

1 PAUL HASTINGS LLP
2 JAMES A. ZAPP (SB# 94584)
3 jameszapp@paulhastings.com
4 CAMERON W. FOX (SB# 218116)
5 cameronfox@paulhastings.com
6 MELINDA A. GORDON (SB# 254203)
7 melindagordon@paulhastings.com
8 515 South Flower Street
9 Twenty-Fifth Floor
10 Los Angeles, CA 90071-2228
11 Telephone: (213) 683-6000
12 Facsimile: (213) 627-0705

13 Attorneys for Defendant
14 CALIFORNIA INSTITUTE OF TECHNOLOGY.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES

17 DAVID COPPEDGE, an Individual,

18 Plaintiff,

19 vs.

20 JET PROPULSION LABORATORY,
21 form unknown; CALIFORNIA
22 INSTITUTE OF TECHNOLOGY, form
23 unknown; GREGORY CHIN, an
24 Individual; CLARK A. BURGESS, an
25 Individual; KEVIN KLENK, an Individual;
26 and DOES 1 through 25, inclusive,

27 Defendants.

CASE NO. BC 435600

MOTION *IN LIMINE* #8

**DEFENDANT CALIFORNIA INSTITUTE
OF TECHNOLOGY'S NOTICE OF
MOTION AND MOTION *IN LIMINE* #8
("DML 8") FOR AN ORDER EXCLUDING
TESTIMONY, EVIDENCE, ARGUMENT
AND COMMENT REGARDING
PLAINTIFF'S SUBJECTIVE OPINIONS
AS TO ULTIMATE LEGAL ISSUES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF CAMERON W. FOX
IN SUPPORT THEREOF; [PROPOSED]
ORDER**

FSC Date: December 2, 2011
Time: 9:00 a.m.
Place: Department 54
Judge: Hon. Ernest M. Hiroshige

Trial Date: December 14, 2011

28 ORIGINAL

LEGAL US W# 69617633.3

DEFENDANT'S MOTION *IN LIMINE* #8 ("DML 8") FOR AN ORDER EXCLUDING TESTIMONY, EVIDENCE,
ARGUMENT AND COMMENT RE: PLAINTIFF'S SUBJECTIVE OPINIONS AS TO ULTIMATE LEGAL ISSUES

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NOV 30 2011

John A. Clerk
By GLORIFFA ROBINSON Deputy

1 TO PLAINTIFF DAVID COPPEDGE AND TO HIS ATTORNEY OF RECORD, WILLIAM J.
2 BECKER, JR., ESQ., AND THE BECKER LAW FIRM:

3 Defendant California Institute of Technology ("Caltech") will and hereby does move the
4 Court *in limine* for an order precluding Plaintiff David Coppedge ("Coppedge"), his counsel and
5 witnesses from offering, introducing, or presenting any reference, comment, testimony,
6 document, or argument regarding Coppedge's subjective beliefs or opinions on ultimate legal
7 issues, including, without limitation (i) that Caltech discriminated against him based on his
8 religion (or viewpoints)¹; (ii) that Caltech retaliated against him; and (iii) that the transfer of lead
9 duties to another System Administrator constituted a demotion.

10 This Motion is made on the grounds that such evidence is inadmissible because it is
11 improper lay testimony, irrelevant, and is unduly prejudicial to Caltech. *See* Cal. Evid. Code
12 §§ 210, 350, 352, 702, and 800.

13 On November 23, 2011, counsel for Caltech satisfied the meet and confer requirements of
14 Local Rule 3.57 by speaking with counsel for Coppedge regarding the substance of this Motion.
15 *See* Declaration of Cameron W. Fox ¶ 4. Plaintiff's counsel stated that Coppedge would not
16 agree to limit the evidence at trial in a manner consistent with the limitations requested in this
17 Motion. *Id.*

18 This Motion is based on this Notice of Motion and Motion, the accompanying
19 Memorandum of Points and Authorities, the Declaration of Cameron W. Fox, the complete files
20 and records in this action, and on such oral and documentary evidence as may be presented at or
21 before the hearing of this Motion.

