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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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

11 **DAVID COPPEDGE**, an individual;
12
13 Plaintiff,

Case No. BC435600

PLAINTIFF’S TRIAL BRIEF

14 vs.

15 **JET PROPULSION LABORATORY**, form
16 unknown; **CALIFORNIA INSTITUTE OF**
17 **TECHNOLOGY**, form unknown;
18 **GREGORY CHIN**, an Individual; **CLARK**
19 **A. BURGESS**, an Individual; **KEVIN**
20 **KLENK**, an Individual; and **Does 1 through**
21 **25**, inclusive,
22 Defendants.

23 **I. INTRODUCTION**

24 *“David, stop pushing your religion on people!”*

25 -- Greg Chin, March 2, 2009.

26 With his direct order, Plaintiff David Coppedge’s (“Coppedge”) office manager launched
27 a sequence of ill-conceived employment disciplinary decisions culminating in the termination of
28 Coppedge’s 14-year career from the world’s leading research center for space exploration, the

1 storied Jet Propulsion Laboratory in Pasadena, California. Coppedge is a devout evangelical
2 Christian. Though he does not proselytize, he is also not bashful about what he believes.
3 Coppedge is also a “creationist,” who believes that God is the maker of heaven and Earth.

4 Coppedge also is a science and space enthusiast, who faithfully supported JPL’s mission
5 to Saturn longer than any other systems administrator and used his position as team lead for sys-
6 tems administration to call attention to it through community outreach programs. Coppedge be-
7 lieves in a scientific theory known as “intelligent design,” which he blogs about on his website,
8 Creation-Evolution Headlines (crev.info). Coppedge also is a board member of Illustra Media,
9 the production company responsible for creating documentaries about intelligent design. Intelli-
10 gent design posits that there is evidence of design in nature. It challenges the ideologically-
11 entrenched orthodoxy that living creatures and the material universe are the stuff of random
12 chance. As was Galileo’s theory of heliocentrism , intelligent design is wildly misunderstood,
13 and impetuously treated as heresy, a deviation from orthodoxy. Intelligent design is wrongly at-
14 tacked as a ruse engineered by religious “fundamentalists” masking creationism with a different
15 name.
16

17
18 Coppedge believes that the Christmas holiday is a tradition worth keeping, but which has
19 crept out of favor through diversity practices that wrongly assume non-Christians are offended
20 by it. Likewise, Coppedge believes that marriage, traditionally understood to be the union of one
21 man and one woman, is an institution worth preserving, principally for the well-being of chil-
22 dren. in its traditional form. Coppedge’s views on religion, intelligent design, Christmas and
23 marriage are at odds with progressive thought, but they are not unorthodox or even strange.
24

25 Chin’s tantrum was by design, not accident. He was “*tired of all the complaints regard-*
26 *ing David harassing people with his religious viewpoints during business hours.*” (HR interview
27
28

1 notes). *“David had tried to get me to believe in his religion.” Id.* Chin acknowledges that
2 *“[m]any people were aware of David promoting religion and intelligent design. It was a ‘data*
3 *point.’”* (Chin Dep.Tr. 200:6-9). A data point: a single fact or piece of information defining
4 Coppedge. Bigotry relies on data points – a person’s skin color, an accent ... one’s perceived
5 religious sanctimony. *“Did you believe that David was pushing his religious views at work?*
6 *Yes, sir. What religious views was he pushing at work? Intelligent design. Was he also pushing*
7 *his religious views regarding gay marriage? Yes.”* (Chin Dep.Tr. 157:23-158:13).

9 Chin’s intolerance found solidarity with Margaret Weisenfelder (Cassini digital librari-
10 an), Carmen Vetter (Cassini administrative assistant), Scott Edgington, Ph.D. (Cassini scientist)
11 and even the Cassini mission to Saturn program manager, Bob Mitchell:

- 12 • Weisenfelder: Coppedge was *“stepping over the line by discussing religion in the*
13 *workplace.”* (HR interview notes).
- 14 • Vetter: *“I felt like he was trying to convert me to his belief system.”* (Vetter Dep.Tr
15 89:13-16). *“I believe that David is trying to convert people to his Christianity be-*
16 *liefs.”* (*Id.*, 119:5-6).
- 17 • Vetter and Edgington were *“bothered by David and his religious beliefs.”* (HR inter-
18 view notes).
- 19 • Mitchell: *“Do you believe that David was pushing his religion by handing out*
20 *DVD’s? Yes.”* (Mitchell Dep.Tr.).

