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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID COPPEDGE, an Individual,

Plaintiff,

vs.

JET PROPULSION LABORATORY, form unknown; CALIFORNIA INSTITUTE OF TECHNOLOGY, form unknown; GREGORY CHIN, an Individual; CLARK A. BURGESS, an Individual; KEVIN KLENK, an Individual; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. BC 435600

MOTION *IN LIMINE* #4

DEFENDANT CALIFORNIA INSTITUTE OF TECHNOLOGY'S NOTICE OF MOTION AND MOTION *IN LIMINE* #4 ("DML 4") FOR AN ORDER EXCLUDING TESTIMONY, EVIDENCE, COMMENT, OR ARGUMENT REGARDING COUNSEL'S PRIVILEGED CONSULTATION WITH CALTECH; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF CAMERON W. FOX IN SUPPORT THEREOF; [PROPOSED] ORDER

FSC Date:	December 2, 2011
Time:	9:00 a.m.
Place:	Department 54
Judge:	Hon. Ernest M. Hiroshige
Trial Date:	December 14, 2011

ORIGINAL

TO PLAINTIFF DAVID COPPEDGE AND TO HIS ATTORNEY OF RECORD, WILLIAM J. BECKER, JR., ESQ., AND THE BECKER LAW FIRM:

Defendant California Institute of Technology ("Caltech") will and hereby does move the Court *in limine* for an order precluding Plaintiff David Coppedge ("Coppedge"), his counsel, and witnesses from making any reference to, commenting upon, presenting any argument of, or introducing any evidence or testimony regarding the dates and fact of meetings or other communications that in-house or outside counsel had with Caltech managers and employees.

This Motion is based on the grounds that such evidence violates the clear mandates of the California Evidence Code, and is irrelevant, speculative, and unduly prejudicial. *See* California Evidence Code Sections 210, 350, 352, 702 and 913. Specifically, Coppedge seeks to introduce evidence of the dates and fact of meetings with counsel in order to speculate to the jury, or to have the jury speculate, that the purpose of the meetings was to mask a scheme to terminate Coppedge's employment in retaliation for his earlier complaints. Caltech is not asserting an advice-of-counsel defense, but to rebut such speculation, Caltech would be required to waive the attorney-client privilege, which it has an absolute right not to do. The dates and fact of the meetings themselves are irrelevant in the absence of admissible evidence regarding the content of the communications, and any inference as to the content of the communications is speculative, unduly prejudicial and an improper attempt to have the jury draw a negative inference from Caltech's legitimate exercise of the attorney-client privilege.

On November 23 and 28, 2011, counsel for Caltech satisfied the meet and confer requirements of Local Rule 3.57 by speaking with counsel for Coppedge regarding the substance of this Motion. *See* Declaration of Cameron W. Fox ¶ 4. Plaintiff's counsel stated that Coppedge would not agree to limit the evidence at trial in a manner consistent with the limitations requested in this Motion. *Id.*

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Cameron W. Fox, the complete files and records in this action, and on such oral and documentary evidence as may be presented at or

before the hearing of this Motion.

DATED: November 30, 2011

PAUL HASTINGS LLP
JAMES A. ZAPP
CAMERON W. FOX
MELINDA A. GORDON

By: Cameron W. Fox
CAMERON W. FOX

Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff David Coppedge ("Coppedge") has informed Defendant California Institute of Technology ("Caltech") that he intends to present testimony about, and make reference in argument to, the dates and fact of meetings or other communications Caltech's in-house and/or outside counsel had with Caltech managers. He intends to introduce such evidence in order to speculate to the jury, or to have the jury speculate, that the purpose of the meetings was to mask a scheme to terminate Coppedge's employment in retaliation for his earlier complaints. He claims the meetings with counsel are evidence of pretext. The only way Caltech could rebut such speculation would be to waive the attorney-client privilege, which it has an absolute right not to do since Caltech is not asserting an advice-of-counsel defense. Thus, while the dates and fact of meetings with counsel normally are not privileged, by speculating (or inviting the jury to speculate) as to content of the privileged communications, Coppedge would present Caltech with a Hobson's choice: maintain the privilege and risk the consequences of unbridled juror speculation or waive the privilege in order to try to disabuse the jury of such utter falsehoods. And, without knowing the content of the privileged communications, the dates and fact of the meetings themselves are irrelevant, and any inference as to the content of the communications is prohibited by California Evidence Code Section 913, speculative and would have no probative value while being unduly prejudicial to Caltech.

The Court should exclude this improper, inflammatory evidence.

II. TESTIMONY, EVIDENCE, ARGUMENT OR COMMENT REGARDING THE DATES AND ACTS OF COUNSEL'S PRIVILEGED CONSULTATION WITH CALTECH SHOULD BE EXCLUDED

A. The Evidence Is Irrelevant Under California Evidence Code Sections 210 and 350, and It Violates California Evidence Code Section 913.

A client's consultation with an attorney for purposes of obtaining legal advice is protected by both the attorney-client privilege and the attorney work product doctrine. *See* Cal. Evid. Code § 954; Cal. Civ. Proc. Code §§ 2018.010 *et seq.* Caltech is not asserting an advice-of-counsel defense, so its exercise of the privilege is entirely appropriate here. Importantly, the

California Evidence Code plainly prohibits counsel from commenting upon (or asking the jury to draw any inference from) a party's invocation of privilege:

> "If [...] a privilege is or was exercised [...] to refuse to disclose [...] any matter, neither the presiding officer nor counsel may comment thereon, no presumption shall arise because of the exercise of the privilege, and the trier of fact may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding.

Cal. Evid. Code § 913(a). Yet, that is exactly what Coppedge seeks to have the jury do here – that is, conclude from the fact that counsel met periodically with various Caltech managers in 2010, prior to and during the course of the lawsuit (which necessarily includes before Coppedge's layoff in January 2011) that the attorneys were conspiring with Caltech managers to plot Coppedge's layoff.[1]

The declaration Coppedge submitted from his purported Human Resources, Lawrence P. Ball, in opposition to Caltech's summary judgment motion indicates Coppedge's intended use of the fact of Caltech's consultation with counsel. For example, Ball stated: (1) Coppedge's layoff "was the product of suspicious behind-the-scenes activity occurring after Coppedge had already filed his lawsuit" (Declaration of Lawrence P. Ball ¶ 14)[2]; (2) He questioned why supervisors of Coppedge who later participated in the layoff decision attended a meeting with in-house and outside counsel in April or May 2010; "We can only speculate [why these supervisors attended the meeting] because these witnesses were instructed not to divulge what was discussed at the meeting (*Id.* at ¶ 42); and (3) the fact that the supervisors attended the attorney-client meeting in April/May 2010 and other meetings "looks suspicious and because of the attorney-client privilege leaves management with plausible deniability for refusing to divulge what was discussed at that and subsequent meetings." (*Id.* at ¶ 52). The court sustained Caltech's evidentiary objections to Ball's assertions in each of these paragraphs (*see* the Court's November

[1] For example, Coppedge's counsel asked several Caltech managers when and how often they met with counsel. *See, e.g.,* Deposition of William Van Why at 101:15-19 (asking Richard Van Why, Coppedge's Section Manager, the number of times and approximate dates when he met with counsel in 2010-2011), attached to the Declaration of Cameron W. Fox ("Fox Declaration") as Exhibit A.

[2] *See* Declaration of Lawrence P. Ball regarding Plaintiff's Opposition to Motion for Summary Judgment. ¶ 12-13, 21, attached to Fox Declaration as Exhibit B.

18, 2011 ruling regarding Caltech's motion for summary judgment), and likewise should bar such testimony and argument from witnesses and Coppedge's counsel at trial.

If Coppedge is permitted to introduce testimony about the dates and fact of privileged communications, and he or the jury speculates as to what was said during those communications, Coppedge places Caltech in the untenable position of waiving the attorney-client privilege to defend itself, which it has the right not to do, or having the jury draw a negative inference from Caltech's rightful exercise of the privilege, which the law prohibits. And, the dates and the fact of the meetings or other privileged communications are irrelevant without knowing the content of the communications.

In short, the mere fact a client seeks legal advice during the course of a lawsuit does not imply wrongdoing. Indeed, that very notion is contrary to the principles underlying the right to a fair trial. Therefore, the Court should bar as irrelevant any reference to the dates and/or the fact of meetings or other privileged communications in-house or outside counsel had with Caltech managers.

B. <u>The Evidence Is Inadmissible Speculation</u>.

The negative inference Coppedge wants the jury to draw is based totally on speculation. There is no admissible evidence regarding the content of the privileged meetings or other communications counsel had with Caltech management. Yet, Coppedge wants the jury to believe that nefarious plans were hatched on such occasions, as illustrated by the above-cited sections from Ball's declaration. Such self-serving speculation violates California Evidence Code Section 702 (requiring witnesses' to have personal knowledge), and is inadmissible under California case law. *See, e.g.*, *People v. Louie*, 158 Cal. App. 3d Supp. 28, 47 (1984) ("'Evidence is irrelevant if it has a tendency to prove or disprove a disputed fact of consequence only by reason of drawing speculative or conjectural inferences from such evidence. . . . *If proffered evidence can cause the trier of fact only to speculate from such evidence as to the existence or nonexistence of a disputed fact, such evidence is irrelevant and inadmissible*, since it does not come within the definition of "relevant evidence" set forth in [Cal.] Evid C[ode] § 210.'") (emphasis added) (citation omitted).

C. The Evidence Is Irrelevant And Should Be Excluded Under California Evidence Code Section 352.

Whether and when counsel consulted with Caltech management before or during Coppedge's lawsuit has no probative value, but creates a substantial risk of undue prejudice toward Caltech. Jurors unfamiliar with or distrustful of the attorney-client privilege could mistakenly conclude that Caltech's legitimate exercise of the privilege means that Caltech "knew" that it was doing something wrong, or, worse, that it was trying to cover its tracks. As a result, the jury could doubt Caltech's legitimate, stated reasons for Coppedge's layoff, and instead be more inclined to find discrimination or retaliation – even in the total absence of any evidence of such. This is quintessential undue prejudice, and the Court should not permit it.

III. CONCLUSION

For the foregoing reasons, Caltech respectfully requests that the Court grant its Motion and preclude Coppedge, his counsel and witnesses from making any reference to, commenting upon, presenting any argument of, or introducing any evidence or testimony regarding the date and fact of any privileged meetings or other privileged communications Caltech's in-house or outside counsel had with Caltech.

DATED: November 30, 2011

PAUL HASTINGS LLP
JAMES A. ZAPP
CAMERON W. FOX
MELINDA A. GORDON

By: Cameron W. Fox
CAMERON W. FOX

Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

DECLARATION OF CAMERON W. FOX

I, Cameron W. Fox, declare:

1. I am an attorney at law duly admitted to practice before this Court and all of the courts of the State of California. I am an associate with the law firm of Paul Hastings LLP ("Paul Hastings"), counsel of record for the California Institute of Technology ("Caltech") in this action. I have personal knowledge of the facts contained in this Declaration, or know of such facts by my review of the files maintained by Paul Hastings in the normal course of its business, and if called as a witness, could and would testify as to their accuracy.

2. This Declaration is submitted in support of Defendant's Motion *In Limine* For An Order Excluding Testimony, Evidence, Comment Or Argument Regarding Any Consultation By Caltech With Counsel ("Motion").

