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Plaintiff,  
IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE LOS ANGELES COUNTY – CENTRAL DISTRICT

DES MANTTARI,

Plaintiff,

vs.

THOMAS J. BAKER, AND DOES 1  
THROUGH 20, INCLUSIVE.

Defendants.

) Case No. BC356367

) **PLAINTIFF DES MANTTARI'S**  
) **NOTICE OF MOTION AND**  
) **HEARING OF DEMURRER TO**  
) **DEFENDANT'S ANSWER AND**  
) **CONCURRENTLY FILED MOTION**  
) **TO STRIKE; JOINT**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT;**  
) **DECLARATION OF DES**  
) **MANTTARI IN SUPPORT**  
) **THEREOF; REQUEST TO TAKE**  
) **JUDICIAL NOTICE**

) Date: November 9, 2006

) Time: 9:00 a.m.

) Dept.: 16

) [Case Assigned to Judge Rita Miller]

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

**PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1           **PLEASE TAKE NOTICE** that on **November 9, 2006 at 9:00 a.m.** in **Department**  
2 **16** of the Los Angeles Superior Court, Central District located at 111 North Hill Street, Los  
3 Angeles, California 90012, Plaintiff DES MANTTARI (hereinafter, “Plaintiff”) will hereby  
4 move this Court for a hearing on demurrer to Defendant THOMAS J. BAKER’s (hereinafter,  
5 “Defendant”) answer and concurrent motion to strike all or portions of Defendant’s answer,  
6 affirmative defenses, and exhibits.

7           Plaintiff’s demurrer is made on the grounds that the answer is subject to general  
8 demurrer pursuant to California Code of Civil Procedure, §430.20 (a) in that the answer, in  
9 its entirety, fails to state facts sufficient to constitute a defense.

10           Plaintiff's demurrer is made on the further grounds that the answer is subject to  
11 general demurrer pursuant to California Code of Civil Procedure, §430.20 (b) in that the  
12 answer, in its entirety, is uncertain, ambiguous, and unintelligible.

13           Plaintiff's concurrent Motion to Strike portions of Defendant's answer and exhibits is  
14 based on the grounds that the answer and its exhibits is subject to motion to strike pursuant to  
15 California Code of Civil Procedure §§ 435, 436 (a)(b), 437 in that the answer contains  
16 irrelevant, false, and improper matter inserted into the pleading and in that all or part of the  
17 answer has not been drawn or filed in conformity with the laws of this state or a court rule.

18           This motion to strike is also made pursuant to Code of Civil Procedure §§ 435- 437  
19 on the grounds that the answer asserts only affirmative defenses that are wholly irrelevant to  
20 the causes of action alleged in the complaint, and that it otherwise admits the material  
21 allegations of the complaint or as the case may be, and fails to state the legal grounds or legal  
22 theory upon which they are based.

23           This Demurrer and Concurrent Motion to Strike is based upon the Answer, its  
24 exhibits and attachments, this Notice of Demurrer and Demurrer and Concurrent Motion to  
25 Strike and its accompanying Joint Memorandum of Points and Authorities in Support of  
26 Demurrer and Concurrently Filed Motion to Strike (pursuant to Local Rule 9.18(b)) attached

27  
28 **PLAINTIFF’S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO STRIKE  
PORTIONS OF DEFENDANT’S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 hereto, the Request to Take Judicial Notice, the Court's records, papers and pleadings on file  
2 in this action. This motion will also be based upon such other matters, both oral and  
3 documentary, as may be submitted at the time of the hearing.

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5 Dated: September 7, 2006

BY:

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9 DES MANTTARI, Plaintiff, in Pro Per  
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28 **PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO STRIKE  
PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. INTRODUCTION**

4 Plaintiff Des Manttari (hereinafter, "Plaintiff") brings this joint memorandum of  
5 points and authorities in support of her demurrer and concurrently filed motion to strike  
6 Defendant Thomas J. Baker's (hereinafter, "Defendant") answer.

7 **II. BRIEF STATEMENT OF FACTS**

8 On or about August 2, 2006, Plaintiff Des Manttari (hereinafter, "Plaintiff") filed  
9 a verified complaint for libel and slander against Defendant, Thomas J. Baker  
10 (hereinafter, "Defendant") and various unnamed DOE defendants. Defendant filed an  
11 answer with this court on or about August 25, 2006 and subsequently served Plaintiff  
12 with two answers.

13 Defendant's alleged defenses in response to Plaintiff's first and second causes of  
14 action as well as Defendant's additional affirmative defenses have no bearing on the  
15 ultimate question in the case: Whether Defendant made written and oral defamatory  
16 statements against the Plaintiff on or about March 24, 2006 which he knew to be false at  
17 the time they were made. Plaintiff's complaint is narrowly drawn with only two causes of  
18 action, one for slander and the other for libel. As such, there is no need to engage in  
19 discovery or solicit testimony regarding extraneous matters irrelevant to the narrowly  
20 drawn issues in Plaintiff's complaint.

