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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
FEB 09 2012
John A. Clary Clerk
By Glorianna Robinson Deputy

7 Attorneys for Defendant
8 CALIFORNIA INSTITUTE OF TECHNOLOGY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 DAVID COPPEDGE, an Individual,

CASE NO. BC 435600

12 Plaintiff,

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION *IN LIMINE* NO. 4
TO EXCLUDE REFERENCE TO THIRD
PARTY ORGANIZATIONS INTERESTED
IN THE OUTCOME OF THIS CASE, OR,
ALTERNATIVELY, TO ALLOW
PLAINTIFF TO PRODUCE THIRD
PARTIES REPRESENTATIVES AS
REBUTTAL WITNESSES**

13 vs.

14 JET PROPULSION LABORATORY,
form unknown; CALIFORNIA
15 INSTITUTE OF TECHNOLOGY, form
unknown; GREGORY CHIN, an
16 Individual; CLARK A. BURGESS, an
Individual; KEVIN KLENK, an Individual;
17 and DOES 1 through 25, inclusive,

18 Defendants.

FSC Date: February 24, 2012
Trial Date: March 7, 2012
Time: 9:30 a.m.
Place: Department 54
Judge: Hon. Ernest M. Hiroshige

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Coppedge does not dispute that the Discovery Institute and the Alliance Defense Fund
4 support this lawsuit, both financially and ideologically. Indeed, this Motion discloses previously
5 unknown information about their involvement, i.e., that the Discovery Institute provides
6 “uncompensated legal staff assistance” and “assistance educating counsel about intelligent design
7 . . .” Motion at 1:9-12. The role of these organizations in this lawsuit is relevant, but for reasons
8 different from those Coppedge mistakenly attributes to Caltech.¹ It establishes that Coppedge’s
9 expert on intelligent design, Dr. David DeWolf, is not only biased, but may actually have a
10 personal stake in the lawsuit’s outcome, and it calls into question Coppedge’s credibility.

11 Caltech suspects that Coppedge’s real goal here is not to exclude Caltech from discussing
12 the involvement of the Discovery Institute and the Alliance Defense Fund, but rather to obtain
13 license to devote *even more* time at trial to the intelligent design movement, and its beliefs and
14 goals, by introducing testimony from these organizations’ representatives. Coppedge admits as
15 much in this Motion, where he explains that allowing testimony by Discovery Institute and
16 Alliance Defense Fund witnesses “will benefit [his] case . . .” Motion at 3:20-21.

17 The Court should reject this Motion – just as it should reject all of Coppedge’s efforts to
18 turn this case into a forum on intelligent design – and keep the trial focused on the legal issues at
19 hand.

20 **II. THIS MOTION IN LIMINE IS UNTIMELY**

21 As Caltech explained in its Opposition to Plaintiff’s Motion in Limine No. 2, motions *in*
22 *limine* were due on November 30, 2011, and Coppedge has no justification for a two-month
23 delay. This Motion is untimely, and the Court should decline to consider it on this ground alone.
24 Nor can Coppedge credibly contend that he did not foresee filing this Motion until Caltech

25 _____
26 ¹ Caltech does not claim that the *sole* purpose of this lawsuit is to promote intelligent design.
27 Motion, 2:23-24. Caltech has no personal knowledge of why Coppedge chose to file suit, nor is
28 Caltech so presumptuous as to suggest that Coppedge would not have done so but for the
Discovery Institute and the Alliance Defense Fund. On the other hand, the fact that these
organizations view this lawsuit and the upcoming trial as a platform for promoting intelligent
design is evident from their respective websites.

1 discussed the Discovery Institute and the Alliance Defense Fund in its motions *in limine*. The
2 involvement of both organizations was discussed during Coppedge's deposition in *fall 2010*.
3 Coppedge Tr. 24:14-23, 37:15-38:17; 44:23-45:1.² Regardless, Coppedge knew or should have
4 known that Caltech planned to discuss the role of these organizations in the case when the motion
5 *in limine* briefing took place in November and December 2011; there was no reason for further
6 delay until the end of January 2012.

7 **III. ARGUMENT**

8 **A. The Involvement Of The Discovery Institute And The Alliance Defense Fund**
9 **Is Relevant And Admissible.**

10 The interest and involvement of the Discovery Institute and the Alliance Defense Fund are
11 very relevant to this action, for multiple reasons.

12 First, this evidence is relevant to establishing bias on the part of Coppedge's intelligent
13 design expert, Dr. David DeWolf. Dr. DeWolf is a paid senior fellow with the Discovery
14 Institute, earning between \$10,000 and \$25,000 per year. DeWolf Tr. 58:7-15; 62:5-63:7.
15 Moreover, Dr. DeWolf, an attorney, admitted at deposition that the Discovery Institute is a client
16 of his:

17 Q. As Mr. Becker has indicated, you and he are both attorneys
18 who represent the Discovery Institute, correct?

19 A. I have represented the Discovery Institute, yes.

20 DeWolf Tr. 23:2-6.

21 Thus, not only is Dr. DeWolf neither objective nor impartial, but he has a personal
22 financial interest in the outcome of Coppedge's case. The success of this lawsuit (or lack thereof)
23 could impact his engagement by the Discovery Institute, and, in turn, the compensation he
24 receives from them. The jurors are entitled to know all this information so they may judge for
25 themselves the credibility (or lack of credibility) of Dr. DeWolf's testimony.

