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 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

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7 Attorneys for Defendant
 8 CALIFORNIA INSTITUTE OF TECHNOLOGY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 DAVID COPPEDGE, an Individual,
 12 Plaintiff,

13 vs.

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

18 Defendants.

CASE NO. BC 435600

DEFENDANT'S TRIAL BRIEF

Trial Date: March 7, 2012
 Time: 9:30 a.m.
 Place: Department 54
 Judge: Hon. Ernest M. Hiroshige

FILED

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. Introduction.....	1
II. Brief Statement of Facts.....	2
A. Overview Of Caltech And JPL	3
B. The Cassini Mission.....	3
C. Coppedge’s Work History And Performance Issues	3
D. March 2, 2009: A Member Of Cassini Complained That Coppedge Had Harassed Her; When Chin Tried To Coach Coppedge (Again), Coppedge Accused Him Of Creating A Hostile Work Environment	5
E. Chin Notified HR and Management About Coppedge’s Accusation; Human Resources Investigated And Recommended That Coppedge Receive A Written Warning.....	5
F. April 7, 2009: Human Resources Separately Addresses Coppedge’s Performance Issues with Burgess and Chin.....	6
G. April 13, 2009: Coppedge Received A Written Warning And Was Removed As Lead	7
H. Coppedge Appealed The Warning And His Removal As Lead; Klenk Reviewed All The Facts And Denied The Appeal.....	7
I. Human Resources Rescinded The Written Warning	7
J. Coppedge Filed This Lawsuit	8
K. May 4, 2010: Burgess And Patel Talked To Coppedge Regarding Use Of Work Time	8
L. Coppedge Was Laid Off As Part Of The Staff Reduction For The Second Extended Mission.....	8
III. Brief Memorandum of Legal Issues.....	9
A. Coppedge Cannot Demonstrate That He Experienced Religious Discrimination.....	10
1. Coppedge Cannot State A <i>Prima Facie</i> Claim For Discrimination.....	10
a. Except For The Layoff, There Is No Adverse Employment Action.....	10
b. All Allegations Fail On The Fourth Prong: Coppedge Cannot Provide Any Evidence Of Discrimination.....	10
2. Caltech’s Legitimate Non-discriminatory Reasons	12
a. The Written Warning Was A Legitimate Regulation Of The Manner Of Coppedge’s Speech	12
b. Loss Of Informal Lead Duties Was Based On Longstanding Dissatisfaction With Coppedge’s Interactions With Colleagues	12
c. Coppedge Was Laid Off As Part Of A Funding-Based Reduction	12

TABLE OF CONTENTS

(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

3. Coppedge Has No Evidence of Pretext..... 12

B. Coppedge Cannot Establish That He Experienced Retaliation..... 13

C. Coppedge Cannot Prevail On His Claims For Wrongful Demotion And
Wrongful Termination 14

D. There Was No Discrimination; Even If There Had Been, Coppedge Cannot
Show That Caltech Is Liable For Failure To Prevent It..... 14

IV. Conclusion 15

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

CASES

Akers v. Cnty. of San Diego,
95 Cal. App. 4th 1441 (2002)..... 10

Arteaga v. Brink's, Inc.,
163 Cal. App. 4th 327 (2008)..... 13

Barrett v. Applied Radiant Energy Corp.,
240 F.3d 262 (4th Cir. 2001)..... 15

Flait v. N. American Watch Corp.,
3 Cal. App. 4th 467 (1992)..... 13

Gen. Dynamics Corp. v. Super. Ct.,
7 Cal. 4th 1164 (1994) 13

Guz v. Bechtel Nat'l, Inc.,
24 Cal. 4th 317 (2000) 10, 11, 12

Hanson v. Lucky Stores, Inc.,
74 Cal. App. 4th 215 (1999)..... 14

Hersant v. Dep't of Soc. Servs.,
57 Cal. App. 4th 997 (1997)..... 12

Horn v. Cushman & Wakefield W., Inc.,
72 Cal. App. 4th 798 (1999)..... 14

Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.,
103 Cal. App. 4th 1021 (2002)..... 15

Peterson v. Hewlett-Packard Co.,
358 F.3d 599 (9th Cir. 2004)..... 11

Reeves v. Safeway Stores, Inc.,
121 Cal. App. 4th 95 (2004)..... 13

Silo v. CHW Med. Found.,
27 Cal. 4th 1097 (2002) 11

Taylor v. Procter & Gamble Dover Wipes,
184 F. Supp. 2d 402 (D. Del. 2002), *aff'd*, 53 Fed. Appx. 649 (3d Cir. 2002)..... 13

Trujillo v. N. Cnty. Transit Dist.,
63 Cal. App. 4th 280 (1998)..... 14-15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Yanowitz v. L'Oreal USA, Inc.,
36 Cal. 4th 1028 (2005) 10

STATUTES

Labor Code § 98.6..... 9
Labor Code § 1101..... 9

21758-702

1 **I. INTRODUCTION**

2 This case is about an employee who had no self-awareness. David Coppedge alienated his
3 co-workers by the way he acted with them, and then blamed anyone who complained about those
4 interactions. He is doing the same thing in this case. He accuses his former project supervisor
5 (Greg Chin) and line manager (Clark Burgess) of making discriminatory and retaliatory
6 employment decisions, when they had in fact protected him for years – years during which they
7 were fully aware of his religious views and his belief in Intelligent Design (“ID”).¹ Burgess even
8 bought some DVDs about ID from Coppedge. Coppedge admitted in deposition that both Chin
9 and Burgess had always treated him fairly for many years before March 2009. Coppedge’s belief
10 in ID and his religious views had nothing to do with the employment actions at issue in this case.

