

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

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MANSFIELD HELIFLIGHT, INC., )

Plaintiff, )

v. )

Case No. 2:16-cv-28

FREESTREAM AIRCRAFT USA, LTD., )

Defendant. )

**JURY CHARGE**

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence presented during the trial.

The lawyers may have referred to some of the rules of law in their arguments. If any difference appears between the law as stated by the lawyers and the law as stated by the court in these instructions, you must follow the court's instructions.

Our judicial system requires you to carefully and impartially consider all of the evidence, follow the law, and reach a just verdict, regardless of the consequences.

**JURORS AS FINDERS OF FACT/RULINGS OF THE COURT**

You and you alone are the triers of the facts. Each of you, as jurors, must determine the facts for yourselves in reaching a verdict. By the rulings which I made

during the course of the trial, I did not intend to indicate to you or to express my own views about this case.

### **SYMPATHY/PREJUDICE**

Neither sympathy nor prejudice, for or against the parties, or any other person involved with this case, should influence you in any manner in reaching your verdict. Your deliberations should be well-reasoned and impartial.

### **CORPORATIONS**

As you know, Plaintiff Mansfield Heliflight, Inc. ("Mansfield") and Defendant Freestream Aircraft USA, Ltd. ("Freestream") are corporations. You should consider this case, however, as an action between persons. A corporation is entitled to the same treatment as a private individual. All persons, including corporations, stand equal before the law.

### **IMPORTANT CASE**

This is an important case to the parties and the court. You should give it serious and fair consideration.

### **ARGUMENTS/STATEMENTS/OBJECTIONS OF THE ATTORNEYS**

The opening statements and closing arguments of the attorneys, their questions and objections, and all other statements that they made during the course of the trial are not evidence. The attorneys have a duty to object to evidence that they believe is not admissible. You may not hold it against either side if any attorney feels it is necessary to make an objection.

### **NUMBER OF WITNESSES**

The fact that one side may have called more witnesses than the other side is of no significance. Your task is to evaluate the credibility of the witnesses and to weigh all of the evidence.

### **EVIDENCE IN THE CASE**

The evidence in this case consists of the sworn testimony of the witnesses and the exhibits admitted into evidence, regardless of which party presented the evidence. Any evidence to which an objection was sustained or stricken by the court must be disregarded.



### **EVIDENCE – DIRECT OR CIRCUMSTANTIAL**

There are two types of evidence from which you may find the facts of this case: direct and circumstantial evidence. Direct evidence is the testimony of someone who asserts actual knowledge of a fact, such as an eyewitness or the exhibits in the trial. Circumstantial evidence is proof of a chain of facts and circumstances tending to prove or disprove an issue in the case.

For example, if a witness were to testify that he or she had seen cows in a field, that would be an example of direct evidence that there were cows in a field. On the other hand, if a witness were to testify that he or she had seen fresh cow tracks in the field, that would be an example of circumstantial evidence that there had been cows in the field.

The law does not require a party to prove its claims or defenses by direct evidence alone, that is, by testimony of an eyewitness. One or more of the essential elements, or all of the essential elements, may be established by reasonable inference from other facts that are established by direct testimony. Circumstantial evidence may alone be sufficient to prove a claim or defense.

The law makes no distinction between the weight to be given to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should consider all the evidence in the case and give it such weight as you think it deserves.

### **CREDIBILITY OF WITNESSES**

You are the sole judges of the credibility of the witnesses, and the weight to give their testimony is up to you. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe; his or her demeanor while testifying; any interest or bias he or she may have; and the reasonableness of his or her testimony, considered in light of all of the evidence in the case. 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 a witness's testimony. Two or more persons witnessing an incident or transaction may see or hear it differently. It is your duty to reconcile conflicting testimony if you can do so. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or to an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest may create a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it only with great care. This is not to suggest that any witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

You may give the testimony of each witness such weight, if any, you think it deserves. You may believe all of the testimony of any witness, you may believe it in part and disbelieve it in part, or you may reject it altogether. You do not have to accept the testimony of any witness, even if it is uncontradicted. It is for you to say what you will believe and what you will disbelieve.

#### **PRIOR INCONSISTENT STATEMENTS**

You may find that a witness has made statements outside of this trial that are inconsistent with the statements that the witness gave here. You may consider the out-of-court statements not made under oath only to determine the credibility of the witness and not as evidence of any facts contained in the statements. As to out-of-court statements that were made under oath, such as statements made in prior testimony, you may consider them for all purposes, including for the truth of the facts contained therein.