26 Second, this evidence is relevant to Coppedge's credibility. Regardless of why Coppedge
27 filed this lawsuit in the first place, the jury is entitled to understand the role of the Discovery

28 ² All deposition testimony excerpts and/or exhibits cited herein are formatted as follows:
[deponent last name] Tr. [page number]:[line number]; Ex. [number], and attached as exhibits to
the concurrently-filed Declaration of Melinda A. Gordon.

1 Institute and the Alliance Defense Fund in supporting this lawsuit and their larger interests in
2 promoting intelligent design – and to consider Coppedge’s claims and testimony in the context of
3 those background facts.

4 Third, Coppedge actually makes his own argument for relevance, albeit a misguided one.
5 He contends that, by arguing this lawsuit was brought solely to promote intelligent design,
6 Caltech is engaging in stereotyping against intelligent design proponents and Christians. Motion
7 at 3:12-16. As noted above, this is not Caltech’s position, and regardless, it is not stereotyping.
8 Stereotyping occurs when an individual assumes characteristics or conduct on the basis of group
9 membership. *See, e.g., Lindahl v. Air France*, 930 F.2d 1434, 1439 (9th Cir. 1991) (district
10 manager saw “[male candidate] as aggressive and cool . . . , while he saw the female candidates
11 as nervous and emotional. His comments could suggest that [he] made his decision on the basis
12 of stereotypical images of men and women . . .”). Caltech is not assuming what Coppedge, the
13 Discovery Institute and the Alliance Defense Fund *would do* based on their affiliations and/or
14 beliefs, but rather is informing the jury about what they *actually are doing*: using a
15 discrimination and retaliation trial as a means of promoting their views on intelligent design.
16 This evidence is admissible, not because it shows stereotyping – it does not – but because it is
17 relevant to DeWolf’s bias and Coppedge’s credibility.

18 Finally, Coppedge’s analogy (and case authority) regarding amicus briefs is completely
19 inapposite. The involvement of the Discovery Institute and the Alliance Defense Fund here is
20 substantially greater than and different from that of an amicus, whose major contribution is in
21 submitting a brief, generally at the appellate stage. Assuming *arguendo* their role was
22 comparable to that of amici (rather than far exceeding it), neither of the cases cited by Coppedge
23 suggests either that amici identity is irrelevant, or that amici identity should be concealed.
24 *Neonatology Associates, P.A. v. C.I.R.* 293 F.3d 128, 129-134 (3d Cir. 2002) simply discusses
25 amicus briefs standards under Federal Rule of Appellate Procedure 29. And *American Civil*
26 *Rights Foundation v. Los Angeles Unified School Dist.*, 169 Cal. App. 4th 436 (2008) contains no
27 analysis of amicus briefs at all; Coppedge is simply citing the case for the fact that there were
28 amici with diverse viewpoints.

1 **B. Informing the Jury About Involvement Of The Discovery Institute and**
2 **Alliance Defense Fund Will Not Confuse Or Mislead Them.**

3 Permitting testimony about the involvement of the Discovery Institute and the Alliance
4 Defense Fund will not mislead the jury or confuse the issues. It will instead provide clarity and
5 additional information for the jury to judge the credibility of Dr. DeWolf and Coppedge. The
6 jury will have a full understanding of everyone involved in this lawsuit (not simply those about
7 whom Coppedge wants them to know) and how the lawsuit has been funded and litigated – facts
8 relevant to credibility and bias. As a result, the jury will be *better* equipped to perform its job as
9 the trier of fact.

10 **C. There Are No Grounds For Permitting Discovery Institute and Alliance**
11 **Defense Fund Representatives To Testify At Trial, For Any Reason.**

12 Finally, Coppedge gets to his real goal here: he contends that if Caltech argues that the
13 Discovery Institute and the Alliance Defense Fund view this case as a means of promoting
14 intelligent design, he “will call representatives of the DI and the ADF as rebuttal witnesses to
15 explain just why they support this case.” Motion at 3:20-22. There is nothing that Coppedge –
16 and representatives of these two organizations – want more than to devote *even more* trial time to
17 the intelligent design movement and its views in general, rather than to the legal claims actually at
18 issue.

19 But there is no basis for doing so. The involvement and support of these organizations
20 can be established through testimony by Coppedge and Dr. DeWolf (if Dr. DeWolf is not barred
21 from testifying). Coppedge’s and Dr. DeWolf’s understanding of the goals of these organizations
22 – which is relevant to *their* motivations, biases, and credibility – can be explored through their
23 own testimony. All other topics related to these organizations, such as *why* they support the
24 lawsuit, are irrelevant, confusing to the jury, and a waste of time.

25 **IV. COUNSEL FOR CALTECH MET AND CONFERRED IN GOOD FAITH**

26 Coppedge’s counsel argues that Caltech did not meet and confer in good faith as to this
27 Motion. He is wrong. Caltech did meet and confer in good faith.³ On January 6, 2012, Ms. Fox

28 ³ As discussed in Caltech’s Opposition to Plaintiff’s Motion *in Limine* No. 2, the meet and confer
 requirements for motions *in limine* apply to the moving party, not the opposing party. L.A.
 Super. Ct. Local Rule 3.57(a).

1 and Ms. Gordon discussed the substance of this Motion with Coppedge's counsel, Mr. Becker, by
2 telephone. Gordon Decl. ¶ 5. Mr. Becker summarized his positions in an email later that day.
3 *Id.* ¶ 6, Ex. C. On January 9, 2012, Ms. Gordon responded to Mr. Becker's email, explaining
4 that Caltech would be opposing this Motion and setting forth reasons why it believed the evidence
5 to be relevant. *Id.* ¶ 7, Ex. D.

