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

DAVID COPPEDGE, an individual;

Plaintiff,

vs.

JET PROPULSION LABORATORY, form unknown; **CALIFORNIA INSTITUTE OF TECHNOLOGY**, form unknown; **GREGORY CHIN**, an Individual; **CLARK A. BURGESS**, an Individual; **KEVIN KLENK**, an Individual; and **Does 1** through **25**, inclusive,

Defendants.

Case No. BC435600

The Honorable Ernest M. Hiroshige, Dept. 54

PLAINTIFF DAVID COPPEDGE'S OBJECTIONS TO DEFENDANT'S PROPOSED STATEMENT OF DECISION

[Cal. Rules of Court, Rule 3.1590, subd. (g)]

PART 6 OF 7

By Fax

¶ 14 (a)	Other Conduct. Chin's Comment Regarding Coppedge's Employment Options. The Court finds that Chin's statement that Coppedge might find his employment options limited if he continued making co-workers feel harassed was not an adverse employment action. The evi-	Plaintiff hereby incorporates by reference, as though fully set forth herein, all prior objections, and particularly findings of fact, ¶¶ 18-20, 26, 30. Objection. This proposed conclusion of law misstates and mischaracterizes the evidence. Chin's own description

	dence reflects that Chin was not threatening Coppedge, but rather, explaining what Chin believed would be the consequences of Coppedge continuing to make co-workers feel uncomfortable. Moreover, the Court finds that whatever the purpose of Chin's statement, it did not impact the terms and conditions of Coppedge's employment at all, let alone substantially. The Court finds that Chin had a legitimate, non-discriminatory reason for counseling Coppedge as to the potential impact of his actions, and that Coppedge presented no evidence to suggest this reason is pretextual. To the contrary, the evidence shows that Coppedge felt that he and Chin had a good working relationship until the March 2 meeting and that Chin tried to coach Coppedge throughout his time supervising Coppedge's work—to the point where Chin was criticized for doing so.	of the anger that consumed him belies the suggestion that he was merely being helpful. Chin admitted he was motivated by frustration and anger listening to Coppedge try to "debate" whether intelligent design was a scientific or a religious subject. G.Chin, 3/29 a.m., 21:9-12 ("I was frustrated and I was getting angry because, you know, somehow my conversation got hijacked into having a debate about intelligent design...."). Chin further admitted that he threatened Coppedge's job security: "I said, David, stop this. If you continue down this path, you're going to find your career options here at the lab very extremely limited...." (Id., 21:21-23, emphasis added). Chin realized he had misused his authority by threatening Coppedge's job security ("I figured maybe I did something wrong. I was still angry." (G.Chin, 22:26-23:2, emphasis added); "My mistake was telling David that I – in an angry tone – that I felt [ ] his career options here might be limited." (G.Chin, 4/2 a.m., 32:20-22, emphasis added). "I told him ... this topic [intelligent design] is not for further discussion. He objected. I then told him ... that if [he] pursues

		this line of thought (wanting to discuss ID ...) ... that his employment options here would be severely limited.... He then told me that he felt that I was threatening him ... and creating a 'hostile work environment'. I informed him that if he felt that, please go ahead and file a complaint with his supervisor." (Exh. 227, p. 48, 3/3/2009 e-mail from G.Chin to C.Burgess, et al., re: "Coppedge Incident," emphasis added). The preponderance of evidence further demonstrates that Chin perceived intelligent design to be a religious belief, and that he ordered Coppedge to stop "pushing" that belief on others. This is unquestionably an example of hostility toward Coppedge's religious views and practices. Chin did not protect Coppedge from adverse employment actions resulting from his religious intolerance. Indeed, rather than protect Coppedge from such harm, Chin was singlehandedly responsible for exposing Coppedge to it by inviting an HR investigation and steering HR's investigator toward other employees with grievances concerning Coppedge's actual or perceived religious activities.