### **SPECIALIZED KNOWLEDGE AND EXPERIENCE OF JURORS**

In deliberating upon your verdict, you are not expected to put aside your common sense or your own observations or experience of the general affairs of life. However, a juror having specialized knowledge of a subject may neither state this knowledge to fellow jurors nor act upon it himself or herself in arriving at a verdict. You must not tell your fellow jurors about matters which are based on specialized knowledge concerning an issue in the case that did not come from the evidence received in the courtroom.

### **CLEAR AND CONVINCING EVIDENCE**

Mansfield has the burden of proving claims alleging fraud by clear and convincing evidence. This is a different standard than the preponderance of evidence standard that you will use in evaluating the other claims.

Clear and convincing evidence requires that the party asserting the claim convince you that the existence of each contested fact or element is highly probable. Clear and convincing evidence is a very demanding standard, requiring less than evidence beyond a reasonable doubt, but more than a preponderance of the evidence.

### **PREPONDERANCE OF THE EVIDENCE**

Mansfield has the burden of proving certain claims and elements by a preponderance of the evidence.

To prove an element by a preponderance of the evidence means to prove that something is more likely than not. In other words, a preponderance of the evidence means such evidence that, when considered and compared with that opposed to it, has more persuasive force, and produces in your minds a belief that what is sought to be proved is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence. In determining whether a fact, claim, or defense has been proven by a preponderance of the evidence, you may consider the testimony of witnesses, regardless of who may have called them, and the exhibits in evidence, regardless of who may have produced or introduced them. No proof of absolute certainty is required.

## **INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE**

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that is applicable to your determinations in this case.

### **OVERVIEW OF PARTIES AND CLAIMS**

This case arises out of the disputed purchase and sale of a Gulfstream IV Jet (the "Aircraft"). Mansfield brings claims against Freestream under the theories of fraudulent inducement, tortious interference with a contract, tortious interference with a prospective business relationship or expectancy, civil conspiracy, and unjust enrichment. Freestream denies these claims.

You have heard reference to Rudolph Melk during this trial. I remind you that claims concerning Mr. Melk's liability are not before you.

### **CLAIM 1: FRAUDULENT INDUCEMENT**

Mansfield alleges that it was fraudulently induced to terminate its contract with Punj Lloyd Limited because of the following alleged false statements that Freestream made or caused to be made: (1) the August 4, 2015 FAA lien filed against the Aircraft premised upon non-payment of services provided by Mr. Melk; (2) the August 14, 2015 representation by Connie Marrero to Plaintiff's escrow agent Leda Francis that Freestream had a contract to purchase the Aircraft; and (3) the August 19, 2015 representations by Connie Marrero to Eric Chase regarding the validity of the FAA lien, the closing date, and the live purchase agreement. With regard to each of these claimed misrepresentations, you must determine whether Mansfield has proved the following essential elements by clear and convincing evidence:

1. Freestream intentionally or recklessly misrepresented an existing fact;
2. The misrepresentation affected the essence of the transaction;
3. The misrepresentation was false at the time it was made and Freestream knew it to be false;

4. The misrepresentation was not open to Mansfield's knowledge;
5. Mansfield relied on the misrepresentation to its detriment; and
6. The misrepresentation was the direct and proximate cause of Mansfield's damages.

If you find that any statement that Freestream made satisfies all of these elements, you must enter a verdict in favor of Mansfield on its claim for fraudulent inducement. If you find that Mansfield has failed to prove all of these elements with regard to at least one statement, you must enter a verdict in favor of Freestream on this claim.

### **INTENTIONALLY**

To act intentionally means to act on purpose, and not inadvertently or by mistake or accident. Whether Freestream acted intentionally may be proven by its words and conduct and by all the facts and circumstances supplied by the evidence in this case.

### **RECKLESSLY**

Fraud exists not only when speakers know their statements are false, but also when the statements are made in such a reckless manner that the law will presume them to be made with knowledge. An actual fraudulent representation occurs when a person misrepresents a fact in a way that asserts that the maker knows it to be so, but in fact has merely a belief in its existence and recognizes that there is a chance that the fact may not be as it is represented. Fraud perpetrated in this manner is characterized as a false representation made recklessly because the person making the representation asserts something as fact regardless of whether it is true or false. Additionally, when someone makes a false representation of fact and expressly states that it is based upon the maker's personal knowledge of the fact in question or even upon his or her personal investigation of the matter, or though not expressly so stated, the representation is made in a form or under such circumstances as to imply that this is the case, then the misrepresentation so made is fraudulent even though the maker is honestly convinced of its truth from hearsay or other sources that he or she believes to be reliable.



