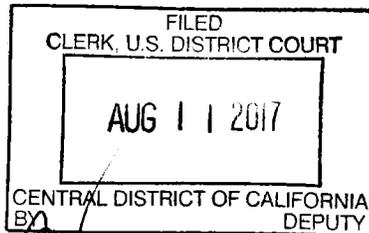


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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

HALEY VIDECKIS and LAYANA
WHITE, individuals,

Plaintiffs,

vs.

PEPPERDINE UNIVERSITY, a
corporation doing business in
California,

Defendant.

Case No. 2:15-cv-00298-DDP (JCx)

JURY INSTRUCTIONS

1 BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

2 When a party has the burden of proving any claim or affirmative defense by a
3 preponderance of the evidence, it means you must be persuaded by the evidence that
4 the claim or affirmative defense is more probably true than not true. You should
5 base your decision on all of the evidence, regardless of which party presented it.

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TWO OR MORE PARTIES—DIFFERENT LEGAL RIGHTS

You should decide the case as to each plaintiff separately. Unless otherwise stated, the instructions apply to all parties.

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CORPORATIONS — FAIR TREATMENT

All parties are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any party.

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WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits that are admitted into evidence;
3. any facts to which the lawyers have agreed; and
4. any facts that I have instructed you to accept as proved.

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WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that is excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence only for a limited purpose, you must do so and you may not consider that evidence for any other purpose.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

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EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted only for a limited purpose. When I instruct you that an item of evidence has been admitted only for a limited purpose, you must consider it only for that limited purpose and not for any other purpose.

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DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

By way of example, if you wake up in the morning and see that the sidewalk is wet, you may find from that fact that it rained during the night. However, other evidence, such as a turned on garden hose, may provide a different explanation for the presence of water on the sidewalk. Therefore, before you decide that a fact has been proved by circumstantial evidence, you must consider all the evidence in the light of reason, experience and common sense.

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CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account: (1) the opportunity and ability of the witness to see or hear or know the things testified to; (2) the witness's memory; (3) the witness's manner while testifying; (4) the witness's interest in the outcome of the case, if any; (5) the witness's bias or prejudice, if any; (6) whether other evidence contradicted the witness's testimony; (7) the reasonableness of the witness's testimony in light of all the evidence; and (8) any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony. However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest. The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

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STIPULATIONS OF FACT

The parties have agreed to certain facts that will be read to you. You must therefore treat these facts as having been proved.

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USE OF INTERROGATORIES OF A PARTY

Evidence was presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath before the trial in response to questions that were submitted under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

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EXPERT OPINION

You have heard testimony from expert witnesses who testified to opinions and the reasons for his or her opinions. This opinion testimony is allowed, because of the education or experience of this witness. Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness’s education and experience, the reasons given for the opinion, and all the other evidence in the case.

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DUTY TO DELIBERATE

Before you begin your deliberations, elect one member of the jury as your presiding juror. The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court.

You shall diligently strive to reach agreement with all of the other jurors if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to their views.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not be unwilling to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

1 **CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY**

2 Because you must base your verdict only on the evidence received in the case
3 and on these instructions, I remind you that you must not be exposed to any other
4 information about the case or to the issues it involves. Except for discussing the
5 case with your fellow jurors during your deliberations:

6 Do not communicate with anyone in any way and do not let anyone else
7 communicate with you in any way about the merits of the case or anything to do
8 with it. This includes discussing the case in person, in writing, by phone or
9 electronic means, via email, via text messaging, or any Internet chat room, blog,
10 website or application, including but not limited to Facebook, YouTube, Twitter,
11 Instagram, LinkedIn, Snapchat, or any other forms of social media. This applies to
12 communicating with your family members, your employer, the media or press, and
13 the people involved in the trial. If you are asked or approached in any way about
14 your jury service or anything about this case, you must respond that you have been
15 ordered not to discuss the matter and to report the contact to the court.

16 Do not read, watch, or listen to any news or media accounts or commentary
17 about the case or anything to do with it; do not do any research, such as consulting
18 dictionaries, searching the Internet, or using other reference materials; and do not
19 make any investigation or in any other way try to learn about the case on your own.

20 Do not visit or view any place discussed in this case, and do not use Internet
21 programs or other devices to search for or view any place discussed during the trial.
22 Also, do not do any research about this case, the law, or the people involved—
23 including the parties, the witnesses or the lawyers—until you have been excused as
24 jurors. If you happen to read or hear anything touching on this case in the media,
25 turn away and report it to me as soon as possible.