6 **V. CONCLUSION**

7 For the foregoing reasons, Caltech respectfully requests that the Court deny Coppedge's
8 Motion *in Limine* to exclude reference to third party organizations interested in the outcome of
9 this case, and reject Coppedge's alternative request to allow him to produce third parties
10 representatives as rebuttal witnesses.

11 DATED: February 9, 2012

12 PAUL HASTINGS LLP
13 JAMES A. ZAPP
14 CAMERON W. FOX
15 MELINDA A. GORDON

16 By: _____

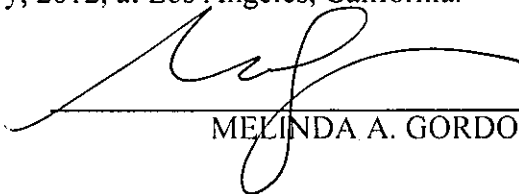
17 MELINDA A. GORDON

18 Attorneys for Defendant
19 CALIFORNIA INSTITUTE OF TECHNOLOGY
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of February, 2012, at Los Angeles, California.



MELINDA A. GORDON

02/09/12

02/09/12

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAVID COPPEDGE, an Individual,)	CASE NO. BC 435600
)	
Plaintiff,)	
)	
vs.)	
)	
JET PROPULSION LABORATORY,)	
form unknown; CALIFORNIA)	
INSTITUTE OF TECHNOLOGY, form)	
unknown; GREGORY CHIN, an)	
Individual; CLARK A. BURGESS,)	
an Individual; KEVEIN KLENK,)	
an Individual; and DOES 1)	
through 25, inclusive,)	
)	
Defendants.)	

DEPOSITION OF DAVID COPPEDGE

SEPTEMBER 30, 2010

VOLUME 1

(Pages 1 through 256)

REPORTED BY:

Deborah R. Meyers
CSR No. 8569

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CULVER CITY, CALIFORNIA 90232
(310) 838-7734

02/09/12

EX-A

10:04:27 1 MR. BECKER: Vague as to "immediate."
10:04:34 2 Q BY MR. ZAPP: Well, strike that.
10:04:35 3 You had said earlier it was immediately
10:04:37 4 after something. Was it after the -- immediately
10:04:38 5 after the discussion with Greg Chin on or after
10:04:41 6 March 2 of 2009?
10:04:42 7 A In that time period.
10:04:43 8 Q Approximately how long after that day?
10:04:52 9 A Within a week.
10:04:53 10 Q And who was it with whom you consulted? Or
10:05:00 11 if it was an organization, which organization?
10:05:11 12 A I'm not sure of their legal positions, but
10:05:19 13 I consulted with friends at the Discovery Institute.
10:05:28 14 Q And what is the Discovery Institute?
10:05:31 15 A They are a think tank supporting
10:05:38 16 intelligent design.
10:05:42 17 Q And why did you consult with legal
10:05:45 18 representatives of the Discovery Institute?
10:05:51 19 A I had become acquainted with two of them a
10:05:58 20 few months prior.
10:06:01 21 Q And who were the two people you'd become
10:06:03 22 acquainted with?
10:06:06 23 A Casey Luskin and John West.
10:06:12 24 Q How did you become familiar with them or
10:06:14 25 acquainted with them?

10:28:16 1 Q And they're lawyers with the Discovery
10:28:20 2 Institute; is that correct?
10:28:23 3 A No, not Mr. West.
10:28:26 4 Q Okay.
10:28:26 5 A I was incorrect, I believe.
10:28:28 6 Q All right. Mr. Luskin is with -- a lawyer
10:28:30 7 with the Discovery Institute?
10:28:32 8 A Yes. He's a lawyer. I don't know in what
10:28:35 9 capacity he works.
10:28:37 10 Q And Mr. West was also a lawyer?
10:28:40 11 A No.
10:28:40 12 Q What -- do you know what Mr. West does or
10:28:45 13 who he does it with?
10:28:47 14 A No.
10:28:53 15 Q So when you contacted the Discovery
10:28:54 16 Institute back in March of 2009, with whom did you
10:29:01 17 speak there?
10:29:04 18 A I did not contact the Discovery Institute
10:29:08 19 per se.
10:29:08 20 Q Okay. Who did you contact then?
10:29:11 21 A Casey Luskin.
10:29:13 22 Q Okay. And did you contact him at the
10:29:19 23 Discovery Institute?
10:29:22 24 A I don't know.
10:29:23 25 Q How did you reach out to him?

10:29:25 1 A Email.

10:29:33 2 Q And in this email were you seeking legal

10:29:35 3 advice, or were you just talking to him as a friend?

10:29:41 4 A Advice. I'm not sure it was legal.

10:29:51 5 Q Well, what was the substance of what you

10:29:52 6 and Mr. Luskin discussed by email?

10:29:56 7 A What had --

10:29:58 8 MR. BECKER: I'm going to object on the

10:30:00 9 ground that it does invade the attorney-client

10:30:01 10 privilege. He was seeking counsel relating to this

10:30:04 11 matter, and Mr. Luskin is an attorney who he

10:30:10 12 consulted with. He also consulted with Mr. West,

10:30:13 13 believing he was an attorney.

10:30:15 14 So I'm going to object on that ground and

10:30:18 15 instruct you not to disclose any confidential

10:30:21 16 communications you had with them in connection with

10:30:23 17 that consultation.

10:30:25 18 Q BY MR. ZAPP: Is that correct, you

10:30:26 19 understood Mr. West was an attorney at the time you

10:30:28 20 contacted him?

10:30:30 21 A I thought so.

