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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES

17 DAVID COPPEDGE, an Individual,
18 Plaintiff,
19 vs.

20 JET PROPULSION LABORATORY, form
21 unknown; CALIFORNIA INSTITUTE OF
22 TECHNOLOGY, form unknown; GREGORY
23 CHIN, an Individual; CLARK A. BURGESS,
24 an Individual; KEVIN KLENK, an Individual;
25 and DOES 1 through 25, inclusive,
26 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

MAY 29 2012

John A. Clark, Court Officer/Clerk
By  Deputy
GLORIETTA ROBINSON

CASE NO. BC 435600

**DEFENDANT'S POST-TRIAL RESPONSE
BRIEF**

Trial Date: March 7, 2012
Place: Department 54
Judge: Hon. Ernest M. Hiroshige

27 ORIGINAL
28

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The credible evidence at trial established beyond a doubt that Caltech neither discriminated nor
4 retaliated against David Coppedge. Caltech laid off Coppedge because of his relative lack of skills, and
5 for no other reason. It is indisputable that Nick Patel and Oscar Castillo had greater expertise in needed
6 technologies. They also had excellent customer service skills, while Coppedge had a long history of poor
7 customer relations. Caltech disciplined Coppedge only after a neutral Human Resources ("HR")
8 investigation revealed that co-workers legitimately felt harassed by how he interacted with them during
9 work hours on controversial, non-work-related topics (like Proposition 8 and intelligent design ("ID")).
10 And, the written warning he received was rescinded once Coppedge adhered to Caltech's reasonable
11 request that he refrain from discussions that were argumentative, disruptive or otherwise harassing to co-
12 workers. Lastly, Coppedge's line manager, Clark Burgess, transferred Coppedge's informal lead duties to
13 another Cassini System Administrator ("SA") only after Burgess personally observed what Coppedge had
14 demonstrated for years in a variety of circumstances: that he does not listen to others, that he blames others
15 for any problems, and that he otherwise communicates in an argumentative and confrontational manner.
16 Indeed, Coppedge demonstrated these very same behaviors when testifying at trial.

17 Coppedge's post-trial brief largely ignores the trial record and instead engages in the same
18 rampant speculation that was the hallmark of his pretrial briefs and closing argument.¹ According to the
19 brief, everyone who disagreed with Coppedge's views (such as Margaret Weisenfelder, Scott Edgington,
20 Carmen Vetter) and everyone who made decisions with which he disagreed (such as Greg Chin, Burgess,
21 Kevin Klenk, Jhertaune Huntley, Bob Mitchell, Diane Conner, Richard Van Why) necessarily
22 discriminated or retaliated against him. That is utter nonsense!

23 The undisputed evidence rebuts any inference of religious or retaliatory animus. Caltech
24 embraces its multi-national, multi-cultural workforce at JPL, both in its policies and by its actions. Caltech
25 allowed Coppedge to show movies about religion and ID in JPL conference rooms during lunch and
26 allowed a Bible Study Group to meet during non-work time on JPL property for many years.² Coppedge
27 never had any discussions, let alone disputes, about religion, ID or politics with Van Why, Mitchell,
28 Conner or anyone who criticized his performance on Cassini. According to his own tracking chart, several

26 ¹Coppedge improperly filed with his brief a PowerPoint presentation, some of which his counsel used
27 during closing argument. This presentation is not admissible evidence, and it otherwise violates the
28 Court's order expressly limiting each of the parties' initial briefs to twenty (20) pages. Therefore, Caltech respectfully requests that the presentation be stricken and/or disregarded in its entirety.

² (3/27 45:26-46:20, 96:27-97:13.)

1 individuals whom Coppedge now accuses of discrimination either bought DVDs or otherwise made
2 favorable comments about them. In short, there is no credible evidence to support Coppedge's claims.
3 The Court should enter judgment for Caltech on all claims.

4 **II. THE OVERWHELMING EVIDENCE ESTABLISHED CALTECH'S LEGITIMATE,**
NON-DISCRIMINATORY, NON-PRETEXTUAL REASONS FOR ITS ACTIONS

5 **A. Coppedge Made His Co-Workers Feel Harassed And Uncomfortable.**

6 For years, Coppedge used work time to approach co-workers on controversial, non-work-related
7 topics, such as political measures, judicial candidates, ID, and religion. (3/19 182:17-24, 204:10-18.) One
8 of his targets, Margaret Weisenfelder, complained to Chin on March 2, 2009, about two issues. First, a
9 sticky note on the back of an ID DVD Coppedge lent her suggested he was tracking co-workers. She saw
10 "Try Again" next to a co-worker's name, and she worried he was re-offering the DVD to people who
11 already declined it. (4/3 221:15-24, 223:3-11, 224:13-20.) Second, a few months earlier, Coppedge had
12 approached her during work to persuade her to his beliefs about controversial Prop. 8. When she said she
13 did not support the Proposition, he asked if he could change her mind and reacted disapprovingly when
14 she said no. This left her feeling uncomfortable and personally judged. (4/3 216:26-217:12.)

15 Two other co-workers had similar experiences. Scientist Scott Edgington was left shaken after
16 Coppedge came to his office to discuss Prop. 8. Coppedge raised his voice and accused Edgington of not
17 liking children when he disagreed with Coppedge's views. Edgington was deeply insulted and had to tell
18 Coppedge twice to leave before he did so. (4/4 11:1-18:18.) Program administrator Carmen Vetter
19 overheard part of the conversation and confirmed Edgington's account. (4/4 54:8-56:11.) Vetter herself
20 had struggled with Coppedge too. When he learned she was also Christian, Coppedge sought her out to
21 discuss religion at work. She found that inappropriate, as well as his judgmental manner in discussing
22 Christianity. (4/4 57:19-59:24.) Coppedge alienated her further by pressing her to change the Cassini
23 Holiday Party to a "Christmas Party," and by making her feel judged as a Christian when she did not do
24 so. (4/4 48:14-50:28.) Vetter sought advice from Program Manager Bob Mitchell. He confirmed the
25 Holiday Party would not be renamed to embrace only one religion; after all, the party was inclusive and
26 should show respect and appreciation to *all* Cassini workers. Mitchell corroborated Vetter's testimony,
27 and confirmed she was visibly upset by the pressure Coppedge was applying. (4/5 219:14-220:12.)

28 **B. Rather Than Accept Chin's Advice For What It Was, Coppedge Created A**
Confrontation And Disingenuously Claimed Chin Was Biased Against Him.

Chin chose to talk to Coppedge informally about Weisenfelder's concerns. He wanted Coppedge
to understand that discussing volatile topics (like politics and religion) during work hours could be

1 disruptive, and that he should discuss such topics on his own time. (3/29 15:27-16:21, 17:21-26, 21:8-15.)

2 Instead of seeing Chin's advice for what it was – another attempt to help him – Coppedge turned
3 the discussion into a confrontation. He demanded to know the names of his “accusers.” He challenged
4 Chin's reference to ID as religion, and wanted to debate Chin on “what was science.” Coppedge claimed
5 evolution was a “protected religion” at JPL and challenged Chin to debate ID off the premises. Chin
6 became frustrated by Coppedge's persistence in trying to argue the merits of ID when the point of Chin's
7 message was to avoid such controversial topics during work hours. Chin told Coppedge that if he
8 continued, his employment options would be limited (meaning it would be hard for Coppedge to get
9 assignments, if he alienated people). (3/29 18:8-22:12.) Coppedge responded that Chin could be
10 construed as creating a hostile work environment; Chin said he should file a complaint if he felt that way.
11 (3/29 22:13-21.) Chin later realized that his word choice about Coppedge limiting his options could
12 mistakenly be interpreted as a threat. (4/2 32:12-22.) As a manager, he felt obligated to – and did – notify
13 HR, and his and Coppedge's managers about what happened. (3/29 22:24-23:24, 24:23-25:11.)

