

1 PAUL HASTINGS LLP  
2 JAMES A. ZAPP (SB# 94584)  
3 jameszapp@paulhastings.com  
4 CAMERON W. FOX (SB# 218116)  
5 cameronfox@paulhastings.com  
6 MELINDA A. GORDON (SB# 254203)  
7 melindagordon@paulhastings.com  
8 515 South Flower Street  
9 Twenty-Fifth Floor  
10 Los Angeles, CA 90071-2228  
11 Telephone: (213) 683-6000  
12 Facsimile: (213) 627-0705

13 Attorneys for Defendant  
14 CALIFORNIA INSTITUTE OF TECHNOLOGY

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

DEC 27 2011

John A. Cramer, Court Officer/Clerk

By Glorietta Robinson, Deputy  
GLORIETTA ROBINSON

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

17 DAVID COPPEDGE, an Individual,  
18 Plaintiff,

19 vs.

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

CASE NO. BC 435600

**REPLY ON MOTION *IN LIMINE* #8**

**DEFENDANT CALIFORNIA INSTITUTE  
OF TECHNOLOGY'S REPLY IN  
SUPPORT OF MOTION *IN LIMINE* #8  
("DML 8") FOR AN ORDER EXCLUDING  
TESTIMONY, EVIDENCE, ARGUMENT  
AND COMMENT REGARDING  
PLAINTIFF'S SUBJECTIVE OPINIONS  
AS TO ULTIMATE LEGAL ISSUES**

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

Trial Date: March 7, 2012

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Caltech's moving papers urged the Court to exclude any testimony by Coppedge  
4 regarding ultimate issues before the jury – *i.e.*, that he was demoted, and that he experienced  
5 religious discrimination and retaliation. As Caltech's motion makes clear, these are nothing more  
6 than irrelevant and improper legal opinions, and will do nothing more than confuse the jury and  
7 create undue prejudice to Caltech.

8 **II. DISCUSSION**

9 **A. Testimony By Coppedge On Legal Issues Should Be Excluded As Irrelevant**  
10 **And Improper Legal Opinions.**

11 Coppedge's Opposition is dismissive of Caltech's concerns, contending that testimony of  
12 this kind is generally admissible and that Caltech is trying to "suppress" the facts.

13 First, Coppedge is incorrect in contending that such evidence is admissible. While lay  
14 witnesses may use conclusory descriptions of *facts*, in certain limited circumstances (e.g., to  
15 describe someone as intoxicated), this does not entitle them to give legal opinions. *Osborn v.*  
16 *Mission Ready Mix*, 224 Cal. App. 3d 104 (1990), cited by Coppedge, aptly makes the point.  
17 There, the court of appeal found that it was permissible for a personal injury plaintiff to testify  
18 that a dangerous condition was open and obvious, but that trying to have the plaintiff testify about  
19 whether the condition was unreasonable "called for a legal conclusion" and was therefore  
20 objectionable. *Id.* at 113-14.

21 The other cases cited by Coppedge likewise do not help him. *Anderson v. HCA Deer*  
22 *Park Hospital*, 834 F. Supp. 183, 185-189 (S.D. Tex. 1993) discusses evidence introduced in a  
23 *bench* trial, without commenting on its admissibility – but does confirm the lack of relevance of a  
24 plaintiff's subjective belief that discrimination occurred. *Id.* at 190 ("A plaintiff's subjective  
25 belief of discrimination, however genuine, cannot alone be the basis for judicial relief."). *Belian*  
26 *v. Texas A & M University Corpus Christi*, 987 F. Supp. 517, 522-23 (S.D. Tex. 1997) likewise  
27 offered no substantive analysis on admissibility; rather, it just noted the evidence presented by the  
28 plaintiffs and then proceeded to grant defendant's motion for judgment as a matter of law. As for

1 *Kelley v. Conco Companies*, 196 Cal. App. 4th 191 (2011), it simply dealt with the legal  
2 proposition that an employee need not prove that he was discriminated against in order to bring a  
3 retaliation claim, but rather, need only show that he opposed conduct he reasonably believed to be  
4 discriminatory. *Id.* at 209. *Kelley* involved a motion for summary judgment, not a trial, did not  
5 analyze the admissibility issues at hand, and offers no guidance here.

6 Second, and more importantly, Coppedge misses the point: Caltech does not intend to  
7 preclude *evidence* regarding whether Coppedge experienced religious discrimination or  
8 retaliation, only testimony that amounts to Coppedge's opinion on ultimate legal issues. His own  
9 Opposition suggests the appropriate limits to his testimony: Coppedge of course can testify about  
10 what he told his supervisors or the HR investigator. Opp'n at 2. What he cannot do is testify that  
11 he actually experienced discrimination, a demotion, or retaliation, in the legal sense.

12 **B. Coppedge's Opinions On Legal Issues Should Be Excluded Under Evidence**  
13 **Code Section 352.**

14 Coppedge's Opposition gives short shrift to the prejudice that Caltech would suffer if  
15 Coppedge was allowed to present such testimony. Caltech never suggested that the jury will  
16 "mistake Coppedge for being a lawyer," nor is that an accurate description of the danger here.  
17 Opp'n at 3. The issue is that Coppedge will be presenting as "opinions" what are actually  
18 questions for the jury: whether he was demoted, and whether he experienced religious  
19 discrimination or retaliation. The risk that the jury will be misled to classify Coppedge's opinions  
20 as fact is significant, especially when he is presenting them as such. While Caltech can seek to  
21 limit this harm through cross-examination, or a jury instruction, the surest way to prevent undue  
22 prejudice is to prohibit Coppedge from presenting such testimony at all.

23 **III. CONCLUSION**

24 For the foregoing reasons, and those set forth in its moving papers, Caltech respectfully  
25 requests that the Court grant its Motion and preclude Coppedge, his counsel and witnesses from  
26 offering, introducing, or presenting any reference, comment, testimony, document, or argument  
27 regarding Coppedge's subjective beliefs or opinions on ultimate legal issues, including, without  
28 limitation (i) that Caltech discriminated against him based on his religion (or viewpoints); (ii) that

1 Caltech retaliated against him; and (iii) that the transfer of lead duties to another System  
2 Administrator constituted a demotion.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

1 **PROOF OF SERVICE**

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

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

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

8 **REPLY ON MOTION *IN LIMINE* #8**

9 **DEFENDANT CALIFORNIA INSTITUTE OF TECHNOLOGY'S REPLY IN**  
10 **SUPPORT OF MOTION *IN LIMINE* #8 ("DML 8") FOR AN ORDER EXCLUDING**  
11 **TESTIMONY, EVIDENCE, ARGUMENT AND COMMENT REGARDING**  
12 **PLAINTIFF'S SUBJECTIVE OPINIONS AS TO ULTIMATE LEGAL ISSUES**

13 on the interested parties as follows:

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

Attorney for Plaintiff  
DAVID COPPEDGE

18 Email: [bbeckerlaw@gmail.com](mailto:bbeckerlaw@gmail.com)

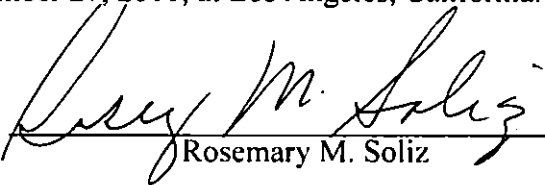
19  **VIA ELECTRONIC MAIL:**

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

22  **VIA U.S. MAIL:**

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

28 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