21 These sentiments signal an unapologetic intolerance toward Coppedge’s religious convic-
22 tions and perceived religious dogma. But HR had more clues that these delicate individuals were
23 animated by a petulant sort of ultra-sensitivity. Weisenfelder, Vetter and Edgington all felt that
24 Coppedge had acted in an extreme manner and had “harassed” them with his religious views and
25 his interest in intelligent design. So agitated were they that they went to the trouble of formaliz-
26 ing their complaints with Chin. Their claims were based on the flimsiest factual pretenses:
27
28

1 Weisenfelder

2 Weisenfelder carried a grudge ever since Coppedge had the temerity to ask on the eve of
3 the election about her position on Proposition 8. She wore that grudge on her back for three
4 months, when on February 28, 2009, Coppedge loaned her a copy of the intelligent design doc-
5 umentary "Unlocking the Mystery of Life." Here is how the screenplay of this suspense thriller
6 with all of its harrowing action would read:¹

8 INT. WORK AREA – LATE AFTERNOON

9 COPPEDGE quietly approaches WEISENFELDER.

10 COPPEDGE

11 Hi, Margaret. Tomorrow's the election and I was wondering if
12 you have decided on Proposition 8 yet. I will be voting for it.

13 WEISENFELDER
14 (annoyed)

15 I disagree with your position on it and don't care to discuss it.

16 COPPEDGE

17 Is there anything I can say to change your mind?

18 WEISENFELDER

19 No.

20 COPPEDGE leaves.

21 THREE MONTHS LATER

23 INT. WORK AREA – DAY

24 COPPEDGE quietly approaches WEISENFELDER.

25 COPPEDGE

26 _____
27 ¹ Some liberties have been taken with the dialogue and action as artistic license. The dialogue is generally taken
28 directly from Huntley's notes and Weisenfelder's deposition testimony..

1 Hi, Margaret. I've got a great DVD called Unlocking the Mystery
2 of Life. Would you like to borrow it?

3 WEISENFELDER

4 Sure.

5 INT. MARGARET'S HOME -- DAY

6 MARGARET is watching the DVD "Unlocking the Mystery of Life." She fast-forwards through
7 it, stopping occasionally to watch portions. She becomes increasingly distressed. This is about
8 *religion!* How *heavy-handed* and *repetitive* can it get?

9 THE DVD PACKAGE. She notices a yellow sticky note. *Wha??* There are names on it. "Try
again" scrawled next to one of the names. *What the ...??*

10 INT. OFFICE -- DAY

11 Morning at the office. WEISENFELDER moves urgently through the corridors. Out of breath,
12 reaches CHIN's office.

13 CHIN

14 Hi Margaret. What's up? You look like you've just seen a ghost.

15 WEISENFELDER

16 I saw a ghost alright. A *holy ghost!*

17 CHIN

18 Come again?

19 WEISENFELDER

20 David Coppedge made me borrow a DVD about intelligent design.
21 I took it home ... and ... and --

22 CHIN

23 Take a deep breath, Margaret. Tell me what happened.

24 WEISENFELDER

25 It was ... horrible. I'm an ordained minister in the Metaphysical
26 Interfaith Church, you know. David just doesn't know when he's
27

28

1 crossing the line talking about religion and politics in the work-
2 place. I've had it with him. I'm so uncomfortable with David ap-
3 proaching me about watching an intelligent design DVD and talk-
4 ing about my stance on Proposition 8. I don't want to deal with
5 him on these kinds of issues. And (sobs) ...

6 CHIN

7 There, there.

8 WEISENFELDER

9 ... and there was a sticky note on the DVD package. It had *names*
10 on it and – I think he's trying to keep track of who he loans his
11 DVDs out to. I don't want him to offer me DVDs ever again. I
12 can't take it. I just can't!

13 CHIN

14 Well, I'll look into it. Let me know if his behavior continues to be
15 a problem for you.

16 WEISENFELDER

17 You know, I'm an ordained minister in the Metaphysical Interfaith
18 Church, and I --

19 According to Weisenfelder, she "*feared*" Coppedge would try to loan her another DVD when she
20 did not want him to contact her again. (Weisenfelder Dep.Tr. 159:25-161-4). This is a difficult
21 thriller to appreciate without more information, but that's where Weisenfelder's dramatic con-
22 frontation with Coppedge ends.