		Finally, it is undeniable that Chin's outburst had an adverse impact on the terms and conditions of Coppedge's employment. In Yanowitz v. L'Oreal, supra, the California Supreme Court held that "a series of separate retaliatory acts collectively may constitute an 'adverse employment action' even if some or all of the component acts might not be individually actionable." Id., at 1058. Chin immediately reported the incident to his supervisors and management, followed it up with a report to HR, referred HR to other individuals who objected to Coppedge discussing his religious interests with them, offered his own negative input to the HR investigator, and cooperated with and assisted Burgess in having Coppedge demoted and removed as team lead. This series of activities adds up to adverse employment action, resulting in Coppedge losing the prestigious distinction and prominent role of team lead. The phrase "compensation, terms, conditions, or privileges" of employment has been construed by the United States Supreme Court to be intended to

		strike at the entire spectrum of disparate treatment in employment. Meritor Savings Bank v. Vinson (1986) 477 U.S. 57, 64; cited approvingly by Fisher v. San Pedro Hospital (1989) 214 Cal.App.3d 590, 607). An adverse employment action is a job change that is "materially adverse," and could consist of, inter alia, "a demotion evidenced by ... a less distinguished title, ... significantly diminished material responsibilities, or other indices ... unique to a particular situation." Kassner v. 2nd Avenue Delicatessen Inc. (2d Cir. 2007) 496 F.3d 229, 238 (emphasis added; quotation and citation omitted)). Transfers of job duties and undeserved performance ratings, if proven, would constitute "adverse employment decisions." Yartzoff v. Thomas (9th Cir. 1987) 809 F.2d 1371, 1376.
¶ 14 (b)	Huntley's Investigation. The Court finds that Huntley's investigation was not an adverse employment action. The investigation was not an "action" at all; separate from its outcome, it could not have impact on Coppedge's terms and conditions of work. McRae v. Dep't of Corr. and Rehab., 142 Cal.App.4th 377, 392 (2006) ("[T]he investigation itself, ir-	Plaintiff hereby incorporates by reference, as though fully set forth herein, all prior objections, particularly, findings of fact, ¶¶ 28-29, 45-52. Objection. This proposed conclusion of law misstates and mischaracterizes the evidence and the purpose for which it was presented. The investigation itself is, of course, not an adverse em-

	respective of the reasons for its initiation or its outcome, made no material change in the terms or conditions of ... employment."); Harrison v. City of Akron, 43 Fed. Appx. 903, 906 (6th Cir. 2002) ("[I]ntemal investigations are not adverse employment actions."); Ware v. Billington, 344 F.Supp.2d 63, 76 (D.D.C. 2004) ("[A]lthough the discipline imposed as a result of an investigation may have a sufficiently adverse effect on plaintiffs employment to be actionable, the mere initiation of the investigation does not."). The Court finds that to the extent the investigation could be viewed as an adverse action, Huntley acted for legitimate, nondiscriminatory reasons; she began the investigation based on Chin's report, not any discriminatory motive, and the evidence shows that the investigation was adequate and reasonable. Huntley testified credibly that she conducted the investigation in the same manner as her other investigations. There also is no evidence that Huntley was biased against Coppedge or his views; indeed, she knew nothing about Intelligent Design before the investigation. As such, the Court also finds that Coppedge has not estab-	ployment action. But the adoption, ratification and execution of the recommendations and conclusion of the HR investigator based on the investigation undeniably constitute adverse employment actions. An adverse employment action is a job change that is "materially adverse," and could consist of, inter alia, "a demotion evidenced by ... a less distinguished title, ... significantly diminished material responsibilities, or other indices ... unique to a particular situation." Kassner v. 2nd Avenue Delicatessen Inc. (2d Cir. 2007) 496 F.3d 229, 238 (emphasis added; quotation and citation omitted)). Transfers of job duties and undeserved performance ratings, if proven, would constitute "adverse employment decisions." Yartzoff v. Thomas (9th Cir. 1987) 809 F.2d 1371, 1376. Further, while the HR investigation is not an adverse employment action, it is evidence of discrimination insofar as it was based on Coppedge's religious/perceived religious activity. Here, the investigation adopted the religious animus of Weisenfelder, Vetter, Chin and Edgington as the basis for its findings, conclusions and recommen-

	lished that the investigation was a pretext for discrimination.	dations for discipline. The implementation of those findings, conclusions and recommendations for discipline constitute adverse employment action. In this case, there is direct evidence of religious animus (Chin's hostile attitude toward intelligent design as religious dogma; Vetter and Edgington "bothered" by Coppedge's "religion"; Chin and Vetter threatened by Coppedge's perceived attempts to "convert" them or to modify their religious beliefs; Vetter and Weisenfelder's belief that Coppedge was crossing an undemarcated line by discussing religion). Discrimination based upon an erroneously perceived characteristic can still be actionable discrimination. (See Delaney v. Superior Fast Freight (1993) 14 Cal.App.4th 590, 596 ("employer policies against those believed to [fall within the category] are outlawed as fostering an atmosphere in which [such] workers would be compelled not just to forego seeking equal rights but also to hide their [targeted characteristic]"); see also Estate of Amos ex rel. Amos v. City of Page, Arizona (9th Cir. 2001) 257 F.3d 1086, 1094 ("alleged discrimination is no

