1)

Valid Service of Summons

a. Def: Valerie

To proper serve a defendant with a summons and complaint, P must use reasonable method, timely and effort to make sure D receives the proper notice by personal service, by substitute service where personally serving is not possible, by mail or by public notice if the other methods cannot be achieved reasonably then by any reasonable method of service will suffice. Reasonableness in service also requires that personal service be at reasonable time of day, that a signature of the person accepting the service, and can be a location where P can find D, normally that will be at the person's residence or place of work at that service not be served at a time such as in the middle of the night. For substitute service at D's residence or work, will meet the requirements by being accepted by any adult that lives at the residence, or if at work, has authority to accept service.

Paul, who lives in San Diego, filed in the Superior Court of San Diego. State court requirements that D be properly notified with service of the summons and with the complaint and Paul chose to personally serve Valerie, a resident of San Francisco, by driving to San Francisco and personally serving her with notice. The facts do not mention where Paul met Valerie whether it was at her residence or work just that he personally served Valerie with the summons and complaint or the time of day the service took place. No mention of whether Paul received a signature from Valerie that she has been served. It is assumed that if Paul met the Valerie at her residence or work at a reasonable time and received signature showing Valerie accepted the service then it is valid acceptance.

b. Meyer Corp.

A company that is a corporation outside of the state can be served in the manner mentioned above. Reasonably to serve notice by personal service to the corporation is the best method but if that cannot be acheived, any reasonable method may suffice. Here, Paul chose to serve Meyer Corp. by regular mail. Paul did not attempt to find someone in Germany to serve notice by a personal means upon the corporation which would have been the most effective method and not a burden on Paul to do. The court may find that reasonableness by sending the notice by regular mail is not reasonable since the corporation is in Germany, unless the corporation responds, it may be that notice will be found unreasonable. Here, Paul could have sent it by overnight mail, requiring a return signature to ensure proper service at a minimal cost to Paul. It is likely the court will find that service was not reasonable or timely by using the regular mail method that Paul chose.

2 San Diego Superior Court Personal Jurisdiction

a. Valerie

For a State court to have Personal Jurisdiction in CA, the court has to be able to have jurisdiction to enforce the outcome of the case to redress plaintiff's injury by being able to enforce a judgment against a defendant and a in CA for those outside of the state a coexentigent statute consistent with the US Constitution to hail defendants into the court is necessary to have personal jurisdiction. The requirements for PJ have a basis component and a notice component.

Notice.

Here, for proper service, Paul will meet the notice component as discussed above if the court finds that Paul properly served both defendants, Valerie was

served by personal service and therefore, the notice requirement is met.

Basis

traditional basis over a defendant in a CA court.
Under traditional basis, a person domiciled in the state can be brought into state court. Valerie is a resident in the state and this is considered to be domiciled with in the state. Therefore the court requirement or personal jurisdiction by traditional basis over Valerie is met because she is domiciled within the state so the court may redress Paul's injury if Valerie is liable for damages.

b. Meyer Corp.

Notice.
Here, for proper service, Paul will meet the notice component as discussed above if the court finds that Paul properly served both defendants, Valerie by personal service and Meyer Corp. by regular mail service.

Basis
long arm statute
General
Under Int'l shoe and its progeny proper basis can be found to hail an out of state defendant in if either the general or specific basis component is met. General basis is said to be met if the defendant has systematic and continuous contacts with the state enough. Systematic and continuous would need to be more than just minimal contacts, here, the snack sold to Paul, does not give us any information of how Valerie received the snacks from Meyer Corp. It could be assumed that Valerie may sell quite a lot of snacks at the music event. If those snacks are consistently bought from a Germany supplier such as Meyer Corp. Than this may be more than just systematic and continuous contact with the state. Persumably, that Valerie does not and this was a one time transaction,

Meyer Corp. may not be brought in.

Specific

If Meyer purposefully availed or to be under the protections of state laws governed in CA, then even one or two contacts within the state could be enough, IF it is foreseeable that Meyer could be hailed into the state to defend an action brought by someone in the state. It really depends on whether Valerie bought the snacks because Meyer had contacts with the state such as a catalog, newspaper advertisements that are within CA on a regular basis may be enough even if Valerie just bought the snacks for this music event. Assuming that this is the case, then the second prong of the test of fair play in hailing Meyer must be met

Traditional notions of fair play or justice

Courts are reluctant to hail a defendant into a state if it is unfair to do so or if justice is not one that can be met for the defendant with the matter being hailed into the state. Germany is where the corporation is domiciled and if the proper court would be in Germany, then the court in CA would be reluctant to pursue a personal jurisdiction if it is unreasonable to do so. Here, if the contacts were either enough for general or specific contacts within the state of CA, it may be that CA would proceed but if in the interests of justice, it would be unfair then CA will not have personal jurisdiction over the defendant, Meyer corp and would dismiss the complaint against the corporation.

3 Proper Venue - San Diego?

Venue is proper where any defendant resides, where the tort action took place and the location of the majority of the witnesses the court may choose as in the interests of justice for the convenience of all parties what venue is proper. Here, Paul, plantiff, is a resident of San Diego but a domicillary of Mexico since he is

on a student Visa.

