

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
IRA GREEN, INC.,)	
Plaintiff,)	
)	
v.)	C.A. No. 10-207-M
)	
MILITARY SALES & SERVICE CO.,)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

After years of highly contested litigation and an eight-day trial, replete with testimony, documents, argument, and effective and talented advocacy, a jury unanimously found that Defendant Military Sales & Service, Co. was not liable to Plaintiff Ira Green, Inc. on each of the counts in its complaint. Before the Court is Plaintiff Ira Green, Inc.’s Motion for a New Trial. (ECF No. 170-1.) Because the Court does not find that the verdict was against the weight of the evidence and that any alleged error was harmless, Ira Green’s motion is DENIED.

I. FACTS AND BACKGROUND

On May 26, 2010, Plaintiff Ira Green, Inc. (“Ira Green”) filed suit against Military Sales and Service Co. (“MSS”) for tortious interference with contract, tortious interference with prospective business relationships, and business defamation. (ECF No. 37 at 6-8.) On April 17, 2012, in MSS’s Amended Answer to Green’s Amended Complaint raising these claims, MSS raised three counterclaims against Green arising from the same facts and asserting near-identical allegations: tortious interference with contracts, tortious interference with business relationships, and business defamation and intentional damage to business reputation. (ECF No. 75 at 15-16.) Ira Green filed a Motion to Dismiss MSS’s counterclaims on April 30, 2012. (ECF No. 77.) The

Court granted that motion as to MSS's defamation counterclaim, but denied it as to the tortious interference counterclaims. (ECF No. 80.) Ira Green renewed its Motion to Dismiss the remaining counterclaims on August 9, 2013 (ECF No. 119), and MSS opposed it. (ECF No. 128.) The Court granted Ira Green's Motion to Dismiss, eliminating all of MSS's counterclaims. (Text Order, Sept. 6, 2013.) Trial proceeded on Ira Green's three claims with various witnesses and documents detailing the story of Ira Green and MSS's business dealings. Many details emerged, but only the most salient will be discussed herein.

The Army & Air Force Exchange Service (AAFES) is a government agency who sells merchandise to military personnel and others. AAFES sources the products it sells either through a distributor, who sources from the product manufacturers, or through a direct sales approach, where the manufacturer or vendor ships to AAFES and sometimes utilizes the services of a broker to represent them with AAFES. Ira Green is one such manufacturer who sells to AAFES and who acts as a distributor for other manufacturers. Brigade Quartermasters, Ltd. (Brigade) was a military gear supplier to AAFES. Ira Green purchased the assets of Brigade in January of 2010, when there remained approximately one and a half years left on Brigade's contract with AAFES. Included among those assets, Ira Green contended, were Brigade's relationships with AAFES and its vendors. It also contended that it entered into a contract with AAFES after the asset purchase, which replaced Brigade's contract and provided Ira Green with the authority to issue purchase orders to Brigade's former vendors.

MSS is a broker who represents certain brands to military exchanges. It supports the direct sales model in that it serves as a manufacturer's representative to companies who want to sell to military exchanges, such as AAFES. During the Brigade/Ira Green buyout, MSS reached out to manufacturers that worked with Brigade to discuss changing from the distributor model to

the direct sales route with MSS. Some of those manufacturers, such as J.L. Darling,¹ decided to work with MSS instead of Ira Green. MSS also advised the manufacturers that chose to operate in the direct sales model not to fill purchase orders that Ira Green sent out, believing that it still had contracts through the former Brigade relationship. MSS contended that it had contracts with these manufacturers and gave that advice because it was concerned that filling those purchase orders would delay the transition to the direct sales model. The parties dispute whether it was proper for MSS to make those overtures and/or give that advice in light of Ira Green's understanding that it had contracts with some of these manufacturers. Those disputes are the crux of Ira Green claims that MSS intentionally interfered with its business contracts and relationships with other companies.

In the process of making those overtures and attempting to do business with those other manufacturers, MSS made statements about the quality and performance of Ira Green's STORM SAF paper to AAFES employees. In short, MSS told AAFES that the STORM SAF product "completely dissipates in water in seconds" and does not perform in the field as well as the Darling Rite in the Rain paper product. These comparative statements form the basis of Ira Green's defamation claim.

II. STANDARD OF REVIEW

A "court may, on motion, grant a new trial on all or some of the issues . . . after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1)(A). A district court may order a new trial "only if the verdict is against the law, against the weight of the credible evidence, or tantamount to a miscarriage of justice." *Crowe v. Marchand*, 506 F.3d 13, 19 (1st Cir. 2007) (quoting *Casillas*–

¹ Darling manufactures a waterproof paper called Rite in the Rain that competed in the marketplace with an Ira Green product called STORM SAF.

Diaz v. Palau, 463 F.3d 77, 81 (1st Cir. 2006)). Judicial interference with a jury verdict is warranted only where the verdict represents “a blatant miscarriage of justice.” *Acevedo–Garcia v. Monroig*, 351 F.3d 547, 565 (1st Cir. 2003) (quoting *Sanchez v. P.R. Oil Co.*, 37 F.3d 712, 717 (1st Cir. 1994)).

“It is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusions as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable.” *Tennant v. Peoria & P. U. Ry. Co.*, 321 U.S. 29, 35 (1944). The Court “cannot displace a jury’s verdict merely because he disagrees with it” or because “a contrary verdict may have been equally ... supportable.” *Ahern v. Scholz*, 85 F.3d 774, 780 (1st Cir. 1996) (internal citation omitted). In other words, a district court judge does not sit as a thirteenth juror who may set aside a verdict simply because that court would have reached a different conclusion. *United States v. Rothrock*, 806 F.2d 318, 322 (1st Cir. 1986).

III. ANALYSIS²

Ira Green raises four errors in support of its motion: 1) the jury was not individually polled as requested; 2) errors in the jury instructions; 3) the Judgment should not have been amended; and 4) various errors admitting hearsay documents and testimony. In its reply to MSS’s opposition, Ira Green raises an additional ground – that it is entitled to a new trial because

² This case was litigated in this Court based on the parties’ diversity of citizenship. 28 U.S.C. § 1332(a)(1). In diversity cases, federal courts must apply the substantive law of the forum state. *Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938). The parties agree that Rhode Island law governs this dispute. Accordingly, the Court applied Rhode Island law to the legal disputes throughout the case, and in resolving the instant motion, may apply “persuasive adjudications by courts of sister states, learned treatises, and public policy considerations identified in state decisional law.” *Blinzler v. Marriott Int’l Inc.*, 81 F.3d 1148, 1151 (1st Cir. 1996).

it learned only through MSS's costs motion that MSS paid the attorney's fees of a non-party witness, Todd Silver of J.L. Darling, so that he would be represented by counsel during his witness preparation and at trial. MSS opposes the motion on all grounds.