23 JPL's Unlawful Harassment Policy language on which Coppedge's discipline was based
24 states:

25 "Harassment is the creation of a hostile or intimidating environment in which verbal or
26 physical conduct, ***because of its severity and/or persistence, is likely to interfere signifi-***
27 ***cantly with an individual's work.*** Harassment in any form, based on sex, race, color, age,
28 national origin, disability, religion, gender identity, sexual orientation, or any other char-
acteristic protected by state or federal laws, is prohibited, as are all forms of sexual intim-
idation and exploitation."

1 (Emphasis added.) How did Coppedge's interactions with Weisenfelder rise to the level of har-
2 assment under JPL's policy?

3 The HR investigator, Jhertaune Huntley, saw nothing suspicious about Weisenfelder's
4 tale. She accepted Weisenfelder's unsubstantiated assertion that Coppedge's overtures were
5 "unwelcome" and offensive. It never occurred to her that Weisenfelder might have a low thresh-
6 old of tolerance for views she rejects, bordering on irrational.
7

8 **Vetter**

9 In this act, it is November 2003. Coppedge spots a Holiday Potluck flier and contacts
10 management's administrative assistant responsible for planning the annual luncheon about con-
11 sidering the possibility of calling it a Christmas Potluck. He e-mails her an opinion piece by
12 commentator Dennis Prager, entitled "Jew supports Christmas parties." In it, Prager, who is
13 Jewish, makes hash of the practice of recasting Christmas parties as "holiday" parties. Vetter,
14 who works directly with the Cassini program manager, Mitchell, and who could have passed her
15 grievance on to him (and probably did) takes it instead to Chin. Chin doesn't act on her com-
16 plain or even recall that Coppedge had also sent him the e-mail. Yet *five years* after Vetter has
17 made her complaint, Chin hears more from her and the resentment she maintains for Coppedge's
18 religious zeal. Chin refers Huntley to Vetter to be questioned in connection with the harassment
19 probe. Vetter complains to HR that "David has a religious agenda about Christianity."
20
21

22 Was Coppedge's ancient request in violation of JPL's harassment policy? Was this part
23 of a pattern or practice that cannot be tolerated at JPL? Against all reason and logic, Huntley
24 evidently thought so. Like Weisenfelder's dramatic debut, this act also lacks sufficient dramatic
25 tension to suggest nefarious conduct.
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1 **Edgington**

2 Vetter mentions Scott Edgington to Chin, who also refers Edgington to Huntley. Vetter
3 claims that she and Edgington, who share adjacent offices, are “bothered” by Coppedge’s reli-
4 gious beliefs. Edgington agrees to a discussion about Proposition 8 with Coppedge. The discus-
5 sion grows heated. Edgington describes Coppedge’s views as “propaganda” and the two men
6 quarrel before Edgington demands that Coppedge leave his office. Vetter overhears the quarrel
7 and waits for Coppedge to leave before joining Edgington. At Vetter’s suggestion, Edgington
8 agrees with her that Coppedge “harassed” him. She offers to tell Chin.
9

10 The following day, Coppedge makes a point of visiting Edgington to apologize for his
11 part in the argument. They shake hands, and Edgington suggests they agree to disagree, but does
12 not inform Coppedge that he has reported Coppedge on a charge of harassment. Chin never dis-
13 cusses the matter with Coppedge.
14

15 Coppedge is charged with violating both the Unlawful Harassment Policy and Ethics and
16 Professional Business Conduct Policy. But how did he violate these policies? Unlike Weisen-
17 felder, Edgington *consented* to a discussion on Proposition 8. *Both* Coppedge and Edgington
18 quarreled, yet Edgington was not charged with violating *either* policy. Coppedge never returned
19 to discuss Proposition 8, only to apologize.
20

21 **A. Chin**

22 As the aggressor, who shouted at Coppedge, made unreasonable demands of him and
23 threatened the loss of his employment at JPL, Chin should have figured in Huntley’s investiga-
24 tion. Coppedge suggested that Chin was creating a hostile work environment. But Huntley
25 overlooked Chin’s behavior and considered Coppedge the “problem.” Here, the plot thickens. If
26 Chin’s outburst was the inciting moment that prompted an investigation, shouldn’t he be the one
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1 placed under investigation? And if all the witnesses share one thing in common – let’s say, a
2 common motive (they all believe Coppedge is threatening them with his religious attitude) –
3 what does that say about the investigator? It says she is either an Inspector Clouseau and this is a
4 comedy, or that she is part of a plot to finger Coppedge for the murder. This rhetorical trope is
5 not intended to trivialize what occurred in this case, but rather to place the facts and events in
6 stark relief. *There is not a shred of evidence in this case that Coppedge improperly imposed*
7 *his religious views on others, or engaged in severe, pushy, persistent or otherwise objectiona-*
8 *ble behavior.*

