

**Kern County College of Law**

**CIVIL PROCEDURE II**

Final Examination

Spring 2025

Prof. L. Peake

**Instructions:**

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

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KCL  
Civil Procedure II  
Spring 2025  
Prof. L. Peake

### Question 1

Facts:

Matt, Raul and Bea, police officers for the City of Bakersfield, responded to a call of a stolen vehicle by suspected gang members and arrested the four occupants who were wearing identical "Shark" tee shirts. All four were handcuffed and transported to jail, but later released when it was determined the four were not gang members nor was the vehicle stolen. The four occupants consisted of Maggie, a California domicile, who sustained a wrist injury from the handcuffing; and Marcus, Nia and Naomi, Nevada domiciles. The four filed suit originally in Nevada (but now transferred to Eastern District Federal Court in California) with the Plaintiffs' attorney, Molly, alleging bodily injury as to Maggie, and assault, battery, false imprisonment and violation of 42 USC 1983 on behalf of all four named plaintiffs against the three officers (represented by Attorney Vlad) and against the City of Bakersfield (represented by attorney Alishaan) on a "Monell" claim. The case has been assigned to the Hon. B. Starr.

The plaintiffs' attorney, Molly, has now moved to certify the suit as a class action, with the complaint asserting the class shall consist of all individuals arrested without probable cause by City's officers in the past five years, including those individuals sustaining injuries or having wrongful death claims arising from assault or battery from use of excessive force by the City's officers while acting pursuant to the City's approved training standards. The suit asserts damages of \$1,000,000 for a class alleged to have over 100 members. The City of Bakersfield's attorney and the three officer's attorney have both opposed the certification of the class.

Should Judge Starr certify the suit as a class action?

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## Question 2

### Facts:

Plaintiffs' attorney, Molly, served request for admission #1 ("RFA") on both defendant City and Defendant three officers as follows: "Admit that the arrests made of Plaintiffs herein as described in Plaintiffs' complaint were made pursuant to the City's approved training standards." The attorney for the City (Alishaan) denied the RFA. The attorney for the three defendant officers (Vlad) admitted the RFA. Molly also served a contention interrogatory on all defendants at the same time as follows: "State all facts upon which you base your response to request for admission #1." The City's attorney objected timely to the interrogatory on the ground that it called for attorney work product. Molly immediately sent an email to Alishaan demanding a full answer without objection to the contention interrogatory within three days of the date of her email or she would file a motion to compel an answer. On the fourth day after sending her email, when no response or reply was received from Alishaan, Molly filed a motion to compel the City to answer the interrogatory. Alishaan did not file any opposition to the motion.

How should Judge Starr rule on Molly's motion?

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*Facts from Question 1*

*Matt, Raul and Bea, police officers for the City of Bakersfield, responded to a call of a stolen vehicle by suspected gang members and arrested the four occupants who were wearing identical "Shark" tee shirts. All four were handcuffed and transported to jail, but later released when it was determined the four were not gang members nor was the vehicle stolen. The four occupants consisted of Maggie, a California domicile, who sustained a wrist injury from the handcuffing; and Marcus, Nia and Naomi, Nevada domiciles. The four filed suit originally in Nevada (but now transferred to Eastern District Federal Court in California) with the Plaintiffs' attorney, Molly, alleging bodily injury as to Maggie, and assault, battery, false imprisonment and violation of 42 USC 1983 on behalf of all four named plaintiffs against the three officers (represented by Attorney Vlad) and against the City of Bakersfield (represented by attorney Alishaan) on a "Monell" claim. The case has been assigned to the Hon. B. Starr.*

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Question #3

Assume the facts from Question #1 and the following:

The suit by the four plaintiffs has now proceeded through trial and judgment. At the trial, Hon. B. Starr, the judge presiding over the trial, issued the following four rulings which the City of Bakersfield asserts were in error:

