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Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 27 2011

John A. ... Clerk
By GLORIETTA ROBINSON Deputy

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

REPLY ON MOTION *IN LIMINE* #4

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

FSC Date: February 24, 2012
Time: 9:00 a.m.
Place: Department 54
Judge: Hon. Ernest M. Hiroshige

Trial Date: March 7, 2012

12/27/2011

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff David Coppedge seeks to have the jury draw negative inferences from
4 Caltech's rightful exercise of the attorney-client privilege. Specifically, Coppedge wants the jury
5 to speculate that the mere fact that counsel had privileged meetings with certain Caltech managers
6 after the lawsuit was filed infers that the purpose of the meetings was to plot retaliatory conduct.
7 Permitting such testimony would present Caltech with a Hobson's choice: (a) allow the jury to
8 engage in unbridled speculation about what was said, or (b) waive its attorney-client privilege just
9 so it can defend itself against Coppedge's unfounded insinuations. The Court should not permit
10 this rank and highly prejudicial speculation – or this total disregard for the attorney-client
11 privilege.¹

12 To justify his improper attack on Caltech's privilege rights, Coppedge erroneously
13 asserts that testimony about the meetings is necessary to prove that Richard Van Why, who made
14 the decision to lay off Coppedge, and Diane Conner, who provided input to Van Why about the
15 Cassini System Administrators' ("SAs") skills and performance, knew about the filing of
16 Coppedge's lawsuit at the time. But Conner and Van Why each testified in deposition that they
17 did.² Coppedge's "justification" is a sham. No reference to the privileged meetings is needed.

18 Moreover, Coppedge's Opposition totally ignores California Evidence Code
19 section 913. It prohibits presumptions or inferences that arise from a party's exercise of privilege.
20 The negative inferences Coppedge wants the jury to draw fall squarely within the scope of the
21 statute: (i) that the Spring 2010 Privileged Meetings included discussion of "litigation strategy,"
22 "tactics" and "adverse statements" about Coppedge, and (ii) that Conner and Van Why were

23
24
25 ¹ Coppedge blatantly misrepresents to the Court that Caltech concedes the relevance and
26 admissibility of the dates and fact of these privileged meetings. Caltech does no such thing. *See*
27 Caltech's Notice at 1:16-20; Caltech's Motion at 1:16-19, 3:15-4:11.

28 ² Specifically, Conner testified that a colleague first told her about Coppedge's lawsuit.
Deposition of Diane Conner at 103:17-104:5. *See* Declaration of Cameron W. Fox ("Fox Decl."),
Exhibit A, filed concurrently herewith. All cited deposition testimony is attached to the Fox
Declaration. Van Why testified that he learned about the lawsuit in late Spring 2010. Deposition
of Richard Van Why at 21:11-13. Fox Decl., Ex. B.

1 invited to those meetings as part of a scheme to lay off Coppedge nine months later in retaliation
2 for his lawsuit.

3 Finally, Coppedge's (and his counsel's) admissions, in deposition and the
4 Opposition, shamelessly describe the baseless speculation in which they intend to engage. Those
5 admissions are the most compelling evidence of why the dates and fact of meetings with counsel
6 must be excluded. To permit such testimony is to commit reversible error.

7 **II. DISCUSSION**

8 **A. The Privileged Meetings Are Not Relevant to Any Disputed Issue in the Case;**
9 **Coppedge's Argument That He Must Prove Conner's and Van Why's**
10 **Knowledge of the Lawsuit Is a Ruse.**

11 Coppedge claims that the dates of (and who attended) the privileged meetings is
12 relevant and necessary to establish Conner's knowledge of the lawsuit when she gave input on
13 how to rank the SAs, and Van Why's knowledge of the lawsuit when he decided which SAs to
14 layoff in January 2011. Coppedge gives three justifications for why he believes their knowledge
15 is at issue. Each "justification" fails:

