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COMMUNITY COLLEGE DISTRICT and individually
6 named employees

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 CHIN-LI MOU,

11 Plaintiff,

12 v.

13 WEST VALLEY COLLEGE; et. al.

14 Defendants.

) Case No: C09-01910 JF

) **DEFENDANT'S OPPOSITION TO**
) **PLAINTIFF'S NOTICE OF MOTION**
) **AND MOTION FOR PRELIMINARY**
) **INJUNCTION**

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15
16 **INTRODUCTION**

17 Defendants WEST VALLEY MISSION COMMUNITY COLLEGE DISTRICT (hereinafter
18 "College District") and its employees sued herein hereby submit this Opposition to Plaintiff CHIN-LI
19 MOU (hereinafter "Plaintiff")'s Motion for Preliminary Injunction.

20 Plaintiff is a student at West Valley College who was asked to leave the women's restroom for
21 a few minutes so that a janitor could enter and clean it. Plaintiff refused to do so, and thereafter created
22 a disturbance which resulted in her arrest. The College District suspended Plaintiff for her rude,
23 belligerent and disruptive behavior towards its staff. Plaintiff seeks an injunction against the College
24 District so that she can return to class, receive her previously awarded scholarship, and avoid being
25 harassed or threatened by College District officials.

26 For the reasons stated herein, Plaintiff's Motion for a Preliminary Injunction is meritless.
27 Accordingly, the College District respectfully requests that this Court deny Plaintiff's Motion in its
28 entirety.

STATEMENT OF FACTS**1. Bathroom Encounter on April 8, 2009**

On several occasions, beginning on or about March 2009, Anadelino Fernandes, a custodian, came to the West Valley College Career Center asking for help to check if any students were still inside the women's restroom nearest the Career Center. Mr. Fernandes needed to clean the restroom and was having trouble with one student (Chin-Li Mou) not leaving. Dr. Fred Prochaska, Dean of Career Education and Workforce Development, asked his assistant, Cathy Aimonetti, to help the custodian. (Declaration of Cathy Aimonetti, at ¶3, attached as Exhibit E; Declaration of Fred Prochaska, at ¶3, attached as Exhibit F.)

On April 8, 2009, Ms. Aimonetti noticed Mr. Fernandes standing outside the door of the same restroom, waiting for everyone to come out so that he could clean it. (Aimonetti, at ¶3.) At Mr. Fernandes' request, Ms. Aimonetti checked to see if the restroom was empty. (*Id.*) There were three students using the restroom. (*Id.*) Ms. Aimonetti told them that the custodian was outside waiting to clean the restroom. (*Id.*) Two students left quickly, but one person remained in the handicap stall. (*Id.*) This person turned out to be Plaintiff. (*Id.*) When she came out, Ms. Aimonetti explained again that the custodian was waiting to clean the restroom. (*Id.*) She responded by saying, "So?" (*Id.*) Ms. Aimonetti explained that the custodian needed only a few minutes to clean the restroom and that Plaintiff could come back when he was done. (*Id.*) Plaintiff yelled, "So?" and refused to leave. (*Id.*) Ms. Aimonetti told the custodian what happened and left to go back to her office to ask Dean Prochaska what she ought to do. (*Id.*) When she got back to Dean Prochaska's office, Ms. Aimonetti could hear Plaintiff yelling at Mr. Fernandes in the corridor. (*Id.*) Ms. Aimonetti approached Plaintiff and asked her if she would like to speak with the Dean. (*Id.*) Plaintiff yelled obscenities and walked off. (*Id.*)

2. Confrontation at Career Center on April 9, 2009

The next day, on April 9, 2009, at about 2:00 p.m., Plaintiff came to Ms. Aimonetti's office and confronted her about the restroom incident the day before. (Aimonetti Decl., at ¶5; Prochaska Decl. at ¶4.) Plaintiff acted very rude, saying things like, "What are you, the bathroom police?", "I'm an Asian American, you have a problem with that?", "I can take as long as I want, I went to the custodian's boss, he said okay." "I need to take my medication and drink water slowly." (Aimonetti Decl., at ¶5.) Plaintiff

1 became belligerent and started yelling at Ms. Aimonetti. (*Id.*) Dean Prochaska was in the office next
2 door and heard everything taking place. (Prochaska Decl., at ¶4.) Ms. Aimonetti asked Plaintiff if she
3 wanted to speak with the Dean. Plaintiff refused to speak with the Dean, but also would not leave.
4 (Aimonetti, at ¶5.) She kept repeating the same things loudly, and became very disruptive to students
5 and office personnel. (*Id.*) Eventually, Ms. Aimonetti turned the conversation over to Dean Prochaska
6 as he could see and hear Plaintiff. Plaintiff was standing in the doorway between Dean Prochaska's and
7 Ms. Aimonetti's offices. (*Id.*) In an effort to appease Plaintiff, Dean Prochaska explained that there
8 were other restrooms in the building and that Plaintiff could use those other restrooms when hers was
9 being cleaned. (Prochaska Decl., at ¶4.) He also stated that she could drink her water outside of the
10 restroom and that there were benches in the immediate area. Plaintiff continued talking loudly but
11 eventually left and walked away. (*Id.*)

