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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,

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**,
an Individual; and **Does 1 through 25**, inclu-
sive,

18 Defendants.

Case No. BC435600

The Honorable Ernest M. Hiroshige, Dept. 54

**NOTICE OF MOTION AND MOTION
IN LIMINE NO. 2 TO EXCLUDE REF-
ERENCES TO PROPOSITION 8;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THERE-
OF**

[Decl. of W.Becker, Exhs., filed concurrently
herewith]

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

Trial Date: March 7, 2012

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

BY FAX

23 PLEASE TAKE NOTICE that on February 24, 2012, at 9:00 a.m., or as soon after that
24 date as the matter can be heard, in Department "54" of the above-entitled court, located at 111 N.
25 Hill St, Los Angeles, California 90012, Plaintiff David Coppedge ("Plaintiffs"), will move the
26 Court for an Order in limine to exclude from evidence at trial all references – both direct and in-
27
28

1 direct – to Proposition 8, to require that all documents mentioning or referring to Proposition 8
2 be properly redacted, to preclude all counsel and witnesses from referring to, mentioning or al-
3 luding to Proposition 8 – either directly or indirectly – and requiring counsel to advise all wit-
4 nesses not to mention Proposition 8.

5
6 This motion is made on the grounds that reference to Proposition 8 is not probative of any
7 material issue in this case, is likely to substantially prejudice Plaintiff's case, is a distraction to
8 the jury, will mislead the jury and confuse the issues and will result in an undue consumption of
9 time, particularly during jury selection.

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 This 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; all papers, pleadings, and records on file in this action and on any evidence
19 presented at the hearing of the motion.

20 DATED: January 27, 2012

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 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant JPL wants to inflame jurors' passions, prejudices and sympathy by referring to
4 Plaintiff David Coppedge's views on Proposition 8,¹ the 2008 constitutional amendment passed
5 by California voters. The court should not permit JPL to inject irrelevant controversy into an
6 already complicated case. The probative value of such evidence is substantially outweighed by
7 the probability that its admission will: (1) necessitate undue consumption of time, especially dur-
8 ing voir dire; (2) create a substantial danger of undue prejudice by those jurors who disagree with
9 Coppedge's support for Proposition 8; (3) confuse the issues; and (4) mislead the jury.
10

11 **II. RELEVANT FACTS**

12 In November 2008, on the day before the election, Coppedge handed out leaflets to co-
13 workers supporting Proposition 8 and invited them to discuss it with him. No one complained
14 until March 2009, and then only as part of an HR investigation into whether Coppedge had har-
15 assed co-workers by discussing his views on "religion and politics" prompted by his loaning out
16 a DVD documentary on intelligent design.
17

18 During the HR investigation, JPL learned that:

- 19 1) Coppedge had simply invited co-worker Margaret Weisenfelder to discuss the ballot
20 measure and walked away when she declined the invitation; and
21
22 2) Coppedge invited co-worker Scott Edgington to discuss the measure; Edgington
23 agreed and the conversation grew heated.
24

25
26 ¹ The measure added a new provision, Section 7.5 of the Declaration of Rights, to the California
27 Constitution, which provides that "only marriage between a man and a woman is valid or recog-
28 nized in California."

1 Coppedge contends he did nothing wrong by inviting discussions concerning a political
2 issue, that his behavior was appropriate and that the argument with Edgington was prompted by
3 Edgington's provocations (Edgington responded to Coppedge's position by characterizing it as
4 "propaganda" and became more intense when he learned of Coppedge's position) and did not
5 disrupt work activity (Becker Decl., Exh. No. 1, Edgington Dep.Tr., 32:23-33:3: "Q. When Da-
6 vid interrupted you, did he say anything to ascertain whether or not you were able to be inter-
7 rupted at that time such as 'do you have a minute?' or anything of that nature? A. I do not recall,
8 but if I was busy, I would have told him to go away.") Coppedge further contends that California
9 law gives him the right to engage in conversations concerning political election issues.²
10

11 JPL's HR investigator conducted a series of superficial interviews with the individuals
12 hostile to Coppedge's views on Proposition 8, and assumed that because Coppedge was the one
13 to have initiated the discussions, he must have been an instigator and agitator. The investigator
14 determined that Coppedge had harassed co-workers even though (1) Coppedge had honored
15 Weisenfelder's request not to discuss the political matter; and (2) Edgington consented to a dis-
16 cussion and was at least equally to blame for engaging in argument. The investigator failed to
17 interview others who would have challenged HR's assumptions with exculpatory evidence that
18 Coppedge behaved appropriately.
19
20
21
22

23
24 ² The relevant language of Lab. Code § 1101 provides that "No employer shall make, adopt, or
25 enforce any *rule, regulation, or policy* ... [c]ontrolling or directing, or tending to control or di-
26 rect the political activities or affiliations of employees." This court has ruled, however, that
27 Coppedge has failed to state a claim under Lab. Code § 1101 on the ground that Plaintiff has
28 failed to allege facts or offer evidence of a JPL *policy* that impedes the political expression of
employees. Coppedge maintains that by issuing the Written Warning, JPL was making, adopting
or enforcing a rule, regulation or policy of controlling and directing, or tending to control or di-
rect his political activities.

1 As a result of JPL's superficial investigation, JPL issued a Written Warning to Coppedge
2 ordering him to "refrain from discussions which are argumentative, disruptive and/or harassing
3 to your co-workers." (Becker Decl., Exh. No. 2, Written Warning.) The Written Warning
4 blamed Coppedge for approaching various co-workers during JPL business hours to discuss his
5 "religious and political beliefs" and for creating a disruption in the workplace "by approaching a
6 co-worker during work hours to engage in a political debate about a recent controversial issue."

