

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
SHELALARA VINEYARDS AND,)	
WINERY, INC., AND SHEILA GOLD)	
Plaintiffs)	
v.)	C.A. No. 15-001-M-LDA
)	
THE PURPLE CAT VINEYARD AND)	
WINERY, INC. et al.,)	
Defendants.)	
_____)	

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard all of the evidence and the arguments of counsel, it is my job to instruct you on the law that is applicable to this case.

A. PROVINCE OF THE COURT AND JURY

It is your duty as jurors to follow the law as I state it to you and to apply that law to the facts of the case, as you determine those facts to be from the evidence in this case. You are not to be concerned with the wisdom of any rule of law stated by me. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Further, nothing I say in these instructions and nothing that I have said or done during the trial is to be taken as an indication that I have any opinion about the facts of the case. I do not. It is not my role to determine the facts; that is your role.

You must perform your duties as jurors without bias or prejudice to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties — and the law — expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. All parties are entitled to the same fair trial at your hands. All parties stand equal before the law, and are to be dealt with as equals in a court of justice. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

B. CONSIDER EACH PLAINTIFF AND DEFENDANT SEPARATELY

It is your duty to give separate and personal consideration to each Plaintiff on the counterclaims and to each Defendant on the claims. When you do so, you should analyze what the evidence in the case shows with respect to that particular party, leaving out of consideration entirely any evidence admitted solely against the other party. The fact that you return a verdict for or against a Plaintiff or Defendant on any claim should not, in any way, affect your verdict regarding the other Plaintiff or Defendant.

C. RESPONDEAT SUPERIOR

Generally, one person is not legally responsible for the conduct of another except under certain circumstances. Only where a special relationship exists

between the two, such as an officer, agent, employee or another individual acting on behalf of and for the benefit of a corporation. If you find that Dan Ribeiro and/or Andrew Gold acted in any of these capacities for The Purple Cat with the intent at least in part to benefit The Purple Cat, then The Purple Cat is liable for their actions as well. And if you find that Sheila Gold acted in any of these capacities for ShelaLara with the intent at least in part to benefit ShelaLara, then ShelaLara is liable for her actions as well.

D. EVIDENCE IN THE CASE

In determining the facts of this case, you are to consider only the evidence that has been properly put before you. That evidence consists of the sworn testimony of witnesses and the exhibits that have been received into evidence. Evidence that this Court has refused to admit is not a proper subject for your deliberations and you should not consider it when reaching a verdict.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if the evidence was admitted.

Certain things are not evidence, and you may not consider them in deciding what the facts are.

1. Arguments and statements by lawyers are not evidence.
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 is not evidence and must not be considered.

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 trial.

E. CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. 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 that witness testified about;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice the witness may have;
5. whether other evidence contradicted the witness' testimony; and
6. the reasonableness of the witness' testimony in light of all the evidence.

After making your own judgment, you may believe everything a witness says, or part of it, or none of it at all. Also, the weight of the evidence is not necessarily

determined by the number of witnesses testifying to the existence or non-existence of any fact.

F. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two types of evidence from which you may properly find the facts of this case. One is direct evidence – such as the testimony of an eyewitness. The other is indirect or circumstantial evidence – that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. You are simply required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

In your consideration of the evidence in this case, you are allowed to make reasonable inferences from witnesses' testimony and the admitted exhibits. Inferences are deductions that reason and common sense lead you to draw from facts that have been established by the evidence in this case. Inferences, however, may not be based on pure speculation or conjecture.

G. BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE

The burden is on the Plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the Plaintiff's claim by a preponderance of the evidence, then you should find for the Defendants on that claim. The Defendants do not have any obligation to disprove that which the

Plaintiff asserts or claims. In the same way, Andrew Gold has the burden of proof on his counterclaims.

