

**QUESTION ONE**

**One Hour**

Stuart, a Sacramento, CA. resident, has recently given up traditional cigarettes and now uses only e-cigarettes. His flavor of choice is Kiwi-Custard which he regularly purchases from Flavormasters, Inc., an electronic smoking supply store in Reno, Nevada. Flavormasters, Inc. has multiple stores in Nevada, and also offers products for sale via its Web site. Its newest product is an e-cigarette flavor, Samba Savor, imported from Brazil by E-Hip Inc., a Colorado corporation that distributes nationwide but does not retail any products.

After purchasing this new flavor on line and trying it, Stuart becomes seriously ill requiring a 31 day hospital stay at the UC Davis Medical Center in Sacramento. While hospitalized Stuart contacts his cousin Vinny, a Los Angeles based lawyer. Conducting internet research, Vinny discovers that flavor vials for e-cigarettes are a health hazard if they contain any water and there are reports of serious consequences including pneumonia from consuming e-cigarette flavors contaminated with water.

Vinny promptly files a lawsuit on Stuart's behalf in the U.S. District Court for the Eastern District of California, in Sacramento. The lawsuit names Flavormasters, Inc. and E-Hip Inc. as defendants and alleges negligence for the sale of a contaminated nicotine product, in violation of regulations of the US Department of Agriculture which prohibit the importation and/or sale of contaminated tobacco related products. The suit indicates exact damages are unknown but estimated to exceed \$80,000.

Defendant Flavormasters, Inc. files a Motion to Dismiss alleging lack of Subject Matter Jurisdiction. Defendant E-Hip Inc. also files a Motion to Dismiss, however it asserts lack of Personal Jurisdiction. Both Motions are denied. Defendant E-Hip, Inc. then files a claim against Flavormasters Inc. for failing to pay past invoices for products ordered by Flavormasters, Inc.

1. Did the Court rule correctly on Flavormasters' Motion to Dismiss ? (40 pts.)
2. Did the Court rule correctly on E-Hip's Motion to Dismiss? (40 pts)
3. Can this court hear E-Hip's claim against Flavormasters? (20pts)

**QUESTION TWO**

**One Hour**

New Tech Fabrics Inc. is an Arizona Corporation that manufactures “sliders”, small rectangular pieces of fabric used on parachutes. New Tech has a new supplier for the grommets used in each corner of the “sliders”, the supplier is now Valco Metals Inc., also an Arizona Corporation.

Jerry is an experienced recreational skydiver who will only use parachutes with the New Tech sliders. Jerry is a lifelong California resident and while skydiving over Perris Lake, Ca. experienced a partial failure of both his main and reserve chute. The reserve chute does not rely on sliders for deployment but does use the traditional rip-cord. The rip cord is a separate component and is manufactured by Reliable Products, a California corporation.

The partial failures of both Jerry’s main and reserve chutes resulted in a high velocity near fatal landing causing multiple broken bones. While recovering Jerry learns that Valco Metals Inc. has knowingly used metals in their grommets with a high failure rate and that New Tech Fabrics was probably aware of the defect. Jerry files a lawsuit against New Tech Fabrics, Inc. in U.S. District Court in Los Angeles claiming negligence, personal damages in excess of \$250,000, and punitive damages in an amount to be determined.

New Tech Fabrics Inc. files the following Motions:

1. Motion to Dismiss on the grounds Jerry has failed to add Reliable Products Inc., a necessary party, to the suit. (40 pts)
2. Motion to Strike the Punitive Damage claim on the ground California law prohibits punitive damage claims until after discovery and a court hearing. Jerry has responded his Complaint meets all FRCP pleading requirements. (40 pts)
3. Motion to add Valco Metals Inc as a party defendant. (20 pts)

How should the Court rule on the Motions. Discuss