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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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11 DAVID COPPEDGE, an Individual,

12 Plaintiff,

13 vs.

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

18 Defendants.
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CASE NO. BC435600

**[PROPOSED] STATEMENT OF
DECISION**

Trial Date: March 7, 2012
Judge: Hon. Ernest M. Hiroshige
Dept.: 54

Complaint Filed: April 14, 2010

Defendant California Institute of Technology ("Caltech") respectfully submits the following proposed statement of decision regarding Plaintiff David Coppedge's ("Coppedge") claims for discrimination, retaliation, and failure to prevent discrimination:

I. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT CALTECH ENGAGED IN RELIGIOUS DISCRIMINATION IN VIOLATION OF FEHA

A. Findings of Fact.

i. The JPL Organization, The Cassini Project, And Coppedge's Employment Background.

1. Caltech, a private, non-profit corporation, operates the Jet Propulsion Laboratory ("JPL"), a Federally Funded Research and Development Center, pursuant to a prime contract with the National Aeronautics and Space Administration ("NASA").

2. Cassini is a joint NASA-European Space Agency project to study the planet Saturn and its satellites. 3/28/12 (Chin) Tr. 202:20-24; 4/10/12 (Woncik) Tr. 157:9-11.

3. The spacecraft was launched in 1997 and reached Saturn in July 2004. 3/28/12 (Chin) Tr. 202:20-203:3. The prime mission lasted four years, from 2004 to 2008. *Id.* at Tr. 203:7-11. Cassini was extended for a first extended mission, or XM, from July 1, 2008 to October 1, 2010, at full funding. *Id.* at Tr. 203:11-24. Cassini was then extended for a second extended mission, or XXM, on October 1, 2010, at reduced funding. *Id.* at Tr. 203:25-204:2.

4. JPL initially hired Coppedge as a contractor in July 1996 to work as a System Administrator ("SA"). 3/15/12 (Coppedge) Tr. 36:11-14; 36:25-37:2; 52:9-12.

5. JPL is a matrix organization, consisting of projects and line organizations. 3/15/12 (Coppedge) Tr. 45:27-46:9. Project managers direct employee work on projects. *Id.* at Tr. 46:3-5. Managers in line organizations, like Group Supervisors and Section Managers, are responsible for supervisory tasks such as performance reviews, pay increases, discipline, hiring, and firing. *Id.* at Tr. 46:6-9; 4/3/12 (Klenk) Tr. 3:25-4:2.

6. Coppedge's Group Supervisor was Clark Burgess ("Burgess"). 3/15/12 (Coppedge) Tr. 51:12-17. Greg Chin ("Chin"), the Office Manager for the Mission

1 **Support and Services Office (“MSSO”), supervised Coppedge’s work on Cassini at all**
2 **relevant times until October 2010.** *Id.* at Tr. 152:10-15; 3/28/12 (Chin) 191:21-22.

3 7. **Chin and Burgess asked Coppedge to act as the team lead for the**
4 **Cassini SAs, primarily because he had the longest tenure of the SAs at the time.** 3/15/12
5 (Coppedge) Tr. 154:14-22; 3/28/12 (Chin) Tr. 208:18-21; 3/28/12 (Chin) Tr. 209:3-15 (“Q.
6 Okay. And on what basis did you decide that Mr. Coppedge should become a lead rather than
7 Mr. Castillo. A. These early stages we were thinking that tenure was probably the most
8 important criteria. Q. And Mr. Coppedge had been on the project longer? A. Yes, sir. . . .”).

9 8. **The team lead role was an unofficial position, and involved a limited**
10 **set of administrative tasks.** 4/2/12 (Burgess) Tr. 220:22-24 (“[Q] . . . the designation of team
11 lead was an unofficial position; isn’t that right? A. Yes.”); 4/2/12 (Burgess) Tr. 165:10-11
12 (“ . . . [T]he lead was doing a somewhat administrative task”); 3/21/12 (Coppedge)
13 Tr. 33:23-35:11 (Coppedge’s lead duties included “attend[ing] Mr. Chin’s weekly staff meetings
14 with the team leads,” “work[ing] with the SA’s weekly reports in submitting them to Mr. Chin,”
15 prepar[ing] monthly reports,” “act[ing] as a sort of liaison between the customer or user and the
16 systems administrators,” though “[n]ot exclusively, because SAs “could deal directly with the
17 customers as well,” and participating in interviews of SA candidates along with the other SAs.).

18 9. **Chin recommended to Burgess that Coppedge be offered employment**
19 **at JPL. Coppedge was hired as a JPL employee in January 2003 and he continued to work**
20 **as a System Administrator on Cassini.** 3/15/12 (Coppedge) Tr. 50:24-51:5; 3/28/12 (Chin) Tr.
21 211:13-15 ([Q.] “Did you participate in recommending that he be hired a JPL employee? A.
22 Yes, sir.”); *Id.* at (Coppedge) Tr. 52:4-8; 52:20-25.

23 ii. **Coppedge’s Co-Workers Reported That He Made Them Feel Harassed**
24 **And Uncomfortable By The Manner In Which He Discussed Non-Work**
25 **Topics.**

26 10. **Margaret Weisenfelder (“Weisenfelder”) (a minister and a Christian**
27 **herself) did not know Coppedge’s religious beliefs, or ever discuss religion with him.** 4/3/12
28 (Weisenfelder) Tr. 227:17-22 (“Q. Has David Coppedge ever discussed his religious views with

1 you? A. No. Q. And at the time of the events in this case, did you know what David
2 Coppedge's religious faith was? A. No, I don't"); Trial Ex. 227, p 35.).

3 **11. Coppedge approached Weisenfelder in 2008, prior to the election,**
4 **regarding Proposition 8, in a manner that made her feel uncomfortable and judged.** 4/3/12
5 (Weisenfelder) Tr. 214:9-17; 215:14-217:17 ("Q. Now you said that Mr. Coppedge asked your
6 view on Proposition 8, or whether you knew about Proposition 8. . . . [A]. I indicated that I didn't
7 share his view. . . . A. I remember him asking me if there was anything he could say to change
8 my mind [about Prop 8]. Q. How did that make you feel? A. Pressured, like he wasn't going to
9 let it go. Q. And did you say anything in response? A. I told him, no. Q. And how did you see
10 him react when you said, no? A. I don't remember him saying anything. But he gave a deep
11 disappointed kind of sigh with his shoulders slumped. Q. And how did that make you feel when
12 you saw that? A. Uncomfortable, and kind of judged."). **Weisenfelder did not report the**
13 **Proposition 8 incident at the time because "it was a one-time incident and [she] was giving**
14 **him the benefit of the doubt."** 4/3/12 (Weisenfelder) Tr. 217:28-218:3.

15 **12. In late February 2009, Coppedge lent Weisenfelder an intelligent**
16 **design DVD; while neither the DVD nor the concept of intelligent design bothered her, a**
17 **post-it note on the DVD that listed the names of several JPL co-workers (with a notation to**
18 **"try again") made her uncomfortable, because it showed Coppedge's persistence.** *Id.* at Tr.
19 217:7-12; 218:23-24; 219:8-14; 219:23-28. ("Q. Okay. And was there anything about the DVD
20 itself that made you uncomfortable? A. Not the DVD itself, there was a yellow post-it note that
21 was attached to the back of the DVD jacket that had a list of names with a notation next to it that
22 said, "try again."). *Id.* at Tr. 221:15-24. ("Q. What was it about "try again" that struck you on
23 this post-it note? A. It was the implication that it was going to be offered again to someone who
24 had already refused it"); *Id.* at Tr. 223:28-224:11. (Weisenfelder noting that there was nothing
25 "about the concept [of intelligent design] that was uncomfortable for [her] or bothered [her] in
26 any way").

27 **13. On March 2, 2009, Weisenfelder told Chin about the Proposition 8**
28 **discussion and the post-it note.** 4/3/12 (Weisenfelder) Tr. 224:12-20. ("I remember telling

1 [Greg Chin] that . . . Mr. Coppedge had come to me to discuss his views on Proposition 8, as well
2 as the sticky note that had a list of names with the notation "try again."). **Weisenfelder spoke to**
3 **Chin because she "was feeling uncomfortable and [she] wanted his advice" (4/3/11**
4 **(Weisenfelder) Tr. 223:8-11), not because she intended for Coppedge to be disciplined; she**
5 **did not ask Chin to take any particular action.** *Id.* at Tr. 224:12-225:6. ("Q. Was there a
6 reason why you felt that Mr. Chin was the right person for you to talk to in this instance? A. He
7 was my supervisor and I felt comfortable talking to him." "Q. Did you ask Mr. Chin to take any
8 particular action? A. No.").

9 14. **Coppedge also discussed Proposition 8 with Cassini scientist Scott**
10 **Edgington ("Edgington") before the 2008 election. Coppedge insulted Edgington by**
11 **commenting that Edgington must want to harm (or must not like) kids; Edgington had to**
12 **ask Coppedge twice to leave his office, and the incident left Edgington feeling shaken.**
13 4/4/12 (Edgington) Tr. 9:11-15; 11:1-18:18. *Id.* at Tr. 11:10-21; 12:24-13:27 ("He said . . . that
14 well, you must want to harm kids or you must not like kids"); *Id.* at Tr. 14:3-12 ("His tone was
15 raised. [Y]ou could tell that he was – he couldn't grasp me not thinking that I, you know, would
16 agree with him on this topic. Q. Did he seem upset? A. Yes. He seemed upset."); *Id.* at Tr.
17 14:13-15 ("Q. How did you feel when he said to you that you must not like kids or be against
18 kids? A. I was shocked and upset."); *Id.* at Tr. 15:19-18:17 ("[A.] I was feeling intimidated, as
19 he was standing on the other side of my desk, you know, making this statement. And so I politely
20 asked him to leave. . . . Q. And what happened next? A. He started repeating the arguments that
21 he had made earlier in the conversation and his tone was raised over what it was previous to that
22 as if repeating it would convince me that he was right. Q. And did he make any gesture as if he
23 was going to leave? A. No. No. Not as he was repeating those arguments. Q. And what
24 happened after that? A. Well, I said to myself, I really need to, you know, get out of this
25 situation. So I asked him to leave again. Q. And how did you say it the second time? A. I said
26 in a higher tone, you know, 'would you please leave my office,' and, yes. Q. Did he at that time?
27 A. Yes, he did. Q. How did he leave? A. He had this frustrated look on his face and just
28 stormed out of the office. . . . After he left I was shaken up a bit by the situation.").

1 15. Carmen Vetter ("Vetter"), the Cassini Program Administrator, had
2 **felt uncomfortable in conversations with Coppedge. Soon after Vetter and Coppedge met,**
3 **seven to nine years ago, Coppedge tried to discuss religion with her during work hours on**
4 **multiple occasions. These conversations and Coppedge's manner eventually made Vetter**
5 **uncomfortable – not because she disagreed with his practices or beliefs, but because she felt**
6 **like he was judging her Christianity.** 4/4/12 (Vetter) Tr. 57:27-59:24 ("Q. . . . [H]ow long
7 ago did you meet David Coppedge? A. 7 to 9 years. . . . Q. How soon after you first met him,
8 did you have a first conversation with him about either you or he being a Christian? A. I don't
9 recall. Q. Was it relatively early in the time you knew him? A. It was. Who brought up religion
10 first you or Mr. Coppedge? A. David Coppedge. . . . Q. Were there conversations about
11 religion after that first or second conversation? A. There were several. Q. And describe for the
12 court those several conversations after what was your comfort level with those conversations over
13 time? A. I started to become uncomfortable talking to Mr. Coppedge about my Christianity.
14 Though we shared the same beliefs I felt that he was more judgmental about his Christianity than
15 I was comfortable with. Q. Was there something about the way Mr. Coppedge spoke to you that
16 made you feel that way? A. I don't know how to describe it. I felt he was judging my
17 Christianity. I don't even know how to explain it. Q. At that point did he – did you try to avoid
18 conversations with him on religion going forward? A. Yes, I did. . . . Q. Was there anything
19 that you knew about his religious beliefs or practices that bothered you in any way? A. No. Q.
20 Was there anything about his religious beliefs or practices that offended you? A. No.").

21 16. **Vetter also felt like Coppedge was judging her Christianity and**
22 **harassing her when he tried to pressure her to change the name of the Cassini holiday party**
23 **to a Christmas party.** 4/4/12 (Vetter) Tr. 48:14-50:28 ("He asked me if I would change the
24 name [of Cassini's annual holiday party] to a Christmas party. And I said, no. That we were an
25 inclusive multi-cultural mission and it would say a holiday party. That was the program project
26 stance on it. . . . Q. After that did the subject come up again with Mr. Coppedge? A. Yes. I
27 received an email, and it was asking me to change the holiday party to a Christmas party based on
28 some articles or something. I don't remember exactly what they were. It's been a long time. Q.

1 Was there anything about that first email that you received that bothered you . . . ? A. I don't
2 remember exactly which email or how many there were but at one time point he had mentioned
3 because I was a Christian well then I should make sure to change [the Cassini holiday party
4 name] to Christmas party. . . . [That i]t's the right thing to do basically. Q. How did that make
5 you feel? A. I felt it was inappropriate, and I felt harassed by that. And I felt like I was being
6 judged for being a Christian and not doing what he thought was Christian.”).

7 **17. Vetter expressed concern about the holiday party situation to Program**
8 **Manager Bob Mitchell (“Mitchell”), who told her to leave it as a holiday party. 4/5/12**
9 (Mitchell) Tr. 219:14-220:12; 220:3-12 (“We have people on this project from many different
10 religions, cultures, all of whom are valuable contributors to the project. And we want to treat all
11 of them with appropriate respect and appreciation. And beyond that, we want them all to feel
12 comfortable in this work environment to lead to a more conducive team work environment.”);
13 Tr. 219:14-220:3; 219:24-28.

14 **iii. The March 2, 2009 Meeting Between Chin And Coppedge.**

15 **18. Although Chin initially told Weisenfelder to speak to Coppedge about**
16 **her concerns, Chin decided to do so himself because this was the first time someone used the**
17 **word “harassed” when describing Coppedge’s behavior, and Chin wanted to help Coppedge**
18 **avoid further complaints. 3/29/12 (Chin) Tr. 15:21-16:21 (“ . . . [A.] This is the first time that**
19 **someone said that they felt harassed by David. . . . I was thinking if David has a list of names and**
20 **he’s going off to individuals he might inadvertently start harassing other individuals on the**
21 **program and I wanted to chat with him to kind of put the brakes on this.”).**

22 **19. Chin informed Coppedge that there was a harassment complaint, and**
23 **explained that there are appropriate times and places, other than during work hours, to**
24 **discuss controversial topics like religion and politics. *Id.* at 18:8-26 (“Q. How did you[r]**
25 **meeting start? How did you start the discussion with Mr. Coppedge? A. I mentioned that there**
26 **is I told him that there was a complaint, a harassment complaint, that I received. And I told him**
27 **that I requested that he stop pushing his religion and politics on individuals in the workplace. . . . I**
28 **told him politics and religion are controversial subjects and there is an appropriate time and place**

1 to do these type of things. I said before work, after work, lunch hours. I think during Bible
2 studies. Other places but just not during the work hours.”).

3 20. **Coppedge became confrontational, wanting to know who his accuser**
4 **was, and tried to debate Chin, in the office or off-Lab, regarding whether intelligent design**
5 **was science or religion.** 3/29/12 (Chin) Tr. 18:17-20 (“A. . . . David then – initially David asks
6 me, he says he wanted to know who his accuser was. I told him, no. I wasn’t going to tell him
7 about this.”); *Id.* at 19:1-17 (describing how he explained to Coppedge that he was not “singl[ing]
8 him” out, and that he only spoke to him because someone mentioned the harassment issue); *Id.* at
9 19:24-21:7 (“A. . . . David . . . asked me what was science and what was evolution. . . . David
10 insisted that intelligent design was the only scientifically proven fact and that evolution was a
11 fiction and that is why we got into the discussion about evolution being the protected religion. . . .
12 [W]e had this interchange going back and forth about religion or intelligent design and whatnot.
13 And I said, you know, David, this is your personal belief. We’re not going to go there and – Q.
14 What did he say? A. At some point he said, well, let’s go off lab and let’s continue this
15 discussion. Let’s have this debate. Let’s go off lab, and we can figure out whether intelligent
16 design is the appropriate thing to be discussing in the workplace. Q. What did you say in
17 response? A. I said, no. We’re not going to go there. We’re not going to do this. I got up to
18 leave.”).

