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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

DAVID COPPEDGE, an individual;

Plaintiff,

vs.

JET PROPULSION LABORATORY, form unknown; **CALIFORNIA INSTITUTE OF TECHNOLOGY**, form unknown; **GREGORY CHIN**, an Individual; **CLARK A. BURGESS**, an Individual; **KEVIN KLENK**, an Individual; and **Does 1** through **25**, inclusive,

Defendants.

Case No. BC435600

The Honorable Ernest M. Hiroshige, Dept. 54

PLAINTIFF DAVID COPPEDGE'S POST-TRIAL OPENING BRIEF

BY FAX

Plaintiff hereby submits his Post-Trial Opening Brief.

DATED: May 7, 2012

THE BECKER LAW FIRM

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I. PRELIMINARY STATEMENT

The trial evidence has shown dispositively Defendant California Institute of Technology/Jet Propulsion Laboratory ("JPL") violated well established laws that protect employees from workplace discrimination and retaliation for opposing such discrimination. Plaintiff David Coppedge ("Coppedge") was employed with JPL as a system administrator on the Cassini-Huygens mission to Saturn ("Cassini") from 1996 to 2011. In March 2009, Coppedge was reprimanded by his "project supervisor" (JPL Tr. Br., 1:3-5), Greg Chin ("Chin"), for advocating certain personal views Chin believed to be informed by Coppedge's religious convictions, specifically referring to Coppedge's support for intelligent design theory. Chin ordered Coppedge to cease "pushing" Coppedge's religious views on co-workers even though JPL has no policy against religion-centered workplace discussions and even though Coppedge tried to explain that intelligent design had nothing to do with religion.

Coppedge opposed Chin's discriminatory order at the outset, challenging Chin's right to interfere with Coppedge's actual and perceived religious practices. Coppedge's opposition triggered a series of retaliatory responses by JPL resulting in unfair disciplinary measures and Coppedge's wrongful demotion in April 2009. Coppedge then challenged and opposed the discriminatory actions that flowed from Chin's reckless behavior by appealing them. Coppedge then filed administrative complaints with the Department of Fair Employment and Housing ("DFEH"), was issued a "right-to-sue" letter and initiated legal proceedings by filing a civil complaint with the Superior Court. JPL retaliated against Coppedge for the filing of these complaints by terminating him. At all relevant times, JPL failed to take necessary steps to prevent Coppedge from being subjected to further discrimination, retaliation and harassment.

II. LEGAL THEORIES

Coppedge seeks judgment on the following causes of action:

- First Cause of Action: Religious Discrimination in Violation of Govt. Code § 12900, et seq. (Fair Employment and Housing Act ("FEHA")
- Third Cause of Action: Retaliation in Violation of FEHA
- Fourth Cause of Action: Retaliation in Violation of Public Policy
- Sixth Cause of Action: Failure to Prevent Discrimination and Harassment
- Seventh Cause of Action: Wrongful Demotion in Violation of FEHA
- Eighth Cause of Action: Wrongful Demotion in Violation of Public Policy
- Ninth Cause of Action: Wrongful Termination in Violation of FEHA
- Tenth Cause of Action: Wrongful Termination in Violation of Public Policy (FEHA)

- Eleventh Cause of Action: Wrongful Termination in Violation of Public Policy (Religious Discrimination, Art I, § 8, Cal.Const.)

III. THE TRIAL EVIDENCE SUPPORTS COPPEDGE'S CLAIM FOR RELIGIOUS DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA.

A. Required Elements Of A Discrimination Case.

A violation of FEHA is a violation of a person's civil rights. FEHA declares it an "unlawful employment practice" for any employer "because of the ... religious creed ... of any person, ... to discharge the person from employment ..., or to discriminate against the person in compensation or in terms, conditions, or privileges of employment." (Govt. Code, § 12940, subd. (a)).

The elements of a claim for employment discrimination in violation of section 12940, subd. (a), are: (1) the employee's membership in a classification protected by the statute; (2) discriminatory animus on the part of the employer toward members of that classification; (3) an action by the employer adverse to the employee's interests; (4) a causal link between the discriminatory animus and the adverse action; (5) damage to the employee; and (6) a causal link between the adverse action and the damage. (*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713). Under California law, "[t]he specific elements of a prima facie case may vary depending on the particular facts." (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355). "Religious creed," "religion," "religious observance," "religious belief," and "creed" include *all aspects* of religious belief, observance, and practice. (Govt. Code § 12926(o)).

B. Required Elements Of A Retaliation Case.

FEHA also prohibits JPL from retaliating against Coppedge for complaining of employment discrimination against him. (Govt. Code, § 12940, subd. (h)). The elements of a claim for retaliation by an employer in violation of section 12940, subd. (h) are: (1) the employee's engagement in a protected activity, e.g., opposing any practices forbidden under the statute; (2) retaliatory animus on the part of the employer; (3) an adverse action by the employer; (4) a causal link between the retaliatory animus and the adverse action; (5) damages; and (6) a causal link between the adverse action and the damage. (*Mamou, supra*, at p. 713).

To rebut a defendant's asserted nonretaliatory explanation for its actions, the plaintiff may present evidence showing the defendant's proffered explanation is self-contradictory, dissembling, or otherwise not worthy of belief. That showing of "pretext" constitutes evidence of discriminatory or retaliatory animus or intent. (*See Flait v. North American Watch Corp.* (1992)

3 Cal.App.4th 467, 476). Here, JPL failed to establish any reasonable justification for its discriminatory and retaliatory conduct. JPL's contradictory explanations and *post hoc* rationalizations only add weight to Coppedge's claims of discrimination and retaliation.

IV. COPPEDGE WAS ENGAGED IN (ACTUAL OR PERCEIVED) PROTECTED RELIGIOUS ACTIVITY AND WAS A MEMBER OF A PROTECTED CLASS.

Unquestionably, Coppedge was first reprimanded because of a perceived religious interest in intelligent design. He was then investigated and found in violation of JPL's unlawful harassment policy because of his practice of sharing intelligent design DVDs with co-workers. Although JPL has no rule or policy restricting religious speech (K.Klenk, 4/3/12 p.m., 171:13-16; J.Huntley, 3/26/2012 a.m., 46:22-27; C.Vetter, 4/4/2012 p.m., 173:16-18; G.Chin, 3/29/2012 p.m., 230:15-17), Chin ordered Coppedge to keep his personal views concerning religion (specifically intelligent design) to himself (Exh. 227, p. 48, J.Huntley's investigation file, 3/3/2009 e-mail from G.Chin to C.Burgess, et al., re: "Coppedge Incident – 3/2/09" ("this type of discussion is appropriate in certain settings (i.e., a JPL Bible Study group)...."; intelligent design is a "personal belief that should be kept to himself unless invited by others to discuss.")).

