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**FILED**  
LOS ANGELES SUPERIOR COURT

SEP 02 2011

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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10 **DAVID COPPEDGE**, an individual;

11 Plaintiff,

12 vs.

13 **JET PROPULSION LABORATORY**, form  
14 unknown; **CALIFORNIA INSTITUTE OF**  
15 **TECHNOLOGY**, form unknown;  
16 **GREGORY CHIN**, an Individual; **CLARK**  
17 **A. BURGESS**, an Individual; **KEVIN**  
**KLENK**, an Individual; and **Does 1 through**  
**25**, inclusive,

18 Defendants.

Case No. BC435600

**PLAINTIFF DAVID COPPEDGE'S  
RESPONSES AND OBJECTIONS TO  
DEFENDANT'S SEPARATE  
STATEMENT OF UNDISPUTED  
MATERIAL FACTS IN SUPPORT OF  
PLAINTIFF DAVID COPPEDGE'S  
OPPOSITION TO DEFENDANT  
CALIFORNIA INSTITUTE OF  
TECHNOLOGY'S MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY  
ADJUDICATION OF ISSUES**

[Pl.'s Opp to Mot.; Mem. of Ps & As; Obj. to  
Evid.; Decl. of W. Becker, Jr.; Decl. of D.  
Coppedge; Decl. of D. DeWolfe; Decl. of  
L. Ball; Appdx. Of Non-Calif. Auth's.; Exhib-  
its and [Prop'd.] Order Re: Obj. To Evid. filed  
concurrently herewith]

HEARING DATE: September 16, 2011  
HEARING TIME: 8:45 a.m.  
DEPT: 54

Trial Date: October 19, 2011

1 Plaintiff, David Coppedge, hereby submits his Separate Statement of Disputed and  
2 Undisputed Facts in Opposition to the Motion of Defendant California Institute of Technology  
3 ("Caltech") for Summary Judgment or in the Alternative Summary Adjudication of Issues.

4 **DEFENDANT'S ISSUE NO. 1: PLAINTIFF'S FIRST CAUSE OF ACTION FOR**  
5 **DISCRIMINATION IN VIOLATION OF FEHA FAILS AS A MATTER OF LAW**  
6 **BECAUSE HE CANNOT ESTABLISH A PRIMA FACIE CASE: EXCEPT FOR**  
7 **PLAINTIFF'S LAYOFF, NONE OF THE CONDUCT AT ISSUE CONSTITUTES A**  
8 **LEGALLY COGNIZABLE ADVERSE EMPLOYMENT ACTION, AND NONE OF THE**  
9 **EVENTS ALLEGED, INCLUDING PLAINTIFF'S LAYOFF, GIVE RISE TO AN**  
10 **INFERENCE OF DISCRIMINATION BASED ON ACTUAL OR PERCEIVED**  
11 **RELIGIOUS CREED.**

12 **Defendant's Sub-Issue No. 1: Except For Plaintiff's Layoff, None Of The Conduct At**  
13 **Issue Constitutes A Legally Cognizable Adverse Employment Action.**

| <u><b>MOVING PARTY'S UNDISPUTED<br/>MATERIAL FACTS AND<br/>SUPPORTING EVIDENCE</b></u>   | <u><b>OPPOSING PARTY'S RESPONSE AND<br/>SUPPORTING EVIDENCE</b></u>   |
|--|---|
| 14 1. Caltech, a private, non-profit<br>15 corporation, operates JPL, a Federally<br>16 Funded Research and Development Center,<br>17 pursuant to a prime contract with the<br>18 National Aeronautics and Space<br>19 Administration ("NASA"). <b>Clennan-Price</b><br>20 <b>Decl. ¶ 4.</b> | Objection. Vague and ambiguous as to the<br>meaning of "operates." Subject to and with-<br>out in any way waiving the foregoing objec-<br>tion, and to the extent that Responding Party<br>understands this alleged fact: Undisputed.                       |
| 21 2. The employees who work at JPL are<br>22 employed by Caltech. <b>Clennan-Price</b><br>23 <b>Decl. ¶ 5.</b>  | Objection. Vague and ambiguous as to the<br>meaning of "employees" and "who work at<br>JPL." Subject to and without in any way<br>waiving the foregoing objection, and to the<br>extent that Responding Party understands this<br>alleged fact: Undisputed. |
| 24 3. JPL is a "matrix" organization<br>25 consisting of Program Offices and Line<br>26 Management organizations. <b>Tr. 52:5-7</b><br>27 ("Q. And you understand that JPL or  | Objection. Vague and ambiguous as to the<br>meaning of "'matrix' organization." General-<br>ly vague and ambiguous. Subject to and with-<br>out in any way waiving the foregoing objec-   |

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| 1  | Caltech uses a matrix organization at JPL?           | tions, and to the extent that Responding Party  |
| 2  | A. Yes."); <b>Clennan-Price Decl. ¶ 7;</b>           | understands this alleged fact: Undisputed.      |
| 3  | 4. Line Managers are responsible for the             | Objection. Vague and ambiguous as to the        |
| 4  | normal supervisory tasks such as preparing           | meaning of "normal supervisory tasks." Sub-     |
| 5  | performance evaluations, recommending                | ject to and without in any way waiving the      |
| 6  | pay increases, promotions and discipline.            | foregoing objection, and to the extent that Re- |
| 7  | <b>Clennan-Price Decl. ¶ 7.</b>                      | sponding Party understands this alleged fact:   |
| 8  |  | Undisputed.                                     |
| 9  | 5. Project management directs employees'             | Objection. Vague and ambiguous as to the        |
| 10 | work on projects. <b>Clennan-Price Decl. ¶</b>       | meaning of "Project management" and "di-        |
| 11 | <b>7.</b>  | rects employees' work." Subject to and with-    |
| 12 |  | out in any way waiving the foregoing objec-     |
| 13 |  | tion, and to the extent that Responding Party   |
| 14 | 6. Cassini is a joint NASA-European                  | understands this alleged fact: Undisputed.      |
| 15 | Space Agency ("ESA") project to study the            |   |
| 16 | planet Saturn and its satellites. <b>Chin 14:22-</b> |   |
| 17 | <b>25</b> ("Q. What was the prime mission for        |   |
| 18 | Cassini, very briefly? . . . A. [T]o study           |   |
| 19 | the Saturnian system.").                             |   |
| 20 | 7. In 2008, NASA extended the Cassini                | Objection. Vague and ambiguous as to the        |
| 21 | mission for two more years, and in 2010              | meaning of "much smaller scale." Subject to     |
| 22 | extended the mission a second time, but on           | and without in any way waiving the foregoing    |
| 23 | a much smaller scale with approximately a            | objection, and to the extent that Responding    |
| 24 | 50% reduction in funding. <b>Chin 33:2-13</b>        | Party understands this alleged fact: Disputed.  |
| 25 | ("Q. . . . [T]he Cassini mission extended            | Disputed that reductions were 50%. Initial      |
| 26 | beyond the prime mission . . . A. [T]here            | planning exercises in 2008 called for teams to  |
| 27 | are two extensions in the current                    | consider 50%. Actual reductions were 40%        |
| 28 | environment. There was one extension . . .           | (60% funding level), less for some offices.     |
|    | and then another one. . . Q. [A]re we                | MSSO-SA team was reduced 40% (2 out of          |
|    | currently in the phase of the second                 | 5). Becker Decl., Exh. 2, Coppedge Dep.Tr.,     |



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|   | <p>(“At that time, he was considered one of the better workers on the team supporting Cassini that were - he was one of many contractors. And there were several people we considered converting over to JPL employment because of their - it's necessary to keep the best people on the job.”). Disputed that Coppedge was hired as full-time employee in March 2003. Becker Decl., Exh. 43, e-mail from D.Coppedge to G.Chin, 1/09/2003 (“I tendered my resignation with Averstar yesterday, and start work as a JPL-er on Monday, Jan 27.”); <i>id.</i>, Exh. 44, Coppedge notebook #19, 1/27/2003 (“JPL New Employee Orientation - first day.”)</p> |
| <p>10. Throughout his time at JPL (both as contractor and employee), Coppedge was one of several SAs on Cassini. <b>Tr. 181:12-13</b> (“[T]here was a Cassini system administration team.”); <b>Tr. 184:8-9</b> (“I had been with Cassini since March 1997.”).</p>  | <p>Undisputed</p>   |
| <p>11. Chin was Manager of Cassini’s Mission Support and Services Office (“MSSO”), pursuant to which the Cassini SAs, including Coppedge, worked for him. <b>Tr. 268:25-269:4</b> (“... Greg Chin came on as the leader of Data and Computing Services, which he changed to MSSO, Mission Support and Services Office ...”); <b>Chin 12:17-19</b> (“... I became the manager of a group we called the Mission Support And</p> | <p>Objection. Vague and ambiguous as to the meaning of “worked for him.” Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed.</p>  |

Services Office."); **Tr. 52:8-10** ("Q. [T]he person you worked for was Greg Chin; correct? A. Yes.").

12. The SAs performed various computer-related tasks. **Tr. 169:5-8** ("A system administrator primarily is -- has to have a lot of technical skill and a wide variety of computer IT-related subjects and also honesty and integrity so they can be trusted with superuser access to systems."); **Chin 22:16-17** ("Their primary function is to support the servers and workstations."); **Chin 22:20-23:13** ("It's a wide-ranging function. . . the SA's are involved in the early phases when we get new software deliveries. They'll take them and install them on test systems so we can verify. And the SA's can also be involved when the product is finally approved for delivery. And then they are the ones responsible for doing the official installation configuration of it. . .").

Undisputed.

13. Group Supervisor Burgess was Coppedge's line manager and immediate supervisor until Burgess retired in September 2010. **Tr. 52:11-15** ("Q. And who was your line manager then at the time that you joined JPL in March of 2003? A. Cab Burgess. Q. And Mr. Burgess was your group supervisor? A. Yes."); **Burgess 11:22-25** ("Q. Now, from March 2003 to

Objection. Vague and ambiguous as to the meaning of "immediate supervisor." Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed.

1 your retirement, David was a full-time  
2 employee working under your supervision;  
3 is that correct? A. Yes.”).

4 14. Kevin Klenk was Section Manager and  
5 Burgess’s immediate supervisor. Tr.  
6 52:19-52:21 (“Q. At some point in time,  
7 Kevin Klenk became the section manager?  
8 A. Yes.”); Klenk 300:7-20 (“Q. What was  
9 your title . . . in 2009. A. In 2009, Section  
10 Manager. Q. . . . Your relationship to Cab  
11 Burgess as -- what was his title? A. Group  
12 Supervisor. Q. . . . You were his direct  
13 supervisor? A. Correct.”).

14 15. In 2000, Chin, with Burgess’s  
15 concurrence, made Coppedge lead of the  
16 Cassini SAs because he had the longest  
17 tenure of the SAs at the time. Chin 101:18-  
18 20 (“Q. Who is it that determines who the  
19 lead will be for the team? A. That was my  
20 responsibility.”); Chin 102:6-12 (“Q. And  
21 what criteria did you utilize to determine  
22 who a team lead would be? A. Generally, I  
23 looked at the tenure of an individual . . .  
24 because there’s a lot of history and . . . if  
25 people have history, they might remember  
26 why we did something. And so usually just  
27 tenure.”); Chin 110:16-19 (“So anybody  
28 could be team lead? A. Anyone could be,  
but I had just chose tenure as the primary  
thing, and I just stuck with it.”); Chin  
111:8-17 (“Q. But when did you assign

Objection. Vague and ambiguous as to the  
meaning of “immediate supervisor.” Subject  
to and without in any way waiving the forego-  
ing objection, and to the extent that Respond-  
ing Party understands this alleged fact: Un-  
disputed.

Undisputed that Chin with Burgess’s concur-  
rence, made Coppedge lead of the Cassini  
SAs. Disputed that Coppedge was made lead  
of the Cassini SAs solely on the basis of ten-  
ure. The role of team lead required leadership  
ability and other qualifications. Becker Decl.,  
Exh. 5, Klenk Dep.Tr., 208:5-22 (“By having  
the lead activities, he was the one who was  
going to be recording the activities that were  
going to be performed, and he had a *signifi-  
cant amount of customer interaction in that  
role*. So he was one of the people named as  
*‘This is who you can talk to.’*”); *id.*, 243:21-  
244:16 (“So everywhere you’ve worked,  
you’ve seen the term “team lead”? A. For all  
kinds of uses. Q. Well, how is the term used at  
JPL? A. I’m very familiar with what is done  
inside the division, and I’ve been a big propo-

1 David to the team lead position? A. . .  
2 .Probably around the early 2000 time  
3 period.”); **Chin 112:11-15** (“Q. But when  
4 you assigned him to team lead, did he have  
5 a long tenure at Cassini? A. Of the SA’s at  
6 that time, he had the longest tenure of the  
7 SA’s in that group at the moment.”);  
8 **Burgess 20:17-19** (“Q. Were you  
9 responsible for placing David in the role of  
10 team lead SA originally? A. Yes, I was in  
11 agreement with Greg’s choice.”); **Burgess**  
12 **21:8-11** (“Q. Were there reasons why you  
13 selected David for that role? A. Generally,  
14 the reasons were at that time he was  
15 considered the most senior in the group.”).

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nment in having it apply for people who are put  
on a task, *to lead a task with a group of people.*”); *id.*, Exh.6, 2008-2009 ECAP, p.3, Em-  
ployee Comments attached to Exh. 7 to Klenk  
Dep.Tr., as Exh. 7 (“As team lead, I not only  
assign work for myself but for the other four  
SAs, and hold weekly meetings to share news  
and discuss issues. I provide weekly status  
reports on the work of all 5 SAs, as well as  
monthly management reports. I try to act on  
concerns they raise. I encourage their training  
and cross-training and try to keep morale  
high. I take interest in Cassini and other JPL  
missions, attending on-lab science presenta-  
tions as time permits and giving Cassini out-  
reach talks.”); *id.*, Exh. 3, Burgess Dep.Tr.,  
20:6-16 (“Q. Can you describe what the team  
lead’s responsibilities were under your super-  
vision? A. Well, it was an administrative-type  
task *to lead the group*. It wasn’t an official  
organizational position at all. But primarily it  
was to provide status to the customer, namely  
Cassini project, and *overseeing task assign-  
ments* to others on the team, *getting feedback  
from them, and reporting it, and just sending  
a general direction on where the SA team  
was going as a whole.*”); *id.*, 23:2-19 (“Q. Is  
it correct to say that the team lead served as a  
liaison between the SA group and the custom-  
ers? ... THE WITNESS: Yes.”); *id.*, Exh.  
Mitchell Dep.Tr., 78:13-20 (“Q. What is your



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| 1  |   | understanding as to what team lead is in the      |
| 2  |   | Cassini project? A. In that specific instance, it |
| 3  |   | was the person responsible for coordinating       |
| 4  |   | the activities, coordinating among the SAs as     |
| 5  |   | to which would do what tasks, what were the       |
| 6  |   | priorities of the different tasks to be complet-  |
| 7  |   | ed, schedule for when they were to be com-        |
| 8  |   | pleted.") (Emphasis added.)                       |
| 9  | 16. "Lead" was not a formal job                   | Undisputed that the designation team "lead"       |
| 10 | classification, but only an informal              | was not a "formal job classification." Disput-    |
| 11 | designation for some administrative               | ed that the designation was "only an informal     |
| 12 | activities that Coppedge performed in             | designation for some administrative activities"   |
| 13 | addition to his regular SA duties. <b>Burgess</b> | that Coppedge performed and the implication       |
| 14 | <b>20:6-16</b> ("Q. Can you describe what the     | that the team "lead" lacked prestige, power       |
| 15 | team lead's responsibilities were under your      | and influence. The "lead" designation, as the     |
| 16 | supervision? A. Well, it was an                   | term implies, signified a level of responsibil-   |
| 17 | administrative-type task to lead the group.       | ity bestowed upon an employee possessing          |
| 18 | It wasn't an official organizational position     | leadership ability, and represented an es-        |
| 19 | at all. But primarily it was to provide status    | teemed position granting the designated per-      |
| 20 | to the customer, namely Cassini project, and      | son additional access, recognition and privi-     |
| 21 | overseeing task assignments to others on          | leges within the program and JPL. an es-          |
| 22 | the team, getting feedback from them, and         | teemed position granting the designated per-      |
| 23 | reporting it, and just sending a general          | son additional access, recognition and privi-     |
| 24 | direction on where the SA team was going          | leges within the program and JPL. Becker          |
| 25 | as a whole."); <b>Burgess 117:6-14</b> ("Q.       | Decl., Exh. 5, Klenk Dep. Tr., 208:5-22 ("Q.      |
| 26 | Team lead was a prestigious role, even if         | So what was your understanding of David           |
| 27 | not an official role, wasn't it? MS. FOX:         | Coppedge's role as team lead systems admin-       |
| 28 | Objection. Vague. A. I didn't put the             | istrator for the five years that you knew him?    |
|    | importance on that as David may have              | A. I understood that he was an SA on the Cas-     |
|    | thought it to be. Like I say, it was an           | sini project. By having the lead activities, he   |
|    | unofficial role. There wasn't any                 | was the one who was going to be recording         |

1 designation anywhere other than just  
2 leading the team. There was no official  
3 position ever defined that explains  
4 anywhere what a team lead is or does.”);  
5 **Chin 110:3-14** (“Q. To be team lead of a  
6 team within MSSO or any other division or  
7 unit of JPL would signify some kind of  
8 special, privileged position, wouldn’t it?  
9 MR. ZAPP: Objection. Vague and  
10 misstates the evidence. A. No, sir. Q. No?  
11 You didn’t consider it to be a position of  
12 privilege at all? MR. ZAPP: Same  
13 objection. Vague. A. No, sir.”).

the activities that were going to be performed,  
and he had a significant amount of customer  
interaction in that role. So he was one of the  
people named as “This is who you can talk  
to.” Q. Okay. Customer interaction -- A. Yes.  
Q. -- As opposed to other systems administra-  
tors. Did they not have customer interaction?  
A. Ideally in the lead role, you have one per-  
son who is the focal point.”); *id.*, 243:21-  
244:16 (“Q. Are team leads -- you said there  
are team leads all throughout JPL; right?  
Mr...THE WITNESS: The term -- every place  
I’ve worked, I’ve seen terms like that.... [f]or  
all kinds of uses. Q. Well, how is the term  
used at JPL? A. I’m very familiar with what is  
done inside the division, and I’ve been a big  
proponent in having it apply for people who  
are put on a task, to lead a task with a group  
of people.”; *id.*, Exh. 3, Burgess Dep. Tr.,  
20:6-16 (“Q. Can you describe what the team  
lead’s responsibilities were under your super-  
vision? A. Well, it was an administrative-type  
task to lead the group. It wasn’t an official  
organizational position at all. But primarily it  
was to provide status to the customer, namely  
Cassini project, and overseeing task assign-  
ments to others on the team, getting feedback  
from them, and reporting it, and just sending a  
general direction on where the SA team was  
going as a whole. Q. Were you responsible for  
placing David In the role of team lead SA

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originally? A. Yes, I was.”; *id.*, 21:8-14 (“Q. What were the reasons you selected David for that role? A. Generally, the reasons were at that time he was considered the most senior in the group. Q. Senior with respect to time at JPL? A. Senior as a system administrator in support of the Cassini project.”; *id.*, 23:2-19 (“Q. Is it correct to say that the team lead served as a liaison between the SA group and the customers? ... THE WITNESS: Yes. Specifically they reported to Greg Chin in his element manager role for that particular area. His responsibility with the Cassini project -- Greg’s was -- was to have that SA team under his responsibility. BY MR. BECKER: Q. Were there particular criteria other than seniority that you took into account in selecting David for that role?... THE WITNESS: Well, he was not only senior but probably the best technical person.”; *id.*, Exh. 34, Employee Contribution and Assessment of Performance (“ECAP”) 2008 Job Description attached to Klenk Dep.Tr. as Exh. 34 (“Team Lead SA on multiple distributed networks for the Cassini project, both Development and Ops Operations, supporting over 160 Unix workstations and servers, and 14 routers and assorted peripheral equipment in the Space Flight Operations Facility. Support 10 remote Science and Operations centers in the USA and Europe, comprised of Cisco routers and workstations.