To establish by “a preponderance of the evidence” means to prove that something is more probably true than not true. In other words, if you were looking at opposite ends of a scale, the Plaintiff’s evidence would have to make one end of the scale tip to its side.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression “if you find,” I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true. This rule does not, of course, require proof to an absolute certainty or even a near certainty.

II. CASE-SPECIFIC INSTRUCTIONS

A. Nature of the Plaintiffs’ Claims and Andrew Gold’s Counterclaims

This is a civil case brought by Sheila Gold and ShelaLara Winery against Andrew Gold, Dan Ribeiro, and The Purple Cat Winery. Plaintiffs allege that Defendants deceived them into believing that Defendants were loyal employees when they were not working in Plaintiffs’ best interest and all the while planning to open a competing wine business. Andrew Gold denies those claims and brings his own claims against both Sheila Gold and ShelaLara, alleging the Plaintiffs owe him wages, and locked him out of the business and his home. You are being asked to determine whether Plaintiffs and/or Defendants are liable and any amount of damages owed.

Established Facts - (All Claims)

As I instructed you at the beginning of the trial, the following facts are deemed established. Therefore, you do not need to assess whether these facts have been proven during your deliberations. You should accept these established facts as true and give them whatever weight you choose in assessing the parties' claims.

1. Defendants The Purple Cat Vineyard & Winery, Inc., Daniel Ribeiro, and Andrew Gold have, in their operation of The Purple Cat, used and continue to use to their benefit ShelaLara's distribution network, the identity of ShelaLara's customers, and ShelaLara's documentation of customers' particular likes and dislikes.

2. Defendants The Purple Cat, Daniel Ribeiro, and Andrew Gold took the following property when they left the employ of ShelaLara that they have used and continue to use for the benefit of The Purple Cat:

a. recipes and formulae relating to products developed by or sold by ShelaLara or derived from information developed or learned at ShelaLara, including fruit essence wine, frozen wine and/or wine slushies;

b. notes and other writings relating to testing and production of the ShelaLara wine products; and

c. notes and writings which set forth step-by-step procedures for winemaking and winemaking testing, including for the frozen and/or "slushie" wine.

3. The earnings by The Purple Cat from wine sales are from wine products made with the wine-making processes developed at ShelaLara.

B. Racketeer Influenced and Corrupt Organization Act (RICO) - 18 U.S.C. § 1962(c) - (Plaintiffs' Count I)

Plaintiffs assert a claim against each of the Defendants for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. A plaintiff who is injured by reason of a person or entity's violation of RICO may recover damages to compensate that plaintiff for her injuries. In this case, Plaintiffs contend that Andrew Gold, Dan Ribeiro, and The Purple Cat violated § 1962(c) of RICO. Specifically, Plaintiffs allege that each of the Defendants violated that section because they were associated with an enterprise consisting of Andrew Gold, Dan Ribeiro, and The Purple Cat; that this enterprise engaged in activities affecting interstate commerce; and that the Defendants participated in the affairs of this enterprise through a pattern of racketeering activity, which included wire fraud. Plaintiffs allege that they suffered injuries because of this alleged pattern of racketeering activity.

To prove that a Defendant violated RICO § 1962(c), Plaintiffs must prove each of the following five facts by a preponderance of the evidence.

First, Plaintiffs must prove the existence of an enterprise. An "enterprise" does not have to be a legal entity. It can be an association of persons or entities. The association between the enterprise's members might be loose or informal. But the enterprise must have at least a purpose, relationships among those associated

with the enterprise, and a duration sufficient to permit those associates to pursue the enterprise's purpose.

Second, Plaintiffs must prove that the enterprise engaged in or had an effect on interstate commerce.

Third, Plaintiffs must prove that the Defendant was employed by or associated with the alleged enterprise. The requirement that the Defendant be "employed by or associated with" the enterprise means the Defendant must have some minimal association with the alleged enterprise. The Defendant must know something about the alleged enterprise's activities as they relate to the racketeering activities.

