| 1 | Eugene B. Elliot, State Bar No. 111475 | | |
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| 2 | Michael C. Wenzel, State Bar No. 215388 BERTRAND, FOX & ELLIOT | | |
| 3 | 2749 Hyde Street | | |
| 4 | San Francisco, CA 94102-1222 Telephone: (415) 353-0999 | | |
| 5 | Facsimile: (415) 353-0990 | | |
| 6 | Attorneys for Defendants DIABLO VALLEY COLLEGE and CONT | | |
| 7 | COSTA COMMUNITY COLLEGE DISTR | RICI | |
| 8 | UNITED STATES DISTRICT COURT | | |
| 9 | NORTHERN DISTRICT OF CALIFORNIA | | |
| 10 | | | |
| 11 | DR. SAMUEL THARPE, |) Case No. C11-02624 SBA | |
| 12 | Plaintiff, |) STIPULATED REQUEST FOR COURT | |
| 13 | v. | ORDER ENLARGING TIME TO FILE OPPOSITION AND REPLY BRIEF TO | |
| 14 | DIABLO VALLEY COLLEGE, | DEFENDANTS' MOTION TO STRIKE, OR IN THE ALTERNATIVE, DISMISS | |
| 15 | Defendant. | PLAINTIFF'S FIRST AMENDED | |
| 16 | | COMPLAINT; DECLARATION OF MICHAEL C. WENZEL IN SUPPORT | |
| 17 | | THEREOF | |
| 18 | | Date: February 28, 2012 | |
| 19 | | Time: 1:00 p.m. Courtroom: 1, 4 th Floor | |
| 20 | | Judge: Hon. Saundra B. Armstrong | |
| 21 | |)) | |
| 22 | | | |
| 23 | IT IS HEREBY STIPULATED by a | all parties to this action that the parties have agreed to | |
| 24 | request that this Court issue an order enlarging time for Plaintiff SAMUEL THARPE to file an | | |
| 25 | Opposition to Defendant CONTRA COSTA COMMUNITY COLLEGE DISTRICT'S | | |
| 26 | (erroneously sued herein as "DIABLO VALLEY COLLEGE") Motion to Strike Plaintiff's First | | |
| 27 | Amended Complaint pursuant to F.R.C.P. 12(f) or, in the alternative, to Dismiss Plaintiff's First | | |
| 28 | | 1 | |
| | BRIEF TO DEFENDANTS' MOTION TO STRI | R ENLARGING TIME TO FILE OPPOSITION AND REPLY IKE, OR IN THE ALTERNATIVE, DISMISS PLAINTIFF'S ON OF MICHAEL C. WENZEL IN SUPPORT THEREOF | |

FIRST AMENDED COMPLAINT; DECLARATION OF MICHAEL C. WENZEL IN SUPPORT THEREOF

Amended Complaint pursuant to F.R.C.P. 12(b)(6) ("Motion to Dismiss"), and for Defendant CONTRA COSTA COMMUNITY COLLEGE DISTRICT to file a Reply Brief to Plaintiff's Opposition accordingly. The parties further agree, subject to the continued availability on this Court's calendar, that the hearing date on this motion shall remain on calendar for February 28, 2012. The grounds for this Stipulated Request for Court Order Enlarging Time are as follows:

- 1. As Plaintiff is proceeding in the present matter in propia persona, and is not registered with the Court's electronic filing system, the DISTRICT serves Plaintiff with a paper copy of all documents filed with the Court.
- Following this Court's Order granting the DISTRICT's Motion to Dismiss plaintiff's original complaint, plaintiff filed a First Amended Complaint on October 6, 2011. The DISTRICT timely filed a Motion to Strike, or, in the alternative, Motion to Dismiss the First Amended Complaint on October 19, 2011. The motion is set for hearing on February 28, 2012. Counsel for Defendant believed that plaintiff was served with a copy of the DISTRICT's Motion on October 19, 2011, as the practice and procedure of defense counsel's firm during this entire matter has been to serve all documents on plaintiff that had been electronically filed with the Court.
- 3. On or about November 22, 2011, counsel for the DISTRICT received correspondence from plaintiff indicating he did not receive a written copy of the DISTRICT's Motion. Immediately upon receipt of Plaintiff's correspondence defense counsel attempted to verify service on plaintiff, but was unable to locate a proof of service.
- 4. Defense counsel therefore caused the DISTRICT's Motion to be served on plaintiff via Federal Express Overnight Delivery on November 29, 2011, and immediately prepared this Stipulated Request for a Court Order Enlarging Time, so that this Court may allow plaintiff additional time to file and serve his Opposition to the DISTRICT's Motion, and permit the DISTRICT time to file any Reply.

