Discovery is the process by which a party gathers information from other parties and non-parties to help prepare for trial. X and Y must comply to the FRCP regarding all discovery requests and responses. The rules set form explicit limitations that all good attorneys should know and practice with. Rule 26(b) defines what information is subject to discovery. The standard is one of relevance. “Non privileged information is discoverable if it is relevant to the claim or defense of any party.” Rule 26(b). Under this standard, information that X and Y seek must be relevant to a claim or defense of a party. However, discovery may still be relevant to the subject matter, under 26(b)(1), only by motion showing good cause. Information is subject to discovery if it is reasonably calculated to lead to the discovery of evidence, but does not necessarily have to be evidence that the party, here X and Y, uses at trial.

In this case, after the parties exchanged their initial disclosures, under Rule 26 (a), Y, the defendant, sent X a set of interrogatories. Interrogatories are written questions that the recipient answers under oath. The advantage of these are that they are cheaper for the interrogator. The disadvantage is that because the questioner cannot follow up evasive answers with a question designed to pin things down, interrogatories that go beyond routine specific information may yield little value. Its [sic] best to present objective questions, such as the name of witnesses, and facts of incident. The goal of interrogatories is to build a path; figure out the story; put together the piece of the puzzle. An attorney who uses these as a tool for investigation will best utilize this piece of discovery.

In this case, Y utilized her interrogatories in an investigatory manner. She began with the background information of the dog, then sought all the information/details regarding the contract.
between the parties. She then asked for the doctor’s [sic] names, health care providers, and any treatment done to the dogs. Y then asked details regarding the collapsing incident, any witnesses at the scene. Y then followed up with questions regarding the dog’s breeding. These questions are all very objective and straight forward. Y has asked questions designed to pin things down so she can have a better picture of the story.

However, Y forgot to consult Federal Rule 33(a) before constructing these thoughtful interrogatories. Rule 33(a) expressly limits the amount of questions a party may serve on another party. This is limited to 25 questions, including all discrete subparts. Although Y numbered 26 questions in total, which is already more than prescribed in the Rule, a closer eye (such as ME!) can count up to 101 questions. This is four times the amount allotted. To ask all 101 questions, Y must have a written stipulation or leave from court to serve additional interrogatories.

In addition, when making an interrogatory, it must be relevant and non-privileged. Rule 26(b)(1). If X believes the information is not relevant, then he is permitted to make an objection. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall expressly make the claim, and describe the nature of the material.

In this case, any question that X believes to be non-relevant or privileged, she may object to the interrogatory. Questions that do not pertain to Protection that is within the scope of the Animal Protection Act, or does not pertain to the contractual claim, need to be objected. I am unfamiliar with the scope of this Act, so I will not be able to make recommendations as to which interrogatories should be objected to due to irrelevancy. In regards to protected information,
privileges such as attorney-client privilege may arise. (see supra). There privileges are not be confused with Attorney-work product.

Attorney-work product protects materials that are prepared in anticipation of litigation from discovery by counselors. The work-product doctrine is more inclusive than the attorney-client privilege. This doctrine includes and [sic] materials prepared by persons other than an attorney. As long as the materials are prepared with an eye towards the realistic possibility of impending litigation.

Interrogatory number 26 seeks all supporting documentation to the extent not already provided through X’s 26(a) disclosures. This will most likely fall under attorney work product. Y seeks to benefit from X’s hard labor—which goes directly against the notion of adversarialness.

Moreover, Rule 33(d) prevents a situation where the party issuing the rogs forces a tremendous amount of work on the other side. To produce all documentation, asked in Question 26, could either be privileged information, or, to the extent to which the documentation is very large, X may tell Y to sift through the records to figure out the information herself. Also, any asking of how something is computed could go to attorney work product.

The next piece of discovery that was conducted was the deposition of V. Y, who obviously did not read her rules book, incorrectly served a deposition notice under Rule 30. Since V is not a party, Y should have initiated through subpoena, governed by Rule 45. This is an order from the Court, as opposed to the notice that was directly sent by Y. Special provision for third party discovery states that third party discovery only allows for depositions, document production, and inspection. When noticing a third party deposition, Y should have included
special language, such as the name of the court which its [sic] issued, the title of the action, and the name where the action is pending. Again, this needs to be issued through subpoena.

Had V not wanted to comply, V had two options (1) informal route of writing a letter, or (2) formally submit a motion. However, V waived this by showing up and being sworn in at the deposition.

If V is treated as an expert, then Y has the right to depose V under Rule 26(b)(4)(A).

Depositions are taken to preserve material for trial. However, attorneys must be within the discovery rules when taking a deposition. The party not taking the deposition (i.e. asking the questions) may object during the deposition. Objections must be “stated concisely and in a non-argumentative and non-suggestive manner. V’s attorney followed this format when objecting to Y’s questions. Objection is not the same thing as instructing a witness not to answer. After objecting, the party still needs to answer. All this objection does is place the objection on the transcript.

However, an attorney may instruct a witness not to answer under Rule 30(d)(1). There are three instances when this may occur: (1) to enforce a court order, to make a motion, or to preserve a privilege. At this deposition, on several occasions, V’s attorney instructed her witness not to answer. However, she failed to state why she was instructing her not to answer. In this case, when inappropriate discovery is sought, a party can make a motion for a protective order. (Rule 26(c)). Y’s questions, such as “how many animal deaths have been caused by your incompetence, and how many times in the last 10 years have you beaten or abused your pet is highly inappropriate. V’s attorney should have stopped the deposition to make a motion of a protective order. If V’s attorney could should good cause, the court is authorized to “make any
order which justice requires” to protect a party or person from annoyance, embarrassment, oppression, undue burden or from undue expense. Rule 26(c). In this case, V’s attorney could get a protective order to protect V from annoyance, embarrassment, or oppression.

