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EXODUS TRUST, dba PHOENIX GENESIS/MBS LP, a
California Limited Partnership; and DES MANTTARI,
Individually and as Trustee of the MARTIN B. SCHAPIRO
EXODUS TRUST

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARTIN B. SCHAPIRO EXODUS TRUST,	)	Case No. BS099138
dba, PHOENIX GENESIS/MBS LP, a California)	
Limited Partnership; and DES MANTTARI,)	
Individually and as Trustee of the MARTIN B.)	
SCHAPIRO EXODUS TRUST,	)	VERIFIED COMPLAINT AND
	)	PETITION FOR
Plaintiffs/Petitioners	)	DECLARATORY AND
	)	INJUNCTION RELIEF AND
vs.	)	ALTERNATIVE WRIT OF
	)	MANDATE UNDER THE
SANTA MONICA COMMUNITY COLLEGE	)	CALIFORNIA PUBLIC RECORDS
DISTRICT, PATRICIA GREEN, JULIE	)	ACT
YARRISH, LIN D. CALDWELL, JUDITH)	
PENCHANSKY, JUDY FRITZ, THOMAS	)	[C.C.P. § 1085; Gov't Code § 6250,
DONNER, LETTY KILIAN, and DOES 1-20,	)	et. seq.]
Inclusive,)	
	)	Date: December 23, 2005
Defendants/Respondents	)	Time: 9:30 a.m.
_____	)	Dept.: 85

TO DEFENDANTS/RESPONDENTS SANTA MONICA COMMUNITY COLLEGE DISTRICT,
PATRICIA GREEN, JULIE YARRISH, LIN D. CALDWELL, JUDITH PENCHANSKY, JUDY
FRITZ, THOMAS DONNER, LETTY KILIAN, AND DOES 1-20, INCLUSIVE (HEREINAFTER
COLLECTIVELY REFERRED TO AS "DEFENDANTS/RESPONDENTS") AND TO THE
ABOVE-CAPTIONED COURT:

Plaintiffs/Petitioners Martin B. Schapiro Exodus Trust, dba Phoenix/Genesis MBS LP, a California Limited Partnership, and Des Manttari, Individually and as Trustee of the Martin B. Schapiro Exodus Trust (hereinafter collectively referred to as “Plaintiffs/Petitioners”), bring this Verified Complaint for a declaratory judgment, and a temporary, preliminary and permanent injunction order and, alternatively, petitions this Court, pursuant to California Code of Civil Procedure Section 1085 et seq. and the California Public Records Act (Government Code Section 6250 et. seq.), for a writ of mandate directed to Defendants/Respondents commanding them to obey the California Public Records Act (hereinafter, “CPRA”), and alleges as follows:

I. JURISDICTION AND VENUE

1. The relief sought by the Plaintiffs/Petitioners is authorized by Government Code (GOV.) Sections 6258 and 6259 and California Code of Civil Procedure (C.C.P.) Section 1085. Plaintiff/Petitioner PHOENIX GENESIS/MBS LP is a business duly licensed under the laws of the State of California and venue in Los Angeles County is appropriate. Plaintiff/Petitioner Des Manttari is a natural born citizen of the state of California and a consumer residing in Los Angeles, California, and, therefore, that venue in Los Angeles County is appropriate.

II. THE PARTIES

2. Plaintiff/Petitioner Des Manttari is a natural person and at all times mentioned herein was a resident of Los Angeles County, California. Plaintiff/Petitioner is a “person” authorized to bring this action under the California Public Records Act, GOV. § 6252(c).

3. At all relevant times, Plaintiff/Petitioner Des Manttari is a currently enrolled student at SMCCD and thus an interested party to said public records held in the control and custody of SMCCD.

4. At all relevant times, Plaintiff/Petitioner the Martin B. Schapiro Exodus Trust, dba Phoenix Genesis/MBS LP is a current stockholder of record of the publicly traded company known as eCollege.com (“ECLG”) and thus an interested party to said public records held in the control and custody of SMCCD.

5. Plaintiffs/Petitioners are informed and believe and thereon allege that Defendant/Respondent Santa Monica Community College District (SMCCD) is, and at all times mentioned herein, an agency of the California government, which is an agency in charge of promoting and protecting the interests of the people as consumers, and is a “state agency” within the meaning of GOV. § 6252(a).

6. Plaintiffs/Petitioners are informed and believe and thereon allege that Defendant/Respondent Patricia (“Pat”) Green is, at all times mentioned herein, a public employee of Santa Monica Community College District.

7. Plaintiffs/Petitioners are informed and believe and thereon allege that Defendant/Respondent Julie Yarrish is, at all times mentioned herein, a public employee of Santa Monica Community College District.

8. Plaintiffs/Petitioners are informed and believe and thereon allege that Defendant/Respondent Lin D. Caldwell is, at all times mentioned herein, a public employee of Santa Monica Community College District.

9. Plaintiffs/Petitioners are informed and believe and thereon allege that Defendant/Respondent

Thomas Donner is, at all times mentioned herein, a public employee of Santa Monica Community College District.

10. Plaintiffs/Petitioners are informed and believe and thereon allege that Defendant/Respondent Letty Kilian is, at all times mentioned herein, a public employee of Santa Monica Community College District.

11. Plaintiffs/Petitioners are informed and believe and thereon allege that Defendant/Respondent Judy Fritz is, at all times mentioned herein, a public employee of Santa Monica Community College District.

12. Plaintiffs/Petitioners are informed and believe and thereon allege that Defendant/Respondent Judith Penchansky is, at all times mentioned herein, a public employee of Santa Monica Community College District.