21 On the face of Defendant's written statement to the SMCPD, he alleged that  
22 Plaintiff had a "mental illness" or was on "medication for a mental illness." He also  
23 stated that Plaintiff had made "death threats" and had a history of "stated arrests." Either  
24 these statements against Plaintiff were true or they were false. If they were true, then  
25 Defendant should raise defenses that point to their veracity rather than providing evasive  
26 answers and affirmative defenses that seem to throw in everything but the kitchen sink.  
27 Most of Defendant's exhibits are either hearsay evidence or absolutely irrelevant to this

28 **PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 case. His total answer, with exhibits (four of which aren't even referenced or  
2 incorporated), allegedly comes to 205 pages! Of course Defendant has not taken the time  
3 to cite any portion of these exhibits with respect to page number, paragraph, or sentence  
4 reference, so Plaintiff is left guessing what portion of each exhibit is relevant to either  
5 this action or Defendant's defense.

6 Not only is Defendant's answer ripe for a motion to strike as to its exhibits,  
7 affirmative defenses, and portions of its general and specific defenses, but it is  
8 concurrently ripe for demurrer as it does not raise facts sufficient to constitute a defense.  
9 Furthermore, the Court would be justified to sustain Plaintiff's demurrer on the additional  
10 grounds that the Answer is uncertain, ambiguous, and unintelligible in that it recites a  
11 bewildering array of evidentiary facts, legal references, and requests for relief, many of  
12 which are unintelligible. Defendant even goes so far as to deny on information and belief  
13 allegations from Plaintiff's complaint that were certainly within his personal grasp.

### 14 **III. CONCISE STATEMENT OF LAW**

#### 15 **A. Defendant's Answer is Subject to a Motion for Demurrer.**

16 A party who has filed a complaint may, within 10 days after service of the answer  
17 to his pleading, demur to the answer. (Code of Civil Procedure, § 430.40(b)). Plaintiff's  
18 demurrer to Defendant's Answer is timely filed. When any ground for objection to the  
19 answer appears on the fact thereof, or from any other matter of which the court is  
20 required to or may take judicial notice, the objection on that ground may be taken by a  
21 demurrer to the pleading (Code of Civil Procedure, § 430.30(a)).

#### 22 **B. Defendant's Answer is Subject to a Motion to Strike.**

23 Any party, within the time allowed to respond to a pleading, may serve and file a  
24 notice of motion to strike the whole or any part thereof (Code of Civil Procedure, §  
25 435(b)(1)). The grounds for a motion to strike shall appear on the face of the challenged  
26 pleading or from any matter of which the court is required to take judicial notice (Code of  
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28 **PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 Civil Procedure, § 437(a)). Plaintiff's motion to strike Defendant's Answer is timely  
2 filed.

3 The pleadings at which a motion to strike may be directed include demurrers,  
4 answers, complaints, and cross complaints. (Code of Civil Procedure, § 435 (a)). Plaintiff  
5 moves to strike all of Defendant's ten affirmative defenses, all of Defendant's exhibits (A  
6 through U, respectively), as well as paragraphs 0, 2, 13, 15, 16, 17, 20, 23, 27, 28, 29, 30,  
7 31, 32, 33, 36, 37, 38, and 50, respectively as well as Defendant's second answer served  
8 via certified mail in its entirety as set forth in Plaintiff's Motion to Strike, the Notice for  
9 Motion, and this memorandum of points and authorities herein and the Declaration in  
10 Support.

#### 11 **IV. ARGUMENT AND ANALYSIS: DEMURRER**

##### 12 **A. Defendant's Answer is Subject to Demurrer as it Does Not State Facts** 13 **Sufficient to Constitute a Defense.**

14 A party against whom an answer has been filed may object, by demurrer as  
15 provided in Section 430.30 to the answer upon the grounds that the answer does not state  
16 facts sufficient to constitute a defense (Code of Civil Procedure, § 430.20(a)). Both  
17 Plaintiff's complaint and Defendant's corresponding answer should set forth sound  
18 theories of law and specific, concise, and relevant facts so that the parties have any  
19 opportunity to see what material issues, if any, are in dispute which may require an  
20 evidentiary hearing. Moreover, requiring specific statements of facts in pleadings  
21 provides the parties with streamlined discovery requests and motions for summary  
22 decisions where appropriate.

