

1 William J. Becker, Jr., Esq. (SBN 134545)
2 **THE BECKER LAW FIRM**
3 11500 Olympic, Blvd., Suite 400
4 Los Angeles, California 90064
5 Phone: (310) 636-1018
6 Fax: (310) 765-6328
7 Attorneys for Plaintiff, David Coppedge

FILED
Superior Court of California
County of Los Angeles

DEC 14 2011

John A. Clarke, Executive Officer/ Clerk
By: M. Soto, Deputy
MOSES SOTO

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; **GREGO-**
16 **RICHIN**, an Individual; **CLARK A.**
17 **BURGESS**, an Individual; **KEVIN KLENK**,
an Individual; and **Does 1 through 25**, inclu-

18 Defendants.

Case No. BC435600

The Honorable Ernest M. Hiroshige, Dept. 54

**PLAINTIFF DAVID COPPEDGE'S OP-
POSITION TO DEFENDANT'S MO-
TION IN LIMINE NO. 2 FOR AN OR-
DER EXCLUDING TESTIMONY, EVI-
DENCE, ARGUMENT AND COMMENT
REGARDING THE CONTENT OF
DVDS COPPEDGE DISTRIBUTED TO
CO-WORKERS AND FILMS REGARD-
ING ALLEGED HOSTILITY PROPO-
NENTS OF INTELLIGENT DESIGN
HAVE EXPERIENCED; MEMORAN-
DUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

[Declaration of William J. Becker, Jr.;
Exhibits filed and lodged concurrently here-
with]

FSC: February 24, 2012
HEARING TIME: 9:00 a.m.
DEPT: 54

Trial Date: March 7, 2011

1 COMES NOW PLAINTIFF DAVID COPPEDGE ("Coppedge") and hereby opposes De-
2 fendant California Institute of Technology's/Jet Propulsion Laboratory's ("JPL's) Motion in
3 Limine No. 2 for an order excluding testimony, evidence, argument and comment regarding the
4 content of DVDs Coppedge distributed to co-workers and films regarding alleged hostility pro-
5 ponents of intelligent design have experienced.

6 This Opposition is based on the ground that JPL's motion lacks merit, is improperly pre-
7 sented for the purpose of suppressing admissible evidence and would create confusion if granted.

8 DATED: December 13, 2011

THE BECKER LAW FIRM

William J

Becker Jr, Esq

By:

WILLIAM J. BECKER, JR., ESQ.

Attorneys for Plaintiff, DAVID COPPEDGE

Digitally signed by William J Becker Jr.
Esq
DN: cn=William J Becker Jr, Esq, o=THE
BECKER LAW FIRM, ou,
email=bbeckerlaw@gmail.com, c=US
Date: 2011.12.13 19:22:17 -0800

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 A. An Understanding Of Intelligent Design And The Content Of DVDs Is Relevant
4 In This Case.

5 Plaintiff David Coppedge ("Coppedge") loaned the intelligent design DVDs "Unlocking
6 the Mystery of Life" ("UTMOL") and "The Privileged Planet" ("TPP") to co-workers. At least
7 one coworker, Margaret Weisenfelder, complained that she felt harassed by Coppedge after he
8 loaned a copy of UTMOL to her. Two other co-workers to whom Coppedge had loaned DVDs
9 (Carmen Vetter and Scott Edgington) complained about Coppedge's religious dogmatism (Edg-
10 ington borrowed TPP; Vetter can't recall the DVDs she borrowed). Coppedge's office manager,
11 Greg Chin, told Coppedge that numerous co-workers had complained to him about the DVDs,
and argued insistently that they expressed a religious viewpoint.

12 Defendant California Institute of Technology/Jet Propulsion Laboratory ("JPL") conduct-
13 ed an investigation into the allegations of harassment and concluded that its employees found
14 Coppedge's DVDs to be "unwelcome." Coppedge was censored, disciplined and demoted be-
15 cause of his interest in intelligent design and his practice of loaning the DVDs to co-workers.
JPL can claim otherwise, but that will be for the jury to decide.

