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FILED
LOS ANGELES SUPERIOR COURT

FEB 15 2012

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

BY FAX

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

The Honorable Ernest M. Hiroshige, Dept. 54

**PLAINTIFF DAVID COPPEDGE'S
REPLY TO DEFENDANT'S
OPPOSITION TO REPLY TO
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION IN LIMINE NO.
2 TO EXCLUDE REFERENCES TO
PROPOSITION 8; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

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

Trial Date: March 7, 2012

23 COMES NOW PLAINTIFF David Coppedge and hereby submits his Reply to Defendant
24 California Institute of Technology's ("JPL's) Opposition to Plaintiff's Motion in Limine No. 2 to
25 exclude references to Proposition 8 as follows:
26

27 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PLAINTIFF'S MOTIONS IN LIMINE ARE PROCEDURALLY FAVORED AND**
3 **NOT UNTIMELY.**

4 Plaintiff's instant Motion in Limine was not filed in violation of any court order or court
5 rule. Defendant's protest of the instant Motion asserts untimeliness, but that assertion is insuffi-
6 cient. To prevail here, Defendant "must demonstrate not only that the notice was defective, but
7 that he or she was prejudiced.... Procedural defects which do not affect the substantial rights of
8 the parties do not constitute reversible error." *Reedy v. Bussell* (2007) 148 Cal.App.4th 1272,
9 1288-1289 (internal quotations and citations omitted).

10
11 All of Plaintiff's Motions in Limine are brought to facilitate the smooth delivery of rele-
12 vant and not unduly prejudicial evidence at trial. Motions in limine avoid problems of trying to
13 "unring the bell," and they "permit more careful consideration of evidentiary issues than would
14 take place in the heat of battle during trial. They minimize sidebar conferences and disruptions
15 during trial, allowing for an uninterrupted flow of evidence. Finally, by resolving potentially crit-
16 ical issues at the outset, they enhance the efficiency of trials and promote settlements." *Kelly v.*
17 *New West Federal Savings* (1996) 49 Cal.App.4th 659, 669 (citations omitted), quoted and fol-
18 lowed by *Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365, 1386. If Plaintiff's Motions
19 are denied solely on timeliness grounds, then the same objections will be raised during trial any-
20 way. Resolving the evidentiary issues on their merits before trial benefits the court, all parties,
21 and the jury.

22
23 **II. HIGH CONTROVERSY ACCOMPANIES PROPOSITION 8 EVERYWHERE –**
24 **YET DEFENDANT BLITHELY ASSERTS THAT INJECTING PROPOSITION 8**
25 **INTO THIS TRIAL CREATES NO POTENTIAL FOR UNDUE PREJUDICE,**
26 **ALTHOUGH ACTING AS A DISTRACTION FROM ITS OWN MISCONDUCT.**

27 Defendant JPL's Opposition brief at page 5 states: "First, Proposition 8 is no more in-
28 flammatory than views on the origins of life...."

1 JPL's opinion, cited to no source, could not be more ignorant or disingenuous. Consider
2 just some of the evidence of white-hot controversy surrounding Proposition 8:

3 "You really acted like a real idiot at the Yes of [sic] Prop 8 rally this past weekend. Con-
4 sider yourself lucky. If I had a gun I would have gunned you down along with each and
5 every other supporter...."

6 "Anybody who has a YES ON PROP 8 sign or banner in fron [sic] of their house or
7 bumper sticker on the car in Fresno is in danger of being shot or firebombed. Fresno is
8 not safe for anyone who supports Prop 8."

9 *ProtectMarriage.com v. Bowen* (E.D.Cal. 2009) 599 F.Supp.2d 1197, 1200 (verbatim quote from
10 a death threat to a clergyman).

11 "You're as bad as the racist white people who used to enjoy banning black people the
12 same rights as them. The rest of the world is disgusted by your actions. Best start rethink-
13 ing your position NOW!"

14 *Id.*, 599 F.Supp.2d at p. 1203 (verbatim quote from a message to a victim of harassment for his
15 Proposition 8 views).

16 Opponents of Proposition 8 reported suffering "widespread harassment and intimidation"
17 including vandalism and death threats, and there were public demonstrations resulting in near
18 riot conditions. *John Doe No. 1 v. Reed* (2010) 130 S.Ct. 2811, 2823 (Alito, J., concurring);
19 *Bowen, supra*, 599 F.Supp.2d at pp. 1201-1204 (documenting experiences of nine victims and
20 other public and private demonstrations of colliding views).

