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To: Santa Monica Community College District  
1900 Pico Boulevard  
Santa Monica, CA 90405-1628

Re: Santa Monica Community College District, et. al. vs. Des Manttari

VIA EMAIL AND PERSONAL DELIVERY TO THE OFFICE OF JUDICIAL AFFAIRS

## **APPEAL BY DES MANTTARI FROM SANTA MONICA COLLEGE'S SUSPENSION**

### **INTRODUCTION & NAMED PARTIES**

Respondent Des Manttari ("Manttari"), erroneously named as "Des Mantarri", hereby generally denies each and every allegation of Santa Monica College's three-page suspension letter, dated May 23, 2006, for violations ("the violations") of the SMC Student Code of Conduct ("the Complaint"), and any and all allegations of its agents, employees, and third parties, including but not limited to Jim Keeshen (erroneously named as "Jim Keeshan"), Judith Penschansky and Thomas J. Baker (collectively, "SMC") for violations of the Student Code of Conduct as set forth herein and requests a hearing with the SMC Student Conduct Appeals Committee as to the suspension and the allegations, incidents, and violations contained therein in its entirety.

### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 1**

**"You disrupted the AET lab in April 2005 and campus police were called."**

Answering SMC's claims that "You disrupted the AET lab in April 2005 and campus police were called, " (hereinafter "Allegation Number 1"), SMC has failed to set forth a specific date. Furthermore, Manttari has never received a campus police report from SMC regarding this alleged incident despite repeated written requests. As such, Manttari is unable to answer with particularity as to Allegation Number 1 and objects to its vagueness and ambiguity.

Further answering Allegation Number 1, Manttari objects to the word "disrupted" as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any facts. As such, Manttari denies each and every allegation that she "disrupted the AET lab in April 2005."

Manttari additionally contends that on or about June 6, 2005 (exactly one year ago), Judith Penschansky wrote Manttari the following regarding this allegation: "Nothing will appear in your academic records regarding this incident."

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 2**

#### **"You made threatening remarks about lab employees at the AET to Professor Jim Keeshen in Spring 2005."**

Answering SMC's claims that "You made threatening remarks about lab employees at the AET to Professor Keeshen in Spring 2005, " (hereinafter "Allegation Number 2"), SMC has failed to set forth a specific date or location. Furthermore, SMC has failed to specify which "lab employees" it is referring to. As such, Manttari is unable to answer with particularity as to Allegation Number 2 and objects to its vagueness and ambiguity.

Further answering Allegation Number 2, Manttari objects to the term "threatening remarks" as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any facts. As such, Manttari denies each and every allegation that she "made threatening remarks about lab employees at the AET to Professor Jim Keeshen in Spring 2005."

Manttari additionally contends that on or about June 6, 2005 (exactly one year ago), Judith Penchansky wrote Manttari the following regarding this allegation: "Nothing will appear in your academic records regarding this incident."

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 3**

#### **"You took unauthorized photographs of students and lab employees at the AET lab on August 10, 2005."**

Answering SMC's claims that "You took unauthorized photographs of students and lab employees at the AET lab on August 10, 2005," (hereinafter "Allegation Number 3"), Manttari admits to taking "photographs" with SMC student Dustin Curran for evidentiary purposes and contends that Judith Penchansky's and Katharine Muller's prohibition of Manttari's access to the AET computer lab in Spring semester 2005 violated SMC's own written policies and procedures, as well as any other rights afforded under state or federal law.

In further answering, Manttari objects to the word "unauthorized" as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any SMC policies, regulations, or rules and no such policies, regulations, or rules prohibiting such photography, if they exist (which Manttari is informed and believes and thereon alleges they do not) were ever made available to her.

Further answering Allegation Number 3, Manttari alleges that said photograph or photographs of unauthorized individuals in the AET lab speak for itself. Except as herein admitted, Manttari denies each and every other allegation as contained in Allegation Number 3.

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

#### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 4**

**“You disrupted the office of Pat Green on August 17, 2005 and campus police were called.”**

Answering SMC’s claims that “You disrupted the office of Pat Green on August 17, 2005 and campus police were called, ” (hereinafter “Allegation Number 4”), SMC has failed to set forth specific facts. Furthermore, Manttari has never received a campus police report from SMC regarding this alleged incident despite repeated written requests. Furthermore, Manttari has no recollection, to the best of her knowledge, of speaking with campus police on this date or that campus police was even called or appeared at Pat Green’s office. As such, Manttari is unable to answer with particularity as to Allegation Number 4 and objects to its vagueness and ambiguity.