		less malevolent because it was based upon an erroneous assumption [about plaintiff's category].”).
¶ 14 (c)	The Appeal Process. The Court finds that neither the appeal process, nor Klenk's decision to uphold the written warning and removal of lead duties, were adverse employment actions. First, like an investigation, an appellate process, separate from its outcome, has no impact on terms or conditions of work—and here, Coppedge requested the appeal. Further, the evidence establishes that Klenk was the appropriate person to assess Coppedge's appeal. Second, because neither the written warning nor removal of lead duties were adverse employment actions, Klenk's decision to uphold them likewise could not be an adverse employment action. Assuming, arguendo only, that they were, the record establishes a legitimate, nondiscriminatory basis for the decision: Klenk reviewed Huntley's findings, met with Coppedge, and reasonably upheld the warning and removal of lead duties, based in part on Coppedge's conduct at the appeal meeting (where Coppedge continued to insist on his right to discuss intelligent	Plaintiff hereby incorporates by reference, as though fully set forth herein, all prior objections, particularly, findings of fact, ¶¶ 78-82. Objection. When an appeal is sought, it is sought with a tribunal consisting of someone other than the original decisionmakers. Plaintiff objects to the abuse and misuse of the term “appeal,” which is ambiguous. Cal. Civ. Proc. Code § 634. Klenk was decisionmaker in both instances and could not have sat objectively adjudicated the same issues as an appellate decisionmaker. Notwithstanding this objection, Plaintiff also objects to this proposed conclusion of law and finding of fact on the ground that it is irrelevant to the claim of discrimination; rather it is relevant to the claim of retaliation.

	design during work hours and admitted he had difficult relationships with customers). Coppedge presented no evidence to suggest that Klenk's reasons for his decision are pretextual; to the contrary, Klenk and Coppedge never discussed religion, politics or intelligent design, much less disagreed over them.	
¶ 15	The Court finds that, even considering all of the purported adverse employment actions collectively, Coppedge cannot establish discrimination. Caltech has presented legitimate, nondiscriminatory reasons for each action, and all of them, and Coppedge has failed to present evidence that any of those reasons, or all of them, were a pretext for discrimination.	Plaintiff hereby incorporates by reference, as though fully set forth herein, all prior objections. Objection. This proposed conclusion of law misstates and mischaracterizes the evidence. The full record of evidence in this case shows dispositively that Coppedge presented evidence of pretext. Plaintiff hereby incorporates by reference here all prior objections.
¶ I (C)	Decision. The Court finds that Coppedge failed to prove that Caltech discriminated against him. Except for Coppedge's layoff, none of the conduct at issue constitutes a legally cognizable adverse employment action, and there is no evidence that any of the alleged conduct, including Coppedge's layoff, was taken because of Coppedge's actual or perceived religious creed. The	Plaintiff hereby incorporates by reference, as though fully set forth herein, all prior objections.

	Court finds further Caltech proved that it had legitimate, nondiscriminatory reasons for all of the actions taken, and that Coppedge failed to prove that these reasons were pretextual. Accordingly, Plaintiff's first cause of action for religious discrimination in violation of FEHA fails and judgment on Plaintiffs FEHA discrimination claim shall be entered in favor of Cal tech.	

II. PLAINTIFF OBJECTS TO THE PROPOSED STATEMENT OF DECISION'S ASSERTED FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT CALTECH ENGAGED IN RETALIATION IN VIOLATION OF FEHA.

Parag.	Statement	Objection
¶ (A)	**Findings of Fact.** The Court incorporates by reference herein its Findings of Fact, numbered 1 to 114.	Plaintiff incorporates by reference herein the objections to Defendant's proposed findings of fact, ¶¶ 1 to 114.
¶ 16	**Conclusions of Law.** The Court incorporates by reference herein its Conclusions of Law, numbered 1, 7, 10-14.	Plaintiff incorporates by reference herein the objections to Defendant's proposed Conclusions of Law, ¶¶ 1 to 15.
¶ 17	To prevail on his FEHA retaliation claim, Coppedge must prove that (1) he engaged in protected activity; (2) he suffered an adverse employment action; and (3) there was a causal link	Plaintiff incorporates by reference herein the objections to Defendant's proposed conclusions of law, ¶ ¶ 1-4. Objection. This proposed conclusion