Furthermore, Y asked questions regarding information that is privileged under the attorney client privilege. This extends to communications made by the client, in confidence, relating to the purpose of the suit, that is made to her lawyer when legal advice is sought. V had no right to ask questions about the conversations that where [sic] had between V and V’s attorney. When asked, V should have objected, instructed V not to answer, then state the reason—because the information is privileged under the attorney client privilege.

Sanctions are available for an attorney who does not comply with discovery rules. Under Rule 37(d), (g), sanctions are available upon occurrence of the misbehavior. If a party fails to answer the question, an attorney—like X, can file a motion to compel. However, this will probably not prove to be successful for X, as X has acted in a way that is unprofessional. It is most likely that X will be held in contempt of court, and may be subject to fines—such as reasonable expenses, and attorney fees. X should have acted more lawyerly.

V’s attorney, to avoid any sanctions from the court by walking out of the deposition, should have stopped the deposition to make an order.

The last piece of discovery that was issued was a document production request from Y to X, demanding that V produce all document and records pertaining to complaints. Y should have issued this directly to V by a subpoena, under Rule 45(a)(1)(c).

As previously discussed, V, as a third party, has an option to comply. If she does not want to she may write an informal letter, or file a motion. In addition, there are limits on the
issuance of subpoenas to protect the convenience of third party. If V chooses to not comply with a request for document production, Y can file a motion to compel.
Question 2

If Y believes that W may be liable for all or part of the P’s (X) claim against Y (the original D), Y may implead W under Rule 14 impleader. Impleader is a joinder device that is only applicable upon a theory of derivative/contingent liability and it is entirely permissive. If Y should choose to implead W it would be saying that if Y is liable than [sic] W is liable. Here Y is arguing that if Y is liable it is because they relied on W’s advice on how to design the doghouse which subsequently collapsed. Thus, W’s liability would be contingent upon the original D (Y’s) liability. Hence, Y should implead W and then Y would become the 3rd party P and W would become the 3rd party D. If Y does implead W, (which needs to happen no later than 10 days after serving the original answer otherwise 3rd party P must obtain leave on motion upon notice to all parties) any part can object. Further, the 3rd party D can raise defenses against the original Ps claim as well as raising counterclaims against the original D. Moreover, the original P may also assert claim against the 3rd party D.

While a SMJ and PJ analysis is also needed, here the facts indicate no problems w/ either SMJ or PJ. It is likely that Y will implead W because of the concern for preclusion and/or inconsistent results. If there is no impleader, the D (Y) or 3rd party P can use the empty chair defense which essentially says that the party that is liable is not in the courthouse. However, if Y does implead W they will lose the empty chair defense. However, because Y does not to be precluded from bringing a subsequent suit against Y he will likely implead. Namely, if no impleader and Y lost the 1st suit against X making Y liable for the doghouses collapse (breach of K claim & violation of APA) then if Y tried to sue W, W would argue Ys claims should be precluded b/c it was already decided that Y is liable in the 1st suit. Thus, Y should implead W.
I disagree with the jurisprudence in State Farm v. Campbell. In this case, the Supreme Court outlined three guideposts for limiting punitive damages. First, they look at the degree of reprehensibility, then they look at the disparity between the actual and potential harm and the punitive damages, and thirdly, the difference between the punitive damages and the civil penalties awarded in comparable cases.

As to the first requirement, the court looks at several factors, such as whether there was physical or economic harm, whether the basis of the tort was indifference or recklessness, the financial vulnerability of the plaintiff, whether the action was isolated or repeated, and whether the tort was intentional or accidental. In whole, I find these guideposts poorly formulated.

Reason#1

The Supreme Court seems to limit punitive damages, even if every factor has been more than satisfied to a single digit ratio. They argue that such a ratio is within the due process concerns they try so hard to conserve. But how is this so? The purpose of punitive damages is to punish the defendant, and when you are talking about corporations, the most efficient and practical punishment is money damages. But the Supreme Court has given corporations a single-digit cushion in which they make take a small sigh of relief. These corporations have plenty of money and perhaps punitive damages that is small because the actual harm suffered was small, although its conduct is completely reprehensible, would do little in deterrence or punishment. Also, a single-digit limit, in addition to the other factors violates one’s right to a jury trial. It undermines a jury’s ability to award damages they deem appropriate and no matter what award
they give, it is subject the this ruling’s scrutiny. Where then has the jury right gone? It has been partially replaced by the Supreme Court’s discretion.

Reason #2

These guideposts, although providing some guidance, is [sic] completely arbitrary. Once we have found to be within the single digit ratio, there is a little guidance after that which will justify a 2-1 award as opposed to a 6-1 award. The Supreme Court has neither offered a bright line rule nor provided adequate guidance to determining punitive damages within the 9% range. They have done nothing but muddy the waters and the only parties [sic] would seek to benefit from it are the corporations themselves.

Proposition

I think that the Supreme Court should abandon this attempt to impose constitutional limits upon punitive damages award. More credit should be given to a reasonable jury that they are in fact “reasonable” in deciding how much punitive damages would be adequate to punish a certain defendant. Any attempts to otherwise mandate guidelines and restrictions does more harm than good, and in the face of competing interests, the right to a jury is the most fundamental and the balance should be waived [sic] in its favor. I cannot propose any changes to this jurisprudence that would improve it. Any guidelines will be ambiguous and arbitrary. Our faith should rest with a reasonable jury and the Supreme Court has only discredited the jury’s function and reasonable ability in restricting the duty they have been called to perform.