UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SANFORD S. WADLER,

Plaintiff,

v.

BIO-RAD LABORATORIES, INC., et al.,

Defendants.

Case No.15-cv-02356-JCS

FINAL JURY INSTRUCTIONS

Dated: February 3, 2017

JOSEPH C. SPERO
United States Magistrate Judge

JURY INSTRUCTION NO. 1

DUTY OF THE JURY

Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you on the law that applies to this case. Each of you has received a copy of these instructions that you may take with you to the jury room to consult during your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

Please do not read into these instructions or anything that I may say or do or have said or done that I have an opinion regarding the evidence or what your verdict should be.

JURY INSTRUCTION NO. 2

CLAIMS AND DEFENSES

To help you follow the evidence, I will give you a brief summary of the positions of the parties. Mr. Wadler asserts the following three claims:

(1) Mr. Wadler claims that Defendants Bio-Rad and Norman Schwartz retaliated against him in violation of the Sarbanes-Oxley Act for his engaging in activity protected under the Sarbanes-Oxley Act.

(2) Mr. Wadler claims that Defendants Bio-Rad and Norman Schwartz retaliated against him for engaging in activity protected under the Dodd-Frank Act (which includes conduct that is protected under the Sarbanes-Oxley Act).

(3) Mr. Wadler claims that Defendant Bio-Rad discharged him from employment for reasons that violate a public policy.

Mr. Wadler has the burden of proving these claims.

Defendants deny those claims and contend that Mr. Wadler's conduct was not protected under the Dodd-Frank Act or the Sarbanes-Oxley Act. They also assert that they did not violate any public policy by terminating Mr. Wadler and that they would have terminated Mr. Wadler because of his other conduct even if Mr. Wadler had not engaged in the conduct that he alleges was the reason for his termination.

JURY INSTRUCTION NO. 3

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

JURY INSTRUCTION NO. 4

BURDEN OF PROOF—CLEAR AND CONVINCING EVIDENCE

When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

JURY INSTRUCTION NO. 5

LIABILITY OF CORPORATIONS

Under the law, a corporation is considered to be a person. It can only act through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

JURY INSTRUCTION NO. 6

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

(1) the sworn testimony of any witness;

(2) the exhibits which are received into evidence;

(3) any facts to which the parties have agreed;

(4) any facts that I have instructed you to accept as proved.

JURY INSTRUCTION NO. 7

WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, sometimes testimony and exhibits are received only for a limited purpose; when I have given a limiting instruction, you must follow it.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

JURY INSTRUCTION NO. 8

EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted only for a limited purpose. Where I have instructed you that an item of evidence has been admitted only for a limited purpose, you must consider that evidence only for that limited purpose and not for any other purpose.

JURY INSTRUCTION NO. 9

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

JURY INSTRUCTION NO. 10

RULING ON OBJECTIONS

As I instructed you at the outset of the case, there are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. Whenever I sustained an objection to a question, you must ignore the question and must not guess what the answer might have been. Similarly, if I ordered that evidence be stricken from the record and that you disregard or ignore the evidence, you must not consider the evidence that I told you to disregard.

JURY INSTRUCTION NO. 11

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

(1) the opportunity and ability of the witness to see or hear or know the things testified to;

(2) the witness's memory;

(3) the witness's manner while testifying;

(4) the witness's interest in the outcome of the case, if any;

(5) the witness's bias or prejudice, if any;

(6) whether other evidence contradicted the witness's testimony;

(7) the reasonableness of the witness's testimony in light of all the evidence; and

(8) any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

JURY INSTRUCTION NO. 12

RELIANCE ON NOTES

Whether or not you took notes during the trial, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of other jurors.

JURY INSTRUCTION NO. 13

BENCH CONFERENCES AND RECESSES

From time to time during the trial, it became necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury was present in the courtroom, or by calling a recess. Please understand that while you were waiting, we were working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. Of course, we have done what we could to keep the number and length of these conferences to a minimum. I did not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

JURY INSTRUCTION NO. 14

USE OF INTERROGATORIES

Evidence was presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath before the trial in response to questions that were submitted under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

JURY INSTRUCTION NO. 15

USE OF REQUESTS FOR ADMISSION

Evidence was presented to you in the form of admissions to the truth of certain facts. These admissions were given in writing before the trial, in response to requests that were submitted under established court procedures. You must treat these facts as having been proved.