	between the two. Flait v. N Am. Watch Corp., 3 Cal. App. 4th 467, 475 (1992).	of law is an incomplete statement of law. Code Civ. Proc. § 634. In addition to these elements, proof of retaliation requires Plaintiff show that his protected activity was a motivating reason for Defendant's decision to discharge, demote or engage in other adverse employment actions. CACI 2505. A "motivating reason" for purposes of liability under the FEHA "is a reason that contributed to the decision to take certain action, even though other reasons also may have contributed to the decision." CACI 2507.
¶ 18	The ultimate burden lies with Coppedge to show that the actions in question constituted retaliation in violation of FEHA. McRae v. Dep't of Corr. & Rehab., 142 Cal. App. 4th 377, 388-89 (2006) (citing St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 510-511 (1993).	
¶ 19	Of the conduct alleged to be retaliatory by Coppedge, considered individually or collectively, only one constitutes an adverse employment action for purposes of his retaliation claim: his layoff. Yanowitz v. L'Oreal USA, Inc., 36 Cal. 4th 1028, 1051 n.10, 18 I 052 (2005) (adopting materiality standard for adverse employment ac-	Plaintiff incorporates by reference herein the objections to Defendant's proposed finding of fact, ¶ 7-8, 52, 64 and conclusion of law, ¶¶ 7, 11(a), 13(a), 14(a). Objection. This proposed finding of fact purporting to be a conclusion of law is an incomplete statement of the

	tions in the retaliation context: "Accordingly, although an adverse employment action must materially affect the terms, conditions, or privileges of employment to be actionable, the determination of whether a particular action or course of conduct rises to the level of actionable conduct should take into account the unique circumstances of the affected employee as well as the workplace context of the claim.").	evidence and of the law. Code Civ. Proc. § 634. Coppedge suffered multiple adverse employment actions. Under FEHA, an adverse employment action is one that materially affects the terms, conditions, or privileges of employment, and includes "adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion." Yanowitz v. L'Oreal USA, Inc. at 1055. The phrase "compensation, terms, conditions, or privileges" of employment has been construed by the United States Supreme Court to be intended to strike at the entire spectrum of disparate treatment in employment. Meritor Savings Bank v. Vinson (1986) 477 U.S. 57, 64; cited by Fisher v. San Pedro Hospital (1989) 214 Cal.App.3d 590, 607). An adverse employment action is a job change that is "materially adverse," and could consist of, inter alia, "a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices ... unique to a particular situation." Kassner v. 2nd Avenue Delicatessen Inc. (2d Cir. 2007) 496 F.3d 229, 238 (emphasis added; quotation and citation omitted).

		Transfers of job duties and undeserved performance ratings, if proven, would constitute "adverse employment decisions."Yartzoff v. Thomas (9th Cir. 1987) 809 F.2d 1371, 1376). In Yanowitz v. L'Oreal, supra, the California Supreme Court held that "a series of separate retaliatory acts collectively may constitute an 'adverse employment action' [necessary to satisfy a claim of retaliation] even if some or all of the component acts might not be individually actionable." Id., at 1058). Yanowitz surveyed cases citing adverse employment actions in the following situations: (1) Actions that threaten to derail an employee's career (such actions are "objectively adverse"); (2) Disadvantageous transfers or assignments; (3) Unwarranted or undeserved negative job evaluations/performance ratings; (4) Solicitation of negative comments by coworkers; (5) Toleration of harassment by other employees; (6) Written reprimands; (7) Demotions; and (8) Termination. Id., at 1060-1061 (citations omitted). This list is non-exclusive, and whether an employee has been subjected to an adverse action depends on the circumstances ("other indices unique to the circumstances"). The evidence here shows overwhelmingly JPL engaged in

		these and additional adverse actions: **Threats to Job Security**: Chin made what Coppedge interpreted as a threat to his job security in their March 2, 2009 encounter (Exh. 227, pp. 48-49 ("He ... told me that he felt that I was threatening him ... and creating a 'hostile work environment.'"); D.Coppedge, 3/19 a.m., 48:16-21, 60:7-16, 62:21-25)). The written reprimand issued to Coppedge on April 13, 2009, made the threat explicit (Exh. 103, Written Warning, p. 2, ¶¶ 1 & 3 ("subject to further disciplinary action up to and including termination"); Exh. 227, p.16, ¶ 2, 4/15/2009, e-mail from C.Burgess to S.Curtis, et al., re: "FW: Meeting with David Coppedge on 4/13/09" ("termination could be one of the choices we'd have to make")). **Assignment to Lower Level Tasks**: JPL's witnesses conceded that Coppedge was as-signed to lower level tasks when stripped of his team lead position and made to work under Nick Patel (C.Burgess, 4/2 p.m., 221:22-222:21; R.Aguilar, 3/27 a.m., 55:7-57:7; G.Chin, 3/29 p.m., 163:11-21,163:24-164:3 (gave up significant customer interaction); N.Patel, 4/4 p.m., 231:25-232:4 (lost significant responsibilities); id., 4/5 a.m., 36:17-23 (lost responsibility to manage other SAs' work activities); id.,

