

14-0475\juryinst

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

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	*	
JEFF & JULI RADCLIFF	*	NO. LACV112343
& RADCLIFF ENTERPRISES,	*	
LLC.,	*	
	*	
Plaintiffs,	*	
	*	PLAINTIFFS PROPOSED
v.	*	JURY INSTRUCTIONS
	*	
CHRISTINE L. COASH &	*	
VITACORE, INC.,	*	
	*	
Defendants.	*	
	*	
	* * * * *	

The undersigned submits the attached Requested Jury Instructions in the above-entitled matter.

/s/ Brett Ryan

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served this date upon all parties to the above cause to each of the attorneys of record designated below via electronic filing:

Jordan Glaser
233 Pearl Street, PO Box 1078
Council Bluffs, IA 51502

Adam Prochaska
800 Lincoln Square, 121 S. 13th St.
PO Box 82028
Lincoln, NE 68501-2028
ATTORNEYS FOR DEFENDANTS

/s/ Tammy S. Pomernackas

SIGNATURE

NO. _____

Members of the jury: in this case, plaintiffs, Jeff and Juli Radcliff and Radcliff Enterprises, LLC, claim that they had either a contractual relationship or a prospective business relationship with Jenny Craig, Inc., and that the defendants, Christine Coash and VitaCore, Inc. unlawfully interfered with that contractual or prospective business relationship by contacting Jenny Craig and causing the plaintiffs to not obtain a Jenny Craig franchise agreement for the Council Bluffs, Iowa territory.

Do not consider this summary of proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

AUTHORITY

Iowa Civil Jury Instruction 100.1

NO. _____

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

AUTHORITY

Iowa Civil Jury Instruction 100.2

NO. _____

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

AUTHORITY

Iowa Civil Jury Instruction 100.3

NO. _____

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

Testimony in person or by deposition.

Exhibits received by the court.

Stipulations which are agreements between the attorneys.

Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

AUTHORITY

Iowa Civil Jury Instruction 100.4

NO. _____

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

AUTHORITY

Iowa Civil Jury Instruction 100.5

NO. _____

During this trial, you have heard the word ‘interrogatory’. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

AUTHORITY

Iowa Civil Jury Instruction 100.6

NO. _____

The parties served upon one another written requests for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the either party or which either party failed to deny.

AUTHORITY

Iowa Civil Jury Instruction 100.7

NO. _____

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

AUTHORITY

Iowa Civil Jury Instruction 100.9

NO. _____

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

AUTHORITY

Iowa Civil Jury Instruction 100.11

NO. _____

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

AUTHORITY

Iowa Civil Jury Instruction 100.12

NO. _____

You have heard evidence claiming both plaintiffs and defendants made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if that individual had made it under oath during the trial.

If you find such a statement was made and was inconsistent with that individual's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that individual's testimony during the trial but you are not required to do so. You should not disregard that individual's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

AUTHORITY

Iowa Civil Jury Instruction 100.13

NO. _____

You have heard evidence **claiming [name of witness]** made statements before this trial while under oath which were inconsistent with what [name of witness] said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe [name of non-party witness]. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

AUTHORITY

NO. _____

You have heard evidence claiming [name of party] made statements before this trial [while under oath] [and] [while not under oath].

If you find such a statement was made, you may regard the statement as evidence in this case the same as if [name of party] had made it under oath during the trial.

If you find such a statement was made and was inconsistent with [name of party]'s testimony during the trial you may also use the statement as a basis for disregarding all or any part of [name of party]'s testimony during the trial but you are not required to do so. You should not disregard [name of party]'s testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

AUTHORITY

Iowa Civil Jury Instruction 100.15

NO. _____

You have heard evidence claiming the witness has a [reputation] [character trait] for not telling the truth. You may use that evidence only to help you decide whether to believe the witness and how much weight to give [his] [her] testimony.

AUTHORITY

Iowa Civil Jury Instruction 100.16

NO. _____

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

AUTHORITY

NO. _____

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and a trust, whether large or small, is entitled to the same fair and conscientious consideration by you as any other person.

AUTHORITY

Iowa Civil Jury Instruction 100.20

NO. _____

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

AUTHORITY

Iowa Civil Jury Instruction 200.38

NO. _____

In order to succeed on a claim of intentional interference with a prospective business relationship, the Plaintiff must prove all of the following propositions:

1. The plaintiff had a prospective business relationship with Jenny Craig, Inc.
2. The defendant knew of the prospective relationship.
3. The defendant intentionally and improperly interfered with the prospective business relationship by contacting Jenny Craig, Inc. and causing them to revoke their approval for the plaintiffs to operate a Jenny Craig co-branded franchise in the Council Bluffs, Iowa territory.
4. a. The interference caused Jenny Craig, Inc. not to enter the relationship; or
b. The interference prevented the plaintiff from entering the relationship.
5. The nature and amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

AUTHORITY

Iowa Civil Jury Instruction 1200.2

NO. _____

"Prospective business relationship" means a there was a reasonably likely business relationship that would have been to a financial benefit to the plaintiff.

