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13 Attorneys for Defendant
14 CALIFORNIA INSTITUTE OF TECHNOLOGY

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES

17 DAVID COPPEDGE, an Individual,

18 Plaintiff,

19 vs.

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

27 Defendants.

CASE NO. BC 435600

MOTION *IN LIMINE* #7

**DEFENDANT CALIFORNIA INSTITUTE
OF TECHNOLOGY'S NOTICE OF
MOTION AND MOTION *IN LIMINE* #7
("DML 7") FOR AN ORDER EXCLUDING
PLAINTIFF'S SUBJECTIVE OPINION OF
HIS OWN JOB PERFORMANCE;
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

28 ORIGINAL

LEGAL US W # 69444360.3

DEFENDANT'S MOTION *IN LIMINE* #7 ("DML 7") FOR AN ORDER EXCLUDING PLAINTIFF'S
SUBJECTIVE OPINION OF HIS OWN JOB PERFORMANCE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NOV 30 2011

John A. ...
By GLORIETTA ROBINSON Deputy

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

3
4 Defendant California Institute of Technology ("Caltech") will and hereby does
5 move the Court *in limine* for an order precluding Plaintiff David Coppedge ("Coppedge"), his
6 counsel and witnesses from making reference to, commenting upon, introducing testimony or
7 documents, or presenting any argument pertaining to Plaintiff's subjective opinion of his own job
8 performance. Caltech does not seek to exclude customers' and supervisors' assessments of
9 Coppedge's job performance (for example, in performance reviews), or the underlying facts of
10 the work that Coppedge performed.

11 This Motion is made on the grounds that such evidence is inadmissible because it
12 is irrelevant, lacks foundation, is speculative, and would unduly prejudice Caltech. *See* Cal. Evid.
13 Code §§ 210, 350, 352, 702, and 800.

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

19 This Motion is based upon this Notice of Motion and Motion, the accompanying
20 Memorandum of Points and Authorities, the Fox Decl., all other pleadings on file herein, and
21 such further oral or written argument or evidence as may be presented at or before the hearing of
22 this Motion.

23 DATED: November 30, 2011

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

24
25 By: 

CAMERON W. FOX

26
27 Attorneys for Defendant
28 CALIFORNIA INSTITUTE OF TECHNOLOGY

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant California Institute of Technology ("Caltech") anticipates that Plaintiff
4 David Coppedge ("Coppedge") will attempt to opine on his own job performance in an effort to
5 suggest that Caltech's layoff rankings were incorrect and that Caltech's reasons for Coppedge's
6 layoff were pretextual. Coppedge has already tried this exact approach in opposing Caltech's
7 Motion for Summary Judgment and in his deposition.¹

8 Coppedge's own subjective, self-serving conclusions are merely that, and they are
9 irrelevant to what motivated the decision-makers in this case. It does not matter whether Caltech
10 was right or wrong in determining that Coppedge was not the most qualified SA, so long as its
11 actions were non-discriminatory and non-retaliatory – and they were. Coppedge's subjective
12 opinions about his own job performance have no potential relevance, and no place in this trial.
13 Moreover, any such testimony also should be excluded because Coppedge cannot lay the requisite
14 foundation for such opinions, and because it will confuse the jury and unduly prejudice Caltech.

15 **II. TESTIMONY, EVIDENCE, ARGUMENT OR COMMENT REGARDING**
16 **PLAINTIFF'S SUBJECTIVE OPINION OF HIS OWN JOB PERFORMANCE**
SHOULD BE EXCLUDED

17 **A. Coppedge's Self-Serving Opinions Should Be Excluded Under Evidence Code**
18 **Sections 210 and 350 Because They Are Irrelevant.**

19 The sole relevant inquiry in this action is the intent and motivations of those who
20 participated in the decision to discipline and layoff Coppedge. Only the perceptions of those
21 individuals are relevant to that inquiry. Coppedge's self-serving perceptions of *himself* are not.
22 *See Morgan v. Regents of Univ. of Cal.*, 88 Cal. App. 4th 52, 76 (2000) (noting in the summary
23 judgment context that an employee's subjective judgment of his own competence does not raise a
24 genuine issue of material fact); *Horn v. Cushman & Wakefield Western, Inc.*, 72 Cal. App. 4th

25 ¹ *See, e.g.*, Plaintiff's Memorandum of Points and Authorities in Opposition to Caltech's Motion
26 for Summary Judgment at 12 ("Coppedge was the most senior SA with the most experience. . . .
27 Coppedge was not an otherwise logical target for layoff."). Coppedge made similar and equally
28 baseless claims at deposition. *See, e.g.*, Deposition of David Coppedge at 883:4-12 ("Q. . . . [I]n
which areas did you feel you were the best qualified SA? . . . A. I would characterize it as the
sum total of a number of areas which added up to a collective technical capability that should
have qualified me as the best qualified to remain on."), 874:19-875:11, attached to concurrently-
filed Declaration of Cameron W. Fox as Exhibit A.