A. INDIVIDUAL POLLING OF JURORS POST-VERDICT

Ira Green argues that it is entitled to a new trial because the Court erred by failing to poll the jury upon its request. Asserting that a party's right to a jury poll is a substantial right, citing an out of circuit criminal case, Ira Green argues that the Court's failure to poll the jury is a "per se error requiring reversal." *United States v. F.J. Vollmer & Co., Inc.*, 1 F.3d 1511, 1522 (7th Cir. 1993). MSS counters that even if Rule 48(c) mandates polling upon request, Ira Green's failure to object when the Court failed to poll the jury was tantamount to a waiver, any failure to poll was inadvertent, and any error resulting was harmless. Because the Court finds support for MSS's position in the law and also finds that the absence of an individual jury poll did not prejudice Ira Green in any way, its motion for a new trial on this ground must fail.

The matter of jury polling is new to civil jurisprudence. Rule 48 of the Federal Rules of Civil Procedure was amended in 2009 to add a polling provision. It now states: "[a]fter a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial." Fed. R. Civ. P. 48(c). While this rule is adapted from Rule 31(d) of the Federal Rules of Criminal Procedure, which has been discussed often in our case law, this rule has not been applied in the civil context. Therefore, the Court will turn to the specific events of this case to determine whether it erred in not polling the jury upon Ira Green's request.

At the outset of this discussion, it is important to note that the Court did not deny Ira Green's request to poll the jury. When the jury came into the courtroom after notifying the Court that it had a verdict, the Court did poll the jury prior to engaging in the jury verdict form colloquy with the foreperson. The Court asked "Ladies and Gentlemen, I understand that you have reached a unanimous verdict; is that correct?" to which each of the Jurors collectively answered "Yes, that's correct." (ECF No. 169 at 3.) The Court reviewed the verdict form questions with the foreperson, but inadvertently neglected to read the last question regarding damages in the defamation claim. (*Id.* at 4.) The foreperson orally affirmed that the jury unanimously found that Ira Green failed in its burden to prove the elements of its tortious interference with contract and business relationships claims and that Ira Green proved that MSS made defamatory statements about Ira Green's product. (*Id.*) After the foreperson went through the verdict form on the record, the Court asked "Ladies and Gentlemen, is that the true and accurate verdict of each and every one of you?" to which all of the Jurors answered "Yes." (*Id.* at 4-5.)

The Court asked Ira Green's counsel if he would like the jury polled. (*Id.* at 6.) He replied that he did, but raised the fact that the Court had not read the last question and answer on the jury verdict form. (*Id.*) The Court acknowledged this oversight and read the final question and the foreperson answered that the jury found no damages. (*Id.*) Ira Green's counsel did not raise the jury poll again and the Court dismissed the jury without objection from any party. After inquiring whether any party had anything further to add and complimenting the work of counsel, hearing no objection from Ira Green or MSS, the Court adjourned. Ira Green waived its right to raise the Court's inadvertent oversight as ground for a new trial.

Even if the Court were to find that individual polling upon a party's request is mandatory and that Ira Green did not waive it, the Court must consider whether any error in inadvertently failing to individually poll was harmless. Rule 61 of the Federal Rules of Civil Procedure provides guidance to the Court in conducting a harmless error analysis in this case. That rule states:

[u]nless justice requires otherwise, no error in admitting or excluding evidence-- or any other error by the court or a party--is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Fed. R. Civ. P. 61. "In determining whether an error affected a party's substantial right[s], the central question is whether this court can say with fair assurance ... that the judgment was not substantially swayed by the error." *Ahern*, 85 F.3d at 786 (citations, internal quotation marks and original alterations omitted). If the error does not affect a party's substantial rights, it is harmless. *Id.*

In arguing that the Court's inadvertent failure to conduct an individual jury poll upon request was a *per se* reversible error, Ira Green advocates that it is entitled to the poll and that the poll itself is the substantial right, not that the error in not polling affected a substantial right. In so narrowing its focus, Ira Green has failed to demonstrate how the lack of an individual jury poll affected its substantial rights or affected the verdict. It does not, because it cannot, argue that the lack of a jury poll swayed the judgment for MSS in its case. *See Jaca Hernandez v. Delgado*, 375 F.2d 584, 586 (1st Cir. 1967) (the Court found no constitutionally based injury where "petitioner does not even suggest a basis for an inference that a poll would have revealed that the foreman's announcement of the verdict was erroneous."). Ira Green cannot argue that

the lack of an individual poll hid the fact that the verdict was not unanimous, especially in the face of the Court's two collective inquiries as to unanimity.

While the First Circuit has acknowledged its preference for individual polling of jurors, *see Audette v. Isaksen Fishing Corp.*, 789 F.2d 956, 959-60 (1st Cir. 1986), the Court believes that its collective polling in this case was adequate to ensure unanimity and assent by all of the jurors as provided in Rule 48(c). There was nothing in the jurors' demeanor or behavior to suggest that any one of them did not render willingly and knowingly the group's unanimous verdict. *See United States v. Gerardi*, 586 F.2d 896, 899 (1st Cir. 1978) (affirming conviction over objection to a lack of jury poll where the trial court asked the jurors as a group whether the verdict reflected their decision and that he saw no hesitancy when they responded.) There is no evidence that the jury was divided. They were attentive, focused, and most engaged in robust note taking. There is nothing inconsistent with the verdict in light of the way the questions were asked.³ Because there was no reason to believe that the jury was not unanimous, in fact there is every reason to believe that they were, any oversight in not individually polling the jury was harmless.

