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As set out below, (1a) Paul did not validly serve the summons on Valeria, (1b) Paul did not validly serve the summons on Meyer Corp, (2a) Superior Court of California in San Diego have does not have personal jurisdiction over V, and Superior Court of California in San Diego have does not have personal jurisdiction over M, (3) As such, Venue does not properly lie in the Superior Court of California San Diego. (4) P action cannot properly be removed to Federal Court.

1. Paul validly serve the summonns:

(1a) Valerie

### **Service of Summons**

In California, the Plaintiff must service the Defendant with a (a) summon that gives Defendant notice of the pending action, and the complaint.

Here, P drove to SF where he "personally handed V a summons and copy of the complaint complaint." the summons was served with a copy of the complaint. By receiving both V had been put on notice that there is a pending action again her in Superior Court of California in San Diego. As such, P properly served the Summons on V.

Therefore, P properly served the summons on V

### **Service**

Service of process is proper when (a) a copy of the summons and complaint is

serve; (b) by a person over the age of 18; (c) by a person who is not part of the action; (d) a defendant is served or person or agent.

Here re (a), P drove to SF and handed V a summons and copy of the complaint. by serving the defendant with both the summons and a complaint this gives the defendant notice of the pending action. The serving the summons on the defendant the defendant has been put of notice that there is a cause of action pending and she must appear and defend her case. As such, the P properly served the summons.

Therefore, this element is met.

Here re (b), P is a college student that lives in SD and is a citizen of Mexico, who has moved to SB to attend college. The facts do not tell us whether P is over the age of 18 however, presumably he is considering that he is a college student. Additionally, P drove to SF to attend a music festival, generally people that attend music festivals are over the age of 18. As such, P is likely over the age of 18.

Therefore, this element is met.

Here re (c), P drove to SF where he "personally handed V a summons and copy of the complaint." P is the party to the pending claim since he was the one who filed the cause of action after he consumed a snack that "contained toxic substance. P is the plaintiff in this action because he was the party that was injured. As such, P is the person to this action.

Therefore, this element is not met.

Here re (d) P drove to SF where he "personally handed V a summons and copy of the complaint." V is the defendant and she "personally" received the

summons and the complaint. By "personally" receiving the summons and the complaint the defendant V was properly put on notice that P has filed an action against her in the Superior Court of California in San Diego. As such, the defendant received the service.

Therefore, this element is met.

As such, element (a), (b), (d), are met but element (c) is not met, and therefore P did not properly serve the D.

### **Conclusion Re (1a):**

As such, P did not properly serve V with the summons.

(1b) Meyer Corp

### **Service**

A party to any action may be personally a copy of the (a) summons and complaint is served; (b) by a person over the age of 18; (c) a defendant is served or person or agent or mail a copy by certified mail.

Here re (a) P sent a summons and a copy of the complaint to Meyer Corp by ordinary mail to the company in Germany. The summons was attached with a copy of the complaint. Furthermore, P mailed both the Summons and the Complaint. As such, both the summons and the complaint was mailed.

Therefore, this element is met.

Here re (b), Here re (b), P is a college student that lives in SD and is a citizen of Mexico, who has moved to SB to attend college. The facts do not tell us

whether P is over the age of 18 however, presumably he is considering that he is a college student. Additionally, P drove to SF to attend a music festival, generally people that attend music festivals are over the age of 18. As such, P is likely over the age of 18.

Therefore, this element is met.

Here re (c) The defedant Meyer Corp is a German company with its sole place of business in German. P mailed Meyer Corp both the summons and the complaint by "ordinary mail". The use of ordinary mail is not likely, a proper form because it is not likely the M would received proper notification that there is a pendng action against them. Additionaly, P just mailed the summon and complaint to the company and he did not address the docuements to a proper person or even specifiiic person. German is a different contry and they are not likely aware of the American laws. Additionally, P used ordinary mail and instead it would be proper for him to use at least certied mail to ensure the docs were not lost. As such, P did not properly mailing the summons and complaint to M.

As such, this element is not met.

As such, element (a), (b) are met, but element (c) is not met and there fore, service was not proper.

**COncclusion re (1b):**

As such, P did not properly serve the summons on Meyer

**(2a) Personal Jurisidiction over Valerie**

In California, Personal Jurisidiction is when the court has jurisdiction over a

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particular defendant. Jurisdiction is properly based on 3 basis where

(b) Venue in Superior Court of California in SD

### **3. Venue**

In California, venue determined whether the action was brought in the proper district in California venue is proper for personal injury cases (a) county/ district where the defendants live or (b) where the accident occurred.

Here re (a) the defendant V is a resident of SF. But P filed the complaint in SD. The defendant M is resident of German where its sole place of business. However, Venue also deals with where a court has personal jurisdiction over the defendant. Here, M has sold their snacks in SF and therefore, they personally availed themselves to jurisdiction of SF. However, P brought the action in SD, but we are not told whether M sells snacks in SD. As such, Venue would be proper in the district where the court has personal jurisdiction.

Therefore, element (a) is not met.

Here re (b) P got sick when he ate the snacks that contained a toxic substance. He purchased the snacks in SF while he was there for a music festival. Getting sick is a personal injury matter because it concerns a person getting injured by a product. However, P filed the action in SD but he purchased the snacks in SF. As such, Venue would be proper in SF.

Therefore, this element is not met.

As such element (a) and (b) are not met, and therefore, venue would not be proper in San Diego.

### **Conclusion re (3)**

As such, Venue does not properly lie in the Superior Court of California San Diego.

### **4. Removal**

Removal is proper if the original action could have been brought in Federal court. The claim must be between (a) diversity citizens and the (b) the cause of action but be over \$75,000.

Here (a), P is a citizen of Mexico but he lives in SD for college on a student visa. However, while residing in CA is considered to be a citizen of the state he lives in. Here V lives in SF which is also a city in CA. Additionally, the only facts we have is that M has its sole place of business in Germany. Here re (b), P injury claims for medical expenses are \$50k however, to be able to file it in Fed court the claim must exceed \$75k.

