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CALIFORNIA INSTITUTE OF TECHNOLOGY

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 DAVID COPPEDGE, an Individual,
13 Plaintiff,

14 vs.

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

CASE NO. BC 435600

DEFENDANTS' MOTION *IN LIMINE* #5

**DEFENDANT CALIFORNIA INSTITUTE
OF TECHNOLOGY'S NOTICE OF
MOTION AND MOTION *IN LIMINE* #5
("DML 5") FOR AN ORDER EXCLUDING
OR LIMITING THE TESTIMONY OF
PLAINTIFF'S EXPERT DAVID K.
DEWOLF; 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

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LEGAL US W # 69043232.3

DEFENDANT'S MOTION *IN LIMINE* #5 ("DML 5") FOR AN ORDER EXCLUDING OR LIMITING
THE TESTIMONY OF EXPERT DAVID K. DEWOLF

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

3 Defendant California Institute of Technology ("Caltech") will and hereby does move the
4 Court *in limine* for an order barring the testimony of Plaintiff David Coppedge's purported expert
5 witness, David K. DeWolf ("DeWolf") in its entirety, or in the alternative, precluding Coppedge
6 and his counsel from offering any testimony or documentary evidence, making reference to or
7 presenting any argument (through DeWolf or otherwise) that the proponents of intelligent design
8 historically have been subjected to hostility or discrimination or that Caltech's treatment of
9 Coppedge is an illustration of the hostility toward advocates of intelligent design.

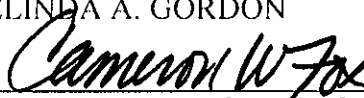
10 This Motion is made on the grounds that DeWolf's testimony is not proper expert
11 testimony and will not assist the trier of fact, is irrelevant, is unduly prejudicial, and is akin to
12 inadmissible character evidence. *See* California Evidence Code Sections 210, 350, 352, 801, 803,
13 and 1100.

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

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

23 DATED: November 30, 2011

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

24 By: 

CAMERON W. FOX

25
26
27 Attorneys for Defendant
28 CALIFORNIA INSTITUTE OF TECHNOLOGY

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The only relevant inquiry in this action is whether Defendant California Institute of
4 Technology ("Caltech") engaged in religious discrimination or retaliation against Plaintiff David
5 Coppedge ("Coppedge") – an inquiry that necessarily is tethered to the specific facts of *this* case.
6 However, Coppedge intends to call as an expert witness David W. DeWolf ("DeWolf"), who will
7 ignore the facts and instead attempt to establish discrimination by opining that there is general
8 hostility toward proponents of intelligent design and that the treatment of Coppedge by Caltech is
9 "an illustration" of this hostility.¹ The Court should exclude DeWolf's testimony altogether
10 because it concerns a subject that is not the proper topic of expert testimony and will not assist the
11 trier of fact. DeWolf's testimony is inadmissible on several other grounds as well, including
12 speculation, lack of relevance, and the significant undue prejudice it would cause to Caltech.

13 II. DEWOLF'S "EXPERT" TESTIMONY SHOULD BE BARRED FROM TRIAL

14 A. DeWolf Will Not Offer Proper Expert Testimony.

15 1. The Testimony Is Not A Proper Topic for Expert Testimony And Will
16 Usurp The Function Of The Jury.

17 Expert testimony must "[r]elate[] to a subject that is sufficiently beyond common
18 experience that the opinion of an expert would assist the trier of fact." Cal. Evid. Code § 801(a).
19 In contrast to typical areas of expert testimony, such as medicine, environmental impact and
20 damages, neither intelligent design nor the reactions to it are "beyond common experience."
21 *Kennemur v. State of California*, 133 Cal. App. 3d 907, 925-26 (1982) (stating that if jurors are

22
23 ¹ See Declaration of David K. DeWolf Re: Plaintiff's Opposition to Defendants' Motion for
24 Summary Judgment ("DeWolf Decl."), at ¶ 15 (2) and (3), attached as Exh. A to the
25 accompanying Declaration of Cameron W. Fox. In ruling on Caltech's evidentiary objections to
26 this declaration at summary judgment, the Court properly sustained objections to that testimony
27 where DeWolf opined that Coppedge had been subjected to hostility, discrimination and
28 retaliation because of his advocacy for intelligent design. See Court's ruling as to paragraphs 11
and 26 to 31. Those rulings should apply equally at trial. However, the Court overruled
Caltech's objections to DeWolf's testimony about the alleged hostility of scientists and academics
in general to intelligent design and to purported instances of retaliation toward academics who
advocated for intelligent design at other institutions unrelated to Caltech and unrelated to the
circumstances of this case. See, e.g., Court's ruling as to paragraphs 22 to 25. Caltech
respectfully submits that such testimony should be excluded for the reasons stated herein.

1 fully capable of deciding the issue based on their own experience then there is no need for an
2 expert to give his opinion on the issue).