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| 1  |   | Participate in hardware, software, network    |
| 2  |   | design and implementation. Oversee func-      |
| 3  |   | tions of security, backups, monitoring, prob- |
| 4  |   | lem solving and user assistance. Coordinate   |
| 5  |   | tasks for team of 5 system administrators and |
| 6  |   | report activities to management.”).           |
| 7  | 17. As lead, Coppedge acted as a conduit          | Objection. Vague and ambiguous as to the      |
| 8  | between MSSO and the project. He                  | meaning of “conduit,” “attended Chin’s week-  |
| 9  | attended Chin’s weekly staff meetings and         | ly staff meetings and passed the information  |
| 10 | passed the information onto the SAs,              | onto the SAs,” and “relayed information from  |
| 11 | consolidated individual SA weekly status          | the project.” Subject to and without in any   |
| 12 | reports for Chin and relayed information          | way waiving the foregoing objection, and to   |
| 13 | from the project to Chin. <b>Tr. 176:2-177:22</b> | the extent that Responding Party understands  |
| 14 | (“Q. Well, what did you see as your job           | this alleged fact: Undisputed.                |
| 15 | duties and responsibilities when you were         |   |
| 16 | acting as the lead administrator? . . . . So      |   |
| 17 | one is acting as a liaison. Another one is        |   |
| 18 | the reporting and sometimes consolidating         |   |
| 19 | the input from the individual SAs into a          |   |
| 20 | consolidated report that you provided to Mr.      |   |
| 21 | Chin; correct? . . . [A] third thing was you      |   |
| 22 | also attended [weekly MSSO lead]                  |   |
| 23 | meetings that Mr. Chin had . . . . Does that      |   |
| 24 | generally summarize the activities you did        |   |
| 25 | as a lead? A. Yes, and bring their concerns       |   |
| 26 | forward. And also, I would take notes to          |   |
| 27 | bring back to the . . . system admin. Q.          |   |
| 28 | Acting sort of like, for lack of a better term,   |   |
|    | a conduit between the two entities? A.            |   |
|    | Yes.”); <b>Chin 102:13-22</b> (“Q. What is the    |   |
|    | purpose of a team lead? A. Well, the team         |   |

leads are like -- the project -- or my office is big, and I don't have an opportunity to talk to each and every individual. So the team lead would come and sit in my meetings, and I'd make some announcements, maybe prioritize something, maybe Christmas party is coming up -- just make general announcements that way. And their job or task is to relay that information down to their respective smaller groups.").

18. As a system administrator, it is important to work effectively with, and maintain a positive relationship with, the customer or user. Tr. 173:17-22 ("Q. And as a systems administrator, is it true that one of your most important functions -- not the only one, but one of the most important functions is to be able to work effectively with the customer or user? A. Well, yes. . . ."); Tr. 174:3-13 ("Q. Is it correct to say that as a systems administrator, it's very important for you to maintain a positive relationship with your customers and users? A. Yes . . .").

19. Chin received complaints from twenty-five different managers and staff about Coppedge's uncooperative attitude and poor interpersonal skills. Chin 80:15-81:18 ("Q. . . . Can you give me your impression of what the preponderance of complaints was generally related to? . . . . A. . . . so there

Objection. Vague and ambiguous as to the meaning of "customer or user." Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether Defendants discriminated against Plaintiff on the basis of religion. Subject to and without in any way waiving the foregoing objections, and to the extent that Responding Party understands this alleged fact: Undisputed.

Objection. Hearsay (Cal.Ev.Code § 1200). Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether Defendants discriminated against Plaintiff on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Re-

1 were some technical issues, and there were  
2 some personality issues, and there are some  
3 performance issues."); Chin 54:16-55:20  
4 ("Q. Did any of their dissatisfaction relate  
5 to David's temperament? MR. ZAPP:  
6 Objection. Vague as to "Temperament."  
7 A. Temperament is a characteristic I guess  
8 you could use, yes. Q. What did they say  
9 about his temperament? MR. ZAPP: Same  
10 objection as to "Temperament." Go ahead.  
11 A. Noncooperative. Q. Was that the word  
12 they used? A. I don't recall if that's the  
13 exact word. Q. And did they describe to  
14 you why they felt that he was not  
15 cooperative? A. To the extent that people  
16 would make suggestions and Dave would --  
17 "No, I can't do this" or "No." It was  
18 usually answering in a negative manner.");  
19 Chin 82:15-84:22 ("Q. Now, you used the  
20 word "personality issues." . . . what didn't  
21 they like about it? A. . . His personality in  
22 terms of they did not like working with him.  
23 They felt he was insincere. They would  
24 talk to him. They would believe he would  
25 not listen to them and has already formed an  
26 opinion about what he is going to do and  
27 just ignore them. And Dave -- and -- he  
28 didn't do anything feisty, angry, malicious.  
He was pleasant, but they felt he was being  
insincere about it. And I guess that  
annoyed them. Q. They feel he was

sponding Party understands this alleged fact:  
Disputed. Becker Decl., Exh. 29, 2002-2003  
ECAP performance evaluation attached to  
Klenk Dep.Tr. as Exh. 1 (rated higher by  
manager than employee on all items of "Inter-  
personal Effectiveness" save one.); *id.*, Exh.  
45, commendation from Jim Gersbach  
03/28/1997 ("Dave has been nothing less than  
outstanding - his work ethic, follow through,  
demeanor, and honesty.... everything has gone  
so smooth for the past six months that it is on-  
ly fitting that I toot the horn for him."); *id.*,  
Exh. 46, commendation from Bruce Elgin  
8/8/2000 ("David is an extremely hard, care-  
ful, and committed worker, and a pleasure to  
work with... if we could clone a couple more  
of him, our project would be in better  
shape."); *id.*, Exh. 36, 2009-2010 ECAP per-  
formance evaluation attached to the deposi-  
tion transcript D.Coppedge as Exh. 1035,  
feedback from J. Brown: ("Dave's SA duties  
put him in a support position of having to  
communicate with personnel. If issues do  
arise, there is no hesitation on his part to con-  
tact all parties involved to close the issues as  
soon as possible. Dave is a very approachable  
person which is reflected in his personality  
and interpersonal relationships with those he  
works with. Dave possesses all of the skills  
necessary to properly evaluate issues techni-  
cally.... He is a great asset to the Project and

1 stubborn? A. That would be a word that  
2 could be used, yes. Q. Did they say he was  
3 unpleasant? MR. ZAPP: Objection.  
4 Vague. Q. Or words to that effect? A.  
5 They said it would be unpleasant to be  
6 working with David."); Chin 71:16-73:13  
7 ("Q. . . . But who else complained about  
8 David? These are customers you're talking  
9 about? A. Customers, colleagues. Q.  
10 Well, I didn't ask you about colleagues, but  
11 why don't we just get all the names out  
12 right now, and we can go through it. . . I'll  
13 list the names of people you've mentioned  
14 already, and then you can add to that list so  
15 that we have it on one page. Diane Conner,  
16 Barbara Larsen, Carol Wong, Don  
17 Fleischman, Nancy Grenander, Pam  
18 Woncik, Sue Linick, and Kathryn Weld.  
19 MR. ZAPP: And Patti Smith. MR.  
20 BECKER: Patti Smith. . . MR. BECKER:  
21 He was going to add to the list. A. Tammy  
22 Fujii. . . . Margaret Weisenfelder . . .  
23 Harvey Chien, Nick Patel, Oscar Castillo,  
24 Robert Kremer, Bob Jobsky. . . Vicky  
25 Barlow, Carmen Vetter, Nancy Grenander,  
26 Bob Mitchell, Julie Webster. . . Scott  
27 Edgington. . . Bruce Elgin; Marrisa Rubio;  
28 Carol Boyles, . . . Mou Roy . . . Don  
Fleischman. That's all the names I'm  
recalling at the moment without sounding  
repetitive."

should be to his group."); *id.*, Exh. 47, ,  
emails to Burgess illustrating Coppedge's at-  
tempts to make peace with complaining par-  
ties, and get feedback from other customers  
attached to the deposition transcript of  
C.Burgess as Exhs. 52, 53, 55; *id.*, Exh. 3,  
Burgess Dep. Tr. 16:4-18:18 ("Mr. Becker: Q.  
Now, you worked with David for 12 years, a  
fairly lengthy period of time to work with  
somebody. How would you have character-  
ized him as a personality? . . . THE  
WITNESS: With me, he was very pleasant.  
BY MR. BECKER: Q. When you say 'with  
me,' you sort of qualified it there. Did you  
feel that he was unpleasant with others? A. I  
don't know that. I'm just saying my experi-  
ence was positive, pleasant. Q. As an employ-  
ee, did he respond well to instruction? . . . THE  
WITNESS: Yes. . . . Q. . . . [D]id he respond  
positively to constructive criticism? . . . THE  
WITNESS: As far as I know, yes. BY MR.  
BECKER: Q. Where there was room for im-  
provement, did you observe that he would  
make an effort to improve? A. Yes. Q. Did  
you find him to be somebody who had initia-  
tive? . . . THE WITNESS: Yes. BY MR.  
BECKER: Q. Did you find him to be some-  
body who was enthusiastic and supportive of  
the mission? A. Yes. Q. Did you determine  
that he was technically qualified for the job he  
was in? . . . THE WITNESS: Yes. BY MR.

1 BECKER: Q. Well, for the 12-year time peri-  
2 od. A. Yes. Q. At any time did you feel that  
3 he was technically unqualified for the position  
4 he held? ... THE WITNESS: No."); *id.*, 68:8-  
5 14 ("Q. Okay. So the complaints that you  
6 would learn about, you learned through Greg  
7 Chin; is that right? A. Primarily, yes. Q. You  
8 didn't learn them directly from the customers?  
9 A. I did not."); *id.*, 97:6-18 ("Q. Did Bob  
10 Mitchell ever talk to you directly about Da-  
11 vid? A. He did not. Q. How did you come to  
12 learn that Bob Mitchell had issues with Da-  
13 vid? A. I had heard it from Greg Chin for sev-  
14 eral years. Q. Is there any reason why you  
15 never discussed it with Bob Mitchell? A. Greg  
16 was my immediate interface to the project,  
17 and that was sufficient for me. Q. And you  
18 trusted Greg's judgment? A. I did."); *id.*,  
19 109:1-110:14 ("Q. Well, did you go directly  
20 to Pam [Woncik] to talk to her? ... THE  
21 WITNESS: Would I? BY MR. BECKER: Q.  
22 Did you in 2009? A. I did not. Q. Why not?  
23 A. Because I was relying on the input from  
24 Greg Chin. He is my customer interface. Q.  
25 And if Greg Chin's views were poisoned by  
26 some kind of bias, you would not know what  
27 that bias is, would you? ... THE WITNESS: I  
28 have no idea. BY MR. BECKER: Q. You  
never asked him, did you, whether or not he  
felt that these complaints were warranted? ...  
THE WITNESS: Not in those words, I did



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not. BY MR. BECKER: Q. But although he would tell you, 'This is what's happening, and I'm hearing from Mitchell and I'm getting pressure on this. We've got to do something about it,' you didn't learn the details of what David was specifically doing to create this sort of global disharmony within the project; correct? ... THE WITNESS: The details of the complaints between these project element managers [ ] were explained to Bob Mitchell. I had no knowledge whether Bob Mitchell in turn specified in detail what he told Greg other than that there was a complaint from somebody on such and such a subject. I don't know those details were even fed down to Greg. They may have been, but I don't know."); *id.*, Exh. 8, Chin Dep.Tr., 60:3-11 ("Q. Can you be more specific about what he does or did that made you believe that he could be difficult to work with? A. Most of the observations or comments or impressions are the result of others -- listening to people talk to me about issues and concerns. When David is around me, he acts generally very professional, generally very responsive to my role as the office manager."); *id.*, ("Q. Did you ever document in writing for purposes of David's personnel file any of the complaints made against him?... THE WITNESS: No."); *id.*, 76:8-10 ("Q. Did you document the complaints from any of those individuals in writ-

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|   | <p>ing? A. No, sir.”); <i>id.</i>, Exh. 22, Weisenfelder Dep.Tr. 53:10-20 (“Q. What did you think of him? THE WITNESS: In my acquaintance with Dave Coppedge, my impression is that he is a sincere person, that he’s a serious person, and that’s really about it. I don’t know him very well. BY MR. BECKER: Q. Prior to November 2008, did you believe that David Coppedge was a pushy person? ... THE WITNESS: No.”); <i>id.</i>, Exh. 24, Edgington Dep. Tr., 15:1-5 (“Q. Prior to that discussion, how would you have characterized David and your relationship? A. Prior to that discussion, I ... thought Dave was a nice guy, you know, cordial, you know, curious about the ongoings of the project.”); <i>id.</i>, Exh. 7, Mitchell Dep.Tr., 8:11-14 (“Q. What is your impression of David as a person? A. I think he’s an honest, fair, forthright kind of person.”); <i>id.</i>, Exh. 36, Patel Dep. Tr., 60:25-62:3 (“Q. Do you like David Coppedge? A. Yes, I do. Q. Did you consider him a friend? A. Yes. Q. Can you describe to me what kind of person David was to you.... THE WITNESS: I got along with him fairly decent.... Q. ... What was your impression of David while working with him? A. He was easy to get along [with].”).</p> |
| <p>20. There were several people who complained about interacting with Coppedge and/or chose not to work with him. Tr. 534:22-535:18 (“Q. Isn’t it true</p> | <p>Objection. Hearsay (Cal.Ev.Code § 1200). Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether Defendants discrimi-</p>  |

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that there were several people who complained about interacting with you and/or chose not to work with you even though you may have disagreed with their perceptions? Isn't that in fact true? . . . . The question is weren't there several people who complained about interacting with you and/or chose not to work with you but to work with others, even recognizing you may have disagreed with that perception? A. Yes . . .").

nated against Plaintiff on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed. However, see Plaintiff's objections and responses to ¶ 19, *supra* .

21. Chin coached Coppedge on how to improve his interactions with others. Chin 55:21-56:1 ("Q. Did you have a talk with David about the fact that people believed he was noncooperative at any time? A. Yes. Q. More than one time? A. Yes."); Chin 86:24-90:16 ("Q. Did you have any discussions with David concerning their complaints? A. Yes. . . . Q. What did you tell him as specifically as you can recall? A. Well, these are different type of communication skills, the things of how you deal with people, you know, one of the main things in dealing with customers is you have to listen to them. . . . figure out what is the problem that they're trying to solve and work with the users instead of just saying, 'No, I can't do that.' . . . that is a common theme, is that Dave would be very negative on topics. . . . The

Objection. Vague and ambiguous as to the meaning of "coached," "improve," and "interactions." Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Disputed. Chin supervised Coppedge , a responsibility of his management position. Chin believed that Coppedge dealt with many complex problems and personnel and has held up well to the task. 2003-2004 ECAP performance evaluation, ¶ 6, attached to the deposition transcript of K.Klenk as Exh. 2 ("David has become a very valuable employee and asset to Jpl [sic] and to the Casini Project in particular. David has had a difficult year working with many complex prob-

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1 preponderance of things that kept coming  
2 up was that Dave had a hard time working  
3 with people. And you know, I would think,  
4 well, maybe we try different  
5 communication strategies, and let's figure  
6 out how we can better improve the  
7 situation."); Chin 334:2-5. ("Q. And you  
8 would also have discussions about how to  
9 deal with the customer more effectively;  
10 right? A. Yes, sir.").