26 These rules protect each party’s right to have this case decided only on
27 evidence that has been presented here in court. Witnesses here in court take an oath
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1 to tell the truth, and the accuracy of their testimony is tested through the trial
2 process. If you do any research or investigation outside the courtroom, or gain any
3 information through improper communications, then your verdict may be influenced
4 by inaccurate, incomplete or misleading information that has not been tested by the
5 trial process. Each of the parties is entitled to a fair trial by an impartial jury, and if
6 you decide the case based on information not presented in court, you will have
7 denied the parties a fair trial. Remember, you have taken an oath to follow the rules,
8 and it is very important that you follow these rules.

9 A juror who violates these restrictions jeopardizes the fairness of these
10 proceedings, and a mistrial could result that would require the entire trial process to
11 start over. If any juror is exposed to any outside information, please notify the court
12 immediately.

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COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the clerk, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing. I will not communicate with any member of the jury on anything concerning the case except in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including the court—how the jury stands, whether in terms of vote count or otherwise, until after you have reached a unanimous verdict or have been discharged.

INTRUSION INTO PRIVATE AFFAIRS

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Plaintiff Haley Videckis and Plaintiff Layana White each claim that Pepperdine University violated her right to privacy. To establish this claim, Plaintiff Videckis and Plaintiff White must prove all of the following:

1. That Plaintiff Videckis and/or Plaintiff White had a reasonable expectation of privacy with respect to her medical records and/or their intimate relationship;
2. That Pepperdine University intentionally intruded into the medical records/medical condition of Plaintiff Videckis and/or Plaintiff White and/or into their intimate relationship;
3. That Pepperdine University’s intrusion would be highly offensive to a reasonable person;
4. That Plaintiff Videckis and/or Plaintiff White each was harmed; and
5. That Pepperdine University’s conduct was a substantial factor in causing Plaintiff Videckis’ and/or Plaintiff White’s harm.

In deciding whether Plaintiff Videckis and/or Plaintiff White had a reasonable expectation of privacy with respect to her medical records/medical condition and their relationship, you should consider, among other factors, the following:

- (a) The identity of Pepperdine University;
- (b) The extent to which other persons had access to their medical records and/or knew about their personal relationship;
- (c) The means by which the intrusion occurred.

In deciding whether an intrusion is highly offensive to a reasonable person, you should consider, among other factors, the following:

- (a) The extent of the intrusion;
- (b) Pepperdine University’s motives and goals; and
- (c) The setting in which the intrusion occurred.

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AFFIRMATIVE DEFENSE—INVASION OF PRIVACY JUSTIFIED

Pepperdine University claims that even if Plaintiff Videckis and/or Plaintiff White has proven all of the above, its conduct of inquiring as to the Plaintiffs' health and the medical records that supported it, and intimate relationship, was justified. Defendant Pepperdine must prove that the circumstances justified the invasion of privacy because the invasion of privacy substantially furthered the interests in protecting the health and safety of student athletes including Plaintiffs and in promoting and addressing potential team chemistry and unity problems. If Defendant Pepperdine proves that its conduct was justified, then you must find for Defendant Pepperdine unless Plaintiffs prove that there was a practical, effective, and less invasive method of achieving Defendant Pepperdine's purpose.

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TITLE IX

Title IX applies to institutions such as Pepperdine University that receive federal financial assistance. Pursuant to Title IX, Plaintiff Haley Videckis and Plaintiff Layana White each claim that she was harmed by being subjected to discrimination, harassment, and/or retaliation at school because of her sexual orientation and that Pepperdine University is responsible for that harm. To establish this claim, Plaintiff Videckis and Plaintiff White must prove all of the following:

1. That she suffered discrimination and/or harassment based upon her sexual orientation, and/or retaliation for making complaints about discrimination or harassment based on her sexual orientation;
2. That the discrimination, harassment, and/or retaliation was so severe, pervasive, and objectively offensive that it effectively deprived her of the right of equal access to educational benefits and opportunities;
3. That Pepperdine University had actual knowledge of that discrimination, harassment, and/or retaliation. To establish that Pepperdine University had actual knowledge of the harassment, discrimination and/or retaliation, Plaintiffs must show that a person with the authority to address the discriminatory, harassing, and/or retaliatory conduct had actual knowledge of the discrimination, harassment, and/or retaliation. For purposes of satisfying the actual notice requirement, the individual with actual knowledge of the discrimination, harassment, and/or retaliation cannot be the person who engaged in the acts of discrimination, harassment, and/or retaliation. The reason for this requirement is that, in order to meet their burden to show that Pepperdine University had actual knowledge, Plaintiffs must show that a person other than the person who engaged in the discrimination, harassment, and/or retaliation had actual knowledge of the discrimination, harassment, and/or retaliation; and
4. That Pepperdine University acted with deliberate indifference in the face

1 of that knowledge. Deliberate indifference means that Pepperdine University's
2 response was clearly unreasonable.