### **MISREPRESENTATION OF EXISTING FACT**

A misrepresentation of opinion is not a misrepresentation of existing fact. However, where an opinion is part of a scheme to defraud, it may be considered a fraudulent misrepresentation. A statement regarding quality, value, authenticity, or other matters of judgment made in an arm's length transaction between two sophisticated and experienced business entities is not a representation of existing fact. With respect to promises to perform, a misrepresentation about future actions can be fraudulent if Freestream, at the time it made the statement, intended to act differently from the promise. A representation of the state of mind of the maker or of a third person is a misrepresentation if the state of mind in question is other than as represented. Thus, a statement that a particular person is of a particular opinion or has a particular intention is a misrepresentation if the person in question does not hold the opinion or have the intention asserted. In deciding whether Freestream made a misrepresentation of existing fact, you must consider the character and relation of the parties, their respective intelligence, the subject-matter of the bargain, and all the circumstances.

### **AFFECTING THE ESSENCE OF THE TRANSACTION**

A fraudulent misrepresentation is one that affects the essence of a transaction and involves a material fact that relates distinctly and directly to the transaction. A statement does not affect the essence of the transaction if it relates to other matters or relates to the transaction in a trivial and unimportant respect only.

### **FALSE**

A representation of existing fact is false when made if it was untrue in a material and substantial respect.

### **NOT OPEN TO MANSFIELD'S KNOWLEDGE**

A fact is not open if it is not known or available. Conversely, if Mansfield knew the truth regarding the misrepresentation, no fraudulent inducement claim may be made with regard to that particular misrepresentation.



### **RELIANCE**

You must decide whether Mansfield actually, justifiably, and reasonably relied on Freestream's misrepresentation. If you find that Mansfield did not rely on Freestream's misrepresentation, you must proceed no further with regard to that misrepresentation. If you find that Mansfield actually relied on Freestream's misrepresentation, the issue of whether Mansfield's reliance was justifiable and reasonable must be determined based upon the facts and circumstances at the time. Between bargaining adversaries there can ordinarily be no justifiable reliance upon an opinion. For example, a party would not be justified in accepting the legal opinion of a known adversary because the law requires it to draw its own conclusions or to seek its own independent legal advice. If you find that Mansfield had sufficient facts so as to create a duty to inquire, then you must conclude that Mansfield knew all those facts that a diligent inquiry would have revealed to it. Similarly, if you find that Mansfield displayed a lack of care or failed to do its due diligence, you may not conclude that Mansfield justifiably and reasonably relied on any misrepresentation.

### **DIRECT AND PROXIMATE CAUSE**

Mansfield must prove that but for Freestream's actions, it would not have suffered damages. If Mansfield's damages were not caused by Freestream's actions, or if Mansfield would have suffered damages regardless of Freestream's actions, Mansfield has failed to prove causation. That is, if Mansfield probably would have suffered damages regardless of the way in which Freestream acted, then the acts or omissions of Freestream are not the cause of Mansfield's damages.

The law also requires Mansfield to prove that Freestream's actions were a "proximate cause" of its damages. Proximate cause is a cause which results in damages in a natural and continuous sequence, unbroken by any other cause. It is a cause without which the result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts or things, or the conduct of two or more persons or entities may operate at the same time, either independently or together, to cause injury or damage and in such a case, each may be a proximate cause.

### **DAMAGES**

If you find the other elements of this claim have been established, in order for Mansfield to prevail on this claim you must find by clear and convincing evidence that, as a direct and proximate result of Mansfield's justifiable reliance on Freestream's misrepresentation, Mansfield suffered an economic loss.

### **CONCLUSION**

Enter your conclusion regarding this claim on the verdict form where indicated.

## **CLAIM 2: TORTIOUS INTERFERENCE WITH A CONTRACT**

Mansfield alleges that Freestream interfered with Mansfield's contract to purchase the Aircraft by: (1) acting in concert with Mr. Melk to file an improper FAA lien and (2) making false statements.