10:30:32 22 Q Okay. Did you learn in the course of your

10:30:35 23 communications that he was not?

10:30:38 24 A Yes.

10:30:39 25 Q Did you continue to have communications

10:37:00 1 A Losing my job, the situation I was in.

10:37:04 2 Q Can you tell me the substance of your

10:37:06 3 conversation with Lynn at the Alliance Defense Fund?

10:37:09 4 A I described --

10:37:11 5 MR. BECKER: No, because she's a

10:37:12 6 representative of a legal organization, and

10:37:16 7 therefore that communication is confidential.

10:37:20 8 THE WITNESS: Okay.

10:37:21 9 MR. BECKER: He's instructed not to answer.

10:37:22 10 MR. ZAPP: So are you instructing him not

10:37:24 11 to answer on the grounds it's privileged?

10:37:26 12 MR. BECKER: It's attorney-client

10:37:27 13 privilege.

10:37:32 14 Q BY MR. ZAPP: And do you know the Alliance

10:37:33 15 Defense Fund to be a legal organization?

10:37:35 16 A Yes.

10:37:43 17 Q Is the Alliance Defense Fund in any way

10:37:45 18 connected with your current lawsuit?

10:37:50 19 A Yes.

10:37:51 20 Q How are they connected to your current

10:37:52 21 lawsuit?

10:37:57 22 A They put out a bulletin about my situation.

10:38:08 23 MR. BECKER: Let me cut to the chase. I'm

10:38:10 24 an ally, allied attorney with the Alliance Defense

10:38:14 25 Fund. Okay? And this case is underwritten by the

10:38:17 1 Alliance Defense Fund.

10:38:24 2 Q BY MR. ZAPP: Is what Mr. Becker stated

10:38:27 3 true?

10:38:27 4 A Yes.

10:38:29 5 Q So the case is being underwritten by the

10:38:31 6 Alliance Defense Fund?

10:38:33 7 A To my knowledge.

10:38:35 8 Q Does that mean that you are paying no costs

10:38:38 9 in connection with the case?

10:38:41 10 A No.

10:38:43 11 Q That's a bad question. Let me reask the

10:38:45 12 question.

10:38:46 13 Is it your understanding that the Alliance

10:38:47 14 Defense Fund is going to pay any costs and legal

10:38:49 15 fees associated with the case?

10:38:51 16 MR. BECKER: It's irrelevant. It also

10:38:53 17 disturbs the attorney-client relationship and the

10:38:57 18 communications between counsel and the witness, and

10:39:03 19 I don't see its relevance to the material facts in

10:39:05 20 the case. So I'm going to instruct the witness not

10:39:08 21 to answer that question.

10:39:10 22 MR. ZAPP: Let me state it this way.

10:39:12 23 Q When you said the case was underwritten by

10:39:13 24 the Alliance Defense Fund, what did you mean?

10:39:16 25 MR. BECKER: Well, I said it, and he

1 REPORTER'S CERTIFICATION

2
3 I, Deborah R. Meyers, a Certified
4 Shorthand Reporter, do hereby certify:


5 That prior to being examined, the witness
6 named in the foregoing proceedings was by me duly
7 sworn to testify to the truth, the whole truth, and
8 nothing but the truth;

9 That said proceedings were taken before me
10 at the time and place therein set forth and were
11 taken down by me in shorthand and thereafter reduced
12 to computerized transcription under my direction and
13 supervision;

14 That the dismantling of the transcript
15 will void the reporter's certificate.

16 I further certify that I am neither
17 counsel for, nor related to, any party to said
18 proceedings, nor in any way interested in the
19 outcome thereof.
20

21 IN WITNESS WHEREOF, I have hereunto
22 subscribed my name this 12th day of October, 2010.

23 
24 DEBORAH R. MEYERS, CSR NO. 8569
25

DAVID COPPEDGE DEPOSITION : DAY 1 09/30/2010 : CHANGES

PAGE/LINE	ORIGINAL	CHANGE TO:
23:20	Yeah.	Yes.
29:18	center	synod
51:5	Infotech	Infotec
67:7-8	I think it's the belief that there is a creator rather than things happening on their own.	Creation simply means that the universe was created by a Creator, usually assumed to be God.
67:22-25	I think that there -- that creationism, as you would call it, is a subset. It's one answer to the question of the designing intelligence, whereas intelligent design itself is	No. Intelligent design does not depend on a belief in a creator to arrive at its scientific conclusions.
68:13-15	It means that there is a designing intelligence, a creator, as opposed to things happening without a designing intelligence.	Creation per se just means a Creator created the universe.
68:17-19	Intelligent design does not answer that question, but Biblical creationism would identify the designing intelligence as God.	Yes, creationism usually posits God as the Creator. In most uses of the term these days, creationism refers to the belief that the God of the Bible created the world according to the account in the book of Genesis. Intelligent design is restricted to inferring design, not the designer, using the methods of science. Creationism is concerned with proving that the designer is God.
69:23-24	There are certainly non-Christians and nonreligious people who consider it a valid, scientific question.	I misunderstood the question, which upon re-reading, makes no sense. Creation implies a Creator. I am unaware of anyone teaching that creation occurred without a creator; that would be illogical.
70:5-7	It's not focused on the identity of the intelligence but just the effects of design, whether they are discernible or not.	Upon re-reading, this question makes no sense, either. An intelligent source is a creator by definition. If you are asking whether ID teaches the intelligent source is God, then the answer is no; intelligent design doesn't teach any such thing, because that's outside its domain. That question is left to philosophers and theologians.