3. The specific matter alleged to be inadmissible in Caltech's Motion *In Limine* is any reference, comment, testimony, document, or argument pertaining to any consultation by Caltech with its internal or outside counsel.

4. On November 23 and 28, 2011, I spoke with counsel for Plaintiff David Coppedge, William J. Becker, regarding the substance of this Motion. Mr. Becker stated that Coppedge would not agree to limit the evidence at trial in a manner consistent with the limitations requested in this motion.

5. Caltech will suffer prejudice if this Motion *In Limine* is not granted because the evidence sought for exclusion is attorney client privileged and attorney work product, speculative, irrelevant and inadmissible under California Evidence Code Section 352.

Attached hereto as **Exhibit A** are true and correct copies of excerpts from Day Two of the deposition of Richard William Van Why, taken on July 22, 2011.

6. Attached hereto as **Exhibit B** is a true and correct copy of the Declaration of Lawrence P. Ball, which Coppedge filed and served on my office in support of his Opposition to

Caltech's Motion for Summary Judgment Or, In the Alternative, Motion for Summary Adjudication of Issues.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of November, 2011, at Los Angeles, California.

CAMERON W. FOX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID COPPEDGE, an Individual,

Plaintiff,

vs.

JET PROPULSION LABORATORY, form unknown; CALIFORNIA INSTITUTE OF TECHNOLOGY, form unknown; GREGORY CHIN, an Individual; CLARK A. BURGESS, an Individual; KEVIN KLENK, an Individual; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. BC 435600

MOTION *IN LIMINE* #4

[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION *IN LIMINE* #4 ("DML 4") FOR AN ORDER EXCLUDING TESTIMONY, EVIDENCE, COMMENT, OR ARGUMENT REGARDING COUNSEL'S PRIVILEGED CONSULTATION WITH CALTECH

FSC Date:	December 2, 2011
Time:	9:00 a.m.
Place:	Department 54
Judge:	Hon. Ernest M. Hiroshige
Trial Date:	December 14, 2011

Defendant California Institute of Technology's Motion *In Limine* For An Order Excluding Evidence of Counsel's Privileged Consultation with Caltech came on for hearing before this Court on December 2, 2011.

The Court, having reviewed and considered the Motion and all papers and pleadings on file herein, and the oral argument of counsel, HEREBY ORDERS, ADJUDGES AND DECREES:

That Plaintiff David Coppedge, his counsel and witnesses are precluded from making any reference to, commenting upon, presenting any argument of, or introducing any evidence or testimony regarding the date and fact of privileged meetings or other privileged communications in-house or outside counsel had with Caltech.

DATED: _____

_____
Ernest M. Hiroshige
Judge of the Superior Court

Presented by:

PAUL HASTINGS LLP
JAMES A. ZAPP
CAMERON W. FOX
MELINDA A. GORDON

By: _____
CAMERON W. FOX

Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

EXHIBIT A

William J. Becker, Jr., Esq. (SBN 134545)
THE BECKER LAW FIRM
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Los Angeles, California 90064
Phone: (310) 636-1018
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Attorneys for Plaintiff, David Coppedge

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

DAVID COPPEDGE, an individual; Plaintiff, vs. **JET PROPULSION LABORATORY**, form unknown; **CALIFORNIA INSTITUTE OF TECHNOLOGY**, form unknown; **GREGORY CHIN**, an Individual; **CLARK A. BURGESS**, an Individual; **KEVIN KLENK**, an Individual; and **Does 1** through **25**, inclusive, Defendants.	Case No. BC435600 **DECLARATION OF LAWRENCE P. BALL** HEARING DATE: September 16, 2011 HEARING TIME: 8:45 a.m. DEPT: 54 Trial Date: October 19, 2011

I, LAWRENCE P. BALL, declare as follows:

1. I have been retained by the Becker Law Firm to provide my opinions regarding matters within my expertise concerning employment issues raised in this case. If called as a witness, I could and would competently testify to the facts and opinions contained herein.

ER A

I. QUALIFICATIONS/BACKGROUND

2. I am the proprietor of The Human Resources Management Network, a human resources management consulting firm. My practice focuses on management of human resources. I have been retained, and have testified, as an expert witness on numerous occasions. I have opined on management policies and practices in connection with allegations of employment discrimination on several occasions.

3. Over the past 48 years, I have occupied professional and management workplace positions in executive management and the field of human resources. My responsibilities have ranged from technical recruiter to vice president of human resources in a variety of industries, including service, warehouse, and manufacturing and as general manager of a prominent nursery materials grower.

4. I have conducted myriad training courses and seminars in all aspects of human resources management, including sexual harassment, discipline and discharge, supervisory and management skills, documentation, and others.

5. For nine years I managed the Orange County district for the Employer's Group. They are a non-profit association whose purpose is to provide expert counseling regarding appropriate management practices and procedures for managing people to Human Resources professionals and operating Executives. Over 1000 member companies in Orange County, California relied on me and my staff to provide them with technical and professional guidance in the management of their people.

6. I have completed an 18-month Certified Arbitrator Development training program at UCLA sponsored by the Federal Mediation and Conciliation Service, the American Association and other agencies and have served as an Arbitrator on workplace issues.

7. I obtained my Bachelor of Science degree from the University of Kansas and have worked toward a Masters in Business Economics, Claremont Graduate School.

8. Attached hereto and incorporated herein as Exhibit A is a true and correct copy of my current curriculum vitae. Attached hereto and incorporated herein as Exhibit B is a true and correct copy of listings of my trial and deposition testimony.

9. I have attached Exhibit C to my report to reflect documents which I have reviewed up through the date of this report.

II. ISSUES AND CONCLUSIONS

10. My assignment relating to this declaration was to review and analyze the material presented based upon my knowledge of the required standard of care regarding discrimination and other employment law issues in the workplace. I was further asked to comment upon my conclusions relating to adverse employment actions undertaken by JPL against Plaintiff, David Coppedge ("Coppedge"), paying particular attention to the sufficiency of the harassment investigation conducted by the Defendant Jet Propulsion Laboratory's ("JPL") human resources ("HR") department, Coppedge's demotion from the role of Team Lead and the circumstances surrounding Coppedge's termination from JPL.

11. Based upon my years of experience, training in the field of human resources and other factors, it is my opinion Coppedge suffered adverse employment action by JPL (1) when JPL carried out an inadequate and one-sided investigation of charges of harassment resulting in his demotion and disparagement, (2) by being demoted from Team Lead, a position Coppedge had held for nine years in which he was given significantly added responsibilities and which distinguished him as a leader among his colleagues, (3) by giving Coppedge undeserved low performance ratings and (4) by being terminated.

A. JPL's Investigation Was Incompetent.

12. In a variety of ways the investigation conducted by HR representative Jhertaune Huntley ("Huntley") was inadequate, faulty, unfair and fell far below the standard of care required of a professional investigator looking into charges of employee harassment. In fact, I found it fell unacceptably below professional standards in its inattention to detail, lack of objectivity, disregard for Coppedge's rights and superficiality. This is not an objective case of religious proselytizing. Coppedge's views were *perceived* to be religious and attacked on that basis. At minimum, a competent investigator would have examined the nature of the subject matter. Most disturbing here was the investigator's utter failure to find convincing facts to show a violation of the company unlawful harassment policy.

13. As explained in more detail below, JPL's HR investigator Huntley was confronted with claims made by a management employee that Coppedge had been pushing his religious views on other co-workers by discussing the subject of intelligent design ("ID") and handing out DVDs on that subject yet failed to determine the threshold question as to whether ID expresses a religious viewpoint. When the investigator was confronted with the fact that complaints made by co-workers against Coppedge were based on ideological differences, she failed to question the hidden biases, state of mind or motivating animus of those individuals, ignoring a vital key to understanding why they would react harshly to Coppedge's benign actions. Additionally, the investigator 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. The investigator ignored Coppedge's claims of a hostile work environment, civil rights violations and harassment, thereby treating the claims of harassment against him as conclusive. The investigator 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. The investigator discredited the favorable statements supplied by one individual. Finally, the investigator failed to revisit Coppedge to give him an opportunity to correct or contradict prejudicial statements made by the complaining parties.

B. Several Factors Lead To My Conclusion That JPL'S Termination Of Coppedge Was Pretextual.

14. It is my further opinion that 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. I describe below the following reasons why I have concluded that 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. Based on the material I have reviewed and considered, (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 hiring of two new personnel to Coppedge's team in October 2010 conveniently provided management with an excuse to terminate Coppedge in January 2011 in conformity with the number of reductions contemplated as early as April/May 2010; (4) Coppedge had no documented critical record of his job performance over a career span of 14 years until *after* he filed this lawsuit in 2010; (5) criticisms in Coppedge's 2010 performance evaluation were made by individuals with motives for wanting

Coppedge terminated, and in one case, accusations of misuse of business time by Coppedge were manufactured by a named defendant in this case and the person he had appointed to replace Coppedge in a position the defendant had demoted him from; (6) subjective criteria was used to rank employees who were under consideration to be part of the reduction in force; and (7) the list of employees considered for lay off was "padded" to include favored employees that were not even part of the group designated for staff reductions.

15. These multiple factors raise serious questions concerning JPL's true reason for terminating Coppedge, and offer ample basis to conclude that Coppedge's termination was not based upon legitimate, objective criteria, but was imposed because Coppedge had challenged his discipline and filed this lawsuit.

III. HUNTLEY'S INVESTIGATION WAS INCOMPETENT, INADEQUATE AND UNFAIR.

16. JPL's "investigation" into harassment charges made by employees against Coppedge did not conform to the accepted conduct of a fair and objective investigation in compliance with JPL's policy or as established by the California Supreme Court's decision *Cotran v. Rollins Hudig Hall Intern., Inc.* (1998) 17 Cal.4th 93 and as accepted by human resources management professionals as the standard for workplace investigations. Indeed, it fell substantially short of a fair, competent fact-finding investigation.

17. Coppedge was issued a written warning, charged with harassing other employees and removed from his role as team lead. In my opinion, the unjustifiable charges of harassment and the removal constituted an adverse employment action.

18. The story of what transpired that led up to disciplinary action against Coppedge by JPL begins on March 2, 2009, when Chin became visibly upset and accused Coppedge of

pushing his religion by discussing ID. JPL has no express policy barring discussions about religion and politics. Chin seemed to be focused on ID as a form of religious expression. But other evidence in this case shows that Chin felt Coppedge had tried to convert him to Coppedge's religion the prior Christmas when Coppedge left a religious DVD in Chin's mail slot as a Christmas gift. Chin apparently had also received reports of Coppedge discussing Proposition 8. But those matters were not brought up during Chin's outburst – only ID. Coppedge sought to disabuse Chin of the impression that ID is a religious idea, but Chin would have nothing of it. When Coppedge said he felt that Chin was creating a hostile work environment, Chin dared him to report him.

19. At the outset, the pretense that Coppedge was engaged in religious activities by handing out DVDs concerning ID is suspect. Nowhere in the deposition testimony or any of the documents I have reviewed is there any interest shown by the HR investigator Jhertaune Huntley ("Huntley") in learning more about the subject matter of ID, its purported religious attributes or whether what made it offensive to Chin. This is significant because Chin was ordering Coppedge to stop talking about religion and politics, but was focused on ID. At deposition, Chin admitted that he believed ID to be a religious matter and that he told Coppedge so directly. Chin therefore was concerned about ID (the content of the message Coppedge was told to discontinue raising with other employees), so it would have made sense for Huntley to attempt to learn something about this perceived religious topic. If ID had something to do with religion, then Chin's efforts to censure Coppedge might be interpreted to improperly tread upon Coppedge's legitimate right of religious expression.

