PAUL, HASTINGS, JANOFSKY & WALKER LLP 1 JAMES A. ZAPP (SB# 94584) 2 **CAMERON W. FOX (SB# 218116)** 515 South Flower Street Twenty-Fifth Floor 3 Los Angeles, CA 90071-2228 4 Telephone: (213) 683-6000 Facsimile: (213) 627-0705 5 Attorneys for Defendants 6 CALIFORNIA INSTITUTE OF TECHNOLOGY GREGORY CHIN, CLARK A. BURGESS, AND 7 KEVIN KLENK 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 **COUNTY OF LOS ANGELES** 10 11 DAVID COPPEDGE, an Individual, CASE NO. BC435600 12 Plaintiff, DEFENDANTS' ANSWER TO PLAINTIFF'S 13 UNVERIFIED FIRST AMENDED VS. 14 **COMPLAINT** JET PROPULSION LABORATORY, form unknown; CALIFORNIA 15 - 71 INSTITUTE OF TECHNOLOGY, form unknown; GREGORY CHIN, an Individual; CLARK A. BURGESS, an 16 Individual; KEVIN KLENK, an Individual; 17 and DOES 1 through 25, inclusive, 18 Defendants. 19 20 21 22 23 24 25

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1	TO PLAINTIFF DAVID COPPEDGE AND TO HIS ATTORNEY OF RECORD, WILLIAM J.		
2	BECKER, JR., AND THE BECKER LAW FIRM:		
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4	/ Defendants CALIFORNIA INSTITUTE OF TECHNOLOGY ("Caltech"),		
5	GREGORY CHIN ("Chin"), CLARK A. BURGESS ("Burgess"), and KEVIN KLENK		
6	("Klenk") (collectively, "Defendants"), for themselves alone and no other defendant, hereby		
7	answer the unverified First Amended Complaint ("Complaint") of Plaintiff DAVID COPPEDGE		
8	("Plaintiff") as follows:		
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10	1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure,		
11	Defendants deny, generally and specifically, each and every allegation in Plaintiff's Complaint.		
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13	2. Defendants further deny, generally and specifically, that Plaintiff is entitled		
14	to the relief requested, or that Plaintiff has been or will be damaged in any sum, or at all, by		
15	reason of any act or omission on the part of Defendants, or any of their past or present agents,		
16	representatives, or employees.		
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18	Without admitting any facts alleged by Plaintiff, Defendants also plead the		
19	following separate and affirmative defenses to the Complaint:		
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21	FIRST SEPARATE AND AFFIRMATIVE DEFENSE		
22	3. The Complaint, and each of its causes of action, fails to state facts		
23	sufficient to constitute a cause of action.		
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‡ 5	SECOND SEPARATE AND AFFIRMATIVE DEFENSE		
23 24 25 26 27 27 27 27 27 27 27 27 27 27 27 27 27 27 2	4. The Complaint, and each of its causes of action, is barred by all applicable		
27	statutes of limitation, including but not limited to, the California Fair Employment and Housing		
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DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED FIRST AMENDED COMPLAINT

1	Act ("FEHA"), California Government Code section 12960 et seq., and California Code of Civil		
2	Procedure section 335.1.		
3 4 5 6 7	THIRD SEPARATE AND AFFIRMATIVE DEFENSE 5. The Complaint, and each of its causes of action, is barred by the doctrine of unclean hands.		
8	FOURTH SEPARATE AND AFFIRMATIVE DEFENSE		
9	6. Plaintiff has waived the right to pursue the Complaint, and each of its		
10	causes of action, by reason of his own actions and course of conduct.		
11 12 13 14	FIFTH SEPARATE AND AFFIRMATIVE DEFENSE 7. Plaintiff is estopped from pursuing the Complaint, and each of its causes of action, by reason of his own actions and course of conduct.		
15 16 17 18	SIXTH SEPARATE AND AFFIRMATIVE DEFENSE 8. The Complaint, and each of its causes of action, is barred, in whole or in part, by the after-acquired evidence doctrine.		
19 20 21 22 23 24 25 26 26 27 28	SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE 9. The first, second, and third causes of action are barred because Plaintiff failed to exhaust his administrative remedies, the allegations in the Complaint fall outside the scope of any administrative charges Plaintiff filed and/or Plaintiff otherwise failed to comply with the statutory prerequisites to the bringing of this action, pursuant to the FEHA, California Government Code section 12900 et seq.		
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-3-DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED FIRST AMENDED COMPLAINT

EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

10. The Complaint, and each of its causes of action, is barred because Defendants are unable to reasonably accommodate Plaintiff's alleged religious beliefs and/or practices without undue hardship.

NINTH SEPARATE AND AFFIRMATIVE DEFENSE

11. The Complaint, and each of its causes of action, is barred because all of Defendants' actions with respect to Plaintiff were done in good faith and/or in a manner consistent with business necessity.

TENTH SEPARATE AND AFFIRMATIVE DEFENSE

12. The Complaint, and each of its causes of action, is barred because Plaintiff did not satisfy and/or breached his statutory obligations as provided in the California Labor Code including, but not limited to, sections 2854 and 2856-2859.

ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

13. The Complaint, and each of its causes of action, is barred because all of Defendants' actions with respect to Plaintiff were taken solely for legitimate, business reasons unrelated to any alleged discrimination, harassment or retaliation.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

Defendants did not engage in the alleged discrimination, harassment or retaliation set forth in the Complaint, but even assuming for the sake of argument that they did, Defendants would have taken the same employment actions in any event for legitimate, non-discriminatory, non-retaliatory, non-pretextual reasons.