11 Chin had received many complaints over the years about Coppedge from members of the
12 project on which he worked, Cassini. Coppedge was seen as stubborn, unwilling to listen and
13 always having to do things his way, which frustrated project members and resulted in errors.
14 Some project leaders refused to work with him. The Cassini Project Manager suggested that
15 Coppedge be taken off the project, but Chin had defended Coppedge. He tried to coach
16 Coppedge on how to improve his interpersonal communications. Burgess had tried to find work
17 on another project for Coppedge, but there were no openings because JPL had fewer space flight
18 projects.

19 Then, on March 2, 2009, one of Coppedge’s co-workers complained to Chin that
20 Coppedge had made her feel so uncomfortable in discussing non-work related topics that it
21 bordered on harassment. Chin alerted Coppedge to this complaint, with the hope that Coppedge
22 could modulate his conduct to avoid similar or more serious situations. He said Coppedge should
23 limit his discussions about non-work-related topics such as religion and politics to non-working
24 time, such as lunches or breaks. Coppedge, however, immediately went on the offensive. He
25 escalated what was intended to be a helpful heads-up into a heated discussion. In the end,
26 Coppedge accused Chin of creating a “hostile work environment.”

27 That phrase resonated with Chin because of his harassment training. Worried that he
28 might have said something wrong, Chin reported the incident to his and Coppedge’s management
and to Human Resources. This triggered a Human Resources investigation which revealed that
Coppedge, not Chin, had acted inappropriately. Other co-workers told Human Resources that

¹ Coppedge is an evangelical Christian and practicing Baptist. He believes that ID is a scientific theory of life’s origins, but asserts that his views on ID were perceived as religion.

1 they too felt Coppedge had harassed them regarding non-work related topics (such as ID and
2 Proposition 8 (“Prop. 8,” the gay marriage initiative)). Based on Human Resources’
3 recommendation, Burgess gave Coppedge a written warning on April 13, 2009. Burgess’s
4 supervisor, Kevin Klenk, then a Section Manager, agreed and sat in on the meeting. Burgess also
5 removed Coppedge’s informal designation as team lead for the Cassini Systems Administrators
6 (“SAs”), because of on-going work-related complaints about Coppedge from Cassini team
7 members. Coppedge unsuccessfully appealed these actions in August 2009, though Human
8 Resources later rescinded the written warning on April 7, 2010 (the oral warning was deemed
9 sufficient).

10 In October 2010, Cassini moved into the second extended phase of its mission, which
11 included a long-anticipated 40% to 50% reduction in NASA funding and corresponding layoffs.
12 Chin had warned the SAs about these expected reductions for over two years. Approximately one
13 out of every three employees working on Cassini was let go from the project, including Chin.
14 Section Manager Richard Van Why, with assistance from Human Resources and input from the
15 project, ranked the SAs according to JPL’s standard business criteria. This resulted in Coppedge
16 and one other SA being laid off on January 24, 2011. The SAs who were retained had stronger
17 skills in those areas that were needed in the future, and Cassini team members had greater
18 confidence in their skills and performance.

19 This case also has a subtext – to promote the views held by Coppedge and his counsel.
20 The evidence will show that Coppedge’s counsel is associated with a group called the Discovery
21 Institute. The Discovery Institute is devoted to promoting ID and the position that ID is science,
22 not religion. The Discovery Institute has been involved behind the scenes throughout this case,
23 and one of its paid senior fellows and attorneys, David DeWolf, is Coppedge’s “expert” witness
24 on ID. Another organization, the Alliance Defense Fund, has funded part of the cost of bringing
25 this lawsuit. The Alliance Defense Fund is a conservative Christian organization, and Professor
26 DeWolf is associated with this organization as well.

27 In sum, there is no evidence of discrimination or retaliation here. All of the
28 decisionmakers – two of whom protected Coppedge for years – acted for legitimate reasons.. The
evidence at trial will establish that Caltech did not unlawfully discriminate or retaliate against
Coppedge.

II. BRIEF STATEMENT OF FACTS

1 **A. Overview Of Caltech And JPL.**

2 Caltech, a private, non-profit educational institution, operates JPL, a Federally Funded
3 Research and Development Center, pursuant to a prime contract with the National Aeronautics
4 and Space Administration ("NASA"). Employees who work at JPL are employed by Caltech, not
5 by the federal government. JPL uses a "matrix" organization consisting of Program Offices and
6 Line Management organizations. Line managers are responsible for supervisory tasks such as
7 performance evaluations and discipline, as well as finding projects for their employees to work
8 on. Project managers direct employee work on projects.

9 **B. The Cassini Mission.**

10 Cassini is a space flight project studying Saturn and its satellites. The spacecraft was
11 launched in 1997 and reached Saturn in 2004. Cassini was successful, and as anticipated, NASA
12 extended the mission in July 2008, and then extended it a second time in October 2010, but with a
13 40% to 50% reduction in funding.