Coppedge's Purported Justification	Why the Justification Fails
"Conner's and Van Why's knowledge of the lawsuit is circumstantial evidence [of] a retaliatory motive [in choosing Coppedge for layoff]. Proving that knowledge is part of Plaintiff's proof of causation." Opp'n at 1:6-8.	Conner and Van Why acknowledged during their depositions that they knew Coppedge had filed a lawsuit when Conner provided input to Van Why about the SAs' skills and performance, and when Van Why selected Coppedge and one other SA for layoff. (Conner 34:22-35:2, 103:17-104:5; Van Why 21:11-13.) Coppedge cannot ignore this evidence to create a supposed need for the impermissible testimony.
"Van Why and Conner will try to distance themselves from having any knowledge of Coppedge's lawsuit [...] They will claim they were unaware of the lawsuit [...]" Opp'n at 5:16-19.	If Conner or Van Why tried to change their testimony at trial, Coppedge could impeach them with their deposition testimony.
"[Conner and Van Why may] testify at trial that they did not take the lawsuit into account when determining layoff criteria and selecting Coppedge" for layoff. Opp'n at 5:18-19.	This is an entirely separate topic from the question of what Conner and Van Why knew. Moreover, Van Why followed Caltech's established layoff procedures in ranking the SAs and implementing the layoffs. He testified at deposition that he made the layoff decisions based on the relative skills and performance of the SAs. Conner testified that her input about the SAs was based on her personal observations as well as information she obtained from other Cassini managers. It is up to the jury to decide whether Van Why and/or Conner were

1 impermissibly influenced by Coppedge's lawsuit.

2 Coppedge's attempt to paint the privileged meetings as relevant to a disputed issue
3 fails; there is no conceivable purpose for presenting evidence of those meetings *except* to invite
4 the jury to speculate as to what was said.³

5 Given the incontrovertible evidence on this issue, it is particularly disturbing that
6 Coppedge chooses to mislead the Court in his Opposition by stating that "JPL [...] concedes the
7 relevance and admissibility of the fact that [Conner and Van Why] met with counsel." Opp'n at
8 1:4-6. That assertion is palpably false. Caltech's privileged meetings are irrelevant under
9 Evidence Code sections 210 and 350; all references to them should be excluded. Moreover,
10 inferences about what was said in the meetings (and why they were held) are the essence of
11 inadmissible speculation (see Section B immediately below).

12 **B. The Inferences Coppedge Wishes to Draw From the Meetings Are Rank**
13 **Speculation, and Coppedge Does Not Contend Otherwise.**

14 Caltech established in its Motion that the negative inferences Coppedge wishes the
15 jury to draw from the dates and fact of the privileged meetings constitute inadmissible speculation
16 under Evidence Code section 702. Motion at 3:15-28. Coppedge's Opposition is conveniently
17 silent on this point. This is not surprising given that even Coppedge's own purported Human
18 Resources expert, Lawrence Ball, described inferences as to what was said in those meetings as
19 "speculat[ion]."⁴

20 **C. The Baseless Inferences Coppedge Will Ask the Jury To Draw Violate**
21 **Evidence Code Section 913.**

22 Coppedge intends to misuse evidence of the privileged meetings to draw
23 unsupported negative inferences, which are flatly prohibited by Evidence Code Section 913:

24 _____
25 ³ In support of his justifications, Coppedge cites *Flait v. North American Watch Corp.*, 3 Cal.
26 App. 4th 467 (1992), and *Reeves v. Safeway Stores, Inc.*, 121 Cal. App. 4th 95 (2004), for a
27 general discussion of pretext and causation. Those cases (and their cited excerpts) have nothing
28 to do with the issue here: a plaintiff trying to speculate to a jury about the content of privileged
meetings under the guise of establishing facts that are not in dispute.

⁴ See Ball Declaration at ¶ 42 ("We can only speculate [why these supervisors attended the
meeting] because the witnesses were instructed not to divulge what was discussed at the
meeting.")

