector and Visitors of the University of Virginia*,
14 515 U.S. 819 (1995); *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666
15 (1998); and *Thomas v. Chicago Park District*, 534 U.S. 316 (2002).
16

17 19. The CSC now seeks to prevent the public from discovering its censorship of free
18 speech supporting intelligent design, and its discrimination against the pro-intelligent design
19 viewpoint by suppressing public documents requested by Discovery Institute, which would expose
20 the CSC's viewpoint discrimination-based reasons for cancelling the AFA event. This is evinced
21 by the fact that CSC neither disclosed any documents in response to the public documents request
22 that cover communications from CSC decision makers about the AFA event,⁵ nor did CSC
23 disclose any communications with the Smithsonian Institution regarding the AFA event.
24

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26 ⁵ CSC did disclose a few e-mails sent to Jeff Rudolph or Chris Sion, but no e-mails from those CSC decision
27 makers.
28

1 20. On October 9, 2009, Discovery Institute submitted a CPRA Request (Exh. 1) to
2 CSC requesting several categories of documents as follows:

3 “1. Copies of any records, communications, or documents, involving any
4 employees, staff members, and board members of the California Science Center, within the
5 past 30 days, which reference the following:

- 6 • *Intelligent Design*
- 7 • *Discovery Institute*
- 8 • *American Freedom Alliance*
- 9 • *Darwin’s Dilemma*
- 10 • *Cambrian explosion*
- 11 • *Illustra Media*
- 12 • *Stephen Meyer*
- 13 • *David Berlinski*
- 14 • *Lad Allen*
- 15 • *Jonathan Wells*
- 16 • *The Smithsonian Institution and any of its concerns about intelligent*
17 *design or the screening of the “Darwin’s Dilemma” video.*
- 18 • *The contract between the California Science Center and the American*
19 *Freedom Alliance for rental of the California Science Center’s IMAX*
20 *Theatre on Sunday, October 25th, 2009.*

21 2. Copies of any records, communications, or documents involving Christina
22 M. Sion, within the past 30 days, which reference the following:

- 23 • *Intelligent Design*
- 24 • *Discovery Institute*
- 25 • *American Freedom Alliance*
- 26 • *Darwin’s Dilemma*
- 27 • *Cambrian explosion*
- 28 • *Illustra Media*
- *Stephen Meyer*
- *David Berlinski*
- *Lad Allen*
- *Jonathan Wells”*
- *The Smithsonian Institution and any of its concerns about intelligent*
 design or the screening of the “Darwin’s Dilemma” video.
- *The contract between the California Science Center and the American*
 Freedom Alliance for rental of the California Science Center’s IMAX
 Theatre on Sunday, October 25th, 2009. ”

(See Exhibit 1: Discovery Institute’s October 9, 2009 CPRA Request to CSC.)

1 **21.** On November 2, 2009, CSC responded by providing Discovery Institute with:
2 a. 1-page written response dated November 2, 2009, (“CSC Response”); and
3 b. documents produced: 2 copies of the Discovery CPRA Request and 40
4 pages of e-mails between the persons set forth above in Paragraph 14 (“CSC e-mails”)
5 (See Exhibit 2: CSC Response; Exhibit 4: CSC e-mails.)
6

7 **22.** In its part relevant to these proceedings, the CSC Response (Exh. 2) provides:
8 *“...Except as described below, no documents have been withheld on the basis of*
9 *privilege or an exception to the Public Records Act...You will see that we have*
10 *redacted certain information from these documents. Information that was redacted*
11 *was either not responsive to your request, or was personal information (such as*
12 *telephone numbers and email addresses) which was redacted consistent with*
13 *Government Code section 6254(c) and the Information Privacy Act of 1977, Civil*
14 *Code section 1798. Because information in nearly every document required*
15 *redaction, we cannot provide an electronic copy of the responsive documents.”*
16 (See Exhibit 2: CSC Response.)
17

18 **23.** CSC has failed to provide a single document reflecting communications from
19 decision makers at CSC who oversaw cancellation of the AFA Event, nor did CSC disclose any
20 documents reflecting its communication with the Smithsonian Institution regarding this matter.
21 To be more specific, the documents provided to Discovery Institute, CSC failed to provide, for
22 example, the following:
23

24 a. the written contract between AFA and CSC regarding the AFA Event at the
25 CSC facility;
26 b. all documents provided by AFA in support of its application to secure the
27 CSC facility for the AFA Event, including, but not limited to, the completed application(s)
28 submitted by AFA and attachments thereto, communications between AFA and CSC, CSC’s
internal documents relating to approval of the AFA application;

1 c. CSC's October 6, 2009, communication from Chris Sion to the AFA
2 notifying the AFA of CSC's cancellation of the AFA Event (*see, e.g.*, Exh. 5, which was not
3 produced by CSC);

4 d. communications between the CSC and anyone at the Smithsonian
5 Institution regarding intelligent design (*see, e.g.*, Exh. 6, which was not produced by CSC);

6 e. communications between the CSC and anyone at the Smithsonian Institute
7 regarding *Darwin's Dilemma* (*see, e.g.*, Exh. 6, which was not produced by CSC);

8 f. communications involving CSC president and CEO Jeff Rudolph, which
9 satisfy Discovery Institute's October 9, 2009 CPRA Request, such as his October 5, 2009
10 communication with Shell Amega pertaining to the AFA event and the Smithsonian Institution
11 (*see, e.g.*, Exh. 6, which was not produced by CSC);

12 g. all of the CSC e-mails in non-redacted form; and

13 h. Any other documents satisfying Discovery Institute's October 9, 2009
14 CPRA, which were not previously disclosed by the CSC in response to that request.