19 21. **Frustrated by Coppedge’s attempt to turn the conversation into a**
20 **debate about intelligent design, Chin told Coppedge that if he continued acting in this way,**
21 **his career options would be limited, by which he meant that if Coppedge badgered and**
22 **argued with people, they would not want to work with him.** 3/29 (Chin) Tr. 21:8-24
23 (“Q. What was your demeanor at this point? A. I was frustrated and I was getting angry
24 because, you know, somehow my conversation got hijacked into having a debate about intelligent
25 design and our ability to discuss that in the workplace. And I was trying to tell him, no, we don’t
26 want to do this here. We don’t want to talk about politics and religion during the workplace
27 because it can be disruptive. Q. So then what statement did you make to him? A. As I got up to
28 leave, David made a comment saying, this is, you know, infringing on my freedom of religion

1 and speech. I said, David, stop this. If you continue down this path you're going to find your
2 career options here at the lab very extremely limited, and I walked out."); *Id.* at 22:2-12 ("Q.
3 What did you mean by the statement? A. I meant by if you continue badgering people, if you
4 continue to want to argue and be argumentative with someone no one in our organization is going
5 to want to work with you. You have to acknowledge they said, look, we're done. We're done.
6 Let's move on.").

7 22. **Coppedge responded that he thought Chin was creating a hostile work**
8 **environment; Chin said that if he felt that way, he should file a complaint.** 3/29/12 (Chin)
9 Tr. 22:13-21 ("As I left David got up and said, Greg, I think you're creating a hostile work
10 environment. Q. What was your response? A. Well, hostile work environment to me is a key
11 word. So I said, fine. David, if you really feel that way go down the hall. Talk to your line
12 manager, Cab Burgess, and file a complaint.").

13 23. **Chin subsequently questioned whether he might have done something**
14 **wrong in light of Coppedge's statement about his creating a hostile work environment.**
15 3/29/12 (Chin) Tr. 22:26-23:4) ("I reflected on how I said, you know, our conversation went. I
16 realized that huh, David claimed I created a hostile work environment. That is not good. Maybe
17 I screwed up. Sorry for the language there. I figured maybe I did something wrong. I was still
18 angry. And I thought I better go down and chat with Cab Burgess.").

19 24. **Chin notified his and Coppedge's managers, the Cassini program**
20 **administrator (Vetter), who handled personnel matters on the project, the program**
21 **manager (Mitchell), and the Human Resources ("HR") hotline about what had happened.**
22 3/29/12 (Chin) Tr. 23:6-25:11.

23 25. **Coppedge had a good working relationship with Chin prior to**
24 **March 2, 2009.** 3/20/12 (Coppedge) Tr. 199:14-22 ("Greg has been a great boss, and I've
25 worked with him for eight years. He's a great guy. He's competent. He's knowledgeable. He
26 does a lot of good for us, and, frankly, I was shocked at this [March 2, 2009] outburst. We had
27 had, you know, some heated discussions a little bit over the years, but he was aware way back, I
28 think years ago, about [my intelligent design] DVDs.").

1 26. There is no evidence that Chin had any hostility toward intelligent
2 design or Christianity. Chin knew of Coppedge's beliefs as far back as the late 1990's, and
3 he nonetheless supported Coppedge by recommending him, first to be informal team lead
4 and then to become a Caltech employee in 2003. Further, Chin's uncle, with whom Chin
5 got along well, belonged to Coppedge's church and strongly believed in intelligent design.
6 3/28/12 (Chin) Tr. 206:21-207:20 ("Q. . . . When did you first meet Mr. Coppedge? A. Late
7 1990's, probably right around '97, '98 time period"); 3/28/12 (Chin) Tr. 208:18-21 ("Q. And
8 who made the decision to appoint Mr. Coppedge as lead? A. It was actually a joint effort
9 between Cab Burgess and myself."); 3/28/12 (Chin) Tr. 211:7-18 ("Q. . . . Did you participate in
10 recommending that he be hired a JPL employee? A. Yes, sir. Q. You knew at the time that he
11 was believing in Intelligent Design? A. Yes, sir."); *Id.* at Tr. 206:21-207:20 ("My uncle
12 Bomund Dong was a church member at the same place that David attended."); *Id.* at
13 Tr. 168:22-168:13 ("My uncle had a strong belief in Intelligent Design. My uncle and I got
14 along great and we were fine friends.").

15 27. Chin tried to help Coppedge over the years. He counseled Coppedge
16 on his people skills, and intentionally assigned him to jobs where he would not interact with
17 those who criticized him. 3/29/12 (Chin) Tr. 13:13-24 (noting that Coppedge "was technically
18 performing well. He had some communication skill issues, and I thought we were working on
19 them."); 3/28/12 (Chin) Tr. 224:9-225:9 (explaining that he assigned Coppedge Institutional
20 Services responsibilities in order to minimize Coppedge's interactions with other offices that
21 were having problems with him. "I didn't need to add more salt to the wounds.").

22 iv. **The HR Investigation: Huntley Interviewed Coppedge, Chin, Burgess,**
23 **And Co-Workers Who Felt Harassed Or Made Uncomfortable By**
24 **Coppedge.**

25 28. HR Generalist Jhertaune Huntley ("Huntley") conducted an
26 investigation in response to Chin's message to the HR hotline. 3/22/12 (Huntley)
Tr. 164:25-28; 165:17-26.

27 29. Huntley had conducted 800 – 1,000 investigations over her 22 years of
28 experience in HR. She knew nothing about intelligent design before the investigation.

1 3/22/12 (Huntley) Tr. 184:12-19 (“Q. Looking back on all of the employers who you have
2 worked for in human resources that you just described, can you estimate the number of human
3 resources investigations you’ve participated in as part of that job? . . . The Witness: Between
4 800 to a thousand investigations.”); 3/22/12 (Huntley) Tr. 183:11-13 (“Q. How many total years’
5 experience do you have in human resources across all employers that you’ve worked for?
6 A. 22.”); 3/22/12 (Huntley) Tr. 203:19-21 (“Q. . . . Did you have an understanding of what
7 intelligent design was as of the time of that meeting [where Huntley asked Coppedge if he was
8 selling intelligent design DVDs]? A. No.”)

9 **v. Coppedge, Chin And Burgess.**

10 **30. Coppedge met with Huntley for approximately an hour and gave his**
11 **version of what happened. He had the opportunity to tell her everything he wanted to**
12 **regarding the March 2 meeting with Chin.** 3/21/12 (Coppedge) Tr. 151:24-152:13 (“Q.
13 . . . That meeting [with Huntley] took place on March 5, correct? A. Yes. Q. For approximately
14 an hour or so? A. Yes . . . Q. And at the beginning of the meeting, she told you that she was
15 looking into the incident that had occurred between you and Greg Chin on March 2, correct? A.
16 I believe she said looking into the issue. Q. Okay. The issue of that date, correct? A. Yes. Q.
17 And then you described your version of what occurred; is that correct? A. I described what
18 happened, yes.”). *Id.* at Tr. 154:14-21 (“Q. BY MR. ZAPP: And you had the opportunity to tell
19 Ms. Huntley everything that you wanted to tell her about your interaction with Greg Chin,
20 correct? A. I gave her a synopsis because -- Q. Mr. Coppedge, the question is: You had the
21 opportunity to tell Ms. Huntley everything that you wanted to tell her about the interaction with
22 Mr. Chin, yes or no? A. I had an opportunity, yes.”).

23 **31. Coppedge volunteered to Huntley that he had a heated conversation**
24 **with Edgington regarding Proposition 8, during which Edgington became angry, and that**
25 **he came back the next day to apologize to Edgington.** *Id.* at Tr. 153:6-14 (Q. And you told
26 [Huntley] that you had had a heated conversation with Scott Edgington about Proposition 8,
27 didn’t you? A. Yes. . . .); 3/19/12 (Coppedge) Tr. 183:9-15 (“Q. . . . So what did you tell her
28 about handing out the [Proposition 8] flyer at the prior election? A. I told her that I had given a

1 few flyers out about the proposition, and one of the individuals named Scott Edgington became
2 angry over the issue, so I backed off but came back the next day and offered an apology, which he
3 accepted.”); *id.* at 189:4-10 (“A. She was asking in general what kind of political discussions I
4 had had with coworkers, so I volunteered information that I could think of on that topic.
5 Q. Okay. And so you mentioned Dr. Edgington? A. Yes.”).

6 **32. Coppedge also described his practice of handing out DVDs to co-**
7 **workers, and showed Huntley a chart on which he recorded those to whom he lent or sold**
8 **DVDs, and what they allegedly said about them.** 3/21/12 (Coppedge) Tr. 152:17-24; 3/19/12
9 (Coppedge) Tr. 173:1-174:15; Trial Ex. 227, pp. 40-41.

10 **33. During Chin’s interview with Huntley, Chin described Weisenfelder’s**
11 **complaints about Coppedge harassing her, including their Proposition 8 conversation.** Trial
12 Ex. 227, p. 37.

13 **34. While Huntley’s notes reflect that Chin related Weisenfelder’s**
14 **complaints regarding discussions of politics and religion (rather than politics and intelligent**
15 **design), that was because Chin inadvertently blended the concepts of religion and intelligent**
16 **design in describing her concerns.** 3/29/12 (Chin) Tr. 32:20-34:2) (Q. If you turn to Exhibit
17 227, page 37. A. Okay. Q. And have you now come to know that this page is Ms. Huntley’s
18 notes of the interview you had with her? A. Yes, sir. Q. Okay. . . . What information do you
19 feel got blended in the very first paragraph up to where the squiggly line is crossed off? A.
20 About talking about religion and politics as it relates to Prop. 8. Q. When you’re talking about
21 religion, what do you mean? A. Margaret was complaining primarily about Prop. 8 and that was
22 her primary concern. She had a DVD, and it had I believe it was an ID, intelligent design, topic.
23 I may have inadvertently blended the two together when I talked to her about saying that it was an
24 intelligent design DVD, and I take that as my fault for blending it. Q. In other words, you might
25 have used the word religion when you were referring to the intelligent design DVD? A. Yes,
26 sir.”).

27 **35. When Huntley interviewed Burgess, he explained that no one had**
28 **complained to him about Coppedge discussing religion or politics during work hours, and**

1 **that he had discussed intelligent design with Coppedge and purchased a DVD from him.**

2 3/22/12 (Huntley) Tr. 211:12-212:11 (“... Mr. Burgess told me that he had discussed intelligent
3 design with Mr. Coppedge, that casual conversation. In fact, he even purchased a DVD. He also
4 let me know that he hadn’t heard of any complaints as it relates to religion or politics directly or
5 indirectly. . . .”).

6 **vi. Weisenfelder, Vetter And Edgington.**

7 36. **Weisenfelder described to Huntley the two incidents she reported to**
8 **Chin on March 2: the Proposition 8 conversation and the post-it note on the DVD.** 3/26/12
9 (Huntley) Tr. 9:25-10:27.

10 37. **Huntley understood that Weisenfelder’s concern was that she felt**
11 **Coppedge had stepped over the line by discussing politics and religion during work hours.**
12 3/26/12 (Huntley) Tr. 11:7-14 (“Q. What did you understand to be the heart of her concern about
13 David Coppedge as relates to these two incidents the Proposition 8 and the DVD passing out?
14 A. My understanding was that she felt that Mr. Coppedge was stepping over the line discussing
15 two issues she felt were personal in nature, and she just, you know, felt uncomfortable talking
16 about these subject matters during work hours.”).

17 38. **Vetter told Huntley about Coppedge’s efforts to discuss their**
18 **Christianity at work and his insistence that the Cassini holiday party be renamed a**
19 **Christmas party.** 3/26/12 (Huntley) Tr. 13:28-14:25.

20 39. **Huntley determined that nothing about Coppedge’s religious views**
21 **bothered Vetter; rather, Vetter did not want to discuss certain topics, like religion, in the**
22 **workplace.** 3/26/12 (Huntley) Tr. 14:26-15:8 (“Q. Was there anything about what Ms. Vetter
23 told you in that interview that suggested to you that she was bothered by Mr. Coppedge’s actual
24 religious beliefs? A. No. Q. What did you understand was bothering her? A. Again just being
25 approached in the workplace by certain topics that she felt just weren’t appropriate.”); 4/4/12
26 (Vetter) Tr. 45:8-10 (“Q. Did you say to Mr. Chin that you were bothered in any way by
27 David’s religious beliefs? A. No.”); 4/4/12 (Vetter) Tr. 186:9-12 (“I recall that I had said Scott
28 and I had been bothered by David. Q. Not by his religious beliefs? A. No.”); 3/29/12 (Chin)

1 Tr. 32:24-37:11) (“Q. BY MR. ZAPP: Let me ask you, Mr. Chin, where it says, ‘Carmen replied
2 that she and Scott Edgington had been bothered by David and religious beliefs.’ Was that an
3 accurate statement of what you told Ms. Huntley? A. No, sir.”).

4 40. **Vetter purchased an intelligent design DVD from Coppedge.** 4/4/12
5 (Vetter) Tr. 188:24-26.

6 41. **Edgington described to Huntley how Coppedge approached him about**
7 **Proposition 8, including Coppedge’s statement that he must be against children; he also told**
8 **her that the situation made him uncomfortable and that he had to ask Coppedge to leave.**
9 3/26/12 (Huntley) Tr. 17:21-18:20.

10 42. **Huntley learned in the interviews that Coppedge went to Edgington to**
11 **apologize the following day.** *Id.* at Tr. 18:21-26 (“Q. And so did you understand that it was Mr.
12 Coppedge who had gone to Mr. Edgington to apologize? A. Yes. Q. Next day? A. Yes. He
13 told me that thereafter.”).

14 43. **Edgington never discussed religion with Coppedge and does not know**
15 **anything about Coppedge’s religious beliefs.** 4/4/12 (Edgington) Tr. 21:27-22:1 (“Q. Have
16 you ever had any discussions with David Coppedge about religion? A. No.”); *Id.* at Tr. 22:5-7
17 (“Q. Do you know anything about David Coppedge’s religious beliefs at all? A. No.”).

18 44. **Edgington likewise never had any discussions with Coppedge**
19 **regarding intelligent design.** *Id.* at Tr. 22:2-4 (“Q. Have you ever had any discussions with him
20 about intelligent design? A. No.”). *Id.* at Tr. 22:8-11 (“Q. Has he ever offered to you a DVD on
21 intelligent design? A. I did not know at the time that he did, but yes, he offered me a DVD
22 several years prior.”); *Id.* at Tr. 23:7-16 (“Q. Did you, in fact, watch the DVD? A. No, I did
23 not.”).

24 **vii. Huntley Concludes That Coppedge Violated Caltech’s Policies.**

25 45. **During the interviews, Huntley observed the witnesses’ body language,**
26 **tested their answers against information she already had, and looked for inconsistencies in**
27 **their responses.** 3/26/12 (Huntley) Tr. 8:7-22 (“Q. [W]hen you are conducting an interview of
28 people who have made a complaint, what are the types of things you’re looking for? A. I am

1 looking for to see how truthful they are, when I speak with them about the initial complaint. I
2 will go ahead and ask them questions based upon information I received of their involvement.
3 Also observing their body language, inflections they use when speaking to me in their tone.
4 Things of that nature.”).

5 **46. Huntley considered whether Coppedge’s underlying personal views**
6 **caused these employees’ reactions, and determined that they did not; rather, the problem**
7 **was Coppedge approaching them during work hours and being persistent. 3/26/12**
8 (Huntley) Tr. 20:13-27 (“Q. What was your understanding as to whether Mr. Coppedge’s
9 religious beliefs were affecting the complaints that you had? A. That wasn’t the issue why
10 people were making the complaints. It was the fact that they were approached by Mr. Coppedge
11 during the workplace and felt that he, Mr. Coppedge, was persistent in getting his viewpoints
12 across. They felt uncomfortable, you know, responding to the question, but they did because that
13 is just typically what employees do when they work with each other. It’s just office decorum.
14 When you have to see somebody every single day you kind of want to keep the peace. And they
15 just felt that it wasn’t the place of where these issues should be discussed and they just didn’t
16 want it to continue.”).