20. Content would seem to be an important factor here. Nothing about Chin's statements that Coppedge was pushing religion through the topic of ID speak objectively to religious

proselytizing. Yet that was the nature of Chin's claim – that Coppedge was proselytizing. In sexual harassment cases, the use of particular language used by the offending employee may be the basis for a finding of sexual harassment. That presents a content-based (as opposed to merely a behavioral) concern. In cases of religious proselytizing, a threshold question is whether the subject matter of the employee's contacts with other employees concerns religious advocacy. By definition, one can't be proselytizing if one is not engaged in a discussion of religion. Thus, 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.

21. Huntley was neither interested in determining what ID was or whether it had religious substance. In fact, she testified repeatedly that she was not interested in ID, only Coppedge's behavior. But this was disingenuous because Huntley seemed very concerned with the subject matter of Proposition 8 when she discussed it with Weisenfelder and Edgington. In her testimony, Huntley dances around the matter. The appearance is one of trying to avoid admitting that she overlooked a relevant piece of the puzzle. If, as Coppedge tried to tell her, ID is a scientific topic dealing with origin concepts consistent with the mission of JPL, Coppedge's employer, and not a religious idea, then the next relevant question could be asked, particularly of Chin: Why do you believe it to be a religious statement? Huntley's failure to ask Chin that question allows the inference she did so in ignorance, neglect or hostility. If she failed to examine the matter with Chin out of ignorance or neglect, then her investigation was flawed at the outset, because she could not proceed on the basis of workable data. If out of hostility, then the entire investigation was unfair.

22. Huntley testified that the only concern she had was whether an individual felt "uncomfortable" when Coppedge approached them, regardless of whether the individual

expressed their discomfort to Coppedge. Her testimony in this regard shows she did not carry out a fair and balance investigation but had prejudged the person accused. By accepting as true the subjective statements given to her by employees with axes to grind, without assessing their credibility or trustworthiness, Huntley stacked the deck against Coppedge. If it was merely the burden of his accusers to state that by approaching them on matters involving his personal interests Coppedge had made them feel "uncomfortable" and that his overtures were "unwelcome," then nothing Coppedge could say could overcome such a burden. If no amount of evidence was necessary to test whether the complaining employees had a reasonable basis for the way they felt, then Coppedge was left defenseless.

23. Responding to Chin on March 2, Coppedge told him that Chin's behavior looked to be consistent with a "hostile work environment." Chin dared Coppedge to report him. Chin must have sensed, however, that his behavior was inappropriate because he quickly put calls out to Human Resources as well as to a number of management personnel. Chin's stated purpose for making the calls was to initiate an investigation into when he (Chin) had created a hostile work environment by raising his voice and berating Coppedge. Ms. Huntley was assigned to investigate the situation but incorrectly based her investigation on the premise that Coppedge was the party that had created a hostile work environment and conducted her investigation on that basis.

24. Huntley interviewed only five witnesses (Chin, Carmen Vetter, Margaret Weisenfelder, Scott Edgington and Clark Burgess). Weisenfelder, Vetter and Edgington were made known to Huntley through Chin. All but Burgess, Coppedge's direct supervisor, held negative views toward Coppedge. Although Burgess indicated that he had purchased DVDs from Coppedge and had discussed ID with him, he told Huntley that Coppedge had not made

him feel uncomfortable and that he was unaware of the fact that anyone had felt uncomfortable by having Coppedge approach them concerning his personal interests. This should have made Huntley question the motives of the other employees, or, at the very least, probe into their state of mind sufficiently to learn whether their claimed feelings of discomfort were justified by an objective standard. Instead, Huntley appears to have not even taken Burgess' positive statements into consideration in her evaluation of Coppedge's perceived behavior.

25. We do not know what Chin told Huntley concerning his outburst. It is not in her interview notes from her meeting with him nor in Chin's e-mail to management describing the incident, so it is obvious that he did not explain any of the facts to defend against Coppedge's assertion that he had created a hostile work environment. This is particularly troubling, because Coppedge's recollections from the e-mail he sent Chin and which Chin forwarded to Huntley as well as Huntley's interview notes with Coppedge reaffirm Coppedge's description of what transpired between him and Chin, even going so far as to say that Chin had violated his civil rights, a very strong allegation, which Huntley, herself a minority I am informed, would have been expected to take seriously. However, Huntley was strangely uninterested in this charge. When she was asked at her deposition whether she takes charges of a civil rights violation seriously, she responded dispassionately that it "depends on the situation at hand." (Huntley Depo, p.189, line 19 and 20). This is extraordinary not merely for its insensitiveness, but because of the disdain she revealed for what Coppedge was telling her. Thus it appears Huntley claimed she required facts to determine whether a civil rights claim was justified, but needed no facts to decide whether a harassment claim was justified. Breaking it down further: Huntley did not look for facts of a civil rights violation because *she herself did not take the allegation seriously.* And she claimed she did not need additional facts to test the trustworthiness of the

individuals alleging that Coppedge harassed them. In short, Coppedge's defenses were not taken seriously by Huntley at all. She accepted the claims that Coppedge had harassed the coworkers without questioning their bald allegations, while at the same time rejecting Coppedge's claims of a hostile work environment and his civil rights charge without any inquiry. There is no evident reason why Huntley should trust the allegations against Coppedge but distrust Coppedge's allegations.

26. Not only did Huntley ignore Coppedge's accusations of wrongful conduct by Chin while accepting as true the allegations made against him, Huntley also failed to interview witnesses potentially favorable to Coppedge. Huntley, after interviewing unfavorable witnesses, also failed to return to Coppedge so that he could correct or contradict relevant statements prejudicial to his case. Coppedge kept a log of everyone he had approached regarding his views on ID. His purpose in keeping the log was to avoid returning to those who expressed no interest in the topic of ID. Huntley again showed no interest and dismissed Coppedge's efforts to show her the list of names. Huntley's indifference to all the evidence at her disposal is quite puzzling. She was confronted with an unusual set of facts. This was not a case in which Coppedge repeatedly hounded another employee, or used aggressive methods of approaching people.

27. JPL's Unlawful Harassment Policy states the relevant criteria for a finding of harassment. "Harassment is the creation of a hostile or intimidating environment in which verbal or physical conduct, because of its severity and/or persistence, is likely to interfere significantly with an individual's work." Under this standard, Coppedge would first have had to "create" a particular type of environment, either "hostile" or "intimidating." Next, his verbal (referring to the use of words or language) or physical (nonverbal) conduct must have had to have been (1) severe, and/or (2) persistent. The last part of this standard requires that the conduct would be

"likely" (more probable than not) to interfere (as opposed to merely interrupt) "significantly" with an individual's work.

28. None of the criteria for harassment exists in any of the scenarios brought to Huntley's attention. In the case of Vetter, he had merely asked her to consider changing "Holiday" to "Christmas." Vetter was the person in charge of the employee parties and so she was the logical person to approach on his request. The only evidence I have seen that shows Coppedge approaching anyone on the subject is an e-mail to Chin with a commentary copied from the Internet. Coppedge's approach appears rather harmless. He even states that the issue is "small potatoes" for him. The e-mail does not have any of the characteristics one would associate with "harassment." Vetter, however, on the basis of her deposition testimony, has a real insecurity about her religious beliefs. She has more or less abandoned her faith, but she never once revealed that fact to Coppedge, nor, for that matter, stated to him any reluctance or aversion to discussing religion. As the administrative assistant to the program manager, she was in a position to tell Coppedge firmly that the idea of reverting to the Christmas Party name for the annual company event he suggested had been considered and rejected. She didn't, however. Instead, she states that she reported the matter to Chin as harassment. This is truly puzzling, since Chin testified that he does not deal with personnel matters. That was Burgess's domain. Yet Vetter never discussed it with Burgess. These facts should have been explored by Huntley. But Huntley did not apparently even ask Vetter about why she would have been upset by Coppedge's request. And when Vetter told Huntley that (1) she believes Coppedge has an "agenda," (2) that once Coppedge found out she was a Christian "she was harassed by him," (3) that Coppedge is "inappropriate," and (4) that he doesn't know "the line he is crossing when he brings religion in the workplace," Huntley accepts these conclusions at face value, never

following up to ask Vetter what Coppedge had done other than ask for a Christmas Party name change. In short, Vetter's criticism of Coppedge appears to be a personal matter. Did Coppedge create a hostile or intimidating environment in which verbal or physical conduct, because of its severity and/or persistence, was likely to interfere significantly with an individual's work? Huntley does not appear to have questioned Vetter regarding whether Coppedge said or did anything that could have significantly interfered with Vetter's work. In fact, there is no evidence in this case that I have seen tending to show that Coppedge had acted persistently, aggressively or in any intimidating or hostile manner. The fact that Vetter felt intimidated is subjective. The test is whether the average reasonable person would have been intimidated by one Christian talking to another Christian about Christianity, or whether a request to name a social function its traditionally recognized name is intimidating. I do not see how Vetter could have felt harassed unless she harbored a deep resentment for Coppedge's Christian orthodoxy and convictions. In fact, Vetter's complaint to Chin might itself be characterized as a form of religious discrimination, since she appeared intolerant of his religious views.

29. Weisenfelder's statements and actions apparently ignited this case. She was the one who went to Chin on March 2 to complain about Coppedge sharing his religious (ID) and political (Proposition 8) interests. It was because of her complaint that Chin became upset. Chin, however, was motivated also by his own religious animus. When Coppedge left a Christmas gift in his mail slot – a DVD called "The Case for Christ" – Chin perceived that act not as one of seasonal charity but of religious proselytizing. He told Huntley that Coppedge was trying to get him to "believe in his religion during work hours." Accordingly, when Weisenfelder approached him that morning, the pump had already been primed, so to speak. Chin already was frustrated, a fact that he did not disavow. ("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.")

30. Chin's theory of persistent behavior appears to derive from what Vetter and Weisenfelder had said to him. He testified that some 25 other people claimed they too found Coppedge annoying with his religious and political interests (he did not say that they felt harassed), but that claim does not appear to be validated by any evidence other than Chin's self-serving statements. Nevertheless, it opens a window into Chin's state of mind. Had Chin informed Coppedge that 25 people over the years had complained about Coppedge, and that these complaints could lead to discipline, that might have been a professional approach to take with Coppedge under the circumstances. But Chin's judgment appears to have been clouded by his own personal animus and hostility toward Coppedge's religious views. Huntley should have determined at this point that an investigation ought to include looking into whether Chin had created a hostile or intimidating environment with his severe verbal and physical conduct, and the threat of adverse employment action based on Coppedge's religious expression. But Huntley's approach lacked that basic level of sophistication necessary for conducting a reasonable investigation.