11 lems and personnel and has held up well to  
12 the task."); *id.*, Exh. 31, 2004-2005 ECAP  
13 performance evaluation attached to deposition  
14 transcript of K.Klenk as Exh. 3 ("David has  
15 had many accomplishments this last year end-  
16 ed them in a very difficult environment. Da-  
17 vid has led the Cassini Sys Admin team for a  
18 couple of years now and the project's success  
19 has been partly due to this team's efforts and  
20 dedication."); Among "David has had many  
21 difficult customers and has been able to deal  
22 with them and understand their problems to  
23 such a degree that there was all working to-  
24 gether now tort a common goal, that been the  
25 success of the project."; "Summary of cus-  
26 tomer feedback: several of David's Cassini  
27 customers have voiced support for him and  
28 his team. They seem to be most appreciative  
of his efforts and support they get from the  
team he leads. "; "Overall, David is shown the  
ability to keep the team going and overcoming  
the many different problems that have come  
up. We hope he stays with us for several  
more years because Cassini's certainly needs  
him and benefits from his efforts."; *id.*, Exh.  
32, 2005-2006 ECAP performance evaluation  
attached to the deposition transcript of  
K.Klenk as Exh. 4 ("David has led the sys  
admin team for several years now and their  
customers are becoming more and more used  
to dealing with him."; "David has had signifi-

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|  | <p>cant improvement and success in dealing with others on the Cassini project. They all have more of a get-along and get-the-job done mentality.”; “David has done a good job this year and has overcome a lot of his customers’ concerns from past years.”); <i>id.</i>, Exh. 34, 2007-2008 ECAP performance evaluation attached to the deposition transcript of K.Klenk as Exh. 6 (“Dave has gone above and beyond what would be normally expected to communicate with individuals &amp; teams who have expressed dissatisfaction with prior interactions.”; “David has most of his project customer supporting when he’s trying to do for them is expected to continue supporting the project over the next several years.”)</p> |
| <p>22. Cassini’s Project Manager, Bob Mitchell, suggested several times that Chin should remove Coppedge from the project, but Chin defended Coppedge. Tr. 204:12-205:12 (“Q. Did Mr. Chin ever tell you that Program Management asked him several times to replace you? A. He said that. . . . Q. How many times did Mr. Chin tell you that Program Management had come to him and asked that you be replaced? A. I don’t know. At least two. And he would say, ‘And Dave, I stood up for you, and I defended you.’ Q. And is that true? You believe that he did stand up and defend you? A. Tammy says that’s what he did. I</p> | <p>Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Subject to and without in any way waiving the foregoing objections, and to the extent that Responding Party understands this alleged fact: Disputed. Becker Decl., Exh. 7, Mitchell Dep.Tr., 55:4-7 (“Q. Did you ever tell Greg Chin, ‘Greg, it’s time we replace David’? A. No. What I said to Greg was ‘Greg, this is a problem. It’s your problem. You got to fix it.’”)</p>  |

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1 have no reason to doubt it."); Chin 188:11-  
2 189:12 ("Bob [Mitchell] had suggested  
3 strongly to me that there are things we  
4 should do to improve our overall situation  
5 by it best to get rid of David. Q. He said it  
6 would be best to get rid of David? A. I  
7 cannot be sure of those exact words, but I'm  
8 paraphrasing. He said, 'What can we do to  
9 get David off Cassini?' . . . Q. When was  
10 the first time he made those comments or  
11 comments similar to that? MR. ZAPP:  
12 Objection. Asked and answered. Go ahead.  
13 A. Sometime in the early 2000's."); Chin  
14 190:17-191:2 ("Q. Bob Mitchell -- I would  
15 characterize his conversations as 'We  
16 should really make a change. You should  
17 get rid of him.' I have had long discussions  
18 with Bob Mitchell about what are the  
19 reasons, what are the facts, why. We went  
20 into details about whatever instance that  
21 may have popped up. Sometimes I felt they  
22 were unwarranted. Sometimes valid  
criticism. Okay. But I didn't think it rose  
to the level of removing someone from a  
project.").

23 23. When Chin told Burgess about these  
24 complaints, Burgess tried to find another  
25 project for Coppedge, but there were no  
26 openings because JPL had fewer projects  
27 and positions over the years. Chin 97:5-  
28 99:6 ("Q. Was there a time . . . in which

Objection. Immaterial. The alleged fact has  
no significance in determining the outcome of  
this case with regard to whether Defendants  
discriminated against Plaintiff on the basis of  
religion. Subject to and without in any way  
waiving the foregoing objection, and to the



1 customer would go away as they moved on  
2 to some other work task. And that wasn't  
3 happening. Our workplace at JPL was  
4 downsizing."); Burgess 61:8-15 ("Q. Did  
5 you ever consider having him terminated?  
6 A. That was considered. Q. When? A. A  
7 number of times over those years. Q. And  
8 why was it not put into effect? A. Because  
9 I decided to somewhat protect him and try  
10 to find a new place for him.").

11 24. Burgess did not document many  
12 criticisms in Coppedge's annual  
13 performance reviews to maximize  
14 Coppedge's chance to transfer to another  
15 project. Burgess 58:14-59:7 ("I was  
16 looking for another position to transfer him  
17 to so I could have him removed so that  
18 problem that he was having with the rest of  
19 the people on the project would go away.  
20 The other members of his team were having  
21 success on dealing with those people,  
22 whereas he didn't seem to be making any  
23 headway. Q. Did you document those facts  
24 in the ecaps? A. I don't believe I did. Q.  
25 Why not? A. Part of the transfer scenario  
26 that I had imagined would be -- one thing  
27 that would be involved in that would be the  
28 review of the documents by his prospective  
new customer, and I didn't want to put too  
much negativity into the ECAPS.").

Objection. Immaterial. The alleged fact has  
no significance in determining the outcome of  
this case with regard to whether Defendants  
discriminated against Plaintiff on the basis of  
religion. Objection. Burgess was the sole  
witness to the alleged facts and his state of  
mind is offered solely through his self-serving  
affirmation of it. Code.Civ. Proc., §437c(e)  
("... [S]ummary judgment may be denied in  
the discretion of the court, where the only  
proof of a material fact offered in support of  
the summary judgment *is an affidavit or dec-*  
*laration made by an individual who was the*  
*sole witness to that fact; or where a material*  
*fact is an individual's state of mind, or lack*  
*thereof, and that fact is sought to be estab-*  
*lished solely by the individual's affirmation*  
*thereof.*" Emphasis added.) Subject to and  
without in any way waiving the foregoing ob-  
jections, and to the extent that Responding  
Party understands this alleged fact: Respond-



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|  | ing Party can neither dispute nor support this fact inasmuch as Burgess was the sole witness to the fact as alleged, and because Defendant seeks to establish the alleged fact solely by Burgess' affirmation of it. |
| 25. On the morning of March 2, 2009, Cassini's Digital Librarian, Margaret Weisenfelder, told Chin that Coppedge had harassed her in discussions about Proposition 8 and that Coppedge appeared to be targeting JPL co-workers because a DVD Coppedge had given her about intelligent design had a post-it note on the back cover listing JPL co-workers (the list had a notation "Try Again" beside one of the names). Chin 114:3-24 ("I had an individual who expressed a concern, a complaint. Two issues. One was David -- well, they felt -- to the point they were being harassed, and it was regarding Prop 8 and some religious aspects. The second thing was also that the individual brought up and said that David had a list of people that he was, quote, 'targeting' . . ."); Chin 128:11-129:8 ("Q. It says that Margaret came to your office to express a concern about being harassed by David" dash, dash, 'His belief in intelligent design and support for Prop 8.' What did she tell you about his belief in intelligent design and support for Prop 8 made her feel as though he was | Objection. Hearsay (Cal.Ev.Code § 1200). Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed.                       |

1 harassing her? A. I don't recall the exact  
2 words that Margaret used. . . but Dave was  
3 against gay marriages, and Margaret had the  
4 opinion that gay marriages were okay. And  
5 she felt that David wouldn't take no for an  
6 answer. And she said -- she tried to get  
7 Dave to leave, and . . . I believe David had  
8 said something, 'Is there anything I could  
9 do to convince or change your mind?' and  
10 she said 'No.' and Dave would shake his  
11 head and leave. In summary, that's kind of  
12 what she relayed to me.").

13 26. On March 2, 2009, Chin spoke to  
14 Coppedge informally about what  
15 Weisenfelder reported to him in the hope of  
16 avoiding further (and even more serious)  
17 complaints. Chin 140:2:9 ("Margaret used  
18 the word 'harassment.' I was not in a  
19 position to sit there, to judge whether it rose  
20 to the level or not. That was not my intent,  
21 my intent was an employee used a key word  
22 that can trigger formal complaints and  
23 things. I was trying to advise David not to  
24 do this. 'Stop it before we get ourselves  
25 into big trouble.'"); Tr. 271:10-16 ("Q. So  
26 let's turn to the events of March 2, 2009.  
27 Now, there is a meeting where you and  
28 Greg Chin were alone, but it's my  
understanding that there was a meeting  
preceding . . . A. It was the weekly MSSO  
team lead meeting."); Tr. Ex. 1012

Objection. Vague and ambiguous as to the  
meaning of "informally." Subject to and with-  
out in any way waiving the foregoing objec-  
tion, and to the extent that Responding Party  
understands this alleged fact: Disputed that  
this was an informal conversation. It was a  
harangue, a tirade, an angry outburst.  
Coppedge was shocked and stunned and com-  
pletely caught off guard by Chin's behavior  
and his manner. Becker Decl., Exh. 2,  
Coppedge Dep.Tr., 275:1-10 ("Q "...[D]id he  
make a statement to you to the point or to the  
effect that you shouldn't try to advocate your  
beliefs or question the beliefs of others? A He  
put it a lot stronger than that. He claimed I  
was pushing my religion on people, and he  
was visibly angry and demanding that it had  
to stop. Q So he was visibly angry and de-  
manding at the very outset of the meeting? A

1 (Coppedge notes summarizing what he  
2 believes was said during the March 2, 2009  
3 meeting).

Yes.”); *id.*, 276: 5-15 (“Q So is it your testi-  
mony that Mr. Chin was visibly angry and  
hostile towards you at the very outset? ... A  
My recollection is that he was hostile and ar-  
gumentative from the outset. And I wrote  
down my recollections of the meeting....”);  
6 *id.*, 278:12-14 (“...[H]e was argumentative  
and would not listen to reason. No matter  
7 what I said in my defense, he refused to ac-  
cept it.”); *id.*, 142:3-4 (“I was frankly shocked  
at this outburst.”); *id.*, (“I was stunned. I was  
11 completely caught off guard by his behavior  
and his manner....”); *id.*, Exh. 16, Huntley  
12 Dep.Tr., 134:22-25 (“Q. And David told you  
that Greg was very angry during the meeting  
13 on March 2 and refused to tell David who  
made the complaint? A. Yes.”); *id.*, Exh. 8,  
14 Chin Dep.Tr., 152:23-25 (“I raised my voice  
because I was getting frustrated because, you  
15 know, I had asked Dave, ‘let’s not go here.’”);  
16 Disputed that Chin spoke to Coppedge about  
Weisenfelder. *Id.*, 265:20-266:10 (“ BY MR.  
17 BECKER: Q. In other words, on March 2,  
2009, when you told David that you had re-  
18 ceived a lot of complaints from people, you  
had in mind certain individuals who had com-  
19 plained about him discussing politics and reli-  
20 gion around the office; right? A. No, sir. Q.  
21 So when you told him on March 2, 2009, that  
other people had complained, were you refer-  
22 ring to job performance issues? A. I was actu-

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|   | ally referring to -- in terms of the religious and politics and things, I was just referring to Margaret Weisenfelder, but I was leaving in generalities because I did not want him to be able to identify specifically who so he could go and confront the individual.”) Huntley Dep.Tr., 134:22-25 (“Q. And David told you that Greg was very angry during the meeting on March 2 and refused to tell David who made the complaint? A. Yes.”). Disputed that Weisenfelder’s comments to Chin constituted a “serious complaint.” |
| 27. According to Coppedge, Chin was hostile and argumentative from the outset, said ID was religion, not science, accused Coppedge of “pushing” religion on colleagues and told him to stop bringing up religion and politics with others in the office, though he could discuss those topics during lunch or at home. Tr. 275:1-7 (“Q. And did he make a statement to you to the point or to the effect that you shouldn’t try to advocate your beliefs or question the beliefs of others? A. He put it a lot stronger than that. He claimed I was pushing my religion on people, and he was visibly angry and demanding that it had to stop.”); Tr. 276:5-15 (“Q. So is it your testimony that Mr. Chin was visibly angry and hostile towards you at the very outset? . . . A. My recollection is that he was hostile | Undisputed.   |

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1 and argumentative from the outset . . ."); Tr.  
2 278:2-15 ("Q. BY MR. ZAPP: And in  
3 fact, wasn't Mr. Chin's tone at the outset of  
4 the meeting one of trying to work with you,  
5 one of trying to give you sort of a heads-up  
6 that this is an issue that someone's  
7 complained about, so you ought to be  
8 careful about how you go about doing this?  
9 . . .THE WITNESS: No, my recollection is  
10 that he was argumentative and would not  
11 listen to reason. No matter what I said in  
12 my defense, he refused to accept it."); Tr.  
13 Ex. 1012 (Coppedge notes summarizing  
14 what he believes was said during the March  
15 2, 2009 meeting).

16 28. During the March 2, 2009 meeting,  
17 Chin allegedly stated "You are not to talk  
18 about religion or politics with anyone in this  
19 office, or it will be difficult for you to  
20 maintain employment in this organization."  
21 Tr. 290:2-15 ("Q. And at some point did  
22 Mr. Chin make any statement to the effect  
23 that if you continued to talk about  
24 intelligent design or other beliefs with  
25 people who have already said they're not  
26 interested, that that could have some  
27 limitation on your future employment  
28 opportunities? . . .THE WITNESS: I stated  
exactly what I recalled he remembered, that  
he looked me in the eye and said, 'You are  
not to talk about religion or politics with

Undisputed.

|    |  |             |
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| 1  | anyone in this office, or it will be difficult |             |
| 2  | for you to maintain employment in this         |             |
| 3  | organization.””).                              |             |
| 4  | 29. Coppedge told Chin that his words          | Undisputed. |
| 5  | could be construed as creating a hostile       |             |
| 6  | work environment. Tr. 295:2-296:5 (“Q. . .     |             |
| 7  | Did you tell Mr. Chin that he was creating a   |             |
| 8  | hostile work environment? . . . A. I said his  |             |
| 9  | words could be construed as creating a         |             |
| 10 | hostile work environment.””).                  |             |
| 11 | 30. On March 3, 2009, Coppedge                 | Undisputed. |
| 12 | summarized his version of the March 2,         |             |
| 13 | 2009 meeting in an email to Chin. Tr. Ex.      |             |
| 14 | 1014; Tr. 329:22-330:6 (“Q. . . Is Exhibit     |             |
| 15 | 1014 a true and correct copy of the email      |             |
| 16 | that you sent to Greg Chin and which you       |             |
| 17 | have described earlier as being your           |             |
| 18 | summary of the conversation? A. Yes. Q.        |             |
| 19 | And did you develop this email from the        |             |
| 20 | notes that you had taken which we’ve           |             |
| 21 | marked previously as Exhibit 1012? A.          |             |
| 22 | Yes, I summarized them and redacted them       |             |
| 23 | for this purpose.””).                          |             |
| 24 | 31. Chin did not respond to Coppedge’s         | Undisputed. |
| 25 | March 3, 2009 email. Tr. 276:12-15 (“And       |             |
| 26 | I wrote down my recollections of the           |             |
| 27 | meeting and gave him an opportunity to         |             |
| 28 | respond and say is this correct? And he did    |             |
|    | not.”)   |             |
|    | 32. Chin notified his and Coppedge’s           | Undisputed. |
|    | management about the meeting and the           |             |

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1 hostile-work-environment comment. Chin  
 2 151:4-154:3 (“‘Hostile work environment’  
 3 is another key phrase, a very sensitive one. .  
 4 . . I thought about it. I go, ‘Oh, maybe I  
 5 said it the wrong way.’ So I went and  
 6 reported to my organization . . . that I had  
 7 created a hostile work environment for  
 8 [David] . . . . I was trying to just brief Cab. I  
 9 told the AA and the people I notified  
 10 because, ‘Look, I said something. . . I raised  
 11 my voice because I was getting frustrated . .  
 12 . and so if I created a hostile work  
 13 environment, I later thought my choice of  
 14 words were probably not the best choice of  
 words. And I went and reported it and said,  
 ‘Look, if I did something wrong, tell me.’”).

15 33. Human Resources Generalist Jhertaune  
 16 Huntley investigated the issues surrounding  
 17 the March 2, 2009 meeting. Huntley Decl.  
 18 ¶ 4.

Objection. Vague and ambiguous. Subject to  
 and without in any way waiving the foregoing  
 objection, and to the extent that Responding  
 Party understands this alleged fact: Undisput-  
 ed.

19 34. As part of her investigation, Huntley  
 20 interviewed Coppedge, Chin, Burgess,  
 21 Weisenfelder, Carmen Vetter, and Scott  
 22 Edgington. Huntley Decl. ¶¶ 5, 8.

Undisputed.

