

**QUESTION 1 (60 minutes)**

Only Grad Students, Inc. (OGS) is a California corporation that offers an on-line dating service to clients that reside in or attend graduate school in California, and can provide proof of enrollment in graduate degree program. Fees include an initial membership fee of \$150 and monthly dues of \$150 thereafter. Potential clients must complete a detailed application requiring extensive personal information and photos. OGS guarantees strict confidentiality of all personal information.

Dustin Evans is a student in the Graduate School of Business at the University of San Francisco and decides to participate in OGS's dating site. After submitting his application and paying all fees he is given a password to a secure site. Mr. Evans notices that he is now receiving numerous business solicitations from all across the country, some containing specific, personal information. After contacting other OGS participants and confirming similar events, Mr. Evans consults with an attorney and a class action lawsuit is filed against OGS for breach of contract, violation of state privacy laws, and fraud. The potential number of "members of the class" is 675.

Named as Defendants are: OGS Inc., Susan Elhers, President of OGS Inc., and Gary Galson Director of Operations for OGS, Inc. Both Ms. Elhers and Mr. Galson live in Nevada where OGS, Inc. is headquartered. OGS files for removal to the U.S. District Court for the Eastern District of California and plaintiff's counsel does not oppose the removal. Counsel for OGS then files a Motion to Dismiss on the grounds the lawsuit fails to state a claim because it does not meet the requirements of FRCP 23, regarding class actions. The Motion is denied and plaintiff's counsel then serves on defendants Elhers and Galson discovery requests seeking "their personal banking records for the last three years and the names of OGS employees responsible for business transactions".

Defendants Elhers and Galson ignore the requests and plaintiffs' counsel now seeks Judgment against those defendants on the grounds of willful failure to respond to discovery.

Discuss:

1. Was removal to the US District Court correct?
2. Does the lawsuit meet the requirements of FRCP 23 regarding class actions?
3. How should the Court rule on Plaintiffs' request for Judgment against Defendants Elhers and Galway?

**QUESTION 2 (75 minutes)**

Arthur and Angela Allen are recently married and received such substantial cash wedding presents that they started looking for their first home to purchase. Discovering that even substantial cash will only qualify them for a “fixer upper” they acquire the services of realtor, Edward Max, as their agent and make an offer on an older but quaint home. Prior to the offer they discussed with their agent concerns that the master bedroom has a unique ceiling lighting fixture, very ornate, that is in need of repair. Mr. Max assures the Allens the lighting fixture will remain with the house, it is no problem to have fixed, and refers them to Residential Lighting Solutions (RLS), a local electrical contractor for repairs.

The Allen’s offer is accepted, they buy the house, have the ornate ceiling fixture repaired by Residential Lightening Solution, and move in. Within three months of moving in, the ornate lighting fixture falls onto the Allen’s bed, injuring Mr. Allen. Mr. Allen files a Complaint for negligence against Residential Lighting Solutions and against their agent, Edward Max.

Defendant Edward Max files a Motion for Summary Judgment and attaches a document entitled “Release and Hold Harmless for Negligence of Others”. The document is signed by both Mr. and Mrs. Allen. Plaintiff Mr. Allen files on Opposition to Summary Judgment that includes a Report of Expert that opines “not only did the lighting fixture need repair but the bedroom ceiling contained obvious dry rot such that the entire ceiling needed complete replacement”.

The Court denied the Motion and Mr. Allen’s attorney then filed discovery requests to Residential Lighting Solutions (RLS) including a medical examination of the eyes of the RLS employee who performed the ceiling fixture repair. The Court granted the Motion. At trial, plaintiff’s counsel makes an oral Motion in Limine to exclude from the jury anyone “who worked for or whose family member worked for electricians and or electrical contractors”. The Court granted this Motion. The jury heard evidence from plaintiff, his wife, plaintiff’s expert, both defendants and experts for defendants.

After trial the jury returned a verdict finding Mr. Max not negligent but did find RSL negligent and legally responsible for Mr. Allen’s damages. Defendant RSL is considering appeal.

Assume FRCP applies:

1. Was the Court’s ruling on the Motion for Summary Judgment correct?
2. Was the Court’s ruling on the Allen discovery request correct?
3. Was the Court’s ruling on Plaintiff’s Motion in Limine correct?
4. If defendant RSL files an appeal on the grounds the Verdict was not support by the evidence and the trial court abused her discretion on the Motion in Limine, how should the Appeals Court rule?

**QUESTION 3 (45 Minutes)**

Rodger and Marco were experienced recreational pilots. They particularly enjoyed flying experimental aircraft together. While flying a model XJ172, designed and built by Advanced Avionics, a Maryland corporation, the plane crashed and both Rodger and Marco were killed.

Rodger's wife brings a product design lawsuit against Advanced Avionics, Inc. claiming negligent design was responsible for the crash. The case was tried before a jury and it returned a verdict finding there was a design defect, however, it also found pilot error on the part of Rodger. The jury apportioned liability 80% design flaw, 20% pilot error.

The Administrator of the Estate of Marco then brings a separate lawsuit for wrongful death in a different forum against both Advanced Avionics and the Estate of Rodger.

Discuss only what preclusion doctrines, if any, apply.