31. Weisenfelder's grievances too were highly suspect. What exactly were they? On an earlier occasion, Coppedge had asked her to share her views on Proposition 8. She declined and he backed away, asking only if there was anything he could say to change her mind. She characterized that behavior as "persistent." But that behavior is not objectively persistent, and Weisenfelder's characterization of it as such should have been rejected by Huntley. On the March 2 occasion, Weisenfelder had voluntarily borrowed a DVD from Coppedge about ID. She took it home and sped through it, finding it to be "heavy-handed" with religious content. I have

not seen the film and am going by what counsel has told me (that it contains no religious message or content). Nevertheless, Weisenfelder testified that she was not offended by the DVD. What she claims disturbed her was a yellow Post-It note on the DVD jacket with some names on it and the words "try again" alongside one of the names. In her deposition transcript, several pages of testimony reveal Weisenfelder trying in vain to avoid explaining what her fear was. Eventually, she stated that the yellow note made her feel like Coppedge would try to come back and approach her again with another DVD. She did not want him to talk to her again. (Deposition at pages 158-161).

32. A few points should be noted regarding Weisenfelder's complaints. 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 could then have been found to have acted persistently, because she had already made her position clear and definite.

33. Regarding the DVD, Weisenfelder accepted the loan of it consensually. She need only have returned it to him and told him not to offer her any more. As with her statements to him regarding Proposition 8, she could have said, I don't think we're on the same page ideologically, or words to that effect. Somehow, she could have conveyed to him that she felt

uncomfortable discussing ID. But Weisenfelder seemed to harbor a strong intolerance toward what she perceived to be Coppedge's beliefs. There is evidence in this case that Coppedge's religious views were widely known around JPL. In fact, Coppedge might have been a minor celebrity had he chosen to reveal to co-workers his Creation Safari Headlines website and his membership on the film company's board of directors. Weisenfelder's stern response to the issues that Coppedge identified with demonstrates a hostility bordering on bigotry. Had Coppedge been in favor of Proposition 8 and against ID, presumably she would not have felt intimidated or harassed. It is the same when a racist feels threatened by another person's ethnicity. If the other person were not a member of that ethnic group, there would be no tension between them. But the tension is based on the racist's intolerance, not on the other person's ethnicity. In this case, Vetter, Chin and Weisenfelder all blame Coppedge for their frustration and discomfort when it is his religious identity, something he can do nothing about, that disturbs them. It is interesting to me that Vetter and Weisenfelder are friends and were certified together to teach a course in interpersonal communication. They clearly are kindred souls, a fact that Huntley overlooked.

34. Edgington also was a case of intolerance toward Coppedge's viewpoint, which was perceived, at least by Huntley and management to be religious in nature. Unlike Weisenfelder, Edgington had consented to a discussion concerning Proposition 8 with Coppedge. Also unlike Weisenfelder, Edgington did not disclose what his feelings were initially, telling Coppedge that he was leaning a certain way. When Coppedge disclosed what he believed, Edgington characterized Coppedge's views as "propaganda," a term he understood to have a derogatory meaning. An argument soon followed and Edgington asked Coppedge to leave his office. The first point to note is that the discussion initially was consensual. Although two people may

argue, there is nothing improper about an argument where both parties agree to participate. There is a dispute as to whether Coppedge was asked to leave Edgington's office. However, Coppedge did leave, and the following day he made a point of visiting Edgington to apologize for his rudeness. This might have ended the matter. However, Vetter (who along with being friends with Weisenfelder had her own problem with Coppedge dating back to the Christmas incident five years earlier) had her office adjacent to Edgington's. Overhearing the argument, she waited for Coppedge to leave before approaching Edgington about reporting Coppedge for harassment to Chin. When Coppedge presented his apology to Edgington, Edgington did not let on that he had already authorized Vetter to report Coppedge as having harassed him.

35. Vetter and Chin appear to be at the center of each of these scenarios, a fact never explored nor recognized by Huntley. In Huntley's interview of Coppedge, he told her that he had discussed Proposition 8 with another employee the same day he spoke to Edgington and that the conversation had been friendly. Huntley did not feel this was important and did not attempt to interview the other individual. Nor did she attempt to learn whether Edgington might have been to blame for starting the argument by labeling Coppedge's comments propaganda. And finally, after Huntley had conducted the interviews with Weisenfelder, Chin, Edgington and Vetter, she failed to visit with Coppedge a second or final time to allow him an opportunity to rebut their allegations against him. Coppedge was well able to respond to those charges during his four days of deposition testimony. Huntley could have given him another hour of her time. She met with Chin on more than one occasion. The idea of having Coppedge respond to his accusers seemed lost on Huntley.

36. To sum up to this point, Huntley (1) failed to determine the threshold question as to whether ID is religion in order to understand Chin's statements to Coppedge that "ID is religion"

and his order to stop "pushing" his religion; (2) failed to question the integrity of the accusations leveled against Coppedge by his complaining coworkers; and (3) gave weight to subjective and bare claims of feeling "uncomfortable" while giving no weight to the evidence showing that Coppedge had not acted in any objectively improper manner; (4) ignored Coppedge's claims of a hostile work environment, civil rights violations and harassment; (5) failed to interview favorable witnesses who could have disrupted a perceived "pattern" of bad behavior; and (6) failed to return to Coppedge to allow him to correct or contradict prejudicial statements made by Weisenfelder Edgington, Vetter and Chin.

37. Since Ms. Huntley erroneously considered Chin the Complainant and Coppedge the Respondent, she continuously violated the JPL Policy on Unlawful Harassment and Coppedge's rights. The policy states that she must protect the rights of both the Complainant (Chin) and Respondent (Coppedge) with the greatest degree of confidentiality. It also states that each individual team member conducting the investigation will be trained. Huntley (the only team member apparent) seems not to have been not trained, otherwise she would have correctly ascertained that it was Coppedge who felt Chin had created a hostile work environment with his angry words and excessive conduct during their exchange. The policy requires that the complainant and the respondent be informed of the relevant procedures and have an opportunity to comment on the suitability of the investigator. Further, the JPL's Nondiscrimination and Equal Opportunity Policy and JPL's Unlawful Harassment Policy, which prohibits retaliation, state that they are to be reviewed with both parties. They also state that the Complainant and Respondent shall be given the opportunity to present their cases separately to the investigator and to suggest others who might be interviewed. Although Coppedge sent Huntley several emails seeking clarification of the process, he had no idea what was happening to him until he was called to a

meeting with Burgess and Klenk, counseled about his behavior, was given a written warning and demoted.

38. The written warning contained statements that appear untrue based on my review. Burgess stated "You failed to stop these activities when you were told they were unwelcome and disruptive." He further stated that "coworkers found your requests to watch your DVD's that express your personal views to be unwelcome." No one represented that to Coppedge at the time of the exchange.

39. Ms. Huntley had apparently consulted with no one, analyzed her notes on the few negative animus witnesses she interviewed and recommended to Burgess that he give Coppedge a written warning. The JPL policy states that the investigator will summarize for the respondent the evidence in support of the complaint to allow the respondent the opportunity to reply. Then and only then, the policy states, the investigator will report the findings and recommend solutions or sanctions and measures to prevent the occurrence of similar instances. Huntley abrogated her responsibilities, rushed to judgment and violated the provisions of JPL's Policy on the handling of investigations of unlawful harassment complaints. Burgess then compounded an already unfair and discriminatory situation by demoting Coppedge and taking away his title of Team Lead that he had held for 9 years.

40. Burgess tried to justify his action by informing Coppedge that he was remiss in that he did not stop the activities when he was told they were unwelcome and disruptive. The evidence seems otherwise. Coppedge was never told by the staff he approached that the conversations were unwelcome or disruptive. Those words were later added by Huntley, Burgess and Klenk. In the few instances where it became obvious the person was uninterested, Coppedge ceased the conversation and did not reopen the subject.

41. There appears to be much more to review and comment on with respect to Huntley's investigation, an investigation I can categorically describe as incompetent, unfair, inadequate and inconsistent with JPL guidelines even without the benefit of additional review.

IV. COPPEDGE'S TERMINATION WAS BUILT AROUND SEVERAL PRETEXTS.

42. Apparently, Coppedge's attorney sent a courtesy copy of the complaint to JPL's attorney on April 15, 2010. I have not seen the letter, but am told this by counsel. In April or May of 2010 (after the lawsuit was filed and after JPL's attorneys received notice of it), a meeting was held at JPL attended by JPL's in-house and outside counsel to discuss the lawsuit. Two individuals who would assume the roles of Coppedge's supervisors in the Fall, Dianne Connor and Richard Van Why, also attended the meeting. Their attendance raises the question why their presence at a confidential meeting concerning this lawsuit was at all necessary. We can only speculate because these witnesses were instructed not to divulge what was discussed at the meeting. What we do know (through Van Why's testimony) is that the subject matter of the meeting was confined to this lawsuit.

43. The attendance of Conner and Van Why at a meeting in the Spring 2010 exclusively relating to this lawsuit becomes significant because these individuals were responsible for selecting which systems administrators ("SA") on the Cassini Program would be laid off in anticipated reductions. Conner had been informed in April or May, the same period of time in which she and Van Why attended the lawsuit meeting, that she would be required to reduce the SA team to 3.0 FTE (full-time equivalent) employees. She believed that would mean letting go two SAs. The SA team at that time stood at 4.0 FTE (Coppedge, Nick Patel, Harvey Chien and Bob Jobsky (see chart). Attached hereto and incorporated herein as Exhibit D is a true and correct copy of a chart I requested from counsel illustrating who was employed during calendar

2010. This means that Conner understood in April/May that one SA would need to be terminated when the layoffs went into effect. Conner and Van Why began working on the layoff process in the summer.

44. In October, Conner hired two new SAs at a time when she was already involved in the process of determining two reductions in the SA workforce (see chart). This raises a serious question about timing. If 3.0 FTE were required in the new calendar year, why was she hiring two new SAs in October, boosting the number of SAs to 6.0 FTE? One can fairly speculate that Conner had "padded" the SA team with two members more to her liking so that when time came to lay off employees, she would not be left having to retain Coppedge. Mr. Jobsky quit in December, and I do not know when or if Conner first learned that he would be leaving the SA team. However, with Jobsky gone on January 1, 2011, that left the staff at 4.0 FTE, requiring only one SA to be laid off.

45. Apparently Chris Cordell worked in another "directorate" but was transferred to Conner's office in October. At the time Van Why considered the list of SA names for possible layoff, Cordell was not on the list because he was in another "directorate." Doing the math, had Conner not hired Cordell and re-hired Oscar Castillo in October, that would have left Conner's team at 3.0 FTE, precisely where it was required to be based on expected budgeting, without any need to terminate anyone. By adding Castillo, the SA team stood at 4.0 FTE. But Van Why included on the list an individual who was not part of Conner's SA team, Gary Wang. Van Why explains that Wang was listed on the layoff criteria worksheet for consideration because Van Why supervised him in another office. But if Wang was not a member of Conner's SA team and Cordell was, why wasn't Wang excluded from consideration and Cordell included? The explanation for putting Wang on the list is inconsistent with keeping Cordell off the list.

Following the logic applied to Cordell's name not being included in the list of potential layoffs, Wang's name should not have been on it either. And if Wang's name had not been on it (and Castillo had not been hired in October), the SA team would have stood at 3.0 FTE! No layoffs would have been necessary. By "padding" the team with two additional people, Conner made it possible to still terminate two SAs, but they would be two disfavored SAs, and to clear Cordell from consideration. This was quite creative. And it was something that might have been discussed at the lawsuit meeting behind closed doors with counsel, though that is strictly conjecture. Nevertheless, one can draw a reasonable inference from the evidence for purposes of showing pretext in a wrongful termination setting. It is therefore my opinion that the evidence creates at least a triable issue as to whether Coppedge was terminated for reasons other than budgetary concerns.