Chin specifically told Coppedge to stop pushing his religion on others. (G.Chin, 3/29/2012 a.m., 18:12-14 ("And I told him that I requested he stop pushing his religion ... on individuals in the workplace."; D.Coppedge, 3/19/2012 a.m., 45:28-46:2 ("He said, 'Dave, it has come to my attention that you are pushing your religion in this office and harassing people with your religion. This must stop.'")).

Chin believed that Coppedge was engaging in a religious activity by advocating intelligent design. (Exh. 227, p. 48, 3/3/2009 e-mail from G.Chin to C.Burgess, et al., re: "Coppedge Incident" (Weisenfelder concerned about being "harassed" by Coppedge, i.e., his "belief in intelligent design"); Exh. 65, 3/3/2009 e-mail from D.Coppedge to G.Chin, re: "Request for Documentation" ("When I asked what constituted the religious views, you said I was giving out DVDs about intelligent design. When I asked why that constituted pushing religious views, you said emphatically, 'intelligent design is religion' at least twice."); D.Coppedge, 3/19/2012 a.m., 46:18-47:6 (pushing religion with intelligent design)).

Coppedge was perceived as holding strong religious convictions and wanting to share them with others (G.Chin, 4/2/2012 a.m., 15:26-16:3 ("I know David is very passionate about his beliefs, and I have talked to David previously. I know that David wants to share his beliefs with others. So when he talks to the other employees or other individuals I feel that David is trying to

convince them that his personal belief is a good belief."); *id.*, 3/29/2012 a.m., 39:9-10 ("David is very passionate about his religious beliefs and I knew that."); Exh. 227, p. 37, J.Huntley notes from interview with G.Chin, 3/17/2009 ("harassing" Weisenfelder about personal choices in life, i.e., religion; Vetter tells Chin she and Scott Edgington "had been bothered by David and his religious beliefs"; Chin stated Coppedge had previously tried to get him (Greg) to believe in his religion during work hours leaving "religious material" in Chin's inbox; Chin complains he is "tired of all the complaints regarding David harassing people with his religious viewpoints"); C.Vetter, 4/4/2012 a.m., 48:5 (Coppedge has a "religious agenda"); *id.*, p.m., 174:22-23 (religion is "the only thing he talked about"); Exh. 227, pp. 35-36, J.Huntley investigation notes from interview with M.Weisenfelder, 3/19/2009 ("crossing the line" discussing religion); M.Weisenfelder, 4/3/2012 p.m., 248:8-14 (didn't want to "deal with" Coppedge discussing religion); Exh. 227, pp. 33-34, J.Huntley investigation notes from interview with C.Vetter, 3/20/2009 ("Coppedge has an "agenda about Christianity;" discovered Vetter was a Christian and "harassed" her; demanded Vetter put the word "Christ" on the Holiday Potluck invitation flyer; has a "passion" about getting his religious point across; "can't see the line he is crossing")).

V. THE EVIDENCE IN THIS CASE SHOWS DISCRIMINATORY AND RETALIATORY ANIMUS.

JPL sought to persuade the Court that its actions against Coppedge were taken because of Coppedge's "conduct," not because of the "content" of Coppedge's conversations or DVDs. The issue is clearly one of mental state, of intention, which is nearly always a question of fact. (*See Hailey v. California Physicians' Service* (2007) 158 Cal.App.4th 452, 472). In this case, there is direct evidence of religious animus. (*See* excerpts in section IV, *supra* (Chin's hostile attitude toward intelligent design as religious dogma; Vetter and Edgington "bothered" by Coppedge's "religion"; Chin and Vetter threatened by Coppedge's perceived attempts to "convert" them or to modify their religious beliefs; Vetter and Weisenfelder's belief that Coppedge was crossing an undemarcated line by discussing religion)).

Discrimination based upon an erroneously perceived characteristic can still be actionable discrimination. (*See Delaney v. Superior Fast Freight* (1993) 14 Cal.App.4th 590, 596 ("employer policies against those believed to [fall within the category] are outlawed as fostering an atmosphere in which [such] workers would be compelled not just to forego seeking equal rights but also to hide their [targeted characteristic]"); *see also Estate of Amos ex rel. Amos v. City of*

Page, Arizona (9th Cir. 2001) 257 F.3d 1086, 1094 ("alleged discrimination is no less malevolent because it was based upon an erroneous assumption [about plaintiff's category]")).

Evidence showing JPL's dissembling, untrue, conflicting, or unbelievable statements about its reasons for disciplining, demoting and firing Coppedge is evidence supporting an inference of discrimination. (*Reeves v. Sanderson Plumbing Prods., Inc.* (2001) 530 U.S. 133, 134 ("In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose.")). Record examples, some of which are discussed elsewhere in this brief, abound:

A. Chin's Religious Animus

Chin refused Coppedge the opportunity to explain intelligent design, labeled it "religion," unjustifiably foreclosed Coppedge's right to discuss intelligent design, claimed "his" [Chin's] discussion was "hijacked" by Coppedge's attempt to defend his right to discuss intelligent design (as a scientific theory), and threatened Coppedge's employment status. Chin sought to justify his actions as being motivated by a need to "protect" Coppedge from an unspecified harm and a need to prevent "disruption" of the workplace environment. But Chin can't disguise his contempt for what he believed to be Coppedge's polluting of the office with a creationist/religious viewpoint. Chin's failure to question Weisenfelder's exaggerated claim of harassment or to conduct a basic inquiry into why her claim of being "tracked" gave rise to such hysteria shows him to be aligned with her intolerance toward Coppedge's ideological views and dismissive of intelligent design as religious propaganda.