23 35. Chin described Weisenfelder’s  
 24 complaint. He also said that Coppedge had  
 25 made another Cassini employee (Carmen  
 26 Vetter) uncomfortable by discussing his  
 27 religious views in the workplace. Huntley  
 184:2-7 (“Q. You said you learned about

Objection. Vague and ambiguous as to the  
 context in which Chin described Weisenfeld-  
 er’s complaint. Vague and ambiguous as to  
 the meaning of “complaint.” Incomplete and  
 misleading. Subject to and without in any  
 way waiving the foregoing objections, and to

1 Weisenfelder . . . from Greg Chin, you also  
2 learned about Carmen Vetter from Greg  
3 Chin? A. Yes.”); Huntley Decl. ¶ 6.

the extent that Responding Party understands  
this alleged fact: Undisputed.

4 36. When Huntley interviewed Coppedge,  
5 he volunteered that he had discussed Prop. 8  
6 with another co-worker (Scott Edgington)  
7 and that their conversation had become  
8 heated such that Coppedge had apologized  
9 the next day for his behavior. Tr. 104:8-10  
10 (“Q. You met with Ms. Huntley on March  
11 5 of 2009; correct? A. I believe so.”); Tr.  
12 345:1-346:8 (“Q. What did you tell her  
13 about Proposition 8 materials with Scott  
14 Edgington? A. . . I had no way of knowing  
15 this in advance, but he was apparently a  
16 very strong opponent of Prop 8. I didn’t  
17 know that. And when I just offered him,  
18 ‘Well, wouldn’t you like to at least just read  
19 what it’s about and what it says?’ I pursued  
20 that with a few questions, and he engaged  
21 me with his reasons why not and why he  
22 didn’t believe it. And we got into a  
23 conversation about it for some time that did  
24 become a little bit heated to the point where  
25 the next day, I went to him . . . . And it kind  
26 of surprised me how argumentative he got  
27 about it. I -- it got to the point where I  
28 backed off and realized nothing is being  
gained here. So I just cut it off. The next  
day I said, ‘Scott, I just want to reaffirm to  
you that I consider you a friend. And I

Undisputed.



1 think yesterday's conversation got a little  
2 heated, and I just wanted you to know I  
3 appreciate you and I'm sorry for that. And  
4 will you forgive me?' He stood up and  
5 spontaneously shook my hand as if he really  
6 appreciated my having the guts to do  
7 that."); Huntley 331:5-14 ("David stated  
8 that he had a heated conversation with  
9 Scott. When I asked him the question, you  
10 know, about the situation or the other  
11 situations, he volunteered that information  
12 with Scott Edgington. And he said it didn't  
13 sit well with him because he knew that, you  
14 know, Scott and he didn't agree. But he  
15 wanted to clear the air. So he approached  
16 him the next day or there afterwards and  
17 apologized."); Huntley Decl. ¶ 7.

16 37. Weisenfelder described to Huntley the  
17 two incidents she reported to Chin. She  
18 explained that Coppedge's persistence made  
19 her feel uncomfortable and that he stepped  
20 over the line by discussing politics and  
21 religion during work hours. Weisenfelder  
22 127:16-21 ("Q. Do you remember meeting  
23 with Jhertaune Huntley? A. Yes, I do. Q.  
24 Was March 19, 2009, about the time that  
25 you remember meeting with her? A. It was  
26 in March."); Weisenfelder 145:22-147:12  
27 ("Q. Looking at Exhibit 31, ... Margaret  
28 stated to Dave that she did not agree with  
his viewpoint on Prop 8 and did not want to

Undisputed that Weisenfelder told Huntley  
her self-serving version of what had occurred.

1 discuss the issue with him because he was  
 2 so persistent.' Now, your testimony earlier  
 3 was that you didn't tell him that you did not  
 4 want to discuss the issue. You just told him  
 5 you didn't agree with him. Did you tell  
 6 Jhertaune Huntley that you told David that  
 7 you did not want to discuss the issue with  
 8 him because he was so persistent? A. . . .  
 9 It's been two years . . . I'm not sure. I  
 10 don't have any reason to doubt Jhertaune's  
 11 notes, but I don't have a specific  
 12 recollection. BY MR. BECKER: Q. Well,  
 13 she underscores 'He was so persistent.' . . .  
 14 Is it correct to say that you told Jhertaune  
 15 Huntley that David was very persistent, in  
 16 your view? A. I felt that he was being  
 17 persistent. Q. Okay. But did you also tell  
 18 her that you told David, 'David, you're  
 19 being too persistent'? A. I might have, but  
 20 I don't remember specifically. Q. And you  
 21 felt that David was being persistent when he  
 22 asked you whether there was anything he  
 23 could say to change your mind; right? . . .  
 24 THE WITNESS: Yes."); Weisenfelder Ex.  
 25 31; Huntley Decl. ¶ 9.

23 38. Vetter told Huntley that Coppedge had  
 24 harassed her a few years earlier by  
 25 demanding that she change the name of the  
 26 Cassini "Holiday" Potluck to a "Christmas"  
 27 Potluck. Coppedge had been so persistent  
 28 that she had asked Chin to make Coppedge

Undisputed that Vetter told Huntley her self-  
 serving version of what had occurred. Disput-  
 ed that Coppedge harassed Vetter. See  
 Coppedge's Additional Disputed Material  
 Facts, § XI (findings of a feckless investiga-  
 tion: the Christmas incident and Vetter's

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stop. Vetter Ex. 26 (Huntley notes from Vetter interview; "A couple years (four to five years) he demanded that she put the word 'Christ' on the Holiday Potluck Invitation flier"); Vetter 116:17-19 ("Q. Do you recall meeting with Jhertaune Huntley on March 20th, 2009? A. Yes."); Vetter 126:19-127:3 ("Q. Did you use the word "harassed" in your conversation with Jhertaune Huntley? A. Yes. Q. What did you mean by it? A. I mean the holiday potluck flier. I mean him wanting to talk to me about it whenever we ran into each other. That is what I meant. Q. So you felt he was harassing you; is that right? A. That is correct."); Vetter 130:15-20 ("I stated earlier that during this time when we were talking in the first paragraph about the potluck, he was harassing me. And I did the appropriate thing by contacted Greg Chin, and it stopped. And that is what that first paragraph with Jhertaune is regarding."); Vetter 145:16-22 ("Q. But did you tell Jhertaune Huntley that he demanded that you put the word 'Christ' as opposed to the word 'Christmas' in the holiday party flier? . . . THE WITNESS: I don't recall everything we said or how she may have shorthanded it. I don't recall."); Huntley Decl. ¶ 10.

agenda).

39. Edgington told Huntley that, after

Disputed that David told Scott that he "must

1 Coppedge had initiated a discussion about  
2 Prop. 8, Coppedge insulted him by saying  
3 that he "must be against having children"  
4 because he disagreed with Coppedge's view  
5 on the proposition. Edgington Ex. 27  
6 (Huntley notes from Edgington interview;  
7 "David became more passionate about his  
8 viewpoint and kept going on about his  
9 personal views. Per Scott, David at one  
10 point stated 'he must be against having  
11 children.' Scott had to ask David to leave  
12 his office . . ."); Edgington 28:4-6 ("Q. Do  
13 you recall meeting with Jhertaune Huntley  
14 on March 20th, 2009? A. Yes, I do.");  
15 Edgington 28:22-24 ("Q. What was the  
16 nature of that conversation? A. It was as a  
17 result of the incident where David came to  
18 talk to me about Proposition 8 . . .");  
19 Huntley Decl. ¶ 11.

be against having children." Edgington under-  
stood during the disagreement with Coppedge  
that Coppedge was concerned that Proposition  
8 would be harmful to children. Disputed that  
Coppedge insulted Edgington. Edgington  
Dep. Tr. 50:2-3 (Q. He was expressing con-  
cern for children? A. Yes."); *id.* 63:3-5 ("A.  
The biggest point was the children, yes, and  
he was very adamant in his statement that this  
would be harmful to children, yes. "). Disput-  
ed that Coppedge initiated an argument. It  
was Edgington – not Coppedge – who initiat-  
ed an argument with insults by labeling  
Coppedge's position "propaganda."  
Coppedge had a polite conversation on the  
subject with another employee, Bruce Elgin.  
Huntley dismissed these relevant facts. *Id.*,  
Huntley Dep.Tr., 332:8-15 ("He [Coppedge]  
told me that he went and spoke with Bruce  
and he spoke with Scott...Q. Had a friendly  
conversation with Bruce; right? ... THE  
WITNESS: That's what David stated."); *id.*,  
Edgington Dep.Tr., 40:14-41:4 (Q. After you  
discussed some science-related issues, what  
happened? A. Well, he asked if he could have  
a few more moments of my time and asked if  
I would be willing to talk about Prop 8. ...  
[T]hinking that Dave was a reasonable guy, I  
said, 'Sure, I don't mind.' He then proceeded  
to define Prop 8, asked if I knew what it was  
about. And, you know, I said yes, I did know

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about it. You know, I told him that I did not know how I was going to vote on it. He then proceeded with going into some propaganda that was being put out by various parties, which I'm sure everyone knew about it if they had a TV, you know, to which he was saying this propaganda. You know, I responded with 'I do not believe this propaganda.'"; Id., 43:10-12 ("Q. You were leaning towards voting against it? A. Voting against it, yes."); Id., 42:21-22, 43:12 ("Q. You were leaning towards voting against it? A. Voting against it, yes."); Id., 44:3-46.12 ("Q. So when he began discussing it with you, he said, 'Are you familiar with this measure, this Prop 8 measure?' Right? A. Yes. Q. And you told him you were? A. Yes. Q. Where did the conversation head then? A. Well, he went over the propaganda. Q. I guess I need to know what you mean by propaganda. He didn't have literature with him. So when you're referring to propaganda, what are you referring to? A. The propaganda meaning that this would be harmful to kids, if passed -- or if not passed. Q. By propaganda, then, you mean the arguments for the measure? A. Yes. Q. You understand "propaganda" is a pejorative term, don't you? THE WITNESS: Yes. BY MR. BECKER: Q. Okay. I just want to know how you're using the word 'propaganda.' So when you use the word 'propaganda' referring to the arguments

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|   | for the measure, you're intending to use that term in its pejorative sense; correct?... Do you understand the question? THE WITNESS: It would be good if you define 'pejorative.' BY MR. BECKER: Q. Well, 'pejorative' means that you're giving it a negative meaning; the use of the word presents a negative context. A. Okay. Q. So when you use the word 'propaganda' -- like when we talk about Soviet propaganda during the Cold War, we're talking [about] it in the sense that it's information being put out by an unreliable source; right? Yes.... Q. ... Again, I'm trying to focus on the way you're using the term 'propaganda' because I want to understand what you're telling me. When you used the word 'propaganda,' you could be using the word 'arguments' for Proposition 8, which has a neutral meaning. But you used the word 'propaganda' in the sense that you feel the arguments for Proposition 8 are illegitimate? A. Yes.") |
| 40. Edgington had to tell Coppedge twice to leave his office before he finally did so. Edgington 80:25-81:8 ("Q. Did you tell [Vetter] that you asked him to leave two times? A. Yes. Q. Did you tell her that he refused to leave? A. I must have, yes. MS. FOX: He doesn't want you to guess. To the best of your recollection. A. Yes."); Edgington 101:23-103:2 ("Q. Dr. Edgington, a moment ago you were | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether Defendants discriminated against Plaintiff on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Disputed. Becker Decl., Exh. 2, Coppedge Dep.Tr., 346:16-18 ("Q Did Mr. Edgington have to tell you to leave his office?   |

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| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17 | testifying to the fact that you had felt threatened in this meeting with David Coppedge. Did you consider calling anyone to assist you in that meeting? . . . .<br>A. Well, my first thought was anyone within, you know, hearing range, the other was to call security and . . . based on his behavior, I did not know how the situation was really -- you know, what he would do. You know, he's standing there, going through his arguments and, you know, talking in a louder tone to me. Here I am sitting at my desk. I didn't know how things would play out, whether he would leave or not. so I was thinking, okay, maybe security might be the proper thing to do. Q. Did you in the end call security or anybody outside your office for help? A. No, I did not because by the second time I asked him to leave, he had left the office."). | A He claims he did, but I don't recall that.") |
| 18<br>19<br>20<br>21<br>22  | 41. Based on her investigation, Huntley concluded that Coppedge's behavior violated Caltech's Unlawful Harassment Policy and its Ethics and Business Conduct Policy. Huntley Decl. ¶ 12, Exs. A and B.   | Undisputed.                                    |
| 23<br>24<br>25  | 42. Huntley recommended that Coppedge receive a written warning for his conduct. Huntley Decl. ¶ 14.   | Undisputed.                                    |
| 26<br>27<br>28  | 43. Burgess and Klenk agreed with Huntley's recommendation. Burgess 118:13-119:2 ("Q. Was the decision to  | Undisputed.                                    |

1 issue the written warning yours to make, or  
2 was it a combination of yours and Kevin's  
3 or yours and Kevin's and HR's or HR's?  
4 Whose was it? A. It was a  
5 recommendation from HR to me. And as  
6 you saw, there was no signature block on  
7 there by Kevin. But I chose to share that  
8 with him on recommendation from hr [sic]  
9 since he was my immediate manager -- to  
10 include him in that until -- you know, so he  
11 was aware of it all before we actually  
12 delivered it to David. Q. Which is a way of  
13 saying it was your decision; right? A.  
14 Yes."); Klenk 130:18-23 ("Q. What was  
15 your involvement with respect to the written  
16 warning decision? A. I heard the feedback  
17 from hr [sic] concerning it. They reviewed  
18 what their findings were. They said what  
19 their recommendation was, and I supported  
20 that decision."); Huntley Decl. ¶ 14.

21 44. On April 13, 2009, Burgess and Klenk  
22 delivered the written warning to Coppedge.  
23 Tr. 406:12-14 ("Q. The 13th of April, that  
24 was the date of the disciplinary meeting?  
25 A. Yes."); Tr. Ex. 1018 (written warning,  
26 dated April 13, 2009); Tr. 389:17-20 ("Q.  
27 Okay. All right. You recognize Exhibit  
28 1018 as the warning letter that you  
received? A. Yes.") Klenk 306:5-19 ("Q.  
Were you advised by hr that you should  
play any particular part within that process?

Undisputed.



1 . . . A. HR suggested that I should attend  
2 the meeting with Cab and David. Q. Did  
3 they tell you what the basis of their  
4 suggestion was? A. I do not recall them  
5 saying any basis. Q. Did you have any  
6 understanding as to why they were asking  
7 you to participate in the meeting? . . . A.  
8 As I understand it, it was to support Cab in  
the meeting with David.”).

9 45. Coppedge acknowledges that Burgess  
10 and Klenk treated him courteously, and no  
11 one raised his voice, in the April 13, 2009,  
12 meeting. Tr. 395:21-396:5 (“Q. And  
13 during the course of the meeting, fair to say  
14 that none of you raised your voices;  
15 correct? A. Correct. Q. And Mr. Klenk  
16 and Mr. Burgess and you treated each other  
17 courteously even though there was  
18 disagreement obviously on some of the  
19 topics; correct? A. Well, for people who  
were not paying attention to what I was  
saying, yeah, they did that courteously.”).

20 46. Burgess and Klenk told Coppedge that  
21 the warning concerned the manner in which  
22 he had interacted with his co-workers, not  
23 the substance of what he had discussed. Tr.  
24 395:12-20 (“Q. And is it correct that during  
25 the meeting, that Mr. Klenk and Mr.  
26 Burgess told you that it wasn’t the  
27 substance of what you were talking about  
28 but rather the way in which you were –

Objection. Immaterial. The alleged fact has  
no significance in determining the outcome of  
this case with regard to whether Defendants  
discriminated against Plaintiff on the basis of  
religion. Subject to and without in any way  
waiving the foregoing objection, and to the  
extent that Responding Party understands this  
alleged fact: Undisputed.

Undisputed that Burgess and Klenk delivered  
their talking points.

1 paraphrasing it -- the way in which you  
2 were doing things that led to the warning  
3 letter, words to that effect? A. That was  
4 their talking points that they stuck to despite  
5 all the evidence I had to the contrary.”).

6 47. Klenk told Coppedge they had “no issue  
7 with people discussing religion and politics  
8 in the office so long as it’s not unwelcome  
9 or disruptive.” Klenk 468:25-469:11 (“Q.  
10 Mr. Klenk, you referred me to the line in  
11 that transcript that says, “We have no issue  
12 with people discussing religion and politics  
13 in the office so long as it’s not unwelcome  
14 or disruptive”; is that right? A. Correct. Q.  
15 Is it your testimony that that was your  
16 attempt to inform Mr. Coppedge that he was  
17 free to discuss religion and politics so long  
18 as it was not unwelcome or disruptive? A.  
19 That was an explicit statement to that  
20 effect.”); Klenk Ex. 44, at page 7 (transcript  
21 of tape recording Coppedge made of April  
22 13, 2009 meeting, reflecting same).

