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

10 **DAVID COPPEDGE**, an individual;

11 Plaintiff,

12 vs.

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

20 Defendants.

Case No. BC435600 94

PLAINTIFF DAVID COPPEDGE'S
SUPPLEMENTAL OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF

[Supp. Sep. Stat.; Becker Decl.; Exhibits Decl.
of W. Becker, Jr.; Exhibits; Appdx. Of Non-
Calif. Auth's.; Exhibits; filed concurrently
herewith]

20 COMES NOW Plaintiff David Coppedge ("Coppedge") and, pursuant to this Court's Or-
21 der of September 9, 2011, hereby respectfully submits his Supplemental Opposition to Defendant
22 Jet Propulsion Laboratory'/California Institute of Technology's ("JPL") Motion for Summary
23 Judgment or, in the Alternative, Summary Adjudication of Issues, as follows:
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Was Defendant JPL motivated by religious animus in deciding to discipline Plaintiff
4 Coppedge? Or, as JPL contends, did non-discriminatory factors principally guide its decisions?

5 Summary judgment must be denied if there is either: (1) direct evidence of an employer's
6 discriminatory motive for disciplining an employee; or (2) indirect evidence that undermines the
7 credibility of the employer's articulated reasons for the discipline (thus showing pretext). Re-
8 cently acquired evidence connects JPL's adverse employment activity directly to HR's investiga-
9 tion and cements Coppedge's contention that religious stereotyping was the determinative and
10 motivating factor underlying JPL's decisions. Alternatively, this new evidence undermines the
11 credibility of JPL's non-discriminatory explanations for its actions.

12 As Coppedge's opposition papers have shown, JPL's human resources department
13 ("HR") investigated claims that Coppedge was imposing his religious views on other people
14 around the workplace. The investigation was prompted by Coppedge's office manager, Greg
15 Chin, who on March 2, 2009, harangued Coppedge and ordered him to stop discussing his reli-
16 gious and political interests during work hours. Documents recently produced by JPL reveal for
17 the first time in this case that, responsive to the March 2 incident and HR's investigation, Cassini
18 management sought Coppedge's immediate removal from the space program and was pulling his
19 funding "due to" his "conduct" and "interpersonal communications issues." (¶ 154).¹

20 JPL contends that the complaints about Coppedge's religious views were simply the last
21 straw following a history of performance-related disagreements between Coppedge and JPL
22 "customers" (JPL personnel whose workstations Coppedge serviced). New evidence of a strate-
23 gic plan to oust Coppedge puts the lie to this claim. At best, JPL's explanation for its discipli-
24 nary decisions is pretextual. The new evidence: (1) ties JPL's decisions directly to HR's harass-
25 ment investigation; (2) omits any reference to performance-related "customer" complaints; (3)
26 specifically refers to the (religious) harassment issue; and (4) shows the disciplinary decisions
27 coinciding with HR's investigation. JPL further contends that it was prompted to act because of
28 Coppedge's conduct, not the content of his speech activity. The new documents underscore the
absence of evidence supporting this explanation.

¹ Paragraph references correspond to Coppedge's initial (¶¶ 1-151) and supplemental (¶¶ 152-163) Separate State-
ments of Additional Material Facts.

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1 **II. SUMMARY OF ARGUMENT**

2 Coppedge's Opposition papers already presented evidence establishing a prima facie case
3 showing that religion was a determinative and motivating factor in JPL's employment decisions
4 and that JPL's non-discriminatory explanations for disciplining and firing Coppedge are pre-
5 textual. New evidence obtained in recent weeks crystallizes this assessment, and a genuine issue
6 of fact therefore exists concerning the basis for JPL's disciplinary actions.

