

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 6**

**Honorable Evette D. Pennypacker, Presiding**

David Criswell, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2160

**DATE: September 21, 2023      TIME: 9:00 A.M.**

**TO REQUEST ORAL ARGUMENT:** Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
  - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**IN PERSON HEARINGS:** The Court strongly prefers in person appearances for contested law and motion matters. We are open and look forward to seeing you in person again.

**VIRTUAL HEARINGS:** Whenever feasible, please use video when appearing for your hearing virtually through Microsoft Teams. To attend virtually, click or copy and paste this link into your internet browser, and scroll down to Department 6: [https://www.sccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**TO HAVE YOUR HEARING REPORTED:** The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here: [https://www.sccourt.org/general\\_info/court\\_reporters.shtml](https://www.sccourt.org/general_info/court_reporters.shtml)

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
<a href="#"><u>1</u></a>	19CV347316	Huang Family vs City of Cupertino	Plaintiff's Motion to Reclassify Action from Limited to Unlimited is DENIED. Final judgment in favor of the City was entered in this matter on March 26, 2021. Plaintiff is ordered not to file any additional papers in this case. This order will be reflected in the minutes. The parties are ordered to appear at the hearing.
<a href="#"><u>2</u></a>	20CV371982	2585 Bayshore, LLC vs Mustard Seed Learning Center Nonprofit Corporation et al	Defendant Shuhuan Hsu's Motion to Set Aside Judgment Pursuant to Code of Civil Procedure section 473(b) is DENIED. Please scroll down to Lines 2-3 to review full tentative ruling. To request oral argument, call or email the other side <u>and</u> call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
<a href="#"><u>3</u></a>	20CV371982	2585 Bayshore, LLC vs Mustard Seed Learning Center Nonprofit Corporation et al	2585 Bayshore, LLC's Motion for Attorney's fees against guarantor Shuhuan Hsu is GRANTED. Please scroll down to Lines 2-3 to review full tentative ruling. To request oral argument, call or email the other side <u>and</u> call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.

<a href="#"><u>4</u></a>	23CV414116	Sandra Deneen vs Dan Fortune	Labor Commissioner's Motion to Set Aside Clerk's Judgment is GRANTED. The Court notes that this motion was noticed for hearing both for September 21, 2023 and for November 16, 2023. However, a void judgment must be set aside, and since Sandra Deneen filed a de novo appeal of the Labor Commissioner's Order, Decision and Award, the clerk's judgment is void. Accordingly, the Labor Commissioner's Motion is GRANTED. To request oral argument, call or email the other side <u>and</u> call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order.
<a href="#"><u>5</u></a>	22CV404353	Huang Family vs City of Cupertino	Plaintiff's Motion to Vacate Judgment is DENIED. Please scroll down to Lines 5-6 for full tentative ruling. Court to prepare formal order. The parties are ordered to appear at the hearing.
<a href="#"><u>6</u></a>	22CV404353	Huang Family vs City of Cupertino	Defendants' Motion for an Order Declaring Plaintiff a Vexatious Litigant is GRANTED. Please scroll down to Lines 5-6 for full tentative ruling. Defendants to prepare a prefiling order requiring Plaintiff to obtain permission before filing any new litigation, requiring Plaintiff to post \$10,000, and staying all pending litigation until such time as the \$10,000 is posted. The parties are ordered to appear at the hearing.

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## **Calendar Lines 5-6**

**Case Name:** *2585 Bayshore, LLC vs Mustard Seed Learning Center Nonprofit Corporation et al*

**Case No.:** 20CV371982

Before the Court is (1) Defendant Shuhuan Hsu's Motion to Set Aside Judgment Pursuant to Code of Civil Procedure section 473(b) and (2) 2585 Bayshore, LLC's ("Bayshore") Motion for Attorney's Fees Against Guarantor Shuhuan Hsu. Pursuant to California Rule of Court 3.1308, the Court issues its tentative rulings below.