17 **47. Huntley did not re-interview Coppedge after she interviewed**
18 **Weisenfelder, Edgington, and Vetter, because they were discussing how they personally felt,**
19 **and this was not something Coppedge could comment upon. 3/26/12 (Huntley)**
20 Tr. 20:28-21:16 (“Q. Did you go back to Mr. Coppedge to meet with him a second time after you
21 had completed these interviews of Ms. Weisenfelder, Mr. Edgington and Ms. Vetter? A. No, I
22 did not. Q. Why not? A. Because when I met with Mr. Coppedge, he provided me with a lot of
23 information, a lot of detail, you know, provided me with more than what I asked for. When I met
24 with these individuals, they were more so discussing with me how they felt as related to different
25 occurrences they had with Mr. Coppedge. These were their personal feelings. And I did not
26 believe that Mr. Coppedge could comment on these individual’s personal feelings. You know,
27 this is how they felt. It was something that, you know, again was only something they could
28 comment on not Mr. Coppedge.”).

1 48. **Caltech has implemented policies against discrimination, retaliation,**
2 **and harassment, including its Unlawful Harassment Policy and its Ethics and Business**
3 **Conduct Policy.** Trial Exs. 193, 195; 3/26/12 (Huntley) Tr. 46:17-21.

4 49. **Huntley concluded that Coppedge's behavior violated Caltech's**
5 **Unlawful Harassment Policy, because Coppedge's practice of approaching co-workers**
6 **during work was likely to interfere, and already had interfered, significantly with JPL**
7 **work, and because he was persistent in this behavior.** Trial Ex. 193, 3/26/12 (Huntley)
8 Tr. 23:10 24:25 ([Ms. Fox asked Huntley to read the definition of harassment from the policy:]
9 "What conduct by Mr. Coppedge, in your opinion, violated that portion of the policy. I'm sorry.
10 That portion of the definition of harassment. A. During my interviews with . . . the complainant,
11 as well as Mr. Edgington, they let me know that he did approach them during actual work hours.
12 So it's more than likely he did interfere with their work. And more importantly when I met with
13 Mr. Coppedge, he discussed his practice of approaching individuals during actual work hours as
14 related to discussing issues such as politics as well as the loaning of his DVDs which was more
15 than likely to significantly interfere with various coworker's work"); *Id.* at 24:14-25 ("And how
16 did you think that [loaning of DVDs] that was likely to interfere significantly with work? [A]. . . .
17 He felt that he wasn't doing anything that was making them feel uncomfortable. He wasn't
18 interrupting what they were doing. But when I of course met with, you know, I guess, three of
19 the individuals who he did approach it was the exact opposite."); *Id.* at Tr. 25:3-10 ("Q. And then
20 a second component of that sentence is that it says, 'because of its severity and/or persistence,'
21 was there an element of that phrase that you thought Mr. Coppedge's conduct had violated? [A].
22 Yes. . . . When I met with Ms. Weisenfelder, she felt that he was being persistent when speaking
23 with her."); *Id.* at Tr. 26:1-7 ("You know, he was persistent in approaching people, you know,
24 from one moment to the next certain days as well as certain times. . . . [He was] also keeping a
25 tracking system, so he knew exactly, you know, who had them and who he should approach
26 next."); *Id.* at Tr. 26:8-12 (" . . . Ms. Weisenfelder, Mr. Edgington and Ms. Vetter . . . all felt that
27 in some manner that it was going to stop, and it didn't."); *Id.* at Tr. 27:7-28:11 ([Ms. Fox asked
28 Huntley to read the paragraph regarding acting in a professional manner, in the policy:] "Did you

1 feel that Mr. Coppedge's conduct had violated this portion of the [harassment] policy? A. Yes.

2 Q. Why? A. In terms of my meetings with individuals that I spoke with, they felt that, you
3 know, the way they were being approached was not professional. And in terms of Mr. Chin
4 addressing this issue with Mr. Coppedge directly, he again is responsible, like all other
5 employees, to maintain an appropriate work environment. And what he was doing was simply
6 trying to stop, discourage the behavior that was presented to him as being, you know,
7 uncomfortable for employees. He reported it.”).

8 **50. Huntley concluded that Coppedge's behavior also violated Caltech's**
9 **Ethics and Business Conduct Policy, which requires employees to treat one another with**
10 **fairness, dignity, and respect, because Coppedge had made other employees feel**
11 **uncomfortable and therefore had not treated them fairly and with dignity and respect.** Trial
12 Exs. 195; 3/26/12 (Huntley) Tr. 28:12-30:3 (Q. BY MS. FOX: Ms. Huntley, I would like to take
13 your attention to page 2 [of the Ethics and Business Conduct Policy] specifically the JPL honor
14 code down at the bottom. Is there a portion of the JPL honor code that you thought was
15 triggerred by Mr. Coppedge's conduct in this situation? A. Yes. Q. Which portion? A. Under
16 3.1 go down to the fourth bullet point. Q. Would you please read that out loud? A. (Reading.)
17 “I will treat my fellow employees fairly, with dignity and respect.” Q. Did you feel Mr.
18 Coppedge's conduct had violated the JPL honor code as to that element? A. Yes. Q. Why? A.
19 By making his fellow employees feel uncomfortable that was not treating them fairly and with
20 dignity and respect.”).

21 **51. Huntley conducted this investigation in the same manner as her other**
22 **investigations.** 3/26/12 (Huntley) Tr. 235:27-236:5 (“When you look back on the investigation
23 relating to Mr. Coppedge and you look at the procedures that you followed and the steps that you
24 took, did you handle this investigation any differently than you do the other investigations that
25 you do in the regular course of your employment at JPL? A. I handled it exactly the way I do all
26 my investigations.”).

27 **52. After Huntley concluded her investigation, she presented her findings**
28 **to Burgess and recommended he issue Coppedge a written warning; Burgess agreed, and**

1 **Kevin Klenk ("Klenk"), the Section Manager, supported the decision.** 3/26/12 (Huntley)
2 Tr. 30:4-10 ("Q. Based on your findings, your interviews and your review of these policies, did
3 you make any conclusion as to whether Mr. Coppedge should be disciplined? A. Yes. Q. What
4 was your conclusion? A. That he should receive a written warning."); 3/26/12 (Huntley)
5 Tr. 33:10-18 ("Q. What did you recommend to Mr. Burgess? A. I recommended that he receive
6 a written warning. Q. Did you meet with Mr. Burgess to discuss that recommendation? A.
7 Yes."); 4/2/12 (Burgess) Tr. 192:8-21 ("I essentially agreed that – that I would go forward with
8 that decision [to issue a written warning]."); 4/3/12 (Klenk) Tr. 19:16-18 (Klenk "supported"
9 HR's recommendation to issue Coppedge a written warning).

10 **viii. Coppedge Had A History Of Customer Complaints By Cassini Project**
11 **Members.**

12 53. **Several Cassini project members had complained to Chin, Mitchell,**
13 **and/or Chin's deputy manager, Tammy Fujii ("Fujii"), over the years about Coppedge's**
14 **poor interpersonal skills, argumentative manner, and inability to follow instructions,**
15 **including Spacecraft Operations ("SCO") Manager Julie Webster, Distributed Operations**
16 **Coordinator Pam Woncik, Science and Uplink ("SAUL") Manager Kathryn Weld**
17 **("Weld"), and Desktop Services Coordinator Patty Smith.** 4/9/12 (Webster) Tr. 159:8-11
18 ("We had difficulty working with [David]. He was condescending with Ms. Grenander. I didn't
19 always get all the truth of what was going on, and there were some attempts to do some unilateral
20 things that [] weren't coordinated with [us]."); 4/9/12 (Webster) Tr. 160:10-15 ("Q. Did you pass
21 the[se] concerns . . . along to Mr. Chin? A. Yes, I did. Q. [D]uring what time period . . . ? A.
22 2004, 2005 specifically."); 4/10/12 (Woncik) Tr. 36:22-37:18 ("I found David to be rather
23 obstinate and arrogant. He didn't follow instructions and certainly wouldn't follow protocol. . . .
24 [H]e often would object to doing work and didn't really seem to understand what the
25 ramifications of his objections or his behavior would have on the risk to the project or the science
26 objectives. He also didn't have very good customer service skills. And even the simplest
27 requests he would challenge and argue every little point of those. We found that [] many more
28 hours [were] spent listening to his excuses why work couldn't get done rather than him digging in

1 and actually figuring out how to do it. He was careless very often and would . . . refuse to check
2 his work. And he seemed to be overly sensitive and take almost everything personal[ly]. . . . [I
3 shared these concerns with] [m]y immediate boss Sue Linick [who] is the IO manager, her boss
4 the SAUL manager Kathryn Weld. When asked, I shared with Bob Mitchell. I shared this with
5 Greg Chin and Tami Fujii and Carol Wong.”); 4/9/12 (Weld) Tr. 208:26-209:3 (“Q. On how
6 many occasions in total do you recall complaining to Mr. Mitchell about Mr. Coppedge? A. [A]t
7 least 10 if not more . . . [from] 2004 to 2007.”); 4/9/12 (Smith) Tr. 244:2 19 (“[I] . . . would get a
8 kind of condescending, patronizing type of response [from David] when really all I needed to
9 know is how many hard drives we needed or something. . . . Q. Did you share your concerns on
10 this issue with Greg Chin, your manager? A. I did.”).

11 **54. Webster never discussed religion or intelligent design with Coppedge,**
12 **nor had any disputes with him regarding these topics.** 4/9/12 (Webster) Tr. 171:25-172:2
13 ([Q.] “Have you ever had any discussions or disputes with Mr. Coppedge about religion? A.
14 No, I have not. Q. Have you ever had any discussions or disputes with him about a subject called
15 intelligent design? A. No, I have not.”).

16 **55. Woncik never discussed religion or intelligent design with Coppedge,**
17 **nor had any disputes with him regarding these topics, and does not know anything about his**
18 **religious beliefs.** 4/10/12 (Woncik) Tr. 157:22-158:2 (Q. Have you ever had any discussions or
19 disputes with David Coppedge about religion? A. Never. Q. Have you ever had any discussions
20 or disputes with him about intelligent design? A. No. Q. Have you ever known anything about
21 his religious beliefs? A. Nothing.”).

22 **56. Weld never discussed religion or intelligent design with Coppedge, nor**
23 **had any disputes with him regarding these topics.** 4/9/12 (Weld) Tr. 216:25-217:2 (“Q. Have
24 you ever had any discussions or disputes with Mr. Coppedge about religion? A. No. Q. Have
25 you ever had any discussions or disputes with him about intelligent design? A. No.”).

26 **57. Fujii never discussed religion or intelligent design with Coppedge, nor**
27 **had any disputes with him regarding these topics.** 4/10/12 (Fujii) Tr. 199:24-200:1 (“Q. Have
28 you ever had any discussions or disputes with David Coppedge about his religion? A. No. Q.

1 Have you ever had any discussions or disputes with David Coppedge about intelligent design? A.
2 No.”).

3 **58. Coppedge’s notes showed that Chin told him about the customer**
4 **complaints as far back as 2004.** Trial Ex. 264, p. 2 (Mar 2004) (“[Chin] claims [e]very office
5 had complaints about me. Even my own team members were complaining . . . Office Mgrs
6 thought I was rude, incompetent or uncooperative. Other SAs felt . . . I was micromanaging. . . .
7 [S]ome office leads were asking I be removed. . . . [Greg is] not asking I be removed or that a
8 PIP be initiated but making me aware there had been complaints.”); Trial Ex. 264, p. 5 (Mar
9 2004) (“Tammy [Fujii] [said there was] a negative opinion of me – felt that my first response was
10 always ‘no’ to new requests. . . . [M]any in & out of the office who had this opinion about me . . .
11 I promised to do better.”); Trial Ex. 421, p. 4 (Aug 2004) (Quoting Chin: “People think you’re
12 hard to deal with . . . They think [your] tone of voice or body language suggests negativity . . .”);
13 Trial Ex. 266, p. 4 (Jan 2005) (Julie Webster “said . . . ‘I would never work with Dave’ altho’
14 [have] no problem with the other SAs. . . . [Chin] knew about claim from Don F[leischman] that
15 [Coppedge] [had been] blaming him for password not working . . . [an] example of [Coppedge]
16 not owning up to a mistake . . . contributed to a bad impression of [him].”); Trial Ex. 269, p. 3
17 (Jun 2006) (“Greg said there are still complaints about me . . .”).

18 **59. Chin tried to help Coppedge by recommending twice that Coppedge**
19 **take a course on interpersonal relationships (which Coppedge reluctantly conceded that**
20 **JPL probably would have paid for), but Coppedge never did so.** 3/21/12 (Coppedge)
21 Tr. 13:11-21 (“Q. Mr. Chin made a suggestion he made a reference to a week-long class on
22 personal relationships and thought that you should go to that; correct. A. He suggested that, yes.
23 Q. Did you -- actually, your notes reflect this is the second time he had suggested that class for
24 you; correct? A. Yes. Q. Did you ever go to that class? A. No.”); 3/22/12 (Coppedge) Tr.
25 46:10-27 (“Q. Let’s straighten out one thing right away, Mr. Coppedge, when you took courses
26 at JPL they always paid for you to be able to take the courses; isn’t that right? A. If they were
27 authorized by JPL they were, yes. Q. Greg Chin was . . . prepared to authorize you and
28 encourage you to take this course on improving interpersonal relations; isn’t that right? A. He

1 suggested it. I don't think he authorized it or mentioned paying for it. Q. Mr. Coppedge, if he's
2 encouraging you to take it didn't you understand that he was going to pay for it and you would
3 [have] continued to get your salary as you were taking that class . . . ? A. I think, yes, JPL
4 probably would have paid for it, but that was not discussed in detail.”).

5 60. **Chin had defended and protected Coppedge over the years, to the**
6 **point where other Cassini project members commented on, and even criticized, Chin's**
7 **management style, his protection of Coppedge, and his being too lenient (which Chin**
8 **acknowledged).** Trial Ex. 421, p. 4 (Aug 2004) (Quoting Chin: “I have bent over backwards to
9 defend you to upper managers who have asked that you be removed” (mentioned Kathryn
10 Weld . . .)). 4/9/12 (Weld) Tr. 206:26-207:9 (Science & Uplink (SAUL) Manager Weld was
11 frustrated at how Chin protected Coppedge during a January 2005 meeting with Program
12 Manager Mitchell: “Q. And what did you see of Mr. Chin in that meeting as far as responding to
13 what he was hearing from you about concerns regarding David Coppedge? A. Well, Greg is a
14 great protector of his people. I mean, that's an asset and a curse sometimes. And so I saw a lot of
15 that, a protection of his people. Q. Were you frustrated by how Mr. Chin handled the complaints
16 about David Coppedge in that meeting? A. Very much so. Q. Did you feel he should be
17 addressing them more directly? A. Absolutely.”); 4/5/12 (Mitchell) Tr. 212:11-22 (“Greg [] was
18 respected by [] his team [and] nice to a fault. . . . He [spent] considerable time coaching and
19 mentoring [] the weaker performers on his team . . . I faulted him for that. I thought he took that
20 too far and should have taken [] other actions sooner than he did.”); 4/10/12 (Deputy Manager
21 Tammy Fujii (“Fujii”)) Tr. 199:21-23 (“Q. As his deputy manager, did you have any criticism of
22 him as a manager? A. I thought he was too nice sometimes.”); *Id.* 184:13-18 (explaining that she
23 recommended at least 3 times during 2004-2008 that Chin remove Coppedge from Cassini); Trial
24 Ex. 301 (1/3/05 email from Chin to Weld, stating in part: “I will admit that I have been evaluated
25 as being too lenient with some employees.”).

26 61. **On multiple occasions from 2004 through 2009, Chin told Burgess that**
27 **the program manager (Mitchell) wanted Coppedge removed from Cassini, but Burgess was**
28 **unable to find another project for him given the lack of open job opportunities at JPL.**

1 4/2/12 (Burgess) Tr. 163:9-164:7 ("Q. And did Greg Chin ever talk to you about project
2 management's views of Mr. Coppedge on the project? A. Yes, he did. Q. What did Mr. Chin
3 relay to you? A. He indicated that the project manager would like us -- Greg and myself -- to
4 find some other opportunities for David to follow. Q. And when do you recall this first
5 becoming a subject? A. As early as 2004. Q. And did it occur on other occasions prior to
6 March of 2009? A. Yes. Q. And so when you received this information from Mr. Chin, what
7 did you seek to do? A. I was looking for other opportunities at JPL on other projects and tasks
8 that would need somebody of David's caliber, as far as a systems administrator. Q. Okay. And
9 what success, if any, did you have? A. I did not have much success. The project was
10 downsizing. There wasn't a lot of opportunities out there. Positions were frozen as far as
11 building positions. . . . Q. Now when you say -- this began in 2004 and then continued
12 periodically thereafter? A. Yes.").