13. Plaintiffs/Petitioners are ignorant of the true names and capacities of defendants sued herein as Does 1-20, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs/Petitioners will amend this complaint to allege their true names and capacities when these are ascertained. Plaintiffs/Petitioners are informed and believe and thereon allege that each of the fictitiously named defendants are responsible in some manner for the occurrences herein alleged, and that plaintiffs' damages as herein alleged were proximately caused by the conduct of such fictitiously named defendants.

III. FACTS GIVING RISE TO CLAIMS

14. Since on or about January 2003 to the present, Plaintiff/Petitioner Des Manttari has been a

student at Santa Monica Community College, specifically attending the satellite campus known as the Academy of Entertainment and Technology (hereinafter, “AET”). On or about April 2004, Des Manttari became a teaching assistant to Professor Jim Keeshen for an online class administered through a third party vendor known as eCollege.com, contracted through SMCCD, in addition to working on the eCompanion supplemental online materials for the SMCCD ground classes for Mr. Keeshen. Both Jim Keeshen, by and through Jim Keeshen Productions, Inc., a California Corporation, and Des Manttari, by and through Plaintiff/Petitioner the Martin B. Schapiro Trust, dba, Phoenix Genesis/MBS LP, a California Limited Partnership, provided limited use of online course materials known as the “History of Animation” to eCollege.com’s website www.smconline.org from Plaintiffs/Petitioner’s web server located at <http://www.vtutorials.com/clients/des/manttari>.

15. At all relevant times, Plaintiff/Petitioner Des Manttari, acting in her official capacity of trustee of the Martin B. Schapiro Trust, dba Phoenix Genesis/MBS LP, holds common stock in College.com (ECLG). As such, Plaintiffs/Petitioners have an interest in the public records in the custody and control of Defendant/Respondent SMCCD as well as its satellite campus, the Academy of Entertainment and Technology, and its contracted consultant, eCollege.com, formerly known as Real Education, Inc.

16. On June 27, 2005, Plaintiff/Petitioner, accompanied by Stephen Drury, met with SMCCD employee Chris Bonvenuto in his office, inquiring about where to begin their search for public records belonging to Defendants/Respondents. Mr. Bonvenuto indicated that they should speak with Pat Green, the secretary to Reagan Romali.

17. On June 30, 2005, Plaintiff/Petitioner Des Manttari, accompanied by Dolores Hernandez,

personally met with Pat Green and Judy Fritz to inspect the public records of SMCCD. Specifically, Plaintiff/Petitioner requested any and all current contracts by and between eCollege.com and SMCCD. Additionally, Des Manttari requested to inspect the summary of all grants available in the SMC Accounting Office as well as the summary of all consultant contracts. At this time, Plaintiff/Petitioner was denied access to inspect any of these records.

18. On July 15, 2005, Plaintiff/Petitioner Des Manttari, accompanied by Stephen Drury, personally caused to be delivered a written request for inspection and copies of twenty-three (23) distinct public records to the attention of Patricia (“Pat”) Green. At that time, Chris Bonvenuto, a public employee of SMCCD, accepted and signed for said documents. A true and correct copy of Chris Bonvenuto’s acceptance is attached hereto as “**Exhibit 1**” and made a part herein. A true and correct copy of the 23 public records requests are attached hereto as “**Exhibit 2**” and made a part herein.

19. Plaintiff/Petitioner Des Manttari’s July 15, 2005 request reasonably described the aforementioned public records and was made in accordance with SMCCD’s Board of Trustees Policy, Article 2100 Administrative Operations, BP 2175 District Records. Defendants/Respondent SMCCD has maintained these records at their office in Santa Monica, CA. The information contained in the aforementioned records is not personal or confidential.

20. On July 19, 2005, Plaintiff/Petitioner Des Manttari emailed Pat Green regarding her public records request. A true and correct copy of Plaintiff’s email entitled “Follow-up regarding public records request” is attached hereto as “**Exhibit 3**” and made a part herein.

21. On July 19, 2005, Defendant/Respondent Pat Green emailed Des Manttari stating that she

had “started to pull documents.” However, she did not offer an appointment when Plaintiff could come into the office to inspect said records. A true and correct copy of Plaintiff’s email entitled “RE: Follow-up regarding public records request” is attached hereto as “**Exhibit 4**” and made a part herein.

22. On July 21, 2005, Plaintiff/Petitioner Des Manttari emailed Pat Green and stated “Just let me know what times are convenient for you.” A true and correct copy of Plaintiff’s email entitled “RE: Follow-up regarding public records request” is attached hereto as “**Exhibit 5**” and made a part herein.

23. On July 28, 2005, Defendant/Respondent Pat Green emailed Plaintiff/Petitioner Des Manttari and stated, “I have pulled all the documents. I will need a check in the amount of \$50.60 paid to Santa Monica College. After I receive the check I will then start to copy the documents.” However, Defendant/Respondent did not state a time when Plaintiff/Petitioner could come into her office to inspect the public records. Furthermore, at this time, Defendant/Respondent did not object to providing any of the documents requested by Plaintiff nor did Defendant make any claims regarding non-disclosure or assert any privilege prohibiting disclosure. A true and correct copy of Plaintiff/Petitioner’s email entitled “Follow-up regarding public records request” is attached hereto as “**Exhibit 6**” and made a part herein.