14 For its primary and first extended missions, the Cassini project was organized into four
15 major components:

- 16 o Spacecraft Operations Office, led by Julie Webster
- 17 o Science & Uplink Office, led by Kathryn Weld. Another employee, Sue Linick, is
18 responsible for Science & Uplink Communications.
- 19 o Mission Support and Services Office ("MSSO"), led by Greg Chin.
- 20 o Navigation

21 Cassini had a team of SAs who configure and maintain computer workstations and the
22 private Cassini network and perform various other computer-related tasks. The SAs supported
23 the Spacecraft Operations Office and Science & Uplink Office as well as other individual
24 functions. Navigation had its own SA for its work.

25 **C. Coppedge's Work History And Performance Issues.**

26 Throughout his time at JPL, Coppedge was one of the SAs on Cassini. Coppedge was
27 employed for several years as a contractor, before Burgess hired him as a regular employee in
28 January 2003. Burgess, a Group Supervisor, was Coppedge's line manager and immediate
29 supervisor until he retired in September 2010. Klenk was the Section Manager and Burgess's
30 immediate supervisor until Klenk became the Division Manager, and Richard Van Why became
31 Section Manager, around late summer 2009.

1 In 2000, Chin, with Burgess's concurrence, made Coppedge lead SA on Cassini because
2 he had the longest tenure of the SAs at the time. "Lead" was not a formal job classification, but
3 only an informal designation for some administrative activities that Coppedge performed in
4 addition to his regular SA duties. The lead designation did not provide Coppedge with any
5 advantage in pay or benefits over the other SAs. As lead, Coppedge acted as a conduit between
6 MSSO and the project. He attended Chin's weekly staff meeting and passed the information onto
7 the SAs, consolidated individual SA weekly status reports for Chin and relayed information from
8 the project to Chin.

9 It is important for SAs to work effectively, and maintain positive relationships, with the
10 mission scientists, engineers and administrators ("customers" or "users"). Chin received
11 complaints from at least fifteen project members about Coppedge, focusing on his uncooperative
12 attitude and poor listening and interpersonal skills, which contributed to issues about his technical
13 performance. Webster, Weld, and Linick – the leaders of Cassini's Spacecraft Operations and
14 Science & Uplink Offices, the two largest components of the project – were among those who
15 complained. Indeed, Webster was so unhappy with Coppedge that she refused to work with him
16 as early as 2005. Weld was so unhappy that she persuaded the Project Manager, Bob Mitchell, to
17 let her hire her own SA, Chris Cordell, around 2006 to do most of her group's work.

18 Chin defended Coppedge to the customers in the face of these complaints, while he
19 coached Coppedge on how to improve his interactions with others. While Coppedge wanted to
20 do better, and his relationships with customers improved for a short while at times, more
21 complaints followed. Chin then tried to shift Coppedge away from work assignments involving
22 interactions with those customers.

23 Cassini's Project Manager, Bob Mitchell, suggested several times that Chin should
24 remove Coppedge from the project altogether, but Chin defended Coppedge. When Chin told
25 Coppedge's line manager, Burgess, about these complaints, Burgess tried to find another project
26 for Coppedge, but there were no openings because JPL had fewer projects over the years.
27 Burgess made only passing reference to these criticisms in Coppedge's annual performance
28 reviews ("ECAPs"), to maximize Coppedge's chances of transferring to another project.

29 **D. March 2, 2009: A Member Of Cassini Complained That Coppedge Had Harassed Her; When Chin Tried To Coach Coppedge (Again), Coppedge Accused Him Of Creating A Hostile Work Environment.**

30 On the morning of March 2, 2009, Cassini's Digital Librarian, Margaret Weisenfelder,
31 told Chin that Coppedge had made her so uncomfortable about his persistence in discussing Prop.

1 8 that Coppedge's conduct bordered on harassment. Weisenfelder also said that the back cover of
2 a DVD Coppedge had given her about ID had a post-it note with a list of JPL co-workers whom
3 he appeared to be targeting (the list had a notation "Try Again" beside one of the names).
4 Weisenfelder's reference to "harassment" was a red flag to Chin. He decided to talk to Coppedge
5 informally about this in the hope of helping Coppedge avoid further (and even more serious)
6 complaints.

7 Chin and Coppedge met after Chin's staff meeting that afternoon. Chin told Coppedge
8 that colleagues had complained about his talking to them about non-work related topics such as
9 religion and politics. Chin wanted Coppedge to understand that discussing volatile topics (like
10 religion and politics) during work hours could be disruptive. Chin told Coppedge he could
11 discuss these topics at lunch or on his own time, but not during work hours in the office.

12 Coppedge demanded to know the names of his "accusers," but Chin did not provide them.
13 When Chin referred to ID as religion, Coppedge interpreted it as an attack on ID. Coppedge
14 wanted to debate "what was science." He claimed evolution was a "protected religion" at JPL.
15 When Chin said he did not want to discuss those issues, Coppedge challenged Chin to debate ID
16 off of JPL's premises. Chin again declined. Chin told Coppedge that if he continued to discuss
17 such topics in the office, his employment options would be limited. While Chin meant that
18 Coppedge would have difficulty finding assignments if he alienated people, he misinterpreted
19 Chin's comment as threatening him. When Coppedge said Chin's words could be construed as
20 creating a hostile work environment, Chin told Coppedge to file a complaint if he felt that way.