6 **III. SUPPLEMENTAL SUMMARY OF ADDITIONAL FACTS**

7 After Chin's eruption had prompted an HR investigation into Coppedge's behavior in
8 March 2009, Chin briefed Cassini's program manager, Bob Mitchell, on the matter and turned to
9 him for direction (§ 152). Mitchell told Chin it was *his* problem and that *he* should fix it. *Id.*
10 After having thrown the book at Coppedge for pushing his religion, Chin's solution was to re-
11 move Coppedge from the Cassini program. *Id.* Chin advised Clark Burgess, Coppedge's group
12 supervisor, of *his* decision. *Id.* On Friday, April 3, Burgess carried that decision to HR general-
13 ist Jhertaune Huntley, advising her that Cassini management wanted Coppedge removed from
14 the space program "as soon as possible." (§ 153). The following Tuesday, April 7, Burgess met
15 with Huntley and HR generalist Nancy Aguilera. He repeated that Cassini wanted Coppedge
16 "off the project," adding that Cassini was pulling Coppedge's funding "due to his con-
duct/interpersonal communications issues." (§ 154). (Emphasis added.)

17 Burgess advised the HR generalists that he was unable to find work for Coppedge and
18 wanted him laid off. (§ 155). HR explained to Burgess that because work remained available on
19 the Cassini project, "layoff [was] not an option." (§ 156). However, to appease Burgess and Cas-
20 sini management (Chin/Mitchell), HR devised a "strategy" calculated to marginalize and dimin-
21 ish Coppedge's role within Cassini and ultimately to end his JPL career. *Id.* HR's "strategy" in-
22 cluded: (1) issuing a written warning "for inappropriate conduct/harassment"; (2) removing
23 Coppedge as the team lead; (3) monitoring Coppedge "to ensure no further incidents"; and (4)
24 recording "conduct/communication issues" as part of Coppedge's annual performance evalua-
25 tions ("ECAPS"). *Id.*

26 On April 13, Burgess and Klenk executed the first two strategic steps by issuing him a
27 written warning and removing him from team lead. (§ 157). Two days later, Coppedge asked
28 Burgess to clarify whether he had been disciplined due to his sharing of intelligent design DVDs

1 or “for some other activity, personal flaw or deficiency in job performance.” (¶ 158). Burgess
2 responded the next day, conceding the trigger was Coppedge’s discussing intelligent design. *Id.*

3 Summaries of the April 13 disciplinary meeting prepared by Burgess and Klenk confirm
4 the written warning and removal from the team lead role stemmed solely from the HR harass-
5 ment investigation into Coppedge’s perceived religious and political speech activity (¶ 159).

6 **IV. EVIDENCE OF PRETEXT FOR UNLAWFUL EMPLOYMENT DISCRIMINA-**
7 **TION CAN BE SHOWN EITHER BY DIRECT EVIDENCE OF THE EMPLOY-**
8 **ER’S DISCRIMINATORY MOTIVE OR INDIRECT EVIDENCE THAT UN-**
9 **DERMINES THE CREDIBILITY OF THE EMPLOYER’S ARTICULATED**
10 **NON-DISCRIMINATORY REASONS.**

11 The specific elements of a prima facie case of discrimination vary depending on the par-
12 ticular facts. *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355. Generally, however, “the
13 plaintiff must provide evidence that (1) he was a member of a protected class, (2) was qualified
14 for the position he sought or was performing competently in the position he held, (3) suffered an
15 adverse employment action, such as termination, demotion, or denial of an available job, and (4)
16 *some other circumstance suggests discriminatory motive.*” *Id.* (Emphasis added.)

17 Evidence of pretext can defeat summary judgment. “...[A]t the summary judgment stage,
18 a plaintiff may raise a genuine issue of material fact as to pretext via (1) direct evidence of the
19 employer’s discriminatory motive or (2) indirect evidence that undermines the credibility of the
20 employer’s articulated reasons.” *Noyes v. Kelly Services* (9th Cir. 2007) 488 F.3d 1163, 1170-71.