13 **62. Mitchell never discussed religion, intelligent design, or politics with**
14 **Coppedge, nor had any disputes with him regarding these topics.** 4/5/12 (Mitchell)
15 Tr. 219:7-13 (" . . . Did you ever have any disputes of any kind with Mr. Coppedge regarding
16 religion intelligent design or politics? A. No. Q. Did Mr. Coppedge ever have any discussion
17 with you about any of those topics? A. No.").

18 **63. Coppedge received an annual performance review, or "ECAP" each**
19 **year.** 3/19/12 (Coppedge) Tr. 2:11-18 ("Q. Was there a policy at JPL under which you were
20 informed on a yearly or annual basis of your performance? A. Yes. We had an annual review
21 we call the ECAP. Q. And you received those annual reviews from year to year, did you?
22 A. Yes, every year of my employment.").

23 **64. As Coppedge's Group Supervisor, Burgess was responsible for**
24 **preparing Coppedge's ECAPs. Over the years, Burgess referred to Coppedge's poor**
25 **customer relationships, but intentionally tried to couch it in a positive rather than a**
26 **negative way, because he did not want to hurt Coppedge's ability to transfer to another**
27 **position at JPL.** 4/2/12 (Burgess) Tr. 164:8-13 ("Q. I'd like to turn then to the subject of
28 ECAPs. As Mr. Coppedge's group supervisor, were you the individual responsible for preparing

1 his annual performance evaluation? A. Yes.”); *Id.* at Tr. 164:14-25 (“Q. And you know we’ve
2 talked about some of the performance issues. To what extent did you document in the ECAPs,
3 performance issues that you were made aware of through Mr. Chin and others? A. I tried to tone
4 [down] the actual negative aspects of a lot of the things I was hearing. Q. And why did you do
5 that, sir? A. Because the process of having somebody interview him for another position at
6 another project, task at JPL on, I was convinced that those people would want to look at his
7 ECAPs prior to agreeing to have him come across.”); Trial Ex. 28, p. 4 (2004 ECAP) (“[David’s]
8 interface to his customers can be improved. His intent to prioritize his work is good, however his
9 customers may perceive it as a way to avoid meeting their needs . . . [H]e . . . is trying to improve
10 his dealing with higher management. . . . David has had a difficult year working with many
11 complex problems and personnel and has held up well. . . .”); 4/2/12 (Burgess) Tr. 166:27 167:8
12 (“Q. What led you to put that particular paragraph in [the 2004 ECAP]? . . . [Burgess:] This is
13 the first time for him, I believe, when we heard that some people were having difficulties with his
14 personal interaction and direction and manner. So, it was discussed with Dave. And he had
15 mentioned that he was going to try to deal with that issue and get those people -- work with those
16 people to come up with a more favorable work relationship.”); Trial Ex. 30, pp. 1-2 (2006
17 ECAP) (“This year . . . [m]ost of the Cassini Project has been satisfied with David’s work. . . .
18 David has had a generally good history of working well with most of the Cassini Project
19 Engineers, but there is still some friction with one of the offices.”), 4/2/12 (Burgess)
20 Tr. 170:19 25 (“Q. . . . Was your use of the term “most” purposeful? [Burgess:] Yes. That was
21 my way of trying to couch all this in a positive, rather than negative [way]. Q. In other words,
22 there were people who had issues but there were others who did not, and that’s what you were
23 trying to say? [Burgess:] Yes.”); Trial Ex. 31, p. 3 (2007 ECAP), 4/2/12 (Burgess) Tr. 171:27-
24 172:5; Trial Ex. 32, p. 2 (2008 ECAP), 4/2/12 (Burgess) Tr. 172:24-27, 173:3-17; Trial Ex. 34, p.
25 3 (2009 ECAP) 4/2/12 (Burgess) Tr. 175:3-17) (additional ECAP sections, and Burgess
26 explaining the basis for their inclusion).

27 **65. As part of the ECAP process in 2009 and 2010, just as in preceding**
28 **years, Burgess solicited input from others; Coppedge likewise had an opportunity to solicit**

1 **input and did so.** 4/2 (Burgess) Tr. 179:13-180:25 (“... [Q.] ... Did you as supervisor have
2 the opportunity to ... solicit information from others? A. Yes, I had an opportunity to do that
3 as well. ... Q. Did Mr. Coppedge request anybody in this particular ECAP [2010]? In other
4 words, did he say I’d like to have you send it to this person? A. That’s what I’m indicating. That
5 J. Brown was the individual Dave asked me to retrieve the source of input and performance.”).

6 **66. Coppedge’s 2009 ECAP contained positive comments, as well as**
7 **constructive criticism.** Trial Ex.34, pp. 3-4 (“Dave is dedicated ... and does his best,” “He
8 applies the appropriate level of accuracy and thoroughness,” “He uses technology [] effectively
9 and efficiently,” “Dave is technically competent and strongly desires to continuously learn new
10 skills and tools.”).

11 **67. The individuals who provided input to Coppedge’s 2010 ECAP**
12 **included those who worked with him first-hand, including Chin, Nick Patel, Diane Conner,**
13 **and Sue Linick.** 4/2/12 (Burgess) Tr. 180:24-183:4; Trial Ex. 35.

14 **68. On April 7, 2009, Senior HR Generalist Nancy Aguilera met with**
15 **Burgess to discuss Coppedge’s ongoing problems with poor customer relationships and to**
16 **find out whether there was some other place for him to work at JPL; Huntley was present**
17 **for the meeting.** Tr. 4/2/12 (Burgess) Tr. 186:12-187:1 (“Q. All right. And what did you
18 understand the purpose of the meeting was? A. Well, to discuss what options, if any, that we had
19 in trying to find some place for David to work at JPL, another project, another task. What could
20 we do?”). **The meeting resulted from Chin informing Burgess, as he had in the past, that**
21 **Mitchell wanted to find some other place for Coppedge to work.** *Id.* at Tr. 187:13-16 (“Q.
22 And this was in response to Mr. Chin having told you that Mr. Mitchell had said it’s time we got
23 David off the project? A. Yes.”). **Burgess had no other work for Coppedge, so he could not**
24 **be moved; as a result, Aguilera suggested ways to address the situation, including**
25 **approaching Cassini management and managing Coppedge’s performance issues more**
26 **directly (e.g., removing Coppedge’s Lead SA duties).** Trial Ex. 97. **Burgess considered her**
27 **suggestions, but made no decision regarding them at the time.** 4/2/12 (Burgess)
28 Tr. 190:23 191:7) (explaining that HR “did mention that ... [the] one thing I would possibly

1 accomplish, is have him removed from the lead position. Q. This is April 7, 2009, correct? A.
2 Yes. Q. And what, if anything, did you do with that recommendation? A. I took it under
3 advisement. And at that time I hadn't decided to go one way or another with it.”).

4 69. **Aguilera then interviewed Chin to ensure that Chin was not retaliating**
5 **against Coppedge because of the March 2 incident when he told Burgess that Mitchell**
6 **wanted Coppedge off the project.** Trial Ex. 97; 3/29/12 (Chin) Tr. 46:12-49:21 (describing
7 meeting with Aguilera on April 7, 2009). **Chin described the ongoing customer complaints**
8 **against Coppedge (including where he thought they were invalid) and subsequently sent**
9 **Aguilera a copy of his recent input to Coppedge’s 2009 ECAP.** *Id.* at Tr. 47:6-48:3 (“Q.
10 Okay. And what did you say to her? A. . . .I told her I was trying to be open, honest about what
11 we were doing with David. There were customers who complained about him. I felt that many
12 of the customers had unfair criticisms of David. I also said that over the course of the years some
13 of the criticisms came out were valid, some of the interpersonal skill issues. Those were things
14 we were working on. . . . [T]he areas of concern that I agreed with is like where his negative
15 response, his not listening to some of the customers, not getting the full picture of what they
16 needed to get done. And so there were -- they were the interpersonal skills that were primarily
17 the issues that I was thinking we brought up. . . .”); Trial Ex. 33; 3/29/12 (Chin) Tr. 49:1-13 (“Q.
18 . . . Is that a copy of the email that you sent to Mr. Burgess where your input for Mr. Coppedge’s
19 evaluation in 2009? A. Yes, sir.”).

20 70. **Aguilera concluded that no retaliation was taking place. She**
21 **documented her conclusion in an e-mail to her supervisor and another HR manager.** Trial
22 Exhibit 97 (“I spoke with Chin today. No retaliation. . . .”).

23 ix. **Burgess Issued The Written Warning To Coppedge.**

24 71. **On April 13, 2009, Burgess met with Coppedge to deliver the written**
25 **warning; Klenk was present. They told Coppedge repeatedly that the warning concerned**
26 **the manner in which he had interacted with his co-workers, not the substance of what he**
27 **said, and that JPL did not prohibit religious or political speech, so long as it was not**
28 **disruptive. Coppedge characterized the warning as an attack on intelligent design and tried**

1 **to defend his right to discuss intelligent design.** Trial Ex. 103 (written warning) (“[Y]ou must
2 refrain from discussions which are argumentative, disruptive and/or harassing to your co-
3 workers”); Trial Ex. 351 (audio recording of meeting); Trial Exhibit 102 (transcript of audio
4 recording), pp. 11-12, 14, 22-24; *Id.* at 23 (Klenk: JPL had “no policy against [] talking about
5 religion and politics in the office so long as it’s not unwelcome or disruptive.”); *Id.* at 18-19
6 (Coppedge: “There is a lot of hostility in our culture against intelligent design. . . . So, what I
7 espouse is certainly a minority view among the scientific community. . . . some of this
8 background information that may be brought to bear on why I am being singled out . . .”); *Id.* at
9 24 (Coppedge: “You know for me to approach them on a subject that I think is interesting and
10 worthwhile is protected speech.”).

11 **72. Coppedge acknowledged that Burgess had always treated him fairly**
12 **all the way up until Burgess gave him the written warning.** 3/21/12 (Coppedge) Tr. 46:1-4
13 (“Q. And Mr. Burgess had always treated you fairly throughout the time you worked for him up
14 until he gave you that written warning in 2009 correct? A. I felt so yes.”). Burgess and
15 Coppedge never had any disputes of any kind regarding intelligent design, religion, or any
16 political topic. 4/2/12 (Burgess) Tr. 159:26-160:1 (“Q. Did you ever have any disputes of any
17 kind with Mr. Coppedge regarding the subject of intelligent design, religion, or any political
18 topic? A. No.”).

19 **73. Burgess had no bias against Coppedge’s belief in intelligent design.**
20 **Burgess had purchased four DVDs from Coppedge and had several conversations with**
21 **Coppedge regarding intelligent design over the years.** 4/2/12 (Burgess) Tr. 159:14-16 (“Q. In
22 fact how many different DVD’s did you buy from Mr. Coppedge? A. Four.”); Trial Ex. 61
23 (Coppedge’s tracking chart, reflecting that Burgess and he discussed the DVDs as far back as
24 2005, and that Coppedge perceived Burgess as liking them), 4/2/12 (Burgess) Tr. 159:14-16
25 (“Q. In fact how many different DVD’s did you buy from Mr. Coppedge? A. Four.”); 4/2/12
26 (Burgess) Tr. 159:17-23 (describing his discussions with Coppedge about intelligent design as
27 “generally cordial”; explaining that the DVDs “looked good. I appreciated looking at the media.
28 It was interesting to me. And I thought it was good stuff.”).

1 x. Burgess Removed Coppedge's Lead Duties.

2 74. Burgess decided to remove Coppedge's lead duties during the April 13,
3 2009 meeting, based on Coppedge's history of poor customer relationships, individuals now
4 claiming that Coppedge harassed them, Coppedge's confrontational behavior with Chin on
5 March 2 regarding whether intelligent design is science, and culminating in Coppedge's
6 confrontational behavior toward Klenk, the section manager, at the meeting. This was the
7 first time Burgess personally had observed Coppedge acting in this confrontational and
8 argumentative manner about which Cassini project members had complained, and Burgess
9 was no longer comfortable having him as lead SA. 4/2/12 (Burgess) Tr. 193:26-195:17

10 ("Q. And when did you make that decision to remove his lead responsibilities? A. Towards the
11 end of the meeting, I did. Q. So actually in the meeting itself? A. Yes. Q. Can you please tell
12 me what led you to decide during that meeting that Mr. Coppedge's lead responsibilities should
13 be removed? A. Well, several things had happened. And at first, being that over the years we
14 had heard there was a lot of strife [sic] and difficult times with David supporting the Cassini
15 customers. . . . And then we had the fact that we had individuals now claiming that they were
16 being harassed by David; And then we had the discussion and follow-up email on what took
17 place between David and Greg and I felt uncomfortable that somebody in my organization
18 . . . was getting into an argument with a customer, in this case Greg, and arguing points about
19 what is science . . . And then I saw his manner actually dealing with Kevin Klenk our section
20 manager . . . here was this confrontational mode belligerent, I felt, that David took with Kevin
21 and I, and primarily with Kevin. And I just felt this was totally uncalled for. And his manner was
22 just so confrontational. And I decided that somebody in our organization, acting like that should
23 not be in a lead position representing us with our customer, the Cassini project. Q. Okay. Had
24 you ever personally observed in your presence Mr. Coppedge acting in that manner? . . . [A].
25 That was the first time I personally had seen this type of confrontational mode for myself. . . .
26 [Q]. How did what you observed of Mr. Coppedge in that meeting compare to what you had been
27 told by Mr. Chin or others regarding Mr. Coppedge's manner of interacting with customers? A.
28 Well, it was very definitely similar to what I had heard over the years. And I never had seen it

1 myself. And of course we heard more frequently that the meeting that he had with Greg, during
2 the heat the argument, he was in a confrontational mode there too. But like I say, this was the
3 first time I had personally actually observed that kind of a reaction to him.”).

4 **75. Burgess informed Coppedge at the end of the meeting that he was**
5 **removing his lead responsibilities.** *Id.* at Tr. 193:22-25; Trial Ex. 102 at 36-37.

6 **76. Coppedge’s pay, benefits, and title remained the same following the**
7 **removal of his lead duties; all that changed was that Coppedge no longer had to perform the**
8 **subset of administrative duties that comprised the lead position.** 3/15/12 (Coppedge)
9 Tr. 227:1-17 (did not receive additional pay or employee benefits (e.g. “better health care”) for
10 being team lead); Trial Ex. 35 (2010 ECAP, reflecting that Coppedge remained a “System
11 Administrator”).

12 **77. The lead position did not involve significant responsibilities or a large**
13 **time commitment, as the SAs were experienced and did not need to be led. The lead**
14 **position was later eliminated in October 2010 when Conner took over supervision of the**
15 **SAs.** 4/4/12 (Patel) Tr. 234:9-17 (Q. Did you find it necessary to mentor the S.A.’s on the team
16 during the time that you were the team lead? A. No, I did not. Q. Why not? A. Because my
17 team had been there almost – for more than 10 years. And they were very experienced S.A. And
18 there was no need to be leading the team. The team was capable of doing their job.”); 4/4/12
19 (Patel) 233:16-20 (“Q. All right. During the time that you were the lead, what is your best
20 estimate as to the percentage of your time that you spent doing lead activities versus normal S.A.
21 duties? A. 10 percent.”); 3/20/12 (Coppedge) Tr. 202:1-5 (“Q. Because, in fact, the team lead,
22 that informal designation, had been eliminated in October of 2010 when Diane Conner took over
23 the supervision of the systems administrators, correct? A. Correct.”).

24 **xi. Coppedge Appealed The Written Warning And Removal Of Lead Duties;**
25 **The Appeal Was Reviewed And Denied.**

26 **78. On or around May 18, 2009, Coppedge appealed Burgess’s written**
27 **warning and lead removal decision.** Trial Ex. 115; 3/20/12 (Coppedge) Tr. 57:19-24; 58:28-
28 59:2.