AUTHORITY

Iowa Civil Jury Instruction 1200.7

NO. _____

The defendant “knew” of the potential business relationship if the defendant either had actual knowledge of the potential business relationship or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the potential business relationship between the plaintiffs and Jenny Craig, Inc.

AUTHORITY

Iowa Civil Jury Instruction 1200.4

NO. _____

A defendant's interference with a prospective business relationship is intentional if the defendant either interferes with the prospective business relationship on purpose or knows the conduct is substantially certain to interfere with the prospective business relationship.

AUTHORITY

Iowa Civil Jury Instruction 1200.6

NO. _____

A defendant's interference with a prospective business relationship is improper if the defendant's interference is done with the predominant purpose of financially harming or destroying the plaintiff's business.

AUTHORITY

Iowa Civil Jury Instruction 1200.8

NO. _____

In order to succeed on a claim of interference with a contractual relationship, the Plaintiff must prove all of the following propositions:

1. The plaintiff has a contractual relationship with Jenny Craig, Inc..
2. The defendant knew of the prospective relationship.
3. The defendant intentionally and improperly interfered with the relationship by contacting Jenny Craig, Inc. and causing them to revoke their approval for the plaintiffs to operate a Jenny Craig co-branded franchise in the Council Bluffs, Iowa territory.
4. The nature and amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

AUTHORITY

Iowa Civil Jury Instruction 1200.2

NO. _____

A contract is an agreement between two or more persons to do or not to do something.

AUTHORITY

Iowa Civil Jury Instruction 1200.3

NO. _____

The defendant “knew” of the contract if the defendant either had actual knowledge of the contract or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contract between Jeff and Juli Radcliff and Radcliff Enterprises, LLC and Jennie Craig, Inc.

AUTHORITY

Iowa Civil Jury Instruction 1200.4

NO. _____

In determining whether a defendant's conduct in intentionally interfering with a contract is improper you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. The defendant's motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by the defendant.
5. The social interests in protecting the freedom of action of the defendant and the contractual interests of the other party.
6. The nearness or remoteness of the defendant's conduct to the interference.
7. The relations between the parties.

AUTHORITY

Iowa Civil Jury Instruction 1200.5

NO. _____

A defendant's interference with a contract is intentional if the defendant either interferes with the contract on purpose or knows the conduct is substantially certain to interfere with the contract.

AUTHORITY

Iowa Civil Jury Instruction 1200.6

NO. _____

Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct. *If applicable, add:* Although you may consider harm to others in determining the nature of defendant's conduct, you may not award punitive damages to punish the defendant for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by the defendant that is not similar to the conduct which caused the harm to the plaintiff in this case.

AUTHORITY

Iowa Civil Jury Instruction 210.1

NO. _____

VitaCore, Inc. is liable for punitive damages by reason of the acts of an employee or agent if one of the following occurred:

1. VitaCore, Inc. authorized the act and the way it was done; or
2. The employee or agent was acting in a managerial capacity and was acting in the scope of employment; or
3. VitaCore, Inc. ratified or approved the act.

AUTHORITY

Iowa Civil Jury Instruction 210.3

NO. _____

Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

AUTHORITY

Iowa Civil Jury Instruction 100.19

NO. _____

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

AUTHORITY

Iowa Civil Jury Instruction 210.4

NO. _____

I am giving you _____ verdict forms and special Interrogatories. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and Interrogatories must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict and Interrogatories must be signed by all seven jurors who agree.

When you have agreed upon the verdict and Interrogatories and appropriately signed it, tell the Court Attendant.

AUTHORITY

SPECIAL INTERROGATORIES

NO. _____

Question No. 1. Do you find that the plaintiffs, Jim and Juli Radcliff or Radcliff Enterprises, LLC, had a prospective business relationship with Jenny Craig, Inc.?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 1 is "No" do not answer any further Questions. If your answer is "Yes" proceed to the next Question]

Question No. 2: Do you find that the defendants, Christine Coash and VitaCore, Inc., knew of plaintiff's, prospective business relationship with Jenny Craig, Inc?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 2 is "No" do not answer any further Questions. If your answer is "Yes" proceed to the next Question]

Question No. 3: Do you find that the defendants, Christine Coash and VitaCore, Inc., intentionally and improperly interfered with the prospective business relationship between the plaintiffs and Jenny Craig, Inc. by contacting Jenny Craig, Inc. and causing them to revoke their approval for the plaintiffs to operate a Jenny Craig co-branded franchise in the Council Bluffs, Iowa territory?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 3 is "No" do not answer any further Questions. If your answer is "Yes" proceed to the next Question]

Question No. 4: What amount of damages, if any, do you award?

ANSWER:

Please proceed to the next Instruction.

Question No. 5: Do you find that the defendants, Christine Coash and VitaCore, Inc.'s actions were done with a willful and wanton disregard for the rights of Jim and Juli Radcliff or Radcliff Enterprises, LLC ?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 5 is "No" do not answer any further Questions. If your answer is "Yes" proceed to the next Question]

Question No. 6: What amount of punitive damages, if any, do you award?

ANSWER: