

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 27 2011

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

DAVID COPPEDGE, an individual;

Plaintiff,

vs.

JET PROPULSION LABORATORY, form
unknown; **CALIFORNIA INSTITUTE OF
TECHNOLOGY**, form unknown; **GREGO-
RY CHIN**, an Individual; **CLARK A.
BURGESS**, an Individual; **KEVIN KLENK**,
an Individual; and **Does 1** through **25**, inclu-
sive,

Defendants.

Case No. BC435600

The Honorable Ernest M. Hiroshige, Dept. 54

**PLAINTIFF DAVID COPPEDGE'S RE-
PLY TO DEFENDANT JPL'S OPPOSI-
TION TO MOTION IN LIMINE NO. 1
TO PERMIT THE SHOWING OF TWO
INTELLIGENT DESIGN DVDS TO
THE JURY; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUP-
PORT THEREOF**

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

Trial Date: March 7, 2011

BY FAX

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant JPL devotes its argument to disputing facts for the purpose of proving that in-
4 telligent design DVDs loaned out to co-workers are irrelevant to Coppedge's religious discrimi-
5 nation claims. But JPL's argument depends upon the false premise that its one-sided, self-
6 serving evidence is uncontradicted. The court need only refer to JPL's documented record of
7 discipline to know that Coppedge was accused and found guilty of violating JPL's Unlawful
8 Harassment Policy due to religious stereotyping of the intelligent design topic of the DVDs, e.g.:
9 (1) "Co-workers found your requests to watch your DVDs ... unwelcome." (Exh. No. 1¹,
10 JPL's Written Warning issued to Coppedge; emphasis added.); and (2) "approx 8 AM, employee
11 MW [Margaret Weisenfelder] came to my office to express a concern about being harassed by
12 David – his belief in Intelligent Design...." (Exh. No. 2, Greg Chin's description of Weisen-
13 felder's complaining to him after watching an intelligent design DVD she borrowed from
14 Coppedge; emphasis added.)

15
16 And, of course, Coppedge's version of the initial disciplining of him is material evidence
17 that the DVDs were the force driving the adverse actions taken against him by JPL:

18
19 "You told me that it had been reported to you that I was pushing my religious views at
20 work and that some found this offensive. You told me this must stop. You ordered me not
21 to discuss politics or religion with anyone in this office.... When I asked what consti-
22 tuted the religious views, you said I was giving out DVDs about intelligent design.
23 When I asked why that constituted pushing religious views, you said emphatically,
24 'intelligent design is religion' at least twice."

25 (Exh. No. 3, 3/3/2009 e-mail from Coppedge to Chin; emphasis added.)
26

27 ¹ All references to exhibits herein correspond to the exhibits attached to the Declaration of Wil-
28 liam J. Becker, Jr., filed concurrently herewith.

1 So what is JPL's point, if disputing the facts isn't enough to show the DVDs to be irrele-
2 vant? Very simply, JPL seeks to blind jurors from the religious animus animating employees
3 who felt "harassed" and "bothered" by Coppedge's perceived religious views – views they be-
4 lieved intelligent design (and the DVDs on intelligent design Coppedge loaned out) touted.
5 JPL's method of disguising the motives of its employees is to claim that they acted in response to
6 Coppedge's "manner" – his non-verbal behavior – and not the perceived religious message they
7 believed he was imposing on them. But JPL is engaging in mere dissembling. If JPL were sin-
8 cere in advancing this argument, and not merely offering it as pretext, it would have revealed ev-
9 idence of Coppedge's alleged inappropriate behavior. The absence of any reference to such evi-
10 dence in its opposition brief exposes the dishonesty of JPL's argument.
11

12 The DVDs are not only relevant to show pretext, but essential to understanding
13 Coppedge's cause of action, as explained below.² Applying analogous facts in a recognizable
14 context reveals why that is.
15

16 **II. UNDER DIRECTLY ANALOGOUS FACTS, THE NEED TO SHOW THE JURY**
17 **THE DVDS BECOMES OBVIOUS.**

18 What if Coppedge had not been accused of harassment based on his religious views, but
19 instead accused of sexually harassing Weisenfelder based on the perception that the DVDs were
20 obscene? Would the content of the DVDs be relevant in that case? These questions are best an-
21 swered by mapping the material facts in this case (Section A, *infra*) into a hypothetical illustra-
22 tion (Section B, *infra*).
23
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25

26
27 ² Coppedge incorporates by reference as though fully set forth herein his Opposition to JPL's
28 Motion in Limine No. 2.