70:7 cont.		Intelligent design is a scientific theory, focused not on the identity of the designer but on the evidence for design, whether it is detectable or not using well-tested methods of science and mathematics and logical inference. Those same methods are routinely used in other scientific fields, like archaeology, information theory, and genetics. Even lawyers rely on it! They use the same methods to decide if a body died of natural causes or was murdered. See? Some designers can be evil, but intelligent design theory doesn't get into the nature of the intelligent source, interesting as that question might be, because it's focused on the evidence, not the person. In the same way, investigators gather clues from a crime scene, and the coroner makes a determination between chance, natural law, or murder. It's up to others to figure out the motives and purposes of the murderer--an evil designer in this case. This shows it's possible to use intelligent design theory without getting into questions about God.
71:15	Production	Productions
71:21	honorary	honoraria
73:23	I don't want to speculate.	For 2009, gross revenue reported was \$2302.
82:15	the. This	this
92:6	Ken	Cab
97:23	I	I've
98:18	There's	There are
98:24	persons. And	persons, and
117:8	what I was being accused of.	that I had been accused of anything.
118:8	Yeah	Yes
119:10	Yeah	Yes
132:21	Yeah.	Yes.
133:9	Yeah	Yes
134:18-25	I didn't believe it was -- that what I was saying was religious. But apparently they did. And if they did, then they had a right to accommodate and protect that. But they were -- you know, they were saying I was pushing religion. Well, if that's what their argument is, then I should be able to, you know, defend my right to be able to discuss that.	Yes. I did not believe what I was doing in handing out DVDs on intelligent design constituted religious activity, but apparently Greg Chin did. But rather than respecting my free speech and accommodating what he deemed to be religion, he gave me a blanket order to shut up or be fired.
138:33	of that	from that

139:3	Yeah	Yes
142:19	think the only thing that makes sense is about my	think the only thing that explains that tension is my
142:24-143:1	No, but you certainly get the impression when many suggestions you give are kind of given the "yeah, but" response.	No, but ever since I had shared a DVD with him early on in our acquaintance, I felt he was less friendly with me than with others, and tended to find fault with my ideas and suggestions.
144:4	But I--and I	But I
150:15	how they both, you know, contrary to their -- to the	how, contrary to the
150:16	contrary to their -- our	contrary to our
150:22	You know, I	I
151:1	back to a good -- on	back on
151:20	sick to these -- what	stick to what
152:13-14	And I would ask, well, who are we -- you know, are we	I asked them: are we
154:1	would be, you know, unlikely	would be unlikely
154:6-7	Subsequent to that, you know, Cab almost, I think, forgot about it.	Subsequent to that, Cab almost forgot about it.
154:9-10	passed over or was a	had blown over
157:9	(Nods head up and down.)	Yes. After reading all the deposition transcripts, I feel that the May 4, 2010 meeting with Cab Burgess and Nick Patel and the negative comments in my 2010 performance review also constitute retaliatory acts by Cab Burgess.
161:6	suspect would	
162:2	yeah	yes
162:10	Yeah	Yes
166:11	Uh-huh	Yes
168:7-8	what to do when, you know, for reasons not related to my own performance, I had been removed.	what to do from a position I had lost for reasons unrelated to my performance.
169:6	and a wide variety	and knowledge about a wide variety
169:7	so they	so he
173:16	is important.	are both important.
176:24	was	were
177:19	admin	admins
179:8-11	They may have said that about me. I don't know. But I don't recall telling people I had... I had difficulty -- not myself prioritizing but	No. I had no difficulty prioritizing my own work. My difficulty was working
180:1	I mean, there -- I could	I could
180:4-5	to, you know, understand both points of view and try to -- and	to understand the problems of squeaky wheel mode we were in, and provide leadership in prioritization, so that my priorities were not in conflict with theirs.
181:14	Late '90s or early 2000s, yeah.	Either late 1999 or early in 2000.

184:1	yeah	yes
186:8	Yeah.	Yes.
188:15	Yeah.	[delete line; irrelevant]
188:23	3 and -- I don't think she had direct	I don't believe she had
190:3-4	when I heard that, you know -- I think her name came up in one of the meetings with Greg.	when her name came up in one of the meetings with Greg...
190:11-12	In terms of when I was probing for like who is unhappy,	I would ask him who specifically was complaining, and
191:18	saying, you know, how can we do better? How	asking, how
191:21	up, gave	up to our offices and
(3:5-6	And I believe -- it	And it
194:25	doubt any--expect any problem	expect any problem
196:20	And you know, these	These
197:24	There was not, you know, the	There were no
200:3	I had -- could	I could
200:8	no	"no"
200:13	by all--everybody	by everybody
200:18-19	And it -- and some people read into that that I'm just, you know, saying	Some people read into that that I was saying
200:23	I'm not doing -- I'm	I'm
203:3	customer, do	customer, to do
204:17	For seven--	For several-- [Seven does not make sense here; strike?]
205:16	far after	long after
206:16	Uh-huh	Yes
211:5-6	Can't say until I find out what the acronym is.	This was a New Tribes Mission film about a remarkable true story of a missionary bringing hope and joy to a New Guinea tribe. I shared it one time with a fellow Christian.
211:11-12	just a little tiny thing.	a reduced-size package of the same film.
212:24	Yeah.	Yes.
214:6	Uh-hun.	Yes.
217:22	Sometimes. Not always.	Sometimes, but not often.
219:19	blasting	blatantly promoting
220:21	this, that	this -- that
220:23	an artificial	something artificial
221:4	You know, that was kind of an acronym	"LGM" was actually an acronym
221:5	life and they	life. Later, they
222:11	and saying	and saying,
222:20	the whole process a whole list	the others a short list
223:17	film, he talks	film, talks
224:17	No, I think -- I'm	No, I'm
224:19	theistic Darwinists	theistic evolutionists
229:2	would	could
230:19	Yeah, for like	Yes, for