16 What about the DVDs was so objectionable that they would cause management to crack
17 down on Coppedge's practice of sharing them with co-workers with such force? Only the DVDs
18 can speak to that question adequately.¹

19 B. JPL's Erroneous Description Of A DVD Counsel For Coppedge Provided Its At-
20 torneys Two Years Ago Leaves No Doubt That Jurors Should Not Just Hear Ev-
21 idence About Relevant DVDs But Should Also View Them To Judge The Veraci-
22 ty Of JPL's Witnesses.

23 In the opening paragraph of its brief, JPL unwittingly proves why its motion should be
24 denied and why a jury should not just be allowed to hear testimony about the content of relevant
25 DVDs but especially allowed to view relevant DVDs in this case to evaluate the truthfulness of
JPL's witnesses. JPL erroneously describes "Expelled," a documentary about the loss of intel-

26 ¹ Coppedge has filed his own Motion in Limine to have two of the DVDs shown to the jury. That motion is incorpo-
27 rated as though fully set forth herein. In addition, Coppedge has previously lodged copies of the DVDs UTMOL
and TPP in connection with his opposition to JPL's Motion for Summary Judgment and incorporates those DVDs
28 herein.

1 lectual freedom in America, as "*a comedic film* starring Ben Stein." Is "Expelled: No intelli-
2 gence Allowed" (the full title of the film) "comedic"? Not by a long shot, as anyone who has
3 actually watched it could attest.² Counsel was obviously deceived by the DVD packaging, which
4 suggests the film is comedic, no doubt to capitalize on Stein's comedic fame.

5 "Expelled"'s opening montage features historical footage of the construction of the Ber-
6 lin Wall, depicting the division, isolation and despair caused by barriers to freedom. Stein then
7 introduces the theme of the film by paying homage to freedom as the essence of America, in-
8 cluding the freedoms of speech and religion. Throughout the documentary, Stein interviews var-
9 ious academicians and scientists who lost jobs, tenure and entire careers by doubting evolution-
10 ary theory and supporting intelligent design. Stein documents evolutionary theory as the basis
11 for experimentation in eugenics and Hitler's policy of racial cleansing. He visits the Hadamar
12 Euthanasia Center, a psychiatric hospital used by the Nazis to perform mass sterilizations and
13 mass murder of "undesirable" members of Nazi society, specifically those with physical and
14 mental disabilities. Stein laments towards the end of the film that "We take freedom for granted
15 here in the United States. Freedom is what this country is all about. And a huge part of freedom
16 is freedom of inquiry. But now I'm sorry to say freedom of inquiry in science is being sup-
17 pressed."

18 In November 2009, Coppedge's attorney sent Jim Zapp, JPL's lead counsel, a copy of
19 "Expelled" with the following explanations:

20 "Dear Jim: Please find enclosed three DVDs. *As I mentioned to you in our phone con-*
21 *versation of November 30, 2009, "Expelled" will introduce you to the controversy en-*
22 *veloping intelligent design theory.* "Unlocking the Mysteries of Life" and "The Privi-
23 leged Planet" were DVDs that David shared with friends and co-workers.

24 "Expelled" is an entertaining documentary *exposing an irrational hostility toward Intel-*
25 *ligent Design theory pervasive in academia and the scientific world. This would be a*
26 *good film to watch first.*

27 * * *

28 You will note that there is not one iota of religious advocacy in the documentaries. Yet,
29 *as "Expelled" illustrates, people do come to the topic of Intelligent Design not merely*
30 *with a narrow and false understanding, but with a level of hostility that defies rational*
31 *explanation."*

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² The court can decide for itself by viewing the documentary, a copy of which is separately lodged concurrently herein and incorporated herein by reference. (See Notice of Lodgment, copy of "Expelled: No Intelligence Allowed.")