JURY INSTRUCTION NO. 16

EXPERT OPINION

You have heard testimony from the following expert witnesses: Wei Chiu, Margo Ogus, and Emre Carr. These expert witnesses testified to opinions and the reasons for their opinions. This opinion testimony is allowed because of the education or experience of these witnesses. Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

JURY INSTRUCTION NO. 17

CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries not admitted into evidence have been shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

JURY INSTRUCTION NO. 18

SARBANES-OXLEY CLAIM—ELEMENTS AND BURDEN OF PROOF

To prevail on his claims against Defendants Bio-Rad and Norman Schwartz for retaliation in violation of the Sarbanes-Oxley Act, Mr. Wadler has the burden of proving each of the following elements by a preponderance of the evidence:

(1) Mr. Wadler engaged in activity protected by the Sarbanes-Oxley Act;

(2) Bio-Rad and Norman Schwartz knew or suspected that Mr. Wadler engaged in this protected activity.

(3) The circumstances were sufficient to raise an inference that the protected activity was a "contributing factor" in Mr. Wadler's termination.

Mr. Wadler contends the first element of this claim, the "protected activity" requirement, is satisfied by his report to the Audit Committee dated February 8, 2013. Bio-Rad and Norman Schwartz contend this conduct is not "protected activity" under the Sarbanes-Oxley Act but do not dispute that they knew about Mr. Wadler's report to the Audit Committee prior to his termination.

JURY INSTRUCTION NO. 19

SARBANES-OXLEY CLAIM—PROTECTED ACTIVITY

An employee engages in protected activity under the Sarbanes Oxley-Act if he makes a disclosure regarding conduct that he reasonably believes constitutes a violation of any rule or regulation of the Securities and Exchange Commission. It is not necessary that there actually be a violation of any rule or regulation of the Securities and Exchange Commission. An employee's conduct is protected under the Sarbanes-Oxley Act even if the employee had a reasonable but mistaken belief that the conduct violated a rule or regulation of the Securities and Exchange Commission.

JURY INSTRUCTION NO. 20

SARBANES-OXLEY CLAIM—REASONABLE BELIEF

To establish that he had a reasonable belief, Mr. Wadler must prove by a preponderance of the evidence both:

(1) That he subjectively – that is, personally and in good faith – believed that the conduct he was disclosing constituted a violation of any rule or regulation of the Securities and Exchange Commission; and

(2) That his belief was objectively reasonable under the circumstances. Whether a belief is objectively reasonable is evaluated based on what a reasonable person with the same training and experience as the Plaintiff would believe under the circumstances at the time he filed his disclosure.

JURY INSTRUCTION NO. 21

SARBANES-OXLEY CLAIM—RELEVANT SEC RULES AND REGULATIONS

THE FOREIGN CORRUPT PRACTICES ACT

Under the rules and regulations of the Securities Exchange Commission applicable to Bio-Rad, as well as its officers, directors, employees, and agents:

(1) It is unlawful to "bribe" an officer or employee of a foreign government.

(2) It is unlawful for a company to fail to keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of the assets of the company in reasonable detail. However, a company may not be liable for an independent, third-party company's failure to maintain books and records.

(3) It is unlawful to knowingly falsify any book, record, or account that is necessary to accurately and fairly reflect the transactions and dispositions of the assets of the company in reasonable detail.

(4) It is unlawful to knowingly circumvent a system of "internal accounting controls."

"Bribery" includes giving anything of value to an officer or employee of a foreign government for the purpose of obtaining or retaining business.

"Internal accounting controls" are processes designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

JURY INSTRUCTION NO. 22

SARBANES-OXLEY CLAIM—CONTRIBUTING FACTOR

A "contributing factor" is any factor, which alone or in combination with other factors, tends to affect in any way the outcome of the decision. To be a "contributing factor," the factor need not be the only factor affecting or influencing the decision, nor must it be a significant, substantial, primary, or predominant factor.

JURY INSTRUCTION NO. 23

SARBANES-OXLEY CLAIM—SAME DECISION DEFENSE

If Mr. Wadler proves by a preponderance of the evidence the elements of his Sarbanes-Oxley Claim as stated in Instruction Nos. 18-20. Bio-Rad and Norman Schwartz are not liable if they prove by clear and convincing evidence that they would have terminated Mr. Wadler at the same time based on wholly legitimate reasons even if Plaintiff had not engaged in protected activity. For purposes of this defense, a legitimate reason is any reason other than the reasons forbidden by the Sarbanes-Oxley Act as stated in Instruction Nos. 18-20.

JURY INSTRUCTION NO. 24

DODD-FRANK CLAIM—ELEMENTS

Mr. Wadler also claims Defendants Bio-Rad and Norman Schwartz terminated Mr. Wadler in violation of the Dodd-Frank Act. Mr. Wadler has the burden of proving each of the following elements of this claim by a preponderance of the evidence:

(1) Mr. Wadler engaged in activity protected by the Dodd-Frank Act;

(2) Defendants Bio-Rad and Norman Schwartz knew or suspected that Mr. Wadler engaged in this protected activity.

