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

Pro Se

FILED

2009 AUG -4 P 1:21

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA S.J.

UNITED STATES FEDERAL COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CLF

CHIN-LI MOU,

Plaintiff,

vs.

West Valley College, an individual and a
non-profit educational corporation; JOHN
HENDRICKSON, an individual; PHILIP L.
HARTLEY, an individual; ERNEST
SMITH, an individual; Dave Fishbaugh, an
individual ;LAURA LORMAN, an
individual; CATHY AIMONETTI, an
individual; FRED PROCHASKA, an
individual; CHRIS ROLEN, an individual;
LINBERO #107, an individual.

Defendants.

CASE NO. C09-01910

MOTION FOR RELIEF FROM
JUDGMENT—FRAUD AND
MISCONDUCT

Date:
Time:
Dept.:

Filed: August 4, 2009

1 **Relief Sought**

2 Plaintiff, Chin-Li Mou, moves this court, pursuant to Rule 60(b)(3), for an order set aside the
3 first preliminary injunction judgment entered in this action in June, 2009 and setting this action
4 for a new preliminary injunction hearing and issue an order compelling defendants to schedule
5 an administrative review hearing with Plaintiff.

6 **Grounds for Motion**

7 The judgment entered in this action should be set aside and a new preliminary injunction should
8 hold because defendants and defendants' attorneys committed fraud and/or misconduct that make
9 current judgment unfair.

- 10 1. Both defendants' attorney and WVC staff Ms. Brosamer committed fraud and/or
11 misconduct on Chin-Li Mou and the court:
- 12 a. On June 16,2009), Mr. Shupe and Mr. Shiu filed an answer without filing any
13 proof of service to the court and without serving a copy to plaintiff, which are as
14 required procedures by FRCP and local court rule .
 - 15 b. On June 24, 2009, defendants' attorneys filed in opposition to plaintiff's request
16 for a preliminary injunction to the court, and again without filing proof of service
17 and without serving a copy to plaintiff, which are as required procedures by FRCP
18 and local court rule. Plaintiff did not have any chance to read defendants' court
19 documents before the preliminary injunction hearing, which is completely unfair.
20 Plaintiff was not even given time to read and to prepare for the hearing due to
21 WVC attorney's faults. There is no excuse for any attorney not following court
22 rule. Plaintiff was not aware of defendants' arguments and was not prepared.
 - 23 c. Plaintiff was unaware of a summary judgment scheduled on Aug 28, 2009, which
24 is in conflict with Plaintiff's other case. Again there was no document served to
25 Plaintiff, and Plaintiff was not notified until Honorable Judge Fogel kindly
26 indicates in the RE letter. Plaintiff believes that defendants' attorney intentionally
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1 and maliciously violate federal laws to take advantage of a pro se plaintiff.

2 Plaintiff also believes that defendants' attorney scheduled the same date with
3 Plaintiff's other case just to create unnecessary stress to Plaintiff and jeopardize
4 her cases in bad faith. Plaintiff further requests the Court sanction defendants and
5 defendants' attorneys for their future violation of court rules.

6 d. In *Metlyn Realty Corp. v. Esmark, Inc.*, 763 F.2d 826,833 (7th Cir. 1985), the fraud of
7 an opposing party's attorney is surely chargeable to that party; therefore, fraud of
8 counsel should be chargeable to defendants' party. In addition, on information
9 and belief from the State Bar of California, Mr. Shupe has been admitted to the
10 State Bar of California since 1979 (Exhibit A). Mr. Shiu has been admitted to the
11 State Bar of California since 1991 (Exhibit B). Both of defendants' attorneys have
12 more than 18 years of experience in practicing laws in California. It is impossible
13 for them not to know these rules. Plaintiff, as per se, do not know many of the
14 court rules, but plaintiff is willing to learn and obey these rules. Defendants'
15 attorneys have plaintiff's contact information. However, defendants' attorneys did
16 not contact plaintiff until after the Court issues a final order for preliminary
17 injunction; one of the defendants' attorneys called plaintiff and left messages
18 everyday for at least for a week to show off their winning.

19 e. On May 7, 2009, right after plaintiff mails out appeal request, plaintiff
20 immediately emails Ms. Brosamer and clearly stated, "Donna, I emailed you the
21 letter today. Let me know if you don't receive it in a reasonable time. thanks" (see
22 Exhibit C). However, plaintiff did not hear anything from Ms. Brosamer until
23 May 14 (Exhibit D (1)). Ms. Brosamer in this email orders plaintiff to keep her
24 schedule, May 18 to May 22, open just the appeal for whole week next week,
25 which is very unreasonable. Plaintiff emails back to Ms. Brosamer and states
26 plaintiff can't promise and indicates there is a hardship if she would like to bring
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1 another person to the hearing, which is allowed by WVC. Plaintiff did her best to
2 reschedule every doctor appointments and lab testing for that week, which cause a
3 lot of problems because most of doctors took vacation during summer. Plaintiff
4 emails Ms. Brosamer to express her concerning about the way Ms. Brosamer
5 schedules the appeal date on May 14 around 5:30pm (Exhibit E).