In advocating for a *per se* reversible error analysis, Ira Green relies exclusively on criminal cases⁴ that implicate constitutional considerations of liberty, but that reasoning mandating polling as a substantial constitutional right does not hold in the civil context. *See*

³ Question 5 distinctly references the first three elements of defamation – whether MSS made false and defamatory statements concerning Ira Green and/or its products – without mentioning damages. The fact that there was a separate inquiry about the final element of damages – “Specifically, what damages, if any, do you award as a result of the defamation?” – and that the jury unambiguously answered that they awarded none not only shows that Ira Green failed to meet that element of its claim, but also that the jury plainly understood the instructions and question in making a consistent and unanimous decision.

⁴ In fact, the First Circuit found that even a criminal defense counsel's failure to request that a jury be individually polled did not constitute ineffective assistance of counsel. *Gerardi*, 586 F.2d at 899.

Jaca Hernandez, 375 F.2d at 585 (citing *Humphries v. District of Columbia*, 174 U.S. 190 (1899)) (“[t]he Supreme Court has never had occasion to pass on the question, but its statements in a civil case on the nature of the right to poll do not indicate that it considers the right to be constitutionally protected.”) Ira Green fails to cite any civil case that holds that a right to poll the jury is so substantial that a failure to do so, by mistake or design, necessitates throwing out a verdict. In addition, while the Court has assumed for the sake of argument here that Rule 48(c) mandates jury polling upon request, the Rule makes clear that, absent a request, jury polling is not mandatory in every civil case, demonstrating that not every civil case presents the kind of substantial rights implicated in every criminal case. Therefore, the criminal cases that Ira Green relies on to provide force for their argument are inapplicable here.

Furthermore, “our system of trial by jury is premised on the assumption that jurors will scrupulously follow the court’s instructions.” *United States v. Rivera-Gomez*, 67 F.3d 993, 999 (1st Cir. 1995) (citing *Richardson v. Marsh*, 481 U.S. 200, 206 (1987); *Francis v. Franklin*, 471 U.S. 307, 324 n. 9 (1984); *United States v. Sepulveda*, 15 F.3d 1161, 1185 (1st Cir. 1993)). In this case, the Court thoroughly instructed the jurors on the applicable law in addition to its general instructions about the burden of proof, its role in the trial, and the requirement of unanimity. The Court presumes the jury heeded and followed its instructions. *United States v. Sotomayor-Vazquez*, 249 F.3d 1, 17 (1st Cir. 2001). Because the Court does not find that its omission in failing to individually poll the jury was anything more than harmless error, Ira Green’s first issue of error in support of a new trial is overruled.

B. JURY INSTRUCTIONS

1. Defamation *Per Se*

Ira Green next argues that the Court erred by failing to give the jury a defamation *per se* instruction as part of Count IV, its business defamation claim. A court must give an instruction to the jury “on a material issue if requested and supported by evidence.” *Gillentine v. McKeand*, 426 F.2d 717, 724 n. 24 (1st Cir. 1970).

The standard for determining whether a factual issue is sufficiently contested to require an instruction is identical to the standard for determining whether a factual controversy prevents the entry of judgment as a matter of law. In neither situation may the court weigh the evidence, make credibility determinations, or resolve conflicts in the proof. Instead, the court must determine whether the evidence presented at trial, along with all inferences that may reasonably be drawn therefrom, could plausibly support a finding for either party on any given issue of material fact.

Wilson v. Mar. Overseas Corp., 150 F.3d 1, 10 (1st Cir. 1998) (citations omitted.) Therefore, the Court must consider whether the evidence that Ira Green presented at trial, in light of the legal framework of defamation *per se*, required an instruction to the jury.

Essentially Ira Green argues that because the jury was not instructed on defamation *per se*, the jury instructions on Count IV were incomplete and misleading, requiring a new trial. Ira Green cites several examples of testimony and evidence in the record that it argues could support a defamation *per se* determination by the jury. These defamatory statements, Ira Green argues, all of them solely focused on the alleged shortcomings of Ira Green’s STORM SAF paper, “represented and implied that Ira Green is dishonest, fraudulent or incompetent.” (ECF No. 170-1 at 8.) MSS counters that no defamation *per se* instruction was necessary. Because the Court finds that its decision to omit a defamation *per se* instruction was not only supported by Restatement (Second) of Torts § 573, comment g, but also proper in light of the dearth of

evidence of conduct amounting to defamation *per se*, Ira Green's motion for new trial on this ground is overruled.⁵

"It is well settled that a statement is defamatory *per se* if it charges improper conduct, lack of skill, or integrity in *one[']s* profession or business, and is of such a nature that it is calculated to cause injury to *one* in his profession or business." *Marcil v. Kells*, 936 A.2d 208, 213 (R.I. 2007) (emphasis added) (citing Restatement (Second) *Torts* § 573 (1977)). The Rhode Island Supreme Court qualified this definition, however, by emphasizing that "the disparaging words must affect the *plaintiff* in some way that is peculiarly harmful to one engaged in his trade or profession; disparagement of a general character, equally discreditable to all persons, is not enough unless the particular quality is peculiarly valuable to the *plaintiff[']s* business or profession." *Id.* (emphasis added.) Moreover, defamation *per se* is distinguished from defamation because in the former, "a plaintiff can establish liability without a showing of special or pecuniary damages because those damages are presumed." *Nassa v. Hook-SupeRx, Inc.*, 790 A.2d 368, 374 (R.I. 2002) (citing *Henry v. Cherry & Webb*, 73 A. 97 (1909)). This presumption rests on the fact that in a defamation *per se* situation, the statements are so egregious and reputation shattering that there can be no question that the defamed party's reputation suffered as a result. *Marcil*, 936 A.2d at 212. "To be actionable as slander *per se* - without proof of special damages - the false statement must impute to the other: (1) a 'criminal offense,' (2) a 'loathsome disease,' (3) a 'matter incompatible with his business, trade, profession, or office,' or (4) a

⁵ In considering MSS's request to charge the jury on defamation *per se*, the Court stated on the record that Ira Green did not present any evidence to the jury of this claim and relied on Restatement § 573, comment g in finding that defamation *per se* is not rooted in defamation of a product. *Nassa v. Hook-SupeRx, Inc.*, 790 A.2d 368, 374 (R.I. 2002). The Court's post-trial review of the entire record and of the jury's verdict supports this decision.

