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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**

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. 3 PRECLUDING EVIDENCE AND ARGUMENT SUGGESTING THAT DEFENDANT HAD A RIGHT TO INTERFERE WITH COPPEDGE'S POLITICAL ACTIVITIES; EXHIBITS

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

Trial Date: March 7, 2012

BY FAX

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

24 1. I am an attorney admitted to practice before all the courts in the State of California
25 and counsel of record for David Coppedge, Plaintiff herein ("Plaintiff"). The following facts and
26 circumstances are personally known to me, and if called upon to do so, I could and would com-
27 petently testify as to them.
28

1 2. This declaration is made in support of Plaintiff David Coppedge's ("Coppedge") Mo-
2 tion in Limine No. 3 precluding evidence and argument suggesting that defendant had a right to
3 interfere with Coppedge's political activities.

4 3. The specific matter alleged to be inadmissible and prejudicial is evidence that as a
5 private employer, JPL had a right to control Coppedge's speech activity. Such evidence is con-
6 tradicted by the limitations imposed by Lab. Code § 1101, which constrains private employers
7 from controlling or directing an employee's political activities.

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

11
12 "As I understand the evidence and your argument, you intend to argue that JPL disci-
13 plined David because of his manner/conduct, not because of the message. Since the court
14 has disallowed our theory under Lab Code s1101 (political activity in the workplace), the
15 issue of whether or not David had a right to engage in political activity is gone. David
16 cannot argue that he had a legal right to discuss politics. JPL should therefore not be al-
17 lowed to argue that it had a right to interfere with David's political activity. However,
18 because religious discrimination remains an issue in the case, whether David had a right
19 to discuss religious matters at work should be allowed.

20 * * *

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

24 (Attached hereto and incorporated herein as Exhibit 2 is a true and correct copy of my e-mail to
25 counsel.)

26 5. I never heard back from lead counsel, Jim Zapp, or his lead associate, Cameron Fox.
27 On November 24, I took the deposition of JPL's economist expert witness. Ms. Gordon and I
28 discussed this matter and were joined in that discussion by JPL's house attorney, Hema Vatti.
Ms. Gordon appeared not to have fully discussed the issue with Mr. Zapp, and offered no mean-

1 ingful substantive argument for opposing this motion, merely stating that JPL would not agree to
2 limit the evidence at trial in a manner consistent with the limitations requested in this Motion.
3 Indeed, it was apparent that Ms. Gordon had not been given the authority to resolve this dispute.
4 In my view, JPL's counsel failed to meaningfully and in good faith meet and confer with me on
5 this matter.

6
7 6. Attached hereto and incorporated herein as Exhibit I is a true and correct copy of ex-
8 cerpts from the transcript of the April 13, 2009, disciplinary meeting between Coppedge and his
9 supervisors, at which time he was told that he could discuss religion and politics so long as it was
10 not unwelcome or disruptive. I personally prepared this transcription from a careful listening to
11 the audio recording prepared by my client of the meeting. That audio recording was made with
12 the express consent of the meeting participants and has been produced in this case, as has the
13 transcript from which this excerpt derives. I have sought but have never received any objections
14 or suggested changes to this transcript and can therefore certify its accuracy.

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

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

19
20 William J
21 Becker Jr, Esq

Digitally signed by William J
Becker Jr, Esq
DN: cn=William J Becker Jr, Esq,
o=THE BECKER LAW FIRM, ou,
email=bbeckerlaw@gmail.com,
c=US
Date: 2012.01.27 12:18:00 -0800

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01/27/2012

EXHIBIT 1

EXHIBIT 1



William Becker
<bbeckerlaw@gmail.com>

JPL: MIL re evidence of political expression revised

1 message

William Becker

Sat, Jan 21, 2012 at 10:49

<bbeckerlaw@gmail.com>

AM

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

Bcc: David Coppedge <cdave@creationsafaris.com>, Casey Luskin <cluskin@discovery.org>, Joshua Youngkin <jyoungkin@gmail.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.

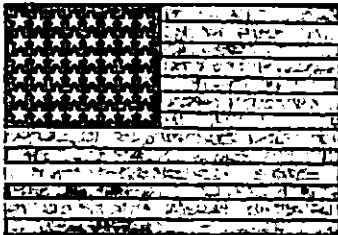
If we do agree, I will prepare the stip.

Bill

The Becker Law Firm

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

Counsel,

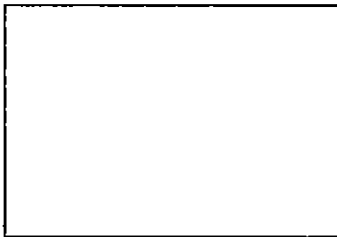
As you know, the court granted summary judgment as to Lab. Code section 1101. In light of that ruling, it would be unfair to admit evidence of David's political speech activities, including all reference to Prop 8, discussions about Prop 8 and discipline on the basis of political expression. Accordingly, 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

The Becker Law Firm

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01/27/2012

EXHIBIT 2

1 Because what I have done fits in with this. The only time a boss can tell an em-
2 ployee not to discuss this is with an individual who either tells the person doing it
3 to stop, or tells the boss, I don't want to hear about that anymore. Then the boss
4 can go to the employee and say don't talk to so-and-so. But Greg told me you are
5 not to discuss religion or politics with anyone in this office. That's what he told
6 me. How do you feel about that?

7 Klenk: No... We have no issue with people discussing religion and politics in the office
8 so long as it's not unwelcome or disruptive.

9 Coppedge: I understand. And I, my claim is that it wasn't. Now I went to the Chief Ethics
10 Officer right after Greg talked to me and I said, "Can a boss do this? Can a boss
11 you know give a blanket order that you're not to discuss this?" And he said,
12 "Well, you know no, that's overboard," and he you know gave me some sugges-
13 tions on how to handle these things. But in other words I was immediately seek-
14 ing, have I done something wrong here, or or is that proper?

15 Klenk: I think I think partly you should think through you know that, both of you seeking
16 out external sources on this, you must have felt that at some point that there was
17 some things done that caused tension in the workplace, on both sides. One sug-
18 gession I would have is perhaps you weren't reading the body language of these
19 people well enough. You were looking for a 'Dave, I understand you refused, I
20 don't believe in this; please don't talk to me again about it' whereas they were try-
21 ing to be more polite, being that they felt uncomfortable, and were trying to say,
22 'Please don't talk about it, you know I'd rather do talk about something else,' and
23 you weren't reading the more subtle ...