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

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

[Name of plaintiff] has brought 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 RICO § 1962 by conspiring to violate RICO § 1962. I’ve already given you instructions on the elements of a violation of § 1962. Now you must decide if [name of plaintiff] has proved by a preponderance of the evidence whether two or more of the defendants engaged in a conspiracy to violate RICO § 1962.

Generally, a RICO “conspiracy” is an agreement by two or more people to commit an unlawful act. Put another way, it’s a kind of partnership for illegal purposes. Every member of the conspiracy becomes the agent or partner of every other member. [Name of plaintiff] doesn’t have to prove that all the people named in the complaint were members of the conspiracy – or that those who were members made any kind of formal agreement. The heart of the conspiracy is the making of the unlawful plan itself. And [name of plaintiff] doesn’t have to prove that the conspirators were successful in carrying out the plan.

To prove a RICO conspiracy, [name of plaintiff] must prove each of the following three facts by a preponderance of evidence:

First, you must find that two or more people agreed to try to accomplish an unlawful plan to engage in a pattern of racketeering activity.

And second, you must find that a defendant agreed to the overall objective of the conspiracy.

Or, as an alternative to the second element, you must find that a defendant agreed with at least one other defendant to commit two predicate acts as part of the conspiracy.

[Name of plaintiff] may show an “agreement to the overall objective of the conspiracy” by circumstantial evidence that a defendant must have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity. If [name of plaintiff] proves agreement on an overall objective, then it isn’t necessary that a defendant agree to personally commit two predicate acts.

A defendant can also engage in a RICO conspiracy even if [name of defendant] didn’t agree to the conspiracy’s overall objective. It’s enough that [name of defendant] engaged in a part of the conspiracy with at least one other defendant by committing at least two predicate acts – alone or with someone else.

While the essence of a RICO conspiracy is an agreement to further an endeavor that, if completed, would satisfy all the elements of a substantive RICO violation, [name of plaintiff] doesn’t have to offer direct evidence of an agreement. The conspiracy’s existence can be inferred from the participants’ conduct. But a defendant must objectively manifest, through words or actions, [name of defendant]’s agreement to participate in the enterprise’s affairs.

[Name of plaintiff] doesn’t have to show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly stated the details of the scheme, its object, or purpose, or the precise means by which the object or purpose was to be accomplished. [Name of plaintiff] also doesn’t have to establish that all the means or methods alleged to carry out the alleged conspiracy were, in fact, agreed on, or that all the means or methods that were agreed on were actually used or put into operation. And [name of plaintiff] doesn’t have to prove that all persons alleged to be conspiracy members were actually members or that alleged conspirators succeeded in accomplishing their unlawful objectives.

But it isn’t enough if the evidence shows only that the alleged conspirators agreed to commit the acts of racketeering [name of plaintiff] alleges, without more, or that they agreed to participate in the affairs of the same alleged enterprise. It doesn’t matter that the alleged conspirators participated in the conduct of the affairs of the alleged enterprise through different or dissimilar acts of racketeering activity so long as the alleged racketeering acts would – if actually committed – create a “pattern of racketeering activity” as I’ve defined it.

A defendant can become a member of a conspiracy without knowing all the unlawful scheme’s details or without knowing the names and identities of all the other alleged conspirators. If [name of plaintiff] proves by a preponderance of the evidence that a particular defendant has knowingly joined the alleged conspiracy, it doesn’t matter that [name of defendant] may not have participated in the alleged conspiracy or scheme’s earlier stages.

Mere presence at the scene of some transaction or event, or mere similarity of conduct among various persons and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, doesn’t necessarily prove the existence of a conspiracy. A person who doesn’t have knowledge of a conspiracy, but who happens to act in a way that advances some object or purpose of conspiracy, doesn’t become a conspirator.

[Name of plaintiff] doesn’t have to prove that a defendant actually committed any of the acts that [name of defendant] may have agreed to commit to establish [his/her] membership in the conspiracy.

To determine whether there was a conspiracy, you must consider all the evidence in the case. If you find that there was a conspiracy, then you can attribute the statements or acts of the [names of co-conspirators] to [name of defendant]. If you find that there was not a conspiracy, then you can’t attribute the statements or acts of [names of co-conspirators] to [name of defendant].

If you find the conspiracy didn’t exist, then you must find for [name of defendant]. But if you’re satisfied that the conspiracy existed, you must determine who the members of the conspiracy were.

If you find that a particular defendant is a member of another conspiracy, but not the one [name of plaintiff] charged, then you can’t find that defendant liable in this case. Put another way, you can’t find that a defendant violated § 1962 unless you find that [name of defendant] was a member of the conspiracy charged – not some other separate conspiracy.

If you decide that a defendant conspired to violate RICO, you must decide whether that conspiracy caused [name of plaintiff] injury. The damages [name of plaintiff] may recover are those caused by the predicate acts committed by members of the conspiracy that injured [name of plaintiff] in [his/her/its] business or property.

If you conclude that a defendant joined in a conspiracy to violate RICO, [name of defendant] is responsible for all damages caused by predicate acts committed by members of the conspiracy that caused injury to [name of plaintiff]. It isn’t necessary that every predicate act caused damage to [name of plaintiff], but [he/she/it] can only recover for damages caused by a predicate act committed by a conspiracy member.

In your consideration of this conspiracy claim, you should first determine whether the alleged conspiracy existed. If you conclude that a conspiracy existed as alleged, you should next determine whether each defendant under consideration willfully became a member of that conspiracy.