1 79. **Burgess was the decision-maker on both the written warning and the**
2 **removal of the lead designation; Klenk's only role on the written warning was to support**
3 **the decision and he did not know that Burgess would remove the lead designation until**
4 **Burgess told Coppedge in the meeting.** 4/3/12 (Klenk) Tr. 19:10-18 ("Q. . Who made the
5 decision to give Mr. Coppedge the written warning? A. Cab Burgess. Q. And it was your
6 understanding it was based on human resource's recommendation? A. Yes. Q. And what role,
7 if any, did you play in that? A. I supported it."); *Id.* at 22:9-16 ("Q. Now, at the end of the
8 meeting there has been testimony that Mr. Burgess told Mr. Coppedge that he was removing his
9 lead activities, do you recall that? A. Yes. Q. Did you know in advance of the meeting that Mr.
10 Burgess was going to do that? A. No. I didn't.").

11 80. **Klenk heard the appeal as Burgess's supervisor, per Caltech's**
12 **Problem Resolution Policy. To prepare for the appeal, Klenk interviewed Huntley about**
13 **her process and findings.** Trial Ex. 198; 4/3/12 (Klenk) Tr. 26:16-19 ("Q. And so what steps
14 did you do or what did you do to prepare prior to the meeting with Mr. Coppedge? A. I
15 discussed the situation again with Jhertaune Huntley. . . . I called her up on the phone and I said:
16 'Let's go through all the details of the meeting, of the investigation that you took, so I understand,
17 you know, what things were. Let's refresh my memory on it. Let's get more details.' And that
18 was the step I took with Jhertaune.").

19 81. **On August 25, 2009, Klenk met with Coppedge for an hour. As he did**
20 **during the April 13 meeting, Coppedge characterized himself as the victim and defended his**
21 **right to discuss intelligent design during work hours. When Coppedge asked about the**
22 **removal of his lead duties, Klenk explained that a key reason for it was his long history of**
23 **problems interacting with customers – which Coppedge acknowledged.** 4/3/12 (Klenk)
24 Tr. 28:13-18; 29:23-30:6 ("Q. . . . And from your perspective, what was the focus of what
25 Mr. Coppedge seemed to be telling you? A. Mr. Coppedge in substance was telling me that he
26 felt he was the victim in the process and that he had a right to do that in the workplace. Q. And
27 what response, if any, did you say to him? A. I told him that basically it wasn't the substance of
28 what he said it was the manner in which he was delivering it, you know, basically recounting

1 what I said the first time in the meeting with Mr. Burgess.”); *Id.* at Tr. 33:4-17 (“What was it that
2 you were explaining to him at that point about his removal from lead? A. I was basically
3 explaining to him that the unwelcome and disruptive behavior that gave him the written warning
4 wasn’t part of the removal from the lead role. I was trying to explain that his ongoing
5 interpersonal difficulties were what caused the removal from the lead role. Q. And let’s go down
6 to the next paragraph where it says you followed this discussion with Mr. Coppedge and he
7 admitted that he had difficult relationships with the coworkers in the past. Is that an accurate
8 statement? A. Yes, it is.”); Trial Ex. 144.

9 **82. On September 21, 2009, Klenk upheld the written warning and**
10 **removal of lead duties due to Coppedge’s insistence that he had a right to approach co-**
11 **workers during work hours and his admission of difficult relationships with customers.**

12 4/3/12 (Klenk) Tr. 36:5-27 (“Q. Did you subsequently make a decision as to whether or not to
13 change anything relative to the written warning and the removal of the lead activities? . . . A. I
14 decided to not go forward with David’s appeal. Q. In other words, not change anything? A. To
15 not change anything. Q. And what was your thinking in reaching that conclusion? A. . . . I got
16 the impression that David felt he had a right to do that in the workplace and wasn’t willing to
17 moderate his behavior and that he needed the written warning to focus on that. And I thought that
18 his admission that he had ongoing relationships -- ongoing difficult relationships it didn’t make
19 sense to keep him in a customer facing role.”); Trial Ex. 150.

20 **83. Klenk and Coppedge never discussed or had any dispute regarding**
21 **religion, politics or intelligent design.** 4/3/12 (Klenk) Tr. 9:15-22 (“Q. Did you ever have any
22 kind of dispute with Mr. Coppedge regarding religion, politics or intelligent design? A. No. I
23 did not. Q. Did you ever have any discussion with Mr. Coppedge about religion, politics or
24 intelligent design? A. No. I did not.”)

25 **xii. Caltech Rescinded The Written Warning After One Year; Coppedge Sued**
26 **One Week Later.**

27 **84. In April 2010, HR determined that the written warning could be**
28 **rescinded, given that there had been no further complaints regarding Coppedge’s behavior**

1 **being disruptive, and HR's view that a verbal admonishment was therefore enough.** 4/3/12
2 (Klenk) Tr. 38:15-24 ("Q. And what did you learn from human resources . . . ? A. That upon
3 further review they felt that a verbal admonishment was sufficient. Q. And when you say 'a
4 verbal admonishment was sufficient' in relation to what? A. In regards to David's behavior.
5 Q. Okay. And what, if anything, did that meeting with respect to the written warning? A. That I
6 was going to be able to rescind it."; *Id.* at Tr. 43:14-27 ("Q. . . . You have already testified that
7 human resources said a verbal admonishment was going to be sufficient. Did they explain to you
8 why they felt the verbal admonishment would be sufficient instead of the written warning?
9 A. Basically they said that there had been no further complaints or indication that David's
10 behavior was unwelcome and disruptive, and they felt a simple verbal admonishment was
11 enough. Q. You understood them to mean that there hadn't been any complaints since the
12 investigation in March of 2009? A. Correct.").

13 **85. On April 7, 2010, Klenk and Burgess met with Coppedge to tell him**
14 **that the warning was being rescinded.** *Id.* at 38:8-11 ("On April 7, 2010, did you have a
15 meeting with Mr. Coppedge and I believe Mr. Burgess also was in attendance regarding the
16 written warning? A. Yes."); *Id.* at Tr. 39:3-8 (" . . . I told him that the written warning was being
17 rescinded. . . . I told him that the verbal admonishment that we had given him was sufficient.").

18 **86. Coppedge's April 12, 2010 email to Klenk regarding the April 7, 2010**
19 **meeting misquoted Klenk by suggesting Klenk had said the warning was inappropriate.**
20 Trial Ex. 160; 4/3/12 (Klenk) Tr. 40:7-42:4 ("Q. . . . Did you use the terminology about the
21 written warning was inappropriate? A. Absolutely not. Q. What again did you tell him? A. I
22 told him that the verbal admonishment was sufficient.")

23 **87. On April 13, 2010, Coppedge filed a charge with the DFEH for the**
24 **third time, alleging discrimination and retaliation (among other things) following earlier**
25 **charges filed on June 12, 2009 and September 17, 2009.** Trial Exs. 211, 213, and 216.

26 **88. On April 14, 2010, one week after the written warning was rescinded**
27 **and two days after the April 12th email, Coppedge filed suit against Caltech, Chin, Burgess,**
28

1 and Klenk, asserting claims for religious discrimination and harassment, retaliation, and
2 wrongful demotion. *See* Complaint.

3 **xiii. Cassini Funding Reductions Related To XXM Required Elimination Of**
4 **30% Of Full-Time Equivalent Jobs; Coppedge Was Selected For Layoff.**

5 89. In January 2009, Chin told Coppedge and the other SAs about the
6 Cassini funding cuts and likely reduction in staff for XXM; on March 19, 2010, Chin sent an
7 e-mail referencing the “upcoming XXM staffing/changes” and providing employees with
8 additional information about the layoff process. 3/29/12 (Chin) Tr. 157:2-158:12 (“Q. . . .
9 Now, you had given the S.A.’s advance warning of the likely reduction in staff when we went to
10 the second extended mission, correct? A. Yes, sir. . . . Q. . . . What did you tell the S.A.’s back
11 two years earlier in January 2009, when you were . . . advising them about this potential change?
12 A. At the time the outlook profile, or our budgetary profile we were already planning about a 40
13 to 50 percent reduction, and with that we knew the office was going to change. . . . So at the time
14 I encouraged everyone, not just the S.A.’s but the entire team, that we need to be prepared. . . .”);
15 Trial Ex. 155.

16 90. On March 19, 2010, Burgess provided his personal opinion on post-
17 reduction Cassini staffing. Trial Ex. 154.

18 91. Due to Cassini funding reductions by NASA, and the beginning of the
19 XXM in October 2010, Cassini management was required to eliminate 30% of full-time-
20 equivalent positions (from 170 to 120). 4/5/12 (Mitchell) Tr. 214:19-215:10 (“Q. And when
21 you were making the proposal to NASA for the second extended mission, what did you do with
22 the funding level? A. . . . For the second extension, we hadn’t been directed so by NASA, but we
23 had every reason to believe that we would not be funded at that same level again. . . . Q. Okay.
24 And so you proposed a second extended mission at reduced funding? A. Yes. Q. And was that
25 approved? A. Yes.”); 4/5/12 (Mitchell) Tr. 215:21-216:3 (“ . . . The difference was 50,
26 approximately 50 F.T.E.’s. Q. And approximately how many F.T.E.’s had there been budgeted in
27 the first extended mission? A. 170. Q. So [i]t [went] from 170 to about 120? A. Yes.”).

1 92. **In the XXM, Mitchell restructured the Cassini project, including**
2 **dissolving MSSO and eliminating Chin's job.** 4/5/12 (Mitchell) Tr. 216:4-14 ("Q. Now
3 there's been testimony that the project was re-organized as a part of the second extended mission;
4 is that correct? A. Yes. . . . In restructuring the organization we moved a number of the MSSO
5 functions to other areas, including some directly as staff roles, and MSSO was dissolved in the
6 new organization. Q. And Mr. Chin's job was eliminated, correct? A. Yes.").

7 93. **As part of the reorganization, the SA team became part of Uplink**
8 **Integrated Systems, under the supervision of Diane Conner, and it too had to be reduced (to**
9 **three SAs).** 4/5/12 (Mitchell) Tr. 216:16-216:21 ("Q. And then where did you put the S.A.'s?
10 A. . . . one of the new staff positions was a task called uplink integrated systems. And we named
11 a person by the name of Diane Conner to lead that group and put the S.A.'s in there."); 4/11/12
12 (Conner) Tr. 206:22-207:2 ("Q. BY MR. BECKER: Isn't it true that Mr. Mitchell told you you
13 would need to reduce the SAs to 3.0 full-time equivalent employee staff? A. He said I would
14 have three SAs, yes. Q. And FTE means you would have to have the equivalent of three full-
15 time employees, right? A. That's correct.").

16 94. **Caltech's Layoff Policy (in effect since 2006) provides that, when there**
17 **are multiple incumbents performing same or similar duties and there is going to be a**
18 **reduction in force, they are to be ranked based on certain standard criteria: need, skills,**
19 **abilities, performance, conduct, reliability, education/training, and experience.** Trial
20 Ex. 199.

21 95. **In accordance with the Layoff Policy, Section Manager Richard Van**
22 **Why was tasked with ranking all SAs in his section on the standard criteria; those**
23 **individuals were Coppedge, Harvey Chien, Oscar Castillo, Gary Wang, and Nick Patel.**
24 Trial Ex. 199; 4/11/12 (Van Why) Tr. 232:2-235:5 ("Q. . . . Is there a process that JPL follows
25 when there are multiple incumbents performing same or similar duties when there is going to be a
26 reduction in force? A. Yes. That's a ranking sheet that's used. . . . And under 3.5 it talks about
27 the layoff ranking criteria worksheet, and then it lists a number of criteria. Q. Were those the
28

1 criteria that you were to apply in evaluating the employees as to their relative skills, performance
2 abilities in deciding who to lay off? A. Yes.”); *Id.* at 239:7-15.

3 **96. Employee ECAPs are not considered in the layoff ranking process.**
4 4/11/12 (Van Why) Tr. 235:6-8 (“Q. Okay. As part of the layoff process, do you look at
5 employee ECAPS? A. No.”).

6 **97. Van Why sought input from the Cassini project regarding the relative**
7 **weights to assign to each criterion, as the layoff process is driven primarily by the current**
8 **and future needs of the customer.** Trial Ex. 167; 4/11/12 (Van Why) Tr. 235:6-26 (“Q. What
9 is it that you’re focusing on when you’re going through the process of this layoff ranking criteria
10 worksheet? A. Primarily the -- both current and future needs of the customer. Q. Okay. And so
11 for that reason, do you solicit the information from the project? A. Yes. Q. Okay. . . . -- after
12 you contacted HR and after you looked at the policy, what was the next step you took? A. Once
13 I had the ranking spreadsheet, it was then to determine what the weights of each category would
14 be. Q. Okay. And from whom did you seek that information? A. From the customer, which
15 was Cassini. Q. And who on Cassini? A. Diane Conner and Bob Mitchell.”); *Id.* at Tr. 236:15-
16 23 (Q. And then there is a weight. Is that the information that you were seeking from the
17 project? A. Yes, it was. Q. And what is the purpose of the weight as you understand it? A.
18 Each customer may have different areas that they feel are more important for their both current
19 and future needs, and so they need to apply what the weight would be specific to those, specific to
20 what they need moving forward.”).

21 **98. Conner then worked with Cassini’s managers to identify the most**
22 **critical technologies and skills needed on Cassini for XXM.** 4/11/12 (Conner) Tr. 153:17-21
23 (“Q. . . . [D]id you speak with any members of the project in order to determine or confirm what
24 skills were to be most important for the future and also customers’ insights with respect to SAs?
25 A. Yes.”)

26 **99. Conner consulted with Webster and Weld, the two office managers**
27 **who led SCO and SAUL, respectively (and therefore oversaw approximately 85% of**
28 **Cassini’s workforce), as well as Barbara Larsen (“Larsen”), the Level 3 System Engineer**

1 **who coordinated engineering for the entire project.** 4/11/12 (Conner) Tr. 153:22-23 (“Q.
2 Okay. With whom did you speak in that regard? A. Kathryn Weld, Julie Webster, and Barbara
3 Larsen.”); *Id.* at Tr. 163:6-8 (“Q. If you took SCO and SAUL out of the picture, what percentage
4 of the project do their areas represent? A. About 85 percent.”); 3/28 (Chin) Tr. 195:20-196:1 (Q.
5 And then level III system engineering is Barbara Larsen. What did Ms. Larsen do? What was
6 her job? A. The level III system engineer is the person that looks at the bigger picture of
7 everything. She saw that the spacecraft operations, navigation, the MSSO science and uplink
8 office, she kind of coordinated all our activities to make sure they were integrated and working
9 effectively together.”).

10 100. **Based on their input, and her own experience working directly with**
11 **the SAs for much of her 13 years on Cassini, Conner determined that the key technical SA**
12 **skills needed in XXM were managing web servers, servicing SCO’s Integrated Test Lab**
13 **(“ITL”), and possessing knowledge of Linux and MYSQL.** 4/11/12 (Conner) Tr. 153:17-
14 155:10 (“Q. . . . What information did Ms. Webster give you? A. She said that the SCO and ITL
15 support was very important. . . . [Q.] What information did you learn from Kathryn Weld? A.
16 That maintaining the web servers was very important to her operations as well as the IO servers,
17 which included MYSQL and FEI, which was a tool. . . . Q. [W]hat did you decide were the most
18 critical functions going forward that you needed to have skilled SAs to perform? A. Definitely
19 the web servers and ITL, Linux was very important, MYSQL, overall Unix administration, also
20 knowledge of networks.”); *Id.* at Tr. 30:16-18 (“Q. How long had you worked all [told] on the
21 Cassini project? A. Since 1997.”); Tr. 31:3-8 (Connor started working on Cassini in 1997 or
22 1998; “Q. Throughout that time have you generally worked with the SA’s pretty closely? A.
23 Yes.”); Trial Ex. 165.

24 101. **Burgess provided historical input on the SAs’ trouble-shooting and**
25 **interpersonal skills.** 4/11/12 (Van Why) Tr. 239:26-241:4 (describing Burgess’s input, which
26 focused on factors like interpersonal skills and troubleshooting : “Q. . . . [W]hat was the nature
27 of the input that Mr. Burgess gave you? A. Primarily historical, mostly talking about customer
28 feedback and a little bit more generalities with regards to each individual.”).