22 DATED: November 29, 2011

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

24 By: 
25 CAMERON W. FOX

26 Attorneys for Defendant
27 CALIFORNIA INSTITUTE OF TECHNOLOGY

28 ¹ *See* Caltech's concurrently-filed Motion *in Limine* to Exclude Testimony, Evidence, Argument
and Comment Regarding Viewpoint Discrimination.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant California Institute of Technology (“Caltech”) anticipates that Plaintiff David
4 Coppedge (“Coppedge”) will attempt to tell the jury his subjective belief on ultimate legal issues
5 in the case – i.e., that Caltech “discriminated” against him because of his religion and/or
6 viewpoints², “retaliated” against him, and “demoted” him – in the hope of affecting how the jury
7 decides those ultimate issues. But the jury must be allowed to reach its *own decisions* on these
8 issues based on the evidence. Coppedge’s self-serving opinions and legal conclusions are
9 improper, irrelevant, and unduly prejudicial to Caltech. They must not be allowed.

10 **II. THIS COURT SHOULD EXCLUDE ANY EVIDENCE, ARGUMENT OR**
11 **COMMENTARY REGARDING COPPEDGE’S SUBJECTIVE BELIEFS AS TO**
12 **LEGAL ISSUES**

13 **A. Coppedge’s Opinions On Legal Issues Should Be Excluded Because They**
14 **Constitute Improper Lay Testimony.**

15 It is well-settled that legal conclusions are not within the realm of common experience and
16 are inadmissible opinions by lay witnesses. *See Pond v. Ins. Co. of N. Am.*, 151 Cal. App. 3d 280,
17 289 (1984) (holding opinions of claims adjusters as to insurance coverage were inadmissible
18 speculation by nonexperts). As a lay witness, Coppedge’s subjective beliefs about the ultimate
19 issues in the case are nothing more than improper legal conclusions, and thus they are
20 inadmissible. Moreover, allowing Coppedge to opine on ultimate issues will infringe on the
21 jury’s role as the finder of fact. Just as courts often bar experts from testifying as to their
22 opinions on ultimate issues where they will invade the province of the jury,³ so too should the
23 court bar Coppedge – a layperson and a self-interested *party* to the case – from doing so.

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26 ² To the extent Coppedge would say that Caltech discriminated against his “viewpoints,” that is
27 inadmissible for the additional reasons cited in Caltech’s concurrently-filed Motion *in Limine* to
28 Exclude Testimony, Evidence, Argument and Comment Regarding Viewpoint Discrimination,
which Caltech incorporates by reference here.

³ See Caltech’s concurrently-filed Motions *in Limine* to exclude the testimony of Coppedge’s
experts, David DeWolf and Lawrence Ball.

1 **B. Coppedge's Opinions On Legal Issues Should Be Excluded Because They Are**
2 **Irrelevant.**

3 No legal opinion by Coppedge has any potential relevance. Even if his opinions were
4 otherwise admissible, they are not appropriate here because Coppedge has no training or
5 background in the law. Therefore, as to legal issues, Coppedge can offer nothing more than his
6 speculation, which is irrelevant as a matter of law. *People v. Louie*, 158 Cal. App. 3d Supp. 28,
7 47 (1984) (“Evidence is irrelevant if it has a tendency to prove or disprove a disputed fact or
8 consequence only by reason of drawing speculative or conjectural inferences from such
9 evidence. . . . *If proffered evidence can cause the trier of fact only to speculate from such*
10 *evidence as to the existence or nonexistence of a disputed fact, such evidence is irrelevant and*
11 *inadmissible . . .*”) (emphasis added) (citation omitted).

12 **C. Coppedge's Opinions On Legal Issues Should Be Excluded Under Evidence**
13 **Code Section 352.**

14 As shown above, Coppedge's opinions on ultimate legal issues have no probative value
15 because they are irrelevant and baseless. Worse yet, such testimony runs a serious risk of
16 poisoning the jury's ability to decide the ultimate issues for themselves. There is a substantial
17 danger that Caltech will suffer undue prejudice if the jury is led to conclude that these issues have
18 already been decided, or must be decided in favor of Coppedge, based on nothing more than his
19 own uninformed, self-serving testimony.

20 **III. CONCLUSION**

21 For the foregoing reasons, Caltech respectfully requests that the Court grant its Motion
22 and preclude Coppedge, his counsel and witnesses from offering, introducing, or presenting any
23 reference, comment, testimony, document, or argument regarding Coppedge's subjective beliefs
24 or opinions on ultimate legal issues, including, without limitation (i) that Caltech discriminated

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1 against him based on his religion (or viewpoints); (ii) that Caltech retaliated against him; and
2 (iii) that the transfer of lead duties to another System Administrator constituted a demotion.
3

4 DATED: November 30, 2011

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

By: 
CAMERON W. FOX

Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

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5. Caltech will suffer prejudice if this Motion *In Limine* is not granted because the evidence sought for exclusion is improper lay testimony, irrelevant, and is unduly prejudicial to Caltech under California Evidence Code Section 352.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of November, 2011, at Los Angeles, California.