3 DeWolf intends to opine that Caltech managers discriminated and retaliated against
4 Coppedge because they felt threatened by his beliefs or that their actions otherwise reflect the
5 alleged hostility toward advocates of intelligent design. DeWolf Decl. ¶¶ 27-32. In that regard,
6 DeWolf seeks to tell the jury why Caltech's managers acted as they did, i.e., that their actions
7 demonstrate an unlawful intent to discriminate or retaliate against Coppedge. But that is for the
8 jury to decide. Most jurors are or were employees. They can and should determine for
9 themselves the reasons Caltech acted as it did. *See, e.g., Westbrook v. State of Cal.*,
10 173 Cal. App. 3d 1203, 1210 (1985) ("If the jurors would be able to draw a conclusion from the
11 facts testified to as easily and as intelligently as the expert, the opinion testimony of the expert is
12 not admissible."). Thus, DeWolf's anticipated testimony usurps the role of the jury by reaching a
13 conclusion any lay person could draw, but giving it the appearance of "expertise." *See, e.g.,*
14 *Kotla v. Regents of Univ. of Cal.*, 115 Cal. App. 4th 283, 293 (2004) (finding prejudicial error to
15 permit expert testimony about "indicators" of retaliation that "created an unacceptable risk that
16 the jury paid unwarranted deference to [the expert's] purported expertise when in reality [the
17 expert] was in no better position than they were to evaluate the evidence concerning retaliation.").

18 **2. The Testimony Is Built On Speculation, Not Matters Upon Which**
19 **Expert Testimony May Be Based.**

20 DeWolf's methods are unreliable. An expert opinion must be "[b]ased on matter . . .
21 perceived by or personally known to the witness or made known to him . . ." Cal. Evid. Code
22 § 801(b). Yet, DeWolf apparently intends to base his opinion on the state of mind of various
23 witnesses:

24 The purpose of this declaration is to be of use to the court in
25 explaining a phenomenon that is not commonly understood by the
26 average lay person. It can be summed up in the context of this
27 case by these questions: Why would someone tell another person
28 that they he/she is barred from discussing intelligent design at the
risk of being terminated from employment? Why would someone
tell another person that "intelligent design is religion" and order
that individual to stop "pushing your religion" by discussing
intelligent design?

1 See DeWolf Declaration at ¶ 1. DeWolf has no personal knowledge of the witnesses' states of
2 mind, nor could they be "made known to him." Even if the subject of DeWolf's testimony were
3 otherwise admissible – it is not – he still cannot base his opinions on his personal speculation
4 about what the witnesses must have been thinking. See *Daubert v. Merrell Dow Pharm., Inc.*,
5 509 U.S. 579, 589 (1993) (The "trial judge must ensure and any [expert opinion] admitted is not
6 only relevant, but *reliable*." (emphasis added)).²

7 **B. DeWolf's Testimony Is Irrelevant and Should Be Excluded Under California**
8 **Evidence Code Sections 210 and 350.**

9 Whether intelligent design or evolution best explains the origins of life or how academics
10 or scientists generally have responded to the theory of intelligent design has no relevance to the
11 issues in this case. Though Plaintiff would like to use this trial as a public forum in which to
12 promote intelligent design, the parties' dispute only concerns the facts surrounding specific events
13 that Coppedge contends were discriminatory and/or retaliatory. Thus, DeWolf's opinions on the
14 theory of intelligent design and his belief that there has been hostility towards its advocates in
15 academic and scientific circles, have no tendency to prove or disprove any fact relating to
16 Coppedge's claims.

17 Moreover, based on his declaration, Caltech expects DeWolf to testify as to at least seven
18 unrelated cases as examples of the manner in which intelligent design advocates, primarily in
19 academia, purportedly have been mistreated. DeWolf Decl. ¶ 26. Even if DeWolf is permitted to
20 testify about what intelligent design is, the testimony about these unrelated cases should be
21 precluded because it is completely irrelevant in this case. Those examples involve different
22 decision makers, at other institutions scattered throughout the country, under circumstances far
23 different from those in this case. Coppedge was not an academic; he does not allege a lack of
24 academic freedom, nor could he since he did not hold a teaching position in which he published
25 academic or scientific material. Coppedge was a Systems Administrator. His job was to ensure
26 that computer systems and related applications operated effectively on the Cassini project. The
27 subject of intelligent design had nothing whatsoever to do with the job he was paid to perform.

28 ² *People v. Leahy*, 8 Cal. 4th 587, 598 (1994) (noting federal and state rules of evidence related to
experts are the "functional equivalent").

1 **C. DeWolf's Testimony Should Be Excluded Under California Evidence Code**
2 **Section 352.**

3 The probative value of DeWolf's testimony is substantially outweighed by the fact that it
4 will unnecessarily add to the length of the trial, confuse and mislead the jury and cause substantial
5 undue prejudice to Caltech. Cal. Evid. Code § 352. As explained above, whether academics or
6 scientists at other institutions have been subjected to hostility for their beliefs is of no moment
7 here. The sole purpose for presenting such irrelevant testimony is to bias the jury against Caltech,
8 by implying that any Caltech employees who do not agree with the theory of intelligent design
9 necessarily would be hostile to its advocates, such as Coppedge. If the jury is permitted to hear
10 DeWolf's "expert" opinion that intelligent design proponents supposedly have been subjected to
11 hostility in academic and scientific circles, the jury improperly may conclude, on the basis of the
12 "expert imprimatur" and in the absence of facts establishing such, that Coppedge experienced
13 such hostility and therefore was subjected to unlawful discrimination and retaliation. *See Spencer*
14 *v. General Elec. Co.*, 688 F. Supp. 1072, 1077 (E.D. Va. 1988) (stating that admission of
15 evidence in the form of expert testimony will create unfair prejudice "by creating an aura of
16 special reliability and trustworthiness."); *Kotla*, 115 Cal. App. 4th at 293 (same).