Further answering Allegation Number 4, Manttari objects to the word “disrupted” as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any facts. As such, Manttari denies each and every allegation that she “disrupted the office of Pat Green on August 17, 2005.”

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

#### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 5**

**“You disrupted the office of Judy Fritz on August 19, 2005 and campus police were called.”**

Answering SMC’s claims that “You disrupted the office of Judy Fritz on August 19, 2005 and campus police were called, ” (hereinafter “Allegation Number 5”), SMC has failed to set forth specific facts or the specific location of Judy Fritz’s office. Furthermore, Manttari has no recollection, to the best of her knowledge, of speaking with Judy Fritz on this date or going to her alleged designated office. As such, Manttari is unable to answer with particularity as to Allegation Number 5 and objects to its vagueness and ambiguity.

Further answering Allegation Number 5, Manttari objects to the word “disrupted” as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any facts. As such, Manttari denies each and every allegation that she “disrupted the office of Judy Fritz on August 19, 2005.”

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 6**

**"You harassed Professor Keeshan [sic] on February 27, 2006, at his ET2 Storytelling class and campus police were called."**

Answering SMC's claims that "You harassed Professor Keeshan [sic] on February 27, 2006, at his ET2 Storytelling class and campus police were called, " (hereinafter "Allegation Number 6"), SMC has failed to set forth specific facts. As such, Manttari is unable to answer with particularity as to Allegation Number 6 and objects to its vagueness and ambiguity.

Further answering Allegation Number 6, Manttari objects to the word "harassed" as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any facts. As such, Manttari denies each and every allegation that she "harassed Professor Keeshan [sic] on February 27, 2006, at his ET 2 Storytelling class."

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 7**

**"You harassed Professor Keeshan [sic] on March 6, 2006, at his ET2 Storytelling class."**

Answering SMC's claims that "You harassed Professor Keeshan [sic] on March 6, 2006, at his ET2 Storytelling class, " (hereinafter "Allegation Number 7"), SMC has failed to set forth specific facts. As such, Manttari is unable to answer with particularity as to Allegation Number 7 and objects to its vagueness and ambiguity.

Further answering Allegation Number 7, Manttari objects to the word "harassed" as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any facts. As such, Manttari denies each and every allegation that she "harassed Professor Keeshan [sic] on March 6, 2006, at his ET 2 Storytelling class."

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 8**

**"You ignored Dean Penchansky's letter of March 6, 2006, which stated that you were not to communicate with Professor Keeshen either in person, via telephone, or by e-mail, when you e-mailed him on March 15, 2006."**

Answering SMC's claims that "You ignored Dean Penchansky's letter of March 6, 2006, which stated that you were not to communicate with Professor Keeshen either in person, via telephone, or by e-mail, when you e-mailed him on March 15, 2006," (hereinafter "Allegation Number 8"), Manttari admits that Judith Penchansky sent her a letter on March 6, 2006 and contends that Judith Penchansky's instructions violated the California Education Code, SMC's own written policies and procedures, as well as any other rights afforded under state or federal law.

Further answering Allegation Number 8, Manttari alleges that said email was sent and speaks for itself. Except as herein admitted, Manttari denies each and every other allegation as contained in Allegation Number 8.

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 9**

**"You were asked to leave the SMC Gaming Club on Friday, March 24, 2006 and campus police were called."**

Answering SMC's claims that "You were asked to leave the SMC Gaming Club on Friday, March 24, 2006 and campus police were called, " (hereinafter "Allegation Number 9"), SMC has failed to set forth specific names and facts. As such, Manttari is unable to answer with particularity as to Allegation Number 10 and objects to its vagueness and ambiguity.

Further answering Allegation Number 9, Manttari objects to the term "asked to leave" as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any facts. Without waiving any objections, Manttari contends that she was not "asked to leave the SMC Gaming Club" by its President or members, but ordered to do so without legitimate justification or authority by her accuser, SMC student Thomas J. Baker. Manttari further contends that she was not in violation of the Student Conduct Code and that any orders or interrogation by Thomas J. Baker violated SMC's own written policies and procedures.