### **I. Background**

Bayshore filed this complaint on October 9, 2020 against Mustard Seed Learning Center ("Mustard Seed") and Shuhuan Hsu, asserting breach of lease, breach of guaranty, breach of implied covenant of good faith and fair dealing and fraud.

The Complaint alleges that on November 2, 2010 Bayshore and Mustard Seed entered a 10 year lease which commenced on July 21, 2012. (Complaint, ¶¶7, 10, Ex. A.) Mustard Seed leased the premises for the purpose of operating a commercial daycare and after school learning center. (Complaint, ¶9.) Mustard Seed agreed to pay monthly rent that increased each year of the 10 year term. (Complaint, ¶8.) The Lease also gave Mustard Seed two options to extend for five years each on the same terms and conditions set forth in the Lease at fair market rental value at that time. (Complaint, ¶8.)

The Lease required execution of a Guaranty of Lease, which was attached to the Lease as Exhibit B. (Complaint, ¶22, Ex. A.) On November 12, 2010 Jack Hsu entered the Guaranty of Lease, insuring rent and other obligations under the Lease for up to \$1,000,000, which would be reduced to a maximum of \$500,000 if Mustard Seed was not in default for a period of three full consecutive years. (Complaint, ¶23-24, Ex. B.) Paragraph 13 of the Guaranty of Lease provides:

This Guaranty shall be binding upon Guarantor, Guarantor's heirs, representatives, administrators, executors, successors and assigns and shall insure to the benefit of and shall be enforceable by Landlord, its successors, endorsees and assigns. Any married person executing this Guaranty agrees that recourse may be had against community assets and against his separate property for the satisfaction of all obligations herein guaranteed. As used herein, the singular shall include the plural, and the masculine shall include the feminine and neuter and vice versa, if the context so requires. (Complaint, ¶27, Ex. B.)

After her spouse's death, Shuhuan Shu sent the following letter to Bayshore on November 24, 2014:

I am contacting your company in response to the certified letter sent to Mustard Seed Learning Center (MSLC) last week by your lawyer, Douglas D. Hughmanick of Terra Law LLP.

Regarding your request for updated and comprehensive financial statements for MSLC, I have asked MSLC, I have asked MSLC's accountants to prepare quarterly accrual financial statements for Q1 and Q2 of 2014. They will be working on that request this week. However, their offices are closed on Thursday and Friday for the Thanksgiving holiday. MSLC will be in touch by email with Dan Cunningham to provide updates on when these statements will become available.

The primary purpose of this letter is to address the issues pertaining to the Lease Guaranty originally provided by Mr. Jack Hsu.

As you know, the guarantor of Mustard Seed Learning Center's lease for the premises at 2585 E Bayshore Road, Palo Alto, CA was my husband, Mr. Jack Hsu, who has passed away.

I, Shuhuan Hsu, hereby formally advise you that I will answer as guarantor of Mustard Seed Learning Center's lease for the premises at 2585 E Bayshore road, Palo Alto, CA. I understand that this will likely require executing a new Lease Guaranty, and if so I will work with you to execute that document.

I have attached to this letter my current financial statements.

I understand that you also requested a description of the community assets and separate property held by Mr. Jack Hsu to which the Landlord is entitled to have recourse under paragraph 13 of Mr. Jack Hsu's Lease Guaranty. My belief is that my current financial statements will be sufficient to guarantee the lease, and this additional information is no longer required.

If we need to execute a new Lease Guaranty, I am now requesting your help in preparing that document for my review and signature.

Please let me know if you need additional information from me regarding the Lease Guaranty.

(Complaint, ¶31, Ex. C.) Mustard Seed continued leasing the property from Bayshore.  
(Complaint, ¶32.)

