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FILED
LOS ANGELES SUPERIOR COURT

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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
10

11 **DAVID COPPEDGE**, an individual;

Case No. BC435600

12 Plaintiff,

**PLAINTIFF DAVID COPPEDGE'S
SEPARATE STATEMENT OF
ADDITIONAL DISPUTED FACTS IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION OF
ISSUES**

13 vs.

14 **JET PROPULSION LABORATORY**, form
15 unknown; **CALIFORNIA INSTITUTE OF**
16 **TECHNOLOGY**, form unknown;
17 **GREGORY CHIN**, an Individual; **CLARK**
18 **A. BURGESS**, an Individual; **KEVIN**
19 **KLENK**, an Individual; and **Does 1 through**
20 **25**, inclusive,

[Pl.'s Opp. To Mot.; Mem. Of P's & A's; Pl.'s
Resp. to Sep. Stat. of Undisp. Mat. Facts; Obj.
to Evid.; Decl. of W. Becker, Jr.; Decl. of D.
Coppedge; Decl. of D. DeWolf; Decl. of
L. Ball; Appdx. Of Non-Calif. Auth's.;
Exhibits; Not. Of Ldg't; and [Prop'd] Order
Re: Obj. To Evid. filed concurrently herewith]

21 Defendants.

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

Trial Date: October 19, 2011

1 Plaintiff, David Coppedge, also submits the following statement of additional material
2 facts that raise triable issues as to all causes of action together with references to supporting evi-
3 dence, in opposition to Defendant's motion.

<u>PLAINTIFF'S ADDITIONAL</u> <u>MATERIAL FACTS</u>	<u>SUPPORTING EVIDENCE</u>
I. COPPEDGE'S EMPLOYMENT BACKGROUND	
1. Described by NASA/JPL as "one of the most ambitious effort in planetary space exploration ever mounted," Cassini is NASA's foray into exploring the ringed planet and studying the Saturnian system in detail.	Becker Decl., Exh. 1, NASA Facts, Cassini Mission to Saturn.
2. Coppedge was hired by Defendant JPL in September 1996, as a System Administrator ("SA") through a contract with an outside agency and as a full-time employee in January 2003. He served on the program for fourteen years, longer than any other SA.	Becker Decl., Exh. 2, Coppedge Dep.Tr., 50:1-22 and 265:2-11 (describing longevity).
3. Coppedge's duties, title and responsibilities remained unchanged in the transition from contractor to employee.	<i>Id.</i> , 51:22-52:1 ("Greg told me it was more advantageous to the program if I were a JPL employee rather than a contractor. So I evaluated the matter and chose to be a JPL employee. My role and work did not change as a result.")
II. COPPEDGE'S ROLE AS TEAM LEAD SA.	
4. In 2000, Coppedge's line management supervisor, Clark A. Burgess ("Burgess") appointed Coppedge team "lead" for Cassini's Mission Support and Services Office ("MSSO") ("Team Lead SA"). He was not only the most senior systems administrator	Becker Decl., Exh. 3, Burgess Dep.Tr., 23:13-19 ("Q. Were there particular criteria other than seniority that you took into account in selecting David for that role? ... THE WITNESS: <i>Well, he was not only senior</i>

1	but the best technical person for the job.	<i>but probably the best technical person.”)</i>
2		(Emphasis added.)
3	5. For <i>nine</i> years, Coppedge led a team of	Becker Decl., Exh. 2, Coppedge Dep.Tr,
4	“system administrators” (“SAs”) responsible	866:19-20 (“I was Team Lead for nine years.”);
5	for managing and maintaining almost all of	<i>id.</i> , Exh. 4, Employee Contribution and As-
6	the computers and networks supporting the	essment of Performance (“ECAP”) 2007-
7	ground systems of the world-renowned space	2008 Job Description attached to Klenk
8	mission.	Dep.Tr., as Exh. 6 (“Team Lead SA on multi-
9		ple distributed networks for the Cassini pro-
10		ject, both Development and Ops Operations,
11		supporting over 160 Unix workstations and
12		servers, and 14 routers and assorted peripheral
13		equipment in the Space Flight Operations Fa-
14		cility. Support 10 remote Science and Opera-
15		tions centers in the USA and Europe, com-
16		prised of Cisco routers and workstations. Par-
17		ticipate in hardware, software, network design
18		and implementation. Oversee functions of
19		security, backups, monitoring, problem solv-
20		ing and user assistance. Coordinate tasks for
21	6. A Team Lead was recognized as some-	team of 5 system administrators and report
22	one with leadership judgment. The position	activities to management.”).
23	was akin to an administrative position. It in-	<i>Id.</i> , Exh. 5, Klenk Dep.Tr., 208:5-22 (“By
24	involved a significant amount of customer in-	having the lead activities, he was the one who
25	teraction. The Team Lead was the “go to”	was going to be recording the activities that
26	SA for the team. The Team Lead was re-	were going to be performed, and he had a <i>sig-</i>
27	sponsible for leading tasks for the group,	<i>nificant amount of customer interaction in</i>
28	overseeing task assignment, obtaining and	<i>that role</i> . So he was one of the people named
	reporting customer feedback, and setting the	as ‘ <i>This is who you can talk to.</i> ’”); <i>id.</i> ,
		243:21-244:16 (“So everywhere you’ve
		worked, you’ve seen the term “Team Lead”?

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Team Lead served as a liaison between the SA group and the customers? ... THE WITNESS: Yes."); *id.*, Exh. Mitchell Dep.Tr., 78:13-20 ("Q. What is your understanding as to what Team Lead is in the Cassini project? A. In that specific instance, it was the person responsible for coordinating the activities, coordinating among the SAs as to which would do what tasks, what were the priorities of the different tasks to be completed, schedule for when they were to be completed.") (Emphasis added.); *id.*, Exh. 2, Coppedge Dep.Tr., 175:21-177:19 ("In terms of being a lead, as a lead, did you act as the liaison between the customer or user and the systems administrators? A Sometimes, yes. At meetings I would occasionally be the representative, I would say, of the SA team. Q Well, what did you see as your job duties and responsibilities when you were acting as the lead administrator? A Well, I listed a lot of these in the complaint already, and I -- you know, I've documented this pretty well. But in short, the team lead is acknowledged to be the one who represents the SAs' interests and concerns and then conveys the project priorities and messages to the team. I felt it was my duty to build morale and a team spirit and to hear their concerns. I would hold weekly meetings, and they would do most of the talking because I would give them a platform to share things that they were working on and

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	<p>... I would also do reporting of the team's activities to Mr. Chin, and also these would go into monthly management reports to the program. And there was other things that I've documented, but that's some of them. Q So one is acting as a liaison. Another one is the reporting and sometimes consolidating the input from the individual SAs into a consolidated report that you provided to Mr. Chin; correct? A Oh, and as I think of things, may I add to the list? Q I was just going to tell you, a third thing was you also attended meetings that Mr. Chin ... [w]eekly ... [s]taff meetings. A -- MSSO lead meetings, yes. Q ... I realize that's not every detail. Does that generally summarize the activities you did as a lead? A Yes, and bring their concerns forward. And also, I would take notes to bring back to the ... system admin.") ;<i>id.</i>, 679:9-15 ("I'm depressed over having lost a very prestigious position. I mean, being the Team Lead system admin in the largest interplanetary mission ever is a big blow to my pride.")</p>
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III. INTELLIGENT DESIGN	
<p>7. Intelligent design ("ID") is a scientific theory that refers to the study of patterns in nature that are best explained by an intelligent cause, not by undirected processes such as natural selection,. Although it is a scientific theory, it has implications for philosophy and religion. Because the theory ID de-</p>	<p>DeWolf Decl., ¶ 15, 5:18-26.</p>

1 sign, as applied to questions of biological
2 origins, challenges the assumptions upon
3 which a materialist philosophy is based, pro-
4 ponents of ID as a scientific theory are fre-
5 quently perceived by individuals who hold a
6 materialist viewpoint to be arguing in favor
7 of a religious rather than a scientific view-
8 point.

8 8. ID is not focused on the identity of the
9 intelligent agent but on the effects of design
10 in nature and whether they are discernable.
11 ID is a scientific theory, but it has implica-
12 tions for philosophy and religion.

Becker Decl., Exh. 2, Coppedge Dep.Tr, 70:5-
7 ("It's not focused on the identity of the intel-
ligence but just the effects of design, whether
they are discernible or not."); DeWolf Decl., §
4(A), pp. 6-8.

12 9. Because the theory of ID, as applied to
13 questions of biological origins, challenges
14 the assumptions upon which a materialist
15 philosophy is based, proponents of ID as a
16 scientific theory are frequently perceived by
17 individuals who hold a materialist viewpoint
18 to be arguing in favor of a religious rather
19 than a scientific viewpoint.

DeWolf Decl., § 4(B), pp.8-9.

19 10. The hostility toward proponents of ID is
20 widespread in academic and scientific cir-
21 cles. This hostility is based not on the scien-
22 tific merits of ID as a theory, but rather upon
23 the perception that ID theory threatens set-
24 tled assumptions that form the basis of a
25 common worldview.

DeWolf Decl., § 4(C), pp 9-15

25 11. Multiple historical examples of individu-
26 als suffering adverse consequences because
27 of a positive view of ID and reflecting an

DeWolf Decl., ¶ 26, 11:15-15:6.

1 intolerance toward ID advocacy (especially
2 in the employment context) have been doc-
3 umented.

4 12. The treatment of Coppedge by JPL em-
5 ployees is consistent with the irrational hos-
6 tility often exhibited toward advocates of ID.

DeWolf Decl., § 4(D), pp. 15-17.

7 IV. COPPEDGE'S RELIGIOUS CONVICTIONS

8 13. Coppedge was raised in a religious
9 household. His father was a Methodist min-
10 ister who founded a San Fernando Valley
11 church. The 60-year-old Coppedge is a life-
12 long faithful, active and practicing Christian.
13 He attended a Christian university. He is
14 president of Master Plan Association, a non-
15 profit youth ministry.

Becker Decl., Exh. 2, Coppedge Dep.Tr,
30:16-19 (Christian since he was a child); *id.*,
30:20-25 (attended a Christian university); *id.*,
63:23-65:11 (president of Master Plan Asso-
ciation).

16 14. Coppedge only discussed religion with
17 willing co-workers, and generally co-
workers who had divulged to Coppedge that
they too were Christian.

Coppedge Decl., ¶ 6, 3:8-9.

18 V. COPPEDGE'S ACTIVITIES DISTRIBUTING DVDS

19 15. For the past decade, Coppedge has been
20 a board member of Illustra Media, the pro-
21 duction company behind the DVDs he
22 loaned to co-workers. His interest in ID and
23 his association with Illustra left him with a
24 profound respect for the study of life's origin
25 and the origin of the universe. Coppedge al-
26 so hosts and maintains a website, Creation-
27 Evolution Headlines (crev.info) focused on
28 that study.

Becker Decl., Exh. 2, Coppedge Dep.Tr,
58:10-25 ("Are you affiliated in any way with
Illustra Media? A Yes. Q In what way are you
affiliated? A An unpaid board member. Q
And when you say a board member, you mean
a board of directors? A Yes. Q All right. And
how long have you been a member of the
board of directors for Illustra Media? A
About 10 years or more. ... Maybe 12
years."); *id.*, 476:20-477:11 (web site);
Coppedge Decl., ¶ 15.

1 16. Because JPL and Cassini are in the busi-
2 ness of exploring the origin of life on earth
3 and the origin of the solar system, which is
4 what the DVDs also examine, Coppedge be-
5 lieved his co-workers would find the DVDs
6 of interest. Indeed, several JPL scientists
7 even appear in the DVDs.
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Becker Decl., Exh. 7, Mitchell Dep.Tr., 69:2-
72:19 (The results from the Cassini mission
“will give a fresh impetus to the theories of
the origin of life on the Earth” and “yield fun-
damental information on the processes that led
to the origin of life on Earth.”; apart from
hoping to discover evidence relating to the
formation of life on Earth, the Cassini mission
also is an effort to determine the solar sys-
tem's origins; “Is it fair to say that JPL is in
the business of searching for clues to the solar
system’s origins in many of its missions? ...
A. Yes. BY MR. BECKER: And the origin of
life on Earth? ... A. Yes.); *id.*, Exh. 2,
Coppedge Dep.Tr, 746:6-14 (“Two of the sci-
entists were Cassini scientists that everybody
in the Cassini program knew. And I thought
surely people would be interested in this. It's
uplifting. It's thought-provoking. It's not bi-
ased. I mean, watch it. It's not dogmatic at all.
Why wouldn't I have an interest?”)

19 17. Coppedge’s interests in his religious
20 convictions and ID were widely known with-
21 in Cassini. Through his years at JPL,
22 Coppedge had enjoyed sharing his interest in
23 ID with others through documentary DVDs
24 exploring the subject.
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Becker Decl., Exh. 8, Chin Dep.Tr., 200:6-9
 (“Many people in the program were well
aware of David promoting religion and intel-
ligent design.... It was a data point.”); Mitch-
ell Dep.Tr., 28:11-15 (“Q. You're aware that
David handed out DVD'S concerning intelli-
gent design; is that right? A. I am. Q. How
did you come to that information? A. General
hallway hearsay.”); Becker Decl., Exh. 2,
Coppedge Dep.Tr, 215:23-216:17 (“Q What

1		was your purpose in giving out all these
2		DVDs? A These are great films. They're beau-
3		tiful films. And I challenge anybody who's
4		worried about what I did to take these films
5		and watch them. Q I know, but -- A They're --
6		Q -- the purpose is why are you giving them
7		out to people? A Why not? Q What's your
8		goal, if there is one? A I believe strongly in
9		intelligent design. I'm excited about it. I like
10		to talk about it. And what better way to intro-
11		duce a subject than to at least let somebody
12		see a well-done, highly professional, beautiful
13		film that explains what it's about. If they want
14		to discuss it further after that, fine. If they
15		don't, that's fine. To me it was just a nice con-
16		versation starter on something that is interest-
17		ing and important.")
18	18. If co-workers were not interested in	Becker Decl., Exh. 2, Coppedge Dep.Tr,
19	watching a DVD about ID, Coppedge would	217:14-16 ("If they were not interested, all
20	not bring it up again with them.	they had to do was say the word, and it would
21		never be brought up again."
22	19. Coppedge loaned out the DVDs "Un-	Becker Decl., Exh. 9 (DVDs "Unlocking the
23	locking the Mystery of Life," a documentary	Mystery of Life" and "The Privileged Planet"
24	detailing the biochemical explanation for ID,	lodged with the Court); <i>id.</i> , Exh. 2, Coppedge
25	and "The Privileged Planet," a documentary	Dep.Tr, 70:1-7 ("Q. BY MR. ZAPP: Well, my
26	detailing the cosmological explanation for	question is does intelligent design teach that
27	ID. Neither DVD refers to the doctrine of	there could be an intelligent source for the
28	Creationism, to the identity of a designing	universe other than a god or creator? A. It's
	agent, to God, to religion or to any religious	not focused on the identity of the intelligence
	view.	but just the effects of design, whether they are
		discernible or not."); <i>id.</i> , Exh. 10, DVD Loan-

1		Out Log, 11/16/04 through 3/17/09, attached to Coppedge Dep.Tr., as Exh. 1009; <i>id.</i> , Exh. 2, Coppedge Dep.Tr., 209:1-13 ("Q And so TPP stands for The Privileged Planet? A Yes. Q UMOL is Unlocking Mysteries of Life? A Yes."; DeWolf Decl., ¶ 28, 15:20-25.
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6	20. Over a period of time beginning in November 2004 through March 2009,	Becker Decl., Exh. 10, <i>supra</i> ; <i>id.</i> , Exh. 11,
7	Coppedge kept a log of the names of individuals to whom he loaned or sold DVDs,	notations on calendar indicating positive, neutral and negative responses, attached to the
8	the dates he loaned them, the dates the DVDs were returned to him, and descriptions of the responses he received (e.g.,	deposition transcript of David Coppedge as Exh. 1010, p. 2; <i>id.</i> , Exh. 12, 3/10/2009 notes
9	"Liked it very much, wants to get a copy. Impressed with the quality.") More often	from Burgess interview attached to the deposition transcript of Jhertaune Huntley as Exh. 24, ("Clark states that he has discussed Intelligent Design w/ David C and has even purchased some DVDs/CDs"); <i>id.</i> , Exh. 3, Burgess Dep.Tr., 35:12-14 ("Q. Were you offended by the content of any of those DVD'S? A. I was not."); <i>id.</i> , Exh. 22, Weisenfelder Dep.Tr., 21:25-22:1 ("I was not offended by the content of the DVD."); <i>id.</i> , Exh. 20, Vetter Dep.Tr., 110:25-111:1 ("Q. Do you recall being offended by [the DVD "The Privileged Planet"]? A. I do not -- No, I was not offended.")
10	than not, the individual borrowing an intelligent design DVD liked it. Some would thereafter purchase a copy to keep for themselves. Even Coppedge's line management supervisor, Clark ("Cab") Burgess, purchased them from Coppedge. In fact, many employees did not find the DVDs to be offensive at all.	
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23	21. Coppedge's purposes for maintaining the log were to avoid approaching anyone on the subject of ID who showed a lack of interest so that he would not be accused of harassing them, as well as to build relationships with those who found ID to be interesting.	Becker Decl., Exh. 2, Coppedge Dep.Tr, 208:7-16 ("At one point I decided to keep track of DVDs I had shared with friends and co-workers because I was interested in how they responded, for one thing, and I didn't want to upset or bother anybody who did not
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1		have a good response by forgetting that I had
2		shared one and they didn't want to hear about
3		it again. So this was my effort to try to avoid
4		being unwelcome or disruptive with people by
5		keeping notes."); <i>id.</i> , 57:21-58:1 ("Q And
6		what was your purpose in maintaining a
7		list of individuals to whom you distributed
8		these DVDs? A So as not to harass someone if
9		I had approached them earlier and they were
10	22. Coppedge distributed DVDs of a reli-	<i>Id.</i> , 54:21-55:23, 209:14-29.
11	gious nature to people he felt already were	
12	accepting of the Christian point of view.	
13	They included the Lee Strobel films "The	
14	Case for Christ," "The Case for a Creator"	
15	and "The Case for Faith" as well as a docu-	
16	mentary entitled "Jesus, Fact or Fiction."	
17	Other than "Jesus, Fact or Fiction," these	
18	films were produced by La Mirada Films, an	
19	imprint of Illustra Media, the company on	
20	which Coppedge sits as a board member.	
21	23. In December 2008, in the spirit of giving	Becker Decl., Exh. 10, <i>supra</i> ; <i>id.</i> , Exh. 2,
22	the Christmas holiday is meant to inspire,	240:7-15; <i>id.</i> , Exh. 11, <i>supra</i> (In 2008,
23	and believing Chin would be interested in it,	Coppedge notes eight positive responses,
24	Coppedge left a copy of "The Case for	three neutral responses and one (Chin) nega-
25	Christ" in Chin's mail slots. Chin never	tive response.); <i>id.</i> , Exh. 2, 143:20-144:5 ("...
26	bothered to respond or to thank Coppedge	I gave him a copy of The Case for Christ as a
27	for the gift, and Coppedge never brought the	Christmas present just in his mail slot,
28	matter up with Chin.	Christmas 2008. It was Christmas, you know.
		So here's Lee Strobel's account of the historic-
		ity of the account of Christ. I thought he might

be interested in it. He never responded to it, never said a peep about it. But I -- and I never brought it back up again with him.”); *id.*, Exh. 8, Chin Dep.Tr., 176:14-177:16 (“Q. Do you re-call David giving you a DVD called the Case for Christ, based on the book by Lee Strobel, for Christmas in 2008? A. Yes, sir. Q. Did you receive that DVD in your mail slot at JPL? A. Yes, sir. Q. What did you do with that DVD? A. I set it aside. Q. Did you ever discuss it with David? A. No. Q. Did you ever thank him for it? A. I do not believe I did. Q. Why not? A. I did not thank him. Q. Was there a reason for not thanking David for giving you that gift? A. I don’t recall. I do not recall thanking David specifically. Q. Did you ever view the DVD he gave you for Christmas? A. No, sir. Q. Were you offended that he gave you that as a gift? A. No, sir. Q. To this day, you haven’t viewed that movie, have you? A. That’s correct.