1 798, 816 (1999) (same). How Coppedge thinks he performed has no bearing on his actual job
2 performance in the eyes of customers and managers. His biased opinions are therefore irrelevant
3 and must be excluded.

4 **B. The Evidence Should Be Excluded Because It Lacks Foundation And**
5 **Constitutes Speculation.**

6 Even if Coppedge's self-serving opinions were relevant to the issues in this case
7 (they are not), they are nonetheless inadmissible because they are baseless speculation. Coppedge
8 cannot opine on the overall quality of his own job performance because that testimony would
9 require Coppedge to speculate as to the opinions of his customers and managers – opinions upon
10 which Van Why properly relied in carrying out the layoff process. Coppedge cannot have
11 personal knowledge of the opinions of others. Thus, any testimony by Coppedge regarding his
12 overall job performance is necessarily speculative, and cannot be used to try to cast doubt on
13 Caltech's reasons for laying him off. *See Ost v. W. Suburban Travelers Limousine, Inc.*,
14 88 F.3d 435, 441 (7th Cir. 1996) ("It is well settled, however, that a plaintiff's own opinions
15 about his work performance . . . do not sufficiently cast doubt on the legitimacy of [his]
16 employer's preferred reasons for its employment actions.").

17 **C. The Evidence Should Be Excluded Under Evidence Code Section 352.**

18 Coppedge's biased and speculative opinions about his own job performance have
19 no probative value. At the same time, such testimony will confuse the jury, by leading them to
20 credit Coppedge's views of *himself* – even though there is no proper basis for his opinion, and the
21 law renders it irrelevant. Such testimony will also cause undue prejudice to Caltech, because it
22 may cause the jury to question Caltech's layoff ranking process and find pretext where none
23 exists.

24 **III. CONCLUSION**

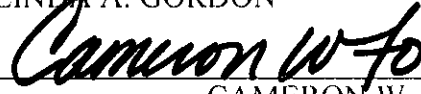
25 For the foregoing reasons, Caltech respectfully requests that the Court grant its
26 motion *in limine*, and bar Coppedge, his counsel and witnesses from introducing testimony,
27
28

1 evidence, argument, or comment pertaining to Plaintiff's subjective opinion of his own job
2 performance.
3

4 DATED: November 30, 2011

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

By:



CAMERON W. FOX

Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

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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* #7

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION *IN LIMINE* #7
("DML 7") FOR AN ORDER
EXCLUDING PLAINTIFF'S
SUBJECTIVE OPINION OF HIS OWN
JOB PERFORMANCE**

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

Trial Date: December 14, 2011

1 Defendant California Institute of Technology's Motion *In Limine* For An Order
2 Excluding Plaintiff's Subjective Opinion Of His Own Job Performance and That Of Other System
3 Administrators came on for hearing before this Court on December 2, 2011.

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

7 That Plaintiff David Coppedge, his counsel and witnesses are precluded from
8 introducing testimony, evidence, argument, or comment pertaining to Plaintiff's subjective
9 opinion of his own job performance.

10
11 DATED: _____

Ernest M. Hiroshige
Judge of the Superior Court

12
13
14
15 Presented by:

16 PAUL HASTINGS LLP
17 JAMES A. ZAPP
18 CAMERON W. FOX
19 MELINDA A. GORDON

20 By: 
21 CAMERON W. FOX

22 Attorneys for Defendant
23 CALIFORNIA INSTITUTE OF TECHNOLOGY
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28

13/01/11

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAVID COPPEDGE, an Individual,	)	CASE NO. BC 435600
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JET PROPULSION LABORATORY,	)	
form unknown; CALIFORNIA	)	
INSTITUTE OF TECHNOLOGY, form	)	
unknown; GREGORY CHIN, an	)	
Individual; CLARK A. BURGESS,	)	
an Individual; KEVEIN KLENK,	)	
an Individual; and DOES 1	)	
through 25, inclusive,	)	
	)	
Defendants.	)	

DEPOSITION OF DAVID COPPEDGE

JUNE 10, 2011

VOLUME 4

(Pages 758 through 963)

REPORTED BY:

Jan M. Roper
CSR No. 5705

TRA

HOMAN ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
4287 JACKSON AVENUE
CULVER CITY, CALIFORNIA 90232
(310) 838-7734

01:46:38

1 Q. So you believe that -- do you believe that
2 there would be no basis for Julie Webster to have,
3 based upon her own observations and having worked
4 with you or having had her people -- Strike that.

01:46:54

5 Nevermind.

6 So if there were going to be SAs who were
7 reduced, who, in your mind, should have been the two
8 people who were going to be reduced?