##### 23 **1. Defendant Fails to Provide Any Facts that Plaintiff was Mentally Ill.**

24 As previously indicated, Plaintiff alleges in her complaint that Defendant has  
25 defamed her by making statements that Plaintiff was mentally ill, on medication for  
26 mental illness, and had a history of arrests at Santa Monica College. Based on these  
27 statements, Defendant further defamed Plaintiff by stating that she was dangerous to  
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**PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 everyone's safety at school. Defendant went so far as to file a written statement  
2 (Plaintiff's Complaint, Exhibit B) with the Santa Monica College Police Department  
3 (hereinafter, "SMCPD"). Despite submitting an Answer that contains over 200 pages,  
4 mostly copies of articles from Plaintiff's website, Defendant does not state a single fact  
5 or exhibit to prove that Plaintiff suffered from any sort of mental illness or was treated by  
6 a physician for such. The demurrer should be sustained without leave to amend as  
7 Plaintiff is confident that Defendant will not be able to cure his answer to provide such  
8 facts.

9 **2. Defendant Fails to Provide Any Facts that Plaintiff was Arrested.**

10 The same holds true for Defendant's failure to state any concrete and concise  
11 facts that Defendant was ever arrested on the Santa Monica College campus either prior  
12 to or on the date in question, March 24, 2006. Defendant's inclusion of the SMCPD  
13 incident report from March 24, 2006 (Defendant's Answer, Exhibit O) does not even  
14 stand as, on its face, it shows that there was no "arrest" of Plaintiff and that the party  
15 attempting to effectuate an arrest was Defendant Baker himself in response to his  
16 defamatory statements against Plaintiff on the date in question. Defendant's flimsy and  
17 circumstantial inclusion of his Exhibit M (SMCPD daily incident logs) and voluminous  
18 pages from Plaintiff's website fail flat on their face as well as there are no specific  
19 quotations from either showing that Plaintiff has ever been arrested by the SMCPD. In  
20 fact, these exhibits refute that Plaintiff had been arrested. The demurrer should be  
21 sustained without leave to amend as Plaintiff is confident that Defendant will not be able  
22 to cure his answer to provide such facts.

23 **3. Defendant Fails to Provide Any Facts that Plaintiff made Death**  
24 **Threats to Stu Seldon, Tim Ryan, or Anyone Else at Santa Monica College.**

25 Defendant again fails to set forth any facts in his defense that Plaintiff made  
26 "death threats" against anyone at Santa Monica College. Defendant's own exhibits work  
27 against him yet again as they clearly show that Plaintiff had never made any "death  
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**PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 threats” as Defendant alleges. His Exhibit A, an unauthenticated and hearsay statement  
2 by student (which unfortunately for purposes of demurrer must be accepted as true),  
3 relies on its face upon an article that Plaintiff allegedly wrote, that neither Defendant  
4 Baker provides as part of his Exhibit A or as any other attached or incorporated exhibit in  
5 his answer. Defendant himself admits that he did not know if any of his defamatory  
6 statements were true by virtue of the email he sent Stu Seldon within a short time in the  
7 date in question, March 24, 2006 (Plaintiff’s Complaint, Exhibit A). Accordingly, the  
8 demurrer should be sustained without leave to amend as Plaintiff is confident that  
9 Defendant will not be able to cure his answer to provide such facts.

10 **4. Defendant Fails to Provide Any Facts to Support His Denials.**

11 Defendant’s answer is an evasive and lengthy diatribe against Plaintiff that  
12 attempts to circumvent facts (which for purposes of this demurrer and defendant’s  
13 answer) must be taken as true on their face. Defendant offers only a boilerplate denial  
14 “both generally and specifically” to “each and every allegation of said paragraph” in his  
15 answers as set forth in paragraphs 5, 7, 9, 10, 11, 12, 14, 17, 18, 19, 21, 22, 23, 24, 25,  
16 34, 35, 40, 41, 42, 43, 44, 45, 48, 49, and 50, respectively. There are absolutely no facts,  
17 legal arguments, or exhibits supporting these denials, thus questioning their merit. As  
18 such, a demurrer should be sustained.

19 **5. Defendant Fails to Answer Allegations in Plaintiff’s Complaint.**

20 Plaintiff’s demurrer should be sustained without leave to amend as Defendant has  
21 failed to answer four (4) allegations in Plaintiff’s complaint as set forth below.

22 Plaintiff’s complaint, paragraph 17 states in full: “These statements uttered by  
23 Defendant, THOMAS J. BAKER, are defamatory because the language carries a meaning  
24 that Plaintiff’s conduct was criminal and harmful to others.” Defendant has failed to  
25 answer, thus offering no facts to constitute a defense.

26 Plaintiff’s complaint, paragraph 20 states in full: “Plaintiff is informed and  
27 believes and thereon alleges that this March 24, 2006 email by Defendant, THOMAS J.

1 BAKER, to Stu Seldon was forwarded by Seldon on or about March 25, 2006 to Dean  
2 Katharine Muller, Campus Disciplinarian Judith Penschansky, and SMCPD Chief of  
3 Police Eileen Miller, thus further damaging the reputation of Plaintiff in regards to her  
4 status as a student at Santa Monica Community College.” Defendant has failed to answer,  
5 thus offering no facts to constitute a defense.

