

RULING ON SUBMITTED MATTER

November 18, 2011

David Coppedge v. Jet Propulsion Laboratory, et al.

Case No. BC 435600

Department 54, Judge Ernest M. Hiroshige

Re: Motion for Summary Judgment, or in the Alternative, Summary Adjudication
(Original Hearing Date: October 26, 2011)

RULING: THE COURT MODIFIES ITS TENTATIVE RULING AS FOLLOWS: THE MOTION FOR SUMMARY JUDGMENT IS DENIED. THE MOTION FOR SUMMARY ADJUDICATION IS GRANTED AS TO ISSUE 3 IN DEFENDANT'S NOTICE OF MOTION, AND THE SECOND AND FIFTH CAUSES OF ACTION. THE MOTION FOR SUMMARY ADJUDICATION IS DENIED AS TO THE FIRST, THIRD, FOURTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, AND ELEVENTH CAUSES OF ACTION.

On October 26, 2011, the MSJ/MSA filed by defendant California Institute of Technology ("Defendant") came for hearing before the Court. After considering the parties' written and oral arguments, the Court took the matter under submission. After further review of the parties' arguments and cited legal authorities, the Court hereby rules as follows:

Evidentiary Objections

The Court rules as follows on the evidentiary objections to the Declaration of Lawrence Ball:

- (1)-(10) Overruled
- (11) Sustained
- (12)-(13) Overruled
- (14)-(15) Sustained
- (16) Overruled
- (17)-(18) Sustained
- (19)-(27) Overruled
- (28)-(35) Sustained
- (36)-(39) Overruled
- (40)-(53) Sustained

The Court adopts its tentative ruling on all other evidentiary objections.

First, Third, and Fourth Causes of Action – Religious Discrimination, Retaliation

After further review of the parties' arguments, the Court finds that a triable issue of material fact exists as to whether Defendant's stated reasons for the adverse employment actions against Plaintiff were pretextual.

There are triable issues of fact as to whether Plaintiff's demotion, written warning, negative performance evaluations, and ultimate termination were adverse employment actions. There is evidence that the team lead engaged in significant customer interaction and coordination of other employees. (UMF 17; P's AMF 6-7, 128.) Defendant's purported decision to remove Plaintiff from team lead due to communication issues suggests the team lead enjoyed significant additional responsibilities. Thus, a trier of fact could find that Plaintiff's demotion from team lead was a substantial adverse change in the terms of his employment. While the written warning or negative performance evaluations may not be actionable in isolation, a trier of fact would be entitled to consider them as a part of a generalized discriminatory response to Plaintiff's religious views or protected activities. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1060.)

Given the close temporal proximity between Plaintiff's confrontation with Chin on March 2, 2009, which centered on Plaintiff's religious views and speech, and Plaintiff's demotion on April 13, 2009, Plaintiff has asserted a prima facie case for discrimination. (*Passantino v. Johnson & Johnson Consumer Products, Inc.* (9th Cir. 2000) 212 F.3d 493, 507 [temporal proximity can support prima facie case].) A trier of fact could also view the events of March 2, 2009, as triggering a string of adverse employment actions leading up to Plaintiff's termination.

As to the retaliation claims, the temporal proximity between Plaintiff's claim of a "hostile work environment" in March 2009 and his demotion in April 2009 support a prima facie case. Especially given the evidence of earlier adverse employment actions, Plaintiff's termination eight months after the filing of his complaint also supports a prima facie case. This prima facie case is supported by evidence that the lay-off process began three months after Plaintiff's complaint was filed. (AMF 145.)

A trier of fact would be entitled to disbelieve Defendant's stated reasons for the adverse employment actions. The Court was persuaded by Plaintiff's argument at the hearing that a trier of fact should decide whether Weisenfelder, Chin, Burgess, and the relevant decisionmakers acted based on the content of Plaintiff's religious views as opposed to his alleged persistence. Because of the distinctive facts of this case, particularly Plaintiff's alleged "pushing" of Intelligent Design and the perception of Intelligent Design as religion by various co-employees, this determination requires an inquiry into the internal mental states of individuals that is inappropriate for summary adjudication. Defendant's argument that the relevant decisionmakers are in the same "protected category" (i.e. Christian), and thus lacked discriminatory bias, is not persuasive. Christianity is diverse, and a trier of fact could reasonably conclude that the decisionmakers held different views on Christianity and Intelligent Design than Plaintiff. While there is evidence in the record that Weisenfelder and others believed Plaintiff to be persistent, a trier of fact should be able to consider evidence that Plaintiff was tactful in approaching co-employees with his religious ideas and that other employees were not offended by Plaintiff's conversations. (See, e.g., AMF 20, 24.)

A trier of fact could find it suspicious that Defendant initially investigated Plaintiff for workplace harassment, issued a written warning that was later rescinded, and demoted Plaintiff for reasons separate from the alleged workplace harassment. The shifting nature

of Defendant's response to the alleged workplace harassment could cause a trier of fact to question the legitimacy of the demotion and written warning.

Defendant primarily relies on the testimony of Clark Burgess to show that Plaintiff's demotion from team lead was based on a longstanding dissatisfaction with Plaintiff's interaction with colleagues. (Burgess Depo. 96; Mot. 12:12-16.) Burgess testified that the incident on March 2, 2009, was the "straw that broke the camel's back" and that he "couldn't take it anymore." However, a trier of fact would be entitled to disbelieve Burgess' testimony in light of Plaintiff's performance evaluations, which were signed by Burgess and were generally positive. (Oppo. Exh. 4, 6, 31-34.) While Plaintiff's performance evaluations prior to 2009 briefly refer to "customer concerns," the evaluations could be viewed as inconsistent with Burgess' suggestion at deposition that Plaintiff's performance issues were longstanding. If such was the case, one could presume Plaintiff's performance issues would have been more clearly documented in his pre-2009 evaluations.

Finally, as argued by Plaintiff at the hearing, a trier of fact could also reasonably question evidence that Plaintiff's performance evaluations appear to become lengthier and more negative after his altercation with Chin regarding "pushing religion" and his complaint of a hostile work environment in March 2009. (Oppo. Exh. 4, 6, 31-34.)

The MSA is denied as to the first, third, and fourth causes of action.

Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Causes of Action – Wrongful Termination and Demotion in Violation of FEHA; Wrongful Termination and Demotion in Violation of Public Policy; Failure to Prevent Discrimination or Harassment

As stated in Defendant's moving papers, these claims are derivative of Plaintiff's discrimination and retaliation claims. Thus, for the reasons stated above, the MSA is denied as to these causes of action.

Issue 3, and Second and Fifth Causes of Action – Right to Free Speech (Issue 3); Violations of Labor Code §§ 1101 and 98.6; Harassment

The Court was unconvinced from Plaintiff's oral argument that it should change its tentative ruling as to Issue 3 in Defendant's notice of motion or as to the second cause of action. Plaintiff apparently conceded as to his harassment claim. Accordingly, the MSA is granted as to Issue 3 and the second and fifth causes of action.

Clerk to serve notice via fax to the parties' counsel of record.

Date: November 18, 2011



Judge Ernest M. Hiroshige