U.S. DISTRICT COURT
DISTRICT OF VERMONT
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

MICHAEL CARROLL and JENNA CARROLL,	:	
Plaintiffs,	:	
v.	:	File No. 1:08-CV-138
TROPICAL AQUACULTURE PRODUCTS, INC. and JOHN SCHRAMM,	:	
Defendants.	:	

CHARGE TO THE JURY

Now that you have heard the evidence and arguments, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and not question it, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole.

The lawyers may have referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by the lawyers and the law stated by me in these instructions, you are to follow my instructions.

Nothing I say in these instructions is an indication that I have any opinion about the facts of the case. It is not my function to determine the facts, but rather it is yours.

You must perform your duties as jurors without bias or prejudice as to any party. You are not to be governed by sympathy, prejudice, or public opinion.

All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Corporations

The law makes no distinction between corporations and private individuals, nor does it distinguish between the size or type of business in which a corporation engages. All persons, including corporations, stand equal before the law, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

Evidence in the Case

Statements and arguments of counsel are not evidence in the case. However, when the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, and all facts which may have been admitted or stipulated.

Any evidence to which an objection was sustained by me, and any evidence ordered stricken by me, must be disregarded.

Evidence -- Direct, Indirect, or Circumstantial

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

There is no distinction between direct or circumstantial evidence. You may find the facts by a preponderance of all the evidence in the case, both direct and circumstantial.

Evidence -- Charts and Summaries

Charts and summaries have been used to help explain the facts disclosed by the books, records and other documents which are in evidence. Such charts or summaries are not evidence or proof of any facts. They are used only used as a matter of convenience. If you find the charts or summaries do not accurately reflect the facts or figures shown by the evidence in this case, you should disregard them entirely.

Credibility of Witnesses -- Discrepancies in Testimony

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, by the manner in which the witness testifies, by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is believable. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness' ability to observe the matters to which the witness testifies, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, any bias or prejudice, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit their testimony. Two or more persons witnessing an incident or a transaction may see or hear

it differently, which is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

You may give the testimony of each witness such weight, if any, as you think it deserves, and accept or reject the testimony in whole or in part.

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You may find that the testimony of a small number of witnesses is more credible than the testimony of a larger number of witnesses to the contrary.

Deposition Testimony

Some of the testimony before you is in the form of a videotaped deposition which has been received into evidence. A deposition is simply a procedure where the attorneys for one side may question a witness or adversary party under oath before a court stenographer prior to trial. You may consider the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a live witness at trial.

Verdict -- Unanimous -- Duty to Deliberate

The verdict must represent the considered judgment of each juror. To return a verdict, all jurors must agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of other jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Instructions of Law

Now I will give you instructions concerning the law that applies to this case. You must follow the law as stated in these instructions. You must then apply these rules of law to the facts you find from the evidence.

You are to determine the facts in this case. By these instructions, I do not intend to indicate in any way how you should decide any question of fact.

Burden of Proof and Preponderance of the Evidence

The plaintiffs must prove every element of their claims by a preponderance of the evidence. To prove "by a preponderance of the evidence" means to prove that something is more likely so than not so.

Stated another way, a preponderance of the evidence means the greater weight of the evidence. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a fact, claim has been proven by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called them, all the relevant exhibits received in evidence, regardless of who may have produced them, and any stipulations the parties may have entered into.

Overview of the Claims in this Case

Plaintiff Michael Carroll claims defendants Tropical Aquaculture Products, Inc. -- Mr. Carroll's former employer -- and John Schramm -- president of Tropical -- violated the Vermont Parental and Family Medical Leave Act by discharging him for reasons related to medical leave he took in January 2008 for Jenna Carroll's medical condition. Defendants assert Mr. Carroll was not discharged but rather he quit his employment so he could return to Boston.

Mr. Carroll also asserts a claim for intentional infliction of emotional distress against Mr. Schramm for abuse and harassment he claims he endured at the end of his employment with Tropical. Mr. Schramm denies this claim, and in particular, denies he abused or harassed Mr. Carroll.

