1 PAUL, HASTINGS, JANOFSKY & WALKER LLP JAMES A. ZAPP (SB# 94584) CAMERON W. FOX (SB# 218116) 2 JUL 01 2011 MELINDA A. GORDON (SB# 254203) 3 515 South Flower Street Twenty-Fifth Floor 4 Los Angeles, CA 90071-2228 Telephone: (213) 683-6000 Facsimile: (213) 627-0705 5 6 Attorneys for Defendant CALIFÓRNIA INSTITUTE OF TECHNOLOGY 7 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 COUNTY OF LOS ANGELES 10 11 DAVID COPPEDGE, an Individual, CASE NO. BC435600 Plaintiff, 12 DEFENDANT CALIFORNIA INSTITUTE 13 VS. OF TECHNOLOGY'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, 14 JET PROPULSION LABORATORY, form unknown; CALIFORNIA SUMMARY ADJUDICATION OF ISSUES INSTITUTE OF TECHNOLOGY, form 15 unknown; GREGORY CHIN, an Individual; CLARK A. BURGESS, an 16 September 16, 2011 Date: Individual; KEVIN KLENK, an Individual; 8:30 a.m. Time: 17 and DOES 1 through 25, inclusive, Dept: 54 18 Defendants. Trial Date: October 19, 2011 19 20 21 22 CIT/CASE: BC435400 LEA/DEF#; 23 24 25 26 27 28

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES

TO PLAINTIFF DAVID COPPEDGE AND TO HIS ATTORNEY OF RECORD, WILLIAM J. BECKER, JR., ESQ. AND THE BECKER LAW FIRM:

PLEASE TAKE NOTICE that on September 16, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 54 of the above-captioned Court, located at 111 North Hill Street, Los Angeles, CA 90012, Defendant California Institute of Technology ("Caltech" or "Defendant") will, and hereby does, move this Court, pursuant to California Code of Civil Procedure Section 437c, for an Order granting summary judgment in its favor and against Plaintiff David Coppedge ("Coppedge" of "Plaintiff") as to each cause of action in Coppedge's Second Amended Complaint on file herein. This motion is made on the grounds that there is no triable issue as to any material fact and that Caltech is entitled to judgment in its favor as a matter of law.

Alternatively, if for any reason total summary judgment is not granted, Caltech will, and hereby does, move this Court for an Order adjudicating that the following issues are established without substantial controversy as against Coppedge, that no further proof shall be required in the trial of this action, and that any final judgment in this action shall, in addition to any matter determined at trial, be based on the following:

Issue No. 1: Plaintiff's First Cause of Action for discrimination in violation of FEHA fails as a matter of law because he cannot establish a *prima facie* case: except for Plaintiff's layoff, none of the conduct at issue constitutes a legally cognizable adverse employment action, and none of the events alleged, including Plaintiff's layoff, give rise to an inference of discrimination based on actual or perceived religious creed. (Undisputed Fact Nos. 1-58, 60, 62-82).

Issue No. 2: Plaintiff's First Cause of Action for discrimination in violation of FEHA fails as a matter of law because Caltech had legitimate, non-discriminatory reasons for the actions taken, and Plaintiff cannot show pretext. (Undisputed Fact Nos. 7, 15-58, 60, 62-82, 84-88).

<u>Issue No. 3:</u> Plaintiff's First Cause of Action for discrimination in violation of FEHA fails as a matter of law to the extent Plaintiff purports to base it upon his alleged right to free expression. (Undisputed Fact Nos. 1, 2, 47).

1	Issue No. 4: Plaintiff's Second Cause of Action for discrimination pursuant to Labor		
2	Code §§ 1101 and 98.6 fails as a matter of law because Plaintiff cannot establish conduct in		
3	violation of either section. (Undisputed Fact No. 47, 91).		
4 5 6 7	Issue No. 5: Plaintiff's Third Cause of Action for retaliation in violation of FEHA fails as a matter of law because Plaintiff cannot establish a causal nexus between any protected conduct and any alleged adverse employment action. (Undisputed Fact Nos. 7, 15-60, 62-82, 84-88). Issue No. 6: Plaintiff's Fourth Cause of Action for retaliation in violation of public policy		
9	fails as a matter of law because Plaintiff cannot establish a causal nexus between any protected		
10	conduct and any alleged adverse employment action, and, to the extent he attempts to rely on free		
	speech, also because he cannot tether it to a fundamental public policy, as required. (Undisputed		
11	Fact Nos. 1-2, 7, 15-60, 62-82, 84-88.).		
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13	Issue No. 7: Plaintiff's Fifth Cause of Action for harassment in violation of FEHA fails as		
14	a matter of law because the conduct alleged was not sufficiently severe or pervasive to alter the		
15	terms and conditions of his employment, some conduct constitutes non-actionable personnel		
16	management decisions, and the totality of circumstances establish no harassment took place. (Undisputed Fact Nos. 7, 15-60, 62-82, 84-88).		
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18	Issue No. 8: Plaintiff's Sixth Cause of Action for failure to prevent discrimination and		
19	harassment in violation of FEHA fails as a matter of law because no discrimination or harassment		
20	occurred, and because Caltech met its obligation to take reasonable steps to prevent		
21	discrimination and harassment by implementing policies and taking action to investigate and		
22	remedy charges under them. (Undisputed Fact Nos. 15-60, 62-82, 84-88, 101-103).		
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24	Issue No. 9: Plaintiff's Seventh Cause of Action for wrongful demotion in violation of		
25	FEHA fails as a matter of law for the same reasons as Coppedge's religious discrimination and retaliation claims. (Undisputed Fact Nos. 15-56, 82, 85-86, 88).		
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27	Issue No. 10: Plaintiff's Eighth Cause of Action for wrongful demotion in violation of		

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public policy fails as a matter of law for the same reasons as Coppedge's religious discrimination

<u>Issue No. 11:</u> Plaintiff's Ninth Cause of Action for wrongful termination in violation of FEHA fails as a matter of law for the same reasons as Coppedge's religious discrimination and retaliation claims. (Undisputed Fact Nos. 7, 62-80, 87).

Issue No. 12: Plaintiff's Tenth Cause of Action for wrongful termination in violation of public policy (Tameny) fails as a matter of law for the same reasons as Coppedge's religious discrimination and retaliation claims, and, to the extent he attempts to rely on free speech, also because Plaintiff cannot tether it to a fundamental public policy, as required. (Undisputed Fact Nos. 1, 2, 7, 47, 62-80, 87).

Issue No. 13: Plaintiff's Eleventh Cause of Action for wrongful termination in violation of public policy (based on the California Constitution) fails as a matter of law for the same reasons as Coppedge's religious discrimination and retaliation claims, and, to the extent he attempts to rely on free speech, also because Plaintiff cannot tether it to a fundamental public policy, as required. (Undisputed Fact Nos. 1, 2, 7, 47, 62-80, 87).

This Motion is based on California Code of Civil Procedure Section 437c, this Notice of Motion and Motion, the concurrently filed Memorandum of Points and Authorities, Separate Statement of Undisputed Material Facts, Declarations of Richard Van Why, Jackie Clennan-Price, Jhertaune Huntley, and James A. Zapp, Appendix of Non-California Authorities, the concurrently lodged [Proposed] Order Granting Motion For Summary Judgment Or, In The Alternative, Summary Adjudication Of Issues, all papers and pleadings on file in the Court, and such further oral and documentary evidence as may be presented at or before the hearing on this Motion.

1	DATED: July 1, 2011	PAUL, HASTINGS, JANOFSKY & WALKER LLP
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5		By: JAMES A. ZAPP
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