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FILED
CIVIL JUSTICE OFFICE 1
07 SEP -7 AM 10:21
CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 JENNIE CHU,

11 Plaintiff,

12 vs.

13 JAMES HSU, an individual; ELLEN HSU, an
14 individual; OASIS HEALTH FOODS, LLC., a
15 California Limited Liability Company; and
16 DOES 1 through 100 inclusive

17 Defendants.

Case No.: GIC 830943
IC Judge: Hon. Joan M. Lewis

NOTICE OF RULING AND ENTRY OF
ORDER THEREON RE: DEFENDANTS'
MOTION FOR NEW TRIAL AND JNOV

18 **TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

19 **PLEASE TAKE NOTICE** that, on August 31, 2007, Defendants' Motion for New Trial based
20 upon 1) insufficiency of the evidence, 2) excessive damages, and the verdict was against the law and
21 Defendants' Motion for JNOV came on for hearing before the Honorable Joan M. Lewis in the above
22 captioned Court. John Kang appeared on behalf of Plaintiff Jennie Chu. Shawn McMillan, of the Law
23 Offices of Shawn A. McMillan appeared on behalf of Defendants James Hsu and Oasis Health Foods,
24 LLC. Plaintiff submitted on the tentative ruling without argument.

25 Based upon the moving papers, the evidence filed in support of and in opposition to the motion,
26 the record of the underlying proceeding the Court granted Defendants' New Trial Motion on the bases

1 identified in the motion. The Court denied Defendants' motion for JNOV. A true and correct copy of
2 the order of the Court is attached hereto as **exhibit A**.

3
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5
6 Dated: September 4, 2007

The Law Offices of Shawn A. McMillan, APC.

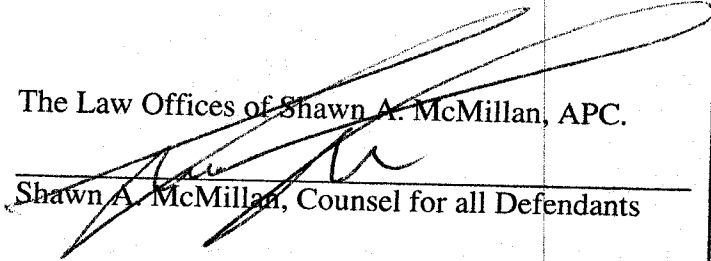
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8 
9 Shawn A. McMillan, Counsel for all Defendants

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE

TENTATIVE RULINGS - August 30, 2007

EVENT DATE: 08/31/2007

JUDICIAL OFFICER: Joan M. Lewis

EVENT TIME: 08:30:00 AM

DEPT.: C-65

CASE NO.: GIC830943

CASE TITLE: CHU VS HSU

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Fraud

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment Not Withstanding the Verdict, 07/23/2007

Defendants request a new trial on the grounds listed in the Code of Civil Procedure section 657. Defendants' motion is granted. Specifically, the Court reviewed and considered the entire record and concludes as follows:

Defendants have established there is an insufficiency of evidence to justify the verdict, that the verdict was against the law (C.C.P. § 657(6)) and the damages awarded are excessive (C.C.P. § 657(5)).

At the time the jury awarded \$71,500 as to each cause against Defendant Hsu and as to concealment cause of action against Defendant Oasis, the jury implicitly found that the intentional misrepresentation of concealment was undertaken by the Defendants to specifically mislead Plaintiff.

Intentional Misrepresentation

In order to be liable for intentional misrepresentation, Plaintiff was required to prove that Defendant Hsu knowingly made a false representation of a material fact that Plaintiff reasonably relied upon resulting in damages to Plaintiff. There was insufficient evidence at trial to support the findings that any misrepresentation was made to Plaintiff by the Defendant and, furthermore, had there been an intentional misrepresentation, Plaintiff did not suffer damages.

Plaintiff maintains that she agreed to expend her money to purchase 49% ownership in Oasis with the understanding that the company would be debt free at the time of her purchase. Plaintiff maintained that she was unaware that Defendant had any debt, including owing the former partners any money. Plaintiff further maintained that had she known of any debt, she would not have agreed to pay \$70,000 for the 49% interest in the company.

Defendant, on the other hand, maintained that the \$70,000 Plaintiff expended was for the purpose of buying out the former partners' interest in the company, thereby leaving the company debt free at the time Plaintiff would take over as the new 49% partner.

