

1 PAUL HASTINGS LLP
JAMES A. ZAPP (SB# 94584)
2 jameszapp@paulhastings.com
CAMERON W. FOX (SB# 218116)
3 cameronfox@paulhastings.com
MELINDA A. GORDON (SB# 254203)
4 melindagordon@paulhastings.com
515 South Flower Street
5 Twenty-Fifth Floor
Los Angeles, CA 90071-2228
6 Telephone: (213) 683-6000
Facsimile: (213) 627-0705

7 Attorneys for Defendant
8 CALIFORNIA INSTITUTE OF TECHNOLOGY
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12

13 DAVID COPPEDGE, an Individual
14

15 Plaintiff,

16 vs.

17 JET PROPULSION LABORATORY,
form unknown; CALIFORNIA
INSTITUTE OF TECHNOLOGY, form
18 unknown; GREGORY CHIN, AN
Individual; CLARK A. BURGESS, an
19 Individual; KEVIN KLENK, an Individual;
and DOES 1 through 25, inclusive,
20

21 Defendants.
22

CASE NO. BC 435600

**DEFENDANT'S SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION *IN LIMINE* #3
("DML 3") FOR AN ORDER EXCLUDING
ANY CONTENTION THAT PLAINTIFF'S
CONDUCT WAS JUSTIFIED BECAUSE OF
NASA'S AND/OR JPL'S PROGRAMS AND
RESEARCH REGARDING THE ORIGINS
OF LIFE**

Date: March 13, 2012
Time: 10:00 a.m.
Dept.: 54
Judge: Hon. Ernest M. Hiroshige

Complaint Filed: April 14, 2010
Trial Date: March 7, 2012

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26 ORIGINAL
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 13 2012

John A. Clarke, Executive Officer/Clerk
BY Rubena Juliano, Deputy

1 **I. INTRODUCTION**

2 Undeterred by the actual facts of this case, Coppedge continues to argue that he had a
3 right to engage in conduct his co-workers found harassing, because it was “work-related.” To
4 support that argument, Coppedge points to JPL’s and/or NASA’s programs relating to exploring
5 life’s origins. Caltech has filed a Motion *in Limine* (DML 3) seeking to prevent Plaintiff from
6 making this argument at trial. As Caltech explained in prior briefing and shows here again,
7 Coppedge cannot attempt to justify his behavior as work-related, when it had nothing whatsoever
8 to do with the job for which he was paid. Coppedge remains free to have discussions on non-
9 work related topics, but only during breaks and lunch – not during work hours, when he is being
10 paid to do something else – and only so long as it is not unwelcome or disruptive.

11 On March 12, 2012, the Court’s tentative ruling on the parties’ motions *in limine* indicated
12 that the Court was granting this Motion, and correctly found that there was an “insufficient
13 showing . . . that his job responsibility encompassed this task or JPL/Cal tech encouraged him to
14 become involved in the subject.” Following argument by the parties, the Court indicated that it
15 was taking the Motion under submission, and would permit supplement briefing.

16 Caltech provides this supplemental brief in response, and takes the opportunity to show
17 both that its Motion is meritorious, and that Coppedge is determined, yet again, to go beyond the
18 facts and explore topics irrelevant to his case and certain to waste trial time.

19 **II. PLAINTIFF’S CONDUCT WAS NOT RELATED TO HIS JOB DUTIES**

20 As the Court properly found, Coppedge has not shown that his job had anything to do
21 with intelligent design. Coppedge was a Systems Administrator (“SA”), meaning his work
22 involved servicing computers and computer networks. He was not a scientist, and he was not
23 paid to study or discuss the origins of life. Even if he had been a scientist (he was not), and even
24 if his work encompassed origins research (it did not), that still would not justify discussions
25 regarding intelligent design. To be work-related, the conduct would have had to pertain to origins
26 research that JPL and/or NASA were actually *doing*. Their origins research does not encompass
27 intelligent design.

28 Coppedge has suggested that it does not matter whether his specific job duties pertained to

origins research, and that if topics are of interest to him, he can discuss them at work – whether it is intelligent design, or “baseball,” the example he gave at the motion *in limine* hearing. This argument mistakenly presumes that he had an unfettered right to discuss non-work-related topics at his pleasure in the workplace. He did not. The content of Coppedge’s speech was indeed irrelevant to his work, and to JPL’s missions, but it was his failure to communicate in an appropriate manner that led to the written warning, not that content.¹ Thus, even if intelligent design were related to Coppedge’s job, or JPL’s missions, Coppedge still acted inappropriately by communicating about it in a manner his co-workers found disruptive and doing so during work hours, rather than during lunch or on his own time.