17 **D. DeWolf's Testimony Is Akin To Inadmissible Character Evidence.**

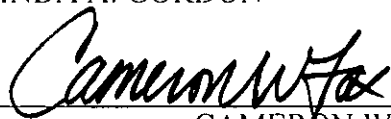
18 Finally, DeWolf's testimony must be excluded because he presupposes that any scientists
19 who disagree with the theory of intelligent design will necessarily be hostile toward those who
20 advocate it, which constitutes inadmissible character evidence. Cal. Evid. Code § 1101(a)
21 (prohibits evidence of a person's character or a trait of his character from being offered to prove
22 his conduct on a specified occasion). Specifically, DeWolf presumes that Caltech's managers
23 (and the employees who complained about Coppedge) oppose intelligent design, and that
24 opponents of intelligent design are hostile toward its advocates. Therefore, DeWolf concludes
25 that Caltech's managers were hostile toward Coppedge and discriminated and retaliated against
26 him for that reason. This evidence should be excluded under Evidence Code section 1101.
27
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1 **III. CONCLUSION**

2 For the foregoing reasons, Caltech respectfully requests that the Court grant its Motion
3 and bar the testimony of expert David K. DeWolf in its entirety, or in the alternative, preclude
4 Coppedge and his counsel from offering any testimony or documentary evidence, making
5 reference to or presenting any argument (through DeWolf or otherwise) that proponents of
6 intelligent design historically have been subjected to hostility or discrimination or that Caltech's
7 treatment of Coppedge is an illustration of the hostility toward advocates of intelligent design.
8

9 DATED: November 30, 2011

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

12 By: 

CAMERON W. FOX

14 Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

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

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

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

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7 CAMERON W. FOX

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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

DEFENDANTS MOTION *IN LIMINE* #5

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION *IN LIMINE* #5
("DML 5") FOR AN ORDER EXCLUDING
OR LIMITING THE TESTIMONY OF
PLAINTIFF'S EXPERT DAVID K.
DEWOLF**

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* No. 5 for an Order
2 Excluding or Limiting the Testimony of Plaintiff's Expert David K. DeWolf came on for hearing
3 before this Court on December __, 2011.

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

7 That Plaintiff David Coppedge and his counsel are precluded:

8 (a) from offering any testimony or documentary evidence from Coppedge's expert
9 witness, David K. DeWolf; or

10 (b) from offering any testimony or documentary evidence, making reference to or
11 presenting any argument (through DeWolf or otherwise) that proponents of intelligent design
12 historically have been subjected to hostility or discrimination or that Caltech's treatment of
13 Coppedge is an illustration of the hostility toward advocates of intelligent design.

14 DATED: _____

Ernest M. Hiroshige
Judge of the Superior Court

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18 Presented by:

19 PAUL HASTINGS LLP
20 JAMES A. ZAPP
21 CAMERON W. FOX
22 MELINDA A. GORDON

23
24 By: _____

CAMERON W. FOX

25 Attorneys for Defendant
26 CALIFORNIA INSTITUTE OF TECHNOLOGY
27
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EXHIBIT A

1 William J. Becker, Jr., Esq. (SBN 134545)
2 **THE BECKER LAW FIRM**
3 11500 Olympic, Blvd., Suite 400
4 Los Angeles, California 90064
5 Phone: (310) 636-1018
6 Fax: (310) 765-6328
7 Attorneys for Plaintiff, David Coppedge

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PAUL, HASTINGS

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
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11 **DAVID COPPEDGE**, an individual;
12
13 Plaintiff,

14 vs.

15 **JET PROPULSION LABORATORY**, form
16 unknown; **CALIFORNIA INSTITUTE OF**
17 **TECHNOLOGY**, form unknown;
18 **GREGORY CHIN**, an Individual; **CLARK**
19 **A. BURGESS**, an Individual; **KEVIN**
20 **KLENK**, an Individual; and **Does 1 through**
21 **25**, inclusive,

22 Defendants.

Case No. BC435600

DECLARATION OF DAVID K. DEWOLF

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

Trial Date: October 19, 2011

23 I, DAVID K. DeWOLF, declare as follows:

24 1. I am a professor of law at Gonzaga Law School in Spokane, Washington. I am an
25 expert in the intersection of science, religion and the law, particularly as it relates to the discus-
26 sion of intelligent design. I have been retained by The Becker Law Firm to provide my opinions
27 regarding matters within my expertise concerning issues raised in this case pertaining to histori-
28 cal and sociological responses to the subject of intelligent design. If called as a witness, I could

1 and would competently testify to the facts and opinions contained herein. The purpose of this
2 declaration is to be of use to the court in explaining a phenomenon that is not commonly under-
3 stood by the average lay person. It can be summed up in the context of this case by these ques-
4 tions: Why would someone tell another person that they he/she is barred from discussing intelli-
5 gent design at the risk of being terminated from employment? Why would someone tell another
6 person that "intelligent design is religion" and order that individual to stop "pushing your reli-
7 gion" by discussing intelligent design?

9 2. I will present my professional background, the opinions expressed, and the basis for
10 those opinions.

11 **I. PROFESSIONAL BACKGROUND**

12 **A. Academic Training**

13
14 3. I graduated in 1971 from Stanford University with a B.A. in religious studies (Honors
15 in Humanities). In 1976 I entered Yale Law School and was awarded my J.D. in 1979. While a
16 student I was a research assistant for two of my law professors. I provided research assistance to
17 Guido Calabresi in preparation of his book *A Common Law in the Age of Statutes* and for Joseph
18 Goldstein in the preparation of his book (co-authored with Anna Freud and Albert Solnit) *Before*
19 *the Best Interests of the Child*. In both cases the problem of a neutral approach by law to reli-
20 gious questions was recognized as a difficulty.