Fourth, Plaintiffs must also prove by a preponderance of the evidence that the Defendant "participated, directly or indirectly, in the conduct of the affairs of the enterprise." To prove this, Plaintiffs must show that the Defendant actively conducted or participated in conducting the affairs of the alleged enterprise through a pattern of racketeering activity. The Defendant does not need to participate in, or be aware of, all of the enterprise's activities. It is sufficient if the Defendant conducted or participated in the conduct of some of the enterprise's activities through a pattern of racketeering activity.

Fifth, Plaintiffs must prove that the Defendant participated in the conduct of the enterprise's affairs through a pattern of racketeering activity. An act of "racketeering activity" is also called a "predicate act. "Racketeering activity" is an act that violates the federal wire fraud statute.

Let me explain wire fraud to you. It is a violation of the federal wire fraud statute to use interstate wire communications to carry out a scheme to defraud someone else. To prove that the Defendant engaged in wire fraud, the Plaintiffs must prove each of the following facts:

(1) the Defendant knowingly devised or participated in a scheme to defraud, or to obtain money or property by using false pretenses, representations, or promises;

(2) the false pretenses, representations, or promises were about a material fact;

(3) the Defendant acted with the intent to defraud; and

(4) the Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

The term "scheme to defraud" includes any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises.

A statement or representation is "false" or "fraudulent" if it is about a material fact that the speaker knows is untrue or makes with reckless indifference to the truth, and makes with the intent to defraud. A statement or representation may be "false" or "fraudulent" when it is a half-truth, or effectively conceals a material fact, and is made with the intent to defraud.

A “material fact” is an important fact that a reasonable person would use to decide whether to do or not do something. A fact is “material” if it has the capacity or natural tendency to influence a person’s decision.

The “intent to defraud” is the specific intent to deceive or cheat someone, usually for personal financial gain or to cause financial loss to someone else. Plaintiffs do not have to prove all the details about the precise nature and purpose of the scheme or that the material transmitted by interstate wire was itself false or fraudulent. Plaintiffs also do not have to prove that the use of the wire was intended as the specific or exclusive means carrying out the fraud, or that the Defendant actually made the transmission over the wire.

To “use” interstate wire communications is to act so that something would normally be sent through wire communications in the normal course of business. Each separate use of the interstate wire communications as part of the scheme to defraud is a separate “predicate act.”

A “pattern of racketeering activity” means that the Defendant committed at least two distinct predicate acts. Distinct does not have to mean different types. But by itself, proof of two or more predicate acts does not establish a pattern under RICO. To prove a pattern of predicate acts, Plaintiffs must show that the acts were related to one another and to the enterprise. Two or more acts of racketeering activity that are not related do not establish a pattern of racketeering activity under RICO. Predicate acts are “related” to one another if they have the same or similar purposes, results, participants, victims, or methods. Predicate acts are also related

if they have common distinguishing characteristics and are not isolated events. To be related, the predicate acts don't have to be the same kind of acts. For example, the acts may comprise one act of wire fraud and one act of mail fraud.

To make up a pattern of racketeering activity, predicate acts must also demonstrate continuity. Continuity can be demonstrated in two basic ways. The first is to demonstrate related predicate acts extending over a substantial period of time. The second is to show conduct that does not occur over a substantial period of time but, by its nature, is likely to be repeated into the future. Again, "racketeering activity" means an act that violates the wire fraud statute. But you cannot consider just any racketeering act the Defendant allegedly committed in violation of one of these statutes as bearing on whether the Defendant has committed two or more predicate acts as a pattern of racketeering activity. To determine if there is a pattern of racketeering activity, you must consider only those specific racketeering acts Plaintiffs allege against Defendant. And you cannot find that the Defendant engaged in a "pattern of racketeering activity" unless you unanimously agree on which of the alleged predicate acts, if any, make up the pattern.