Valerie, defendant one, a resident of San Francisco and Meyer Corp, defendant two, a resident corporation in Germany and the original purchase of the snack was in San Francisco. San Diego is not where either defendant resides or where the tort action took place and is not proper venue based on venue rules of residing or tort action occurence. Paul was at a concert in San Francisco and incurred $50,000 in medical expenses, the facts do not state if Paul's medical expenses occurred in San Francisco or in San Diego. If they occured in San Diego, then the hospital or medical facility where treatment occured will have doctors and nurses who would be witnesses to the treatment. This could determine for Paul that the witnesses could be more convenient to the San Diego court if that is where treatment occurred. Since Paul filed in San Diego, if the witnesses reside there then in the interest of justice the venue in San Diego would be proper.

Here, however, if the witnesses reside in San Francisco, then the tort action, the location of one of the defendant's residency will control and the venue would not be proper in San Diego.

4 Removal to Federal Court?

Federal courts are limited in the type of cases they may hear to be only Diversity of Citizenship cases or cases involving Federal Questions. The federal court must be a court where the case could have been originally brought and a defendant can then seek to have the case removed to the federal court.

Action filed - Tort

Here, the case is a tort action for compensatory damages based on defective

product which was an edible snack that contained contaminants toxic causing Paul to become very ill with damages in the amount of medical expenses of $50,000. A tort action is not a federal question but a state action, so unless the case meets the Diversity of Citizenship requirements, the federal court which can't originally hear the case cannot receive a case for removal by a defendant.

Diversity of Citizenship

The action in diversity requires complete diversity between parties, therefore plaintiff in CA can sue a defendant who is a resident of any other state or even a defendant who is foreign resident. The diversity also requires the amount of controversy by the plaintiff against the defendants to be redressed by the injury to be over $75,000

Here, Paul is the plaintiff residing in San Diego, CA but Paul is on a student VISA from Mexico, for residency purposes, Paul may NOT be considered a citizen but only a student who is going to school in CA and therefore not domiciled in CA.

Valerie, one of the defendants is a resident of San Francisco, CA and the other defendant, Meyer Corp., is a corporation, a resident of Germany.

Diversity of citizenship between Paul and Meyer Corp. exists but however, since Valerie and Paul are both residents of the same state, this may will destroy diversity unless Paul is not considered a resident of CA. If Paul is considered a resident of Mexico, which is more than likely, then Diversity does exist.

BUT In addition to the diversity of citizenship requirement, the amount of controversy is only $50,000 and does not meet the over $75,000 amount required. Therefore, the federal court does not have original jurisdiction to hear

the case in the first place and removal would not be proper based on diversity of citizenship since the amount does not meet the requirement.

Question #1 Final Word Count = 1771

2)

1. Ben v. Polly

Easements

An Easement in writing which gives a party an express right by the dominant estate to enter another's land is an easement appurtenant and it is said that it touches and concerns the land of the servient and will remain as a restriction to the serviant estate by the dominent estate so long as the easement is not abandoned or it is not servered by the dominant and servient estate becoming in the possession of the same owner. Recordation of the easement can protect an owner of the easement against subsequent good faith purchasers of value who do not receive a deed which declares the restricted covenant showing the easement.

Ben received a deed to an easement from Al, in 1990, to drive across Al's farm at the north side. A deed is valid if the grantor has the intent to grant, describes the property to be used and proper delivery is made to the grantee. Upon receipt of the deed, Ben has a right to use the easement at any time Ben may cross the farm. Ben graded and paved the easement and both Ben and Al used the easement daily. The deed Ben received was not recorded at the time, however, the recordation will not invalidate the deed as at the time of delivery of the deed, Ben received possessory rights to use the easement at the time he received the deed from Al.

In 2009, Al deeding his farm to his daughter, Carol did not state the easement to Ben according to the facts. An easement which is part of an estate that is not listed as an encumberance to the estate does not fail unless the party receiving the deed does not have notice of the easement. Here, the north side of the farm now has a paved road and Ben uses daily, notice can be met if Carol has actual, inquiry or constructive notice. Constructive notice is recordation. Since the

easement was not recorded yet, Carol does not have constructive notice but here, Ben uses the road. If Carol lives on the farm she would see Ben using the road and then she would have actual notice by seeing the usage. Or if Carol was to inquire with her dad about any encumbrances she would then be charged with inquiry notice. We do not know if Carol has inquiry or actual notice at this point because we do not know if Carol's dad told her about the easement or if Carol is in possession of the farm to actually see Ben using the road. However, prior to the sale of the property, in 2011, Ben recorded the easement. This recordation now falls outstide of the chain of title and therefore subsequent purchasers who would search the recordings would not see the easement granted from Al to Ben, since Al to Carol recording occured in 2009.

In 2012, the written contract to sell the farm to Polly did not include the easement, would also not be in the chain of title so Polly would not have constructive notice of the easement. Here, however, Ben uses the road daily and Polly on inspection of the farm SAW Ben using the road. As stated above, Polly has actual notice that Ben uses the road and should be charged with actual notice of the usage.

The sale of the farm for 100,000 from Carol to Polly did not occur until 2014, the contract for sale will have said to merge into the deed upon the completion of the transfer of the deed to the grantee. The deed did not show the easement but as stated above the actual notice of seeing Ben drive on the road would be enough notice by the purchaser of value to have notice of the easement. The fact that the deed did not contain the express easement for Ben to use the road will not fail, Ben is entitled to the easement and Polly will not be allowed to block Ben from using the easement.

Polly v. Carol

a. Breach of contract

For a contract claim, the action will be governed under the common law since this is a land sale contract.