9
10 Our society has become increasingly diverse – politically, socially, racially and religious-
11 ly. In some quarters, what just a few years ago was consensus is now suspect. We are taught to
12 respect, or at least, to tolerate ideas with which we, as individuals, may not agree. “Sensitivity,”
13 or “diversity,” training is a widely-adopted corporate policy response to this pluralism. In the
14 workplace, an employee who displays intolerance toward another employee faces possible disci-
15 pline.
16

17 In this wrongful demotion/termination case, the reverse occurred. As the Cheshire Cat
18 said to Alice, “If you don’t know where you are going, any road will get you there.” Huntley’s
19 investigation failed to consider the ideological agendas animating Coppedge’s accusers, or any
20 exculpatory evidence, such as the content of the DVDs or Coppedge’s explanation for maintain-
21 ing a list of names of individuals he loaned DVDs (to avoid harassing them if they did not wish
22 to view another one). Huntley was unscrupulous and light-headed in her fact-gathering. She
23 chose to take the road to nowhere. Coppedge was targeted for “pushing” his religious “agenda,”
24 for trying to “convert” others to his religious beliefs and for “stepping over the line” by discuss-
25 ing religion and politics in the workplace, none of which was supported by evidence. Coppedge
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1 was stereotyped, scorned, chastised, disciplined, demoted, shamed and fired. Where's the toler-
2 ance for his beliefs?

3 JPL is staking its defense on the theory that Coppedge was demoted due to his work-
4 related performance, not his non-work related discussions. The evidence contradicts JPL's theo-
5 ry. Clark Burgess, Coppedge's supervisor, made it clear on at least two occasions that his deci-
6 sion to remove Coppedge as team lead was directly based upon HR's investigation into claims of
7 harassment. The official record – Coppedge's annual performance reviews – doesn't support
8 JPL's theory. All JPL has left is the self-serving testimony of witnesses who were apparently
9 MIA for 12 years.

11 Coppedge spent months trying to reverse the decisions made against him. At no time
12 during that process was he informed that he was demoted for work-performance related reasons.
13 When Coppedge had exhausted his administrative remedies, he challenged Defendant's discrim-
14 inatory decisions by filing this lawsuit in April 2010. Eight months later, in January 2011,
15 Coppedge, with seniority over all the other candidates for lay-offs, was fired.

17 **II. CAUSES OF ACTION AND LEGAL THEORIES**

18 As set forth in Coppedge' Second Amended Complaint, Coppedge alleges 9 causes of
19 action:

- | | | | |
|----|---|-----------------------------------|---------------|
| 20 | 1 | Discrimination - Religious | FEHA |
| 21 | 3 | Retaliation | FEHA |
| 22 | 4 | Retaliation | Public Policy |
| 23 | 6 | Failure to Prevent Discrimination | FEHA |
| 24 | 7 | Wrongful Demotion | Public Policy |
| 25 | 8 | Wrongful Demotion | FEHA |
| 26 | 9 | Wrongful Termination | FEHA |
| 27 | | | |
| 28 | | | |

1 10 Wrongful Termination Public Policy

2 11 Wrongful Termination Public Policy (Religious Discrimination Art.
3 I, § 8 Cal. Const.)

4 As the court observed in its summary judgment ruling, Causes of Action Six, Seven,
5 Eight, Nine, Ten and Eleven are derivative of the discrimination and retaliation claims.

6 **III. RELIGIOUS DISCRIMINATION IN VIOLATION OF FEHA**

7 The principal statute governing employment discrimination in California is the Fair Em-
8 ployment and Housing Act ("FEHA"). Govt. Code C §§12900-12996. FEHA protects the right
9 of all persons to seek, obtain, and hold employment without discrimination based on race, reli-
10 gion, color, national origin, ancestry, physical or mental disability, medical condition, marital
11 status, sex, sexual orientation, age (at least 40), or pregnancy. Govt. Code §§12940(a), 12941,
12 12945(a). This protection extends to persons perceived to have any such characteristic or to be
13 associated with a person who has, or is perceived to have, any such characteristic. Govt. Code §
14 12926(m) states:
15

16 "Race, religious creed, color, national origin, ancestry, physical disability, mental disa-
17 bility, medical condition, marital status, sex, age, or sexual orientation' includes a per-
18 ception that the person has any of those characteristics or that the person is associated
19 with a person who has, or is perceived to have, any of those characteristics."

19 (Emphasis added.)