1. Judge Starr ruled that the three individually named defendants (Officers Matt, Raul and Bea, represented by Attorney Vlad) and the City of Bakersfield (represented by Attorney Alishaan) constituted "one side" and limited Vlad and Alishaan to three "shared" peremptory challenges over Alishaan's objection and assertion that the City was entitled to its own three peremptories;
2. During voir dire, juror GiGi, when asked if she knew any of the parties or attorneys, advised that she was friends with the plaintiffs' attorney (Molly), and the City's attorney, Alishaan, immediately requested Judge Starr dismiss GiGi for cause, which Judge Starr denied...and the City could not use a peremptory because the three "shared" peremptory challenges had been used;

3. During the trial, over objection by Alishaan for the City of undue prejudice, Judge Starr allowed Vlad to introduce into evidence the Officers' request for admission response that their arrests of the plaintiffs were made pursuant to the City's approved training standards;

4. The trial ended with a jury verdict of 6-0 in favor of the plaintiffs against the City for monetary damages and injunctive relief, with Judge Starr allowing the jurors to decide not only the legal issue of damages, but also the Plaintiffs' claim for injunctive relief.

The City asserts that Judge Starr committed prejudicial error as to the City on each of the above four rulings. Did he?

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Civil Procedure Final

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## Question #1 Answer Outline

Issue: Should the court certify the Federal Court suit as a class action

FRCP

23:

Rule:

One or more members of a class may sue as representative parties on behalf of all members if

(1) the class is so numerous that joinder is impracticable; (2) there are common questions of law or fact present; (3) the claims of the representatives are typical of the claims of the class; and (4) the representatives will fairly and adequately protect the interests of the class.

Where

appropriate, the court may order additional plaintiffs to be added as named representatives and/or allow subclasses to be created. FRCP 23(b)(2) allows for equitable relief, including injunctive relief. FRCP 23(b)(3) allows for legal relief in the form of damages when class claims predominate over individual claims.

Analysis:

Numerosity: Named and unnamed class member exceed one hundred individuals. Numerosity is present.

Common questions of law and fact: It appears common questions of law and fact are present as to named and unnamed members on assault, battery, false arrest and 42 USC sec. 1983 and Monell claims. However, none of the four named representatives is claiming wrongful death: there is a lack of commonality as between the named and unnamed class members on this damage claim. Molly has sustained bodily injuries, so a named class representative is present to represent class members in that category of loss (fact)

Typicality: IF considered a separate element to be met (see *Inmates of Attica vs. Rockefeller* 453

F2d 12 (2dCiv.1971), Molly is an adequate representative (arguably) on the bodily injury claims of unnamed class members. Marcus, Nia and Naomi are adequate representatives meeting typicality on remaining claims except as to wrongful death claims: none of the four named representatives are suing for wrongful death, creating a potential conflict on damage issue presentation/valuation of claims by Molly as attorney for the named and unnamed class members. Thus, arguably typicality not met.

Adequacy of representation: The four named representatives would appear to Jack adequacy of representation as to wrongful death claimants as no named class member has a wrongful death cause of action.

Conclusion:

It would appear that, as pleaded by Plaintiffs' attorney, the proposed class action should not be certified.

Adding additional named plaintiffs:

The Court may allow Plaintiffs' attorney, Molly, to add an additional named plaintiff to satisfy the commonality/typicality/adequacy of representation requirements of FRCP 23(a). The additional named plaintiff would be an individual claimed wrongful death damages against the defendants.

Creating subclasses:

The Court may order the creation of subclasses for the different forms of injury and wrongful conduct to insure adequacy of representation is present: i.e., a subclass under named plaintiffs Marcus, Nia and Naomi for false imprisonment/injunctive relief and a subclass under named plaintiff Maggie for bodily injury from assault and battery; and, if an additional named plaintiff is found, a subclass for wrongful death claimants.

Conclusion:

The Court should most probably not certify the class as presented, but

allow Plaintiffs to add a representative plaintiff for wrongful death damages and order subclasses for each unnamed class member to have adequate representation.

Issue: Class certification under 28 USC sec. 1332(d) Rule:

A class may be certified if there is one defendant diverse from one defendant with class membership of at least one hundred members and over \$5,000,000 in plaintiffs' aggregate claims.

Analysis:

The complaint alleges one hundred plaintiffs exists as names and unnamed class members.