24. Prior to March 2, 2009, Coppedge was unaware of any complaints from anyone about his lending the DVDs.

Coppedge Decl., ¶ 2, 2:7-8

VI. CHIN LAUNCHES AN OFFENSIVE TIRADE, ACCUSING COPPEDGE OF PUSHING HIS RELIGIOUS VIEWS ON COWORKERS AND THREATENING HIM WITH TERMINATION.

25. On March 2, 2009, in response to a complaint from a JPL employee, Chin angrily accused Coppedge of “pushing” his religious views concerning intelligent design and gay

Becker Decl., Exh. 8, Chin Dep.Tr. 113:12-114:3 (“Q. Do you remember March 2, 2009? A. Yes. Q. Describe to me what happened after the team meeting. Did you ask David to

1 marriage on co-workers and demanded it
2 stop. From the outset, Chin was hostile and
3 argumentative. Coppedge memorialized the
4 exchange in an e-mail the following day.
5 However, Chin neither responded to nor re-
6 butted it.

7 stick around? A. Yes.... The meeting was
8 held in the conference room. Q. What was
9 your purpose in holding that meeting on
10 March 2, 2009? A. I wanted to advise David
11 of the situation, that I thought it was getting a
12 little -- possibly out of hand."); *id.*, 157:23-
13 158:7 ("Q. Now, on paragraph 3 of David's e-
14 mail to you, it says that you, Greg Chin, told
15 him, David Coppedge, that it had been report-
16 ed to you, Greg, that 'I,' David, '*was pushing*
17 *my religious views* at work and that some
18 found this offensive.' Is that an accurate
19 statement? A. Yes, sir. Q. *Did you believe*
20 *that David was pushing his religious views at*
21 *work? A. I am -- yes, sir.*") (Emphasis add-
22 ed.); *id.*, 158:8-13 ("Q. What religious views
23 was he pushing at work? A. Intelligent De-
24 sign. Q. Was he also pushing his religious
25 views regarding gay marriage? A. Yes."); *id.*,
26 Exh. 14 (3/3/09 e-mail from Coppedge to
27 Chin ("You told me that it had been reported
28 to you that I was pushing my religious views
at work and that some found this offensive.
You told me this must stop. You ordered me
not to discuss politics or religion with anyone
in this office."); *id.*, Exh. 5, Coppedge Dep.Tr
275:1-10 ("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 ques-
tion the beliefs of others? A He put it a lot
stronger than that. He claimed I was pushing

1		my religion on people, and he was visibly angry and demanding that it had to stop. Q So
2		he was visibly angry and demanding at the
3		very outset of the meeting? A Yes."); <i>id.</i> ,
4		Exh. 2, 276:11-15 ("... [H]e was hostile and
5		argumentative from the outset. And I wrote
6		down my recollections of the meeting and
7		gave him an opportunity to respond and say is
8		this correct? And he did not. So I take that to
9		be agreement.")
10	26. Although Coppedge does not believe that	Becker Decl., Exh. 8, Chin Dep.Tr., 163:9-12
11	intelligent design is a religious concept, Chin	("At the time I believed intelligent design was
12	perceived it that way. Chin repeatedly insist-	religion. I didn't want him to be discussing
13	ed that "intelligent design is religion" and	religious concepts during the work hours.");
14	ordered Coppedge to "cease all discussion of	<i>id.</i> , Exh. 2, Chin Dep.Tr. 3/3/09 e-mail from
15	religion or politics with anyone in the of-	Coppedge to Chin memorializing the incident
16	fice."	the previous day attached to Chin Dep.Tr., as
17		Exh. 14 ("When I asked why that constituted
18		pushing religious views, you said emphatical-
19		ly intelligent design is religion at least
20		twice."); <i>id.</i> , Exh. 8, Chin Dep.Tr., 311:17-
21		312:1 ("I did say intelligent design was reli-
22		gion, yes.... I said intelligent design was reli-
23		gion. David insisted intelligent design is fact,
24		not a religion. And I disagreed."; <i>id.</i> , 314:13-
25		316:12 ("I was getting a little frustrated with
26		David.... But yes, I reiterated I did not want
27		him to be discussing this because it would be
28		disruptive.... David did say that, yes, he
		heard me and I did not need to be repeating
		it."); <i>id.</i> , 161:8-18 ("I did say intelligent de-

1		sign is religion. BY MR. BECKER: Q. Did
2		you say it emphatically? A. Not necessarily
3		the choice of words I would have used. Q. Did
4		you say it in a loud voice? A. I was trying to
5		relay to Dave, yes, intelligent design is reli-
6		gion. Q. Did you say it at least twice? A.
7		Yes."); <i>id.</i> , Exh. 13, <i>supra</i> ("When I asked if
8		science is determined by consensus or by evi-
9		dence, you did not wish to discuss that sub-
10		ject. Throughout this interchange, you repeat-
11		ed the order several times to cease all discus-
12		sion of religion with anyone in this office, to
13		the point where I remarked I heard you and
14		did not need the repetition.")
15	27. During the March 2 meeting, Chin de-	<i>Id.</i> ("You told me that it had been reported to
16	manded that Coppedge immediately cease	you that I was pushing my religious views at
17	discussing religion and politics at work and	work and that some found this offensive. You
18	warned against disobeying his order at the	told me this must stop. You ordered me not to
19	risk of termination. Chin warned Coppedge	discuss politics or religion with anyone in this
20	that disobedience would result in making it	office....You said that if what I was doing
21	"difficult" for Coppedge "to maintain em-	continued, it would be difficult for me to
22	ployment in this organization."	maintain employment in this organization.");
23		<i>id.</i> , Exh. 8, Chin Dep.Tr., 316:13-317:11 ("I
24		had told Dave that if he continued and persist-
25		ed being difficult to work with people, if he's
26		making himself -- no one will want to work
27		with him. No one will want to listen to him.
28		No one will do things. And I said his options
		here will be severely limited. ... I'll agree my
		choice of words probably weren't the best...."
	28. When Chin assailed Coppedge for push-	Becker Decl., Exh. 2, Coppedge Dep.Tr,

1 ing his religion on others, he was visibly an-
2 gry, uninterested in hearing Coppedge's po-
3 sition and insensitive to Coppedge argu-
4 ments in his defense.

140:21-141:12 ("Greg was visibly angry with
me and refusing to hear any response I gave.
And he at the end stormed out of the room,
saying, 'Well, then go ahead and file a com-
plaint.' ... Subsequent to that, when I tried to
reason with him by saying, you know, this
was a kind of a tense meeting here, here's my
recollection of what was said, you know, just
trying to be impartial -- 'Is this correct, or do
you have a different version?' -- he refused to
answer. ... And the next thing I know, I'm be-
ing investigated as if I had done something
wrong."); *id.*, Exh. 8, Chin Dep.Tr., 310:20-25
("Q. But it's accurate that when David offered
to provide examples of conversations that he
was aware of, you did not wish to hear them?
A. I said it wasn't necessary because if people
are being harassed by this, I didn't want him
to go down that path."); *id.*, Exh. 2, Coppedge
Dep.Tr., 278:12-14 ("...[H]e was argumenta-
tive and would not listen to reason. No matter
what I said in my defense, he refused to ac-
cept it.")

21 29. Coppedge was stunned. He was com-
22 pletely caught off guard by Chin's angry and
23 hostile behavior and manner in addition to
24 the subject of Chin's tirade, and surprised
25 enough to promptly make a record of what
26 had occurred. He did not know where
27 Chin's behavior had come from. He felt he
deserved to be treated better, that Chin had

Becker Decl., Exh. 2, Coppedge Dep.Tr.,
291:17-292:3 ("Q And wasn't it totally out of
character for Mr. Chin to be as you described,
and that is to be immediately angry and hos-
tile towards you over this subject at the outset
of the conversation? A It was surprising
enough to me to where I wrote that follow-up
email saying, 'This is clearly a very sensitive

1 violated his civil rights and had crossed a
2 line by making a blanket accusation of har-
3 assment.

subject. And for your protection as well as
mine, wouldn't it be good to have a record of
what was said?' I was stunned. I was com-
pletely caught off guard by his behavior and
his manner and the subject matter."); *id.*, Exh.
14, J.Huntley Notes from Interview of
D.Coppedge, 3/5/09 attached to deposition
transcript of Jhertaune Huntley as Exh. 23
("David stated that he was very surprised by
Greg's behavior during the 3/4 mtg. Did not
know where it came from. He feels he de-
serves better treatment. He feels Greg has
violated his civil rights, his freedom of speech
and went over the line in making a blanket
accusation about harassment.")

14 30. Coppedge told Chin that his words could
15 be construed as creating a hostile work envi-
16 ronment.

Becker Decl., Exh. 2, Coppedge Dep.Tr.,
295:21-296:5 ("Q Did you make any state-
ment to the effect that -- strike that. Did you
use the term 'hostile work environment' in
any form? ... A I said his words could be
construed as creating a hostile work environ-
ment.")

20 31. Coppedge recalled the encounter with
21 Chin in an e-mail sent to Chin the following
22 day. Coppedge advised Chin that he respect-
23 ed Chin's authority and would abide by his
24 directives. Coppedge further advised that his
25 purpose in sending the e-mail was to estab-
26 lish an accurate record of what was actually
27 said between them, and to offer Chin an op-
28 portunity to correct any errors or omissions

Becker Decl., Exh. 13, *supra* ("Greg, I want
to repeat my commitment to you, that I re-
spect your authority, and will abide by your
directives in this office, as I always have, to
the extent that they do not violate the laws of
the United States or my conscience. Given the
sensitive nature of yesterday's interchange, I
feel a mutually-agreed on record of the con-
versation is important for our mutual protec-

1 in Coppedge's version of the facts.

2 tion. Here are my recollections. The purpose
3 is to record what was actually said, not what
4 might have been the intent, nor to comment
5 on the merit of any points made. You can cor-
6 rect any errors or omissions, or simply reply
7 to this email to acknowledge whether this
8 summary is basically accurate. You told me
9 that it had been reported to you that I was
10 pushing my religious views at work and that
11 some found this offensive. You told me this
12 must stop. You ordered me not to discuss
13 politics or religion with anyone in this office.
14 When I asked for specifics about who com-
15 plained, you said you did not have to provide
16 me names. When I offered to provide exam-
17 ples of conversations I knew of, you did not
18 wish to hear them. When I asked what consti-
19 tuted the religious views, you said I was giv-
20 ing out DVDs about intelligent design. When
21 I asked why that constituted pushing religious
22 views, you said emphatically, "intelligent de-
23 sign is religion" at least twice. When I asked
24 if SETI NASA's Search for Extra-Terrestrial
25 Intelligence" is religion, since it also uses sci-
26 entific methods to infer intelligence, you said
27 that was different, and SETI has been decided
28 by NASA to be a scientific activity. When I
asked if evolution is religious, you said that
that evolution by scientific consensus was sci-
ence. When I asked if science is determined
by consensus or by evidence, you did not wish

1		to discuss that subject. Throughout this inter-
2		change, you repeated the order several times
3		to cease all discussion of religion with anyone
4		in this office, to the point where I remarked I
5		heard you and did not need the repetition. You
6		said that if what I was doing continued, it
7		would be difficult for me to maintain em-
8		ployment in this organization. When I said
9		this order gets into issues of freedom of
10		speech and religion, you did not wish to dis-
11		cuss that subject, and got up to leave. When I
12		said this could be construed as creating a hos-
13		tile work environment, you said "Go ahead a
14		file a complaint," and walked out. No com-
15		plaints about my job performance were stated.
16		Nothing was said whether my alleged reli-
17		gious activities were interfering with work.
18		The conversation lasted about 5-10 minutes
19		on Monday, March 2, 2009, about 3:30p.m.
20		Toward a mutual understanding and construc-
21		tive work relationship, David F. Coppedge").
22	32. Chin did not mention during the meeting	Becker Decl., Exh. 14, <i>supra</i> ("No complaints
23	any complaints about Coppedge's job per-	about my job performance were stated.")
24	formance.	
25	33. Chin's treatment of Coppedge reflects	Decl. Dewolf., ¶ 32.
26	both of the features commonly found in the	
27	treatment of ID advocates – the assumption	
28	that it is not worthy of debate as a scientific	
	theory, and the belief that, because it is reli-	
	gious rather than scientific, it poses a threat	
	to the integrity of the scientific enterprise	

1	itself.	
2	34. Chin never mentioned that Coppedge's	Becker Decl., Exh. 14, <i>supra</i> ("Nothing was
3	alleged religious activities had interfered	said whether my alleged religious activities
4	with anyone's work.	were interfering with work.")
5	35. Following Chin's March 2 tirade,	Becker Decl., Exh. 2, Coppedge Dep.Tr,
6	Coppedge paid a visit to JPL's chief ethics	318:12-319:6 (Coppedge contacted Doug
7	officer seeking a neutral opinion as to	Sanders the same day).
8	whether Chin's conduct had crossed a line.	
9	VII. CHIN REPORTS COPPEDGE TO HR AND MANAGEMENT	
10	36. Chin reconsidered the wisdom of inviting	Becker Decl., Exh. 5, Klenk Dep.Tr., 328:7-
11	Coppedge to file an official complaint	15 ("Now, initially the decision to issue a
12	against him, and thus sought to preempt	written warning was triggered by David's
13	Coppedge by reporting the incident himself	complaint of a hostile work environment to
14	to JPL's human resources department	Greg Chin; isn't that correct?
15	("HR") and requesting that HR conduct an	... THE WITNESS: Greg Chin reported that
16	investigation into whether he (Chin) had	he had been accused of creating a hostile work
17	done something wrong. Chin reported to	environment and reported that."); <i>id.</i> , Exh. 15,
18	HR, to Coppedge's "line management" su-	Transcript of 4/13/2009 audio recording of
19	pervisor, Clark A. ("Cab") Burgess ("Bur-	meeting with K.Klenk and C.Burgess attached
20	gess") and to his supervisors that Coppedge	to the deposition transcript of Kevin Klenk as
21	had accused him of creating a hostile work	Exh. 44 ("We actually heard that you said
22	environment. According to Chin, his purpose	someone was creating a hostile work envi-
23	in reporting the incident was to prompt an	ronment. So we immediately called ER em-
24	investigation into his own conduct – not into	ployee relations that you were being – you felt
25	Coppedge's conduct or even any claim of	you were in a hostile work environment. So
26	harassment alleged against Coppedge.	we had them immediately go out and say
27		please check into it. It was an impartial point
28		of view. The response to us was 'Well, there
		was a hostile work environment, and we feel
		David is the one creating it.'"); <i>id.</i> , Exh. 8,
		Chin Dep.Tr., 123:22-124:13 ("Q. What was

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your purpose in sending the document marked as exhibit 13 to Arden Acord and Mario Mora? A. They are my line management. Q. What was your purpose in sending it to them? A. To document an incident. Q. When you refer to 'an incident,' what are you referring to? A. The course of the meeting, I had conversation with David. At the end of the meeting, David felt that I was creating a hostile work environment for him. That raises a red flag also. It's a key term. I reported to various entities that 'Hey, this incident happened. Please be aware of it.'");*id.*, Exh. 8, Chin Dep.Tr., 152:10-154:3 ("Now, 'hostile work environment' is another key phrase, a very sensitive one. It's not something -- I thought about it. I go, 'Oh, maybe I said it the wrong way.' So I went and reported to my organization that I created a situation where David felt he was being -- that I had created a hostile work environment for him. So I wanted to report that 'Look, if I said it wrong, I screwed up here. Cab, I said this to David. David may be coming down,' okay, because I was trying to just brief Cab. I told the AA and the people I notified because, 'Look, I said something. I got -- I raised my voice because I was getting frustrated because, you know, I had asked Dave, 'let's not go here. Let's not talk about politics. Let's not talk about religion.' And yet he persisted. He kept going and wanted to