B. Vetter's and Edgington's Religious Animus

Huntley recorded on March 17, 2009, during her meeting with Chin specific information implicating Vetter and Edgington for their religious animus: "Greg mentioned Margaret Wisenfield's [sic, Weisenfelder's] complaint about David to Carmen Vetter on 3.2.2009 .... Carmen replied that she and Scott Edington [sic, Edgington] had been bothered by David and ~~as it related to~~ his religious beliefs. She [Vetter] was not surprised by Margaret's complaint." (Exh. 227, p. 37, J.Huntley interview notes; words stricken in original).

At trial, Huntley (J.Huntley, 3/26/2012 p.m., 223:17-28), Chin (G.Chin, 4/29/2012 a.m., 35:2-5, 37:4-11), Vetter (C.Vetter, 4/4/2012 a.m., 45:8-14), and Edgington (S.Edgington, 4/4/2012 a.m., 37:16-21) were all prepared to emphatically disavow the statement. Of course JPL would want them to disavow it because it directly evidences religious animus. Huntley was

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generally pretty sloppy recording details, but the stricken portion indicates she made a conscious effort to record this detail accurately. By modifying the original words ("as it related to"), she deliberately sought to correct the meaning (and significance) of the sentence (while significantly *not* striking the words "his religious beliefs").

Edgington dissembled as well when he disavowed knowledge of Coppedge's religious beliefs. Edgington (just like Chin, Weisenfelder and Huntley [J.Huntley, March 22, 2012 p.m., 203:13-204:3, a "belief system" that is "religious based."]) believes that intelligent design is a religious concept. Coppedge had loaned Edgington an intelligent design DVD ("The Privileged Planet"). Edgington testified confidently that he never viewed it, but instead set it aside after determining for no particular reason that he wasn't interested in viewing it (S.Edgington, 4/4/2012 a.m., 36:6-12). Edgington's testimony was not credible for two specific reasons: (1) Edgington made clear he believed intelligent design to be a form of creationism and therefore a religious concept (*id.*, 36:13-26). Edgington is a space exploration scientist – it isn't believable that he had no particular reason for not watching the DVD; and (2) record evidence shows that Edgington *had viewed* the DVD (Exh. 61, Lending Log; Coppedge recorded on 6/2/2005: "Finally watched the bonus features; cordial, said we'll have to discuss it sometime....").

Had Edgington viewed even the bonus features of the DVD, he would have understood it dealt with the subject of intelligent design. (Exh. 54, DVD, "The Privileged Planet"). Significantly, Coppedge used the word "finally." That implied he had been waiting for Edgington to comment on the film; "finally," he did. The trustworthiness of Coppedge's written description of Edgington's reaction to the DVD after viewing portions of it is beyond debate because it was recorded close in time to when Edgington made it and Coppedge would have no reason to have misstated what Edgington told him. Edgington's convenient memory loss does not diminish the Lending Log's trustworthiness. From this, the Court should infer that Edgington had watched some portion of the DVD, determined it to contain a creationist message and became "bothered" that Coppedge was pushing his religious/creationist views on him.

It also follows that at some point Edgington discussed the DVD with his like-minded adjacent office neighbor, Carmen Vetter, who was loaned the DVD within recent months (see Exh. 61, *supra*). Huntley noted that Vetter was so bothered by the intelligent design DVDs Coppedge offered her, she complained to Chin about it. Huntley thus recorded on March 20, 2009, Vetter's account of how troubled she had been:

> "A couple of years ago, David approached her [Vetter] about the 'Intelligent Design' DVD. She watched it as a courtesy and told him it was interesting but nothing more. David did not pursue engaging her in a further discussion about the DVD. He has left her alone recently. *Greg assisted with that issue.* * Carmen has referred other employees to Greg when David has bothered/approached them *about his religious views.*"

(Exh. 227, p. 33, J.Huntley notes from meeting with C.Vetter, 3/20/2009; emphasis added; asterisk message situated in conformity with its placement in the margin). The terminology "that issue" about which Chin was assisting Vetter obviously referred to the intelligent design DVDs. The asterisk in the margin lies right next to the statement that "Greg assisted with that issue." Immediately following the phrase "He has left her alone recently," it is apparent that – as Huntley recorded it – Vetter believed Chin had bridled Coppedge in response to complaints over his DVDs.

Vetter's testimony that Coppedge had been inappropriately persistent in urging the renaming of the annual "holiday" potluck was also not credible. Vetter's impression of Coppedge's manner must be viewed in context. Coppedge testified he believed Vetter to welcome conversations about their mutual Christian faith. He was unaware that Vetter was uncomfortable with his religious openness, and she never expressed her reservations to him. He would have had no practical way of knowing that he was creating an intimidating environment for Vetter. Vetter's bias is subjective. But the evidence shows that from an objective view of all the relevant circumstances, Coppedge was anything but insistent. Indeed, he gingerly approached the issue with Chin, characterizing it as "small potatoes." (Exh. 24, 11/12/03 e-mail from D.Coppedge to G.Chin re: "Jew Supports Christmas Parties"). This evidence supports the inference that for years Vetter had maintained a deep-seated hostility toward Coppedge and his perceived religious obsession.

C. <u>Weisenfelder's Religious Animus</u>

Weisenfelder tried but failed to conceal her objections to Coppedge's religious views. Weisenfelder testified she did not object to religious content she ascribed to the DVD "Unlocking the Mystery of Life" (Exh. 53) (M.Weisenfelder, 4/3/2012 p.m., 223:12-224:11). But that testimony substantially conflicts with the fact that she complained to Chin about Coppedge's views on intelligent design (Exh. 227, Huntley investigation notes, p. 48 (Weisenfelder expressed a "concern about being 'harassed'" by Coppedge because of his "belief in intelligent design.") while admitting that she felt *religion* was too sensitive an issue to discuss at work

(M.Weisenfelder, 4/3/2012 p.m., 223:12-224:11). If discussing religion at work were Weisenfelder's entire concern, then her reaction to the DVD and to being "tracked" would make little sense. But Weisenfelder objected to both Coppedge's religious and political views (on Proposition 8) (*id.*, 245:13, 23-25). This shows her actions to have been motivated by her ideological choices, which clashed with Coppedge's. Weisenfelder was not objecting to Coppedge's discussing religion per se; she was objecting to him discussing a (perceived) religious view *she rejects*. Her strong emotional revulsion to Coppedge's views explains why she claimed to be victimized by Coppedge and to label his benign social interaction "harassment." Yet again, it was *explicitly the content* of Coppedge's overtures, *not his conduct*, that loomed large (*see*, e.g., *id.* ("The first discussion was regarding politics... The second discussion *the religious aspect was in the subject matter* of the DVD."; emphasis added)).