As such, element (a) and (b) are not met, and therefore, cannot be removed to Fed court.

### **Conclusion re (4)**

As such, P action cannot properly be removed to Federal Court

### **Overall Conclusion**

In Conclusion (1a) Paul did not validly serve the summons on Valeria, (1b) Paul did not validly serve the summons on Meyer Corp, (2a) Superior Court of California in San Diego does not have personal jurisdiction over V, and

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Superior Court of California in San Diego have does not have personal jurisdiction over M , (3) As such, Venue does not properly lie in the Superior Court of California San Diego.(4) P action cannot properly be removed to Federal Court.

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Question #1 Final Word Count = 1503

2)

As set out below, (1) the likely outcome of B's action will prevail on his action for declaratory relief that the farm is burdened by the easement. (2a) The likely outcome is that P will not prevail on her claim for breach of contract (2b) P is unlikely to prevail on her claim for breach of the covenant under the warranty deed.

### 1. Outcome of B's Action

#### Easement

Easement is an interest in land which grants the easement holder the right to enter another's land. An easement must be (a) in writing; (b) signed by the party to be charged; (c) describes the location of the easement, and (d) must state the grantor's intent.

Here re (a) we are told that in 1990, A deeded an easement to B to use it for a road. He is not told that whether the easement was in writing. However, the facts do state that the deed was not recorded in 1990, but B finally did record the deed in 2011. By recording a deed in 2011 it is presumably, that the easement was in writing because for B to record something he must have had a written deed. As such, the easement was in writing.

Therefore, this element is met.

Here re (b) we are told that in 1990, A deeded an easement to B to use it for a road. He is not told that whether the easement was signed by A. However, the facts do state that the deed was not recorded in 1990, but B finally did record the deed in 2011. By 2011 A was no longer the owner of the farm and therefore, it can be presumed that A did sign the deed back in 1990. Since, by recording a deed in 2011 it is presumably, that the easement was signed



because for B to record something he must have had a written deed. As such, the easement was in writing.

Therefore, this element is met.

Here re (c) A deeded an easement to B "along the north side of the farm. The easement from A to B described the location where the road was to be built and paved. As such, the easement described the location of the easement.

Therefore, this element is met.

Here re (d) A deeded an easement for a road along the north side of the farm to his neighbor B. the facts do not state A's intent however, based on B's action of immediately grading and paving the road on the easement.

Furthermore, A and B both "used the road on daily basis." This shows A intent that he deed the easement to B for the use of the road because they both enjoyed the use and A never objected regarding the road. Instead, he enjoyed the benefit. As such, B had the intent to grant to easement.

Therefore, this element is met.

As such, element (a), (b), (c), (d) are met, and therefore, there was a proper easement.

### **Easement Appurtenant**

An easement Appurtenant is when there is 2 adjoining lands. The property that is burdened by the easement is the servient tenement and the property that receives the benefit is the dominant tenement.

Here, the B property and A's farm are adjoining lands. Here, A's property is the

servient tenement because his property is the burdened land. Here after the easement was granted the easement decreased "the fair market value of the farm by \$5,000." Here by decreasing the value of the property by \$5,000 this shows that the property was being burdened by the easement. On the other hand, B's property was the dominant tenement since his property is receiving the benefit of the easement including having a paved road for daily use.

Therefore, there was an easement appurtenant.

### **Burden Passing**

The easement (servient tenement) passing will depend whether the (a) the subsequent purchaser is a bona fide purchaser for value and (b) whether the party received notice.

Here re (a) P paid \$100,000 to purchase the farm from C. B initially conveyed the farm to C in 2009 and in 2011 C executed a written contract to sell the farm to P for \$100,000. As such, P is a bona fide purchaser for value since she paid \$100,000 for the farm.

Therefore, this element is met.

Here re (b) B has been using the road daily since he received the easement in 1990 from A. However, he did not record the easement until 2011. P only contracted to purchase the farm from C in 2012, however, by that time the easement was already recorded. While even if the deed went out of the chain of title since B recorded the easement after A conveyed the property to C. But, in 2012 when C and B executed the written contract to sell the farm, during the inspection of the farm, "P had observed B traveling on the road along the north side of the farm." P had actual notice and inquiry notice because after a reasonable inspection P "observed B traveling" and if she had any question she

should have asked further which she did. As such, P had recieved notice of the ease.

Therefore, this element is met.

As such, element (a) and (b) are met the burden will run.

### **License Estoppel**

A licence is an oral promise that allows a party to go on the land of another however, if the party relies on the oral promise by expanding substantial time and money on the attempted easement. Teh grantor will be estoppel from denying the easement.

Here, if the easement was not proper beween B and A in 1990. B did allow A to enter the land. Additionally, immediately after A granted the easement B graded and Paved the road. Here, B expanded a lot of time working on building the road. Additionally, B expanded at lot of \$\$ on grading and Paving the road. It is reasonable ot assume the a constrcution project of grading and paving a road would cost a lot of \$\$\$. B would have to hire people and purchase supplies which all cost money. \$\$.

As such, the party will be estopped from denying the easement and B is likly to prevail that he has a licence by estoppel.

### **COncclusion re (1)**

B is likely to provail on his action for declaratory relief that the farm is burdened by the easement.

## 2a. Polly's Claim for breach of Contract

### **Warranty Deed**

A warranty deed provides guarantees of present and future interest. The warranty deed guarantees that the property what the grantor claims it is. The warranty deed provides present guarantees of (1) Right of seizen; (2) the right to convey the (3) the right against encumbrances. However, the Statute of limitation runs once the title and possession has been transferred. However, Once the deed is transferred the party cannot sue on the contract but on the deed.

Here, 2012 C provided P that "Seller shall covenant against encumbrance with no exception". B's easement is clearly an encumbrance because it makes the P land more burdened. However, P "observed the B use of the road" back in 2009. Additionally, in 2014 when C executed and delivered to P a warranty deed that contracted merged into a deed.

Here, P no longer has a cause of action on the contract because the SOL has ran and therefore, if she wants to bring an action she must do it under the deed.