‘serious sexual misconduct.’” *Id.* (quoting Restatement (Second) Torts § 570 at 186 (1977)). Each of these legal definitions focuses on disparaging an *individual person*, not a product.

While Ira Green is correct in asserting that there are no Rhode Island cases that specifically state that defamation *per se* cannot be argued in relation to statements about a product alone, the plain language of the common law and Restatement focus on statements made about an *individual* that affect that *individual* in his or her business, i.e. a personal slander. And, in fact, Restatement § 573, comment g distinguishes disparagement of goods and states:

A statement may create liability because it is disparaging of another’s products, although it is not actionable as slander *per se* under the rule stated in this Section. Disparagement of goods may consist of statements that discredit the quality or utility of the goods, without in any way reflecting unfavorably on the producer or owner. On the other hand, disparagement of goods may be made under circumstances and in a manner that implies that the manufacturer or vendor is dishonest, fraudulent or incompetent. In such a case, the other’s business reputation is affected, and the rule stated in this Section is applicable.

Id. Therefore, when disparaging statements are made about a product, those statements are only actionable as defamation *per se* if they are made in a way that reflect unfavorably on the producer or owner by implying dishonesty, fraud, or incompetence.

Looking at the defamation *per se* evidence that Ira Green points to in its motion, the Court finds that that evidence and any reasonable inferences that the jury could draw from that evidence does not support a finding that MSS’s statements about the STORM SAF paper amounted to defamation *per se*. It highlights two pieces of evidence with corresponding trial testimony: that Gregg Koefler, MSS’s Director of Marketing told Paul Atherton at AAFES that STORM SAF was inferior, that the STORM SAF product “completely dissipates in water within a matter of seconds,” and “can compromise” military missions (PTX 57); and that Todd Silver of J.L. Darling emailed Mr. Atherton that the STORM SAF product will fail when soldiers try to use it in the field (PTX 63). Ira Green argues that the jury could have drawn an inference that

the statements about the quality and performance of its STORM SAF paper implied that Ira Green and its owner Mr. McAllister are dishonest, fraudulent, or incompetent because Mr. McAllister personally selects the products based on his business assessment of quality. In other words, MSS's criticisms of the STORM SAF product for poor quality amount to defamation so obvious that damage to Ira Green is presumed and need not be proven because an attack on its products is an attack on Mr. McAllister himself.

MSS's statements, while they may be disparaging of Ira Green's STORM SAF product, in no way explicitly or implicitly questioned Mr. McAllister's character or integrity. In fact, none of the evidence that Ira Green cites mentions Mr. McAllister personally and there is no evidence in the record that AAFES or Mr. Atherton knew whether Mr. McAllister was involved at all in selecting Ira Green's products. Unlike the defendant in *Nassa* who the Rhode Island Supreme Court determined would be liable for defamation *per se* because it spread statements that the plaintiff accepted bribes to advance its business interests and "disparaged Nassa's reputation for honesty in his business dealings," there is no evidence that MSS accused Mr. McAllister or Ira Green of dishonesty or even insinuated that he did not conduct a reputable business in Ira Green. 790 A.2d at 374 (quoting Restatement (Second) *Torts* § 573 at 191-92). Additionally, MSS's statements do not accuse Mr. McAllister or Ira Green of committing a crime, of having a loathsome disease, conducting himself or itself in a matter incompatible with business, or of serious sexual misconduct. *See Marcil*, 936 A.2d at 212. These would be extreme and incredibly damaging accusations to be sure, befitting a finding of defamation without any need to demonstrate damages, but not even closely analogous to the statements MSS made about STORM SAF products. At best, the evidence showed that MSS claimed falsely that Ira Green's product was defective. Because the Court finds that the statements Ira Green cites as

defamatory *per se* do not actually reflect unfavorably on Mr. McAllister or even support a reasonable inference of dishonesty, fraud or incompetency on his part, the lack of a defamation *per se* instruction was not reversible error.

2. “Justification”

Ira Green also argues that the Court’s justification instruction was error. Specifically, it argues that that instruction “erroneously suggested at that stage in the instructions that MSS’s intentional and improper interference is presumed legitimate and/or justified, which confused and/or misled the jury.” (ECF No. 177 at 7.) MSS counters that the justification instruction, when read in the context of the instructions as a whole, was appropriate and did not confuse or mislead the jury. The Court finds that Ira Green’s suggested reading and interpretation of the justification instruction is untenable in the context of its tortious interference instructions as a whole. It tortures the language beyond its plain meaning and as such, Ira Green’s argument on this issue is rejected.

In light of the circuitous and ambiguous nature of Ira Green’s argument on this instruction, it is important to lay out exactly what the Court instructed. Both parties agreed on the four elements of the tortious interference claims⁶ and the Court defined the terms “contract” and “business relationship.” In line with Ira Green’s proposed instructions, the Court defined intentional and improper interference as follows:

Intentional interference is an element of both tortious interference claims. I will now define the term for you. Ira Green must show that MSS acted both intentionally and for an improper purpose when allegedly interfering with a contract or contracts or prospective business relationships. No showing of actual

⁶ Those elements are 1) the existence of a contract(s) or business relationship(s); 2) that MSS knew of the contract(s) or business relationship(s); 3) that MSS intentionally and improperly interfered with Ira Green’s contract(s) or business relationship(s); and 4) that MSS’s interference caused damages to Ira Green. *See Mesolella v. City of Providence*, 508 A.2d 661, 669 (R.I. 1986).

malice is necessary; rather, a showing of legal malice, or an intent to do harm without justification will suffice.

In determining whether MSS acted improperly, you may consider: 1) the nature of MSS's conduct, 2) MSS's motive, 3) the contractual interest with which the conduct interferes, 4) the interest sought to be advanced by MSS, 5) the balance of the social interest in protecting freedom of action of MSS and the contractual freedom of Ira Green, 6) the proximity of MSS's conduct and the interference complained of, and/or 7) the parties' relationship.

(ECF No. 151 at 8.) The very next instruction is the one Ira Green raises as error:

A defendant is not liable simply for committing an intentional act that interferes with a plaintiff's contracts or business relationships. The interference also must be impermissible or unjustified. In other words, a defendant would not be liable for legitimately competing with a plaintiff for business.