However the complaint also alleges the amount in controversy to be \$1,000,000, far below the over \$5,000,000 required for a CAFA suit. Diversity is met as Marcus, Nia and Naomi are diverse from the City of Bakersfield in domicile. Conclusion: Judge Starr should not certify the plaintiffs' suit as a class action under CAFA.

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KCCL 2025 Civil Procedure Final Question #2 Answer Outline

Issue: How should Judge Starr rule on Plaintiffs' motion to compel answer to contention interrogatory

Rule:

Interrogatories may be served on a party consistent with FRCP sec. 33. Contention interrogatories are permissible and not subject to objection as calling for attorney work product. FRCP sec. 33(a)(2). Requests for admission may also be used as to a party in the pending suit. FRCP sec. 36. A Motion to compel an answer that is evasive or incomplete to interrogatory requires as a condition of its being granted a meaningful meet and confer. FRCP sec. 37. Absent such meet and confer to resolve a discovery dispute, a motion to compel discovery will not be granted. FRCP sec. 37.

Analysis:

Plaintiffs' attorney has served what is referred to as a contention interrogatory, which ostensibly appear to call for attorney work product. FRE 5020(9). The interrogatory appears to require the City's attorney to apply facts and analysis to a referenced request for admission.

However, FRCP sec. 33(a)(2) specifically allows contention interrogatories to be served, and an objection on the basis of attorney work product protection cannot properly be made.

While the City's attorney timely made the (improper) objection of attorney work product, such attorney did not make an arguably proper objection that the interrogatory was not full and complete in and of itself, as it required reference to other materials (RFA and response to same by the City).

Thus, while the Plaintiffs' attorney had a legitimate basis for moving to compel an answer without objection to the contention interrogatory, she was first required to meet and confer with the City's attorney in a meaningful manner (or attempt to do so) prior to filing her motion. FRCP sec. 37.

Here, Plaintiff's attorney's meet and confer effort consisted of a single email with a three day period to respond or her motion would be filed.

A three day period would be insufficient to constitute a "meaningful" attempt to resolve a discovery dispute. Further, it is arguable as to whether a single email would be sufficient as a meet and confer attempt by Molly.

The compliance with the meet and confer obligation is a condition which must be met for the court (Judge Starr) to grant the Plaintiffs' motion to compel the contention interrogatory. Thus, no opposition needed to be filed by the City to avoid the motion being (properly) granted by the court.

Conclusion:

The Court should properly deny the otherwise proper motion to compel answer to Plaintiff's contention interrogatory for failure of the Plaintiffs' attorney to meaningfully meet and confer to resolve the discovery dispute over the City's improper work product objection.

1)

**Class Action**

**Certification of the Class Action under FRCP 23**

*FRCP 23*

*Rule:* Under FRCP 23, certification of a class action should be given when four conditions are met: 1) commonality, 2) typicality, 3) numerosity, and 4) adequacy of representation by the named class representative and the attorney for the class.

*Commonality*

When there exists one or more questions of common facts or law among the named and unnamed class members.

Here, the common facts and law among the named class members are suffering bodily injury, assault, battery, false imprisonment, and violation of 42 U.S.C. 1983. The rest of the complaint asserts all individual's arrested without probable cause by City officers in the past five years, including those individuals sustaining injuries or having wrongful death claims arising from assault or battery from use of excessive force by the City officers while acting pursuant to the City approved training standard.

Here, the named plaintiffs and unnamed class members have questions common fact and law arising out of injuries sustained from use of excessive force. However, the city and the officer's attorney will argue that the plaintiffs do not have common questions of fact and law as none of the named plaintiff's suffered a wrongful death but have included it in their complaint.

Under a monetary damages (B)(3) class action: the focus is on the common questions of fact or law that predominate over individual questions that a class action would be adequate in handling. However, a wrongful death cause of action would have a unique set of harm and damages that would have to be awarded none of which the remainder of the class has.

Conclusion: It is more likely than not commonality will not be meet.

*Typicality*

Tests whether the position of the named plaintiff is sufficiently similar to the unnamed class members.

Here, the position of some of the unnamed plaintiff suffering a wrongful death causing of action might be position differently than the named plaintiff especially since a wrongful death claim might have a different cause of action or that those plaintiffs would be entitled to different compensation or damages.