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	<p>challenge me. And I was just getting frustrated. I just said, 'we're not going there.'" And so if I created a hostile work environment, I later thought my choice of 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.' <i>Q. Was it your goal to begin an investigation of David for violating the unlawful harassment policy of JPL at the time you reported him to Clark Burgess, Carmen Vetter, Whitney Haggins, Mario Mora, and -- and I'm not sure of any others -- but was that your intention?... THE WITNESS: No.</i> BY MR. BECKER: <i>Q. Did you understand that by contacting those individuals you would, in effect, be initiating an employee investigation? A. On myself? Yes. Q. What do you mean 'on yourself'? A. I'm the one that created a hostile work environment for David. I needed to tell them that 'If David feels this, I must have screwed up.'") (Emphasis added.).</i></p>
<p>37. In his initial e-mail reporting the incident the following morning, Chin recalled an employee ("MW") coming to his office around 8 a.m. to "express a concern" about being "harassed" by Coppedge relating to Coppedge's "belief in Intelligent Design and Support for Pro. 8." Chin said he informed Coppedge that ID is a "personal belief that should be kept "to himself" unless <i>other</i></p>	<p>Becker Decl., Exh. 17, e-mail from G.Chin to C.Burgess, C.Vetter, et al., 3/3/2009 describing his version of the 3/2/2009 incident with Coppedge ("Approx 8 AM, employee MW came to my office to express a concern about being 'harassed' by David -- his belief in Intelligent Design and support for Prop. 8."; "informed him that Intelligent Design (ID) is a personal belief that should be kept to himself</p>

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1	people invited <i>him</i> to discuss it.	<i>unless invited by other to discuss.</i> ") (Emphasis added.)
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3	38. Chin further told Coppedge that he was	<i>Id.</i> ("I informed him that he was not been sin-
4	not being singled out because he was being	gled out...as I have a complaint alleging that
5	accused of harassment because of his "ideol-	he is harassing people with his ideology.")
6	ogy."	
7	39. Chin admitted telling Coppedge that "his	<i>Id.</i> ("... I then told him...that if he pursues
8	employment options here would be severely	this line of thought (wanting to discuss ID
9	limited" if he continued to discuss ID.	with individuals...who have already said they
10		are not interesting sic in hearing), that his em-
11		ployment options here would be severely lim-
12	40. Chin further reported that Coppedge felt	ited ...")
13	that Chin was threatening him and creating a	
14	hostile work environment. He recalled tell-	<i>Id.</i> ("He then told me that he felt that I was
15	ing Coppedge to file a complaint with his	threatening him ... and creating a 'hostile
16	supervisor.	work environment'. I informed him that if he
17		felt that, please go ahead and file a complaint
18	41. Chin made sure his report of the incident	with the supervisor.")
19	would go viral within management. Not	
20	content to simply leave a voicemail with HR	Becker Decl., Exh. 17, <i>supra</i> ("I then went to
21	concerning whether his personal behavior	disclose this interaction with his current su-
22	may have been excessive, he made a point of	supervisor (Clark Burgess) and the Cassini pro-
23	directly contacting Coppedge's immediate	gram's AA (Carmen Vetter). I also left a
24	supervisor (Clark Burgess), program man-	phone message on the Employee Relations
25	agement (Carmen Vetter), Coppedge's sec-	(x4-7506) phone line... requesting assistance
26	tion administrative assistant (Whitney Hag-	and to document this exchange. I've also
27	gins) and his immediate supervisor in line	called (and let the message describing the
28	management (Mario Mora). Haggins	above) with Whitney Haggins, Section 17x
	promptly spread the information to	AA. I have since talk directly with Whitney
	Coppedge's section manager (Kevin Klenk)	who says that she is informing Kevin Klenk
	and to the section's "HR representative."	(Section 173 Manager) and her HR repre-
		sentative. I've also called my line manage-
		ment organization (Mario Mora) And left a

1		message about the situation.”)
2	42. In 2009, JPL’s Human Resources (“HR”)	Becker Decl., Exh. 16, Huntley Dep.Tr., 38:9-
3	Management Section handled employee rela-	16 (“Q. First of all, can you tell me what you
4	tions issues. Those issues included reports	mean by employee relations issues? A. They
5	of a hostile work environment.	can range from someone making a claim of
6		harassment, discrimination, hostile work envi-
7		ronment, not getting along with their supervi-
8		sor or co-worker, accusations of time card
9		fraud, accusations of plagiarism, inappropriate
10	43. On March 3, 2009, Jhertaune Huntley	solicitation. It's varied and vast.”
11	(“Huntley”), a “senior human resources gen-	<i>Id.</i> , 90:15-91:6 (“When was your first contact
12	eralist” in JPL’s HR Management Section,	with anybody regarding David Coppedge on
13	responded to a voicemail Chin had left with	or around March 2 or 3? A. It was on the 2nd
14	HR. Huntley called Chin. Chin provided	of March. Q. And who was that contact with?
15	Huntley with his version of the exchange	A. Greg Chin. Q. Was that over the telephone,
16	with Coppedge. During that telephone con-	by e-mail, personally or some other method of
17	versation, Chin told Huntley that he had re-	communication? A. Over the telephone. Q.
18	ceived a complaint from an employee re-	Was that telephone call initiated by Mr. Chin?
19	garding being harassed by Coppedge in rela-	A. No. Q. Was it initiated by you in response
20	tionship to the employee’s “personal choic-	to something? A. Yes. Q. What were you re-
21	es.” Chin also told Huntley that the matter	sponding to? A. A voice mail message. Q.
22	was “religious based” and concerned ID and	From Greg Chin? A. Yes.”); <i>id.</i> , Exh. 8, Chin
23	Proposition 8. Chin further advised that	Dep.Tr., 184:16-19 (“A. Jhertaune called me
24	Coppedge would prepare and hand out polit-	up and wanted to understand what happened,
25	ical “press releases” to coworkers. Chin said	and I gave her clarifications as to what -- my
26	he had received complaints regarding “those	perspective of what happened, the events that
27	two issues.” He advised that the individual	transpired.”); <i>id.</i> , 184:20-22 (Chin spoke to
28	who had complained that day to him was	Carmen Vetter); <i>id.</i> , Huntley Dep.Tr., 96:16-
	Margaret Weisenfelder (“Weisenfelder”), the	25 (“He stated that he had received a com-
	Cassini digital librarian, and that he had spo-	plaint from an employee regarding being har-
		assed by David as relates to the employee's

1 ken about the matter with Carmen Vetter
2 ("Vetter"), the administrative assistant to the
3 Program Manager, Bob Mitchell ("Mitch-
4 ell").

personal choices, and she didn't know what to
do and she wanted it to stop. *And the choices
were concerning Proposition 8 as well as a
DVD he stated was called 'intelligent de-
sign,' and then he stated it was religious
based.* He also stated that he prepares press
releases as relates to politics to hand out to
employees, and he had received complaints
regarding those two issues.") (Emphasis add-
ed.)

10 **VIII. THE FINDINGS OF A FECKLESS INVESTIGATION: HUNTLEY BEGINS**
11 **HER "INVESTIGATION" BY INTERVIEWING COPPEDGE**

12 44. On 3/5/2009, Huntley met with
13 Coppedge to interview him in connection
14 with her investigation into charges of har-
15 assment against Coppedge triggered by
Chin's "complaint."

Becker Decl., Exh. 23, *supra* ("Mtg w/ David
Coppedge 3/9/09 re: Greg Chin Complaint.")

16 45. Her investigation was strictly focused on
17 the charges of harassment made against
18 Coppedge, not on Chin's behavior or wheth-
19 er Coppedge's allegation of a hostile work
20 environment were substantiated.

Becker Decl., Exh. 16, Huntley Dep.Tr.,
126:8-16 ("Q. Okay. March 2 was a Monday.
Did you agree on a date to meet with David?
A. Yes.... Q. You agreed to meet on March
5th? A. Yes."); 129:8-132:13 ("Q. Did you
tell David that you were responding to a re-
port by ... David's manager that David had
characterized the work environment as a hos-
tile work environment? A. No. Q. During the
meeting on March 5, 2009, did you inform
David at any time that you were responding to
Greg Chin's report to you that David had
characterized the work environment as a hos-
tile work environment? A. No. Q. Did you

ask David whether, during the meeting on March 5, 2009, whether he believed that he was working in a hostile work environment? A. No. Q. Why not? A. That wasn't the complaint that was lodged with me by Greg Chin. Q. ... Did Greg tell you in the March 2 phone call that David claimed that it was a hostile work environment? A. No. Q. Were you aware, as of March 5, that David had told Greg Chin that he felt -- something along the lines of that he felt that this was a hostile work environment or that Greg was creating one? A. Only by reading the documents. Q. Did you bring any documents that Greg forwarded to you? A. Yes. Q. So why is it that you didn't ask David what he meant by hostile work environment during the March 3 -- March 5, 2009 meeting? A. Because I was investigating the complaint that was basically lodged by Greg Chin, and it was not hostile work environment. ... Q. Do you mean the complaint that Greg Chin was relating to you from the other unidentified individual, or do you mean Greg Chin? A. It's twofold. It was one unidentified Individual, as well as others from -- other employees from the past that had lodged complaints with him, as relates to David. Q. Were you also, on March 5, 2009, investigating David with respect to Greg Chin's personal complaint about David?...THE WITNESS: Could you clarify 'personal.' BY MR.

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	<p>BECKER: Q. Didn't the documents that you reviewed relate a story in which Greg and David had a heated conversation and in which David mentioned the words 'hostile work environment' and in which Greg Chin told him to go file a complaint if he felt there was a hostile work environment? ... BY MR.</p> <p>BECKER: Q. You learned that from those documents; right? A. Yes. Q. So on March 5, were you interested in exploring what David meant ... that Greg was creating a hostile work environment? ...THE WITNESS: I was investigating the claim that was made to me by Greg Chin, which was an employee came to him and complained about being harassed by David Coppedge as relates to her personal choices, i.e., religion and politics, as well as a number of people coming to Greg in the past, stating they, as well, had been harassed by David as relates to his religious beliefs.")</p>
<p>46. Coppedge informed Huntley that Chin accused him of pushing his religious views on people and forbade him from ever discussing his religious or political views with anyone at the lab. Coppedge told the HR investigator that Chin said Coppedge was "harassing people," that it "had been going on for some time" and that "a number of people have complained." Coppedge described Chin as very angry.</p>	<p>Becker Decl., Exh. 14, <i>supra</i> ("David stated that Greg Chin asked to see him in his office on 3409 and accused him of pushing his religious views on people. Greg forbade him to discuss his religious or political views with anyone at the lab in the future. Greg was very angry and refused to tell David who made the complaint. Greg further stated during their meeting that David was harassing people and that it was going on for some time and a number of people have complained.")</p>

1 47. Coppedge told Huntley that he loaned
2 out copies of ID DVDs and kept a list of
3 names of co-workers who borrowed them to
4 keep track of who had the DVDs and who he
5 had already approached.
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Id., ("David states he would initiate giving his
co-workers the (*keeps a list of who he gives
DVDs to and who refuses to take them)
DVDS (i.e., The Privileged Planet, Intelligent
Design). He would ask if they would like to
watch the DVD at the end of the day on Fri-
days or Thursdays (RDO week). Some of his
co-workers would say yes and others would
let him know they were not interested in view-
ing the DVD's."); *id.*, Exh. 16, Huntley
Dep.Tr., 136:25-137:2 ("Q. Did he tell you
why he maintained that list? A. To keep track
of who had the DVDS and who he had al-
ready approached.")

13 48. Coppedge told Huntley that he had given
14 Chin "The Case for Christ" DVD as a
15 Christmas gift.
16

Id., ("David gave Greg a DVD (The Case for
Christ) as a Christmas gift. (Case for Christ is
a historical documentary, where scholars dis-
cuss their viewpoint if Christ lived or not).")

17 49. Coppedge told Huntley that he never co-
18 erced or pressured anyone to take the DVDS.
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Id., ("David stated that he lent the DVD's out.
They were not given as gifts (only Greg
Chin's). He never coerced or pressured any-
one to take the DVDS. David stated that he
takes less than 1 minute of his time he and his
co-workers to discuss lending out DVDS.")

22 50. Huntley's notes reflect that Coppedge
23 told her that at least one of the ID DVDs was
24 not religious and that Chin argued with him
25 that it was. In fact neither ID DVD contained
religious content.
26

Id., ("David states that the DVD Intelligent
Design is not religious and Greg Chin argued
with him that it is.") Coppedge Decl., ¶ 2.

27 51. Coppedge told Huntley that he was very
28 surprised by Greg's behavior during the

Id., ("David stated that he was very surprised
by Greg's behavior during the ¾ meeting.

1 meeting and did not know where it came
2 from. He said he believed he should have
3 been treated better, that he felt his civil rights
4 were violated and the Chin had crossed a
5 line by accusing him of harassment. He told
6 her that Chin shouted at him and told him to
file a complaint against him.

Did not know where it came from. He feels
he deserves better treatment. He feels Greg
has violated his civil rights, his freedom of
speech and went over the line in making a
blanket accusation about harassment. Greg
also shouted at him and stated, 'go ahead and
file a complaint.'")

7 52. Coppedge felt that he had been harassed
8 by Chin.

Becker Decl., Exh. 2, Coppedge Dep.Tr,
380:9-22 ("Without understanding the legal
meaning of the term, I thought he was acting
quite hostile to me and making my work envi-
ronment difficult, giving me a sweeping order
that I thought was beyond the bounds of what
any manager should demand of any employee,
and making it -- putting me on notice that I
could be fired if I cross some line that he had
set up. I was -- I was afraid of being in jeop-
ardy of my job and wondering if I talk about
anything that he considers inappropriate, even
if the person doesn't let on that this is unwel-
come or disruptive, I could be let go on that
pretext. I was quite disturbed and afraid of
the situation I was in.")

21 53. Coppedge's description of Chin's behav-
22 ior and grievance that Chin had violated his
23 civil rights by accusing him of harassment
24 and ordering him not to discuss his personal
25 views made no impression on Huntley, who
26 cannot even recall Coppedge's complete re-
27 marks to her, and who expressed utter indif-
ference to Coppedge's allegations.

Id., ("Q. So towards the bottom, it says that he
feels Greg has violated his civil rights, his
freedom of speech, and went over the line in
making a blanket accusation about harass-
ment. Greg also shouted at him and stated,
'go ahead and file a complaint.' When David
told you those things, did you feel that he was
reporting to you a claim of harassment? A.

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	<p>No. Q. Why not? When somebody reports their civil rights are being violated, don't you take that seriously? ... THE WITNESS: It depends on the situation at hand. BY MR. BECKER: Q. So, when he said he felt his civil rights were being violated, did you explore the situation at hand to find out what he was trying to tell you?... THE WITNESS: Can you be more specific? BY MR. BECKER: Q. No. You either did or you didn't try to explore it, so I don't know how to be more specific. He reported to you that he felt his civil rights were being violated. Did you take that report seriously? ... THE WITNESS: Yes, I took everything he told me seriously. BY MR. BECKER: Q. When he told you that Greg had violated his civil rights, did you inquire of the circumstances that led him to believe that his civil rights were being violated? A. Yes. Q. Okay. What did you ask him? A. How? Q. Okay. What did he tell you? A. What's written here, by making blanket accusation about harassment. Q. Did he say anything more about how his freedom of speech had been violated? ...THE WITNESS: I don't recall. BY MR. BECKER: Q. Did he say any more about how Greg went over the line in making a blanket accusation about harassment? A. I don't recall.")</p>
54. Coppedge described to Huntley a conversation he had had with another coworker,	Becker Decl., Exh. 16, Huntley Dep.Tr., 332:8-15 ("He told me that he went and spoke

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1 2 3 4	Bruce Elgin, concerning Proposition 8. He said the discussion was civil and cordial.	with Bruce and he spoke with Scott. ... Q. Had a friendly conversation with Bruce; right? ... THE WITNESS: That's what David stated.")
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	55. Huntley understood that Chin's complaint related to "religion and politics" and Coppedge's loaning of an ID DVD to Weisenfelder. Huntley also knew that Chin had ordered Coppedge not to discuss ID or hand out ID DVDs. Despite this information, Huntley failed to see any purpose in determining whether ID or the DVDs were in any way religious in nature, or that Coppedge had engaged in religious proselytizing. Whether Chin felt that ID was religious expression was not the basis of Huntley's investigation. She was only interested in a "pattern of behavior."	Becker Decl., Exh. 16, Huntley Dep.Tr., 164:11-15 ("The complaint that was lodged with Greg Chin was personal choices having to do with <i>religion and politics</i> . And with <i>that was the DVD, wanting to basically have the employee who made the complaint watch the DVD</i> . David asked her would she watch it."); <i>id.</i> , 346:1-8 ("THE WITNESS: What was important to me was the behavior, was the conduct and the manner in which he was approaching people. That was what was important. It didn't matter what the DVDs represented. It presented, you know, a manner that people conveyed to me, which was uncomfortable for them."); <i>id.</i> , ("Q. Well, did you ask Greg Chin whether he felt that intelligent design was religious expression? A. No, I did not. It wasn't the basis of my investigation. Again, it was the behavior. It was the pattern of the behavior."); see ¶¶ 35-37, 48, <i>supra</i> (Chin and Coppedge both referring to Chin's characterization of ID as religion).
24 25 26 27 28	56. Huntley was interested only in <i>how</i> people felt ("uncomfortable") when Coppedge approached them to discuss his "beliefs, opinions, views, his viewpoint," not <i>why</i> they felt that way.	<i>Id.</i> , 349:14-20 ("THE WITNESS: I was mainly interested on <i>how people felt</i> when they were approached by David about these particular, I guess, beliefs, opinions, views, his viewpoints; and they felt uncomfortable.

