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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

TRUST COMPANY OF THE WEST, a  
California Corporation,

Plaintiff,

vs.

JEFFREY GUNDLACH, an individual, *et al.*,

Defendants.

And Related Cross Action.

CASE NO. BC 429385  
[Related to Case No. BC 450413]

[Assigned to Hon. Carl J. West, Dept. 322]

**APPROVED JURY INSTRUCTIONS**

Date Complaint Filed: January 7, 2010  
Cross Complaint Filed: May 14, 2010  
Trial Date: July 25, 2011

1  
2 DATED: September 12, 2011

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3  
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Mark B. Helm

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7 Defendants and Cross-Complainants Jeffrey  
Gundlach, Barbara VanEvery, Cris Santa Ana and  
Jeffrey Mayberry

8 DATED: September 12, 2011

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13 Jeffrey Gundlach, Barbara VanEvery, Cris Santa  
14 Ana and Jeffrey Mayberry  
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## **JURY INSTRUCTIONS**

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2. CACI 202: Direct and Indirect Evidence
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4. CACI 205: Failure to Explain or Deny Evidence
5. CACI 206: Evidence Admitted For Limited Purpose
6. CACI 207: Evidence Applicable to One Party
7. CACI 208: Deposition as Substantive Evidence
8. CACI 212: Statements of a Party Opponent
9. CACI 219: Expert Witness Testimony
10. CACI 220: Experts—Questions Containing Assumed Facts
11. CACI 221: Conflicting Expert Testimony
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28

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# **GENERAL EVIDENCE INSTRUCTIONS**

Jury Instruction/Special  No. <u>200</u>		Authorities  <b>CACI 200: Obligation to Prove—More Likely True Than Not True</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **200**  
No. \_\_\_\_\_

A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as “the burden of proof.”

After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.

In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.



Jury Instruction/Special  No. <u>202</u>		Authorities  <b>CACI 202: Direct and Indirect Evidence</b>			
Requested by Plaintiff	X	Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **202**  
No. \_\_\_\_\_

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane flying across the sky. Some evidence proves a fact indirectly, such as testimony of a witness who saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as "circumstantial evidence." In either instance, the witness's testimony is evidence that a jet plane flew across the sky.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.

Jury Instruction/Special  <b>SJI AA &amp; CACI 204</b> No. _____		Defendants ' <b>SJI AA &amp; CACI 204: Willful Suppression of Evidence</b> Authorities			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction  
No. \_\_\_\_\_ **SJI AA & CACI 204**

You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party.

In determining whether one party intentionally concealed or destroyed evidence, you may consider the nature of the information destroyed, the reasons the information was destroyed, whether copies of the information were retained, and whether efforts were made to retain the information.

Jury Instruction/Special  No. <u>205</u>		Authorities  <b>CACI 205: Failure to Explain or Deny Evidence</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **205**  
No. \_\_\_\_\_

You may consider whether a party failed to explain or deny some unfavorable evidence. Failure to explain or to deny unfavorable evidence may suggest that the evidence is true.

Jury Instruction/Special  No. <u>206</u>		Authorities  <b>CACI 206: Evidence Admitted for Limited Purpose</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 206

During the trial, I explained to you that certain evidence was admitted for a limited purpose. You may consider that evidence only for the limited purpose that I described, and not for any other purpose.

Jury Instruction/Special  No. <u>207</u>		Authorities  <b>CACI 207: Evidence Applicable to One Party</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **207**  
No. \_\_\_\_\_

During the trial, I explained that certain evidence could be considered as to one or more parties but not to every party. You may not consider that evidence as to any other party.

Jury Instruction/Special  No. <u>208</u>		Authorities  <b>CACI 208: Deposition as Substantive Evidence</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **208**  
No. \_\_\_\_\_

During the trial, you heard testimony read from a deposition. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was read to you in the same way as you consider testimony given in court.

