

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 27 2011

John A. Clark, Clerk

By GLORIFETTA ROBINSON Deputy

8 Attorneys for Defendant
9 CALIFORNIA INSTITUTE OF TECHNOLOGY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12
13 DAVID COPPEDGE, an Individual,
14 Plaintiff,

15 vs.

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

CASE NO. BC 435600

REPLY ON MOTION *IN LIMINE* #1

**DEFENDANT CALIFORNIA INSTITUTE
OF TECHNOLOGY'S REPLY IN
SUPPORT OF MOTION *IN LIMINE* #1
("DML 1") FOR AN ORDER EXCLUDING
TESTIMONY, EVIDENCE, ARGUMENT
AND COMMENT REGARDING
VIEWPOINT DISCRIMINATION**

FSC Date: February 24, 2012
Time: 9:00 a.m.
Place: Department 54
Judge: Hon. Ernest M. Hiroshige

Trial Date: March 7, 2012

12/27/11

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Caltech accurately anticipated that Coppedge wants to testify and argue that he
4 experienced viewpoint discrimination. What Caltech did not anticipate is that Coppedge would
5 agree with Caltech on the critical point here: viewpoint discrimination “addresses government
6 action, and falls under First Amendment jurisprudence.” Opp’n at 3. Coppedge also does not
7 dispute either that Caltech is a private entity, meaning that government speech restrictions do not
8 apply, or that he did not bring a claim for “upper-case Viewpoint Discrimination,” as he puts it.
9 Opp’n at 3. That Coppedge thinks his beliefs were a basis for alleged religious discrimination
10 does not allow him to characterize that claim as “lower-case viewpoint discrimination,” a doctrine
11 he has constructed out of whole cloth.

12 Meanwhile, Coppedge’s insinuation that no undue prejudice will result because the jury
13 “lacks understanding of First Amendment jurisprudence” is insulting to the jury and misses the
14 point. Regardless of their legal knowledge or training, jurors could reasonably believe that the
15 use of the separate terms, “religious discrimination” and “viewpoint discrimination,” refers to two
16 different legal claims. Moreover, the term “viewpoint” is so broad that jurors could misinterpret
17 it to mean that Coppedge could be discriminated against on the basis of any personal belief he
18 might hold, including, for example, his personal belief regarding Proposition 8, the Gay Marriage
19 Initiative – when the Court already has granted summary adjudication in favor of Caltech as to
20 Coppedge’s Labor Code claim under Section 1101.

21 Coppedge also unsuccessfully argues that testifying that he experienced viewpoint
22 discrimination is proper opinion testimony; as discussed herein and in Caltech’s Motion *in Limine*
23 No. 8, that is not so.¹ The remainder of Coppedge’s Opposition simply argues the merits of his
24 case, and in addition to being unpersuasive, has no bearing on the admissibility issues presented
25 by this motion.

26
27 ¹ Defendant’s Motion *In Limine* #8 (“DML 8”) For An Order Excluding Testimony, Evidence,
28 Argument And Comment Regarding Plaintiff’s Subjective Opinions As To Ultimate Legal Issues,
and its reply brief supporting same, are incorporated herein by reference.

1 **II. DISCUSSION**

2 **A. Coppedge Concedes That The Legal Doctrine Of Viewpoint Discrimination Is**
3 **Not At Issue Here.**

4 Coppedge freely admits that this case is not about “*that* viewpoint discrimination (First
5 Amendment viewpoint discrimination).” Opp’n at 1 (emphasis in original). Instead, he
6 erroneously suggests that there is another kind of viewpoint discrimination, which he defines as
7 “discrimination based on the suppression of ideas.” Opp’n at 3. Coppedge cites no authority for
8 this definition, because there is none. He made it up. There is only one kind of viewpoint
9 discrimination – the one recognized by the United States Supreme Court in *Rosenberger v. Rector*
10 *and Visitors of University of Virginia*, 515 U.S. 819 (1995) and elsewhere. *Id.* at 829 (“The
11 *government* must abstain from regulating speech when the specific motivating ideology or the
12 opinion or perspective of the speaker is the rationale for the restriction.”) (emphasis added).