24. On July 28, 2005, Plaintiff/Petitioner Des Manttari emailed Pat Green that she would drop off a check for the documents “either this afternoon or tomorrow.” A true and correct copy of Plaintiff’s email entitled “Follow-up regarding public records request” is attached hereto as “**Exhibit 7**” and made a part herein.

25. On July 29, 2005, Plaintiff/Petitioner Des Manttari, accompanied by Stephen Drury, personally dropped off a domestic postal money order for the public records in the amount of \$50.60 made payable to Santa Monica College. At this time, Pat Green pointed to 2 cardboard boxes and stated that those were the files she had pulled pursuant to Plaintiff's written request for public records. However, Defendant did not offer Plaintiff an opportunity to inspect these records nor did she make an appointment to inspect said records. A true and correct copy of Plaintiff's domestic postal money order is attached hereto as "**Exhibit 8**" and made a part herein.

26. On August 1, 2005, Defendant/Respondent Pat Green emailed Plaintiff/Petitioner Des Manttari stating that she can pick up her documents. A true and correct copy of Defendant's email entitled "Follow-up regarding public records request" is attached hereto as "**Exhibit 9**" and made a part herein.

27. On August 3, 2005, Plaintiff/Petitioner Des Manttari, accompanied by Stephen Drury, personally met Defendant/Respondent Pat Green to pick up her documents. At that time, Defendant/Respondent Pat Green did not offer Plaintiff/Petitioner an opportunity to inspect the files from her written public records request.

28. On August 9, 2005, Plaintiff/Petitioner Des Manttari emailed Defendant/Respondent Pat Green regarding the fact that Defendant/Respondent did not fully comply with her written request for copies of documents. Plaintiff/Petitioner detailed each request and sought compliance accordingly. Plaintiff/Petitioner additionally requested that she would like to "review these public records beginning tomorrow so that we can get everything we need and that we can get together any reasonable additional costs that may be incurred for copying of these documents." Plaintiff additionally wrote that she had not, to date, "been given an opportunity" to "examine

these 23 public records requests.” A true and correct copy of Plaintiff/Petitioner’s email entitled “Public Records Request – Missing Documents” is attached hereto as “**Exhibit 10**” and made a part herein.

29. On August 10, 2005, Plaintiff/Petitioner Des Manttari, accompanied by Dustin Curran, met Defendant/Respondent Pat Green to begin inspect of said public records and to resolve the missing copies of documents. At that time, Defendant/Respondent stated that she had started to pull the documents. When Plaintiff/Petitioner asked when Pat Green would like her to call her or stop by and Defendant/Respondent answered, “I don’t know. Call me.”

30. On August 11, 2005, Defendant/Respondent Pat Green emailed Plaintiff/Petitioner Des Manttari, stating that she had “been pulling some documents.” Pat Green indicated that Plaintiff/Petitioner call her on Monday to update her on how far she had gotten. A true and correct copy of Defendant/Respondent’s email entitled “Public Records Request – Missing Documents” is attached hereto as “**Exhibit 11**” and made a part herein.

31. On August 14, 2004, Plaintiff/Petitioner Des Manttari emailed Pat Green and thanked her for “starting to pull the documents.” Plaintiff/Petitioner stated, “In any event, I would like to review these files as it will be much easier for both of us if I can see what’s in them and then we don’t have to continually repull them and try to figure out what we need. I will touch base with you tomorrow (Monday).” A true and correct copy of Plaintiff’s email entitled “Public Records Request – Missing Documents” is attached hereto as “**Exhibit 12**” and made a part herein.

32. On August 16, 2005, Plaintiff/Petitioner Des Manttari, accompanied by Dustin Curran, personally served Defendant/Respondent Julie Yarrish with twenty (20) distinct requests for

public records in the custody and control of Defendant/Respondent SMCCD, dated August 15, 2005. A true and correct copy of the 20 public records requests are attached hereto as “**Exhibit 13**” and made a part herein. At that time, Defendant/Respondent Julie Yarrish did not make any effort to locate or make available any of the public records for inspection nor did she offer Plaintiff/Petitioner an appointment to inspect said records.

33. Plaintiff/Petitioner Des Manttari’s August 15, 2005 request reasonably described the aforementioned public records and was made in accordance with SMCCD’s Board of Trustees Policy, Article 2100 Administrative Operations, BP 2175 District Records. Defendants/Respondent SMCCD has maintained these records at their office in Santa Monica, CA. The information contained in the aforementioned records is not personal or confidential.

34. Plaintiff/Petitioner Des Manttari gave Defendant/Respondent Pat Green additionally time to pull and gather the requested public records and did not call her until around noon on August 17, 2005. At that time, Plaintiff left a polite voice mail stating that she would like to come in and inspect the documents that were already overdue.

35. Later that afternoon on August 17, 2005, Defendant/Respondent Pat Green emailed Plaintiff/Petitioner Des Manttari and stated “I just received your message about wanting to view documents tomorrow. That will not be happening.” Defendant/Respondent additionally stated that she had complied with the request (which she had not) and stated that Plaintiff/Petitioner’s email regarding compliance was now a “new request” (which in fact it was not). A true and correct copy of Defendant/Respondent Pat Green’s email entitled “Public Records Request – Missing Documents” is attached hereto as “**Exhibit 14**” and made a part herein.