Jury Instruction/Special  No. <u>212</u>		Authorities  <b>CACI 212: Statements of a Party Opponent</b>			
Requested by Plaintiff	X	Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **212**  
No. \_\_\_\_\_

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

1. Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.
2. If you believe that the statement was made, do you believe it was reported accurately?

You should view testimony about an oral statement made by a party outside the courtroom with caution.

Jury Instruction/Special  No. <u>219</u>		Authorities  <b>CACI 219: Expert Witness Testimony</b>			
Requested by Plaintiff	X	Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **219**  
No. \_\_\_\_\_

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

- a. The expert's training and experience;
- b. The facts the expert relied on; and
- c. The reasons for the expert's opinion.



Jury Instruction/Special  No. <u>220</u>		Authorities  <b>CACI 220: Experts—Questions Containing Assumed Facts</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **220**  
No. \_\_\_\_\_

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert's opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

Jury Instruction/Special  No. <u>221</u>		Authorities  <b>CACI 221: Conflicting Expert Testimony</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **221**  
No. \_\_\_\_\_

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

Jury Instruction/Special  No. <b>SJI 33</b>		Authorities Plaintiff's <b>SJI 33: Affiliate Plaintiffs</b>			
Requested by Plaintiff		Requested by Defendant		Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 33**  
 No. \_\_\_\_\_

You have heard evidence regarding Trust Company West, which has been referred to in this trial as "TCW," and various TCW affiliated entities, including TCW Investment Management Company, also known as "TIMCO"; TCW Special Mortgage Credits Fund II GP, LLC; TCW Asset Management Company, also known as "TAMCO"; and TCW Group, Inc. When I refer to "TCW" in these instructions in connection with TCW's claims, I am referring to those TCW's affiliates as well as TCW.

# **BREACH OF FIDUCIARY DUTY**

Jury Instruction/Special  No. <u>4100</u>		Authorities  <b>CACI 4100: "Fiduciary Duty" Explained</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested	<input checked="" type="checkbox"/>	Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 4100

A corporate officer owes what is known as a fiduciary duty to his or her corporation or employer.  
A fiduciary duty imposes on a corporate officer a duty to act with the utmost good faith in the best interests of his or her corporation or employer.

Jury Instruction/Special  No. <b>4102</b>		Authorities  <b>CACI 4102: Duty of Undivided Loyalty—Essential Factual Elements</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **4102**  
No. \_\_\_\_\_

[TCW] claims that [it] was harmed by [Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana and Jeffrey Mayberry]'s breach of the fiduciary duty of loyalty. Officer[s and directors] owe his or her corporation undivided loyalty. To establish this claim, [TCW] must prove all of the following:

1. That [Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana and Jeffrey Mayberry] were [officers and/or directors of TCW];
2. That [during the time they were officers and/or directors], [they] knowingly acted against [TCW]'s interests;
3. That [TCW] did not give informed consent to [Jeffrey Gundlach's, Barbara VanEvery's, Cris Santa Ana's or Jeffrey Mayberry's] conduct;
4. That [TCW] was harmed; and
5. That [Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana and/or Jeffrey Mayberry]'s conduct was a substantial factor in causing [TCW]'s harm.

Jury Instruction/Special		Authorities Defendants' <b>SJI 6: Breach of Fiduciary Duty—Trade Secret Preemption</b>			
No. <b>SJI 6</b>					
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 6**  
 No. \_\_\_\_\_

TCW cannot maintain a breach of fiduciary duty claim that relies on the same nucleus of facts as the misappropriation of trade secrets claim. You may not find breach of fiduciary duty liability based on any conduct that TCW also claims constitutes misappropriation of trade secrets.

Jury Instruction/Special  No. <u>      </u> <b>SJI 2A</b>		<b>Defendants' Authorities</b> <b>SJI 2A: Breach of Fiduciary Duty—Preparations to Compete</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **SJI 2A**  
No.       