13 That Coppedge believes his views were a basis for religious discrimination does not
14 entitle him to invoke a legal doctrine with a similar-sounding name, but no actual legal
15 application. Coppedge spends a large portion of his Opposition improperly arguing the merits of
16 his case: that he experienced religious discrimination and retaliation because of what he was
17 saying, not how. *See, e.g.*, Opp’n at 2-3, 5. Caltech disputes this, and maintains that it is the
18 manner of Coppedge’s speech that is at issue, not its content.² Regardless, all of the facts
19 pertaining to Coppedge’s religious discrimination and retaliation claims can be explored at trial
20 without reference to “viewpoint discrimination.” For example, Coppedge will likely testify at
21 trial that Chin told him he was “pushing [his] religious views at work.” Opp’n at 1-2. Permitting
22 Coppedge then to testify that this constitutes “viewpoint discrimination” adds no probative value
23
24

25 ² As Caltech explained in its moving papers, Burgess and Klenk told Coppedge that his written
26 warning concerned the *manner* in which he had interacted with his co-workers, not the substance
27 of what he had discussed. Deposition of David Coppedge at 395:12-20. *See* Exhibit A to the
28 Declaration of Cameron W. Fox (“Fox Decl.”), in support of Caltech’s moving papers. All cited
deposition testimony is attached to the Fox Decl. Klenk told him they had “no issue with people
discussing religion and politics in the office so long as it’s not unwelcome or disruptive.”
Deposition of Kevin Klenk at 313:25-314:14; 468:25-469:11; Ex. 44, at 7. Fox Decl., Ex. C.

1 whatsoever – particularly when he admits that viewpoint discrimination jurisprudence does not
2 apply here.³

3 **B. Coppedge Fails To Show That He Can Testify About Experiencing Viewpoint**
4 **Discrimination.**

5 As Caltech established in its Motion *in Limine* #8 to exclude Coppedge’s subjective
6 opinions as to ultimate legal issues, and its reply brief in support, such testimony is inappropriate
7 even where the topics are actually at issue in the case.⁴ Here, Coppedge does not even have a
8 claim for viewpoint discrimination. If Coppedge cannot testify that he experienced religious
9 discrimination or retaliation – and he cannot – he certainly should not be permitted to tell the jury
10 that he experienced viewpoint discrimination.

11 Coppedge nevertheless claims that he can offer such testimony because it goes to state of
12 mind, and a witness can testify as to his or her own state of mind if it is relevant to the case.
13 Opp’n at 6. Assuming *arguendo* that Coppedge, a non-lawyer, actually believed he was
14 experiencing “viewpoint discrimination,” and further assuming that this is a “state of mind,” it
15 remains inadmissible, because it is irrelevant to the issues in the case. There is no claim for
16 viewpoint discrimination here, and even if there were, it is for the jury to decide whether
17 discrimination took place, not Coppedge.

18 **C. Caltech Established That Viewpoint Discrimination Should Be Excluded**
19 **Under California Evidence Code Section 352, And Coppedge Does Not Show**
20 **Otherwise.**

21 As Caltech explained in its moving papers, and above, viewpoint discrimination has no
22 probative value here; Coppedge essentially concedes the point, by acknowledging that the legal
23 doctrine of viewpoint discrimination is not at issue in this case. Caltech also established in its
24 moving papers that exploration of viewpoint discrimination at trial will confuse and mislead the

25 ³ Coppedge questions why Caltech does not seek to preclude the term “civil rights.” Opp’n at 4.
26 The concept of “civil rights,” while irrelevant here, is sufficiently colloquial that Caltech does not
27 anticipate juror confusion. That said, if Coppedge attempts to treat “civil rights violations” as a
28 legal claim at trial, Caltech will object accordingly.

