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FILED
Superior Court of California
County of Los Angeles
DEC 14 2011
John A. Clarke, Executive Officer/ Clerk
By M. A. BOTO, DEPUTY
MOSES BOTO

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

10 **DAVID COPPEDGE**, an individual;
11 Plaintiff,

12 vs.

13 **JET PROPULSION LABORATORY**, form
14 unknown; **CALIFORNIA INSTITUTE OF**
15 **TECHNOLOGY**, form unknown; **GREGO-**
16 **RY CHIN**, an Individual; **CLARK A.**
17 **BURGESS**, an Individual; **KEVIN KLENK**,
18 an Individual; and **Does 1 through 25**, inclu-
19 sive,
20 Defendants.

Case No. BC435600
The Honorable Ernest M. Hiroshige, Dept. 54

PLAINTIFF DAVID COPPEDGE'S OP-
POSITION TO DEFENDANT'S MO-
TION IN LIMINE NO. 7 FOR AN OR-
DER EXCLUDING PLAINTIFF'S SUB-
JECTIVE OPINION OF HIS OWN JOB
PERFORMANCE; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUP-
SUPPORT THERE; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUP-
SUPPORT THEREOF

FSC: February 24, 2012
HEARING TIME: 9:00 a.m.
DEPT: 54

Trial Date: March 7, 2011

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1 COMES NOW PLAINTIFF DAVID COPPEDGE ("Coppedge") and hereby opposes De-
2 fendant California Institute of Technology's/Jet Propulsion Laboratory's ("JPL's) Motion in
3 Limine No. 7 for an order excluding Plaintiff's subjective opinion of his own job performance.

4 This Opposition is based on the ground that JPL's motion lacks merit, is improperly pre-
5 sented for the purpose of suppressing admissible evidence and would create confusion if granted.
6

7 DATED: December 13, 2011

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Attorneys for Plaintiff, DAVID COPPEDGE

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Coppedge alleges in this action that JPL's explanations for firing him in January 2011 are
4 pretextual, and that JPL retaliated against him for filing this lawsuit in April 2010. The evidence
5 supports an inference that JPL's stated reasons for its decision were merely a subterfuge for re-
6 taliatory conduct.

7 JPL will try to establish that Coppedge was fired due to "poor job performance." It con-
8 tends – unassisted by any supporting legal authority – that the *sole relevant inquiry* in this action
9 is the intent and motivation of individuals who participated in discipline and layoff decisions
10 (JPL Br., 1:18-20). This argument is erroneous for at least two relevant reasons: (1) JPL's deci-
11 sion-makers' state of mind is not the "sole relevant inquiry in this action"; and (2) Coppedge's
12 ability to describe his performance abilities are relevant to rebut the subjective/self-serving con-
13 tentions of the decision-makers.

14 II. ARGUMENT

15 A. Evidence Apart From The Decisionmaker's State Of Mind Is Relevant In Retal-
16 iation Cases.

17 JPL asserts that the *sole relevant inquiry in this action* is the intent and motivation of in-
18 dividuals who participated in discipline and layoff decisions. In retaliation cases, however, pre-
19 text may be inferred by, *inter alia*, the timing of the company's termination decision, the identity
20 of the person making the decision, and the terminated employee's job performance before termi-
21 nation. *See Flait v. North American Watch Corp.* (1992) 3 Cal.App.4th 467, 479. Depending on
22 the circumstances, the state of mind of decision-makers may be but one of the relevant inquiries
23 in such cases, particularly where the employer seeks to justify a termination by reference to the
24 quality of the employee's job performance. *See, e.g., Yanowitz v. L'Oreal USA, Inc.* (2005) 36
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26
27
28

1 Cal.4th 1028 (alleged poor performance as basis for termination contradicted by performance
2 evaluations).

3 **B. Coppedge's Subjective Opinions Concerning His Own Job Performance Are**
4 **Relevant And Admissible.**

5 Although an employee's subjective personal judgments of his or her competence *alone*
6 are insufficient to establish pretext (*see Horn v. Cushman & Wakefield Western, Inc.* (1999) 72
7 Cal.App.4th 798, 816), such evidence nevertheless may be relevant to show an employer's ex-
8 planation for terminating an employee in certain circumstances. The cases cited by JPL (*Horn,*
9 *Morgan v. Regents of Univ. of Cal.* (2000) 88 Cal.App.4th 52, and *Ost v. W. Suburban Traveler's*
10 *Limousine, Inc.* (7th Cir. 1996) 88 F.3d 435, and cases cited therein) focus on the subjective tes-
11 timony of employees in non-retaliatory discrimination cases and within the framework of bur-
12 den-shifting in summary judgment proceedings. None of JPL's authority – or other authority
13 Coppedge has been able to find – would exclude such testimony for proving retaliation at trial.