Although an officer or employee may not engage in actual competition with his or her employer during his or her employment, it is not a breach of fiduciary duty for an officer or employee to make preparations to compete, including by forming a potential competing business, provided such conduct is not harmful to the corporation during such time as the officer or employee is employed by the corporation or intended to prevent the corporation from operating its business after the officer or employee is no longer employed by the corporation.



Jury Instruction/Special  No. <b>SJI 4</b>		Authorities Defendants' <b>SJI 4: Breach of Fiduciary Duty—No Duty to Disclose Preparations to Compete</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 4**  
No. \_\_\_\_\_

Generally, there is no requirement that an officer or employee disclose his or her preparations to compete with his or her employer.

Jury Instruction/Special  No. <b>SJI 90</b>		Authorities <b>Defendants' SJI 90: Right to Seek Other Employment</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 90**  
 No. \_\_\_\_\_

An officer, director, or employee has the right to seek other employment and to engage in negotiations for other employment during his or her employment.

Jury Instruction/Special  No. <u>    <b>SJI 3</b>    </u>		<div style="text-align: right;">Authorities</div> Defendants' <b>SJI 3: Right to Engage in Competition</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No.     **SJI 3**    

A former officer, director or employee has the right to engage in competitive business for himself and to enter into competition with his former employer.

Jury Instruction/Special  No. <u>    <b>SJI 3A</b>    </u>		Authorities Defendants' <b>SJI 3A: Right to Engage in Competition</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No.     **SJI 3A**    

A former officer, director, or employee has the right to lawfully solicit clients of his or her former corporation or employer.

# **MISAPPROPRIATION OF TRADE SECRETS**

Jury Instruction/Special		Authorities			
No. <u>4400</u>		CACI 4400: Misappropriation of Trade Secrets— Introduction			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 4400

TCW claims that it was the owner of certain information.

TCW claims that this information constitutes trade secrets and that Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana, Jeffrey Mayberry and DoubleLine misappropriated those trade secrets. "Misappropriation" means the improper acquisition, use or disclosure of the trade secrets.

TCW also claims that defendants' misappropriation caused TCW harm.

Defendants deny those claims.

Defendants maintain that the information TCW claims they misappropriated was not trade secret and, even if it was trade secret, TCW was not harmed by any alleged misappropriation because they did not use the information or otherwise cause TCW any compensable injury.

Jury Instruction/Special		Authorities			
No. <u>4401</u>		CACI 4401: Misappropriation of Trade Secrets— Essential Factual Elements			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 4401, p. 1

TCW claims that defendants have misappropriated trade secrets. To succeed on this claim, TCW must prove all of the following:

1. That TCW owned one or more of the following items of information:
  - Portfolio holdings data
  - Trade ticket binders
  - Fixed income grids
  - Fixed income fee schedules
  - Contact database
  - Task list database
  - MBS database
  - Security Analyzer and BWIC Browser
  - the spreadsheet titled “greg.xlsx” containing fund and account detail sent by Cris Santa Ana to Gregory Ward on November 11, 2009

Jury Instruction/Special  No. <u>4401</u>		Authorities  <b>CACI 4401: Misappropriation of Trade Secrets— Essential Factual Elements</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 4401, p. 2

2. That the information was a trade secret at the time of the misappropriation;
3. That defendants improperly acquired, used or disclosed TCW's trade secrets  
either personally or through instructions carried out by others;
4. That TCW was harmed; and
5. That DoubleLine Capital's, Jeffrey Gundlach's, Barbara VanEvery's, Cris Santa  
Ana's or Jeffrey Mayberry's acquisition, use, or disclosure was a substantial factor in causing  
harm to TCW.



Jury Instruction/Special		Defendants' Authorities <b>SJI 20: Trade Secrets—Showing of Harm</b>			
No. <u>          </u> <b>SJI 20</b>					
Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **SJI 20**  
 No.           

Mere possession of trade secrets is insufficient to constitute use or disclosure to establish harm.