The contract stated the farm was only subject to a covenant from the Water Co. to provide water service to local properties including the farm. No mention of the covenant to the road by Ben was in the contract or the deed. Failure to list encumbrances in a contract, may be considered a breach to disclose the encumbrance. In addition, a contract which contains a condition that "seller shall covenant against encumbrances with no exceptions" where the property does have an encumbrance will be held to the terms of the contract. At common law, the sale contract for land merges into the deed, and therefore breach of an absolute duty can require damages to be awarded. Since the contract here, did not state the easement and the "no exception" clause, requires the seller to sue on behalf of the buyer for any claims. However, for an easement, the recourse would be to sue the buyer for damages.

The land with the Ben Easement decreased in value by 5000.00, so Polly can sue Carol for the 5,000 decrease in value from the original sale price that Polly paid to Carol.

b. breach of covenant of warranty deed

Under a covenant against all encumbrances, a buyer can require the seller to sue if an encumbrance effects the use and enjoyment of the buyer with the land sale contract. Here, marketable title is said to be one free and clear of those encumbrances not listed within the title but the merger upon the closing the deed controls. Buyer cannot sue but can force the seller to sue on behalf of the buyer.

However, since Polly had actual notice of Ben using the easement, she will not prevail in an action against Ben or cannot force Carol to sue on her behalf.

Question #2 Final Word Count = 1002

3)

Dirt v. Builder

Contracts for goods are governed by the UCC, contracts for services are governed by common law. Here, Builder and Dirt signed a contract to have Dirt excavate the site preparation for a large office development, this is a service performed by Dirt for Builder and therefore the common law principles will govern this contract.

A contract is said to have been formed if the parties mutually agree to the certain and definite terms of the offer and there is consideration. Here, the facts state we have a valid written contract between the parties whereby Builder will pay $1,500,000 to Dirt for Dirt's services of excavation of the land in prepartation for the office development, which meets the consideration element, with work to start on or before June 1 to be finished by September 1. The contract also states that Dirt make all his equipement available and take no other jobs during the duration of this contract. It is assumed both signed the agreement and therefore are both bound to the terms within. The contract has certain and definite terms and the June 1 start time is considered an abosulte condition to perform, unless there can be an exception to this.

The unusual high pressure weather system settling over the state. This may be an exception to the contract if weather is not foreseeable at the time of formation. On May 1, this is out door work, the weather is always foreseeable as to being unpredictable at any time for outside work delays. It may be here, that Dirk would say he couldn't start on June 1 due to the unusal high pressure, but this would not excuse the contract from starting. What did happen was the state enacted a statute, that stated due to the effort to reduce air pollution, the state banned all diesel-powered equipment, this ban was not foreseeable and therefore the contract will be effected. The result is that the contract is frustrated or may be impossible or impracticable because of the state passing the ban.

Frustration, impossibility, impracticality

A contract with a duty to perform on or before a specific date can be excused if it is impossible to perform if at the time of formation the impossiblity was not forseeable, certain and avoidable. Dirt called Builder on June 2, to notify Builder that the new law made it impossible for him to perform without incurring an addition 500,000 in expenses in pulling out the gas-powered vehicles to perform the job. It is not foreseeable or certain that the state would do a ban such as this and when Builder refused to allow the increase in cost and at this point Dirt could state that the increase in cost was so substantial to make the contract impossible to perform. This would make the contract voidable by Dirt and therefore, since the law was the result that was unforeseeable at the time of formation, Dirt may be excused from performance due to the illegality of using the diesel-powered equipment.

The contract that is not started when the terms state to start, Dirt did not commit an anticipatory repudiation, Dirt on June 2, called and stated that a modification was needed due to the new law, he did not unequivacably revoke the contract or have the intent to revoke, Dirt wanted a modification.

Modifications at common law are not allowed unless new consideration is necessary unless the parties agree. Here, we do not have an agreement between the parties for a modification. Dirt needed to use gas-powered in exchange for 500,000 more from Builder so in a sense because of the new law, consideration of using the gas equipment both would increase the costs would be new consideration. The contract is said to be substantially altered with these new requirements and if a party chooses not to agree to the modification it can not be brought in.

Dirt at this point may void the contract due to the contract was impossible to

perform due to the new law banning his equipment and may not sue for the loss of his profits of 200,000 since the ban by the state made the contract voidable even with Builder termination of the contract on June 4.

Countersuit by Builder

Countersuing for damages because the original contract was breached by nonperformance. If the court finds that Dirt should have used his gas-powered equipment then a countersuit for damages as a result of the breach may be the result.

Here, however,even though Dirt did not commit AR or void the contract on June 2, Dirt did not start performance on June 1 as required by the contract and Builder under anticapatory repudiation has a right to sue when performance which was an absolute duty to perform does not occur. Here, Builder terminated the contract on June 4. Builder has a duty to mitigate any damages. Here, Builder immediately want out and found another company to do the excavation for 1,800,000 which would have been less than the amount that Dirt would have had to expend because Dirt stated the total cost due to the law would have been 2,000,000.

Builder's increase in costs due to Dirt not performing was an increase of 300,000. It is highly u

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Question #3 Final Word Count = 877

END OF EXAM

4)

Procedural due process clause of the 14th Amendment

The PDP of the 14th protects citizens from state regulatory violations of the citizen's right to life, liberty and property and in order for Paige to claim a violation of the due process clause, P must prove a protected property right exists and the state action violated the property right without notice and a hearing from Paige to address the property right.

The statute in question states that salary of a teacher at City High will be withheld for a maximum of two years if the City High school standard falls below the established standard. City High failed to meet the state standard and Paige's salary was being withheld. A teacher's salary would be considered a taking if the teacher has a property right to the salary and under the due process clause would require that the taking must have notice and a hearing.

Property right.