	They felt that, you know, the behavior was harassing in nature. That's what I was interested in finding out.") (Emphasis added.)
57. Huntley should have been interested (or at minimum curious) about the nature of ID. She should have inquired whether ID is a religious idea or doctrine. A competent investigator would have examined the nature of the subject matter.	Ball Decl. ¶ 12, 4:9-10; ¶ 20, 8:8-9.
IX. THE FINDINGS OF A FECKLESS INVESTIGATION: HUNTLEY INTERVIEWS BURGESS.	
58. On March 10, 2009, Huntley met with Burgess, Coppedge's direct supervisor to interview him in connection with her investigation into charges of harassment against Coppedge triggered by Chin's "complaint."	Becker Decl., Exh. 12, <i>supra</i> ("3.10.09 Mtg w/Clark Burgess (David Coppedge's supervisor) re: Greg Chin's Complaint"); Huntley Dep.Tr., 193:21-23 (these are the notes taken during the meeting with Burgess);
59. Huntley interviewed Burgess because Burgess was Coppedge's line manager, who Coppedge reported to directly. Huntley wanted to determine if anyone had complained to Burgess about Coppedge of harassment based on Coppedge's political and religious views.	<i>Id.</i> , ("Q. What was your purpose in meeting with Mr. Burgess? A. He is David Coppedge's line manager. That's who David Coppedge reports to."; <i>id.</i> , Exh. 16, Huntley Dep.Tr., 231:23-232:5 ("Q. Why did you speak to Burgess? A. Because he was David's line manager, direct line manager. Q. Okay. Did you have a purpose in mind for questioning Clark Burgess prior to that meeting? A. Yes. Q. What was it? A. Because he was David's line manager and I wanted to determine if anyone had complained to him about David as it relates to what was told to me by Greg Chin."))
60. Burgess told Huntley that he had discussed ID with Coppedge and had even pur-	<i>Id.</i> , ("Clark states that he has discussed intelligent design with David C And has even pur-

1	chased some DVD's/CDs from him. Bur-	chased some DVD's slash CDs from him.
2	gess said he never felt threatened or harassed	Clark has never felt threatened or harassed by
3	by Coppedge. The subject of ID was a topic	David. It was a topic that was casually dis-
4	that was casually discussed.	cussed.")
5	61. No co-workers had ever complained to	<i>Id.</i> , ("No co-workers have complained to
6	Burgess about Coppedge discussing ID with	Clark about David discussing intelligent de-
7	them nor had he ever heard that it had been	sign with them nor has he heard it has been
8	discussed with Coppedge's co-workers.	discussed with his co-workers. Clark has
9	Burgess had never witnessed nor heard Da-	never witnessed or heard David discuss any-
10	vid discuss anything politically related. This	thing politically related. The political stuff
11	was new information for Burgess.	was new information for Clark.")
12	62. Burgess told Huntley that Coppedge did	<i>Id.</i> , ("Clark states David does not really un-
13	not understand the harassment claim made	derstand the claim and want to know who
14	against him and wanted to know who com-	Complained to Greg Chin. Clark was not
15	plained to Chin. Coppedge was under the	aware that more than one individual complaint
16	impression he gave the videos/DVDS to only	about David harassing them during work
17	Christians. Burgess was not aware that more	hours about his political and religious views.
18	than one person had claimed harassment dur-	Per Clark, David does not understand why the
19	ing work hours about Coppedge's political	individual who complained to Greg did not
20	and religious views against him. Burgess	approach him first. David was under the im-
21	said Coppedge did not understand why the	pression he gave the videos/DVDS to only
22	individual who complained to Greg did not	Christians.")
23	approach him first.	
24	X. THE FINDINGS OF A FECKLESS INVESTIGATION: HUNTLEY	
25	INTERVIEWS CHIN.	
26	63. On 3/17/2009, Huntley met with Chin to	Becker Decl., Exh. 18, J.Huntley handwritten
27	interview him regarding his complaint. The	notes from interview with G.Chin, 5/17/2009.
28	notes she took during the meeting reflect	
	what Chin told her during their meeting.	
	64. Huntley's notes reflected a continuing	<i>Id.</i> ; Huntley Dep.Tr., 200:22-201:10 ("Q. ...
	focus on the religious and political nature of	'Greg states that he's tired of all of the com-

1 Coppedge's interests. Chin reiterated that
2 Weisenfelder had complained to him that
3 Coppedge was "harassing" her. During the
4 meeting, Chin recalled Weisenfelder telling
5 him that she felt harassed concerning her
6 "personal choices." Huntley asked Chin
7 what personal choices Weisenfelder was re-
8 ferring to. His response was "religion and
politics."

plaints ... regarding David harassing people
with his religious viewpoints during business
hours.' Did you ask Greg Chin during that
meeting what personal choices in life Marga-
ret Weisenfelder was talking about? A. Yes.
Q. And what were they? A. Religion and poli-
tics. Q. But 'personal choices'? What does
that mean? A. He stated religion and poli-
tics.")

9 65. Chin told Huntley that he had mentioned
10 Weisenfelder's complaint to Vetter and Edg-
11 ington. Vetter told Chin that she and Edging-
12 ton "had been bothered by David and his re-
13 ligious beliefs," and that she "was not sur-
prised by Margaret's complaint."

Id. ("Greg mentioned Margaret Weisenfield-
er's (sic) complaint about David to Carmen
Vetter on 3/2/09 as well. Carmen replied that
she and Edgington Edgington had been both-
ered by David and his religious beliefs. She
was not surprised by Margaret's complaint.")

14 66. Chin made a point of telling the HR in-
15 vestigator that Coppedge had previously
16 tried to convert Chin to Coppedge's religion
17 during work hours by leaving a DVD in his
18 inbox. Chin told Huntley that he was "tired
19 of all of the complaints regarding David har-
20 assing people with his religious viewpoints
during business hours."

Id. ("Greg also stated that David had previ-
ously tried to get him (Greg) to believe in his
religion during work hours. David had left
religious material (I.e. DVD) in Greg's inbox.
Greg states that he is tired of all of the com-
plaints regarding David harassing people with
his religious viewpoints during business
hours.")

21 67. When Chin told Coppedge on March 2
22 that "a lot of people" had complained about
23 him discussing his religion and politics
24 around the office, he was only referring to
25 one individual, Weisenfelder, but wished to
26 conceal her identity by making it appear as
27 though a lot of other people had complained.

Becker Decl., Exh. 8, Chin Dep.Tr., 265:21-
266:13 ("Q. In other words, on March 2,
2009, when you told David that you had re-
ceived a lot of complaints from people, you
had in mind certain individuals who had com-
plained about him discussing politics and reli-
gion around the office; right? A No, sir.
Q. So when you told him on March 2, 2009,

	that other people had complained, were you referring to job performance issues? A. I was actually 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. I was trying to give him an open -- say, 'Look, these are things you should not be doing here.'")
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XI. THE FINDINGS OF A FECKLESS INVESTIGATION: THE CHRISTMAS PARTY INCIDENT AND VETTER'S AGENDA

68. Up until 2003, the Cassini party in December of each year had been called the Christmas Party.

Coppedge Decl., ¶ 3.

69. In 2003, Coppedge noticed a change of name to "Holiday Party." Coppedge e-mailed Vetter and Chin inquiring into why it was being changed, and copied them on articles by commentators who believed that the practice of neutralizing "Christmas" in the work environment was a bow toward political correctness. Coppedge was not pushy, scolding or demanding in his communications with Vetter (the program manager's administrative assistant) or Chin (Coppedge's project manager), nor would he have attempted to be inasmuch as it would not have benefited him to deliberately alienate them. As Coppedge then expressed it to Chin, the issue was "small potatoes" to him,

Coppedge Decl., ¶ 4, Exh. 1, 11/3/2003 e-mail from D.Coppedge to G.Chin ("Greg,[t]his is small potatoes to me, and I'm not one to pour sour gravy over small potatoes, but I just want you to read this article. A Jewish leader supports changing 'holiday party' back to 'Christmas party' in the workplace. That's interesting in itself, but consider also the logic of his arguments. Thanks.")

1 but felt it would be appropriate to refer Chin
2 to an opinion piece written by noted Jewish
3 commentator Dennis Prager critical of the
4 practice of replacing "Christmas" with "hol-
5 iday."

6 70. Four years later, in 2007, JPL introduced
7 its "Diversity and Inclusion" policy to em-
8 ployees with a web presentation each em-
9 ployee was required to watch. One of the
10 slides recommended that offices avoid the
11 use of the word 'Christmas' in their party-
12 announcements, and even avoid Christmas-
13 color decorations, so as to appear more "in-
14 clusive."

15 71. On 3/20/2009, Huntley met with Carmen
16 Vetter, administrative assistant to the Cassini
17 Program Manager, Bob Mitchell, to inter-
18 view her in connection with her investigation
19 into charges of harassment against Coppedge
20 triggered by Chin's "complaint." The notes
21 she took during the meeting reflect what
22 Vetter told her at that time.

23 72. Vetter told Huntley that Coppedge "has
24 an agenda about Christianity." Vetter told
25 the investigator that once he discovered she
26 was a Christian "she was harassed by him."
27 She stated that several years earlier
28 Coppedge had "demanded" that she put the
word "Christ" on the Holiday Potluck invita-
tion flyer. Vetter said she asked Chin to put a

Coppedge Decl., ¶ 5, Exh. 2, screen shot of
2007 JPL diversity policy quiz referring to a
Christmas party invitation as inappropriate
because it features an image of Santa Claus, a
Christmas tree and Christmas presents ("the
pictures are associated with Christmas and
should be more neutral.") and refers to a
"Christmas Party"("keep the invitation and
party religion neutral. Instead of
'Christmas Party,' why not 'Holiday Party?'"")

Becker Decl., Exh. 19, J.Huntley handwritten
notes from meeting with Vetter on 3/20/2009
attached to the deposition transcript of
J.Huntley as Exh. 26.

Id. ("Carmen stated that she believes that Da-
vid has an agenda about Christianity. Once he
discovered she was a Christian she was har-
assed by him. A couple of years (4 to 5 years)
he demanded that she put the word "Christ"
on the Holiday Potluck invitation flyer. She
spoke to Greg Chin about the incident to make
it stop. Carmen believes that David is inap-

1 stop to it. Vetter described Coppedge as "in-
2 appropriate." She told the investigator that
3 Coppedge "has a passion about getting his
4 point across as it relates to religion" and that
5 he "can't see the line he is crossing when he
6 brings religion in the workplace." Vetter did
7 not explain to the investigator why she be-
8 lieved Coppedge to be "inappropriate" or
9 that Coppedge was unable to see that he was
10 crossing a line by discussing religious issues,
and Huntley did not inquire further.

appropriate and has a passion about getting his
point across as it relates to religion. David
can't see the line he is crossing when he
brings religion in the workplace."

11 73. Vetter was responsible for putting holi-
12 day parties together and had authority to
13 change the name of the Holiday Potluck Par-
14 ty to Christmas Party.

Becker Decl., Exh. 20, Vetter Dep.Tr., 93:16-
94:2 ("Q. Were you responsible for putting
the holiday parties together? A. Yes. Q. Okay.
At any time could you have changed it to be
called a Christmas party? MS. FOX: Objec-
tion. Assumes facts as to the Witness's au-
thority. BY MR. BECKER: Q. That's what
I'm asking you. Did you have the authority to
change it at any time? A. I -- Yes, I could
have changed it.")

19 74. In November 2003, Coppedge did, in
20 fact, contact Vetter by e-mail to request that
21 management consider restoring Cassini's
22 annual "Holiday Potluck Party" to its prior
23 name as the "Christmas Party." Coppedge
24 sent Vetter articles he had obtained off of the
25 Internet arguing the case for why neutral ref-
26 erences to Christmas were pandering to a
27 false sense of cultural "inclusiveness." Vet-
ter did not retain the e-mails Coppedge sent

Id., 43:9-15 ("Q. Okay. Can you tell me what
the e-mail said in general? A. in general, it
was saying that we were -- that we should call
it a Christmas party because that's what it is;
that it's not a holiday party; and then there
were articles that followed that e-mail."); *id.*,
44:17-45:2 (no recollection of having re-
sponded to the e-mails).

1	to her and does not recall if she ever re-	
2	sponded to any of them.	
3	75. Vetter characterized Coppedge's tone in	<i>Id.</i> , 43:4-44:10 ("Q. ... Can you describe the
4	his e-mail(s) to her as "pushy" and "scold-	tone of the e-mail? ... A. Pushy. ... "It was a
5	ing."	scolding manner.")
6	76. E-mails sent to Vetter cannot be located.	Coppedge Decl., Exh. 1, <i>supra</i> ("Greg, this is
7	However, Coppedge similarly had written to	small potatoes to me, and I'm not one to pour
8	Chin to make the request as well. The tone	sour gravy over small potatoes, but I just want
9	of Coppedge's e-mail to Chin was neither	you to read this article. A Jewish leader sup-
10	pushy nor scolding. He characterized the is-	ports changing 'holiday party' back to
11	sue as "small potatoes," but referred Chin to	'Christmas party' in the workplace. That's in-
12	a piece written by radio host Dennis Prager,	teresting in itself, but consider also the logic
13	who is Jewish, to consider the logic of Prag-	of his arguments. Thanks.")
14	er's argument against the employment prac-	
15	tice of substituting "holiday" for "Christ-	
16	mas."	
17	77. Vetter complained to Chin that	Becker Decl., Exh. 20, Vetter Dep.Tr.,
18	Coppedge was harassing her with his	135:13-15 ("I called Greg and asked him to
19	Christmas Party request.	have him stop. He was bothering/harassing
20		me regarding the Holiday Party.")
21	78. After learning about Vetter's complaint	Becker Decl., Exh. 16, Huntley Dep.Tr.,
22	of harassment concerning the naming of the	316:20-317:7 (Q. ... I want to know how you
23	Holiday Party, Huntley did not consider it	concluded that he was demanding that the par-
24	appropriate to interview Coppedge in order	ty be called a Christmas party or that the word
25	to obtain his version of the facts.	'Christ' be put into the event when he claims
26		he never demanded that. <i>You did ask him</i>
27		<i>about it; right? A. No, I didn't ask him about</i>
28		<i>it.</i> ") (Emphasis added.)
	79. Vetter believes Coppedge has an "agen-	Becker Decl., Exh. 20, Vetter Dep.Tr., 118:25-
	da," that he wants to convert people to his	126:16 ("I believe that David is trying to con-
	religious beliefs. But Vetter did not describe	vert people to his Christianity beliefs. Q. Has

1 any instance to Huntley of Coppedge engag-
2 ing in religious proselytizing and Huntley
3 made no effort to learn of any. Moreover,
4 Vetter has no idea even what Coppedge's
5 religious beliefs are. Vetter and Coppedge
6 had only "general conversations" about their
7 religious beliefs, which occurred "a long
8 time ago."
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he ever told you that he's trying to convert
people? A. I don't recall. Q. Did he ever invite
you to church with him? A. I don't recall. Q.
Did he ever invite you to any church-related
activity? A. I don't recall. Q. Did he ever in-
vite you to Bible study, for instance? A. I
don't recall. Q. Did he ever invite you to one
of his hikes which he calls Creation Safaris?
A. Not that I recall.... Q. Did you ever relate
to David what specific beliefs you held in
your particular faith? A. I believe we had dis-
cussions. Q. Do you recall specifically what
you told him you believed? A. I don't recall
specifically. Q. Did you share any of your
specific beliefs about your faith? A. *I recall
that we had general conversations about our
belief systems.* Q. Other than that, though,
can you be more specific? A. About? Q.
About what you discussed about your belief
system.... THE WITNESS: *I don't recall ex-
actly what we discussed about our belief sys-
tems....* Q. Do you recall what he said about
his particular beliefs ... in any of your discus-
sions with him? ... THE WITNESS: I don't
recall the conversations verbatim from five
years ago.... THE WITNESS: In the begin-
ning, in the general getting to know each oth-
er, it became very apparent that our belief sys-
tems were different, and David was very in-
tense in his beliefs, *more intense than I was
willing to work with, deal with in the work-*

1 *place.* And I did not want to meet him off lab
2 somewhere to discuss any of the issues. MR.
3 BECKER: ... Q. My question was very spe-
4 cific. Did he tell you his beliefs? ...Q. Yes or
5 no? Did he or didn't he? ... I believe Jesus
6 Christ is my savior. I'm telling you that right
7 now as an example. As an example, I'm going
8 to tell you that. I'm sharing with you what I
9 believe. A. Yes. Q. My question to you is:
10 Did David share what he believes in his reli-
11 gious practice with you? ... THE WITNESS:
12 I recollect that we had a conversation where
13 we discussed our belief systems to the point
14 where I was uncomfortable enough not to
15 want to have any more conversations. BY
16 MR. BECKER: Q. Okay. So he did share his
17 beliefs with you; right? A. To the best of my
18 recollection. *Q. Now, do you recall specifical-*
19 *ly what those beliefs were that he related to*
20 *you? A. No. Q. Not even one of them? A.*
21 *Not that I recollect.* Q. And what was it that
22 you felt that he was saying or doing that
23 brought the conversation to the point where
24 you were uncomfortable enough not to want
25 to have any more conversation? A. The inten-
26 sity of it.... I don't recollect everything we
27 discussed. I recollect -- I recollect that it
28 was intense enough, he was pushy enough
about his belief system that I did not want to
have the conversations anymore because I felt
he was looking to convert, to get you to move