20 Govt. Code § 12926(o) states:

21 "Religious creed," "religion," "religious observance," "religious belief," and "creed" in-
22 clude all aspects of religious belief, observance, and practice.

23 (Emphasis added.)

24 To establish a prima facie case of discrimination (disparate treatment) in this action,
25 Coppedge must establish that (1) he was a member of a protected class; (2) he was performing
26 competently in the position held; (3) he suffered an adverse employment action, e.g., termina-
27

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1 tion, demotion, or denial of an available job; and (4) some other circumstance suggests discrimi-
2 natory motive. *Guz v Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 355.

3 Coppedge's religious beliefs (and perceived religious beliefs) place him within a protect-
4 ed class. Coppedge was performing competently in his position as a systems administrator. The
5 third element of a wrongful termination claim is that the Coppedge has been subjected to an ad-
6 verse employment action. Under FEHA, an adverse employment action is one that materially
7 affects the terms, conditions, or privileges of employment, and includes "adverse treatment that
8 is reasonably likely to impair a reasonable employee's job performance or prospects for ad-
9 vancement or promotion." *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1054-1055,
10 quoted and followed in *Malais v. Los Angeles City Fire Dept.* (2007) 150 Cal.App.4th 350, 357.

11 An adverse employment action is a job change that is "materially adverse," and
12 could consist of, *inter alia*, "a demotion evidenced by ... a less distinguished title, ... significant-
13 ly diminished material responsibilities, or other indices ... unique to a particular situation."
14 *Kassner v. 2nd Avenue Delicatessen Inc.* (2d Cir. 2007) 496 F.3d 229, 238. Transfers of job du-
15 ties and undeserved performance ratings, if proven, would constitute "adverse employment deci-
16 sions." *Yartsoff v. Thomas* (9th Cir. 1987) 809 F.2d 1371, 1376.

17 These criteria are met here: (1) Coppedge was stripped of the distinguished title of Team
18 Lead; (2) Coppedge had significantly diminished material responsibilities; (3) Coppedge's job
19 duties were transferred to Nick Patel; and (4) Coppedge scored undeserved performance ratings.

20 IV. RETALIATION IN VIOLATION OF FEHA

21 FEHA prohibits employers from retaliating against employees for opposing any practices
22 forbidden by FEHA or for filing a complaint, testifying, or assisting in any proceeding under
23 FEHA. Govt. Code § 12940(h). FEHA also mandates that employers take all reasonable steps
24 necessary to prevent retaliation. Govt. Code § 12940(k); *Taylor v. City of Los Angeles Dep't of*
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26
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1 *Water & Power* (2006) 144 Cal.App.4th 1216, 1239, disapproved on other grounds in *Jones v.*
2 *Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158. See also CACI 2527.

3 To show retaliation under FEHA, Coppedge must show that (1) he engaged in protected
4 activity under FEHA; (2) he suffered an adverse employment action; and (3) there is a causal
5 connection between the protected activity and the adverse employment action. See, e.g., *Nadaf-*
6 *Rahrov v. Neiman Marcus Group* (2008) 166 Cal.App.4th 952, 990.

7
8 To maintain a retaliation claim based on opposing an unlawful practice, employee need
9 show only that he or she had a “reasonable belief” that the employment practice he or she pro-
10 tested was unlawful; it does not matter that a court later determines that the practice was not ac-
11 tually unlawful. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1043 (plaintiff's refusal
12 to carry out supervisor's order to fire another employee because she was not sufficiently attrac-
13 tive was based on reasonable belief that ground for firing was discriminatory).

14
15 Coppedge indisputably “engaged in a protected activity” by filing his religious discrimi-
16 nation complaint. Section 12940 subd. (h) expressly makes filing a complaint for discrimination
17 a “protected activity.”

18 On element (2) of the prima facie case, even Defendant JPL concedes Coppedge suffered
19 an adverse employment action when he was laid off. He also suffered adverse employment ac-
20 tion (a) when JPL carried out an inadequate and one-sided investigation of charges of harassment
21 resulting in his demotion and disparagement, (b) by being demoted from Team Lead, a position
22 Coppedge had held for nine years in which he was given significantly added responsibilities and
23 which distinguished him as a leader among his colleagues, and (c) by giving Coppedge unde-
24 served low performance ratings.