12 At around 2:20 p.m., Plaintiff returned to Ms. Aimonetti's office and continued talking very
13 loudly about the same things as before. (Aimonetti Decl., at ¶6.) One of the employees in Ms.
14 Aimonetti's office, Rebecca McConnell, called the police because Plaintiff was disrupting the office.
15 (*Id.*) However, Plaintiff left Ms. Aimonetti's office before the Police arrived. (*Id.*) The Police went
16 looking for Plaintiff in the restroom but could not find her there. (*Id.*) Ms. Aimonetti and Ms. McConnell
17 explained to the Police that Plaintiff usually could be found in the restroom between 4:15 p.m. and 4:30
18 p.m. when the custodian needed to clean it. (*Id.*) The Police advised that they would return at that time
19 to observe how Plaintiff responded to the custodian. (*Id.*)

20 At about 2:45 p.m., Ms. Aimonetti went across the corridor to collect her mail from the Applied
21 Arts and Science Division Office. Plaintiff approached Ms. Aimonetti and threatened her, saying "*You*
22 *better watch out, I'm watching you and I'll get you.*" Ms. Aimonetti reported this encounter to Cass
23 Owen, Dean Prochaska and Rebecca McConnell. (Aimonetti Decl., at ¶7.)

24 At about 4:15 p.m., Ms. Aimonetti opened the side door of the Career Programs office to keep
25 an eye out for the custodian to let him know that Plaintiff was particularly upset today. Almost
26 immediately after Ms. Aimonetti opened the door, Plaintiff yelled from the doorway "*You stalking me,*
27 *you crazy bitch?*" (Aimonetti Decl. at ¶8.) Rebecca McConnell overheard Plaintiff and called the Police
28 because Plaintiff was being disruptive again. (*Id.*)

1 **3. Police Respond to Disturbance**

2 At about 4:25 p.m. Officer Marcus Lindberg responded to the Applied Arts and Science Building
3 at West Valley College on account of a report of a disruptive student – Plaintiff. (Declaration of Marcus
4 Lindberg at ¶3, attached as Exhibit G.) Officer Lindberg was advised that Mr. Fernandes had had several
5 prior encounters with Plaintiff over the past few weeks. (*Id.*) Mr. Fernandes explained that it was quite
6 common for Plaintiff to refuse to leave the restroom when asked to do so and that he has had to ask Ms.
7 Aimonetti for help so that he could complete his custodial duties. (*Id.*)

8 Mr. Fernandes escorted Officer Lindberg to the women’s restroom next to the Career Center and
9 explained that Plaintiff was inside. (Lindberg Decl., at ¶4.) Officer Lindberg knocked on the door,
10 announced his presence and asked if Plaintiff was inside. (*Id.*) A female voice was heard, saying, “Ya,
11 I’m pooping.” (*Id.*) Officer Lindberg told Plaintiff to finish her business because it was time to leave.
12 (*Id.*) He waited about 3 or 4 minutes by the door for Plaintiff to finish. (*Id.*) Next, he heard someone
13 open a locker inside the restroom. (*Id.*) Officer Lindberg asked Plaintiff several more times to come out,
14 but she remained inside. (*Id.*) Accordingly, Officer Lindberg walked in and found Plaintiff standing next
15 to Locker No. 50. (*Id.*) Plaintiff appeared disheveled and emotionally distressed. (*Id.*) She waived her
16 arms in the air and repeatedly told Officer Lindberg, “I don’t have to go, you stupid.” (*Id.*)

17 Over the course of the next 3 or 4 minutes, Officer Lindberg told Plaintiff several more times that
18 she had to leave campus because of her behavior during the earlier part of the day. (*Id.*) Plaintiff became
19 more animated and angry each time she was told why she had to leave. (*Id.*) At one point, Plaintiff
20 walked up to Office Lindberg, stood about 12 to 16 inches away, pointed her finger at his face and said,
21 “No, I don’t have to leave, you stupid!” (*Id.*) Again, Officer Lindberg told Plaintiff that she had to leave
22 but she remained in the restroom. (*Id.*) Because Plaintiff refused repeated requests to leave, Officer
23 Lindberg tried to escort her out of the restroom. (*Id.* at ¶5.) Without warning, Plaintiff struck Officer
24 Lindberg in the right forearm. (*Id.*) Officer Lindberg then turned Plaintiff around and tried to control
25 her arms and told her she was under arrest and to stop resisting. (*Id.*) Plaintiff kept yelling and swinging
26 her arms around making it difficult for Officer Lindberg to control her. (*Id.*) Officer Lindberg grabbed
27 Plaintiff’s arm and tried to pull her out of the restroom. (*Id.*)

28 A short while later, Officer Kamfirouzi responded to the scene. (Lindberg Decl., at ¶7.) Officer

1 Kamfirouzi helped Officer Lindberg handcuff Plaintiff. (*Id.*) Thereafter, Officer Lindberg escorted
2 Plaintiff to his patrol car, completed a Notice of Withdrawal of Consent prohibiting Plaintiff from
3 entering West Valley and Mission College for 14 days, and drove her to the Santa Clara Main Jail. (*Id.*)

