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FILED
Superior Court of California
County of Los Angeles

DEC 14 2011

John A. Clarke, Executive Officer/Clerk
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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 Plaintiff,

13 vs.

14 **JET PROPULSION LABORATORY**, form
15 unknown; **CALIFORNIA INSTITUTE OF**
16 **TECHNOLOGY**, form unknown; **GREGO-**
17 **RY CHIN**, an Individual; **CLARK A.**
18 **BURGESS**, an Individual; **KEVIN KLENK**,
an Individual; and **Does 1 through 25**, inclu-

19 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. MOTION IN
LIMINE #3 FOR AN ORDER EXCLUD-
ING ANY CONTENTION THAT
PLAINTIFF'S CONDUCT WAS JUSTI-
FIED BECAUSE OF NASA'S AND/OR
JPL'S PROGRAMS AND RESEARCH
REGARDING THE ORIGINS OF LIFE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THERE-
OF**

[Declaration of William J. Becker, Jr.;
Exhibits filed concurrently herewith]

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. #3 for an order excluding any contention that plaintiff's conduct was justified be-
4 cause of NASA's and/or JPL's programs and research regarding the origins of life.
5

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

Digitally signed by William J
Becker Jr, Esq

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Date: 2011.12.13 12:19:08 -08'00'

WILLIAM J. BECKER, JR., ESQ.

Attorneys for Plaintiff, DAVID COPPEDGE

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 There is nothing untoward or unusual about discussing the origin of life, the solar system
4 or the universe at JPL. As the core focus of JPL's famed space programs, the subject of origins
5 would seem not just an appropriate topic for discussion within all employee ranks, but something
6 to be encouraged – certainly not grounds for discipline. As a 12-year veteran of the Cassini-
7 Huygen mission to Saturn program ("Cassini"), Plaintiff David Coppedge ("Coppedge") had no
8 reason to believe that discussions about the origin of the material universe and life on Earth
9 would be off limits at an organization dedicated to exploring those origins. But when Coppedge
10 sought to interest co-workers in DVDs on the subject, he was in for a rude awakening. Like the
11 target of a restless mob shouting "Kill the beast!", Coppedge was accused of pushing his religion
12 on people, then charged with harassment and ordered to keep his personal views to himself *un-*
13 *less others brought the subject up first!* (Exh. No. 1, Written Warning.)¹ JPL's decision-
14 makers singled out Coppedge's discussions about intelligent design and his loaning out of DVDs
15 to explain their disciplinary actions.² There can be little doubt that such a discrepancy deserves
16 an explanation and that the jury should be given sufficient facts to makes sense of it.

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19 JPL contends the topic of the DVDs and its relationship to JPL's *raison d'etre* have no
20 relevant significance in this lawsuit. It cries foul that Coppedge would try to point out the ab-
21 surdity of JPL's order. But JPL's concern is not whether the jury will be *confused*; just the op-
22 posite. JPL is concerned the jury will become informed.

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24
25 ¹ All exhibits referenced are attached to the Declaration of William J. Becker, Jr., filed concurrently herewith.

26 ² "You acknowledged that you approached various coworkers during work hours to inquire if they were interested in
27 watching your DVDs which clearly express your personal views and you engaged various co-workers in conversa-
28 tions about your personal views.... Effective immediately, you must refrain from discussions which are argumenta-
tive, disruptive and/or harassing to your co-workers. Today we have talked about what type of conduct is unwel-
come or offensive.... For example, co-workers found your requests to watch your DVDs that express your personal
views to be unwelcome." (Exh. No. 1, Written Warning.)

1 Evidence that the message of the documentaries related to life's origin and the origin of
2 the universe and was therefore consistent with JPL's space explorations is relevant in this case
3 for at least five reasons: (1) to show Coppedge's state of mind – why he sought to share the
4 DVDs with co-workers, who he reasonably believed would be interested in them; (2) to show his
5 accusers' state of mind – why they would have accused him of harassment on the basis of the
6 films' content; (3) to show the decision-makers' state of mind – why they would rubberstamp the
7 erroneous allegations made by Coppedge's accusers against him that he was pushing his religion
8 with the DVDs or expressing improper "personal views"; (4) to discredit JPL's contention that it
9 was justified in failing to determine whether the documentaries and Coppedge's interest in intel-
10 ligent design conformed to acceptable standards of conduct at JPL; and (5) to discredit the testi-
11 mony of witnesses who considered the films and Coppedge's interest in intelligent design to be
12 religious dogma.
13
14

15 **II. FACTUAL BACKGROUND³**

16 For 14 years, Coppedge was a systems administrator on JPL's Cassini-Huygen mission to
17 Saturn program ("Cassini") – the largest interplanetary mission in history. In his role as "team
18 lead" for systems administration, he promoted JPL and the Cassini program to schools, civic or-
19 ganizations and other groups through community outreach presentations.
20

21 JPL is recognized the world over for its search for evidence of life within our planetary
22 system. The results of the Cassini mission were expected to give fresh impetus to the theories of
23 the origin of life on Earth. (Exh. No. 2, Mitchell Dep.Tr., 69:11-20.) Cassini's study of the Ti-
24 tan moon was expected to yield fundamental information on the processes that led to the origin
25 of life on Earth. (*Id.*, 70:10-71:2.) In fact, JPL is in the *business* of searching for clues to the
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27 ³ Coppedge hereby incorporates by reference herein the "Factual Background" sections of his Oppositions to Mo-
28 tions in Limine Nos. 1 (viewpoint discrimination) and 2 (DVDs).