If you find that Ira Green has proven that MSS acted intentionally and for an improper purpose, the burden shifts to MSS to prove that its interference was justified. Many factors are instructive in determining whether an alleged interference with contracts or business relationships occurred without justification or was otherwise improper. These include the nature of the actor's conduct, the interests of the party with whom the actor's conduct interferes, and the relations between the parties.

If you find that MSS was justified in interfering with Ira Green's contracts and/or business relationships, you should find that MSS is not liable for tortious interference with contracts and/or business relationships.

(ECF No. 151 at 9.) Ira Green's argument on this issue is relatively nebulous, except that it highlights the sentence at the end of the first paragraph as the sticking point; that is "a defendant would not be liable for legitimately competing with a plaintiff for business." It is this sentence that Ira Green focuses on for its argument that the instructions implied that MSS's conduct is presumptively legitimate.

Where Ira Green's argument fails is in pulling out that one sentence and reading it in a vacuum. *United States v. Boylan*, 898 F.2d 230, 244 (1st Cir. 1990) (each jury instruction should be reviewed "in the context of the charge as a whole, not in isolation.") The previous instruction told the jury what an intentional and improper interference was and the first paragraph of the

justification instruction with which Ira Green takes issue relates more to the previous instruction on what acts are improper. The concept of a defense comes in the second paragraph where the jury was told that if it finds MSS's acts were intentional and improper, the burden shifts to MSS to prove its actions were justified. This justification instruction outlines the defense – it bolsters the previous instruction's requirement that the interference be intentional and improper, highlights the burden shifting to MSS to prove that its interference was justified, and instructs the jury about the types of conduct it could consider in weighing justification. It does not state that Ira Green has any burden to demonstrate again that MSS's conduct was improper. Nor does it infer that at that point, the jury should presume that MSS's interference was proper or justified. The fact that the jury even gets to the burden shifting presumes that it found MSS's conduct to be improper. It clearly states that once Ira Green has proven the elements, only then does MSS have the opportunity to show that its improper conduct was justified. At no point in that instruction is there any language allowing for that presumption or placing an additional burden on Ira Green. The Court's justification instruction was appropriate.

Even if the Court were to find that its justification instruction was incorrect, “[a]n erroneous jury instruction necessitates a new trial only if the error could have affected the result of the jury’s deliberations.” *Allen v. Chance Mfg. Co., Inc.*, 873 F.2d 465, 469 (1st Cir. 1989) (citing *Elwood v. Pina*, 815 F.2d 173, 177 (1st Cir. 1987)). Specifically, “[w]here the jury’s verdict or its answers to special questions makes clear that its findings were not affected by the erroneous instructions, a new trial is not appropriate.” *Allen*, 873 F.2d at 469-70 (citing *Elwood*, 815 F.2d at 177-78). There is no evidence that the jury was confused or misled by the justification instruction. It did not ask the Court any questions about that concept (or about any other jury instruction related to the tortious interference claims) and its verdict on both tortious

interference counts was consistent. Therefore, Ira Green's point of error on the justification instruction is rejected.

C. AMENDED JUDGMENT

There were six questions on the jury verdict form. Questions one through four dealt with the tortious interference claims and five and six dealt with the defamation claim. Question five on the jury verdict form in this case asked "Did MSS make false and defamatory statements concerning Ira Green and/or its STORM SAF products?" (ECF No. 150 at 2.) The jury checked "Yes." (*Id.*) Question six asked "What damages, if any, do you award Ira Green as a result of MSS's defamation?" (*Id.*) The jury wrote in "None." (*Id.*) After the jury returned its verdict on September 18, 2013, the Court's Deputy Clerk clerically entered Judgment for MSS on Counts I, II, and III and for Ira Green on Count IV, the defamation claim, based on her reading of the jury verdict form. (ECF No. 153.) Subsequent to that entry, the Court reviewed the Judgment, identified the clerical error in Count IV, and conferenced with counsel for both parties about amending it.⁷ MSS indicated at the conference that it intended to bring a Motion to Amend the Judgment and Ira Green indicated that it would object. The Court invited MSS's motion, reviewed the objection and issued an Amended Judgment on October 16, 2013 in favor of MSS on all counts and in favor of Ira Green on MSS's counterclaims pursuant to the Court's pre-trial decision granting summary judgment. (ECF No. 160.) Ira Green moves for a new trial, arguing that the entry of the Amended Judgment stripped it of its verdict on the defamation claim. MSS counters that the original Judgment was inconsistent with the verdict form and a clerical error cannot be grounds for enforcing an erroneous judgment.

⁷ Rule 60(a) of the Federal Rules of Civil Procedure allows a Judgment to be corrected. That rule states that: "[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice." Fed. R. Civ. P. 60(a).

This issue hinges on the elements of defamation.⁸ “A defamation action requires a plaintiff to prove ‘(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher;’ and (d) damages, unless the statement is actionable irrespective of special harm.” *Swerdlick v. Koch*, 721 A.2d 849, 859-60 (R.I. 1998) (emphasis added) (quoting *Healey v. New England Newspapers, Inc.*, 555 A.2d 321, 324 (R.I. 1989)). Question five reflected the first three elements and question six addressed the final required element, damages. The jury determined that Ira Green did not suffer any damages resulting from MSS’s statements, despite their defamatory nature. Because Ira Green had to prove damages in order to prove its defamation claim, it did not prevail on that claim. Therefore, the Amended Judgment accurately reflects the jury’s verdict in this case and Ira Green’s motion is rejected on this ground.

D. DOCUMENTARY AND TESTIMONIAL EVIDENCE

As a final point in its motion, Ira Green argues that the Court made evidentiary errors at trial that affected its substantial rights and requires a re-trial of its case. Specifically, Ira Green argues that the Court should not have admitted a string of emails from March and April of 2012 between Mr. McAllister, David Lumbley of Ira Green and others, and should not have permitted Mr. Atherton’s hearsay statements to be introduced through other witnesses, specifically Greg Koefer, Rick Fox, Paul Atherton, and Todd Silver. MSS counters that the Court properly admitted the emails and testimony.