⁴ Coppedge’s citation to *Wells Truckways v. Cebrian*, 122 Cal. App. 2d 666 (1954) is inapposite;
the case concerns expert testimony, not lay testimony, and therefore has no bearing on whether
Coppedge himself may testify to experiencing viewpoint discrimination.

1 jurors, who may think this is another claim at issue.⁵ It will also create undue prejudice to
2 Caltech, by providing Coppedge with ammunition to portray Caltech as committing multiple
3 wrongs (when in fact, it committed none).

4 Coppedge fails to dispute Caltech's showing of confusion and undue prejudice. He
5 suggests that jurors will not be familiar with the First Amendment implications of "viewpoint
6 discrimination," and that if they do "know enough to spot the distinction, they ought to be
7 presumed to know enough to assess the evidence correctly." Opp'n at 7. This argument is
8 condescending to the jury and fails to address Caltech's point, in addition to being nonsensical.
9 First, jurors are savvy. They will observe that Coppedge is arguing that he experienced two
10 different kinds of discrimination, and assume that he has two discrimination claims, regardless of
11 their legal knowledge or training. Second, Coppedge's argument makes no sense. Jurors without
12 legal training will assume there are two different discrimination claims, because they would have
13 no reason to assume that Coppedge is using "viewpoint discrimination" as a way to refer to his
14 religious discrimination claim. Jurors with legal training could be even more confused, because
15 they will wonder whether Coppedge actually does have a First Amendment claim or not –
16 meaning Caltech will have to waste trial time explaining why free speech is not at issue here.

17 **III. CONCLUSION**

18 For the foregoing reasons, and those set forth in its moving papers, Caltech respectfully
19 requests that the Court grant its Motion and preclude Coppedge, his counsel and witnesses from
20 making reference to, commenting upon, introducing testimony or documents regarding, or
21 presenting any argument pertaining to viewpoint discrimination, including without limitation any
22 testimony by Coppedge that he experienced viewpoint discrimination.

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27 ⁵ As discussed above, it is not. Coppedge cannot bring a legal claim based on just any of his
28 personal views; it is only if those views were perceived as religious that he may pursue his claims
under FEHA and the California Constitution.

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DATED: December 27, 2011

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

By: Cameron W Fox
CAMERON W. FOX

Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

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 of
6 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 December 27, 2011, I served the foregoing document(s) described as:

8 **REPLY ON MOTION *IN LIMINE* #1**

9 **DEFENDANT CALIFORNIA INSTITUTE OF TECHNOLOGY'S REPLY IN**
10 **SUPPORT OF MOTION *IN LIMINE* #1 ("DML 1") FOR AN ORDER EXCLUDING**
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VIEWPOINT DISCRIMINATION

12 on the interested parties as follows:

13 William J. Becker, Jr., Esq.
14 THE BECKER LAW FIRM
11500 Olympic Blvd, Suite 400
Los Angeles, CA 90064

Attorney for Plaintiff
DAVID COPPEDGE

15 Email: bbeckerlaw@gmail.com

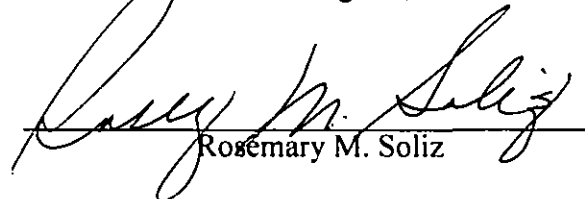
16 **VIA ELECTRONIC MAIL:**

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

19 **VIA U.S. MAIL:**

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

23 I declare under penalty of perjury under the laws of the State of California that the
above is true and correct and was executed on December 27, 2011, at Los Angeles, California.

24
25 
26 _____
Rosemary M. Soliz

11/27/2011