1 **A. Summary Of Material Facts**

2 **1. Margaret Weisenfelder**

3 In this case Plaintiff David Coppedge loaned a DVD to a coworker, Margaret Weisen-
4 felder. Weisenfelder believes it had a religious viewpoint, and she is expected to testify to that
5 belief. (Exh. No. 4, Weisenfelder Dep.Tr., 22:25-23:10.) Weisenfelder feared Coppedge would
6 try to approach her again by loaning her another DVD. (*Id.*, 160:17-161:4.) She complained to
7 Greg Chin, Coppedge's office manager, that Coppedge had "harassed" her by discussing his re-
8 ligion in the workplace by loaning her the DVD ("approx 8 AM, employee MW came to my of-
9 fice to express a concern about being harassed by David -- his belief in Intelligent Design....").
10 (Exh. No. 2, *supra.*) Weisenfelder told HR that Coppedge doesn't know when he is "stepping
11 over the line" by discussing religion in the workplace. (Exh. No. 5, Weisenfelder interview notes
12 from HR investigation.)
13

14 **2. Scott Edgington**

15 Coppedge also loaned Scott Edgington an intelligent design DVD, "The Privileged Plan-
16 et"). (Exh. No. 6, Edgington Dep.Tr., 15:9-16:5). Edgington testified that he never watched it
17 because he had made up his mind that intelligent design is religion and therefore the DVD was
18 something he was not interested in watching. (*Id.*, 19:7-20:7.) Although he had never discussed
19 religion with Coppedge, he did believe the DVD contained a religious viewpoint (Creationism)
20 (*id.*) and conveyed his belief to Carmen Vetter that he was "bothered" by Coppedge's religious
21 views. (Exh. No. 7, Chin interview notes from HR investigation.) Vetter passed that message on
22 to Greg Chin, and Chin told HR. (*Id.*) HR relied on the statement in reaching its disciplinary rec-
23 ommendations, which were adopted and ratified by management. HR did not look at the DVDs
24 to see if they contained religious material.
25
26
27
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1 **3. Additional Material Facts**

2 Coppedge maintains the DVDs "Unlocking the Mystery of Life" and "The Privileged
3 Planet" are science documentaries – not religious dogma. Coppedge tried to explain that to
4 Chin, who refused to discuss it with Coppedge, Jhertaune Huntley, the HR investigator, and his
5 supervisors, Kevin Klenk and Clark Burgess. None of these individuals was willing the view the
6 DVDs to determine whether they contained objectionable religious viewpoints. Huntley refused
7 to look at the DVDs or to otherwise determine whether they do, in fact, contain objectionable
8 religious dogma. Nevertheless, Huntley recommended disciplinary measures, which Klenk and
9 Burgess adopted and ratified. Klenk and Burgess issued Coppedge a Written Warning ordering
10 him not to discuss his "personal views," which people found to be "unwelcome." They state
11 that, as an example, people found the DVDs to be unwelcome. They then demoted Coppedge
12 from team lead. Coppedge was ultimately terminated.
13

14 Bob Mitchell, the head of the Cassini program, testified he believed Coppedge was push-
15 ing his religion by loaning out the DVDs.
16

17 **B. Analogous Hypothetical – Lending an Ob-Gyn DVD that Others Claim is Ob-**
18 **scene (With or Without Having Viewed It):**

19 Assume the following facts:

- 20 1) Instead of working in the planetary program of a large space facility, Coppedge works
21 at the obstetrics and gynecology (OB-GYN) department of a large medical facility.
22 2) Instead of loaning Weisenfelder, Edgington and others DVDs about intelligent de-
23 sign, Coppedge loans them DVDs about new advances in obstetrics and gynecology.
24 3) Weisenfelder contends that the DVD she borrowed contains obscene material and
25 will testify to that fact at trial.
26 4) Weisenfelder contends that she feared Coppedge would approach her again with ob-
27 scene material.
28 5) Weisenfelder complains she has been *sexually* harassed.
 6) After Weisenfelder complains to Greg Chin (Coppedge's office manager), Chin ac-
 cuses Coppedge of lewdness and indecency. Chin orders Coppedge to stop handing

1 out DVDs, which he believes are obscene. Chin then asks HR to conduct an investi-
2 gation.

