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FILED
LOS ANGELES SUPERIOR COURT

JAN 27 2012

JOHN A. CLARKE, CLERK
BY RAUL SANCHEZ DEPUTY

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

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

Case No. BC435600

The Honorable Ernest M. Hiroshige, Dept. 54

12 vs.

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

**NOTICE OF MOTION AND MOTION
IN LIMINE NO. 3 PRECLUDING EVI-
DENCE AND ARGUMENT SUGGEST-
ING THAT DEFENDANT HAD A
RIGHT TO INTERFERE WITH
COPPEDGE'S POLITICAL ACTIVI-
TIES; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

18 Defendants.

[Decl. of W.Becker, Exhs., Req.Jud.Not.,
Appdx. of Non-Calif. Auth's., filed
concurrently herewith]

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

Trial Date: March 7, 2012

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BY FAX

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 24, 2012, at 9:00 a.m., or as soon after that
3 date as the matter can be heard, in Department "54" of the above-entitled court, located at 111 N.
4 Hill St, Los Angeles, California 90012, Plaintiff David Coppedge ("Plaintiffs"), will move the
5 Court for an Order in limine precluding JPL from introducing testimony or documents, or pre-
6 senting any argument, suggesting it had a right to interfere with Coppedge's political activities.
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8 This motion is made on the grounds that such evidence will confuse the issues, mislead
9 the jury and create a substantial danger of undue prejudice to Plaintiff.

10 On November 24, 2012, counsel for Plaintiff satisfied the meet and confer requirements
11 of Local Rule 3.57 by speaking with counsel for Defendant regarding the substance of this Mo-
12 tion. See Declaration of William J. Becker, Jr. Defendant's counsel stated that Defendant would
13 not agree to limit the evidence at trial in a manner consistent with the limitations requested in
14 this Motion. *Id.*

15
16 The Motion will be based on this notice of motion, on the attached Memorandum of
17 Points and Authorities, the Declaration of William J. Becker, Jr., and Exhibits attached thereto in
18 Support Thereof; the Request for Judicial Notice and Exhibit attached thereto and in support
19 thereof; all papers, pleadings, and records on file in this action and on any evidence presented at
20 the hearing of the motion.
21

22 DATED: January 27, 2012

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THE BECKER LAW FIRM
William J
Becker Jr, Esq
By: WILLIAM J. BECKER, JR., ESQ.
Attorneys for Plaintiff, DAVID COPPEDGE

Digitally signed by William J Becker Jr, Esq
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Up to a point, a private employer has a right to restrain an employee's speech activities.
4 A private employer's right is limited by Labor Code § 1101, which provides that a private em-
5 ployer *does not* have the right to control or direct an employee's political activities. Defendant
6 JPL intends to present evidence or argue to the jury that as a private employer, it had a right to
7 control Plaintiff David Coppedge's speech activity. But JPL did not have a right to control
8 Coppedge's political (speech) activity.
9

10 This Court has observed that California law does not prohibit regulation of employee
11 speech by a private employer like JPL. (Motion for Summary Judgment, Req.Jud.Not., Exhs. 1
12 (tentative ruling) & 2 (final ruling adopting tentative ruling), citing *Peterson v. Hewlett-Packard*
13 *Co.* (9th Cir. 2004) 358 F.3d 599, 605, n.5.) However, California law *does* prohibit private em-
14 ployers from making, adopting, or enforcing *any rule, regulation, or policy* controlling or direct-
15 ing, or tending to control or direct, the political activities of employees. Lab. Code § 1101.
16

17 Coppedge was engaged in political activities when he sought to discuss a political meas-
18 ure (Proposition 8) with co-workers and was ordered to refrain from engaging in activity that
19 amounted to a *de facto* violation of Section 1101. However, under this Court's ruling on JPL's
20 Motion for Summary Judgment, Coppedge is prevented from offering evidence that he had a
21 statutorily protected right to engage in political speech activity, including handing out fliers and
22 discussing political issues, and that JPL interfered with it. If allowed to argue or present evi-
23 dence that it had an affirmative right to interfere with Coppedge's political speech activities, JPL
24 would be given an unfair advantage in this case. If Coppedge cannot tell the jury he had a right
25 to engage in political speech activity, JPL should not be allowed to tell the jury it had a right to
26 control or direct his political speech activity.
27
28

1 **II. RELEVANT FACTS**

2 Plaintiff's Second Amended Complaint ("SAC") alleged a Second Cause of Action for
3 violation of Labor Code § 1101. That Section provides in relevant part: "No employer shall
4 make, adopt, or enforce any *rule, regulation, or* policy ... [c]ontrolling or directing, or tending
5 to control or direct the political activities or affiliations of employees." The SAC additionally
6 alleged, *inter alia*, that "Plaintiff was told to stop expressing all personal views on politics... in
7 the workplace or he would be fired." (SAC, ¶ 48, 16:12-20.)