21 **E. Chin Notified HR and Management About Coppedge's Accusation; Human**
22 **Resources Investigated And Recommended That Coppedge Receive A**
23 **Written Warning.**

24 Chin knew that "hostile work environment" was a serious accusation. He felt obligated to
25 notify Human Resources, and his and Coppedge's management, about the meeting and the
26 "hostile work environment" comment. This led to Human Resources Generalist Jhertaune
27 Huntley's investigating the situation. Initially, she interviewed Coppedge, Burgess and Chin.
28 Coppedge volunteered that he had discussed Prop. 8 with a Cassini scientist (Dr. Scott
Edgington), and their conversation had become so heated that Coppedge had apologized the next
day for his behavior. Coppedge also told Huntley that he kept a list of people to whom he had
passed out DVDs on ID or religion. Chin described Weisenfelder's complaint. Chin also said
that Coppedge had made another Cassini employee (Carmen Vetter) uncomfortable by discussing
his religious views in the workplace.

1 Huntley then interviewed Weisenfelder, Vetter and Edgington. Weisenfelder described
2 the two incidents she reported to Chin. She explained that Coppedge's persistence made her feel
3 uncomfortable and that he stepped over the line by discussing politics and religion during work
4 hours. Vetter told Huntley that Coppedge had harassed her a few years earlier by demanding that
5 she change the name of the Cassini "Holiday" Potluck to a "Christmas" Potluck. Coppedge had
6 been so persistent that she had asked Chin to make Coppedge stop.² Edgington told Huntley that,
7 after Coppedge had initiated a discussion about Prop. 8, Coppedge insulted him by saying that he
8 must not like children because he disagreed with Coppedge's view on the initiative. Edgington
9 had to tell Coppedge twice to leave his office before Coppedge did so.

10 Based on her investigation, Huntley concluded that Coppedge's behavior violated
11 Caltech's Unlawful Harassment Policy and its Ethics and Business Conduct Policy. She
12 recommended that he receive a written warning for his conduct. Coppedge's line manager,
13 Burgess, agreed, and decided to give the written warning; Burgess's supervisor, Klenk, supported
14 the decision.

15 F. **April 7, 2009: Human Resources Separately Addresses Coppedge's**
16 **Performance Issues with Burgess and Chin.**

17 Meanwhile, Coppedge continued to experience performance issues, including on-going
18 problems interacting with customers.

19 On April 7, 2009, Senior Human Resources Generalist Nancy Aguilera met with Burgess
20 to discuss Coppedge's performance on Cassini.³ Chin had informed Burgess that Mitchell, the
21 Project Manager, wanted to move forward on removing Coppedge from the project. Burgess had
22 informed Human Resources of this. Burgess listened to Aguilera's suggestions about how to
23 manage the performance issues, but did not make decisions at that time.

24 Later that day, Aguilera met with Chin to obtain additional information on the Cassini
25 customer complaints, and to ensure that Chin was representing the situation fairly (and not
26 retaliating against Coppedge). Chin provided her with a general overview of the customer
27 complaints, and the names of individuals who had complained, so she could obtain feedback
28 directly. Aguilera concluded that no retaliation was taking place.

² Vetter also reported her concern to Mitchell, the Project Manager, who told her not to change
the name of the party. JPL has employees from dozens of different countries and ethnic and
religious backgrounds. JPL tries to respect these widely-varied cultures in its communications.

³ Huntley also sat in on the meeting.

1 **G. April 13, 2009: Coppedge Received A Written Warning And Was Removed**
2 **As Lead.**

3 On April 13, 2009, Burgess and Klenk met with Coppedge, so Burgess could give
4 Coppedge the written warning. Coppedge asked to record the meeting, and was permitted to do
5 so. As the recording reflects, Burgess and Klenk told Coppedge that the warning concerned *the*
6 *manner* in which he had interacted with his co-workers, *not the substance* of what he had
7 discussed. Klenk told him they had “no issue with people discussing religion and politics in the
8 office so long as it’s not unwelcome or disruptive.” Despite this, Coppedge continued to focus on
9 the content of what he discussed, rather than his behavior, and insisted that his rights were being
10 violated and that this was an attack on intelligent design.

11 Burgess decided during the meeting that he had to remove Coppedge as lead. For years,
12 Chin had told Burgess about Cassini project member complaints regarding Coppedge, including
13 his poor listening skills and failure to work cooperatively. Now, for the first time, Burgess was
14 witnessing this behavior first-hand: Coppedge was argumentative, unwilling to listen, and acted
15 as if he were right, and everyone else was wrong. Burgess concluded he had been remiss in not
16 acting sooner.

17 Following the removal of Coppedge’s lead duties, there was no change in his job
18 classification, salary grade, pay or benefits.

19 **H. Coppedge Appealed The Warning And His Removal As Lead; Klenk**
20 **Reviewed All The Facts And Denied The Appeal.**

21 On May 1, 2009, Coppedge “appealed” his written warning and removal as lead to Human
22 Resources. The appeal process called for him to meet with Klenk. Klenk interviewed Huntley
23 regarding her investigation and reviewed all the facts. Klenk then met with Coppedge on August
24 25, 2009. Coppedge simply repeated the same things he had said in the earlier meeting. Hearing
25 no reason to modify the earlier decision, Klenk determined that both of Burgess’s decisions were
26 appropriate and denied the appeal. Klenk sent Coppedge a memorandum summarizing his
27 decision.

