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7 Plaintiff,  
8 IN PRO PER

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

11 DES MANTTARI,

12 Plaintiff/Petitioner,

13 vs.

14 SANTA MONICA COMMUNITY  
15 COLLEGE DISTRICT, CHUI L. TSANG,  
16 AND DOES 1-20, INCLUSIVE.

17 Defendants/Respondents.

Case No. BS104928

**PLAINTIFF/PETITIONER DES  
MANTTARI'S NOTICE OF  
MOTION AND MOTION FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND ALTERNATE WRIT  
OF MANDATE UNDER THE  
CALIFORNIA PUBLIC RECORDS  
ACT; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT;  
DECLARATION OF DES  
MANTTARI IN SUPPORT  
THEREOF; PEREMPTORY WRIT  
OF MANDATE; [PROPOSED]  
ORDER FOR DECLARATORY  
RELIEF; [PROPOSED] ORDER FOR  
INJUNCTIVE RELIEF;  
[PROPOSED] ORDER TO SHOW  
CAUSE**

Date: November 17, 2006

Time: 9:30 a.m.

Dept.: 85

28 **PLAINTIFF'S/PETITIONER'S MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND  
ALTERNATIVE WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT**

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

**PLEASE TAKE NOTICE** that on **November 17, 2006 at 9:30 a.m.** in **Department 85** of the Los Angeles Superior Court, Central District located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff/Petitioner DES MANTTARI (hereinafter, “Plaintiff/Petitioner”) will hereby move this Court for Declaratory and Injunctive Relief and Alternative Writ of Mandate Under the California Public Records Act [Government Code § 6250, et. seq.].

This motion is being made pursuant to Code of Civil Procedure § 1085 and Government Code §§ 6258 and 6259. It is based upon this Notice, the Memorandum of Points and Authorities attached hereto, the Declaration of Des Manttari attached hereto, the Peremptory Writ of Mandate, the [Proposed] Orders for Declaratory Relief, the [Proposed] Order for Injunctive Relief, the [Proposed] Order to Show Cause for submitted concurrently herewith, and the records, papers and pleadings on file herein, including Plaintiff’s/Petitioner’s Verified Complaint and Petition for Declaratory and Injunctive Relief and Alternate Writ of Mandate Under the California Public Records Act.

This motion will also be based upon such other matters, both oral and documentary, as may be submitted at the time of the hearing.

Dated: September 5, 2006

BY:

\_\_\_\_\_  
DES MANTTARI, Plaintiff, in Pro Per

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 On August 1, 2006, Plaintiff/Petitioner DES MANTTARI filed a written request  
5 for public records to Defendants/Respondents Santa Monica College District and Chui L.  
6 Tsang via certified mail return receipt requested (See: Verified Complaint and Petition  
7 For Declaratory and Injunctive Relief And Alternative Writ of Mandate Under The  
8 California Public Records Act, Exhibits 1 and 2, respectively). Defendants/Respondents  
9 did not respond to Petitioner’s Public Records Act request and has not made the records  
10 listed in the request available to Petitioner to inspect or copy. Plaintiff/Petitioner’s  
11 complaint, is a Writ of Mandate alleging non-compliance with the Public Records Act  
12 (“PRA”), Gov. Code § 6250 et. seq. which was duly filed in this Court on August 31,  
13 2006.

14 To date, Plaintiff/Petitioner has not been allowed inspection or copies of vital  
15 public records and now moves the Court to compel Defendants/Respondents to comply  
16 with the PRA. Plaintiff and Defendants have tried to resolve their differences in previous  
17 public records request for over one year, Unfortunately, Defendants have something to  
18 hide and will not allow Plaintiff to examine and obtain copies of the records in question.  
19 Exhausting all other remedies, Plaintiff now moves the Court for compliance under the  
20 PRA.

21 **II.**

22 **ARGUMENT AND ANALYSIS**

23  
24 **A. The General Rules of the PRA.**

25 The Public Records Act ("PRA") is set forth at Government Code §§6250 et seq.  
26 Unless otherwise noted, all statutory references are to the Government Code. The PRA  
27 was enacted against a "background of legislative impatience with secrecy in  
28

1 government..." (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771-  
2 772, hereinafter "*San Gabriel*"), "passed for the explicit purpose of 'increasing freedom  
3 of information' by giving the public 'access to information in possession of public  
4 agencies' [Cit.]. Maximum disclosure of the conduct of governmental operations was to  
5 be promoted by the Act (53  
6 Ops.Cal.Atty.Gen. 136, 143 (1970).)" (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651-  
7 652.) This was reaffirmed in *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th  
8 1411.