To prevail on this claim, Mansfield must prove by a preponderance of the evidence that:

1. Mansfield had a contract with Punj Lloyd Limited to purchase the Aircraft;
2. Freestream had knowledge of that contract;
3. Freestream acted intentionally and improperly to interfere with that contract;
4. Mansfield suffered actual damages; and
5. Freestream's interference was the direct and proximate cause of Mansfield's damages.

If you find that Mansfield has proven all of these elements by a preponderance of the evidence, you must enter a verdict in Mansfield's favor on this claim. In order for Mansfield to prevail on this claim, it only needs to prove a single act of interference. If you find that Mansfield has failed to prove any of these elements by a preponderance of the evidence, you must enter a verdict in Freestream's favor on this claim.

### **EXISTENCE OF A CONTRACT**

You must determine whether Mansfield had a contract with Punj Lloyd Limited to purchase the Aircraft. In determining whether Mansfield had a contract with Punj Lloyd Limited, both parties must have intended to be bound by an agreement. A contract is



only formed when both parties had a “meeting of minds” and intended to enter into the same contract. In order to determine what the parties intended, you may consider the words and actions of both parties. A contract does not need to be written, but if a contract exists, you may presume that a clearly written contract reflects the parties’ intent.

### **KNOWLEDGE**

You must find that Freestream had actual knowledge of the contract between Mansfield and Punj Lloyd Limited.

### **INTENTIONAL AND IMPROPER INTERFERENCE**

You must find that Freestream acted intentionally and improperly to interfere with Mansfield’s contract to purchase the Aircraft. Intent to interfere exists if Freestream acted for the primary purpose of interfering with contract, even if it also acted with some other, additional purpose. Intent also exists if Freestream knew that interference would be substantially certain to occur as a result of its actions. To act intentionally means to act on purpose, and not inadvertently or by mistake or accident. Whether Freestream acted intentionally may be proven by its words and conduct and by all the facts and circumstances supplied by the evidence in this case.

You must also find that Freestream’s interference, if any, was improper. Mansfield therefore must prove that Freestream acted either with the purpose to harm Mansfield or by means that were dishonest, unfair, or wrongful. In making this determination, you should consider: the nature of Freestream’s conduct; its motives; the relations of the parties; the interests of Mansfield with which the conduct interferes; the social interests in protecting Freestream’s freedom of action and Punj Lloyd Limited’s rights; and the proximity or remoteness of Freestream’s conduct to the interference.

One who, by asserting in good faith a legally protected interest of his own or threatening in good faith to protect the interest by appropriate means, intentionally causes a third person not to perform an existing contract or enter into a prospective contractual relations with another does not interfere improperly with the other’s relation if the actor

believes that his or her interest may be otherwise impaired or destroyed by the performance of the contract or transaction.

### **DIRECT AND PROXIMATE CAUSE**

Mansfield must prove that but for Freestream's actions, it would not have suffered damages. If Mansfield's damages were not caused by Freestream's actions, or if Mansfield would have suffered damages regardless of Freestream's actions, Mansfield has failed to prove causation. That is, if Mansfield probably would have suffered damages regardless of the way in which Freestream acted, then the acts or omissions of Freestream are not the cause of Mansfield's damages.

The law also requires Mansfield to prove that Freestream's actions were a "proximate cause" of its damages. Proximate cause is a cause which results in damages in a natural and continuous sequence, unbroken by any other cause. It is a cause without which the result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts or things, or the conduct of two or more persons or entities may operate at the same time, either independently or together, to cause injury or damage and in such a case, each may be a proximate cause.

### **DAMAGES**

If you find the other elements of this claim have been established, in order for Mansfield to prevail on this claim you must find that Mansfield suffered economic damages directly and proximately caused by Freestream's intentional and improper interference.

### **CONCLUSION**

Enter your conclusion regarding this claim on the verdict form where indicated.