D. Huntley's Desperate Attempt To Claim Disinterest In The Religious Content Of The Complaints

Huntley masterfully dodged questions aimed at eliciting her description of Coppedge's alleged offensive "manner." The uncontroverted evidence is that Coppedge's manner of approaching people was polite, professional and brief. Indeed, it is uncontroverted that the real focus of Huntley's investigation was on the "controversial" nature of the religious and political subjects Coppedge brought up (G.Chin, 3/29/2012 p.m., 15:1-17:12, 4/2/2012 a.m., 232:7-233:18; M.Weisenfelder, 4/3/12 p.m., 215:21-23, 226:3-6, 226:23-28, 248:8-249:1) and not Coppedge's "manner." In the end, Huntley's pretzel logic could not save her credibility.

E. JPL's Contention That It Did Not Order Coppedge To Stop Discussing Religion And Politics

JPL tried to argue that it did not bar Coppedge from discussing religion and politics provided his discussions were not viewed as "unwelcome" or "disruptive." But Coppedge would never be able to predict when his interactions might subjectively be branded "unwelcome" or "disruptive." Thus, the Written Warning placed an unfair *de facto* restraint on Coppedge's actual and perceived religious activity, a restraint that was not placed on other employees.

VI. COPPEDGE SUFFERED MULTIPLE ADVERSE EMPLOYMENT ACTIONS.

Under FEHA, an adverse employment action is one that materially affects the terms, conditions, or privileges of employment, and includes "adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1055, *quoted and followed in Ma-*

lais v. Los Angeles City Fire Dept. (2007) 150 Cal.App.4th 350, 357). The phrase "compensation, terms, conditions, or privileges" of employment has been construed by the United States Supreme Court to be intended to strike at the entire spectrum of disparate treatment in employment. (*Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57, 64; *cited by Fisher v. San Pedro Hospital* (1989) 214 Cal.App.3d 590, 607). An adverse employment action is a job change that is "materially adverse," and could consist of, *inter alia*, "a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, *or other indices ... unique to a particular situation.*" (*Kassner v. 2nd Avenue Delicatessen Inc.* (2d Cir. 2007) 496 F.3d 229, 238 (emphasis added; quotation and citation omitted)). Transfers of job duties and undeserved performance ratings, if proven, would constitute "adverse employment decisions." (*Yartzoff v. Thomas* (9th Cir. 1987) 809 F.2d 1371, 1376).

In *Yanowitz v. L'Oreal, supra*, the California Supreme Court held that "a series of separate retaliatory acts collectively may constitute an 'adverse employment action' [necessary to satisfy a claim of retaliation] even if some or all of the component acts might not be individually actionable." (*Id.*, at 1058). *Yanowitz* surveyed cases citing adverse employment actions in the following situations: (1) Actions that threaten to derail an employee's career (such actions are "objectively adverse"); (2) Disadvantageous transfers or assignments; (3) Unwarranted or undeserved negative job evaluations/performance ratings; (4) Solicitation of negative comments by co-workers; (5) Toleration of harassment by other employees; (6) Written reprimands; (7) Demotions; and (8) Termination. (*Id.*, at 1060-1061, citations omitted). This list is non-exclusive, and whether an employee has been subjected to an adverse action depends on the circumstances ("other indices unique to the circumstances"). The evidence here shows overwhelmingly JPL engaged in these and additional adverse actions:

Threats to Job Security: Chin made what Coppedge interpreted as a threat to his job security in their March 2, 2009 encounter (Exh. 227, pp. 48-49 ("He … told me that he felt that I was threatening him ... and creating a 'hostile work environment.'"); D.Coppedge, 3/19/2012 a.m., 48:16-21, 60:7-16, 62:21-25)). The written reprimand issued to Coppedge on April 13, 2009, made the threat explicit (Exh. 103, Written Warning, p. 2, ¶¶ 1&3 ("subject to further disciplinary action up to and including termination"); Exh 227, p.16, ¶ 2, 4/15/2009, e-mail from C.Burgess to S.Curtis, et al., re: "FW: Meeting with David Coppedge on 4/13/09" ("termination could be one of the choices we'd have to make")).

Assignment to Lower Level Tasks: JPL's witnesses conceded that Coppedge was assigned to lower level tasks when stripped of his team lead position and made to work under Nick Patel (C.Burgess, 4/2/2012 p.m., 221:22-222:21; R.Aguilar, 3/27/2012 a.m., 55:7-57:7; G.Chin, 3/29/2012 p.m., 163:11-21,163:24-164:3 (gave up significant customer interaction); N.Patel, 4/4/2012 p.m., 231:25-232:4 (lost significant responsibilities); *id.*, 4/5/2012 a.m., 36:17-23 (lost responsibility to manage other SAs' work activities); *id.*, 154:1-156:10 (lost representational responsibilities); B.Elgin, 3/28/2012 a.m., 20:11-21:6 (lost supervisorial and reporting privileges)).

Negative Performance Evaluations: Coppedge received unwarranted and undeserved negative job evaluations/performance ratings only *after* he challenged the discriminatory actions taken against him (Exhs. 34 & 35, 2009-2010 ECAPS).

Solicitation of Negative Evaluations: Coppedge's line management supervisor (Burgess) solicited negative comments from Coppedge's project manager supervisor (Chin) in 2009. In 2010, after Burgess and Chin learned they were being sued as defendants in this lawsuit and while recognizing their negative comments posed a question of retaliatory behavior (G.Chin, 4/2/2012 a.m., 41:7-42:9 (aware of conflict of interest and appearance of retaliation)), not only did Burgess solicit negative comments from Nick Patel, Diane Conner, Greg Chin and Barbara Larsen (C.Burgess, 4/2/2012 p.m.,181:27-183:9, 204:6-12; G.Chin, 4/29/2012 a.m., 41:7-42:9), but Chin also solicited negative comments from Nick Patel, Tammy Fujii and Patty Smith (G.Chin, 3/29/2012 p.m., 153:6-156:25).