Here, Attorney Molly could ask the court to create a separate sub class for the unnamed plaintiffs for the wrongful death complaints. *OR LEAVE TO ADD DEATH PLAINTIFF AS A NAMED PLAINTIFF*

Under FRCP 23, it allows the court to create subclasses when appropriate to provide those subclasses with a separate named representative to provide for commonality, typicality, and adequacy of representation to the subclass. Additionally, the court may also appoint a separate lawyer to the subclass to ensure adequate representation to the subclass and their interest might differ from the remainder of the original class.

The City's attorney and the officer's attorney would argue for the class to not be certified due to the lack of typicality between the named and unnamed plaintiff's. However, Attorney Molly could persuade the court to order the creation of a subclass and give her time to find a named plaintiff to represent that subclass.

Conclusion: It is more likely than not typicality would not be met.

### Numerosity

Adequate numerosity is achieved when there is sufficient number of anticipated class members that joinder of all class members would be impracticable. There can never be lower than 20 class members, and usually 40 or more class members would be sufficient to certify a class action.

Here, the class is alleged to have over 100 members. This would be adequate for numerosity.

### *Adequacy of Representation*

FRCP 23 requires the named class representative and the attorney be capable of adequately representing the class.

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Here, <sup>while</sup> well most of the complaint for the class encompasses similar questions of law and fact. None of the named plaintiffs can adequately represent unnamed plaintiffs joining under a wrongful death cause of action as none of them have suffered from this type of harm caused by the <sup>city</sup> city or its officers. Additionally, it would have to prove that Attorney Molly would be capable of adequately representing the class by a showing that she has handled claims with this many plaintiffs and for this large of an award previously. Here, the City's attorney and the officer's attorney would again argue that there is no adequate representation by the named plaintiff to the unnamed class members thus the court should be certify the class action. Attorney Molly could then remind the court of its ability to create a subclass that way there would be commonality, typicality, and adequacy of representation among the original class and subclass for the wrongful death claim.

Conclusion: It is more likely than not that adequacy of representation would not be met unless the court decides to create subclass for the wrongful death action of the complaint and give Molly time to find a named class representative and another attorney to represent that subclass's different interests.

### Certification of Class Action under CAFA

CAFA 28 U.S.C. 1332

Rule: proposes certification of a proposed class action when there is minimal diversity between a named plaintiff and any defendant, over 100 class members involved as plaintiffs, and over \$5,000,000 in exposure to the defendants.

Here, minimum diversity is achieved as at least 3 of the named plaintiffs (Nia, Marcus, and Naomi) are from Nevada (suit was transferred to the Eastern District Federal Court in California). There <sup>is</sup> ~~is~~ <sup>are</sup> over 100 class members. Unfortunately, the claim does not meet the required \$5,000,000 of exposure to the defendants as the suit asserted damages for only \$1,000,000.

✓ Conclusion: Class action could not be certified under CAFA.

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2)

✓ **Whether the Judge Starr should grant Molly's Motion**

**Discovery**

Discovery is the process of acquiring and producing information between parties and nonparties. Discovery consists of information that is relevant, proportional, and non-privileged. The process begins with a meaningful meet and confer, initial disclosures, and conferences. Then is conducted with tools such as requests for admissions, interrogatories, etc.

**RFA**

A request for admission (RFA) is when a party sends another party a request to admit, deny, or state they do not know the information being asked of them. Objections must be made timely, with particularity. Anything admitted will not need to be litigated at trial. Response is required within 30 days.

Here, Molly served an RFA on both Vlad and Alishaan asking them to Admit that the arrests that were made on the Plaintiffs were compliant with the City's approved training standards. Alishaan denied the RFA and Vlad admitted to it. Molly will argue that because both attorneys responded to the admissions they are compelled to answer any follow-up interrogatories. However, the City's attorney will argue otherwise.

As discussed below.

**Interrogatories**

✓ Interrogatories are questions submitted to another party asking for information that pertains to witnesses, documents, or anything relevant to the case. Only 25 interrogatories at a time unless otherwise granted by the court. Objections must be made timely, with particularity.