6 Plaintiff’s complaint, paragraph 23 states in full: “As a proximate result of  
7 Defendant, THOMAS J. BAKER’s statements on March 24, 2006, Plaintiff has suffered  
8 loss of her reputation, shame, mortification, and hurt feelings all to her general damages  
9 in a sum to be proven at trial.” Defendant has failed to answer, thus offering no facts to  
10 constitute a defense.

11 1. Plaintiff’s complaint, paragraph 37 states in full: “That the following statements  
12 are false as they apply to Plaintiff: ‘Also, due to her arrests, death threats, and personally  
13 observed abnormal behavior, the students that I feel an obligation to be responsible for  
14 are not in a safe and secure environment.’” Defendant has failed to answer, thus offering  
15 no facts to constitute a defense.

16 **B. Defendant’s Answer is Subject to Demurrer as it is Uncertain,**  
17 **Ambiguous and Unintelligible.**

18 A party against whom an answer has been filed may object, by demurrer as  
19 provided in Section 430.30 to the answer upon the grounds that the answer is uncertain  
20 (“uncertain” includes ambiguous and unintelligible) (Code of Civil Procedure, §  
21 430.20(b)). As previously indicated, approximately half of Defendant’s Answer contains  
22 no facts to support his general and specific denials. Many of his other denials, based on  
23 lack of information and belief, are uncertain, ambiguous, and unintelligible. Furthermore,  
24 Defendant Baker’s ten (10) affirmative defenses rest unsoundly on legal theory which is  
25 not clearly sufficient on its face combined with statements of facts that are little more  
26 than mere conclusory allegations.

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**PLAINTIFF’S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT’S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 Defendant's exhibits in support thereto are either based on hearsay evidence or  
2 simply have no prima facie viability. Defendant never bothers to cite page numbers,  
3 paragraphs, or specific sections or quotes for his exhibits, leaving the Plaintiff to  
4 prejudicially guess their weight, intent and relevancy. Accordingly, many of the defenses  
5 raised by Defendant are irrelevant to this proceeding and raise the specter of the parties  
6 expending considerable time, money, and resources on issues having no bearing on  
7 Plaintiff's complaint.

8 **V. ARGUMENT AND ANALYSIS: MOTION TO STRIKE**

9 **A. Defendant's Answer Should Be Stricken Because It Was Not Drawn**  
10 **or Filed In Conformity With the Law.**

11 **1. Improperly Drawn or Filed Answer Subject to Motion to Strike.**

12 The Court may, on a motion to strike pursuant to Code of Civil Procedure § 435  
13 or at any time in its discretion, strike any pleading or part thereof not drawn or filed in  
14 conformity with state law or a court rule. (Code of Civil Procedure § 436 (b)).

15 2006 California Rules of Court, Rule 201 governs the form of papers presented  
16 for filing with the Court. Rule 201 (h) outlines the changes on face of paper and  
17 conformance of copies and specifies that "Additions, deletions, or interlineations must be  
18 initialed by the clerk or judge at the time of filing. All copies served must conform to the  
19 original filed, including the numbering of lines, pagination, additions, deletions, and  
20 interlineations." Defendant Baker in his answer crosses out by hand two sections and  
21 corrects them without the proper court authorization as set forth in this rule. Specifically,  
22 at page 1, paragraph 0, line 25 of Defendant's answer, Defendant changes the total  
23 number of pleadings from "207" to 205." At page 9, paragraph 52, line 7 of Defendant's  
24 answer, Defendant changes the word "Defendant" to "Plaintiff." Plaintiff is unsure if  
25 these changes were made before or after the answer was filed with the Court. In any  
26 event, they were not initialed by the clerk or judge.

27 **2. Defendant Has Served Plaintiff with Two Conflicting Answers.**

28 **PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 To make matters far worse, Defendant has served Plaintiff with two different  
2 answers in this action, one via personal substitute service on or about August 28, 2006  
3 and a latter one via certified mail on or about August 31, 2006 (see Declaration of Des  
4 Manttari in Support Thereto, Exhibit 1). The first answer has attached to it four exhibits  
5 (Exhibits R, S, T, and U, respectively) that are not otherwise referenced or incorporated  
6 therein to Defendant's Answer, leaving Plaintiff unsure as to their relevancy. The second  
7 answer (via mail) does not have the hand written corrections as previously mentioned  
8 (thus questioning if these corrections revert back to the original typed information), bears  
9 no filing stamp or seal of this Court, has a different signature (indicating it was signed at  
10 a different time and thus not a copy of the first answer) and incorporates and references  
11 numerous exhibits (Exhibits A through Q, respectively) that were never attached or  
12 otherwise mailed to Plaintiff. Although this answer lists the total pages as 207 (at page 1,  
13 paragraph 0, line 25), Plaintiff was in fact only mailed 13 total pages as is evidence on  
14 the envelope's total postage price.

