Empire College School of Law Student ID#______________
Professor Wheeldin
Civil Procedure – Spring Final
Thursday, April 12, 2012

Question 1 (90 minutes)

Robert Mays worked for Primary Silicon Chips, Inc. (PSC), a Delaware Corporation based in San Jose, California. By May, 2010 Mr. Mays had 30 years of service and planned on retiring.

In January, 2010, Mr. Mays saw a posted flyer in the PSC employee break room regarding "Retirement Planning Seminars" conducted by several local CPAs and by Secure Futures Inc., (SFI), a Nevada Corporation.

Mr. Mays attended the February, 2010 seminar and after accepting a lump sum distribution from PSC in May, 2010, decided to invest $120,000 with SFI. The investment provided for a 10% annual return, payable monthly.

Beginning in June, 2010, and for the remainder of that year, Mr. Mays received his monthly interest check, however the January, 2011, check never arrived. When no additional checks came, Mr. Mays retained counsel who filed a complaint in the U.S. District Court in San Francisco. The complaint included claims for breach of contract, conversion, fraud and violation of ERISA, which provided for federal jurisdiction. Named defendants were: PSC, SFT, Robert Goodman, CPA, and Thomas Trueblood, CPA.

1. PSC filed a Motion for Summary Judgment on the grounds it never endorsed or recommended SFI and attached a Human Resources Memo, signed by plaintiff, acknowledging PSC had no responsibility for items posted in the employee break room. How should the Court rule on the Motion? (50pts)

2. Plaintiff's counsel informally interviewed CPA Goodman prior to filing the lawsuit. After the suit was filed, Mr. Goodman fled, apparently to Brazil and never returned. May remaining defendants obtain the interview notes via discovery taken by plaintiff's counsel? (20pts)

3. Prior to trial, the Securities and Exchange Commission issued a Cease and Desist Order against SFI, freezing all company assets. May plaintiff use any preclusion doctrine at the civil trial? (20pts)

4. At trial Plaintiff files a Motion in Limine to exclude from the jury all current or former CPAs. How should the Court rule? (10pts)

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Question 2 (90 minutes)

Fountain of Youth Cosmetics, Inc. (FYC) is a Florida Corporation that sells a skin care product line nationwide. Its best selling product, Nu Zest Crème, contains a specially processed crystallized collagen supplied by Exotics International, a business operated from Thailand.

Jasmine Julian, a lifetime resident of Arizona purchases the Nu Zest Crème to combat years of desert exposure. She has a severe reaction including burning and residual facial scarring.

The attorney retained by Ms. Julian determines the crystallized collagen is a substance regulated by the Federal Drug Agency, specifically under authority of the Truth in Cosmetics Act passed by Congress. The Federal act directs the FDA to regulate, specifies label warnings on products containing the crystallized collagen, and provides for Federal remedies in the event of violation.

A Complaint is filed in Arizona state court on May 1, 2009. Defendant FYC files a Motion to Remove to U.S. Federal District Court in Arizona. The Motion was granted.

In the course of conducting discovery plaintiff learns of the role of Exotics International and files a Motion to Amend its Complain to add Exotics International as defendant. That Motion was granted on June 27, 2010. Before filing an Answer, attorneys for Exotics International file a Motion to Dismiss on the grounds the Amended Complaint was filed beyond the one year Arizona Statute of Limitations. The Court denied the Motion.

At trial defendant FYC presents evidence of over 1 million unit sales of its Nu Zest Crème and an expert's testimony that its product is 100% safe when used as directed. Although the plaintiff testified she followed label instructions and her injuries occurred after use of the crème, and her physician testified there was no pre-existing condition, the Court refused to call plaintiffs' expert on causation to testify. Even though Plaintiff's expert had been deposed, she had been inadvertently omitted from the pre-trial witness disclosure.

At the close of plaintiff's case, defendants moved for a Judgment as a Matter of Law on the grounds the plaintiff had failed to produce legally sufficient evidence. The Court denied the Motion. Following a verdict for defendants, plaintiff filed a Motion for a New Trial on the grounds she was denied a fair trial by the Court's ruling precluding her expert from testifying.

1. Did the Court rule correctly on the Motion to Remove? (25pts)

2. Did the Court rule correctly on Defendant Exotic International's Motion to Dismiss? (25pts)

3. Did the Court rule correctly on Motion for Judgment as a Matter of Law? (25pts)

4. How should the Court rule on Plaintiff's Motion for a New Trial? (25pts)