3 7) Edgington has made up his mind that the DVD he borrowed is obscene and refuses to
4 watch it.

5 8) Although Coppedge has never discussed anything salacious with him, Edgington
6 nevertheless is "bothered" by Coppedge's "depravity" and considers him a degener-
7 ate.

8 9) Edgington conveys his opinion of Coppedge to Vetter, who tells Chin. Chin passes
9 the message along to HR in connection with its investigation into Weisenfelder's sex-
10 ual harassment claim. Edgington's observation serves as a basis for HR's conclu-
11 sions and recommendations.

12 10) Coppedge contends the DVDs do not contain obscene material, but relate to medical
13 concerns consistent with his employer's specialized field.

14 11) HR refuses to look at the DVDs or to otherwise determine whether they are, in fact,
15 obscene.

16 12) HR recommends discipline.

17 13) Management adopts and ratifies HR's recommendations without inspecting the con-
18 tent of the DVDs.

19 14) Management bars Coppedge from discussing his "personal views," which some con-
20 sidered obscene and therefore unwelcome. He is demoted and eventually terminated.

21 15) Bob Mitchell (Chin's boss and the head of the OB-GYN Department) testifies that he
22 agrees that the DVDs were obscene and that this is a prevailing view about
23 Coppedge's beliefs and attitudes throughout the department.

24 16) Management's lawyers want to preclude Coppedge from showing the jury the DVDs
25 so he can prove they contain no obscene content.

26 Under this slightly altered hypothetical scenario, there can be no doubt that a jury should
27 be given the opportunity to watch the DVDs and decide: (a) whether the accusing individuals'
28 perceptions were unfair and erroneous, (b) whether HR failed to conduct a fair investigation, and
(c) whether management failed to consider Coppedge's relevant arguments in his defense.

When there is a charge of harassing or inappropriate speech in a given context, the con-
tent of the speech is directly relevant. *See, e.g., Pantoja v. Anton* (2011) 198 Cal.App.4th 87,
119 at n.3 (whether a party's words and conduct were offensive was judged by actions and the
actual words used); *Bonnell v. Lorenzo* (6th Cir. 2001) 241 F.3d 800, 820-821 (actual words es-

1 tablished fact of vulgar and inappropriate speech); *Dambrot v. Central Michigan University* (6th
2 Cir. 1995) 55 F.3d 1177, 1189-90 (actual words were examined for appropriateness in civil
3 rights action); *Vasquez v. County of Los Angeles* (9th Cir. 2003) 349 F.3d 634, 642-643 (actual
4 words were deemed offensive in analysis of workplace harassment).

5 Defendant here claims Coppedge "pushed" his "religion" via his lending DVDs. The on-
6 ly way to know if Defendant's claims are valid is to see what the DVDs' content actually is.

7
8 **III. THE ACTUAL CONTENT OF THE DVDS IS RELEVANT TO EXPLAIN THE**
9 **MENTAL STATES OF KEY ACTORS, AND IN PARTICULAR THE NATURE**
10 **OF THEIR HOSTILITY TOWARD INTELLIGENT DESIGN, THEIR**
11 **STEREOTYPING OF IT, THEIR MOTIVES FOR REPORTING DISCOMFORT**
12 **AND HARASSMENT, THEIR MOTIVES FOR WANTING COPPEDGE**
13 **RESTRAINED FROM DISCUSSING IT, THEIR DISSEMBLING AND OTHER**
14 **FACTORS RELEVANT TO PROOF OF DISCRIMINATORY ANIMUS.**

15 JPL makes a series of calculated and misleading statements about the evidence in this
16 case. It argues that "no witness ever complained about the DVDs' contents [sic]." (JPL Br., 1:5-
17 6.) But the evidence shows that Weisenfelder and Edgington *did* complain about the DVDs.