### **CLAIM 3: TORTIOUS INTERFERENCE WITH A PROSPECTIVE BUSINESS RELATIONSHIP OR EXPECTANCY**

Mansfield claims Freestream tortiously interfered with a prospective business relationship or expectancy with a third-party buyer, Gulfstream Aviation Services, Inc. Mansfield claims it expected to resell the Aircraft to Gulfstream Aviation Services, Inc.



after purchasing it from Punj Lloyd Limited. Mansfield claims that Freestream interfered with this business relationship or expectancy by acting in concert with Rudolph Melk to file the FAA lien and by making false statements. To prevail on this claim, Mansfield must prove that:

1. Mansfield had a business relationship or expectancy with Gulfstream Aviation Services, Inc.;
2. Freestream had knowledge of that business relationship or expectancy;
3. Freestream acted intentionally and improperly to interfere with that business relationship or expectancy;
4. Mansfield suffered actual damages; and
5. Freestream's interference was the direct and proximate cause of Mansfield's damages.

If you find that Mansfield has proven elements 1, 2, 4, and 5 by a preponderance of the evidence and by clear and convincing evidence element 3, you must enter a verdict in Mansfield's favor on this claim. In order for Mansfield to prevail on this claim, it only needs to prove a single act of interference. If you find that Mansfield has failed to prove any of these elements, you must enter a verdict in Freestream's favor on this claim.

#### **BUSINESS RELATIONSHIP OR EXPECTANCY**

In determining whether Mansfield had a business relationship or expectancy with Gulfstream Aviation Services, Inc., there must have existed a reasonable probability that a business or contractual relationship would have arisen, but for the conduct of Freestream. In other words, a business relationship or expectancy does not need to be formally reduced to a contract.

#### **INTENTIONAL AND IMPROPER INTERFERENCE**

You must find that Freestream acted intentionally and improperly to interfere with Mansfield's business relationship or expectancy. Intent to interfere exists if Freestream acted for the primary purpose of interfering with the business relationship or expectancy, even if it acted with some other, additional purpose. Intent also exists if Freestream knew that interference would be substantially certain to occur as a result of its actions. To act

intentionally means to act on purpose, and not inadvertently or by mistake or accident. Whether Freestream acted intentionally may be proven by its words and conduct and by all the facts and circumstances supplied by the evidence in this case.

You must also find that Freestream's interference, if any, was improper. Mansfield therefore must prove that Freestream acted either with the purpose to harm Mansfield or by means that were dishonest, unfair, or wrongful. In making this determination, you should consider: the nature of Freestream's conduct; its motives; the relations of the parties; the interests of Mansfield with which the conduct interferes; the social interests in protecting Freestream's freedom of action and Punj Lloyd Limited's rights; and the proximity or remoteness of Freestream's conduct to the interference.

Competitive business practices are not tortious. If Freestream's interference was intended to advance its own competing interests, the claim will fail unless Freestream's methods were criminal or fraudulent. As you know from the court's prior instructions, fraud must be proved by clear and convincing evidence and consists of an intentional misrepresentation of existing fact.

One who, by asserting in good faith a legally protected interest of his own or threatening in good faith to protect the interest by appropriate means, intentionally causes a third person not to perform an existing contract or enter into a prospective contractual relations with another does not interfere improperly with the other's relation if the actor believes that his or her interest may be otherwise impaired or destroyed by the performance of the contract or transaction.

#### **DIRECT AND PROXIMATE CAUSE**

Mansfield must prove that but for Freestream's actions, it would not have suffered damages. If Mansfield's damages were not caused by Freestream's actions, or if Mansfield would have suffered damages regardless of Freestream's actions, Mansfield has failed to prove causation. That is, if Mansfield probably would have suffered damages regardless of the way in which Freestream acted, then the acts or omissions of Freestream are not the cause of Mansfield's damages.



The law also requires Mansfield to prove that Freestream's actions were a "proximate cause" of its damages. Proximate cause is a cause which results in damages in a natural and continuous sequence, unbroken by any other cause. It is a cause without which the result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts or things, or the conduct of two or more persons or entities may operate at the same time, either independently or together, to cause injury or damage and in such a case, each may be a proximate cause.

### **DAMAGES**

If you find the other elements of this claim have been established, in order for Mansfield to prevail on this claim you must find that Mansfield suffered economic damages directly and proximately caused by Freestream's intentional and improper interference.

### **CONCLUSION**

Enter your conclusion regarding this claim on the verdict form where indicated.

## **CLAIM 4: CIVIL CONSPIRACY**

Mansfield claims Freestream engaged in a civil conspiracy with Rudolph Melk to cause Mansfield harm. Where, as here, the civil conspiracy claim alleges Mr. Melk and Freestream conspired to commit fraud, the burden of proof is by clear and convincing evidence. Accordingly, to prevail on this claim, Mansfield must prove by clear and convincing evidence that:

1. Freestream and Mr. Melk entered into an agreement to perform an illegal act;
2. The illegal act they agreed to perform was carried out in furtherance of their agreement and was done by illegal means; and
3. Mansfield suffered damages that were directly and proximately caused by that act.