46. But that begs the question. Why would Coppedge have been singled out for layoff? He was the most senior SA on the team, having been there since prior to the Saturn probe's launch date, and he had been rewarded for nine of the 14 years he was there with the position of Team Lead. As a full-time employee, his performance evaluations were steadily complimentary each year. None of the "Employee Contribution and Assessment of Performance" ("ECAP") performance evaluations for Coppedge for 2003/4, 2004/5, 2005/6, 2006/7, 2007/8 and 2008/9 were critical of his job performance. Only after the lawsuit was filed did Coppedge receive poor performance assessment.

47. According to testimony I have reviewed, the only documented evidence of poor job performance an employee would receive would be found in Coppedge's personnel file. My review of that file contained Huntley's handwritten notes from her investigation. It also contained the ECAPs. One can infer from these facts that the disciplining of Coppedge was

taken into account and that Coppedge's decision to file a lawsuit in April 2010 counted against him. I have worked at General Dynamics, a defense firm, and have experience with work environments similar to JPL. These companies are very concerned about their brands and their reputations. There is no doubt that Burgess, a Defendant in the lawsuit, and Mitchell, both of whom attended the April/May lawsuit meeting (and let's not forget that Vetter is Mitchell's administrative assistant), would look with disfavor on the disrepute such a lawsuit might bring to the world-renown space lab.

48. Burgess especially would have been perturbed by the lawsuit. He was scheduled to retire October 1. And, too, he had already made the decision to remove Coppedge as his Team Lead and give it to Nick Patel. These facts appear in various places but due to timing constraints I cannot cite them at this time. It fell to Burgess to prepare the SAs' annual ECAPs, but Burgess could invite comments from employees of his choosing. For 2010, after the lawsuit had been filed, he strangely chose Conner and Patel to comment on Coppedge's job performance. Conner was already paving the way to include Coppedge on the list of layoff casualties.

49. It is unclear what Patel's problem with Coppedge was. Patel and Coppedge had worked side-by-side as SAs for several years. Coppedge had been Patel's "lead." That position carried with it additional responsibility, mainly interfacing with other Cassini managers and serving as the bridge between his office and the other units on the space program. Not once in the nine years that Coppedge served as team lead did he criticize another SA in front of line management. Nor did Coppedge micromanage the SAs by snooping to see if they were working on business-related matters at all times.

50. But when Patel was elevated to the lead role, power seemed to corrupt him. He accused Coppedge of typing personal matter on company time, a charge he could not prove. He

dragged Coppedge before Burgess, now a Defendant in this lawsuit, to make the unfounded accusation. So when Burgess invited Patel to comment on Coppedge's job performance for the 2010 ECAP, Burgess could expect Patel to be critical...and he was. The critical comments in Coppedge's ECAP could then serve as pretext for Coppedge's termination.

51. Finally, I have reviewed the layoff criteria worksheet attached hereto as Exh. E and incorporate herein by reference. Burgess and Conner provided input to Van Why, who scored the SAs to determine who would be selected for termination. My study of the testimony of Conner and Van Why leads me to conclude that this was a purely subjective process in which Burgess and Conner fed Van Why, who had not worked with Coppedge before, with critical comments. Based on the input provided by Burgess, a Defendant at the time in this lawsuit, and Conner, who attended attorney-client privileged meetings with JPL's internal and outside counsel concerning this lawsuit at a time when she had no connection to it, Coppedge received a rank of 5 (an "F" grade) in three categories and a rank of 4 (a "D" 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 ranking 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.

52. Based on these factors, I have concluded that there is sufficient evidence to infer that Coppedge's termination was based upon pretext. To sum up, (1) the temporal proximity between the April 2010 filing of the lawsuit and the Summer/Autumn ranking of SA to be laid off is

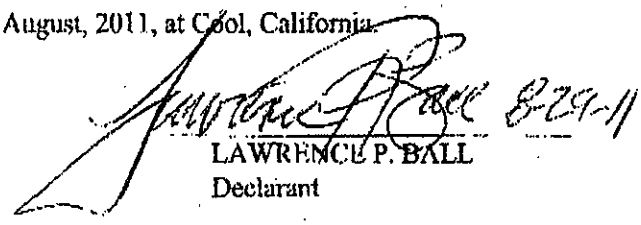
sufficiently close in time to raise a suspicion that Coppedge's termination was based on his having challenged his employer's decision to discipline him in April 2009 through the filing of this action; (2) the attendance in April/May 2010 of Coppedge's future supervisors, who would be responsible for determining which SAs to lay off, at a confidential meeting with JPL attorneys' solely to discuss this lawsuit looks suspicious and because of the attorney-client confidentiality privilege leaves management with plausible deniability for refusing to divulge what was discussed at that and subsequent meetings; (3) the "padding" of the SA team at a time when reductions were being discussed and planned for, together with contradictory explanations for who would be included on the layoff criteria worksheet for purposes of deciding layoff casualties, raises a clear inference that favored personnel were added so that disfavored personnel could be removed; (4) until this lawsuit was fired, Coppedge's personnel file contained not a single documented record of poor job performance, but once the lawsuit was filed, Coppedge's job performance was severely criticized; (5) Burgess and Patel engineered a scenario that would ensure that Coppedge's performance review would contain criticism; (6) the the mostly subjective, not data-driven, process for ranking employees left Coppedge with preposterously inferior grades for "need," "skills" and "performance" after 14 years with Cassini.

53. I understand that there is quite a bit of deposition testimony and documentation in this case, which I would like to review. Should additional information be made available to me, it may become necessary to alter my opinions and conclusions. I reserve the right to amend my opinions based on additional information received prior to my trial testimony.

54. I am prepared to testify on my findings and opinions.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 29th day of August, 2011, at Cool, California.



LAWRENCE P. BALL
Declarant

EXHIBIT A

116 West Santa Fe Ave., Suite A
Placentia, CA 92870

Phone 714-542-9525
FAX: 530-885-4394

SUMMARY OF QUALIFICATIONS:

Human Resources professional with over 40 years experience (22 years functional management including Director and Vice President positions and 15 years as a consultant to clients) in numerous industries. Author of articles on people practices and legal trends for trade publications and a business journal. Experience as an expert witness and internal investigator involving sexual harassment, age, race and sex discrimination, discipline and discharge cases.

SPECIFIC EXPERIENCE:

Sexual Harassment: Investigated, analyzed and resolved incidents of harassment, both while employed and for clients. Developed internal policies, procedures and practices addressing discrimination and harassment.

Discrimination Issues: Investigated and resolved informal and formal discrimination charges and responded to agencies. Coordinated resolution of cases with the Department of Fair Employment and Housing and the Equal Employment Opportunities Commission.

Corrective Action: Administered corrective action procedures including positive discipline. Counseled managers regarding the fair, appropriate and consistent application of workplace rules. Monitored and evaluated all termination actions

Employment Issues: Thoroughly familiar with accepted recruiting, selection and placement practices in various industries and the legal obligations regarding reductions in force. Direct responsibility, as well as through support staff, for the placement of all levels of Production, Technical, Professional, Management and Administrative employees.

Trier of Fact: Completed an 18 month Certified Arbitrator Development training program at UCLA sponsored by the Federal Mediation and Conciliation Service, the American Arbitration Association and other agencies. Served as an Arbitrator on workplace issues.

EMPLOYMENT:

Present	Human Resources Management Network On-Site Human Resources Management services for small to mid-sized companies (Project management and outsourced HR management). Expert Witness assignments and internal investigations.
1997 to 2000	STRATEGIC HR SERVICES Senior Vice President, Advisory Division, managing the activities of consulting staff performing all aspects of Human Resource Management on an outsourced basis for client companies.
1995 to 1997	HUMAN RESOURCES MANAGEMENT NETWORK People Management practices consultant, Internal Investigator, Expert Witness
1992-1995	ORANGE COUNTY TRANSPORTATION AUTHORITY Senior Projects Manager implementing people management systems for a large public employer.
1984-1992	EMPLOYERS GROUP (Formerly the Merchants and Manufacturers Association) Regional Manager serving as a technical workplace consultant to human resources and operations managers at 1000 member companies.
1981-1984	APPLEGATE STORE Owner/Manager of country general store in Oregon
1978-1981	STOODY COMPANY Vice President of Employee Relations
1975-1978	GOLDEN STATE FOODS Director of Employee Relations
1972-1975	ARMSTRONG NURSERIES Director of Administration
1967-1972	CLAREMONT COLLEGES Director of Personnel

1963-1967	GENERAL DYNAMICS-Pomona Division Senior Personnel Representative
1962-1963	ROY GILLIS AND ASSOCIATES Employment Search Recruiter
1961-1962	UNITED STATES AIR FORCE First Lieutenant, Recalled to duty in Berlin Crisis
1958-1961	HALLMARK CARDS Manager Managed two production processes and Final Inspection

EDUCATION:

Bachelor of Science, University of Kansas
Work toward Masters in Business Economics, Claremont Graduate School
Certified Arbitrator Development Program, University of California, Los Angeles

PUBLICATIONS:

Personnel Journal

Take Charge, Be an Intrapreneur

Orange County Business Journal "Workplace" Column

Staff Cutbacks Involving Over-40 Employees
Workplace Nude Pinups-Sexual Harassment
Analyzing Jobs Can Cut Workers' Comp Costs
Employers Need to Know Time Off Rules
Hiring the Disabled Makes Dollars and Sense
Employers Can Be Responsible for Injuries Sustained at Play
Workplace Privacy Could be Your Next Lawsuit
Court Upholds Homosexual Rights on the Job
Independent Contractors Examined Closely by IRS
Managing Costs by Reviewing Your Pay System
Dealing with Stress and Trauma in the Workplace
Elder Care: Making it Company Policy

Orange County Business Journal "Human Resources Guide"

How to Control Unemployment Insurance Costs
Employee Assistance Programs, a Must for the 90's
Productivity and Market Performance Linked to HR Practices
Don't Get Caught with Your Posters Down
Courting and Joking at Work May Become Harassment
Part Time HR Manager, An Idea Whose Time Has Come

Money Radio, AM 1620 Weekly Commentator

Workplace issues

Employer's Alert

Employer's Obligations Under New USERRA

CLIENT ENGAGEMENTS:

Payne and Fears	Irvine, CA	Dan Fears
R. Craig Scott and Associates	Newport Beach, CA	Craig Scott
Accurate Instrument and Repair	Orange, CA	Lowell Smith
Pacific Theatres Corporation	Los Angeles, CA	Ira Levin
Moulton Niguel Water	Aliso Viejo	Carol Sanders

REFERENCES:

Barnes, Crosby, FitzGerald & Zeman	Irvine, CA	William Crosby
Gerald Unis and Associates	San Clemente, CA	Gerald Unis
Nossaman, Guthner, Knox & Elliott	Irvine, CA	Greg Sanders
Paul, Hastings, Janofsky and Walker	Costa Mesa, CA	Howard Hay
Rutan and Tucker	Costa Mesa, CA	Jim Morris
Allen, Matkins, Leck, Gamble and Mallory	Irvine, CA	Dwight Armstrong
Murtaugh, Miller, Meyer and Nelson	Costa Mesa, CA	Jim Murphy
Gibson, Dunn and Crutcher	Irvine, Ca	Bill Claster
Gibson, Dunn and Crutcher	Irvine, CA	Ken Ristau