1 (Exh. No. 1, Letter from W.Becker to J.Zapp; emphasis added.)³

2 In the more than two years that JPL's attorneys have been in possession of this DVD, JPL
3 counsel apparently have not bothered to watch the film. *Comedic*? That characterization draws
4 either from a gross ignorance of the film's content or a poisonous contempt for it. Either expla-
5 nation would be unsatisfactory.

6 Why would JPL's attorneys assert as fact that a film as serious as "Expelled" is "come-
7 dic" if they had watched it?⁴ And, if they hadn't watched it, why would they assert a fact that is
8 false to support their motion? The likely explanation is that they never watched it. Yet having
9 never actually watched it, they formed the erroneous opinion that it was "comedic." They *as-*
10 *sumed* they knew something about the film, and, on the basis of their erroneous *assumptions* they
11 misinformed the court. Knowing that, why should the court trust anything they have to say?

12 This example of how misinformation can poison the outcome of a fact-finding investiga-
13 tion powerfully illustrates why it is vital that jurors view relevant DVDs and not be forced to ac-
14 cept the biased testimony of JPL's untrustworthy witnesses.

15 **II. FACTUAL BACKGROUND**

16 On February 26, 2009, Plaintiff loaned a DVD copy of UTMOL to the Cassini program's
17 digital librarian, Weisenfelder. (Exh. No. 3, Weisenfelder Dep. Tr. 115:17-116:2). After viewing
18 portions of the DVD, Weisenfelder went to Chin complaining that Plaintiff had "harassed" her
19 with his belief in intelligent design. Weisenfelder believed the DVD to contain a religious view-
20 point. (*Id.*, 23:4-10, 32:25-33:10). Reacting to Weisenfelder's complaint, Chin took Plaintiff
21 aside later that day, excoriated him for imposing his religion on others at work and singled out
22 the intelligent design DVDs as representing an unacceptable "personal belief" that should best be
23 reserved for Bible group discussion. (Exh. No. 4, e-mail from Chin to Employee Relations, erro-
24 neously dated 3/2/2009, sent on 3/3/2009). Chin ordered Plaintiff to stop handing out DVDs
25 about intelligent design and told him that if he continued the practice, it could lead to his termi-
26 nation. (Exh. No. 5, Coppedge Dep. Tr. 290:10-15). Weisenfelder later told the HR investigator
27 that Plaintiff "is stepping over the line by discussing religion and politics in the workplace."
28

³ Unless otherwise lodged with the court, all exhibits are attached to the Declaration of William J. Becker, Jr. filed concurrently herewith.

⁴ Counsel appears to have been misled by the DVD's packaging, which aims to cash in on Stein's comedic popularity. The packaging and the blurbs on it do not reflect the tone of the documentary accurately.

1 (Exh. No. 6, Notes of Investigator, 3/19/2009). As a result of HR's investigation, Plaintiff was
2 warned not to discuss his views with others in the workplace:

3 "You acknowledged that you approached various coworkers during work hours *to in-*
4 *quire if they were interested in watching your DVDs which clearly express your per-*
5 *sonal views and you engaged various co-workers in conversations about your personal*
6 *views.*

7 * * *

8 "Effective immediately, you must refrain from discussions which are argumentative, dis-
9 ruptive and/or harassing to your co-workers. Today we have talked about what type of
10 conduct is unwelcome or offensive.... *For example, co-workers found your requests to*
11 *watch your DVDs that express your personal views to be unwelcome."*

12 (Exh. No. 7, Written Warning, 4/13/2009). (emphasis added).)

13 Plaintiff tried hard to convince his supervisors that the DVD he had loaned to Weisen-
14 felder did not convey a religious message:

15 "... [T]his particular DVD [UTMOL] was about science, it was not about religion. You
16 are welcome to watch it if you would like. I'd be glad to give you a copy and you can see
17 exactly what it was about. *There's no way it can be construed as pushing ... religion.*
18 And in fact it's a subject that is of great interest to everyone.... In fact one of the most
19 popular films I like to give out ["The Privileged Planet"] has four JPL scientists in it who
20 were interviewed on lab with the full NASA cooperation with the producer.... This is the
21 kind of material we're talking about."