Toleration of Harassment by Co-workers: JPL tolerated and even supported Chin's harassment of Coppedge on March 2, 2009, as shown principally through the HR investigator's (Jhertaune Huntley's) failure to investigate Coppedge's complaint of a hostile work environment and of Chin's violating his civil rights (D.Coppedge, 3/21/2012 a.m., 63:11-28; J.Huntley, 3/22/2012 p.m., 165:17-26, 209:26-210:6; K.Klenk, 4/3/2012 a.m., 13:25-14:6, 17:1-15; J.Huntley, 3/22/2012 p.m., 199:1-4, 209:1-18).

Written Reprimand: Coppedge was issued a formal written reprimand falsely accusing him of harassment and unethical conduct and of failing to comply with Chin's order restricting his right to discuss religion or politics, and forbidding him from engaging in protected activity (discussing "religion" during work hours). (Exh. 103 (Written Warning); K.Klenk 4/3/2012 p.m., 171:13-16 (no policy prohibiting discussion of religion or politics in the workplace), 202:16-22 (adversely effects employee as part of progressive disciplinary process), 203:8-14 (restrictions

remained in effect after Written Warning revoked); Burgess, 4/3/2012 p.m., 239:15-23 (conceding he knew at the time the Written Warning was issued "it would have an adverse effect on [Coppedge's] employment status")).

Demotion: Coppedge was demoted from the leadership position he held for nine consecutive years as Team Lead for system administration (Exh. 109 (Chin's demotion announcement, "leading the team for the past decade"); Burgess 4/8/2012 a.m., 222:1-224:1 (announcement to all users advising they would no longer be communicating through Coppedge)). Team Lead held significant responsibilities (*see* item No. 2, "Assignment to Lower Level Tasks," *supra*).

Termination: Coppedge was terminated for opposing JPL's discriminatory practices. (*See* section VIII, *infra*).

Biased/Inadequate Investigation: In addition, the evidence showed Coppedge was wrongfully subjected to an improper, biased and inadequate investigation on charges of harassment. JPL was required to produce evidence that: (1) it acted with "good faith" in making its decisions to discipline, demote and terminate Coppedge; (2) its investigation was "appropriate under the circumstances;" and (3) it had reasonable grounds for believing Coppedge engaged in the alleged misconduct, i.e., harassment under JPL's policy. (*See Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal.4th 93, 109, and *Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 264 (describing the standards for an appropriate investigation conducted by an employer before imposing an adverse employment action, such as demotion or termination)).

Under *Silva*, in an appropriate investigation: (a) an uninvolved human resources representative investigates the charges; (b) complaints are investigated promptly; (c) interviews are memorialized in writing; (d) important witnesses provide their written statements; (e) relevant, open-ended, nonleading questions are asked; (f) facts, rather than opinions or suppositions, are obtained; (g) witnesses get the opportunity to clarify, correct or challenge information provided by other witnesses who give contrary statements; (h) the accused is given an additional opportunity to respond to statements made by others.

On these elements, JPL's investigation fell woefully short: (a) Huntley admitted that she failed to comply with JPL policy that required offering Coppedge a chance to select an investigator (J.Huntley, 3/22/2012 p.m., 175:6-9). She thus compromised her role by callously ignoring Coppedge's rights. Her lack of detachment revealed itself through her inexplicably bizarre de-

scription of Coppedge's "targeting" Weisenfelder (holding a piece of paper in his hand (*id.*, 180-185) and having a "sticky note" on the DVD he loaned her). Huntley failed to rationally explain what she meant by the term "targeting" or how under the circumstances and within the context of Coppedge's two brief encounters with Weisenfelder his behavior could rationally be found harassing; (b) Huntley commenced her investigation on the basis of a single reported incident, but considered *events remote in time* when she gave her disciplinary recommendations; (c) Although Huntley's interviews were memorialized in writing, she testified that her practice is not to write everything down because she isn't trained to do it. Time after time, she admitted *failing to record* a material fact. Her notes thus comprise an unreliable record of her investigation; (d) *None* of the "important" witnesses provided a written statement; (e-f) Huntley recorded vague details from her discussions, showing *a lack of any rigorous method of fact-gathering*; (g) Coppedge was *not given the opportunity to clarify, correct or challenge information* provided by other witnesses who gave contrary statements; and (h) Coppedge *was not given an additional opportunity to respond* to statements made by others.

Egregiously, Huntley's investigation ignored standard procedures required to ensure a fair and impartial investigation and ignored the language of the unlawful harassment policy in forming her conclusion that Coppedge had violated it. Huntley failed to take into account the ideological biases of Coppedge's accusers, failed to seek out exculpatory evidence, failed to consider exculpatory evidence (e.g., Burgess's statements that Coppedge had not harassed him with his intelligent design DVDs) and failed utterly to justify her findings at trial.

JPL's "Unlawful Harassment" policy tracks California law of harassment. JPL Policy states: "Harassment is the creation of a hostile or intimidating environment in which verbal or physical conduct, because of its severity and/or persistence, is likely to interfere significantly with an individual's work" (Exh. 193). But it further states that "Harassment must be distinguished from behavior which, *even though unpleasant or disconcerting*, is ... *objectively reasonable under the circumstances*" and that "in order to make an accurate judgment as to whether these incidents are illegal or violate policy, *the full context* in which these actions were taken or statements made *must be considered.*" (*Id.*). "[H]arassment focuses on situations in which the social environment of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee." (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 706). "[H]arassment cannot be occasional, isolated,

sporadic, or trivial ... [it must be] a concerted pattern of harassment of a repeated, routine or a generalized nature." (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 131 (internal quotations and citations omitted)). "That is, when the harassing conduct is not severe in the extreme, more than a few isolated incidents must have occurred to prove a claim based on working conditions." (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 284). Nothing about Coppedge's supposed conduct even remotely approaches JPL's definition of harassment. JPL audaciously expects the Court to adopt Huntley's outrageous characterization of Coppedge's sociable, benign practice of loaning DVDs to people as "harassment." Huntley's contorted application of JPL policy ignored the *full context* of the circumstances within which Coppedge shared his DVDs with others and by doing so relinquished any pretense of objectivity.

VII. THE PREPONDERANCE OF EVIDENCE SHOWS THAT JPL'S ADVERSE ACTIONS WERE CAUSALLY CONNECTED TO COPPEDGE'S PROTECTED ACTIVITIES AND DAMAGES.