Plaintiff Jenna Carroll -- Mr. Carroll's wife -- asserts a claim for loss of spousal consortium against Mr. Schramm [redacted]. Ms. Carroll alleges Mr. Carroll was not able to provide her with companionship, society, comfort, or solace during the in-vitro fertilization process in January 2008 and for a period of time thereafter because of Mr. Schramm's [redacted] abusive conduct toward Mr. Carroll. Defendants deny liability with respect to this claim.

Vermont Parental and Family Leave Act

The Vermont Parental and Family Leave Act (VPFLA) entitles an eligible employee to take up to twelve weeks of unpaid leave. If leave is given, at the conclusion of the leave, the employee must be reinstated to the same or comparable position held prior to the leave.

With respect to Mr. Carroll's claim alleging violation of the VPFLA, the parties have entered into a number of stipulations. As I said earlier, you must, unless otherwise instructed, accept the stipulation and regard that fact as proved. The parties have stipulated the following:

1. Tropical was an employer that is subject to the requirements of the VPFLA.
2. Ms. Carroll had a serious illness as that term is defined in the VPFLA.
3. Mr. Carroll was an employee entitled to take up to twelve weeks of unpaid leave under the VPFLA.
4. Mr. Carroll gave appropriate notice of his need for leave under the VPFLA.

For Mr. Carroll to prevail on his Vermont Parental and Family Leave Act claim, he must establish three elements: (1) Tropical denied him leave under the VPFLA; (2) prior to requesting family medical leave, he had not been given notice

that his employment would end; and (3) he was discharged for reasons related to his request for family medical leave.

Intentional Infliction of Emotional Distress

Mr. Carroll has also asserted a claim for intentional infliction of emotional distress (IIED) against Mr. Schramm. To prevail on this claim, Mr. Carroll must establish the following four elements by a preponderance of the evidence: (1) Mr. Schramm's conduct was extreme and outrageous in the manner or method of discharge; (2) Mr. Schramm acted intentionally or with reckless disregard of the probability of causing emotional distress; (3) Mr. Carroll suffered extreme emotional distress; and (4) Mr. Carroll's extreme emotional distress was actually or proximately caused by Mr. Schramm's extreme and outrageous conduct. The burden on an employee who raises a claim of IIED is a heavy one. In determining whether Mr. Carroll has established a claim for IIED, you are instructed to consider only the events of the final days of his employment with Tropical.

For conduct to be "outrageous," it must be not merely bad or hurtful but so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized community. Termination of employment alone cannot be considered outrageous. Mere insults, indignities, threats, annoyances, petty oppressions, or other trivialties are not outrageous. It is not enough for Mr. Carroll to show that he suffered a series of indignities or unpleasant actions at the hands of his employer.

He must demonstrate by a preponderance of the evidence that he experienced at least one particular incident of behavior that went beyond the vast realm of unpleasant and often stressful conduct in the workplace. Mr. Carroll does not meet his burden of proving outrageousness by combining a series of incidents that are themselves insignificant. Rather, there must be at least one single incident during the time surrounding the termination of his employment that showed circumstances of oppressive conduct and abuse of a position of authority. Lastly, conduct may be considered outrageous if the employer knows the employee is peculiarly susceptible to emotional distress and the employer proceeds in the face of that knowledge. However, you should judge the outrageousness by Mr. Schramm's actions, not by his intent.

With respect to the second element, conduct which does not rise to the level of being intentional may still satisfy the element if it is done with reckless disregard of causing emotional distress. "Reckless" means the intentional disregard of the consequences of one's actions: the actor does not intend the consequences directly, but he or she consciously does not consider the probable outcome.

Extreme emotional distress is more than being upset or distressed; the distress must be severe. Emotional distress includes all highly unpleasant mental reactions, such as fright,

horror, grief, shame, humiliation, embarrassment, anger, disappointment, worry, and nausea. While some of Mr. Carroll's reactions may have physical components, I instruct you that he is not required to show that he suffered any physical injury. There may be no recovery, however, if you do not find Mr. Carroll's emotional distress to be extreme. The test is objective: You must decide whether a reasonable person in Mr. Carroll's position would be expected to endure the conduct without extreme emotional distress.