1 On element (3), the evidence shows a causal link between Coppedge's filing the com-
 2 plaint and his being laid off. Among the evidence allowing the inference of causation is:

Evidence	Probative of Causal Link
3 On April 14, 2010, Coppedge filed his religious discrimination complaint challenging the demotion.	Coppedge's protected activity.
4 Coppedge's supervisor, Burgess was a named defendant.	Burgess knew about the protected activity and was an adverse party.
5 Burgess subsequently selected individuals to give negative input into Coppedge's the annual performance report (ECAP). Coppedge had never had a negative performance evaluation until after filing his lawsuit.	Burgess developed information designed to damage Coppedge's career and set up Coppedge to lose the lawsuit or to be terminated for trumped up "performance" reasons.
6 After Coppedge's complaint was filed, the Team Lead selected after Coppedge's demotion from the position, Mr. Patel, accused Coppedge of carrying on personal business during work time – a charge never before suggested against Coppedge.	Hand-picked replacement of Coppedge generates new and unprecedented "complaint" about Coppedge's alleged job misconduct, thus building a "case" against Coppedge. Patel's accusation shows supervisors were closely watching Coppedge, which supports the inference of retaliation.
7 Patel reported his suspicions about Coppedge's use of work hours for personal matters to Burgess even though there was no evidence of impropriety. Patel then was selected by Burgess to provide input to Coppedge's ECAP even though Burgess knew Patel had issues with Coppedge and Burgess was named as a Defendant in this lawsuit.	Shows special efforts Defendant made to build a "case" against Coppedge by any plausible means.
8 Individuals responsible for evaluating layoff candidates in the Summer 2010 met privately with JPL attorneys in the Spring of 2010 to be briefed on the lawsuit.	Shows a "scheme," forward-planning. Only by briefing Conner and Van Why on the lawsuit beginning in Q1 2010 could they strategize to develop plausible rationales for selecting Coppedge for termination in Q4 2010. Conner/Van Why had no other purpose for attending the private briefing in Q1.
9 Conner hired two new SAs in October 2010 months after she had been advised of the need to terminate two SAs.	Shows plan to "pad" SA team with favored employees so that disfavored employees could be terminated when attrition had already reduced the SA team to the budgetary level expected to be in place.
10 Coppedge received the resulting downgraded ECAP, the first negative ECAP in his 14 year career.	Shows a key step taken to position Coppedge for layoff, and that the ECAP was unprecedented.

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1	Defendant JPL management expected layoffs before ranking Coppedge low.	The layoff gave management "cover" for its retaliation.
2	Coppedge was the most senior SA with the most experience. He had never been given a poor performance evaluation until after he filed the lawsuit.	Coppedge was not an otherwise logical target for layoff.
3		
4	Layoff criteria were largely non qualitative and subjective.	Non qualitative and subjective evaluation criteria help conceal underlying discriminatory animus and motivations.
5		
6	The layoff criterion "conduct" referred to abiding by rules and policies; Coppedge was ranked favorably, even though Burgess, Conner and Van Why had all attended a meeting pertaining to this lawsuit in April/May 2010 and (especially Burgess) knew about the written and oral warnings given to Coppedge and his demotion.	Silent discriminatory downgrade quite possible based upon pending complaint and issue of disfavored workplace conversations.
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10		
11	In the layoff criterion "performance," three out of four of its defined elements were <i>purely subjective</i> ; Coppedge was ranked lowest.	Using the three purely subject elements of the criterion, "interpersonal effectiveness," "ownership of performance," and "commitment to improvement," Defendant could downgrade Coppedge for concealed reasons.
12		
13		
14	Defendant ranked Coppedge as one of the bottom two employees and laid him off on January 24, 2011.	Termination was engineered and carried out in retaliation for filing the discrimination lawsuit against Defendant JPL and the individual managers.
15		

16

17 Coppedge's termination was a response to his having challenged the disciplinary actions

18 taken against him, and not due to relevant criteria JPL would have evaluated in reducing its

19 workforce because (1) the temporal proximity between the filing of the lawsuit and Coppedge's

20 termination was suspiciously close in time; (2) Coppedge's transitional supervisors who would

21 become responsible for determining that he would be laid off in late 2010 suspiciously attended

22 an attorney-client confidential meeting concerning this lawsuit several months before they assumed their supervisory positions; (3) the hiring of two new personnel to Coppedge's team in

23 October 2010 conveniently provided management with an excuse to terminate Coppedge in January

24 2011 in conformity with the number of reductions contemplated as early as April/May

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1 2010; (4) Coppedge had no documented critical record of his job performance over a career span
2 of 14 years until after he filed this lawsuit in 2010; (5) criticisms in Coppedge's 2010 perfor-
3 mance evaluation were made by individuals with motives for wanting Coppedge terminated, and
4 in one case, accusations of misuse of business time by Coppedge were manufactured by a named
5 defendant in this case and the person he had appointed to replace Coppedge in a position the de-
6 fendant had demoted him from; (6) subjective criteria was used to rank employees who were un-
7 der consideration to be part of the reduction in force; and (7) the list of employees considered for
8 lay off was "padded" to include favored employees that were not even part of the group desig-
9 nated for staff reductions. These multiple factors raise serious questions concerning JPL's true
10 reason for terminating Coppedge.

