

1)

===== Start of Answer #1 (1321 words) =====

1. Was removal to the district court proper?

Under section USC 1441, and case filed in state court may be removed to federal court if two qualifications are met: (1) the federal court has original jurisdiction (SMJ), and (2) no defendant resides in the state in which the district court exists.

Under 28 USC 1331 (Arising Under) the district court has original jurisdiction in all cases which arise out of the United States Constitution, federal laws, or United States treaties. Here, Mr. Evans is suing for breach of contract, violation of *state* privacy laws, and fraud. These are all state actions and would not qualify under 1331. Under 28 USC 1332, a district court has original jurisdiction in any case where there is complete diversity of the parties, and the amount in controversy exceeds \$75,000.

good
law
of
fact

Complete diversity of the parties exists if no plaintiff is a citizen of the same state as any defendant. Citizenship is determined by domicile. A corporation's domicile can be determined either by the state in which they are incorporated (here CA) or by their principle place of business. A principled place of business can be determined by the Muscle Test, where the bulk of the coporation's activity occurs (here CA) or by the Nerve Center Test (Hertz). Under the Nerve center test, the principle place of business is where operations are run from, and major decisions for the company are typically made, such as the headquarters. The facts state that OGS is headquartered in Nevada. Therefore, OGS is a citizen of Nevada or more likely California as it is incorporated in California and the bulk of the activity is in California.

more
good
law

However, in a class action suit, complete diversity is established by the named representatives. In this case that would be Mr. Evans. An individual's domicile is their

fixed and permanent home with intent to remain. Here, Mr. Evans is a student at the University of San Francisco. There is no information as to where Mr. Evans hales from or whether he intends to remain in California once he graduates. While OGS applies only to individuals who reside in California, this would not likely uphold as a legal determination of residence. Based on the facts supplied, it cannot be determined whether complete diversity exists. However, if Mr. Evans is a citizen of another state (not Nevada) complete diversity could exist.

Based on the class as a whole, it seems likely that the amount in controversy is met as well. While the facts don't say what is being asked for, simply by multiplying the membership fee of \$150.00 by 675 class members, and then adding all of the monthly dues you likely exceed the \$75,000.01 minimum without even looking at other possible damages. Assuming the members will also be asking for membership fees and monthly dues, plus additional damages. The amount in controversy is satisfied.

The district court system likely has original jurisdiction. However, under 1441 removal is not proper if any defendant resides in the state in which the district is located. Here OGS "resides" in California and as indicated above, its "residence" is in the same state as the district court. Therefore removal was not proper.

Removal to the US District Court was not proper.

2. Does the lawsuit meet the requirements of FRCP 23 regarding class actions?

Rule FRCP 23(a) list four pre-requisites in order for a class action to be properly certified by the court. The first requirement is Numerosity, in that the class is so numerous that joinder is impracticable. Here, there are 675 class members. This is an extremely large number of parties to join in a single action. Class actions have been found to be proper in cases where there were 50 members. There are clearly enough

members to meet the Numerosity requirement.

The second pre-requisite is Commonality in that the members of the class share a common question of law or fact within their claims. That is met here in that all class members are claiming the same damages: fraud, violation of state privacy laws and breach of contract. The facts do not state that any member is not making these claims or asserting different claims that predominate. Commonality exists.

*good
law
good
approach*

The third pre-requisite is Typicality in that the named representative's claim is a typical of the class. Here, as stated above, Mr. Evans is making the same arguments as his other class members. He contacted other members of the class and they reported similar complaints as Mr. Evans. OGS was limited in who it took on as clients and therefore, as a student residing in CA, enrolled in a graduate program suing for the above named actions, he is typical of the class.

The final pre-requisite is Adequacy, in that the named representative can adequately represent the class as a whole. Based on the above, this prong is met. He shares the same claims as the other members and is typical of the class and his claims adequately represent their claims as a whole. He meets this test.

*very
good
law
here*

Under FRCP 23(b) once the above pre-requisites are met the court must certify a class if (1) failure to do so would risk inconsistent results, (2) injunctive or declaratory relief is sought for the class as a whole, or (3) the common question of law or fact predominates the action. Here both prongs (1) and (3) are met in that with 675 members inconsistent results would be almost guaranteed, and the common questions predominate the entire action. The class was properly certified under FRCP 23.

3. How should the Court rule on the plaintiffs motion for judgment?

good law

Under Rule 26 a party is entitled to discover all non-privileged information reasonably calculated to lead to admissible evidence. The matter sought need not be admissible as long as it is reasonable to believe it will lead to evidence relevant to a claim or defense of the parties. Under Rule 37, sanctions may be sought in a case where a party fails to disclose discovery as required. A party must respond to a discovery request within 30 days. Here, the defendants ignored the request outright. However, sanctions under Rule 37 are governed by reasonableness.