		154:1-156:10 (lost representational responsibilities); B.Elgin, 3/28 a.m., 20:11-21:6 (lost supervisorial and reporting privileges)). **Negative Performance Evaluations:** Coppedge received unwarranted and undeserved negative job evaluations/ performance ratings only after he challenged the discriminatory actions taken against him (Exhs. 34 & 35, 2009-2010 ECAPS). **Solicitation of Negative Evaluations:** Coppedge's line management supervisor (Burgess) solicited negative comments from Coppedge's project manager supervisor (Chin) in 2009. In 2010, after Burgess and Chin learned they were being sued as defendants in this lawsuit and while recognizing their negative comments posed a question of retaliatory behavior (G.Chin, 4/2 a.m., 41:7-42:9 (aware of conflict of interest and appearance of retaliation)), not only did Burgess solicit negative comments from Nick Patel, Diane Conner, Greg Chin and Barbara Larsen (C.Burgess, 4/2 p.m.,181:27-183:9, 204:6-12; G.Chin, 4/29 a.m., 41:7-42:9), but Chin also solicited negative comments from Nick Patel, Tammy Fujii and Patty Smith (G.Chin, 3/29 p.m., 153:6-156:25). **Toleration of Harassment by Co-**

		workers: JPL tolerated and even supported Chin's harassment of Coppedge on March 2, 2009, as shown principally through the HR investigator's (Jhertaune Huntley's) failure to investigate Coppedge's complaint of a hostile work environment and of Chin's violating his civil rights (D.Coppedge, 3/21 a.m., 63:11-28; J.Huntley, 3/22 p.m., 165:17-26, 209:26-210:6; K.Klenk, 4/3 a.m., 13:25-14:6, 17:1-15; J.Huntley, 3/22 p.m., 199:1-4, 209:1-18). **Written Reprimand:** Coppedge was issued a formal written reprimand falsely accusing him of harassment and unethical conduct and of failing to comply with Chin's order restricting his right to discuss religion or politics, and forbidding him from engaging in protected activity (discussing "religion" during work hours). (Exh. 103 (Written Warning); K.Klenk 4/3 p.m., 171:13-16 (no policy prohibiting discussion of religion or politics in the workplace), 202:16-22 (adversely effects employee as part of progressive disciplinary process), 203:8-14 (restrictions remained in effect after Written Warning revoked); Burgess, 4/3 p.m., 239:15-23 (conceding he knew at the time the Written Warning was issued "it would have an adverse effect on [Coppedge's] employment status")).

		Demotion: Coppedge was demoted from the leadership position he held for nine consecutive years as Team Lead for system administration (Exh. 109 (Chin's demotion announcement, "leading the team for the past decade"); Burgess 4/8 a.m., 222:1-224:1 (announcement to all users advising they would no longer be communicating through Coppedge)). Team Lead held significant responsibilities (see "Assignment to Lower Level Tasks," supra). **Termination:** Plaintiff incorporates by reference herein the objections to Defendant's proposed finding of fact, ¶ 89. **Biased/Inadequate Investigation:** In addition, the evidence showed Coppedge was wrongfully subjected to an improper, biased and inadequate investigation on charges of harassment. JPL was required to produce evidence that: (1) it acted with "good faith" in making its decisions to discipline, demote and terminate Coppedge; (2) its investigation was "appropriate under the circumstances;" and (3) it had reasonable grounds for believing Coppedge engaged in the alleged misconduct, i.e., harassment under JPL's