14 Based on nothing more than this exchange, Coppedge alleges Chin discriminated against him
15 (because of his religion and belief in ID) and had “contempt for [his] religious viewpoint.” The objective
16 evidence is to the contrary. Chin held *no* hostility toward ID or Christianity – his much-loved uncle
17 belonged to Coppedge's church and was a firm believer in ID. Chin knew of Coppedge's beliefs as far
18 back as the late 1990's, and he nonetheless supported Coppedge by recommending him, first to be
19 informal team lead in 2000, and then to become a Caltech employee in 2003. (3/28 206:21-207:20, 211:7-
20 18; 3/29 167:26-168:13.) Finally, Coppedge's sworn testimony, at deposition and trial, contradicts his
21 allegation: “Greg has been a great boss, and I've worked with him for eight years. He's a great guy. He's
22 competent. He's knowledgeable. He does a lot of good for us, and, frankly, I was shocked at this [March
23 2, 2009] outburst. We had had, you know, some heated discussions a little bit over the years, but he was
24 aware way back, I think years ago, about [my intelligent design] DVDs. ...” (3/20 199:14-22.)

25 Chin protected Coppedge to his own detriment, to the point that others openly criticized him:

26 • Science & Uplink Manager Kathryn Weld described her frustration at how Chin protected
27 Coppedge during a January 2005 meeting with Program Manager Mitchell regarding her office's
28 complaints about Coppedge. She noted: “Greg is a great protector of his people ... that's an asset and a
29 curse sometimes.” (4/9 206:26-207:9.) At the time, Chin sent a conciliatory email acknowledging the
30 problem: “I will admit that I have been evaluated as being too lenient with some employees.” (Ex. 301.)

31 • Mitchell testified: “Greg [] was respected by [] his team [and] nice to a fault.... He [spent]
32 considerable time coaching and mentoring [] the weaker performers on his team... I faulted him for that. I

1 thought he took that too far and should have taken [] other actions sooner than he did.” (4/5 212:11-22.)

2 • Deputy Manager Tammy Fujii faulted Chin as a manager because “he was too nice.” For
3 example, she recommended at least 3 times during 2004 -2008 that he remove Coppedge from Cassini,
4 but Chin refused to do so. (4/10 184:13-18, 188:8-190:7, 199:14-23.)

5 Despite this all, Chin focused on Coppedge’s strengths, counseled him on his people skills, and
6 assigned him to jobs with less customer interaction. (3/28 224:9-225:9; 3/29 13:13-24.)

7 **C. The Overwhelming Evidence Showed Coppedge Had A Long History Of Customer**
8 **Complaints; Burgess Purposefully Understated These Issues.**

9 Despite Chin’s best efforts, customer dissatisfaction with Coppedge grew. Chin recommended
10 twice that he take a week-long class on personal relations. JPL would have paid for it. But Coppedge
11 refused. (3/21 13:11-21; 3/22 46:16-27.) At trial, Coppedge tried to disavow knowing of the complaints.
12 He argued that such testimony is unreliable because there is nothing in writing about them. But Coppedge
13 was impeached when his own notes showed he was told about the complaints as far back as 2004:

12 13 14	Ex. 264, p2 (Mar 2004):	“[Chin] claims [e]very office had complaints about me. Even my own team members were complaining ... Office Mgrs thought I was rude, incompetent or uncooperative. Other SAs felt ... I was micromanaging. ... [S]ome office leads were asking I be removed. ... [Greg is] not asking I be removed or that a PIP be initiated but making me aware there had been complaints.”
15 16	Ex. 264, p5 (Mar 2004):	“Tammy [Fujii] [said there was] a negative opinion of me – felt that my first response was always ‘no’ to new requests. ... [M]any in & out of the office who had this opinion about me ... I promised to do better.”
17 18	Ex. 421, p4 (Aug 2004):	Quoting Chin: “I have bent over backwards to defend you to upper managers who have asked that you be removed (mentioned Kathryn Weld...) People think you’re hard to deal with ... They think [your] tone of voice or body language suggests negativity ...”
19 20	Ex. 266, p4 (Jan 2005):	Julie Webster “said ... ‘I would never work with Dave’ altho’ [has] no problem with the other SAs. ... [Chin] knew about claim from Don F[leischman] that I [had been] blaming him for password not working ... [an] example of [me] not owning up to a mistake ... contributed to a bad impression of me.”
21	Ex. 269, p3 (June 2006):	“Greg said there are still complaints about me...”

22 Plus, the Court heard first-hand from key Cassini project members who complained:

23 24 25 26	SCO Manager Julie Webster:	“We had difficulty working with [David]. He was condescending with Ms. Grenander. I didn’t always get all the truth of what was going on, and there were some attempts to do some unilateral things that [] weren’t coordinated with [us].” (4/9 159:8-11.) “Q. Did you pass the[se] concerns ... along to Mr. Chin? A. Yes, I did. Q. [D]uring what time period ...? A. 2004, 2005 specifically.” (4/9 160:10-15.)
27 28	Distributed Operations Coordinator Pam Woncik:	“I found David to be rather obstinate and arrogant. He didn’t follow instructions and certainly wouldn’t follow protocol. ... [H]e often would object to doing work and didn’t really seem to understand what the ramifications of his objections or his behavior would have on the risk to the project or the science objectives. He also

1		didn't have very good customer service skills. And even the simplest requests he would challenge and argue every little point of those. We found that [] many more
2		hours [were] spent listening to his excuses why work couldn't get done rather than
3		him digging in and actually figuring out how to do it. He was careless very often
4		and would ... refuse to check his work. And he seemed to be overly sensitive and
5		take almost everything personal[ly]. ... [I shared these concerns with] my
6		immediate boss Sue Linick [who] is the IO manager, her boss the SAUL manager
7	SAUL Manager Kathryn Weld:	Kathryn Weld. When asked, I shared with Bob Mitchell. I shared this with Greg
8		Chin and Tami Fujii and Carol Wong." (4/10 36:22-37:18.)
9	Desktop Services Coordinator Patty Smith:	"Q: On how many occasions in total do you recall complaining to Mr. Mitchell
10		about Mr. Coppedge? A: [A]t least 10 if not more ... [from] 2004 to 2007. (4/9
11		208:26-209:3.)
12		"[I] ... would get a kind of condescending, patronizing type of response [from
13		David] when really all I needed to know is how many hard drives we needed or
14		something." "Q. Did you share your concerns on this issue with Greg Chin, your
15		manager? A. I did. ..." (4/9 244:2-19.)

Chin and Burgess discussed these customer complaints many times from 2004-2009. Chin told Burgess that Mitchell wanted Coppedge removed from Cassini, but Burgess was unable to find another project for him given Lab-wide project downsizing. To ensure Coppedge would be welcomed onto a new project when one was found, Burgess deliberately worded his ECAPs to cast Coppedge in a positive light while still noting Coppedge's ongoing interpersonal skills problems. (4/2 163:3-164:7.) For example:

Coppedge's Performance Review	Burgess's Related Testimony
16 17 18 19 20 21 2004 ECAP (Ex. 28, p4): "[David's] interface to his customers can be improved. His intent to prioritize his work is good, however his customers may perceive it as a way to avoid meeting their needs ... [H]e ... is trying to improve his dealing with higher management. David has had a difficult year working with many complex problems and personnel and has held up well ..."	22 23 24 25 26 27 28 "Q. What led you to put that particular paragraph in?... [Burgess:] This is the first time for him, I believe, when we heard that some people were having difficulties with his personal interaction and direction and manner. So, it was discussed with Dave. And he had mentioned that he was going to try to deal with that issue and get those people – work with those people to come up with a more favorable work relationship." (4/21 66:27-167:8.)
22 23 24 25 2006 ECAP (Ex. 30, pp1-2) (emphasis added): "This year ... [m]ost of the Cassini Project has been satisfied with David's work. ... David has had a generally good history of working well with <i>most</i> of the Cassini Project Engineers, but there is still some friction with one of the offices."	26 27 28 "Q. Was your use of the term "most" purposeful? [Burgess:] Yes. That was my way of trying to couch all this in a positive, rather than negative [way]. Q. In other words, there were people who had issues but there were others who did not, and that's what you were trying to say? [Burgess:] Yes." (4/2 170:19-25.)
26 27 28 2007 ECAP (Ex. 31, p3) (emphasis added): " <i>Most</i> of the Cassini people that responded with comments were appreciative of David's efforts over the last year."	26 27 28 "Q. Was your use of the term "most" purposeful again? [Burgess:] Yes. I wanted to say there were some people that were very positive in their words about David's performance supporting them, but there were still some people that had difficulties with the manner and the way