28 **I. Human Resources Rescinded The Written Warning.**

 On April 7, 2010, Burgess and Klenk again met with Coppedge and rescinded the April
 13, 2009 warning. While Coppedge had shown poor judgment, Human Resources concluded that
 an oral admonition (rather than a formal written warning) was sufficient to make Coppedge aware
 of how he should conduct himself. Burgess and Klenk did not restore Coppedge’s designation as

1 lead because that concerned customer complaints and was unrelated to the earlier harassment
2 investigation.

3 **J. Coppedge Filed This Lawsuit.**

4 On April 14, 2010, Coppedge filed the instant lawsuit, asserting claims for religious
5 discrimination and harassment, retaliation and wrongful demotion.

6 **K. May 4, 2010: Burgess And Patel Talked To Coppedge Regarding Use Of
7 Work Time.**

8 On May 4, 2010, Burgess and Patel spoke to Coppedge to remind him to use work time
9 productively, following reports suggesting he had not been doing so. Among other issues, Nick
10 Patel, who had replaced Coppedge as lead SA, had observed Coppedge typing what he believed
11 was a personal document for hours a day (rather than performing his SA work). Other SAs had
12 observed and reported the same thing to Patel. Coppedge also was failing to respond to emails in
13 a timely manner. This meeting was not a disciplinary action, but only a discussion to remind
14 Coppedge of work expectations.

15 **L. Coppedge Was Laid Off As Part Of The Staff Reduction For The Second
16 Extended Mission.**

17 When Cassini's Second Extended Mission began in October 2010, there was a significant
18 funding reduction, personnel were released, and part of the project was reorganized. Chin had
19 warned the SAs two years earlier about the cuts and that no one would be guaranteed a job.
20 Mitchell dissolved MSSO and eliminated Chin's job. The SAs became part of Integrated Uplink
21 Systems ("IUS"), managed by Diane Conner. Conner eliminated the lead SA designation as it no
22 longer was needed. Due to the funding cuts, Conner determined that she needed two fewer SAs.

23 Caltech has an established procedure for reductions in force. In most cases, Section
24 Managers rank employees performing the same or similar work (typically, employees who are in
25 the same job classification) within their section according to established business criteria. The
26 purpose of the ranking is to determine employees' relative qualifications, skills and abilities to
27 perform the work needed after the reductions.

28 Richard Van Why became Section Manager in late Summer 2009, and Acting Group
Supervisor following Burgess's retirement at the end of September 2010. With Conner's input
and the assistance of Human Resources Manager Jackie Clennan-Price, Van Why evaluated and
ranked the SAs in his section: Patel, Harvey Chien, Oscar Castillo, Coppedge, and Gary Wang.
Based on this process, Van Why concluded that Patel, Castillo, and Wang were more qualified
than Coppedge and Chien, and determined that Coppedge and Chien should be laid off.

1 The rankings accurately reflected the diminishing degree to which Coppedge was
2 contributing to Cassini. Following dissolution of MSSO, there were only two large Offices
3 within Cassini that utilized SAs – Spacecraft Operations and Science & Uplink. As noted above,
4 the managers of each office had complained about Coppedge’s performance. The manager for
5 Spacecraft Operations, Julie Webster, refused to have him work in her area. Those two offices
6 made up approximately 80% of the project.

7 In addition, the two SAs who were retained, Patel and Castillo, had stronger technical
8 skills than Coppedge in areas that were needed in the future. Patel was the expert in the
9 Spacecraft Office (and its Integrated Test Lab, which tests commands in a simulated environment
10 before sending them to the spacecraft). No other SA could adequately perform this work. The
11 project leaders also viewed Patel as having the strongest overall skills, the strongest
12 troubleshooting skills and the best customer relationships. Castillo was the expert for the web
13 server.⁴ He also had the strongest Linux skills, which was important, strong network
14 administration skills and excellent customer relationships. On the other hand, Coppedge had
15 focused heavily on areas that were not going to be needed in the future or were becoming
16 obsolete. One such area was routers, switches and the Cassini private network (to save money,
17 Cassini gave up its private network and converted to the JPL network, which all other flight
18 projects used; SAs in another division performed that work.) Another area was OpenView (an
19 expensive software platform that Cassini phased out in the second extended mission).

20 On January 24, 2011, Van Why notified Coppedge and Chien of their layoffs. Coppedge
21 filed a Second Amended Complaint, adding claims regarding his layoff.

22 **III. BRIEF MEMORANDUM OF LEGAL ISSUES⁵**

23 **A. Coppedge Cannot Demonstrate That He Experienced Religious 24 Discrimination.**

25 Coppedge contends he experienced discrimination due to religion (Christianity) or
26 perceived religion (ID), in violation of FEHA and the California Constitution. But as Caltech will
27

28 ⁴ Chien, the other SA who was laid off, had tried to take over the web server responsibilities
when Castillo had divided his time for a short period between Cassini and another area.
However, Chien could never master the requirements. He always had to rely on help from
Castillo.

⁵ The Court granted summary adjudication on Coppedge’s Labor Code claims (under Section
1101 and 98.6), his harassment claim, and his claims based on free speech. Caltech does not
address those claims herein. Additionally, because the Court granted summary adjudication on
Coppedge’s harassment claim, Caltech is addressing only the discrimination aspect of
Coppedge’s failure to prevent claim.