Plaintiff's testimony was not credible in light of the fact she wrote personal checks to each of the two former partners in the amount of \$35,000 totaling the \$70,000. It would be logical to conclude Plaintiff was paying \$70,000 directly to these partners for the purpose of buying out their interest in the business.

Additionally, the disputed debt of \$6,000 owed to the former partners was paid back to Defendant Oasis by Defendant Hsu from Hsu's personal monies. The testimony at trial and the documents supporting the testimony showed that Defendant Hsu paid back the company approximately \$5,900 of the \$6,000, which essentially leaves Plaintiff without a damage claim.

Fraudulent Concealment

As to the fraudulent concealment cause of action against Defendants Hsu and Oasis, Plaintiff failed to prove that she sought discovery of an important fact that Defendants either actively concealed or prevented her from discovering such fact or that Defendants failed to disclose an important fact that was only known to them and could not be discovered by Plaintiff. Plaintiff testified that she told Defendant Hsu that she wanted to invest in the company that was debt free. Plaintiff claims that Defendant Hsu concealed from her that: (1) the former partners were to paid the \$70,000 and (2) there was a \$6,000 debt. Plaintiff has proffered insufficient evidence that she sought information of important facts and that Defendant Hsu prevented her from ascertaining such knowledge. Furthermore, there was no evidence at trial that Defendant Hsu prevented Plaintiff Chu from discovering any information she desired.

Finally, in order to recover under any of the theories in this case, Plaintiff Chu was required to prove that she suffered damages in some measurable amount. The only evidence introduced at trial on the issue of damages was that as a result of the business deal made with the former partners, the company incurred a debt of \$6,000 which survived the closing of Plaintiff Chu's decision to purchase a 49% share in the business on November 7, 2003. The evidence showed that this debt was paid by Defendant Hsu depositing his own funds into the company in the approximate amount of \$6,000.

In review of the moving papers, opposition thereto, supplemental papers, and review of the entire case, the Court concludes there is insufficient evidence to support the jury findings as to the above causes of action. Additionally, the jury's award of damages in the amount of \$71,500, suffered by the Plaintiff is not substantiated by the admissible evidence.

In accordance with Code of Civil Procedure section 657, Defendants' motion for new trial is granted. Defendant is directed to serve notice of ruling in accordance with Code of Civil Procedure section 1019.5(a).

Defendants' JNOV is denied.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

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SAN DIEGO COUNTY, CA
SEP 7 2007

Chu vs. Hsu et al.

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ATTORNEYS FOR
Defendants

Civil Number
GIC 830943

PROOF OF SERVICE BY MAIL

I, Shawn A. McMillan, declare that: I am over the age of 18 years and not a party to the case; I am employed in the County of San Diego, California, and my business address is 4955 Via Lapis, San Diego, California.

I served the following document(s)

1. NOTICE OF RULING AND ENTRY OF ORDER THEREON RE: DEFENDANTS' MOTION FOR NEW TRIAL AND JNOV;

Upon Plaintiff Jennie Chu, by placing a true copy of each document in an envelope addressed to Plaintiff's counsel of record as follows:

John J. Kang, Esq.
7670 Opportunity Rd., Ste 225
San Diego, CA 92111

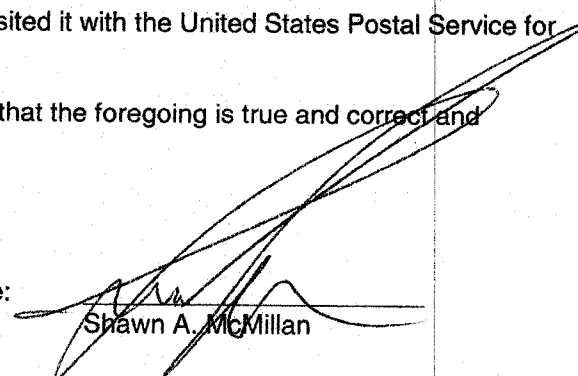
Phone: 858-278-5480
Fax: 858-278-5480

I then sealed the envelope and, with postage thereon fully pre-paid, I deposited it with the United States Postal Service for next day delivery this same day in San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed in the City of San Diego, California.

Dated: September 4, 2007

Signature:



Shawn A. McMillan