11
12 The FEHA aims to prevent employers from deterring employees' good faith discrimina-
13 tion complaints. *Akers v. County of San Diego* (2002) 95 Cal.App.4th 1441, 1455. Only after
14 Coppedge challenged Chin's outburst and filed his discrimination complaint did JPL start to
15 build its "case" against him. The unfavorable ECAP is itself actionable here, given that JPL used
16 that evaluation as a basis to detrimentally alter the terms and conditions of the recipient's em-
17 ployment, i.e., to fire him. The evidence in this case will show that the JPL's personnel file con-
18 tains the only documented record of job performance. The ECAP process complies with JPL's
19 policy for keeping written records of job performance. They are kept in the employee's person-
20 nel file indefinitely. *See Akers, supra*.

21
22
23 Coppedge's being closely watched, adversely rated and then fired, while his discrimina-
24 tion complaint was pending creates an inference of retaliation.

25 **V. FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA**

26 FEHA also mandates that employers take all reasonable steps necessary to prevent retali-
27 ation. Govt C §12940(k); *Taylor v. City of Los Angeles Dep't of Water & Power* (2006) 144
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1 CA4th 1216, 1239, disapproved on other grounds in *Jones v. Lodge at Torrey Pines Partnership*
2 (2008) 42 C4th 1158, 72 CR3d 624. See also CACI 2527.

3 **VI. WRONGFUL TERMINATION**

4 In the absence of an express or implied agreement to the contrary, an employment rela-
5 tionship without a fixed term is presumed to be validly terminable at the will of either party, em-
6 ployer or employee, at any time. Lab. Code, § 2922; *Foley v. Interactive Data Corp.* (1988) 47
7 Cal.3d 654, 675-682. However, “[i]n the employment context, factors apart from consideration
8 and express terms may be used to ascertain the existence and content of an employment agree-
9 ment, including the personnel policies or practices of the employer, the employee's longevity of
10 service, actions or communications by the employer reflecting assurances of continued employ-
11 ment, and the practices of the industry in which the employee is engaged.” *Id.* at 680 (internal
12 punctuation omitted).

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15 **VII. WRONGFUL DEMOTION/TERMINATION IN VIOLATION OF PUBLIC
POLICY**

16 Courts allow tort recovery for wrongful termination to employees who prove that they
17 were terminated in violation of public policy. *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d
18 654, 669. To support a claim for wrongful demotion or termination, a public policy must be (1)
19 delineated in statutory, constitutional, or regulatory provision; (2) public; (3) well-established;
20 and (4) fundamental and substantial. *Green v. Ralee Eng'g Co.* (1998) 19 Cal.4th 66; *Stevenson*
21 *v. Superior Court* (1997) 16 Cal.4th 880, 889. The employee must show that the particular public
22 policy is derived from (1) constitution; (2) statute; or (3) administrative regulations that imple-
23 ment an important statutory objective. *Id.* To sustain a claim of wrongful termination in violation
24 of public policy, the plaintiff must prove the following: (1) an employer-employee relationship;
25 (2) he was subjected to adverse employment action; (3) a violation of public policy; (4) a nexus
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1 between the public policy and the adverse employment action; and (5) resulting damages. *Haney*
2 *v. Aramark Uniform Servs., Inc.* (2004) 121 Cal.App.4th 623, 641.

3 A constitutional or statutory provision must sufficiently describe the type of prohibited
4 conduct to enable an employer to know the fundamental public policies that are expressed in that
5 law. *Sequoia Ins. Co. v. Superior Court* (1993) 13 Cal.App.4th 1472, 1480. As early as 1961, a
6 California employee who was fired for exercising his or her statutory rights or privileges could
7 bring a wrongful termination action even though no statute provided a specific remedy. *See*
8 *Glenn v. Clearman's Golden Cock Inn, Inc.* (1961) 192 Cal.App.2d 793, 796. In fact, since the
9 Supreme Court's decision in *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 164, many
10 courts have approved such claims when the Labor Code was the source of the asserted right.
11 *See, e.g., Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1371 (termination of
12 employee for discussing employer's bonus structure violated Lab. Code § 232's public policy
13 prohibiting termination for disclosing wage amount).