PROFESSIONAL ASSOCIATIONS:

Association of Professional Consultants	Costa Mesa, CA	Juli Bartels
Forensic Consultants Association	Costa Mesa, CA	Norma Fox

EXHIBIT B

Case Listing

Case Name	Law Firm	Issue	Attorney
Achondo v. T.M. Cobb	Payne & Fears	Sexual Harassment	Mark Sacks/Dan Fears
Giocondo v. TRM Mfging	Ricks & Anderson	Wrongful Termination	Cecil Ricks
Daum v. Mental Health Systems	Law Offices of Susan Moore	Religious Discrimination	Susan Moore
Bisl v. Imperial Irrigation District	Sutherland & Gerber	Disability Discrimination	Lowell Sutherland
Mason v. Lanterman Hospital	Law Offices of Diane Cray	Sexual Harassment	Diane Cray
Edmonds v. Ornda	Cotkin & Collins	Sexual Harassment	Phil Collins
Anderson v. Natl. Revenue Corp.	Law Offices of Robert D. Coviello	Sexual Harassment	Robert Coviello
Dayeh v. Mission Amb. Surgi-center	Barnes, Crosby, FitzGerald & Zeman	Disability Discrimination	William Crosby
Anne Rex v. ACT Networks	Brobeck, Phelger, Harrison LLP	Gender Harassment	Gabrielle Wirth
Moreno v. Salvatorre Rotella	Best, Best & Krieger LLP	Harassment & Retaliation	Patrick HWF Pearce
Keller & Gadde v. CSUN	Law Offices of Lawrence J. Hanna	Disability Discrimination	Lawrence J. Hanna
J.C. Washington v. City of Colton	Best, Best & Krieger LLP	Racial Discrimination/ Retaliation	Patrick HWF Pearce
Ornelas v. Arnold Palmer Golf Mgt. Co.	Law Offices of John Kiwan	Racial Discrimination/ Wrongful Termination	Patrick O'Keefe
Sinkula v. Farmers Insurance Exchange	Sedgwick, Detert, Moran & Arnold	Wrongful Termination, Gender Discrimination	Alan Freisleben
Wisted v. Bicycle Club	Sedgwick, Detert, Moran & Arnold	Wrongful Termination, Breach of Contract	Yvette Cano
Stewart v. Unihealth	Law Offices of Victor George	Sexual Harassment	Victor George
Bemiller v. Unihealth	Law Offices of David Holt	Sexual Harassment	David Holt
Wilson v. 24 Hour Fitness	Law Offices of David Holt	Wrongful Termination/ FMLA Violation	David Holt
Smith v. Pool	Thomas and Price	Racial Discrimination/ Wrongful Termination	Michael Price/Paul Ayers
Damico v. Nations Healthcare	Harrigan, Ruff	Racial Discrimination	Frank Tobin
Stacey Detels v. Farmers Insurance	Sedgwick, Detert, Moran & Arnold	Disability Discrimination	Yvette Cano/Alan Freisleben
Ramirez v. Thomas Bros. Maps	Barnes, Crosby, FitzGerald & Zeman	FMLA/Disability Discrimination	William Crosby
Bukhaya v. Kaiser Laboratories	Thelen, Reid & Priest	National Origin, Sex and Disability Discrimination	Cheryl Schreck

Graham v. Auto Club of Southern Calif.	Murtaugh, Miller, Meyer & Nelson	Sexual Harassment, Wrongful Discharge, Disability Discrim., FMLA Violation	Michael Murtaugh
Lee Bon v Argentina Airlines	Gutierrez, Preciado & House	Age Discrimination, Wrongful Term, Breach of Contract	Peter Kim
Debra Brown v. Warner Brothers Studios.	Barnes, Crosby, Fitzgerald & Zeman	Discrimination and Harassment	William Crosby
Baez v. AirTouch Cellular	Law Offices of Victor George	Sexual Harassment	Victor George
Sage v. San Diego Zoological Society	Law Offices of Donald Moses	Age and Disability Harassment	Donald Moses
Cervantes v Aon Corp/Sherwood Ins.	Barnes, Crosby, FitzGerald & Zeman	Wrongful Termination	Wm Crosby
Sessions v Beckman Coulter, Inc.	Payne and Fears	Wrongful Discharge	Andrew Jaramillo
Willie Marshal v. County of Riverside	Kinkle, Rodiger & Spriggs	Wrongful Discharge, Racial Discrimination	Bruce Disenhouse
Heather Flanders v. Salt Lake City Corp.	Dewsnup, King & Olson	Sexual and Age Discrimination	Alan Mortensen
Gorrell v. Insituform Technologies, Inc.	Hewitt & Prout	Wrongful Discharge, Whistleblower	Erica Arouesty
Laurence Sanders v. Insituform Tech.	Hewitt & Prout	Marital Status Discrimination	Henry Truszkowski
Michael Leatherman v. Insituform Tech	Hewitt & Prout	Reverse Discrimination	Henry TruszkowsKi
Siccama v. Comant Industries	Payne & Fears	Age Discrimination	James Payne
Georgiev v. The Bicycle Club	Peterson, Pitcher, Chow & Freisleben	Violation of FMLA	Lily Chow
Jaimes v. Teamsters	Hewitt and Prout	Wrongful Discharge, Sexual Harassment	Stacey Raphael
Maesee v. Calendar	Roberts & Associates	Sexual Discrimination	Cliff Roberts
Beauchamp v. Kabuki Sushi	Scott Galien & Assoc.	Sexual Harassment/Wrongful Discharge	Ted Cox
David Jones, et.al. v. Family Dollar Stores	Perkins, Johnson & Settle	Racial Discrimination, Hostile Environment	Florence Johnson
Saldana v L. A. County Office of Education	Bolden & Martin	Wrongful Discharge & Violation of FMLA	Areva Martin
Steele v. Inland Eye and Tissue Band	Thompson & Colgate	Wrongful Hiring/Retention	Kurt Yeager
James Martey v. Masina	Walton & Associates	Racial Discrimination	Justin E.D. Daily
Williams v County of Riverside	Kinkle, Rodiger & Spriggs	Disability Discrimination/FMLA Violation	Bruce Disenhouse
Linda Shannon v. U.S. Postal Service	Law Offices of Ollie Manago	FMLA Violation	Ollie Manago
Karol Vladovich v. Abrams Communications	Borton, Petrini & Conron, LLP	Sexual Discrimination & Harassment	Michael F. Long
Thornton v. Gartner Group	Bolden & Martin	Racial Discrimination	Areva Martin
Williams v. United Rentals	Qualls & Workman	Sexual Harassment	Robin Workman
Fajardo v. Walter's Auto Sales	Hewitt & Prout	Disability Discrimination Constructive Discharge	Susan Rosenblat
Enke Enterprises v. Search West,Inc.	Wilson Law Firm	Breach of Contract, Employment	Dennis Wilson

Rivera v. Ag Formulators	Law Offices of Dean B. Gordon	Sexual Harassment/Wrongful Discharge	Dean Gordon
Buy.com v. Scott Blum	Law Offices of David Salvin	Sexual Harassment, Battery, Wrongful Termination	David Salvin
Seever v. Copley Press	Shepherd Mullin	Wrongful Termination, Violation of ADA	Tara Wilcox
Muller v. DMJMH&N	Krieger & Krieger	Age Discrimination	Jeff Neiderman
Fajardo v Walter's Auto Sales, et.all.	Hewitt and Prout	Wrongful Termination, Disability Discrimination	Susan Rosenblat
Everett v. Chargers Football Co.	Pillsbury Winthrop	Wage Hour, Exempt v Non-exempt	George Howard
Westlake Plaza Realty v Leyden	Silver & Arsht	Wrongful Termination, Breach of Contract	Jeff Frasier
AC Phillips v Boeing Aircraft	Law Offices of Rachelle Evans Jackson	Wrongful Termination, Age Discrimination, Race Discrimination	Rachelle Jackson
Morelli v Pioneer House	Law Offices of Richard K. Werner	Wrongful Termination	Richard K. Werner
Sumner v. Wamco	Barnes, Crosby, Fitzgerald & Zeman	Wrongful Termination, Failure to provide Standard of Care re: Anti-Discrimination, Anti-Harassment Law	Bill Crosby
Tsamoudakis v. City of Garden Grove	Barnes, Crosby, Fitzgerald & Zeman	Disability Discrimination	Bill Crosby
Addison v Nishihara	Bolen & Martin	FEHA Housing Discrimination	Chike Onyia
Edwards v Hurricane Bar and Grill	Law Offices of John Kraemer	Sex Discrimination, Sex Harassment	John Kremer
Mathews v Sunrise Colony	O'Brien & Nelson	Sexual Harassment, Failure to Promote	April A. O'Brien
Myers v Kaiser	Thielen, Reed & Priest	Disability, Sex & Race Discrimination, Wrongful Termination	Hardy Murphy
Tarzi v. Fountain Valley Hospital	Law Offices of Donald Huffstader	Hostile Work Environment, Constructive Discharge	Donald Huffstader
Santoro v Macy's	Barr & Mudford	Wrongful Termination due to Breach of Contract	Dugan Barr
Matta v Valley Yellow Pages, ,	Hinkle, Hachimowicz, Pointer & Mayron	Disability Discrimination	Jerry Emanuel

Adams et.al. v. Merced City School Distr.	Richter and Smith	Sexual Harassment/Retaliation	William Smith
Maldavo v Robert Half International	Radoslovich Law Corp,	Breach of Contract, Negligent Referral, Negligent Misrepresentation	Frank Radoslovich
Scott Arwood v D.J.'s Glass Plus	Honaker Law Offices	Wrongful Hiring and Retention	Richard Honaker
Busolo v. Caesar's Palace	O'Brien & Nelson	FMLA, Wrongful Discharge	Sharon O'Brient
Hernandez v. Roundtable Pizza	Lionel, Sawyer & Collins	Disability Discrimination, Employability	Leslie Hart
Johnson et al v. Walgreens	Alverson, Taylor, Nortensen, Nelson & Sanders	Racial Discrimination	Nathan Reinmiller
Gathright v. Oak Grove School	Law Offices of Kyle Scott	Wrongful Hire and Retention	Kyle Scott
Randolf v. Mahdy Ahmed & First Interstate Security	Law Offices of Eugene Shoe	Sexual Harassment/Constructive Discharge	Arnold Levine
Vargas v. NMB (USA), Inc.	Littler Mendelson	Sexual Harassment, Retaliation, FMLA Violation	Martha Keon
Briggs v. San Diego Housing Commission	Christensen, Schwerdtfeger & Spath	ADA Violation, Constructive Discharge	Sean Schwerdtfegger
Haluck, Litton v. Ricoh Elec, Inc.	Littler, Mendelson	National Origin, Race Discrimination	Ken Rose/Mindy Mattingly
Morales v. Home Depot	Damiani Law Group	Employment Discrimination, Wrongful Discharge	Lisa Damiani
Park v Choil Enterprises	Hollins & Schechter	Wrongful Discharge, Discrimination & Retaliation	Kathleen Carter
Choil v. Rose Cain	Hollins & Schechter	Interference with Economic Advantage, Defamation	Kathleen Carter
Rose Cain v. Choil Enterprises	Hollins & Schechter	Wrongful Discharge, Retaliation	Kathleen Carter
Leach v Imhoff	Rosen and Associates	Independent Contractor Status	John Wallace
Don Del Rio v. Carey Limo	Haney, Buchanan & Patterson	Independent Contractor Stauts	George Romain
Kathy Green v. Air Force Village West	Carney & Delaney	Wrongful Discharge	Richard Roth
Oglesby-Lugo v.Antelope Valley Union High School District	Sylvester, Oppenheim & Linde	Disability Discrimination	Alan Varner
Jo A. Preston v. City of North Las Vegas	Kolias Law Offices	ADA Violation, Age, Gender Discrimination, Retaliation	Marina Kolias
Chand et. al. v Target Corp.	Paul, Hastings, Janofsky & Walker	FMLA Violation, Exempt/Non-Exempt Determination	Jeff Wohl

