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FILED
LOS ANGELES SUPERIOR COURT

JAN 27 2012

JOHN A. CLARKE, CLERK
BY RAUL SANCHEZ, DEPUTY

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 **RYS CHIN**, an Individual; **CLARK A.**
17 **BURGESS**, an Individual; **KEVIN KLENK**,
an Individual; and **Does 1 through 25**, inclu-
sive,

18 Defendants.

Case No. BC435600

The Honorable Ernest M. Hiroshige, Dept. 54

**NOTICE OF MOTION AND MOTION
IN LIMINE NO. 4 TO EXCLUDE REF-
ERENCE TO THIRD PARTY ORGANI-
ZATIONS INTERESTED IN THE OUT-
COME OF THIS CASE, OR, ALTER-
NATIVELY, TO ALLOW PLAINTIFF
TO PRODUCE THIRD PARTIES REP-
RESENTATIVES AS REBUTTAL WIT-
NESSES; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

[Decl. of W.Becker, Exhs. , Appdx. of Non-
Calif. Auth's., filed concurrently herewith]

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

Trial Date: March 7, 2012

BY FAX

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26 ///

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 24, 2012, at 9:00 a.m., or as soon after that
3 date as the matter can be heard, in Department "54" of the above-entitled court, located at 111 N.
4 Hill St, Los Angeles, California 90012, Plaintiff David Coppedge ("Plaintiff"), will move the
5 Court for an Order in limine to exclude any and all reference to the Discovery Institute, the Alli-
6 ance Defense Fund or other third parties interested in the outcome of this case for the purpose of
7 claiming that Coppedge was motivated to file this action to promote or publicize intelligent de-
8 sign or to expose counsel's affiliations with the organizations. Alternatively, Plaintiff requests
9 that it be permitted to respond to such evidence with the rebuttal testimony of organizational rep-
10 resentatives.
11

12 This motion is made on the grounds that such evidence is irrelevant, would be presented
13 for an improper purpose and would confuse the issues and mislead the jury. On November 24,
14 2012, counsel for Plaintiff satisfied the meet and confer requirements of Local Rule 3.57 by
15 speaking with counsel for Defendant regarding the substance of this Motion. *See* Declaration of
16 William J. Becker, Jr. Defendant's counsel stated that Defendant would not agree to limit the
17 evidence at trial in a manner consistent with the limitations requested in this Motion. *Id.*
18

19 The Motion will be based on this notice of motion, on the attached Memorandum of
20 Points and Authorities, the Declaration of William J. Becker, Jr., and Exhibits attached thereto in
21 Support Thereof; all papers, pleadings, and records on file in this action and on any evidence
22 presented at the hearing of the motion.
23

24 DATED: January 27, 2012

THE BECKER LAW FIRM

William J Becker

By: Jr, Esq

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WILLIAM J. BECKER, JR., ESQ.

Attorneys for Plaintiff, DAVID COPPEDGE

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 In its opposition to Plaintiff David Coppedge's Motion in Limine No. 1, Defendant JPL
4 stated: "From the outset, Coppedge and his supporters at the Alliance Defense Fund and the
5 Discovery Institute have viewed this case as a means to promote and publicize intelligent de-
6 sign." (JPL Opp.Br. To Pl.'s Mot. in Lim. #1, 2:22.) Counsel for Coppedge is an attorney that
7 has represented the Discovery Institute ("DI"), a think tank in Seattle that advocates for intelli-
8 gent design, among other things. Coppedge's attorney is assisted in this case by DI personnel,
9 some of whom may even be present at trial to assist him. They provide uncompensated legal
10 staff assistance, assistance educating counsel about intelligent design and the history of discrimi-
11 nation against intelligent design proponents and other work product aid.
12

13
14 Coppedge's counsel also applied for and was issued a grant through the ADF to under-
15 write some of Coppedge's costs in this case. The Alliance Defense Fund ("ADF") has publicly
16 supported this case (<http://www.adfmedia.org/News/PRDetail/4063>). The DI is publicizing it on
17 its web sites. But so are opponents of intelligent design, such as the National Center for Science
18 Education, which is posting the pleadings in this case on its web site ([http://ncse.com/creation-](http://ncse.com/creation-ism/legal/coppedge-v-jpl)
19 [ism/legal/coppedge-v-jpl](http://ncse.com/creation-ism/legal/coppedge-v-jpl)), as well as bloggers, who are republishing the pleadings and offering
20 generally superficial commentary on their web sites and proving Plaintiff's point in this case:
21 that militant hostility toward intelligent design (often puerile), the spreading of misinformation
22 and ad hominem attacks by intelligent design's detractors are a common reaction to support for
23 intelligent design.
24