1 **“If ... a privilege is or was exercised ... to refuse to disclose ...**
2 **any matter, neither the presiding officer nor counsel may comment**
3 **thereon, no presumption shall arise because of the exercise of**
4 **the privilege, and the trier of fact may not draw any inference**
5 **therefrom as to the credibility of the witness or as to any matter**
6 **at issue in the proceeding.”**

7 Cal. Evid. Code § 913(a) (emphasis added). Coppedge ignores this statute in his Opposition
8 because he has no legitimate response to it.

9 Coppedge’s Opposition previews at least two ways in which he intends to mislead
10 the jury, and both violate section 913:

11 First, Coppedge speculates that the participants discussed “litigation strategy,”
12 based merely on his conjecture that “[s]uch meetings with a corporate client are typical [sic] to
13 make tactical decisions and discuss developments in the case.” Opp’n at 1:17-18. Throughout
14 his Opposition, Coppedge refers – *without any basis whatsoever* – to the meetings as “legal
15 strategy meetings” and “strategy sessions,” and he openly speculates that there were “adverse
16 statements made about Coppedge.” Opp’n at 5:14, 6:4-6, 6:19-23. Coppedge’s assertions are
17 baseless. But Caltech cannot defend itself against these misrepresentations – here or at trial –
18 without waiving its own attorney-client privilege to show what *actually* was said in those
19 meetings. It will be reversible error to require Caltech to make that choice.

20 Second, Coppedge suggests that Conner’s and Van Why’s attendance at the
21 meetings reflects a scheme to retaliate against him. Here again, Coppedge takes preposterous
22 liberties with the facts. For example, he asserts that Van Why and Conner had no reason to be in
23 the meetings because they were not named as defendants or wrongdoers in the Complaint and had
24 no supervisory authority over Coppedge. That is utter nonsense. Van Why was Coppedge’s
25 Section Manager, having moved into that position in late 2009, before the lawsuit was filed – and,
26 as Coppedge’s Opposition points out, Conner had been asked to manage the Integrated Uplink
27 Systems and therefore was preparing to direct Coppedge’s and the other SAs’ work on the project
28 when the Cassini project budget reductions were effected. It is hardly unusual for counsel to meet
with a currently-employed plaintiff’s supervisors when a lawsuit is filed.

1 D. Coppedge's Own Representations (and Those of His Counsel) Are the Best
2 Evidence of How Highly Prejudicial and Speculative This Evidence Would
3 Be.

4 It does not take a rocket scientist to understand how Coppedge and his counsel
5 intend to abuse Caltech's legitimate exercise of the attorney-client privilege. They repeatedly
6 have admitted that they plan to speculate to the jury about what was said in the meetings and the
7 reasons for the meetings in order to prejudice Caltech, because Caltech is unable to defend itself
8 without waiving the privilege:

9 I want to be clear about this. Backing up to the May meeting with
10 counsel, it's Counsel's position you can't say a word about that
11 meeting, right? So [...] if that's going to be the evidence in the
12 case [--] your knowledge of David[']s lawsuit] coming in May of
13 2010 [--] and **that's all the jury is going to hear about[,] then it**
14 **will create an inference or question as to what you knew, and if**
15 **you're not able to tell the jury, I'm going to make certain**
16 **arguments about what you knew.**

17 Commentary of William Becker, counsel of record to Coppedge, in Van Why Deposition at 37:2-
18 13 (emphasis added).

19 The jury can [] draw the inference that [Conner and Van Why]
20 knew *something* about JPL's legal interests, theories and strategy
21 and come to its own conclusions about it, particularly in the
22 absence of any explanation [by Caltech].

23 Opp'n at 6:4-6 (emphasis in original).

24 Evidence of [Conner's and Van Why's attendance at the meetings]
25 leads ineluctably to a rational inference that they were ...
26 influenced by the briefings they attended with counsel.

27 Opp'n at 6:17-20.

28 "The question to be put to jurors is: Why would Conner and Van
29 Why ... attend meetings with counsel [] about this lawsuit unless
30 they were discussing the *facts and tactics* surrounding this
31 lawsuit?"