### **AGREEMENT TO PERFORM AN ILLEGAL ACT**

Mansfield claims that the illegal act consists of filing a fraudulent FAA lien. You must decide whether the evidence shows that Freestream and Mr. Melk agreed to file an illegal FAA lien.

Mansfield must prove that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act. You need not find that the alleged members of the conspiracy actually met and entered into any express or formal agreement. You need not find that the alleged members stated in words or writing what the object or purpose of the conspiracy was, or every precise detail of the scheme. The agreement may only consist of a mutual understanding that the members would commit some future illegal act by means of a common plan or course of action. A conspiracy does not exist if you find that Mr. Melk was acting independently even if he intended to benefit Freestream.

There may or may not be direct proof of the agreement. However, because a conspiracy is sometimes characterized by secrecy, you may or may not infer its existence from the circumstances and the conduct of the parties involved. You may therefore consider the actions and statements of all of those you find to be participants as proof that a common design existed for acting together to accomplish an unlawful purpose.

### **MEMBERSHIP IN THE CONSPIRACY**

If you are satisfied that the conspiracy existed, you must next ask yourselves who the members of that conspiracy were. In order to make this determination, you must decide whether Freestream knowingly and willfully joined the conspiracy with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective.

The fact that acts taken by Freestream, without knowledge of the conspiracy, merely happen to further the purposes or objectives of the conspiracy, does not make Freestream a member. Freestream's knowledge is a matter of inference and must be established by its own acts or statements, as well as those of the other alleged co-conspirators.



Mere association with others does not, in and of itself, make Freestream a member of the conspiracy. Also, proof that Freestream had a financial interest in the outcome of a scheme, in and of itself, does not suffice to prove membership. Presence or association with conspirators and financial interest, though, are factors that you may consider among others to determine whether Freestream was a member of the conspiracy.

#### **DIRECT AND PROXIMATE CAUSE**

Mansfield must prove that but for Freestream's actions, it would not have suffered damages. If Mansfield's damages were not caused by Freestream's actions, or if Mansfield would have suffered damages regardless of Freestream's actions, Mansfield has failed to prove causation. That is, if Mansfield probably would have suffered damages regardless of the way in which Freestream acted, then the acts or omissions of Freestream are not the cause of Mansfield's damages.

The law also requires Mansfield to prove that Freestream's actions were a "proximate cause" of its damages. Proximate cause is a cause which results in damages in a natural and continuous sequence, unbroken by any other cause. It is a cause without which the result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts or things, or the conduct of two or more persons or entities may operate at the same time, either independently or together, to cause injury or damage and in such a case, each may be a proximate cause.

#### **DAMAGES**

If you find the other elements of this claim have been established, in order for Mansfield to prevail on this claim you must find that Mansfield suffered damages as a direct and proximate result of the civil conspiracy.

#### **CONCLUSION**

Enter your conclusion regarding this claim on the verdict form where indicated.

#### **CLAIM 5: UNJUST ENRICHMENT**

Mansfield claims that Freestream was unjustly enriched by Mansfield's termination of its August 3, 2015 purchase agreement with Punj Lloyd Limited for the

Aircraft, which allowed Freestream to buy the Aircraft and resell it for a profit. To prevail on this claim, Mansfield must prove by a preponderance of the evidence that:

1. Mansfield conferred a benefit on Freestream;
2. Freestream accepted the benefit; and
3. Freestream retained the benefit under such circumstances that it would be inequitable for Freestream not to compensate Mansfield for its value.

### **CONCLUSION**

Enter your conclusion regarding this claim on the verdict form where indicated.

### **AFFIRMATIVE DEFENSES**

Freestream asserts two affirmative defenses in this case which it claims defeats all or a part of Mansfield's claims. An affirmative defense is a legal or equitable defense to liability. Freestream has the obligation to prove these affirmative defenses by a preponderance of the evidence except where it asserts a claim of fraudulent conduct which, as you know, requires Freestream to prove that defense by clear and convincing evidence.