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THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

15. Plaintiff's Complaint is barred, in whole or in part, because Defendants exercised reasonable care to prevent and correct promptly any alleged harassing, discriminatory and/or retaliatory conduct, if any.

FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

16. Plaintiff's Complaint is barred, in whole or in part, because Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendants or to avoid harm otherwise.

FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

17. Plaintiff's claim for harassment is barred by the avoidable consequences doctrine, in that Plaintiff failed to exercise reasonable care and diligence to avoid harm or loss that could have reasonably been prevented by such reasonable efforts.

SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

18. The Complaint, and each of its causes of action, is barred because none of the acts about which Plaintiff complains constituted an adverse employment action under applicable law.

SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

19. The fourth purported cause of action for wrongful demotion in violation of public policy is barred because all of Defendants' actions with respect to Plaintiff were taken for legitimate, business reasons unrelated to any alleged protected expression or activity by Plaintiff or any alleged discrimination, harassment or retaliation by Defendants.

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EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

20. The fourth purported cause of action for wrongful demotion in violation of public policy fails because Defendants' actions do not implicate a fundamental public policy.

NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

21. Plaintiff has failed to mitigate, or reasonably attempt to mitigate, his damages, if any, as required by law.

TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

22. Any and all claims in the Complaint based in whole or in part upon any alleged physical or emotional injury or distress are barred because Plaintiff's sole and exclusive remedy, if any, for such injuries is governed by the California Workers' Compensation Act and before the Workers' Compensation Appeals Board. Cal. Lab. Code §§ 3600 et seq.

TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

23. Plaintiff is barred from, and has waived, any recovery for any alleged physical or emotional injury or distress, to the extent that Plaintiff has failed to pursue and exhaust his remedies, if any, under the California Workers' Compensation Act. Cal. Lab. Code §§ 3600, et seq.

TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

24. Plaintiff is not entitled to recover attorneys' fees under California Code of Civil Procedure § 1021.5 or on any other basis.

TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

25. Plaintiff's claim for injunctive or other equitable relief is barred because Plaintiff has an adequate and complete remedy at law.

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TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

26. Plaintiff's claim for injunctive or other equitable relief is barred because of Plaintiff's unclean hands.

TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

27. Plaintiff may not recover damages in this action because, under the circumstances presented, it would constitute unjust enrichment.

TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

28. Plaintiff is not entitled to recover any punitive damages, and any allegations in support of a claim for punitive damages should be stricken, because California's laws regarding the acts and omissions alleged are too vague to permit the imposition of punitive damages, and because any award of punitive damages in this action would violate Defendants' constitutional rights under the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution, as well as other provisions of the United States Constitution and the California Constitution.

TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

29. Defendant Caltech cannot be held liable for punitive damages because neither Caltech nor any of its officers, directors or managing agents committed any alleged oppressive, fraudulent or malicious act, authorized or ratified such an act, or had advanced knowledge of the unfitness, if any, of the employee or employees, if any, who allegedly committed such an act, or employed any such employee or employees with a conscious disregard of the rights or safety of others. Cal. Civ. Code ¶ 3294.

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TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

30. None of the Defendants engaged in oppressive, fraudulent or malicious conduct toward Plaintiff. Cal. Civ. Code ¶ 3294.

TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

31. Plaintiff may not recover punitive damages because, at all times relevant to the Complaint, Defendant Caltech had in place a policy to prevent discrimination, harassment, and retaliation in the workplace and made good-faith efforts to implement and enforce that policy.

THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE

32. Defendant alleges that it currently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Defendant expressly reserves the right to assert additional affirmative defenses in the event discovery indicates those would be appropriate

WHEREFORE, Defendants pray for judgment as follows:

- 1. That Plaintiff take nothing by reason of his Complaint, that the Complaint be dismissed in its entirety with prejudice, and that judgment be entered for Defendants;
 - 2. That Defendants be awarded their reasonable costs and attorneys' fees; and

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1	3. That Defe	endants be awarded such other and further relief as the Court
2	deems just and proper.	
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4	DATED: July 23, 2010	PAUL, HASTINGS, JANOFSKY & WALKER LLP JAMES A. ZAPP
5		CAMERON W. FOX
6		Manual Iva
7		By: CAMERON W. FOX
8		Attorneys for Defendants
9		Attorneys for Defendants CALIFORNIA INSTITUTE OF TECHNOLOGY, GREGORY CHIN, CLARK A. BURGESS, AND KEVIN KLENK
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PROOF OF SERVICE 1 STATE OF CALIFORNIA 2 CITY OF LOS ANGELES AND COUNTY OF 3 LOS ANGELES 4 I am employed in the City of Los Angeles and County of Los Angeles, State 5 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. 6 On July 23, 2010, I served the foregoing document(s) described as: 7 DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED FIRST AMENDED 8 COMPLAINT 9 on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows: 10 William J. Becker, Jr., Esq. THE BECKER LAW FIRM Attorney for Plaintiff 11 DAVID COPPEDGE 11500 Olympic Blvd, Suite 400 12 Los Angeles, CA 90064 13 14 VIA U.S. MAIL: 15 × I am readily familiar with the firm's practice of collection and processing of 16 correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on July 23, 2010 with postage thereon fully prepaid, 17 at Los Angeles, California. 18 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 July 23, 2010, at Los Angeles, 19 California. 20 Chute Weler 21 Christine Wilson Type or Print Name 22 23 24 25 28