Undisputed that Klenk gratuitously made such  
a statement to Coppedge at the 4/13/2009 dis-  
ciplinary meeting and that the Written Warn-  
ing stated it. Disputed that JPL had no issue  
with particular religious and political subject  
matter even when presented in a manner not  
likely to significantly interfere with work ac-  
tivity. Chin specifically ordered Coppedge  
not to discuss religion at all, regardless of  
Coppedge’s nonverbal manner. Becker Decl.,  
Exh. 8, Chin Dep.Tr., 163:10-12 (“I didn’t  
want him to be discussing religious concepts  
during the work hours.”) In fact, the Written  
Warning constituted a blanket prohibition on  
*all* speech relating to Coppedge’s “personal  
views,” and specifically religion and politics;  
Becker Decl., Exh. 26, Written Warning  
(“The Employee Relations Office has com-  
pleted an investigation concerning allegations  
that you approached various co-workers dur-  
ing JPL business hours to discuss your reli-  
gious and political beliefs.... You acknowl-  
edged that you approached various coworkers  
during work hours to inquire if they were in-  
terested in watching your DVDs which clearly  
express your personal views and you engaged

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|  | <p>various co-workers in conversations about your personal views.”) Although the Written Warning was later removed from Coppedge’s personnel file, the restrictions on his speech activity remained in place. Becker Decl., Exh. 48, e-mail from K.Klenk to D.Coppedge, 4/14/2010 (“The only purpose of our conversation was to inform you of the decision to withdraw the prior written warning you received. This warning resulted from complaints by certain work colleagues about conversations which were disruptive in the workplace and not related to job duties. That was the only decision at issue. I told you that upon further review, we felt that a verbal admonition was adequate.”). Coppedge understood that the oral admonition restricting his speech activities remained in force. See Plaintiff’s Separate Statement of Additional Disputed Material Facts, ¶¶ 26, 27, 36, 43, 45, 55, 64, 67, 122 and 123.</p> |
| <p>48. Burgess made the decision to remove Coppedge as lead during the April 13, 2009 meeting. Burgess 96:18-20 (“I made the decision to remove him from the team lead during that meeting where the three of us talked about the letter.”).</p> | <p>Disputed. Burgess made the decision to remove Coppedge as team lead <i>prior</i> to the meeting after consulting with HR about the investigation of allegations of harassment against Coppedge and based upon the belief that Coppedge’s lending out of “unwanted” DVD’s constituted harassment simply because a person “considered it harassment.” Becker Decl., Exh. 3, Burgess Dep.Tr., 28:22-29:19 (“Q. At what point in time did you feel that</p>  |

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David was not qualified to serve as team lead?

A. When I first talked with the HR people about their investigation. Q. When was that?

A. I don't recall the date. Q. It was prior to your meeting with David on April 13, 2009?

... Q. The meeting that was recorded with Kevin Klenk. A. Yes, it was prior to that. Yes.

Q. And it was subsequent to David's confrontation with Greg Chin on March 2, 2009? ...

Q. Your discussion with HR was after March 2, 2009, when David and Greg Chin argued?

A. It was after that date, yes."); *id.*, 48:17-49:3 ("In his capacity as team lead, where it was important for him to work with customers, for instance, ... did you form the opinion that David in his role as team lead systems administration had harassed a customer? A. Yes. Q. What was the basis of the opinion that you formed? A. Just that the claim for distributing unwanted DVD's probably constituted the fact that they considered it -- the person considered it harassment."); *id.*, 78:2-8 ("Q. Was the decision to remove David as team lead based on HR's investigation? Is that what you said?.... THE WITNESS: That was tantamount to my decision to do it, yes."); *id.*, 93:13-94:9 ("Q. In the bottom paragraph, it says, "I had decided after becoming aware of how many people thought they were being harassed by David that we needed someone else handling the lead position." it was your

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| 1  |   | testimony that you didn't know how many                |
| 2  |   | people had complained; isn't that right? A. I          |
| 3  |   | did not know the number of people inter-               |
| 4  |   | viewed. Q. So that statement is really refer-          |
| 5  |   | ring to the fact that Jhertaune Huntley gener-         |
| 6  |   | ally said to you that she had spoken to a lot of       |
| 7  |   | people; right? A. Correct.")                           |
| 8  | 49. Burgess decided to remove Coppedge as     | Objection. Hearsay (Cal.Ev.Code § 1200).               |
| 9  | lead because Chin had told Burgess about      | Vague and ambiguous as to the meaning of               |
| 10 | complaints regarding Coppedge for years,      | "complaints." Subject to and without in any            |
| 11 | and this was another instance of Coppedge     | way waiving the foregoing objection, and to            |
| 12 | creating conflicts with others. Burgess       | the extent that Responding Party understands           |
| 13 | 96:20-97:4 ("And I came to the realization    | this alleged fact: Disputed. See Plaintiff's ob-       |
| 14 | and conclusion that this was kind of like the | jections and responses to ¶¶ 19 and 48, <i>supra</i> . |
| 15 | straw that broke the camel's back, where      |  |
| 16 | I've had several years of input from various  |  |
| 17 | people through Greg that -- including the     |  |
| 18 | project manager, Bob Mitchell, was very       |  |
| 19 | uncomfortable and dissatisfied with David's   |  |
| 20 | performance. and so these issues that came    |  |
| 21 | up during this letter that we presented him   |  |
| 22 | finally was just -- I couldn't take it        |  |
| 23 | anymore."); Klenk Ex. 44, at page 20          |  |
| 24 | (transcript of tape recording Coppedge        |  |
| 25 | made of April 13, 2009 meeting; Burgess       |  |
| 26 | speaking: "And the idea there is that you     |  |
| 27 | won't have that interface to these people out |  |
| 28 | there on the project that are complaining     |  |
|    | that they're uncomfortable with your          |  |
|    | actions."); Tr. 432:16-433:19 ("Q. What do    |  |
|    | you recall Mr. Burgess saying when he told    |  |

1 you that he was relieving you of the lead  
2 responsibilities? . . . A. My recollection  
3 only, but the record states what was actually  
4 said, that because of the poisonous  
5 atmosphere that all of this had created, he  
6 felt it best to remove me from my team lead  
7 position. Q. . . . And is -- do you recall  
8 him saying, "that all of this had created"?  
9 What did you understand him to be  
10 referring to? . . . A. I don't recall word for  
11 word what was said. It's a matter of record.  
12 But my understanding was that, as he said  
13 in this email, all of this started March 2, and  
14 it had created a -- an atmosphere of conflict,  
15 in his opinion, and he thought it best to  
16 remove me as team lead.").

15 50. When Burgess removed Coppedge as  
16 lead, there was no change in Coppedge's  
17 job classification, salary grade, pay or  
18 benefits. Tr. 49:6-25 ("Q. When you  
19 changed from being the team lead to no  
20 longer team lead, did your pay change? A.  
21 No. Q. Did your salary grade change? A.  
22 No. Q. Did any of your benefits change?  
23 A. No. Q. . . What was the date on which  
24 you no longer were lead? A. April 13,  
25 2009. Q. Do you know what your job  
26 classification was immediately before April  
27 13, 2009? A. In terms of the actual  
28 wording, I don't recall. Q. Did your job  
classification change in any way after April

Objection. Immaterial. The alleged fact has  
no significance in determining the outcome of  
this case with regard to whether JPL discrimi-  
nated against Coppedge on the basis of reli-  
gion. Subject to and without in any way  
waiving the foregoing objection, and to the  
extent that Responding Party understands this  
alleged fact: Undisputed.

|    |   |  |
|----|---|--|
| 1  | 13, 2009? A. I don't know. I don't think      |  |
| 2  | so, but I don't know.").                      |  |
| 3  | 51. On May 1, 2009, Coppedge appealed         | Objection. Vague and ambiguous as to the               |
| 4  | his written warning and removal as lead to    | meaning of "appealed." Subject to and with-            |
| 5  | Human Resources. Tr. 406:15-18 ("Q.           | out in any way waiving the foregoing objec-            |
| 6  | May 1, Appeal. That's a letter that you       | tion, and to the extent that Responding Party          |
| 7  | send to Ms. Saidiner requesting an appeal of  | understands this alleged fact: Disputed.               |
| 8  | the written warning? A. Yes."); Tr. Ex.       | Coppedge requested an appeal. See Defend-              |
| 9  | 1025 (May 1, 2009 letter from Coppedge        | ants' evidence, ¶ 51.                                  |
|    | requesting appeal).                           |  |
| 10 | 52. In connection with Coppedge's appeal,     | Objection. Vague and ambiguous as to the               |
| 11 | Klenk interviewed Huntley regarding her       | meaning of "interviewed," "regarding her in-           |
| 12 | investigation and reviewed all the facts.     | vestigation" and "all the facts." Subject to           |
| 13 | Klenk Tr. 388:16-389:21 ("Q. At the time      | and without in any way waiving the foregoing           |
| 14 | that you scheduled the meeting with David     | objection, and to the extent that Responding           |
| 15 | in August of 2009, had you discussed with     | Party understands this alleged fact: Undisput-         |
| 16 | Jhertaune Huntley any of the details that     | ed that Klenk met with Huntley to discuss              |
| 17 | we've been talking about earlier today? . . . | Plaintiff's request to appeal. Disputed that the       |
| 18 | A. Are you asking if I discussed additional   | meeting constituted any part of an "appeal."           |
| 19 | details with Jhertaune after issuing the      | JPL had not appeal process. Klenk, the deci-           |
| 20 | written warning and before I met with         | sion-maker responsible for disciplining                |
| 21 | David -- Q. Yes. A. -- For his appeal? Q.     | Coppedge met with Coppedge. The trier of               |
| 22 | Yes. A. Yes. Q. Was that in one               | fact does not preside over appeals. The meet-          |
| 23 | conversation or multiple conversations? A.    | ing was equivalent to a request for reconsider-        |
| 24 | Multiple. . . . Q. Did you pose questions to  | ation with no new evidence to consider.                |
| 25 | Huntley in order to clear up some of the      | Becker Decl., Exh. 16, Huntley Dep.Tr.,                |
| 26 | questions in your own mind? A. I posed        | 449:2-8 ("Was there a written policy for ap-           |
| 27 | questions to Ms. Huntley just to make sure I  | pealing the decision to issue him a written            |
| 28 | understood the details."); Klenk Ex. 47       | warning? . . . A. No, there is not a written pro-      |
|    | ("Written Response to Appeal") ("I have       | cess."); <i>id.</i> , Exh. 5, Klenk Dep.Tr., 385:21-25 |
|    | carefully reviewed the investigation that     | ("The appeal process that I understood was             |

|  |   |  |
|--|---|--|
| 1<br>2<br>3<br>4<br>5<br>6                               | Jhertaune Huntley, human resources generalist, conducted regarding allegations that you approached various coworkers during JPL business hours to discuss your religious and political beliefs.”); Huntley Decl. ¶ 15.  | when David wanted to appeal his Written Warning, HR basically had his next level management -- which was myself -- review the situation and make a recommendation on the appeal.”)   |
| 7<br>8<br>9<br>10<br>11<br>12<br>13<br>14                | 53. Klenk met with Coppedge regarding his appeal on August 25, 2009. Tr. 123:5-9 (“Q. Right, but then you had another meeting with Mr. Klenk in August; correct? A. Oh, to follow up as part of the appeal. Q. Right. A. Yes.”); Tr. 530:7-9 (“Q. You met with Kevin Klenk on or about August 25, 2009; is that correct? A. If that’s the date on my record, yes.”).  | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Undisputed that Klenk met with Plaintiff to discuss Plaintiff’s request to appeal the disciplinary decisions. Disputed that the meeting constituted any part of an “appeal.” See Coppedge’s Objections and Responses, ¶ 52, <i>supra</i> . |
| 15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24 | 54. Klenk’s demeanor in the August 25, 2009 meeting was polite and gentlemanly. There was no hostility during the meeting, and neither of them raised his voice. Tr. 556:11-16 (“I mean, he was being polite. For somebody who was stonewalling me, he was being very polite and gentlemanly, as he always is. There was no raised voices. There was no hostility. But it was pointless. It was a futile exercise trying to get an appeal.”). | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether Defendant discriminated on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed.   |
| 25<br>26<br>27<br>28                                     | 55. Klenk determined that Burgess had acted appropriately and denied Coppedge’s appeal. Klenk Ex. 47 (“Written Response to Appeal”) (“Although I can certainly  | Undisputed. Klenk rubber-stamped HR’s recommendation. Becker Decl., Exh. 5, Klenk Dep.Tr., 415:11-13 (“The behavior was unwelcome. That is something that Ms. Huntley  |



1 understand that you are not happy with the  
2 findings of the investigation and the  
3 decision to remove you from your lead role,  
4 I did not find any additional information to  
5 support reversing the actions taken against  
6 you.”).

found. I saw no reason to disagree with  
that.”); *id.*, 416:16-25 (“I’m assuming that HR  
does their job and that I can rely on them do-  
ing their job and -- Q. That’s just based on  
the fact that they’re HR; right? ... THE  
WITNESS: We have people who have re-  
sponsibilities at JPL, and they are the experts  
in their field, and we should rely on them for  
that.”)

9 56. Klenk sent Coppedge a memorandum  
10 summarizing his decision regarding  
11 Coppedge’s appeal. Tr. Ex. 1031  
12 (September 21, 2009 email from Klenk to  
13 Coppedge, attaching the Written Response  
14 to Appeal: “David: Please find attached  
15 my written response to your appeal.  
Sincerely, Kevin Klenk”).

Undisputed that Klenk referred to his decision  
as relating to an appeal. Disputed that Klenk  
provided Plaintiff with an appeal. See  
Coppedge’s Objections and Responses, ¶ 52,  
*supra*.

16 57. On April 7, 2010, at Human Resources’  
17 direction, Burgess and Klenk again met  
18 with Coppedge and rescinded the April 13,  
19 2009 warning, but not his removal as lead.  
20 Tr. 572:2-8 (“Q. . . [Y]ou did have a  
21 meeting with Kevin Klenk, and I’ll  
22 represent that was on or about April 7,  
23 2010; is that correct? A. Yes. Q. And this  
24 was the meeting that was you, Mr. Klenk,  
25 and Mr. Burgess? A. Yes.”); Tr. 167:4-14  
26 (“Q. -- Mr. Coppedge, in the last paragraph  
27 it says, “On April 7, 2010 . . . the division  
28 manager and group supervisor summoned  
me again,” . . . basically this was a meeting

Objection. Immaterial. The alleged fact has  
no significance in determining the outcome of  
this case with regard to whether JPL discrimi-  
nated against Coppedge on the basis of reli-  
gion. Subject to and without in any way waiv-  
ing the foregoing objection, and to the extent  
that Responding Party understands this al-  
leged fact: Undisputed that Burgess and Klenk  
met with Coppedge to rescind the written  
warning that had been issued on April 13,  
2009. Disputed that the meeting was at HR’s  
direction. JPL was represented by both house  
counsel and panel attorneys advising Defend-  
ant. Counsel for Coppedge had place JPL’s

1 where, number one, the warning letter was  
 2 rescinded but, number two, you were not  
 3 restored to -- not restored as a lead; correct?  
 4 A. Yes. . . ."); Klenk 441:7-11 ("Q. Whose  
 5 decision was it to withdraw that written  
 6 warning from David's personnel file? A.  
 7 This was HR's recommendation. Q. Hr?  
 8 A. Correct."); Klenk 456:16-19 ("Q. Do  
 9 you recall having a meeting with David  
 10 where you informed him that the written  
 11 warning was going to be rescinded? A.  
 12 Correct.").

attorneys' on notice on September 18, 2009, of  
 a demand for resolution of the employment  
 dispute to avoid litigation. Counsel for  
 Coppedge had communicated with Jim Zapp,  
 JPL's attorney, multiple times prior to April 7,  
 2010, and was on notice of potential litigation.  
 Becker Decl., Exh. 49, correspondence with  
 J.Zapp.

13 58. Klenk and Burgess informed Coppedge  
 14 that Human Resources had concluded that  
 15 an oral admonition (rather than a formal  
 16 written warning) was sufficient to make  
 17 Coppedge aware of how he should conduct  
 18 himself. Klenk 456:20-457:2 ("Q. Do you  
 19 recall telling him during that meeting that it  
 20 had been inappropriately issued? A. I  
 21 believe I said that it was more appropriate  
 22 just to leave it as a verbal admonishment.  
 23 Q. Why did you tell him that? A. Because  
 24 when I talked with HR, they suggested that  
 25 was adequate."); Klenk 476:14-477:5 ("Q.  
 26 When was that? A. The verbal  
 27 admonishment? Q. Yes. A. That would  
 28 be April of 2009. Q. April 2009. At the  
 April 13th meeting? A. That was when the  
 written warning was issued. Q. When was  
 the verbal? A. That same meeting. . . . in

Objection. Immaterial. The alleged fact has  
 no significance in determining the outcome of  
 this case with regard to whether Defendants  
 discriminated against Plaintiff on the basis of  
 religion. Vague and ambiguous as to the  
 meaning of "informed" and "concluded."  
 Subject to and without in any way waiving the  
 foregoing objection, and to the extent that Re-  
 sponding Party understands this alleged fact:  
 Disputed that Klenk and Burgess "informed"  
 Plaintiff about a "conclusion" reached by HR.  
 Disputed that Coppedge was on notice of how  
 he was to "conduct himself." See Coppedge's  
 Objections and Responses to ¶ 47, *supra*.  
 Coppedge had no idea after the meeting what  
 its purpose or effect was. Becker Decl., Exh.  
 50, Coppedge e-mail to self following the  
 meeting, 4/7/2010 (numerous questions con-  
 cerning his future conduct raised by meeting).

1 April we gave him a written warning and  
 2 described what happened to him. Okay.  
 3 Our verbal discussion with David served as  
 4 the verbal admonishment, and we thought  
 5 that was sufficient.”); Tr. 573:18-575:4 (“Q.  
 6 And Mr. Klenk told you in this meeting that  
 7 the written warning of April 13, 2009 was  
 8 being removed; correct? A. Yes. Q. . . .  
 9 When you inquired about what that meant,  
 10 he told you that basically it was the same as  
 11 if it had never existed; correct? A. Yes. Q.  
 12 And so it’s no longer -- was no longer part  
 13 of your personnel file; correct? .A. That’s  
 14 right. . . . Q. He did tell you that the  
 15 determination had been made that the verbal  
 16 admonishment that you had had with them  
 17 was sufficient; correct? A. I think so. Yes.  
 18 Well, not a formal verbal reprimand . . . .  
 19 Q. And what he simply said is that he was  
 20 just verbally advising you to try and be  
 21 sensitive to others as you spoke to them  
 22 about subjects; correct? A. Yes.”).