1	he tried to implement the changes.” (4/2 171:27-172:5.)
2 3 4 5 6 7	<p>2008 ECAP (Ex. 32, p2): “Dave has gone above and beyond what would normally be expected to communicate with individuals & teams who have expressed dissatisfaction with prior actions. It seems he is starting to [win] over some of the disgruntled, although some are still hard to deal with.”³</p> <p>“David has <i>most</i> of his project customers supporting what he’s trying to do for them.” (emphasis added)</p>
8 9 10 11 12 13 14	<p>“Q. What were you trying to say there? [Burgess:] Again there were still some difficulties, but it looked like things had been improving from the last year. So it looked like he was doing better.” (4/2 172:24-27.)</p> <p>“Q. Was that again the same purposeful use of the term ‘most,’ as in the prior evaluations? [Burgess:] Yes.” (4/2 173:3-17.)</p> <p>2009 ECAP (Ex. 34, p3): “[David] needs to make a stronger effort dealing with some of the managers that tend to be more difficult to deal with. He needs to establish effective working relationships in Cassini/JPL’s adversity-rich environment in order to promote a positive healthy work environment by showing respect for and inclusion of others.”</p> <p>“Q. What did you mean by that? [Burgess:] Well, David and I had talked over the years over this difficulty that he was having with some individuals. And every ... annual performance review, he [said] he was working on [it]. And he was always going to ... try to convince everybody that he was trying to do his best, and try to win them over and support them in a much better fashion. But I said it’s been going on for several years. And I was telling him that he needs to do it a little stronger. Because he wasn’t totally successful yet, and he had been working at it for some time.” (4/2 175:3-17.)</p>

15 **D. The HR Investigation: Huntley Interviewed Coppedge, Chin, Burgess, And Each**
16 **Co-Worker Who Felt Harassed.**

17 Soon after Chin self-reported to HR the events of March 2, 2009, HR Generalist Jhertaune
18 Huntley was assigned to investigate. She had already conducted 800-1,000 investigations over her 22
19 years experience in HR, and knew nothing about ID at the time. (3/22 183:11-13, 184:12-19, 203:19-21.)

20 **The Coppedge, Chin and Burgess Interviews:** Coppedge talked with Huntley for nearly an
21 hour and described fully his side of the story. (3/21 151:24-154:21.) He volunteered that he discussed
22 various political issues with co-workers and that not all of the conversations had gone well. He mentioned
23 the Prop. 8 discussion with Edgington that became so heated that Coppedge later apologized for his
24 behavior. Coppedge also described his practice of approaching co-workers with non-work-related DVDs
25 (mainly on ID). He said he kept a record of people to whom he loaned the DVDs, and he showed her one
26 such list. (3/19 173:4-22, 182:14-24, 204:10-18; Ex. 227, pp40-41.) Chin described Weisenfelder’s
27 complaint. He also said Vetter told him that Coppedge had bothered Edgington and her too. (3/29 32:24-
28 35:1.) Burgess said no one had complained to him about Coppedge discussing personal topics, but he

³ Coppedge cites this as evidence his people skills problems were resolved by 2008. The 2008 ECAP says nothing of the kind, and the 2009 ECAP shows they were still a major issue.

1 knew Coppedge was passing out ID DVDs at work (and bought some for himself). (3/22 211:2-212:11.)

2 **The Weisenfelder, Vetter and Edgington Interviews:** Weisenfelder described the two
3 incidents she had reported to Chin. She explained her discomfort with Coppedge's behavior, and that she
4 felt he stepped over the line by discussing politics and religion at work. (3/26 7:25-11:14.) Coppedge
5 contends Weisenfelder complained because she is hostile to ID as a religious concept, but the evidence
6 showed that is not true. Weisenfelder testified that she was not bothered by the principle of ID. (4/3
7 223:28-224:11.) Moreover, Weisenfelder (a minister and a Christian herself) did not even know
8 Coppedge's religious beliefs, or ever discuss religion with him. (4/3 227:17-22; Ex. 227, p35.)

9 Vetter told Huntley about Coppedge's demands that the Cassini "Holiday" Party be renamed a
10 "Christmas" Party, and her discomfort with Coppedge's efforts to discuss their Christianity at work (*see*
11 Section IIA). (3/26 12:26-15:8.) Huntley determined, and Vetter testified, that nothing about Coppedge's
12 religious views bothered her – rather, it was the way he behaved. (4/4 44:25-45:14, 50:10-28, 58:16-
13 59:24.) Desperate to make it seem like *someone* had animus against him, Coppedge claims a lined-out
14 portion of Huntley's hand-written notes of the Chin interview "shows" that Vetter and Edgington were
15 bothered by Coppedge's religious beliefs. But that too is false. Vetter, Edgington and Chin all testified
16 that none of them ever said that or felt that way. (3/29 34:13-19; 4/4 37:16-21, 186:2-12.) To the extent
17 Huntley's notes could be read to suggest otherwise, Chin testified it is because he told her that he thought
18 Coppedge's pressure over the Holiday Party had a "religious component" to it.⁴ (3/29 34:13-37:11.)

19 Edgington described how Coppedge approached him about Prop. 8 and insulted him when he
20 disagreed with Coppedge's view (*see* Section IIA). (3/26 17:2-20:1.) Coppedge grasps at straws to
21 contend animus here too. Edgington, like Weisenfelder, never knew Coppedge's religious beliefs, let
22 alone was bothered by them. (4/4 21:27-22:7.) Coppedge claims Edgington knew Coppedge believed in
23 ID (based on a DVD Coppedge handed him) and was biased against it as a creationist theory. But
24 Edgington never watched the DVD or discussed ID with Coppedge (4/4 23:7-16), and there is absolutely
25 no evidence Edgington had any hostility toward ID *or* creationism.

26 **Huntley's Conclusions:** During the interviews, Huntley observed the witnesses' body language,
27 tested their answers against information she already had, and looked for inconsistencies in their responses.
28 (3/26 8:7-22.) She concluded that Weisenfelder, Edgington and Vetter were genuine in describing their
discomfort with Coppedge's behavior. (3/26 11:20-12:7, 16:11-17:1, 19:5-20:1.) Huntley considered
whether Coppedge's underlying personal views caused their reactions; she determined they did not –

⁴ Coppedge suggests that Huntley's notes are a verbatim record of what was said, but Huntley testified plainly that they are not since she cannot write fast enough to do that. (3/26 159:24-28.)

1 Coppedge's behavior and disruption of work was the problem.⁵ (3/26 20:13-27.) That Huntley did not re-
2 interview Coppedge is unsurprising – there was nothing he could have said that would change how these
3 co-workers *felt* about how he treated them. (3/26 20:28-21:16.)

4 Huntley concluded that Coppedge's behavior violated Caltech's Unlawful Harassment Policy
5 (prohibiting conduct likely to interfere significantly with work due to its persistence), and its Ethics and
6 Business Conduct Policy (requiring all employees to treat one another with fairness, dignity and respect).
7 (Exs. 193, 195.) Huntley based her conclusion on several factors, including that Coppedge's long-
8 standing practice of approaching co-workers during work was likely to interfere (and already had
9 interfered) significantly with JPL work, and that Coppedge's discomfoting (and, at times, insulting)
behavior had not shown his co-workers fairness, dignity *or* respect. (3/26 22:24-30:3.)