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

### **SANTA MONICA COLLEGE SUSPENSION ALLEGATION NUMBER 10**

**"You disrupted the AET lab on May 8, 2006, demanding that the lab tech remove a student who was using the lab, claiming that he was not entitled to use the lab."**

Answering SMC's claims that "You disrupted the AET lab on May 8, 2006, demanding that the lab tech remove a student who was using the lab, claiming that he was not entitled to use lab," (hereinafter "Allegation Number 10"), SMC has failed to set forth specific names and facts. Furthermore, Manttari has never received a written statement or notice from SMC regarding this alleged incident until this instant suspension letter despite repeated written requests. As such, Manttari is unable to answer with particularity as to Allegation Number 10 and objects to its vagueness and ambiguity.

Further answering Allegation Number 10, Manttari objects to the word "disrupted" as it is vague, ambiguous, and overbroad as well as being unsubstantiated by any facts. In further answering Allegation Number 10; Manttari contends that the date of this alleged incident speaks for itself. As such, Manttari denies each and every allegation that she "disrupted the AET lab on May 8, 2006."

Additionally, Manttari contends that she did not violate any provision of the Student Code of Conduct regarding this alleged incident and no such Student Conduct Code has been cited with this specific allegation to warrant suspension.

**SMC CITED ADMINISTRATIVE REGULATION NUMBER 1 (AR 4410 A)**

**“Continued disruptive behavior, continued willful disobedience, habitual profanity or vulgarity, or the open and persistent defiance of the authority of, or persistent abuse of, college personnel.”**

Answering SMC’s claims that Manttari violated SMC AR 4410 (A), Manttari alleges that SMC has failed to set forth sufficient facts and information to warrant a violation under this Administrative Regulation subsection in its entirety.

In further answering SMC AR 4410 (A), Manttari objects to the term “disruptive behavior” as it is vague, ambiguous, and overbroad.

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (A) by “continued disruptive behavior.”

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (A) by “continued willful disobedience.”

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (A) by “habitual profanity or vulgarity.”

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (A) by “the open and persistent defiance of the authority of, or persistent abuse of, college personnel.”

As such, Manttari denies each and every allegation contained therein and denies that she violated SMC AR 4410 (A) in its entirety.

**SMC CITED ADMINISTRATIVE REGULATION NUMBER 2 (AR 4410 B)**

**“Assault, battery or any threat of force or violence upon a student, college personnel.”**

Answering SMC’s claims that Manttari violated SMC AR 4410 (B), Manttari alleges that SMC has failed to set forth sufficient facts and information to warrant a violation under this Administrative Regulation subsection in its entirety.

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (B) by “assault upon a student.”

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (B) by “assault upon college personnel.”

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (B) by “battery upon a student.”

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (B) by “battery upon college personnel.”

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (B) by "threat of force or violence upon a student."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (B) by "threat of force or violence upon college personnel."

As such, Manttari denies each and every allegation contained therein and denies that she violated SMC AR 4410n(B) in its entirety.

**SMC CITED ADMINISTRATIVE REGULATION NUMBER 3 (AR 4410 G)**

**"Persistent, serious misconduct where other means of correction have failed to bring about proper conduct."**

Answering SMC's claims that Manttari violated SMC AR 4410 (G), Manttari alleges that SMC has failed to set forth sufficient facts and information to warrant a violation under this Administrative Regulation subsection in its entirety.

In further answering SMC AR 4410 (G), Manttari objects to the term "persistent, serious misconduct" as it is vague, ambiguous, and overbroad. In further answering SMC AR 4410 (G), Manttari objects to the term "other means of correction" as it is vague, ambiguous, and overbroad.

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (G) by "persistent, serious misconduct."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (G) because "other means of correction have failed to bring about proper conduct."

As such, Manttari denies each and every allegation contained therein and denies that she violated SMC AR 4410 (G) in its entirety.

**SMC CITED ADMINISTRATIVE REGULATION NUMBER 4 (AR 4410 J)**

**"Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other college activities, including, but not limited to, community service functions, or other authorized activities."**

Answering SMC's claims that Manttari violated SMC AR 4410 (J), Manttari alleges that SMC has failed to set forth sufficient facts and information to warrant a violation under this Administrative Regulation subsection in its entirety.

In further answering SMC AR 4410 (J), Manttari objects to the term "obstruction" as it is vague, ambiguous, and overbroad. In further answering SMC AR 4410 (J), Manttari objects to the term "disruption" as it is vague, ambiguous, and overbroad.