(3) The circumstances were sufficient to raise an inference that the protected activity was a "contributing factor" in the termination.

Mr. Wadler contends the first element of this claim, the "protected activity" requirement, is satisfied by his report to the Audit Committee dated February 8, 2013. Bio-Rad and Norman Schwartz contend this conduct is not "protected activity" under the Dodd-Frank Act but do not dispute that they knew about Mr. Wadler's report to the Audit Committee prior to his termination.

If you find that Mr. Wadler engaged in protected activity under the Sarbanes-Oxley Act, you must also find that he engaged in protected activity under the Dodd-Frank Act. Conversely, if you find that Mr. Wadler did *not* engage in protected activity under the Sarbanes-Oxley Act, you must also find that he did not engage in protected activity under the Dodd-Frank Act. Similarly, if you conclude for the Sarbanes-Oxley Claim that the circumstances were sufficient to raise an inference that the protected activity was a "contributing factor" in the termination you must reach the same conclusion for the Dodd-Frank Claim. If you find that the circumstances were *not* sufficient to raise such an inference for the Sarbanes-Oxley Claim you must reach the same conclusion for the Dodd-Frank Claim.

Defendants do not dispute that Bio-Rad and Norman Schwartz terminated Mr. Wadler.

JURY INSTRUCTION NO. 25

DODD-FRANK CLAIM—PROTECTED ACTIVITY

An employee engages in protected activity under the Dodd-Frank Act whenever he or she engages in activity protected under the Sarbanes-Oxley Act.

JURY INSTRUCTION NO. 26

DODD-FRANK CLAIM—SAME DECISION DEFENSE

If Mr. Wadler proves by a preponderance of the evidence the elements of his Dodd-Frank claim as stated in Jury Instruction Nos. 24 and 25, Bio-Rad and Norman Schwartz are not liable if they prove by clear and convincing evidence that they would have terminated Mr. Wadler at the same time based on wholly legitimate reasons even if Plaintiff had not engaged in protected activity. For purposes of this defense, a legitimate reason is any reason other than the reasons forbidden by the Dodd-Frank Act as stated in Instruction Nos. 24 and 25.

JURY INSTRUCTION NO. 27

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

ESSENTIAL ELEMENTS AND BURDEN OF PROOF

Mr. Wadler claims he was discharged from employment for reasons that violate a public policy. It is a violation of public policy to discharge an employee for engaging in protected activity under the Sarbanes-Oxley Act. To establish this claim, Mr. Wadler must prove all of the following by the preponderance of the evidence:

(1) That a substantial motivating reason for Mr. Wadler's discharge was that Mr. Wadler engaged in protected activity under the Sarbanes-Oxley Act, as described in Instructions 19 and 20; and

(2) That the discharge caused Mr. Wadler harm.

JURY INSTRUCTION NO. 28

SUBSTANTIAL MOTIVATING REASON

A substantial motivating reason is a reason that actually contributed to Mr. Wadler's discharge. It must be more than a remote or trivial reason. It does not have to be the only reason motivating the discharge.

JURY INSTRUCTION NO. 29

DAMAGES

TYPES OF DAMAGES AND BURDEN OF PROOF

It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered. If you find for Mr. Wadler on any of his claims, you must determine his damages. Mr. Wadler has the burden of proving damages by a preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate the plaintiff for any injury you find was caused by the Defendants. You should consider the following:

The reasonable value of earnings lost up to the present time;

The reasonable value of earnings that with reasonable probability will be lost in the future;

The mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and emotional distress experienced up through today and that with reasonable probability will be experienced in the future.

It is for you to determine what damages, if any, have been proved. Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

JURY INSTRUCTION NO. 30

DAMAGES

ECONOMIC AND NONECONOMIC DAMAGES

The damages claimed by Mr. Wadler for the harm caused by Defendants fall into two categories called economic damages and noneconomic damages. The damages Mr. Wadler requests for past and future lost earnings are economic damages. The damages Mr. Wadler requests for mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and emotional distress are noneconomic damages.

JURY INSTRUCTION NO. 31

DEFINITION OF EARNINGS

Mr. Wadler received various forms of compensation from Bio-Rad, including wages, benefits, stock options and restricted stock units. In determining Mr. Wadler's lost earnings, if any, you should consider all of these forms of compensation.

JURY INSTRUCTION NO. 32

PAST AND FUTURE LOST EARNINGS

To recover damages for past lost earnings, Mr. Wadler must prove the amount of earnings that he has lost to date.

To recover damages for future lost earnings, Mr. Wadler must prove the amount of earnings he will be reasonably certain to lose in the future as a result of his termination from Bio-Rad.

