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FILED
LOS ANGELES SUPERIOR COURT

FEB 15 2012

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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;
16 **GREGORY CHIN**, an Individual; **CLARK**
17 **A. BURGESS**, an Individual; **KEVIN**
18 **KLENK**, an Individual; and **Does 1** through
19 **25**, inclusive,

20 Defendants.

Case No. BC435600

BY FAX
The Honorable Ernest M. Hiroshige, Dept. 54

**PLAINTIFF DAVID COPPEDGE'S
REPLY TO DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
MOTION IN LIMINE NO. 3 RE:
POLITICAL ACTIVITY;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

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

Trial Date: March 7, 2012

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22 COMES NOW PLAINTIFF David Coppedge and hereby submits his Reply to Defendant
23 California Institute of Technology's ("JPL's) Opposition to Plaintiff's Motion in Limine No. 3
24 Re: Political Activity as follows:
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. PLAINTIFF'S MOTIONS IN LIMINE ARE PROCEDURALLY FAVORED AND**
3 **NOT UNTIMELY.**

4 Plaintiff's instant Motion in Limine was not filed in violation of any court order or court
5 rule. Defendant's protest of the instant Motion asserts untimeliness, but that assertion is insuffi-
6 cient. To prevail here, Defendant "must demonstrate not only that the notice was defective, but
7 that he or she was *prejudiced*.... Procedural defects which do not affect the substantial rights of
8 the parties do not constitute reversible error." *Reedy v. Bussell* (2007) 148 Cal.App.4th 1272,
9 1288-1289 (internal quotations and citations omitted).
10

11 All of Plaintiff's Motions in Limine are brought to facilitate the smooth delivery of rele-
12 vant and not unduly prejudicial evidence at trial. Motions in limine avoid problems of trying to
13 "unring the bell," and they "permit more careful consideration of evidentiary issues than would
14 take place in the heat of battle during trial. They minimize sidebar conferences and disruptions
15 during trial, allowing for an uninterrupted flow of evidence. Finally, by resolving potentially crit-
16 ical issues at the outset, they enhance the efficiency of trials and promote settlements." *Kelly v.*
17 *New West Federal Savings* (1996) 49 Cal.App.4th 659, 669 (citations omitted), quoted and fol-
18 lowed by *Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365, 1386. If Plaintiff's Motions
19 are denied solely on timeliness grounds, then the same objections will be raised during trial any-
20 way. Resolving the evidentiary issues on their merits before trial benefits the court, all parties,
21 and the jury.
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23 **II. DEFENDANT JPL AGREES TO FOREGO EVIDENCE AND ARGUMENT RE:**
24 **COPPEDGE'S POLITICAL ACTIVITIES.**

25 Plaintiff Coppedge's instant Motion in Limine No. 3 on page 5 makes this argument and
26 request:
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“JPL should not be allowed to say it had a right the law says it does not have, i.e. to interfere with an employee’s political speech activities. For all the reasons stated herein, Plaintiff respectfully urges this Court to enter an order *precluding JPL from* introducing testimony or documents, or presenting any argument, *suggesting it had a right to interfere with Coppedge’s political activities.*”

(Emphasis added.)

Agreeing with Plaintiff’s request, Defendant’s “Opposition” at page 1, lines 10-11, states:

“Caltech has *never argued that it had a “right” to interfere with Coppedge’s political activities, nor does it plan to do so at trial.*”

(Emphasis added.)

Defendant’s “Opposition” restates its agreement, and thus only nominally requests denial of the instant motion (emphasis added):

“Although Caltech has *no intention of arguing that it had a “right” to interfere with any particular kind of speech, political or otherwise*, there are no grounds for granting this Motion.”

(Def’t.’s Opp. Br., 6:3-4, emphasis added.)

III. THIS COURT SHOULD EXERCISE ITS DISCRETION TO GRANT PLAINTIFF COPPEDGE’S SUBSTANTIALLY UNOPPOSED MOTION

This Court has the discretion to grant a meritorious unopposed motion. *See Tire Distributors, Inc. v. Cobrae* (2005) 132 Cal.App.4th 538, 543 (holding superior court has discretion to grant unopposed summary judgment motion). This Court also has the inherent discretion to control the admission and exclusion of evidence. *People v. Rodriguez* (1999) 20 Cal.4th 1, 10; *Ghadrdan v. Gorabi* (2010) 182 Cal.App.4th 416, 420-421 (same).

This Court has previously ruled that Coppedge may not argue JPL violated Coppedge’s rights by interfering with Coppedge’s activities protected under Labor Code section 1101. In reciprocal fairness, JPL should not be permitted to argue its “right” to interfere as a defense of JPL’s conduct. JPL apparently agrees, as quoted above verbatim from its brief.

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1 **IV. GIVEN JPL'S NON-OPPOSITION TO COPPEDGE'S SUBSTANTIVE**
2 **REQUEST, JPL'S OTHER ARGUMENTS ARE MOOT; JPL'S DEMAND TO**
3 **INTRODUCE CONTENTS OF CONVERSATIONS FACIALLY CONTRADICTS**
4 **ITS CONTENT-NEUTRALITY ASSERTION**

5 If neither JPL nor Coppedge may argue the issue of Coppedge's Labor Code section 1101
6 right to political activity, then the content of conversations, debates, "insults" and arguments is
7 irrelevant if their content is political. JPL's "Opposition" brief on page 1 expressly states:

8 As JPL has maintained throughout this lawsuit, it disciplined Coppedge because of the
9 manner of his speech, *without respect to its content*. JPL does have the right, indeed the
10 obligation, to regulate employee *conduct* in the workplace, to prevent unwelcome, offen-
11 sive and/or disruptive *conduct*, and that is all JPL sought to do here.

12 (JPL's Opp. Br. 1:11-14 (emphasis added).)

13 To establish "conduct" or "manner of his speech without respect to its content," JPL
14 needs only to provide evidence about "the frequency of the offensive acts or encounters," the
15 "number of days" over which "the offensive conduct occurred," and "the context" of Coppedge's
16 alleged conduct. *See Herberg v. California Institute of the Arts* (2002) 101 Cal.App.4th 142, 150
17 (employing a "totality of the circumstances" analysis to workplace harassment allegations).

18 While in *Herberg, supra*, the accused employee's "words" were judged for their offensive quali-
19 ties, here JPL expressly disclaims concern about the Coppedge's words. Only the "manner" and
20 "conduct" are at issue, JPL says.

21 Therefore, JPL could offer evidence of the number and types of conversations that
22 Coppedge had with coworkers to establish the alleged objectionable "manner" or "conduct." Ev-
23 idence of shouting, repeated and prolonged arguments, whether profanity or obscene language
24 was used – any of these items could be offered without ever mentioning the subject matter (con-
25 tent) or the words of the conversations. Because JPL insists the conversations' content was irrel-
26 evant to the discipline decision, it would not matter whether the conversations were about poli-
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1 tics or baseball – and it would not be important to the jury to know the contents of the conversa-
2 tions either.

3 **V. CONCLUSION**

4 For the reasons set forth in the instant Motion and this Reply, Plaintiff Coppedge respect-
5 fully requests this Court grant Plaintiff's Motion in Limine No. 3.
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7 DATED: February 15, 2012

THE BECKER LAW FIRM

8 William J
9 Becker Jr, Esq
By: WILLIAM J. BECKER, JR., ESQ.
Attorneys for Plaintiff, DAVID COPPEDGE

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