### **UNCLEAN HANDS/IN PARI DELICTO**

Unclean hands is an equitable defense to Mansfield's unjust enrichment claim. *In pari delicto* is the legal counterpart to unclean hands and applies to Mansfield's remaining claims. You can consider the two doctrines as the same doctrine applied to different types of claims.

Under the doctrine of unclean hands/*in pari delicto*, Mansfield is not permitted to recover on its claims if Mansfield has been guilty of illegal or fraudulent conduct and was equally or more culpable than Freestream or acted with the same or greater knowledge of the illegality or wrongfulness of the transaction. In order to apply, the doctrine requires Mansfield be an active, voluntary participant in the unlawful activity that is the subject of the suit.



Freestream claims that Mansfield engaged in the following alleged conduct as the basis of this affirmative defense: (1) condoning an improper payment to Punj Lloyd Limited's "inside company man" to secure a purchase agreement; (2) Mr. Chase's allegedly false statement during the August 19, 2015 telephone call that "I've got the airplane sold too;" and (3) in connection with the Commission Agreement dated September 11, 2015, agreeing to represent to Punj Lloyd Limited that Mansfield was purchasing the Aircraft for itself without disclosing to Punj Lloyd Limited that Rudolph Melk was the ultimate buyer.

If Freestream proves this affirmative defense you must render a verdict in favor of Freestream on each claim to which you find it applies.

### **WAIVER**

Freestream asserts the affirmative defense of waiver. It asserts that Mansfield voluntarily and intentionally relinquished its right to pursue its August 3, 2015 Aircraft Purchase Agreement with Punj Lloyd Limited and decided to pursue the August 25, 2015 Commission Agreement with Lima Mike Bravo, LLC. If you find Freestream has proven this affirmative defense of waiver by a preponderance of the evidence, you must find that Mansfield cannot recover for damages caused by the termination of its August 3, 2015 Aircraft Purchase Agreement with Punj Lloyd Limited.

### **DAMAGES**

If you decide in favor of Freestream on each of Mansfield's five claims, you must proceed no further and you will not consider the issue of damages. However, if you decide for Mansfield on any of its claims, you must determine the amount of money that will compensate Mansfield for the harm caused by Freestream's conduct. This compensation is called "damages."

The fact that I am about to instruct you as to the proper measure of damages does not reflect any view of mine as to which party is entitled to your verdict. Instruction as to the measure of damages is given for your guidance and use only if you first find in favor

of Mansfield in accordance with the other instructions. In reaching your verdict, carefully consider the evidence presented.

### **COMPENSATORY DAMAGES**

If you decide in favor of Mansfield on all or some of its claims, then you must determine the amount of money that reasonably, fairly, and adequately compensates Mansfield for the harm that it suffered. Your aim in calculating compensatory damages is to put Mansfield as nearly as possible in the same position that it would have occupied but for Freestream's unlawful actions.

The burden is on Mansfield to prove by a preponderance of the evidence the amount of damages which it has suffered, except for with regard to its fraudulent inducement claim where the burden is clear and convincing evidence. Where the amount of damages are capable of being calculated in dollars and cents, Mansfield must demonstrate the amount of its loss in dollars and cents. Under no circumstances may you award damages that are speculative or conjectural.

Lost profits may not be recovered as an element of damages unless they are proved with reasonable certainty. If lost profits are proved with sufficient certainty, the amount that may be recovered is the net loss only. The net loss in this case can be calculated by deducting amounts that Mansfield would be obligated to pay other parties.

### **RESTITUTION DAMAGES**

If you decide in favor of Mansfield on its claim for unjust enrichment, you must determine whether Mansfield is entitled to restitution damages. Unjust enrichment requires that the party who has been unjustly enriched surrender the benefit it received at the expense of the other party. With regard to this equitable claim, you must determine as a fact what you believe that benefit is.

### **DAMAGES CANNOT BE DUPLICATED**

You have been instructed on multiple claims under which Mansfield seeks damages. If you decide that any damages are justified in this case, you should be careful not to award any damages for one claim that duplicates an award for another claim. Any



award in all respects must be fair and reasonable in light of all the evidence that you find worthy of belief and all the reasonable inferences to be drawn from such evidence.

### **MITIGATION OF DAMAGES**

Under the law, a party seeking an award of damages must make reasonable attempts to minimize or eliminate those damages. If you find that Mansfield has failed to mitigate its damages by a preponderance of the evidence, you must subtract the monetary amount of any such failure from your award. In other words, a party is not entitled to recover damages to the extent it could have avoided or reduced those damages.