32 Opp'n at 7:16-18 (emphasis in original).

33 In short, this evidence shows that Conner and Van Why, the layoff
34 decision-makers, *could have been influenced by adverse statements*
35 *made about Coppedge* during strategy sessions but at a minimum
36 were influenced in some way adverse to Coppedge's interests by
37 *their mere participation in the meetings.*

1 Opp'n at 6:20-23 (emphasis added).

2 Coppedge and his counsel are unabashed in their desire to speculate about the
3 content of the privileged meetings and to take unfair advantage of Caltech's rightful exercise of
4 the attorney-client privilege. This conduct is not only unprofessional, but also exhibits total
5 disregard for that privilege and the strong protection that California courts afford it. "The
6 [attorney-client] privilege is absolute and disclosure may not be ordered, without regard to
7 relevance, necessity or any particular circumstances peculiar to the case." *Costco Wholesale*
8 *Corp. v. Super. Ct.*, 47 Cal. 4th 725, 732 (2009), quoting *Gordon v. Super. Ct.*, 55 Cal. App. 4th
9 1546, 1557 (1997). Such tactics go well beyond zealous advocacy. *Rico v. Mitsubishi Motors*
10 *Corp.*, 42 Cal. 4th 807, 818 (2007) ("An attorney has an obligation not only to protect his client's
11 interests but also to respect the legitimate interests of fellow members of the bar, the judiciary,
12 and the administration of justice.") (emphasis added) (citation and internal quotation marks
13 omitted).

14 Allowing Coppedge and his counsel to hijack Caltech's legally protected right, and
15 to force Caltech to reveal privileged communications to defend itself, is the essence of undue
16 prejudice.

17 **III. CONCLUSION**

18 If Coppedge is permitted to present at trial any evidence or argument about the
19 privileged meetings, it will be the analytical equivalent of the Court waiving Caltech's right to
20 consult with counsel. This should not be allowed. Caltech's Motion in *Limine* should be granted
21 in full, and any references to, commenting upon, presenting any argument of, or introducing any
22 evidence or testimony regarding the dates and fact of meetings, or other communications that in-
23 house or outside counsel had with Caltech managers or employees, should be excluded from trial.

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DATED: December 27, 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

12/27/2011

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 Reply In Support Of Motion *In Limine* for an Order Excluding Testimony, Evidence, Argument And Comment Regarding Viewpoint Discrimination.

3. Attached hereto as **Exhibit A** are true and correct copies of excerpts from Days One and Two of the deposition of Diane Conner, taken on April 14, 2011 and August 4, 2011.

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

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

Executed this 27th day of December, 2011, at Los Angeles, California.