Therefore, P does not have a claim for breach of contract.

### **Conclusion re (2a)**

Therefore, the likely outcome is that P will not prevail on her claim for breach of contract.

## **2b. Claim of breach of covenant under the warranty deed**

A warranty deed provides guarantees of present and future interest. The warranty deed guarantees that the property what the grantor claims it is. The

warranty deed provides future protection (1) right to use and enjoyment; (2) the right to defend; (3) right to further assurance.

Here re (1) P's use of land has not been interfered by anyone with superior titled. She is still able to use and enjoy her land. Here re (2) P has not been used by anyone with superior titled but just by B re the easement, which P had notice off. Here re (3) Here, there is not issues with P's title that would require P to need further assurance in correcting the title.

As such, P is unlikely to prevail on her claim for breach of the covenant under the warranty deed.

### **Overall Conclusion**

In Conclusion (1) the likely outcome of B's action will prevail on his action for declaratory relief that the farm is burdened by the easement. (2a) The likely outcome is that P will not prevail on her claim for breach of contract (2b) P is unlikely to prevail on her claim for breach of the covenant under the warranty deed.

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Question #2 Final Word Count = 1493

3)

As stated below, (1)

1. D's Suit

Anticipator RePUDIATION

An anticipatory repudiation occurs when (a) a party makes a clear and unequivocal statement that they will not perform, (b) and done before the performance started.

Here, on June 4 after seeing no work was done, B emailed D stating that the contract was terminated. B made a "clear" statement that he will not be performing the contract with D.

As such, the statement was clear.

Here re (b), The statement was made on June 4 while the contract was entered into on May 1. However, D had not worked on the project because of the ban and then because the high pressure weather system settled over the state.

Condition or Promise

A condition is what must be met and a promise is could be met but will not lead to be unenforceable.

Here, D is a large excavating company, they had recently replaced all of its gas-powered equipments with more efficient diesel power equipment. They then contracted with B a general contractor for a large office development. They had

agreed to perform all the preparation work. " Dirt agreed to have have all of its equipment available as needed to permorm this contract." However, on JUne 2, D told B that the ban stated that they could not use the gas-power equipment. As such, B was fine with them using the old equitmennt, however that would increase the costs.

As such, the use of the gas-powered eqitment was a mere promise

### Total or Partial Breach

A breach of contract to be a total breach if when if the breach resuled by there there was a condition that need to be be met of whether the condition was just a promise. The court will determine whether to consider the breach based on factor such as (1) how much work has the the breaching party completed, (2) whether the breaching pary acted in good faith; (3) whether the other party will be unjustly enriched; (4) whether the breaching party has the ability to completed the work.

Here, on May 1, B an D signed a valid written contract under which D agreed to perform all the site preparation work for \$1,500,000.

Here re(1) Here, the parties entered into a contratced on May 1 however, by Jne 4 th, there was no work done at the site. Here re (2), B acted in good faith becuase no work was no and in order for them to work on the large office development they need to the work to be commenced by Dirt. (3) Here there was no more done by D.

## 2. BUILDER

### EXPECATION DAMAGES

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Expectation damages are used to give the non breaching party the benefit of the contract.

Here, B would be able to try to recover from D the difference between \$1500000 and 1,800000.

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Question #3 Final Word Count = 476

**END OF EXAM**



4)

As set out below, (1) the City High's termination of Paige without a hearing did not violate the procedural due process guarantee of the 14th Amendment to the US Constitution. (2) The Court should dismiss the State and Attorney General's Motion.

### **1. P's Hearing**

#### **Substantive Due Process**

The Substantive Due Process applies to the states under the 14th Amendment it requires that the state's law cannot deprive a person's property, liberty, life. The Substantive Due Process determines that the law applies to all people equally.

Here, State X recently passed legislations to address its failing public schools. When the school falls below the established standards, each teacher at the school has 10% of their salary withheld each month for the max of 2 years. Upon completion the 10% of the money is returned with interest, upon completion of 10 hour certification program or termination of employment. The law in this legislation applies to all teachers equally, "each teacher at the school at the school has 10%" withheld. Furthermore, the City high school is a public school in State X and has where the salary withholding begun. B and P are both teachers at the school. P is a probationary teacher and may be terminated without cause upon "written notice". After being "outspoken opponent" P was served with written notice termination employment and a refund of the withholding. This legislation applies to the economic interest of the teacher and therefore, it must meet rational basis. P will argue that she has a fundamental right in her employment. But P was only hired as a "probationary" teacher and therefore, can be terminated without cause. As such, the substantive process must meet rational basis.

Therefore, if the rational basis test is met the law will be constitutional.

### **Rational Basis**

If a law deal with an economical that (a) law must be rationally related to (b) an legitimate state interest. The plaintiff has the burden of proof

Here re (a) the law has relates to to addressing that when a failing public school falls below the established standard the school is allowed to with hold the teachers salary. The law rationally relates to the schools interest in helping it improve thier school from "failing." By withholding 10% the school are able to use the money \$\$to help fund or improve the schools performance that will help it from failing. In the mean time teachers are able to get the proper knowledge by "completion of 10 hour certification program". This will allow the school to recover. P will argue that the law is rationally related bc the law takes away from the teachers. However, the school will argue that it does because the money is used to improve the proformance of the school and provide the teachers the proper knowledge with the program. As such, the law is rationally related.

Therefore, this element is met.

Here re (b) the state and City High has a legitmate interest in improving the school performance and prevent it from "failing." The school have an interest to ensure that tiher students are able to obtain a proper education which will help them in the future by earning a degree and recieve proper job. P will argue that its not legitimately related because the takes \$\$ away from the teacher. However, the schools have a legitimate interest in improving the education in thier school. As such the law is rationally related.

Therefore, this element is met.

Therefore, element (a) and (b) are met and the law is rationally related.

### **Procedural Due Process**

The State cannot deprive a person of his life, liberty, and property without due process. The Plaintiff must show that (a) she has a property interest and an entitlement to a property benefit; (b) the government acted intentionally to deprive that interest; and (c) the process that is required based on (i) interest to the Plaintiff; (ii) the risk of erroneous deprivation; (c) the state's financial and treasury costs.