III. THIS EVIDENCE IS NOT OTHERWISE RELEVANT TO THIS CASE

Caltech acknowledges that Coppedge discussed origins research during his investigation interview with Huntley, and gave her materials on the topic. These facts can be established at trial through testimony about what actually occurred: what Coppedge said to Huntley, and what materials gave her. To the extent that Coppedge may have discussed origins research with other employees at JPL, Caltech likewise would not object to testimony about such events.

However, this does not open the door for Plaintiff to present evidence regarding the substance of origins research, or to make baseless, post-hoc arguments that such research projects justified the conduct that multiple coworkers found disruptive. Such evidence and argument are totally irrelevant to what is at issue here. Assuming *arguendo* that Coppedge actually considered origins research as a basis for approaching his coworkers, at the time he approached them (rather than afterwards, when he was trying to justify himself), it is irrelevant whether the origins research motivated his conduct, much less what the substance of that research is. What is at issue

¹ As Caltech has maintained throughout this case, Coppedge was disciplined for the *manner* of his interactions, not the content. The evidence supports Caltech’s position. Clark Burgess and Kevin Klenk expressly told Coppedge that his written warning related to the manner in which he had interacted with his co-workers; not the substance of what he had discussed. Coppedge Depo. Tr. 395:12-20 (attached to the Fox Declaration in Support of Defendant’s Reply in Support of DML 3). Klenk told Coppedge they had “no issue with people discussing religion and politics in the office so long as it’s not unwelcome or disruptive.” Certified Transcription of Audio Recording of Meeting on April 13, 2009, at 11.

1 now is whether Caltech's actions in response were legitimate, or whether they were
2 discriminatory and/or retaliatory. Origins research cannot shed any light on these questions.

3
4 **IV. CONCLUSION**

5 For the reasons stated in Caltech's Motion, reply papers, and during the motion *in limine*
6 hearing, the Court should grant Caltech's Motion *in Limine* No. 3 and preclude any contention or
7 purported evidence that Coppedge was justified in passing out DVDs or discussing intelligent
8 design during work hours because of JPL's and/or NASA's programs and research on the origins
9 of life.

10
11 DATED: March 13, 2012

PAUL HASTINGS LLP
JAMES A. ZAPP
CAMERON W. FOX
MELINDA A. GORDON

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13
14 By: 

15 MELINDA A. GORDON

16 Attorneys for Defendant
17 CALIFORNIA INSTITUTE OF TECHNOLOGY
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
CITY OF LOS ANGELES AND COUNTY OF LOS)
ANGELES)

I am employed in the City of Los Angeles and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is as follows: Nationwide Legal, Inc., 1609 W. James M. Wood Blvd., Los Angeles, CA 90015.

On March 13, 2012, I served the foregoing document(s) described as:

DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION *IN LIMINE* #3 ("DML 3") FOR AN ORDER EXCLUDING ANY CONTENTION THAT PLAINTIFF'S CONDUCT WAS JUSTIFIED BECAUSE OF NASA'S AND/OR JPL'S PROGRAMS AND RESEARCH REGARDING THE ORIGINS OF LIFE

on the interested parties by transmitting a true and correct copy thereof via facsimile number referenced below to:

William J. Becker, Jr., Esq.
c/o Los Angeles Superior Court
111 North Hill Street, Dept. 54
Los Angeles, CA 90012

Attorney for Plaintiff
DAVID COPPEDGE

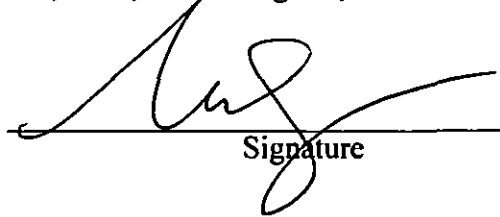
☒ **VIA PERSONAL DELIVERY:**

I personally delivered such sealed envelope(s) by hand to the offices of the addressee(s) pursuant to CCP § 1011.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on March 13, 2012, at Los Angeles, California.



Print Name



Signature