4 At the Main Jail, Officer Lindberg tried to give Plaintiff the Notice of Withdrawal of Consent.
5 (Lindberg Decl., at ¶9.) Because Plaintiff refused to sign the Notice, Officer Lindberg placed a copy of
6 the Notice in Plaintiff's property bag. (*Id.*) He advised Plaintiff that she was not permitted to come onto
7 the West Valley or Mission College campus without an appointment. (*Id.*) If she did so, she would be
8 arrested for trespassing. (*Id.*) Plaintiff was booked into the Santa Clara County Main Jail. (*Id.*)

9 **4. Plaintiff Is Suspended**

10 On April 14, 2009, Plaintiff met with V.P. Smith to discuss the April 9, 2009 incident.
11 (Declaration of Ernest Smith, at ¶8, attached as Exhibit J.) In this meeting, Plaintiff recounted what
12 happened from her perspective. V.P. Smith explained to Plaintiff that if College staff requested her to
13 leave the restroom, she should try to come out as quickly as possible. (*Id.*) Following the meeting, V.P.
14 Smith decided that Plaintiff could remain on campus only to attend class and for no other purpose. (*Id.*)
15 He explained that he needed time to review Plaintiff's statements of what happened, the numerous
16 complaints he had received about the April 9, 2009 incident and others leading up to the situation and
17 scheduled a follow up meeting on April 22, 2009. (*Id.*)

18 Meanwhile, V.P. Smith received a number of complaints from West Valley College staff about
19 Plaintiff approaching them to speak about the April 9, 2009 incident. V.P. Smith explained to these staff
20 members that they were under no obligation to speak with Plaintiff and that they could refer her to V.P.
21 Smith if they did not feel comfortable speaking with Plaintiff. (Smith Decl., at ¶9.)

22 At their April 22, 2009 meeting, V.P. Smith explained to Plaintiff that complaints had been made
23 by a large number of people from Career Programs Office, Dean of Career Education and Workforce
24 Development, the library, the Educational Transition Program, custodial staff, and Health Services.
25 (Smith Decl., at ¶10.) He explained that because Plaintiff's conduct on April 9, 2009, constituted a
26 violation of Student Code of Conduct, Section 5.19.2, A, B, C and P, and of Education Code section
27 87708(A) and (B), she was being placed on disciplinary suspension effective immediately. (*Id.*) Plaintiff
28 asked to complete the semester because she hoped to transfer to another college. (*Id.*) However, because

1 her behavior had become threatening to others, V.P. Smith denied Plaintiff's request. (*Id.*) V.P. Smith
2 confirmed his decision in a letter on April 27, 2009. (*Id.* at ¶11.) V.P. Smith explained to Plaintiff that
3 she was being dropped from all her classes, that her Norma Crawford scholarship would be rescinded,
4 and that her suspension would last until January 2010. (*Id.*) V.P. Smith also explained that Plaintiff had
5 the right to appeal this decision to the Student Disciplinary Hearing Board. (*Id.*, at ¶12.)

6 **5. Plaintiff Appeals to Student Disciplinary Hearing Board**

7 On May 6, 2009, Plaintiff requested an appeal of her suspension to the Student Disciplinary
8 Hearing Board. (Smith Decl., at ¶13.) All committee members were quickly assembled and Plaintiff was
9 advised on May 13, 2009, that her appeal would be heard the next day on May 14, 2009. (*Id.*, at ¶14.)
10 Because Plaintiff had a conflicting medical appointment, her appeal had to be rescheduled. (*Id.*)
11 However, Plaintiff indicated that it was her belief that it was too late for any hearing because she had
12 been dropped from all her classes. (*Id.*, at ¶15.)

13 On May 21, 2009, Plaintiff was advised that her appeal was rescheduled for June 2, 2009. (Smith
14 Decl., at ¶16.) Plaintiff responded by stating, "Let court decided if WVC's appeal process is proper or
15 not." (*Id.*) V.P. Smith's office tried clarify Plaintiff's statement, but was ignored. (*Id.*)

16 The Student Disciplinary Hearing Board convened on June 2, 2009, to consider Plaintiff's appeal.
17 (Smith Decl., at ¶17.) Plaintiff did not personally appear at this hearing. (*Id.*) The Hearing Board
18 considered all the information provided by Plaintiff and others, and determined that V.P. Smith properly
19 suspended Plaintiff for the remainder of Spring Semester 2009 and Fall Semester 2009. (*Id.*) A notice
20 of this decision was issued on June 11, 2009. (*Id.*)

21 **6. Plaintiff Lodges Complaint Against Dean Prochaska**

22 Meanwhile, on April 14, 2009, Plaintiff left a voicemail message with David Fishbaugh, the
23 Dean of Instruction at West Valley College, stating that she wished to complain about Dean Prochaska.
24 (Declaration of David Fishbaugh at ¶4, attached as Exhibit R.) Plaintiff was advised that she needed to
25 submit a signed written statement, setting forth her concerns with Dean Prochaska. (*Id.*)

26 Plaintiff complained that on April 8 and April 9, Dean Prochaska conspired with his staff and
27 police to harass her for using the bathroom, thereby violating her due process, equal protection, First
28 Amendment, Fourth Amendment and Eighth Amendment rights. (Fishbaugh at ¶9.)