Jury Instruction/Special  No. <b>4402</b>		Authorities  <b>CACI 4402: "Trade Secret" Defined</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **4402**  
No. \_\_\_\_\_

To prove that any item was a trade secret, TCW must prove all of the following as to that item of information:

1. That the information was secret;
2. That the information had actual or potential independent economic value because it was secret; and
3. That TCW made reasonable efforts to keep the information secret.

Jury Instruction/Special  No. <b>4403</b>		Authorities  <b>CACI 4403: Secrecy Requirement</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **4403**  
No. \_\_\_\_\_

The secrecy required to prove that something is a trade secret does not have to be absolute in the sense that no one else in the world possesses the information. It may be disclosed to employees involved in TCW's use of the trade secret as long as they are instructed to keep the information secret. It may also be disclosed to nonemployees if they are obligated to keep the information secret. However, it must not have been generally known to the public or to people who could obtain value from knowing it.

Jury Instruction/Special  No. <b>4412</b>		Authorities  <b>CACI 4412: "Independent Economic Value" Explained</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	_____ Judicial Officer			
Withdrawn	<input type="checkbox"/>				

Instruction **4412**  
No. \_\_\_\_\_

The information has independent economic value if it gives the owner an actual or potential business advantage over others who do not know or have the information and who could obtain economic value from its disclosure or use.

In determining whether information had actual or potential independent economic value because it was secret, you may consider the following:

- (a) The extent to which TCW obtained or could obtain economic value from the information in keeping it secret;
- (b) The extent to which others could obtain economic value from the information if it were not secret;
- (c) The amount of time, money, or labor that TCW expended in creating, compiling or developing the information;
- (d) The amount of time, money, or labor that was saved by a competitor who used the information.

The presence or absence of any one or more of these factors is not necessarily determinative.

Jury Instruction/Special  No. <u>4404</u>		Authorities  <b>CACI 4404: Reasonable Efforts to Protect Secrecy</b>			
Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **4404, p. 1**  
No. \_\_\_\_\_

To establish that the information is a trade secret, TCW must prove that it made reasonable efforts under the circumstances to keep it secret. "Reasonable efforts" are the efforts that would be made by a reasonable business in the same situation and having the same knowledge and resources as TCW, exercising due care to protect important information of the same kind. This requirement applies separately to each item that TCW claims to be a trade secret.

In determining whether or not TCW made reasonable efforts to keep the information secret, you should consider all of the facts and circumstances. Among the factors you may consider are the following:

- a. Whether documents or computer files containing the information were marked with confidentiality warnings;
- b. Whether TCW instructed its employees to treat the information as confidential;
- c. Whether TCW restricted access to the information to persons who had a business reason to know the information;

Jury Instruction/Special  No. <u>4404</u>		Authorities  <b>CACI 4404: Reasonable Efforts to Protect Secrecy</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **4404, p. 2**  
No. \_\_\_\_\_

- d. Whether TCW kept the information in a restricted or secured area;
- e. Whether TCW required employees or others with access to the information to sign confidentiality or nondisclosure agreements;
- f. Whether TCW took any action to protect the specific information, or whether it relied on general measures taken to protect its business information or assets;
- g. The extent to which any general measures taken by TCW would prevent the unauthorized disclosure of the information;
- h. Whether there were other reasonable measures available to TCW that it did not take.

The presence or absence of any one or more of these factors is not necessarily determinative.

Jury Instruction/Special  No. <b>SJI 8</b>		Plaintiff's Authorities <b>SJI 8: Confidentiality Agreements Are Reasonable Efforts to Protect Secrecy</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **SJI 8**  
No. \_\_\_\_\_

If you find that TCW required its employees to sign confidentiality agreements, that should be considered in deciding whether TCW took reasonable efforts to keep information secret.

Jury Instruction/Special  No. <b>4405</b>		Authorities  <b>CACI 4405: Misappropriation of Acquisition</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **4405**  
No. \_\_\_\_\_

DoubleLine Capital, Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana or Jeffrey Mayberry misappropriated TCW's trade secrets by acquisition if they acquired the trade secrets and knew or had reason to know that the person or persons from whom they acquired the trade secrets used improper means to acquire them.