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (J) by "obstruction or disruption of teaching."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (J) by "obstruction or disruption of research."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (J) by "obstruction or disruption of administration."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (J) by "obstruction or disruption of disciplinary procedures."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (J) by "obstruction or disruption of other college activities."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (J) by "obstruction or disruption of community service functions."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (J) by "obstruction or disruption of other authorized activities."

As such, Manttari denies each and every allegation contained therein and denies that she violated SMC AR 4410 (J) in its entirety.

**SMC CITED ADMINISTRATIVE REGULATION NUMBER 5 (AR 4410 L)**

**"Willful or blatant misuse of email or other inappropriate forms of communication towards faculty, staff or students including but not limited to phone, voicemail, written notes and any form of electronic communication."**

Answering SMC's claims that Manttari violated SMC AR 4410 (L), Manttari alleges that SMC has failed to set forth sufficient facts and information to warrant a violation under this Administrative Regulation subsection in its entirety.

In further answering SMC AR 4410 (L), Manttari objects to the term "willful misuse" as it is vague, ambiguous, and overbroad. In further answering SMC AR 4410 (L), Manttari objects to the term "blatant misuse" as it is vague, ambiguous, and overbroad.

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "willful or blatant misuse of email toward faculty."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "willful or blatant misuse of email toward staff."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "willful or blatant misuse of email toward students."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward faculty."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward staff."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward students."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward faculty via phone."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward staff via phone."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward students via phone."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward faculty via voicemail."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward staff via voicemail."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate forms of communication toward students via voicemail."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate written notes toward faculty."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate written notes toward staff."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate written notes toward students."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate electronic communication toward faculty."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate electronic communication toward staff."

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (L) by "inappropriate electronic communication toward students."

As such, Manttari denies each and every allegation contained therein and denies that she violated SMC AR 4410 (L) in its entirety.

**SMC CITED ADMINISTRATIVE REGULATION NUMBER 6 (AR 4410 P)**

**"Failure to comply with directions of college officials acting in the performance of their duties."**

Answering SMC's claims that Manttari violated SMC AR 4410 (P), Manttari alleges that SMC has failed to set forth sufficient facts and information to warrant a violation under this Administrative Regulation subsection in its entirety.

In further answering SMC AR 4410 (P), Manttari objects to AR 4410 (P) in its entirety, as it is vague, ambiguous, and overbroad.

SMC has failed to set forth any and all facts that support its contention that Manttari violated AR 4410 (P) by "failure to comply with directions of college officials acting in the performance of their duties."

As such, Manttari denies each and every allegation contained therein and denies that she violated SMC AR 4410 (P) in its entirety.

### **GENERAL OBJECTIONS TO SUSPENSION**

**"Your behavior is not acceptable and is a violation of the Santa Monica College Administrative Regulation 4410, Rules for Student Conduct."**

In answering this allegation by SMC, Manttari denies that her "behavior is not acceptable." In further answering this allegation by SMC, Manttari denies that she "is in violation of the Santa Monica College Administrative Regulation 4410, Rules for Student Conduct." As such, Manttari generally denies this statement by SMC in its entirety.

### **FIRST SPECIFIC OBJECTION** **(Objection to Summary Allegations and Violations)**

In answering SMC's notification of suspension, Manttari objects on the grounds that she was provided only a summary list of "incidents" and summary violations of the Student Code of Conduct in the May 23, 2006 suspension letter. As such, Manttari contends that the suspension and immediate interim suspension are not justified, as the allegations are not supported by the violations referenced therein by SMC.

### **SECOND SPECIFIC OBJECTION** **(Objection to Two-Year Length of Suspension)**

**"You are hereby notified that you are being suspended for two years (until Summer 2008), and an immediate interim suspension as authorized under AR 4410, Section 2(E)(4), from Santa Monica College as a result of several incidents reported by SMC Police, faculty and staff during the last year."**

In answering SMC's notification that Manttari is "suspended for two years (until Summer 2008)," Manttari objects on the grounds that the length of the suspension is not supported by the alleged facts and alleged violations cited by SMC. As such, Manttari contends that the length of suspension is duly oppressive and burdensome and is a violation of her rights.