⁸ MSS made a Rule 50 motion on Ira Green’s defamation claim at the close of Ira Green’s case. (ECF No. 166 at 94.) The Court reserved its decision, permitting Count IV to go to the jury. MSS renewed its motion in its Motion to Alter or Amend Judgment, but the Court denied that motion as moot in light of the entry of the Amended Judgment. (ECF No. 159.) MSS again renews its Rule 50 motion, raising the specter of a First Circuit appeal on this technical issue. Because the Court finds that there is a legally valid judgment based on a solid jury verdict supported by the evidence both parties presented at trial, the Court declines to reconsider its previous ruling that MSS’s Rule 50 motion is moot.

“No error in the admission of evidence is ground for granting a new trial ‘unless refusal to take such action appears to the court inconsistent with substantial justice.’” *S.E.C. v. Happ*, 392 F.3d 12, 28 (1st Cir. 2004) (quoting Fed. R. Civ. P. 61.) “Improper admission of testimony is ‘harmless if it is highly probable that the error did not influence the verdict.’” *United States v. Benitez-Avila*, 570 F.3d 364, 372 (1st Cir. 2009) (quoting *United States v. Casas*, 356 F.3d 104, 121 (1st Cir. 2004)). “There is no bright-line rule”; the “harmlessness determination demands a panoramic, case-specific inquiry considering, among other things, the centrality of the tainted material, its uniqueness, its prejudicial impact, the uses to which it was put during the trial, the relative strengths of the parties’ cases, and any telltales that furnish clues to the likelihood that the error affected the factfinder’s resolution of a material issue.” *Benitez-Avila*, 570 F.3d at 372 (quoting *Sepulveda*, 15 F.3d at 1182). With this standard in mind, the Court will review Ira Green’s arguments as to specific documents and testimony.

1. DTX L-3

This two-page document contains a series of emails where the final email is a communication from Dave Lumbley, an Ira Green employee, to Mr. McAllister alerting him to communications between Ira Green and an AAFES employee about tests that AAFES conducted on Ira Green’s STORM SAF paper.

Ira Green argues that the document contained hearsay because the communication to Mr. McAllister was only three letters “FYI” and the other emails discussing the testing were not directly sent to him. MSS argues that this document is not excludable as hearsay because it did not admit it for the truth of the matter (that is, that test results revealed that MSS’s product was better than Ira Green’s), but that AAFES conducted the testing on its own and was able to form its own opinions of Ira Green’s product. At trial, MSS sought to introduce it as a business

record, taking Mr. McAllister through the colloquy determining that he received the email, that it came out of Ira Green's files, and that it deals with communications made and maintained in the regular course of business.⁹ (ECF No. 165 at 117-118.)

It is clear to the Court that this document was not introduced for the truth of a matter relevant to Ira Green's defamation claim – that is, that MSS defamed its products to AAFES – but to show that AAFES conducted its own evaluation of the STORM SAF product in September 2011 in response to the May 16, 2011 email from Scott Hance at MSS (Exh. 57) that Ira Green's product “dissipates in seconds.” This testimony went to MSS's defense that AAFES did not make its product decisions based on MSS's alleged defamatory representations alone, but tested Ira Green's product for itself in order to make those decisions. Also, MSS used this series of emails to refresh Mr. McAllister's recollection because he testified that he did not know whether Mr. Atherton had the outside testing done after he received the email from Mr. Hance. (ECF No. 165 at 113-114.) It was the only time that document was used and related to the impact that the allegedly defamatory Scott Hance email had on AAFES's decision to stock the STORM SAF notebooks.

Additionally, Ira Green's position on this document does not square with its other arguments. First of all, it argues that it prevailed on the defamation claim because the jury answered affirmatively to Question 5 that MSS made false and defamatory statements so under that argument, admission of L-3 did not prejudice Ira Green. Second, Mr. McAllister testified that Scott Hance's comment that STORM SAF “completely dissipates in water within a matter of seconds” was the defamatory comment, not AAFES's September 2011 test results showing that

⁹ This email chain was admissible as a business record. *Espedito Realty, LLC v. Nat'l Fire Ins. Co. of Hartford*, 935 F. Supp. 2d 319, 326-27 (D. Mass. 2013) (emails are admissible as business record).

its STORM SAF notebooks did not perform as well as Darling's Rite in the Rain notebooks, so the fact that AAFES tested the product and received the test results should not weigh for or against Ira Green's defamation claim.

Ira Green states that admission of L-3 was a harmful evidentiary error that affected its substantial rights because the jury was left with unsupported hearsay evidence about whether its product was substandard, which goes to the heart of its defamation claim. This argument is similarly unavailing. While it is true that at the heart of a defamation claim is a false and misleading statement, the L-3 emails do not state that Ira Green's product did not meet certain false or unattainable standards, but that the AAFES evaluation demonstrated that the STORM SAF notebooks did not perform as well as the Rite in the Rain notebooks. Notably, its defamation claim is against MSS, not AAFES and an AAFES employee authored and sent the testing email. There is no evidence that MSS had anything to do with AAFES sending the email or being responsible for the testing information contained within that email. Any suggestion by Ira Green that the L-3 email prejudiced its defamation claim against MSS is belied by the final questions put to Mr. McAllister. He testified:

Q. In other words, they (AAFES) evaluated the product. Now, we don't know if they evaluated it in response to Mr. Hance's e-mail, but if you look at the dates, it suggests that Mr. Hance sent the e-mail and then AAFES maybe had some concerns and they did some testing of their own; correct?

A. Right, yeah.

Q. Okay. And no one from AAFES has ever made any representations to you or anyone else at Ira Green, to your knowledge, about any reasons why they did or did not purchase any Storm Safe products; correct?

A. Correct.

Q. Okay. And there's no documents or letters or e-mails from AAFES telling you that they're not going to purchase the Storm Safe paper because of anything MSS said or did; correct?

A. Correct.

Q. All right. And Paul Atherton never communicated to you that AAFES is not going to purchase or reduce its purchase level of the Storm Safe paper as a result of anything MSS said or did; right?

A. Correct.

(ECF No. 165 at 124-125.) Because the Court finds that L-3 was not admitted for the truth, but to refresh Mr. McAllister's recollection on a critical point of AAFES's independent testing done after Mr. Hance of MSS's email, the crux of Ira Green's defamation claim, Ira Green's point of error on this document is rejected.