102. **With the reduction of the SA team from six members to three, it also was important for each SA to have good interpersonal skills to be able to work effectively with everyone on the project.** 4/12/12 (Van Why) Tr. 158:3-13 (“Q. . . . Why were interpersonal skills important – were interpersonal skills especially important in a reduced workforce of six SAs to three SAs? A. Yes. Q. Why? A. Because it’s important with the smaller staffing that those individuals would remain, that all of them would be able to interact with everyone within the project equally, and that there would not be any -- anybody within the project that would not want to interact with any of the remaining individuals.”).

103. **Conner and Van Why met to discuss the SAs’ relative abilities, consistent with the project’s needs.** 4/11/12 (Conner) Tr. 153:11-16) (“Q. . . . [W]as [Van Why] asking you for input regarding the SAs’ relative strengths and weaknesses? A. Yes. Q. And their relative skills? A. Yes”); 4/12/12 (Van Why) Tr. 158:14-19) (“Q. . . . [C]an you remind me again, which were the functions that Ms. Conner identified to you as being critical functions and needs for the future? A. ITL, web servers, Linux, MYSQL, being a good troubleshooter, and the interpersonal skills.”)

104. **Van Why made the following determinations regarding the SAs:**

a. **Castillo was expert in web servers and Linux and was one of the two most highly-regarded SAs in terms of troubleshooting and positive customer relationships. Coppedge acknowledges that Castillo has greater expertise in web server, and that his own Linux skills are minimal.** 4/11/12 (Van Why) Tr.249:4-10) (“Q. And Mr. Castillo, as you had indicated, was the web server which was critical? A. Correct. Q. As well as Linux? A. Yes. Q. And MYSQL? A. Yes.”); 4/12/12 (Van Why) Tr.158:23-159:10 (“Q. In terms of web servers, who was the expert in that area? A. Oscar Castillo. Q. In terms of the individuals you were rating before or ranking, who was the most qualified as to Linux? A. Oscar. Q. With respect to MYSQL, who was the most qualified among those you were ranking? A. Oscar. Q. And among troubleshooters, who were the highest ranked people with respect to troubleshooting skills? A. Nick and Oscar. Q. And with respect to interpersonal skills, customer relationships, who had the most positive customer relationships? A. Nick and

1 Oscar.”); 4/12/12 (Coppedge) Tr. 226:4-6 (“Q. And isn’t it also true that Oscar Castillo had more
2 expertise in the web server than you did? A. Yeah, he did.”); *Id.* at Tr. 181:17-25 (“Q. . . . What
3 was your level of skill [on Linux], do you think, on that? A. Well, I actually had some
4 experience with Linux. It wasn’t a lot. . . . I knew of about five machines out of over two
5 hundred that ran Linux.”); *Id.* at 223:7-21 (“ . . . I would rank [my Linux skills] as minimal but
6 not zero.”).

7 b. **Patel was expert in working with the ITL machines, and was**
8 **the other of the two most highly-regarded SAs in terms of trouble-shooting and positive**
9 **customer relationships. Coppedge acknowledges that Patel is more experienced in SCO and**
10 **ITL and that he only worked as Patel’s assistant in these areas.** 4/11/12 (Van Why) Tr.
11 248:28-249:3 (“Okay. So Mr. Patel’s specialty was ITL; is that right? A. Yeah. That was one of
12 the areas he had specialized in.”); 4/12/12 (Van Why) Tr. 158:20-159:10 (“Q. And in terms of
13 the ITL who was the expert in that area? A. Nick Patel. . . . Q. And among troubleshooters,
14 who were the highest ranked people with respect to troubleshooting skills? A. Nick and Oscar.
15 Q. And with respect to interpersonal skills, customer relationships, who had the most positive
16 customer relationships? A. Nick and Oscar.”); 4/12/12 (Coppedge) Tr. 225:10-226:2 (discussing
17 Coppedge’s deposition testimony regarding SCO and ITL, and confirming that he worked as
18 Patel’s assistant in these areas: “Q. Who was more expert at the spacecraft office and [ITL]
19 systems, you or Nick Patel? . . . More expert and more knowledgeable? . . . A. Nick spent more
20 time in these areas, so he acquired more experience over the years because he was assigned to do
21 those things, but I did assist him on those things.’ Q. That was your role. You assisted Nick
22 Patel in connection ITL and ICO; isn’t that correct, sir? . . . You were his right-hand man as I
23 think you described earlier on your redirect testimony; isn’t that correct? . . . You worked as his
24 assistant, correct? A. I guess you could describe it that way, yes.”).

25 c. **Wang was an expert in super-computing, a skill no other SA**
26 **had.** 4/11/12 (Van Why) Tr. 242:-243:12 (“Q. . . . Now, you personally had observed
27 Mr. Wang’s performance as well, correct? A. Yes. . . . [H]e was kind of a specialty within the
28 system administration field. He dealt quite a bit with high performance clusters. Q. Okay. A.

1 And that he was a very strong technical person and also, you know, dealt well with the customer.
2 Q. And can you tell us in layman terms, when you say 'high performance clusters,' or here it
3 says 'super computing,' in layman's terms, what does that mean? A. So a super computer is a --
4 would be like thousands of computers hooked together that is used for very high-end processing
5 of jobs that on a single system might take weeks to months. Because of the additional computing
6 that it can get it done in minutes, hours, or days. Q. Okay. And did any of the other SAs you
7 were comparing, that is, any of the other four, have the capacity to do that particular work? A.
8 No. . . Q. [W]hy was super computing needed, if it was? A. Super computing is an area that
9 there is strong interest across the science communities as well as the flight projects. It's just an
10 important task at JPL.").

11 d. **Chien was not expert in any of the key technical SA skills areas,**
12 **but he was a decent administrator and had good interpersonal skills.** 4/11/12 (Van Why)
13 Tr. 240:17-23.

14 e. **Coppedge was not the most proficient in any of the key**
15 **technical SA skills areas, and he had a history of poor customer relationships, such that**
16 **Webster and Weld expressly told Conner they did not want him working on their machines.**
17 Trial Ex. 169; 4/11/12 (Conner) Tr. 154:1-6 ("Q. What, if anything, did [Webster] tell you about
18 Mr. Coppedge? A. She did not want David working on her machines. Q. And did she tell you
19 why? A. They had had some experience with him making mistakes that had interrupted their
20 work."); *Id.* at Tr. 155:1-155:2 (Weld "also did not want David working on her machines").

21 105. **Coppedge did not consider Linux to be very significant for the XXM,**
22 **and did nothing to improve his Linux skills in the two years after Chin told the SAs to take**
23 **training to prepare for the XXM downsizing.** 4/12/12 (Coppedge) Tr. 226:23-227:5 ("Q. And
24 you said before that you didn't consider Linux to be very important for a second extended
25 mission; is that correct? . . . Didn't you testify to the fact that it wasn't very significant because
26 there were only a few machines that did Linux, something to that effect? A. Yes."); Tr. 228:21-
27 229:1 ("Q. . . . [D]idn't you have from January of 2009 all the way up until January of 2011, a
28 two-year period, within which you could have taken the Linux class to broaden your skills? A. I

1 could have. Q. But you didn't do that, did you? A. No."). **Patel did take a Linux class.**

2 3/21/12 (Coppedge) Tr. 217:28-218:10 ("I remember Nick Patel having taken a class on Linux
3 toward the end of 2011, and I was planning on taking that one too, but he said it was very
4 different from Solaris.").

5 106. **The skills Coppedge did have were no longer needed on Cassini,**
6 **including Cassini's private network (disbanded to save costs), AFS (a file system, replaced**
7 **by another file system), and HP Open View (out of use by March 2011).** 4/11/12 (Conner)
8 Tr. 163:23-164:10 ("Q. . . . One of the things that you said that Mr. Coppedge was skilled in was
9 the Cassini private network? A. Yes. Did you continue to utilize the Cassini private network in
10 the second extended mission, in other words, after October of 2010? In other words, are you still
11 using the private Cassini network? A. Not anymore. . . . We disbanded it and turned it over to
12 JPL Networks. . . . [t]o reduce the effort that we had to spend on networks."); *Id.* at Tr. 4/11/12
13 (Conner) Tr. 158:10 ("David was our expert in AFS"); 36:27-37:7 ("Q. . . . First of all,
14 what is AFS? A. The Andrew file system. Q. What was it used for? A. It was used for serving
15 files in a distributed way a wide area network. Q. What is NFS? A. That is a network file
16 system. That is more isolated to a local area network."); *Id.* at Tr. 164:16-22 ("Q. One other
17 area you said that Mr. Coppedge was expert in was HP Open View. Is HP Open View still being
18 used? A. No. Q. When did you stop or decide you were not going to use it? A. I believe it was
19 March, 2011."); *Id.* at 166:18-21 ("Q. . . . What is HP OpenView? A. That is a monitoring tool
20 that allows you to see whether networks or machines are functional or not."); *Id.* at
21 Tr. 164:28-165:11 ("Q. Okay. You also said that Mr. Coppedge was an expert at AFS. And
22 what is the status of AFS? A. We use it very minorly but not for any of our software or any of
23 our spacecraft files. Q. What are you using instead? A. NFS. Q. So is it fair to say that three of
24 the areas where Mr. Coppedge was strong, the Cassini private network, HP Open View and AFS,
25 were not going to be used in the second extended mission. A. That's correct.").

26 107. **HR Manager Jackie Clennan-Price ("Clennan-Price") took notes**
27 **contemporaneously in the Conner/Van Why meeting, and then created a summary chart of**
28 **the SAs' relative skills based on Conner's input.** 4/12/12 (Van Why) Tr. 159:11-160:2

1 (“Q. You were also asked whether you took notes as you met with Ms. Conner and she gave you
2 this information, and you said you didn’t. Was anyone taking notes during that time period? A.
3 Yes. Q. Who was? A. Jackie Clennan-Price. Q. And who is she again? A. She is with HR.
4 Q. And so she was taking notes as you and Ms. Conner conversed? A. Yes. Q. And what is
5 your understanding that she did with those notes? A. She eventually put together the chart that I
6 think we discussed earlier. Q. And without having to go through it, it’s the chart that shows each
7 person’s name and their strengths and weakness, exhibit 169? A. Yes.”); Trial Ex. 169.

8 **108. Conner’s own past experiences with Coppedge, including his**
9 **discomfort with virtual networks (and his decision to use physical networks that later**
10 **deteriorated and had to be replaced with virtual networks anyway) and his disappointing**
11 **and unprofessional presentation on access control technologies, supported her assessments.**
12 Trial Ex. 35, 4/11/12 (Conner) Tr. 33:2-36:3 (discussing Coppedge’s decision to use physical
13 connections rather than virtual ones, which then had to be replaced anyway: “. . . [I]nitially we
14 had an expert come in and recommend that we employ VLANs for our Sunrays a sun expert.
15 And David wanted to use physical connections rather than VLANs. . . . He was not comfortable
16 with [the virtual networks] . . . So initially we did not employ the VLANs. We connected people
17 to routers physically by their proximity of where they were located. Q. How did that work out?
18 A. Eventually it was going to deteriorate and fall apart as people moved around. Q. So what
19 happened at that point? A. So probably about a year later we finally employed the VLANs.”);
20 4/11/12 (Conner) Tr. 36:14-42:15 (Coppedge gave a disappointing and unprofessional
21 presentation on access control technologies for Conner, Larsen and other system engineers; the
22 presentation “did not provide sufficient detail or compare the pros and cons of each
23 implementation. It didn’t provide enough detail and background of how these could actually be
24 implemented.”).

25 **109. Conner never had any discussions with Coppedge regarding religion**
26 **or any political issue, including Proposition 8.** 4/11/12 (Conner) 31:11-17 (“Q. Did you ever
27 have any discussion or disagreement with him regarding Proposition 8 or any political issue?
28 A. No. Q. Did you ever have any discussion with Mr. Coppedge regarding religion? A. No.”).

1 **They never had any disputes or disagreements regarding intelligent design; in fact,**
2 **Coppedge loaned Conner a DVD, which she thought was very interesting, and at some**
3 **point, she purchased a DVD from Coppedge.** *Id.* at Tr. 31:23-32:10 (“Q. Did Mr. Coppedge
4 ever loan you a DVD on intelligent design? A. Yes. Q. And do you recall what it was? A. Not
5 exactly the title. Q. Did you watch it at the time? A. Yes. Q. What was your reaction to it? A.
6 I thought it was very interesting. Q. At some point in time did you actually purchase a DVD
7 from Mr. Coppedge? A. Yes. Q. Okay. Did you ever have any dispute or disagreement with
8 Mr. Coppedge regarding intelligent design? A. No.”).

9 110. **Van Why ranked the SAs on each criterion, reflecting the fact that**
10 **Patel, Castillo, and Wang were more qualified on needed technologies than Coppedge and**
11 **Chien.** Trial Ex. 168; *Id.* at Tr. 246:23-247:2 (Chien “had fallen to fourth out of five . . .
12 potential individuals to be ranked . . .”); 4/12/12 (Van Why) Tr. 1:24-2:12 (“Q. . . . Looking at
13 need and skills, you gave Mr. Coppedge a 5 which ranked him fifth among the five SA’s. Why
14 did you rank him fifth, Mr. Van Why? A. In taking a look at the information that we had
15 gathered on each of the individuals, the needs and skills of Cassini moving forward dealt more
16 with ITL web services, Linux, troubleshooting, good customer skills. And those are areas that
17 David did not rank as high on.”).

18 111. **Coppedge and Chien were the lowest ranked, so Van Why selected**
19 **them for layoff. He reached his final decision in December 2010.** 4/12/12 (Van Why)
20 Tr. 4:20-24 (“Q. . . . And what -- based on these scores, whom did you decide should be laid off?
21 A. Based on these scores, the two individuals that were at the lowest were Harvey Chien and
22 David Coppedge.”); *Id.* at Tr. 31:16-20 (“And the decisions that you made concerning who
23 would be laid off you finalized when? . . . A. December of 2010.”).

24 112. **Van Why does not believe he opened Burgess’s March 19, 2010 e-mail**
25 **regarding post-reduction Cassini staffing, because it concerned Burgess’s quiet hours,**
26 **which Klenk was still handling.** Trial Ex. 154 (noting that Coppedge would “probably have to
27 move on because of the budget reduction”); 4/12/12 (Van Why) Tr. 50:15-22 (“Q. . . . [Y]ou
28 have not seen this document before? A. I don’t recall having seen this document before, no.

1 Q. Do you have any reason to believe that you did not receive this document from Mr. Burgess?
2 A. No. I get five to 700 emails per day, so I likely received it.”); *Id.* at Tr. 156:5-157:13 (“Q. ...
3 Now, also with respect to that same e-mail, I think you testified that you get someplace between
4 500 and 700 e-mails a day? A. Yes. Q. And my impression was and I think you testified that
5 you don’t always read all your e-mail? A. Yes. ... Because it had come from Cab and it
6 included myself, Kevin Klenk, and Stephen O’Hearn. That would not have caused me to open it
7 because Kevin Klenk had been the one responsible for Cab’s quiet hours as section manager prior
8 to being division manager.”).

9 113. **Mitchell gave no input to the rankings, and did not even know who**
10 **would be laid off until Van Why told him in December.** 4/5/12 (Mitchell) Tr. 218:6-22
11 (“Q. Okay. Now did you participate at all in deciding which S.A.’s would be laid off and which
12 ones would not, other than what you just said? A. Well, once the rankings had been completed
13 by the section -- meaning Van Why primarily, then I was shown what the file rankings were and
14 asked for my opinion. I did not influence the process getting to that point.”); 4/11/12 (Conner)
15 Tr. 165:12-166:8 (Conner learned who would be laid off in December 2010; “Q. Do you know
16 whether or not that same information was presented to Mr. Mitchell? A. Yes, it was. Q. Were
17 the two of you together when Mr. Van Why said that? A. Yes.”).

18 114. **Van Why notified Coppedge and Chien of their layoff on January 24,**
19 **2011.** 4/12/12 (Van Why) Tr. 6:16-22 (noting that notification of layoffs occurred on January 24,
20 2011); 3/21/12 (Coppedge) Tr. 199:26-28 (“Q. So you were notified of your layoff on January
21 24, 2011, correct? A. Yes.”).