236:7	in my discuss -- no,	in sharing it that year. No,
236:12-13	accused, yeah, of Christian	accused of pushing
237:5	Yeah,	Yes,
246:22-23	And it's kind of like in	It's in
248:4	Yeah -- well, not	Yes. Not
251:25	program. Now	program -- now
252:1	Planet Quest	Planet Quest --

02/09/12

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DAVID COPPEDGE, an Individual,)
)
 Plaintiff,)
)
 vs.) No. BC435600
)
 JET PROPULSION LABORATORY, form)
 unknown; CALIFORNIA INSTITUTE OF)
 TECHNOLOGY, form unknown; GREGORY)
 CHIN, an Individual; CLARK A.)
 BURGESS, an Individual; KEVIN)
 KLENK, an Individual; and DOES 1)
 through 25, inclusive,)
)
 Defendants.)
)

DEPOSITION OF DAVID DeWOLF, ESQ.
Los Angeles, California
Wednesday, December 14, 2011

Reported by:
Deborah R. Meyers,
CSR No. 8569

02/09/12

EXB

1 BY MR. ZAPP:

2 Q So let me just see if I can back up. As
3 Mr. Becker has indicated, you and he are both attorneys
4 who represent the Discovery Institute; correct?

5 A I have represented the Discovery Institute,
6 yes.

7 Q And in the capacity of your representing the
8 Discovery Institute, without getting into the details of
9 the discussion, did you and Mr. Becker have privileged
10 communications with each other and perhaps with other
11 representatives of the Discovery Institute regarding
12 Mr. Coppedge's case either prior to the litigation or
13 after the litigation but before you became an expert
14 witness?

15 A As I stated earlier, I had that conversation.
16 Because I can't remember the -- even the context or
17 the -- whether it was an attorney-client privileged
18 situation or whether it was not, I do not have a
19 distinct recollection.

20 Q It sounds as if Mr. Becker's representing that
21 there were communications that took place with you and
22 he as attorneys for the Discovery Institute, and perhaps
23 with others there, with respect to Mr. Coppedge's case
24 before you became an expert witness. And that's what
25 he's claiming a privilege to if I understood Bill

1 missed it. Why is that the case?

2 A A simple omission on my part. I didn't
3 recognize that that was not included.

4 Q What is the --

5 A Oh, it does -- excuse me. At the very
6 beginning, current position.

7 Q I apologize. So is your position fellow or
8 senior fellow?

9 A I am now a senior fellow.

10 Q Did you first begin your association with the
11 Discovery Institute in 1990 -- strike that.

12 When did you first begin your association with
13 the Discovery Institute?

14 A Based on my reading of my resume, I believe it
15 was in 1998. I don't recall.

16 Excuse me, could you repeat the question? I'm
17 not sure I answered.

18 MR. BECKER: When did you first begin your
19 association with the Discovery Institute?

20 THE WITNESS: It was before I became a fellow.

21 BY MR. ZAPP:

22 Q Right.

23 A As I described in the declaration, it was my
24 affiliation with Stephen Meyer which began my
25 association with the Discovery Institute.

1 Q That's the one advantage of being the
2 student -- or the lawyer, not the student in this case,
3 with no insult to you as a professor.

4 A I understand.

5 Q Well, so the question is on what basis are you
6 provided compensation? You can describe it in your own
7 words.

8 A Yes. Typically, the compensation is a flat
9 amount of a fellowship grant.

10 Q And that generally is renewed on an annual
11 basis?

12 A Correct.

13 Q And what is the amount of your current grant?

14 A \$10,000 per year.

15 Q And has historically that been the grant for
16 some period of time?

17 A It has varied.

18 Q And has it ever been more than \$10,000?

19 A Yes.

20 Q During what time period?

21 A I believe in the year 2005 when I was on
22 sabbatical and did considerably more work for the
23 Discovery Institute than would be normal.

24 Q And what was it in that particular year,
25 recognizing what you just described?

1 A That was the year of Kitzmiller versus the
2 Dover School Board.

3 Q And what was the amount?

4 A I believe it was \$25,000.

5 Q And between 2006 and the present then, it has
6 been \$10,000 per year?

7 A Yes.

8 Q And for example, I believe you authored or at
9 least coauthored an amicus brief in the Kitzmiller case?

10 A Correct.

11 Q Did you get paid any additional compensation
12 for the amicus brief?

13 A Not that I recall.

14 Q It was encompassed within the fellowship grant?

15 A Correct.

16 Q Do you receive any other form of financial
17 recompense from the Discovery Institute since -- from
18 2005 to the present other than what you've told me?

19 A Occasionally I get free books.

20 Q Anything else?

21 A Free DVDs.

22 Q For those that don't want to read it.

23 Anything else?

24 A Not that I recall.

25 Q Have you ever been associated with the Alliance

1 REPORTER'S CERTIFICATION

2
3 I, Deborah R. Meyers, a Certified Shorthand
4 Reporter, do hereby certify:

5 That prior to being examined, the witness
6 named in the foregoing proceedings was by me duly sworn
7 to testify to the truth, the whole truth, and nothing
8 but the truth;

9 That said proceedings were taken before me at
10 the time and place therein set forth and were taken down
11 by me in shorthand and thereafter reduced to
12 computerized transcription under my direction and
13 supervision;

14 That the dismantling of the transcript will
15 void the reporter's certificate.

16 I further certify that I am neither counsel
17 for, nor related to, any party to said proceedings, nor
18 in any way interested in the outcome thereof.