25 *Who* supports a party or position in this lawsuit is entirely irrelevant to whether JPL dis-
26 criminated and retaliated against Coppedge. The identity of supporting organizations is just as
27 irrelevant here as is the identity and position of an *amicus curiae* in the appellate courts. There is
28

1 nothing sordid or nefarious about connections between the organizations and Coppedge. Indeed,
2 Coppedge's attorney specializes in religious liberty and free speech cases. He operates without a
3 staff, and is allied with various organizations to provide both cost and staff support assistance on
4 his cases. Coppedge's attorney is proud of his affiliations with the DI and the ADF and believes
5 it would be practically impossible for someone discriminated against for the reasons Coppedge
6 was to find competent legal help without the support of organizations like them.
7

8 But the interest of the DI and the ADF in the outcome of this case and their affiliations
9 with Coppedge's attorney are irrelevant.

10 **II. MOTIONS IN LIMINE**

11 This motion is authorized pursuant to Local Rule 3.25(h)(2), which provides:

12 "In a direct calendar case, the parties must file and serve any trial preparation motions
13 and dispositive motions, other than summary judgment motions, including motions in
14 limine or bifurcation motion, with timely statutory notice so as to be heard on the day of
the final status."

15 **III. LEGAL STANDARD**

16 The court in its discretion may exclude evidence if its probative value is substantially
17 outweighed by the probability that its admission will (a) necessitate undue consumption of time
18 or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the
19 jury. Evid. Code § 352.
20

21 **IV. ALLOWING JPL TO OFFER EVIDENCE OF THIRD PARTY INTEREST HAS 22 NO PROBATIVE VALUE AND IS CALCULATED TO ARGUE SOME KIND OF GUILT BY ASSOCIATION ARGUMENT.**

23 JPL wants to suggest to the jury that this case was brought for the sole purpose of pro-
24 moting and publicizing intelligent design – and that Coppedge has no better motive for suing his
25 employer after being disciplined, demoted and fired. Such evidence is intended to mislead the
26 jury and to confuse the issues.
27
28

1 Suppose Coppedge were an African-American discriminated against on the basis of race
2 and received support in the case by the NAACP. Or a woman sexually harassed and supported
3 in the case by NOW. What if Amnesty International or the ACLU were supporting this case?
4 Would the identities of the supporters prove any fact in the case? Not at all. *See Neonatology*
5 *Associates, P.A. v. C.I.R.* (3d Cir. 2002) 293 F.3d 128, 129-134 (discussing the policy of nondis-
6 crimination against viewpoints in the courts and approving the policy of permitting amici briefs
7 from third parties regardless of the parties' positions on the merits); *American Civil Rights*
8 *Foundation v. Los Angeles Unified School Dist.* (2008) 169 Cal.App.4th 436, 437 (accepting
9 briefs on opposite sides from diverse interested amici, e.g., Pacific Legal Foundation and the
10 NAACP).

11
12 By suggesting that Coppedge's lawsuit was brought solely to promote intelligent design
13 ideas, JPL would actually be proving JPL was guilty of stereotyping and tarring Christians and
14 intelligent design proponents on the basis of the support and encouragement they get from out-
15 side groups.

16
17 Counsel for Coppedge has placed JPL's attorneys on notice that if they intend to argue to
18 the jury that "[f]rom the outset, Coppedge and his supporters at the Alliance Defense Fund and
19 the Discovery Institute have viewed this case as a means to promote and publicize intelligent de-
20 sign," Coppedge will call representatives of the DI and the ADF as rebuttal witnesses to explain
21 just why they support this case. Their testimony will benefit Coppedge's case, because it will
22 only bolster his claims that he was discriminated against on the basis of his religious views and
23 his support for intelligent design.

24
25 **V. CONCLUSION**

26 JPL's beliefs that Coppedge brought this action simply to promote and publicize intelli-
27 gent design and that Coppedge's attorney's affiliations with the DI and the ADF are somehow
28

1 relevant to the issues in this case are baseless and irrelevant. But JPL has insisted on opposing
2 this motion. Coppedge therefore urges the Court to either grant its request to exclude all evi-
3 dence identifying the DI, the ADF and any other third party interested in the outcome of this case
4 for the purpose of claiming that Coppedge was motivated to file this action to promote or publi-
5 cize intelligent design or to allow Coppedge to present rebuttal testimony from representatives of
6 the DI and the ADF. The latter option would assist the jury to understand the issues underlying
7 JPL's animus.
8

9 DATED: January 27, 2012

THE BECKER LAW FIRM

William J
Becker Jr, Esq

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