Here re (a) P has been "outspoken opponent" of the State X law and it's application to the school. P is a highly regarded probationary teacher at the City High. P will argue that is a "highly regarded" teacher and she has an interest in her employment. Furthermore, that when the school served P with a termination notice and refund of her 10% interest that has been withheld before the end of her 1st year the school deprived her of her interest in her employment. However, the school will argue that a "probationary teacher may be terminated for any reason upon written notice within the 1st year of employment. P has only been employed for 1 year. As such, P does not have a property interest in her employment.

Therefore, the element is not met.

Here re (d) the school served P with a termination notice and refund of her 10% interest that has been withheld before the end of her 1st year the school deprived her of her interest in her employment. the school's act with intentional however, the school was allowed to terminate a probationary teacher without "cause" upon written notice. Which P was provided. As such, the school's action did not deprive P.

Therefore, this element is not met.

Here re (c) P was given notice of termination before the end of her 1st year. P was a probationary teacher and the school was allowed to terminate her without cause. She was only entitled to written notice. As such, she was not entitled to a process and a hearing before termination.

Therefore, this element is not met.

As such, element (a), (b), and (c) is not met, and therefore, P's rights have not violated the procedural due process.

### **Conclusion re (1)**

City High termination of P did not violate her procedural due process.

## **2. State and Attorney General Motion**

### **Standing**

In order for a Plaintiff to claim that her constitutional rights have been violated the plaintiff must prove that: (a) injury in fact; (b) caused by the government; and (c) court ruling will redress that injury.

Here re (a) P has been terminated from her employment as a teacher. When the school terminated P she has been injured in her ability to earn money \$\$\$. Additionally, P has been injured because she is no longer able to provide educational services to the students at the school. As such, P has been injured.

Therefore, this element is met

Here re (b) D has enacted a statute that withholding teacher 10% salary when

a school fails. P was a "outspoken opponent" of that statute and as a result, the school provided P notice of termination before the end of her 1st year employment. If the school did not terminate P she would be able to continue working and earning money \$\$\$. The school terminating her has caused her to lose \$\$\$. As such, the injury was caused by the government.

Therefore, this element is met.

Here re (c) the city enacted a statute that allows schools to withhold funds if a public school starts failing and City school began using it. If the legislation was not enacted and the school would not use it, P would not oppose it and be terminated from employment. If the legislation is held unconstitutional and the school would not be enforcing it and therefore, P would not be terminated from her employment. As such, a court ruling will redress the injury.

As such, this element is met.

Therefore, element (a), (b), (c) are met and therefore, P has standing.

As such, P has standing and therefore, the court should dismiss D's motion.

### **11th Amendment**

The 11th Amendment deals with whether a private person may sue state. A person may sue if they sue a local entity.

Here, P is suing State X and City high for damages and injunctive relief. The school is a local entity. Additionally, P is requesting damages but she is also requesting injunctive relief. Injunctive relief will not cause the State \$\$\$ loose because all she wants is to get her job back.

As such, D's motion should be dismissed under the 11th Amendment.

**Conclusion re (2)**

The Court should dismiss the State and Attorney General's Motion.

**Overall Conclusion**

(1) the City High's termination of Paige without a hearing did not violate the procedural due process guaranty of the 14th Amendment to the US Constitution.

(2) The Court should dismiss the State and Attorney General's Motion.

**1. P's Hearing**

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Question #1 Final Word Count = 1412

**5)**

As set out below, H's and W's right and liabilities, regarding the following; (1) H has complete rights to the condo and W does not have any rights to the condo; (2) the both H and W has rights Joint saving account; (3) H and W both have a 1/2 right in the rental Property (4) tBoth W and H would be liable for the hosiptal bill.

### **General Community Property Statement**

CA is a community property state and there is a presumption that everything that is earned and acquired during the marriage is considered community property. Additionally, there is a presumption that everything aquired before marriage and after permanente separation is considered separate property that includes, gift, inheretance, bequest, profits from separate property. As such, below is discussed the distribution and application of the community property laws.

#### **1. The Condominium**

##### **Premartial Agreement**

A premarital agreement allows a spouse to agree to terms different in CP such as waiving spousal support and not treating property aquired during marriage as CP after 1/1/1985 is (a) required to be in writing and signed by the spouse that will be affected; (b) the terms and assets must be fully disclosed; (c) the spouse is required to be instructed to seek independment counsel or the spouse may waive in writing; (d) the agreement must be signed at least 7 days after recieving the agreement; (e) the agreement must be in the langague that the spouse if proficient in and terms must not be unconscionable.

Here re (a) In 2003, before getting married H and W prepared a document where each party agreed that each spouses property will be treated a separate

property. The written document stated "After we get married, W's salary is her property and H's salary is his property." H and W agreed in a written document. Additionally, H and W "signed and dated each document." As such, H and W agreement was in writing and was signed.

Therefore, this element is met.

Here re (b) H and W spent weeks discussing how they would each control their assets. However, the facts that state whether they discussed to each other what assets each had the only thing that was provided in the writing was that W's salary is her property and H's salary is his property." Presumably, after "weeks discussing" how they each could own and control their respective salaries they disclosed to each other their assets at that time. As such, presumably they discussed their assets.

Therefore, this element is met.

Here re (c) both H and W prepared a separate document in which they stated "We agree we do not need legal advice." They each signed and dated the documents. H and W both waived their rights to get advice from independent counsel and waived their rights in a written document. As such, they waived their right to get advice from counsel.

Therefore, this element is met.

Here re (d) H and W spent "weeks" discussing how they could each control their own assets. the facts do not state after how many days they signed the documents after it was prepared. However, since they spend week discussing the documents it can be presumed there was at least 7 days between the signing. As such, presumably there was at least 7 days between the signing.



Therefore, this element is met.

Here re (e) H and W spent "weeks" discussing how they could each control thier own assets. Assuming since they were able to disscuss the agreement and the way to form it for after discussing it for week they were able to understand each other. Additionally, they both wrote the agreement regarding the terms.