After the Governor declared a state of emergency because of COVID-19 and the Santa Clara County Board of Supervisors adopted Ordinance No. NS-9.287, Bayshore alleges Mustard Seed "unilaterally choose [sic] to only pay approximately have rent for April, May, June, and July 2020" (paying \$25,885.05 out of the required \$51,779.09 per month). (Complaint, ¶36.) After attempting to work with Mustard Seed and demanding payment, Mustard Seed stopped paying rent altogether in August 2020. (Complaint, ¶¶37-39.) On August 10, 2020, Defendants advised Bayshore through an attorney that Mustard Seed did not intend to pay rent any further and intended to surrender the premises. (Complaint, ¶40.) Bayshore alleges it is owed at least \$1,241,676.04 in unpaid rent, not including

damages from the costs of cleaning and repairing the premises which were abandoned. (Complaint, ¶42.)

Defendants answered the Complaint but then essentially failed to respond to any further activity in the case. Hsu's repeated failure to respond to discovery or to comply with the Court's numerous orders to do the same ultimately resulted in the Court issuing terminating sanctions against Hsu and entering judgment against her on March 8, 2023.

Both the Lease and the Guaranty of Lease include attorneys' fees provisions:

Attorneys' Fees. In the event either party places the enforcement of this Lease, or any part thereof, or the collection of any Rent due, or to become due hereunder, or recovery of the possession of the Premises in the hands of an attorney or files suit upon the same, or any appeal therefrom, the prevailing party shall recover its reasonable attorneys' fees and court costs. (Complaint, ¶19, Ex. A.)

In the event of any dispute or litigation regarding the enforcement or validity of this Guaranty, Guarantor shall be obligated to pay all charges, costs and expenses (including without limitation, reasonable attorneys' fees and costs) incurred by Landlord, whether or not any action or proceeding is commenced regarding such dispute and whether or not such litigation is prosecuted to judgment. (Complaint, ¶28, Ex. B.)

## **II. Hsu's Motion to Set Aside Judgment**

Hsu asks the Court to set aside the judgment against her, which was entered as a sanction for her repeated failure to comply with discovery orders, because her attorney was either neglectful or abandoned her. The Court declines to do so.

There are certain circumstances where it is mandatory for the court to grant the relief Hsu seeks. Code of Civil Procedure section 437(b) states: "Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." (Code of Civ. Pro. §473(b); *Huh v. Wang* (2007) 158 Cal. App. 4th 1406, 1414.) "[T]he defaulting party must submit sufficient admissible evidence that the default was actually caused by the attorney's error." (*Huh v. Wang* (2007) 158 Cal. App. 4th 1406, 1414, citing *Todd v. Thrifty Corp.* (1995) 34 Cal.App.4th 986, 991.)

The parties dispute whether a judgment entered as a terminating sanction falls under this mandatory relief section. Even if it does not, courts have discretion to set aside "any 'judgment, dismissal, order, or other proceeding.' Thus, for example, 'the failure of counsel to meet a procedural deadline' is 'a proper subject for section 473 relief.'" (*Huh v. Wang* (2007) 158 Cal. App. 4th 1406,

1419, quoting *Lee v. Wells Fargo Bank* (2001) 88 Cal.App.4th 1187, 1193.) “So, too, is ‘failure to timely respond to [a] request for admissions.’” (*Id.*, quoting *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234.) A party seeking discretionary relief must act diligently and “demonstrate that the error was excusable, since the attorney’s negligence is imputed to the client. The inexcusable neglect of an attorney is usually not a proper basis for granting the client’s motion under section 473. Excusable neglect is that neglect which might have been the act of a reasonably prudent person under the same circumstances.” (*Huh v. Wang* (2007) 158 Cal. App. 4th 1406, 1419 (internal citations and quotations omitted.)

As the moving party, Hsu bears the burden of establishing she is entitled to either mandatory or discretionary relief.

