

FILED

2009 MAY 29 A 11:31

U.S. DISTRICT COURT  
S.D. DIST. OF CAL. S.J.

1 CHIN-LI(Karen)MOU  
2 4141 Boneso Circle  
3 San Jose, CA 95134

4 Pro Se

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6  
7 UNITED STATES FEDERAL COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN JOSE DIVISION

10 *OKF*

11  
12 CHIN-LI MOU,

13 Plaintiff,

14 vs.

15 West Valley College, an individual and a  
16 non-profit educational corporation; JOHN  
17 HENDRICKSON, an individual; PHILIP L.  
18 HARTLEY, an individual; ERNEST  
19 SMITH, an individual; Dave Fishbaugh, an  
20 individual; LAURA LORMAN, an  
21 individual; CATHY AIMONETTI, an  
22 individual; FRED PROCHASKA, an  
23 individual; CHRIS ROLEN, an individual;  
24 LINBERO #107, an individual.

25 Defendants.

CASE NO. C09-01910

*Amended*

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PRELIMINARY INJUNCTION

Date: May 29, 2009  
Time: 9:00AM  
Dept.: Court Room 3

Filed: May 27, 2009

1 COMES NOW PLAINTIFF CHIN-LI MOU, submits the following Memorandum of  
2 Points and Authorities in Support of her preliminary injunction in her complaint:

3 **I. INTRODUCTION and FACTS**

4 About two semesters ago, one of the custodians at West Valley College (WVC) threatened  
5 Plaintiff that he would call police officer to arrest her if she did not get out of the restroom  
6 when he came in. The custodian and police showed up on April 8, 2009 around 4:30pm and  
7 ordered plaintiff to come out within two minutes without giving the same order to another  
8 student who was also in the same restroom at that time. Plaintiff came out within two  
9 minutes and tried to fetch a bottle of water in her locker in the restroom because she just  
10 swallowed medicine without water. She was punished by the police and was forced to defend  
11 herself. Plaintiff, as a quiet petite Asian woman, is 5'1 tall and weighs about 103 pounds at  
12 that time, was hurt by the two police whose totally weight were about 500 pounds. Mr. Smith  
13 expelled plaintiff and dropped all her classes from WVC without any due process. Mr. Smith  
14 further wrote a letter to cancel the scholarship award (Exhib. A- a true copy) that plaintiff had  
15 just been rewarded for her hard work, demonstrated as a 4.0-GPA student in WVC. Mr.  
16 Smith further threatened Plaintiff not to discuss the incident happened on April 8, 2009 with  
17 any school staff. His order has chilling effect on the whole campus, and all staffs were  
18 disallowed to discuss that incident with Plaintiff. When plaintiff called staff in WVC and  
19 tried to get advice or even to call to say hi, mostly she was rejected because of Mr. Smith's  
20 order. Plaintiff started taking Paralegal classes since spring 2007, and enjoys every class  
21 from Ms. Hopkins, Ms. Mathieson, Ms. Dawkins, and Ms. Grilli. None of these instructors  
22 has any complaint about her violating any rule prior to the incident happened on April 8,  
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1 2009. She studies everywhere in the campus and complies every rule. Within these two years,  
2 the only confrontation was with two library clerks who threaten and insisted forcing her to  
3 follow the rules that do not exist (ex post facto law) at that time. According to California  
4 Constitution ARTICLE 1—SEC. 9:

5  
6 A bill of attainder, ex post facto law, or law impairing the obligation of  
7 contracts may not be passed.

## 8 II. Legal Arguments

### 9 A. A PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT FURTHER 10 GREAT OR IRREPARABLE INJURY TO PLAINTIFFS UNTIL THIS CASE IS 11 RESOLVED. 12