Additionally, the terms of the agreement seems to be fair because each spouse is will "own and control thier respecitive salaries." Since they neither will be any benefit of the other spouses earns and it affects them both equally.

As such, this element is met.

As such, element (a), (b), (c), (d) (e) are met and therefore, the premartial agreement is valid.

### **Community Property**

Property acquired during the married is presumed CP.

Here, H and W got married in 2003 and in 2004 they moved into a condo that was purchased by H using his "salary" additionally, he put thah title of the condo into his name alone. The Condo was aquired during H and W's marriage and it is presumed to be community property. However, the property can be traced to assets that will rebut the presumption of CP. Espeically since both H and W signed a premartial agreement agreeing to how they could each control thier respecific salaries and to keep thier property separate. As such, the CP presumption as been rebutted.

Therefore, the Condo is not separate property.

### **Separate Property**

All property acquired before marriage and after separation is presumed separate property. Additionally, additionally the name on the title controls and is presumed to be the property owner however it is to be rebutted.

Here, in 2004 H used his salary to buy a condominium and took the title in his alone. H and W moved into the condo. H used his "salary" to purchase the condo and he placed the title in his "name alone." Since H and W each agreed that its spouses salaries will be kept separately. The condo is presumed to be separate property. They each signed a premartial agreement agreeing to how they could each control thier respecific salaries and to keep thier property separate. Here, H used his "own salary" to pruchase the condo and he put it in his name alone."

As such, the condo will be considered H's own separate property.

### **Conclusion re Condo**

H has complete rights to the condo and W does not have any rights to the condo.

### **2. Joint Saving Account**

#### **Community Property**

Property acquired during the married is presumed CP.

Here, in 2004 H and W opened a joint saving account at thier bank and thereafter, they each deposited \$5,000 from thier salaries in the account yearly. The account is held in both spouses names, and each deposited money\$\$\$ in to

the account yearly from 2005 till 2016 after Harry filed a petition for dissolution of the marriage. The joint account will be considered CP and each spouse will be entitled to 1/2 of the assets. While W used the assets to purchase a rental property. However, if W did not use the \$\$ to purchase the property that account would have \$110,000 if that money hasnt been used. As such, on divorce each would get \$ \$55,000.

Therefore, both H and W have a 1/2 right in the account.

### **3. The Rental Property**

#### **Married Women Separate Property Presumption**

Prior to 1975, property held in a married woman's name was presumed to be separate property however, that presumption can be rebutted.

Here, W purchased the rental property in 2005 and put it in her name alone. However, this occurred in 2005 additionally, H would be able to rebut that presumption because she never disclosed the fact that she was using their joint savings to purchase property.

As such, the MWSP will not apply

#### **Transmutation**

To change the character of property from CP to SP or SP to CP the agreement must be (a) writing; (2) signed by the spouse that's affected; (c) express that spouse's intent.

Here re (a) there was no writing since W did not even tell H that she was using their joint account savings to purchase the rental property, (b) H could not sign

any documents since he was not even aware of the purchase until 2015 which was 10 years after the purchase. (c) H was not even aware of the purchase of the rental property until 2015, he did not expressly state that he intended the property to be W's separate property.

As such, element (a), (b), (c) are met and therefore, there is no transmutation and H did not intent to change the character of the property

### **Rental Property**

Property Acquired with CP funds will be distributed equally upon dissolution of marriage.

Here, W used H and W joint saving account to purchase a rental property, she did not disclose that to H which has to. However, each spouse is entitle to use and spend the community fund so long as they are not negligent. Here W's action dont seem negligent while it would be reasonable for a spouse to disclose to the other that they are using CP funds to purchase a property. As such, the rental property would be distributed 1/2 upon dissolution of marriage.

### **Conclusion re Rental Property**

H and W both have a 1/2 right in the rental Property

## **4. Hospital Bill**

### **Termination of community**

A CP is terminated up (a) permanent separation and (b) no intent to resume.

Here re (a) in 2016, H and W permanently separate. (b) W then moved out

which shows that they did not intent to resume since she was not planning to return. However, they did not file to dissolution for marriage until later when H "later filed a petition for dissolution of marriage.

As such, there community property ended in 2016

### **Hospital Bills**

Each spouse shall provide the necessities such a medical care to each spouse until dissolution of marriage. Each spouses separate property may attach to pay the cost. However, they may be entitled to reimbursement from CP.

Here, 2016 W required medical care that costed \$50,000. H and W were not yet divorced and therefore, H's separate property may be required to be used to cover the cost. However, if they had enough in there CP their saving account and W did not have SP. Then if H's SP is used to cover the med Cost he can be reimbursed from the CP.

Therefore, Both W and H would be liable for the hospital bill

### **Overall Conclusion**

In Conclusion, H's and W's right and liabilities, regarding the following; (1) H has complete rights to the condo and W does not have any rights to the condo; (2) the both H and W has rights Joint saving account; (3) H and W both have a 1/2 right in the rental Property (4) Both W and H would be liable for the hospital bill.

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Question #2 Final Word Count = 1711

6)

### **Duty of Loyalty/ Conflict of Interest**

Each attorney has a duty of loyalty to each client and must act on the best interest of the client and must not allow anything to compromise the loyalty. Additionally, an attorney must not engage in any concurrent interest that would interfere with the attorney acting in the best interest of the client. A concurrent conflict exists if: (1) the representation of one client would be materially adverse against another client; and (2) the representation of the client may be materially limited by the representation of another client, personal interest, 3rd party.

Here re (a) The ABC President asked L to represent them in challenging a statute that requires that all new residential development contain percentage of low-income house. L is a member of E who had helped based that statute. While L does not represent E he is a member of the of the organization. As such, the ABC's representation will not be materially adverse to another client.

Therefore, there is not concurrent conflict under this factor.