36. Knowing that Defendant/Respondent Pat Green would be on vacation beginning August 19, 2005 and would not return until September 6, 2005, Plaintiff/Petitioner Des Manttari decided to speak to her personally to see if she could resolve the issue of inspection and copying prior to Defendant/Respondent leaving for vacation. Later that day, on August 17, 2005, Plaintiff/Petitioner Des Manttari, accompanied by both Stephen Drury and Dustin Curran, went to meet Defendant/Respondent Pat Green in her office. Plaintiff/Petitioner asked Pat Green to set up an appointment for her, Stephen Drury, and Dustin Curran (all of which are Santa Monica College students) to view files as she was going on vacation. Defendant/Respondent Pat Green responded, "That's not happening." Plaintiff then inquired, "Why can't I look at any public records?" Defendant/Respondent Pat Green responded in a loud voice, "I have no control of letting you look at the records." Defendant/Respondent angrily added, "Tom Donner has to decide whether you can look at the records." Plaintiff/Petitioner saw the public records she had requested sitting on Defendant/Respondent's Pat Green's desk and asked if she could view any of those records. Defendant/Respondent then led Plaintiff/Petitioner along with Stephen Drury and Dustin Curran into Thomas Donner's (the current president of SMCCD) office and left.

37. When Plaintiff/Respondent Des Manttari entered Thomas Donner's office, along with Stephen Drury and Dustin Curran, she was greeted by Lin D. Caldwell, the Administrative Assistant for Mr. Donner. Plaintiff indicated that she was a student of Santa Monica College and asked for an appointment to inspect public records. At that time, Plaintiff provided Lin D. Caldwell with her name and voicemail. Additionally, Plaintiff offered to provide her with the written documentation to date regarding her request to Pat Green for said records. Plaintiff indicated that it's been almost two months since she first came in to view public records and, to date, has not been allowed to inspect records.

38. On August 18, 2005, Dustin Curran, accompanied by Plaintiff/Petitioner caused to be personally served to Defendant/Respondent Pat Green a document entitled “CPRA Compliance Demand Letter” dated August 18, 2005, of which a true and correct copy is attached hereto as “**Exhibit 15**” and made a part herein. As soon as Mr. Curran and Plaintiff/Petitioner entered Defendant/Respondent Pat Green’s office, Defendant/Respondent stated, “You either turn your asses around now and get out or I call the police. What choice do you want?” Plaintiff/Petitioner inquired to Defendant/Respondent Pat Green why she would call the police, but Defendant/Respondent did not respond and immediately began to call the SMCCD campus police. Mr. Curran served Defendant/Respondent with said letter for compliance with the California Public Records Act and both Plaintiff/Petitioner Des Manttari and Mr. Curran left her office and went to speak with Mr. Thomas Donner in his office. A true and correct copy of the proof of service is attached hereto as “**Exhibit 16**” and made a part herein.

39. Plaintiff and Mr. Curran served Defendant Thomas Donner with a copy of the same document which they served Pat Green (see “**Exhibit 15**”) and asked that he give it to his assistant, Lin D. Caldwell. Plaintiff asked Defendant why Pat Green called the police on them and Mr. Donner did not want to address the issue or aid in the compliance with the CPRA. He stated, “Send your attorney to speak to me about it.” Plaintiff and Mr. Curran left before the police arrived. . A true and correct copy of the proof of service is attached hereto as “**Exhibit 17**” and made a part herein.

40. On August 19, 2005, Plaintiff/Petitioner Des Manttari, accompanied by Dustin Curran and Lindsay Berkovitz (a Santa Monica College student who is disabled and confined to a wheelchair), went back to Defendant/Respondent Thomas Donner’s office to see if Defendant/Respondent Lin D. Caldwell received the request for compliance letter they had

served Mr. Donner the previous day and to see if they could set up an appointment to inspect public records. Defendants/Respondents SMCCD, with the aid of Judy Fritz, Letty Kilian, and Lin D. Caldwell, misused the campus police by summoning and instructing SMCCD campus police officer Willie Malone to threaten, coerce, and intimidate Plaintiff/Petitioner Des Manttari, Mr. Dustin Curran, and Ms. Lindsay Berkovitz from their constitutional and statutory rights to inspect public records.

41. True and correct excerpts of the conversation between Plaintiff/Petitioner Des Manttari and SMCCD Police Officer Willie Malone is set forth below and made a part herein:

WILLIE MALONE: "I'm going to put the handcuffs on and escort you out of here if I have to. You want me to arrest you?"

DES MANTTARI: "No, sir."

WILLIE MALONE: "You want me to arrest you then, okay?"

DES MANTTARI: "No, sir. ... Are you going to arrest my friends, too, for wanting to look at public records?"

WILLIE MALONE: "I'm going to arrest everyone. ... If it's necessary, I'll arrest everyone right now. ... You understand me? ... I'm going to say it one time. She [Lin D. Caldwell] is going to make an appointment with you for the necessary records that's necessary that you see. Yes, it says in the record there that it's available for public display at any time during normal business office [hours], but they're not available. Okay?"

DES MANTTARI: "So they're not complying with the law?"

WILLIE MALONE: "They're not complying with the law right now. Because it's not available for

what you need, okay? You understand me? ... [shouting] I don't care what you have on paper! ... You want to leave peacefully?"

DES MANTTARI: "Yes, sir."

WILLIE MALONE: "Alright, let's go. Get up and go. Let's go. Let's go. I'm finished. [to Dustin Curran] Let's go. [to Lindsay Berkovitz] Get up and go."

DES MANTTARI: "She can't get up ... she has cerebral palsy."

WILLIE MALONE: "You can push her out, okay?"

DES MANTTARI: "Okay, we'll push her out in the wheelchair." [Everyone leaves the office.]

WILLIE MALONE: "We'll call you when the appointment is necessary, okay?"