2. Hearsay in Other Testimony – State of Mind Exception

Ira Green objected to lines of inquiry in Mr. Koefer and Mr. Fox's testimony as hearsay to which MSS responded that the testimony was not hearsay because it was not offered for the truth of the matter and, even if it were hearsay, it was admissible under the "state of mind" exception. Federal Rule of Evidence Rule 803(3)

removes from the hearsay prohibition statements that exhibit a declarant's "then-existing state of mind." But, this exception is not to be construed as a sweeping endorsement of all state-of-mind evidence. To be admissible under this exception, a declaration, among other things, must "mirror a state of mind, which, in light of all the circumstances, including proximity in time, is reasonably likely to have been the same condition existing at the material time."

Colasanto v. Life Ins. Co. of N. Am., 100 F.3d 203, 212 (1st Cir. 1996) (quoting 2 John W. Strong, McCormick on Evidence § 274 (4th ed. 1992)). The Court now turns to the testimony of Mr. Koefer and Mr. Fox.

a. Greg Koefer

Ira Green objects to Mr. Koefer's testimony when he was asked about how he felt at the time about the delay in setting up new MSS vendors in the AAFES system as hearsay. He testified that MSS expected it would take AAFES ten days to two weeks to set up the new vendors, but it took much longer, leaving him feeling "frustrated." (ECF No. 163 at 57-58.) The Court overruled Ira Green's hearsay objection in light of MSS's argument that this testimony was coming in not for the truth of the statements, but for MSS and Mr. Koefer's state of mind

during this time period where MSS and AAFES were setting up the new accounts. That state of mind, MSS argues, is relevant to the testimony Ira Green elicited from Mr. Koefer about MSS's attempts to interfere with Ira Green's relationships and contracts with other vendors. What Mr. Koefer was thinking and feeling, MSS argues, went directly to how MSS was acting and reacting to the delays in setting up these new vendors with AAFES.

Ira Green's suggestion in its motion that Mr. Koefer's testimony about how he felt about AAFES's delays suggested to the jury that "MSS's conduct was somehow sanctioned by AAFES or that MSS was operating under the imprimatur of AAFES, so it could not be tortious" is not supported in the record. (ECF No. 170-1 at 14-15.) In fact, Mr. Koefer's testimony was that, because of his frustration at the slow pace with which AAFES and Mr. Atherton were setting up new vendors, he escalated the complaint to his boss in an attempt to move the process along. (ECF No. 163 at 58-59.) Mr. Koefer testified that he was upset with AAFES and reported to his boss about it, not that MSS had AAFES's official approval to do anything. The conclusion that Mr. Koefer's testimony suggested that AAFES was sanctioning MSS's alleged interference is just not a reasonable conclusion in light of Mr. Koefer's testimony.

Moreover, the Court cured any possible confusion among the jurors by giving the following instruction to the jury at Ira Green counsel's request:

THE COURT: Mr. Scott, I'd be glad to inform the jury about how evidence comes in for the truth or for state of mind if you'd like.

MR. SCOTT: That would be helpful. Thank you.

THE COURT: Ladies and Gentlemen, oftentimes you hear objections as to hearsay. Hearsay is an out-of-court statement, a statement that occurs out of court, and it's only hearsay if it's offered for the truth of the matter asserted. So if it's not being offered for the truth of the matter; that is, someone told me that so-and-so hit so-and-so, if it's offered as to whether so-and-so hit so-and-so, that would be hearsay because it's offered for the truth the matter. But there are many other reasons that material that otherwise would be hearsay can come in. Oftentimes, and actually a lot that you've heard in this trial, has to do with the state of mind of the actor, not for the truth but what they heard that may have

caused them to act in a certain way, their state of mind. If it's offered for state-of-mind testimony, then it's not considered hearsay even though it's not their own statement, it's an out-of-court statement. In this court case and the last few times there have been objections concerning hearsay, and the Court has overruled it, and it's allowing the testimony in not to prove the truth of the facts of what was said or not but to give evidence of the state of mind of either Mr. Koefer or for Military Sales & Service. So it's coming in for that limited purpose.

(ECF No. 163 at 60-61.) This clear and contemporaneous instruction on hearsay being admitted as evidence of state of mind cured any confusion that may have arisen among the jury. *Rivera-Gomez*, 67 F.3d at 999 (citing *Richardson*, 481 U.S. at 206 (“our system of trial by jury is premised on the assumption that jurors will scrupulously follow the court’s instructions.”)) Therefore, allowing Mr. Koefer to testify about this area was not error.

b. Rick Fox

Ira Green questioned MSS employee Rick Fox about alleged confidential information he received from a third party, Mr. Cliff Vaughan. That testimony was in support of its allegations that MSS used this confidential information to interfere with its contracts with vendors. Ira Green asked Mr. Fox several lines of questioning about this allegedly stolen and confidential information. (ECF No. 163 at 113-119; 183-186; 189-191.) When MSS questioned Mr. Fox, counsel asked his understanding about what Mr. Vaughan meant when he described the information to Mr. Fox as confidential. Over Ira Green’s hearsay objection, the Court permitted Mr. Fox to answer that he understood that he needed to protect the information because the industry was small. (*Id.* at 157-159.) MSS argues that Mr. Fox’s testimony on this subject went to his state of mind and therefore was not hearsay. The Court agrees. Mr. Fox testified what he understood about the information he received from Mr. Vaughan at the time he received it. This testimony was appropriate.

3. Hearsay in Other Testimony – Lack of Knowledge

a. Paul Atherton

Ira Green also argues that the Court erred in permitting Paul Atherton of AAFES to testify as to areas about which he had no personal knowledge or lacked adequate foundation. By allowing the jury to hear Mr. Atherton's speculative responses, Ira Green argues that the jury was invited to speculate about AAFES policies and infer that AAFES sanctioned MSS's actions. (ECF No. 170-1 at 15.) MSS objects and argues that Mr. Atherton was the AAFES witness best suited to testify about AAFES policies, was offered by Ira Green in its case in chief to testify about AAFES, and that his testimony was appropriate.