### **THIRD SPECIFIC OBJECTION** **(Objection to Immediate Interim Suspension)**

**"You are hereby notified that you are being suspended for two years (until Summer 2008), and an immediate interim suspension as authorized under AR 4410, Section 2(E)(4), from Santa Monica College as a result of several incidents reported by SMC Police, faculty and staff during the last year."**

In further answering SMC's notification that "an immediate interim suspension as authorized under AR 4410, Section 2(E)(4)," Manttari objects on the grounds that the immediate suspension is not supported by the alleged facts and alleged violations cited by SMC. Furthermore, SMC has failed to provide any facts, sufficient or otherwise, which would support the requirements of AR 4410, Section 2 (E)(4) that an "immediate suspension is required in order to protect lives or property and to insure the maintenance of order pending a hearing." As such, Manttari objects that the immediate suspension is duly oppressive and burdensome and is a violation of her rights.

In further answering SMC's justification of an "immediate interim suspension," Manttari additionally objects on the grounds that this immediate suspension has violated her due process as set forth in AR 4410, Section 2(E)(4) in that SMC did not follow its own procedures in that the "College Disciplinarian" failed to "hold a formal conference with the student" and "present a clear statement of the charges." In further answering this section, Manttari objects on the grounds that SMC did not follow the required laws under state and federal law governing due process and immediate suspension procedures.

**FOURTH SPECIFIC OBJECTION**  
**(Objection and Denial of "Good Cause" and Misconduct)**

**"Students enrolling in the college assume an obligation to conduct themselves in a manner compatible with the college's function as an educational institution. Misconduct or 'good cause' for which students are subject to discipline falls into the following categories."**

In answering this contention by SMC as set forth in AR 4410, Manttari denies that her conduct was anything other than "in a manner compatible with the college's function as an educational institution." In further answering this contention, Manttari denies any misconduct that would violate AR 4410. In further answering this contention, Manttari alleges that SMC has failed to state facts sufficient to constitute "good cause" for any discipline measures against Manttari.

**AFFIRMATIVE DEFENSES**

For her affirmative defenses to all causes of action and violations of the Student Conduction Code asserted against her, Manttari alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**  
**(Failure to State a Claim)**

The Complaint, and each cause of action thereof, fails to state facts sufficient to constitute a claim for relief against Manttari.

**SECOND AFFIRMATIVE DEFENSE**  
**(Statute of Limitations)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred by the applicable statute of limitations, including, without limitation, Code of Civil Procedure sections 337, 338, 339, and 343.

**THIRD AFFIRMATIVE DEFENSE**  
**(Waiver, Estoppel, Acquiescence)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or part, by the doctrines of waiver, estoppel, and acquiescence.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Satisfaction and Discharge)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, because Manttari's obligations to SMC, if any, have been satisfied and discharged.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Failure to Mitigate Damages)**

Manttari is informed and believes, and on that basis alleges, that SMC has failed to exercise reasonable care and diligence to avoid or mitigate their damages, if any. Accordingly, in the event that Manttari is found liable to SMC in any way, Manttari is entitled to have the length of suspension reduced to the extent SMC could have avoided or reduced its alleged losses by the exercise of reasonable care and diligence.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Statute of Frauds)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, by the statute of frauds.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Indemnity)**

Manttari is informed and believes, and on that basis alleges, that the damages or violations suffered by SMC, if any, were proximately caused by the actions of Jim Keeshen, Thomas J. Baker and/or persons, firms, or entities not specifically named in the Complaint, and therefore Manttari is entitled to indemnity, in whole or in part, from Jim Keeshen, Thomas J. Baker and/or other persons, firms, or entities.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Conduct of Plaintiff and/or Third Parties)**

Manttari is informed and believes, and on that basis alleges, that the alleged damages and violations complained of by SMC, if any there actually were (said damages and violations being expressly denied by Manttari) were proximately caused by the negligence and/or other fault of SMC and/or firms, persons, corporations or entities other than Manttari, and said negligence and/or other fault proportionately reduces the percentage of any negligence and/or other fault attributable to Manttari, if it should be found that Manttari was negligent or otherwise at fault (which Manttari expressly denies).

**NINTH AFFIRMATIVE DEFENSE**  
**(Good Faith)**

Manttari is informed and believes, and on that basis alleges, that any and all acts alleged by SMC to have been performed by or on behalf of Manttari were performed, if at all, in good faith, without malice, and were based upon legally sufficient justification.

**TENTH AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, by the doctrine of unclean hands.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(Failure to Satisfy Conditions)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, because not all conditions precedent and/or subsequent of the legal obligations owing Manttari by state law, federal law, Constitutional law, and by virtue of its own policies and procedures have been satisfied.