10 Coppedge criticizes Huntley's investigation as "biased." But there is no evidence she held any
11 conflicting personal beliefs, and she testified that she conducted her investigation in the exact same manner
12 as all of her other investigations. (3/26 235:27-236:5.) Coppedge also asserts that the "real focus" of
13 Huntley's investigation was the "controversial nature of the religious and political subjects" on which
14 Coppedge approached his co-workers, as if that reflects bias. Not so. It is entirely logical that Huntley
15 inquired about Coppedge's choice of controversial topics (versus mundane ones) because that contributed
to the inappropriateness of his behavior.

16 Coppedge also criticizes Huntley's investigation as inadequate under two other equally flawed
17 theories. Coppedge wrongly contends that the investigation failed to meet the standard of *Cotran v.*
18 *Rollins Hudig Hall Int'l, Inc.*, 17 Cal. 4th 93 (1998). As an initial matter, *Cotran* is inapplicable – it
19 concerned misconduct-based terminations, not neutral layoffs unrelated to an earlier investigation. But to
20 the extent *Cotran* and its progeny are instructive at all, they show the investigation was appropriate.
21 Coppedge claims *Silva v. Lucky Stores, Inc.*, 65 Cal. App. 4th 256 (1998), requires that investigations
22 evaluated under *Cotran* include eight specific procedures, but that is patently false. *See Silva* at 264-275
23 (observing that "*Cotran* did not delineate the earmarks of an appropriate investigation," and finding
24 employer's investigation adequate even where plaintiff claimed the company "failed to interview key
25 people, ignored substantial exculpatory evidence and was swayed by rumor, gossip and innuendo";
26 "While the investigation was not perfect, it was appropriate given that it was conducted 'under the
27 exigencies of the workaday world and without benefit of the slow-moving machinery of a contested
28 trial.'"). *Cotran* specifically held that "[t]he common law requirement of a fair procedure ... may be

⁵ Indeed, the April 13, 2009 meeting transcript confirms that this is the same thing Huntley said to Burgess when she delivered her findings. (Ex 102, pp14, 16-17.)

1 satisfied by any one of a variety of procedures which afford a fair opportunity for an applicant to present
2 his position. . . . [T]his court should not attempt to fix a rigid procedure that must invariably be
3 observed.”) *Cotran*, 17 Cal. 4th at 108 (internal citations omitted). *See also*, *Granillo v. Exide*
4 *Technologies, Inc.*, No. CV 10-1080 SJO (FMOx), 2011 WL 2535112, at *23 (C.D. Cal. May 20, 2011)
5 (granting summary judgment where the “investigatory interview with Plaintiff lasted approximately 45
6 minutes, Plaintiff had notice of the claimed misconduct and was given an opportunity to respond, and
7 ‘there is nothing to suggest [Plaintiff] was denied the opportunity to say anything he wanted to say’”
8 (citing *Cotran*, 17 Cal. 4th at 108).) Coppedge admitted he told Huntley everything he wanted to say
9 during his one-hour interview. (3/21 151:24-154:21.) The investigation plainly satisfies *Cotran*. Second,
10 Coppedge contends Huntley wrongly relied on JPL’s internally-posted policy to inform Coppedge, rather
11 than telling him expressly, of his right to comment on her as an investigator. This distinction is
12 meaningless. Coppedge was on notice either way, and regardless, there is no evidence that he had any
13 previous experience with or other information about Huntley on which to base a comment.

14 Lastly, Coppedge challenges Huntley’s investigation because he disagrees with her conclusion
15 that he violated Caltech’s policies. Yet the evidence showed that Coppedge’s persistent practice of
16 approaching co-workers during work was disruptive, and his judgmental tone in discussing sensitive, non-
17 work-related topics made them uncomfortable. Huntley’s conclusion was correct. But whether she and
18 Caltech were right is immaterial anyway, because nothing here suggests discrimination. *See Arteaga v.*
19 *Brink’s, Inc.*, 163 Cal. App. 4th 327, 343 (2008) (“The [employee] cannot simply show that the
20 employer’s decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory
21 animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent . . .”)
22 (citations omitted); *Guz v. Bechtel National, Inc.*, 24 Cal. 4th 317, 362 (2000) (“[I]f nondiscriminatory,
23 [the employer’s] true reasons need not necessarily have been wise or correct.”).

24 **E. April 7, 2009: HR Separately Addressed Coppedge’s Performance Issues.**

25 On April 7, 2009, Senior HR Generalist Nancy Aguilera met with Burgess to discuss Coppedge’s
26 ongoing customer service problems. Burgess shared information recently provided by Chin – that
27 Mitchell was again urging, as he had for years, that Coppedge be moved to another project. (4/2 186:12-
28 187:16.) But Burgess still could not find an open position on another project, so Coppedge could not be
moved. Aguilera suggested ways to (i) tell Mitchell this, and (ii) manage Coppedge’s performance issues
more directly (e.g., moving the lead duties to another SA with better customer service skills). (Ex 97.)
Burgess considered her suggestions, but made no decision regarding them. (4/2 190:23-191:7.)

Aguilera then interviewed Chin to ensure Chin was representing the situation and Mitchell’s

1 request fairly (and not retaliating for the events of March 2nd). (Ex. 97.) Chin described Coppedge's
2 strengths and weaknesses (including the nature of the customer complaints about him), gave Aguilera the
3 names of individuals who had complained so she could obtain their feedback directly, and sent her a copy
4 of his recent input to Coppedge's 2009 ECAP. (3/29 46:25-49:21; Ex. 33.) Aguilera concluded that no
5 retaliation was taking place. She documented that finding in an email to her supervisor. (Ex. 97.)

6 **F. April 13, 2009: Coppedge Is Disciplined For His Manner In Approaching Co-
Workers On Sensitive Personal Topics, Not For The Content Of What He Said.**

7 After Huntley concluded her investigation, she presented her findings to Burgess and
8 recommended he issue a written warning. (3/26 30:4-10, 33:10-18.) Burgess agreed; Klenk supported his
9 decision. (4/2 192:8-21; 4/13 19:16-18.) Coppedge criticizes Burgess for his decision, but Coppedge
10 cannot credibly argue it was motivated by religious animus or hostility to ID. Burgess and Coppedge
11 never had any disputes about either topic. (4/2 159:26-160:1.) To the contrary, they had cordial
12 conversations about ID as far back as 2005; Burgess even purchased four ID DVDs from Coppedge over
13 the years, and liked all of them. He described their material as "good stuff" and "interesting." (4/2
14 158:17-159:23; Ex. 61.) Coppedge himself testified that Burgess treated him fairly all the way up until
15 the written warning with which Coppedge disagreed. (3/21 46:1-4.)

16 On April 13, 2009, Burgess delivered the written warning, with Klenk present. As the audio
17 recording reflects, Coppedge spent most of the hour-plus meeting doggedly insisting that the warning was
18 an attack on ID and that he had an unfettered right to discuss it. (Ex. 351.) Burgess and Klenk told
19 Coppedge *six* times that the warning concerned the manner in which he had interacted with his co-
20 workers, not the substance of what he had discussed, and that JPL had "no policy against [] talking about
21 religion and politics in the office so long as it's not unwelcome or disruptive."⁶ (Ex. 102, pp11-12, 14, 16-
22 17, 22-25.) Nevertheless, in the meeting, at trial, *and* in his post-trial brief, Coppedge has contended that
23 he was prohibited from discussing ID or religion at all. That is just false. The record shows Burgess's and
24 Klenk's directive was content-neutral. They simply asked Coppedge to do what reasonable people do
25 every day in the workplace: be considerate of co-workers and not approach them with non-work-related
26 topics (political, religious, or otherwise) in a way that offends them. That Coppedge fights this concept –
27 even now – shows he still has not learned anything from this experience.