A. JPL's Disciplinary Decisions Were The Direct Result Of Chin's, Weisenfelder's, Vetter's And Edgington's Religious Intolerance.

"While a complainant need not prove that [discriminatory] animus was the sole motivation behind a challenged action, he must prove by a preponderance of the evidence that there was a 'causal connection' between the employee's protected status and the adverse employment decision." (*Mixon v. Fair Employment and Housing Com.* (1987) 192 Cal.App.3d 1306, 1319). "Proof that the employer's proffered reasons are unworthy of credence may 'considerably assist' a circumstantial case of discrimination, because it suggests the employer had cause to hide its true reasons. Still, there must be *evidence supporting a rational inference* that intentional discrimination, on grounds prohibited by the statute, was the true cause of the employer's actions." (*Guz v. Bechtel Nat. Inc.*, *supra*, 361 (internal citation omitted; emphasis added)).

Coppedge proved by a preponderance of the evidence that Chin – Coppedge's project supervisor – was the driving force behind Coppedge's discipline and demotion on April 13, 2009. JPL's disciplinary decisions were made on the direct basis of Chin's hostility toward Coppedge's views on intelligent design, which he thought to be a religious concept, and the religious intolerance of others interviewed by the HR investigator (Vetter, Weisenfelder, Edgington) informed by their ideological leanings.

The dots begin to connect when, after borrowing an intelligent design DVD from Coppedge, Weisenfelder complained to Chin that she did not want to discuss sensitive issues like

religion with Coppedge. Both Chin and Weisenfelder believed intelligent design to express a religious idea. (G.Chin, 3/29/2012 p.m., 228:14-20; M.Weisenfelder, 4/3/2012 p.m., 239:1-5, 25-28). Chin admitted he was motivated by frustration and anger listening to Coppedge try to "debate" whether intelligent design was a scientific or a religious subject. ("I was frustrated and I was getting angry because, you know, somehow my conversation got hijacked into having a debate about intelligent design...." (G.Chin, 3/29/2012 a.m., 21:9-12). Chin further admitted that he threatened Coppedge's job security: "I said, David, stop this. If you continue down this path, *you're going to find your career options here at the lab very extremely limited....*" (*Id.*, 21:21-23, emphasis added). Chin realized he had misused his authority by threatening Coppedge's job security ("I figured maybe I did something wrong. *I was still angry.*" (G.Chin, 22:26-23:2, emphasis added); "My mistake was telling David that I – *in an angry tone* – that I felt [ ] *his career options here might be limited.*" (G.Chin, 4/2/2012 a.m., 32:20-22, emphasis added). "I told him ... this topic [intelligent design] is not for further discussion. *He objected.* I then told him ... that if [he] pursues this line of thought (wanting to discuss ID ...) ... that *his employment options here would be severely limited....* He then told me that *he felt that I was threatening him* ... and creating a 'hostile work environment'. I informed him that if he felt that, please go ahead and file a complaint with his supervisor." (Exh. 227, p. 48, 3/3/2009 e-mail from G.Chin to C.Burgess, et al., re: "Coppedge Incident," emphasis added).

Chin's rash overreaction and refusal to allow Coppedge to defend himself unmasked a smoldering contempt for what Chin erroneously believed to be Coppedge's religious practices. His anger trailed him out of the room and ignited a string of deliberate and interrelated moves jeopardizing Coppedge's job status. These moves consisted of Chin's: (1) hasty and preemptive hallway dash alerting management to an anticipated complaint from Coppedge; (2) triggering an HR investigation, focusing the investigation on Coppedge's activities and steering the investigator toward witnesses unfavorable to Coppedge (Exh. 227, p. 37 ("Carmen [said] that she and Scott Edgington had been bothered by David and his religious beliefs.")); (3) authoring an unprecedented negative performance review in Coppedge's 2009 ECAP (Exh. 34 (to be amplified in 2010 [Exh. 35] with enhanced criticism and the solicitation of negative feedback from anonymous coworkers)); (4) soliciting the approval of Bob Mitchell to remove Coppedge from the Cassini program (G.Chin, 3/29/2012 a.m., 41:3-42:7); and (5) conveying to Clark Burgess, Coppedge's line management supervisor responsible for executing personnel decisions, *Chin's*

decision to pull Coppedge off the project and to cut his funding because of Coppedge's "conduct/interpersonal communications issues." (Exh. 97, 4/7/2009 e-mail from N.Aguilera to S.Curtis re: "David Coppedge," "Importance: High").

Chin's actions thus formed an unbroken chain of maneuvers that on April 13, 2009, led directly to: (1) the issuance of a formal written reprimand; (2) Coppedge's team leadership demotion; and (3) enhanced surveillance intended to document negative reports. (*Id.*).

B. JPL's Proffered Reasons For Its Disciplinary Actions Are Pretext For Discrimination.

"[E]vidence of dishonest reasons, considered together with the elements of the prima facie case, may permit a finding of prohibited bias." (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 356). JPL's pretextual answer to the evidence of Chin's offensive was two-fold. First, it tried to distance Chin's actions from the March 2 incident, and instead connect them to purportedly ongoing performance issues. Although JPL unleashed an army of witnesses eager to clobber Coppedge over his fussy personality style ("argumentative" and "condescending" were just a few of the tested invectives tossed out to describe him), the effect amounted to overkill. If Coppedge had been the serious problem employee they sought to portray, the Court might question why Coppedge had remained employed with JPL for as many as 12 years and why JPL had not treated the problem with greater urgency. Indeed, the evidence in the case is that Coppedge was terminable at will (Exh. 202, JPL Termination Policy) and could have been let go at any earlier time dating back to 2004. It simply isn't credible that such loathing could occur for such a prolonged period without JPL's taking meaningful corrective action.