CAMERON W. FOX

12/27/2011

EX.A

EXHIBIT A

1 TO DAVID.

2 Q. HE WAS NOT PART OF IT?

3 A. NO.

4 Q. WHO WAS IT WHO RECOMMENDED THAT DAVID BE
5 LET GO?

12:04:45PM

6 MR. ZAPP: OBJECTION TO THE EXTENT IT LACKS
7 FOUNDATION. CALLS FOR SPECULATION.

8 GO AHEAD. YOU CAN ANSWER WHAT YOU KNOW.

9 THE WITNESS: RICHARD.

12:04:53PM

10 BY MR. BECKER:

11 Q. RICHARD VAN WHY?

12 A. YES.

13 Q. HE'S SECTION MANAGER FOR SECTION 1731;
14 IS THAT RIGHT?

12:05:21PM

15 A. I BELIEVE SO.

16 Q. WHAT IS 1731?

17 A. I DON'T KNOW.

18 Q. HOW DOES HIS SECTION RELATE TO YOUR
19 SECTION? WHAT DO THEY HAVE IN COMMON?

12:05:40PM

20 A. THAT THEY ARE PART OF THE MATRIX
21 ORGANIZATION THAT JPL HAS.

22 Q. WHEN DID YOU FIRST SPEAK TO RICHARD
23 VAN WHY CONCERNING DAVID?

24 A. PERHAPS SEPTEMBER.

12:06:07PM

25 Q. OF 2010?

1 A. YES. OR AUGUST. IT COULD HAVE BEEN
2 SEPTEMBER.

3 Q. WHAT DID HE TELL YOU WHEN HE FIRST
4 MENTIONED DAVE TO YOU?

12:06:27PM

5 A. I DON'T RECALL SPECIFICALLY.

6 Q. DO YOU GENERALLY READY?

7 A. I GENERALLY RECALL TALKING ABOUT PROCESS
8 THAT HE NEEDED MY HELP WITH, THAT HE NEEDED MY INPUT
9 ON.

12:06:40PM

10 Q. DO YOU RECALL IN WHAT CONTEXT DAVID'S
11 NAME CAME UP?

12 A. JUST THAT HE WAS ONE OF THE FOUR SA'S
13 THAT WERE PART OF THE PROCESS.

14 Q. DID RICHARD SAY SOMETHING ABOUT DAVID'S
15 PERFORMANCE DURING THAT DISCUSSION?

12:06:55PM

16 A. NOT SPECIFICALLY.

17 Q. DID HE SAY ANYTHING ABOUT DAVID'S
18 QUALIFICATIONS IN THAT DISCUSSION?

19 A. THERE WERE DISCUSSIONS ABOUT
20 QUALIFICATIONS.

12:07:08PM

21 Q. WHAT WAS SAID?

22 A. THERE WAS DISCUSSION ABOUT RELATIVE
23 QUALIFICATIONS.

24 Q. I UNDERSTAND UNDER THAT RUBRIC,
25 QUALIFICATIONS, SOMETHING WAS DISCUSSED.

12:07:22PM

1 STATE OF CALIFORNIA)

2 COUNTY OF LOS ANGELES.)

3

4

5 I, HEIDI SULLIVAN, A CERTIFIED SHORTHAND REPORTER

6 LICENSED BY THE STATE OF CALIFORNIA, CERTIFY:

7

8 THAT THE FOREGOING DEPOSITION OF DIANE CONNER

9 WAS TAKEN BEFORE ME PURSUANT TO NOTICE

10 AT THE TIME AND PLACE THEREIN SET FORTH, AT WHICH

11 TIME THE WITNESS WAS PUT UNDER OATH BY ME;

12

13 THAT THE TESTIMONY OF THE WITNESS AND ALL OBJECTIONS

14 MADE AT THE TIME OF THE EXAMINATION WERE RECORDED

15 STENOGRAPHICALLY BY ME AND WERE THEREAFTER

16 TRANSCRIBED;

17

18 THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY

19 AND OF ALL OBJECTIONS AT THE TIME OF THE EXAMINATION.

20

21 IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME THIS

22 9TH DAY OF MAY, 2011.

23

24



25

LICENSE NUMBER 6600

12/27/2011

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF LOS ANGELES
4

5 DAVID COPPEDGE, AN INDIVIDUAL,)
6)
7) PLAINTIFF,)
8)
9 VS.) CASE NO.
10) BC 435600
11 JET PROPULSION LABORATORY, FORM)
12) UNKNOWN; CALIFORNIA INSTITUTE)
13) OF TECHNOLOGY, FORM UNKNOWN;)
14) GREGORY CHIN, AN INDIVIDUAL;)
15) CLARK A. BURGESS, AN INDIVIDUAL;)
16) KEVIN KLENK, AN INDIVIDUAL; AND)
17) DOES 1 THROUGH 25, INCLUSIVE,)
18)
19) DEFENDANTS.)
20)
21)
22)
23)
24)
25)