DES MANTTARI: "I'm just curious, why are they so secretive about those public records of the school?"

WILLIE MALONE: "You can bring your attorney."

DES MANTTARI: "Now I have to hire attorneys? ... Just a question, if I bring a government agent here on Monday to look at records, are you going to arrest them, too?"

WILLIE MALONE: "If necessary. ... Yes."

DES MANTTARI: "Have a nice day."

LINDSAY BERKOVITZ: "Thank you."

42. On August 19, 2005, Defendants/Respondents caused to be served (by and through their attorney, Joshua Morrison) a letter to Plaintiffs/Petitioners regarding, in part, the issues pertaining to the public records request. A true and correct copy of Mr. Morrison's letter is attached hereto as "**Exhibit 18**" and made a part herein.

43. On or about August 23, 2005, Plaintiffs/Defendants received not only Mr. Morrison's letter, but two additional letters from Defendant/Respondent Judith Penchansky, seeking to cause disciplinary proceedings against Plaintiff/Petitioner Manttari which Plaintiff/Petitioner is informed and believes and thereon alleges were fabricated as a means to threaten her from pursuing her legitimate request for public records. On that same afternoon, Plaintiff/Petitioner

had a lengthy phone conversation with Mr. Morrison in order to attempt to resolve the issues concerning the public records.

44. On August 25, 2005, Plaintiff/Petitioner Des Manttari emailed Defendant/Respondent Pat Green and reiterated her meeting with her on August 18, 2005. Plaintiff once again requested in writing that Defendant comply with the California Public Record Act. Plaintiff wrote the following: “Again, please accept this as a formal request to allow me or any designee to both inspect and copy any and all public records belonging to Santa Monica Community College without any further delay, intimidation, harassment, retaliation, or threat of violence on your part or the part of the SMC police department.” To date, Defendant/Respondent Pat Green has not responded to Plaintiff/Petitioner’s last email. A true and correct copy of Plaintiff/Petitioner Des Manttari’s email entitled “Request for Compliance with the California Public Records Act” is attached hereto as “**Exhibit 19**” and made a part herein.

45. On August 26, 2005, Plaintiff/Petitioner Des Manttari emailed Joshua Morrison, the attorney for Defendant/Respondent SMCCD, and once again requested inspection of the public records of Defendants/Respondent. Plaintiff generously granted an extension for the August 15, 2005 request for copies of the public records until September 8, 2005, but granted no additional time for compliance pertaining to the July 15, 2005 request for copies. To date, Plaintiff/Petitioner is informed and believes and thereon alleges that she has not received any response from Mr. Morrison. A true and correct copy of Plaintiff/Petitioner’s email entitled “Request for Compliance with the California Public Records Act” is attached hereto as “**Exhibit 20**” and made a part herein.

46. On August 26, 2005, Plaintiff/Petitioner Des Manttari emailed Defendant/Respondent Judith

Penchansky regarding the “patently groundless allegations against [her]” as well as again requesting that Defendants/Respondents produce “documents for inspection and copying by our August 30, 2005 meeting.” A true and correct copy of Plaintiff/Petitioner’s email entitled “RE: Our Meeting Next Tuesday” is attached hereto as “**Exhibit 21**” and made a part herein.

47. Plaintiff/Petitioner Des Manttari’s August 26, 2005 request reasonably described the aforementioned public records and was made in accordance with SMCCD’s Board of Trustees Policy, Article 2100 Administrative Operations, BP 2175 District Records. Defendants/Respondent SMCCD has maintained these records at their office in Santa Monica, CA. The information contained in the aforementioned records is not personal or confidential.

48. On or August 29, 2005, Plaintiff/Petitioner Des Manttari is informed and believes and thereon alleges that Defendant/Respondent Judith Penchansky threatened Plaintiff/Petitioner in writing (via email) to misuse the SMCCD campus police when she wrote the following: “Please be advised that if you do not conduct yourself in a respectful and appropriate manner during our meeting, I will call Campus Police and escort you from my office and I will then, as I have warned you in writing, begin suspension proceedings.” A true and correct copy of Plaintiff’s email entitled “RE: Our Meeting Next Tuesday” is attached hereto as “**Exhibit 22**” and made a part herein.

49. On August 30, 2005, Plaintiff/Petitioner Des Manttari emailed Defendant/Respondent Lin D. Caldwell and wrote: “On or about August 18, 2005, per your request, we provided Mr. Thomas Donner, your boss, a copy of the CPRA Compliance Demand Letter (dated 8/18/2005) addressed to Pat Green. On or about August 19, 2005, we attempted to make an appointment with you to view public records, but were forced by a campus police officer to leave (which I will address

more fully in another email to you) and we [were] told that you would contact me to make an appointment. It is now almost two weeks since you were provided with this request for compliance in writing. By copy of this email, please email me and let me know if and when I will be able to inspect the public records which I have requested.” To date, Defendant Lin D. Caldwell has not responded to Plaintiff’s last email. A true and correct copy of Plaintiff’s email entitled “Public Records Follow Up” is attached hereto as “**Exhibit 23**” and made a part herein.

50. Plaintiff/Petitioner Des Manttari had not heard back from Defendant/Respondent Julie Yarrish since she was served with the request for public records on August 16, 2005. So, on August 30, 2005, Plaintiff/Petitioner Des Manttari emailed Defendant/Respondent Julie Yarrish and stated that she had not heard back from her nor had she “been given assistance or access by you or anyone with whom you work at the Distance Education department in the media center. Please let me know when I can come by and begin to view the records which I requested from you.” A true and correct copy of Plaintiff/Petitioner Des Manttari’s email entitled “Public Records Request Follow-Up” is attached hereto as “**Exhibit 24**” and made a part herein.