YES

In order to get sanctions for discovery that does not fall under the mandatory disclosure rule (which these documents likely do not), the party must first move for a motion to compel. Once the non-disclosing party fails to respond to the court order, sanctions may be sought. The sanctions must be proportionate to the wrong committed by the party. When considering what type of sanction is appropriate, the court will consider such things as the need of the requested discovery, the prior history of the parties, and the likelihood that an unjust result would occur without that evidence.

discuss fraud cause

Here, the personal bank records for the last three years is likely relevant as there is a possibility that director of operations and president of the corporation were financially motivated in there actions. This could be demonstrated on the bank records and is relevant to the action. However, the name of every employee that is responsible for business transactions is vague at best and overly burdensome at worst. It is unlikely this request would be upheld had OGS chosen to respond with a request for a protective order (Rule 26). There is no evidence that prior to this incident, OGS was not complying with proper discovery procedures, and there is no facts stating how long Mr. Evans was trying to acquire this discovery or whether a court order compelling the discovery was issued. It seems that some other sanction (such as monetary) would be more appropriate.

they are ones who will know how many transactions

speculation
good analysis

This is good law, good analysis, good result

Based on the above, and as the courts shy away from issuing the ultimate sanction

(judgment) unless truly egregious conduct has occurred, the motion for Judgment will be denied.

(90)

=====
2) =====

=====
1. Was the Court's ruling on the MSJ correct? =====

Under Rule 56 of the FRCP, a motion for summary judgment may be granted if the moving party can show that no genuine issue of material fact is in dispute and the party is entitled to a judgment as a matter of law. The motion is heard at anytime within 30 days of the close of discovery and may be based on all pleadings, affidavits, and discovered material in the action. The trial court does not make any credibility determinations and makes all reasonable inferences for the non-moving party. It is moving party's initial burden to show there are no genuine facts in dispute. By attaching the waiver against negligence, Mr. Max shifted the burden to the Allen's in that they apparently waived any actions of negligence involving third parties and judgment should therefore be afforded to him as a matter of law if their claim lay solely within the "negligence of others" provision.

No -
"until"

good
lawyer

However, once the burden shifts, the non-moving party need only make a showing that there may still be facts in dispute. That showing does not need to be based on admissible evidence, though here it appears to be. Despite the jury later finding that Mr. Max was not negligent, the expert's report showing rot in the ceiling demonstrates other facts supporting the claim of negligence, aside from the negligence of RLS. Mr. Max

may argue that rot in the ceiling was a distinct possibility as they knew they were purchasing a "fixer upper" and that he is therefore not liable beyond his recommendation of the electrician, for which he has a waiver. However, a reasonable jury could find that Mr. Max was negligent in his failure to notice and/or inform the Allen's of the rot which led to their damages.

The Motion for Summary Judgment was properly denied.

2. Was Mr Allen's discovery request correct?

good law
Under Rule 26 a party is entitled to discover all non-privileged information reasonably calculated to lead to admissible evidence. The matter sought need not be admissible as long as it is reasonable to believe it will lead to evidence relevant to a claim or defense of the parties. Under Rule 35, upon court order, a party may be required to undergo a medical or mental examination so long as the requesting party can show good cause and that the physical condition of the party is at issue in the action.

YES
Generally an medical exam can only be requested for a party to the action. However, as an agent of RLS and the individual conducting the work, the employee might still be subject to examination. However, there is still the question as to whether the employees eyesight is at dispute and of consequence to the action.

Although the facts as stated do not include any indication that the employees physical condition was at issue, the Allen's likely argued that the employee was working directly with the ceiling, up close and personal to the extensive rot. Had his eyesight been as it should be, he should have noticed the dry rot and that the ceiling would not be able to with-hold the light fixture. While the court will generally not permit fishing expeditions, and limits the number and scope of such examinations, the court should allow the eye

exam here. Should it be discovered that the employee had terrible eye sight, and the company knew about it, that could go directly to the Allen's claim of negligence. Furthermore, the fact that the employee apparantly didn't notice teh damage indicates that there was indeed something wrong with his eyes.

The request for a medical exam was appropriately limited and supported by good cause. It was properly granted.

3. Was the Court's ruling on the Motion in Limine excluding all electricians or family members of electricians correct?

very good law

In general parties are entitled to a cross-section of the community in the pool of potential jurors. A court is not allowed to systematically exclude any cognizable group from the jury. However, a court also has discretion to eliminate any amount of jurors for cause on a showing of bias or prejudice that will likely result in the juror's inability to be impartial. Under *Fein v. Permanente Medical Group*, the court is allowed to draw from its experience and exercise broad discretion to eliminate jurors that will not be impartial.

more good law

Under *Fein*, electricians are not a cognizable class sharing the same experiences, knowledge, and background, and to exclude them is not necessarily improper. Recently, Court's have been broader in thier application of what may be cognizable group and *Fein* may no longer be as applicable. In fact, it could be argued that *Fein* would be overturned if heard in today's court. Here, the Court excluded not only electricians, which may arguably be biased against anyone suing someone in their profession, but also anyone who has worked for, or whose *family member* has worked for electricians. There does not seem to be a reasonable basis for such a broad exclusion of individuals. It is entirely likely that a family member of someone who once

worked for an electrician several years ago is entirely unbiased.