1 show at trial, Coppedge cannot establish a *prima facie* case of discrimination; even if he could,
2 the evidence shows that Caltech had legitimate reasons for all actions taken, and Coppedge has no
3 evidence of pretext.

4 **1. Coppedge Cannot State A Prima Facie Claim For Discrimination.**

5 To establish a *prima facie* case, Coppedge must show that (1) he belongs to a protected
6 category; (2) he is otherwise qualified to do his job; (3) he suffered an adverse employment
7 action; and (4) there are circumstances raising an inference of discrimination based on the
8 protected category (here, religion). See *Guz v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 355 (2000).

9 None of the conduct Coppedge alleges supports a *prima facie* case. Other than his layoff,
10 none of the events he identifies are adverse employment actions. In all events, Coppedge's *prima*
11 *facie* case fails on the fourth prong: employers are permitted to regulate conduct at work,
12 religious or otherwise, and there is no evidence to suggest that anything Coppedge experienced,
13 including the layoff, occurred because of his actual or perceived religious beliefs.

14 **a. Except For The Layoff, There Is No Adverse Employment**
15 **Action.**

16 Coppedge contends that he was "demoted" when Burgess removed his informal lead
17 duties – but his salary, benefits and job classification stayed the same. This change was not a
18 demotion, but merely a change in some job duties and loss of an informal designation, neither of
19 which constituted a material adverse change in the terms and conditions of his employment.
20 *Akers v. County of San Diego*, 95 Cal. App. 4th 1441, 1455 (2002). That Coppedge felt
21 "humiliated" does not render the change actionable. *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th
22 1028, 1054 (2005).

23 Neither Coppedge's written warning, nor his 2009 and 2010 performance evaluations,
24 were adverse actions either: none had any impact on the terms and conditions of employment,
25 and the warning was ultimately rescinded.

26 **b. All Allegations Fail On The Fourth Prong: Coppedge Cannot**
27 **Provide Any Evidence Of Discrimination.**

28 While Coppedge's layoff could constitute an adverse employment action, he still cannot
establish a *prima facie* case based on it, or the other events about which he complains, because
there are no circumstances suggesting a discriminatory motive. *Guz*, 24 Cal. 4th at 355.

First, Coppedge was not ordered to stop discussing religion, either by Chin or via the
written warning (which was rescinded, in any event). Chin just told Coppedge to limit such
communications to non-work periods, like lunch and breaks. As for the written warning, this was

1 based on Coppedge's interactions with other employees, and the fact that the employees felt
2 uncomfortable as a result – not the content. Indeed, some of the discussions were not even about
3 religion, but about Prop. 8. At the April 13 meeting, Burgess and Klenk emphasized to Coppedge
4 that the warning was based on the *manner* of his communication, not the substance, and that
5 Caltech had no issue with people discussing religion and politics so long as it was not disruptive
6 or unwelcome. These efforts to modulate Coppedge's conduct do not constitute religious
7 discrimination: employers may regulate workplace conduct affecting other employees, even
8 where that impacts religious expression. *See, e.g., Silo v. CHW Med. Found.*, 27 Cal. 4th 1097,
9 1105 (2002) (the parties did not dispute that an employer may take adverse action for
10 proselytizing in the workplace if it interfered with the performance of the employee's duties or
11 was directed at employees who made clear their objections to such activities).⁶

12 Second, Burgess removed Coppedge's lead duties because of ongoing customer
13 complaints about Coppedge's manner of dealing with others. Burgess personally observed
14 Coppedge acting in that manner, for the first time, in the April 13 meeting when Coppedge
15 argued for more than an hour. Coppedge was unwilling to listen, he ignored what he was being
16 told, he denied everything, and everyone who complained about him was wrong. Coppedge was
17 exhibiting the same type of behavior about which the project members had complained for years.
18 Burgess concluded at that time that he had been remiss in not taking action sooner and that he
19 could no longer have someone who created such conflict act as lead SA.

20 Third, Van Why made the layoff decision via a formal process using legitimate business
21 criteria, in which he determined (with Conner's input and Human Resources' assistance) that
22 Coppedge was one of the two least qualified SAs. There is no evidence of bias or unfair
23 treatment by Van Why or Conner. Neither Van Why nor Conner had ever had any dispute with
24 Coppedge about ID, religion or politics.

22 **2. Caltech's Legitimate Non-discriminatory Reasons.**

23 The evidence at trial will show that Caltech has legitimate reasons for each action taken,
24 shifting the burden back to Coppedge.

25 **a. The Written Warning Was A Legitimate Regulation Of The 26 Manner Of Coppedge's Speech.**

27 ⁶ *See also Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 607-08 (9th Cir. 2004) (employer need
28 not accommodate an employee's religious views if doing so would degrade or discriminate
against co-workers, implicate the employer's diversity program, or have the effect of allowing the
employee to impose religious beliefs on co-workers).

1 Burgess issued the warning in response to the concerns of employees, who felt harassed
2 by the manner of Coppedge's speech. While Caltech has a right to regulate religious expression,
3 Klenk nevertheless made clear that there was no issue with people discussing religion and politics
4 so long as it was not disruptive or unwelcome.