14 In this case, the following statutes and constitutional provisions support the claims for
15 Wrongful Demotion in Violation of Public Policy and Wrongful Termination in Violation of
16 Public Policy:

- 17 (1) Religious Discrimination - Art. I, § 8 Cal. Const.: "A person may not be disqualified
18 from entering or pursuing a business, profession, vocation, or employment because of
19 sex, race, creed, color, or national or ethnic origin."
20
21 (2) Political Activity – Lab. Code § 1101: "No employer shall make, adopt, or enforce
22 any rule, regulation, or policy:(a) Forbidding or preventing employees from engaging
23 or participating in politics or from becoming candidates for public office.(b) Control-

1 ling or directing, or tending to control or direct the political activities or affiliations of
2 employees.”

3 **VIII. REMEDIES**

4 **A. Damages in Wrongful Termination Cases**

5 A wrongful termination subjects the employer to “liability for compensatory and punitive
6 damages under normal tort principles.” *Gantt v. Sentry Ins.* (1992) 1 Cal.4th 1083, 1101. Be-
7 cause tort damages, including punitive damages, are also available in civil actions under the
8 FEHA, damages decisions in FEHA cases may be useful in wrongful termination cases. *See*
9 *Commodore Home Sys. v. Superior Court* (1982) 32 Cal.3d 211, 221.

11 **B. Compensatory Damages**

12 Compensatory damages may include economic loss (e.g., lost income) and general dam-
13 ages for emotional distress. Economic damages typically include back pay and future loss of
14 earnings. *See, e.g., Bihun v. AT&T Info. Sys.* (1993) 13 CA4th 976, 996, disapproved on other
15 grounds in *Lakin v. Watkins Assoc. Indus.* (1993) 6 Cal.4th 644, 664; *Watson v. Department of*
16 *Rehabilitation* (1989) 212 Cal.App.3d 1271, 1294; *Smith v. Brown-Forman Distillers Corp.*
17 (1987) 196 Cal.App.3d 503, 517; *Boehm v. American Broadcasting Co.* (9th Cir. 1991) 929 F.2d
18 482, 488.

20 **C. Emotional Distress**

21 Recovery for emotional distress may encompass not only prior emotional distress caused
22 by the wrongful termination, but emotional distress “reasonably certain to result in the future.”
23 *Bihun v. AT&T Info. Sys.* (1993) 13 Cal.App.4th 976, 995, disapproved on other grounds in
24 *Lakin v. Watkins Assoc. Indus.* (1993) 6 Cal.4th 644, 664. *See also Watson v. Department of Re-*
25 *habilitation* (1989) 212 Cal.App.3d 1271, 1294, in which a substantial award for emotional dis-
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1 tress damages was upheld based in part on the plaintiff's loss of a position that she found emo-
2 tionally rewarding.

3 **D. Punitive Damages**

4 The employer's conduct that is challenged in a wrongful termination claim is often egre-
5 gious by its very nature and thus may persuade the jury to find clear and convincing evidence of
6 fraud, oppression, or malice. Accordingly, these cases may particularly warrant imposition of
7 punitive damages. For example, in *Smith v. Brown-Forman Distillers Corp.* (1987) 196 CA3d
8 503, 516, 241 CR 916, the court upheld a \$250,000 punitive damages award to a plaintiff who
9 proved that he had been forced to quit after resisting his employer's efforts to have him engage in
10 illegal activities. The court found sufficient evidence that the employer had consciously disre-
11 garded the plaintiff's rights when the employer did nothing to ensure that its employees were ad-
12 equately informed of the law or that illegal activities would not occur, despite its knowledge of
13 the plaintiff's complaints of illegal conduct; and pursued a course of knowingly placing its em-
14 ployees in a situation in which they would engage in illegal activities because it wanted to obtain
15 the competitive benefits of the illegal conduct while paying lip service to a contrary policy so
16 that it could disavow any responsibility for that conduct.

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19 **E. Attorneys Fees And Costs**

20 Under FEHA (Govt. Code § 12965(b)), the court, in its discretion, may award to the pre-
21 vailing party reasonable attorney's fees and costs, including expert witness fees. A prevailing
22 plaintiff is entitled to recover both attorney fees and costs absent circumstances that would ren-
23 der the award unjust. *Stephens v Coldwell Banker Commercial Group, Inc.* (1988) 199
24 Cal.App.3d 1394, 1406, disapproved on other grounds in *White v Ultramar, Inc.* (1999) 21
25 Cal.4th 563, 574 n4.
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