Johnson v. Palm Management	Law Offices of Hugh Duff Robertson	Wrongful Termination, Sexual Discrimination, Failure to Promote	Hugh Robertson
Garcia v Choon Suk Ro	Gray and Prouty	Wrongful Hire, Retention	Jill Klein
Elmwood Insurance	Cozen, O'Connor	Wrongful Hire/Retention, Misrepresentation	Peter Lynch
Darling v Coca Cola	Atkins & Evans	Disability Discrimination, Wrongful Discharge	Cynthia Sands
De Leon v. TW Metals	Law Offices of Doug Spoors	Discrimination and Harassment	Doug Spoors
Sanchez v. City of Los Angeles	Law Offices of Michael Light	Retaliation	Michael Leight
Taylor/Napoles v. California Pizza, LLC	Fisher and Phillips	Racial Discrimination, Harassment, Retaliation	Steve Miller
Glow v. UPRC, et al.	Ganong & Wyatt, LLP	Wrongful Retention	Phil Ganong
Adrienne Terrill v CFL, Inc. et al; #RIC 425263	Chamblee & Ryan	Sexual Harassment	James Eckels
Adrienne Terrill v. Central Freight Lines, Inc. et al, #RIC 428089	Chamblee & Ryan	Wrongful Hire	James Eckels
Tanya Milan v. City of Holtville	Plourd and Breeze	Wrongful Discharge-Failure to Provide Reasonable Accommodation	John Breeze
Crabtree v. Visaye	Cihigoyenetche, Grossberg & Clouse	Nation of Origin Discrimination,	Richard Clouse
Chanlee v. First Mutual Mortgage	Teuton, Loeyw & Parker	CFRA Violation	Michael Lisko
Ross v. Director's Guild of America	Latham & Watkins	Discrimination, Retaliation, Constructive Dismissal	Charles Courteny
Maria D. v. Comcast	Lewis, Brisbois, Bisgaard & Smith	Wrongful Hire/Retention, Inadequate Investigation	Paul Clauss
Aflak v. Pro Unlimited	Qualls & Workman	Exempt/Non-Exempt Classification, Wrongful Termination, FMLA Violation	Robin Workman
Tzresniowski v. Signature Flight Support	Hal P. Gazaway, P.C.	Wrongful Termination	Hal P. Gazaway
Henderson/Davis v. LadyFootLocker	Law Offices of Florence Johnson	Sexual Harassment, Wrongful Discharge	Florence Johnson
Gonzales v. Autozone	Madrid Law Firm	Wrongful Hiring/Retention	Eduardo Madrid
Angel/Licona v. Rapid Transfer	White & Oliver	Wrongful Discharge	Larry Ward
Gonzales v. Plastic Dress up Co.	Rager Law Firm	Age Discrimination, Sex Discrimination	Jeff Rager

Shelley v CRST Expedited	Lyndberg and Watkins	Disability Discrimination	Judy Gold
Stacy Crissmore V. CCA of Tennessee, LLC.	Gleason & Favarote	Sexual Harassment, Discrimination	Richard Chen
Rebbeca McWhorter v. CCA of Tennessee, LLC.	Gleason & Favarote	Wrongful Constructive Discharge, Discrimination	Paul Gleason
Koci v. Hilton Hotel	Girardi & Keese	Wrongful Discharge, Disability Discrimination	Keith Griffin
Boehme v. Symond Abina	The Walston Legal Group	Slander	Julie Zhalkovsky
Fernandez v. Niagra Bottling Co.	Kring and Chung	Disability Discrimination/Wrongful Discharge	Laura Hess/Greg Brown
Pietruslewicz v Ashland	Bonetati, Sasaki, Kincaid & Kincaid	Disability Discrimination/Failure to Accommodate	Marilyn Bonetati
Yeakel v. Farmers Insurance	Tharpe and Howell	Wrongful Termination, Whistle Blower	David Binder
Wolf v. Target Corp	Lendrum Law Firm	Wrongful Discharge, Disability Discrimination	Jeff Lendrum
Pleasants v. Lowes	Erickson, Arbuthnot, Kilduff, Day & Lindstrom	Wrongful Hire of Independent Contractor	Jodie Steinberg
Curtis v. Golden Rain	Kinkle, Rodiger & Spriggs	Defamation, Slander	Dave Lenhardt
Haynes v. Plycon Transportation Group	Law Offices of David Bates	Wrongful Discharge	David Bates
Buccheri v. Legal Match.com	The Revelation Law Firm	Sexual Harassment, Retallation	Melanie Popper
Anderson v. Longs Drugs	Mashney Law Firm	Defamation and Violation of Privacy	Gerald Block
Michel Morgan v. City of Oceanside	Law Offices of Laura Farris	Disability Discrimination, Failure to Reasonably Accommodate, Wrongful Termination	Laura Farris
Mathews v. Alpha Tech Spine	Justin Prato, Atty at Law	Sexual Harassment and Retaliation,	Justin Prato
Scott Fitzpatrick v. Bradshaw Intl.	Farmer and Ridley	Wrongful Term/Wage Hour	Rebecca Mocciaro
Chandna v. Lynwood Unified School District	Leal and Trejo, LLP	Failure to Accommodate, Race & National Origin Discrimination	David Trejo
Pham v. Samano	The Reeves Law Group	Negligent Hire/Train/Investigate	Derek Pakis

Ryan v. Southwest Diagnosics	Doyle, Berman & Murday	Sexual Harassment/Gender Discrimination, Employment discrimination, Retaliation,	Heather Fazio
Pasinger v. Starbucks	Hollins, Schechter	Race, Religious Discrimination, Wrongful Discharge	Christy Arnold
Vinogradov v. Montana State University	Waddel & Magan	Gender Discrimination, Equal Pay	E. Casey Magan
White v. United Health Care Services	Brendan White	Labor Code Violations, Wrongful Discharge	Brendan White
Hoffman Richter v. Costco	Damiani & Assoc	Sexual Harassment, Inadequate Investigation	Lisa Damiani
Alice Lin v. Wang, Hartmann & Gibbs	Khiterer Law Office	Employability	Vladimir Khiterer
Kalene Peoples v. Pabst Brewing	Mason & Mason, LLP	Wrongful Retention, Sexual Harassment, Assault	Reginald Mason
Victoria Cruz v. Sequoia School	Dale, Braden & Hinchcliffe,	Wrongful Termination, Long Term Employee Leave Expired	Stacie Johnson, Leah Gasendo
Smith v. Sun State Components of Nevada	Lee Hernandez, Kelsey Brooks Garofola & Blake	Wrongful Retention	Maria Maskall
Deckert v. FedX Freight West	Law Office of Mary-Alice Coleman	Wrongful Term, Race Discrimination, Inadequate Investigation	Jim Ashworth
Mosier v. Encore Capital Group	Procopio, Cory, Hargreaves & Savitch	Defamation, Breach of Contract	Eunice Lau
Allison v. Apple Tree Home Care	Trullinger & Wenk	Wrongful Hire, Retention	Chuck Trullinger
Sunada v. CCSD	Nelson Law	Disability Harassment/Discrimination	Sharon Nelson
Piro v. Pacific Honda	Flynn & Flynn	Sexual Harassment	Linda Flynn
Mark Gee v. Ken Bankston v. American Power Converters	Ricks & Anderson	Disparate Impact Age Discrimination	Cecil Ricks
Quinteros v. Snelling Staffing	Geary, Shea & O'Donnell	Breach of Standard of Care in Hiring	Matthew Good
Pohrman v. Westair Gases and Equipment, Inc.	Higgs, Fletcher & Mack	Disability Discrimination	Loren Freestone

Blue v. GRM	Law Offices of Cecil Ricks	Wrongful Termination, Violation of CFRA	Cecil Ricks
Dickerson v. California Waste Solutions, Inc	Law Offices of Wallace Doolittle	Sexual Harassment, Racial Discrimination	John B. Sweeney, Esq
Sweet v. ALB Industries	Treon & Shook	Defamation, Libel, Negligent Termination	Kelly Jo
Wiles v. County of Kings	Weakley, Arendt & McGuire LLP	Harassment/Hostile Intimidating & Offensive Workplace, Constructive Discharge, Age Discrimination	Maribel Hernandez James Arendt
Johnson v. Land Title	Doyle, Berman, Murdy PC	Negligent Hiring, Negligent Retention, Negligent Supervision, Negligent Training	Tari Anderson,
Gomez v Kenyon Construction, Inc.	Corporate Legal Division	Disability Discrimination, Constructive Discharge	Brian Chien
Owsley v. J.B. Hunt	Tharpe & Howell	Wrongful Term, Failure to properly drug test	Norman Pearl
Frates v Liberty Elementary School	Weakley, Arendt & McGuire LLP	Discrimination, Sexual Harassment, Retaliation	Maribel Hernandez James Arendt
Troy White et al. v. Memphis Metropolitan Transportation	Johnson & Brown	Race Discrimination and Harassment	Florence Johnson
Thorson Specialty Insurance Services v. The Hampshire Group LLC	Artiano & Associates	Standards of Recruiting	Chip (Lawrence) Andrews
McBurnie v. City of Prescott Arizona	City of Prescott	Wrongful Discharge (Layoff)	Matt Podracky
Mitchell v. Martin Sprocket and Gear	Law Offices of Mary Alice Coleman	Racial Discrimination, Wrongful Discharge	James Ashworth
Lemeck v. SAPPI LTD	Barnes Crosby	Wrongful Discharge, Violation of Labor Code	Bill Crosby
Rich Futia v. Romano Family	Willams, Panelli, Cullen	Disability Discrimination, ADA Accessiblity	Amy Carlson
Papazian v. Chino Valley USD	Thompson & Colgate	Discrimination, Retaliation, Cancer Diagnosis	Kelly Henry
Lebsack v. Goff	Yoka & Smith	Negligent Hiring and Retention	Kelly Douglas
Gerondale v. Memorial Care Hospital	Law Office of Cecil Ricks	Wrongful Discharge	Cecil Ricks

Arvizu v. County of Kern	Office of County Counsel, Kern County	Reasonableness of Vision Standard	Scott Fontes
Elizabeth Hughey v. Clarus Group LLC	Fisher and Phillips	Sexual Harassment, Negligent Hire, Negligent Retention	Steve Miller
Govan v. Security National Funeral Homes	Lewis Brisbois, Bisgaard & Smith LLP	Wrongful Demotion, Racial Discrimination, Religious Discrimination	Karen Karr, Esq,
Belardes v. County of Los Angeles	Law Offices of William Balderrama	Whistle Blower, Wrongful Discharge	Michael Carmichael
Bowen v. State of California, Department of Justice	Law Offices of Mary Alice Coleman	Racial Discrimination, Wrongful Discharge	James Ashworth
Zapata v. City of San Diego	Haight, Brown and Bonesteel, LLC	Wrongful Discharge, Sexual Orientation Discrimination	Chandra Moore
Alonzo v. Tuesday Morning	Law Offices of Sandra Castro	FMLA/CFRA RTW, failure to Accomm, Failure to engage in interactive discussion	Kristen Brown
Lordes v. City of Houston Alaska	Lazarus Law Office	Wrongful Termination	Dennis Lazarus