8
9 In addition to alleging a violation of Section 1101, Coppedge introduced evidence of
10 JPL's rule, regulation or policy of placing *de facto* prior restraints on his speech activity in oppo-
11 sition to JPL's Motion for Summary Judgment. (Req.Jud.Not., Exh. No. 3, Written Warning,
12 attached to Becker Decl., Exh. 23 (ordering Coppedge to refrain from engaging in activity ex-
13 pressing his personal views on religion and politics).) As specifically set forth in the Written
14 Warning issued to Coppedge, JPL justified its disciplining and censorship of him based upon the
15 following alleged activity:
16

- 17 (1) Coppedge approached various co-workers during JPL business hours to discuss his
18 religious and political beliefs;
- 19 (2) Coppedge created disruption in the workplace by approaching a co-worker during
20 work hours to engage in a political debate about a recent controversial issue;
- 21 (3) When Coppedge discovered the co-worker did not share his political views,
22 Coppedge became upset and argumentative. The co-worker had to request that
23 Coppedge leave his office in order to cease the conversation; and
- 24 (4) Coppedge's behavior in the workplace was perceived as unwelcome and unprofes-
25 sional.

26 Additional evidence that JPL had interfered with Coppedge's political activities appears
27 in the written transcript of the disciplinary meeting held by Coppedge's supervisors with him on
28 April 13, 2009. JPL's oral directive reinforced the *de facto* prior restraints placed on Coppedge's
political speech activities, when they stated: "We [JPL] have no issue with people discussing re-
ligion and politics in the office *so long as it's not unwelcome or disruptive.*" Becker Decl., Exh.

1 I, excerpt from disciplinary meeting transcript, April 13, 2009.) That directive placed an unreal-
2 istic burden on Coppedge to ascertain when his approaching someone about a political issue
3 would be “unwelcome” and faulting him for causing “disruptions” should the other party taking
4 part in the discussion claim his work was disrupted (even in the absence of evidence of disrupt-
5 tion).
6

7 **III. MOTIONS IN LIMINE**

8 This motion is authorized pursuant to Local Rule 3.25(h)(2), which provides:

9 “In a direct calendar case, the parties must file and serve any trial preparation motions
10 and dispositive motions, other than summary judgment motions, including motions in
11 limine or bifurcation motion, with timely statutory notice so as to be heard on the day of
the final status.”

12 **IV. LEGAL STANDARD**

13 The court in its discretion may exclude evidence if its probative value is substantially
14 outweighed by the probability that its admission will (a) necessitate undue consumption of time
15 or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the
16 jury. Evid. Code § 352.
17

18 **V. ALLOWING JPL TO OFFER EVIDENCE THAT IT WAS AUTHORIZED TO**
19 **CONTROL COPPEDGE’S POLITICAL SPEECH ACTIVITY WILL CONFUSE**
20 **THE ISSUES, MISLEAD THE JURY AND CREATE A SUBSTANTIAL DANGER**
21 **OF UNDUE PREJUDICE TO COPPEDGE.**

22 JPL is expected to tell the jury: (1) that it did not interfere with Coppedge’s political
23 speech activities; and (2) that even if JPL had interfered with Coppedge’s political speech activi-
ties, JPL had the right to do so.

24 As to Point (1), it is a disputed issue in this case whether JPL’s compulsory order requir-
25 ing Coppedge to “refrain from discussions which are argumentative, disruptive and/or harassing
26 to your co-workers” operated as a prior restraint on his political (speech) activities. Coppedge
27 contends he was effectively barred from discussing politics altogether, because the order issued
28

1 to him placed an unfair and unrealistic burden on him to ascertain when his discussions on a mat-
2 ter of political interest to him would be found “unwelcome” or “disruptive” to others according
3 to the subjective guidelines given to him. Anyone who disagreed with Coppedge’s political po-
4 sitions could subjectively claim they felt the discussion to be unwelcome and disruptive, thus
5 exposing Coppedge to termination.
6

7 On Point (2), Labor Code § 1101, by its terms, bars private employers from making,
8 adopting, or enforcing *any rule, regulation, or policy* controlling or directing, or tending to con-
9 trol or direct, the political activities of employees. But Coppedge’s hands are tied. Coppedge
10 cannot seek reconsideration of this Court’s earlier ruling. Accordingly, if Coppedge is prevented
11 from introducing evidence or arguing that JPL interfered with his statutorily protected right –
12 when JPL is allowed to present contrary evidence – then Coppedge will be substantially preju-
13 diced.
14

15 **VI. CONCLUSION**

16 By virtue of its vague and unrealistic order, JPL enforced a *de facto* prior restraint on
17 Coppedge’s political speech activities, effectively muzzling him so that he would not be able to
18 discuss politics at work, especially not for the purpose of influencing others to consider the
19 strength of his political arguments.
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01/27/2010
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1 JPL should not be allowed to say it had a right the law says it does not have, i.e. to inter-
2 fere with an employee's political speech activities. For all the reasons stated herein, Plaintiff re-
3 spectfully urges this Court to enter an order precluding JPL from introducing testimony or doc-
4 uments, or presenting any argument, suggesting it had a right to interfere with Coppedge's politi-
5 cal activities.
6

7 DATED: January 27, 2012

THE BECKER LAW FIRM

8 William J
9 Becker Jr, Esq

Digitally signed by William J
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10 WILLIAM J. BECKER, JR., ESQ.
11 Attorneys for Plaintiff, DAVID COPPEDGE
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01/27/2012