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EDUCATION CODE

Plaintiffs claim, pursuant to California Education Code Section 66270, that they were harmed by being subjected to harassment at Pepperdine because of their sexual orientation and that Defendant Pepperdine is responsible for that harm. To establish this claim, Plaintiffs must prove all of the same elements that they must prove to establish a claim under Title IX.

1 **UNRUH CIVIL RIGHTS ACT—ESSENTIAL FACTUAL ELEMENTS**

2 Plaintiff Haley Videckis and Plaintiff Layana claim that Defendant
3 Pepperdine denied them full and equal accommodations, advantages, facilities,
4 privileges or services because of their sexual orientation.

5 To establish this claim, Plaintiffs Videckis and Plaintiff White must prove all
6 of the following:

7
8 1. That Defendant Pepperdine denied/aided or incited a denial
9 of/discriminated or made a distinction that denied full and equal accommodations/
10 advantages/ facilities/privileges/services to Plaintiff Videckis and Plaintiff White;

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12 2. That a substantial motivating reason for Defendant Pepperdine’s conduct
13 was its perception of Plaintiff Videckis’ and/or Plaintiff White’s sexual orientation;

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15 3. That Plaintiff Videckis and/or Plaintiff White was harmed; and

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17 4. That Defendant Pepperdine’s conduct was a substantial factor in causing
18 Plaintiff Videckis’ and/or Plaintiff White’s harm.

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**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS -
ESSENTIAL FACTUAL ELEMENTS**

Plaintiff Haley Videckis and Plaintiff Layana White each claim that Pepperdine University’s conduct caused her to suffer severe emotional distress. To establish this claim, Plaintiff Videckis and Plaintiff White each must prove all of the following:

1. That Defendant Pepperdine’s conduct was outrageous;
2. That Defendant Pepperdine intended to cause Plaintiff Videckis and/or Plaintiff White emotional distress or acted with reckless disregard of the probability Plaintiff Videckis and/or Plaintiff White suffer emotional distress;
3. That Plaintiff Videckis and/or Plaintiff White suffered severe emotional distress; and
4. That Defendant Pepperdine’s conduct was a substantial factor in causing Plaintiff Videckis’ and Plaintiff White’s severe emotional distress.

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**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS -
“OUTRAGEOUS CONDUCT” DEFINED**

“Outrageous conduct” is conduct so extreme that it goes beyond all possible bounds of decency. Conduct is outrageous if a reasonable person would regard the conduct as intolerable in a civilized community. Outrageous conduct does not include trivialities such as indignities, annoyances, hurt feelings, or bad manners that a reasonable person is expected to endure.

In deciding whether Defendant Pepperdine’s conduct was outrageous, you may consider, among other factors, the following:

(a) Whether Defendant Pepperdine abused a position of authority or a relationship that gave it real or apparent power to affect Plaintiff Videckis’ and/or Plaintiff White’s interests;

(b) Whether Defendant Pepperdine knew that Plaintiff Videckis and/or Plaintiff White was particularly vulnerable to emotional distress; and

(c) Whether Defendant Pepperdine knew that its conduct would likely result in harm due to mental distress.

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**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS –
“SEVERE EMOTIONAL DISTRESS” DEFINED**

Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame.

“Severe emotional distress” is not mild or brief; it must be so substantial or long lasting that no reasonable person in a civilized society should be expected to bear it. Plaintiff Videckis and Plaintiff White are not required to prove physical injury to recover damages for severe emotional distress.

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**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS—
AFFIRMATIVE DEFENSE—PRIVILEGED CONDUCT**

Pepperdine University claims that it is not responsible for Plaintiff Videckis' or Plaintiff White's harm, if any, because Defendant Pepperdine's conduct was permissible. To succeed, Defendant Pepperdine must prove all the following:

1. That Defendant Pepperdine was exercising its legal right to inquire as to Plaintiff Videckis' and Plaintiff White's medical condition and request supporting medical records, and to inquire as to the nature of their personal relationship;
2. That Defendant Pepperdine's conduct was lawful and consistent with community standards; and
3. That Defendant Pepperdine had a good-faith belief that it had a legal right to engage in the conduct.