28 **G. Burgess Removed Coppedge's Lead Duties Based On Legitimate Factors.**

As Burgess sat in the April 13th meeting, he was disturbed by Coppedge's confrontational

⁶ The warning could not be clearer: "[Y]ou must refrain from discussions which are argumentative, disruptive and/or harassing to your co-workers." It does not restrict any specific topics. (Ex. 103.)

1 behavior, particularly toward Klenk, who was a manager two levels higher. Though it was consistent with
2 the litany of complaints he heard for years about Coppedge's communications with customers (see Section
3 IIC), this was the first time Burgess personally observed Coppedge act this way. Moreover, co-workers
4 were now complaining of harassment, and Coppedge had shown a serious lapse in judgment by
5 disrespectfully arguing with Chin (his customer and project manager) and challenging him to a debate off
6 JPL property. Based on all of these factors, Burgess decided he no longer could afford to have Coppedge
7 acting as a lead customer interface to Cassini; he told Coppedge at the end of the meeting that his lead
8 duties would be moved to another SA. (4/2 194:3-196:5.)

9 Coppedge contends Burgess's description of his reasoning at trial is inconsistent with what
10 Burgess said in the meeting. Not so. Burgess said on April 13th that he felt transferring the lead duties
11 would lessen the strife Coppedge's poor people skills had caused, and he expressed the same concern
12 about Coppedge's unhappy customer base and HR's findings. (Ex. 102, pp36-38.) Coppedge also attacks
13 Burgess's credibility by suggesting he already decided to remove the lead duties before the meeting based
14 on Burgess's April 7 email exchange with Aguilera. But Coppedge misrepresents that email just as he did
15 at trial. There, *Aguilera suggested* that Burgess remove Coppedge's lead duties. Burgess had not yet
16 decided to do so. (4/2 190:23-191:7.)

17 **H. Coppedge Received A Fair Appeal.**

18 Coppedge appealed Burgess's written warning and lead removal decision. Burgess was the sole
19 decision-maker on both,⁷ so Klenk heard the appeal as Burgess's supervisor (per Caltech's Problem
20 Resolution Policy). (Ex. 198.) Klenk analyzed Huntley's investigation, and interviewed her about her
21 process and findings. Klenk then met with Coppedge for an hour. Just like on April 13th, Coppedge spent
22 most of the meeting insisting he had been prohibited from discussing religion and politics at work and
23 refusing to listen to the fact that disrupting work and harassing co-workers – on any topic – was
24 inappropriate. He again demanded to confront his accusers. Klenk concluded that Coppedge still "wasn't
25 willing to moderate his behavior and that he needed the written warning to [help him] focus on
26 [improving] that." (4/3 36:15-27.) When Coppedge asked about the removal of his lead duties, Klenk
27 explained that a key reason for it was his long history of customer service problems. Coppedge admitted
28 that these problems were true. After the meeting, Klenk reasonably decided to uphold both of Burgess's
29 decisions. (4/3 26:5-28:2, 31:28-34:9; Exs. 144, 150.) Importantly, Coppedge does not contend that
30 Klenk's decision was biased, nor could he. The evidence showed Coppedge and Klenk never even

⁷ This is not disputed. Klenk had no idea Burgess would remove the lead designation until Burgess told Coppedge in the meeting. (4/3 22:9-16.)

1 discussed religion, politics or ID. (4/3 9:15-22.)

2 **I. Caltech Rescinded The Warning After One Year; Coppedge Sued A Week Later.**

3 In April 2010, HR elected to rescind the warning. There had been no complaint about Coppedge
4 in the last year, and HR felt the April 13th verbal admonishment was sufficient. (4/3 43:10-27.) Klenk
5 and Burgess met with Coppedge to deliver the good news that the warning had been removed from
6 Coppedge's file. True to form, Coppedge was argumentative – he demanded (again) to confront his
7 “accusers,” and to know if his lead designation would be reinstated. Klenk responded “no” as to both.
8 (4/3 38:25-40:3.) After the meeting, Coppedge sent Klenk a supposed “summary” of the meeting that
9 misquoted Klenk in ways plainly scripted for use in the lawsuit Coppedge would file one week later⁸ (e.g.,
10 wrongly claiming Klenk said issuing the warning in the first place was “inappropriate”). Klenk responded
11 promptly to correct such misstatements. (Ex. 160; 4/3 40:7-42:4.)

12 **J. Coppedge Was Laid Off Because Of His Undisputed Lack Of Skills That Were
13 Needed In The Second Extended Mission.**

14 When Cassini transitioned to its second extended mission (XXM) in October 2010, the project's
15 funding was significantly reduced. That required Cassini management to eliminate 50 full-time-equivalent
16 positions (from 170 to 120). Mitchell dissolved MSSO and eliminated Chin's job. The SA team became
17 part of Uplink Integrated Systems, under Diane Conner, and it too had to be reduced (to three SAs). (4/5
18 215:21-216:21; 4/11 206:22-207:2.)

19 In accordance with Caltech's Layoff Policy (in effect since 2006), Section Manager Richard Van
20 Why was tasked with ranking all SAs in his section who performed similar work based on the following
21 standard criteria: need, skills, abilities, performance, conduct, reliability, education/training, and
22 experience. (Ex. 199.) Caltech's process is always driven by the current and future needs of the customer,
23 so – consistent with the policy – Mitchell and Conner assigned and provided to Van Why the relative
24 weights for these criteria based on Cassini's needs. (Ex. 167; 4/11 236:7-23.) Conner then worked with
25 Cassini's managers to identify the most critical technologies and skills needed for XXM, and the SAs who
26 were most capable of performing them. (4/11 153:1-16.)

27 Conner consulted with Webster and Weld, the two office managers who oversaw approximately
28 85% of Cassini's workforce, as well as Barbara Larsen, the Level 3 System Engineer who coordinated
29 engineering for the entire project. Based on their input, and her having worked directly with the SAs for
30 much of her 13 years on Cassini, Conner determined that the key SA skills needed in XXM were

⁸ The lawsuit's timing is notable. The warning had been rescinded, yet Chin had just warned MSSO
(including Coppedge) in a meeting and an email that Cassini layoffs would happen in the Fall. (Ex. 155.)

1 managing web servers, servicing SCO's Integrated Test Lab ("ITL"), knowledge of Linux and MySQL,
 2 trouble-shooting, and having strong interpersonal skills because of the smaller team environment. (4/11
 3 29:27-30:18, 153:17-155:10; Ex. 169.) Conner and Van Why met to discuss these needs, and the SAs'
 4 relative abilities. (4/11 153:11-16; 4/12 158:14-19.) Conner explained that Castillo was expert in web
 5 servers and Linux, Patel was expert on working with the ITL machines, and both Castillo and Patel were
 6 the most highly regarded SAs in troubleshooting and customer service. (4/12 158:20-159:10.) Coppedge,
 7 by comparison, was not the most proficient in any of these areas, and he had a history of customer service
 8 problems, such that Webster and Weld expressly told Conner they did not want him working on "their
 9 machines."⁹ (4/11 153:17-155:2.) HR Manager Jackie Clennan-Price took notes and created a summary
 10 chart of the SAs' relative skills based on Conner's input. (4/12 159:11-160:2; Ex. 169.)¹⁰

Conner's assessments cannot be disputed. Even Coppedge conceded:

Web servers:	"Q: And isn't it also true that Oscar Castillo had more expertise in the web server than you did? A: Yeah, he did." (4/12 226:4-6.)
ITL	"Q: Who was more expert at the spacecraft office and [ITL] systems, you or Nick Patel? ... More expert and more knowledgeable?" ... "A: Nick spent more time in these areas, so he acquired more experience over the years because he was assigned to do those things, but I did assist him on those things." "Q. [And Patel] was the SA [Webster] specifically requested to work on her machines, yes or no? A: Yes." (4/12 224:16-22, 225:10-22.)
Linux	"I would rank my [Linux] skills as minimal but not zero." "[I] had some experience with Linux. It wasn't a lot. ..." (4/12 181:19-25, 223:7-21.) ¹¹

16 Equally important, the skills Coppedge *did* have were fast becoming obsolete. Coppedge
 17 managed Cassini's private network, but it was disbanded to save costs during XXM. He was expert at
 18 AFS (the system Cassini used to store command and operational files), but Cassini replaced that system
 19 with another. He also worked on HP Open View, a network management software that Cassini stopped
 20 using altogether in March 2011. (4/11 158:9-14, 163:27-165:11.)