Jury Instruction/Special  No. <b>4406</b>		Authorities  <b>CACI 4406: Misappropriation by Disclosure</b>			
Requested by Plaintiff	X	Requested by Defendant		Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **4406, p. 1**  
No. \_\_\_\_\_

DoubleLine Capital, Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana or Jeffrey Mayberry misappropriated TCW's trade secrets by disclosure if they

1. disclosed one or more of the trade secrets without TCW's consent; and
2. did any of the following:
  - acquired knowledge of the trade secrets by improper means;
  - at the time of disclosure, knew or had reason to know that his, her, or its knowledge of TCW's trade secrets came from or through former TCW employees and that the former TCW employees had previously acquired the trade secrets by improper means;
  - at the time of disclosure, knew or had reason to know that his, her, or its knowledge of TCW's trade secrets was acquired while employed by TCW and obligated to maintain the information in confidence, which created a duty to keep the information secret; or

Jury Instruction/Special  No. <u>4406</u>		Authorities  <b>CACI 4406: Misappropriation by Disclosure</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **4406, p. 2**  
No. \_\_\_\_\_

- at the time of disclosure, knew or had reason to know that his, her, or its knowledge of TCW's trade secrets came from or through former TCW employees and that the former TCW employees had a duty to TCW to keep the information secret.

Jury Instruction/Special  No. <u>4407</u>		Authorities  <b>CACI 4407: Misappropriation by Use</b>			
Requested by Plaintiff	X	Requested by Defendant		Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **4407, p. 1**  
No. \_\_\_\_\_

DoubleLine Capital, Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana or Jeffrey Mayberry misappropriated TCW's trade secrets by use if they

1. used them without TCW's consent; and
2. did any of the following:

acquired knowledge of the trade secrets by improper means;

at the time of use, knew or had reason to know that his, her or its knowledge of TCW's trade secrets came from or through former TCW employees and that the former TCW employees had previously acquired the trade secrets by improper means;

at the time of use, knew or had reason to know that his, her or its knowledge of TCW's trade secrets was acquired under circumstances creating a legal obligation to limit use of the information; or

Jury Instruction/Special  No. <u>4407</u>		Authorities  <b>CACI 4407: Misappropriation by Use</b>			
Requested by Plaintiff	X	Requested by Defendant		Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **4407, p. 2**  
No. \_\_\_\_\_

at the time of use, knew or had reason to know that his, her or its knowledge of TCW's trade secrets came from or through former TCW employees, and that the former TCW employees had a duty to TCW to limit use of the information.

Jury Instruction/Special  No. <b>4408</b>		Authorities  <b>CACI 4408: Improper Means of Acquiring Trade Secret</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **4408**  
No. \_\_\_\_\_

Improper means of acquiring a trade secret or knowledge of a trade secret include, but are not limited to, theft, misrepresentation, or breach or inducing a breach of a duty to maintain secrecy.

Jury Instruction/Special  No. <b>4420</b>		Authorities  <b>CACI 4420: Affirmative Defense—Information Was Readily Ascertainable by Proper Means</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **4420**  
No. \_\_\_\_\_

Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana, Jeffrey Mayberry and DoubleLine did not misappropriate TCW's trade secrets if they prove that the information was readily ascertainable by proper means at the time of the alleged acquisition, use or disclosure.

There is no fixed standard for determining what is "readily ascertainable by proper means." In general, information is readily ascertainable if it can be obtained, discovered, developed, or compiled without significant difficulty, effort, or expense. For example, information is readily ascertainable if it is available in trade journals, reference books, or published materials. On the other hand, the more difficult information is to obtain, and the more time and resources that must be expended in gathering it, the less likely it is that the information is readily ascertainable by proper means.