5 **b. Loss Of Informal Lead Duties Was Based On Longstanding
6 Dissatisfaction With Coppedge's Interactions With Colleagues.**

7 Burgess shifted the lead activities away from Coppedge for an entirely legitimate, non-
8 discriminatory reason: a long record of dissatisfaction with Coppedge's interactions with others,
9 resulting in poor customer service. Whether Coppedge disagrees with Burgess's assessment is
10 irrelevant: the employer's "reasons need not necessarily have been wise or correct"; they need
11 only be "facially unrelated to prohibited bias . . ." *Guz*, 24 Cal. 4th at 358.

12 **c. Coppedge Was Laid Off As Part Of A Funding-Based
13 Reduction.**

14 Coppedge's layoff was likewise based on job performance. Faced with necessary staff
15 reductions, Van Why, with Conner's input, engaged in a careful process to evaluate the relative
16 qualifications of the SAs, determined that Coppedge was among the least qualified, and chose
17 him for layoff. That Coppedge disagrees with their assessment, or believes he should have been
18 retained for other reasons (*e.g.*, long tenure), is irrelevant. *Guz*, 24 Cal. 4th at 358.

19 **3. Coppedge Has No Evidence of Pretext.**

20 In the final stage of the burden-shifting analysis, Coppedge must produce specific,
21 substantial evidence that the actions in question were taken *because* of his religious views. *Guz*,
22 24 Cal. 4th at 361; *Hersant v. Dep't of Soc. Servs.*, 57 Cal. App. 4th 997, 1009 (1997) (employee
23 must offer substantial evidence that employer's stated reason is untrue or pretextual). Coppedge
24 cannot meet this burden.

25 First, as discussed above, there is *no* evidence giving rise to any inference of
26 discrimination, with respect to any of the conduct alleged to be discriminatory.

27 Second, the evidence here undermines any suggestion of bias: Coppedge's beliefs
28 regarding religion and intelligent design, and his efforts to promote them, were well-known, and
had been known for years. What changed in 2009 was that an employee complained of feeling
harassed by Coppedge, triggering the events that led to the HR investigation and written warning
– which was rescinded, in any event.⁷

⁷ Additionally, the decisionmakers (as well as Huntley and the three complaining employees) are Christian, and two (Burgess and Conner) even bought DVDs from Coppedge. No inference of

1 **B. Coppedge Cannot Establish That He Experienced Retaliation.**

2 To establish a *prima facie* case, Coppedge must show that (1) he engaged in protected
3 activity; (2) he suffered an adverse employment action; and (3) there was a causal link between
4 the two. *Flait v. N. American Watch Corp.*, 3 Cal. App. 4th 467, 475 (1992). The evidence at
5 trial will establish that he cannot do so.

6 Of the purported “retaliatory” events identified by Coppedge, only one is an adverse
7 employment action – his layoff – and he cannot establish a nexus between it and his arguably
8 protected activity: his claim of a “hostile work environment” in March 2009, and his lawsuit in
9 April 2010. Coppedge has no evidence of *any* link between his alleged protected conduct and his
10 layoff, much less that these events were a motivating factor for his layoff:⁸

11 • Any temporal connection is weak at best: Coppedge was not laid off until January
12 2011 – almost *two years* after he accused Chin of creating a hostile work environment, and over
13 nine months after he filed his lawsuit. *See Arteaga v. Brink’s, Inc.*, 163 Cal. App. 4th 327, 354,
14 357 (2008) (“temporal proximity by itself . . . is not adequate to show pretext”). Retaliators act;
15 they do not delay. Had Caltech wanted to get rid of Coppedge because of that complaint, other
16 purported gripes, or the lawsuit, it surely could have done so then, not months or years later.

17 • Coppedge suggests that his layoff must have been retaliatory, because he had the
18 longest tenure on Cassini and, in his mind, was the most qualified SA. But such “subjective
19 personal judgments of . . . competence alone do not raise a genuine issue of material fact.”
20 *Horn v. Cushman & Wakefield W., Inc.*, 72 Cal. App. 4th 798, 816 (1999). It is indisputable that
21 Patel and Castillo possessed needed skills that Coppedge did not. In addition, Coppedge had the
22 worst customer relationships. Van Why properly concluded that Coppedge was one of the two
23 least qualified SAs, based on the ranking process – and it was this conclusion, not Coppedge’s
24 beliefs, desire to express them, or lawsuit, that led to his layoff.

25 discrimination arises when the decisionmaker is in the same protected category as the plaintiff.
26 *See, e.g., Taylor v. Procter & Gamble Dover Wipes*, 184 F. Supp. 2d 402, 413 (D. Del. 2002)
27 (“[A]n inference of discrimination is less plausible when the decision-maker is a member of the
28 same protected class as the plaintiff.”), *aff’d*, 53 Fed. Appx. 649 (3d Cir. 2002).

29 ⁸ Caltech maintains that the standard for Coppedge’s retaliation claims is “but-for” causation.
30 *See, e.g., Gen. Dynamics Corp. v. Superior Court*, 7 Cal. 4th 1164, 1191 (1994) (plaintiff “bears
31 the burden of establishing . . . that the employer’s conduct was motivated by impermissible
32 considerations under a ‘but for’ standard of causation”); *Reeves v. Safeway Stores, Inc.*, 121 Cal.
33 App. 4th 95, 108 (2004) (ultimate issue “is whether retaliatory animus was a but-for cause of the
34 employer’s adverse action”). Solely for purposes of the trial in this action, however, Caltech will
35 not contest the “a motivating reason” standard set forth in the CACI jury instructions.