22 (Exh. No. 2, Transcript of April 13, 2009, meeting). (Emphasis added).

23 Evidence in this case will also show that in 2005 Plaintiff had loaned a copy of TPP to
24 Scott Edgington ("Edgington"), a Cassini program scientist. Edgington told Carmen Vetter
25 ("Vetter") that he was "bothered" by Plaintiff's religious beliefs. (Exh. No. 8, Notes of Investi-
26 gator, 3/17/2009). Vetter conveyed this understanding to Chin, who repeated it to the investiga-
27 tor. (*Id.*) But although Edgington reportedly was troubled by Plaintiff's religious beliefs, Plaintiff
28 had never discussed religion with Edgington. (Exh. No. 9, Edgington Dep. Tr. 27:12-16, 56:6-
12). Edgington testified that he believes intelligent design to be a "religious belief" unworthy of
his attention as a scientist because "it is not a [scientific] theory." (*Id.*, 19:7-20:2).

1 III. ARGUMENT

2 A. Whether JPL's Decision-Makers Engaged In Adverse Employment Actions On
3 The Basis Of A Grossly Erroneous Belief That Coppedge Was Imposing His Re-
4 ligious Dogma On Co-Workers Through The Intelligent Design DVDs Is One Of
5 The Central Issues In This Case.

6 Coppedge was accused of harassment, disciplined, demoted, downgraded and fired be-
7 cause he allegedly "harassed" co-workers with his religious views when he loaned them DVDs
8 or gave them as Christmas gifts. Some of the DVDs, such as "The Case for Christ," which
9 Coppedge gave as a Christmas present to his office manager, Greg Chin, are unquestionably reli-
10 gious in nature. A jury does not need to see a film about Jesus Christ to know that it presents a
11 Christian viewpoint.

12 The DVDs UTMOL and TPP, however, concern intelligent design. JPL's employees
13 perceived intelligent design to be religious in nature, and, based upon that erroneous perception,
14 accused Coppedge of harassing them. Coppedge, however, contends that these documentaries
15 discuss science, not religion, and that he was not offering them as religious advocacy.

16 One of the central issues in this case is whether JPL's decision-makers engaged in ad-
17 verse employment actions on the basis of a grossly erroneous belief that Coppedge was imposing
18 his religious dogma on co-workers through the intelligent design DVDs. If the DVDs were so
19 offensive, why did JPL's decision-makers not bother to determine what made them offensive?
20 Had they done that, they might have questioned the ideological motives of Coppedge's accusers
21 and whether they were hostile to intelligent design (unless, of course, they shared an ideological
22 prejudice). Had JPL's decision-makers questioned the dubious allegations of Coppedge's accus-
23 ers concerning the nature of the DVDs, they would have learned that the DVDs made no reli-
24 gious claims whatsoever and were not otherwise offensive. JPL's decision-makers also would
25 have discovered that Coppedge's accusers engaged in religious stereotyping and that Coppedge
26 was not proselytizing or imposing his views in any way on them.

27 Had JPL's decision-makers taken the basic step of examining the DVDs to ascertain
28 whether they actually featured objectionable religious content, Coppedge might have been spared
the brutal employment consequences of their complacency and inattention to detail. Whether the
DVDs *actually* presented a religious viewpoint or other content that would have justified charges
of harassment or JPL's punitive response is a factual question that cannot be resolved through

1 conflicting and self-serving opinion testimony, but can only be answered by reference to direct
2 evidence – the documentaries themselves.