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16 24. The documents, including electronic files, that Discovery Institute seeks from CSC
17 are "*public records*" within the meaning of Government Code § 6252(e) and "*writings*" within the
18 meaning of Government Code § 6252(g). Pursuant to Government Code § 6250, review of the
19 public records sought by Discovery Institute is a right which the Legislature has deemed
20 "*fundamental and necessary.*"

21
22 25. In addition to the documents that were not produced by CSC, as described above in
23 Paragraph 23, the non-redacted version of the CSC e-mails and the non-redacted documents
24 responsive to Discovery Institute's CPRA Request (Exh. 1) must be provided in a manner that
25 includes all of the information set forth in such documents, rather than portions that the CSC
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1 deems “*not responsive*.” Accordingly, the Court should conduct an *in camera* review pursuant to
2 Government Code § 6259(a).

3
4 **FIRST CAUSE OF ACTION**
5 **WRIT OF MANDAMUS TO REQUIRE THE**
6 **PRODUCTION FOR INSPECTION AND COPYING OF DOCUMENTS UNDER CPRA**
7 **(Government Code §§ 6258 and 6259)**

8 26. Discovery Institute incorporates by reference Paragraphs 1 through 25 of this
9 petition, as though fully set forth herein.

10 27. The documents described in the foregoing paragraphs are public records. As such,
11 it is required that they be made available to members of the public for review upon request.
12 Discovery Institute has made a lawful request for said public records (Exh. 1). CSC has a
13 statutory duty to provide the non-redacted public records in question to members of the public
14 who make a lawful request for inspection and copying and to do so without delay or obstruction.

15 28. As described in greater detail in the foregoing paragraphs, CSC has unlawfully
16 withheld public records from Discovery Institute.

17 29. Pursuant to Government Code §§ 6258 and 6259, Discovery Institute petitions this
18 Court to issue a writ of mandamus requiring CSC to provide, for inspection and copying, the
19 documents described above in Paragraph 23 and in Discovery Institute’s CPRA Request (Exh. 1).

20 30. The issuance of the writ is indispensable to the enforcement of Discovery
21 Institute’s rights in that Discovery Institute has no plain, speedy, or adequate remedy in the
22 ordinary course of law whereby its rights can be upheld or whereby CSC can be compelled to
23 comply with the CPRA. If the relief sought by this petition is not granted, great and irreparable
24 injury will be caused to Discovery Institute.
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SECOND CAUSE OF ACTION
DECLARATORY RELIEF AS TO WHETHER
CSC HAS COMPLIED WITH CPRA
(Government Code §§ 6258 and 6259)

31. Discovery Institute incorporates by reference Paragraphs 1 through 25 of this petition, as though fully set forth herein.

32. Discovery Institute seeks declaratory relief as to whether CSC has lawfully and fully complied with the provisions of CPRA, including but not limited to whether CSC has unlawfully redacted the CSC e-mails and whether CSC has failed to provide all documents required under CPRA.

33. By way of this petition, Discovery Institute asserts that (a) CSC has unlawfully redacted the CSC e-mails (Exh. 4) and (b) CSC has unlawfully failed to produce all documents required to be produced under the CPRA. Contrariwise, CSC disagrees. Accordingly, a controversy presently exists between Discovery Institute and CSC, wherein declaratory relief under CPRA is appropriate and required.

PRAYER

WHEREFORE, Petitioner therefore requests relief as follows:

1. That the Court issue an alternative Writ of Mandamus commanding Respondent to comply with Government Code § 6253 or to show cause before this Court at a time specified by court order why it has not done so and why a peremptory writ should not issue;

2. That, on the return of the alternative writ and the hearing of this Petition, this Court issue its peremptory Writ of Mandamus commanding Respondent to provide, for inspection and copying, all of the documents requested in this Petition;

1 3. That where the Court deems appropriate pursuant to Government Code § 6259(a),
2 to make its determination, conduct an *in camera* review of any redacted and/or documents
3 withheld by Respondent;

4 4. For declaratory and/or injunctive relief, pursuant to Government Code §§ 6258 and
5 6259, as to whether the reasons specified by Respondent, in denying inspection and copying of
6 public records, is lawful;

7 5. For reasonable attorney fees pursuant to Government Code § 6259(d);

8 6. For taxable costs of suit incurred herein;

9 7. For such other and further relief as the Court deems just and proper.

10
11 Dated: **November 30, 2009.**

LEPISCOPO & MORROW, LLP

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15 By: _____
16 Peter D. Lepiscopo, Esq.,

17 Attorneys for Petitioner, **DISCOVERY**
18 **INSTITUTE**

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I am an attorney licensed to practice law in the State of California and am over the age of eighteen. I am the Program Officer in Discovery Institute's Public Policy and Legal Affairs Department, and as such I have personal knowledge of the herein alleged matters and I have authority to make this verification.

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Carly

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