23 59. On April 14, 2010, Coppedge filed the  
 24 instant lawsuit, asserting claims for  
 25 religious discrimination and harassment,  
 26 retaliation and wrongful demotion.  
 27 Plaintiff’s Complaint, filed April 14, 2010.

28 60. On May 4, 2010, Burgess and Nick  
 Patel spoke to Coppedge to remind him to  
 use work time productively, following  
 reports suggesting he had not been doing so.

Undisputed.

Objection. Immaterial. The alleged fact has  
 no significance in determining the outcome of  
 this case with regard to whether Defendants  
 discriminated against Plaintiff on the basis of

1 Tr. 584:10-23 ("Q. Did you have a meeting  
2 with Cab Burgess and Nick Patel at some  
3 point in May of 2004? A. Yes, I did. Q.  
4 And what was the subject matter of the  
5 meeting, if you recall? A. Out of the blue,  
6 Nick was accusing me of various things.  
7 And I was caught quite by surprise by this  
8 meeting. So it's all recorded in my  
9 thoughts from that day. Q. All right. Was  
10 one of the issues that came up the fact that  
11 Nick felt that you weren't showing initiative  
12 in taking on work that needed to be done?  
13 A. He said that, but I thought that was  
14 outrageous."); Tr. 648:22-649:2 ("Q. Well,  
15 did you receive any kind of written  
16 documentation of the earlier meeting with  
17 Mr. Patel and Mr. Burgess on May 4? A.  
18 No. Q. It was just a discussion; correct?  
19 A. Yeah, it was just a discussion.").

religion. Vague and ambiguous as to the  
meaning of "productively." Subject to and  
without in any way waiving the foregoing ob-  
jection, and to the extent that Responding Par-  
ty understands this alleged fact: Undisputed  
that Burgess and Patel (1) spoke to Coppedge,  
(2) lectured him on his use of time, and (3)  
implied without evidence that he was not us-  
ing his time effectively. Disputed that Plain-  
tiff was not using work time "productively."  
Becker Decl., Exh. 37, Coppedge notes to self  
following meeting with Burgess and Patel,  
5/4/2010 attached to the deposition transcript  
of C.Burgess as Exh. 54 ("I asked him [Patel]  
point blank: has any of this impacted my  
technical competence or my ability to perform  
my job responsibilities? He said, No."; *id.*,  
Exh. 36, Patel Dep. Tr., 151:8-10 ("... [W]as  
there a particular user who complained that  
David had not finished an assignment? A.  
No.")). Disputed that Burgess and Patel ap-  
proached Coppedge concerning his activities  
for a legitimate purpose. On April 15, 2010,  
Coppedge had filed the Complaint in this ac-  
tion naming Burgess as a Defendant and pro-  
vided his attorneys' with a courtesy copy.  
Burgess was aware of the lawsuit and his  
pending status as a Defendant. *Id.*, Exh. 3,  
Burgess Dep.Tr., 123:21-124:12 ("Q. When  
did you first learn that David was filing a law-  
suit in this case? A. Somebody told me. ...

|    |  |   |
|----|--|---|
| 1  |  | Probably the day after it happened. ... Q. Do     |
| 2  |  | you know who told you? A. Somebody men-           |
| 3  |  | tioned to me that it would have -- had been       |
| 4  |  | referenced on the JPL website. They have a        |
| 5  |  | function in the website that tracks local news    |
| 6  |  | media, and it had come out in the Pasadena        |
| 7  |  | News Star. And as soon as that happened, it       |
| 8  |  | had been gathered up by the JPL office that       |
| 9  |  | handles that and put on their own website.")      |
| 10 |  | Moreover, Patel had been elevated to the posi-    |
| 11 |  | tion of "Team Lead SA," the position              |
| 12 |  | Coppedge was removed from by Burgess as           |
| 13 |  | part of the disciplinary process relating to the  |
| 14 |  | HR investigation of Coppedge. Neither Bur-        |
| 15 |  | gess nor Patel are able to support their "suspi-  |
| 16 |  | cion" that Plaintiff was using work hours on      |
| 17 |  | matters not work related, and their manufac-      |
| 18 |  | tured suspicion that Plaintiff was using work     |
| 19 |  | time on non-work related activity yields no       |
| 20 |  | rational inference that Plaintiff was, as the al- |
| 21 |  | leged fact implies, "unproductive." Decl.         |
| 22 |  | L.Ball, ¶¶ 48-49.                                 |

**Defendant's Sub-Issue No. 2: None Of The Events Alleged, Including Plaintiff's Layoff, Give Rise To An Inference Of Discrimination Based On Actual Or Perceived Religious Creed.**

|    |   |  |
|----|---|--|
| 23 | 61. Defendant incorporates by reference | Plaintiff hereby incorporates its objections |
| 24 | Undisputed Material Fact ¶¶ 7, 15-60.   | and responses to Defendant's Undisputed Ma-  |
| 25 | Defendant incorporates by reference     | terial Fact ¶¶ 7, 15-60.                     |
| 26 | Supporting Evidence for Undisputed Fact |  |
| 27 | ¶¶ 7, 15-60. [sic]                      |  |
| 28 | 62. When Cassini's Second Extended      | Objection. Vague and ambiguous as to the     |

1 Mission began in October 2010, there was a  
2 significant reduction in funding, implicating  
3 personnel reductions, and System  
4 Administration was reorganized. Chin  
5 36:3-19 ("Q. In other words, the budget  
6 cuts projected three years ago for fiscal  
7 2011; right? A. Correct. Q. The 50  
8 percent reduction projected for 2011, that  
9 was never altered by the additional funding  
10 received for the two extended missions, was  
11 it? . . . A. No. Project -- we are told  
12 funding for each phase. That second phase  
13 which started in fiscal year '11 -- and we  
14 call it XXM, extended extended mission,  
15 the budget for that was independent from  
16 the prior budget."); Tr. 790:1-5 ("Q. Prior  
17 to the project going into the second  
18 extended mission, were you informed that  
19 the budget for the Cassini project was going  
20 to be reduced when it, in fact, did go into  
21 the second extended mission? A. Yes.  
22 That was general knowledge."); Chin  
23 30:21-24 ("When an organization says  
24 you're only going to have 50 percent of  
25 your funding, that has workforce  
26 implications."); Chin 32:3-6 ("Project  
27 Manager said, "You should expect a 50  
28 percent budget reduction and, conversely,  
also significant -- same -- similar amounts  
of reduction in staff."); Tr. 794:7-10 ("Q.  
And the reduction in budget necessarily

meaning of "significant" and "implicating."  
Subject to and without in any way waiving the  
foregoing objection, and to the extent that Re-  
sponding Party understands this alleged fact:  
Undisputed that when Cassini's Second Ex-  
tended Mission began in October 2010, there  
was a reduction in funding. Disputed that the  
reduction required personnel "reductions."  
Conner was told she would have 3.0 FTE to  
work with, which could have resulted in a  
staff of five part-time SAs. Cassini needed  
two fewer full-time equivalent employees  
("FTE"), a budgetary designation determined  
decimally (e.g., "Five people working part-  
time would equal three FTEs.") Becker Decl.,  
Exh. 28, Connor Dep.Tr., 23:20-24:2 ("You  
can have five people working part time to add  
up to a level of 3.0. Q. A level of 3.0. A. Yes.  
Q. What does 3.0 signify in terms of that lev-  
el? What is the level? A. It's a budgetary  
item of a full time equivalent person.") In  
April or May 2010, Mitchell instructed Con-  
ner to reduce the number of SAs to "3.0  
FTE." *id.*, 22:18-23:16 ("A. He told me the  
number of FTE's that I would have available.  
Full time equivalent. . . 3.0 FTE."). Accord-  
ingly, JPL needed two fewer FTEs, not two  
fewer employees. Under this formula,  
Coppedge could have remained employed on  
at least a part-time basis. Moreover, the cuts  
were made necessary only by virtue of the ad-

1 meant that there were going to be  
2 reductions in staff; correct? A.  
3 Obviously.”); Chin 36:21-37:6 (“Q. Was  
4 MSSO reorganized in 2010 at some point?  
5 . . . Yes. . . The project manager dissolved  
6 MSSO and distributed the functions of --  
7 each of the functions to different entities or  
8 spread it among his existing [sic]. Q. Who  
9 is the project manager? Mitchell? A.  
10 Robert Mitchell, yes.”); Conner 20:9-21:1  
11 (“Q. Under MSSO, there was a division or  
12 department called Systems Administration;  
13 is that correct? . . . Do you have a similar  
14 group under IUS? A. Yes. Q. . . And  
15 those are various system administrators? A.  
16 Yes. . . Q. Do they perform the same  
17 functions that the Systems Administrators  
18 under MSSO performed, to your  
19 knowledge? A. To my knowledge, yes.”).

20 63. Chin warned the SAs at least two years  
21 before the funding reduction that it would  
22 occur and that no one would be guaranteed  
23 a slot. Tr. 768:18-24 (“Q. But, in fact, as  
24 early as January 2009, Mr. Chin specifically  
25 told you and other systems administrators  
26 that there would be reductions in the next  
27 year or two in the Cassini program; isn’t  
28 that right? . . . A. Yes.”); Tr. 769:8-18 (“Q.  
Well, in January 2009, which was, what,  
more than a year and a half before -- or  
almost two years before your layoff

ditional SAs assigned to Cassini after reduc-  
tions were planned. By adding three SAs, De-  
fendant could pretextually argue that a 40%  
reduction was required. Had Defendant not  
increased the number of SAs by three em-  
ployees, no reductions would have been need-  
ed. Additionally, Wang was never employed  
on Cassini, but was included in the ranking  
due to the reorganization, thus adding an SA  
to the list developed by Van Why of SAs to be  
considered for lay-off. **Decl. L. Ball ¶ 43.**

Objection. Immaterial. The alleged fact has  
no significance in determining the outcome of  
this case with regard to whether Defendants  
discriminated against Plaintiff on the basis of  
religion. Subject to and without in any way  
waiving the foregoing objection, and to the  
extent that Responding Party understands this  
alleged fact: Undisputed.

1 occurred, Mr. Chin had told all of the SAs  
2 that when the reductions occur, that no one  
3 would be guaranteed a slot; correct? . . .  
4 THE WITNESS: He spoke to the group  
5 generally, yes. Did not give any indication  
6 to any one individual, including me, of who  
7 was most likely to be laid off.”).

8 64. Project Manager Mitchell dissolved  
9 MSSO in late 2010. Chin 36:21-37:6 (“Q.  
10 Was MSSO reorganized in 2010 at some  
11 point? A. In calendar 2010? Yes. Q. And  
12 how was it reorganized? A. In beginning  
13 of fiscal year ‘11, which is September,  
14 October 2010, the project manager  
15 dissolved MSSO and distributed the  
16 functions of -- each of the functions to  
17 different entities or spread it among his  
18 existing [sic]. Q. Who is the project  
19 manager? Mitchell? A. Robert Mitchell,  
20 yes.”).

21 65. System Administration became part of  
22 Integrated Uplink Systems (“IUS”),  
23 managed by Diane Conner. Conner 17:10-  
24 19 (“Q. I understand there was a  
25 restructuring that occurred recently, and I  
26 understood that you are heading a  
27 department known as -- and maybe it’s not  
28 a department; so I don’t want to be  
misstating it. Integrated Uplink Systems.  
A. Yes. Q. Can you tell me what your  
relationship is to that and what that is. A.

Objection. Immaterial. The alleged fact has  
no significance in determining the outcome of  
this case with regard to whether Defendants  
discriminated against Plaintiff on the basis of  
religion. Subject to and without in any way  
waiving the foregoing objection, and to the  
extent that Responding Party understands this  
alleged fact: Undisputed.

Objection. Immaterial. The alleged fact has  
no significance in determining the outcome of  
this case with regard to whether Defendants  
discriminated against Plaintiff on the basis of  
religion. Subject to and without in any way  
waiving the foregoing objection, and to the  
extent that Responding Party understands this  
alleged fact: Undisputed.



1 I'm the manager of that office, and that's in  
 2 the project organization."); Conner 20:9-  
 3 21:1 ("Q. Under MSSO, there was a  
 4 division or department called Systems  
 5 Administration; is that correct? . . . Do you  
 6 have a similar group under IUS? A. Yes.  
 7 Q. . . . And those are various system  
 8 administrators? A. Yes. . . . Q. Do they  
 9 perform the same functions that the Systems  
 10 Administrators under MSSO performed, to  
 11 your knowledge? A. To my knowledge,  
 12 yes.").

13 66. Due to the cuts, Cassini needed two  
 14 fewer SAs. Conner 21:24-24:9 ("Q. Do you  
 15 recall what Mitchell told you at that time  
 16 regarding any reorganization . . . Did he  
 17 describe to you any reduction in force that  
 18 would need to be part of your proposal? . . .  
 19 A. He told me the number of FTE's that I  
 20 would have available. Full time equivalent.  
 21 . . 3.0 FTE. . . You can have five people  
 22 working part time to add up to a level of  
 23 3.0. . . Did you understand that to be a  
 24 reduction in personnel? A. Yes. Q. By  
 25 how many people did you understand that  
 26 to be? A. I estimated by two."); Conner  
 27 28:20-22 ("Do you know why there was a  
 28 reduction in personnel within the project?  
 We had reduced funding.").

Disputed that Cassini needed two fewer SA's  
 due to "cuts." See Coppedge's Objections and  
 Responses to ¶ 62, *supra*.

67. Caltech has an established procedure for  
 reductions in force. Clennan-Price Decl. ¶

Objection. Immaterial. The alleged fact has  
 no significance in determining the outcome of

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| 8.   | this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Vague and ambiguous as to the meaning of "established procedure." Subject to and without in any way waiving the foregoing objections, and to the extent that Responding Party understands this alleged fact: Disputed as to the implication that reductions in force are based on objective standards. <b>Decl. L. Ball</b> ¶¶, 14-15, 50-51. However, undisputed that Defendant has worked out a procedure for handling reductions in force. |
| 68. Section Managers rank all the employees in the same job classification within their section according to established factors. The factors are: need, skills, ability, performance, conduct, reliability, education/training and experience. Clennan-Price Decl. ¶ 8. | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Vague and ambiguous as to the meaning of "established factors." Subject to and without in any way waiving the foregoing objections, and to the extent that Responding Party understands this alleged fact: Disputed as to the implication that "established factors" denote objective criteria or impartial outcomes. Otherwise, undisputed.        |
| 69. The purpose of the ranking is to determine the employees' relative qualifications, skills and ability to perform the work needed to be done after the reductions. Clennan-Price Decl. ¶ 8.   | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Vague and ambiguous as to the meaning of "relative qualifications, skills and abilities." Subject to and without in any way   |

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| 1  |   | waiving the foregoing objections, and to the    |
| 2  |   | extent that Responding Party understands this   |
| 3  |   | alleged fact: Disputed that the ranking process |
| 4  |   | can objectively/impartially determine out-      |
| 5  |   | comes.  |
| 6  | 70. Richard Van Why became Section            | Objection. Vague and ambiguous as to the        |
| 7  | Manager for Section 1731 in Summer 2009,      | meaning of "Section 1731" and "Group            |
| 8  | and Acting Group Supervisor for Group         | 173(a)." Subject to and without in any way      |
| 9  | 173(a) following Burgess's retirement at the  | waiving the foregoing objection, and to the     |
| 10 | end of September 2010. Van Why Decl. ¶¶       | extent that Responding Party understands this   |
| 11 | 4-5; Tr. 807:16-808:7 ("Q. Other changes      | alleged fact: Undisputed.                       |
| 12 | that took place around the time of the        |   |
| 13 | second extended mission was that Cab          |   |
| 14 | Burgess retired; correct? A. Correct. Q.      |   |
| 15 | He retired at the end of September of 2010?   |   |
| 16 | A. Yes. Q. . . . When did Richard Van         |   |
| 17 | Why become the section manager, if you        |   |
| 18 | recall? A. It was in September. Cab told      |   |
| 19 | us it was his last meeting with us, and he    |   |
| 20 | introduced Richard. Q. And Richard then       |   |
| 21 | served as sort of an acting group supervisor  |   |
| 22 | or group manager as well at that point;       |   |
| 23 | correct? A. Yes.").                           |   |
| 24 | 71. Conner provided input to Van Why          | Objection. Immaterial. The alleged fact has     |
| 25 | during the reduction in force of the Cassini  | no significance in determining the outcome of   |
| 26 | SAs. Conner had personal knowledge of         | this case with regard to whether JPL discrimi-  |
| 27 | the system administrators' relative           | nated against Coppedge on the basis of reli-    |
| 28 | qualifications, skills and ability to perform | gion. Vague and ambiguous as to the mean-       |
|    | the needed work based on her supervision      | ing of "provided input" and "relative qualifi-  |
|    | of them since the end of September 2010       | cations, skills and ability." Subject to and    |
|    | and her having worked with them directly      | without in any way waiving the foregoing ob-    |

1 for some years prior to that time. Conner  
2 Tr. 34:22-36:8 ("Q. When did you first  
3 speak to Richard Van Why concerning  
4 David? A. Perhaps September. Q. Of  
5 2010? A. Yes. Or August. It could have  
6 been September. Q. What did he tell you  
7 when he first mentioned Dave to you? A. I  
8 don't recall specifically. Q. Do you  
9 generally recall? A. I generally recall  
10 talking about process that he needed my  
11 help with, that he needed my input on. Q.  
12 Do you recall in what context David's name  
13 came up? A. Just that he was one of the  
14 four SA's that were part of the process. Q.  
15 Did Richard say something about David's  
16 performance during that discussion? A. Not  
17 specifically. Q. Did he say anything about  
18 David's qualifications in that discussion?  
19 A. There were discussions about  
20 qualifications. Q. What was said? A.  
21 There was discussion about relative  
22 qualifications. Q. I understand under that  
23 rubric, qualifications, something was  
24 discussed. what was said? . . . A. It was  
25 discussing the different tasks that we had as  
26 SA's and who was the best – the point  
27 person for those tasks or the best qualified  
28 for those different areas of expertise.");  
Conner 42:4-13 ("Q. I think you said you  
had more than one discussion with Richard  
relating to the qualifications of SAs for

jections, and to the extent that Responding  
Party understands this alleged fact: Undisput-  
ed.