6 f. Ms. Brosamer, on May 21, after plaintiff filing a lawsuit against WVC, emails
7 plaintiff (Exhibit F (1)) and orders her that her appeal date is June 2, 2009, which
8 was not between May 18 and May 22 according to Ms Brosamer previous order.
9 Again plaintiff will have to reschedule her appointment for June 2 appeal. In
10 WVC, spring semester ends at the last week of May. The incident happened in
11 early April; plaintiff believes that defendants delay Plaintiff's appeal process
12 maliciously and willfully. Therefore, plaintiff emails (Exhibit F (2)) Ms. Brosamer
13 on May 28 stated "let court decide if WVC's appeal process is proper or not". So
14 Ms. Brosamer clearly knows plaintiff will not show up for this appeal but go
15 ahead to proceed with appeal without plaintiff.

16 2. This motion is being made within a reasonable time from the time when Chin-Li Mou
17 discovered or could have discovered the fraud and/or misconduct.

18 3. A motion under Rule 60(b)(3) is permitted because the motion is being brought within
19 one year from the date on which the judgment was entered.

20 **Supporting Papers**

21 This motion is based on this document, the attached Notice of Motion, proof of Service, and
22 exhibits attached to it,, all of the pleadings, papers, and other records on file in this action, and
23 whatever evidence and argument may be presented at the hearing of this motion.

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25 Dated: August 4, 2009
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Chin-Li Mou

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THE STATE BAR OF CALIFORNIA

Tuesday, July 21, 2009

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ATTORNEY SEARCH

Exhib A

John Arthur Shupe - #87716

Current Status: Active

This member is active and may practice law in California.

See below for more details.

Profile Information

Bar Number	87716	Phone Number	(650) 341-3693
Address	Shupe & Findelstein 177 Bovet Rd #600 San Mateo, CA 94402	Fax Number	(650) 341-1395
		e-mail	jas@bovetprofessional.com
District	District 3	Undergraduate School	Univ of California Davis; Davis CA
County	San Mateo	Law School	UCLA SOL; Los Angeles CA
Sections	None		

Status History

Effective Date	Status Change
<i>Present</i>	Active
11/29/1979	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

This member has no public record of discipline.

Administrative Actions

This member has no public record of administrative actions.

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ATTORNEY SEARCH

Exhib B.

Eric Kai-Him Shiu - #156167

Current Status: Active

This member is active and may practice law in California.

See below for more details.

Profile Information

Bar Number	156167		
Address	Bialson Bergen & Schwab 2600 El Camino Real #300 Palo Alto, CA 94306	Phone Number	Not Available
		Fax Number	Not Available
		e-mail	Not Available
District	District 3	Undergraduate School	Univ of California Berkeley; Berkeley CA
County	Santa Clara	Law School	McGeorge SOL Univ of the Pacific; CA
Sections	None		

Status History

Effective Date	Status Change
Present	Active
12/17/1991	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

This member has no public record of discipline.

Administrative Actions

This member has no public record of administrative actions.

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Exhibit C

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RE: Student Appeal

From: **chin-li mou** (cmou@hotmail.com)
Sent: Thu 5/07/09 1:19 AM
To: donna_brosamer@westvalley.edu

Donna,

I mailed you the letter today. Let me know if you don't receive it in a reasonable time.thanks
karen

Date: Thu, 30 Apr 2009 13:12:04 -0700
To: cmou@hotmail.com
From: donna_brosamer@westvalley.edu
Subject: RE: Student Appeal

Karen,
Yes that will do.
Donna

At 01:01 PM 4/30/2009, you wrote:

Donna,

If i send a letter with a time stamp on or before May 8 will do, right?
karen

Date: Thu, 30 Apr 2009 11:52:57 -0700
To: cmou@hotmail.com
From: donna_brosamer@westvalley.edu
Subject: Student Appeal
CC:

Karen

You will need to send the written appeal to me, including exactly what you are appealing before May 8, 2009. I will set up a meeting for the Student Discipline Hearing Board to hear your appeal and you will be notified of that date as soon as I can set it with the members, You will be notified by Dr. Smith of their findings. I will give copies of your appeal to this Hearing Board . My address is Donna Brosamer, Counseling Office, 14000 Fruitvale Avenue, Saratoga, California 95070.