1 Dean Fishbaugh investigated these allegations and sent Plaintiff his findings on May 6, 2009.
 2 (Fishbaugh at ¶11.) Dean Fishbaugh concluded that Dean Prochaska had not conspired with his staff
 3 or the police to harass Plaintiff, and that Dean Prochaska had not violated Plaintiff's rights. (*Id.*)
 4 Plaintiff was advised that if she did not agree with Dean Fishbaugh's decision, she could appeal to
 5 President Philip Hartley. Plaintiff did not appeal Dean Fishbaugh's decision. (Declaration of Philip
 6 Hartley, at ¶5, attached as Exhibit X.)

7 **7. Plaintiff Is a Vexatious Litigant**

8 Plaintiff has a habit of disruptive behavior and consistently believes that others are harassing her.
 9 Over the past two years, Plaintiff has filed two other lawsuits against the California State University and
 10 the City of San Jose, alleging violations of her civil rights. (See Declaration of Eric Shiu, at ¶¶4, 5,
 11 attached as Exhibit A.) She also was the subject of a civil harassment action brought by Lola Robles.
 12 (Shiu Decl., at ¶6.) In this current lawsuit, Plaintiff has named a number of individuals who have no
 13 involvement with the April 9, 2009 incident, including Dalton C. Rolen, Laura Lorman, Philip Hartley
 14 and John Hendrickson. (Declaration of Dalton C. Rolen, at ¶3, attached as Exhibit Z; Declaration of
 15 Laura Lorman at ¶3, attached as Exhibit AA; Declaration of Philip Hartley at ¶6, attached as Exhibit X;
 16 Declaration of John Hendrickson at ¶3, attached as Exhibit BB.)

17 **LEGAL ARGUMENT**

18 A preliminary injunction is a provisional remedy issued prior to final disposition of the litigation.
 19 Its function is to preserve the status quo and to prevent irreparable loss of rights prior to judgment.
 20 (*Sierra On-Line, Inc. v. Phoenix Software, Inc.* (9th Cir., 1984) 739 F.2d 1415, 1422.) A preliminary
 21 injunction is a **drastic and extraordinary** remedy that is not to be routinely granted. (*Intel Corp. v. ULSI*
 22 *Systems Technology, Inc.* (Fed. Cir., 1993) 995 F.2d 1566, 1568.) The basis for injunctive relief in the
 23 federal courts has always been irreparable injury and the inadequacy of legal remedies. (*Weinberger v.*
 24 *Romero-Barcelo* (1982) 456 U.S. 305, 312.)

25 An injunction never issues as a matter of course. A court must balance the competing claims of
 26 injury and consider the effect on each party of granting or withholding the requested relief. Although
 27 particular regard should be given to the public interest, a federal judge is not mechanically obligated to
 28 grant an injunction for every violation. (*Amoco Production Co. v. Village of Gambell, Alaska* (1987)

1 480 U.S. 531.) A plaintiff seeking a preliminary injunction must establish: (a) a likelihood of success
 2 on the merits; (b) a likelihood of irreparable harm in the absence of a preliminary injunction; (c) the
 3 balance of equities tips in favor of granting the preliminary injunction; and (d) an injunction is in the
 4 public interest. (*Amoco*, supra, at 542.)

5 **1. Plaintiff Is Not Likely to Prevail on the Merits of Her Claim**

6 To obtain a preliminary injunction, Plaintiff must show that she is “likely” to prevail on the
 7 merits. (*Ashcroft v. ACLU* (2004) 542 U.S. 656, 665.) This means that Plaintiff must demonstrate a
 8 likelihood of prevailing on any affirmative defense as well as on Plaintiff’s case in chief. (*National Steel*
 9 *Car, Ltd. v. Canadian Pac. Ry.* (Fed. Cir., 2004) 357 F.3d 1319, 1325; see also *A&M Records, Inc., v.*
 10 *Napster, Inc.* (9th Cir. 2001) 239 F.3d 1004, 1015, fn 3.) A likelihood of success requires a balancing
 11 of interests: the greater the risk of injury to the defendant if the injunction is granted, the stronger a
 12 showing a plaintiff will need to make on the merits. (See *Steakhouse, Inc. v. City of Raleigh, N.C.* (4th
 13 Cir. 1999) 166 F.3d 634, 637.) Conversely, if a moving party raises a substantial question and the
 14 equities are otherwise strongly in his or her favor, the showing of success on the merits can be less.
 15 (*Dataphase Systems, Inc. v. C.L. Systems, Inc.* (8th Cir., 1981) 640 F.2d 109, 113.)