7
8 *Id.* Coppedge was also demoted from team lead to "lessen the strife" in his work area.

9 **III. MOTIONS IN LIMINE**

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

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

15 **IV. LEGAL STANDARD**

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

20 **V. REFERENCES TO PROPOSITION 8 PRESENT A SUBSTANTIAL DANGER OF
21 UNDUCE PREJUDICE TO COPPEDGE.**

22 As specifically set forth in the Written Warning issued to Coppedge, JPL justified its dis-
23 ciplining and censorship of him based upon the following alleged activity:

- 24 (1) Coppedge approached various co-workers during JPL business hours to discuss his
25 religious and political beliefs;
26 (2) Coppedge's "actions" were *reported* as harassing in nature;
27 (3) Coppedge acknowledged that he approached various coworkers during work hours to
28 inquire if they were interested in watching his DVDs "which clearly express your
personal views and you engaged various co-workers in conversations about your personal
views";

- 1 (4) Coppedge “failed to stop these activities when you were told they were unwelcome
2 and disruptive”;
3 (5) Coppedge created disruption in the workplace by approaching a co-worker during
4 work hours to engage in a political debate about a recent controversial issue;
5 (6) When Coppedge discovered the co-worker did not share his political views,
6 Coppedge became upset and argumentative. The co-worker had to request that
7 Coppedge leave his office in order to cease the conversation; and
8 (7) Coppedge’s behavior in the workplace was perceived as unwelcome and unprofes-
9 sional.

10 (Becker Decl., Exh. 2, *supra.*)

11 The central issue in this case is whether Coppedge was discriminated against under
12 FEHA based upon his religious discussions and discussions about intelligent design that co-
13 workers perceived to be religious in nature. Accordingly, the subject matter of Coppedge’s reli-
14 gious discussions with co-workers is probative of the religious animus motivating co-workers
15 who accused Coppedge of harassing them.

16 By contrast, the nature of Coppedge’s political discussions is not similarly in issue for at
17 least two reasons. First, JPL has repeatedly conceded that Coppedge’s particular position on
18 Proposition 8 – his support of it – was not the basis of its decision to discipline him. Rather, JPL
19 has insisted it was the “manner” in which Coppedge interacted with people while discussing reli-
20 gion and politics, i.e., his non-verbal conduct, that justified its disciplining of him. Second, this
21 Court has already ruled there is no evidence that JPL enforced a policy restricting Coppedge’s
22 political activity. Accordingly, whether Coppedge was discussing Proposition 8 or some other
23 election topic proves nothing in this case. Neither the Written Warning nor any other evidence
24 in this case tends to establish that Coppedge was disciplined due to his discussions about Propo-
25 sition 8 specifically – the discipline was due to his discussions about religion and politics in the
26 general sense only. In sum, evidence that Coppedge was *specifically* discussing Proposition 8,
27 when the complaints against him were that he was *generally* discussing his political views, what-
28 ever they might be, tends to prove no relevant fact.

1 Evidence that Coppedge supported Proposition 8, however, poses a very real and substan-
2 tial danger of prejudicing his case. Proposition 8 is still highly inflammatory. *See Perry v. Brown*
3 (Nov. 17, 2011) 52 Cal.4th 1116 (conc. opin. of Kennard, J) (describing the issues and litigation
4 history, referring the Proposition as part of an “ongoing political and legal struggle”). Jurors un-
5 avoidably would be guided by their own attitudes toward gay marriage. Ultimately, jurors would
6 place too great a focus on Coppedge’s views on Proposition 8, and too little – if any – on the real
7 issues in the case (whether Coppedge was treated less favorably than others because of his pro-
8 tected status).

10 JPL would like to appeal to the passions, prejudices and sympathy of the jury. JPL likely
11 anticipates that many jurors did not support Proposition 8, or are otherwise sympathetic to the
12 arguments against Proposition 8. JPL wants to mislead the jury into believing that this case is
13 really about Coppedge’s views against gay marriage. But in addition to misleading the jury and
14 confusing the issues in the case, evidence of Proposition 8 will only prolong the trial, especially
15 during voir dire, as the court and counsel try to sift out prospective jurors who cannot set aside
16 their own ideological convictions. And a panel neutral to the issue is guaranteed to be too unin-
17 formed to competently consider the subtle issues in this case.

19 **VI. CONCLUSION**

20 Perhaps unlike any other political measure in modern history, Proposition 8 was uncom-
21 monly divisive. Supporters of Proposition 8, including Mormons and African-Americans, were
22 branded bigots. Opponents of Proposition 8 were branded as immoral. Is that what the court
23 wants this case to be reduced to – a debate over the merits of gay marriage?
24

25 Evidence of Proposition 8 as the specific topic discussed by Coppedge will not prove or
26 disprove a single material fact in this case. It will, however, lay claim to jurors’ passions, preju-
27 dices and sympathies. Accordingly, the Court is respectfully urged to enter an order precluding
28

1 the parties from making reference to, commenting upon, introducing testimony or documents
2 regarding, or presenting any argument pertaining to Proposition 8, and ordering counsel to in-
3 struct all witnesses not to make reference to, comment upon, or testify about Proposition 8. The
4 court is also asked to order counsel to redact all reference to Proposition 8 in any document
5 sought to be introduced at trial.
6

7 DATED: January 27, 2012

THE BECKER LAW FIRM

William J

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By:

WILLIAM J. BECKER, JR., ESQ.

Attorneys for Plaintiff, DAVID COPPEDGE

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