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	<p>to the next step of whatever his religious agenda was. BY MR. BECKER: Q. Okay. So that's just a general feeling you had? A. That was -- yes. Q. <i>And you don't recall specifically what he had to say?</i> A. <i>I do not recall specifically. It was a long time ago.</i> Q. Did he ever criticize your faith? ... THE WITNESS: ... Criticize, no. There is only one way to go with David. BY MR. BECKER: Q. What is that? A. With his belief system. Q. Okay. And what is his belief system? ... THE WITNESS: I -- <i>I didn't get to know it well enough to know what his belief system is. I don't know.</i> BY MR. BECKER: Q. Weren't you curious?... THE WITNESS: No. BY MR. BECKER: Q. No? A. No. Q. Why not? A. Not after a few conversations." (Emphasis added.)</p>
<p>80. Vetter is currently not practicing her faith. She has many doubts about religion. In fact, she has so many questions at this point in her life that even though she nominally refers to herself as a "Christian," she is incapable of affirming a central tenet of Christianity -- that Jesus Christ is God.</p>	<p><i>Id.</i>, 53:13-54:7 (... "I have many questions at this point about Lutheranism and religion."); <i>id.</i>, 171:17-21 (Q. Do you believe that Jesus Christ is God? ... THE WITNESS: ... I have too many questions at this point in my life to even answer that question at this time.")</p>
<p>81. At no time did Vetter ever tell Coppedge that she did not wish to discuss religion with him or that it made her feel uncomfortable.</p>	<p><i>Id.</i>, Exh. 16, Huntley Dep.Tr., 66:18-25 ("Q. ... At some point did you tell David, 'David, I don't want to talk about this. I don't want to talk about religion' or 'I don't want to talk about this subject,' whatever he was telling you? ... THE WITNESS: Not that I recall.");</p>

	91:14-16 ("Q. Did you ever tell him, 'David, now I feel uncomfortable' at any time? A. No.")
82. Huntley did not question whether Vetter might have had an agenda or bias of her own that might cast doubt on the integrity of allegations of harassment Vetter was making.	<i>Id.</i> , 309:23-310:14 ("You didn't question Carmen Vetter's state of mind when she reported facts to you, did you? ...THE WITNESS: What do you mean by state of mind? BY MR. BECKER: Q. Whether she had an agenda.... BY MR. BECKER: Q. If I'm out to get somebody, I've got an agenda. You didn't question whether she had some form of bias toward David that caused her to maybe exaggerate facts, did you? A. No.")
XII. THE FINDINGS OF A FECKLESS INVESTIGATION: THE PROPOSITION 8 INCIDENT: EDGINGTON AND WEISENFELDER.	
83. In November 2008, voters went to the polls to decide whether to amend the California Constitution to define marriage as the union between one man and one woman. The measure passed and was adopted into law. The measure added a new provision, Section 7.5 of the Declaration of Rights, to the California Constitution, which provides that "only marriage between a man and a woman is valid or recognized in California."	Request for Judicial Notice as to California decisional, constitutional, and public statutory law. Evid. Code, § 451.
84. On 3/19/2009, Huntley met with Margaret Weisenfelder to interview her in connection with her investigation into charges of harassment against Coppedge triggered by Chin's "complaint."	Becker Decl., Exh. 21, J.Huntley handwritten notes from meeting with M.Weisenfelder, 3/19/2009 attached to the deposition transcript of Margaret Weisenfelder as Exh. 31.
85. Weisenfelder told Huntley that she felt	<i>Id.</i> , <i>supra</i> , ("Margaret stated that she has ex-

1 2 3 4 5 6 7 8 9 10 11 12 13 14	<p>"uncomfortable" when Coppedge approached her to discuss Proposition 8 the day before the election. Weisenfelder stated that Coppedge offered his view on Proposition 8 and asked her opinion. Weisenfelder told Huntley that she responded to Coppedge by telling him that she did not agree with his viewpoint and did not want to discuss the issue with him "because he was so persistent." Weisenfelder informed the Huntley that "David's approach was, 'can I talk to you about Prop 8,' then had a Prop 8 paper in his hand."</p> <p>86.</p>	<p>perienced two uncomfortable incidents with David. The first occurred the day before the presidential election/Prop 8 vote. David approached Margaret and asked if he could talk to her about Prop 8. Margaret stated that she was thinking while being asked this question by David, that she probably should not talk about political issues during work hours. David proceeded to tell Margaret his viewpoint on Prop 8 and then asked for her opinion. Margaret stated to David that she did not agree with his viewpoint and did not want to discuss the issue with him because he was so persistent. Margaret said that David's approach was, "can I talk to you about prop eight." Then had a Prop 8 paper in his hand.")</p>
15 16 17 18 19	<p>87. Although Coppedge had approached Weisenfelder in November regarding Proposition 8, Weisenfelder waited until March 2, 2009, to report the incident to Chin, when she also complained to Chin about Coppedge's ID DVD.</p>	<p><i>Id.</i>, ("Margaret went to Greg Chin to discuss the DVD issue and told him that she was feeling uncomfortable about David approaching her and talking about her stance on Prop 8.")</p>
20 21 22 23 24 25 26 27 28	<p>88. Weisenfelder testified that in the years she has known him, the only times Coppedge ever brought up religion were (1) when he approached her to discuss Proposition 8 and (2) when he offered her an ID DVD to borrow. However, she does not remember him discussing religion per se during the brief discussion on Proposition 8. And although she believes the DVD con-</p>	<p>Becker Decl., Exh. 22, Weisenfelder Dep.Tr., 26:17-27:23 ("Q. Do you recall David offering you a Prop 8 flier to look at in 2008? ... THE WITNESS: I remember him having it in his hand when he spoke to me on one occasion. BY MR. BECKER: Q. Prior to that occasion, had David ever spoken to you about religion? A. No. Q. During the discussion about Prop 8, did he talk to you about his reli-</p>

1 tained religious content, she can't explain
2 why.

gion? ...THE WITNESS: I don't remember
anything specific about his religion. BY MR.
BECKER: Q. After he talked to you about
Prop 8, did he ever have any conversation
with you about religion? ... THE WITNESS:
No. Only the two conversations, one about
Proposition 8 and then the DVD. BY MR.
BECKER: Q. Did he discuss religion with you
when he discussed Prop 8 with you? A. I don't
remember it specifically. Q. Generally? A. I
remember him asking me what my position on
it was."); *id.*, 32:25-33:19 ("You believe that
the documentary propounded a religious
viewpoint. That's what you said. What view-
point? ... THE WITNESS: Whatever argu-
ments were being given in favor of intelligent
design, which was the subject of the DVD.
BY MR. BECKER: Q. I'm trying to under-
stand why you feel that's a religious view-
point, not a scientific viewpoint.... THE
WITNESS: ... I'm not clear on the distinc-
tion. I'm not well versed in the idea of intelli-
gent design. ... I'm not an expert in any of
this.")

22 89. Weisenfelder felt Coppedge was being
23 "persistent" merely for asking whether there
24 was anything he could say to change her
25 mind.

Id., 110:11-23 ("When you say he was persis-
tent, you're referring to him doing something
persistently. What did he do that you feel was
insensitive? A. When he asked me if there
was anything he could say to change my
mind. Q. You felt that was insensitive? A. I
felt that his persistence was not sensitive. Q.

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	But that was his persistence, when he asked you whether there was anything he could say to change your mind; right? A. Yes. Q. Anything else? A. No.”); <i>id.</i> , 147:8-12 (“Q. And you felt that David was being persistent when he asked you whether there was anything he could say to change your mind; right? ... THE WITNESS: Yes. BY MR. BECKER: Q. And that's the only basis upon which you state that he was persistent; is that right? ... THE WITNESS: Yes.”)
90. Coppedge was not acting “persistent” under any objective standard that should have been treated as a violation of the JPL’s unlawful harassment policy simply by asking Weisenfelder whether he could say anything that might change her mind concerning Proposition 8.	Ball Decl., ¶ 31, 14:23-24 (not objectively viewed as persistent conduct); ¶ 32 15:10-22 (“With regard to the Proposition 8 encounter, Coppedge did not act persistently or severely. His behavior did not create a hostile or intimidating environment that would significantly interfere with Weisenfelder’s work. He came and went. She did not even bother to report it initially. There is no evidence that she could not continue to do whatever she was doing at the time. In fact, she did precisely what Vetter should have done in regard to the Christmas Party matter – told Coppedge she was not interested and did not want to discuss it further. The fact that Weisenfelder did not want to discuss Proposition 8 does not render Coppedge’s overture actionable harassment. Nor does his follow-up question. Had he returned to her on a separate occasion and sought to discuss the subject with her, he

1		could then have been found to have acted persistently, because she had already made her position clear and definite.”)
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4	91. Huntley concluded that Coppedge was	<i>Id.</i> , Exh. 16, Huntley Dep.Tr., 273:1-19 (“Q.
5	being “persistent” with Weisenfelder on the	All I want to know is what facts, not opinions,
6	basis of just three aspects of the encounter:	went into the development of your conclusion
7	(1) Coppedge asked Weisenfelder whether	that David had done something improper that
8	he could discuss the proposition; (2)	constituted persistent behavior, violative of
9	Coppedge held some unidentified “litera-	the unlawful harassment policy when he ap-
10	ture” in his hand; and (3) Coppedge asked	proached Margaret concerning Prop 8? A.
11	Weisenfelder whether there was anything he	As I stated before, when he asked her did she
12	could do to change her mind. Huntley in-	want to discuss -- well, ‘can I talk to you
13	ferred that Coppedge “was prepared like he	about the proposition?” he had literature in his
14	had an agenda before he approached her.”	hand. He was prepared like he had an agenda
15	(Emphasis added.) From this analysis, she	before he approached her. And then when I
16	concluded that he had been overly persistent	spoke to Greg Chin earlier, he told me that
17	with Weisenfelder.	Margaret had stated to him that David asked
18		her, ‘What can I do to change your mind?’
19		And, you know, she may have stated that to
20		me, but I know Greg Chin -- that was one of
21		the issues that he did bring up as it relates to
22		Proposition 8.”
23	92. Weisenfelder believed the Proposition 8	Becker Decl., Exh. 22, Weisenfelder Dep.Tr.,
24	discussion was political, not religious.	28:19-22 (“A. During the prop 8 discussion,
25		he was propounding his political view. I don't
26		remember any specific thing that was – what I
27		would interpret as religious.”)
28	93. On 3/20/2009, the same day she met with	Becker Decl., Exh. 23, J.Huntley handwritten
	Vetter, Huntley met with Edgington, a Cas-	notes from meeting with S.Edgington,
	sini scientist to interview him in connection	3/20/2009 (D000000093).

1 with her investigation into charges of har-
2 assment against Coppedge triggered by
3 Chin's "complaint." The notes she took dur-
4 ing the meeting reflect what Edgington told
5 her at that time.

6 94. Coppedge had also discussed the Propo-
7 sition 8 ballot measure with Edgington that
8 day. Edgington told Huntley that Coppedge
9 discussed his viewpoint on the proposition
10 and asked if Edgington agreed. When Edg-
11 ington replied that he did not agree David
12 became "more passionate about his view-
13 point" and "kept going about his personal
14 views." Based on Edgington's version of
15 what occurred, Coppedge became increas-
16 ingly upset about Edgington's stance on
17 Prop 8. Huntley noted: "Per Edgington, Da-
18 vid at one point stated, 'you must be against
19 children.'" Edgington told Huntley that he
20 asked Coppedge to leave his office and
21 Coppedge complied. Edgington said the
22 next day, Coppedge apologized to him for
23 his behavior and stated that he did not want
24 their heated conversation to come between
25 them. Edgington stated he accepted
26 Coppedge's apology, telling Coppedge that
27 "you have your opinion and I have mine."
28 Edgington stated that this was the first time
he had been approached by David about his
religious and/or political beliefs.

Id.

95. Coppedge had, in fact, visited Edgington

Becker Decl., Exh. 24, Edgington Dep.Tr.,

1 in his office, but not to discuss Proposition 8
2 exclusively. They discussed computer and
3 science issues initially.

31:18-32:1 ("And so he popped his head in,
proceeded to ask me about a computer issue.
I believe that there was something that needed
to be resolved and asked about that, whether it
was resolved. And then after that, we -- he
asked me about some science results. You
know, Cassini is constantly putting out daily
science results, news articles, and stuff. And
so he wanted to chat about that.")

9 96. Edgington has known Coppedge since he
10 started on the Cassini program in 2001.
11 Coppedge had visited Edgington on prior
12 occasions and had never "harassed" him.
13 Edgington thought he was a personable, rea-
14 sonable and nice guy.

Id., 12:23-13:13 ("Q. Now, how long have
you known David? A. I have known him since
I started working on the Cassini project,
which was back in 2001. Q. So that's ten
years? A. Yes. Q. How do you know him? A.
He was one of the computer folk on the pro-
ject, tasked with maintaining and running the
computer network. Q. Did he visit your office
from time to time to chat about matters that
weren't work related? THE WITNESS: He
would come from time to time to talk about
science results...."; *id.*, 36:2-5 ("Q. What kind
of person did you judge him to be prior to
November 2008? ...THE WITNESS: Prior to
the November 8th interaction, I thought Dave
was a nice guy, personable, you know, inter-
ested."; *id.*, 37:11-13 ("Prior to November --
the November time frame, I thought he was a
reasonable guy, you know."))

25 97. Edgington was not busy at the time
26 Coppedge spoke to him and Coppedge was
27 not disrupting Edgington's work activity.

Id., 32:12-33:5 ("Q. When David interrupted
you, did he say anything to ascertain whether
or not you were able to be interrupted at that

1		time such as "do you have a minute?" or any-
2		thing of that nature? A. I do not recall, but if I
3		was busy, I would have told him to go away.
4		You know, if it was an urgent matter, I would
5		have told him to go away and come back
6		some other time.")
7	98. Coppedge asked Edgington if he would	<i>Id.</i> , 40:14-41:4 (Q. After you discussed some
8	be willing to discuss Proposition 8, to which	science-related issues, what happened? A.
9	Edgington agreed. Edgington told Coppedge	Well, he asked if he could have a few more
10	he was not sure how he would vote on it, but	moments of my time and asked if I would be
11	he did not tell him that he was leaning	willing to talk about Prop 8. ... [T]hinking
12	against it. According to Edgington,	that Dave was a reasonable guy, I said, 'Sure,
13	Coppedge then went into "some propagan-	I don't mind.' He then proceeded to define
14	da." Edgington told him "I do not believe	Prop 8, asked if I knew what it was about.
15	this propaganda." Edgington felt that	And, you know, I said yes, I did know about
16	Coppedge's argument that same-sex mar-	it. You know, I told him that I did not know
17	riage was harmful to children was "propa-	how I was going to vote on it. He then pro-
18	ganda" and told him so. Edgington intended	ceeded with going into some propaganda that
19	to use the word "propaganda" in its pejora-	was being put out by various parties, which
20	tive sense.	I'm sure everyone knew about it if they had a
21		TV, you know, to which he was saying this
22		propaganda. <i>You know, I responded with 'I</i>
23		<i>do not believe this propaganda.'</i> "; <i>id.</i> , 43:10-
24		12 ("Q. You were leaning towards voting
25		against it? A. Voting against it, yes.); <i>id.</i> ,
26		42:21-22, 43:12 ("Q. You were leaning to-
27		wards voting against it? A. Voting against it,
28		yes."); <i>id.</i> , 44:3-46:13 ("Q. So when he began
		discussing it with you, he said, 'Are you fa-
		miliar with this measure, this Prop 8 meas-
		ure?' Right? A. Yes. Q. And you told him

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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 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

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	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.") (Emphasis added.)
99. Coppedge sought to be frank and open about his views during the discussion. However he was unaware that Edgington was leaning toward voting against the measure. After explaining his position, Edgington reacted negatively. Coppedge was surprised at how argumentative Edgington became. It reached the point where he realized that further engagement was futile and backed off and cut off the discussion.	Becker Decl., Exh. 2, Coppedge Dep.Tr, 345:1-25 ("Q What did you tell her about Proposition 8 materials with Scott Edgington? A I just -- again, I was being as frank and open about everything, and that was a case where he reacted very negatively because he had strong feelings about it. And I did -- I had no way of knowing this in advance, but he was apparently a very strong opponent of Prop 8. I didn't know that. And when I just offered him, 'Well, wouldn't you like to at least just read what it's about and what it says?' I pursued that with a few questions, and he engaged me with his reasons why not and why he didn't believe it. And we got into a conversation about it for some time that did become a little bit heated to the point where the next day, I went to him and said, you know -- I had never had any conflict with Scott before. In fact, I enjoyed talking about his scientific instrument. He works on the Cassini infrared spectrometer instrument. We had always had pleasant conversations up to that one meeting. And it kind of surprised me how argumentative he got about it. I -- it got

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	to the point where I backed off and realized nothing is being gained here. So I just cut it off.”)
100. Coincidentally, Carmen Vetter, who years earlier accused Coppedge of “harassment” for requesting the renaming of the Holiday Party, was in her office adjacent to Edgington’s, and overheard Coppedge and Edgington’s disagreement.	Becker Decl., Exh. 20, Vetter Dep.Tr., 152:19-21 (“Q. Is your office within eye distance of Scott Edgington’s? A. We’re right next to each other.”); <i>id.</i> , Exh. 24, Edgington Dep.Tr., 28:23-29:5 (“Q. Prior to that meeting, had you had a conversation with Carmen Vetter relating to David? ... THE WITNESS: Prior to that, yes. BY MR. BECKER: Q. More than one or just one? A. Just one. Q. What was the nature of that conversation? A. It was as a result of the incident where David came to talk to me about proposition 8, and it was shortly after that interaction that Carmen came to me and asked what I wanted to do about that. Q. Did you understand what she meant by ‘asked what you wanted to do about that’? A. Yes. Whether I wanted to report it or not. Q. Was it your understanding that Carmen Vetter had a responsibility to intervene in circumstances like this? ...THE WITNESS: She -- Carmen is one of the administrators for the Cassini project, and she -- it's part of her job. you know, she does things for the project where -- involving personnel issues from time to time. BY MR. BECKER: Q. Did she tell you she overheard the conversation? A. Yes.”)
101. Vetter seized on the opportunity to report Coppedge a second time to Chin. She	<i>Id.</i> , Exh. 20, Vetter Dep.Tr., 158: 9-13 (“Q. After David left, did you go into Scott's office

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1 waited just long enough for Coppedge to
2 leave and to "make sure he was gone" before
3 approaching Edgington. She offered to re-
4 port that Coppedge had harassed Edgington
5 about religion/politics. Edgington author-
6 ized her to make the report.

and ask him what was going on? A. I waited a
little while to make sure David was gone, and
then I went over and asked Scott if he was
okay."); *id.*, Exh. 24, Edgington Dep.Tr.,
28:15-29:5 ("Q. Prior to that meeting, had you
had a conversation with Carmen Vetter relat-
ing to David? ... THE WITNESS: Prior to
that, yes.... Q. What was the nature of that
conversation? A. It was as a result of the inci-
dent where David came to talk to me about
Proposition 8, and it was shortly after that in-
teraction that Carmen came to me and asked
what I wanted to do about that. Q. Did you
understand what she meant by 'asked what
you wanted to do about that'? A. Yes. Wheth-
er I wanted to report it or not."); *id.*, 77:10-24
("Q. About how long did the conversation
take -- the conversation strictly on Prop 8? A.
The whole thing probably lasted, I'd say, like
five minutes. I mean, it wasn't that long. You
know, ten at most. Five to ten minutes, I'd say.
Q. And then do you recall how soon after that
Carmen approached you? A. After Dave had
left and was definitely flustered that I wasn't
agreeing with him, I sat there for a brief peri-
od. I don't know how much time went by. But
I was wondering should I report it? To whom?
Carmen came fairly soon after, maybe 30 se-
conds to a minute maybe, and asked if I was
okay."); *id.*, 78:11-17 ("Q. What did you tell
her when she asked, 'What we do about this?'