51. On August 30, 2005, Defendant/Respondent Julie Yarrish emailed Plaintiff/Petitioner Des Manttari back with the following response: “You have received a letter from the College attorney indicating when copies of the documents that you requested will be ready. Please review that letter for the answers to your questions below.” [emphasis in original]. A true and correct copy of Defendant’s email entitled “RE: Public Records Request Follow-Up” is attached hereto as “**Exhibit 25**” and made a part herein.

52. On August 30, 2005, Plaintiff/Petitioner Des Manttari responded to Defendant/Respondent Julie Yarrish’s email as follows: “Thanks for emailing me back. Again, I guess I will try to

clarify myself further. I am not asking you when COPIES of documents will be provided, I am asking you, formally, in writing (via this email) when I will be able to meet with you to inspect (i.e., view, look at, examine) the public records of Santa Monica College's Distance Education department as set forth in my written request to you of August 15, 2005, hand-delivered on August 16, 2005.” To date, Defendant Julie Yarrish has not responded to Plaintiff’s last email. A true and correct copy of Plaintiff’s email entitled “RE: Public Records Request Follow-Up” is attached hereto as “**Exhibit 26**” and made a part herein.

53. On August 30, 2005, Plaintiff/Petitioner Des Manttari, accompanied by her attorney, Mr. Edward Y. Lee, met with Defendant/Respondent Judith Penchansky to inspect public records. On the SMC Student Intake Form, Plaintiff/Petitioner stated in writing that her “reason for visit” was “to obtain public records from SMC.” A true and correct copy of the “Santa Monica College Student Intake Form” with “Santa Monica College Release” form is attached hereto as “**Exhibit 27**” and made a part herein. When Plaintiff asked Defendant/Respondent Judith Penchansky if she had brought the public records for inspection, she replied, “I don't have those public records.” Plaintiff additionally asked Defendant, “Did you ask Mr. Keeshen to bring those records that I requested in writing?” Defendant responded, “I did not.”

54. On this same date, Plaintiff/Petitioner Des Manttari additionally asked Defendant/Respondent Judith Penchansky, “I was just wondering when can I get a copy of my disciplinary file?” Ms. Penchansky responded, “You can subpoena it. That file is not for you.” Plaintiff/Petitioner asked, “Even though it's my student file?” Defendant/Respondent stated, “Because that's private statements. There's other people's names in there that you don't have privy to.” Plaintiff/Petitioner also had asked Defendant/Repondent Judith Penchansky, “By the way, do think that I can have a copy of the envelope with the postage mark of the letter that Jim

Keeshen allegedly gave you, dated I think it was July 5th?” Defendant/Respondent Penchansky answered, “Put your request in writing. I'll see if I can find it. I'm not going to give it to you right now.”

55. On this same date, in the presence of Plaintiff’s attorney, Mr. Edward Y. Lee, Plaintiff Petitioner Des Manttari asked Defendant/Respondent Judith Penchansky, “Why did you blackmail Jim to sign that [letter]?” Defendant/Respondent answered, “I'm not going to have that conversation with you right now.”

56. A few minutes later, Defendant/Respondent Judith Penchansky had the following conversation with Plaintiff/Petitioner Des Manttari in the presence of Plaintiff/Petitioner’s attorney as follows:

JUDITH PENCHANSKY: “All you need to do is answer me this. If you would like to meet with me alone and have me talk to you about the allegations and the reason why you are very close to being suspended from this college--”

DES MANTTARI: “Are you threatening me now with suspension?”

JUDITH PENCHANSKY: “I have written to you that if your behavior continues to disrupt the environment of this college, you will absolutely be suspended.”

DES MANTTARI: “Wait a minute, so you're already saying that I have gone ahead, without any investigation, okay, knowing you've blackmailed Mr. Keeshen to sign this, without any independent investigation, without dates or facts, you have now accused me of breaching student

code of conduct, not allegedly, but breaching it?”

JUDITH PENCHANSKY: “Absolutely.”

57. On this same date, in the presence of Plaintiff/Petitioner’s attorney, Mr. Edward Y. Lee, Defendant/Respondent Judith Penchansky stated to Plaintiff/Petitioner Des Manttari, “You cannot disrupt the college environment.” Plaintiff/Petitioner inquired, “Do you have any facts to prove that I disrupted the college environment?” Defendant/Respondent failed to answer Plaintiff/Petitioner’s question nor did she provide Plaintiff/Petitioner with any facts at that time. To date, Defendant/Respondent Judith Penchansky has not complied with Plaintiffs/Petitioners requests for public records and continues to threaten Plaintiff/Petitioner Des Manttari with disciplinary proceedings and suspension from SMCCD despite the fact that Defendant/Respondent knows, or should have known, that the allegations against Plaintiff/Petitioner are false and created for the alleged malicious purpose of intimidating Plaintiff/Petitioner to abandon her request for public records. In fact, when Plaintiff/Petitioner asked Defendant/Respondent why Mr. Keeshen did not come to the meeting, Defendant/Respondent Judith Penchansky stated, “He has refused to come. He has chosen not to come.”