21 **B. Practice Experience**

22
23 4. Following graduation from law school I clerked for the Hon. Stephen Bistline, Justice
24 of the Idaho Supreme Court. In 1980 I accepted a position with Lukins & Annis, a 40-lawyer
25 firm in Spokane, Washington.

1 **C. Academic and Publication Experience**

2 5. I was appointed Assistant Professor of Law at Oklahoma City University in Oklaho-
3 ma City, Oklahoma in 1984. I began almost immediately working on an article that eventually
4 was published under the title "State Action Under the Religion Clauses: Neutral in Result or
5 Neutral in Treatment?" The point of the article was to identify what aspects of religion should
6 be singled out for special treatment by the law, and to what extent the law should ignore religious
7 benefits or detriments that result from otherwise neutral laws.
8

9 6. Following a one-year return to the practice of law in California from 1987-88, I re-
10 turned to teaching at Gonzaga Law School in 1988, where I have been employed ever since.
11

12 7. In 1992 I met Dr. Stephen C. Meyer, then a professor of philosophy at Whitworth
13 College in Spokane, Washington. Our original meeting was a result of his living three blocks
14 from my house, but over time I learned of his interest in the question of biological origins and
15 the philosophical controversy over whether intelligent design should be classified as a scientific
16 theory, and he learned of my interest in questions about the treatment of religion and religious
17 questions by the legal system.

18 8. In 1994 I accompanied Dr. Meyer when he met with Bruce Chapman and George
19 Gilder to discuss the potential for an expansion of the Discovery Institute (a think tank headed by
20 Bruce Chapman) to include what would later become the Center for Science and Culture. As the
21 relationship grew, it became apparent that there was a need for an explanation of the constitu-
22 tionality of teaching intelligent design as a scientific theory in the public schools. Along with a
23 former student, Mark E. DeForrest, Dr. Meyer and I prepared a legal guidebook to school admin-
24 istrators facing the question of how to respond to requests to teach the origins question in a pub-
25 lic school environment. The same material was expanded into a law review article, *Teaching the*
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1 *Origins Controversy: Science, Religion, or Speech?* (2000 UTAH L. REV. 39 (2000)).

2 9. In 1999, I was appointed a senior fellow at the Discovery Institute, and responded to
3 many requests for information on how to teach the origins controversy in public schools. In
4 2001 I published an article in the REGENT UNIV. LAW REV. entitled "Academic Freedom After
5 Edwards," which followed up on the question of whether or not a public school teacher enjoyed
6 academic freedom to present alternative viewpoints as part of a discussion of Darwinian evolu-
7 tion.
8

9 10. In 2001, the No Child Left Behind Act was pending in Congress. As part of the de-
10 bate over science standards, Senator Rick Santorum proposed an amendment that would express
11 the "sense of the Senate" as follows:
12

13 (1) good science education should prepare students to distinguish the data or testable the-
14 ories of science from philosophical or religious claims that are made in the name of
15 science; and (2) where biological evolution is taught, the curriculum should help stu-
16 dents to understand why this subject generates so much continuing controversy, and
17 should prepare the students to be informed participants in public discussions regard-
18 ing the subject.
19

20 11. In explaining the need for such an amendment, Senator Santorum quoted a paragraph
21 from the legal guidebook that I had prepared in 1999 with Dr. Meyer and Mark DeForrest. Fol-
22 lowing some additional comments by other senators, the Amendment was adopted by a vote of
23 91-8; the only dissenting votes came from Senators who were opposed to any federal regulation
24 of state science standards. A full discussion of the history of this amendment and its incorpora-
25 tion into the Conference Report reconciling the House and Senate versions of the No Child Left
26 Behind Act is contained in *The "Teach the Controversy" Controversy*, 4 U. ST. THOMAS J. L. &
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1 PUBLIC POL'Y 35 (2009).

2 12. In 2004 a school board in Dover, Pennsylvania adopted a resolution that required bi-
3 ology teachers in its district to preface a discussion of biological evolution by a four-paragraph
4 statement that included a reference to the theory of intelligent design. That policy provoked a
5 lawsuit which resulted in a trial in the fall of 2005 in the United States District Court for the
6 Middle District of Pennsylvania. In connection with that trial I authored an amicus brief on be-
7 half of the Discovery Institute, as well as an amicus brief on behalf of scientists who opposed
8 restrictions on the scope of scientific inquiry.
9

10 13. Following the decision by Judge Jones in 2005 to hold the Dover School Board's pol-
11 icy unconstitutional, I prepared an analysis of the opinion, and later authored (with John West
12 and Casey Luskin) a law review article entitled *Intelligent Design Will Survive Kitzmiller v. Do-*
13 *ver*, 68 MONT. L. REV. 7 (2007), along with a rebuttal to a reply to that article, found at 68
14 MONT. L. REV. 89 (2007).
15

16 14. Along with the activities described above, I have appeared twice on National Public
17 Radio as an expert on intelligent design, and I have debated Eugenie Scott on the nationally syn-
18 dicated program "Justice Talking." I have testified before the Nebraska State Board of Educa-
19 tion.
20

21 II. OPINIONS EXPRESSED

22 15. My opinions in this case are as follows:

- 23 (1) Intelligent design is a scientific theory, but it has implications for philosophy and re-
24 ligion. Because the theory of intelligent design, as applied to questions of biological
25 origins, challenges the assumptions upon which a materialist philosophy is based,
26 proponents of intelligent design as a scientific theory are frequently perceived by in-
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1 individuals who hold a materialist viewpoint to be arguing in favor of a religious rather
2 than a scientific viewpoint.