1		or 'What do you want to do about this?' A.
2		Well, she asked, 'Do you want to do anything
3		about this?' and I said, 'I think we should. I'll
4		report it to management.'"); <i>id.</i> , 79:5-8 ("Q.
5		Did you tell Carmen to report it to manage-
6		ment? A. She asked if it was okay to report it
7		to his management, and I said yes."); <i>id.</i> ,
8		85:23-86:10 ("BY MR. BECKER: Q. Did
9		Carmen tell you what she was going to do,
10		who she was going to report it to, how? ...
11		THE WITNESS: She asked me if it would be
12		acceptable to report it to his management, and
13		Greg Chin was the person that she was going
14		to report it to."); <i>id.</i> , 87:21-22 ("Q. Did you
15	102. Coppedge regretted his behavior and	Becker Decl., Exh. 2, Coppedge Dep.Tr,
16	apologized the next day for it. Edgington	346:1-8 ("The next day I said, 'Scott, I just
17	stood up and shook Coppedge's hand, leav-	want to reaffirm to you that I consider you a
18	ing Coppedge with the impression that Edg-	friend. And I think yesterday's conversation
19	ington appreciated that Coppedge had the	got a little heated, and I just wanted you to
20	moral courage to apologize. But Edgington	know I appreciate you and I'm sorry for that.
21	did not inform Coppedge that he had already	And will you forgive me?' He stood up and
22	reported the incident to Chin alleging har-	spontaneously shook my hand as if he really
23	assment against Coppedge. The contrast be-	appreciated my having the guts to do that. <i>id.</i> ,
24	tween their two responses to a political ar-	Exh. 24, Edgington Dep.Tr., 93:3-5 ("Q. After
25	gument could not be more stark, with one	he apologized, did you tell Carmen to call off
26	advocate treating the incident as a matter that	the dogs, not to report it? A. No.")
27	could be respectfully redressed while the	
28	other sought harmful reprisal. After	
	Coppedge apologized, Edgington did not ask	

1	Vetter to withdraw the report.	
2	103. In conducting her investigation of the	Becker Decl., Exh. 16, Huntley Dep.Tr.,
3	facts to determine whether Coppedge had	307:18-20, 308:7-13 ("Did you ask Carmen
4	violated JPL's unlawful harassment policy,	Vetter what her views on Prop 8 were?";
5	Huntley did not take into account the reli-	"THE WITNESS: No, I didn't ask her a ques-
6	gious or political views of Chin, Vetter, Edg-	tion about Proposition 8. BY MR. BECKER:
7	ington and Weisenfelder and whether they	Q. Why not? A. Because that wasn't the issue
8	were contrary to Coppedge's, or whether	that I was investigating. I wasn't investigating
9	their own dogmatism would explain the	Proposition 8. I was investigating David's
10	cause for their alleged discomfort, rather	harassing behavior."); <i>id.</i> , 304:17-22 (doesn't
11	than Coppedge's manner. Accordingly, she	know how Vetter voted); <i>id.</i> , 305:5-10
12	did not even ask Vetter or Chin how they	(doesn't know how Chin voted).
13	voted on the measure.	
14	104. Huntley did not interview Bruce El-	<i>Id.</i> , 332:17-24 ("BY MR. BECKER: Q. Did
15	gin concerning his conversation with	you talk to Bruce? A. No. Q. Why not? A.
16	Coppedge regarding Proposition 8 in order	Because I determined the flow of the investi-
17	to determine whether Edgington was respon-	gation, and if David stated he had a friendly
18	sible for causing the argument with	conversation with Bruce, I trusted that David,
19	Coppedge. In fact, she didn't even under-	you know, was telling me that he had a friend-
20	stand how evidence of a friendly encounter	ly conversation with Bruce."); 333:18-334:12
21	with Elgin might have discredited Edging-	(Q. ... You have two facts in front of you:
22	ton's description of Coppedge's behavior.	friendly conversation with Bruce Elgin, hos-
23		tile or heated conversation with Scott Edging-
24		ton. Two completely different conversations;
25		right? There's only one thing common to those
26		two conversations, and that is David
27		Coppedge. He can have a polite conversation
28		with one person on the subject of Prop 8, even
		though they disagree, but apparently it gets
		heated with another person. Wouldn't that lead
		you to logically conclude that there must have

1		been something about Scott Edgington's behavior that was inconsistent with Scott Edgington's account of the facts such that you would need to explore those facts more deeply with David? ...
2		Do you understand the question? THE
3		WITNESS: No, I don't.")
4	105. Huntley was aware, however, that	Huntley Dep.Tr., 304:11-16 ("And you know
5	Edgington and Weisenfelder had voted	that Margaret was against it; right?" ... A.
6	against Proposition 8. Chin also voted	Sure.); <i>id.</i> , 304:25-305:3 ("And you know that
7	against it.	Edgington was against it; right? ... THE
8		WITNESS: Based upon my investigation.");
9		<i>id.</i> , Exh. 8, Chin Dep.Tr., 133:5-134:4 (Chin
10		voted against Proposition 8).
11	106. Huntley herself voted against Propo-	Becker Decl., Exh. 16, Huntley Dep.Tr.,
12	sition 8.	303:20-304:7 (Huntley voted against Proposi-
13		tion 8).
14	107. Huntley was aware that Coppedge	<i>Id.</i> , 304:8-10 ("And you know that David was
15	voted in favor of Proposition 8.	for Prop 8, right? A. Yes.")
16	XIII. THE FINDINGS OF A FECKLESS INVESTIGATION: THE STICKY-NOTE	
17	INCIDENT.	
18	108. On February 26, 2009, a Thursday,	See ¶ 15, <i>supra</i> ; Becker Decl., Exh. 21, <i>supra</i>
19	Coppedge loaned a copy of the ID documen-	; <i>id.</i> , Exh. 22, Weisenfelder Dep.Tr., 13:7-8
20	tary "Unlocking the Mystery of Life" to	("Q. Do you recall the name of that DVD? A.
21	Weisenfelder for the weekend. This was the	Unlocking the Mystery of Life."); <i>id.</i> , Exh.
22	"second incident" with Coppedge that Wei-	10, <i>supra</i> ; <i>id.</i> , Exh. 31, <i>supra</i> ("The second
23	senfelder characterized as making her feel	incident occurred about two weeks ago (be-
24	"uncomfortable" in her interview with Hunt-	fore the four day holiday weekend) after
25	ley.	lunch. David approached Margaret and asked
26		her if she wanted to borrow a DVD called
27		'Unlocking the Mysteries Of Life.' She took it
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1		home with JPL employees names on it. The
2		sticky note had the words 'try again' by some
3		of the names. The only name she recognized
4		was Patel. Margaret did not want to get into a
5		discussion with David about the DVD so she
6		waited until he was not in his work space to
7		place it on his chair. David did not approach
8		her to discuss the DVD after she returned.
9		Margaret went to Greg Chin to discuss the
10		DVD issue and told him that she was feeling
11		uncomfortable about David approaching her
12		and talking about her stance on Prop 8. She
13		further expressed to Greg that she does not
14		want to deal with him regarding these types of
15		issues.")
16	109. Weisenfelder claims she was not	Becker Decl., Exh. 22, Weisenfelder Dep.Tr.,
17	troubled by the content of the DVD, which	21:25-22:1 ("A. I was not offended by the
18	she believed to convey a religious viewpoint.	content of the DVD."); <i>id.</i> , 22:25-23:10 ("Q.
19		Do you believe that this was a religious doc-
20		umentary? ... The Witness: My impression,
21		after I had watched it, was that it was pro-
22		pounding a particular viewpoint. BY MR.
23		BECKER: Q. A religious viewpoint? Ms.
24		Fox: Same objection. The Witness: I believe
25		so."
26	110. In truth, Weisenfelder was extremely	Becker Decl., Exh. 21, <i>supra</i> ("Margaret went
27	troubled by the content of the DVD. The	to Greg Chin to discuss the DVD issue....
28	morning of Monday, March 2, 2009, at her	She further expressed to Greg that she does
	first opportunity, she went to Chin to com-	not want to deal with him regarding <i>these</i>
	plain about the DVD and the viewpoint she	<i>types of issues.</i> ") (Emphasis added.); <i>id.</i> , Exh.
	perceived it to have conveyed. She felt the	22, Weisenfelder Dep.Tr., 116:3-7 ("Q. What

DVD was "heavy-handed."

time did you see Greg?... It was the first opportunity I had."); *id.*, 19:18-25 ("Q. What was the film about? ... THE WITNESS: The general subject was intelligent design. It was a rather heavy-handed treatment of the subject with a small amount of science, genetics, as I recall."); *id.*, Exh. 17, *supra*, ("...employee MW came to my office to express a concern about being 'harassed' by David -- his belief in Intelligent Design and support for Prop. 8.")

111. The DVD had a sticky-note listing names on it. Beside one of the names were written the words "try again."

Becker Decl., Exh. 21, *supra* ("The sticky note had the words "try again" by some of the names."); *id.*, Exh. 25, copy of sticky note on DVD packaging, attached to the deposition transcript of M. Weisenfelder as Exh. 28.

112. At her deposition, Weisenfelder struggled to explain why the words "try again" on the sticky note caused her concern. She felt that "something was being planned and tracked" and was fearful that Coppedge would attempt to approach her again to loan her another DVD.

Becker Decl., Exh. 22, Weisenfelder Dep. Tr. 158:9-161:4 ("THE WITNESS: When I saw the sticky note with the names and the notation that said 'try again,' I felt uncomfortable because this looked like something that was being planned and tracked and that there would be another contact possibly. BY MR. BECKER: Q. This looked like something that was being planned and tracked. A. He says here 'try again.' He crossed names off. Q. Okay. So you felt that he was keeping track of who he gave the DVD to; right? A. I believe so. Q. What do you mean by 'planned'? What was being planned? A. There's a list of names here to contact. Q. What was he plan-

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ning? A. I don't know. ... BY MR. BECKER:
Q. What do you believe he might be plan-
ning? ... THE WITNESS: I can only infer that
he was going to contact whoever it was again
regarding the DVD. BY MR. BECKER: Q.
Well, he wouldn't have to contact you again
because he already gave it to you. So my
question is: what do you mean by you felt un-
comfortable because you felt he was -- be-
cause it was planned and tracked? ... BY MR.
BECKER: Q. Can you put in very simple
words what your fear was? ... BY MR.
BECKER: Q. Please tell me. Tell me what it
is. A. All I can say is I saw the sticky note
with names on it where he was tracking who
had it with a notation that said 'try again.' and
that's what made me uncomfortable. Q. Got it.
Okay. What was your fear? That he was going
to come do something to you? That he was
going to publish your name some place? I
can't get this at all. Please tell me what your
fear was.... BY MR. BECKER: Q. Tell me
what your fear was, please, ma'am, so we can
get out of here.... THE WITNESS: I didn't
want to be contacted again. BY MR.
BECKER: Q. So the sticky note made you
feel like he would try to come back and ap-
proach you again with another DVD or with
this DVD; right? A. Or -- I don't know. Yes,
it did. BY MR. BECKER: Q. Okay. That
was your fear? A. Yes.

1 113. Weisenfelder felt uncomfortable dis-
2 cussing the DVD with Coppedge and waited
3 until he left his work space to return it to
4 him.
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Id., 149:15-150:9 (“Q. ‘Margaret did not want
to get into a discussion with David about the
DVD. So she waited until he was not in his
work space to place it on his chair.’ Why did-
n’t you want to get into a discussion with him?
A. I didn’t wish to discuss it. I was uncomfort-
able. Q. Why would you not simply approach
him in a civilized manner and say, ‘David,
here’s your DVD. I don’t want to discuss it
with you, but thank you for letting me borrow
it’? ... A. I didn’t feel comfortable doing that.
I put it on his chair, and I didn’t speak to him
about it again.

12 114. Weisenfelder was “uncomfortable”
13 because she believed that Coppedge was
14 pushing his religious views on her.
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Becker Decl., Exh. 21, *supra* ; *id.*, Exh. 22,
Weisenfelder Dep.Tr., 150:10-151:12 (“BY
MR. BECKER: Q. On the next page, it states
that you further expressed to Greg that you
did not want to deal with David regarding
those type of issues. And the specific sentence
reads, ‘She further expressed to Greg that she
does not want to deal with him re these type
of issues.’ Do you see that? A. Yes, I do. Q.
Were those your words, you didn’t ‘want to
deal with him’? A. Might have been. I don’t
remember specifically. Q. What did you
mean by ‘these type of issues’? A. **Religious
or political.** Q. And it’s true that after David
spoke to you about the ... DVD and allowed
you to borrow it over the weekend, he never
approached you again about intelligent design
or the DVD; right? ... When he approached

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	you regarding the DVD, that was the last time he and you ever spoke about it; right? A. Yes.”) (Emphasis added.)
115. Coppedge had previously loaned out the DVD to others and had inadvertently left the note on the DVD jacket. The reference to “try again” was a reminder to him that one of the individuals to whom he had offered to loan the DVD had been too busy to borrow it but was willing to borrow it at a later time. Had either Weisenfelder or Huntley asked him about it, he would have explained the note’s purpose and this lawsuit could have been unnecessary.	Becker Decl., Exh. 2, Coppedge Dep.Tr, 316:4-8 (“So first of all, what was the stick-it note? What was its purpose? A It was to know who I had lent this to. It was the same purpose as the Excel spreadsheet, to keep records of -- and I described that all earlier.”); Coppedge Decl., ¶ 8 (“8. I inadvertently left the note on the back of a copy of “Unlocking the Mystery of Life” I lent to Margaret Weisenfelder. The note contained a list of a few names of individuals I was either planning to loan the DVD to or had already loaned it to. The reason I wrote the words ‘(try again)’ by the name of Jane Jones was because she had been too busy to view it when I initially offered it to her, and she asked me to try her another time. Had Jhertaune Huntley bothered to interview me after she spoke to Margaret, I would have told her this. By never asking me for my version of the facts, she assumed I had done something nefarious. Had Margaret chosen to return the DVD to me directly and ask me about the sticky note, I would have explained to her what it was all about. Instead, she chose to avoid me out of an unsubstantiated fear that I was likely to approach her a se-

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	cond time and to accuse me of harassing her. Her strange insecurity is the reason I am now unemployed and having to restore my life through this lawsuit,"); <i>id.</i> , Exh. 3 (sticky note).
116. Huntley did not give Coppedge a chance to respond to or contradict the statement provided to her by Chin, Vetter, Weisenfelder and Edgington.	Becker Decl., Exh. 16, Huntley Dep.Tr., 146:10-17 ("Q. At a later point in time, did you believe that it was necessary for you to return to David and advise him of what was specifically being complained of? ... THE WITNESS: No."); <i>id.</i> , 159:7-160:3 (Q. You didn't go back to David after you interviewed Vetter, Edgington and Weisenfelder to tell him what they said, did you? THE WITNESS: No. And the reason being is, when I had the initial conversation with David, he provided me with a lot of detail as it relates to him handing out the DVDs to loan to various employees, not selling the DVDS, keeping a tracking system; also discussed how he communicates his personal political views to employees, gave me two individuals who he had conversations with. And when I conducted my investigative meetings with Vetter, Edgington, Weisenfelder, they didn't offer or give me any information which would have caused me to schedule another appointment with David to ask further questions. The only thing they did let me know is their personal feelings, which David couldn't contest to because he's not them, which were, 'I feel harassed by

1		his behavior as it relates to expressing political religious views,' or, 'I had to ask him to leave my office.'"); <i>id.</i> , 147:17-158:23 (Huntley dodges questioning as to why she did not return to Coppedge after conducting the other interviews of co-workers alleging harassment while counsel for JPL repeatedly interferes with the examination with repetitive objections, speaking objections and argument).
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9	117. Huntley did not produce a written	Becker Decl., Exh. 5, Klenk Dep.Tr., 339:17-
10	report, but provided Burgess and Klenk with	21 ("THE WITNESS: The details are done in
11	her findings orally.	a confidential HR investigation. BY MR.
12		BECKER: Q. Orally transmitted to you, not in
13		writing; correct? A. I had conversations with
14		HR that were done orally."); <i>id.</i> , Exh. 16,
15		Huntley Dep.Tr., 365:9-15 ("Q. Well, certainly
16		you give them your report, don't you? You
17		give them your analysis of the facts and evidence
18		that you've developed; right?... THE
19		WITNESS: It's verbal. There is no official
20		written report.")
21	XIV. COPPEDGE'S REPRIMAND AND DEMOTION	
22	118. JPL does not have a policy specifically	Becker Decl., Exh. 5, Klenk Dep.Tr., 64:8-13
23	regulating religious or political speech	("Q. What policies, rules, procedures, or
24	among co-workers.	guidelines are established at JPL to protect an
25		employee's right of political speech? ... THE
26		WITNESS: We have our harassment policy,
27		our ethics policy, diversity training."); <i>id.</i> ,
28		66:4-72:23 (the only policies addressing religious
		or political speech fall within the general
		conduct guidelines contained in JPL's

1		ethics and harassment policies); <i>id.</i> , Exh. 16,
2		Huntley Dep.Tr., 66:19-67:2 ("Does JPL have
3		a policy, rule, procedure or guideline regard-
4		ing the types of speech that employees at JPL
5		are prohibited from engaging in? ...THE
6		WITNESS: No, but we do have policies that
7		address conduct such as that in the harassment
8		policy, ethics handbook, ethics and business
9		conduct,
10		discrimination policies.")
11	119. In fact, employees at JPL are permit-	Coppedge Decl., Exh. 4 (photos of cartoons
12	ted to express their views against Proposition	posted around JPL mocking support for Prop-
13	8 and ID.	osition 8 and ID, Darwin ichthys fish parody
14		with "evolved legs" mocking the Christian
15		ichthys symbol that originated in the early
16		Christian church as a symbol to mark meeting
17		places and tombs or to distinguish between
18		friends and foes (source: http://en.wikipedia.org/wiki/Ichthys).
19	120. JPL's Unlawful Harassment Policy	Becker Decl., Exh. 51, Unlawful Harassment
20	provides: "Harassment is the creation of a	Policy.
21	hostile or intimidating environment in which	
22	verbal or physical conduct, because of its	
23	severity and/or persistence, is likely to inter-	
24	fere significantly with an individual's work."	
25	121. On April 13, 2009, Burgess	Becker Decl., Exh. 15, <i>supra</i> ; <i>id.</i> , Exh. 5,
26	(Coppedge's Group Supervisor) and Kevin	Klenk Dep.Tr., 314:21-24 ("Q. Did David ask
27	Klenk ("Klenk"), Coppedge's Section Man-	to record the meeting? A. Yes. Q. Was he
28	ager, met in an hour-long session with	granted your consent? A. Yes."); Burgess
	Coppedge to discuss the result of HR's in-	Dep.Tr., 163:20-164:5 ("Q. And, by the way,
	vestigation. During the meeting, they gave	you agreed to allow David to record that

1 their consent for Coppedge to tape-record it.

meeting, didn't you? A. that was a mistake, but I did. Q. Mistake for who? A. Me. Q. Why? ... THE WITNESS: As I found out later, HR would have recommended against it. Kevin Klenk and I, neither one said no because we didn't know any better."

