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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

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Satter, Peter M.B. Shames, Amy Snyder )  
20 Hale, William John Walker and Paul R. )  
Weissman, )

21 Plaintiffs, )  
22 )  
23 vs. )

24 National Aeronautics and Space )  
Administration, an Agency of the United )  
25 States; Michael Griffin, Director of )  
NASA, in his official capacity only; )  
Department of Commerce; Carlos M. )  
26 Gutierrez, Secretary of Commerce, in his )  
official capacity only; California Institute )  
27 of Technology; and Does 1-100, )  
28 )

Defendants. )

Case No. CV-07-05669 ODW (VBKx)

**NOTICE OF MOTION TO DISMISS  
FIRST AMENDED COMPLAINT  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

Complaint Filed: August 30, 2007

Date: January 7, 2008

Time: 1:30 p.m.

Courtroom: 11

1           **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2           Pursuant to Fed. R. Civ. P. 12(b)(6) and the parties' Stipulation and Proposed  
3 Order to Amend Complaint and Set Proposed Briefing Schedule in Response to  
4 Amended Complaint, entered on October 19, 2007, Defendant California Institute of  
5 Technology ("Caltech") moves to dismiss Plaintiffs' First Amended Complaint for  
6 Injunctive and Declaratory Relief. This motion is made following the conference of  
7 counsel pursuant to L.R. 7-3 which took place on October 17, 2007. Caltech's  
8 motion to dismiss should be granted for the following reasons:

9           First, Plaintiffs' Administrative Procedure Act claim against Caltech fails  
10 because Caltech is not a federal agency subject to the requirements of that act.

11           Second, Plaintiffs' U.S. Constitution claims against Caltech fail because  
12 Plaintiffs do not adequately allege that Caltech is engaging in government action.  
13 Moreover, Plaintiffs have made a number of judicial statements which preclude any  
14 finding that Caltech is a government actor. Caltech is a private entity and cannot be  
15 liable for the alleged constitutional violations, even if Plaintiffs could state a claim  
16 against the federal government defendants.

17           Third, Plaintiffs' California state constitution claim against Caltech fails  
18 because, as interpreted by Plaintiffs, it is preempted by federal law. Caltech cannot be  
19 subject to state laws that conflict with the federal regulations Caltech is obligated to  
20 follow in connection with its operation of a NASA facility.

21           Caltech's motion to dismiss is supported by the Memorandum of Points of  
22 Authorities and the Request for Judicial Notice and attached exhibits, filed  
23 concurrently herewith.

1 DATED: November 21, 2007

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