16 Here, Plaintiff appears to assert that she was (a) “expelled” without due process (Motion at 2,
 17 lines 14-15); (b) told not to discuss the April 9, 2009 incident with other College staff, which allegedly
 18 violates her rights under the First Amendment (Motion, at lines 19-22); (c) told not to use the restroom
 19 for more than two minutes (Motion, at 4, lines 1-2); and (d) prohibited from filing a report of racial
 20 discrimination against unnamed staff members because she was not permitted to enter West Valley
 21 College (Motion, at 5, lines 307). It is not clear from Plaintiff’s Motion what theories have been asserted
 22 for purposes of her request for a preliminary injunction, and her motion is not supported by an affidavit
 23 signed under oath setting forth the facts supporting her request. In any case, Plaintiff alleges violations
 24 of due process, equal protection, and First Amendment rights, 42 U.S.C. § 1983, 1985, 1986, Civil Code
 25 section 51 and Penal Code section 422.6. The College District will address these below.

26 **(A) No Deprivation of Federally Protected Right under Color of State Law**

27 Plaintiff alleges violations of her rights under the Due Process Clause, the Equal Protection
 28 Clause and under the First Amendment. Defendant interprets these alleged violations to be the basis

1 upon which Plaintiff asserts a cause of action under 42 U.S.C. § 1983. There are two essential elements
 2 to a Section 1983 action: first, that the defendant acted under “color of law”; and, second, that the
 3 defendant's conduct deprived the plaintiff of a federally protected right. (*Haygood v. Younger*, 769 F.2d
 4 1350, 1353 (9th Cir.1985).) As demonstrated below, Plaintiff cannot show that she has been deprived
 5 of a federally protected right and therefore is not likely to prevail on her claim under Section 1983.

6 (i) **Plaintiff Was Not Expelled Without Due Process.** As an initial matter, Plaintiff was
 7 not expelled from West Valley College. She was only suspended until January 2010. (Smith Decl., at
 8 ¶11.) Nonetheless, Plaintiff's allegation that she was disciplined without due process is meritless
 9 because she was given the opportunity to present her side of the story before she was suspended and the
 10 opportunity to challenge her suspension.

11 A Section 1983 claim based upon procedural due process has three elements: (1) a liberty or
 12 property interest protected by the Constitution; (2) a deprivation of the interest by the government; (3)
 13 lack of process. (See *Portman v. County of Santa Clara* (9th Cir. 1993) 995 F.2d 898, 904.) A student
 14 facing suspension is entitled to procedural due process. (See *Goss v. Lopez* (1975) 419 U.S. 565, 95 S.Ct.
 15 729, 42 L.Ed.2d 725.) Students facing suspension from school must be given notice and afforded some
 16 kind of hearing before any punishment is invoked. (See *James P. v. Lemahieu* (2000) 84 F.Supp.2d
 17 1113, 1119; *Coplin v. Conejo Valley Unified School Dist.* (1998) 903 F.Supp 1377, 1387 [due process
 18 requires that a suspended student be informed of charges, presented with evidence and given an
 19 opportunity to tell his side of the story].) A formal hearing is not required so long as a student is allowed
 20 the opportunity to characterize his or her conduct in what s/he believes is the proper context. (See *Board*
 21 *of Curators v. Horowitz*, 435 U.S. 78, 84-85 (1978); *Goss v. Lopez*, 419 U.S. 565, 581 (1975).)

22 Plaintiff was provided all the due process that is required. She was given the opportunity to
 23 characterize her conduct in what she believes is the proper context. Plaintiff personally met with V.P.
 24 Smith on April 14, 2009, to tell her side of the story. (Smith Decl., at ¶8.) V.P. Smith considered
 25 Plaintiff's explanation. He also considered the complaints that he had received about Plaintiff. As set
 26 forth above, Plaintiff was rude and belligerent in front of college staff; she threatened one staff member
 27 and was generally loud and disruptive to the Career Center office. (Aimonetti Decl., at ¶¶ 3-8; Prochaska
 28 Decl., at ¶¶ 4-5.) Plaintiff also resisted a police officer's instructions to leave a restroom and was cited

1 under Penal Code section 626.4, which allows the college to withdraw permission for any person to
 2 remain on campus for up to 14 days when there is reasonable cause to believe that such person has
 3 willfully disrupted the orderly operation of the campus. (Lindberg Decl., at ¶¶ 4-6, 9; Pen. Code §
 4 626.4.) Eventually, V.P. Smith decided to suspend Plaintiff through January 2010 for her rude,
 5 belligerent and disruptive behavior. (*Id.* at ¶10.) Notice of Plaintiff's suspension was sent on April 27,
 6 2009, which advised that the suspension could be appealed to the Student Disciplinary Hearing Board.
 7 (*Id.*, at ¶ 11.) Plaintiff did so. (*Id.* at ¶13.) The College District twice tried to arrange a hearing for
 8 Plaintiff's appeal. (*Id.* at ¶¶ 14-16.) Eventually, the hearing was conducted on June 2, 2009. (*Id.* at ¶¶
 9 16-17.) Plaintiff chose not to appear at the hearing. (*Id.* at ¶ 17.) The College District followed its
 10 procedures to review student grievances and determined that V.P. Smith's suspension was appropriate.
 11 (*Id.*) Because Plaintiff had the opportunity to explain herself before any disciplinary decision was made,
 12 and was given a fair opportunity to challenge the suspension, she has not been disciplined without due
 13 process.