1 solar system's origins. (*Id.*, 72:10-19.) Its PlanetQuest program contemplates a "bold series of
2 missions to find and characterize new worlds" similar to Earth, with the ability to sustain life.
3 (Exh. No. 3, PlanetQuest web pages.)

4 When Coppedge was ordered to stop discussing intelligent design and loaning out DVDs,
5 he was puzzled: "... [W]hat better place [to discuss origins] than Jet Propulsion Laboratory,
6 which is talking about origins – the origin of the universe, the origin of life, the origin of the
7 earth, the origin of intelligence – all the time in their press releases?" (Exh. No. 4, Coppedge
8 Dep.Tr., 219:9-14.) Coppedge had witnessed other members of the Cassini program speak about
9 intelligent design, origins and life. (*Id.*, 227:8-10.) As an outreach speaker, he believed he was
10 as much entitled to discussing those topics on campus as anyone else. (*Id.*, 227:10-12.)

11
12 **III. COPPEDGE'S DISCUSSIONS ABOUT INTELLIGENT DESIGN AND THE**
13 **DVDS UTMOL AND TPP ARE RELEVANT TO SHOW STATE OF MIND AND**
14 **TO DISCREDIT JPL'S WITNESSES.**
15

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

21
22 A party satisfies the burden of producing evidence by introducing evidence sufficient to
23 sustain a finding in his or her favor on the issue involved. *ITT Comm. Fin. v. Tech Power, Inc.*
24 (1996) 43 Cal.App.4th 1551, 1557. A party having the burden of producing evidence need per-
25 suade the court only to the extent of a determination or belief by the court that from the evidence
26 introduced a jury reasonably could find in favor of the party on the issue involved. This means
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1 only that some *believable evidence* has been introduced. *Jefferson's California Evidence Bench-*
2 *book*, §47.32(3).

3 Evidence of an individual's state of mind, including intent, plan, motive and design, is
4 admissible to explain his acts or conduct. Evid. Code § 1250. Evidence relating to a witness's
5 credibility, including the character of his testimony and the existence or nonexistence of a bias,
6 interest, or other motive, is also admissible. Evid. Code § 780.

7
8 Coppedge's accusers felt that the DVDs were so provocative, they took the drastic step of
9 reporting a co-employee on the serious charge of harassment. They were "bothered" by
10 Coppedge's "religious beliefs," which they believed the DVDs presented. They felt that
11 Coppedge was "crossing a line" with his religious beliefs and was trying to "convert" them.
12 What explains such religious animus?

13
14 Consistent with JPL's mission, intelligent design and the DVDs Coppedge loaned out
15 concerning it delve into questions about the development of life and the universe. Indeed, sever-
16 al JPL scientists even appear in one of the DVDs (TPP). Coppedge's discussing these origins
17 questions was not unrelated to his employer's interests. A jury is entitled to hear evidence show-
18 ing the mental state of all concerned: whether Coppedge's belief that the DVDs and discussions
19 about intelligent design were appropriate, whether his accusers' hostility toward intelligent de-
20 sign and the DVDs was justified and whether the decision-makers' actions adopted and ratified
21 claims of harassment aroused by discriminatory animus.

22 **IV. CONCLUSION**

23
24 JPL is reaching for the stars with its transparent efforts to keep relevant evidence hidden
25 from the jurors. It claims that the jury will become confused by evidence showing that
26 Coppedge was discussing issues related to JPL's mission. It wants all evidence of its origins
27
28

1 statements (including the testimony of Cassini's program manager and JPL's manifold press re-
2 leases) and Coppedge's DVDs beyond the jurors' reach.

3 JPL correctly fears that this evidence exposing the mental state of each of the actors who
4 played a part in this unnecessary drama will also expose the carelessness of its HR investigation
5 and the dubious nature of JPL's disciplinary decisions. But JPL's fears do not justify the exclu-
6 sion of relevant evidence. A jury should be able to decide whether Coppedge's discussing ori-
7 gins – in an organization devoted to exploring origins – could ever be considered “pushing reli-
8 gion” or otherwise “harassing” conduct.
9

10 For the reasons stated, the court is respectfully urged to deny JPL's motion.

11 DATED: December 13, 2011

THE BECKER LAW FIRM

12 William J
13 Becker Jr, Esq

14 By:

15 WILLIAM J. BECKER, JR., ESQ.
16 Attorneys for Plaintiff, DAVID COPPEDGE
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