		policy. See Cotran v. Rollins Hudig Hall Internat., Inc. (1998) 17 Cal.4th 93, 109, and Silva v. Lucky Stores, Inc. (1998) 65 Cal.App.4th 256, 264 (describing the standards for an appropriate investigation conducted by an employer before imposing an adverse employment action, such as demotion or termination). Under Silva, in an appropriate investigation: (a) an uninvolved human resources representative investigates the charges; (b) complaints are investigated promptly; (c) interviews are memorialized in writing; (d) important witnesses provide their written statements; (e) relevant, open-ended, nonleading questions are asked; (f) facts, rather than opinions or suppositions, are obtained; (g) witnesses get the opportunity to clarify, correct or challenge information provided by other witnesses who give contrary statements; (h) the accused is given an additional opportunity to respond to statements made by others. On these elements, JPL's investigation fell woefully short: (a) Huntley admitted that she failed to comply with JPL policy that required offering Coppedge a chance to select

		an investigator (J.Huntley, 3/22 p.m., 175:6-9). She thus compromised her role by callously ignoring Coppedge's rights. Her lack of detachment revealed itself through her inexplicably bizarre description of Coppedge's "targeting" Weisenfelder (holding a piece of paper in his hand (id., 180-185) and having a "sticky note" on the DVD he loaned her). Huntley failed to rationally explain what she meant by the term "targeting" or how under the circumstances and within the context of Coppedge's two brief encounters with Weisenfelder his behavior could rationally be found harassing; (b) Huntley commenced her investigation on the basis of a single reported incident, but considered events remote *in time* when she gave her disciplinary recommendations; (c) Although Huntley's interviews were memorialized in writing, she testified that her practice is not to write everything down because she isn't trained to do it. Time after time, she admitted failing to record a material fact. Her notes thus comprise an unreliable record of her investigation; (d) None of the "important" witnesses provided a written statement; (e-f) Huntley recorded vague details from

		her discussions, showing a lack of any rigorous method of fact-gathering; (g) Coppedge was not given the opportunity to clarify, correct or challenge information provided by other witnesses who gave contrary statements; and (h) Coppedge was not given an additional opportunity to respond to statements made by others. Egregiously, Huntley's investigation ignored standard procedures required to ensure a fair and impartial investigation and ignored the language of the unlawful harassment policy in forming her conclusion that Coppedge had violated it. Huntley failed to take into account the ideological biases of Coppedge's accusers, failed to seek out exculpatory evidence, failed to consider exculpatory evidence (e.g., Burgess's statements that Coppedge had not harassed him with his intelligent design DVDs) and failed utterly to justify her findings at trial. JPL's "Unlawful Harassment" policy tracks California law of harassment. JPL Policy states: "Harassment is the creation of a hostile or intimidating environment in which verbal or physical conduct, because of its severity

		and/or persistence, is likely to interfere significantly with an individual's work" (Exh. 193). But it further states that "Harassment must be distinguished from behavior which, even though unpleasant or disconcerting, is ... objectively reasonable under the circumstances" and that "in order to make an accurate judgment as to whether these incidents are illegal or violate policy, the full context in which these actions were taken or statements made must be considered." *Id.* "[H]arassment focuses on situations in which the social environment of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee." Roby v. McKesson Corp. (2009) 47 Cal.4th 686, 706). "[H]arassment cannot be occasional, isolated, sporadic, or trivial ... [it must be] a concerted pattern of harassment of a repeated, routine or a generalized nature." Aguilar v. Avis Rent A Car System, Inc. (1999) 21 Cal.4th 121, 131 (internal quotations and citations omitted)). "That is, when the harassing conduct is not severe in the extreme, more than a few isolated incidents

		must have occurred to prove a claim based on work-ing conditions." Lyle v. Warner Brothers Television Productions (2006) 38 Cal.4th 264, 284). Nothing about Coppedge's supposed conduct even remotely approaches JPL's definition of harassment. JPL audaciously expects the Court to adopt Huntley's outrageous characterization of Coppedge's sociable, benign practice of loaning DVDs to people as "harassment." Huntley's contorted application of JPL policy ignored the full context of the circumstances within which Coppedge shared his DVDs with others and by doing so relinquished any pretense of objectivity.
¶ 20 (a)	Thus, to establish a causal link for purposes of his retaliation claim, Coppedge must show, at minimum, that he engaged in protected conduct that was a motivating factor in his layoff. 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 his March 2, 2009 claim of a "hostile work environment" (and any subsequent informal opposition to Chin's counseling at that meeting that Coppedge might allege) is only argua-	Plaintiff incorporates by reference herein all prior objections. Objection. Defendant's proposed finding of facts and conclusion of law mischaracterize the evidence and is an incomplete statement of the law. Cal. Civ. Proc. Code § 634. Coppedge was engaged in (actual or perceived) protected religious activity and was a member of a protected class. Unquestionably, Coppedge was first reprimanded because of a perceived