14 (ii) **No Violation of Equal Protection.** Plaintiff further asserts that her rights to equal
 15 protection were violated because she was the only person prohibited from using the women's restroom
 16 for more than two minutes. (Motion, at 4, lines 13-17.) She alleges that V.P. Smith's threat to cut her
 17 use of the restroom "short" is arbitrary, capricious and inhuman. (Motion, at 4, lines 7-11.) Plaintiff's
 18 allegation is meritless because everyone as a matter of courtesy and common sense is asked to leave a
 19 restroom whenever a janitor needs to clean the restroom.

20 To succeed on a Section 1983 equal protection claim, a plaintiff must prove that the defendant
 21 acted in a discriminatory manner and that the discrimination was intentional. (*See Reese v. Jefferson*
 22 *School Dist. No. 14J* (9th Cir., 2000) 208 F.3d 736, 740, citing *Federal Deposit Ins. Corp. v. Henderson*,
 23 940 F.2d 465, 471 (9th Cir.1991).)

24 Here, Plaintiff cannot show that West Valley College acted in a discriminatory manner or that
 25 the discrimination was intentional. The evidence shows that any action by the College District was taken
 26 solely because Plaintiff was disruptive and hostile towards College staff and not for any discriminatory
 27 reason. (Aimonetti, at ¶¶ 3-8, 9; Prochaska, at ¶¶ 4-7, 9; Smith Decl., at ¶¶ 11, 18; Lindberg Decl., at
 28 ¶¶ 8, 11.) The college has a legitimate need to maintain a restroom in a clean and sanitary condition for

1 faculty, staff and students. All persons are asked to leave the women's restroom when a janitor needs
 2 to clean it. (See Aimonetti Decl., at ¶ 3 [all individuals using the restroom were asked to leave, but only
 3 Plaintiff refused to do so]; *Jensen v. Reeves* (1999) 45 F.Supp.2d 1265 [suspension of elementary school
 4 student for misconduct did not violate equal protection absent showing that similarly situated students
 5 had been treated differently].) Even if Plaintiff was expressly asked to leave, there would be no equal
 6 protection violation because she was known to use the restroom facilities for extended periods of time
 7 even when the janitor was waiting to clean it. (See, e.g., *Craig v. Selma City School Board* (1992) 801
 8 F.Supp 585 [close monitoring of students who had been involved in series of fights was legitimate and
 9 strict conduct probation was rationally related to achieving legitimate objective].)

10 **(iii) No Violation of First Amendment.** Plaintiff alleges that her First Amendment Rights
 11 have been violated, but does not state specifically the facts that give rise to any violation of that right.

12 To establish a First Amendment retaliation claim, an ordinary citizen must show that (a) he was
 13 engaged in a constitutionally protected activity; (b) the defendant's actions caused him to suffer an injury
 14 that would chill a person of ordinary firmness from continuing to engage in that activity; and (c) the
 15 defendant's adverse actions were substantially motivated against the plaintiff's constitutionally protected
 16 conduct. (See *Mendocino Envtl. Ctr. v. Mendocino County* (9th Cir.1999) 192 F.3d 1283, 1300-01; see
 17 also *Lashley v. Wakefield* (2007) 483 F.Supp.2d 297, 300.) The First Amendment, however, will not
 18 prevent school officials from disciplining students who materially disrupt the educational process. (See
 19 *Lovell By and Through Lovell v. Poway Unified School Dist.* (9th Cir. 1996) 90 F.3d 367, 371.)

20 **(1) Plaintiff Not Prevented From Discussing the April 8, 2009 Incident.** Here, Plaintiff
 21 asserts that she and other staff at West Valley College were prevented by V.P Smith from speaking about
 22 the April 9, 2009 incident. (Motion, at 2, lines 18-22.) V.P. Smith did no such thing. Plaintiff received
 23 a 14-day Withdrawal of Consent and was prohibited from entering the college campus because of her
 24 rude, belligerent and disruptive behavior on April 9, 2009. (Withdrawal of Consent, attached as Exhibit
 25 I.) V.P. Smith modified the terms of this prohibition so that Plaintiff could continue attending her classes
 26 while he considered what action to take. (Smith Decl., at ¶8.) However, V.P. Smith received a number
 27 of complaints about Plaintiff approaching staff to discuss the April 9, 2009 incident. V.P. Smith
 28 explained to these staff members that they were under no obligation to speak with Plaintiff and that they

1 could refer Plaintiff to V.P. Smith if they did not feel comfortable speaking with her directly. (*Id.* at ¶9.)
 2 Under these circumstances, there has been no violation of Plaintiff's First Amendment Rights at all.