If you find all of the above, then Defendant Pepperdine's conduct was permissible.

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DAMAGES—PROOF

It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If you find for the plaintiffs you must determine the plaintiffs' damages. The plaintiffs have the burden of proving damages by a preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate the plaintiffs for any injury you find was caused by the defendant. You should consider the following:

The reasonable value of Plaintiffs' emotional distress, and the reasonable value of damages caused by the loss of any educational benefits, including any damages for loss of any educational benefits that will be, with reasonable probability, lost in the future.

It is for you to determine what damages, if any, have been proved. Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

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DAMAGES—MITIGATION

The plaintiffs have a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

The defendant has the burden of proving by a preponderance of the evidence:

1. That the plaintiffs failed to use reasonable efforts to mitigate damages;
- and
2. The amount by which damages would have been mitigated.

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**DAMAGES ARISING IN THE FUTURE—DISCOUNT TO PRESENT
CASH VALUE**

Any award for future economic damages must be for the present cash value of those damages.

Noneconomic damages such as pain and suffering are not reduced to present cash value.

Present cash value means the sum of money needed now, which, when invested at a reasonable rate of return, will pay future damages at the times and in the amounts that you find the damages would have been received.

The rate of return to be applied in determining present cash value should be the interest that can reasonably be expected from safe investments that can be made by a person of ordinary prudence, who has ordinary financial experience and skill.

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UNRUH CIVIL RIGHTS ACT - DAMAGES

If you decide that Plaintiff Videckis or Plaintiff White has proved her claim against Defendant Pepperdine, you also must decide how much money will reasonably compensate her for the harm. This compensation is called “damages.”

Plaintiff Videckis and Plaintiff White must each prove the amount of her damages. However, Plaintiff Videckis and Plaintiff White do not have to prove the exact amount of the harm or the exact amount of damages that will provide reasonable compensation for the harm. You must not speculate or guess in awarding damages.

The following are the specific items of damages claimed by Plaintiff Videckis and Plaintiff White:

Plaintiff Videckis:

Emotional Distress

Past and future loss of educational benefits

Plaintiff White:

Emotional Distress

Past and future loss of educational benefits

In addition, you may award Plaintiff Videckis or Plaintiff White, or each of them, up to three times the amount of her actual damages as a penalty against Pepperdine University.

1 PUNITIVE DAMAGES—ENTITY DEFENDANT—BIFURCATED TRIAL
2 (FIRST PHASE)

3 If you decide that Defendant Pepperdine University’s conduct caused Plaintiff
4 Haley Videckis and/or Plaintiff Layana White harm, you must decide whether that
5 conduct justifies an award of punitive damages. The amount, if any, of punitive
6 damages will be an issue decided later.

7 At this time, you must decide whether Plaintiff Videckis and/or Plaintiff
8 White has proved that Pepperdine engaged in that conduct with malice, oppression,
9 or fraud. To do this, Plaintiff Videckis and/or Plaintiff White must prove one of the
10 following by clear and convincing evidence:

11 1. That the conduct constituting malice, oppression, or fraud was
12 committed by one or more officers, directors, or managing agents
13 of Pepperdine who acted on behalf of Pepperdine; or

14 2. That the conduct constituting malice, oppression, or fraud was
15 authorized by one or more officers, directors, or managing
16 agents of Pepperdine; or

17 3. That one or more officers, directors, or managing agents of
18 Pepperdine knew of the conduct constituting malice, oppression, or fraud and
19 adopted or approved that conduct after it occurred.

20 “Malice” means that Pepperdine acted with intent to cause injury or that
21 Pepperdine’s conduct was despicable and was done with a willful and knowing
22 disregard of the rights or safety of another. A person acts with knowing disregard
23 when he or she is aware of the probable dangerous consequences of his or her
24 conduct and deliberately fails to avoid those consequences.

25 “Oppression” means that Pepperdine’s conduct was despicable and subjected
26 Plaintiff Videckis and/or Plaintiff White to cruel and unjust hardship in knowing
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1 disregard of her rights. “Despicable conduct” is conduct that is so vile, base, or
2 contemptible that it would be looked down on and despised by reasonable people.

3 “Fraud” means that Pepperdine intentionally misrepresented or concealed a
4 material fact and did so intending to harm Plaintiff Videckis and/or Plaintiff White.

5 An employee is a “managing agent” if he or she exercises substantial
6 independent authority and judgment in his or her corporate decision making such
7 that his or her decisions ultimately determine corporate policy.

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RETURN OF VERDICT

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.