21 Van Why ranked the SAs on each criterion. (Ex. 168.) There was no question that Patel, Castillo,
 22 and Wang were more qualified on needed technologies than Coppedge and Chien. (Wang was the only
 23 SA who was expert in supercomputing – a critical technology for JPL – and Van Why personally had

24 ⁹ Conner's own experiences with Coppedge backed this up. In 2009, he refused to implement needed
 25 virtual networks in favor of less-robust physical connections, which later broke down and had to be
 26 replaced. He also disappointed Conner, Larsen and other system engineers when he gave a superficial
 27 presentation on access control technologies that failed to provide the information Conner and Larsen
 28 needed to make an informed decision. (4/11 34:6-36:3, 36:14-42:15.)

¹⁰ Coppedge wrongly claims Conner's input was not in writing – Ex. 169 is a contemporaneous written
 summary of that input.

¹¹ Notably, Coppedge did nothing to improve his Linux skills in the two years after Chin told the SAs to
 take training to prepare for the XXM downsizing. By contrast, SA Nick Patel proactively took a Linux
 class for which JPL paid. (3/21 217:28-218:10; 4/12 228:21-229:1.)

1 observed his strong work performance.) (4/11 242:8-243:12.) Coppedge and Chien were the lowest
2 ranked, so Van Why necessarily selected them for layoff. He reached his final decision in December
3 2010. Van Why notified Coppedge and Chien of their layoff on January 24, 2011. Caltech personnel
4 spent nearly 3 hours with Coppedge that day notifying him of his layoff, explaining his layoff benefits,¹²
5 helping him download personal material from his computer and packing up his office. Even though Van
6 Why specifically told Coppedge he could not remove JPL proprietary information, such as technical
7 topology maps, Coppedge took them anyway. (4/12 9:23-11:4, 17:1-18:18, 31:16-20; Exs. 427-428.)

8 Coppedge's contention that he was laid off in retaliation for this lawsuit is based on nothing more
9 than speculation: First, he contends that Van Why and Conner ranked him low merely because they knew
10 of the lawsuit.¹³ Of course, mere knowledge of a lawsuit or timing alone does not establish a causal
11 connection. *See Arteaga v. Brink's, Inc.*, 163 Cal. App. 4th 327, 354, 357 (2008) ("temporal proximity by
12 itself . . . is not adequate to show pretext"). But more importantly, Coppedge has no legitimate basis for
13 claiming the ranking was wrong. His lack of skills and his history of poor customer service, particularly in
14 comparison to the other SAs, cannot be disputed. Second, Coppedge suggests that Van Why was
15 influenced by Burgess's March 19, 2010 email reflecting Burgess's pre-retirement thoughts on Cassini
16 staffing in XXM (noting that Coppedge would probably need to "move on" due to the budget reductions).
17 But not only did Van Why testify credibly that he never saw that email,¹⁴ it *predated* Coppedge's April
18 14th filing of his Complaint.¹⁵ Regardless, Burgess's musings do not reflect anything sinister – given
19 Coppedge's long history of customer complaints and Burgess's attempts to move him to another project, it
20 was logical for Burgess to assume that Coppedge would need to leave Cassini when it downsized. Third,
21 Coppedge suggests that Mitchell improperly influenced the ranking. But Mitchell gave no input to the
22 rankings (he did not even know who would be laid off until Van Why told him in December). (4/5 218:6-
23 22.) And while Coppedge accuses Mitchell of "want[ing] to eliminate Coppedge's job for years,
24 especially upon hearing about the March 2, 2009 incident," there is zero evidence that Mitchell wanted to

25 ¹² Coppedge received 61 days of severance pay, six months' continuation of his health insurance and
26 outplacement assistance. (3/21 202:19-203:16.)

27 ¹³ This shows the same baseless leap of logic as Coppedge's argument at trial that he can infer a "strategy"
28 to retaliate simply from the fact counsel met with JPL management in Spring 2010.

¹⁴ Van Why testified he likely did not even open the email. Because the subject line read "Quiet Hour
Subjects," and Klenk, not Van Why, was still conducting quiet hours with Burgess, Van Why would have
ignored it. That Van Why screened emails by the subject line is unsurprising given that he received 500-
700 emails a day. (4/12 156:5-157:15.)

¹⁵ Coppedge suggests *all* of JPL was on notice of the lawsuit before it was filed because his counsel sent a
demand letter to Caltech's HR Department in September 2009. (Ex. 215.) There is not a shred of
evidence any decision-maker saw or knew of that letter. Coppedge's argument is improper speculation.

1 do so based on Coppedge's religious or ID beliefs. Finally, Coppedge mistakenly argues he was not at
2 risk of layoff because Burgess wrote in his 2008 ECAP that he expected Coppedge to continue supporting
3 the project for several years. But the evidence showed that no job was safe from XXM downsizing. Chin
4 told Coppedge and the other SAs that in January 2009, **before** the March 2 incident and **more than a year**
5 **before** his lawsuit was filed. (3/29 157:2-158:12.)

6 **III. THE WITNESSES' CREDIBILITY**

7 This Court denied summary judgment on Coppedge's retaliation and discrimination claims on the
8 ground that a trier of fact should evaluate the intent and credibility of Weisenfelder, Chin, Burgess, and
9 Van Why. At trial, the Court heard these witnesses truthfully describe the reasons for their actions, and
10 heard Coppedge try to twist facts and get caught by his earlier admissions in the case:

11 **Weisenfelder.** Weisenfelder genuinely described why Coppedge made her feel uncomfortable
12 and judged, and her concern over his sticky note of employee names that suggested he was targeting co-
13 workers. (4/3 216:26-217:12.) Her actions show that she was not "out to get" Coppedge: She did not
14 report the Prop. 8 incident at the time because "it was a one-time incident and [she] was giving him the
15 benefit of the doubt." (4/3 217:28-218:3.) And when she saw the sticky note, she chose not to go to HR,
16 but instead she simply asked Chin for advice (and did not ask him to take action).¹⁶ (4/3 224:12-225:6.)

17 **Chin.** Chin's self-effacing and gentle demeanor showed him to be the person his co-workers (and
18 even Coppedge) described: a caring manager who tried to help Coppedge and defended him repeatedly.
19 Chin's actions speak volumes for his credibility. After all, he reported **himself** to HR and management
20 when he realized his March 2nd comment (about the limits Coppedge was placing on his own
21 employment options) could have been misconstrued. (3/29 24:23-25:11.) And immediately after Chin
22 spoke to Huntley, he sent her Coppedge's summary of what happened on March 2nd, as well as his own,
23 so that Huntley would have both of their recollections of the meeting.¹⁷ (Ex. 227, pp 46-49.)

24 **Burgess.** Burgess was equally credible. He thoughtfully explained how he purposefully worded
25 Coppedge's ECAPs to help him transfer to another project, and the reasons why he issued the warning
26 (see Section IIG). Moreover, the fact Burgess never disciplined or discharged Coppedge for his poor
27 customer service in the five years leading up to the 2009 warning shows Burgess's lack of discriminatory
28 motive. Simply put, if Burgess had wanted to discharge Coppedge for his beliefs, he had ample

26 ¹⁶ The same is true for Edgington and Vetter, whose descriptions of Coppedge's behavior toward them
27 have been consistent from the start, and who also chose *not* to report their concerns to HR. Edgington
28 even told Huntley during his interview that he did not want to get Coppedge in trouble. (3/26 19:5-15.)