6 122. Burgess told Coppedge that "a lot of
7 people" found his discussion of religion and
8 politics to be "unwelcome and disruptive"
9 and did not advise him of their feelings be-
10 cause they "were trying to be nice to you."
11 The "bottom line" was that if the subject
12 matter was not work-related and an employ-
13 ee felt it to be "unwelcome," it was not per-
14 mitted, regardless of whether Coppedge was
15 told by co-workers that they felt his message
16 to be unwelcome and even though it was a
17 "subjective" factor. Although Burgess and
18 Klenk sought to convince Coppedge that he
19 was not being disciplined for the content of
20 his discussions with co-workers, they stated
21 that "a lot of people ... were concerned
22 about the discussions you were trying to get
23 into with them." They suggested that
24 Coppedge read others' "body language" bet-
25 ter.
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Becker Decl., Exh. 15, *supra* ("... She's found that a lot of people had been overly nice to you ... just to move on ... when you presented your ideas of whatever it was, politics, ... and they ... were just in agreement without being rude or anything else, but she's found a lot of people who were concerned about the discussions you were trying to get into with them."; "The issue as they understood it to be was: are people feeling any intimidation or harassment or hostile intent or anything along those lines. At minimum people felt it was unwelcome."; "If it's not specifically work-related and an employee feels it is unwelcome, it isn't permitted.... That's the bottom line."; "It's not the topic that's the problem."; "Multiple people indicated the behavior was unwelcome."; "We have no issue with people discussing religion or politics in the workplace as long as it isn't unwelcome."; "Perhaps you weren't reading the body language of those people close enough."; "Most of the harassment things are subjective."; "Burgess: Again, she's saying that you're trying to focus on religion and politics, and that's not HR's,

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	uh, discovery. Their discovery is that you've done something that has interrupted the JPL workforce, from doing JPL work, no matter what the subject discussed was.”; “Klenk: I think the key is being able to recognize when people feel its unwelcome or disruptive in the workplace. ... and what the investigation found is that you haven’t been able to do that adequately obviously. People have felt its unwelcome and disruptive.”; “Klenk: this is a subjective topic. When you talk about the whole idea of a workplace being ... You know, hostile, or, you know, the inclusion and all that, it’s all subjective.”
123. Burgess and Klenk failed to (1) describe what made Coppedge’s alleged behavior “unwelcome,” (2) describe how Coppedge’s alleged behavior was “disruptive,” (3) correlate Coppedge’s alleged misbehavior with the specific standards identified in JPL’s Unlawful Harassment Policy, or (4) offer Coppedge practical ways of discussing religion and politics in the office that would not be characterized as unwelcome and disruptive.	<i>Id.</i> (omitting these points).
124. Coppedge was handed a Written Warning, which incorporated JPL’s Unlawful Harassment policy and related to the religious and political content of Coppedge’s interactions with co-workers: “The Employee Relations Office has	Becker Decl., Exh. 26, Written Warning issued 4/13/2009; <i>id.</i> , Exh. 15, <i>supra</i> .

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1 completed an investigation *concern-*
2 *ing allegations that you approached*
3 *various co-workers during JPL*
4 *business hours to discuss your reli-*
5 *gious and political beliefs.* Your ac-
6 tions were reported as harassing in
7 nature. As part of this investigation,
8 you met with Jhertaune Huntley from
9 Employee Relations and were given
10 the opportunity to discuss the allega-
11 tions and explain your perspective
12 and answer questions. I have re-
13 ceived the results of this investigation
14 and after careful review of all the is-
15 sues and information obtained, I am
16 in agreement with the following find-
17 ings:

18 • You acknowledged that you ap-
19 proached various coworkers during
20 work hours to inquire if they were in-
21 terested in watching your DVDs
22 which clearly express your personal
23 views and you engaged various co-
24 workers in conversations about your
25 personal views. *You failed to stop*
26 *these activities when you were told*
27 *they were unwelcome and disrupt-*
28 *ive.*

• You violated the Unlawful Harass-
ment policy which states: Harass-
ment is the creation of a hostile or in-

1 timidating environment in which
2 verbal or physical conduct, because
3 of its severity and/or persistence, is
4 likely to interfere significantly with
5 an individual's work. Harassment in
6 any form, based on sex, race, color,
7 age, national origin, disability, reli-
8 gion, gender identity, sexual orienta-
9 tion, or any other characteristic pro-
10 tected by state or federal laws, is
11 prohibited, as are all forms of sexual
12 intimidation and exploitation.

- 13 • You created disruption in the work-
14 place by approaching a co-worker during
15 work hours to engage in a political de-
16 bate about a recent controversial issue.

17 When you discovered your co-worker
18 did not share your political views, you
19 became upset and argumentative. Your
20 co-worker had to request that you leave
21 his office in order to cease the conversa-
22 tion.

- 23 • You violated JPL's Ethics and Business
24 Conduct Policy which states:

- 25 ○ JPL employee behaviors shall be
26 consistent with the JPL and
27 NASA Values and the Caltech's
28 JPL honor codes. Specifically, 'I
29 will treat my fellow employees
30 fairly, with dignity and respect.'

1 (Emphasis added.)

2 125. Klenk audaciously advised Coppedge
3 that he was remiss in not reading peoples'
4 body language better, suggesting even that a
5 simple remark concerning sports "could be-
6 come" unwelcome and disruptive.

Becker Decl., Exh. 15, *supra* ("Coppedge:
Are these not mature adults that can say the
words that I'd rather not talk about that? Am I
supposed to interpret 'I'm harassing some-
body' by their body language, is that what
you're telling me? Klenk: I think in some cas-
es yes." ... Coppedge: ... Let's say that I
had DVDs on sports that I wanted to share.
And somebody was not interested in sports,
and yet I said, 'oh, this is really good; you
would enjoy that.' Am I harassing them?
Klenk: It certainly could become unwelcome
or disruptive in the workplace. Absolutely.")

13 126. Even more audaciously, Klenk told
14 Coppedge that the failure of co-workers to
15 raise an objection to Coppedge's discussions
16 was morally equivalent to a sexual harass-
17 ment victim's failure to object.

Id. ("Klenk: ... The more classic case is sexu-
al harassment. People don't say anything typ-
ically even when they're being harassed.";
"Coppedge: ... I think what I'm doing is cer-
tainly not in the category of sexual harassment
-- not even close!")

18 127. Toward the end of the meeting, Bur-
19 gess advised Coppedge that as a direct result
20 of HR's investigation Coppedge would be
21 removed as Team Lead, a position Coppedge
22 had held for nine years. Burgess felt for the
23 first time that Coppedge was not qualified to
24 be Team Lead based on HR's report. Bur-
25 gess named Patel the new Team Lead and
26 issued an announcement to disguise to the
27 other SAs the fact that Coppedge was re-
28 moved as a disciplinary measure.

Id. ("Burgess: We have some work to deal
with now. ... I wanted to "lessen the strife in
your area so I'm going to remove you from
the lead of the system admin team."; "I had a
discussion with Chin on how to deal with that
rearrangement and he and even HR suggested
that when it comes to any announcement that
you are taking on some other role other than
that I should divorce myself from that *so it's
not obvious to the people who are hearing
this that it's part of anything else.*"; "The

1 idea ... is that you won't have that interface to
2 these people out there on the project that are
3 complaining that they're uncomfortable with
4 your actions."; "Now I'm going on what HR
5 says, they say this has gone on too long, they
6 can't believe this is prevalent, this point of
7 view out there, as much as it is. We're talking
8 about a lot of your customers. . . . ***This is di-***
9 ***rectly a result of all the interviews that HR***
10 ***conducted.*** To them, you see, it looks to them
11 like you've got a customer base out there that's
12 very uncomfortable, and removing you from
13 that to be focused on something else is going
14 to lessen the strife in the workplace." (Empha-
15 sis added.); *id.*, Exh. 3, Burgess Dep.Tr.,
16 28:22-29:19 ("Q. At what point in time did
17 you feel that David was not qualified to serve
18 as Team Lead? A. When I first talked with the
19 HR people about their investigation. Q. When
20 was that? A. I don't recall the date. Q. It was
21 prior to your meeting with David on April 13,
22 2009? ... Q. The meeting that was recorded
23 with Kevin Klenk. A. Yes, it was prior to that.
24 Yes. Q. And it was subsequent to David's con-
25 frontation with Greg Chin on March 2, 2009?
26 ... Q. Your discussion with HR was after
27 March 2, 2009, when David and Greg Chin
28 argued? A. It was after that date, yes.")

1 128. Coppedge was depressed over losing
2 such a prestigious position. Being Team
3 Lead for system administration in the largest
4 interplanetary mission ever was a big blow
5 to his pride. Coppedge took pride in his re-
6 lationship with everyone on his team and
7 with all the people he worked with. He felt
8 like an outcast. Burgess's removal of
9 Coppedge following the nine-year stint as
10 Team Lead left Coppedge with significantly
11 diminished responsibilities. Coppedge's sta-
12 tus was reduced in prominence and scope, as
13 he no longer would be conducting team
14 meetings, overseeing and coordinating task
15 assignments, interacting with internal IT
16 "customers," supporting the team members'
training and morale needs, and providing
regular team status reports.

Becker Decl., Exh. 2, Coppedge Dep.Tr,
679:9-16 ("... Being Team Lead system ad-
min in the largest interplanetary mission ever
is a big blow to my pride. I took pride in my
relationship with all the team, with all the
people I work with, and that's been irreparably
harmd because now I'm this pariah. I'm this
person under a cloud of suspicion."); See ¶ 6
(description of Team Lead responsibilities
assumed by Coppedge).

17 129. Coppedge felt humiliated by the de-
18 cision to demote him from the lead role he
19 had held for nine years.

Becker Decl., Exh. 2, Coppedge Dep.Tr.,
442:15-17 ("Did you find this announcement
to be humiliating? A Yes."; *id.*, 744:6-14 ("...
[I]t's clear that I was embarrassed. I felt eve-
rybody was looking at me differently. I felt I
was a pariah, an outcast, a heretic. I was
ashamed at the way I'd been treated. You
know, I had this just sense of dread that peo-
ple are looking at me differently and that the
free and open communication that I had en-
joyed with so many for years was now
harmd, and I was being looked at funny and
avoided.")

1 130. The decision to discipline Coppedge
2 was based on Huntley's recommendations
3 and her investigation. Burgess and Klenk
4 relied entirely on those recommendations
5 and Huntley's investigation.

Becker Decl., Exh. 16, Huntley Dep.Tr.,
147:8-16 ("You conducted the investigation,
not management; isn't that right? A. Yes. Q.
And you made recommendations to manage-
ment; isn't that right? A. Yes. Q. Based on
your investigation of the facts; correct?
A.Yes."); *id.*, Exh. 3, Burgess Dep.Tr., 93:5-7
("I relied 100 percent on HR'S investigation
and their recommendations."); *id.*, Exh. 5,
Klenk Dep.Tr., 130:21-23 ("They said what
their recommendation was, and I supported
that decision.")

11 131. Huntley's investigation was inade-
12 quate, faulty, unfair and fell far below the
13 standard of care required of a professional
14 investigator looking into charges of employ-
15 ee harassment. Huntley was confronted with
16 claims made by a management employee
17 that Coppedge had been pushing his reli-
18 gious views on other co-workers by discuss-
19 ing the subject of ID and handing out DVDs
20 on that subject yet failed to determine the
21 threshold question as to whether ID express-
22 es an objectionable religious viewpoint.
23 When Huntley was confronted with the fact
24 that complaints made by co-workers against
25 Coppedge were based on ideological differ-
26 ences, she failed to question the hidden bias-
27 es, state of mind or motivating animus of
28 those individuals, ignoring a vital key to un-
derstanding why they would react harshly to

Ball Decl. ¶ 12, 4:2-5; ¶ 13, 4:13-5:6, and
passim.

Coppedge's benign actions. Additionally, Huntley accepted the subjective and bare claims of co-workers that Coppedge's actions made them feel "uncomfortable" while giving no weight to the evidence showing that Coppedge had not acted in any objectively improper manner. Huntley ignored Coppedge's claims of a hostile work environment, civil rights violations and harassment, thereby treating the claims of harassment against him as conclusive. Huntley failed to interview favorable witnesses who might have discredited the complaints of disgruntled individuals and thereby challenged her assumption that Coppedge was engaged in a pattern of offensive conduct. Huntley discredited the favorable statements supplied by one individual. Huntley failed to revisit Coppedge to give him an opportunity to correct or contradict prejudicial statements made by the complaining parties.

XV. COPPEDGE'S TERMINATION

132. The instant lawsuit was initially filed on April 14, 2010, and named Burgess, Chin and Klenk as individual Defendants.

Complaint, filed 4/14/2010.

133. Coppedge was terminated on January 24, 2011, approximately nine months later.

Becker Decl., Exh. 2, Coppedge Dep.Tr., 786:4-8, 865:2-6 (notified of lay off and unceremoniously escorted off JPL property on 1/24/2009).

134. In April or May of 2010, several months before they would replace Burgess

Becker Decl., Exh. 27, Van Why Dep.Tr., 21:11-22:7 ("Q. ...When did you first learn

1 and Chin as Coppedge's line manager and
2 project manager, respectively, Richard Van
3 Why ("Van Why") and Dianne Conner (Con-
4 ner") attended a meeting with counsel con-
5 cerning this lawsuit.

about this lawsuit? A. End of spring, begin-
ning of summer 2010. Q. How did you learn
of it? Who informed you?... 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?...

THE WITNESS: Jim Zapp, Hima Vatti.

That 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 Bur-
gess, Diane Conner and Robert Mitchell.

There may have been a representative from
H.R."); *id.*, Exh. 28, Conner Dep.Tr.,

104:12-105:12 ("Q. And so did you attend a
meeting in May of 2010 at which time coun-
sel was present? ... THE WITNESS: I don't
recall when it was. BY MR. BECKER: Q.