15 Finally, neither answer includes any sort of proof of service by either personal  
16 delivery or mail deposit and no proof of service has subsequently been mailed to Plaintiff  
17 by Defendant. Code of Civil Procedure § 1013a(3) makes clear that service "shall be  
18 presumed invalid if the postal cancellation date or postage meter date on the envelope is  
19 more than one day after the date of deposit for mailing contained in the affidavit."

20 In an attempt at clarification at to these two answers, Plaintiff has emailed  
21 Defendant on several occasions requesting proof of service and Defendant has failed to  
22 respond accordingly. In fact, Defendant has alleged that Plaintiff is harassing him by  
23 asking for clarification and proof of service. (See: Des Manttari's Declaration in Support  
24 Thereof). By virtue of Defendant's failure to address this issue, Plaintiff sees the filing of  
25 these two answers as bad faith. Thus, Defendant has filed his answers in violation of the  
26 rules for pleadings and they should be stricken, or alternatively, that the Court determine  
27 which answer is the proper one to which Plaintiff is obligated to respond. In either event,

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28 **PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 Defendant's Exhibits R, S, T, and U, respectively should be stricken as they are not  
2 incorporated or referenced in either answer.

3 **3. Defendant's Affirmative Defenses Do Not Conform with Law or**  
4 **Rules.**

5 Pursuant to 2006 California Rules of Court, Rule 312 (4)(g), governing the form  
6 of a cause of action for a challenged pleading, the Court makes clear the following:  
7 "Each separate cause of action or affirmative defense in a pleading shall specifically  
8 identify its number (e.g., "First cause of Action"); its nature (e.g., "for Fraud"); the party  
9 asserting it, if more than one party is represented in the pleading (e.g., "by Plaintiff  
10 Jones"); and the party or parties to whom it is directed (e.g., "against Defendant Smith)."  
11 [emphasis added]

12 Defendant has presented ten (10) "separate, distinct and affirmative defense[s]" in  
13 his answer filed with this Court. However, despite being categorized as "First  
14 Affirmative Defense," "Second Affirmative Defense," etc. to "Tenth Affirmative  
15 Defense," Defendant fails to provide the nature for such defenses and the party against it  
16 is directed or the cause of action to which it is raised. Plaintiff is left guessing precisely  
17 what defenses Defendant is raising. A defendant should be under no less of a duty than a  
18 plaintiff in pleading its defenses. Therefore, Defendant was under an obligation to  
19 provide Plaintiff with at least some short, concise statement on the grounds on which  
20 each affirmative defense is based and to which relief would be granted or Defendant  
21 would be excused from Plaintiff's alleged misconduct.

22 The reason for this requirement of specificity is clear: in the absence of a  
23 statement of the grounds upon which this defense is based, it becomes a "catchall" place-  
24 holder for any defense that may be proffered later, allowing for trial by ambush, not to  
25 mention trial by afterthought. Accordingly, the plaintiff asks that the defendants' First  
26 Affirmative Defense through Tenth Affirmative Defense, inclusive, be struck as  
27 inadequately pled, for its failure to give the plaintiff the required notice of its basis.

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**PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1           **B. The Court Should Strike the Matter Specified in the Notion of Motion**  
2 **from the Answer Because that Matter is Irrelevant to This Action.**

3           **1. Irrelevant Matter May Be Stricken From Any Pleading.**

4           The Court may on timely motion to strike by a party, or at any time in its  
5 discretion, strike from any pleading any irrelevant matter (Code of Civil Procedure § 436  
6 (a)).

7           **2. Defendant Fails to Incorporate and Reference Four Exhibits in His**  
8 **Answer and, as such, these Should be Stricken as Irrelevant to This Action.**

9           Plaintiff also objects to and moves to strike the following exhibits on the grounds  
10 that they are irrelevant to his answer or to the face of Plaintiff's complaint. As previously  
11 indicated, on or about August 28, 2006, Defendant served Plaintiff an answer to which  
12 was attached Exhibits R, S, T, and U, respectively. These exhibits are neither referenced  
13 or incorporated in Defendant's answer. Defendant simply makes no attempt at argument  
14 in his answer for inclusion or relevancy of these exhibits as a defense. Thus, Plaintiff is  
15 prejudiced by their inclusion as they will weigh down the case, and are hearsay evidence,  
16 not subject to any exception. Each exhibit and Plaintiff's objections are set forth more  
17 fully below.

18           **EXHIBIT R** - Jim Keeshen's Profile. This 3 page document, purportedly  
19 attached to Defendant's Answer, makes no reference to the answer, or to Jim Keeshen in  
20 the body the answer, and is not incorporated therein.

21           **EXHIBIT S** - "Piercing Jim Keeshen's Corporate Veils." This 6 page document,  
22 purportedly attached to Defendant's Answer, makes no reference to the answer, or to Jim  
23 Keeshen in the body the answer, and is not incorporated therein.