19
20 IN WITNESS WHEREOF, I have hereunto subscribed
21 my name this 30th day of December, 2011.

22
23 
24 DEBORAH R. MEYERS, CSR 8569
25

02/09/12

EXHIBIT C

From: William Becker [bbeckerlaw@gmail.com]
Sent: Friday, January 06, 2012 10:58 AM
To: Fox, Cameron W.; Zapp, James A.; Gordon, Melinda; Wilson, Christine
Subject: Coppedge: Summary of Telephone Call
Attachments: COPP423-432 employment dox.pdf

Cam/Mel,

Attached are the TIAA-KREFF documents with Bates numbering as requested. I believe that's everything, but let me know if you think something's missing.

We discussed the following issues followed by my understanding of what we discussed. If my understanding is incorrect in any respect, please respond with your version.

MIL re REDACTING DEWOLF STIPEND AMOUNTS

I advised that I intend to move in limine to redact and to preclude all reference to the amounts David DeWolf receives in stipends from the DI. I simply don't see the relevance. It doesn't prove he's a hired gun any more than the fact that he is a senior fellow at the DI. But it does do harm. This case is being watched and followed by various groups hostile to the DI and intelligent design. They include the National Center for Science Education, which is uploading all documents filed in this case to its web site. They are being linked to other web sites. These groups have no business learning the amount of DD's stipend other than to defame him and derogate the ID movement. JPL will look not just very petty disallowing this request, but will prove its own hostility toward ID.

MIL re DI/ADF

I advised that I intend to move in limine to preclude all references to the DI and ADF's association with this case. The ADF's cost underwriting in keeping with its religious liberty objectives is irrelevant per all s352 criteria. But if you think it's relevant, be prepared for me to offer witnesses on the issue and include documentary evidence such as the public statement available here: <http://www.alliancedefensefund.org/Home/ADFContent?cid=5310>. I'm sure the jury would be interested in learning just how great a religious liberty issue this case presents.

The DI's involvement is also irrelevant per all s352 criteria. Nevertheless, I would relish the opportunity to add new witnesses to discuss the job of the DI, particularly how it is often demonized as a "Creationist" institution.

I may have to re-think the wisdom of this MIL. I rather think the witnesses and additional evidence I would bring to trial would be precisely what the jury should learn about. I'm starting to think "game on!". Ball's in your court. Let me know by Monday latest, as you agreed to do.

MIL re LABOR MARKET STUDIES

I advised that I intend to move in limine to preclude testimony from your economist re job placement and labor market studies. Your economist is not qualified to testify as anything but an economist. Such testimony is beyond the scope of his qualifications. You said you would oppose the motion.

02/09/12

2/8/2012

EX. C

DEWOLF'S DEPOSITION

We agreed to provide dates for DeWolf's continued deposition no later than the close of business on Monday.

WARD DEPO

We agreed to discuss scheduling of Ward's deposition. My preference will be to do it same day as Dewolf.

Bill

The Becker Law Firm

11500 Olympic Blvd., Suite 400 | Los Angeles, CA 90064

Tel: (310) 636-1018 | Toll Free: (866) 649-6057 | Fax: (310) 765-6328



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02/09/12

2/8/2012

02/09/12

EXHIBIT D

Ivory-Clay, Tanya

From: Gordon, Melinda
Sent: Monday, January 09, 2012 3:47 PM
To: William Becker
Cc: Fox, Cameron W.; Zapp, James A.; Wilson, Christine
Subject: RE: Coppedge: DeWolf and Ward depos
 Bill,

We do not agree that the evidence should be excluded. We will oppose motions *in limine* on these topics, should you proceed with filing them. Our reasoning, in substance, is as follows:

MIL re: Redacting Stipend Amounts Paid by Discovery Institute to DeWolf

- The money DeWolf is paid by the Discovery Institute (versus merely being associated with them) is relevant to establishing bias. It does more than show that is he *not* an objective, impartial expert ... it shows the exact opposite: he has a personal interest in the outcome so that he can continue to be paid by the Discovery Institute.
- At minimum, the fact that DeWolf is being paid by the Discovery Institute is highly relevant. But the amount is also relevant because the amount is substantial; it is not merely an honorarium, but rather has ranged from \$10,000 to \$25,000.
- Once the jury knows he is being paid, it will wonder as to the amount; providing the amount will minimize jury speculation and confusion.

MIL re: Excluding Reference to the Discovery Institute and Alliance Defense Fund Roles in The Lawsuit

- Like the stipend, evidence regarding the Discovery Institute's role (financially *and* tactically) goes to establishing the bias of their paid guru, DeWolf.
- This evidence is also relevant to Coppedge's credibility. The jury is entitled to understand what is driving this lawsuit -- the Discovery Institute and the Alliance Defense Fund -- and consider Coppedge's claims and testimony in light of those background facts.
- Reference to the DI's and the ADF's role here does not open the door to testimony by DI and ADF officials. Their involvement can be established through testimony by Coppedge and DeWolf (if DeWolf is not barred from testifying). Further, Coppedge's and DeWolf's understanding of the goals of these organizations, which is relevant to their motivations, can ONLY be explored their own testimony. All other topics related to these organization -- such as the DI believing it is demonized (which Becker says he wants to explore if we talk about the DI or ADF) -- have zero relevance to this lawsuit.