58. On August 31, 2005, around 4:00 p.m., Plaintiff/Respondent Des Manttari met Professor Jim Keeshen in the front parking lot of the AET campus. During this conversation, Mr. Keeshen made several comments to Ms. Manttari in regards to the recent blackmail threats, harassment, intimidation, and hostile environment now at school by the administrators and staff against them because of Plaintiffs/Petitioners request for public records and the underlying fraud as follows:

59. JIM KEESHEN: “You know I told you, all the things you're going to do is really going to come back and haunt me and they are. ... You don't understand consequences, Des. And I told

you, anything you're going to do is going to come back and bite me in the ass.”

60. JIM KEESHEN: “Everybody here hates my guts now. Everybody in administration hates my guts. Everybody thinks that I have caused all of this. ... I'm telling you as a friend, the actions that you have done have really put me in a bad position here. And I know that's not your intention. ... I still consider you my friend. But you got me in trouble now. ... She [Julie Yarrish] hates my guts. And now everyone hates my guts.”

61. JIM KEESHEN: “I don't even want to deal with that at all. I'll leave on my own terms when I want to leave. Right now I'm just using them so that I can finish my film. But your actions now have really put me on very, very thin ice here. So I don't know if I'm even going to last through the next semester or not. Right now I'm down to three classes. ... And I'm just waiting for the axe to fall. ... But if you can find any way to back off of out this, I would appreciate that you would do that. If you can't do it, then fine, then just go ahead, but I am now in great jeopardy.”

62. JIM KEESHEN: “So, Des, if you want to help me out. If you want to be my friend, stop. Just go away. Let this thing go. Let me try to finish up what I'm doing here so I can get out of here on my own terms. Right now, it ain't gonna happen that way and if you keep going, I know that I'll have to suffer the consequences. ... You can't protect me anymore, Des, my head's in the guillotine. ... Your shenanigans with getting all this stuff you want to get has just thrown gasoline onto the fire. ... But you are now scaring the hell out of everybody. And, they're all looking at me as the cause of it all.”

63. JIM KEESHEN: “The only way you can help me, Des is to stop. Just completely stop. Don't request any more documents. Don't request anything from them. Tell them you know what,

you've changed your mind. And just disappear. That's the only way you can help me, Des. Really. And I know that you're not going to do it because I know that you are committed to your cause. I know you want to be upright and you want to defend yourself. And I understand all that. But it's hurting me. And it's hurting me greatly. ... So, I beg you, stop if you can. If you can't do it, then okay. I'll have to go through my drama here.”

64. JIM KEESHEN: “So, again I say to you, if you can stop, please stop. Let this thing go, for the time being. When I'm in the position that I can say, ‘You know what, fuck you all, I'm leaving, goodbye,’ go in there and execute the rest of your plan. But don't do it now because I'm now the sacrificial lamb. ... I'm the one now that is really being fucked up. So, if you can, Des, do this later. But don't do it right now. If you can't, okay, fine. You know what, I'll survive. And everything will be okay. But I would appreciate it if you would stop. If you'd just call everybody up and kind of go, ‘You know what, thank very much, but no thank you. I'm going to reserve the decision to do something maybe later on’... if you can.”

65. JIM KEESHEN: (regarding the former President of SMC, Piedad Robertson), “That's why she left. ... Because there's a huge mess that's going on here.”

66. On September 2, 2005, Plaintiff/Petitioner Des Manttari emailed Jim Keeshen about their conversation on August 31, 2005. Plaintiff/Petitioner wrote in part the following: “I think, given the recent unnecessary grief that we have both received recently from the administration of SMC (the blackmail threats against you, the threats they have given to fire you, the threats to suspend me and the false allegations against me and the gossip which I assume is going around) that it is a good idea that we keep our recent conversation confidential from anyone at

SMC. As you stated that the administration hates you and we know they are afraid of me since my quest for their sacrosanct public records, I am hesitant to trust anyone at SMC. I am thinking very hard about everything we discussed the other day. I'm too tired right now to respond, but I'll email you again soon. In the meantime, as always, please take good care of yourself.” A true and correct copy of Plaintiff/Petitioner Des Manttari’s email to Jim Keeshen entitled “Nice to see you again” is attached hereto as “**Exhibit 28**” and made a part herein.

67. On September 2, 2005, Jim Keeshen emailed Plaintiff/Respondent Des Manttari, confirming the conversation they had on August 31, 2005 and reiterating the suffering, hostility, intimidation, and threats of job termination he is allegedly receiving at the hands of Defendant/Respondent SMCCD and its agents and employees. A true and correct copy of Jim Keeshen’s email to Plaintiff/Petitioner Des Manttari entitled “RE: Nice to see you again” is attached hereto as “**Exhibit 29**” and made a part herein.

68. On September 5, 2005, Plaintiff/Petitioner Des Manttari responded to Jim Keeshen’s email as follows: “I need another day or two to decide what to do. If you have any suggestions, I would appreciate it as well. As I told you, I am trying to protect both of us from harm and make the right decision. Jim, I have always been your true friend and I hope you can see that now despite the circumstances and pressure we are both under.” A true and correct copy of Plaintiff/Petitioner Des Manttari’s email to Jim Keeshen entitled “Just Touching Base” is attached hereto as “**Exhibit 30**” and made a part herein.

69. On September 6, 2005, Jim Keeshen responded to Plaintiff/Petitioner Des Manttari's September 5, 2005 email and wrote in part, "My suggestion to you is that you drop everything, including any classes and go away on a vacation, minimum 2 weeks. You will feel much better, I guarantee it." A true and correct copy of Jim Keeshen's email to Plaintiff/Petitioner Des Manttari entitled "RE: Just Touching Base" is attached hereto as "**Exhibit 31**" and made a part herein.