3 (2) **Plaintiff Was Not Prevented from Filing a Report of Racial Discrimination.** Plaintiff
 4 also appears to allege that her exclusion from the West Valley College campus violated her First
 5 Amendment Rights because it prevented her from filing a report of racial discrimination. (Motion, at 5,
 6 lines 3-7.) This allegation is meritless. As set forth above, Plaintiff appealed her suspension to the
 7 Student Disciplinary Hearing Board (Smith Decl., at ¶13) and submitted a complaint against Dean
 8 Prochaska (Fishbaugh Decl., at ¶9). Plaintiff's filing of these two grievances greatly undermines her
 9 claim that she was prevented from filing a report of racial discrimination. Since Plaintiff clearly was
 10 able to file complaints with West Valley College, her allegation that her First Amendment rights have
 11 been violated is meritless.

12 (B) **No Conspiracy to Violate Plaintiff's Civil Rights.** Although unclear from the Motion,
 13 Plaintiff appears to state that there was a conspiracy in violation of 42 U.S.C. § 1985(3) to prevent her
 14 from staying in the women's restroom for more than two minutes, thereby violating her civil rights.
 15 (Motion, at 4, line 18.) No College District employee conspired to violate Plaintiff's civil rights.

16 The elements of a Section 1985(3) claim are: (1) the existence of a conspiracy to deprive the
 17 plaintiff of the equal protection of the laws; (2) an act in furtherance of the conspiracy and (3) a resulting
 18 injury. (*Scott v. Ross* (9th Cir.1998) 140 F.3d 1275, 1284.) A conspiracy must be motivated by some
 19 racial or other class-based, invidious discriminatory animus. (See *Mustafa v. Clark County Sch. Dist.*
 20 (9th Cir.1998) 157 F.3d 1169, 1181 [evidence of discriminatory animus is needed for conspiracy claim
 21 under Section 1985].).

22 Here, Plaintiff has not put forward any evidence of a conspiracy to deprive her of a constitutional
 23 right. Plaintiff has no constitutional right to be in a restroom at the expense of a janitor whose job is to
 24 clean the restroom. All students are required to comply with the requests of college staff who need to
 25 perform their duties. (See Code of Student Conduct § 5.19.2(P) [students are required to comply with
 26 verbal directions of college staff or police who are acting in the performance of their duties], attached
 27 as part of Exhibit M.) As a matter of common sense and courtesy, everyone is expected to leave a
 28 restroom so that a janitor can clean it. The mere fact that the police was called to respond to Plaintiff's

1 disruptive behavior is no evidence of a conspiracy because making a police report does not form a
 2 conspiracy. (See, e.g., *McKenzie v. Lamb* (9th Cir. 1984) 738 F.2d 1005 [individuals who did no more
 3 than inform police of suspected criminal activity, and who played no part in arrests and seizures, could
 4 not be held liable for participation in alleged conspiracy].) Also, Plaintiff has not produce any evidence
 5 of a conspiracy motivated by a discriminatory animus. Any discriminatory motive is denied.

6 (C) **No Negligence to Prevent Conspiracy to Violate Civil Rights.**

7 Plaintiff also appears to assert a claim under 42 U.S.C. § 1986, which provides a cause of action
 8 against parties who fail to prevent conspiracies to violate the civil rights of other people. Specifically,
 9 any person who knows of a conspiracy to violate civil rights, and who has the power to prevent the rights
 10 violation but refuses or neglects to do so, is liable to the person injured. (See *Delta Savings Bank v.*
 11 *United States of America* (9th Cir. 2001) 265 F.3d 1017, 1025; 42 U.S.C. § 1986.) To state a cause of
 12 action under 42 U.S.C. § 1986, a plaintiff must also state a cause of action under 42 U.S.C. § 1985. (See
 13 *Trerice v. Pedersen* (9th Cir., 1985) 769 F.2d 1398, 1043.) Here, Plaintiff offers no evidence that there
 14 was a conspiracy to deprive her of any civil right because of her ethnicity, race or other protected
 15 classification. As such, there cannot be any negligence to prevent the alleged conspiracy.

16 (D) **No Violation of the Bane Act.**

17 Plaintiff appears to allege a right under the Bane Act (Civil Code section 51.7) to use the
 18 women's restroom free from violence or threat of violence on account of her race or ethnicity. (Motion,
 19 at 4, lines 13-19.) Civil Code section 51.7 provides that all persons have the right to be free from
 20 violence or threat of violence because of, among other things, their race. (Civ. Code § 51.7)

21 Here, Plaintiff's Section 51.7 claim fails because she cannot show that any action was taken
 22 against her on account of her race or ethnicity. As demonstrated by the Declaration of Officer Lindberg,
 23 Ms. Plaintiff was asked repeatedly to leave the restroom because a janitor was waiting to clean the
 24 restroom and she was eventually arrested because she struck the arresting police officer in the arm.
 25 (Lindberg Decl., at ¶ 5.) Plaintiff presents no evidence whatsoever that she suffered violence or a threat
 26 of violence because of her ethnicity or race or other protected classification.

27 Plaintiff's claim under Civil Code section 52.1 is equally meritless. Civil Code section 52.1
 28 provides that an injunction may be sought if any person interferes with the exercise of Constitutional

1 rights. (Civ. Code § 52.1, emphasis added.) Here, Plaintiff's Section 52.1 claim fails because she has
 2 no constitutional right to use the women's restroom for as long as she chooses in defiance of a janitor's
 3 reasonable request to clean the restroom for the benefit of all faculty, staff and students.