### **PUNITIVE DAMAGES**

If you find for Mansfield on its claim of fraudulent inducement, then you must also consider whether Mansfield is entitled to punitive damages. Punitive damages are meant to punish a party for clearly outrageous and reprehensible conduct. In order to award punitive damages, you must find two things:

First, you must find that Freestream's wrongful conduct was outrageously reprehensible; that is, that the conduct—whether acts or failures to act—was egregious, morally deserving of blame, to a degree of outrage frequently associated with a crime.

Second, you must find that Freestream acted with malice. You may find malice if you find that Freestream's reprehensible conduct was intentional and deliberate; that is, that the conduct was the result of Freestream's bad motive, ill will, or personal spite or hatred toward Mansfield. You may also find malice even if Freestream's motivation behind the intentional, outrageous conduct was to benefit itself, rather than to harm Mansfield. Alternatively, you may find malice if Freestream's wrongful conduct was not intentional, but instead was done with a reckless or wanton disregard of the substantial likelihood that it would cause egregious harm to Mansfield; that is, if Freestream acted—or failed to act—with conscious and deliberate disregard of a known, substantial, and intolerable risk of harm to Mansfield, with the knowledge that the conduct was substantially certain to result in the threatened harm.

The fact that Freestream is a corporation does not prevent an award of punitive damages, but the malicious or unlawful act relied upon must be that of the governing

officers of the corporation or one lawfully exercising their authority, or, if the act relied upon is that of a servant or agent of the corporation, it must be clearly shown that the governing officers either directed the act, participated in it, or subsequently ratified it.

In determining the amount of punitive damages to award, if any, you may consider such factors as the nature of Freestream's conduct, the nature of the resulting harm to Mansfield, Freestream's wealth or financial status, and the degree of malice or wantonness in its acts.

### **CONCLUDING INSTRUCTIONS**

#### **JURY DELIBERATIONS/UNANIMOUS VERDICT**

The verdict must represent the considered judgment of each juror. In order to return a verdict, you must all agree. Your verdict must be unanimous.

You must consult with one another. You must try to reach an agreement if you can do so without sacrificing your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. Do not hesitate to re-examine your views and change your opinions if you are convinced they are wrong. But do not surrender your honest opinion as to the weight or effect of evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

If you need to communicate with me, you should send a note through the Court Officer, signed by your foreperson. You must not discuss with the court or with any other person what is said in deliberations, and any note you send to the court must not include this information. In other words, you may ask the court questions but, in doing so, you must not reveal what the jurors are thinking or saying. You must not tell anyone how the jury stands numerically or otherwise until after you have reached a unanimous verdict and you have been discharged. Even then you need not speak to anyone about this case unless you want to.

When you have reached a verdict, tell the Court Officer that you have reached a verdict, but do not tell the Court Officer what the verdict is. You will then be brought into the courtroom where I shall ask you if you have reached a verdict, and, if you have,



what it is.

### **JUROR NOTE TAKING**

During the trial, you have been provided with pen and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether or not they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes. I will now describe the process for a read back.

### **READ BACK OF EVIDENCE**

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or part of these instructions, you may do the following:

1. Write out your question, and have the foreperson sign it;
2. Knock on the door of the jury room; and
3. Deliver your note to the Court Officer, to give to me.

After the attorneys have been consulted, and the record has been reviewed, I shall decide what action to take. I will tell you my ruling.

### **SELECTION AND DUTIES OF A FOREPERSON**

I select [REDACTED] to act as your foreperson. The foreperson acts as a chairperson or moderator. It is your duty to see that discussions are carried out in a sensible and orderly manner and to see that the issues submitted for the jury's decision are fully and fairly discussed, and that every juror has a chance to say what he or she thinks upon every question. When ballots should be taken, you will see that it is done. You will act as the jury's spokesperson in the courtroom. In all other respects, the foreperson is the same as every other juror. His or her vote or opinions do not count more or less than those of his or her fellow jurors.

Ladies and gentlemen of the jury, you may now take the case and retire to begin your deliberations.

Dated at Burlington, in the District of Vermont, this 12<sup>th</sup> day of July, 2019.

A handwritten signature in black ink, appearing to read 'Christina Reiss', with a long horizontal line extending to the right.

Christina Reiss, District Judge  
United States District Court