13 A preliminary injunction is the appropriate and authorized relief to prevent a continuation of  
14 the irreparable injury such as First Amendment Rights, Due process, and Equal Protection to  
15 which plaintiffs have been subjected. Plaintiff need not show positively they will prevail on  
16 the merits. A reasonable probability of success, not an overwhelming likelihood, is all that  
17 need be shown for preliminary injunctive relief. [Gilder V. PGA Tour, Inc. (9<sup>th</sup> Cir. 1991)  
18 936 F2d 417, 422. Plaintiff is likely to prevail because plaintiff's Constitution Rights are  
19 violated. When a violation of constitutionally-protected rights is shown, most courts hold no  
20 further showing of irreparable injury is required.] Associated Gen. Contractors of Cali. V.  
21 Coalition for Economic Equity (9<sup>th</sup> Cir. 1991) 950 F2d 1401,1410; Brewer V. West  
22 Irondequoit Cent. School Dist. (2<sup>nd</sup> Cir. 2000) 212 F3d 738, 744-745. But see Northeastern  
23 Fla. Chapter of Ass'n of Gen. Contractors of America V. Jacksonville, Fla (11<sup>th</sup> Cir. 1990)  
24 896 F2d 1283, 1285-1286.  
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1 Plaintiff has not violated any school rule because there was never a rule saying a student can  
2 only spend two minutes or less in the restroom. There was never a sign or rule saying  
3 woman's restroom closed at 4:30 pm everyday. There was never a school rule saying every  
4 student has to take order from any school staff while there was no written school rule to  
5 prohibit. There is no school rule for anybody to have to "cut it short" while a custodian needs  
6 to clean the woman's room. Mr. Smith treats plaintiff inhumanly and unconstitutionally. Mr.  
7 Smith's order and threats to plaintiff to "cut it short" even she is in the middle of using the  
8 toilet whenever the custodian needs to clean the woman's room are *arbitrary, capricious,*  
9 *and inhuman* while the head of custodian advised her two semester ago that custodian has to  
10 wait until the last person goes in the restroom before the custodian patiently. Not to mention,  
11 Mr. Smith's threat and order to "cut it short" to plaintiff is also **a violation of equal**  
12 **protection and due process because other students don't have to follow this**  
13 **order/threat.** By ordering and threatening plaintiff to follow rules while other students don't  
14 have to is a violation of, including but not limited to, equal protection, due process, 42 U.S.C  
15 1983, 1985, 1986 (Era Civil Rights Act), Tom Banc Civil Rights Act ("Bane Act"), which is  
16 codified at California Civ. Code S 51.7 and 52.1 and penal code S 422.6 seq. Irreparable  
17 harm is presumed where defendants engage in acts or practices prohibited by status that  
18 provides for injunctive relief. For example, "where a defendant has violated a civil rights  
19 statute, we presume that the plaintiff has suffered irreparable injury from the fact of the  
20 defendant's violation." [Silver Sage Partners, Ltd. V. City of Desert Hot Springs (9<sup>th</sup> Cir.  
21 2001) 251 F3d 814,827.  
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1 Some of the staff from WVC making some racial marks to Plaintiff, she would like to file  
 2 discrimination reports against them. On information and belief, those staff latter retaliated and  
 3 demand Mr. Smith to expel plaintiff from West Valley College. Therefore, plaintiff would not  
 4 have the chance to file discrimination reports against them because she was not allowed to go to  
 5 WVC campus; she would not be able to file discrimination/harassment complaint. According to  
 6 United States Constitution First Amendment Right:  
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8 "People have the right peaceably to assemble, and to petition the  
 9 government for a redress of grievances."

10 Direct penalization of First Amendment rights constitutions irreparable injury for the  
 11 purpose of granting a preliminary. ( see Butler V. Alabama Judicial Inquiry Comm'n, 111  
 12 F. Supp. 2d 1241 (M.D. Ala. 2000). Furthermore, the loss of First Amendment  
 13 freedoms for even minimal periods of time constitutes irreparable injury justifying  
 14 the grant of a preliminary injunction. (Elrod V. Burns, 427 U.S 347, 373,96 S. Ct. 2673  
 15 (1976). Plaintiff has the right to discuss the incident happened on April 8, 2009 to  
 16 anyone to seek for help, information, advise, or truth. This type of speech is content-  
 17 neutral and is guaranteed by United State Constitution First Amendment Rights. An  
 18 injunction will be permitted of it is burdens "no more speech than necessary to serve a  
 19 significant government interest." [Madsen V. Women's health Center, Inc. (1994) 512  
 20 US 753, 765, 114 S. Ct. 2516, 2525; Schenck V. Pro-Choice Network of Western New  
 21 York (1997) 519 US 357, 372-374, 117 S. Ct. 855, 864-865; see Dr. Seuss Enterprises,  
 22 L.P. V. Penguin Books USA, Inc (9<sup>th</sup> Cir 1997) 109 F3d 1394, 1403. In addition, there is  
 23 no due process to this expulsion. Mr. Smith, including a class that Plaintiff finished in  
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1 March, canceled all of Plaintiff's classes, which causes irreparable injury. There is no  
2 way for Plaintiff to catch up or make up with those classes she missed. Final exam is also  
3 coming. United States Constitution Section 1. Amendment XIV:

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5 All persons born or naturalized in the United States, and subject to the jurisdiction  
6 thereof, are citizens of the United States and of the state wherein they reside. No state  
7 shall make or enforce any law which shall abridge the privileges or immunities of  
8 citizens of the United States; nor shall any state deprive any person of life, liberty, or  
9 property, without due process of law; nor deny to any person within its jurisdiction the  
10 equal protection of the laws

11 **B. A PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHOULD ISSUE BECAUSE IT  
12 IS LIKELY THAT PLAINTIFFS WILL PREVAIL ON THE MERITS AND THE BALANCE  
13 OF HARDSHIPS FAVORS PLAINTIFFS**

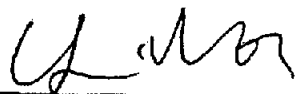
14 Plaintiffs are likely to succeed on the merits of their action because Mr. Smith never present  
15 to Plaintiff any school rule clearly stating a student can only spend less two minutes in the  
16 restroom, a sign or rule saying woman's restroom closed at 4:30 pm everyday, or every  
17 student has to take order from any school staff while there was no written school rule to  
18 prohibit or enforce. Plaintiff received two police citations at the same time after she was  
19 illegal arrested. The continuing losing her rights guaranteed, including but not limited to, U.S  
20 Constitution, California Constitution ,California Civil Code 51.7 and 52.1 by harm, threaten, and  
21 harassment to plaintiffs, if a preliminary injunction does not issue, is irreparable. No amount of  
22 money can compensate for the mental anguish of citizen who is not allowed to discuss her  
23 incident, find out the information, the truth, filing complaints, or the support she needed with  
24 any staff or student in West Valley College. No amount of money can compensate plaintiff's  
25 absence of classes. Unless a **preliminary injunction** issues to prohibit any further threat,  
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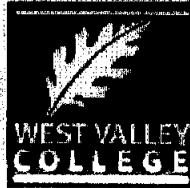
1 violence and intimidation or arrest by defendants, Plaintiff runs a substantial risk of further  
2 physical and emotional injury, and even death. By comparison, by allowing plaintiff going  
3 back to classes/schools, finding information, truth, support, or discussing incident happened  
4 on April 8, 2009 *no harm will befall defendants* as a result of the proposed *preliminary*  
5 *injunction*. Thus, the balance of any hardships to be considered weighs substantially in favor  
6 of plaintiffs and the issuance of a **preliminary injunction**.  
7

### 8 **III. Conclusion**

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10 For the reasons stated above, the **motion** of plaintiffs, Chin-Li Mou, for a **preliminary**  
11 **injunction** for going back to the classes she enrolled during this semester and be able to  
12 attend the future school year; re-awarding Norma scholarship that Mr. Smith cancelled on  
13 Plaintiff; and from suspending, excluding, or threatening to suspend or exclude plaintiff from  
14 classes; and denying her rights; and creating non-exist school rules to force her to follow; and  
15 any further harassment, threat, unequal treatment or violence, or as the case may be.  
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18 Dated: May 27, 2009

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22 Chin-Li Mou  
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April 5, 2009

(Exhib A)

Chin-Li (Karen) Mou  
4141 Boneso Circle  
San Jose, CA 95134

Dear Ms. Mou

It has come to my attention that you were awarded a scholarship this year. This letter is to inform you that we will not be able to award you the Norma Crawford scholarship for \$350.00 due to your suspension from West Valley College for this semester and Fall 2009.

If you have any questions regarding this matter, please feel free to call me at (408) 741-2020.

Sincerely



Dr. Ernie Smith  
Vice President, Student Services

Cc: Phil Hartley, President  
Dave Fishbaugh, Vice President Student Services  
Ginny Aragon, Dean of Student Support Services  
Maritza Cantarero, Financial Aid Director