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FILED
LOS ANGELES SUPERIOR COURT

JAN 27 2012

JOHN A. CLARKE, CLERK
BY RAGEL SANCHEZ, DEPUTY

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

11 **DAVID COPPEDGE**, an individual;
12
13 Plaintiff,

14 vs.

15 **JET PROPULSION LABORATORY**, form
16 unknown; **CALIFORNIA INSTITUTE OF**
17 **TECHNOLOGY**, form unknown;
18 **GREGORY CHIN**, an Individual; **CLARK**
19 **A. BURGESS**, an Individual; **KEVIN**
20 **KLENK**, an Individual; and **Does 1 through**
21 **25**, inclusive,
22 Defendants.

Case No. BC435600

DECLARATION OF WILLIAM J.
BECKER, JR. IN SUPPORT OF MOTION
IN LIMINE NO. 2 TO EXCLUDE
REFERENCES TO PROPOSITION 8;
EXHIBITS

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

Trial Date: March 7, 2012

BY FAX

21 I, William J. Becker, Jr., declare as follows:

22 1. I am an attorney admitted to practice before all the courts in the State of California
23 and counsel of record for David Coppedge, Plaintiff herein ("Plaintiff"). The following facts and
24 circumstances are personally known to me, and if called upon to do so, I could and would com-
25 petently testify as to them.
26

1 2. This declaration is made in support of Plaintiff David Coppedge's ("Coppedge") Mo-
2 tion in Limine No. 2 to exclude references to Proposition 8

3 3. The specific matter alleged to be inadmissible and prejudicial is evidence identifying
4 Proposition 8 as the subject matter of political discussions Coppedge had with co-workers who
5 accused him of harassment. Proposition 8 was a highly controversial and divisive ballot meas-
6 sure. Evidence of Proposition 8 as the specific topic discussed by Coppedge will not prove or
7 disprove a single material fact in this case. It will, however, lay claim to jurors' passions, preju-
8 dices and sympathies.

9
10 4. On November 24, 2012, I met and conferred with Melinda Gordon, an associate as-
11 signed to this case, regarding the substance of this Motion after having sent all defense counsel
12 an e-mail on November 20 explaining the following:

13
14 "Evidence about Prop 8 is irrelevant. What is relevant is whether there was disagreement
15 over a political issue, regardless of what that issue is. For instance, the Written Warning
16 refers to the Edgington issue as a "political debate about a recent controversial issue."
17 Moreover, we have already agreed that the witness' political positions, party membership
18 and sexual orientations are not in issue in the case. To allow evidence of the Proposition
19 8 issue will make it extremely difficult to pick a fair jury, because there are likely to be
20 some jurors for Prop 8 and some against it. Knowing that the discussions were about
21 Prop 8 will only distract them from the real issues in the case, and lengthen the voir dire.
22 Therefore, limiting testimony and evidence to political disagreements should be allowed,
23 but specifying the political issue should not be. We ought to be able to agree on that.

24 * * *

25 "I think we can agree on these issues and would ask that you meet and confer with me
26 and make a decision as early as Monday so that I will not be forced to prepare a motion
27 between Tuesday and Friday, the deadline to file. If we do agree, I will prepare the stip."

28 (Attached hereto and incorporated herein as Exhibit 3 is a true and correct copy of my e-mail to
counsel.)

 5. I never heard back from lead counsel, Jim Zapp, or his lead associate, Cameron Fox.
On November 24, I took the deposition of JPL's economist expert witness. Ms. Gordon and I

1 discussed this matter and were joined in that discussion by JPL's house attorney, Hema Vatti.
2 Ms. Gordon appeared not to have fully discussed the issue with Mr. Zapp, and offered no mean-
3 ingful substantive argument for opposing this motion, merely stating that JPL would not agree to
4 limit the evidence at trial in a manner consistent with the limitations requested in this Motion.
5 Indeed, it was apparent that Ms. Gordon had not been given the authority to resolve this dispute.
6 In my view, JPL's counsel failed to meaningfully and in good faith meet and confer with me on
7 this matter.
8

9 6. Attached hereto and incorporated herein as Exhibit 1 is a true and correct copy of ex-
10 cerpts from the deposition of Scott Edgington taken on February 22, 2011.

11 7. Attached hereto and incorporated herein as Exhibit 2 is a true and correct copy of the
12 Written Warning issued to my client on April 13, 2009.