Here, Molly served a contention interrogatory that requested that the plaintiffs attorneys state all facts upon which they based their response for admission #1. Molly will argue that the City's attorney is compelled to answer the interrogatory because the information Molly is asking for is not privileged or protected. Molly may also argue that because the information is relevant and proportional Alishaan is required to answer. Proportionality refers to the importance to the claims at hand or how burdensome a request may be.

However, the City's attorney objected timely to the interrogatory and the attorney will claim that the work product protection will protect the information from being discoverable. Alishaan's objection was timely and with particularity.

As discussed below.

### Work Product

Work that is prepared for or by an attorney in anticipation of litigation is considered work product. This is protected and a party may not be able to gain access to this unless they show a substantial need and there are no other means of obtaining the information.

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Here, Alishaan will argue that the facts Molly is asking for were obtained in anticipation of litigation. Alishaan will further argue that the facts do not indicate that Molly tried to get the information by another means. There are no facts that indicate she attempted to interview any potential witnesses. Alishaan may also argue that because Vlad did not object she may be able to get the information from him.

Molly will argue that the facts she is requesting are not protected because the facts do not indicate that Alishaan gathered the information in anticipation of litigation. There are also no facts that indicate that Molly had any other means of obtaining the information. Thus, the court should grant the motion to compel as discussed below

AND RULE 33(a)(2) ALLOWS  
CONTENT  
PC

### Motion to Compel/Protective Order

A motion to compel may be granted if a party is demanding information that is discoverable and the other side is concealing the information. A protective order may be granted if a party feels that the court should not allow information to be discovered due to a privilege, protection, or if the information is highly embarrassing. Before requesting the court to grant either of these the parties should have a meaningful meet and confer to resolve any discovery disputes.

Here, Molly will argue that the court grant her motion to compel because she has not heard from Alishaan in 4 days since she demanded that Alishaan send her the information. Once again, Alishaan will argue that due to work product he does not have to answer her request. Alishaan may even go as far as requesting a protective order asking the court to conceal the information from being discovered.

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The court must take into account if the parties have had a meaningful meet and confer. As discussed below

### **Meaningful meet and confer**

- ✓ Before requesting the court to grant either of these the parties should have a meaningful meet and confer to resolve any discovery disputes.

Here, Molly emailed Alishaan stating that if he does not reply within three days she would ask the court to grant a motion to compel. Molly filed the motion and Alishaan did not file a response. Thus, the court should grant the motion

- ✓ However, Alishaan will argue that it is work product and the parties did not have a meaningful meet and confer. The facts do not indicate that the parties met before Molly filed a motion to compel. Also, Alishaan will argue that he did not need to file a response.

The court will take the lack of a meaningful meet and confer into consideration and demand that the parties meet to resolve their disputes before granting the motion.

Thus, Judge Starr should not grant the motion

### **Sanctions**

A court may issue sanctions based on discovery violations committed by parties. There are partial and complete violations. Partial violations are minor and may consist of motions to compel to be granted or attorneys fees to be awarded. Complete violations are more serious and a judge may allow certain facts to be admitted; a plaintiffs case to be dismissed; or a party may be held in contempt of court. A motion to compel does not have to be made in order for a sanction to be issued.

Here, Judge Starr may issue sanctions as against Molly if she does not commit to a meaningful meet and confer the court may issue sanctions as against Molly for any attorneys fees upon the filing of any motions Alishaan may have had to file.

Again, Judge Starr should not grant Molly's motion to compel.

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3)

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### **1) Peremptory Challenges**

Rule: Under FRCP 47, the rule provides that each party is to be allotted 3 peremptory challenges. The rule also gives the court the discretion to consider several plaintiffs or defendants as one side or party and allow them to "share" the 3 peremptory challenges

Here, Judge Starr (using his judicial discretion) ruled that the three individually named defendants (Officers Matt, Raul, and Bea) and the City of Bakersfield constituted one side and limited Attorney Vlad and Attorney Alishaan to three "shared" peremptory challenges over Alishaan's objection which was preserved for the record. While FRCP 47 does allow for judicial discretion of treating several defendant as one side, here Alishaan and Vlad would argue that the sharing of only three peremptory challenges would be prejudicial. Even though Attorney Vlad and Attorney Alishaan both represent defendants against the plaintiff's claims; it would be argued that each defendant has its own interest in not taking liability. Each individually named defendant also have their own interest in not being liable in the suit. To allow all three individually named defendants and the City to share only 3 peremptory challenges does not even given each defendant one challenge to use. This was clearly an abuse of discretion.