ORIGINAL

15 DEPOSITION OF DIANE CONNER,
16 VOLUME II, PAGES 66 - 143

17 TAKEN ON THURSDAY, AUGUST 4, 2011

23 REPORTED BY:
24 HEIDI SULLIVAN
25 CSR NO. 6600
FILE NO.: 11-156

24 || A. SULLIVAN REPORTERS
25 || COURT REPORTERS ||

2420 W. CARSON STREET, SUITE 210
TORRANCE, CALIFORNIA 90501
PHONE 310 • 787 • 4497
FAX 310 • 787 • 1024

12/27/2011

1 MR. ZAPP: I'M GOING TO ALLOW YOU TO NOT
2 DISCLOSE THE COMMUNICATIONS THAT TOOK PLACE DIRECTLY.
3 I'LL ALLOW YOU TO ANSWER THAT QUESTION, BUT NOT THE
4 COMMUNICATIONS.

5 IS THE POINT OF THE QUESTION DID SHE
6 LEARN ABOUT THE LAWSUIT IN THE MEETING -- A PRIVILEGED
7 MEETING? IS THAT THE POINT OF THE QUESTION?

8 BY MR. BECKER:

9 Q. WHEN COUNSEL WAS PRESENT, DID YOU LEARN
10 ABOUT THE LAWSUIT?

11 MR. ZAPP: YES, NO, OR YOU DON'T REMEMBER --
12 IT'S ONE OF THOSE THREE.

13 THE WITNESS: NO.

14 BY MR. BECKER:

15 Q. YOU WERE NOT PRESENT?

16 A. I WAS PRESENT.

17 Q. WHEN DID YOU FIRST LEARN OF THE LAWSUIT?

18 A. I HEARD FROM A COLLEAGUE.

19 Q. WHAT COLLEAGUE?

20 A. I DON'T RECALL WHO TOLD ME.

21 Q. DO YOU RECALL THE SUBSTANCE OF THE
22 CONVERSATION?

23 A. THAT THERE WAS A LAWSUIT.

24 Q. THAT WAS IT?

25 A. (NO AUDIBLE RESPONSE.)

1 Q. JUST THERE WAS A LAWSUIT? NOT WHAT
2 ABOUT?

3 A. NO.

4 Q. NOT WHO IS BEING SUED?

5 A. WELL, JPL, YES, BUT NOT ANY DETAILS.

6 Q. YOU DIDN'T ASK WHY?

7 A. NO.

8 Q. YOU DIDN'T SAY, "OH, I KNOW DAVE
9 COPPEDGE"?

10 A. I JUST DIDN'T DISCUSS IT. IT WAS JUST
11 SOMETHING THAT SOMEBODY LET ME KNOW.

12 Q. AND SO DID YOU ATTEND A MEETING IN MAY OF
13 2010 AT WHICH TIME COUNSEL WAS PRESENT?

14 MR. ZAPP: YOU CAN ANSWER THAT YES, NO, OR YOU
15 DON'T REMEMBER.

16 THE WITNESS: I DON'T RECALL WHEN IT WAS.
17 BY MR. BECKER:

18 Q. DO YOU REMEMBER THE FIRST TIME YOU EVER
19 MET MR. ZAPP?

20 A. YES.

21 Q. WHEN WAS THAT?

22 A. I BELIEVE IT WAS MARCH OR APRIL 2011.

23 Q. OF 2011?

24 A. SORRY. TWO THOUSAND -- WAIT A MINUTE.

25 IT WAS PROBABLY APRIL, MAY OF 2010.

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I CERTIFY UNDER PENALTY OF PERJURY
THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT Pasadena, CALIFORNIA,
ON 31 August, 2011