JURY INSTRUCTION NO. 33

DAMAGES ARISING IN THE FUTURE—DISCOUNT TO PRESENT CASH VALUE

Any award for future economic damages must be for the present cash value of those damages. Noneconomic damages such as past and future loss of enjoyment of life, mental suffering, inconvenience, grief, anxiety, humiliation and emotional distress are not reduced to present cash value.

Present cash value means the sum of money needed now, which, when invested at a reasonable rate of return, will pay future damages at the times and in the amounts that you find the damages would have been received.

The rate of return to be applied in determining present cash value should be the interest that can reasonably be expected from safe investments that can be made by a person of ordinary prudence, who has ordinary financial experience and skill.

You should also consider decreases in the value of money that may be caused by future inflation.

JURY INSTRUCTION NO. 34

NONECONOMIC DAMAGE—PHYSICAL PAIN, MENTAL SUFFERING, AND EMOTIONAL DISTRESS

Past and future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and emotional distress:

No fixed standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation and emotional distress Mr. Wadler must prove that he is reasonably certain to suffer that harm.

For future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and emotional distress, determine the amount in current dollars paid at the time of judgment that will compensate Mr. Wadler for future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and emotional distress. This amount of noneconomic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

JURY INSTRUCTION NO. 35

PUNITIVE DAMAGES

If you decide that Bio-Rad caused Mr. Wadler harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages against Bio-Rad only if Mr. Wadler proves that Bio-Rad acted with malice, oppression, or fraud. To do this, Mr. Wadler must prove one of the following by clear and convincing evidence:

(1) That the malice, oppression, or fraud was conduct of one or more officers, directors, or managing agents of Bio-Rad, who acted on behalf of Bio-Rad

(2) That the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of Bio-Rad

(3) That one or more officers, directors, or managing agents of Bio-Rad knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.

"Malice" means that a defendant acted with intent to cause injury or that a defendant's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A defendant acts with knowing disregard when the defendant is aware of the probable dangerous consequences of his, her, or its conduct and deliberately fails to avoid those consequences.

"Oppression" means that a defendant's conduct was despicable and subjected Mr. Wadler to cruel and unjust hardship in knowing disregard of his rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that a defendant intentionally misrepresented or concealed a material fact and did so intending to harm Mr. Wadler.

An employee is a "managing agent" if he or she exercises substantial independent

authority and judgment in his or her corporate decisionmaking such that his or her decisions ultimately determine corporate policy.

There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following factors separately for each defendant in determining the amount:

(a) How reprehensible was that defendant's conduct? In deciding how reprehensible a defendant's conduct was, you may consider, among other factors:

(1) Whether the conduct caused physical harm;

(2) Whether the defendant disregarded the health or safety of others;

(3) Whether Mr. Wadler was financially weak or vulnerable and the defendant knew Mr. Wadler was financially weak or vulnerable and took advantage of him;

(4) Whether the defendant's conduct involved a pattern or practice; and

(5) Whether the defendant acted with trickery or deceit.

(b) Is there a reasonable relationship between the amount of punitive damages and Mr. Wadler's harm or between the amount of punitive damages and potential harm to Mr. Wadler that the defendant knew was likely to occur because of his, her, or its conduct?

(c) In view of that defendant's financial condition, what amount is necessary to punish him, her, or it and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because a defendant has substantial financial resources.

JURY INSTRUCTION NO. 36

DUTY TO DELIBERATE

Before you begin your deliberations, elect one member of the jury as your presiding juror. The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court. You shall diligently strive to reach agreement with all of the other jurors if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to their views. It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not be unwilling to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

JURY INSTRUCTION NO. 37

CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

- Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, via text messaging, or any Internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, or any other forms of social media. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.
- Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet, or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own. Do not visit or view any place discussed in this case, and do not use Internet programs or other devices to search for or view any place discussed during the trial. Also, do not do any research about this case, the law, or the people involved—including the parties, the witnesses or the lawyers—until you have been excused as jurors. If you happen to read or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

These rules protect each party's right to have this case decided only on evidence that has been presented here in court. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through the trial process. If you do any research or investigation outside the courtroom, or gain any information through improper communications, then your verdict may

be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process. Each of the parties is entitled to a fair trial by an impartial jury, and if you decide the case based on information not presented in court, you will have denied the parties a fair trial. Remember, you have taken an oath to follow the rules, and it is very important that you follow these rules.

A juror who violates these restrictions jeopardizes the fairness of these proceedings. If any juror is exposed to any outside information, please notify the court immediately.

JURY INSTRUCTION NO. 38

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through Ms. Hom, the Courtroom Deputy, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

JURY INSTRUCTION NO. 39

RETURN OF VERDICT

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror should complete the verdict form according to your deliberations, sign and date it, and advise the Court that you are ready to return to the courtroom.