24           **EXHIBIT T** - "Harassment of AET Students by Jim Keeshen." This 2 page  
25 document, purportedly attached to Defendant's Answer, makes no reference to the  
26 answer, or to Jim Keeshen in the body the answer, and is not incorporated therein.

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**PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1           **EXHIBIT U** - “Violence on the Santa Monica Campus.” This 4 page document,  
2 purportedly attached to Defendant’s Answer, makes no reference to the answer, or to Jim  
3 Keeshen in the body the answer, and is not incorporated therein

4           **3. Defendant’s Exhibits as to Related Cases Fail as to Facts or Law.**

5           2006 California Rules of Court, Rule 804 governs notice of related cases. A case  
6 is deemed related if it meets any of the prongs set out in subsection (b): (1) involve the  
7 same parties and are based on the same or similar claims; or (2) involve the same  
8 property, transaction, or event; or (3) involve substantially the same facts and the same  
9 questions of law. Defendant attempts in his affirmative defenses to improperly relate  
10 three cases already disposed of in this Court through his attached Exhibits H, I, and N  
11 respectively. All these cases are unrelated to any defense for slander or libel, are not  
12 within the specified time frame of the causes of action in Plaintiff’s complaint, and could  
13 not be cured by amendment to Defendant’s answer to raise any material or affirmative  
14 defense.

15           Defendant’s Exhibit H has no relation to this action whatsoever. This case, Des  
16 Manttari v. Thomas J. Baker, LASC BS102956, involves a Notice of Hearing and  
17 Temporary Restraining Order to protect Manttari from further harassment by Baker. This  
18 case was filed on May 3, 2005, well over a month from the date of the alleged slander  
19 and libel by Defendant Baker on or about March 24, 2006. The inclusion of this pleading  
20 would prejudice Plaintiff in this matter in that Defendant Baker is attempting to litigate  
21 the merits of this case as part of his defense.

22           The only relevance this case has is to the Answer filed by Defendant Baker,  
23 which is attached to Plaintiff’s complaint as Exhibit C. Plaintiff’s complaint alleges at  
24 paragraph 29 that Defendant made sworn testimony in his answer that was inconsistent  
25 with prior written statements to the Santa Monica College Police Department. The two  
26 statements, on their face, are inconsistent, requiring no inclusion of Defendant’s Exhibit  
27 H. Since Defendant Baker’s answer states at paragraph 29 that he “denies both generally

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28           **PLAINTIFF’S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT’S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 and specifically each and every allegation of said Paragraph,” he should be excluded  
2 from raising it as a defense in his Sixth Affirmative Defense.

3 Defendant’s Exhibit I has no relation to this action or Plaintiff Manttari  
4 whatsoever. This case, Lindsay Berkovitz v. Thomas J. Baker, LASC BS102957,  
5 involves a Notice of Hearing and Temporary Restraining Order to which Plaintiff  
6 Manttari is not a party to the action. This case was filed on May 3, 2005, well over a  
7 month from the date of the alleged slander and libel by Defendant Baker on or about  
8 March 24, 2006.

9 Defendant’s Exhibit N has no relation to this action or Defendant Baker  
10 whatsoever, as he was neither a party nor witness. This case, Martin B. Schapiro Exodus  
11 Trust, et. al. v. Santa Monica Community College District, et. al., LASC Case No.  
12 Bs099138, involves a dispute over public records between at least one unrelated party to  
13 this action and Santa Monica Community College District, et. al. that has since been  
14 resolved by the parties and dismissed accordingly. None of the records sought under the  
15 California Public Records Act referenced or involved Defendant Baker.

16 Furthermore, Defendant has submitted as Exhibit N a sham pleading to this Court  
17 as this 28-page verified complaint and petition has no signatures of verification by the  
18 plaintiff, no signature by the attorney of record for plaintiff, and no file stamp from the  
19 Court.

20 The Court should ignore Defendant’s erroneous inclusion of prior cases unrelated  
21 to the merits or claims raised by Plaintiff of this action for slander and libel. Those cases  
22 or any facts thereto are not offered by Defendant to assist the Court in resolving any issue  
23 in this instant matter. They are, instead, offered by Defendant as his rendition of their fact  
24 finding. In other words, Defendant essentially asks this Court to take judicial notice of  
25 factual finding of other courts in other cases involving other parties. This is forbidden as  
26 a matter of law. Sosinsky v. Grant (1992) 5 Cal. App. 4<sup>th</sup> 1548, 1551 (“Taking judicial  
27 notice of the truth of a judge’s finding would be tantamount to taking judicial notice that

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28 **PLAINTIFF’S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT’S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 the judge’s factual finding must necessarily have been correct and that the judge is  
2 therefore infallible.”) Not only did Defendant not file a notice of related cases, he did not  
3 give this Court any judicial notice regarding these cases (see Evidence Code §§ 451, 452,  
4 453), thus they should be stricken from the record as should his three Exhibits H, I, and  
5 N, respectively.