Put another way, you cannot find that the Defendant has engaged in a pattern of racketeering activity unless you find (1) a "pattern" of predicate acts, and (2) that Plaintiffs have proved by a preponderance of the evidence that the Defendant committed each of the two or more predicate acts that you find make up that pattern. Any Defendant you found to have joined the enterprise is liable under RICO.

If you find that the Defendant violated the RICO statute § 1962(c), you must decide whether that violation caused an injury to Plaintiffs Sheila Gold and ShelaLara. The damages that Plaintiffs may recover are those caused by the predicate acts constituting the pattern of racketeering activity if they injure Plaintiffs or their business or property. It is not necessary that every predicate act caused damage to Plaintiffs. But they can only recover damages caused by predicate acts that are part of the pattern of racketeering activity.

**C. Misappropriation of Trade Secrets – Trade Secret Defined
(Plaintiffs’ Count II)**

You must determine in this action whether any of ShelaLara or Sheila Gold’s trade secrets were misappropriated by Defendants Andrew Gold, Dan Ribeiro, and The Purple Cat. You must determine two things: are ShelaLara’s winemaking recipes, formulae, testing, development, and procedures (including for their fruit essence wine and frozen wine slushies), as well as their customer preference information and distribution network trade secrets; and did ShelaLara take reasonable steps to preserve the secrecy of those trade secrets? A “trade secret” is defined as information, patterns, compilations, programs, devices, methods, techniques, or processes that derive independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure and use and which is the subject of reasonable efforts to maintain its secrecy.

You should find that these are protectable trade secrets if you determine from the evidence:

(1) that the nature of Plaintiffs' winemaking recipes, formulae, testing, development, and procedures, as well as their customer preference information and distribution network are proprietary;

(2) that these trade secrets would have economic value for Defendants; and

(3) that Plaintiffs took reasonable steps to protect the trade secrets.

The law requires that one who possesses a trade secret must take reasonable steps to preserve its secrecy. The law requires only reasonable precautions, not heroic measures. In determining whether the Plaintiffs have taken reasonable precautions to protect the trade secrets, you should give consideration to the following factors:

(1) the existence or absence of an express agreement restricting disclosure and whether the plaintiff has enforced such agreements consistently;

(2) the nature and extent of security precautions taken by the Plaintiffs to prevent acquisition of the information by unauthorized third parties;

(3) the circumstances under which the information was disclosed to any employee to the extent that these circumstances give rise to a reasonable inference that further disclosure, without the consent of the Plaintiffs, was prohibited;

(4) the degree to which the information has been placed in the public domain or rendered readily ascertainable by third parties (such as online) through issued patents or unrestricted product marketing; and

(5) the relationship between and conduct of the Plaintiffs and Defendants Andrew Gold and Dan Ribeiro.

**D. Breach of Confidentiality Agreement
(Plaintiffs' Count III)**

A contract is a legally enforceable promise or agreement made between two or more parties. A breach of contract is a failure to comply with a material or important term of a contract. A material term is an important term, or to put it differently, it is a term that if not complied with, will deprive the other party of the benefit that it bargained for under the contract. To succeed on their claim for breach of contract, Plaintiffs must prove by a preponderance of the evidence:

1) the existence of a contract; 2) a breach of the terms of the contract by the other party; and 3) damages.

The dispute that you must decide is whether each of the Defendants entered into a Confidentiality Agreement, whether each of the Defendants breached the Agreement and if so, what damages, if any, ShelaLara suffered as a result of the breach.

You must determine whether ShelaLara has substantially performed its contractual obligations under the Agreement. A party cannot prevail on a breach of contract claim unless it has substantially performed its promised obligations. Substantial performance is a fact dependent inquiry, which you, as the factfinder, must determine based upon all relevant evidence before you.

You must then determine if Andrew Gold satisfied his obligations under the Agreement. If Andrew Gold did not live up to the obligations imposed under the Agreement, then you should find Andrew Gold to be in breach of the Agreement.