¹⁷ Given this fact, Coppedge's suggestion that Chin self-reported as a preemptive strike to publicize his
own view of the meeting is absurd. (Br. at 14.)

1 opportunity to do so years earlier, it is illogical to suggest he waited so long to do it.

2 **Van Why.** Van Why earnestly described his process for ranking the SAs for layoff. Given (1) his
3 strict adherence to Caltech's layoff policy, (2) his lack of any dispute with Coppedge on religion or ID, and
4 (3) Coppedge's undisputedly inferior skill set, any attack on Van Why's motivation is baseless.

5 **Coppedge.** The truthfulness of Caltech's witnesses stands in stark contrast to Coppedge's
6 testimony. Coppedge repeatedly misrepresented the facts. For example, Coppedge claimed at trial that it
7 was Edgington who acted confrontationally in their Prop. 8 discussion. But Coppedge never once said
8 that during the investigation or the appeal (logical times to mention this, if it were true.) (3/21 153:15-
9 154:13.) Moreover, Coppedge's post *hoc* depiction lacked any credibility given Edgington's shy
10 demeanor at trial, in contrast to the assertive (and often rambling) Coppedge. Coppedge also exaggerated
11 his lead SA duties to make them seem more important. For example, he testified that one of his lead
12 responsibilities was to interview and "hire" additional SAs. But Coppedge admitted on cross examination
13 that even his own project manager, Chin, did not have authority to hire candidates (only line management
14 could do that), and that the other SAs also interviewed potential candidates. (3/15 50:24-51:10, 176:19-
15 177:15; 3/21 33:23-35:11.) Coppedge initially asserted that his headaches increased in severity and
16 frequency only after he lost his lead designation in 2009, but then was forced to admit that even *he* does
17 not believe they were caused by the events of this case, and that they had actually started getting worse
18 five years before then. (3/27 111:7-14; 3/28 180:11-17, 181:17-182:15.)

17 **IV. COPPEDGE'S LEGAL CLAIMS HAVE FAILED**

18 **A. Coppedge's Religious Discrimination And Retaliation Claims Have Failed.**

19 **1. Only Coppedge's Layoff Constitutes An Adverse Employment Action, And Caltech Showed Its Legitimate, Non-Retaliatory Reasons For That Action.**

20 Caltech established that it laid Coppedge off based on objective criteria that had nothing to do with
21 his lawsuit. Coppedge's theory that multiple Caltech employees conspired to lay him off is the very type
22 of speculation that California law forbids. *Guz*, 24 Cal. 4th at 360-370 (evidence showing only "a weak
23 suspicion that discrimination was a likely basis for [discharge]" is insufficient, particularly "[a]gainst ... [an
24 employer's] plausible, and largely uncontradicted, explanation that it [retained others] over [plaintiff] for
25 reasons unrelated to [protected status] [and that] even if he was minimally qualified for the position...,
26 those persons who were actually chosen better fit [the employer's] needs.")

26 Coppedge claims that Caltech's layoff criteria were "subjective" (simply because they were
27 applied by **people**). But even if Coppedge were right (and he is not), use of subjective criteria does not
28 infer discrimination (or retaliation) anyway. *Hicks v. KNTV Television, Inc.*, 160 Cal. App. 4th 994, 1005

1 (2008) (citations omitted) (“The fact that [the] assessment was based upon subjective criteria does not, by
2 itself, demonstrate pretext. . . . [T]here is nothing inherently suspect in the use of subjective criteria.
3 ‘Indeed, subjective evaluations of a job candidate are often critical to the decisionmaking process, and if
4 anything, are becoming more so in our increasingly service-oriented economy . . .’ [A]bsent some
5 evidence that the station made its decisions based upon race, the mere use of subjective criteria does not
6 permit us to second guess the employer’s business judgment.”) Coppedge relies on *Bergene v. Salt River*
7 *Project Agr. Imp. and Power Dist.*, 272 F.3d 1136 (9th Cir. 2001) to argue that subjective criteria alone is
8 relevant; however, that case found subjective criteria relevant only as circumstantial evidence “[a]gainst
the background of the other evidence of pretext.” *Bergene* at 1142.

9 **2. No Other Action Coppedge Disputes Is Actionable; Caltech Had Legitimate,**
Non-Discriminatory / Non-Retaliatory Reasons for Them In Any Event.

10 Coppedge’s post-trial brief expands yet again the list of events he wants to call “adverse
11 employment actions.” He still contends (wrongly) that the warning, the removal of his informal lead
12 designation, and his 2010 ECAP are adverse employment actions; and he now adds to the list Chin’s
13 alleged “threat” to Coppedge’s job security on March 2, 2009, his 2009 ECAP, Caltech’s supposed
14 “toleration of harassment” by Chin, and Huntley’s investigation. None of these, taken individually or
15 collectively, qualifies as an adverse employment action.

16 **The Written Warning.** An employment decision is actionable only if it results in “a *substantial*
17 *adverse change in the terms and conditions*” of employment. *Akers v. County of San Diego*, 95 Cal. App.
18 4th 1441, 1455 (2002) (emphasis added). Coppedge tries to make the warning sound more substantial by
19 saying it “falsely accused him,” and “forbid[] him from engaging in protected activity (discussing religion
20 during work hours).” As shown above, both contentions are false. Moreover, Coppedge ignores that the
21 warning was rescinded after one year, which meant it was as if the discipline never happened. (4/3 39:3-
22 23.) As for the year the warning existed, there is no evidence that Coppedge was prevented from receiving
23 any promotion or other assignment. Indeed, Coppedge made clear that his only desire was to remain on
24 Cassini when Burgess raised the mere possibility of his transferring to another project. (3/15 230:14-26;
25 3/22 5:13-26.) In short, the warning did not adversely change the terms and conditions of Coppedge’s
26 employment at all – let alone substantially. Regardless, Caltech showed it disciplined Coppedge based on
27 its good faith belief that he violated its policies. *Joaquin v. City of Los Angeles*, 202 Cal. App. 4th 1207,
28 1223 (2012) (“If the employer takes an adverse action based on a good faith belief that an employee
engaged in misconduct, then the employer has acted because of perceived misconduct, not because of
protected status or activity. The relevant inquiry is whether the [employer] believed [the employee] was

1 guilty of the conduct”).

2 **The Lead Removal.** Burgess’s decision to remove Coppedge’s informal lead designation was
3 not a demotion; it is undisputed that Coppedge’s pay, title and benefits remained the same. All that
4 changed was an administrative subset of Coppedge’s duties, which Patel (who replaced Coppedge as lead)
5 testified took only 10% of the lead’s time. (4/4 233:16-20.) California law is clear that mere changes in
6 job duties are not actionable adverse actions. *See Thomas v. Dep’t of Corr.*, 77 Cal. App. 4th 507, 511
7 (2000) (action must “be more disruptive than . . . an alteration of job responsibilities”) (internal quotations
8 and citation omitted). And as described above, the trial evidence showed that Burgess’s decision was
9 based on legitimate and nondiscriminatory reasons.

10 **The 2009 and 2010 ECAPs.** Burgess did not solicit only negative input for Coppedge’s 2009
11 and 2010 ECAPs, but in any event a negative evaluation is not actionable unless the employer uses it “to
12 substantially and materially change the terms and conditions of employment.” *Akers*, 95 Cal. App. 4th at
13 1457. That did not happen here: Van Why did not rely on (or even refer to) the employees’ ECAPs in
14 ranking them (4/11 235:6-8), because Caltech’s Layoff Policy does not provide for that (Ex. 199).
15 Moreover, Coppedge’s description of the 2009 review as negative is misleading given that he is praised
16 repeatedly throughout that document. (Ex. 34, pp3-4 (“Dave is dedicated . . . and does his best,” “He
17 applies the appropriate level of accuracy and thoroughness,” “He uses technology [] effectively and
18 efficiently,” “Dave is technically competent and strongly desires to continuously learn new skills and
19 tools”).) And to the extent his 2010 ECAP contained criticism, it was from individuals who observed
20 Coppedge’s work first-hand and whose input was substantiated in their trial testimony.¹⁸ (Ex. 35.)