21 “Direct evidence is evidence which, if believed, proves the fact [of discriminatory ani-
22 mus] without inference or presumption.” *Godwin v. Hunt Wesson, Inc.* (9th Cir. 1998) 150 F.3d
23 1217, 1221 (brackets in original; internal quotes omitted). To establish a prima facie case, a
24 plaintiff must offer evidence that “give[s] rise to an inference of unlawful discrimination.” *Id.* at
25 1220. “The prima facie case may be based either on a presumption arising from the factors such
26 as those set forth in *McDonnell Douglas*, or by more direct evidence of discriminatory intent.”
27 *Id.* (Emphasis added.) “When the plaintiff offers direct evidence of discriminatory motive, a tria-
28 ble issue as to the actual motivation of the employer is created even if the evidence is not sub-
stantial. *Id.* at 1221. (Emphasis added.) Indeed, such direct evidence of discriminatory motive
“need be ‘very little.’” *Id.*, citing *Lindhahl v. Air France* (9th Cir. 1991) 930 F.2d 1434, 1438 (di-
rect evidence of sexual stereotyping where employer believed that the female candidates get
“nervous” and “easily upset”) and other cases.

1 Direct evidence of discriminatory animus may be shown by stereotyping. *See Lindahl* ,
2 *supra*. It may also be shown by derogatory comments. *Cordova, supra*, 124 F.3d at 1148 (de-
3 rogatory comments that employee was a “dumb Mexican” and that he was hired because he was
4 a minority were direct evidence of discriminatory animus).

5 Indirect evidence of discriminatory motive is sufficient to raise genuine issues of fact as
6 to whether JPL’s nondiscriminatory explanations were the true reasons for the adverse employ-
7 ment decisions or whether they masked discriminatory motives. *See Godwin, supra*, 150 F.3d at
8 1222. A plaintiff “need produce very little evidence of discriminatory motive to raise a genuine
9 issue of material fact.” *Id.* at 1220-21 (citing various cases).

10 **V. NEW DOCUMENTS ARE DIRECT EVIDENCE THAT JPL’S DECISION TO**
11 **DISCIPLINE AND DEMOTE COPPEDGE WAS BASED ON A DISCRIMINA-**
12 **TORY MOTIVE (RELIGIOUS ANIMUS) AND INDIRECT EVIDENCE THAT**
13 **JPL’S EXPLANATIONS FOR ITS DECISIONS ARE PRETEXTUAL.**

14 **A. JPL’s Non-Discriminatory Explanations For Disciplining And Demoting**
15 **Coppedge Lack Credence.**

16 JPL’s motion asserted two non-discriminatory explanations for its disciplinary decisions:
17 (1) the decisions were based on Coppedge’s conduct, not the content of his discussions with co-
18 workers; and (2) that Coppedge had a history of difficult interactions with JPL “customers,” who
19 were critical of his technical skills or general attitude. On the admissible evidence before the
20 court,² neither explanation JPL has proffered for disciplining Coppedge is credible. *See Raad v.*
21 *Fairbanks N. Star Borough Sch. Dist.* (9th Cir. 2003) 323 F.3d 1185, 1196 (issue of fact arises
22 sufficient to withstand summary judgment if a plaintiff presents evidence tending to show that
23 defendant’s explanation is unworthy of credence.)

24 The record is bereft of evidence that Coppedge’s conduct justified the harsh discipline
25 imposed on him. Absent also is the existence of any non-hearsay evidence that Coppedge had
26 miscommunicated with any of his JPL customers. *See* fn. 2, *supra*. The new evidence under-
27 mines both explanations by showing that HR accepted the religious stereotyping of those com-
28 plaining about Coppedge’s “personal interests” based on interviews conducted and devised a
strategy to put an end to Coppedge’s career at JPL because of it.

² Coppedge has objected to evidence of customer complaints as inadmissible hearsay and lacking foundation.