Here re (2) L has agreed to represent ABC to challenge the statute that requires that all new residential development contain percentage of low-income house. Representing ABC would be materially adverse to E because L is a supporter of E organization that seeks to help low income families purchase homes through the state. by Representing E he will be litigating against the statute. ABC wants the statute to challenge the statute. L's representation would be materially limited by his own personal interest because he is a member of E and mostly likely worked on passing that statute. Here, ABC would likely disclose confidential information regarding reasoning as to why the statute should be challenged. Additionally, L is likely will to receive communication from ABC that will include future plans that ABC Development Corp plan to build and this would be

adverse to ABC because E goal is directly adverse to the goals of ABC. Since L is a member of ABC his loyalties are likely to be in ABC favor. As such, there is a concurrent conflict.

Therefore, there is a concurrent conflict.

As such, there is a concurrent conflict and therefore, L may not represent ABC unless the exception applies.

### **Exception to Notwithstanding Conflict**

As attorney may represent a client notwithstanding conflict if (a) he reasonably believes he can reasonably represent him; (b) representation is not against the law; (c) the representation of one client would be directly adverse against another client; (e) attorney obtains informed written consent. In California, the attorney must also provide the disclosure in writing.

Here re (a) has agreed to represent ABC to challenge the statute that requires that all new residential development contain percentage of low-income house. Representing ABC would be materially adverse to E because L is a supporter of E organization that seeks to help low income families purchase homes through the state. by Representing E he will be litigating against the statute. ABC wants the statute to challenge the statute. L's representation would be materially limited by his own personal interest because he is a member of E and mostly likely worked on passing that statute. Here, ABC would likely disclose confidential information regarding reasoning as to why the statute should be challenged. Additionally, L is likely will to receive communication from ABC that will include future plans that ABC Development Corp plan to build and this would be adverse to ABC because E goal is directly adverse to the goals of ABC. Since L is a member of ABC his loyalties are likely to be in ABC favor. As such, a



reasonable lawyer would not tell a client to consent.

Therefore, this element is met.

Here re (b) The representation of ABC is not against the law. As such the representation would not be against the law.

Therefore, this element is not met

Here re (c) Representing ABC would not be directly adverse to another client because L does not represent E he is just a member. As such, it would not be directly adverse

Therefore, element is met.

Here re (d) L did not even disclose the info to ABC pres when he required that he represent them in challenging the statute. Additionally in CA he was required to provide disclosure in writing which he did not do.

As such, this element is not met.

Therefore, element (a) and (d) are not met and (b) and (c) are met, therefore, L has violated Duty of loyalty and conflict of interest.

### **Confidentiality**

A lawyer owes each client a duty of confidentiality and must keep their secrets.

Here, L represents ABC in litigating against a statute however, during the course of representing ABC P the President of ABC told L he has filed false reports with the State Environmental Protection and has disposed non-hazardous waste was

and is continuing filing again the false statement. Here P is not his client but since he told him this info he must protect his secrets.

However, L may disclose and withdraw (1) financial crime ; (2) bodily harm

Here, P's actions will cause the org financial harm and the the member of the corp additionally by disposing hazardous product there is a likely hood that it could resolve in death and bodily harm. IN CA L cannot disclose for financial harm.

### **Duty to Community**

Must keep clients reasonably informed

Here, L Failed to tell ABC that he is a member of E. He did not communicate to them that His interest is adverse. He did not tell them that he was a party for the people that worked on enacting that statute.

Therefore, breached duty to communicate.

### **Duty to the Court**

The lawyer has a duty to the court and must act fairly and honestly.

Here, L filed a complaint in the court to challenge the statute. However, L reasonably believed that statute was good law. As she he filed

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Question #3 Final Word Count = 993

**END OF EXAM**

1)

To: Charles Drumm, Assistant County Counsel

From: Applicant

Date: July 26, 2016

Re: Potential Wildomar Property Litigation

Per you memo of July, 26, 2016, please attached a drafted letter for your signature in response to Santa Maria's Counsel's letter. I the letter the following has shown: (1) that the District's position that it may validly convey the Wildomar Property without satisfying the Act's vote-consent requirement is sound under the facts and the law; and (2) that Santa Maria's contrary position is unsound.

Please let me know if you have any questions.

Sincerely,

Applicant

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Standish & Loberty LLP

Attorney at Law

1616 Oak Street

Dixon, Columbia

Re: Intended Conveyance of Wildomar Property

Under the Columbia Regional Park Distriction (ACT) real property is "actually dedicated" by a district, and thereby becomes subject to a requirement that it may validly be conveyed only with voter consent, only if the district's board of directors adopts a resolution dedicating the property. The District's Board of Director's never adopted a resolution dedicating the Wildomar Property, and accordingly never sought or obtained voter consent.

**A. When Riverdale Regional Park District Did Not Accepted the Offer by Developing a Regional Park Then There is No Dedication**

Under Common Law dedication entails, in substance, an offer by a private owner, and an acceptance by a public entity, of real property subject to a specified restricted public use in perpetuity. Common law dedication may be expressed or implied. A common law dedication may be found whenever there is a basis for finding an offer, either express or implied, by the property owner to give the property for perpetual public use, and an acceptance, either express or implied by the public entity to receive the property for the same use. Osuna Section 1. Therefore, the private owner's offer is accepted by the public entity, there is no dedication of the property and hence no restriction. Baldwin

Here, re offer, On June 5, 1995 the District was offered the real property of Wildomar, Columbia for the purchase of \$ 980,000, the difference between the appraised value of the property was \$1,370,000 and amounting to \$420,000 difference as a gift. the district purchased the property that was 160+ acre parcel at the end of Cayton Road to the City of Dixon. The purpose for purchasing the property was "hoping to develop it into a regional park with athletic facilities for games, trails for running and hiking and of course, open space simply for enjoying. As such the offer of the dedication was for perpetual public use.

As such there was an offer for perpetual use.

Here re acceptance, district purchased the property that was 160+ acre parcel at the end of Cayton Road to the City of Dixon. while the city's plan was to construct the property for public use and recreational purpose. District, however, did not have the funds for the development and they were not able to construct the 160+ acres of the Wildomar property. Similar to the Baldwin case, the court held that that the ordinance language can reasonably be interpreted nly as an acceptance of the donation conditioned on SOuth Plain payment of \$200,000.