Do you remember the first time you ever met
Mr. Zapp? A. Yes. Q. When was that? A. I
believe it was March or April 2011. Q. Of
2011? A. Sorry. Two thousand -- wait a mi-
nute. It was probably April, May of 2010. Q.
And was there a meeting that you attended
with others when you first met Mr. Zapp? A.
Yes. Q. Who else attended the meeting? A.
I don't recall everyone who attended. Q. Do

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you remember -- A. I can't name names. Q. Can you name Hima Vatti who's sitting here today? A. Hima Vatti, Bob Mitchell. I believe Sheri Curtis was there. There was another assistant lawyer."); *id.*, Exh. 7, Mitchell Dep.Tr. 61:3-65:21 ("Q. Now, sometime in first quarter 2010 did you participate in a meeting with counsel concerning the lawsuit? ... THE WITNESS: I participated in a meeting with counsel. BY MR. BECKER: Q. Do you recall specifically what month that meeting occurred? A. No. Q. Do you recall who attended that meeting? A. Yes. Q. Who? A. Jim was there. Hima was there. Diane Conner was there. Sheri Curtis was there. A JPL, I think, OGC member, a lawyer by the name of Karen -- I don't know her last name -- was there. I think that's all. ... Q. why was Diane Conner at that meeting? A. I don't know. Q. Did you invite her? A. No. Q. Was she invited by counsel?... THE WITNESS: I don't know. BY MR. BECKER: Q. Was there a subsequent meeting with counsel present regarding the lawsuit? ... THE WITNESS: There was a subsequent meeting that I attended with counsel. BY MR. BECKER: Q. Was that meeting pertaining to this lawsuit? ... THE WITNESS: The meeting was prompted as a consequence of the lawsuit. BY MR. BECKER: Q. The earlier meeting we were

11/11/2011 11:11

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talking about, was that prompted as a consequence of the lawsuit as well? ... THE WITNESS: Yes. BY MR. BECKER: Q. And the second meeting about the lawsuit, do you recall what month that occurred? A. NO. Q. Who attended it? A. Jim, Hima, Diane, Richard Van Why, Kevin Klenk, Karen -- I think -- Q. Karen? A. Yeah, the other lawyer. I Don't know her last name. I think that's about it. Q. Do you recall if that meeting was in the first half of 2010? A. I can't be sure. Q. Were there any additional meetings in 2010 with counsel regarding the lawsuit? ... THE WITNESS: Yes. I think there was one more later in the year. BY MR. BECKER: Q. And who attended that meeting? A. I think Diane was there. I think Richard WAS there. Jim was there. Hima was there. That's all I recall for sure. Karen probably was there. Q. Okay. So is it accurate to say that you remember at least three meetings in which counsel was present that pertained to issues relating to this lawsuit? ... BY MR. BECKER: Q. Do you understand what I mean by the lawsuit? ... A. I think that I do. Q. What is your understanding? A. It's the suit that David has filed against the Laboratory. Q. So when I've asked these questions about these meetings with counsel present regarding this lawsuit, you understand that I'm asking you about meetings that are in-

1		tended to discuss issues pertaining to the litigation. Is that your understanding? A. Yes.
2		Q. Did these three meetings involve any topics that were not related to the litigation? ...
3		A. No. Q. Did the three meetings that you referred to have anything to do with the layoffs? ... THE WITNESS: Yes.")
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7	135. The employee's personnel file contains the only documented record of job performance at JPL. The ECAP process (annual performance evaluations) complies with JPL's policy for keeping written records of job performance. They are kept in the employee's personnel file indefinitely.	Mitchell Dep.Tr., 56:24-57:23 ("Q. Is there a policy at JPL for keeping a written record of the performance of its employees?... THE WITNESS: Yes. BY MR. BECKER: Q.
8		What is the policy? A. ...[I]t's all part of the ECAP process.... I'm not aware that there's any policy with regard to keeping records of the inputs to the supervisor for the ECAP.
9		There is a policy that all ECAP write-ups are kept in an employee's personnel file indefinitely. Q. So the ECAPS would provide the only written record pursuant to JPL policy of the quality of performance of any employee?... THE WITNESS: Not necessarily.
10		There very well could be other written communications. There are procedures for letters of reprimand, performance letters that would go into an employee's file. Those are done not frequently, but there is that formal process as well."
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24	136. The ECAP process involves the line management supervisor's solicitation of input from a list of employees' names provided by the employee being evaluated. However, in	Becker Decl., Exh. 3, Burgess Dep.Tr., 128:14-22 ("Q. What was your policy or practice with regard to soliciting input? A.
25		The individual that was being written about
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1 addition, the line management supervisor
2 could list additional names.

in the ECAP was solicited for a list of names,
usually five or six people that they would
recommend that I would contact for inputs.
And in addition to that, I could add any addi-
tional names I cared to. So that's the pro-
cess.")

6 137. There is no documented record of
7 poor performance by Coppedge until the law-
8 suit was filed in April 2010.

Becker Decl., Exh. 29, 2002-2003 ECAP
performance evaluation attached to the depo-
sition transcript of K.Klenk as Exh. 1 ("Dave
does a great job supporting the Cassini pro-
ject."); *id.*, Exh. 30, 2003-2004 ECAP per-
formance evaluation attached to the deposi-
tion transcript of K.Klenk as Exh. 2 ("Over-
all, how would you assess David's work?
Excellent. He is very professional, cares
about the quality of his work, works well
with others...."); *id.*, Exh. 31, 2004-2005
ECAP performance evaluation attached to
the deposition transcript of K.Klenk as Exh.
3 ("David has good technical skills and the
team he leads has become very successful in
satisfying technical issues that face the pro-
ject."); *id.*, Exh. 32, 2005-2006 ECAP per-
formance evaluation attached to the deposi-
tion transcript of K.Klenk as Exh. 4 ("David
has good technical skills and he works well
with his group. . . ."); *id.*, Exh. 33, 2006-
2007 ECAP performance evaluation attached
to the deposition transcript of K.Klenk as
Exh. 5 ("David's technical skills are up to the
task and he is able to give direction to others

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	on the team that need technical help.”; <i>id.</i> , Exh. 34, 2007-2008 ECAP performance evaluation attached to the deposition transcript of K.Klenk as Exh. 6 (“Dave is technically competent and strongly desires to continuously learn new skills and tools.”); <i>id.</i> Exh 35, 2008-2009 ECAP performance evaluation attached to the deposition transcript of K.Klenk as Exh. 7 (post-Chin outburst of 3/2/2009 while investigation of Coppedge was in progress) (“David’s technical performance as the lead of the Sys Admin team has been excellent. David is technically competent and strives to keep things running smoothly.”); Becker Decl., Exh. 36, 2009-2010 ECAP performance evaluation attached to the deposition transcript of D.Coppedge as Exh. 1035, 8/3/10 (four months after lawsuit filed) (“The quality of Dave’s work is average but acceptable when he produces something.... Patel, N.”; <i>id.</i> , (“... The circumstances behind the sudden negatives here after years of positive reviews strike me as strange.... David F. Coppedge, 8/3/10.”).
138. After Coppedge filed this lawsuit, Burgess, who at the time was named as a Defendant, stacked the deck against Coppedge by inviting comments from individuals he expected to be critical of Coppedge’s work performance to be incorporated into Coppedge’s 2010 annual performance review (ECAP).	Becker Decl., Exh. 3, Burgess Dep.Tr., 133:3-7 (“Q. Now, did you select the individuals to provide input? A. I believe Dave recommended some names for requesting inputs, and I added additional names to the list.”; <i>id.</i> , 133:20-21(“Q. “Did you solicit Nick Patel’s? A. I did.”); <i>id.</i> , (“Q. Why did

1 They included Chin, who was also named as a
2 Defendant in this lawsuit, Nick Patel ("Patel")
3 (the SA picked by Burgess to replace
4 Coppedge as Team Lead) and Conner (the
5 new office manager who would be replacing
6 Chin and who had sat in on meetings in the
7 Spring regarding this lawsuit).

you ask Diane Conner to provide input for
this ECAP? You understood at the time she
was going to be heading up the new ... IUS
team around the time this ECAP was -- A.
Just the fact that she was going to be respon-
sible for the team and was taking it over
from Greg Chin, and these people would be
working under her supervision or her over-
sight."

9 139. In May 2010, around the time that JPL
10 attorneys' were meeting with Burgess and
11 other management personnel regarding this
12 lawsuit, Patel, the SA who replaced Coppedge
13 as Team Lead, accused Coppedge of using
14 work time for personal business. In the nine
15 years that Coppedge had been Team Lead, he
16 never once accused another SA of wrongful
17 conduct. Patel even went to the extreme step
18 of reporting the matter to Burgess, who called
19 Coppedge into his office to discuss Patel's
20 accusation. Neither Burgess nor Patel had any
21 evidence that Coppedge had done anything
22 improper or had failed to complete his as-
23 signments. Nevertheless, Burgess invited Pa-
24 tel to comment on Coppedge's 2010 annual
25 performance review. By inviting Patel to
26 comment on Coppedge at a time when Bur-
27 gess was named as a Defendant in this case,
28 Coppedge was assured of receiving a negative
performance review.

Becker Decl., Exh. 37, e-mail from
D.Coppedge to self memorializing meeting
with C.Burgess and N.Patel, 5/4/2010, at-
tached to the deposition transcript of Clark
Burgess as Exh. 54 ("The subject of the
meeting, not known to me in advance, was to
address alleged concerns about my work
habits. Cab claimed that my performance
had improved around the time the lawsuit
was filed, for about the last month or so; they
showed a 'marked improvement', but then for
the past week, he claimed, reports that I was
returning to old ways that were concerning
my co-workers. At that point Nick piped in
with a list of about 4 items...."; *id.*, "... In
short, this meeting was very strange. I felt I
am being scrutinized for ways my work hab-
its can be criticized, to deflect attention from
my case and to portray me in a bad light. I
was surprised Nick [would] take part in such
a thing. ... Why did Cab and Nick call me in
to point out these petty issues, especially

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now?"); *id.*, Exh. 36, Patel Dep. Tr.,
129:1-14 ("Q. Did David ever come -- when
he was Team Lead, did he ever approach
your cubicle with questions? ... The Witness:
Yeah, occasionally. By Mr. Becker: Q. Did
he ever ask you what you were doing when
you were typing? ... The Witness: I don't
remember. By Mr. Becker: Q. Did he ever
express to you any concern that you weren't
doing work-related business? A. No."); Patel
Dep. Tr., 138:6-138:13 ("Q. When ... David
was Team Lead, did you ever use your com-
puter at your cubicle for any kind of personal
-- A. Occasionally. Q. -- personal matters?
You occasionally would; right? A. Correct.
Q. It's not forbidden there at JPL, is it? A.
No, it's not."); *id.*, 141:21-142:5 ("BY MR.
BECKER: Q. In the nine years that David
was Team Lead, are you aware of any in-
stance at all where he reported another SA to
Cab Burgess? ... BY MR. BECKER: Q.
For any kind of perceived misconduct or
wrongful activity. A. I don't recall. I don't
think I remember anything like that."); *id.*,
Patel Dep. Tr. 150:8-151:10 ("Q. So at
the time you became Team Lead, David had
been working at JPL for twelve years, and
nine of which had been as Team Lead. And
at any time up to that point in time when you
became Team Lead, were you aware of Da-
vid failing to meet an obligation to a user

5/5/2011

1 timely because of personal activities? ...

2 Were you aware or not? A. No. Q. Why
3 would you think, then, the nature or quality
4 of his work would change after you became
5 Team Lead? A. The only thing, that I kept
6 observing him spending the particular times,
7 which was in the daytime. That was the main
8 concern. Q. Let me focus on that for just a
9 second here. You keep saying it, and I'm not
10 sure I understand. But was there a particular
11 user who complained that David had not fin-
12 ished an assignment? A. No.”); *id.*, 194:8-
13 12 (“Q. Prior to the time that you became
14 Team Lead [April 2009], had you ever had
15 any conversations with any SA or any user
16 regarding David typing too much? ... THE
17 WITNESS: No.”); *id.*, Exh. 2, Coppedge
18 Dep.Tr, 590:7-25 (“He [Patel] was talking in
19 an angry tone and a dogmatic tone.... And
20 then in front of Cab, after this lawsuit has
21 been filed, now all of a sudden – it seemed
22 like part of a campaign to try to make me
23 look bad under the circumstances because I
24 had taken steps through our American legal
25 system to try to protect my reputation and
26 protect myself from these things. And now it
27 seems like there was a concerted effort to try
28 to make me look like an incompetent worker
or a troublemaker or somebody who's unreli-
able. And then he continued doing that by
writing that up in my 2010 annual review. I

1		was shocked.”)
2	140. In 2010, the SA team was transferred	Becker Decl., Exh. 28, Conner Dep.Tr.,
3	from the Mission Support and Services office	17:10-15.
4	(MSSO) to the Integrated Uplink Systems of-	
5	fice (“IUS”).	
6	141. Mitchell advised Conner in April or	<i>Id.</i> , 21:11-24:2.
7	May 2010 that he had selected her to manage	
8	IUS. Mitchell asked Conner to provide him	
9	with a reorganization proposal that would re-	
10	duce the SA team to 3.0 full-time equivalent	
11	(“FTE”) personnel, a budgetary term. “3.0	
12	FTE” can be established with five part-time	
13	employees or three full-time employees.	
14	However, Conner planned reducing the SA	
15	team by two full-time employees.	
16	142. At the time Conner was told she	Coppedge Decl., ¶ 11.
17	would need to eliminate two SAs, the SA	
18	team consisted of four people (Coppedge, Pa-	
19	tel, Harvey Chien and Bob Jobsky.)	
20	143. On September 29, 2010, Conner hired	Coppedge Decl., ¶ 12.
21	Chris Cordell and Oscar Castillo as full-time	
22	SA employees bringing the total FTE number	
23	of employees to 6.0.	
24	144. In December 2010, Jobsky transferred	Coppedge Decl., ¶ 14.
25	out of Cassini, resulting in an SA team of 5.0	
26	FTE.	
27	145. Richard Van Why was already work-	Becker Decl., Exh. 27, Van Why Dep.Tr.
28	ing on the layoff process in July 2010.	104:7-25.
	146. Van Why would become Acting	<i>Id.</i> , 19:22-24 (Van Why assumed all of Bur-
	Group Supervisor, replacing the retiring Bur-	gess’s duties); <i>id.</i> , Exh. 3, Burgess Dep.Tr.,
	gess on October 1, 2010, assuming all of his	6:17-19 (Burgess retired effective

1	duties.	10/1/2010).
2	147. Van Why was responsible for recom-	Becker Decl., Exh. 28, Conner Dep.Tr.,
3	mending to management who would be se-	73:2-13.
4	lected to be laid off according to a Layoff Cri-	
5	teria Worksheet.	
6	148. Van Why relied on the input of Con-	Becker Decl., Exh. 27, Van Why Dep.Tr.,
7	ner and Burgess in forming the ranking of	62:19-21 (Cordell supports Cassini but does
8	each SA. They list included five names.	not work within Section 1731); <i>id.</i> , 63:23-
9	Among the SAs on the IUS SA team were	64:4 (Burgess and Conner provided Van
10	Coppedge, Chien, Castillo and Patel. Addi-	Why with information concerning the SAs);
11	tionally, Gary Wang, an SA who was on nei-	<i>id.</i> , 64:24-65:16 (Conner and Burgess pro-
12	ther the original MSSO SA team nor on the	vided input for four of the SAs, but not for
13	new IUS SA team was included. Wang	Wang); <i>id.</i> , 85:18-25 (Van Why relied on the
14	worked under Van Why elsewhere within the	input provided by Conner and Burgess) ; <i>id.</i> ,
15	organization, where Van Why had another	114:13-15 (Cordell is in a completely differ-
16	acting group supervisor job. Cordell was not	ent directorate).
17	included because he worked within a com-	
18	pletely different directorate even though he	
19	performed SA work for Cassini.	
20	149. Based on the input provided by Bur-	Becker Decl., Exh. 39, Layoff Ranking Cri-
21	gess, a Defendant at the time in this lawsuit,	teria Worksheet attached to the deposition
22	and Conner, who attended attorney-client	transcript of R.Van Why as Exh. 59..
23	privileged meetings with JPL's internal and	
24	outside counsel concerning this lawsuit at a	
25	time when she had no connection to it,	
26	Coppedge received a rank of 5 (an "F" grade)	
27	in three categories and a rank of 4 (a "D"	
28	grade) in one category. No other SA received	
	a rank of 5 in multiple categories. After 14	
	years, nine of which he served as Team Lead,	
	Coppedge received the lowest possible rank-	

ing of 5 in "need," "skills" and "performance" categories. He received the next lowest rank in "ability." And although he had seniority over the other SAs evaluated, he received an average rank of 3 in "experience." Strangely, he received a high rank of 2 ("B") for "conduct" even though he had been charged with harassment and unprofessionalism, a fact known to Conner, Burgess and Van Why, who all attended meetings with JPL counsel regarding this lawsuit beginning the prior Spring.

150. Coppedge's termination was not based on any objective criteria, such as a documented record of poor job performance, but was the product of suspicious behind-the-scenes activity occurring after Coppedge had already filed his lawsuit. Coppedge's termination was a response to his having challenged the disciplinary actions taken against him, and not due to relevant criteria JPL would have evaluated in reducing its workforce because (1) the temporal proximity between the filing of the lawsuit and Coppedge's termination was suspiciously close in time; (2) Coppedge's transitional supervisors who would become responsible for determining that he would be laid off in late 2010 suspiciously attended an attorney-client confidential meeting concerning this lawsuit several months before they assumed their supervisorial positions; (3) the

Ball Decl., section II(B), ¶¶ 14-15 (factors leading to conclusion that JPL's termination of Coppedge was pretextual), *id.*, section IV (discussion of factors), ¶¶ 42-54.

1 hiring of two new personnel to Coppedge's
2 team in October 2010 conveniently provided
3 management with an excuse to terminate
4 Coppedge in January 2011 in conformity with
5 the number of reductions contemplated as ear-
6 ly as April/May 2010; (4) Coppedge had no
7 documented critical record of his job perfor-
8 mance over a career span of 14 years until
9 after he filed this lawsuit in 2010; (5) criti-
10 cisms in Coppedge's 2010 performance eval-
11 uation were made by individuals with motives
12 for wanting Coppedge terminated, and in one
13 case, accusations of misuse of business time
14 by Coppedge were manufactured by a named
15 defendant in this case and the person he had
16 appointed to replace Coppedge in a position
17 the defendant had demoted him from; (6) sub-
18 jective criteria was used to rank employees
19 who were under consideration to be part of
20 the reduction in force; and (7) the list of em-
21 ployees considered for lay off was "padded"
22 to include favored employees that were not
23 even part of the group designated for staff re-
24 ductions. These multiple factors raise serious
25 questions concerning JPL's true reason for
26 terminating Coppedge, and offer ample basis
27 to conclude that Coppedge's termination was
28 not based upon legitimate, objective criteria,
but was imposed because Coppedge had chal-
lenged his discipline and filed this lawsuit.

151. In April 2011, Coppedge filed a se-

Second Amended Complaint.

1 cond amended complaint adding claims based
2 upon his termination.

3 DATED: September 2, 2011

THE BECKER LAW FIRM

4
5 By:

6 
WILLIAM J. BECKER, SR., ESQ.
Attorneys for Plaintiff, DAVID COPPEDGE