Finally, the last element Mr. Carroll must establish is causation. Proximate cause is shown if you can find by a preponderance of the evidence that the extreme emotional distress was either a direct result or a reasonably probable consequence of the conduct complained of.

I further instruct you that the intentional infliction of emotional distress claim is separate from and independent of Mr. Carroll's Vermont Parental and Family Leave Act claim. Even if you find Defendants violated the VPFLA, violation of that Act alone is insufficient to support a claim for IIED. Unlawful discrimination in itself does not constitute IIED unless you find that it meets the requirements of outrageousness and atrociousness and that the discrimination occurred during the period Mr. Carroll's employment with Tropical was ending.

If you find that Mr. Carroll has established each of the four elements of his intentional infliction of emotional distress claim by a preponderance of the evidence, you should find for him on this claim.

Loss of Spousal Consortium

Ms. Carroll has asserted a loss of spousal consortium claim against Mr. Schramm, [redacted]. Spousal consortium is defined as the love, companionship, affection, society, comfort, services, or solace that is given by one spouse to another. This claim is designed to compensate a spouse for the injury to the marital relationship and to the interest of the injured party's spouse in the continuance of a happy and healthy marital life.

Ms. Carroll alleges her marital life was intentionally interfered with by Defendant[redacted] and that she was deprived of Mr. Carroll's comfort, companionship, and solace at and after the time of the in-vitro fertilization in January 2008 because of the emotional trauma that Mr. Carroll was suffering as a result of Mr. Schramm's actions.

Ms. Carroll's claim is derivative of Mr. Carroll's claim for intentional infliction of emotional distress (IIED). In other words, her claim is dependent on the success of Mr. Carroll's IIED claim. If you find Mr. Carroll has not proven his IIED claim, then you should not consider Ms. Carroll's claim. If you find, however, that Mr. Carroll has proven his IIED claim, then you may consider Ms. Carroll's derivative claim for loss of spousal consortium.

To prevail on her claim, Ms. Carroll must establish the following three elements by a preponderance of the evidence:

(1) Mr. Carroll has proven his claim of IIED; (2) Ms. Carroll has suffered a loss of consortium; and (3) Mr. Schramm's or Tropical's actions were the controlling cause of the loss of consortium. If you find these elements are satisfied, you should find for Ms. Carroll on her claim for loss of consortium and go on to consider the issue of damages.

Effect of Instructions as to Damages

I will instruct you as to the proper measure of damages, but you should not consider this instruction as an indication of whether you should award damages. The instructions are given only for your guidance. If you decide in favor of Tropical and Mr. Schramm, you will not consider the instructions that I will give you on the issue of Plaintiffs' damages. If you decide for Mr. and Ms. Carroll, you must consider the issue of damages.

Damages -- Vermont Parental and Family Leave Act

If you find that Mr. Carroll has proven his VPFLA claim by a preponderance of the evidence, you must consider the issue of damages. Mr. Carroll's economic damages have two distinct components: (1) the lost back pay he would have earned if he had not been discharged; and (2)the lost future pay he would have earned if he had not been discharged. The second kind of damages is often called "front pay," as opposed to the first kind, which is "back pay." As with other elements of his claim, Mr. Carroll must prove his economic damages by a preponderance of the evidence.

Back pay is the wages Mr. Carroll would have earned from Tropical from the time he was discharged by Tropical through the date of judgment. Front pay is the wages Mr. Carroll would have earned from Tropical in a period not to exceed one year from the day after the date of judgment. Back pay is calculated from the day after discharge through the date of judgment and front pay is calculated from the day after judgment and up to a period of one year.

Damages -- Intentional Infliction of Emotional Distress

If you find that Mr. Carroll has proven his IIED claim by a preponderance of the evidence, you must consider the issue of damages. You are instructed to consider only the events of the final days of Mr. Carroll's employment with Tropical. You may award damages for any harm you find Mr. Schramm's actions caused. Mr. Carroll must prove his damages by a preponderance of the evidence. Those damages may include compensation for any bodily harm, mental anguish, or loss of enjoyment of life experienced in the past, or probably to be experienced in the future. There is no particular formula to calculate this kind of compensation. You should make sure that any amount awarded to Mr. Carroll is fair to the parties in this case in light of the evidence you heard.