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| 1 | 5. The parties respectfully | propose the following schedule with respect to the | |
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| 2 | Motion: | | |
| 3 4 | 11 | ourteen (14) days from the date of service of the Order ranting the Parties' Stipulated Request to Enlarge Time | |
| 5 | 11 | Twenty-One (21) days from the date of the Order Granting the Parties' Stipulated Request to Enlarge Time | |
| 6 7 | Motion Hearing Date: For | ebruary 28, 2012 | |
| 8 9 | IT IS SO STIPULATED | | |
| | Dated: November 30, 2011 | DR. SAMUEL THARPE | |
| 10 | | By: /s/ Dr. Samuel Tharpe | |
| 11 | | Dr. Samuel Tharpe Plaintiff in Pro Per | |
| 12 | | | |
| 13 | Dated: November 30, 2011 | BERTRAND, FOX & ELLIOT | |
| 14 | | By: /s/ Michael C. Wenzel | |
| 15 | | Eugene B. Elliot Michael C. Wenzel | |
| 16 | | Attorneys for Defendants DIABLO VALLEY COLLEGE and | |
| 17 | | CONTRA COSTA COMMUNITY | |
| 18 | | COLLEGE DISTRICT | |
| 19 | <u>ORDER</u> | | |
| 20 | GOOD CAUSE APPEARING THEREFOR, and the parties' having stipulated the same, | | |
| 21 | the parties' stipulation is hereby APPROVED. Plaintiff shall have fourteen days from the date of | | |
| 22 | service of this Order to file an Opposition to Defendant's Motion to Dismiss. Defendant shall | | |
| 23 | have twenty-one days from the date this Order is served to file a Reply Brief to plaintiff's | | |
| 24 | Opposition. | | |
| 25 | IT IS SO ORDERED. | | |
| 26 | DATED:12/1/11 | fambre B. Ormitag | |
| 27 | | HON. SAUNDRA BROWNARMSTRONG United States District Judge | |
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| 1 | UNITED STATES DISTRICT COURT | | |
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| 2 | FOR THE | | |
| 3 | NORTHERN DISTRICT OF CALIFORNIA | | |
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| 6 | DR. SAMUEL THARPE, | | |
| 7 | | | |
| 8 | Plaintiff, | | |
| 9 | | | |
| 10 | v. | | |
| 11 | | | |
| 12 | DIABLO VALLEY COLLEGE et al, | | |
| 13 | D. f 1 | | |
| 14 | Defendant/ | | |
| 15 | | | |
| 16 | | | |
| 17 | Case Number: CV11-02624 SBA | | |
| 18 | | | |
| 19 | CERTIFICATE OF SERVICE | | |
| 20 | | | |
| 21 | | | |
| 22 | I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District | | |
| 23 | Court, Northern District of California. | | |
| 24 | | | |
| 25 | That on December 1, 2011, I SERVED a true and correct copy(ies) of the attached, by placing | | |
| 26 | said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by | | |
| 27 | depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office | | |
| 28 | delivery receptacle located in the Clerk's office. | | |
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STIPULATED REQUEST FOR COURT ORDER ENLARGING TIME TO FILE OPPOSITION AND REPLY BRIEF TO DEFENDANTS' MOTION TO STRIKE, OR IN THE ALTERNATIVE, DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT; DECLARATION OF MICHAEL C. WENZEL IN SUPPORT THEREOF

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| 5 | |
| 6 | Samuel Tharpe |
| 7 | 772 Lindsay Ave. |
| 8 | Rohnert Park, CA 94928 |
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| 10 | Dated: December 1, 2011 |
| 11 | Richard W. Wieking, Clerk |
| 12 | By: LISA R CLARK, Deputy Clerk |
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