	bly protected activity, given that Coppedge did not appear to follow Caltech's proper channels for making such complaints.	religious interest in intelligent design. He was then investigated and found in violation of JPL's unlawful harassment policy because of his practice of sharing intelligent design DVDs with co-workers. Although JPL has no rule or policy restricting religious speech. (K.Klenk, 4/3/12 p.m., 171:13-16; J.Huntley, 3/26 a.m., 46:22-27; C.Vetter, 4/4 p.m., 173:16-18; G.Chin, 3/29 p.m., 230:15-17), Chin ordered Coppedge to keep his personal views concerning religion (specifically intelligent design) to himself (Exh. 227, p. 48, J.Huntley's investigation file, 3/3/2009 e-mail from G.Chin to C.Burgess, et al., re: "Coppedge Incident – 3/2/09" ("this type of discussion is appropriate in certain settings (i.e., a JPL Bible Study group)...."; intelligent design is a "per-sonal belief that should be kept to himself unless invited by others to discuss.")). Chin specifically told Coppedge to stop pushing his religion on others. (G.Chin, 3/29 a.m., 18:12-14 ("And I told him that I requested he stop pushing his religion ... on individuals in the workplace."; D.Coppedge, 3/19 a.m., 45:28-46:2 ("He said, 'Dave, it has

		come to my attention that you are pushing your religion in this office and harassing people with your religion. This must stop.'")). Chin believed that Coppedge was engaging in a religious activity by advocating intelligent design. (Exh. 227, p. 48, 3/3/2009 e-mail from G.Chin to C.Burgess, et al., re: "Coppedge Incident" (Weisenfelder concerned about being "harassed" by Coppedge, i.e., his "belief in intelligent design"); Exh. 65, 3/3/2009 e-mail from D.Coppedge to G.Chin, re: "Request for Documentation" ("When I asked what constituted the religious views, you said I was giving out DVDs about intelligent design. When I asked why that constituted pushing religious views, you said emphatically, 'intelligent design is religion' at least twice."); D.Coppedge, 3/19 a.m., 46:18-47:6 (pushing religion with intelligent design)). Coppedge was perceived as holding strong religious convictions and wanting to share them with others (G.Chin, 4/2 a.m., 15:26-16:3 ("I know David is very passionate about his beliefs, and I have talked to David previously. I

		know that David wants to share his beliefs with others. So when he talks to the other employees or other individuals I feel that David is trying to convince them that his personal belief is a good belief."); id., 3/29 a.m., 39:9-10 ("David is very passionate about his religious beliefs and I knew that."); Exh. 227, p. 37, J.Huntley notes from interview with G.Chin, 3/17/2009 ("harassing" Weisenfelder about personal choices in life, i.e., religion; Vetter tells Chin she and Scott Edgington "had been bothered by David and his religious beliefs"; Chin stated Coppedge had previously tried to get him (Greg) to believe in his religion during work hours leaving "religious material" in Chin's inbox; Chin complains he is "tired of all the complaints regarding David harassing people with his religious viewpoints"); C.Vetter, 4/4 a.m., 48:5 (Coppedge has a "religious agenda"); *id.*, p.m., 174:22-23 (religion is "the only thing he talked about"); Exh. 227, pp. 35-36, J.Huntley investigation notes from interview with M.Weisenfelder, 3/19/2009 ("crossing the line" discussing religion); M.Weisenfelder, 4/3 p.m., 248:8-14 (didn't want to "deal

		with" Coppedge discussing religion); Exh. 227, pp. 33-34, J.Huntley investigation notes from interview with C.Vetter, 3/20/2009 ("Coppedge has an "agenda about Christianity;" discovered Vetter was a Christian and "harassed" her; demanded Vetter put the word "Christ" on the Holiday Potluck invitation flyer; has a "passion" about getting his religious point across; "can't see the line he is crossing").
¶ 20 (b)	The Court finds that there is no evidence to establish a causal link between his protected or arguably protected activity (his DFEH charges and lawsuit, and his claim of a hostile work environment on March 2, 2009) and his layoff in January 2011.	Plaintiff incorporates by reference herein all prior objections. Plaintiff incorporates by reference herein the objections to Defendant's proposed conclusion of law, ¶ 20 (a). Objection. This proposed finding of fact purporting to be a conclusion of law is an incomplete statement of the evidence. Code Civ. Proc. § 634.
¶ 20 (c)	Although only nine months transpired between the filing of Coppedge's lawsuit and his layoff, the Court finds that timing alone does not establish a causal connection, particularly in the absence of any evidence of retaliatory motive. See Arteaga v. Brink's, Inc., 163 Cal. App. 4th 327, 354, 357 (2008) ("[T]emporal proximity by it-	Objection. This proposed finding of fact and conclusion of law is an incomplete statement of the evidence. Code Civ. Proc. § 634. Plaintiff incorporates by reference herein the objections to Defendant's proposed finding of fact, ¶ 89.