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| 1<br>2<br>3<br>4<br>5  | purposes of executing a reduction of personnel; right? . . . A. . . . Yes, I did for the purpose of providing him input on how the qualifications related between the SA's."); Van Why Decl. ¶ 11.   |  |
| 6<br>7<br>8<br>9<br>10<br>11   | 72. Based upon the input Van Why received, he completed a Layoff Ranking Criteria Worksheet for the system administrators within his section: Nick Patel, Harvey Chien, Oscar Castillo, David Coppedge, and Gary Wang. Van Why Decl. ¶ 14; Ex B. | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge due to religion.   |
| 12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24 | 73. From the Layoff Ranking Criteria Worksheet, Van Why concluded that Wang, Castillo, and Patel were more qualified than Coppedge and Chien. Van Why Decl. ¶ 14; Ex B.  | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Vague and ambiguous as to the meaning of "From the...." Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Disputed that Van Why reached a conclusion that Wang, Castillo, and Patel were more qualified than Coppedge and Chien. Based on subjective information provided by Conner to Van Why, all Van Why did was circle numbers ranked 1 through 5 and tally the scores. <b>Decl. L. Ball ¶ 14-15, 50-51.</b> |
| 25<br>26<br>27<br>28   | 74. As a result of the ranking process, Van Why determined that Coppedge and Chien should be laid off. Van Why Decl. ¶ 15.   | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discrimi-   |

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nated against Coppedge on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Disputed. Van Why assumed additional responsibilities and became Plaintiff's supervisor on October 1, 2010, when Burgess retired. Becker Decl., Exh. 27, Van Why Dep.Tr., 19:22-24 (Van Why assumed all of Burgess's duties); *id.*, Exh. 3, Burgess Dep.Tr., 6:17-19 (Burgess retired effective 10/1/2010). In May 2010, at least four months prior to becoming Coppedge's supervisor, Van Why participated in confidential attorney-client privileged meetings in 2010 concerning this lawsuit at a time when he had no practical reason for participating. *Id.*, Exh. 27, Van Why Dep.Tr., 21:11-22:7 ("Q. Okay. When did you first learn about this lawsuit? A. End of Spring, beginning of Summer 2010. Q. How did you learn of it? Who informed you? MR. ZAPP: Well, let me object to the extent it may call for privileged communication. BY MR. BECKER: Q. Well, did you learn about it from counsel or did you learn about it from management or did you learn about it at a meeting that included counsel? A. I learned about it at a meeting with counsel. Q. What counsel was present during that meeting? MR. ZAPP: You can answer that. THE WITNESS: Jim Zapp, Hima Vatti. That

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|   | <p>may have been it. I don't recall if there was a third counsel at that meeting. BY MR. BECKER: Q. Who else was present at that meeting? A. I don't recall the exact invitation list, but as I recall, Kevin Klenk, Cab Burgess, Diane Conner and Robert Mitchell. There may have been a representative from H.R. Q. Do you recall whether that meeting took place prior to August 2010 specifically? A. Yes. Q. You just don't recall if it was May, June or July? A. I believe it was in May. "); <i>id.</i>, 21:8-16 ("Q. Do you recall whether that meeting took place prior to August 2010 specifically? A. Yes. Q. You just don't recall if it was May, June or July? A. I believe it was in May.")</p> <p>Van Why's participation in confidential, attorney-client privileged discussions concerning this lawsuit well prior to his transfer to his new assignment leads to a rational inference that he took part in those privileged discussions in order to shield disclosure of the content of the discussions and for the purpose of developing a pretext for terminating Plaintiff after Plaintiff had initiated legal proceedings against Defendant. Accordingly, a jury could conclude that Van Why's "determination" was <i>predetermined</i> and therefore <i>pretextual</i>.</p> |
| <p>75. On January 24, 2011, Van Why notified Coppedge and Chien of their layoffs. Tr. 797:1-12 ("Q. You were notified of your layoff on January 24, 2011; correct? A.</p> | <p>Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of reli-</p>  |

1 Yes. Q. Harvey Chien was notified of his  
2 layoff on January 24, 2011; correct? . . . A.  
3 At the time, I didn't know. Q. Do you  
4 know now? A. Yes. Q. And was he laid  
5 off at the same time as you? A. That's  
6 what I learned."); Tr. Ex. 1053 (January 24,  
7 2011 memorandum from Van Why to  
8 Coppedge regarding layoff); Van Why  
Decl. ¶ 16.

gion. Vague and ambiguous as to the mean-  
ing of "layoffs." Subject to and without in  
any way waiving the foregoing objection, and  
to the extent that Responding Party under-  
stands this alleged fact: Undisputed.

9 76. Coppedge never had a disagreement  
10 with Van Why regarding religion, politics  
11 or ID, and does not recall if they even  
12 discussed these topics. Tr. 900:18-901:3  
13 ("Q. Did you ever have any disagreement  
14 with Richard Van Why about religion,  
15 politics or intelligent design? A. No. Q.  
16 Did you ever have any disagreement with  
17 Bob Mitchell over intelligent design,  
18 religion or politics? A. No. Q. Did you  
19 ever discuss intelligent design, religion or  
politics with Richard Van Why? A. I don't  
recall. Probably not.").

Undisputed.

20 77. While Coppedge had discussed religion,  
21 politics, and ID with Conner, she was not  
22 offended by it, and actually bought an  
23 intelligent design DVD from Coppedge. Tr.  
24 901:13-23 ("Q. Did you ever discuss  
25 intelligent design, religion or politics with  
26 Diane Conner? A. Yes. Q. When did you  
27 have discussions with her? A. When she  
28 borrowed one of my DVDs and then bought

Undisputed.



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| 1  | one. Q. Did you ever have any sense that       |  |
| 2  | she was offended in any way by that? . . . .   |  |
| 3  | A. No.”).                                      |  |
| 4  | 78. Besides the layoff, Coppedge never felt    | Undisputed.                                    |
| 5  | Van Why treated him unfairly. Tr. 813:1-6      |  |
| 6  | (“Q. Okay. Putting aside the fact that Mr.     |  |
| 7  | Van Why was involved in the decision to        |  |
| 8  | lay you off, was there ever any other          |  |
| 9  | occasion that you’re aware of where he         |  |
| 10 | treated you unfairly? A. Not overtly.”).       |  |
| 11 | 79. Coppedge had always had a good             | Objection. Immaterial. The alleged fact has    |
| 12 | working relationship with Conner. Tr.          | no significance in determining the outcome of  |
| 13 | 657:10-18 (“Q. So is it fair to say that up to | this case with regard to whether JPL discrimi- |
| 14 | the point in time that you saw this review in  | nated against Coppedge on the basis of reli-   |
| 15 | August of 2010, that you felt Ms. Conner       | gion. Subject to and without in any way        |
| 16 | and you had always had a good working          | waiving the foregoing objection, and to the    |
| 17 | relationship? A. Yes, and it continues to      | extent that Responding Party understands this  |
| 18 | this day. She is the new leader of the SA      | alleged fact: Undisputed that Plaintiff be-    |
| 19 | team. And from all indications, she has a      | lieved he had a good working relationship      |
| 20 | pleasant and happy working relationship        | with Conner.                                   |
| 21 | with me and no hesitation to tell me           |  |
| 22 | anything.”).                                   |  |
| 23 | 80. Coppedge never heard Van Why or            | Undisputed.                                    |
| 24 | Conner make any statement suggesting they      |  |
| 25 | wanted to discriminate or retaliate against    |  |
| 26 | him. Tr. 895:21-896:10 (“Q. Did you ever       |  |
| 27 | hear Richard Van Why make any statement        |  |
| 28 | that would suggest that he wanted to           |  |
|    | retaliate against you for any reason? MR.      |  |
|    | BECKER: Asked and answered. MR.                |  |
|    | ZAPP: No, it wasn’t. Q. Go ahead. A.           |  |

Well, no, of course not. No one's going to come out and say that. Q. Did you ever hear Diane Conner make any statement that would suggest she wanted to retaliate against you for any reason? MR. BECKER: Calls for a legal conclusion. A. No. I judge by actions, not statements. That's not a kind of statement that would be made by someone retaliating.”).

81. Coppedge had a good working relationship with Chin prior to March 2, 2009. Tr. 141:25-142:4 (“Greg has been a great boss, and I’ve worked with him for eight years. He’s a great guy. He’s competent. He’s knowledgeable. He does a lot of good for us. And I was frankly shocked at this outburst.”); Tr. 328:20-24 (“Greg has been a very generous manager. He has many strong points as a manager. He’s thoughtful. He’s considerate. He has a sense of humor. He looks out for his employees.”).

Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed that Plaintiff believed he had a good working relationship with Chin.

82. Coppedge had a good working relationship with Burgess and Klenk before the events of March and April 2009. Tr. 151:7-11 (“And I couldn’t believe that Cab Burgess would be a part of this, or Kevin Klenk, because all of my working relationship with them before had been terrific and cordial and cooperative.”); Tr. 150:9-12 (“I consider [Burgess] a great

Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed that Plaintiff believed he had a good working relationship

1 friend. I mean, I have worked with him all  
2 this time. He's a terrific guy. He's a  
3 terrific group supervisor. He's easygoing,  
4 easy to work with."); Tr. 154:19-22 ("Yes.  
5 I like Cab a lot. He's a great friend. And I  
6 think that it appears to me that he was being  
7 forced into an uncomfortable situation  
8 against his will . . ."); Tr. 164:6-15 ("A. . . .  
9 If I could just, you know, interject a point in  
10 C[lark]'s case – Q. Sure. A. -- I think that  
11 it was highly irregular for him, having  
12 worked so closely with him for so many  
13 years, to have been a part of something like  
14 that. So... Q. Fair to say that you think  
15 pretty highly of Mr. Burgess? A. Yes.");  
16 Tr. 151:12-22 ("Q. So fair to say that up to  
17 March 2, 2009, you also thought Kevin  
18 Klenk had always treated you fairly? A.  
19 Yes. I remember when he first came on.  
20 He brought me into his office, and we had a  
21 very pleasant conversation, just kind of  
22 getting to know each other. And it just  
23 stunned me that a man of his, you know,  
24 qualifications and character would stick to  
25 what appeared to me to be talking points  
26 that he was being given from somebody  
27 saying, 'Here is what you need to say to  
28 Dave.'").

with Burgess and Klenk.

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1 **DEFENDANT'S ISSUE NO. 2: PLAINTIFF'S FIRST CAUSE OF ACTION FOR**  
2 **DISCRIMINATION IN VIOLATION OF FEHA FAILS AS A MATTER OF LAW**  
3 **BECAUSE CALTECH HAD LEGITIMATE, NON-DISCRIMINATORY REASONS FOR**  
4 **THE ACTIONS TAKEN, AND PLAINTIFF CANNOT SHOW PRETEXT.**

| <b><u>MOVING PARTY'S UNDISPUTED</u></b><br><b><u>MATERIAL FACTS AND</u></b><br><b><u>SUPPORTING EVIDENCE</u></b>  | <b><u>OPPOSING PARTY'S RESPONSE AND</u></b><br><b><u>SUPPORTING EVIDENCE</u></b>   |
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| <p>6 83. Defendant incorporates by reference</p> <p>7 Undisputed Material Fact ¶¶ 7, 15-58, 60,</p> <p>8 62-82. Defendant incorporates by reference</p> <p>9 Supporting Evidence for Undisputed</p> <p>10 Material Fact ¶¶ 7, 15-58, 60, 62-82.</p>   | <p>6 Plaintiff hereby incorporates its objections</p> <p>7 and responses to Defendant's Undisputed Ma-</p> <p>8 terial Fact ¶¶ 7, 15-58, 60, 62-82. In addition:</p> <p>9 Objection. Immaterial. None of the alleged</p> <p>10 facts incorporated herein by JPL has any sig-</p> <p>11 nificance in determining the outcome of this</p> <p>12 case with regard to whether Caltech had legit-</p> <p>13 imate, non-discriminatory reasons for the ac-</p> <p>14 tions taken, or whether Coppedge can or can-</p> <p>15 not show pretext. Subject to and without in</p> <p>16 any way waiving the foregoing objection, and</p> <p>17 to the extent that Responding Party under-</p> <p>18 stands this alleged fact: See Coppedge's Ob-</p> <p>19 jections and Responses to ¶¶ 60, 62 and 67,</p> <p>20 <i>supra</i> . Decl.L.Ball***</p> |
| <p>19 84. Chin believes in Christian principles,</p> <p>20 and has never subscribed to another</p> <p>21 doctrine. Chin 170:20-22 ("Q. So you're</p> <p>22 not practicing in a church. You believe in</p> <p>23 Christian principles, you said? A. I believe</p> <p>24 in the Christian principles."); Chin 171:16-</p> <p>25 20 ("Q. Other than Christianity, have you</p> <p>26 ever subscribed to any other religious</p> <p>27 doctrine? . . . A. No, sir.").</p> | <p>19 Objection. Immaterial. The alleged fact has</p> <p>20 no significance in determining the outcome of</p> <p>21 this case with regard to whether Defendant</p> <p>22 discriminated against Plaintiff on the basis of</p> <p>23 religion. Vague and ambiguous as to the</p> <p>24 meaning of "Christian principles." Subject to</p> <p>25 and without in any way waiving the foregoing</p> <p>26 objections, and to the extent that Responding</p> <p>27 Party understands this alleged fact: Disputed.</p> <p>28 Chin is nominally a Christian, but does not</p>   |

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| 1  |   | believe in the central tenets of Christianity.      |
| 2  |   | Becker Decl., Exh. 8, Chin Dep.Tr.,                 |
| 3  |   | <i>id.</i> 170:22-171:14 (“Q. ... [D]o you trust in |
| 4  |   | Jesus Christ as your Savior?... THE                 |
| 5  |   | WITNESS: No. BY MR. BECKER: Q. Do                   |
| 6  |   | you believe in the Scripture that Jesus Christ      |
| 7  |   | is the way, the truth, and the light?... THE        |
| 8  |   | WITNESS: No.”)                                      |
| 9  | 85. Klenk is Christian, and attends             | Objection. Immaterial. The alleged fact has         |
| 10 | American Martyrs church. <b>Klenk 133:4-5</b>   | no significance in determining the outcome of       |
| 11 | (“Are you a Christian? A. Yes, I am.”);         | this case with regard to whether JPL discrimi-      |
| 12 | <b>Klenk 263:18-19</b> (“Q. First of all, where | nated against Coppedge on the basis of reli-        |
| 13 | do you go to church? A. I go to American        | gion. Klenk ratified the conclusions and rec-       |
| 14 | Martyrs.”).                                     | ommendations of Jhertaun Huntley, HR’s in-          |
| 15 |   | vestigator, that Plaintiff was violating De-        |
| 16 |   | fendant’s unlawful harassment policies by           |
| 17 |   | discussing his religious views and therefore        |
| 18 |   | should be disciplined. Subject to and without       |
| 19 |   | in any way waiving the foregoing objection,         |
| 20 |   | and to the extent that Responding Party un-         |
| 21 |   | derstands this alleged fact: Undisputed.            |
| 22 | 86. Burgess is Christian. Burgess 66:18-19      | Objection. Immaterial. The alleged fact has         |
| 23 | (“Q. You’re a Christian? A. Yes.”).             | no significance in determining the outcome of       |
| 24 |   | this case with regard to whether JPL discrimi-      |
| 25 |   | nated against Coppedge on the basis of reli-        |
| 26 |   | gion. Burgess ratified the conclusions and          |
| 27 |   | recommendations of Jhertaun Huntley, HR’s           |
| 28 |   | investigator, that Plaintiff was violating De-      |
|    |   | fendant’s unlawful harassment policies by           |
|    |   | discussing his religious views and therefore        |
|    |   | should be disciplined. Subject to and without       |

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|   | in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed.   |
| 87. Van Why considers himself to be Christian. He was raised in the Congregationalist church. Van Why Decl. ¶ 18.   | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed.  |
| 88. Burgess bought four intelligent design DVDs from Coppedge. Burgess 33:4-34:25 ("Q. And did you have a sense of what Greg was referring to when he referred to DVD's? A. I did. Q. And is that because David had shared DVD's with you in the past? A. Yes. Q. Were you aware of what the content or nature of the DVD's was that Greg was referring to? A. Yes. Q. Did he refer to them in that meeting as intelligent design DVD's or related to intelligent design? A. He may have. . . . Q. Did you purchase any of those DVD's from David? A. Those four you mentioned, I did."). | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether JPL discriminated against Coppedge on the basis of religion. Burgess ratified the conclusions and recommendations of Jhertaune Huntley, HR's investigator, that Plaintiff was violating Defendant's unlawful harassment policies by discussing his religious views and therefore should be disciplined. Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed. |