While the Court correctly ruled as to electricians, the exclusion of family members was probably overbroad, and excluded more jurors than should have been properly excluded. The Court ruled incorrectly on the motion in limine.

4. How should the Court rule on the grounds the Verdict was not supported by the evidence and on abuse of discretion as to the jury in limine?

On a claim of insufficiency of the evidence, the Court will apply the substantial evidence test. Any findings by the court or jury as to disputed facts at the trial will be upheld so long as they are substantially supported by the evidence. The judge or jury at trial are present in court to determine the credibility of witnesses and view evidence first hand. Therefore, the courts generally will not disturb a finding on the evidence unless the verdict is not at all supported. While more than a "mere scintilla" is required, there must generally be a complete absence of evidence to support the verdict, to the point where no reasonable jury could have found for the verdict for an appeal based on insufficient evidence to be granted. Here, the jury was able to weigh the experts as they testified and were able to determine the credibility of the evidence. Furthermore, the fact that they released Mr. Max of liability, shows that they were seriously considering the evidence and were able to discount some evidence and uphold other evidence. The jury listened to several experts, percipient witnesses, and the defendant's themselves. There was likely enough evidence to support the claim.

There is enough evidence to support the verdict under the substantial evidence test.

As to the Motion in Limine, as discussed above, it was probably improper for the court to exclude the vast group of potential jurors from the jury pool. However, this motion

4/15 was not under law (which would allow for de novo review) should be determined by and Abuse of Discretion Standard. An appellate court will generally not disturb a trial court's discretion unless the ruling is *clearly erroneous* and the party's rights were substantially violated as a result. While RLS may argue that his right to a cross-section of the community is a substantial right, it is not likely the motion itself actually excluded a large number of jurors. Furthermore, if following the Fein case, the ruling was not clearly erroneous, as it is entirely possible that in the judge's experience, electricians are a biased bunch. Under the harmless error doctrine, a judgment will not be reversed on appeal unless a substantial right was violated depriving the party of a fair trial. While it's true a limited number of jurors might have been eliminated, a party is entitled to a fair trial, not a perfect trial. Here, there was not an egregious enough of a violation to reverse the judgment.

My good work

It is not likely this claim will be successful on Appeal, The appellate court will affirm the judgment.

90

=====**End of Answer #2**=====

3)

=====**Start of Answer #3 (626 words)**=====

Under Claim Preclusion (formally known as res judicata) a party or person in privity with a party may not file a subsequent action on a claim that has been fully adjudicated on the merits, involving the same parties.

Here, the parties in the first action were Rodger's wife, and Advanced Avionics (AA). AA may argue that as Marco's estate was in privity with Rodger's wife's whose success in the previous trial merged the claim into a final judgment, and the estate should be subsequently barred from the filing a claim arising from the same transaction or occurrence. However, privity is defined as a "substantial relationship". Here the only connection is that the two men liked to fly together, and died together. Generally more is required to establish privity which would bar a subsequent claim. Claim Preclusion

requires mutuality of the party's in that both were involved in the previous action.

AA will not be able to argue Claim Preclusion as a defense against Marco's Estate's claim..

Under Issue Preclusion (formally known as Collateral Estoppel) an issue which was actually litigated, and essential to a final judgment on the merits may be subsequently used by either party so long as there was a full and fair opportunity to litigate the issue. Traditionally, Issue preclusion also required mutuality of the parties in that both parties must have been involved in the original action. However, the case of Parklane Hosiery over-ruled the mutuality doctrine allowing third parties to enforce a holding on a issue against another party, even if that third party was not involved in the initial action so long as the party against which issue preclusion was being sought had a full and fair opportunity to litigate the issue.

Issue preclusion (and Claim preclusion) may be used both defensively to bar retrying of an issue and eliminate a claim, and offensively, to enforce a finding on an issue against a subsequent party. Here, Marco's family will want to dispose of what appears to be the entire case by applying the issue findings from the previous case. AA and Rodger's wife may also wish to apply the issue finding if they wish to minimize responsibility and are concerned that a new jury may find either party *more* liable. Though, this is not likely as a new case gives them a chance to reduce their damages should one or the other be found more liable, or even that Marco, who's estate was not a party to the original action, would be found to be partially liable.

Regardless of strategy, the case as it relates to AA and Rodger's wife was fully litigated previously, even if Marco was not involved. A jury verdict means that the case was

decided on the merits. There can be no doubt that a findings of product liability and negligence in a wrongful death case are essential to that final judgment. All issues relevant to Rodger's case are likely to be relevant to Marco's. While Rodger's wife may argue she did not have a full and fair opportunity to litigate as a plaintiff in the first case, chances are that AA was addressing the liability of Rodger throughout the trial (this is supported by the jury verdict). She had a full and fair opportunity to address Rodger's liability, as did AA.

As the case is being tried in a different forum, and as all judgments and orders are mutually respected in all courts in the United States, the law as to issue preclusion in which the original case was heard would apply to the court in the new case. The new Court should apply the issue preclusion doctrine as to the product liability of AA and the negligence of Rodger.

(90) *great job - good law, application to facts*

=====
===== End of Answer #3 =====

END OF EXAM