The right to work in order to make a living may considered a property right when someone pursues a job for a set salary. All the teachers at City High were affected by the salary reduction. No teacher received notice or hearing but when a regulation is enacted by the state by the legisture, the process of the actual enactment is said to meet the regulatory requirements of due process procedures based on the fact that the legislature will form committees to review bills and determine the best laws for the state. State action is necessary under the police powers of the state and for the health, safety and welfare of the citizens may enact statutes for that reason. Education is a fundamental right of citizens and the state enacting legislation to address the welfare of the citizens to receive adequate education would be proper. The means by the legislature would be to give notice of the committee's agenda for the regulations considered and hearings would be held for the public to be involved. The actual statute hear

met the legislative process and a citizen would have had the opportunity to address the matter prior to enactment. Therefore, the teachers effected after the passed legislation addressing the needs of schools failing the guidelines would have been proper under the DP of the 14th, hearing and notice procedures.

Taking of the salary.

However, the taking of the salary of the teachers upon a school failing does not meet the notice and hearing process as this property right is based on the schools failure not the individual teacher's abilities. Paige verbalized this at many various community and school board meetings. Paige probationary teaching position removal without cause is acceptable policy because the school can determine policies for hiring and firing of their employees. Here, the facts state that an probationary employment for temporay teachers according to the state policy have a a full year period in which a teacher may be terminated for any reason upon written notice. Paige received the written notice before the first year completion and meets the state policy. Here, however, Paige was a highly-regarded probationary teacher at City High, so the termination shortly before the end of the probationary period does not look like the reason was based on her actual work quality but more for the fact that she was voicing a viewpoint against the statutory requirement for reduced pay. The termination for any reason upon written notice due to the highly-regarding teaching status of Paige looks contradictory and more for retaliation, even though the policy states any reason, the court will have to look at the reason City High terminated Paige.

Without notice and a hearing. Notice was received of a termination, but Paige did not receive any hearing to determine the reason behind the termination and even though the termination during the probationary period, the termination is supect of being retaliation and the courts should find this a violation of no hearing under procedural due process.

The State and Attorney Generals Motions

Standing

In order to bring an action P must have standing

Standing is injury caused by D that can be redress by the court, here

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Question #1 Final Word Count = 687

5)

California

In California, community property is all property acquired during marriage shall be presumed to be community property and all property acquired by a spouse before and after marriage is separate property as well as property by a spouse acquired by gift, will, devise and bequest.

Agreements

Prenuptual agreements are legal in California if the agreement is signed at least 7 days prior to the marriage and the signing by the parties must be voluntary. California does recommend that the parties not only voluntarily consent to the agreement but that they seek legal counsel to make sure that each party is aware of the effects and understands of the ramifications of the agreement. Here, H and W prepared a document wanting to their salaries after they marry to be classified as separate property of each spouse. CA law requires that salary during marriage is community property so the spouses are electing to have each of their salaries exempt from the community property law during marriage.

Execution

In order to opt the salary out of community property laws, the document must be properly executed with signatures and date, with consent of the intent of keeping their salaries separate with execution at least 7 days prior to marriage and it must state that if the couple should seek advice of counsel prior to signing. The facts state that it is sometime before their wedding, that they took several weeks to plan the wedding but without knowing the date, that this may or may not be binding on the parties.

Fully integrated agreement

In addition, the facts state that a separate document was created stating that H and W did not need legal advice, this was not included in the document regarding the separate property assignment rights of their salaries and even though they signed and dated each of the documents at the same time the document purporting to state they do not need legal advice, the second agreement may not be binding on the separate property agreement.

The prenuptual agreement may then fail for two reasons, if the day of signing was not more than 7 days before the wedding and the agreement did not include the waiver for legal advice. If the parties intended that the second agreement for legal advice was to be part of the Salary Agreement, it may be that the court will say that the writings together make one agreement as that was the parities intent. Parol Evidence could be used to write in the consent but it seems highly unlikely.

If the court finds that the prenuptual agreement is valid, then each spouses earnings will be considered their separate property during marriage if not then the salaries will be community property.

The CONDO

Under the prenuptual

Harry used his salary to buy the condominium and took title in his name only. Salary was separate property and separate property that changes form retains the separate property characterization. The action of Harry next of putting the title in his name only presumes the Condo is to retain the separate property status. The couple moved into the Condo, lived in the Condo from 2005 until 2016. Under the prenup, the home will be considered H's separate property if a valid prenup exists and W will be entitled no share of the home's worth.

Under community property if the prenup is invalid

If the prenup is invalid the Condo, even though title is in H's name, is an action more likely to be looked as property by the community since both are using the Condo as the couple's home. H and W lived in the home, so the purchase of the home on dissolution, it maybe that H and W will split the value if the prenup is invalid or if W can prove that the home was bought for the community and the salary H used for the purchase of the home was indeed a gift to the community.

Gifts

Gifts are personal tangible items generally, for the sole use by a party and not of substantial value, The house would fail to meet the gift definition as it is substantial in value used by both parties and is not personal in nature. Gifts that do not meet the general requirements however can be considered a gift if there is a writing. Transmutation require the writing after 1984, here however there is not a writing, so the gift will fail.

Condo as Community property

If a spouse purchases property with separate property funds, H can receive his separate property funds back through tracing and the community will then receive the market value of the Condo after H is awarded his separate property funds.

Joint Savings Account

Under the prenup

The court would look to tracing, the money should be traceable back to each parties deposit, 5,000 per year. The fact that W took money out should be deducted as well to be that the funds was from her salary so that the portion left in the account would not be split equally but H should receive his salary deposited first then the remaining would be W's.