**DEFENDANT'S ISSUE NO. 3: PLAINTIFF'S FIRST CAUSE OF ACTION FOR DISCRIMINATION IN VIOLATION OF FEHA FAILS AS A MATTER OF LAW TO THE EXTENT PLAINTIFF PURPORTS TO BASE IT UPON HIS ALLEGED RIGHT TO FREE EXPRESSION.**

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| <b><u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u></b> | <b><u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u></b> |
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| 89. Defendant incorporates by reference Undisputed Material Fact ¶¶ 1, 2, 47. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 1, 2, 47. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 1, 2, 47. |
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**DEFENDANT'S ISSUE NO. 4: PLAINTIFF'S SECOND CAUSE OF ACTION FOR DISCRIMINATION PURSUANT TO LABOR CODE §§ 1101 AND 98.6 FAILS AS A MATTER OF LAW BECAUSE PLAINTIFF CANNOT ESTABLISH CONDUCT IN VIOLATION OF EITHER SECTION.**

**Defendant's Sub-Issue No. 1: Plaintiff Does Not Allege, And There Is No Evidence Of, Any Caltech Policy That Impedes Political Expression Of Employees, As Required Under Labor Code Section 1101.**

| <u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u>  | <u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u>  |
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| 90. Defendant incorporates by reference Undisputed Material Fact No. 47. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact No. 47 | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact No. 47.  |
| 91. Coppedge does not allege the existence of any Caltech policy regarding political expression. SAC ¶¶ 72-80.   | Objection. Immaterial. The alleged fact has no significance in determining the outcome of this case with regard to whether Defendant violated Lab. Code 1101. First, it does not qualify as a material <i>fact</i> . Rather, it constitutes a putative demurrer to the Plaintiff's Second Cause of Action. Second, § 1101 is not restricted in its breadth and scope to allegations pertaining to formal written policies, as this alleged fact seems to imply. The section provides: |

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|  | <p>"No employer shall <i>make, adopt, or enforce any rule, regulation, or policy: (a) Forbidding or preventing employees from engaging or participating in politics .... (b) Controlling or directing, or tending to control or direct the political activities or affiliations of employees.</i> (Emphasis added.)</p> <p>Plaintiff has adequately pled facts to show that Defendant, in doing the acts alleged, made, adopted or enforced a rule, regulation or policy forbidding and preventing Plaintiff from engaging or participating in politics by distributing a political flyer. Plaintiff has also adequately pled that Defendant, in doing the acts alleged, sought to control Plaintiff's political activities by restricting his right to discuss Proposition 8 with willing co-workers. Second Amended Complaint ("SAC"), Second Cause of Action, ¶¶ 72-80, 22:10-24:14.</p> |
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**Defendant's Sub-Issue No. 2: Plaintiff Cannot Establish That He Engaged in Conduct Protected Under The Labor Code, As Required Under Labor Code Section 98.6.**

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| <p>92. Defendant incorporates by reference Undisputed Material Fact ¶¶ 47, 91. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 47, 91.</p> | <p>Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 47, 91. Additionally: Immaterial. The alleged facts have no significance in determining the outcome of this case with regard to whether JPL violated Lab. Code § 98.6. See Coppedge's Additional Disputed Material Facts § XII (the findings of a feckless investigation: the Proposition 8 incident).</p> |
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**DEFENDANT'S ISSUE NO. 5: PLAINTIFF'S THIRD CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF FEHA FAILS AS A MATTER OF LAW BECAUSE PLAINTIFF CANNOT ESTABLISH A CAUSAL NEXUS BETWEEN ANY PROTECTED CONDUCT AND ANY ALLEGED ADVERSE EMPLOYMENT ACTION.**

**Defendant's Sub-Issue No. 1: Plaintiff Cannot Establish A Causal Nexus Between Any Protected Conduct And The Only Adverse Employment Action He Identifies, His Layoff.**

| <u><b>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</b></u>  | <u><b>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</b></u>   |
|---|---|
| 93. Defendant incorporates by reference Undisputed Material Fact ¶¶ 7, 62-80, 87. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 7, 62-80, 87. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 7, 62-80, 87. In addition, Plaintiff objects on the ground that the alleged facts have no significance in determining the outcome of this case with regard to whether a causal nexus between protected conduct and adverse employment action can be established. See Coppedge's Additional Disputed Material Facts. |

**Defendant's Sub-Issue No. 2: Plaintiff Cannot Establish A Causal Nexus Between Any Protected Conduct And The Other Alleged Retaliatory Actions.**

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| 94. Defendant incorporates by reference Undisputed Material Fact ¶¶ 15-60, 81-82, 84-86, 88. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 15-60, 81-82, 84-86, 88. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 15-60, 81-82, 84-86, 88. In addition, Plaintiff objects on the ground that the alleged facts have no significance in determining the outcome of this case with regard to whether Plaintiff can establish a causal nexus between protected conduct and the alleged adverse employment action. |
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1 **DEFENDANT'S ISSUE NO. 6: PLAINTIFF'S FOURTH CAUSE OF ACTION FOR**  
2 **RETALIATION IN VIOLATION OF PUBLIC POLICY FAILS AS A MATTER OF LAW**  
3 **BECAUSE PLAINTIFF CANNOT ESTABLISH A CAUSAL NEXUS BETWEEN ANY**  
4 **PROTECTED CONDUCT AND ANY ALLEGED ADVERSE EMPLOYMENT ACTION,**  
5 **AND, TO THE EXTENT HE ATTEMPTS TO RELY ON FREE SPEECH, ALSO**  
6 **BECAUSE HE CANNOT TETHER IT TO A FUNDAMENTAL PUBLIC POLICY, AS**  
7 **REQUIRED.**

| <u><b>MOVING PARTY'S UNDISPUTED<br/>MATERIAL FACTS AND<br/>SUPPORTING EVIDENCE</b></u>                 | <u><b>OPPOSING PARTY'S RESPONSE AND<br/>SUPPORTING EVIDENCE</b></u>  |
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| 95. Defendant incorporates by reference<br>Undisputed Material Fact ¶¶ 1-2, 7, 15-60,<br>62-82, 84-88. | Plaintiff hereby incorporates its objections<br>and responses to Defendant's Undisputed Ma-<br>terial Fact ¶¶ 1-2, 7, 15-60, 62-82, 84-88. In<br>addition, Plaintiff objects on the ground that<br>the alleged facts have no significance in de-<br>termining the outcome of this case with regard<br>to whether Plaintiff can establish a causal<br>nexus between protected conduct and the al-<br>leged adverse employment action. |

16 **DEFENDANT'S ISSUE NO. 7: PLAINTIFF'S FIFTH CAUSE OF ACTION FOR**  
17 **HARASSMENT IN VIOLATION OF FEHA FAILS AS A MATTER OF LAW BECAUSE**  
18 **THE CONDUCT ALLEGED WAS NOT SUFFICIENTLY SEVERE OR PERVASIVE TO**  
19 **ALTER THE TERMS AND CONDITIONS OF HIS EMPLOYMENT, SOME CONDUCT**  
20 **CONSTITUTES NON-ACTIONABLE PERSONNEL MANAGEMENT DECISIONS,**  
21 **AND THE TOTALITY OF CIRCUMSTANCES ESTABLISH NO HARASSMENT**  
22 **TOOK PLACE.**

23 **Defendant's Sub-Issue No. 1: None Of The Conduct Plaintiff Alleges Is Severe Or Per-**  
24 **vasive.**

| <u><b>MOVING PARTY'S UNDISPUTED<br/>MATERIAL FACTS AND<br/>SUPPORTING EVIDENCE</b></u>   | <u><b>OPPOSING PARTY'S RESPONSE AND<br/>SUPPORTING EVIDENCE</b></u>   |
|--|---|
| 96. Defendant incorporates by reference<br>Undisputed Material Fact ¶¶ 1-2, 7, 15-60,<br>62-82, 84-88. Defendant incorporates by | Plaintiff hereby incorporates its objections<br>and responses to Defendant's Undisputed Ma-<br>terial Fact ¶¶ 1-2, 7, 15-60, 62-82, 84-88. In |

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| reference Supporting Evidence for Undisputed Material Fact ¶¶ 1-2, 7, 15-60, 62-82, 84-88. | addition, Plaintiff objects on the ground that the these alleged facts have no significance in determining the outcome of this case with regard to whether Plaintiff can establish a causal nexus between protected conduct and the alleged adverse employment action. |
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**Defendant's Sub-Issue No. 2: Some Of The Actions In Question (Chin's Admonition To Coppedge Regarding Avoiding Disruptive Speech, The Written Warning, Removal Of Lead Duties, Appeal Denial, And Layoff) Were Personnel Management Decisions, Which Are Not Actionable As A Matter Of Law.**

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| 97. Defendant incorporates by reference Undisputed Material Fact ¶¶ 28, 44, 48, 55, 75. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 28, 44, 48, 55, 75. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 28, 44, 48, 55, 75. |
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**Defendant's Sub-Issue No. 3: The Totality Of Circumstances Establish No Harassment Took Place.**

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| 98. Defendant incorporates by reference Undisputed Material Fact ¶¶ 15-60, 62-82, 84-88. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 15-60, 62-82, 84-88. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 15-60, 62-82, 84-88. |
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**DEFENDANT'S ISSUE NO. 8: PLAINTIFF'S SIXTH CAUSE OF ACTION FOR FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN VIOLATION OF FEHA FAILS AS A MATTER OF LAW BECAUSE NO DISCRIMINATION OR HARASSMENT OCCURRED, AND BECAUSE CALTECH MET ITS OBLIGATION TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION AND HARASSMENT BY IMPLEMENTING POLICIES AND TAKING ACTION TO INVESTIGATE AND REMEDY CHARGES UNDER THEM.**

**Defendant's Sub-Issue No. 1: No Discrimination Or Harassment Occurred.**

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| <b><u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND</u></b> | <b><u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u></b> |
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| <b><u>SUPPORTING EVIDENCE</u></b>   |  |
| 99. Defendant incorporates by reference Undisputed Material Fact ¶¶ 15-60, 62-82, 84-88. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 15-60, 62-82, 84-88. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 15-60, 62-82, 84-88. |

**Defendant's Sub-Issue No. 2: Caltech Met Its Obligation To Take Reasonable Steps To Prevent Discrimination And Harassment By Implementing Policies And Taking Action To Investigate And Remedy Charges Under Them.**

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| 100. Defendant incorporates by reference Undisputed Material Fact ¶¶ 29, 32-42. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 29, 32-42. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 29, 32-42.  |
| 101. Caltech has implemented an Unlawful Harassment Policy. <b>Huntley Decl. ¶ 12, Ex. A; SAC ¶ 108.</b>   | Undisputed.   |
| 102. Caltech has implemented a Nondiscrimination And Equal Employment Opportunity Policy. <b>Zapp Decl. ¶ 12, Ex. J.</b>   | Undisputed.   |
| 103. JPL employees can access policies online. <b>Huntley Decl. ¶ 13.</b>  | Objection. Vague and ambiguous as to the meaning of "policies." Subject to and without in any way waiving the foregoing objection, and to the extent that Responding Party understands this alleged fact: Undisputed. |

**DEFENDANT'S ISSUE NO. 9: PLAINTIFF'S SEVENTH CAUSE OF ACTION FOR WRONGFUL DEMOTION IN VIOLATION OF FEHA FAILS AS A MATTER OF LAW FOR THE SAME REASONS AS COPPEDGE'S RELIGIOUS DISCRIMINATION AND RETALIATION CLAIMS.**

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| <b><u>MOVING PARTY'S UNDISPUTED</u></b> | <b><u>OPPOSING PARTY'S RESPONSE AND</u></b> |
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| <u>MATERIAL FACTS AND SUPPORTING EVIDENCE</u>  | <u>SUPPORTING EVIDENCE</u>   |
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| 104. Defendant incorporates by reference Undisputed Material Fact ¶¶ 15-56, 82, 85-86, 88. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 15-56, 82, 85-86, 88. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 15-56, 82, 85-86, 88. Additionally: Objection. |

**DEFENDANT'S ISSUE NO. 10: PLAINTIFF'S EIGHTH CAUSE OF ACTION FOR WRONGFUL DEMOTION IN VIOLATION OF PUBLIC POLICY FAILS AS A MATTER OF LAW FOR THE SAME REASONS AS COPPEDGE'S RELIGIOUS DISCRIMINATION AND RETALIATION CLAIMS, AND, TO THE EXTENT HE ATTEMPTS TO RELY ON FREE SPEECH, ALSO BECAUSE PLAINTIFF CANNOT TETHER IT TO A FUNDAMENTAL PUBLIC POLICY, AS REQUIRED.**

| <u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u>  | <u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u>  |
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| 105. Defendant incorporates by reference Undisputed Material Fact ¶¶ 1, 2, 15-56, 82, 85-86, 88. Defendant incorporates by reference Supporting Evidence for Undisputed Material Fact ¶¶ 1, 2, 15-56, 82, 85-86, 88. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Material Fact ¶¶ 1, 2, 15-56, 82, 85-86, 88. |

**DEFENDANT'S ISSUE NO. 11: PLAINTIFF'S NINTH CAUSE OF ACTION FOR WRONGFUL TERMINATION IN VIOLATION OF FEHA FAILS AS A MATTER OF LAW FOR THE SAME REASONS AS COPPEDGE'S RELIGIOUS DISCRIMINATION AND RETALIATION CLAIMS.**

| <u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u>            | <u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u>                                 |
|--|--|
| 106. Defendant incorporates by reference Undisputed Material Fact ¶¶ 7, 62-80, 87. | Plaintiff hereby incorporates its objections and responses to Defendant's Undisputed Ma- |

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|---------------------------------------|------------------------------|
| 1 Defendant incorporates by reference | terial Fact ¶¶ 7, 62-80, 87. |
| 2 Supporting Evidence for Undisputed  |                              |
| 3 Material Fact ¶¶ 7, 62-80, 87.      |                              |

4 **DEFENDANT'S ISSUE NO. 12: PLAINTIFF'S TENTH CAUSE OF ACTION FOR**  
5 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (TAMENY)**  
6 **FAILS AS A MATTER OF LAW FOR THE SAME REASONS AS COPPEDGE'S**  
7 **RELIGIOUS DISCRIMINATION AND RETALIATION CLAIMS, AND, TO THE**  
8 **EXTENT HE ATTEMPTS TO RELY ON FREE SPEECH, ALSO BECAUSE**  
9 **PLAINTIFF CANNOT TETHER IT TO A FUNDAMENTAL PUBLIC POLICY, AS**  
10 **REQUIRED.**

| 9 <u><b>MOVING PARTY'S UNDISPUTED</b></u>       | 9 <u><b>OPPOSING PARTY'S RESPONSE AND</b></u> |
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| 10 <u><b>MATERIAL FACTS AND</b></u>             | 10 <u><b>SUPPORTING EVIDENCE</b></u>          |
| 11 <u><b>SUPPORTING EVIDENCE</b></u>            | 11 <u><b>SUPPORTING EVIDENCE</b></u>          |
| 12 107. Defendant incorporates by reference     | Plaintiff hereby incorporates its objections  |
| 13 Undisputed Material Fact ¶¶ 1, 2, 7, 49, 62- | and responses to Defendant's Undisputed Ma-   |
| 14 80, 87. Defendant incorporates by            | terial Fact ¶¶ 1, 2, 7, 49, 62-80, 87.        |
| 15 reference Supporting Evidence for            |   |
| 16 Undisputed Material Fact ¶¶ 1, 2, 7, 49, 62- |   |
| 17 80, 87.                                      |   |

17 **DEFENDANT'S ISSUE NO. 13: PLAINTIFF'S ELEVENTH CAUSE OF ACTION FOR**  
18 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (BASED ON THE**  
19 **CALIFORNIA CONSTITUTION) FAILS AS A MATTER OF LAW FOR THE SAME**  
20 **REASONS AS COPPEDGE'S RELIGIOUS DISCRIMINATION AND RETALIATION**  
21 **CLAIMS, AND, TO THE EXTENT HE ATTEMPTS TO RELY ON FREE SPEECH,**  
22 **ALSO BECAUSE PLAINTIFF CANNOT TETHER IT TO A FUNDAMENTAL PUBLIC**  
23 **POLICY, AS REQUIRED.**

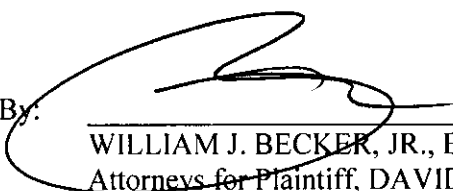
| 22 <u><b>MOVING PARTY'S UNDISPUTED</b></u>      | 22 <u><b>OPPOSING PARTY'S RESPONSE AND</b></u> |
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| 23 <u><b>MATERIAL FACTS AND</b></u>             | 23 <u><b>SUPPORTING EVIDENCE</b></u>           |
| 24 <u><b>SUPPORTING EVIDENCE</b></u>            | 24 <u><b>SUPPORTING EVIDENCE</b></u>           |
| 25 108. Defendant incorporates by reference     | Plaintiff hereby incorporates its objections   |
| 26 Undisputed Material Fact ¶¶ 1, 2, 7, 49, 62- | and responses to Defendant's Undisputed Ma-    |
| 27 80, 87. Defendant incorporates by            | terial Fact ¶¶ 1, 2, 7, 49, 62-80, 87.         |
| 28 reference Supporting Evidence for            |  |
| Undisputed Material Fact ¶¶ 1, 2, 7, 49, 62-    |  |

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| 80, 87. |  |
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DATED: September 2, 2011

**THE BECKER LAW FIRM**

By:   
\_\_\_\_\_  
WILLIAM J. BECKER, JR., ESQ.  
Attorneys for Plaintiff, DAVID COPPEDGE

09/02/11