DIANE CONNER

12/27/2011

1 STATE OF CALIFORNIA)

2 COUNTY OF LOS ANGELES)

3

4

5 I, HEIDI SULLIVAN, A CERTIFIED SHORTHAND REPORTER

6 LICENSED BY THE STATE OF CALIFORNIA, CERTIFY:

7

8 THAT THE FOREGOING DEPOSITION OF Diane Connor

9 WAS TAKEN BEFORE ME PURSUANT TO NOTIC

10 AT THE TIME AND PLACE THEREIN SET FORTH, AT WHICH TIME

11 THE WITNESS WAS PUT UNDER OATH BY ME;

12

13 THAT THE TESTIMONY OF THE WITNESS AND ALL OBJECTIONS

14 MADE AT THE TIME OF THE EXAMINATION WERE RECORDED

15 STENOGRAPHICALLY BY ME AND WERE THEREAFTER

16 TRANSCRIBED;

17

18 THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY

19 AND OF ALL OBJECTIONS AT THE TIME OF THE EXAMINATION.

20

21 IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME THIS

22 18 DAY OF August, 2011

23

24

Heidi Sullivan

25

LICENSE NUMBER 6600

11/05/2011

EX. B

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

**CERTIFIED
COPY**

DEPOSITION OF RICHARD WILLIAM VAN WHY

TAKEN ON FRIDAY, JULY 22, 2011

REPORTED BY:

VICKI A. SABER

CSR NO. 6212

FILE NO.: 11-152

24
25

**A. SULLIVAN REPORTERS
COURT REPORTERS**

**2420 W. CARSON STREET, SUITE 210
TORRANCE, CALIFORNIA 90501
PHONE 310 • 787 • 4497
FAX 310 • 787 • 1024**

EX.B

12/27/2011

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A. NO.

Q. WHAT -- WHY AREN'T THEY INTERVIEWING IF THEY INTEND TO REPLACE CAB BURGESS FOR THOSE DUTIES?

MR. ZAPP: OBJECTION TO THE EXTENT IT CALLS FOR SPECULATION, BUT GO AHEAD.

THE WITNESS: THE O.C.I.O. IS CONTEMPLATING AN INTERNAL REORGANIZATION, AND UNTIL THAT ARCHITECTURE IS DEFINED THEY'RE NOT POSTING ANY TYPE OF MANAGEMENT POSITIONS.

BY MR. BECKER:

Q. OKAY. WHEN DID YOU FIRST LEARN ABOUT THIS LAWSUIT?

A. END OF SPRING, BEGINNING OF SUMMER 2010.

Q. HOW DID YOU LEARN OF IT? WHO INFORMED YOU?

MR. ZAPP: WELL, LET ME OBJECT TO THE EXTENT IT MAY CALL FOR PRIVILEGED COMMUNICATION.

BY MR. BECKER:

Q. WELL, DID YOU LEARN ABOUT IT FROM COUNSEL OR DID YOU LEARN ABOUT IT FROM MANAGEMENT OR DID YOU LEARN ABOUT IT AT A MEETING THAT INCLUDED COUNSEL?

A. I LEARNED ABOUT IT AT A MEETING WITH COUNSEL.

Q. WHAT COUNSEL WAS PRESENT DURING THAT MEETING?

MR. ZAPP: YOU CAN ANSWER THAT.

THE WITNESS: JIM ZAPP, HIMA VATTI. THAT MAY HAVE BEEN IT. I DON'T RECALL IF THERE WAS A THIRD

12/27/2011

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A. NO.

Q. NOW, I WANT TO BE CLEAR ABOUT THIS. BACKING UP TO THE MAY MEETING WITH COUNSEL, IT'S COUNSEL'S POSITION YOU CAN'T SAY A WORD ABOUT THAT MEETING, RIGHT? SO -- AND THIS IS SORT OF JUST FOR EVERYBODY'S INFORMATION HERE. I'M NOT TRYING TO BADGER THE WITNESS OR ANYTHING, BUT IF THAT'S GOING TO BE THE EVIDENCE IN THE CASE ABOUT YOUR KNOWLEDGE OF DAVID COMING IN MAY OF 2010 IN THIS LAWSUIT, AND THAT'S ALL THE JURY IS GOING TO HEAR ABOUT, OKAY, THEN IT WILL CREATE AN INFERENCE OR QUESTION AS TO WHAT YOU KNEW. AND IF YOU'RE NOT ABLE TO TELL THE JURY, I'M GOING TO MAKE CERTAIN ARGUMENTS ABOUT WHAT YOU KNEW.