Commingling the Salaries in a savings account.

The couple opened a joint savings account and deposited $5,000 of their salaries each year into the account. This action would be considered as commingling and funds which are commingled would be presumed to be community funds rather than separate funds. Also, the fact that the two opened the account jointly seems to give the indication that the funds are for the community. Here, the court should find that the Joint Savings account is community even though each spouse contributed the prenup separate funds into the savings account. Upon dissolution, the account should be split between the couple equally.

The Rental Property

Under the prenuptual Agreement

W put here salary into the Joint Savings account, it was her separate property. She then pulled money out of the savings account and bought the rental property. She put the property in here name only. Title will presume this is her separate property but again it doesn't control, if the funds were community funds or if funds were also H's separate property funds. Therefore, if the money she used to purchase the rental property can be traced to be only W's money withdrawn from the joint savings account, then the Rental Property will retain the separate property status of W.

If any of the money used was H's to purchase the rental property. Marriage of Moore - pro rata share if both separate property funds and community property funds were used to purchase the rental property, then a pro rate share can be determined by the amounts used of the community funds and the community will be entitled to a percentage of the fair market value of the home. With this approach, W will receive a portion based on separate property and then the couple will split the community property portion.

Under Community Property

Depositing the $5,000 of their salaries each year into the account if looked as community funds, any withdrawal and purchase will make the purchase of the rental property community property instead of separate property. Upon dissolution, the Rental Property should be split between the couple equally.

Wanda's Hospital Bill

During marriage all debts are considered community debts in California. However, upon dissolution of a marriage the debts after the dissolution are no longer part of the community.

CA community property rights cease that if the marriage is over at the time of separation and even though the Dissolution may occur later, if the parties are no longer looking to the marriage as being reconciled or being in a marriage then from the point of separation, the community ceases. Here, W moved out in 2016, the facts state permanently separated. Therefore, the courts should state that even though dissolution happened later in the year at the time W moved out the community was permanently severed. The medical condition that resulted in Wanda receiving a $50,000 hospital bill occurred after the couple permanently separated. Therefore the community did not incur this debt, Wanda will not be reimbursed for the debt.

Question #2 Final Word Count = 1363

6)

Ethical Duties

Engagement

ABA recommends engagements be in writing when an attorney is representing a client. CA requires that when an attorney enters into an agreement with a client that the agreement be in writing and it is mandatory when fees will be over $1000.00. Here, the facts state Len agreed to represent ABC for a challenge to a statute, the writing requirement is needed stating the terms of the agreement which mentions the reasonable fees as this challenge will exceed the $1000.00 threshold for the ABA. CA requires the engagement addresses the scope of the representation in addition to the hourly rate. The facts do not state an engagement letter was made but one should be made for this matter.

Duty to Disclose

Prior memberships in clubs that may result in a conflict of interest should be disclosed to the new client. ABA does not require the disclosure to be in writing, but CA does and requires that the client consent to the writing. It is mandatory for Len to disclose that he is representing ABC to the non profit organization, Equal, he would be required to get Equal's written approval to proceed because he helped Equal get the statute enacted. It is highly unlikely that Equal will approve, if Len had access to any confidential matters that could be at risk of disclosure to ABC. In the event that Len merely filed documents and was not privy to confidential information, then after both parties consent to waive the conflict, Len may proceed with representation of ABC.

Misconduct

An attorney that does not follow the professional responsibility codes will be held

accountable for misconduct. In CA, the misconduct can result in sanctions, suspension and even disbarment. Here, Len was supposed to inform Equal of his potential engagement with ABC over the same statute he helped Equal enact and receive their written consent for him to proceed with the representation of ABC

Zealous representation

Both CA and ABA require and attorney to zealously represent the client in the legal matters. Here, Len has a belief that the law his client is challenging is a good law and secretly hopes that ABC is not successful in its lawsuit. It may be that Len will not zealously represent ABC with this matter due to his beliefs. Therefore, this will be considered a breach of his duty of loyalty to ABC by not giving the client his sincere effort in representing ABC in the matter of challenging the statute he feels is a good law.

Representation of a Corporation

When a lawyer represents and corporation, the lawyer is not representing the board or the officers but the shareholders who are the owners of the corporation. Here, Len will work with the board of directors and the officers but he does not represent them. Pat, the president of ABC, informs Len that he filed false reports with the EPA and states he is planning on filing another false report and Len does not take any action. When a lawyer represents a corporation and receives information that can harm the corporation, the lawyer must first let the party who gave the confidential information to him know that he does not represent that party. At the moment that Len received this information, Len should have stopped Pat from talking and called outside counsel in immediately. Len should have informed Pat, that Pat must disclose this information to another officer or the board, because the actions by Pat will harm the corporation. Len should also

inform Pat that Pat needs to seek outside counsel regarding this matter.

Duty of confidentiality

A lawyer may not reveal confidential information, however in certain circumstances those that will cause substantial injury or substantial economic harm may be disclosed.

The filing of the false report, is a violation of a substantial civil fine. Len did not take any action. Len should have gone to either the chairman of the board or if there is a CEO over Pat, and disclose the corporation about the false filing and the plan by Pat to file falsely next month.