4 **(E) No Standing to Assert Hate Crime in Violation of Penal Code § 422.6**

5 Plaintiff asserts a violation of Penal Code section 422.6(a), which generally provides that no
 6 person shall by force or threat of force deny someone any right or privilege secured by the laws of the
 7 United States and of the State of California because of his or her race, religion, ancestry, national origin
 8 or sexual orientation. (Penal Code § 422.6) Plaintiff offers no support for the proposition that Penal
 9 Code section 422.6 creates a private right of action for injunctive relief or facts showing that her
 10 constitutional rights have been violated by force or threat of force because of her race or ethnicity.

11 **(F) Equities Do Not Favor Issuance of an Injunction**

12 As set forth above, a preliminary injunction is a *drastic and extraordinary* remedy that is not to
 13 be routinely granted. (*Intel Corp. v. ULSI Systems Technology, Inc.* (Fed. Cir., 1993) 995 F.2d 1566,
 14 1568.) A court must balance the competing claims of injury and consider the effect on each party of the
 15 granting or withholding of the requested relief. Although particular regard should be given to the public
 16 interest, a federal judge is not mechanically obligated to grant an injunction for every violation. (*Amoco*
 17 *Production Co. v. Village of Gambell, Alaska* (1987) 480 U.S. 531, 542.)

18 Here, the equities weigh strongly against issuance of a preliminary injunction. The College
 19 District has a strong and legitimate interest in maintaining a clean and safe environment for its faculty,
 20 staff and students. Plaintiff has no constitutional right use the women's restroom whenever and for
 21 however long she chooses when a janitor reasonably requests to clean the restroom. Plaintiff has no
 22 right to disrupt the operations of West Valley College and to threaten college staff and otherwise treat
 23 them in a rude, belligerent and disruptive manner.

24 **2. Plaintiff Cannot Demonstrate Irreparable Injury**

25 Plaintiff must also demonstrate that irreparable injury is likely in the absence of an injunction.
 26 (*Winter v. Natural Resources Defense Council, Inc.* (2008) 129 S.Ct. 365, 172 L.Ed.2d 249, 77 USLW
 27 4001.) A preliminary injunction may not be granted based on a possibility of irreparable harm, even if
 28 plaintiff demonstrates a strong likelihood of prevailing on the merits. This is because injunctive relief

1 is an extraordinary remedy that may only be awarded upon a clear showing that plaintiff is entitled to
 2 such relief. (*Winter*, supra, at 129 S.Ct. at 367.) Plaintiff must demonstrate immediate threatened harm.
 3 (*Caribbean Marine Services Co., Inc. v. Baldrige* (9th Cir. 1988) 844 F.2d 668, 674.) Plaintiff must
 4 also demonstrate potential harm which cannot be redressed by a legal or equitable remedy following
 5 trial. The preliminary injunction must be the only way of protecting the plaintiff from such harm.
 6 (*Campbell Soup Co. v. ConAgra, Inc.* (3rd Cir. 1992) 977 F.2d 86, 91.) Significantly, temporary
 7 deprivation of employment, even when combined with likely financial distress and difficulty finding a
 8 new job, is not an irreparable injury and therefore will not support a preliminary injunction ordering
 9 plaintiff reinstated. Plaintiff's loss of income can be redressed in damages. (*Shegog v. Board of Ed. of*
 10 *City of Chicago* (7th Cir. 1999) 194 F.3d 836, 339.) ***If a harm is self-inflicted, it does not qualify as***
 11 ***irreparable.*** (*Caplan v. Fellheimer Eichen Braverman & Kaskey* (3rd Cir. 1995) 68 F.3d 828, 839.)
 12 Plaintiff's psychological distress usually does not constitute irreparable injury warranting injunctive
 13 relief. (*DeNovellis v. Shalala* (1st Cir. 1998) 135 F.3d 58, 63-64.)

14 Plaintiff's assertion that she has been irreparably injured is meritless because her alleged injury
 15 is "self-inflicted." Plaintiff has no constitutional right to use the women's restroom at the expense of
 16 a janitor waiting to clean the restroom. She was asked repeatedly to leave the restroom but would not
 17 do so. As a matter of common sense and courtesy, everyone is expected to leave to a restroom when a
 18 janitor needs to clean it. The College has a legitimate and reasonable need to maintain its restrooms in
 19 a clean, orderly and sanitary condition. Creating a disturbance and threatening College staff over a
 20 reasonable and legitimate request to clean the restroom is not protected conduct. Any alleged injury
 21 resulting therefrom, is wholly self-inflicted. Plaintiff's request for a preliminary injunction must fail.

22 CONCLUSION

23 For the reasons stated above, the College District respectfully requests that this Court deny
 24 Plaintiff's Motion in its entirety.

25 Dated: June 24, 2009

Respectfully submitted by,

26 SHUPE AND FINKELSTEIN

27 By

Eric K. Shiu, Attorneys for Defendant