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FILED
LOS ANGELES SUPERIOR COURT

FEB 15 2012

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

BY FAX

12 **DAVID COPPEDGE**, an individual;

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

**REPLY TO 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;
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

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1 COMES NOW PLAINTIFF David Coppedge and hereby submits his Reply to Defendant
2 California Institute of Technology's ("JPL's) Opposition to Plaintiff's Motion in Limine No. 4
3 Re: Third Party Organizations as follows:

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. PLAINTIFF'S MOTIONS IN LIMINE ARE PROCEDURALLY FAVORED AND**
6 **NOT UNTIMELY**

7 Plaintiff's instant Motion in Limine was not filed in violation of any court order or court
8 rule. Defendant's protest of the instant Motion asserts untimeliness, but that assertion is insuffi-
9 cient. To prevail here, Defendant "must demonstrate not only that the notice was defective, but
10 that he or she was *prejudiced*.... Procedural defects which do not affect the substantial rights of
11 the parties do not constitute reversible error." *Reedy v. Bussell* (2007) 148 Cal.App.4th 1272,
12 1288-1289 (internal quotations and citations omitted).

14 All of Plaintiff's Motions in Limine are brought to facilitate the smooth delivery of rele-
15 vant and not unduly prejudicial evidence at trial. Motions in limine avoid problems of trying to
16 "unring the bell," and they "permit more careful consideration of evidentiary issues than would
17 take place in the heat of battle during trial. They minimize sidebar conferences and disruptions
18 during trial, allowing for an uninterrupted flow of evidence. Finally, by resolving potentially crit-
19 ical issues at the outset, they enhance the efficiency of trials and promote settlements." *Kelly v.*
20 *New West Federal Savings* (1996) 49 Cal.App.4th 659, 669 (citations omitted), quoted and fol-
21 lowed by *Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365, 1386. If Plaintiff's Motions
22 are denied solely on timeliness grounds, then the same objections will be raised during trial any-
23 way. Resolving the evidentiary issues on their merits before trial benefits the court, all parties,
24 and the jury.
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1 **II. DEFENDANT JPL HAS NOT ALLEGED BAD FAITH LITIGATION; THE**
2 **EVIDENCE OF “WHAT THEY ACTUALLY ARE DOING” IS IMMATERIAL,**
3 **IRRELEVANT AND PREJUDICIAL.**

4 JPL’s Opposition brief expressly states:

5 “Caltech is not assuming what Coppedge, the Discovery Institute and the Alliance De-
6 fense Fund would do based on their affiliations and/or beliefs, but rather is informing the
7 jury about *what they actually are doing*: using a discrimination and retaliation trial *as a*
8 *means of promoting their views* on intelligent design.”

9 (Def’t.’s Opp. Br. 3:12-15 (emphasis added).)

10 On the eve of trial JPL now collaterally injects a charge of sham litigation or malicious
11 prosecution against Coppedge. But this Court’s summary judgment denial established that
12 Coppedge’s discrimination lawsuit has enough merit to warrant a jury trial. That ruling means
13 there was “probable cause” for Coppedge’s complaint. *See Wilson v. Parker, Covert & Chidester*
14 (2002) 28 Cal.4th 811, 819-820 & n.4 (holding if a reasonable jury could find in the party’s fa-
15 vor, then there was “probable cause” for the party’s action, which defeats malicious prosecution).
16 Given such probable cause, Coppedge’s lawsuit is not malicious prosecution and is not sham lit-
17 igation. *Id.*

18 JPL’s claim that Coppedge’s lawsuit is aimed primarily at obtaining publicity for intelli-
19 gent design theory is a covert charge of both sham litigation and attorney misconduct in bringing
20 a frivolous case. *See In re Kunstler* (4th Cir. 1990) 914 F.2d 505, 519 (obtaining publicity is an
21 improper reason to file a lawsuit). This Court’s denial of JPL’s motion for summary judgment
22 defeats JPL’s covert charge.

23 Evidence about Coppedge’s “true motivations,” or the motivations of the organizations
24 assisting Coppedge with the litigation, could be admissible if these “motivations” were at all rel-
25 evant. The motivations are not relevant, however, because this lawsuit stands on its own merits.
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1 No element of Coppedge's or other organizations' "motivations" gave rise to this Court's denial
2 of summary judgment – their "motivations" are immaterial, irrelevant, and should be excluded.

3 First, an inquiry into "motivations" would be immaterial because the involvement of the
4 supporting organizations came only *after JPL had demoted Coppedge* and Coppedge had filed a
5 complaint. The organizations could not have formed any "motivation" to present intelligent de-
6 sign theory in court when no court case even existed. Their motivations are not even part of the
7 pleaded causes of action, and thus are immaterial. *See Armenta v. Churchill* (1954) 42 Cal.2d
8 448, 457 ("Evidence which is not pertinent to the issues raised by the pleadings is immaterial,
9 and it is error to allow the introduction of such evidence," *quoting and citing Fuentes v. Tucker*
10 (1947) 31 Cal.2d 1, 4).

11
12 Second, arguing the "true motivations" of the organizations to the jury would waste court
13 time and confuse the issues, because the alleged "true motivations" have absolutely no bearing
14 on whether JPL discriminated or retaliated against Coppedge. By attempting to convince the jury
15 about a supposed bad faith litigation conspiracy, when no such cause of action or defense has
16 been pleaded or proved, JPL would be confusing and misleading the jury to consider factors that
17 form no part of the lawsuit. *See Evid. Code § 352.*

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19 **III. IF JPL IS PERMITTED TO SUBMIT EVIDENCE AND ARGUE THAT**
20 **COPPEDGE'S LAWSUIT IS A SHAM OR BROUGHT IN BAD FAITH, OR TO**
21 **OFFER IMPEACHMENT EVIDENCE, THEN COPPEDGE MUST BE**
22 **PERMITTED TO OFFER REBUTTAL WITNESSES AND EVIDENCE.**

23 Litigants have fundamental due process rights to produce for consideration their material
24 and relevant evidence, to cross-examine adverse witnesses, to testify on their own behalf, and to
25 call supporting witnesses. *Fewel v. Fewel* (1943) 23 Cal.2d 431, 433; *Elkins v. Superior Court*
26 (2007) 41 Cal.4th 1337, 1357. Litigants thus have the fundamental right to offer rebuttal evi-
27 dence. *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 290-291 (reversing superior
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1 court's judgment because of the denial of a litigant's fundamental trial rights, including inter alia,
2 the right to offer rebuttal evidence).

3 Here, if JPL is permitted to adduce impeachment evidence from or about the organiza-
4 tions supporting Coppedge's litigation effort, then Coppedge must be permitted to offer rebuttal
5 evidence on the same points. JPL's attempt to obtain impeachment evidence that is immune from
6 rebuttal is an invitation to reversible error. *See id.*, at p. 291 ("Denying a party the right to testify
7 or to offer evidence is reversible per se" (citations omitted)).

9 **IV. CONCLUSION**

10 For the reasons set forth in the instant Motion and this Reply, Plaintiff Coppedge respect-
11 fully requests this Court grant Plaintiff's Motion in Limine No. 4.

12 DATED: February 15, 2012

THE BECKER LAW FIRM

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