MATERIALS REVIEWED IN THE PREPARATION OF MY DECLARATION

1. Separate Statement of Undisputed Material Facts in Support of Defendant California Institute of Technolgy's Motion for Summary Judgment or in the Alternative, Summary Adjudication of Issues

2. Memorandum of Points and Authorities by Defendant California Institute of Technology in Support of Motion for Summary Judgment, or, in the Alternative, Summary Adjudication of Issues

3. Coppedge ECAP's for 2003, 2004, 2005, 2006, 2007, 2008, 2009 & 2010

4. Personnel File Documents

5. Huntley's hand written notes of the interviews

6. Procedures for the Investigating and Resolving Unlawful Harassment Complaints at JPL

7. Additional Disputed and Undisputed Material Facts

8. A chart titled Cassini SA Workforce 2010

9. A chart titled Discreet Layoff Ranking Criteria Worksheet

10. A Chart titled Employee Progression History Report-Coppedge

11. Written Warning from Clark Burgess to David Coppedge

12. Various depositions.

EXHIBIT C

MATERIALS REVIEWED IN THE PREPARATION OF MY DECLARATION

1. Separate Statement of Undisputed Material Facts in Support of Defendant California Institute of Technolgy's Motion for Summary Judgment or in the Alternative, Summary Adjudication of Issues

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9. A chart titled Discreet Layoff Ranking Criteria Worksheet

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11. Written Warning from Clark Burgess to David Coppedge

12. Various depositions.

EXHIBIT D

Cassini SA Workforce 2010

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Cordell														
Castillo														
Jobsky														
Chien														layoff
Patel														
Coppedge														layoff
FTE	5	5	5	4	4	4	4	4	4	6	6	6	5	3

EXHIBIT E

Discreet
Layoff Ranking Criteria Worksheet

Ranking Pool : G1400	Layoff Criteria																Overall Ranking Score
Name:	Need		Skills		Ability		Performance		Conduct		Reliability		Education/ Training		Experience		Total
	Weight 5		Weight 5		Weight 5		Weight 5		Weight 5		Weight 5		Weight [illegible]		Weight 5		
	Rank x Weight =A		Rank x Weight =B		Rank x Weight =C		Rank x Weight =D		Rank x Weight =E		Rank x Weight =F		Rank x Weight =G		Rank x Weight =H		Add A thru H
	Rank	A	Rank	B	Rank	C	Rank	D	Rank	E	Rank	F	Rank	G	Rank	H	
CHIEN, CHIA-HO H (Harvey)	4	20	4	20	5	25	4	20	1	5	[illegible]	15	[illegible]	[illegible]	4	20	124
COPPEDGE, DAVID F	5	25	5	25	4	20	5	[illegible]	2	10	[illegible]	15	2	[illegible]	3	15	131
PATEL, NAVNIT C (Nick)	1	5	[illegible]	[illegible]	[illegible]	[illegible]	1	[illegible]	1	5	1	[illegible]	[illegible]	[illegible]	2	[illegible]	43
CASTILLO, OSCAR	3	15	3	15	3	15	2	10	1	5	1	5	2	[illegible]	5	25	98
Wang, Wei-Men (Gary)	2	10	2	10	2	10	3	15	1	5	1	5	2	[illegible]	1	5	66
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

R= Rank (scale of 1-N), where 1 is best
W= Weight (scale of 1-5), 5 being highest priority

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EXHIBIT 59
WIT: Van Why
DATE: 7-22-11
VICKI A. BABER, CSR 6212

Discreet
Layoff Ranking Criteria Worksheet

Steps

1. Assign a weighted value (W) to each layoff criterion using a scale of 1-5. Use the same value for all employees.
2. In the Name column, list all employees within the section who are performing the same or similar duties [generally this means those working in the same/similar discipline(s)].
3. Describe how the ranking pool was determined. What specific criteria were used to determine which employees were placed in the pool:
_____ (for example, "ranking includes Senior Section Engineers in the CO100 discipline from the lower 1/3 of the Section ranking")
4. Within each criterion column (Need, Skills, etc.), using a scale of 1-N, rank (R) employees in numerical order (highest ranked employee = 1).
5. For each layoff criterion, multiply the individual ranking (R) by the weighted value (W) and put the score in the appropriate columns (A-H).
6. To get the total score for an employee, add columns A through H and place the sum in the Total column.
7. Typically, the employee(s) with the highest overall ranking score will be subject to layoff.
8. List the name(s) of the employee(s) subject to layoff: _____

Layoff Criteria:

NEED - Criticality of skills required to meet present Laboratory commitments and/or anticipated business directions.

SKILLS - Individual applies the knowledge, behaviors, and skills required to execute or perform in a satisfactory manner the tasks and work associated with current position or other positions as anticipated in the future.

ABILITY - Employee's ability to contribute to work assignments based on proficiency, versatility, knowledge and experience.

PERFORMANCE - Current level of contribution in four specific categories: a) Work product including quality, timeliness, quantity of work and adherence to parameters such as budget, b) interpersonal effectiveness, c) ownership of performance, d) commitment to improvement.

CONDUCT - Adherence to JPL policy and compliance with standards of conduct, for example, property, accountability, business ethics, timekeeping practice, personnel instructions and safety.

RELIABILITY - Responsible, trustworthy, a good attendance record, punctual and dependable.

EDUCATION AND/OR TRAINING - Formal education level and extent of specialized instruction and practice.

EXPERIENCE - Job related experience that enhances the ability to perform present or anticipated assignments.

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EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DAVID COPPEDGE, AN INDIVIDUAL, PLAINTIFF, VS. JET PROPULSION LABORATORY, FORM UNKNOWN; CALIFORNIA INSTITUTE OF TECHNOLOGY, FORM UNKNOWN; GREGORY CHIN, AN INDIVIDUAL; CLARK A. BURGESS, AN INDIVIDUAL; KEVIN KLENK, AN INDIVIDUAL; AND DOES 1 THROUGH 25, INCLUSIVE, DEFENDANTS.	CASE NO. BC 435600

ORIGINAL

DEPOSITION OF RICHARD WILLIAM VAN WHY

TAKEN ON FRIDAY, JULY 22, 2011

REPORTED BY:

VICKI A. SABER

CSR NO. 6212

FILE NO.: 11-152

A. SULLIVAN REPORTERS
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FAX 310 • 787 • 1024

RB

Q. WERE YOU AWARE THAT CAB BURGESS WAS A DEFENDANT IN THE LAWSUIT AT THAT TIME?

A. NO.

Q. WERE YOU AWARE THAT HE WAS A DEFENDANT IN THE LAWSUIT AT ANY TIME?

A. YES.

Q. WHEN?

A. I DON'T RECALL WHEN SPECIFICALLY --

Q. GENERALLY.

A. -- I HAD HEARD THAT.

Q. WAS IT IN 2010, 2011?

A. I DON'T RECALL.

Q. WAS IT BEFORE OR AFTER DAVID'S LAYOFF?

A. HONESTLY, I DON'T RECALL.

Q. I WANT TO GO BACK TO THE TIMELINE. WE WERE IN JULY AND PROBABLY EARLY AUGUST WITH THESE EVALUATIONS. TELL ME AS BEST AS YOU CAN RECALL THE APPROXIMATE DATES FOR EACH OF THE TIMES THAT YOU MET WITH COUNSEL WHERE THERE WERE OTHER JPL EMPLOYEES PRESENT.

A. I DON'T RECALL THE SPECIFIC DATES.

Q. LET'S FOCUS PRIOR TO THE LAYOFF WHICH WAS JANUARY 24, 2011.

A. WE HAD -- I KNOW THAT WE HAD MEETINGS IN END OF SUMMER, AGAIN IN THE FALL. THEN IN THE WINTER OF 2010, AND THEN IN THE BEGINNING OF 2011.

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, VICKI A. SABER, A CERTIFIED SHORTHAND REPORTER IN THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT, PRIOR TO BEING EXAMINED, THE WITNESS NAMED IN THE FOREGOING DEPOSITION WAS DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH;

THAT SAID DEPOSITION WAS TAKEN BY ME AT THE TIME AND PLACE HEREIN SET FORTH, AND WAS TAKEN DOWN BY ME IN SHORTHAND AND THEREAFTER TRANSCRIBED UTILIZING COMPUTER-ASSISTED TRANSCRIPTION UNDER MY DIRECTION AND SUPERVISION;

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, NOR RELATED TO, ANY PARTY TO SAID ACTION, NOR ANYWISE INTERESTED IN THE OUTCOME THEREOF.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 2ND DAY OF AUGUST, 2011.

Vicki A. Saber

VICKI A. SABER
CSR NO. 6212

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, VICKI A. SABER, A CERTIFIED SHORTHAND REPORTER IN THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT, PRIOR TO BEING EXAMINED, THE WITNESS NAMED IN THE FOREGOING DEPOSITION WAS DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH;

THAT SAID DEPOSITION WAS TAKEN BY ME AT THE TIME AND PLACE HEREIN SET FORTH, AND WAS TAKEN DOWN BY ME IN SHORTHAND AND THEREAFTER TRANSCRIBED UTILIZING COMPUTER-ASSISTED TRANSCRIPTION UNDER MY DIRECTION AND SUPERVISION;

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, NOR RELATED TO, ANY PARTY TO SAID ACTION, NOR ANYWISE INTERESTED IN THE OUTCOME THEREOF.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 2ND DAY OF AUGUST, 2011.

Vicki A. Saber

VICKI A. SABER
CSR NO. 6212

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
CITY OF LOS ANGELES AND COUNTY OF LOS ANGELES)

I am employed in the City of Los Angeles and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is as follows: 515 So. Flower Street, 25th Floor, Los Angeles, CA 90071.

On November 30, 2011, I served the foregoing document(s) described as:

DEFENDANT CALIFORNIA INSTITUTE OF TECHNOLOGY'S NOTICE OF MOTION AND MOTION *IN LIMINE* #4 ("DML 4") FOR AN ORDER EXCLUDING TESTIMONY, EVIDENCE, COMMENT, OR ARGUMENT REGARDING COUNSEL'S PRIVILEGED CONSULTATION WITH CALTECH; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF CAMERON W. FOX IN SUPPORT THEREOF; [PROPOSED] ORDER

on the interested parties as follows:

William J. Becker, Jr., Esq.
THE BECKER LAW FIRM
11500 Olympic Blvd, Suite 400
Los Angeles, CA 90064

Email: bbeckerlaw@gmail.com

Attorney for Plaintiff
DAVID COPPEDGE

☒ **VIA ELECTRONIC MAIL:**

By personally emailing the aforementioned document in PDF format to the email address designated for the above listed counsel.

☒ **VIA U.S. MAIL:**

By placing a true and correct copy thereof in a sealed envelope(s) as addressed above. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on November 30, 2011, with postage thereon fully prepaid, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on November 30, 2011, at Los Angeles, California.

Irma Gamino
Type or Print Name

Irma Gamino
Signature