13 I declare under penalty of perjury, under the laws of the State of California, that the fore-
14 going is true and correct.
15

16 Executed this 27th day of January, 2012, at Los Angeles, California.

17 William J
18 Becker Jr, Esq

Digitally signed by William J
Becker Jr, Esq
DN: cn=William J Becker Jr, Esq,
ou=THE BECKER LAW FIRM, ou,
email=bbeckerlaw@gmail.com,
c=US
Date: 2012.01.27 12:20:00 -0800

19 William J. Becker, Jr., Declarant
20
21
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28

01/27/2012

EXHIBIT 1

EXHIBIT 1

1 THAT.

2 Q. WHAT TIME OF DAY DID THIS OCCUR?

3 A. I BELIEVE THIS WAS EARLY AFTERNOON.

4 Q. IT WASN'T AT THE END OF THE DAY?

5 A. NO, IT WAS NOT.

6 Q. WHAT WERE YOU DOING AT THE TIME?

7 A. I WAS WORKING. I WAS SITTING AT MY
8 COMPUTER, DOING WHAT I DO.

9 Q. DO YOU RECALL SPECIFICALLY WHAT YOU WERE
10 WORKING ON?

11 A. NO.

12 Q. WERE YOU WORKING ON ANYTHING TECHNICAL?

13 MS. FOX: OBJECTION. VAGUE.

14 THE WITNESS: EVERYTHING WE DO IS TECHNICAL.
15 BY MR. BECKER:

16 Q. WERE YOU WORKING ON ANYTHING OF AN URGENT
17 NATURE; IN OTHER WORDS, HAD TO BE DONE RIGHT THEN AND
18 THERE?

19 MS. FOX: SAME OBJECTION.

20 THE WITNESS: I DO NOT RECALL WHAT I WAS
21 WORKING ON.

22 BY MR. BECKER:

(23) Q. (WHEN DAVID INTERRUPTED YOU, DID HE SAY

(24) ANYTHING TO ASCERTAIN WHETHER OR NOT YOU WERE ABLE TO

(25) BE INTERRUPTED AT THAT TIME SUCH AS "DO YOU HAVE A

(1) (MINUTE?" OR ANYTHING OF THAT NATURE?)

(2) (A.) (I DO NOT RECALL, BUT IF I WAS BUSY, I)

(3) (WOULD HAVE TOLD HIM TO GO AWAY.) YOU KNOW, IF IT WAS
4 AN URGENT MATTER, I WOULD HAVE TOLD HIM TO GO AWAY AND
5 COME BACK SOME OTHER TIME.

6 Q. SURE.

7 AND PRIOR TO THIS OCCASION, DID YOU FEEL
8 THAT DAVID'S COMPANY, WHEN THE TWO OF YOU TALKED, WAS
9 AGREEABLE?

10 MS. FOX: OBJECTION. VAGUE AS TO "DAVID'S
11 COMPANY" AND "AGREEABLE."

12 DO YOU UNDERSTAND THE QUESTION?

13 THE WITNESS: NO, NOT QUITE.

14 BY MR. BECKER:

15 Q. WELL, PRIOR TO THIS PARTICULAR DAY --
16 AND BY THE WAY, THIS HAPPENED IN WHAT,
17 NOVEMBER 2008?

18 A. I BELIEVE SO, YES.

19 Q. IT WAS PRIOR TO THE ELECTION?

20 A. YES. IT WAS PRIOR TO THE ELECTION, YES.

21 Q. SO PRIOR TO THAT TIME, PRIOR TO NOVEMBER
22 OF 2008, DID YOU ENJOY CONVERSATIONS WITH DAVID?

23 MS. FOX: OBJECTION. VAGUE.

24 THE WITNESS: I DON'T THINK THERE'S ANY
25 ENJOYMENT ABOUT IT. I MEAN, WE TALKED ABOUT SCIENCE

01/27/2012

EXHIBIT 2

EXHIBIT 2

DATE: April 13, 2009
TO: David Coppedge
FROM: Clark Burgess
SUBJECT: Written Warning

The Employee Relations Office has completed an investigation concerning allegations that you approached various co-workers during JPL business hours to discuss your religious and political beliefs. Your actions were reported as harassing in nature. As part of this investigation, you met with Jheraune Huntley from Employee Relations and were given the opportunity to discuss the allegations and explain your perspective and answer questions.

I have received the results of this investigation and after careful review of all the issues and information obtained, I am in agreement with the following findings:

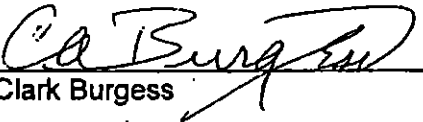
- You acknowledged that you approached various coworkers during work hours to inquire if they were interested in watching your DVDs which clearly express your personal views and you engaged various co-workers in conversations about your personal views. You failed to stop these activities when you were told they were unwelcome and disruptive.
- You violated the Unlawful Harassment policy which states:
 - Harassment is the creation of a hostile or intimidating environment in which verbal or physical conduct, because of its severity and/or persistence, is likely to interfere significantly with an individual's work. Harassment in any form, based on sex, race, color, age, national origin, disability, religion, gender identity, sexual orientation, or any other characteristic protected by state or federal laws, is prohibited, as are all forms of sexual intimidation and exploitation.
- You created disruption in the workplace by approaching a co-worker during work hours to engage in a political debate about a recent controversial issue. When you discovered your co-worker did not share your political views, you became upset and argumentative. Your co-worker had to request that you leave his office in order to cease the conversation.
- You violated JPL's Ethics and Business Conduct Policy which states:
 - JPL employee behaviors shall be consistent with the JPL and NASA Values and the Caltech's JPL honor codes. Specifically, "I will treat my fellow employees fairly, with dignity and respect."