1 • Where, as here, the decisionmaker lacks unlawful animus, the plaintiff cannot
2 show a causal relationship sufficient to raise a triable issue of fact.

3 Finally, even if the other incidents that Coppedge identifies as retaliatory were adverse
4 employment actions (they are not), Coppedge likewise cannot establish a causal nexus. Because
5 he did not file his lawsuit until April 2010, Coppedge must show that his “hostile work
6 environment” complaint at the March 2 meeting with Chin was a motivating reason for his
7 written warning, removal of lead duties, and the content of his performance evaluations. There is
8 no evidence of such. The warning was due to the complaints of other employees, which arose
9 from events preceding the March 2 meeting. Both the removal of lead duties and the performance
10 evaluations, meanwhile, were due to performance issues, some of which had gone on long before
11 that time (e.g., complaints about Coppedge’s interactions with customers).

11 **C. Coppedge Cannot Prevail On His Claims For Wrongful Demotion And**
12 **Wrongful Termination.**

12 Coppedge’s FEHA claims for wrongful demotion and wrongful termination claims fail for
13 the same reason as his religious discrimination and retaliation claims. Neither the alleged
14 demotion nor his layoff (nor any other conduct) had any connection to his religious beliefs (actual
15 or perceived). *See* discussion, *supra*.

16 As for Coppedge’s public policy claims for wrongful demotion and wrongful termination,
17 these claims are duplicative of Coppedge’s FEHA causes of action. Because he cannot establish
18 his FEHA claims for wrongful demotion and wrongful termination, these public policy claims fail
19 as well. *Hanson v. Lucky Stores, Inc.*, 74 Cal. App. 4th 215, 229 (1999) (“because Hanson’s
20 FEHA claim fails, his claim for wrongful termination in violation of public policy fails.”).

20 **D. There Was No Discrimination; Even If There Had Been, Coppedge Cannot**
21 **Show That Caltech Is Liable For Failure To Prevent It.**

21 As discussed above, Coppedge will not be able to prove that discrimination occurred,
22 meaning his failure to prevent claim fails as a matter of law. *See* discussion, *supra*. *Trujillo v. N.*
23 *County Transit Dist.*, 63 Cal. App. 4th 280, 288-89 (1998) (employer cannot be liable for failing
24 to prevent discrimination or harassment when no such conduct actually occurred).

25 Even if Coppedge can persuade the jury that discrimination occurred (it did not), Caltech
26 still will prevail on the failure to prevent claim. An employer meets its obligation to take
27 reasonable steps to prevent discrimination and harassment by implementing policies and taking
28 action to investigate and remedy charges under them. *Northrop Grumman Corp. v. Workers’*
Comp. Appeals Bd., 103 Cal. App. 4th 1021, 1035 (2002) (“Prompt investigation of a

1 discrimination claim is a necessary step by which an employer meets its obligation . . ."); *Barrett*
2 *v. Applied Radiant Energy Corp.*, 240 F.3d 262, 266 (4th Cir. 2001) (distribution of anti-
3 harassment policy is proof that employer has exercised reasonable care to prevent and correct
4 sexual harassment).

5 Caltech will present evidence that it has taken all reasonable steps to meet its obligations.
6 It has implemented a Nondiscrimination and Equal Employment Opportunity Policy and an
7 Unlawful Harassment Policy. JPL employees can access policies online. And the evidence will
8 show that these policies worked as intended here: Chin promptly reported Coppedge's claim that
9 he (Chin) had created a "hostile work environment," and Human Resources conducted an
10 investigation – not only into Coppedge's concerns, but those of other employees as well.
11 Coppedge simply did not like the outcome of the investigation.

12 **IV. CONCLUSION**

13 The evidence will demonstrate that no discrimination or retaliation took place here. The
14 evidence will also show that Chin and Burgess protected Coppedge for years, with full knowledge
15 of his views on religion and intelligent design, despite serious complaints about his customer
16 service and interactions and even when the Cassini Program Manager wanted him off the project.
17 This is the antithesis of religious discrimination.

18 DATED: March 5, 2012

19 PAUL HASTINGS LLP
20 JAMES A. ZAPP
21 CAMERON W. FOX
22 MELINDA A. GORDON

23 By: _____

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25 Attorneys for Defendant
26 CALIFORNIA INSTITUTE OF TECHNOLOGY
27
28

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 March 5, 2012, I served the foregoing document(s) described as:

8 **DEFENDANT'S TRIAL BRIEF**

9 on the interested parties as follows:

10 William J. Becker, Jr., Esq. Attorney for Plaintiff
11 THE BECKER LAW FIRM DAVID COPPEDGE
12 11500 Olympic Blvd, Suite 400
Los Angeles, CA 90064

13 Email: bbeckerlaw@gmail.com

14 **VIA ELECTRONIC MAIL:**

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

17 **VIA U.S. MAIL:**

18 By placing a true and correct copy thereof in a sealed envelope(s) as addressed
19 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
deposited with the U.S. postal service on February 9, 2012, with postage thereon
fully prepaid, at Los Angeles, California.

20 **VIA OVERNIGHT MAIL:**

21 By delivering such document(s) to an overnight mail service or an authorized
22 courier in a sealed envelope or package designated by the express service courier
addressed to the person(s) on whom it is to be served.

23 I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct and was executed on March 5, 2012, at Los Angeles, California.

25
26 _____
Rosemary M. Soliz