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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAY 02 2011

John A. Clarke, Executive Officer/Clerk
BY Mary Flores, Deputy
Mary Flores

Attorneys for Defendants
6 CALIFORNIA INSTITUTE OF TECHNOLOGY,
7 GREGORY CHIN, CLARK A. BURGESS, AND
8 KEVIN KLENK -7-23-10

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 DAVID COPPEDGE, an Individual,
12 Plaintiff,

13 vs.

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

CASE NO. BC435600

DEFENDANTS' ANSWER TO PLAINTIFF'S
UNVERIFIED SECOND AMENDED
COMPLAINT

D-71

Fees paid on

6/18/10 \$350.00
7/23/10 \$1,000.00

L. MENJVAR

55/03/11

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, which includes its
5 division, Jet Propulsion Laboratory, and which erroneously has been sued as a separate entity
6 ("Caltech"), GREGORY CHIN ("Chin"), CLARK A. BURGESS ("Burgess"), and KEVIN
7 KLENK ("Klenk") (collectively, "Defendants"), for themselves alone and no other defendant,
8 hereby answer the unverified Second Amended Complaint ("Complaint") of Plaintiff DAVID
9 COPPEDGE ("Plaintiff") as follows:

10
11 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure,
12 Defendants deny, generally and specifically, each and every allegation in Plaintiff's Complaint.

13
14 2. Defendants further deny, generally and specifically, that Plaintiff is entitled
15 to the relief requested, or that Plaintiff has been or will be damaged in any sum, or at all, by
16 reason of any act or omission on the part of Defendants, or any of their past or present agents,
17 representatives, or employees.

18
19 Without admitting any facts alleged by Plaintiff, Defendants also plead the
20 following separate and affirmative defenses to the Complaint:

21
22 FIRST SEPARATE AND AFFIRMATIVE DEFENSE

23 3. The Complaint, and each of its causes of action, fails to state facts
24 sufficient to constitute a cause of action.

25
26 SECOND SEPARATE AND AFFIRMATIVE DEFENSE

27 4. The Complaint, and each of its causes of action, is barred by all applicable
28 statutes of limitation, including but not limited to, the California Fair Employment and Housing

1 Act ("FEHA"), California Government Code section 12960 *et seq.*, and California Code of Civil
2 Procedure sections 335.1 and 338.

3
4 THIRD SEPARATE AND AFFIRMATIVE DEFENSE

5 5. The Complaint, and each of its causes of action and requests for relief, is
6 barred by the doctrine of unclean hands.

7
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 FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

13 7. Plaintiff is estopped from pursuing the Complaint, and each of its causes of
14 action, by reason of his own actions and course of conduct.

15
16 SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

17 8. The Complaint, and each of its causes of action, is barred, in whole or in
18 part, by the after-acquired evidence doctrine.

19
20 SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

21 9. The first, second, third, fifth, sixth, seventh, and ninth causes of action are
22 barred because Plaintiff failed to exhaust his administrative remedies, the allegations in the
23 Complaint fall outside the scope of any administrative charges Plaintiff filed and/or Plaintiff
24 otherwise failed to comply with the statutory prerequisites to the bringing of this action, pursuant
25 to the FEHA, California Government Code section 12900 *et seq.*

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EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

10. The Complaint, and each of its causes of action, is barred because Defendant Caltech was 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 protected expression or activity by Plaintiff or any alleged discrimination, harassment or retaliation.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

14. The Complaint, and each of its causes of action, is barred because 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 first, second, third, fourth, fifth, seventh and eighth purported causes of action are barred to the extent Plaintiff bases those causes of action on an alleged "demotion" because the acts about which Plaintiff complains do not constitute an adverse employment action under applicable law.

SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

19. The fourth, eighth, tenth, and eleventh purported causes of action for wrongful demotion in violation of public policy fail because Defendants' actions do not implicate a fundamental public policy.

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EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

20. The first, second, third, fourth and sixth purported causes of action fail as to individual Defendants Gregory Chin, Clark A. Burgess, and Kevin Klenk because individual employees and/or supervisors cannot be liable for the conduct alleged in those claims as a matter of law.

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, California Government Code § 12965, or on any other basis.

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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.

TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

27. 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-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

28. 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-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

29. Defendants cannot be held liable for punitive damages because none of the Defendants engaged in oppressive, fraudulent or malicious conduct toward Plaintiff. Cal. Civ. Code ¶ 3294.

TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

30. 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.

TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

31. Defendants allege that they currently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Defendants expressly reserve 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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3. That Defendants be awarded such other and further relief as the Court
deems just and proper.

DATED: May 1, 2011

PAUL, HASTINGS, JANOFSKY & WALKER LLP
JAMES A. ZAPP
CAMERON W. FOX

By: 
CAMERON W. FOX

Attorneys for Defendants
CALIFORNIA INSTITUTE OF TECHNOLOGY,
GREGORY CHIN, CLARK A. BURGESS, AND
KEVIN KLENK

05/03/11

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 CITY OF LOS ANGELES AND COUNTY OF) ss:
4 LOS ANGELES)

5 I am employed in the City of Los Angeles and County of Los Angeles, State
6 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.

7 On May 2, 2011, I served the foregoing document(s) described as:

8 **DEFENDANTS' ANSWER TO PLAINTIFF'S**
9 **UNVERIFIED SECOND AMENDED COMPLAINT**

10 on the interested parties by placing a true and correct copy thereof in a sealed envelope(s)
addressed as follows:

11 William J. Becker, Jr., Esq.
12 THE BECKER LAW FIRM
11500 Olympic Blvd, Suite 400
Los Angeles, CA 90064

Attorney for Plaintiff
DAVID COPPEDGE

13 Email: bbeckerlaw@gmail.com
14
15
16

17 **VIA ELECTRONIC MAIL:**

By personally emailing the aforementioned document in PDF format to the respective
18 email addresses designated for each of the listed opposing counsel.

19 **VIA U.S. MAIL:**

I am readily familiar with the firm's practice of collection and processing of
20 correspondence for mailing. Under that practice such sealed envelope(s) would be
deposited with the U.S. postal service on May 2, 2011 with postage thereon fully prepaid,
21 at Los Angeles, California.

22 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 2, 2011, at Los Angeles,
23 California.

24
25 Irma Gamino
Type or Print Name

Signature