3 **B. JPL's Contention That The Intelligent Design Films Are Irrelevant Is False, And**
4 **Designed To Mislead The Court About The Nature Of This Case**

5 JPL describes Coppedge's intent to explain intelligent design to the jury as a "trick to
6 promote and publicize intelligent design." (JPL Br. 1:11.) Citing the biased testimony of its
7 witnesses, who are expected to testify that they were not offended by the DVDs, JPL argues that
8 evidence of the content of DVDs handed out to co-workers is irrelevant. JPL's argument is dis-
9 ingenuous – a deft tactic to conceal the truth behind its discriminatory actions. The biased ex-
10 planations of JPL's witnesses for claiming harassment, censoring Coppedge's "personal views"
11 expressed through the DVDs and demoting him because of the hostility the DVDs generated are
12 not presumptively truthful. This case involves false assumptions about what intelligent design is
13 and about what Coppedge was communicating to them. Had JPL's decision-makers been con-
14 siderate of Coppedge's argument defending himself against the insensitive harassment claims of
15 co-workers, they would have taken him up on his offer to watch the DVDs UTMOL and TPP.
16 (See Exh. No. 2, Transcript of Disciplinary Meeting, 4/13/2009, 14:3-15.)⁵ Had they watched
17 the DVDs he offered to show them, they would likely have questioned why Coppedge's accusers
18 were claiming harassment.

19 **C. The DVDs UTMOL AND TPP Are Relevant To Coppedge's Accusers' And**
20 **JPL's Decision-Maker's State Of Mind And Credibility.**

21 A party has the burden of proving the facts essential to his or her cause of action or de-
22 fense. Evid. Code § 500. The burden of producing evidence on a particular fact or issue is de-
23 fined as the obligation to present evidence on that fact or issue in order to avoid an adverse ruling
24 or finding. Evid. Code §§110, 550(a). Thus, the initial burden to produce evidence is on the party
25 having the burden of proof for such fact or issue. Evid. Code §550(b).

26 _____
27 ⁵ Coppedge stated at the meeting: "This particular DVD was about science, it was not about religion. You are wel-
28 come to watch it if you would like. I'd be glad to give you a copy and you can see exactly what it was about. There's
no way it can be construed as pushing you know religion. And in fact it's a subject that is of great interest to every-
one. Alright? In fact one of the most popular films I like to give out has four JPL scientists in it who were inter-
viewed on lab with the full NASA cooperation with the producer. OK? This is the kind of material we're talking
about. And there was not a hint of body language or speech or anything by this person that what I was doing was
unwelcome. She thanked me. She said that looks very interesting. She took it, and left it on my desk, and there was
no follow-up at all. That was the day where in the afternoon Greg accused me of this. So what I ask you Kevin is,
what protections are you giving me to hear that my side of the story is the correct one, rather than the testimony of
these people that Jhertaune is saying?"

1 A party satisfies the burden of producing evidence by introducing evidence sufficient to
2 sustain a finding in his or her favor on the issue involved. *ITT Comm. Fin. v. Tech Power, Inc.*
3 (1996) 43 Cal.App.4th 1551, 1557. A party having the burden of producing evidence need per-
4 suade the court only to the extent of a determination or belief by the court that from the evidence
5 introduced a jury reasonably could find in favor of the party on the issue involved. This means
6 only that some *believable evidence* has been introduced. *Jefferson's California Evidence Bench-*
book, §47.32(3).

7 Evidence of an individual's state of mind, including intent, plan, motive and design, is
8 admissible to explain his acts or conduct. Evid. Code § 1250. Evidence relating to a witness's
9 credibility, including the character of his testimony and the existence or nonexistence of a bias,
10 interest, or other motive, is also admissible. Evid. Code § 780. Coppedge intends to prove that
11 the intelligent design DVDs were not religious in nature and that co-workers erroneously ac-
12 cused him of harassing them due to prejudicial religious stereotyping. Coppedge's accusers felt
13 that the DVDs were so pernicious, they chose the drastic option of reporting a co-employee on
14 the serious charge of harassment. They were "bothered" by Coppedge's "religious beliefs,"
15 which they believed the DVDs promoted. They felt that Coppedge was "crossing a line" with
his religious beliefs and was trying to "convert" them. What explains such hostility?