9 The PRA defines "public records" as "any writing containing information relating  
10 to the conduct of the public's business prepared, owned, used, or retained by any state or  
11 local agency regardless of physical form or characteristics." (§6252(e).) *San Gabriel*  
12 quotes with approval an even broader definition of the Attorney General, that "public  
13 record" is "intended to cover every conceivable kind of record that is involved in the  
14 governmental process and will pertain to any new form of record-keeping instrument as it  
15 is developed. Only purely personal information unrelated to 'the conduct of the public's  
16 business' could be considered exempt from this definition, i.e., the shopping list phoned  
17 from home, the letter to  
18 a public officer from a friend which is totally void of reference to governmental  
19 activities." (*San Gabriel*, 143 Cal.App.3d at 774.)

20  
21 **B. Exceptions to the PRA are Narrowly Construed; Burden is on the**  
22 **Government.**

23 Generally speaking, all public records are subject to disclosure, and the burden is  
24 on the agency resisting disclosure to demonstrate why the records should not be made  
25 public. (*New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1584;  
26 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332,345.) See also: *CBS, Inc. v. Block*,  
27 *supra*, at 656 ("the burden of demonstrating a need for nondisclosure is on the agency  
28 claiming the right to withhold the information.").

1 Section 6253(b) puts it this way: "[e]xcept with respect to public records exempt  
2 from disclosure by express provisions of law, each state or local agency, upon a request  
3 for a copy of records that reasonably describes an identifiable record or records, shall  
4 make the records promptly available to any person ..." And such exemptions from  
5 disclosure "are construed narrowly to ensure maximum disclosure of the conduct of  
6 governmental operations." (New York Times v. Superior Court, supra, 218 Cal.App.3d at  
7 1585; San Gabriel, 143 Cal.App.3d at 772-73.) See also: California State University,  
8 Fresno Assn., Inc. v. Superior Court (2001) 90 Cal.App.4<sup>th</sup> 810, 831. (Exemptions to the  
9 PRA's disclosure requirements are narrowly construed).

10 James Madison declared – in ringing words which animate the Public Records  
11 Act – “[knowledge] will forever govern ignorance and a people who mean to be their  
12 own governors, must arm themselves with the power knowledge gives. A popular  
13 government without popular information or the means of acquiring it, is but a prologue to  
14 a farce or a tragedy or perhaps both.” (San Gabriel Tribune v. Superior Court 143  
15 Cal.App.3d at 772 [internal quotations omitted].) Accordingly, Plaintiff/Petitioner merely  
16 seeks to follow the spirit and letter of the law as set forth in the PRA for maximum  
17 disclosure in an attempt at governmental transparency and accountability that clearly  
18 weighs in favor of the people's fundamental and necessary right to know the conduct of  
19 its business.

20  
21 **C. Duties of Responding Party to PRA.**

22 Government Code § 6253(a) reads as follows:

23  
24 Public records are open to inspection at all times during the office  
25 hours of the state or local agency and every person has a right to  
26 inspect any public record, except as hereafter provided. Any  
27 reasonably segregable portion of a record shall be available for  
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1 inspection by any person requesting the record after deletion of the  
2 portions that are exempted by law.

3  
4 In addition, Government Code § 6253(c) sets the time to respond to 10 days, with  
5 an allowable extension “for no more than 14 days” based on “unusual circumstances.”  
6 Having received a proper request for public records, respondent was under a statutory  
7 duty to comply with it “promptly”, except to the extent that the request sought public  
8 records exempt from disclosure by express provisions of law. (Government Code §  
9 6253(b).) The Respondents did not claim that any of the records sought by Petitioner  
10 were exempt from disclosure by any express provision of law, and Respondents did not  
11 assert any exemption from disclosure nor did Respondents request any extensions of  
12 time. Therefore, Respondents did not comply with the request “promptly”, or at all.  
13 Instead, Respondents simply ignored the written request and failed to comply with their  
14 duties under the PRA.

15 Nothing under the provisions of the PRA allow the Respondents to “to delay or  
16 obstruct the inspection or copying of public records.” (Government Code § 6253(d).)  
17 Additionally, the PRA “does not allow limitations on access to a public record based  
18 upon the purpose for which the record is being requested, if the record is otherwise  
19 subject to disclosure.” (Government Code § 6257.5.) Additionally, Respondents cannot  
20 argue that they delayed or ignored inspection and copies of records simply because the  
21 request might have been ambiguous or uncertain. The PRA requires a public agency to  
22 assist a requesting party in making a focused and effective request that reasonably  
23 describes an identifiable record or records. (Government Code § 6253.1.) The  
24 Respondents in this case did not fulfill that requirement by the virtue of their silence.

25 This is the sixth PRA request made by Petitioner to Respondent Santa Monica  
26 Community College District over the course of more than one year. Respondents are well  
27 aware of the mechanics and provisions of compliance and their obligations under the Act.  
28 Petitioner has been extremely patient and flexible with compliance, and the lack thereof,

1 in the past on the part of Respondent's public agencies and employees. The fact that  
2 Petitioner have made numerous requests under the Act does not, by itself, excuse  
3 compliance, particularly where Respondents appear to have made no attempt to  
4 communicate with Petitioner and work out a reasonable time frame for responses.