1 **B. Evidence That JPL Was Influenced By Religious Stereotyping Shows JPL's**
2 **Explanations To Be Pretextual**

3 A genuine issue of fact exists in this case as to whether JPL's stated reason for disciplin-
4 ing Coppedge was pretextual. Specific to religious discrimination cases, an issue of fact arises
5 where a rational jury could conclude that the employer's contrary interpretation of events was
6 influenced by stereotypes about the plaintiff's religion. *Raad, supra*, 323 F.3d at 1196 (school
7 district's stated reason for disciplining substitute teacher of Lebanese descent and Muslim faith
8 accused of making a bomb threat precluded summary judgment in teacher's action alleging dis-
9 crimination based on her national origin and religion).

10 JPL engaged in religious stereotyping by adopting and ratifying the biased views of
11 Coppedge's accusers that he held a particular religious "agenda" by promoting ID, Christmas
12 and Proposition 8. Huntley conducted the HR investigation based upon Chin's claim that "a
13 number of people" had complained that they had been harassed by Coppedge "as relates to his
14 religious beliefs." (¶ 160). But when it came to discovering who had actually complained about
15 Coppedge, only three individuals were identified, and one of them was Chin himself.

16 The record shows Chin's religious animus. Chin complained that Coppedge was trying
17 to "convert" him to Coppedge's religious beliefs when Coppedge left a DVD about Jesus Christ
18 as a Christmas gift in his mail slot. (¶ 161). Chin scolded Coppedge for discussing intelligent de-
19 sign, insisting it is "religion." *Id.* Chin was "tired" of fielding complaints that Coppedge was
20 "harassing people with his religious viewpoints during business hours" and advised Huntley that
21 people had specifically complained to him that Coppedge was harassing them during business
22 hours with his religious beliefs. *Id.*

23 The only other individuals who complained about Coppedge's religious views were Vet-
24 ter (Cassini's administrative assistant) and Weisenfelder (the digital librarian). (¶ 162). The rec-
25 ord shows Vetter's religious animus. *Id.* Vetter claimed that Coppedge had a religious "agenda"
26 when he sought to change the name of a potluck lunch held in December from "Holiday Party"
27 to "Christmas Party." (See Plf.'s Opp.Sep.Stat. ¶¶ 72-77). Vetter told Huntley that she felt har-
28 assed by Coppedge's "persistence," yet was unable to produce the slightest evidence that
Coppedge behaved inappropriately. (¶ 162).

 Weisenfelder felt that the Proposition 8 measure and the DVD she borrowed from
Coppedge were religious in nature (¶ 163) and that Coppedge was "stepping over the line dis-

1 cussing religion and politics in the workplace.” *Id.* Yet Coppedge had not even discussed his
2 religious views with her (§ 163) and had simply asked her opinion on Proposition 8 (§§ 86, 89,
3 90).

4 In short, the evidence relied upon by HR in its investigation into harassment claims rests
5 on religious stereotyping and derogatory comments about Coppedge’s alleged religious beliefs as
6 represented by discussions he had concerning intelligent design, Christmas and a political ballot
7 measure. JPL can argue that other factors played a part in its decisions, but to do so only estab-
8 lishes a triable issue sufficient to deny summary judgment. As Coppedge’s initial Opposition
9 papers showed, Huntley’s investigation yielded direct evidence of religious stereotyping by
10 Chin, Vetter and Weisenfelder, and by Huntley herself in concluding that Coppedge had har-
11 assed them.

12 **C. JPL’s Explanation That Coppedge’s Conduct Motivated Its Decisions Is Pre-**
13 **textual.**