CAMERON W. FOX

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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. BC 435600

MOTION *IN LIMINE* NO. #8

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION *IN LIMINE* #8
("DML 8") FOR AN ORDER
EXCLUDING TESTIMONY, EVIDENCE,
ARGUMENT AND COMMENT
REGARDING PLAINTIFF'S
SUBJECTIVE OPINIONS AS TO
ULTIMATE LEGAL ISSUES**

FSC Date: December 2, 2011
Time: 9:00 a.m.
Place: Department 54
Judge: Hon. Ernest M. Hiroshige

Trial Date: December 14, 2011

1387682

1 Defendant California Institute of Technology's Motion *In Limine* For An Order Excluding
2 Testimony, Evidence, Argument And Comment Regarding Plaintiff's Subjective Opinions As To
3 Legal Issues came on for hearing before this Court on December __, 2011.

4 The Court, having reviewed and considered the Motion and all papers and pleadings on
5 file herein, and the oral argument of counsel, HEREBY ORDERS, ADJUDGES AND
6 DECREES:

7 That Plaintiff David Coppedge, his counsel and witnesses are precluded from offering,
8 introducing, or presenting any reference, comment, testimony, document, or argument regarding
9 Coppedge's subjective beliefs or opinions on ultimate legal issues, including, without limitation
10 (i) that Caltech discriminated against him based on his religion (or viewpoints); (ii) that Caltech
11 retaliated against him; and (iii) that the transfer of lead duties to another System Administrator
12 constituted a demotion.

13 DATED: _____

Ernest M. Hiroshige
Judge of the Superior Court

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17 Presented by:

18 PAUL HASTINGS LLP
19 JAMES A. ZAPP
20 CAMERON W. FOX
21 MELINDA A. GORDON

22 By: 
23 CAMERON W. FOX

24 Attorneys for Defendant
25 CALIFORNIA INSTITUTE OF TECHNOLOGY
26
27

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 CITY OF LOS ANGELES AND COUNTY OF LOS) ss:
4 ANGELES)

5 I am employed in the City of Los Angeles and County of Los Angeles, State
6 of California. I am over the age of 18, and not a party to the within action. My business
address is as follows: 515 So. Flower Street, 25th Floor, Los Angeles, CA 90071.

7 On November 30, 2011, I served the foregoing document(s) described as:

8 **DEFENDANT'S NOTICE OF MOTION AND MOTION IN LIMINE #8 ("DML 8")**
9 **FOR AN ORDER EXCLUDING TESTIMONY, EVIDENCE, ARGUMENT AND**
10 **COMMENT REGARDING PLAINTIFF'S SUBJECTIVE OPINIONS AS TO**
11 **ULTIMATE LEGAL ISSUES; MEMORANDUM OF POINTS AND AUTHORITIES**
12 **IN SUPPORT THEREOF; DECLARATION OF CAMERON W. FOX IN SUPPORT**
13 **THEREOF; [PROPOSED] ORDER**

14 on the interested parties as follows:

15 William J. Becker, Jr., Esq.
16 THE BECKER LAW FIRM
17 11500 Olympic Blvd, Suite 400
18 Los Angeles, CA 90064

19 Attorney for Plaintiff
20 DAVID COPPEDGE

21 Email: bbeckerlaw@gmail.com

22 **VIA ELECTRONIC MAIL:**

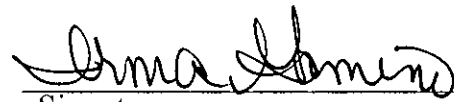
23 By personally emailing the aforementioned document in PDF format to the email address
24 designated for the above listed counsel.

25 **VIA U.S. MAIL:**

26 By placing a true and correct copy thereof in a sealed envelope(s) as addressed above. I
27 am readily familiar with the firm's practice of collection and processing of correspondence
28 for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S.
postal service on November 30, 2011, with postage thereon fully prepaid, at Los Angeles,
California.

29 I declare under penalty of perjury under the laws of the State of California
30 that the above is true and correct and was executed on November 30, 2011, at Los
31 Angeles, California.

32 Irma Gamino
33 Type or Print Name

34 
35 Signature