Notwithstanding JPL's exaggerating the essentially trivial examples of Coppedge rubbing people the wrong way (none documented in writing), JPL failed to produce any credible or direct documentary evidence that its actions were connected to Coppedge's "customer" interactions at all. JPL's motives for its disciplinary decisions are documented in: (1) the April 13, 2009 disciplinary meeting transcript and audio recording (Exhs. 102 and 351); (2) the Written Warning (Exh. 103); and (3) e-mails contemporaneously generated in April (Exhs. 97 & 108). It wasn't until August 25, 2009, that Kevin Klenk, following the August 25, 2009, "appeal" meeting with Coppedge, *for the first time* would write a self-serving note claiming the lead assignment to be unrelated to the HR investigation (Exh.227, p. 6, ¶ 5) (*see*, e.g., Exh. 105 (no mention of demotion in Klenk's summary of the 4/13/2009 disciplinary meeting)). But the decision to demote Coppedge was made by *Burgess* – not Klenk – following consultation with Chin and HR. (Certi-

fied Tr., 4/13/2009 Discipline Meeting, 35:12-20 [contradicting Burgess's trial testimony that he arrived at the decision to remove Coppedge from the team lead role during the meeting].) Moreover, the record evidence shows that Coppedge's demotion and discipline were *directly tethered* to Huntley's investigation ("... [T]his is directly a result of all the interviews that HR conducted." (*Id.*, 36:19); [Coppedge:] "I just want to be crystal clear I was not being investigated/reprimanded for some other activity, *personal flaw or deficiency* in job performance." [Burgess:] "I believe the investigation was triggered by the discussion you had with Greg on April 13th [sic, March 2], when he demanded you stop passing out DVDs and discussing them in the workplace.... It's my belief, if that incidence [sic] had not happened HR would not have been contacted...." (Exh. 108, 4/15-16/2009 e-mail exchange re: "Wording of what we talked about")). In fact the Written Warning conspicuously made *no mention* of work-related interpersonal communication matters outside the context of Huntley's investigation. (Exh. 103).

JPL's reasons for disciplining Coppedge are pretextual for an additional reason. The interpersonal communication problems JPL's employees testified they experienced in the past had been resolved to the satisfaction of Coppedge's supervisors a year earlier; indeed, Coppedge was never singled out as the problem (Exh. 32, Coppedge's 2008 ECAP, p. 32 ("Dave has gone *above and beyond what would be normally expected to communicate with individuals & teams* who have expressed dissatisfaction with *prior interactions*. It seems he [is] starting to [win] over some of the disgruntled although *some still are hard to deal with*."; "David has most of his project customers supporting what he's trying to do for them. *He is expected to continue supporting the project over the next several years*." [Emphasis added])). JPL claims it was "protecting" Coppedge and "trying to be nice." But the ECAP process was the primary basis upon which performance evaluations were to be documented (R.Mitchell, 4/5/2012 p.m., 225:2-16), *an inappropriate place to be fudging the truth*. And the argument that Coppedge was a "nice guy" under "protection" finds absolutely no support in the documented record of Coppedge's employment history. As Coppedge's notebooks portray things, Chin had no particular affection for Coppedge.

Other instances of pretext arose when JPL responded to evidence that Chin's conduct was causally linked to the disciplinary decisions, e.g., when JPL attempted to undermine the accuracy of Nancy Aguilera's April 7, 2009 "strategy" e-mail (Exh. 97), which ties Chin's actions directly to the disciplinary decisions *as well as* the demotion. JPL omitted producing Aguilera at trial to

confirm or dispute its accuracy. And there is no record evidence establishing that Aguilera would have recorded that information inaccurately. Indeed, Huntley, who participated in the April 7 meeting with Burgess, could not dispute the e-mail's accuracy (J.Huntley, 3/26/2012 p.m., 234:14-22).

VIII. JPL RETALIATED AGAINST COPPEDGE FOR CHALLENGING ITS DISCRIMINATORY ACTIONS.

As detailed in section VII(A), *supra*, JPL retaliated against Coppedge's opposition to Chin's March 2, 2009, discriminatory order. JPL's retaliatory scheme included the adverse actions outline in section VI, *supra*. But JPL also retaliated against Coppedge's opposition to the April 13, 2009, disciplinary restrictions and job demotion by finally terminating him in January 2011 after Coppedge had filed administrative and legal complaints. (*See*, e.g., *Chen v. County of Orange* (2002) 96 Cal.App.4th 926, 949 (filing a complaint is a protected activity)). (*See also* Rebuttal Closing Argument, 189:28-190:15 (retaliated by withdrawing protection)).

JPL claims its plans to downsize in anticipation of budget reductions leading into Cassini's second extended mission were in the works well before the events of this lawsuit occurred. However, Coppedge was seemingly not at risk of losing his job (Exh. 32, 2008 ECAP, p. 2, ¶ 5A ("David … is expected to continue supporting the project over the next several years.")).

JPL also tried to establish that the layoff decisionmaker, Richard Van Why, engaged in an objective layoff selection process indifferent to the lawsuit and to Cassini's desire to cut Coppedge from the project. To the contrary: (1) In late summer/fall 2009, Van Why became Coppedge's section manager with responsibility over him (R.Van Why, 154:6-8). In September 2009, JPL was on actual notice of Coppedge's threatened lawsuit (Exh. 215, Demand Letter). It would be ludicrous to assume that JPL would have shielded Van Why from such vital information; (2) Mitchell notified Van Why in March 2010 that upcoming downsizing would affect "our SAs who are in your section" and wanted to discuss retaining a particular SA contractor (Exh. 156, 3/22/2010 e-mail from R.Mitchell to R.Van Why re: "Talk About Cassini Staffing"). Van Why knew or could reasonably be expected to have known about Cassini's desired staff changes specific to each individual SA in his section because Burgess brought it to his attention on March 19, 2010, just three days before Mitchell wrote to Van Why on the same subject (Exh. 154, 3/19/2010 e-mail from C.Burgess to R.Van Why re: "Quiet Hour Subjects …"). It is senseless to conclude that Van Why would have been uninformed of Cassini's desired staff changes relative to each specific SA or that it would have escaped Van Why's attention during this time

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period; and (3) Van Why claims he was made aware of the lawsuit in May 2010 by attending a confidential briefing with JPL counsel (R.Van Why, 4/12/2012 p.m., 26:22, 29:18-26) at which time he was also aware that he was responsible for deciding upcoming layoffs (*id.*, 30:21-23). Mitchell and Julie Webster saw news reports of the lawsuit in April, and Patel and Conner heard about it from colleagues. Van Why surely must have been aware prior to the meeting with counsel that an SA in his section had filed a lawsuit naming his Division Manager (Klenk) and Group Supervisor (Burgess) as defendants. Yet Van Why continued to disavow knowledge of the lawsuit as late as August 2010 (D.Coppedge, 4/12/2012 p.m., 167:14-21).