The Court finds that under either cited standard, Hsu does not meet the requirements for relief. While Hsu does submit a declaration from her prior counsel who attests that he was neglectful, the evidence in the record dated before this declaration indicates Hsu was the party preventing compliance with the Court’s orders, not Lee. For example, in Lee’s declaration in support of his motion to withdraw as counsel, he states unequivocally that he had not had communication with his client in over a year. Lee was also attempting to confer with opposing counsel to buy time for his client, would seem to make some progress, only to be unable to get sufficient information to follow through. The privilege log also illustrates emails Lee sent to Hsu without receiving a response. And the November 24, 2014 letter Hsu sent to Bayshore exemplifies her ability to engage in business related affairs, of which collecting documents and discovery responses would be akin. Thus, while Lee’s declaration may illustrate loyalty to his former client, it is not credible on this record.

Accordingly, Hsu’s motion to set aside is DENIED.

### **III. Plaintiff’s Motion for Attorney’s Fees**

Under the plain language of the Guaranty of Lease, Hsu is responsible for Plaintiff’s reasonable attorneys’ fees and costs. Plaintiff is the prevailing party, having obtained judgment in its favor, and Hsu stepped into the shoes of her husband as guarantor both by operation of the contract language and her own declaration in her November 24, 2014 letter. Thus, Plaintiff is entitled to reasonable attorneys’ fees and costs. (Civ. Code §1717.)

The Court has reviewed the Hughmanick Declarations submitted in support of Plaintiff’s request for attorneys’ fees. The hourly rates charged and the number of hours spent on this matter are reasonable for this type of case in this Silicon Valley market. The Court accordingly awards Plaintiff \$45,260.48 in attorney fees.

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**Calendar Lines 5-6**

**Case Name:** *Huang Family vs City of Cupertino*

**Case No.:** 19CV347316

Before the Court is Plaintiff's motion to set aside/vacate and Defendants' motion for an order declaring Plaintiff a vexatious litigant. Pursuant to California Rule of Court 3.1308, the Court issues its tentative rulings below.

**I. Plaintiff's Motion to Vacate/Set Aside**

This is the third of four lawsuits Plaintiff has brought against various government officials related to a playhouse type structure the Huang family had (or once had) on its property. By order dated April 4, 2023, the Court (Hon. Amber Rosen) granted Defendants' special motion to strike this complaint. Apparently, immediately upon receipt of this order, Plaintiff filed a paper which seems to ask the undersigned to set that ruling aside. There is no basis stated in Plaintiff's motion papers or otherwise that would support setting the April 4, 2023 ruling aside. Plaintiff's motion is therefore DENIED.

**II. Defendant's Motion for Order Declaring Plaintiff Jane Huang a Vexatious Litigant**

"Vexatious litigant" means a person who does any of the following:

- (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.
- (2) *After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.*
- (3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.
- (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.
- (5) After being restrained pursuant to a restraining order issued after a hearing pursuant to Chapter 1 (commencing with Section 6300) of Part 4 of Division 10 of the Family Code, and while the restraining order is still in place, they commenced, prosecuted, or

maintained one or more litigations against a person protected by the restraining order in this or any other court or jurisdiction that are determined to be meritless and caused the person protected by the order to be harassed or intimidated. (Code Civ. Proc. § 391 (emphasis added)).

The Court is familiar with the record in these cases, including the numerous challenges Plaintiff continues to make to the final judgments in the various cases she has brought against these defendants over the last few years. Defendants summarize these challenges at pages 13-15 of their opening brief, which could not have included the additional challenges Plaintiff has made since Defendants filed that brief.

This Court has also had several occasions to speak directly to Plaintiff in an attempt to explain that her case is over, her appeals exhausted, and she must stop filing papers. Plaintiff is undeterred regardless of the number of orders or admonishments she receives. Her claims and arguments are nearly identical in each instance, and Defendants have expended tremendous, unnecessary resources to respond to Plaintiff's seemingly endless filings and challenges.

Accordingly, the Court finds that Plaintiff is a vexatious litigant pursuant to Code of Civil Procedure section 391 and makes the following orders. The Court orders Defendants to prepare a prefiling order requiring Plaintiff to obtain permission before filing any new litigation, requiring Plaintiff to post \$10,000, and staying all pending litigation until such time as the \$10,000 is posted.

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