SO YOU MAY WANT TO TAKE A BREAK WITH COUNSEL AT SOME POINT AND LET ME KNOW IF YOU CAN SAY ANY MORE ABOUT IT, BUT I'M GOING TO ACCEPT IT AS IT IS RIGHT NOW WITH THAT LITTLE BIT OF INFORMATION.

BY THE WAY, DID YOU HAVE ANY MORE MEETINGS WITH COUNSEL PRESENT AFTER MAY?

A. YES.

Q. ABOUT HOW MANY?

A. I DON'T RECALL THE TOTAL NUMBER.

Q. GIVE ME AN ESTIMATE.

A. MAYBE A HALF-DOZEN.

Q. WOULD THAT INCLUDE TODAY'S MEETING BEFORE THE

12/27/2011

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS

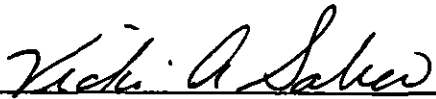
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4
5 I, VICKI A. SABER, A CERTIFIED SHORTHAND REPORTER
6 IN THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

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

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

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

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

20
21 
22 _____
23 VICKI A. SABER
24 CSR NO. 6212

12/27/2011

PAUL HASTINGS

(213) 683-6294
jameszapp@paulhastings.com

August 19, 2011

13365.00018

VIA E-MAIL AND US MAIL

William J. Becker, Jr., Esq.
The Becker Law Firm
11500 Olympic Blvd., Suite 400
Los Angeles, CA 90064

Re: *Coppedge v. Jet Propulsion Laboratory, et al.*
Los Angeles Superior Court Case No. BC435600

Dear Bill:

Please be advised that Richard Van Why reviewed and signed the original of Volume II of his deposition transcript on Thursday, August 18, 2011. Mr. Van Why made the following corrections/changes:

<u>Page:Line</u>	<u>Reads</u>	<u>Should Read</u>
15:7-8	"ORGANIZATION OF THE CHIEF OPERATING OFFICER--CHIEF"	"ORGANIZATION OF THE CHIEF INFORMATION OFFICER."
42:16	"STANDARDS"	"STANDARD"
62:18	"HE DOES WORK FOR CASSINI."	"HE DOES NOT WORK FOR CASSINI."
70:4	"SPECIFIC"	"NON-SPECIFIC"
79:11	"PEER"	"PURE"
105:3	"TIRE"	"TIME"
108:23	"DIRECTOR AT"	"DIRECTORATE"
110:21	"EMPLOYEES"	"EMAILS"
122:8	"LOOK A LOOK AT ANY OPEN POSITION "	"I LOOKED FOR ANY OPEN POSITIONS "

12/27/2011

PAUL HASTINGS

William Becker, Esq.
August 19, 2011
Page Two

Very truly yours,



James A. Zapp
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

JAZ:cw

LEGAL_US_W # 68886220.1

12/27/2011

PROOF OF SERVICE

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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 December 27, 2011, I served the foregoing document(s) described as:

REPLY ON MOTION *IN LIMINE* #4

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

on the interested parties as follows:

William J. Becker, Jr., Esq. Attorney for Plaintiff
THE BECKER LAW FIRM DAVID COPPEDGE
11500 Olympic Blvd, Suite 400
Los Angeles, CA 90064
Email: bbeckerlaw@gmail.com

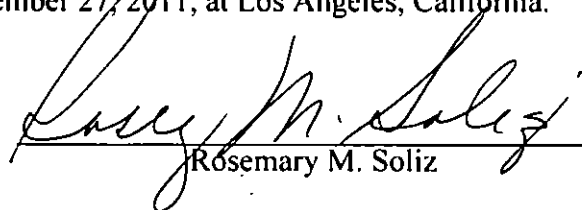
VIA ELECTRONIC MAIL:

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 December 27, 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 December 27, 2011, at Los Angeles, California.



Rosemary M. Soliz

12/27/2011