You must also determine separately if Dan Ribeiro satisfied his obligations under the Agreement. If Dan Ribeiro did not live up to the obligations imposed under the Agreement, then you should find Dan Ribeiro to be in breach of the Agreement.

E. Conversion
(Plaintiffs' Count V)

Plaintiffs ShelaLara and Sheila Gold assert a claim of conversion against Defendants Andrew Gold, Dan Ribeiro, and The Purple Cat. To prove conversion, Plaintiffs must prove:

1. that the Defendant took property or exercised control over property;
2. that Plaintiffs had an ownership or possessory interest in the property at the time it was taken; and
3. that the Defendant had no right, permission, or authority to take the property.

Plaintiffs claim that Defendants took various property from them around the time of the termination of their employment with ShelaLara. You must determine if any property was converted by Defendants and then determine the total damages to the Plaintiffs as a result of the Defendants' conversion of their property.

F. Compensatory Damages

I will now turn to the question of damages. In so doing, I do not intend to indicate that I am of the opinion that Andrew Gold, Dan Ribeiro, and/or The Purple Cat are liable or that Ms. Gold and/or ShelaLara are owed damages. If you find that none of the Defendants are liable, you will not consider the question of damages.

Plaintiffs allege that they have sustained damages as a result of Defendants' unlawful conduct. Just as they have the burden of proving liability by a preponderance of the evidence, Ms. Gold and/or ShelaLara must prove damages by a preponderance of the evidence.

Damages are defined in the law as that amount of money that will compensate an injured party for the harm or loss sustained. These damages are referred to as compensatory damages. The rationale behind compensatory damages is to restore a person to the position he/she was in prior to the harm or the loss. Compensatory damages, then, is the amount of money that will replace, as near as possible, the loss or harm proximately caused by a defendant's conduct.

The damages you award must not be oppressive or unconscionable, and you may assess only such damages as will fairly and reasonably compensate plaintiff insofar as the same may be computed in money. You must confine your deliberations to the evidence, and you must not indulge in guesswork, speculation or conjecture.

I will now discuss the type of damages sought by Plaintiffs in this case. Plaintiffs seek to be compensated for the RICO, misappropriation of trade secrets, breach of contract, and conversion claims against Defendants Andrew Gold, Dan Ribeiro, and The Purple Cat resulting from those Defendants' actions. If you find that Defendants conspired against Plaintiffs, misappropriated trade secrets, breached the confidentiality agreement, and converted Plaintiffs trade secrets, you must consider whether and, if so, in what amount, Plaintiffs ShelaLara and Sheila Gold are entitled to recover money damages from Defendants on the actual harm Defendants' conduct caused. In thinking about the value of the harm, you may consider the fair market value of the property at the time, if you so find, it was converted, and the net profits Plaintiffs lost, if any, as a result of any of the Defendants' misappropriation of the Plaintiffs' trade secrets and confidential information.

In addition to compensatory damages, Plaintiffs are seeking unjust enrichment damages that they are entitled to if you find either misappropriation or conversion or a breach of a confidentiality agreement has occurred. Unjust enrichment includes any of the following: the value of customers, the sales, and any profits gained by Defendants from customer data, winemaking formulae, and wine products misappropriated from Plaintiffs. Unjust enrichment is an amount not taken into account in computing actual loss to the Plaintiffs. Plaintiffs are not required to prove these damages with mathematical precision. All that is required is a reasonable basis of computation and the best evidence obtainable.

**G. Punitive Damages
(Plaintiffs' Count VI)**

In addition to compensatory damages, Plaintiff seeks to recover punitive damages from Defendants in this case. The purpose of punitive damages is not to compensate Plaintiffs but rather it is to punish a wrongdoer for outrageous or extraordinary misconduct and to deter them or others from engaging in similar conduct in the future. On the jury verdict form, you will be asked whether you find that Defendants' conduct was motivated by malice or ill will or involved a reckless or callous indifference to the statutorily protected rights of others. You are not required to award punitive damages. Whether any one or all of these Defendants should be required to pay punitive damages, and if so what amount, is a matter for you to determine.

ANDREW GOLD'S COUNTERCLAIMS

**A. Claims under the Payment of Wages Act
(Defendant Andrew Gold's Counterclaim Counts I, IV)**

Andrew Gold asserts two claims against ShelaLara under the Payment of Wages Act. He claims:

- (1) that ShelaLara knowingly misclassified him as an "independent contractor";
- (2) that ShelaLara violated their obligation under the law to keep accurate wage and hour records of the rate of pay and hours that Andrew Gold worked.

(1) Misclassification

Andrew Gold has the burden to establish by a preponderance of the evidence that ShelaLara violated the law by knowingly classifying him as an “independent contractor” rather than classifying and paying him as an “employee.” The primary factor to be considered to determine if Andrew Gold was an “employee” is the extent or degree of control that ShelaLara had over Andrew Gold’s work. One of the means of ascertaining whether or not this right to control exists is the determination of whether or not, if instructions were given by ShelaLara, they would have to be obeyed or if he worked independently. You may consider whether Andrew Gold was subject to ShelaLara’s orders and control; whether ShelaLara had oversight and power to control Andrew Gold’s work; or whether Andrew Gold oversaw and controlled his own work. You may also consider whether ShelaLara had the right to end the service of Andrew Gold whenever they saw fit to do so.

If you find that ShelaLara had an ability to control Andrew Gold’s performance as is required for an employer-employee relationship, you must determine whether ShelaLara knowingly misclassified Andrew Gold as an independent contractor for wage payment.

(2) Record Keeping

Every employer shall make and keep the following employment records: the name, address, and occupation of each of his or her employees, the rate of pay, and the amount paid each pay period to each employee, the hours worked each day and each work week by the employee.

Andrew Gold claims that ShelaLara failed to keep wage and hour records of each his employment, rate of pay, and hours he worked. He must prove this by a preponderance of the evidence.

B. Computer Trespass
(Defendant Andrew Gold's Counterclaim Count VII)

Andrew Gold makes a claim of computer trespass against ShelaLara and Sheila Gold. In order to prove his claim, he must establish that ShelaLara and Sheila Gold unlawfully used his computer or telephone without authority.

A person is "without authority" when: (A) she has no right or permission of the owner to use a computer, or, she uses a computer in a manner exceeding his or her right or permission or (B) he or she uses an Internet service e-mail system offered by a Rhode Island based Internet service provider in contravention of the authority granted by or in violation of the policies set by the Internet service provider.

In order to find that Andrew Gold proved this claim, you must determine whether ShelaLara and/or Sheila Gold accessed Andrew Gold's cell phone and laptop: (1) without authority to do so; and (2) with the intent to temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.

If you find that Andrew Gold has proven both of these elements by a preponderance of the evidence, you must then determine whether and to what extent Andrew Gold was damaged by this conduct.

C. Access to Computer for Fraudulent Purposes
(Defendant Andrew Gold's Counterclaim Count VIII)

Andrew Gold claims that ShelaLara and Sheila Gold defrauded him into working at ShelaLara on February 20, 2014 and used police to confiscate and/or coerce Andrew Gold into surrendering his cell phone and laptop whereby his data was damaged, destroyed, altered, deleted, or removed. In order to prove his claim, he must show by a preponderance of the evidence that ShelaLara and/or Sheila Gold accessed his computer, computer system or computer network for the purpose of:

- (1) devising or executing any scheme or artifice to defraud;
- (2) obtaining money, property, or services by means of false or fraudulent pretenses, representations, or promises; or
- (3) damaging, destroying, altering, deleting, or removing any program or data contained in it in connection with any scheme or artifice to defraud.

In order to find that Andrew Gold proved this claim, you must determine whether ShelaLara and/or Sheila Gold accessed his computer and phone in order to damage destroy, alter, delete or remove data in connection with a scheme to defraud. Andrew Gold must establish that ShelaLara and/or Sheila Gold had the specific intent to deceive or cheat someone for personal financial gain or to cause financial loss to someone else. If such conduct is proven, then Andrew Gold must also show that he was harmed by the conduct of ShelaLara and/or Sheila Gold.

D. Self-Help Eviction
(Defendant Andrew Gold's Counterclaim Count IX)

Andrew Gold claims he was unlawfully evicted by his mother, Sheila Gold, from her home when she changed the locks and failed to provide him with a key. Under the law, a landlord may not take possession of a dwelling unit from her tenant locking him out except if the tenant abandons or surrenders the dwelling. In order to find in Andrew Gold's favor on this claim, he must be a tenant, his mother must be a landlord, and there must be a rental agreement. A "landlord" is defined as the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part. A "tenant" is defined as a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. "Rental agreement" means all agreements, written or oral, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

If you find that Andrew Gold was a tenant under a rental agreement with Sheila Gold as his landlord, you must then consider whether Sheila Gold wrongfully excluded Andrew Gold from her home and that he did not abandon or surrender the premises. "Abandonment" means the tenant has vacated the premises without notice to the landlord and has no intention of returning, as evidenced by nonpayment of rent for more than fifteen (15) days and removal of substantially all possessions from the premises. If Andrew Gold proves that his mother was his landlord, that she unlawfully removed or excluded him from the rental premises, and that he did not abandon the home on his own, you should find in favor of Mr. Gold.

E. Compensatory Damages

As to compensatory damages, I refer you to the damages instruction I read earlier as they apply equally to Andrew Gold's counterclaims for damages. Andrew Gold alleges that he has sustained damages as a result of Plaintiffs' unlawful conduct. Just as he has the burden of proving liability by a preponderance of the evidence, Andrew Gold must prove damages by a preponderance of the evidence.

Andrew Gold seeks to be compensated for the wage claims, unjust enrichment, computer trespass, and eviction claims against Plaintiffs Sheila Gold and/or ShelaLara resulting from those Plaintiffs' actions. If you find that ShelaLara misclassified Andrew Gold's employment and/or wrongfully accessed his computer and phone, you must consider whether and, if so, in what amount, he is entitled to recover money damages from ShelaLara on the actual harm its conduct caused. If you find that Sheila Gold wrongfully accessed his computer and phone and/or evicted him from her home, you must consider whether and, if so, in what amount, he is entitled to recover money damages from Sheila Gold on the actual harm its conduct caused. In thinking about the value of the harm, you may consider among other things, any unjust enrichment ShelaLara gained by failing to pay Andrew Gold in accordance with state law.

III. FINAL PROCEDURAL INSTRUCTIONS

Ladies and Gentleman, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, you must not allow prejudice,

sympathy, or compassion to influence you in the course of your deliberations. That does not mean that you should approach this case in an intellectual vacuum. You are not required to put aside your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; and it is your right and duty to consider the evidence in light of such experience and observations. But you must not allow prejudice, sympathy, or compassion to cloud your examination of the evidence or influence your determination of the facts.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You may not use any electronic device or media, such as a cell phone, a tablet, or a computer. You may not communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all eight of you are in agreement as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your convictions simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds

reasonably open with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. It is your right to maintain your convictions. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held convictions simply because a majority holds to the contrary.

I am designating juror #1, [REDACTED], as the Foreperson of this jury. [REDACTED] it will be your responsibility to organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but as soon as we do, it will be brought to the jury room.

You will also be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to the Court Security Officer in whose charge you will now be placed. The Court Security Officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not attempt to

communicate privately or in any other way with the Court or with anyone outside the jury room.