In the Balwdin case, the City had an expressed acceptance proved that "City COuncil may make an contract for acquision and or disposition of any real property or any interest in real property, as it may deem necessary and proper, by enacting an ordinance. The Court held that they may have offered the lot under a pertual restiction,t he Cty did not accept the restiction. Baldwin. As similairly, in this case, the District did plan to develop it into a regionional park with athletic facilities for games, trails for running and hiking and of course, open space simply for enjoying and because they had failed to do they did not accept the dedication. As such, the city did not accept the dedication.

Therefore, there was no acceptanc of the dedecation.

Conclusion Re Dedication

As such, there is waant an accepted of the dedication

**B. When Property has been Actually Dedicated and Used Then the Distrist Must get Consent of a Majority Vote of the Dlstrist**

A district may take by grant, appropriate, puchase, gift, devise, condemnation,

and may hold, use, enjoy, and lease the lease or dispose of the real and personal property of every kind... Necessary to the full exercise of its powers. A District 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 voting at a special election called by the Board. Columbia Regional Park District Act 40. Additionally, "actual use", of Property, although not developed into a regional park, has nevertheless functioned as such

In Reply to Santa Maria's claim that it is "indisputable that the property has been actually dedicated and used so to subject the district to the voter consent requirement of Section 40, mandating that it must obtain consent of majority of voters of the district. The Wildomar Lot has never been deemed to have been dedicated under the Common Law, while it was the district was offered lot for the use of developing it into a regional park with athletic facilities for games, trails for running and hiking and of course, open space simply for enjoying. The district never accepted the use because of the funds it would cost them to build.

Additionally, in reply to Santa Maria that the "actual use", of Property, although not developed into a regional park, has nevertheless functioned as such. And that actual dedication is a matter similar to property that has been "dedicated under common law. "

Re actual use, the Wildomar property has been popular with hikers, hunters, and birdwatchers because of its pristine beauty. The prior owner never developed the land and never posted signs to keep out, and neither did the district. As a result, the hiker, hunters, and birdwatchers have continuously used the property. The property has been in "actual use" while the district had it as well as with the prior owner.

In Reply, to Santa Maria is correct regarding the property being in "actual use" is

is correct however her argument that "actual dedication " is a similar matter is incorrect. The district planned on developing the property for recreational purposes and into a regional park with athletic facilities for games, trails for running and hiking and of course, open space simply for enjoying and because they had failed to do they did not accept the dedication. But when they did not have the funds needed there was not an "actual dedication."

As such, the District did not required a board vote because the property was never accepted as a dedication since it was never used.

**C. When the Dedication Involves a Public Recreation Purpose then the District is Deprived it self of the Power**

Here, in the Baldwin Case, the City counseland after hearing on neef for affordable housing in the genereal vinciity of the Woodlot. Teh City Sold the lot to Human Habitated to contruct housing.

Here, the new owner plan to buid a coummunity college becuase the area is over crowed and not enough spaced for students. Additioanlly, Now the funds fromt he sales will allow the District to expand the funds into recational parks they all ready own. Moreover, college will provide builiful locations for public use.

**Overall Conclusion**

Therefore, the District will go forward with the conveyance nothwithstanding the threatened litigation.



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Question #1 Final Word Count = 1257

**END OF EXAM**

1)

To: Jeff Su

From: Applicant

Date: July 28, 2016

Re: Wong V. Pavik Foods, Inc.

Per your July 28, 2016, Interoffice Memorandum please find attached a drafted memorandum explaining the following:

1. Whether the facts available to us support certification of a class of current and former employees for recovery of back wages under the UCL.
2. Arguments that can be made that Wong can bring a representative claim under PAGA on behalf of current and former employees for back wages without satisfying certification requirement.
3. Monetary relief we can obtain for the following:
  - (a) Under the UCL and who may recover civil penalties.
  - (b) Under the PAGA, whether there are any prerequisites we need to satisfy before we can file suit.
  - (c) Under PAGA, whether the employees get to keep all of the civil penalties we might recover

One other thing to consider, it would be helpful to start collecting the employees' records that they kept.

Please let me know if you have any question.

Sincerely,

Applicant

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## Memorandum

### Analysis

#### 1. Class Certification of a Class for Current and Former Employees to Recover Back Wages Under the UCL

The UCL prohibits "any unlawful, unfair, or fraudulent business acts or practice." UCL §17200. The Act provides that a private party may bring a representative action under this law only if the P has "suffered injury in fact and has lost money or property as a result of the unfair competition". UCL §17204. In the Arentza Case, the court held that the private party that wants to bring a representative claim must meet the requirements of both UCL § 17204 and § 382 of Code of Procedure. For the Plaintiff to maintain a class action under the UCL they must satisfy the stringent requirement of showing (a) they suffered an injury in fact and has lost money; (b) Community interest (c) common issues of law and fact, (d) adequate representation of the class interest by the nominal parties, and (e) and sufficient numerosity. Arentza. The Supreme Court has held that § 382 of Code of Procedure is to be applied and interpreted in the same way as Rule 23 of the Federal Civil Procedure Code is applied to class actions brought in the federal courts. Westlund; Campbell.

Here re (a) W has been employed by Pavik (D), he was first head of Bookkeeping and in the last few years he he was also doing Payroll Admin work. In the last few years or so, P work got so busy that he had to work through 1-hour lunch period. When he would turn his timesheet to D he would deduct the 1 hour- pay not not pay him. Additionally, P had worked 9 or 10 hour days and most of the time, except year end holidays, and would work 6-day weeks. D would sometimes "a few dollars extra" for his "devotion in work". But he was never paid over time like the law requires at time and 1/2. He began to question

D and D got tired of his Q and fired him. Additionally, the additional member are the Plant workers. There is approximately 350-400 over a period of a year. One this was common to all th plant workers were also injured they would not under paid and many time they would come to P and ask question. Moreover, the clean up crew anywhere btween 4-5 workers were not paid the require minimum wage of \$8.00 per hour. Additionally, D would not pay employees he fired and sometimes he would pay 1/2 of their wages. As such, each party has suffered an injury in fact and lost money.