9 MR. BECKER: Calls for speculation.

01:47:13

10 MR. ZAPP: Well, he's saying he's the best.

11 Q. So I need to know if two people need to go,
12 who are the two people do you think should have been
13 the ones to go?

01:47:22

14 MR. BECKER: It's irrelevant. Calls for
15 improper lay opinion.

16 THE WITNESS: I can speculate. I don't know
17 what value that provides to you.

18 BY MR. ZAPP:

01:47:31

19 Q. I just simply want to know, assuming that
20 there were two people who had to be laid off from the
21 SAs in Cassini, who were the two people, in your
22 mind, who should have been laid off?

23 MR. BECKER: It's irrelevant. Calls for a
24 legal conclusion. Calls for improper opinion.

01:47:43

25 BY MR. ZAPP:

01:47:44 1 Q. Go ahead.
2 A. All right. This is my --
3 MR. BECKER: Lacks foundation.
4 BY MR. ZAPP:
01:47:48 5 Q. Go ahead.
6 A. This is my opinion.
7 Q. Right.
8 A. Harvey Chien and Chris Cordell.
9 Q. And so you believe you were more qualified
01:47:58 10 to remain employed as an SA than Chris Cordell?
11 A. Yes.
12 MR. BECKER: Same objections.
13 MR. ZAPP: Let him answer the question.
14 MR. BECKER: Wait a second. Let me get my
01:48:06 15 objections in.
16 MR. ZAPP: You're right.
17 Q. So let's repeat it because I think you said
18 yes.
19 Did you already get the "yes" on the answer?
01:48:12 20 You got it. Okay.
21 And your objection's recorded as well.
22 And tell me all the reasons why you believe
23 that you were more qualified to remain employed as an
24 SA than Chris Cordell.
01:48:24 25 A. Chris Cordell had --

01:57:39

1 you felt you were superior to anybody else.

2 A. I'm a humble guy. I don't talk about myself
3 being superior. We had a good team.

01:57:50

4 Q. Well, what I meant by superior is not to be
5 arrogant, but simply where did you feel -- in which
6 areas did you feel you were the best qualified SA?
7 And you've said networking, Solaris 10 knowledge,
8 general SA priorities and purpose so far.

01:58:10

9 A. I would characterize it as the sum total of
10 a number of areas which added up to a collective
11 technical capability that should have qualified me as
12 the best qualified to remain on.

13 Q. But I'm now interested in specific skills.
14 So are there any besides the three you've indicated?

01:58:34

15 A. Contact with technical support, backups. I
16 mean, I could list some dozens of different areas
17 that system administrators work on.

18 Q. So you think your technical skills were
19 deeper?

01:58:57

20 MR. BECKER: I don't think he was done
21 there. So let's let him finish that thought.

22 BY MR. ZAPP:

01:59:05

23 Q. Let me -- to cut it short, you said there
24 would be dozens of things you could talk about in
25 terms of different little things SAs did that you

REPORTER'S CERTIFICATE

I, Jan M. Roper, a Certified Shorthand Reporter No. 5705, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition, DAVID FLETCHER COPPEDGE, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth.

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter transcribed under my direction, and I hereby certify that the foregoing deposition is a true and correct transcript of my shorthand notes so taken.

I further certify that it was stipulated by counsel that said deposition may be read, corrected and signed by the witness under penalty of perjury.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 20th day of June, 2011.


JAN M. ROPER, RPR, CSR NO. 5705

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 CITY OF LOS ANGELES AND COUNTY OF LOS) ss:
4 ANGELES)

5 I am employed in the City of Los Angeles and County of Los Angeles, State of
6 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.

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

8 **DEFENDANT CALIFORNIA INSTITUTE OF TECHNOLOGY'S NOTICE OF**
9 **MOTION AND MOTION *IN LIMINE* #7 ("DML 7") FOR AN ORDER EXCLUDING**
10 **PLAINTIFF'S SUBJECTIVE OPINION OF HIS OWN JOB PERFORMANCE;**
11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;**
12 **DECLARATION OF CAMERON W. FOX IN SUPPORT THEREOF; [PROPOSED]**
13 **ORDER**

14 on the interested parties as follows:

15 William J. Becker, Jr., Esq.
16 THE BECKER LAW FIRM
17 11500 Olympic Blvd, Suite 400
18 Los Angeles, CA 90064

Attorney for Plaintiff
DAVID COPPEDGE

19 Email: bbeckerlaw@gmail.com



21 **VIA ELECTRONIC MAIL:**

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

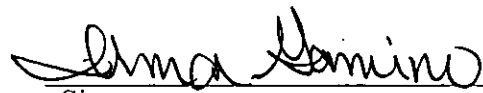


24 **VIA U.S. MAIL:**

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

29 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.

30 Irma Gamino
31 Type or Print Name

32 
33 Signature