16 In *Raad v Fairbanks N. Star Borough Sch. Dist.* (9th Cir 2003) 323 F.3d 1185, a substi-
17 tute teacher of Lebanese descent and Muslim faith was accused of making a bomb threat. The
18 teacher claimed the school district's stated reason for disciplining her was based upon discrimi-
19 nation due to her national origin and religion. Although the District presented evidence in sup-
20 port of its claim that that the teacher did, in fact, make a bomb threat, the teacher presented evi-
21 dence from which the court found a rational jury could conclude that she made no bomb threat at
22 all and that the District's contrary interpretation of the event was influenced by stereotypes about
her religion or nationality. The court therefore concluded that there was a genuine issue of fact as
23 to whether the District's stated reason for disciplining the teacher was pretextual. (*Id.* at 1196.)

24 Evidence that intelligent design DVDs *perceived* to be religious dogma requires the per-
25 sonal experience of watching the DVDs and determining whether they contained religious dog-
26 ma. JPL's witnesses claim that Coppedge's intelligent design DVDs conveyed a religious mes-
27 sage. These witnesses base their views on the stereotype that intelligent design is another name
28

1 for Biblical Creationism. Is that an accurate view or a prejudicial view based on stereotype?
2 How is the jury to know unless it watches the DVDs?

3 Coppedge had given Scott Edgington a copy of TPP to watch. Yet, Edgington refused to
4 watch it and never even returned it to Coppedge. Edgington was "bothered" by Coppedge's reli-
5 gious beliefs but had never discussed religion with him. Edgington's attitude is clearly tied to
6 his belief that Coppedge was advocating a religious message when Coppedge loaned him the
7 DVD. Yet Edgington was unabashed about his ignorance of intelligent design, and belief that it
8 is constitutes religious dogma:

9 "Q. What is your understanding of what intelligent design is?

10 A. My understanding is that it is an attempt to ... reform creationism into a science....

11 Q. On what basis did you form that opinion?

12 A. Well, I'm a scientist. I deal with science as a living. I've taken many philosophy clas-
13 ses as an undergrad where -- especially philosophy of science classes. So as a profession,
14 I do not agree that it is a science at all.

15 Q. How much research have you done into studying the theory of intelligent design?

16 A. None. It is not a theory.

17 * * *

18 Q. What do you believe it to be?

19 A. It's a religious belief.

20 Q. ... Have you read any literature from proponents of intelligent design?

21 A. No, I have not.

22 Q. Have you read any peer-reviewed articles about intelligent design that supports it?

23 A. I have not."

24 (Exh. No. 9, Edgington Dep.Tr., 19:7-20:10).

25 Weisenfelder also had made up her mind that intelligent design was a religious view-
26 point. Although she viewed UTMOL, she could not recall anything specific about the film that
27 gave her that impression. (Exh. No. 3, Weisenfelder Dep.Tr. 22:25-23:10). Chin also accused
28 Coppedge of pushing his religion with the DVDs and refused to allow Coppedge the chance to
refute the claim. (Exh. No. 8, Notes of Investigator, 3/5/2009).

These stereotypes cannot be explained in a vacuum. The jury must be able to trust the
evidence. The uninformed assertion that intelligent design is religion offers a jury nothing with
which to weigh the witnesses' credibility or judge the veracity of their testimony. Only by

1 watching the DVDs and determining for themselves whether JPL's employees had a legitimate
2 point in protesting the DVDs as religious dogma, or had some basis rooted in the message of the
3 documentaries to level charges of harassment, can jurors know for sure whether JPL acted on
4 improper, prejudicial stereotyping.

5 **D. The Videos Will Neither Prejudice The JPL, Consume Unnecessary Time Nor**
6 **Mislead Or Confuse The Jury.**

7 Evidence that has *any* tendency to prove a fact at issue in a lawsuit is relevant. Evid.
8 Code § 210. The test of relevancy is whether the evidence tends, logically, naturally, or by rea-
9 sonable inference to establish a material fact, not whether it conclusively proves it. *People v.*
10 *Vernon* (1979) 89 Cal. App. 3d 853 (evidence allowed). It is axiomatic that its weight is for the
11 jury. (*Id.*)

12 Coppedge respectfully submits that evidence of the DVDs is highly probative. This case
13 concerns the hostile attitudes of Coppedge's peers, who harbored hidden prejudices formed on
14 the basis of stereotypes leading to extreme allegations of harassment and severe adverse em-
15 ployment consequences. Coppedge intends to prove their state of mind through the showing of
16 these DVDs. By the time they have seen them, jurors will wonder what all the fuss was about,
17 and, specifically, why Coppedge was ordered to keep his views to himself.