14 JPL’s contention that its decisions were not influenced by Coppedge’s religious views,
15 only by the manner in which he confronted people, is not believable. Although the word “con-
16 duct” routinely appears in the evidence, JPL has failed to present any evidence that Coppedge’s
17 behavior was excessive, persistent or objectively inappropriate. There are several reasons to be-
18 lieve that the word “conduct” is used gratuitously. To begin with, only three people (Chin, Vetter
19 and Weisenfelder) were identified in Huntley’s investigation as objecting to Coppedge’s ap-
20 proaching them on matters they perceived to be religious in nature. In Chin’s case, Coppedge
21 left a DVD about Jesus Christ in his mail slot as a Christmas gift. (§§ 23, 48). Vetter was an-
22 noyed at Coppedge’s request for renaming the Holiday Party (§§ 68-77); apart from that, she has
23 no memory of anything Coppedge ever said to her about his religious views, concluding never-
24 theless that he has a religious “agenda.” (§§ 72, 79). Weisenfelder’s claims of religious pressure
25 from Coppedge are even more suspect. Although Weisenfelder borrowed a DVD concerning ID
26 from Coppedge, she doesn’t recall discussing it with him (§ 163). And although Weisenfelder
27 believed the DVD to have contained religious content, she can’t recall what it was. *Id.* Neverthe-
28 less, she went to Chin complaining about Coppedge’s religious views. *Id.*

There simply is no evidence in this case that Coppedge’s conduct (as distinguishable
from his views and interests) would have warranted disciplinary action unless Coppedge’s ac-
cusers disagreed with him ideologically. Had they agreed with him, they would not have found

1 his conduct objectionable. Common to all three individuals' grievances, however, was that
2 Coppedge made them feel "uncomfortable." On that basis alone, HR concluded that Coppedge
3 had harassed them.

4 **D. JPL's Explanation That Performance Issues Motivated Its Decisions Is Also Pre-**
5 **textual.**

6 Next, JPL argues that its disciplinary decisions were prompted by a history of customer
7 complaints that Coppedge was a difficult person to deal with. (*See* Def't.'s Motion, 12:12-16.)
8 This explanation is equally disingenuous, and for several reasons.³ The most obvious proof of
9 this is that on April 7, 2009, when HR documented its "strategy" to appease Chin and Burgess
10 HR *knew only what Huntley had learned from her investigation into harassment claims and*
11 *nothing about prior customer dissatisfaction issues.*⁴ JPL's explanation is a red herring, intended
12 to divert the Court's attention from the discriminatory reason for its actions. Issues of perfor-
13 mance-related customer dissatisfaction never once came up either (1) in the written warning is-
14 sued to Coppedge; (2) during the April 13 disciplinary meeting; (3) when Coppedge sought clari-
15 fication from Burgess; (4) when Burgess and Klenk memorialized their descriptions of the April
16 13 meeting; or (5) at any other time. Thus, JPL's explanations for disciplining Coppedge on the
17 basis of customer dissatisfaction lack credence.

16 **VI. CONCLUSION**

17 The new evidence, particularly evidence of HR's "strategy," demonstrates that triable
18 issues of fact exist as to the true basis for JPL's disciplinary decisions, and the motion should
19 therefore be denied.

20 DATED: October 11, 2011

THE BECKER LAW FIRM

21 By:


22 WILLIAM J. BECKER, JR., ESQ.
23 Attorneys for Plaintiff, DAVID COPPEDGE

24 ³ They include the following facts: (1) the only evidence of such customer complaints in this case is inadmissible
25 hearsay; (2) the admissible evidence (Coppedge's ECAPS) shows that Chin and JPL supported Coppedge in all
26 years prior to 2009 against claims that he was responsible for customer dissatisfaction; only after Chin's March 2
27 outburst and HR's investigation did Chin reverse his earlier views by offering commentary critical of Coppedge (see
28 ECAPs for 2003 through 2008. Exhs. 4, 29, 30, 31, 32 and 33, attached to Plf.'s Opp., Becker Decl.); (3) e-mails
memorializing discussions between HR and Burgess make no mention of customer dissatisfaction; (4) those e-mails
do, however, refer to the "inappropriate conduct/harassment"; and (5) the disciplinary "strategy" was developed "on
the heels of [Huntley's] investigation and obviously in response to it.

⁴ The e-mail documenting HR's strategy was suspiciously withheld from production by JPL until the 11th hour on ,
the evening before Coppedge's original opposition papers were due to be filed with the Court.