70. On or about September 7, 2005, Edward Y. Lee, attorney for Plaintiffs/Petitioners, caused to be served, via certified mail, a letter to Joshua Morrison, attorney for Defendants/Respondents, dated September 6, 2005, requesting compliance with the California Public Records Act. A true and correct copy of Attorney Lee's Letter to Attorney Morrison is attached hereto as "**Exhibit 32**" and made a part herein.

71. To date, Plaintiffs/Petitioners have not been allowed by Defendants/Respondents to inspect any of the requested public records. Additionally, Defendants/Respondents have not fully complied with Plaintiffs/Petitioners' original July 15, 2005 request for copies of said records. Furthermore, Defendants/Respondents have not yet complied with Plaintiffs/Petitioners' August 15, 2005 request for either inspection or copies of records. To date, Defendants/Respondents have made no written objections to disclosure or have maintained any privilege to said records.

72. Plaintiffs/Petitioners were, and are, at all times mentioned, ready to tender fees and costs for locating, duplicating and reviewing the documents and information requested.

IV. FIRST CAUSE OF ACTION

Writ of Mandate

73. Plaintiffs/Petitioners incorporate paragraphs 1 through 72, inclusive, as if fully set forth herein.

74. Plaintiffs/Petitioners have a clear, present and beneficial interest in Defendants/Respondents' compliance with the Public Records Act, GOV. § 6250 et. seq., enforceable through this action under GOV. §§ 6258 and 6259. Plaintiffs/Petitioners have no other plain, speedy or adequate remedy in the normal course of law. As a result of Defendants/Respondents' refusal to release the aforementioned public records, the Plaintiffs/Petitioners sustained and will continue to be denied access to information regarding matters of fundamental public interest concerning the public's business at Santa Monica Community College District.

75. By the acts set forth the Plaintiffs/Petitioners have exhausted their administrative remedies in this matter, and has fulfilled all preconditions to filing this Verified Complaint and Petition.

76. Defendants/Respondents have a clear, present and ministerial duty to provide copies of the requested public records. Failure to do so is an abuse of discretion correctable by issuance of a writ of mandate from this Court or, in the alternative, by issuance of an order from this Court granting Plaintiffs/Petitioners' request for injunctive relief. Defendants/Respondents have abused their discretion in responding to the Plaintiffs/Petitioners' Public Records Act request by failing to promptly provide copies of the public records as specified in GOV. § 6252.

V. SECOND CAUSE OF ACTION

Declaratory Relief

77. Plaintiff/Petitioner hereby incorporates paragraphs 1 through 72 inclusive, as if fully set forth herein.

78. An actual controversy exists between the Plaintiffs/Petitioners and Defendants/Respondents in that the Plaintiffs/Petitioners contends that the documents requested are public records which must be promptly released to the Plaintiffs/Petitioners. Defendants/Respondents have repeatedly ignored the Plaintiffs/Petitioners' Public Records Act requests for access to these public documents. Therefore, the Plaintiffs/Petitioners and the public are, and will continue to be, unable to obtain access to the public records sought due to Defendants'/Respondents' acts. Accordingly, the Plaintiffs/Petitioners are entitled to an order pursuant to GOV. § 6258 declaring the records sought are subject to disclosure pursuant to the Public Records Act.

79. The Plaintiffs/Petitioners have incurred, and will incur, attorneys' fees in pursuing in this Court the relief sought.

80. The Plaintiffs/Petitioners allege that the access to copies of the documents sought from Santa Monica Community College District is of substantial interest and benefit to the public. The Plaintiffs/Petitioners further allege that it is, therefore, entitled to recover its attorneys' fees and other litigation costs, pursuant to GOV. § 6259.

WHEREFORE, Plaintiffs/Petitioners pray for:

1. An Order requiring Defendants/Respondents to show cause, if any, why they should not be

enjoined as hereinafter set forth during the pendency of this action;

2. A temporary, preliminary and permanent injunction compelling Defendants/Respondents, and each of them and their agents, servants, and employees, and all persons acting under, in concert with, or for defendants to provide Plaintiffs/Petitioners with copies of the aforementioned records on payment of a fee covering the costs to SMCCD of providing such copies;

3. Alternatively, that this Court issue an alternative writ of mandate commanding Defendants/Respondents to provide copies of the aforementioned records requested by the Plaintiffs/Petitioners, or to show cause before this Court at a time specified by Court order why it should not be done and why a peremptory writ should not issue;

4. On the return of the alternative writ and hearing on the order to show cause, a peremptory writ of mandate should issue under seal of this Court compelling SMCCD to immediately provide inspection and copies to all public records sought by the Plaintiffs/Petitioners.

5. For a declaration that the aforementioned records are subject to disclosure under the Public Records Act [GOV. § 6253] and that disclosure is not prohibited under the public interest exemption [GOV. § 6255].

6. For attorneys' fees and costs in this action according to proof pursuant to GOV. § 6259;

7. That this Court grants such other relief as may be just and proper.

VERIFICATION

I verify under penalty of perjury that the facts alleged in the foregoing complaint are true and correct to the best of my information, knowledge and/or belief.

Dated: September 7, 2005

LEE & FIELDS,
A Professional Corporation

By:

Edward Y. Lee
Attorney for Plaintiffs/Petitioners
MARTIN B. SCHAPIRO EXODUS
TRUST, dba PHOENIX GENESIS/
MBS LP, a California Limited
Partnership; DES MANTTARI,
Individually and as Trustee of the
MARTIN B. SCHAPIRO EXODUS
TRUST