Based on the results of the investigation, it has become apparent that your behavior in the workplace is perceived as unwelcome and unprofessional. This type of behavior is inconsistent with a professional business environment and will not be tolerated in the future.

Due to the seriousness of violating the Unlawful Harassment policy, you are being given a Written Warning. Should another incident of this nature occur, you will be subject to further disciplinary action up to and including termination.

Effective immediately, you must refrain from discussions which are argumentative, disruptive and/or harassing to your co-workers. Today we have talked about what type of conduct is unwelcome or offensive. If you have questions about such conduct, please talk with me immediately. For example, co-workers found your requests to watch your DVDs that express your personal views to be unwelcome.

It is important that you understand that JPL policy prohibits retaliation against any employee who may have participated in this investigation. JPL is committed to a harassment and retaliation free workplace, to investigating complaints promptly, and to taking appropriate corrective action. All participants in this investigation have a right to expect appropriate treatment as a result of bringing this complaint forward. Should you take any actions which JPL believes are retaliatory against any of these individuals, you will be subject to further disciplinary action up to and including termination.


Clark Burgess

4/13/09
Date

This warning has been discussed with me, and I have received a copy. I have read it and understand the consequences of future violations of policy.

David Coppedge

Date

Attachments: Ethics and Business Conduct Policy (DocID# 58572), Unlawful Harassment Policy (DocID# 72112)

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01/27/2012

EXHIBIT 3



William Becker
<bbeckerlaw@gmail.com>

JPL: MIL re evidence of political expression revised

1 message

William Becker
<bbeckerlaw@gmail.com>

Sat, Jan 21, 2012 at 10:49 AM

To: Cameron Fox <cameronfox@paulhastings.com>, "James A. Zapp" <JamesZapp@paulhastings.com>, Melinda Gordon <melindagordon@paulhastings.com>, "Wilson, Christine" <ChristineWilson@paulhastings.com>

Counsel,

I have been giving the additional MIL more thought. It is probably unlikely and impractical to have an order that prevents all mention of political activity inasmuch as "religion and politics" without the "and politics" would require a major overhaul of the facts and record in this case. In light of that issue, I would propose a stipulation that:

1. all references to Proposition 8 be excluded.
2. no testimony or other evidence relating that JPL/Caltech had a right to interfere with political activities.

As to Point #1: Evidence about Prop 8 is irrelevant. What is relevant is whether there was disagreement over a political issue,

regardless of what that issue is. For instance, the Written Warning refers to the Edgington issue as a "political debate about a recent controversial issue." Moreover, we have already agreed that the witness' political positions, party membership and sexual orientations are not in issue in the case. To allow evidence of the Proposition 8 issue will make it extremely difficult to pick a fair jury, because there are likely to be some jurors for Prop 8 and some against it. Knowing that the discussions were about Prop 8 will only distract them from the real issues in the case, and lengthen the voir dire. Therefore, limiting testimony and evidence to political disagreements should be allowed, but specifying the political issue should not be. We ought to be able to agree on that.

As to Point #2: As I understand the evidence and your argument, you intend to argue that JPL disciplined David because of his manner/conduct, not because of the message. Since the court has disallowed our theory under Lab Code s1101 (political activity in the workplace), the issue of whether or not David had a right to engage in political activity is gone. David cannot argue that he had a legal right to discuss politics. JPL should therefore not be allowed to argue that it had a right to interfere with David's political activity.

However, because religious discrimination remains an issue in the case, whether David had a right to discuss

religious matters at work should be allowed.

I think we can agree on these issues and would ask that you meet and confer with me and make a decision as early as Monday so that I will not be forced to prepare a motion between Tuesday and Friday, the deadline to file.

If we do agree, I will prepare the stip.

Bill

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On Fri, Jan 20, 2012 at 7:28 AM, William Becker
<bbeckerlaw@gmail.com> wrote:

Counsel,

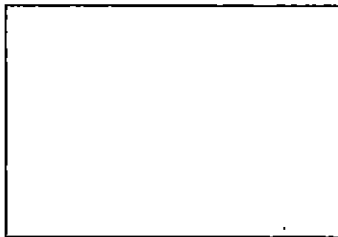
As you know, the court granted summary judgment as to Lab. Code section 1101. In light of that ruling, it would be unfair to admit evidence of David's political speech activities, including all reference to Prop 8, discussions about Prop 8 and discipline on the basis of political expression. Accordingly, I intend to move in limine to exclude such evidence. I would like to discuss this with you on Tuesday after the Michael Ward deposition in order to comply with the good faith meet and confer requirement.

Bill

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