Misconduct

Here, Len was supposed to inform Pat to seek outside counsel, inform the corporation of the false filings and failure to do so was misconduct. Len can be fined, suspended and even disbarred

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Question #3 Final Word Count = 718

END OF EXAM

1)

Charles Drumm, Assistant County Counsel
Office of the County Counsel
County of Riverdale
15000 Civic Center Way
Dixon, Columbia

Michael Standish
Standish & Lobert LLP
Attorneys At Law
1616 Oak Street
Dixon, Columbia

Re: Conveyance of the Wildomar Property

Dear Mr. Standish,

Pursuant to your letter dated July 22, 2016, and your representation Geraldine Santa Maria (Santa Maria) challenging the Riverdale Regional Park District (RRPD) action regarding the intended conveyance of the Wildomar Property (Wildomar) owned by the RRPD to the City of Dixon is a legitimate sale of property owned by RRPD which does not require consent of a majority of the voters of the district because Wildomar, even if your client considers a property defined as an actual dedication within the meaning of Section 40 of the Columbia Regional Park Dristrict Act (Act) the Wildomar property merely requires only a majority of the board to convey the property because the property has not or ever been "actually dedicated and used" within the meaning of Section 40 of the Act.

Statement of RRPD regarding conveyance of Wildomar without majority vote of the voters of the district is valid because voter consent is not required if 1. the conveyance of the property from the Lucille Potts

transaction was a purchase not conditioned on any set land use purpose or requirements stating that the property was to be for park purposes, 2. Wildomar does not meet the common law dedication definition and 3. as a result the Wildomar property as not being designated for any particular use gives the board authority to sell Wildomar by a board resolution to do so because no dedication exists and no voter consent is necessary.

1. Property actual use not conditioned upon how the property was to used after the purchase by RRPD in the land sale contract.

The property of Wildomar was undeveloped land is a surplus property held by the district and was NEVER used for park purposes. Under Section 63, property that is unnecessary for the purposes of the district requires merely a board resolution to dispose of the property. If the property actual usage would have been for "public recreation purposes" the district would have done several things, namely installed restrooms for the public, walkways and possibly lighting and other essentials for the property to be deemed to be interpreted as park use. The *dedicated* under the common law by force if private owner, and acceptance by a public entity specifies the real property to be restricted public use in perpetuity, whether express or implied, by the parties and may have the character as a "gift as well as a "contract." Baldwin v. City of Lake Alston (Colum S.C. 1999). When making the determination of whether the property is dedicated under common law for a certain use only if the party donated offered it with intent of perpetual restriction, the city must accept that restriction for the dedication to be valid. The Supreme Court concluded in Baldwin that the provisions authorizing particular action *discretionary for the action but mandatory of the means.* Ibid. Therefore, since RRPD never proceeded with the development of the property regardless of how the former owner, Lucille Potts intent.

2. The terms which define Common Law Dedication.

The Columbia Supreme Court stated that Common Law dedication is an offer by a private owner and acceptance by a public entity that the property be subject to a specified restriction of public use in perpetuity. (Baldwin v. City of Lake Alston, 1999). Lucille Potts did not state in the contract sale any land use restrictions. The RRPD did not apply any land use restrictions only stated that they hoped to develop the land in the future. Classing the property may be a gift even if the public entity purports to pay for the property at a reduced market value and a Common Law Dedication which does not involve any payment by the public entity will be considered a gift of property is considered a dedication and takes on the character of a contract. Although the purchase price here was substantial in 1995, the RRPD paid $950,000 but the appraised value was $1,370,000 which save the RRPD $420,000, here, the character of the property could be deemed a gift which the RRPD paid a substantial sum for the property from a private property owner BUT this was NOT a dedication but a purchase of real property within the contract did not state any purpose to be dedicated as such for any restricted use by either the buyer or the sellor in this transaction. Since the Common Law Dedication has no restriction, there is no dedication as stated in Baldwin.

3. Property that is not termed dedicated does not need the consent of the majority of the voters in the district.

Property owned by the RRPD which becomes unnecessary for the purposes of the district, may be subject to Section 40, sell such property which is "an easement or any other interest in real property may be actually dedicated for park purposes by the "adoption of a resolution by the board of directors, and ANY interest so dedicated may be conveyed only as provided in this section and. may not validly convey any interest in any real property actually dedicated and used for park purposes without the consent of a majority of the voters of the district does not apply because the board stated it only a hope for developing the property into a regional park and since the hope never came to fruition, the

actual use of defining the property as such would be invalid.

Santa Maria's contrary position to the conveyance of the Wildomar Property requiring voter consent is unsound because Wildomar was *never* actually dedicated and was *never* used for park purposes but is NOT "indisputable" because the Wildomar was not dedicated and used simply because of a belief that the land functioned as a "regional park".

The City did not dedicate Wildomar to be defined as "regional park" so the use is not restricted since the plain language of the contract, the intent of the buyer and the courts shall NOT read the provisions to mean something they do not.

In order to function as a regional park, land must be developed as such. Rules for contstuction of statutes apply equally to ordinances and can apply equally here to contracts, to resolutions to determine the language of a term. (Baldwin) In looking at the history of the property, prior to the June acquisition by RRPD, Lucille Potts held title to undeveloped land and the 160 plus acres was popular among hikers, hunters and other members of the surrounding vacinity. Lucille never posted no trespassing signs and after the acquisition in June 1995 the RRPD did not post no trespassing signs either. Patricia Smith, general manager in 1995, submitted a recommendation to the board of the RRPD to purchase the undeveloped land from Lucille Potts and the minutes of the board meeting reflect a motion which was accepted unanimously to purchase Wildomar on June 5, 1995. In July 1995, the board adopted a resolution authorizing the purchase of Wildomar and entered into a purchase agreement with Lucille Potts to complete the real estate purchase transaction. No recitals were ever stated that this property was bought with the intent to develop the property into a "regional park".