	self ... is not adequate to show pretext."); Lewis v. Holsum of Fort Wayne, Inc., 278 F.3d 706, 711 (7th Cir. 2002) (three-month interval, "without more, [was] insufficient").	
¶ 20 (d)	The Court finds no evidence to suggest that Van Why's rankings, or Conner's input on the ranking process, were based in any way on their knowledge of Coppedge's DFEH charges or lawsuit. As noted above, the evidence reflects that Coppedge was less skilled than those retained, regarding the skills needed on Cassini going forward; Coppedge himself testified that the other SAs were more expert in these areas.	Plaintiff incorporates by reference herein all prior objections, particularly findings of fact, ¶¶ 94-113. Objection. This proposed finding of fact and conclusion of law is an incomplete statement of the evidence. Code Civ. Proc. § 634. Plaintiff incorporates by reference herein the objections to Defendant's proposed finding of fact, ¶ 89.
¶ 20 (e)	There also is no evidence that Van Why was influenced by Burgess' March 19, 2010 email, reflecting Burgess's thoughts regarding post-reduction Cassini staffing. Rather, Van Why testified credibly that he likely never opened the e-mail.	Objection. This proposed finding of fact and conclusion of law is an incomplete statement of the evidence. Code Civ. Proc. § 634. Plaintiff incorporates by reference herein all prior objections, particularly the objections to Defendant's proposed finding of fact, ¶ 89.
¶ 21	Although the Court already has found that the other actions alleged by Coppedge, such as the removal of his lead duties, did not materially impact the terms and conditions of his work (and therefore do not constitute ad-	Objection. This proposed finding of fact and conclusion of law is an incomplete statement of the evidence. Code Civ. Proc. § 634. Plaintiff incorporates by reference herein all prior objections, particularly the objections

	verse employment actions for purposes of his retaliation claim either), even if they did, there is no evidence to support a causal link between those events, and the only the [sic] arguably protected conduct that preceded them (i.e. his claim of a "hostile work environment" in March 2009).	to Defendant's proposed conclusions of law, ¶ 14 (a).
¶ 22	To the extent Burgess considered the events of March 2 in making the decision to remove Coppedge's lead duties, the Court finds that the evidence reflects that Burgess' concern was not with Coppedge's perception of the situation, but rather, that Coppedge was arguing with a customer (i.e. Chin); there is no evidence that Coppedge's claim of a "hostile work environment" had any bearing on Burgess' decision.	Objection. This proposed finding of fact and conclusion of law is an incomplete statement of the evidence. Code Civ. Proc. § 634. Plaintiff incorporates by reference herein all prior objections, particularly the objections to Defendant's proposed conclusions of law, ¶ 12 (c).
¶ 23	The Court finds that, even considering of the purported adverse employment actions collectively, Coppedge cannot establish retaliation. Caltech has presented legitimate, nondiscriminatory reasons for each action, and all of them, and Coppedge has failed to present evidence that any of those reasons, or all of them, were a pretext for retaliation.	Objection. This proposed conclusion of law misstates and mischaracterizes the evidence. The full record of evidence in this case shows dispositively that Coppedge presented evidence of pretext. Plaintiff hereby incorporates by reference here all prior objections.
¶ (C)	**Decision** . The Court finds that Coppedge failed	Plaintiff incorporates by reference herein all prior objections, particularly

	to prove the existence of a causal nexus between any protected conduct and any alleged adverse employment action. Accordingly, Coppedge's third cause of action for retaliation in violation of FEHA fails and judgment on Coppedge's FEHA retaliation claim shall be entered in favor of Caltech.	the objections to Defendant's proposed findings of fact, ¶¶ 68 & 89 and Section I(B) conclusions of law, ¶¶ 4, 14 (a), and Section II, ¶¶ 19, 20 (a), 20 (b), 20 (c), 21.

DATED: December 14, 2012

THE BECKER LAW FIRM

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