**TWELFTH AFFIRMATIVE DEFENSE**  
**(Impossibility)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, by the doctrine of impossibility.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**(Frustration of Purpose)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, by the doctrine of frustration of purpose.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**(Fraud)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, by the doctrine of fraud.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**(Material Breach)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, because SMC has materially breached their obligations owing Manttari by state law, federal law, Constitutional law, and by virtue of its own policies and procedures.

**SIXTEENTH AFFIRMATIVE DEFENSE**  
**(Failure to Comply with California Education Code, Section 76034)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, because SMC has violated California Education Code 76034 which explicitly states as follows: ""No student shall be removed, suspended, or expelled unless the conduct for which the student is disciplined is related to college activity or college attendance."

**SEVENTEETH AFFIRMATIVE DEFENSE**  
**(Failure to Comply with California Education Code, Section 76230)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or in part, because SMC has violated California Education Code 76230 which explicitly states as follows: "Any currently enrolled or former student has a right to access to any and all student records relating to him maintained by community colleges. The editing or withholding of any such records, except as provided for in this chapter, is prohibited. Each community college district shall adopt procedures for the granting of requests by students to inspect and review records during regular school hours, provided that access shall be granted no later than 15 working days following the date of the request. Procedures shall include notification of the location of all official student records if not centrally located and the providing of qualified personnel to interpret records where appropriate."

**EIGHTEENTH AFFIRMATIVE DEFENSE**  
**(Failure to Comply with California Education Code, Section 76242)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or part, because SMC has violated California Education Code 76242 which explicitly states in relevant part as follows: "A community college district may permit access to student records to any person for whom the student has executed written consent specifying the records to be released and identifying the party or class of parties to whom the records may be released."

**NINETEENTH AFFIRMATIVE DEFENSE**  
**(Failure to Comply with SMC AR 4410, Section 2)**

Manttari is informed and believes, and on that basis alleges, that SMC's claims for relief are barred, in whole or part, because SMC has violated its own administrative regulation as set forth in Article 4400 Student Conduct, Activities and Programs, AR 4410 Rules for Student Conduct, AR 4410 (2): Disciplinary Sanctions to Enforce Adequate Standards of Student Conduct which explicitly states in relevant part as follows: "If a written report is placed in the student's disciplinary file, the student shall have the right to inspect and appeal the information as specified in Education Code Section 76232."

**TWENTIETH AFFIRMATIVE DEFENSE**  
**(Reservation)**

Manttari reserves the right to assert other affirmative defenses as they become known during the course of this pending suspension and appeal from suspension, and hereby specifically reserves the right to amend this response to allege said affirmative defenses as such time as they become known.

**PRAYER FOR RELIEF**

WHEREFORE, Manttari prays for judgment in her favor as follows:

- (1) that SMC take nothing by its Complaint;
- (2) that the Suspension be dismissed with prejudice;
- (3) that the Disciplinary Enrollment hold be removed forthwith;
- (4) that Manttari be awarded her costs and attorneys' fees; and
- (5) for such other and further relief as the SMC Student Conduct Appeals Committee deems just and proper.

**GENERAL WRITTEN NOTICES**

By copy of this response, Manttari incorporates her previous written notices to SMC and restates them herein as follows. Such notice shall be construed as formal written notice for all purposes, intent, and timeliness.

**NOTICE OF INTENTION TO BE REPRESENTED BY COUNSEL**

By copy of this response, Manttari is giving formal written notice of her intention to be represented by legal counsel of her choice during the Suspension Appeal Hearing.

**NOTICE OF INTENTION TO VIDEO TAPE PROCEEDINGS**

By copy of this response, Manttari is giving formal written notice of her intention to videotape the Suspension Appeal Hearing.

**NOTICE OF INTENTION TO AUDIO RECORD PROCEEDINGS**

By copy of this response, Manttari is giving formal written notice of her intention to audio record the Suspension Appeal Hearing.

**NOTICE OF INTENTION TO MAKE PROCEEDINGS PUBLIC**

By copy of this response, Manttari is giving formal written notice of her intention to cause this Suspension Appeal Hearing proceedings to be open and accessible to the public as these hearings are vital to the public's interest and knowledge at a publicly funded community college.

**NOTICE OF REQUEST FOR NAMES AND TITLES OF APPEALS COMMITTEE**

By copy of this response, Manttari makes a formal written request for the names and titles of all members that will comprise the SMC Student Conduct Appeals Committee.

Dated: June 6, 2006.

RESPECTFULLY SUBMITTED BY:

Des Manttari /s/