22 **B. Conclusions of Law¹**

23 1. A plaintiff bears the burden of proving each fact that is essential to his
24 claim for relief. Cal. Evid. Code § 500 (“Except as otherwise provided by law, a party has the
25 burden of proof as to each fact the existence or nonexistence of which is essential to the claim for
26 relief or defense that he is asserting.”).

27
28 ¹ Any findings of fact deemed to be a conclusion of law is hereby held to be a conclusion of law.

2. Coppedge bears the burden of proving a *prima facie* case of discrimination. To establish a *prima facie* case, Coppedge must show that (1) he belongs to a protected category; (2) he is otherwise qualified to do his job; (3) he suffered an adverse employment action; and (4) there are circumstances raising an inference of discrimination based on the protected category (here, religion). See *Guz v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 355 (2000).

3. If Coppedge meets the burden of establishing a *prima facie* case, the burden shifts to Caltech to articulate a legitimate, nondiscriminatory reason for its adverse employment decision. *Caldwell v. Paramount Unified Sch. Dist.*, 41 Cal. App. 4th 189, 197 (1995).

4. After Caltech provides its legitimate, nondiscriminatory reason, Coppedge must produce specific, substantial evidence that the actions in question were taken *because* of his religious views. *Guz*, 24 Cal. 4th at 361 (“[T]here must be evidence supporting a rational inference that *intentional discrimination, on grounds prohibited by the statute, was the true cause* of the employer’s actions.”) (emphasis in original); *Caldwell*, 41 Cal. App. 4th at 195 (“In order to prevail under the disparate treatment theory, an employee must show that the employer harbored a discriminatory intent.”); *Ibarbia v. Regents of the Univ. of Cal.*, 191 Cal. App. 3d 1318, 1330 (1987) (rejecting “highly speculative allegations without any real substantiation”); *Crosier v. United Parcel Serv., Inc.*, 150 Cal. App. 3d 1132, 1139 (1983) (“[S]uspicious of improper motives . . . based on conjecture and speculation . . . [do] not show that the reasons for . . . discharge were pretextual . . .”), *disapproved of in part on other grounds by Foley v. Interactive Data Corp.*, 47 Cal. 3d 654 (1988).

5. The ultimate burden lies with Coppedge to show that the actions in question constituted religious discrimination in violation of FEHA; that is, to show that discriminatory intent was a motivating factor in an adverse employment decision by Caltech. *Caldwell*, 41 Cal. App. 4th at 205.

6. The Court finds that Coppedge has failed to prove by a preponderance of the evidence that the conduct he alleges supports a *prima facie* case of religious discrimination or perceived-as religion discrimination.

1 7. As the Court discusses in more detail below, the Court finds that, other
2 than Coppedge's layoff (which is non-actionable because there is no evidence to show it was due
3 to discrimination), none of the conduct he identifies (the written warning, the removal of his
4 informal lead designation, his 2009 and 2010 ECAP; and his other complaints, *e.g.* regarding the
5 appeal process and Huntley's investigation), taken individually or collectively, qualifies as an
6 adverse employment action. An employment decision is actionable only if it results in "a
7 *substantial* adverse change in the terms and conditions" of employment. *Akers v. Cnty. of San*
8 *Diego*, 95 Cal. App. 4th 1441, 1455 (2002) (emphasis added).

9 8. The Court further finds that Caltech met its burden of providing a
10 legitimate, nondiscriminatory reason for its actions, including the layoff. *Caldwell*, 41 Cal. App.
11 4th at 196.

12 9. The Court further finds that Coppedge failed to produce specific,
13 substantial evidence that any of the actions in question actually were taken *because* of his
14 religious views. *Guz*, 24 Cal. 4th at 361.

15 10. The Layoff.

16 a. The Court finds that Caltech established a legitimate
17 nondiscriminatory reason for Coppedge's layoff: it laid Coppedge off based on objective criteria
18 that had nothing to do with his lawsuit. Specifically, the evidence shows that Caltech has a
19 detailed layoff policy, incorporating a layoff ranking process, which Van Why carried out. The
20 evidence clearly shows that Patel, Castillo, and Wang were more qualified than Coppedge
21 regarding the skills needed on the project going forward, such as SCO/ITL, web servers, and
22 Linux, and that Coppedge had a history of poor customer relationships, particularly in comparison
23 to the other System Administrators.

24 b. Coppedge failed to present evidence that Caltech's reason for
25 Coppedge's layoff is a pretext for discrimination (or retaliation).

26 (i) The evidence shows that Caltech followed its established
27 layoff policy. Even if the criteria were considered subjective, subjective criteria does not give
28 rise to an inference of discrimination (or retaliation), without more. *Hicks v. KNTV Television*,

1 *Inc.*, 160 Cal. App. 4th 994, 1005 (2008) (“The fact that [the] assessment was based upon
2 subjective criteria does not, by itself, demonstrate pretext. . . . [T]here is nothing inherently
3 suspect in the use of subjective criteria. ‘Indeed, subjective evaluations of a job candidate are
4 often critical to the decisionmaking process, and if anything, are becoming more so in our
5 increasingly service-oriented economy . . .’ [A]bsent some evidence that the station made its
6 decisions based upon race, the mere use of subjective criteria does not permit us to second guess
7 the employer’s business judgment.”) (citations omitted). The Court further finds that while
8 subjective criteria may constitute circumstantial evidence “[a]gainst the background of the other
9 evidence of pretext,” there is no other evidence of pretext here. *Bergene v. Salt River Project*
10 *Agric. Improvement and Power Dist.*, 272 F.3d 1136, 1142 (9th Cir. 2001).

11 (ii) There is no evidence that the ranking was incorrect. To the
12 extent Coppedge has contended otherwise, this is at odds with his testimony and constitutes
13 speculation, which is insufficient to establish pretext. *Martin v. Lockheed Missiles & Space Co.*,
14 29 Cal. App. 4th 1718, 1735 (1994) (plaintiff’s “showing in the trial court was insufficient to
15 create more than speculation that [the employer’s] showing was pretextual or false”). The
16 evidence shows that Coppedge admits the other System Administrators had greater expertise than
17 he had in needed areas, including SCO/ITL, web servers, and Linux.

18 (iii) There is no evidence to suggest that Van Why’s application
19 of the layoff ranking criteria or Conner’s input to the process were motivated by anything other
20 than legitimate factors. The evidence shows that Van Why adhered to Caltech’s layoff policy and
21 that Conner provided input based on her personal experience with Coppedge’s work and that of
22 Cassini managers. Conner never even discussed religion or politics with Coppedge, and to the
23 extent they discussed Intelligent Design, the interaction was cordial (*i.e.* she borrowed, and then
24 bought a DVD); Coppedge likewise presented no evidence suggesting he ever had any
25 discussions or disputes on such topics with Van Why.

26 11. Written Warning.

27 a. The Court finds that the written warning was not an adverse
28 employment action, as Coppedge did not experience any change in the terms of conditions of his

1 employment as a result of the written warning, much less a substantial one. The evidence shows
2 that the warning was rescinded after one year, and there is no evidence that Coppedge was
3 prevented from receiving a promotion or any other assignment, during that year or after.

4 b. The Court finds that in any event, Caltech met its burden of
5 showing that it issued the written warning to Coppedge based on its good faith belief that he
6 violated Caltech's Unlawful Harassment Policy and its Ethics and Business Conduct Policy.
7 *Joaquin v. City of L.A.*, 202 Cal. App. 4th 1207, 1223 (2012) ("If the employer takes an adverse
8 action based on a good faith belief that an employee engaged in misconduct, then the employer
9 has acted because of perceived misconduct, not because of protected status or activity. The
10 relevant inquiry is whether the [employer] *believed* [the employee] was guilty of the
11 conduct. . . .") (citation and quotation marks omitted; first and second alterations and emphasis in
12 original).

13 c. The Court finds that Coppedge failed to present evidence
14 establishing that Caltech's reason for issuing the written warning is pretextual. Huntley
15 reasonably found, and the witnesses' testimony confirms, that Weisenfelder, Vetter, and
16 Edgington took issue with Coppedge's persistence and the fact that he made them feel
17 uncomfortable, not the content of Coppedge's beliefs. There also is no evidence that Burgess's
18 decision to take Huntley's recommendation, and issue the written warning to Coppedge, was
19 motivated by religious animus or hostility toward intelligent design or Coppedge's political
20 beliefs; they never had any disagreements regarding religion or politics; Burgess actually
21 purchased several intelligent design DVDs from Coppedge; and Coppedge admits that Burgess
22 had always treated him fairly up to that point in time.

23 12. Removal of Lead Duties.

24 a. The Court finds that Burgess's decision to remove Coppedge's
25 informal lead designation was not a demotion, or an adverse employment act of any kind. The
26 undisputed evidence shows that Coppedge's pay, employee benefits, and title remained the same.
27 The evidence establishes that the lead duties did not constitute significant responsibilities, but
28 rather, were informal, administrative in nature, and only took (or should have taken) 10% of the

1 lead's work time. While the lead interacted with the customers, all SAs did so as well. The
2 evidence further establishes that the SAs did not need to be mentored or coordinated, because
3 they were experienced in their work; indeed, the lead position was eliminated in October 2010
4 when Conner took over supervision of the SAs. Changes in job duties are not actionable adverse
5 actions. *See Thomas v. Dep't of Corr.*, 77 Cal. App. 4th 507, 511 (2000) (action must "be more
6 disruptive than . . . an alteration of job responsibilities") (citation and internal quotation marks
7 omitted).

8 b. The Court finds that Burgess's decision was based on legitimate
9 and nondiscriminatory reasons. The evidence establishes that Burgess decided to remove
10 Coppedge's lead duties during the April 13, 2009 meeting, based on a series of work-related
11 problems with Coppedge (including his history of difficult customer relationships) that
12 culminated in Coppedge's confrontational behavior toward Klenk during the meeting – the first
13 time Burgess personally had observed such behavior – leaving Burgess uncomfortable having
14 Coppedge as lead SA.

15 c. The Court further finds that Coppedge failed to present evidence
16 establishing that these reasons are pretextual. There is no evidence to show that Burgess made
17 the decision to remove Coppedge's lead duties prior to the meeting. To the contrary, Burgess's
18 testimony that he made the decision at the meeting is credible, particularly given that this was the
19 first time Burgess personally had observed Coppedge acting in this manner and that Coppedge's
20 behavior was similar to what Cassini project members had complained about over the years.
21 Burgess provided a credible explanation for Coppedge's positive performance evaluations in the
22 past; namely, that he was trying to minimize their negativity so they would not hurt Coppedge's
23 ability to transfer to a job outside of Cassini. Moreover, there is no evidence that Burgess's
24 decision to remove Coppedge's lead duties was motivated by religious animus or hostility toward
25 intelligent design or Coppedge's political beliefs.

26 13. The 2009 and 2010 ECAPs.

27 a. The Court finds that the negative input on Coppedge's 2009 and
28 2010 ECAPs did not constitute an adverse employment action. First, the Court would not

1 characterize the ECAPs as “negative evaluations.” The evidence shows that Burgess did not
2 solicit negative input for the evaluations – and he did obtain and include positive input from a co-
3 worker whom Coppedge recommended. As for the evaluations themselves, the 2009 ECAP
4 contains praise for Coppedge. To the extent his 2010 ECAP contained criticism, it was from
5 individuals who observed Coppedge’s work first-hand and whose input was substantiated in their
6 trial testimony. Second, even assuming the ECAPs were negative evaluations, a negative
7 evaluation still is not actionable unless the employer uses it “to substantially and materially
8 change the terms and conditions of employment.” *Akers*, 95 Cal. App. 4th at 1457. The Court
9 finds that there is no evidence that any such change occurred as a result of Coppedge’s ECAPs,
10 either before the layoff process or during it; Caltech’s layoff ranking process does not consider
11 employee ECAPs.

12 b. The Court finds that Caltech had legitimate, non-discriminatory
13 reasons for including the content it did in Coppedge’s ECAPs. There is no evidence that Burgess
14 intentionally sought negative input, and the input he did include was from individuals who
15 observed Coppedge’s work first-hand (including a co-worker whom Coppedge recommended).

16 c. The Court also finds that Coppedge failed to present evidence that
17 either Burgess’ solicitation of input for the ECAPs, or any negative input that resulted was a
18 pretext for discrimination. As discussed above, to the extent the 2009 and 2010 ECAPs are
19 lengthier or contain more negative content than in the past, the evidence shows that Burgess
20 previously had been trying to minimize negative content, so that Coppedge would be able to find
21 another job at JPL.

22 14. Other Conduct.

23 a. Chin’s Comment Regarding Coppedge’s Employment Options.

24 The Court finds that Chin’s statement that Coppedge might find his employment options limited
25 if he continued making co-workers feel harassed was not an adverse employment action. The
26 evidence reflects that Chin was not threatening Coppedge, but rather, explaining what Chin
27 believed would be the consequences of Coppedge continuing to make co-workers feel
28 uncomfortable. Moreover, the Court finds that whatever the purpose of Chin’s statement, it did

1 not impact the terms and conditions of Coppedge's employment at all, let alone substantially.
2 The Court finds that Chin had a legitimate, non-discriminatory reason for counseling Coppedge
3 as to the potential impact of his actions, and that Coppedge presented no evidence to suggest this
4 reason is pretextual. To the contrary, the evidence shows that Coppedge felt that he and Chin had
5 a good working relationship until the March 2 meeting and that Chin tried to coach Coppedge
6 throughout his time supervising Coppedge's work – to the point where Chin was criticized for
7 doing so.

8 b. Huntley's Investigation. The Court finds that Huntley's
9 investigation was not an adverse employment action. The investigation was not an "action" at all;
10 separate from its outcome, it could not have impact on Coppedge's terms and conditions of work.
11 *McRae v. Dep't of Corr. and Rehab.*, 142 Cal.App.4th 377, 392 (2006) ("[T]he investigation
12 itself, irrespective of the reasons for its initiation or its outcome, made no material change in the
13 terms or conditions of . . . employment."); *Harrison v. City of Akron*, 43 Fed. Appx. 903, 906 (6th
14 Cir. 2002) ("[I]nternal investigations are not adverse employment actions."); *Ware v. Billington*,
15 344 F.Supp.2d 63, 76 (D.D.C. 2004) ("[A]lthough the discipline imposed as a result of an
16 investigation may have a sufficiently adverse effect on plaintiff's employment to be actionable,
17 the mere initiation of the investigation does not."). The Court finds that to the extent the
18 investigation could be viewed as an adverse action, Huntley acted for legitimate,
19 nondiscriminatory reasons; she began the investigation based on Chin's report, not any
20 discriminatory motive, and the evidence shows that the investigation was adequate and
21 reasonable. Huntley testified credibly that she conducted the investigation in the same manner as
22 her other investigations. There also is no evidence that Huntley was biased against Coppedge or
23 his views; indeed, she knew nothing about Intelligent Design before the investigation. As such,
24 the Court also finds that Coppedge has not established that the investigation was a pretext for
25 discrimination.

26 c. The Appeal Process. The Court finds that neither the appeal
27 process, nor Klenk's decision to uphold the written warning and removal of lead duties, were
28 adverse employment actions. First, like an investigation, an appellate process, separate from its

1 outcome, has no impact on terms or conditions of work – and here, Coppedge requested the
2 appeal. Further, the evidence establishes that Klenk was the appropriate person to assess
3 Coppedge’s appeal. Second, because neither the written warning nor removal of lead duties were
4 adverse employment actions, Klenk’s decision to uphold them likewise could not be an adverse
5 employment action. Assuming, *arguendo* only, that they were, the record establishes a
6 legitimate, nondiscriminatory basis for the decision: Klenk reviewed Huntley’s findings, met
7 with Coppedge, and reasonably upheld the warning and removal of lead duties, based in part on
8 Coppedge’s conduct at the appeal meeting (where Coppedge continued to insist on his right to
9 discuss intelligent design during work hours and admitted he had difficult relationships with
10 customers). Coppedge presented no evidence to suggest that Klenk’s reasons for his decision are
11 pretextual; to the contrary, Klenk and Coppedge never discussed religion, politics or intelligent
12 design, much less disagreed over them.

13 15. The Court finds that, even considering all of the purported adverse
14 employment actions collectively, Coppedge cannot establish discrimination. Caltech has
15 presented legitimate, nondiscriminatory reasons for each action, and all of them, and Coppedge
16 has failed to present evidence that any of those reasons, or all of them, were a pretext for
17 discrimination.