3 (2) The hostility toward proponents of intelligent design is widespread in academic and
4 scientific circles. This hostility is based not on the scientific merits of intelligent de-
5 sign as a theory, but rather upon the perception that intelligent design theory threatens
6 settled assumptions that form the basis of a common worldview.

7
8 (3) The treatment of David Coppedge by the Jet Propulsion Laboratory is an illustration
9 of the hostility toward advocates of intelligent design.

10 **III. BASIS FOR OPINIONS**

11 16. In preparation for testifying as an expert witness in this case I have reviewed the
12 following documents:

- 13
- 14 • Deposition of Gregory Chin, February 3, 2011;
 - 15 • Deposition of David Coppedge, September 30 - October 1, October 22, 2010, and June
16 10, 2011;
 - 17 • Deposition of Margaret Weisenfelder, February 28, 2011;

18 **IV. DISCUSSION OF OPINIONS**

19 **A. Opinion #1: Intelligent Design Is A Scientific Theory, But It Has Implications**
20 **For Philosophy And Religion.**

21
22 17. Although there is considerable debate over whether intelligent design is a scientific
23 theory as applied to biological (or cosmological) origins, it is readily used in the analysis of
24 many scientific issues. The basic question that can be asked is whether or not a particular phe-
25 nomenon under investigation was a result of natural (or material) causes, or instead was at least
26 in part a result of the purposeful action of an intelligent agent. A good example would be finding
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1 a dead human body at the bottom of the stairs, requiring an analysis by the medical examiner of
2 the likely cause of death. An examination of the body would provide evidence alternatively sup-
3 porting the likelihood that the decedent died of natural causes (e.g., a heart attack), or instead the
4 decedent victim was the victim of foul play. Or another example may be the Search for Extrater-
5 restrial Intelligence (SETI). The SETI astronomers analyze the signals that are received from
6 objects in outer space, attempting to identify patterns that are not likely to be produced by natural
7 causes, such as recurrent fluctuations in signal intensity, or obstruction by orbiting objects, etc.
8 In the fictional movie "Contact" the astronomers receive a series of signals that comprise the se-
9 quence of prime numbers, and from this improbable sequence they infer that an intelligent agent
10 must have composed this signal as a message.
11

12 18. Critics of intelligent design theory attempt to confine scientific investigation to mate-
13 rial (or non-intelligent) causes, regarding any other causal explanation as "unscientific" by defi-
14 nition. But the practice of science (for example, in forensic medicine) has never been limited in
15 such a way. One of authorities upon which Charles Darwin relied for the *Origin of Species* was
16 a book by Charles Lyell entitled *The Principles of Geology*, which he subtitled *Being an Attempt*
17 *to Explain the Former Changes of the Earth's Surface, by Reference to Causes Now in Opera-*
18 *tion*. An attempt to explain a past event should be open to that class of causes whose effects we
19 now observe as having the capacity to produce the effect now under consideration. When the
20 SETI astronomers search the sky for signs of intelligent life, they look for the same type of intel-
21 ligent agency that is exhibited by intelligent agents now engaged in purposeful communication.
22

23 19. As these examples illustrate, the theory of intelligent design only requires a willing-
24 ness to consider among the range of possible causal explanations (alongside natural or material
25 causes) the actions of an intelligent agent. In its most basic form it neither requires a belief in
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1 supernatural causes nor does its methodology provide a means by which the identity of the intel-
2 ligent agent could be determined. To use the previous examples, the forensic pathologist may
3 form an opinion on the basis of the medical evidence that the decedent was the victim of poison-
4 ing, but from that evidence alone cannot say who poisoned the victim. Similarly, the SETI as-
5 tronomers could conclude that a given signal is the result of an intelligent agent, but be unable to
6 identify who sent it, or even what the message means.
7

8 **B. Opinion #2: Because The Theory Of Intelligent Design, As Applied To Ques-**
9 **tions Of Biological Origins, Challenges The Assumptions Upon Which A Mate-**
10 **rialist Philosophy Is Based, Proponents Of Intelligent Design As A Scientific**
11 **Theory Are Frequently Perceived By Individuals Who Hold A Materialist View-**
12 **point To Be Arguing In Favor Of A Religious Rather Than A Scientific View-**
13 **point.**
14

15 20. Nonetheless, the theory of intelligent design – if applied to such questions as the
16 origin of the universe or the origin of biological complexity – is profoundly disturbing to those
17 who have adopted a worldview that assumes that life on earth (including human life) was not the
18 result of some sort of Creator – who believe, as George Gaylord Simpson put it, “Man is the re-
19 sult of a purposeless and natural process that did not have him in mind. He was not planned. He
20 is a state of matter, a form of life, a sort of animal, and a species of the Order Primates, akin
21 nearly or remotely to all life and indeed to all that is material.” If it were true that scientists
22 could legitimately infer the existence of an intelligent agent from the evidence of design, then the
23 plausibility of the materialist hypothesis would be put in jeopardy. After all, even Richard Daw-
24 kins, one of the fiercest critics of the theory of intelligent design, acknowledges that biology is
25 “the study of complicated things that give the appearance of having been designed for a pur-
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pose.”

21. Because the scientific theory of intelligent design has implications for the plausibility of a materialist viewpoint, many who encounter the argument for intelligent design in their minds jump past the scientific claim to the implications that would follow from accepting the scientific theory. Rather than compare the plausibility of natural causes and intelligent agency in terms of which has a more plausible explanation for biological phenomena, the materialist¹ is much more likely to characterize the intelligent design hypothesis as a religious claim that falls outside the boundaries of legitimate scientific inquiry.