The board prepared a resolution for the intent to convey Wildomar to the City of Dixon on July 14, 2015, the resolution to sell Wildomar stated in the recital that

the hope of the board in 1995 was to develop the property as a regional park but that the board had been unsucessful to obtain the funds necessary to develop Wildomar into a regional park. Since the property never developed into a regional park it can not be termed as "dedicated" if the land that merely just sat idle after purchase. The land will retain the definition defined by the use of the land and since this land is undeveloped the board never designated the use of the land as a regional park. The character of the property termed as a regional park will fail since the board merely hoped if they raised the money necessary to develop Wildomar. The board further noted that there are health and safety risks without parking, restrooms or any other facilities normally found in regional parks.

The intention of RRPD was to raise funds in order to develop the Wildomar property into a park. This intent was not one that was ever realized and the board was unsuccessful in raising the funds necessary to develop Wildomar, the "regional park" was not defined as such and never "dedicated."

All property deemed to be help by a public entity may be deemed held in trust for the residents of the district.

In has long been held by common law that when a trust is created there has to be a proper purpose. The RRPD, is a public entity created for the management of property to be used for the enjoyment of the citizens for recreational purposes. Property held in trust by a trustee must be managed for the benefit of the beneficiaries of the trust. Here, the proper purpose was to develop the Wildomar property to be a regional park but the funds necessary do develop the park were never acquired. Under common law trust, a trustee has a right to sell property if the property is not producing for the benefit of the beneficiaries and property acquired standing idle does no one any benefit. Here, the board is selling and realizing a benefit to the beneficiaries by the sale, the RRPD will be able to put the funds from the sale to use on existing properties for the public use. Property

held in trust by operation of law shall be held by the district as dedicated and set apart to the uses and purposes set forth in an act. Teller Irrigation District v. Collins, Columbia Supreme Court (1998). The board are the trustees and they do not need the voters who are the beneficiaries of the trust to vote to approve the sale of the property. The board is within their authority to manage the property which was not dedicate or used for a regional park to sell the property if it deems the sale will benefit the district. Although it has long been said that residents are the owners of the beneficial title however the board may sell property as a trustee of the trust.

The District will commence the conveyance notwithstanding the threatened litigation.

Sincerely,
Charles Drumm, Assistant County Counsel

Question #1 Final Word Count = 1775

END OF EXAM

1)

To:Jeff Su

From: Applicant

Date: July 25, 2015

Memorandum re: Wong v. Pavlik Foods, Inc.

A. To file a Class Action against Pavlik Foods, Inc. class certification quoted in Abel Westlund v. Palladin Farms, Inc. (2001) states that Section 382 of the Columbia Code of Procedure (CCP) for class actions in Columbia is to apply and interprete the same 4 certification elements as listed in the FRCP Rule 23 for class actions brought in the federal courts: 1. Numerousity, Commonality, Typicality and Adequacy of Representation.

In determining the class action, all four elements should be clearly met, if any one element is questionable, the certification will not be found by a court. This is not the typical case in that so many different classes of workers at the plant seem to have differing greivances. Although certification may be found with the numbers and the fact that all were shorted in their pay, the variations from anyone pay period may not meet the commonality test. Below is a description of the difference and what the court may likely find as a result of the facts in this case.

1. Numerousity: a class so numerous that joinder of all members is impracticable. Joinder of parties typically can be attained in the courts if the parties numbers are not numberous, Arnold Wong stated that Pavlik averages between 350 to 400 employees in its meat processing plant in Gaston County. For the numerousity of the class to recover back wages for current and former employees, Wong stated almost everyone who worked at Pavlik worked overtime and did not receive wages for the hours worked, that some employees

were being paid a lower wage than their wage level that they were hired at, that some employees worked their lunch and did not receive pay for the lunch hour worked and lastly, anyone who complained about the inaccuracy in thier wages paid would be terminated. Anyone who complained about it was terminated. Upon termination, those employees had to wait for their pay, and some where paid in cash about half of what was owed to them, those who were paid were required to sign a release before they would receive their final pay. The employees represent different group sections to included the cleanup crew, the carcass handlers, skinners, deboners and butchers but all in some aspect were not being paid according to the hours they worked. The only group that received overtime pay was the butchers, but every group worked overtime.

The court will likely find that numerousity is met easily for the employees based on the large amount of employees who were entitled to back pay. Those employees number well over 400 for the nonpayment of wages for the hours worked within the last year of current employees, and that is not counting the employees that have been terminated.

2. Commonality: the questions of law or fact common to the class

We have overtime wages not paid to the class, we have a group of cleaners who were paid under minimum wage were a crew of only 4 or 5 people. The commonality is that wages are not being paid, but this is very sporadic as Pavlik would change the pay requirements of different groups. One week it would be the carcass handlers would get a deal, next week it could be the skinners or the deboners. Accordingtly Pavlik had a set of books he'd show the government which did not reflect the REAL facts. Since the variation was so diverse on any given pay period, Wong kept records and the handwritten notes Pavlik gave Wong on how to figure the pay for different employees and Wong said their are some workers who kept records of the hours they worked because he had seen them when the workers complained about not being paid for the hours they

worked.

"The kinds of wage violations alleged vary from group to group within the proposed class and the factual components necessary to establish the violations are likely to vary from individual to individual. The claim of plaintiff, Westlund, is not at all typical of the typses of claims he asserts on behalf of the other members of the proposed class." see Decision Denying Class Certifcation, Westlund v. Palladin Farms, Inc. (2001).