21 Spirited, vociferous parties continue to press Proposition 8 related issues in the courts,
22 with the most recent decision being *Perry v. Brown* (9th Cir. 2012) --- F.3d ----, 2012 WL
23 372713, decided by a panel itself divided. Discussing Proposition 8 in this trial adds nothing to
24 the substance of the case but drags in strong emotions. JPL's downplaying the Proposition 8 con-
25 troversy shows JPL's desperation to inject that very controversy as a distraction from JPL's own
26 discriminatory misconduct. Evidence Code section 352 operates precisely to block JPL's tactic.
27
28

1 **III. JPL DEFENDS ITS DEMOTING COPPEDGE AS A RESPONSE TO**
2 **"CONDUCT" – YET JPL EXPRESSLY INSISTS ON INJECTING CONTENT**
3 **INTO THE EVIDENCE**

4 JPL's Brief displays again JPL's contention that it demoted Coppedge because of his
5 "manner" and "conduct," not the content of his viewpoints. On page 1, the Brief states (empha-
6 sis added):

7 "Coppedge's *manner* of interacting with Caltech employees regarding Proposition 8 is an
8 integral part of this case. Two of the three employees who complained about Coppedge,
9 ... cited his conduct in connection with Proposition 8, and Coppedge's April 2009 written
10 warning was based in part on *his interactions* with them about Proposition 8."

11 Jumbling the evidence, JPL asserts the April 2009 written warning was based on "interac-
12 tions ... about Proposition 8." In fact, the written warning does not mention Proposition 8 at all,
13 as JPL's Brief on page 3 later quotes:

14 "You created disruption in the workplace by approaching a coworker during work hours
15 to engage in a political debate about a recent controversial issue. When you discovered
16 your co-worker did not share your political views, you became upset and argumentative.
17 Your co-worker had to request that you leave his office in order to cease the conversa-
18 tion."

19 JPL's generalized language in the written warning is the same kind of language that can
20 be used at trial for the jury. JPL can elicit testimony and argue that Coppedge "created disrup-
21 tion" or "engaged in heated political debate." It matters not what the debate topic was, because
22 JPL keeps stating: this case is about "manner" and "conduct" – not content.

23 Although the April 2009 written warning cited manner and conduct without detailing
24 content, JPL now asserts that content is crucial to the case: "The jury must be allowed to hear
25 what Coppedge said in the Proposition 8 interactions to understand fully the basis for
26 Coppedge's written warning...." (JPL Opp., at p. 1 (emphasis added).)
27
28

1 **IV. JPL DOES NOT NEED TO INJECT “CONTENT” TO ARGUE IT’S “MANNER**
2 **AND CONDUCT” DEFENSE.**

3 To establish “conduct” or “manner of his speech without respect to its content,” JPL
4 needs only to provide evidence about “the frequency of the offensive acts or encounters,” the
5 “number of days” over which “the offensive conduct occurred,” and “the context” of Coppedge’s
6 alleged conduct. *See Herberg v. California Institute of the Arts* (2002) 101 Cal.App.4th 142, 150
7 (employing a “totality of the circumstances” analysis to workplace harassment allegations).
8 While in *Herberg, supra*, the accused employee’s “words” were judged for their offensive quali-
9 ties, here JPL expressly disclaims concern about the Coppedge’s words. Only the “manner” and
10 “conduct” are at issue, JPL says.
11

12 Therefore, JPL could offer evidence of the number and types of conversations that
13 Coppedge had with coworkers to establish the alleged objectionable “manner” or “conduct.” Ev-
14 idence of shouting, repeated and prolonged arguments, whether profanity or obscene language
15 was used – any of these items could be offered without ever mentioning the subject matter (con-
16 tent) or the words of the conversations.
17

18 Because JPL insists the conversations’ content was irrelevant to the discipline decision, it
19 would not matter whether the conversations were about politics or baseball – and it would not be
20 important to the jury to know the contents of the conversations either. JPL’s injecting Proposi-
21 tion 8 into the case means that JPL wants to argue JPL demoted Coppedge because Coppedge’s
22 political views differed from co-workers’s views and were therefore “disruptive.” That is what
23 JPL calls “the context.” (JPL. Opp. at 3:4, 3:20-23, and 4:23.)
24

25 This Court ruled Plaintiff could not argue JPL violated Labor Code section 1101’s rule
26 against employer’s punishing political activity. This Court should not permit JPL to argue that
27
28

1 its punishment of Coppedge was proper because Coppedge's political views were different from
2 others.

3 Evidence Code section 352 should bar the Proposition 8 content for another reason. In-
4 jecting political debate necessarily dilutes the real issue: whether JPL discriminated and later
5 retaliated against Coppedge because of his expressed religious or perceived religious viewpoints.
6

7 In the "religious" context, the content of conversations and the DVDs is directly on point.
8 JPL's people called Coppedge's Intelligent Design ideas "religious" – and ultimately JPL demot-
9 ed Coppedge because of that. Evidence Code section 352 empowers this Court to block JPL's
10 efforts to dilute the real issue of "religious" content by injecting the inflammatory Proposition 8
11 content.

12 **V. CONCLUSION**

13 For the reasons set forth in the instant Motion and this Reply, Plaintiff Coppedge respect-
14 fully requests this Court grant Plaintiff's Motion in Limine No. 2.
15

16 DATED: February 15, 2012

THE BECKER LAW FIRM

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By:

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