6 **4. Defendant’s Ten Affirmative Defenses and Accompanying Exhibits**  
7 **Should Be Stricken for Failure to Stand Grounds, Insufficient as a Matter of Law,**  
8 **and for Being Irrelevant, False, and Improper.**

9 Additionally, Plaintiff moves to strike Defendants’ **First through Tenth**  
10 **Affirmative Defenses**, inclusive, on the additional grounds that they are irrelevant, false,  
11 or improper. Defendant’s affirmative defenses should be struck as inadequately plead, for  
12 their failure to give the Plaintiff the required notice of its legal basis. Defendant has failed  
13 to show from which cause of action (libel or slander) each affirmative defense arose or is  
14 otherwise related or from what grounds his defenses are based. Since none of the  
15 affirmative defenses arise on the face of Plaintiff’s complaint from the facts alleged, their  
16 inclusion threatens an undue broadening of the issues.

17 Furthermore, Defendant’s First through Tenth Affirmative Defenses, as set forth  
18 fully in Plaintiff’s motion to strike, show that Defendant has improperly inserted  
19 immaterial allegations, nonessential allegations, and allegations of probative facts that are  
20 surplusage. Clearly, the majority of Defendant’s unsubstantiated claims and supporting  
21 exhibits are improperly asserted, nonessential, and surplusage.

22 Immaterial allegation as defined by statute means irrelevant matter that is subject  
23 to be stricken (Code of Civil Procedure §§ 431.10 (c), 436 (a)). An allegation that is not  
24 essential to the statement of a claim or defense is an immaterial allegation that is subject  
25 to be stricken as irrelevant matter. (Code of Civil Procedure §§ 431.10 (b)(1), (c), 436  
26 (a)). Allegations of probative facts in a pleading are surplusage and may be stricken.  
27 (Dabney v. Key (1922) 57 Cal. App. 762, 763, 207 P. 921; see Code of Civil Procedure

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28 **PLAINTIFF’S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT’S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 §§ 431.10 (b)(1), (c), 436 (a)). See also: Stafford v. Shultz (1954) 42 Cal. App. 2d 767,  
2 782, 270 P.2d 1 (probative facts alleged in a pleading are surplusage and may be stricken  
3 out or disregarded). An allegation that is not pertinent to or supported by an otherwise  
4 sufficient claim or defense is an immaterial allegation that is subject to be stricken as an  
5 irrelevant matter. . (Code of Civil Procedure §§ 431.10 (b)(2), (c), 436 (a)). Accordingly,  
6 the motion to strike should be granted as to Defendant’s First through Tenth Affirmative  
7 Defenses in his Answer in their entirety.

8 **C. The Matter in Defendant’s Answer Should Be Stricken Because it is**  
9 **False and / or Improper.**

10 **1. Court May Strike False or Improper Matter.**

11 The Court may, on timely motion to strike by a party, or at any time in its  
12 discretion, strike from any pleading any false or improper matter (Code of Civil  
13 Procedure § 436 (a)).

14 The following Paragraphs should be stricken from Defendant’s answer as  
15 improper matter as they have been previously answered in other Paragraphs and are  
16 redundant and/or non-responsive: 17, 20, 23, 37, and 50, respectively. Defendant answers  
17 the same allegation in Plaintiff’s complaint twice in paragraphs 17, 20, 23, and 37.  
18 Defendant’s Answer Paragraph 17 was answered previously in paragraph 18, Paragraph  
19 20 was answered previously in paragraph 2, Paragraph 23 was answered previously in  
20 paragraph 21, and Paragraph 37 was answered previously in paragraph 28, and Paragraph  
21 50 is irrelevant, false, and improper as Plaintiff’s complaint does not have a “Paragraph  
22 \*\*\*.” Plaintiff is left in the dark precisely what Defendant is denying.

23 **2. Denial on Information and Belief of Matters Within Defendants’**  
24 **Knowledge May Be Stricken.**

25 If a matter alleged in a complaint is within the defendant’s actual knowledge or  
26 by its nature presumed to be within the defendant’s actual knowledge, or the defendant  
27 has the means of ascertaining whether or not the matter is true, a denial on information

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28 **PLAINTIFF’S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT’S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 and belief or for lack of either will be deemed a sham and evasive and may be stricken  
2 out or disregarded (Mulcahy v. Buckley (1893) 100 Cal. 484, 487-489, 35 P. 144;  
3 Dobbins v. Hardister (1966) 242 Cal. App. 2d 787, 791, 51 Cal. Rptr. 866). Sociedade Do  
4 Espirito Santo v. Santa Clara Valley Bank (1914) 24 Cal. App. 592, 594, P. 1054 made  
5 clear that a defendant cannot deny knowledge of his or her own acts, or knowledge of his  
6 or her personal transactions. The Court stated that with respect to allegations of such  
7 facts a positive answer is required.