Here, the commonality in respect to the wage violatings vary and no one seems to have been paid for the true hours worked but differences vary from not only group to group but week to week.

The only common element of employees and former employees is that with all workers NEVER received pay stubs that explained their pay. With regards to former employees, the common element was to not receive their final pay but having to ask and then having to wait for the payment. So, the common elements of former employees also varies between individuals, some would receive half the pay for the last pay earned and some no pay at all. Those who received payment for their final wages earned would have to sign a release. No consistency was maintained for former employees as well.

3. Typicality: The claims or defenses of the representative parties are typical of the claims or defenses of the class

Wong, as payroll administrator, stated that he worked his lunches and that Pavlik did not pay Wong stating that Wong was supposed to take a lunch period. Wong also worked nine and ten hour days and during the holidays worked six days a week, only taking Sunday only receiving a few extra dollars but never paid for overtime or at the overtime rate of time and one-half. Wong may have

the typicality needed for the class action.

4. Adequacy of Representation: the representative parties will fairly and adequately protect the interests of the class.

Wong must fairly and adequately represent these different groups with all the various types of violations. When the only common elements are the no pay stubs for all employees to explain wages, and former employees not receiving pay until asking for their final pay, and that each group seems to have different variances unpaid wages, Wong may not be able to adequately represent the varying groups. Although Wong is among the groups of not being paid all his wages owed consistently, not receiving a pay stub and also being a former employee having to requrest his final pay, it may be that the court will not find that Wong as an individual that can effectively represent all the different groups due to all the varyiances.

Due to the variance in fluctuations of the nonpayment of wages between all employees, the commonality of the employees is susceptible of not being sufficient to meet each employees injury, and due to the typicality of Wong not being able to address each class the court will likely find that the class action will fail certification.

B. To bring a representative claim on behalf of current and former employees for claims of recovery of unpaid wages under PAGA of 2004 the representative does not have to satisfy the traditional requirements for certification of a class.

The representative must meet a 3 prong test to includes: the party bring the suit (Wong) as representative on behalf of himself and the current and former employees can seek restitution for injuries because Pavlik unlawfully withheld

wages, 2 Under the PAGA the procedure require to certification of the class is unnecessary as the PAGO does not have to comply with the CCP Section 382. and 3 Wong would be bringing a suit that is termed a substitue action: "a law enforcement action", for the protection of the public. *Arentz v. Angelina Dairy, Inc. (Colum. Supreme Ct. 2009).*

1. Labor Code Section 2699 (a) states "aggrieved employee can bring an action against the employer, on behalf of himself and others current and former employees,"

Pavlik failed to pay wages earned to Wong and the current and former employees. According to Wong, some employees did complain to the Labor Board. However, no actions were ever taken to address the wage violations at Pavlik. Because of descrapancies and violations of the state labor laws, in 2003, Columbia legislature enacted the Private Attorney General Act of 2004 to address the issue of a growing need for policing the labor violations. *Ibid.* A party that is defined an "aggrieved employee" under the PAGA could bring civil action for a violation to himself and to other co-workers and former co-workers to recover civil penalties from employers in violation with the state labor laws.*Ibid.* Therefore, Wong, on behalf of himself and all other employees and former employees can file an action to recover civil penalties.

2. The class certification is not and express requirement to comply with CCP Section 382.

A a proxy or an agent of the state's labor law enforcement agencies, an employee plaintiff can sue an employer for violations of state labor laws. *Ibid.* This supplement ensures that when state agencies, such as the Labor Board, is unable to redress a claim, the acting plaintiff can by proxy do so. Here, Wong will be the proxy for the current and former employees and he is afforded the same legal right to sue as if Wong was an agency to recover penalties for the Labor

Workforce Development Agency.

3. The party bringing the action is essentially bringing a law enforcement action designed to protect the public.

As stated above, if the LWDA does not take action then Wong, as an agent or proxy, can bring the action against Pavlik for both employees and former employees without certifying the class and recover penaltites to go to both LWDA and the class.

Monetary relief

A. Under the Unfair Competition Law

Under the Unfair Competition Law (UCL) Section 17206, a violation that is deemed to be unlawful, unfair or fraudulent business practice by Pavlik will be assessed $2,500 for each unfair competition. Here, Pavlik has altered records, not paid wages, withheld pay to terminated employees and each and everyone of those violations to each employee could result in this penalty.

B. Prerequisites to satisfied prior to filing a law suit under the PAGA

Prior to proceeding with the lawsuit, Wong must give written notice to both the employer and the Labor Workforce Development Agency describing facts and theories supporting the violations. If the LWDA does not respond to the notice, then Wong may proceed with the law suit as a proxy. (*Arentz)*

C. What civil penalties might be recoverable by the current and former employees under the PAGA

Under Section 558 (a)(1), initial violation by Pavlik is 50.00 for each underpaid employee for each pay period that the employee was underpaid. Since the action will be initial the Section558(a)2 will not apply, but future violations will be assessed 100.00 for each underpaid employee for each pay period. Under the PAGA of these civil penalties, 75 percent will be paid to LWDA and 25 percent will be paid to the "aggrieved employees". In Talbott v. Euphonic Synthesizers, LLC the Columbia Court of Appeals remanded to the trial court to reconsider that ALL the PAGA claim for recovery to the aggrieved employees finding that the employees STAQND in the shoes of the state labor law enforcement agencies. So it may be that we can receive all civil penalties if the court finds that.

All back wages recovered under Section 558 (a)(3) shall be paid to the affected employee.

Question #1 Final Word Count = 1903

END OF EXAM