5  
6 **D. Relief Sought By Petitioner.**

7 The relief sought by the Plaintiff/Petitioner is authorized by Government Code §§  
8 6258 and 6259 and Code of Civil Procedure § 1085. Government Code § 6258 reads as  
9 follows:

10 Any person may institute proceedings for injunctive or declarative  
11 relief or writ of mandate in any court of competent jurisdiction to  
12 enforce his or her right to inspect or to receive a copy of any public  
13 record or class of public records under this chapter. The times for  
14 responsive pleadings and for hearings in these proceedings shall be  
15 set by the judge of the court with the object of securing a decision  
16 as to these matters at the earliest possible time.

17  
18 In addition, Government Code § 6259 (a) reads as follows:

19  
20 Whenever it is made to appear by verified petition to the superior  
21 court of the county where the records or some part thereof are  
22 situated that certain public records are being improperly withheld  
23 from a member of the public, the court shall order the officer or  
24 person charged with withholding the records to disclose the public  
25 record or show cause why he or she should not do so. The court  
26 shall decide the case after examining the record in camera, if  
27 permitted by subdivision (b) of Section 915 of the Evidence Code,  
28

1 papers filed by the parties and any oral argument and additional  
2 evidence as the court may allow.

3  
4 Furthermore, Government Code § 6259 (b) reads as follows:

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6 If the court finds that the public official's decision to refuse  
7 disclosure is not justified under Section 6254 or 6255, he or  
8 she shall order the public official to make the record public.  
9 If the judge determines that the public official was justified  
10 in refusing to make the record public, he or she shall return  
11 the item to the public official without disclosing its content  
12 with an order supporting the decision refusing disclosure.

13  
14 On August 31, 2006, Plaintiff filed a Verified Complaint and Petition for Writ of  
15 Mandate that demonstrates that Defendants are improperly withholding the public  
16 records in the custody and control of Santa Monica Community College District.  
17 Government Code § 6259 (a), that demonstration entitles Plaintiff to an order directing  
18 Defendant to disclose the records or show cause why it should not do so. If Defendant  
19 refuses to disclose those records, then, under Government Code § 6258, the Court should  
20 set a deadline for Defendant to file and serve its response to the petition and a supporting  
21 memorandum of points and authorities and should proceed with a hearing on the matter  
22 and examine the records *in camera*.

23 **III.**

24 **CONCLUSION**

25 Plaintiff's Verified Complaint and Petition shows that Defendants/Respondents  
26 are wrongly holding public records. Based on that showing, Defendant must disclose the  
27 records or justify its refusal to do so. If Defendant takes the latter option, the Court  
28 should proceed to examine the withheld records and decide the matter as quickly as



1 possible. Plaintiff/Petitioner respectfully requests this Court to order  
2 Defendants/Respondents to comply with the California Public Records Act in full and to  
3 grant orders for declaratory and injunction relief, and/or order to show cause and writ of  
4 mandate and for any other orders as the Court deems just and proper.

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6 Dated: September 5, 2006 BY:

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10 DES MANTTARI, Plaintiff, in Pro Per  
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1 **DECLARATION OF DES MANTTARI**

2 I, DES MANTTARI, hereby declare:

3 1. I am the Plaintiff/Petitioner in Pro Per. I have personal knowledge of the  
4 following facts and if called as a witness, I could and would competently testify thereto.

5 2. On or about August 1, 2006, I caused to be served via certified mail,  
6 return receipt requested a public records entitled "Sixth Written CPRA Request to Chui  
7 L. Tsang, dated August 1, 2006."

8 3. To date I have not received a response to my request for public records  
9 from either Santa Monica Community College District ("the District") or Chui L. Tsang.

10 4. I am informed and believe and thereon allege that Santa Monica  
11 Community College has a long history of stonewalling inspection of public records under  
12 the California Public Records Act ("PRA") from me, other students, and faculty. Five  
13 previous public records requests over the last year or so from me have been met with  
14 endless delaying tactics, non-compliance with physical inspection, non-disclosure of  
15 records not otherwise exempt or privileged and bad faith denial of documents responsive  
16 to my requests.

17 5. Additionally, the District, by and through its employees and agents, have  
18 used retaliatory measures to silence compliance with the PRA against myself and other  
19 students at the college including the unwarranted use of campus police on multiple  
20 occasions.

21 6. To further thwart compliance under the PRA and to leverage its position  
22 of failure and refusal to comply with prompt disclosure, the District, by and through its  
23 employees and agents, have used underhanded tactics including, but not limited to,  
24 unwarranted disciplinary holds on my student records and enrollment, withholding of my  
25 student records from inspection, threats of disciplinary sanctions, threats of campus  
26 police intervention and arrest, and actual disciplinary sanctions including suspension  
27 without any due process whatsoever.