18 In spite of JPL's groaning insistence that this case is really concerned with Coppedge's
19 non-verbal conduct – his "manner" – there is not a shred of evidence that Coppedge behaved in-
20 appropriately at any time. Especially in Weisenfelder's case, Coppedge simply loaned her the
21 DVD to take home (Exh. No. 4, *supra*, 114:3-8) – she said he never even discussed intelligent
22 design with her ("Q Did David ever discuss intelligent design with you at any time? A. No.")
23 (*Id.*, 20:21-23.) Weisenfelder may say that Coppedge was "persistent" (*see* JPL Br., 2:15-16), but
24 that self-serving testimony is not corroborated by other evidence. After viewing portions of the
25 DVD "Unlocking the Mystery of Life" at home and finding it to be "repetitive" and "heavy-
26 handed" (Exh. No. 4, *supra*, 19:17-20:7), Weisenfelder complained about Coppedge "harassing"
27 her with his views on intelligent design. (Exh. No. 2, *supra* ("approx 8 AM, employee MW
28 [Margaret Weisenfelder] came to my office to express a concern about being harassed by David

1 – his belief in Intelligent Design....”); emphasis added.) Weisenfelder has testified that she was
2 not offended by the intelligent design content of the DVD. (*Id.*, 29:12-2.) But her self-serving
3 testimony is contradicted by other testimony that she “feared” Coppedge would approach her
4 again to loan her DVDs on the subject of intelligent design:

5 “Q Tell me what your fear was, please, ma’am....

6 * * *

7 THE WITNESS: I didn't want to be contacted again.

8 BY MR. BECKER: Q So the sticky note made you feel like he would try to come back
9 and approach you again with another DVD or with this DVD; right?

10 A or -- I don't know. Yes, it did.

11 BY MR. BECKER: Q Okay. That was your fear?

12 A Yes.”

13 (Exh. No. 4, *supra*, 160:17-161:4; emphasis added.)

14 Weisenfelder further testified in this case that she believed the DVD she borrowed from
15 Coppedge had a religious viewpoint. (*Id.*, 22:25-23:10.) After Weisenfelder made her complaint
16 to Chin, Chin excoriated Coppedge for pushing his religion on people and insisted that intelligent
17 design is “religion.” Thus, Weisenfelder’s decision to report Coppedge for “harassment,” her
18 “fear” that Coppedge would approach her again concerning intelligent design and Chin’s reac-
19 tion to her complaint in demanding that Coppedge stop pushing his religious views with his in-
20 telligent design DVDs shows circumstantially that – contrary to Weisenfelder’s self-serving tes-
21 timony – she *was* offended by what she perceived to be a religious message conveyed by the
22 DVD and feared any association with the topic of intelligent design. This fact is bolstered by her
23 statement to the HR investigator that Coppedge doesn’t know when he is “stepping over the line”
24 discussing religion in the workplace. (Exh. No. 5, *supra*.) Scott Edgington also complained
25 about Coppedge’s religious views on the basis of a DVD Coppedge loaned him. (See Section
26 II(A)(2) Summary of Material Facts, *supra*.)
27
28

1 What would cause Weisenfelder, Edgington and other witnesses to contradict them-
2 selves? Why would Weisenfelder complain of "harassment" when she had never spoken to
3 Coppedge about intelligent design, particularly not in the workplace, but had watched a DVD she
4 felt argued a religious message? Why would Edgington be "bothered" by Coppedge's religious
5 views if he had never spoken to Coppedge about religion, but had been loaned an intelligent de-
6 sign DVD? The jury cannot get to the answers unless it sees that Weisenfelder/Edgington and
7 other witnesses dissembled, and determine that they held a hostility toward intelligent design on
8 the basis of ignorance and prejudice.
9

10 **IV. THE DVDS ARE RELEVANT AND WILL NOT NECESSITATE AN UNDUE**
11 **CONSUMPTION OF TIME, CREATE A DANGER OF UNDUE PREJUDICE,**
12 **CONFUSE THE ISSUES, OR MISLEAD THE JURY.**

13 Evidence that has any tendency to prove a fact at issue in a lawsuit is relevant. Evid.
14 Code § 210. The test of relevancy is whether the evidence tends, logically, naturally, or by rea-
15 sonable inference to establish a material fact, not whether it conclusively proves it. *People v.*
16 *Vernon* (1979) 89 Cal. App. 3d 853 (evidence allowed). It is axiomatic that its weight is for the
17 jury. (*Id.*)