Van Why further sought to claim objectivity in the layoff process by testifying he was relying on objective input from Burgess and Diane Conner (via phone calls, without taking notes) (R.Van Why, 4/12/2012 a.m., 32:16-18, 41:19-23) and with few specifics (*id.*, 35:22-37:15, 39:11-22, 43:15-17). But details of Conner's input are undocumented (*id.*, 181:23-182:5). It isn't plausible to think Cassini's desire to eliminate Coppedge never influenced the layoff decisions. And Van Why's testimony confirmed the vague and subjective layoff categories overlapped so much that their distinctions were meaningless. Undocumented hostile input, an expressed desire to fire, and layoff decisions couched in subjective criteria – that mixture conceals a true motivation behind the pretext. (*See Bergene v. Salt River Project Agr. Imp. and Power Dist.* (9th Cir. 2001) 272 F.3d 1136, 1143 (subjective criteria used in employer's decision are circumstantial evidence of retaliatory intent)).

Like Van Why, Conner had also attended a lawsuit briefing with counsel in April or May (D.Conner, 4/11/2012 p.m., 207:3-6). Just prior to that, in March 2010, Conner met with Mitchell to discuss her proposal for the new office she was to manage, which included reducing the SA staff to 3.0 full-time employees. (D.Conner, 4/11/2012 p.m., 205:22-207:2, R.Mitchell, 247:3-13). Mitchell had wanted to eliminate Coppedge's job for years (R.Mitchell, 209:24-211:3, 213:19-21; G.Chin, 3/28/2012 p.m., 227:4-12, 3/29/2012 a.m., 10:1-22), especially upon hearing about the March 2, 2009, incident (G.Chin, 3/2892012 a.m., 41:7-42:4; R.Mitchell, 218:14-19). Like Chin, Mitchell felt that Coppedge was pushing his religion with his intelligent design DVDs (R.Mitchell, 240:4-7). Viewing the totality of the relevant circumstances, a rational inference can be drawn that there was nothing fair or objective about the layoff process, that it was influenced by Mitchell and the filing of the lawsuit, and that Coppedge's selection was a foregone conclusion.

IX. JPL FAILED TO PREVENT FURTHER DISCRIMINATION AND HARASSMENT.

Employers are required to "take all reasonable steps necessary to prevent discrimination and harassment" in the workplace. (Govt. Code § 12940, subd. (k); *California Fair Employment and Housing Com'n v. Gemini Aluminum Corp.* (2004) 122 Cal.App.4th 1004, 1024). "The employer's duty to prevent harassment and discrimination is affirmative and mandatory." *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 288, *citing Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 1021, 1035).

FEHA makes it a separate unlawful employment practice for an employer to "fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring." (Govt. Code § 12940, subd. (k); *State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1040). On a claim of failure to prevent discrimination or harassment, a plaintiff must show: 1) plaintiff was subjected to discrimination, harassment or retaliation; 2) defendant failed to take all reasonable steps to prevent discrimination, harassment or retaliation; and 3) this failure caused plaintiff to suffer injury, damage, loss or harm. (*Lelaind v. City and County of San Francisco* (N.D.Cal. 2008) 576 F.Supp.2d 1079, 1103). Chin's perverse response to Weisenfelder's complaint was disproportionate to any offense Coppedge may have been perceived to have committed. JPL supported, adopted and ratified Chin's discriminatory actions by conducting a sham investigation, a sham appeal and a sham layoff process. At any stage, JPL could have prevented further discrimination, harassment and retaliation.

X. JPL DISCRIMINATED AND RETALIATED AGAINST COPPEDGE IN TORTIOUS CONTRAVENTION OF PUBLIC POLICY.

At-will employees may recover tort damages from their employers if they can show they were discharged in contravention of fundamental public policy. (*Green v. Ralee Engineering Company* (1998) 19 Cal.4th 66, 71, citing *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 and *Petermann v. Intl. Brotherhood of Teamsters* (1959) 174 Cal.App.2d 184; *see Guz v. Bechtel Nat. Inc., supra* (employment discrimination applies in context of wrongful demotion)). Employees must show that the important public interests they are advancing stand upon fundamental policies flowing from constitutional or statutory provisions. (*Id.,* at 71). FEHA's prohibitions against employer discrimination and retaliation "inure to the benefit of the public" (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143, 1160, citing *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 894), so the courts recognize tort causes of action for wrongful discharge

claims based on disability discrimination (*Moorpark*), age discrimination (*Stevenson*) and sex discrimination (*Rojo v. Kliger* (1990) 52 Cal.3d 65).

Whether a particular policy can support a common law wrongful discharge claim requires that the policy be: (1) delineated in either constitutional or statutory provisions; (2) "public" in the sense that it inures to the benefit of the public rather than merely serving the individual's interests; (3) well established at the time of the discharge; and (4) substantial and fundamental. (*Stevenson, supra,* at p. 894.) All four requirements are satisfied in this case: (1) FEHA clearly delineates a policy against religious discrimination in employment in cases of employers with five or more employees; (2) that policy inures to the benefit of the public because anyone may possess religious convictions and suffer religious discrimination; the public also benefits from religious employees' productivity, while invidious discrimination foments strife and unrest; (3) the policy against religious discrimination is well-established; and (5) the policy against religious discrimination is substantial and fundamental (*City of Moorpark, supra,* at 1160 ("our opinions articulating 'substantial and fundamental' policies against sex and age discrimination use the term 'discrimination' only in the pejorative sense to refer to arbitrary judgments about individuals based on group stereotypes")). As the legal elements are satisfied, the conclusion follows directly. JPL engaged in tortious conduct when it wrongfully demoted and discharged Coppedge because of his actual or perceived religious activity. Accordingly, JPL should be found liable on the Eighth and Tenth Causes of Action.

XI. RELIEF SOUGHT

Coppedge is entitled to recovery of compensatory damages in the total sum of $860,000.00 (*State Personnel Bd. v. Fair Employment & Housing Com.* (1985) 39 Cal.3d 422, 433-434), emotional distress damages in the sum of $500,000.00 (*id.*; Civ. Code § 3283 [reasonably certain to result in the future]), reasonable attorney's fees and costs, including expert witness fees (Govt. Code § 12965, subd.(b)) and prejudgment interest (Civ. Code § 3287, subd. (a)).

DATED: May 8, 2012

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