8 The following Paragraphs should be stricken from Defendant's answer because  
9 his denials on information and belief or lack of either is a sham and evasive as the  
10 allegations in Plaintiff's complaint are within Defendant's knowledge or are presumed to  
11 be within his knowledge or the Defendant otherwise had the means to assert whether or  
12 not the matter is true : paragraphs 2, 13, 15, 16, 27, 28, 29, 30, 31, 32, 33, 36, and 38,  
13 respectively. Each paragraph is set forth fully in Plaintiff's Motion to Strike filed  
14 herewith.

## 15 VI. CONCLUSION

16 For all the foregoing reasons, Plaintiff respectfully requests that the Court strike  
17 Defendant's second answer (via certified mail) in its entirety. Furthermore, Plaintiff  
18 respectfully requests that the Court sustain Plaintiff's Demurrer without leave to amend  
19 as to Defendant's first answer (via personal service) and/or, in the alternative, that the  
20 Court strike those portions of Defendant's answer as objected to as well as the First  
21 through Tenth Affirmative Defenses asserted in Defendant's answer as well as the  
22 Exhibits in support thereto.

23  
24 Dated: September 7, 2006

BY:

25 \_\_\_\_\_  
26 DES MANTTARI, Plaintiff, in Pro Per  
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**PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**



1 is the correct version as well as the mystery of exhibits that were missing to the second  
2 answer and the inclusion of exhibits in the first answer that were neither referenced or  
3 incorporated therein.

4           6.       Defendant responded, in several emails, that I was harassing him and went  
5 so far as to threaten unwarranted police intervention against me. On or about September  
6 5, 2006, Defendant's sole response was as follows: "I am at a loss how you can not see  
7 how this is harassing behavior. Please do not contact me further. You have no desire or  
8 willingness to compromise or settle any of the issues before us. I will see you in court  
9 when the court apportions us a hearing date. Sorry you could not be more reasonable. I  
10 will not be answering any further mailings from you, as they are not being made in good  
11 faith whatsoever, and I believe any attempt to compromise with you to be fruitless and a  
12 waste of both our times."

13           7.       Defendant sent me a second response shortly thereafter, on or about  
14 September 5, 2006, in which his sole response was as follows: "Additionally, if you  
15 attempt to harass me in person, at my home or elsewhere, I will be contacting the police  
16 to protect my safety, and that of my family. I will not tolerate this harassment to continue,  
17 or escalate any further, and will be seeking police intervention and full protection of  
18 myself and my family."

19           8.       On or about September 6, 2006, in the early morning, I again emailed  
20 Defendant, attempting to explain my position at good faith resolution. I wrote in relevant  
21 part the following: "One of the issues involved your filing of two answers, one via  
22 personal service and one via certified mail. Why is it so difficult to provide me with a  
23 clarification? Why did you send me exhibits that have no relevancy to your answer? Why  
24 did you not send me any exhibits at all in your mailed answer? Why are there no proofs  
25 of service to either answer? Why are there handwritten corrections in your first answer  
26 not approved by the court that contradict your second answer? I think I should be  
27  
28

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**PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

1 afforded the minimum courtesy of a response to each of these questions sometime by the  
2 close of business today, preferably sooner than later.”

3 9. Defendant, to date, has not responded to my last email. I feel that based on  
4 Defendant’s failure and/or refusal to resolve this issue, that he has filed his conflicting  
5 answers and exhibits in bad faith. Accordingly, the Court should strike the second answer  
6 sent via certified mail in its entirety and to grant Plaintiff’s other relief as to the  
7 Defendant’s first answer as requested.

8 10. Additionally, I emailed Defendant on several occasions, regarding  
9 entering into a written stipulation to remove Exhibit O from Defendant’s Answer filed  
10 with this court as it contains my Santa Monica confidential student identification that  
11 should not be disclosed or made public. If this information were to remain in the court’s  
12 records, I would suffer immediate and future harm in that it would allow anyone who has  
13 access to this Exhibit to use the information to log into, via the internet, my confidential  
14 records at school, including but not limited to, school transcripts, enrollment records,  
15 class schedules, etc.

16 11. Although Defendant confirmed in writing, via email, that he would  
17 stipulate to the removal of this information, as previously indicated, he is now refusing or  
18 failing to respond to me. Accordingly, Exhibit O should be henceforth stricken and  
19 removed from these court files and record or, in the alternative, that I be allowed leave of  
20 court to file a protective order regarding this matter.

21  
22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct.

24 Executed this 7th day of September 2006, at Los Angeles, California.

25  
26  
27 \_\_\_\_\_  
DES MANTTARI

28  
**PLAINTIFF’S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO  
STRIKE PORTIONS OF DEFENDANT’S ANSWER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**

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**PLAINTIFF'S MOTION FOR DEMURRER AND CONCURRENTLY FILED MOTION TO STRIKE PORTIONS OF DEFENDANT'S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF DES MANTTARI IN SUPPORT THERETO**