Damages -- Loss of Spousal Consortium

If you find Ms. Carroll has proven her loss of spousal consortium claim by a preponderance of the evidence, you must consider the issue of damages. You may award compensation for consortium losses suffered by her. As with the other elements of her claim, Ms. Carroll must prove her damages by a preponderance of the evidence. There is also no particular formula to calculate this kind of compensation. You should make sure that any amount awarded to Ms. Carroll is fair to the parties in this case in light of the evidence you heard.

Election of a Foreperson

I will select _____ to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience. You will take this form to the jury room. I direct your attention to the verdict form.

The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided for each question and, when completed, will date and sign the verdict.

Conclusion

To return a verdict, all jurors must agree to the verdict. In other words, your verdict must be unanimous.

Upon retiring to the jury room your foreperson will preside over your deliberations and be your spokesperson here in Court.

When you have reached a unanimous verdict, your foreperson should sign and date the verdict form.

If, during your deliberations, you should desire to communicate with me, please reduce your message or question to writing, signed by the foreperson, and pass the note to the court security officer. The officer will then bring the message to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I may address your question orally. I caution you, with regard to any message or question you might send, that you should never specify where you are in your deliberations or your numerical division, if any, at the time.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

MICHAEL CARROLL and JENNA CARROLL,	:	
Plaintiffs,	:	
v.	:	File No. 1:08-CV-244
TROPICAL AQUACULTURE PRODUCTS, INC. and JOHN SCHRAMM,	:	
Defendants.	:	

VERDICT FORM

1. Do you find Michael Carroll has proven by a preponderance of the evidence that Defendants discharged him from his employment at Tropical Aquaculture Products, Inc.?

_____ yes _____ no

If your answer to question 1 is "no," then your verdict is for Defendants on all of Plaintiffs' claims and your deliberations are complete.

If your answer to question 1 is "yes," then proceed to question 2.

2. Do you find Michael Carroll has proven by a preponderance of the evidence that Defendants discharged him from his employment at Tropical Aquaculture Products, Inc. for reasons related to his request for family medical leave?

_____ yes _____ no

If your answer to question 2 is "no," then your verdict is for Defendants regarding Mr. Carroll's VPFLA claim, and you should proceed to question 4.

If your answer to question 2 is "yes," then proceed to question 3.

3. State the amount of money you believe Michael Carroll is entitled to recover as a result of Defendants' violation of the Vermont Parental and Family Leave Act:

Back Pay $_____

Front Pay $_____

Proceed to question 4.

4. Do you find Michael Carroll has proven by a preponderance of the evidence that John Schramm is liable to him for intentional infliction of emotional distress (IIED)?

_____ yes _____ no

If your answer to question 4 is "no," then your verdict is for Defendant John Schramm regarding Mr. Carroll's IIED claim, and your deliberations are completed.

If your answer to question 4 is "yes," then proceed to question 5.

5. State the amount of money you believe Michael Carroll is entitled to recover with respect to his claim for intentional infliction of emotional distress:

Damages $_____

Proceed to question 6.

6. Do you find Jenna Carroll has proven by a preponderance of the evidence that Defendant~~r~~ ~~are~~ IS liable to her for loss of spousal consortium?

_____ yes _____ no

If your answer to question 6 is "no," then your verdict is for Defendants regarding Ms. Carroll's loss of spousal consortium claim, and your deliberations are completed.

If your answer to question 6 is "yes," then proceed to question 7.

7. State the amount of money you believe Jenna Carroll is entitled to recover with respect to her claim for loss of spousal consortium:

Damages $_____

Your deliberations are completed.

_____
Foreperson

_____
Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

MICHAEL CARROLL and JENNA CARROLL,	:	
Plaintiffs,	:	
v.	:	File No. 1:08-CV-244
TROPICAL AQUACULTURE PRODUCTS, INC. and JOHN SCHRAMM,	:	
Defendants.	:	

Judge Murtha, we have reached a verdict.

_____
Foreperson

_____
Date