**7.3 Racketeer Influenced and Corrupt Organization Act (RICO) –**

**18 U.S.C. § 1962– Conduct the Affairs of the Enterprise**

[Name of plaintiff] asserts a claim against [name of defendant] for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. [Name of plaintiff] specifically claims that [name of defendant] violated § 1962 of RICO.

To succeed on this claim, [name of plaintiff] must prove each of the following five facts by a preponderance of the evidence:

First, you must find the existence of an enterprise.

Second, you must find that the enterprise engaged in, or had some effect on, interstate or foreign commerce.

Third, you must find that [name of defendant] was employed by or associated with the alleged enterprise.

Fourth, you must find that [name of defendant] participated, either directly or indirectly, in the conduct of the affairs of the enterprise.

And fifth, you must find that [name of defendant] participated through a pattern of racketeering activity.

Now I’ll provide you with some additional instructions to apply as you consider the facts that [name of plaintiff] must prove.

For the first element, [name of plaintiff] must prove the existence of an enterprise.

[Alternative #1: Individual or entity enterprise: An “enterprise” may consist of an individual, partnership, corporation, association, or other legal entity. In this case, the enterprise is alleged to be [identify enterprise].]

[Alternative #2: Association-in-fact enterprise: An “enterprise” doesn’t have to be a legal entity. It can be an association of persons or entities. In this case, the enterprise is alleged to be [identify enterprise]. 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.]

For the second element, [name of plaintiff] must prove that the enterprise engaged in or had an effect on interstate or foreign commerce. “Engage in or have an effect on interstate or foreign commerce” means that the enterprise either engaged in, or had an effect on commerce between two or more states, or on commerce between a state and a foreign country.

For the third element, [name of plaintiff] must prove that [name of defendant] was employed by or associated with the alleged enterprise. The requirement that [name of defendant] be “employed by or associated with” the enterprise means [he/she/it] must have some minimal association with the alleged enterprise. [Name of defendant] must know something about the alleged enterprise’s activities as they relate to the racketeering activities.

For the fourth element, [name of plaintiff] must also prove by a preponderance of the evidence that [name of defendant] “participated, directly or indirectly, in the conduct of the affairs of the enterprise.” To prove this, [name of plaintiff] must show that [name of defendant] actively conducted or participated in conducting the affairs of the alleged enterprise through a pattern of racketeering activity. [Name of defendant] doesn’t need to participate in, or be aware of, all of the enterprise’s activities. It’s sufficient if [name of defendant] conducted or participated in the conduct of some of the enterprise’s activities through a pattern of racketeering activity.

For the fifth element, [name of plaintiff] must prove that [name of defendant] participated in the conduct of the enterprise’s affairs through a pattern of racketeering activity.

“Racketeering activity” is an act that violates [the specific statute[s] alleged]. I’ll explain the law about [this statute/these statutes] to help you determine whether [name of plaintiff] proved by a preponderance of the evidence that [name of defendant] violated [this statute/these statutes]. An act of “racketeering activity” is also called a “predicate act.”

A “pattern of racketeering activity” means that [name of 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 doesn’t establish a pattern under RICO.

To prove a pattern of predicate acts, [name of plaintiff] must show that the acts were related to one another and to the enterprise. Two or more acts of racketeering activity that aren’t related don’t 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 aren’t 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 [type of alleged predicate act (e.g., wire fraud)] and one act of [another type of alleged predicate act (e.g., interstate transportation of stolen property)].

To make up a pattern of racketeering activity, predicate acts must 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 doesn’t 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 statute[s] at issue]. But you can’t consider just any racketeering act [name of defendant] allegedly committed in violation of one of these statutes as bearing on whether [name of 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 [name of plaintiff] alleges against [name of defendant.]] And you can’t find that [name of 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.

So it’s insufficient if you don’t all agree to the finding of what two or more predicate acts [name of defendant] committed. Some of you can’t find that the predicate acts are A, B, and C and the rest of you find that the predicate acts are X, Y, and B. Put another way, you can’t find that [name of defendant] has engaged in a pattern of racketeering activity unless you find a “pattern” of predicate acts, and that [name of plaintiff] has proved by a preponderance of the evidence that [name of defendant] committed each of the two or more predicate acts that you find make up that pattern.

A person doesn’t violate RICO just by associating with or being employed by an otherwise lawful enterprise if others conduct the enterprise’s affairs through a pattern of racketeering activity in which the person isn’t personally engaged.

If you find that [name of defendant] violated § 1962, you must decide whether that violation caused an injury to [name of plaintiff]. The damages that [name of plaintiff] may recover are those caused by the predicate acts constituting the pattern of racketeering activity if they injure [name of plaintiff] or [his/her/its] business or property. It isn’t necessary that every predicate act caused damage to [name of plaintiff]. But [he/she/it] can only recover damages caused by predicate acts that are part of the pattern of racketeering activity.