I included the Procedures and Policies in the first letter I sent you.
Donna Brosamer

*Counseling Office Supervisor
West Valley College
(408) 741-2067
(408) 741-4076 - Fax*

Windows Live™ Hotmail®:...more than just e-mail. Check it out.

*Donna Brosamer
Counseling Office Supervisor
West Valley College
(408) 741-2067
(408) 741-4076 - Fax*

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RE: Your appeal to SDHC

Exhibit D

From: **chin-li mou** (cmou@hotmail.com)
 Sent: Thu 5/14/09 5:25 PM
 To: donna_brosamer@westvalley.edu

(2)

Donna,

I'll try but I can't promise because everyone has his/her schedule.
 I'm allowed to bring a person with me; I have to work with that person's schedule as well. I think it is too late for any hearing because all my classes are all dropped ...
 karen

Date: Thu, 14 May 2009 09:08:42 -0700
 To: cmou@hotmail.com
 From: donna_brosamer@westvalley.edu
 Subject: RE: Your appeal to SDHC
 CC: ernie_smith@westvalley.edu; district_police@wvm.edu

(1)

Karen

I did not receive your letter asking for an appeal until Monday. I did my best to schedule the committee, 5 very busy individuals, as quickly as possible. I will try to reschedule the team for another time next week. I need you to keep your schedule fairly open to help accommodate this hearing. I will let you know when this will happen.

Donna

✓ May 18 to May 22

At 06:57 PM 5/13/2009, you wrote:

Donna,

I feel I did not be respected by WVC as a human. You gave me less than 24 hours notice for a hearing, and I have a doctor appointment at 11:30am tomorrow. I can't cancel my doctor appointment for you very short notice hearing by e-mail.

karen

Date: Wed, 13 May 2009 11:01:05 -0700
 To: cmou@hotmail.com
 From: donna_brosamer@westvalley.edu
 Subject: Your appeal to SDHC
 CC: district_police@wvm.edu

Your appeal with the Student Discipline Hearing Committee will be tomorrow, Thursday May 14, 2009, from 11:00a to 12:00n. It will be held in the President's Conference in the President's office.

Donna Brosamer

*Counseling Office Supervisor
West Valley College
(408) 741-2067
(408) 741-4076 - Fax*

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*Donna Brosamer
Counseling Office Supervisor
West Valley College
(408) 741-2067
(408) 741-4076 - Fax*

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Exhibit-DE

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RE: Your appeal to SDHC

From: chin-li mou (cmou@hotmail.com)
Sent: Thu 5/14/09 5:36 PM
To: donna_brosamer@westvalley.edu

Donna,

I know you are an expericed assistant; therefore, you know how schedule a meeting works. Communication is both way- not just one way. This e-mail account is mainly for schedule since all my classes are droppede I don;t check this e-mail account often.

Date: Thu, 14 May 2009 09:08:42 -0700
To: cmou@hotmail.com
From: donna_brosamer@westvalley.edu
Subject: RE: Your appeal to SDHC
CC: ernie_smith@westvalley.edu; district_police@wvm.edu

Karen

I did not receive your letter asking for an appeal until Monday. I did my best to schedule the committee, 5 very busy individuals, as quickly as possible. I will try to reschedule the team for another time next week. I need you to keep your schedule fairly open to help accommodate this hearing. I will let you know when this will happen.

Donna

May 18 to May 22

At 06:57 PM 5/13/2009, you wrote:

Donna,

I feel i did not be respected by WVC as a human. You gave me less than 24 hours notice for a hearing, and I have a doctor appointment at 11:30am tomorrow. I can't cancel my doctor appointment for you very short notice hearing by e-mail.

karen

Date: Wed, 13 May 2009 11:01:05 -0700
To: cmou@hotmail.com
From: donna_brosamer@westvalley.edu
Subject: Your appeal to SDHC
CC: district_police@wvm.edu

Your appeal with the Student Discipline Hearing Committee will be tomorrow, Thursday May 14, 2009, from 11:00a to 12:00n. It will be held in the President's Conference in the President's office.

Donna Brosamer
Counseling Office Supervisor

EXHIBIT A F

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RE: Your appeal to the Student Discipline Hearing Board

From: **chin-li mou** (cmou@hotmail.com)
Sent: Thu 5/28/09 1:23 AM
To: donna_brosamer@westvalley.edu

(2)

Donna,

Let court decide if WVC's appeal process is proper or not
karen

Date: Thu, 21 May 2009 13:49:48 -0700
To: cmou@hotmail.com
From: donna_brosamer@westvalley.edu
Subject: Your appeal to the Student Discipline Hearing Board

(1)

Your appeal with the Student Discipline Hearing Board will be on June 2, 2009 at 1:30pm in Room 7 in counseling.

*Donna Brosamer
Counseling Office Supervisor
West Valley College
(408) 741-2067
(408) 741-4076 - Fax*

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