MIL re: Mike Ward's Labor Market Studies

- This evidence is plainly relevant to mitigation.
- Caltech anticipates that Coppedge is going to testify that he tried to look for a job, and did not find anything. Caltech is entitled to rebut this allegation by having its expert demonstrate that the hiring market for System Administrators in California is robust, calling into question whether, and how much, Coppedge actually tried to find employment.
- Ward is more than qualified to testify as to the health of hiring markets.
- Ward will not opine that Coppedge could have obtained any particular job.

Regards, Melinda

From: William Becker [mailto:bbeckerlaw@gmail.com]
Sent: Monday, January 09, 2012 9:41 AM

02/09/12

2/8/2012

EX. 1

To: Gordon, Melinda
Cc: Fox, Cameron W.; Zapp, James A.; Wilson, Christine
Subject: Re: Coppedge: DeWolf and Ward depositions

Thanks Melinda,

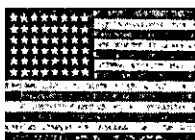
I've confirmed with Dr. DeWolf that Thursday 1/19 at 9a works for him, and it is good for me. The balance of the requests is accepted as well.

Please don't neglect to get back to me on the other matters we discussed. I think we set no later than tomorrow for that.

Bill

The Becker Law Firm

11500 Olympic Blvd., Suite 400 | Los Angeles, CA 90064
Tel: (310) 636-1018 | Toll Free: (866) 649-6057 | Fax: (310) 765-6328



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On Mon, Jan 9, 2012 at 8:43 AM, Gordon, Melinda <melindagordon@paulhastings.com> wrote:
Bill,

Regarding deposition scheduling, we propose the following:

- Both depositions will be held on Thursday, 1/19, at Paul Hastings, with Professor DeWolf appearing by video (or both will be held on Friday, 1/20, if Professor DeWolf cannot make Thursday).
- Professor DeWolf's deposition will start promptly at 9:00 a.m., and go no later than 1:00 p.m. The video hookup pricing is based on 4-hour blocks. We request that you take no longer than 3 hours, providing us with up to 1 hour for redirect as needed. The fee is lower than we previously anticipated, and works out to \$510 per side.
- Michael Ward's deposition will start at 2:00 p.m. We do not anticipate that you will take longer than 3 hours, but please advise if so.

If this is all acceptable, we will proceed with making arrangements, and can provide the location for Prof. DeWolf at that time. I am in the office all day today if you would like to discuss further.

Thanks, Melinda

02/09/12

From: William Becker [mailto:bbeckerlaw@gmail.com]
Sent: Friday, January 06, 2012 1:51 PM
To: Fox, Cameron W.; Zapp, James A.; Gordon, Melinda; Wilson, Christine
Subject: Coppedge: DeWolf and Ward depos

Counsel,

Professor DeWolf is available Tuesday 1/17 until 3p and Thu/Fri 1/29-20 most of the day both days. I would like to be at your office for his deposition as well as Ward's deposition on one day. Please advise. TY.

Bill

The Becker Law Firm
11500 Olympic Blvd., Suite 400 | Los Angeles, CA 90064
Tel: [\(310\) 636-1018](tel:(310)636-1018) | Toll Free: [\(866\) 649-6057](tel:(866)649-6057) | Fax: (310) 765-6328



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02/09/12

2/8/2012

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 CITY OF LOS ANGELES AND COUNTY OF LOS) ss:
4 ANGELES)

5 I am employed in the City of Los Angeles and County of Los Angeles, State of
6 California. I am over the age of 18, and not a party to the within action. My business address is
as follows: 515 So. Flower Street, 25th Floor, Los Angeles, CA 90071.

7 On February 9, 2012, I served the foregoing document(s) described as:

8 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION *IN LIMINE* NO. 4 TO**
9 **EXCLUDE REFERENCE TO THIRD PARTY ORGANIZATIONS INTERESTED IN**
10 **THE OUTCOME OF THIS CASE, OR, ALTERNATIVELY, TO ALLOW PLAINTIFF**
11 **TO PRODUCE THIRD PARTIES REPRESENTATIVES AS REBUTTAL WITNESSES**

12 on the interested parties as follows:

13 William J. Becker, Jr., Esq. Attorney for Plaintiff
14 THE BECKER LAW FIRM DAVID COPPEDGE
15 11500 Olympic Blvd, Suite 400
16 Los Angeles, CA 90064

17 Email: bbeckerlaw@gmail.com

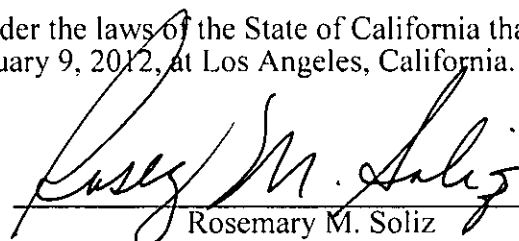
18 **VIA ELECTRONIC MAIL:**

19 By personally emailing the aforementioned document in PDF format to the email
20 address designated for the above listed counsel.

21 **VIA U.S. MAIL:**

22 By placing a true and correct copy thereof in a sealed envelope(s) as addressed
23 above. I am readily familiar with the firm's practice of collection and processing of
24 correspondence for mailing. Under that practice such sealed envelope(s) would be
25 deposited with the U.S. postal service on February 9, 2012, with postage thereon
26 fully prepaid, at Los Angeles, California.

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct and was executed on February 9, 2012, at Los Angeles, California.


Rosemary M. Soliz