C. Opinion #3: The Hostility Toward Proponents Of Intelligent Design Is Widespread In Academic And Scientific Circles. This Hostility Is Based Not On The Scientific Merits Of Intelligent Design As A Theory, But Rather Upon The Perception That Intelligent Design Theory Threatens Settled Assumptions That Form The Basis Of A Common Worldview.

22. The history of the theory of intelligent design in one sense is very ancient. From the time of the Greek philosophers it seemed logical to infer that the order that exists in nature must have had its origin in an intelligent “first cause.” After being eclipsed by Darwinian and other

¹ It should be noted that it is not only materialists who find intelligent design threatening. Many people who describe themselves as religious believers often find the claims of intelligent design threatening. Many religious believers subscribe to a convention that the late paleontologist Stephen Jay Gould described as “NOMA”—Nonoverlapping Magisteria. He distinguished the respective domains of science and religion:

The net of science covers the empirical universe: what is it made of (fact) and why does it work this way (theory). The net of religion extends over questions of moral meaning and value. These two magisteria do not overlap, nor do they encompass all inquiry (consider, for starters, the magisterium of art and the meaning of beauty). To cite the arch clichés, we get the age of rocks, and religion retains the rock of ages; we study how the heavens go, and they determine how to go to heaven.

The religious believer may locate the source of authority for moral meaning and value in personal experience rather than proofs that appeal to objective reasoning. Such an individual will often regard the argument for intelligent design to threaten the clear boundary (as they understand it) between science and religion, between the worlds of fact and value.

1 materialistic theories of how complex biological systems might have descended from primitive
2 ancestors, the theory of intelligent design as a plausible scientific explanation re-emerged in the
3 1970s and 1980s, culminating in the publication of books such as *The Mystery of Life's Origin*
4 (1984), *Evolution: A Theory in Crisis* (1985), *Darwin's Black Box* (1996), *The Privileged Planet*
5 (2004), and *Signature in the Cell* (2009).
6

7 23. While scientists are human, and may understandably react to challenges to prevailing
8 viewpoints with some degree of "circling the wagons," the response to the advocates of intelli-
9 gent design was particularly ferocious. In theory, even a mistaken scientific theory has the po-
10 tential for advancing scientific knowledge; as the U.S. Supreme Court recognized in *Daubert v.*
11 *Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596-97 (1993), "The scientific project is ad-
12 vanced by broad and wide-ranging consideration of a multitude of hypotheses, for those that are
13 incorrect will eventually be shown to be so, and that in itself is an advance." But the theory of
14 intelligent design was not evaluated on its scientific merits, but greeted at the door by the accusa-
15 tion that it was not science at all, but rather a religious belief dressed up as science. Moreover,
16 intelligent design was viewed as worse than simply a distraction from the important work of real
17 science; as Eugenie Scott, the Executive Director of the National Center for Science Education
18 has put it, "Intelligent design is a science stopper. It stops science in its tracks because you stop
19 looking." Rather than entertaining the possibility that intelligent design might provide a more
20 plausible explanation for a particular phenomenon, opponents expressed a visceral reaction to the
21 suggestion that intelligent agency might be the best explanation for some phenomena, such as the
22 appearance of the first cell, or the Cambrian explosion. In their view, advocacy of intelligent
23 design was tantamount to a kind of treason against basic scientific values.
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25

26 24. By analogy, imagine for a moment that a member of a political science department
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1 advocated abolition of the minimum wage. Other members of the political science department
2 might attack this view as detrimental to the economy as a whole, or to the opportunity of disad-
3 vantaged groups to achieve economic equality. The debate might be vigorous, but it would be
4 conducted with an acknowledgement that each side in the debate was expressing a point of view
5 that was defensible. By contrast, imagine a member of a political science department proposing
6 that *Brown v. Board of Education* should be overruled and that schools should be racially segre-
7 gated. There would be no debate on that point. The advocate would be treated as having gone
8 outside the bounds of what was proper for a reasoned debate within the discipline.

10 25. The treatment of intelligent design advocates has been more comparable to the latter
11 case than the former. Rather than engage the merits of the argument, opponents have sought to
12 stigmatize the advocacy of intelligent design as a betrayal of fundamental scientific principles.
13 The very insistence that it is a scientific viewpoint – the refusal to acknowledge that it is a reli-
14 gious doctrine – is regarded as a sign of just how wrong-headed the advocates of intelligent de-
15 sign are.

17 26. The following cases demonstrate the frequency with which this pattern is repeated:

- 18 (1) 1992: Dean Kenyon. Dean Kenyon was one of the pioneers of the theory that life
19 could have originated from spontaneous interactions of chemicals found in the early
20 earth. His textbook outlining this theory, *Chemical Predestination*, was the definitive
21 treatment of the theory from its publication in 1969. However, upon further reflec-
22 tion Kenyon came to the conclusion that the theory he advanced in *Chemical Predes-*
23 *tination* was simply inconsistent with the evidence of the type of information that was
24 required to form even the simplest cell. He then became a co-author of the textbook
25 *Of Pandas and People*, which was later the focal point of the *Kitzmiller* trial in Penn-
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1 sylvania. In the classes that he taught at San Francisco State University, he acknowl-
2 edged that his prior work was mistaken. In response to reports that he was sympa-
3 thetic to the theory of intelligent design, in 1992 he was removed from teaching clas-
4 ses in introductory biology and assigned to teach labs. He complained to the Univer-
5 sity's academic freedom committee and was reinstated, but it was clear that the origi-
6 nal reassignment was in an effort to punish him for his wayward views.
7