Therefore, this element is met.

Here re (b) all the class member including P, the plant work, the clean up crew there claims relates to a common fact that they were each under paid. In each case each party had suffered some injury regarding lost earning. Thier claim also relates to a violation of employment laws including the Columbia Labor Code. As such, all the parties question of law or fact are common to the class.

Therefore, this element is met.

Here re (c) All the parties to the class action including P and all the other working of D would have a claim or defense typical to each other. P, and the other plant work, the clean up crew there claims relates to a common fact that they were each under paid. In each case each party had suffered some injury regarding lost earning. Thier claim also relates to a violation of employment laws including the Columbia Labor Code.

On the other hand, P claim relates to not being paid for overtime time and not getting payed while he worked over his lunch breack. The other member's have not been paid fully, somehave been underpaid, some employees have not been paid at all, and some have not been paid the minimume wage required. In P case there is the violations varie from each case and likely vary from individual to

individual.

P case is similar, to Westland, where the court held that P's claim are not at all typical of the types of claims he asserts on behalf of the other member of the proposed class. Westland was the only salary employee and the other workers were deprived of earning that were owed after they turned in the crop and the D would not consider them.

Therefore, on balance the claims are not typical between P and the other employees.

As such, this element is not met.

Here re (d) P and the plant work, the clean up crew were each under paid. In each case each party had suffered some injury regarding lost earning. Their claim also relates to a violation of employment laws including the California Labor Code. As such, all the parties question of law or fact are common to the class. However, P claim relate to not getting paid for lunch and over time however, the other members of the class are not being paid their earning some are underpaid some are not even paid minimum wage. While P has stated that he was interested in representing the other class members. He stated that he was speaking up for the other employees and that "like to be able to get them their money too.

on the other hand, because there is a difference regarding the type of claim that are being asserted, it seems that P would not be able to fairly adequately represent the other employees especially since P is a regular hourly employee while the other employees as P has indicated are "illegal" and some are not even being paid minimum wage and while some get paid in cash. It would be difficult for P to adequately represent the other employees.

Therefore, on balance P would not be able to fairly and adequately represent the other employees.

Therefore, this element is met.

Here re (e) there is difficult a number of potential class members that meet the requirement. P has stated that there is approximately 350- 400 employees yearly. This violations have been going on for probably years. There is probably thousand of potential class members this element is met.

Therefore, this element is met.

As such element (a), (b) and (e) are met but element (c) (d) are not met and therefore, the facts do not support certification of a class of current and former employees for recovery of back wages under the UCL.

### **Conclusion re (1)**

The facts do not support certification of a class of current and former employees for recovery of back wages under the UCL

## **2. Arguments to Made that Wong can Bring a representative Claim under PAGA on behalf of the Members**

A plaintiff may maintain a representative action under PAGA to recover civil penalties without having to satisfy the traditional requirement for certification of class. **Talbott**. In **Arentz**, the court stated that an aggrieved employee's action under the PAGA function of substitute for the actions brought by the government itself, a judgment in that action will bind all the employees including nonparty aggrieved employee and they would be bound by the judgment. **Talbott**. Under PAGA the aggrieved employee may bring a civil claim action for personally and

on behalf of others current and former employees to recover civil penalties.

**Arentz.** Of the civil penalties that are to be recovered 75 % will go to the Labor and Workforce Dept and 25% will go to the employees. § 2699.3. As stated **Arentz**, an employee suing under the PAGA does so as an agent of the the labor law enforcement agencies and that the employee has the same legal right and interests as the state labor law and may recover for civil penalties that were otherwise collected by the board. The Employee must give notice to the employer and the Labor workforce.

Here, P can bring an action for claim for recovery of penalties for him and the other employees of D. P would be able to bring the claim on behalf of the current and former employees that have been harmed by D's action in failing to pay his employees. He would be able to recover the deduction of 1 hour- pay not paid to him. Additionally, P had worked 9 or 10 hour days and most of the time, except year end holidays, and would work 6-day weeks. P would be able to recover lost earning and overtime that he lost since D never paid him.

Additionally, P would be able to recover earnings that were not paid to current and former employees such as the clean up crew required to be paid minimum wage of \$8.00 per hour and instead were paid under the minimum wage.

Additionally, D would not pay employees he fired and sometimes he would pay 1/2 of their wages. D would also be able to recover for the other plant workers that were not compensated in full for the time worked. Additionally, P would be able to possibly recover for employees that D had discriminated against because of their illegal status. P would possibly be able to recover for the fraud that D engaged in by firing people and not paying.

Additionally, P would have to provide notice to D and the Labor Workforce regarding all of the D fraud that he has committed and P would have to include all the penalties that he is asserting against D.

As such, P would be able to bring a representation claim under PAGA

### **Conclusion re (2)**

P could assert that he is bring claims under the PAGA jsut as the labor board would.

### **3a. Monetary Relief Under UCL]**

Under the UCL the employee can recover all earning and suffering regarding damages.

Here,P and the ther members would be able to recover lost earning relatig to being under paid. additionally they would be able to recover the deduction D made and being paid below minumum wage and and not recieiving full compentation.

### **3a. Monetary Relief Under PAGA and Preques to Statisfy**

P must give notice written notice to the employer and Labor emforment.

P would have to provide written notice to the D and the board regarding the violations. Thereafter they can pursue a claim for penanlites. Int he notice they have to discribe the violations. Thereafter they can claim civil actions for lost penealtoes.

### **3c. 3a. Monetary Relief Under PAGA regarding who gets penalitis.**

Under PAGA the aggreieved employee may bringa civil claim action for personally and on behalf of others current an dformer employees to recover civil penalties. **Arentz**. Of the civil penalties that are to be recover 75 % will go to



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the Labor and Workforce Dept and 25% will go to the employees.

Here, P will be able to recover \$100-200 for each violations. However, the Labor would receive 75% of the penalties while the P's will recover 25% of the penalties.

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Question #1 Final Word Count = 1988

**END OF EXAM**