18 **C. Decision.**

19 The Court finds that Coppedge failed to prove that Caltech discriminated against him.
20 Except for Coppedge’s layoff, none of the conduct at issue constitutes a legally cognizable
21 adverse employment action, and there is no evidence that any of the alleged conduct, including
22 Coppedge’s layoff, was taken because of Coppedge’s actual or perceived religious creed. The
23 Court finds further Caltech proved that it had legitimate, nondiscriminatory reasons for all of the
24 actions taken, and that Coppedge failed to prove that these reasons were pretextual. Accordingly,
25 Plaintiff’s first cause of action for religious discrimination in violation of FEHA fails and
26 judgment on Plaintiff’s FEHA discrimination claim shall be entered in favor of Caltech.
27
28

1 **II. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE**
2 **EVIDENCE THAT CALTECH ENGAGED IN RETALIATION IN VIOLATION**
3 **OF FEHA**

4 A. Findings of Fact. The Court incorporates by reference herein its Findings of Fact,
5 numbered 1 to 114.

6 B. Conclusions of Law.

7 16. The Court incorporates by reference herein its Conclusions of Law,
8 numbered 1, 7, 10-14.

9 17. To prevail on his FEHA retaliation claim, Coppedge must prove that (1) he
10 engaged in protected activity; (2) he suffered an adverse employment action; and (3) there was a
11 causal link between the two. *Flait v. N. Am. Watch Corp.*, 3 Cal. App. 4th 467, 475 (1992).

12 18. The ultimate burden lies with Coppedge to show that the actions in
13 question constituted retaliation in violation of FEHA. *McRae v. Dep't of Corr. & Rehab.*, 142
14 Cal. App. 4th 377, 388-89 (2006) (citing *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510-511
15 (1993)).

16 19. Of the conduct alleged to be retaliatory by Coppedge, considered
17 individually or collectively, only one constitutes an adverse employment action for purposes of
18 his retaliation claim: his layoff. *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028, 1051 n.10,
19 1052 (2005) (adopting materiality standard for adverse employment actions in the retaliation
20 context: "Accordingly, although an adverse employment action must materially affect the terms,
21 conditions, or privileges of employment to be actionable, the determination of whether a
22 particular action or course of conduct rises to the level of actionable conduct should take into
23 account the unique circumstances of the affected employee as well as the workplace context of
24 the claim.").

25 20. Thus, to establish a causal link for purposes of his retaliation claim,
26 Coppedge must show, at minimum, that he engaged in protected conduct that was a motivating
27 factor in his layoff.

28 a. The Court finds that of the evidence Coppedge believes to be
protected conduct, only his DFEH charges and April 2010 lawsuit clearly qualify as such, while

1 his March 2, 2009 claim of a “hostile work environment” (and any subsequent informal
2 opposition to Chin’s counseling at that meeting that Coppedge might allege) is only arguably
3 protected activity, given that Coppedge did not appear to follow Caltech’s proper channels for
4 making such complaints.

5 b. The Court finds that there is no evidence to establish a causal link
6 between his protected or arguably protected activity (his DFEH charges and lawsuit, and his
7 claim of a hostile work environment on March 2, 2009) and his layoff in January 2011.

8 c. Although only nine months transpired between the filing of
9 Coppedge’s lawsuit and his layoff, the Court finds that timing alone does not establish a causal
10 connection, particularly in the absence of any evidence of retaliatory motive. *See Arteaga v.*
11 *Brink’s, Inc.*, 163 Cal. App. 4th 327, 354, 357 (2008) (“[T]emporal proximity by itself . . . is not
12 adequate to show pretext.”); *Lewis v. Holsum of Fort Wayne, Inc.*, 278 F.3d 706, 711 (7th Cir.
13 2002) (three-month interval, “without more, [was] insufficient”).

14 d. The Court finds no evidence to suggest that Van Why’s rankings, or
15 Conner’s input on the ranking process, were based in any way on their knowledge of Coppedge’s
16 DFEH charges or lawsuit. As noted above, the evidence reflects that Coppedge was less skilled
17 than those retained, regarding the skills needed on Cassini going forward; Coppedge himself
18 testified that the other SAs were more expert in these areas.

19 e. There also is no evidence that Van Why was influenced by
20 Burgess’ March 19, 2010 email, reflecting Burgess’s thoughts regarding post-reduction Cassini
21 staffing. Rather, Van Why testified credibly that he likely never opened the e-mail.

22 21. Although the Court already has found that the other actions alleged by
23 Coppedge, such as the removal of his lead duties, did not materially impact the terms and
24 conditions of his work (and therefore do not constitute adverse employment actions for purposes
25 of his retaliation claim either), even if they did, there is no evidence to support a causal link
26 between those events, and the only the arguably protected conduct that preceded them (*i.e.* his
27 claim of a “hostile work environment” in March 2009).

28

1 22. To the extent Burgess considered the events of March 2 in making the
2 decision to remove Coppedge's lead duties, the Court finds that the evidence reflects that
3 Burgess' concern was not with Coppedge's perception of the situation, but rather, that Coppedge
4 was arguing with a customer (*i.e.* Chin); there is no evidence that Coppedge's claim of a "hostile
5 work environment" had any bearing on Burgess' decision.

6 23. The Court finds that, even considering all of the purported adverse
7 employment actions collectively, Coppedge cannot establish retaliation. Caltech has presented
8 legitimate, nondiscriminatory reasons for each action, and all of them, and Coppedge has failed to
9 present evidence that any of those reasons, or all of them, were a pretext for retaliation.

10 **C. Decision.**

11 The Court finds that Coppedge failed to prove the existence of a causal nexus between any
12 protected conduct and any alleged adverse employment action. Accordingly, Coppedge's third
13 cause of action for retaliation in violation of FEHA fails and judgment on Coppedge's FEHA
14 retaliation claim shall be entered in favor of Caltech.

15 **III. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE**
16 **EVIDENCE THAT CALTECH ENGAGED IN RETALIATION IN VIOLATION**
17 **OF PUBLIC POLICY**

18 **A. Findings of Fact.** The Court incorporates by reference herein its Findings of Fact,
19 numbered 1 to 114.

20 **B. Conclusions of Law.**

21 24. The Court incorporates by reference herein its Conclusions of Law,
22 numbered 1, 7, 10-14, 17-23.

23 25. To establish a claim for retaliation in violation of public policy, Coppedge
24 must establish both the elements of a retaliation claim (protected conduct, an adverse employment
25 action, and a causal link between the two), and that the claim is grounded in a fundamental policy
26 established by a constitutional, statutory or regulatory provision. *Green v. Ralee Eng'g Co.*, 19
27 Cal. 4th 66, 76, 90 (1998).
28

1 26. The Court finds that because Coppedge has presented no evidence to
2 support a causal link between any protected conduct and any adverse employment action, as
3 discussed above, he cannot establish a claim for retaliation in violation of public policy.

4 **C. Decision.**

5 The Court finds that Coppedge failed to prove the existence of a causal nexus between any
6 protected conduct and any alleged adverse employment action. Accordingly, Coppedge's fourth
7 cause of action for retaliation in violation of public policy fails and judgment on Coppedge's
8 public policy retaliation claim shall be entered in favor of Caltech.

9 **IV. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE**
10 **EVIDENCE THAT CALTECH FAILED TO PREVENT DISCRIMINATION**

11 **A. Findings of Fact.** The Court incorporates by reference herein its Findings of Fact,
12 numbered 1 to 114. The Court additionally finds that Caltech has implemented policies against
13 discrimination, retaliation, and harassment, including the Unlawful Harassment Policy.

14 **B. Conclusions of Law.**

15 27. The Court incorporates by reference herein its Conclusions of Law,
16 numbered 1-15.

17 28. The Court finds that because Coppedge's discrimination claim fails, and
18 the Court already dismissed his harassment claim, his claim for "failure to prevent" such behavior
19 fails as well. *See Trujillo v. N. Cnty. Transit Dist.*, 63 Cal. App. 4th 280, 288-89 (1998)
20 (employer cannot be liable for failing to prevent harassment when no such conduct actually
21 occurred).

22 29. The Court further finds that, in any event, the evidence shows that Caltech
23 met its obligations to prevent discrimination (as well as retaliation and harassment). An employer
24 meets its obligation to take reasonable steps to prevent discrimination by implementing policies
25 and taking action to investigate and remedy charges under them. *Northrop Grumman Corp. v.*
26 *Workers' Comp. Appeals Bd.*, 103 Cal. App. 4th 1021, 1035 (2002) ("Prompt investigation of a
27 discrimination claim is a necessary step by which an employer meets its obligation . . ."); *Barrett*
28 *v. Applied Radiant Energy Corp.*, 240 F.3d 262, 266 (4th Cir. 2001) (distribution of anti-

1 harassment policy is proof that employer has exercised reasonable care to prevent and correct
2 sexual harassment).

3 30. The Court finds that Caltech implemented policies to prevent
4 discrimination, retaliation, and harassment.

5 31. The Court finds that HR's prompt response to Chin's report, and
6 subsequent investigation into the March 2, 2009 meeting, as well as Aguilera's inquiry in early
7 April 2009 to ensure that Chin was not retaliating, establish that Caltech fulfilled its obligations to
8 prevent discrimination, retaliation, and harassment.

9 **C. Decision.**

10 The Court finds that because Coppedge failed to prove that discrimination or harassment
11 took place, this claim necessarily fails. The Court further finds that Caltech proved that it met its
12 obligation to take reasonable steps to prevent discrimination by implementing policies and taking
13 action to investigate and remedy charges under them. Accordingly, Coppedge's sixth cause of
14 action for failure to prevent discrimination fails and judgment on this claim shall be entered in
15 favor of Caltech.

16 **V. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE**
17 **EVIDENCE THAT CALTECH WRONGFULLY DEMOTED HIM IN**
VIOLATION OF FEHA

18 **A. Findings of Fact.** The Court incorporates by reference herein its Findings of Fact,
19 numbered 1 to 83.

20 **B. Conclusions of Law.** The Court incorporates by reference herein its Conclusions
21 of Law, numbered 1-9, 12, 15, 17-19, 21-23.

22 **C. Decision.**

23 The Court finds that this claim is duplicative of Coppedge's FEHA discrimination and
24 retaliation claims, and fails for the same reasons. Specifically, the Court finds that Plaintiff failed
25 to prove that the removal of his lead duties was a demotion, or otherwise an adverse employment
26 action. The Court also finds that Coppedge failed to prove that he experienced a discriminatory
27 demotion. The Court further finds that Coppedge failed to prove the existence of a causal nexus
28 between any protected conduct and any demotion. Accordingly, Coppedge's seventh cause of

1 action for wrongful demotion in violation of FEHA fails and judgment on Coppedge's FEHA
2 wrongful demotion claim shall be entered in favor of Caltech.

3 **VI. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE**
4 **EVIDENCE THAT CALTECH WRONGFULLY DEMOTED HIM IN**
5 **VIOLATION OF PUBLIC POLICY**

6 A. **Findings of Fact.** The Court incorporates by reference herein its Findings of Fact,
7 numbered 1 to 83.

8 B. **Conclusions of Law.** The Court incorporates by reference herein its Conclusions
9 of Law, numbered 1-9, 12, 15, 17-19, 21-23.

10 C. **Decision.**

11 The Court finds that this claim is duplicative of Coppedge's FEHA wrongful demotion
12 claim (as well as his FEHA discrimination and retaliation claims), and fails for the same reasons.
13 *Hanson v. Lucky Stores, Inc.*, 74 Cal. App. 4th 215, 229 (1999) ("[B]ecause Hanson's FEHA
14 claim fails, his claim for wrongful termination in violation of public policy fails."). Accordingly,
15 Coppedge's eighth cause of action for wrongful demotion in violation of public policy fails and
16 judgment on Coppedge's public policy wrongful demotion claim shall be entered in favor of
17 Caltech.

18 **VII. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE**
19 **EVIDENCE THAT CALTECH WRONGFULLY TERMINATED HIM IN**
20 **VIOLATION OF FEHA**

21 A. **Findings of Fact.** The Court incorporates by reference herein its Findings of Fact,
22 numbered 1 to 114.

23 B. **Conclusions of Law.** The Court incorporates by reference herein its Conclusions
24 of Law, numbered 1-10, 15, 17-20, 23.

25 C. **Decision.**

26 The Court finds that this claim is duplicative of Coppedge's FEHA discrimination and
27 retaliation claims, and fails for the same reasons. Specifically, the Court finds that Plaintiff failed
28 to prove that he experienced a discriminatory termination. The Court also finds that Plaintiff
failed to prove the existence of a causal nexus between any protected conduct and his layoff.
Accordingly, Coppedge's ninth cause of action for wrongful termination in violation of FEHA

1 fails and judgment on Coppedge's FEHA wrongful termination claim shall be entered in favor of
2 Caltech.

3 **VIII. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE**
4 **EVIDENCE THAT CALTECH WRONGFULLY TERMINATED HIM IN**
5 **VIOLATION OF PUBLIC POLICY (*TAMENY*)**

6 A. **Findings of Fact.** The Court incorporates by reference herein its Findings of Fact,
7 numbered 1 to 114.

8 B. **Conclusions of Law.** The Court incorporates by reference herein its Conclusions
9 of Law, numbered 1-10, 15, 17-20, 23.

10 C. **Decision.**

11 The Court finds that Coppedge's claim for wrongful termination in violation of public
12 policy, based on a *Tameny* theory, is duplicative of Coppedge's FEHA wrongful termination
13 claim (and his FEHA discrimination and retaliation claims), and fails for the same reasons.
14 *Hanson*, 74 Cal. App. 4th at 229. Accordingly, Coppedge's tenth cause of action for wrongful
15 termination in violation of public policy (based on a *Tameny* theory) fails and judgment on this
16 claim shall be entered in favor of Caltech.

17 **IX. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE**
18 **EVIDENCE THAT CALTECH WRONGFULLY TERMINATED HIM IN**
19 **VIOLATION OF PUBLIC POLICY (RELIGIOUS DISCRIMINATION)**

20 A. **Findings of Fact.** The Court incorporates by reference herein its Findings of Fact,
21 numbered 1 to 114.

22 B. **Conclusions of Law.** The Court incorporates by reference herein its Conclusions
23 of Law, numbered 1-10, 15, 17-20, 23.

24 C. **Decision.**

25 The Court finds that Coppedge's claim for wrongful termination in violation of public
26 policy, based on a religious discrimination theory, is duplicative of Coppedge's FEHA wrongful
27 termination claim (and his FEHA discrimination and retaliation claims), and fails for the same
28 reasons. *Hanson*, 74 Cal. App. 4th at 229. Accordingly, Coppedge's eleventh cause of action for
wrongful termination in violation of public policy (religious discrimination) fails, and judgment
on this claim shall be entered in favor of Caltech.

1 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED: that this is
2 ruling of the Court on all of Plaintiff's claims tried to the bench.

3
4 DATED: _____, 2012 By: _____

5
6 HON. ERNEST M. HIROSHIGE

7 Respectfully submitted by:

8 PAUL HASTINGS LLP
9 JAMES A. ZAPP
10 CAMERON W. FOX
11 MELINDA A. GORDON

12 By: 

13 CAMERON W. FOX
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PROOF OF SERVICE

STATE OF CALIFORNIA

CITY OF LOS ANGELES AND COUNTY OF LOS
ANGELES

)
) ss:
)

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: 515 So.
Flower Street, 25th Floor, Los Angeles, CA 90071.

On November 30, 2012, I served the foregoing document(s) described as:

(PROPOSED) STATEMENT OF DECISION

on the interested parties as follows:

William J. Becker, Jr., Esq.
THE BECKER LAW FIRM
11500 Olympic Blvd, Suite 400
Los Angeles, CA 90064

Attorney for Plaintiff
DAVID COPPEDGE

Email: bbeckerlaw@gmail.com



VIA ELECTRONIC MAIL:


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



VIA U.S. MAIL:

I am readily familiar with the firm's practice of collection and processing of
correspondence for mailing. Under that practice such sealed envelope(s) would be
deposited with the U.S. postal service on November 30, 2012 with postage thereon fully
prepaid, at Los Angeles, California.

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 November 30, 2012, at Los Angeles, California.


Irma Gamino