14
15 In this case, JPL is expected to present evidence that Coppedge scored low on the basis of
16 weighted criteria. Coppedge intends to show that the layoff selection process was corrupted by
17 subjective criteria, flawed assumptions, and the layoff decision-makers' (Conner and Van Why)
18 involvement in litigation strategy sessions with counsel. (*See Plf.'s Opp. To Mot. in Lim. # 4.*)

19
20 Coppedge had seniority over and had served as a systems administrator ("SA") longer
21 than all of the other layoff candidates. He had trained many of the other candidates in the tasks
22 they performed. These factors were ignored.

23 Instead, Conner selectively canvassed individuals she knew would criticize Coppedge.
24 She did not record their input in writing, but orally conveyed it to Van Why. Conner also testi-
25 fied at deposition that she weighed the relative skills of the SA layoff candidates based upon her
26 own personal observations.
27
28

1 Also contributing to the subjective process was Clark Burgess, at the time a named De-
2 fendant in this lawsuit. Because the layoff decision-makers were involved in private litigation
3 strategy sessions with counsel (and one of the them was a party to this lawsuit), a jury could rea-
4 sonably infer that the fix was in. These and other factors will establish that the entire process of
5 determining layoffs was contaminated. Under such circumstances, Coppedge should be permit-
6 ted to comment on his performance abilities –not to prove his qualifications to remain employed,
7 but to show that JPL’s selection process did not assess his performance abilities *at all*, much less
8 fairly.
9

10 **C. If JPL’s Witnesses May Give Their Subjective Views About Their Thinking**
11 **Processes, Then It Would Be Unfair And Prejudicial To Bar Coppedge’s Subjec-**
12 **tive Opinions To Controvert Those Views.**

13 JPL’s motion does not clearly state what order JPL seeks. On the one hand, JPL states
14 that “the sole relevant inquiry in this action is the intent and motivation of individuals who par-
15 ticipated in *discipline and* layoff decisions.” Yet the caption and the concluding prayer confine
16 JPL’s request to testimony about job performance. Meanwhile, Coppedge believes he was disci-
17 plined and demoted for reasons unrelated to job performance.

18 Evid. Code § 800 limits lay opinion testimony to an opinion that is (a) rationally based on
19 the perception of the witness; and (b) helpful to a clear understanding of his testimony.

20 Coppedge believes he was discriminated against because of his views on religion, politics and
21 intelligent design. JPL’s witnesses will testify that they did not discriminate against Coppedge
22 because of those views, and that they did not discriminate against him at all. Why should
23 Coppedge be prevented from telling the jury what he believes drove JPL’s disciplinary deci-
24 sions? JPL should not be permitted the unfair advantage of freely dissembling at trial without
25 opposing testimony from Coppedge on the same issues.
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1 Coppedge should be permitted to express opinions relating to the disciplinary decisions
2 made by JPL based on his own perceptions (e.g., Greg Chin's shouting at him to stop pushing his
3 religion). His understanding of the intelligent design controversy and the relationships he had
4 with his co-workers places him in a reasonable position to offer his opinions about why he was
5 demoted and disciplined. Requiring him to suppress these views would be tantamount to being
6 victimized twice. If JPL believes Coppedge's opinions are self-serving, then JPL may cross-
7 examine him and make its arguments to the jury.
8

9 **D. Coppedge Agrees That JPL's State Of Mind Evidence Should Be Limited To Its**
10 **Decision-Makers.**

11 The evidence in this case is that Burgess, Conner and Van Why were the only individuals
12 who participated in the layoff decision-making process. Coppedge agrees with JPL that only its
13 layoff decision-makers witnesses should be permitted to testify regarding the reasons for
14 Coppedge's layoff. The opinions and mental states of employees who were not directly involved
15 in making the decision to terminate Coppedge are irrelevant.
16

17 **III. CONCLUSION**

18 Based on the foregoing reasons, Coppedge respectfully requests that (1) the court deny
19 Defendant JPL's motion in limine No. 7, and (2) bar JPL, its counsel and witnesses (other than
20 layoff decision-makers) from introducing testimony, evidence, argument or comment pertaining
21 to their subjective opinions concerning Coppedge's job performance.

22 DATED: December 13, 2011

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