Conclusion: While allocating 3 peremptory challenges to each party was correct under the rule, requiring the 3 individually named defendants and the city to share only 3 peremptory challenges was prejudicial.

### **2) Denial of Dismissing GiGi for Cause**

FRCP 47 (covers Voir Dire, Challenges for Cause, and Peremptory Challenges)

Rule: During voir dire, potential jurors are asked question to determine is any juror has a potential bias (actual or implied). Additionally, the rule covers circumstances in which a juror may be challenged for cause such as being a felon, not being a U.S. citizen, or not being able to understand english proficiently. The judge determines if the challenge for cause is valid.

Here, when asked if GiGi knew any of the parties or attorney's GiGi advised the court that she was friends with the plaintiff's attorney Molly. The City's attorney Alishaan immediately requested that GiGi be dismissed for cause which Judge Starr than denied. The city was left with no peremptory challenges because the three shared peremptory challenges has been used.

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Under FRCP 47, a juror must be removed if it can be shown that the juror has a bias. Here, GiGi clearly stated that she was friends with Attorney Molly. This was clearly prejudicial to Alishaan as GiGi could have ruled in Molly's favor against the city due to their friendship. Molly would argue that Alishaan would have to prove that the error in not dismissing GiGi was prejudicial. Alishaan would have to show that by dismissing GiGi the verdict would have come out in favor of his clients then the denial of dismissal of GiGi was prejudicial. However, if the verdict would have come out the same, then it amounts to no more than harmless error.

Conclusion: It is more likely than not the denial of dismissal of GiGi as a juror was prejudicial error.

### 3) Requests for Admissions

#### *Request for Admissions FRCP 36*

*Rule:* Any party can serve on any other party a written request for admission for the truthfulness and genuineness of the matters or documents described with the request. The responding party must return a sworn statement: 1) admitting, 2) denying, 3) an explanation as to why the responding party cannot admit or deny the request, or 4) object to the request based on an adequate legal basis. Failure to respond or failure to respond timely (within 30 days of being served) defaults the matter as being admitted.

Here, Judge Starr allowed Vlad to introduce into evidence the officer's request for admission response that their arrest of the plaintiff's were made pursuant to the City's approved training standards. Under FRCP 47, Vlad could argue that the RFA should be admitted because it is admissible evidence and the response was also given by his own clients. Alishaan would argue that by allowing the RFA into evidence it would give more weight to the possibility that the City was vicariously liable based on their deficient training standards. Additionally, Vlad could argue that Alishaan could bring in his own RFA in which his client denied the request. Allowing this piece of evidence in and allowing the jury to decide on the issue of whose is liable would not be an abuse of discretion on Judge Starr's part.

Conclusion: Judge Starr's admission of the RFA was not prejudicial.

### 4) Jury deciding Equitable Issues

Under the 7th amendment, parties are entitled to a jury on "all legal issues of common law where the amount in controversy exceeds \$20". However, a party is not entitled to a jury on any equitable

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claims. However, the court may allow an advisory jury on equitable issues but the court must decide the issue itself.

Here, the plaintiffs against the city received monetary damages and injunctive relief with Judge Starr allowing the jurors to decide not only the legal issues of damages, but also the plaintiff's claim for injunctive relief. While, Judge Starr was correct in allowing the jury to decide the issues of monetary damages as this is a legal claim, Judge Starr committed prejudicial error in allowing the jury to decide on the injunctive relief which is an equitable issue. Judge Starr could have allowed an advisory jury on the injunctive relief claim but must have determined that issue himself not the jury.

Conclusion: Judge Starr committed prejudicial error by allowing the jury to decide an equitable issue.

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**END OF EXAM**

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