18 JPL cannot legitimately argue that it would be prejudiced by the showing of the DVDs
19 inasmuch as the adverse actions it took were based on its misapprehension of the nature of the
20 DVDs, stubborn unwillingness to accept Coppedge's description of the their non-religious nature
21 and blind acceptance of the claim that Coppedge was forcing his religious views on his accusers.

22 Nor will the showing of these DVDs confuse or mislead the jury as to the issues in this
23 case. The jury will watch what Weisenfelder watched and what she determined to be a religious
24 message. Jurors will see what Edgington, based on his uninformed preconceived notion of what
25 intelligent design is, refused to watch. They will see what Coppedge's supervisors and JPL's HR
26 investigator felt to be irrelevant evidence in reaching serious decisions determinative of
27 Coppedge's employment status. Rather than being confused or misled, jurors will be enlighten-
28 ment in a way the JPL's employees were not. The showing of these DVDs will help jurors un-
derstand whether Coppedge's accusers were justified in accusing him of harassment and whether
JPL was justified in adopting and ratifying the discriminatory religious animus of its employees.

1 Nor will the showing of these DVDs necessitate an undue consumption of time. The run-
2 ning time of each DVD is approximately one hour, far less time than it would take to review a
3 transcript of the documentaries.

4 **E. At The Present Time, Coppedge Does Not Intend To Show Any Additional**
5 **DVDs To The Jury.**

6 Coppedge seeks at this time to show UTMOL and TPP to the jury because they were
7 loaned to individuals who felt harassed by them. Coppedge reserves the right to show other
8 DVDs to the jury and will make an offer of proof at the appropriate time.

9 **IV. CONCLUSION**

10 The content of the DVDs Coppedge loaned to co-workers and the messages they convey
11 are disputed in this case. The nature of their content is material to a central issue in this case:
12 whether JPL was justified in reprimanding, censoring and demoting Coppedge for harassing co-
13 workers. Just as JPL's attorneys falsely assumed the movie "Expelled" was comedic, a jury will
14 not know what to believe about UTMOL and TPP. They will be left only with false assumptions,
15 that lead to false judgments, and may even be taken in by the prejudicial stereotypes to which
16 JPL's employees have succumbed. Coppedge will be substantially prejudiced if the jury is
17 blinded by the exclusion of this evidence.

18 Understanding the DVDs' content was both fundamental and indispensable to making
19 critical decisions affecting Coppedge's job status. Justice Brandeis famously believed that sun-
20 shine is the best disinfectant, meaning that openness and transparency is the surest way of getting
21 to the truth. JPL favored ignorance over enlightenment by supporting the blind prejudice of
22 Coppedge's accusers while denying Coppedge an opportunity to be understood. By refusing to
23 consider the nature of the DVDs, JPL's decision-makers falsely assumed they presented a reli-
24 gious message. Testimony alone cannot be trusted to explain the mental state of JPL's employ-
25 ees and whether they were blinded by prejudice or by sunshine. Only by viewing the DVDs will
26 the truth from which JPL sought to shield itself be revealed to jurors.

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THE BECKER LAW FIRM

William J

Becker Jr, Esq

By:

WILLIAM J. BECKER, JR., ESQ.

Attorneys for Plaintiff, DAVID COPPEDGE

Digitally signed by William J Becker
Jr, Esq
DN: cn=William J Becker Jr, Esq,
o=THE BECKER LAW FIRM, ou,
email=bbeckerlaw@gmail.com, c=US
Date: 2011.12.13 19:22:27 -0800