This argument merits little discussion. Mr. Atherton was the AAFES witness put forward by both MSS and Ira Green to detail the interactions between both of those companies and other vendors. If any of Mr. Atherton's testimony lacked foundation or was too speculative, the jury was well equipped to determine how much weight to give Mr. Atherton's testimony in light of both parties' presentations of AAFES policies through him. *See United States v. Nishnianidze*, 342 F.3d 6, 14 (1st Cir. 2003) ("the jury's duty is to assess credibility, and it may accept or reject, in whole or in part, any testimony"). Therefore, the Court finds that Mr. Atherton's testimony was appropriate for the jury to consider in this case.

b. Todd Silver

Todd Silver is co-President of J. L. Darling. Ira Green objects to Mr. Silver's testimony that Brigade's competitors had criticized Brigade in the past. It argues that these statements are

hearsay and even if the Court finds they are not hearsay, they had no probative value.¹⁰ MSS counters that Mr. Silver's testimony was not offered for the truth, but to show what Darling was thinking and feeling about competition in the market in which it does business.

MSS established at trial that Mr. Silver, who has worked at Darling since 1977, had the background and personal knowledge to testify about Darling and its business decisions. (ECF No. 166 at 95-98.) The Court ruled at trial that Mr. Silver's testimony came before the jury to show that Darling had been courted by competitors for years and to show Darling's state of mind in its dealings with Brigade before Ira Green purchased it. Those statements did not come in for the truth that competitors had problems with Brigade/Ira Green in the past, but to show Darling's state of mind during the Brigade-Ira Green transition when it was contacted by other companies, in addition to MSS, to do business with them. The Court finds that Mr. Silver's testimony on this point was appropriate and its admission does not merit a new trial.

Ira Green also objects on hearsay grounds to Mr. Silver's testimony about what he and Becky Groves, Darling's Sales Director, discussed about a future working relationship with Ira Green after it bought Brigade. This argument also fails. Mr. Silver's testimony on this matter was not to prove that Brigade was a bad business partner and that therefore, Darling would not choose to stay when Ira Green took over, but to show how Darling was thinking throughout the process of the Ira Green purchase of Brigade and that it was focused on what was best for its business, not focused on any of MSS's statements or interferences. (ECF No. 166 at 121-140.)

¹⁰ Ira Green did not object to this testimony's relevance or lack of probative value at trial. Therefore, its point of error on that ground has been waived. *United States v. Walsh*, 75 F.3d 1, 6 (1st Cir. 1996) ("an objection must be made known at the time that the court is making its decision to act").

That testimony went to Darling's and Mr. Silver's state of mind at the time his company was making its decision to contract with MSS and was thus properly admitted.

E. NEWLY RAISED ISSUE FROM COSTS MOTION

Ira Green charges MSS with misconduct because MSS failed to disclose to Ira Green pre-trial that it agreed to pay Mr. Silver's local attorney's fees for the time spent in Washington and Providence preparing Mr. Silver for his trial testimony in exchange for Mr. Silver's voluntary appearance at trial. Ira Green objects, charging that MSS failed to produce pretrial communications with Darling evidencing that payment arrangement. It argues that a new trial is merited under Fed. R. Civ. P. 59 and 60 (b)(3) because the \$10,000 legal fee payment shows that Mr. Silver would not have appeared voluntarily at trial to testify favorably for MSS in support of its defense that Darling chose MSS because that choice was in its best interests. Because Ira Green did not know about this arrangement, it argues that it could not cross-examine Mr. Silver thoroughly about his relationship with MSS and, perhaps inappropriate bias, in favor of MSS in this litigation. MSS counters that it paid for Mr. Silver to have representation during his trial preparation because he wanted to ensure that his testimony was within the bounds of a confidential settlement agreement that Darling and Ira Green entered into as the result of a lawsuit Ira Green litigated against Darling in Washington. It adds that it did not violate any discovery disclosure rules because all communications were through Mr. Silver's attorney and MSS did not have any documents or any other material covered by Ira Green's requests.

As was a constant throughout this litigation and trial, and post-trial, the parties' views of the facts are contradictory. Ira Green views the \$10,000 as a payment to Mr. Silver in exchange for his favorable testimony. MSS views the payment as a litigation cost resulting from bringing in witnesses for live testimony, like paying for a flight or hotel. The Court finds that no

misconduct or discovery abuse occurred. MSS provides a reasonable explanation about the origins of its payment of Mr. Silver's legal representation as he prepared for his trial testimony. In light of the history of litigation between Darling and Ira Green and due to the confidentiality agreement, which the Court reviewed *in camera*, the Court finds that his request for counsel, and his insistence that MSS pay for it, was not anomalous. Furthermore, the Court does not find that MSS is guilty of misconduct for paying that expense in order to garner the testimony of, as Ira Green describes him, "a critical percipient" witness. It was not a cash payment to Mr. Silver that he could use for his own or Darling's benefit or for personal expenses, but for the payment of incurred fees to Mr. Silver's counsel who represented Darling in the Washington litigation, who knew the parameters of the confidential settlement agreement, and presumably knew how to counsel Mr. Silver about how to avoid breaching that confidentiality.

Moreover, MSS raises an interesting point about the questioning that Ira Green suggests it could have done if it had known about the legal fee payment. Considering Ira Green's motion in limine to prevent MSS from discussing before the jury anything related to the Washington lawsuit for fear that the jury may regard Ira Green as overly litigious, it is unlikely that Ira Green would have wanted to ask Mr. Silver whether he was represented by counsel at trial preparation and why he felt the need to be represented. (ECF No. 122-1.) In light of the Court's ruling precluding testimony about the Washington litigation, it is likely that any testimony about the reason Mr. Silver required representation would not be permitted. More likely, Ira Green would ask Mr. Silver if he was being compensated for his testimony and his truthful answer would be that he was not because the money went directly to his attorney as payment for services.

Ira Green has failed to demonstrate that the fact that it did not know about MSS's agreement to cover a witness's preparation expenses inhibited its ability to prepare for trial or misled the jury. As such, a new trial is not warranted.

IV. CONCLUSION

Ira Green is not entitled to a new trial. It has failed to raise any issues involving the fairness of or any prejudicial errors in the trial. After an almost two-week trial, the jury reached a quite reasonable verdict based on the evidence after having been properly instructed on the law. This case exemplifies the quality and effectiveness of our jury system of justice. Ira Green's Motion for a New Trial (ECF No. 170-1) is DENIED.

IT IS SO ORDERED:

A handwritten signature in black ink, reading "John J. McConnell, Jr.", with a horizontal line underneath the signature.

John J. McConnell, Jr.
United States District Judge

January 15, 2014