8 (2) 1998: Rodney LeVake was asked to teach biology at Faribault High School in Min-
9 nesota. Because of his training in biology (he holds a master's degree in biology), he
10 asked whether or not it would be permissible to "accompany the treatment of evolu-
11 tion with an honest look at the difficulties and inconsistencies of the theory." In re-
12 sponse, rather than tell him that it would be inappropriate for him to do so, the school
13 district reversed their earlier position and assigned him to teach general science.
14

15 (3) 2003: Nancy Bryson, a chemistry professor at Mississippi University for Women,
16 gave a talk to the Honors Forum entitled "Critical Thinking on Evolution." Shortly
17 thereafter she was criticized by a professor of biology who accused her of presenting
18 "religion masquerading as science." The university administration later asked her to
19 resign her position as head of the Division of Science and Mathematics.
20

21 (4) 2004: Richard Sternberg. The case of Richard Sternberg is perhaps the best known
22 example of the way in which advocacy of intelligent design is treated. Sternberg was
23 a research scientist affiliated with the Smithsonian Institution, and as part of his work
24 was an editor of one of its publications, *Proceedings of the Biological Society of*
25 *Washington*. An article was submitted by Dr. Stephen C. Meyer, one of the leading
26 proponents of the theory of intelligent design, arguing that "purposive or intelligent
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28

1 design as a causally adequate--and perhaps the most causally adequate--explanation
2 for the origin of the complex specified information required to build the Cambrian an-
3 imals." Sternberg sent the article to two peer reviewers, who responded with favora-
4 ble comments, and so Sternberg authorized its publication. After the appearance of
5 the article a firestorm of criticism ensued, and Sternberg was subjected to significant
6 adverse treatment, all of which is carefully documented in a report issued by United
7 States Office of Special Counsel, and a subsequent report by the staff of the House
8 Government Reform Subcommittee on Criminal Justice, Drug Policy, and Human
9 Resources of the United States Congress. Most striking in the conclusions of the staff
10 report that the senior officials simply didn't "get it" when the discriminatory treat-
11 ment was pointed out to them.²

12
13
14 (5) 2005: Guillermo Gonzalez. Prior to the publication of *The Privileged Planet* in
15 2004, Guillermo Gonzalez was a well-respected and popular professor of astronomy
16 at Iowa State University. His work had been featured on the cover of *Scientific Amer-*
17 *ican* and he had more than the required number of peer-reviewed publications to earn
18 tenure. However, the argument in *The Privileged Planet* – that certain features of the
19 earth's position in the solar system and the galaxy, its geological activity, its atmos-

20
21 ²Here is an excerpt from the report:

22 The staff investigation has uncovered compelling evidence that Dr. Sternberg's civil and constitutional
23 rights were violated by Smithsonian officials. Moreover, the agency's top officials—Secretary Lawrence
24 Small and Deputy Secretary Sheila Burke—have shown themselves completely unwilling to rectify the
25 wrongs that were done or even to genuinely investigate the wrongdoing. Most recently, Burke and Small
26 have allowed NMNH officials to demote Dr. Sternberg to the position of Research Collaborator, despite
27 past assurances from Burke that Dr. Sternberg was a "Research Associate in good standing" and would be
28 given "full and fair consideration" for his request to renew his Research Associateship. The failure of Small
and Burke to take any action against such discrimination raises serious questions about the Smithsonian's
willingness to protect the free speech and civil rights of scientists who may hold dissenting views on topics
such as biological evolution.

(http://www.souder.house.gov/_files/IntoleranceandthePoliticizationofScienceattheSmithsonian.pdf)

1 phere, and other observable phenomena – suggested that the earth was not only de-
2 signed for life but for discovery. As a result, he was targeted by some colleagues at
3 ISU for denial of tenure because Gonzalez' claims about the logical conclusions to be
4 drawn from the evidence he had cited "do not even begin to meet scientific stand-
5 ards." Although e-mail correspondence clearly demonstrated an animus toward Gon-
6 zalez because of his beliefs, the denial of tenure was ratified by the Iowa State Board
7 of Regents and Gonzalez left ISU in 2007.
8

9 (6) 2005: Scott Minnich. Dr. Scott Minnich agreed to testify in the trial of *Kitzmiller v.*
10 *Dover Area School District*, 400 F.Supp. 707 (2005). His testimony was supportive
11 of the claim that certain features of the bacterial flagellum are "irreducibly complex,"
12 and thus unlikely to have resulted from random variations followed by natural selec-
13 tion. As a result of the national publicity surrounding Minnich's appearance at the
14 trial, the President of the University of Idaho issued a statement that prescribed evolu-
15 tion as "the only curriculum that is appropriate" for science classes, and forbade
16 teaching "views that differ from evolution" in any "life, earth, and physical science
17 courses or curricula."
18

19 (7) 2009: California Science Center. In 2009, the American Freedom Alliance arranged
20 for the showing of a film, *Darwin's Dilemma*, which makes the case for intelligent
21 design as a better explanation (compared with random variation followed by natural
22 selection) for events like the Cambrian Explosion. Although the California Science
23 Center initially agreed to rent their facilities for the showing of the film, when public-
24 ity about the upcoming event was released to the public, the Center received dire
25 warnings that permitting the film to be shown would harm the Center's reputation and
26 27
28