18 Coppedge respectfully submits that evidence of the DVDs' actual content (what Weisen-
19 felder watched and what others presumed to know) is highly probative of the issues in this case.
20 This case concerns the intolerant attitudes of Coppedge's peers, who believed the DVDs to be so
21 offensive they could not tolerate Coppedge approaching them on the subject of intelligent design.
22 Weisenfelder "feared" Coppedge would contact her again to discuss intelligent design. Edging-
23 ton refused to watch the DVD he was loaned due to religious stereotyping. He was "bothered"
24 by Coppedge's religious views, although he had never discussed religion with Coppedge. JPL
25 specifically singled out the DVDs as having been the basis for its disciplinary actions ("You
26 acknowledged that you approached various coworkers during work hours to inquire if they were
27
28

1 interested in watching your DVDs which clearly express your personal views and you engaged
2 various co-workers in conversations about your personal views. You failed to stop these activi-
3 ties when you were told they were unwelcome and disruptive.... [C]o-workers found your re-
4 quests to watch your DVDs that express your personal views to be unwelcome." (Exh. No. 1,
5 Written Warning.)
6

7 JPL cannot legitimately argue that it would be prejudiced by the showing of the DVDs
8 inasmuch as the adverse actions it took were based on its misapprehension of the nature of the
9 DVDs, stubborn unwillingness to accept Coppedge's description of the their non-religious nature
10 and blind acceptance of the claim that Coppedge was forcing his religious views on his accusers.
11

12 Nor will the showing of these DVDs confuse or mislead the jury as to the issues in this
13 case. The jury will watch what Weisenfelder watched and what she determined to be a religious
14 message. Jurors will see what Edgington, based on religious stereotyping, refused to watch.
15 They will see what Coppedge's supervisors and JPL's HR investigator felt to be evidence of har-
16 assment without ever having viewed them.

17 Nor will the showing of these DVDs necessitate an undue consumption of time. The run-
18 ning time of each DVD is approximately one hour. JPL can hardly be concerned that a trial it
19 anticipates to last five weeks will be unreasonably lengthened by two hours.
20

21 ///

22 ///

23 ///

1 **V. CONCLUSION**

2 JPL singled out the DVDs as a basis for its punishment of Coppedge and thus found them
3 relevant to its disciplinary decisions. If the DVDs were *relevant* to its disciplinary decisions,
4 how are they *irrelevant* to Coppedge's claim of religious discrimination? JPL's attempt to blind-
5 side the jury should be rejected. Jurors should be permitted to decide whether JPL rushed to
6 judgment by ratifying the hostile prejudices of Coppedge's accusers while ignoring exculpatory
7 evidence.
8

9 DATED: December 27, 2011

THE BECKER LAW FIRM

William J

Becker Jr,

Esq

By:

WILLIAM J. BECKER, JR., ESQ.

Attorneys for Plaintiff, DAVID COPPEDGE

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1 **PROOF OF SERVICE BY EMAIL**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action; my business address is: 11500 Olympic Blvd., Suite 400,
Los Angeles, California 90064. On December 27, 2011, I served the foregoing documents:

4 **PLAINTIFF DAVID COPPEDGE'S REPLY TO DEFENDANT JPL'S**
5 **OPPOSITION TO MOTION IN LIMINE NO. 1 TO PERMIT THE SHOWING OF**
6 **TWO INTELLIGENT DESIGN DVDS TO THE JURY; MEMORANDUM OF**
POINTS AND AUTHORITIES IN SUPPORT THEREOF

7 The above-referenced document was served on:

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9 Melinda Gordon, Esq..
10 Cameron W. Fox, Esq.
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Attorneys for Defendants, **California Insti-**
tute of Technology, Gregory Chin, Clark
A. Burgess and Kevin Klenk

15 ☒ **BY E-MAIL:** Pursuant to the agreement of counsel, I e-mailed the aforementioned docu-
16 ments to the addressees shown above.

17 ☒ (State) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

18 Executed on December 27, 2011, at Los Angeles, California.

19 William J
20 Becker Jr,
21 Esq
22
23
24
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26
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Digitally signed by William J Becker
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William J. Becker, Jr.