21 **Chin’s One-Time Comment on March 2.** Chin’s statement that Coppedge might find his
22 employment options limited if he continued making co-workers feel harassed, even if it *were* a threat (the
23 evidence showed it was not), did not impact the terms and conditions of Coppedge’s employment at all, let
24 alone substantially. This comment is not actionable.

25 **Caltech’s Supposed “Toleration of Harassment” by Chin.** Coppedge ignores that this Court
26 already dismissed his harassment claim, which was based in part on the March 2 meeting. (November 18,
27 2011 MSJ Ruling at p3.) Coppedge cannot revive that claim now. The Court found there was no
28 harassment, and therefore harassment cannot form a basis for his new theory on adverse action.

Huntley’s Investigation. Coppedge’s brief separates Huntley’s investigation from the written
warning and tries to seek relief for both. This is illogical. Since a warning is not an adverse action unless

¹⁸ Burgess also solicited and included positive input from a co-worker who Coppedge recommended. (4/2
179:13-181:9.)

1 it substantially affects the terms and conditions of employment, an investigation alone (separate from any
2 resulting discipline) certainly cannot be. Moreover, as shown above, Huntley's investigation was adequate
3 and nondiscriminatory. There is no evidence that Huntley was biased against Coppedge or his views, or
4 that she investigated the case differently from any other.

5 **B. The "Failure To Prevent" Claim Is Derivative Of The Discrimination Claims.**

6 Because Coppedge's discrimination and retaliation claims fail, his related claim for "failure to
7 prevent" such behavior does as well. *See Trujillo v. N. County Transit Dist.*, 63 Cal. App. 4th 280, 288-89
8 (1998) (employer cannot be liable for failing to prevent harassment when no such conduct actually
9 occurred). However, even if Coppedge's discrimination and retaliation claims were cognizable, Caltech
10 still would prevail. An employer meets its obligation to take reasonable steps to prevent discrimination
11 and harassment by implementing policies and taking action to investigate and remedy charges under them.
12 *Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.*, 103 Cal. App. 4th 1021, 1035 (2002)
13 ("Prompt investigation of a discrimination claim is a necessary step by which an employer meets its
14 obligation . . ."); *Barrett v. Applied Radiant Energy Corp.*, 240 F.3d 262, 266 (4th Cir. 2001) (distribution
15 of anti-harassment policy is proof that employer has exercised reasonable care to prevent and correct
16 sexual harassment). Caltech's Unlawful Harassment Policy and HR's prompt investigation of the reported
17 harassment, as well as Aguilera's prompt inquiry in early April to ensure that Chin was not retaliating in
18 stating that Mitchell (again) wanted Coppedge removed from Cassini, establish that Caltech fulfilled its
19 obligations to prevent discrimination and retaliation. (Ex. 193.)¹⁹

20 **V. EVEN IF THIS COURT FINDS DISCRIMINATION OR RETALIATION,
21 COPPEDGE'S DAMAGES ARE LIMITED**

22 **A. Unless Coppedge Was Wrongfully Terminated, He Has No Economic Damages.**

23 Coppedge's damages expert, Dr. Vavoulis, admitted that his analysis presumes Coppedge was
24 wrongfully terminated. He conceded Coppedge has no economic damages otherwise. (3/27 12:20-25.)²⁰

25 **B. Even If The Court Finds That Coppedge Was Wrongfully Terminated, Coppedge's
26 Recoverable Economic Damages Are A Fraction Of The Amount He Seeks.**

27 Dr. Vavoulis's damages analysis is fatally flawed. He admitted at trial that the vitality of the
28 market for SAs would affect whether and how quickly Coppedge should find comparable employment,

¹⁹ Coppedge's brief also suggests his claim includes failure to prevent of harassment, but it does not given the Court's dismissal of his harassment claim on summary judgment.

²⁰ Coppedge's counsel argued in closing that he "stood no chance of promotion or reassignment" while the warning was in effect. That was improper and designed to distract from Coppedge's lack of economic loss. There is no evidence that Coppedge could have been a candidate for promotion or reassignment.

1 but never analyzed the job market or Coppedge's job search efforts. Instead, he assumed, based solely on
2 Coppedge's counsel's instruction, that Coppedge would never find comparable employment again. (3/27
3 14:15-17:7.) Caltech's expert, Dr. Ward, showed that the market for SAs in Southern California is robust
4 (in sharp contrast to the larger California economy); SAs of Coppedge's age typically find work in 52.3
5 weeks. (4/9 12:1-25, 14:28-16:9.) Moreover, Coppedge failed to mitigate his damages by engaging in a
6 reasonable job search. Dr. Ward found that Coppedge made little effort to find a new job – just enrolling
7 on a handful of websites that “push” listings of possible jobs out by email, and relying on headhunters to
8 contact him with job opportunities. (4/9 29:20-32:23.) As a labor economist, Dr. Ward testified to the
9 efforts that sincere jobseekers make: they place phone calls, speak to colleagues and prior employers, talk
10 regularly with headhunters, and use outplacement services. Coppedge did virtually none of these things.
11 In short, true jobseekers are active – as Coppedge has not been – they do not just “sit back and wait” for
12 headhunters and websites to contact them. After all, “getting a job is a job.” (4/9 45:6-25.)

13 Based on his analysis of the typical period of unemployment, and once Dr. Ward had corrected
14 Dr. Vavoulis's mistaken calculation regarding severance pay, the appropriate estimate of Coppedge's
15 economic loss resulting from his layoff is \$163,583 - \$212,760 (at least \$647,240 less than what Coppedge
16 is demanding). (Ex. 424, pp2-3.)

17 **C. Coppedge Did Not Prove That He Is Entitled To Any Noneconomic Damages.**

18 As noted above, Coppedge admitted that he has no reason to believe his headaches are related to
19 the events of this case; in fact, the headaches started five years before the March 2, 2009 meeting.
20 Coppedge has no basis to recover damages for them. While he testified to being sad about his layoff, he
21 offered no evidence that he sought treatment from any mental health professional or doctor for emotional
22 distress or depression. Put simply, Coppedge failed to show that he experienced distress greater than or
23 different from that of any of the employees who were laid off in the transition to XXM.

24 **VI. CONCLUSION**

25 Based on the evidence at trial, and the arguments outlined above, Caltech respectfully requests that
26 the Court enter judgment in Caltech's favor on all causes of action.

27 DATED: May 29, 2012

28 PAUL HASTINGS LLP
JAMES A. ZAPP
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By: _____



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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
CITY OF LOS ANGELES AND COUNTY OF LOS)
ANGELES)

I am employed in the City of Los Angeles and County of Los Angeles, State of 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.

On May 29, 2012, I served the foregoing document(s) described as:

DEFENDANT'S POST-TRIAL RESPONSE BRIEF

on the interested parties as follows:

William J. Becker, Jr., Esq. Attorney for Plaintiff
THE BECKER LAW FIRM DAVID COPPEDGE
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Email: bbeckerlaw@gmail.com

VIA ELECTRONIC MAIL:

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

VIA U.S. MAIL:

By placing a true and correct copy thereof in a sealed envelope(s) as addressed 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 May 29, 2012, with postage thereon fully prepaid, at Los Angeles, California.

VIA OVERNIGHT MAIL:

By delivering such document(s) to an overnight mail service or an authorized 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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on May 29, 2012, at Los Angeles, California.


Irma Gamino