1 jeopardize its standing within the scientific community. It became clear that the rea-
2 son this reaction was feared was because of it would be inappropriate for a Science
3 Center to "partner with any group associated with debating Darwinism." The Center
4 subsequently cancelled the event. A lawsuit was filed, that resulted in a recent set-
5 tlement whereby the Center agreed to pay the American Freedom Alliance \$110,000
6 and issue a public invitation to the group to present its intelligent design program at
7 the Center.
8

9
10 **D. Opinion #4: The Treatment Of David Coppedge By The Jet Propulsion Labora-**
11 **tory Is Consistent With The Irrational Hostility Often Exhibited Toward Advo-**
12 **cates Of Intelligent Design.**
13

14 27. As the previous discussion described, the intelligent design proponent may often face
15 a reaction to the scientific claims about intelligent design theory that is incongruous with the
16 proponent's advocacy. Whereas the proponent sees the theory of intelligent design as a new de-
17 velopment in his or her field of study, and relevant to the performance of his or her job, the skep-
18 tic perceives the promotion of intelligent design as at best a distraction and at worst an attempt to
19 destroy the very foundation of the enterprise in which they are engaged. Moreover, any toler-
20 ance toward intelligent design as a legitimate scientific theory – perhaps valid, perhaps invalid,
21 but worthy of careful consideration and debate – risks retaliation by those who regard intelligent
22 design not only as erroneous, but pernicious.
23

24 28. David Coppedge fits this pattern very closely. From his perspective the information
25 contained in DVDs such as *Unlocking the Mysteries of Life* and *The Privileged Planet* would
26 help his colleagues see the benefits of including intelligent agency as a potential explanation for
27
28

1 a variety of scientific phenomena that had previously been assumed to be explicable only by a
2 material or natural process.

3 29. Coppedge also recognized that there would be legitimate disagreement over the mer-
4 its of the theory of intelligent design, and that one might view the evidence as more or less per-
5 suasive, depending upon one's point of view. But he also assumed that anyone who found them-
6 selves unpersuaded by the evidence would at least be appreciative of having heard a persuasive
7 case for it. Indeed, several of Coppedge's colleagues expressed their appreciation for having the
8 opportunity to view the DVDs and discuss them with Coppedge afterward. Coppedge also rec-
9 ognized that if someone was not open to hearing the case for intelligent design, it was both impo-
10 lite and fruitless to renew the invitation once it had been clearly declined.

11
12 30. In the meeting between Gregory Chin and David Coppedge on March 2, 2009, the
13 mismatch of expectations is clearly revealed. Supervisor Chin regarded the advocacy of intelli-
14 gent design as "pushing religion" rather than initiating a conversation about a work-related topic
15 that would be valuable even if the claims that Coppedge was making were found to be unpersua-
16 sive. Coppedge thought that Chin had mischaracterized intelligent design and made some effort
17 to point out ways in which the scientific status of intelligent design theory deserved recognition.
18 He also assumed that Chin would respect the difference in opinion as one where they could agree
19 to disagree. But to Chin the failure of Coppedge to acknowledge the religious nature of intelli-
20 gent design theory was simply another example of how inappropriate his advocacy was, and he
21 admitted that he became "frustrated" when Coppedge would not agree with him.

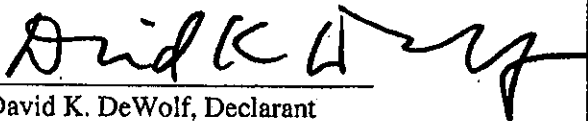
22
23 31. Chin treated Coppedge's opinions as demonstrably wrong, and therefore deserving of
24 summary disposition. Chin expected Coppedge to treat Chin's opinion – that intelligent design
25 was religion – as dispositive of the issue. Coppedge assumed that, just as Democrats and Repub-
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27
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1 licans are free to hold competing opinions (and neither is entitled to be regarded as the "consen-
2 sus" view), disagreements over the validity of intelligent design as a scientific theory should be
3 treated as an open question. While Coppedge was willing to observe the same rules regarding
4 intelligent design that he would observe with respect to political questions (one can make over-
5 tures, but if the overtures are rejected, one is obligated to respect the rejection of the overture),
6 Coppedge should be free to make overtures regarding intelligent design. Chin, by contrast, re-
7 garded Coppedge's advocacy as doubly offensive – not only because it raised the controversial
8 topic of religion, but because Coppedge refused to admit that he was peddling religion in the
9 guise of a scientific theory.
10

11 32. To summarize, Chin's treatment of Coppedge reflects both of the features commonly
12 found in the treatment of intelligent design advocates – the assumption that it is not worthy of
13 debate as a scientific theory, and the belief that, because it is religious rather than scientific, it
14 poses a threat to the integrity of the scientific enterprise itself.
15

16 I declare under penalty of perjury, under the laws of the State of California, that the fore-
17 going is true and correct.

18 Executed this 29th day of August, 2011, at Spokane, Washington.

19
20 
21 David K. DeWolf, Declarant
22
23
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27
28

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
6 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.

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* #5 ("DML 5") FOR AN ORDER EXCLUDING**
10 **OR LIMITING THE TESTIMONY OF PLAINTIFF'S EXPERT DAVID K. DEWOLF;**
11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;**
12 **DECLARATION OF CAMERON W. FOX IN SUPPORT THEREOF;**
13 **[PROPOSED] 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.

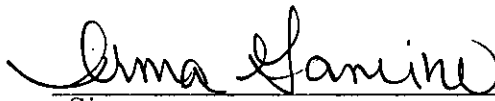


24 **VIA U.S. MAIL:**

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
30 that the above is true and correct and was executed on November 30, 2011, at Los
31 Angeles, California.

32 Irma Gamino
33 Type or Print Name

34 
35 Signature