Jury Instruction/Special  No. <b>SJI 23A &amp; 12</b>		<b>Authorities</b>  <b>Plaintiff's SJI 23A &amp; Defendants' SJI 12:</b> <b>Combinations of General Information</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **SJI 23A & 12**  
No. \_\_\_\_\_

Information is not a trade secret if it is generally known within the industry. However, combinations of generally known information can be a trade secret if the combination is not generally known and meets the other requirements for trade secret protection.

Jury Instruction/Special  No. <b>SJI 19</b>		Authorities Defendants' <b>SJI 19: Trade Secrets—Customer Lists</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **SJI 19**  
No. \_\_\_\_\_

Departing employees may use customer lists to announce a new affiliation.



Jury Instruction/Special  No. <u>    <b>SJI 89</b>    </u>		Defendants' Authorities <b>SJI 89: SMCF I and II Limited Partners' Access to Information</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No.     **SJI 89**    

The SMCF I and SMCF II Limited Partnership Agreements provide that the general partners shall make available to a limited partner information as is reasonably requested by such limited partner for any purpose reasonably related to such limited partner's interest as a limited partner in the SMCF I and SMCF II to the extent that any such efforts do not impose any undue cost or burden on the general partner or the funds.

Jury Instruction/Special  No. _____ SJI 26:		Plaintiff's Authorities SJI 26: Trade Secrets Displayed in Court			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">           _____            Judicial Officer         </div>			
Withdrawn	<input type="checkbox"/>				

Instruction SJI 26  
No. \_\_\_\_\_

Various items of claimed trade secret information have been shown to you and admitted into evidence during this trial. The fact that such information has been shown to you or admitted into evidence is irrelevant to whether such information is or is not trade secret.

**INTENTIONAL  
INTERFERENCE WITH  
CONTRACTUAL  
RELATIONS**

Jury Instruction/Special  No. <b>2201</b>		Authorities  <b>CACI 2201: Intentional Interference With Contractual Relations</b>			
Requested by Plaintiff	X	Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **2201**  
No. \_\_\_\_\_

TCW claims that Jeffrey Gundlach intentionally interfered with the contracts between TCW and its clients, TCW must prove all of the following:

1. That there were contracts between TCW and those clients;
2. That Jeffrey Gundlach knew of the contracts;
3. That Jeffrey Gundlach intended to disrupt the performance of those contracts;
4. That Jeffrey Gundlach's conduct prevented performance or made performance more expensive or difficult;
5. That TCW was harmed; and
6. That Jeffrey Gundlach's conduct was a substantial factor in causing TCW's harm.

Jury Instruction/Special  No. <b>2203 &amp; SJI 30A</b>		Authorities /Defendants' <b>CACI 2203 &amp; SJI 30A: Intentional Interference with Contractual Relations—Intent</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **2203 & 30A**  
 No. \_\_\_\_\_

In deciding whether Jeffrey Gundlach intended to interfere with the rights and obligations of the contracting parties, you may consider whether he knew that such disruption was substantially certain to result from his conduct. If you find that Gundlach knew that disruption of performance of the contracts was substantially certain to result from his conduct, you may infer that he intended to disrupt the performance of the contracts.

Jury Instruction/Special  No. <b>SJI 33</b>		Authorities Defendants' <b>SJI 33: Intentional Interference with Contractual Relations—Justification</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **SJI 33**  
No. \_\_\_\_\_

Justification is an affirmative defense to interference with contractual relations.

In deciding whether an intentional interference with contractual relations by a third party is justified, you should balance the importance, social and private, of the objective advanced by the interference against the importance of the interest interfered with. You should consider all circumstances.

The important factors to consider include: (a) the nature of the actor's conduct, (b) the nature of the contractual relationship with which his or her conduct interferes, (c) the relations between the parties, (d) the interest sought to be advanced by the actor and (e) the social interests in protecting the contractual relationship on the one hand and the actor's freedom of action on the other hand.

The question is whether the actor's conduct was fair and reasonable under the circumstances.

# CONSPIRACY

Jury Instruction/Special  No. <u>3600</u>		Authorities  <b>CACI 3600: Conspiracy—Essential Factual Elements</b>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 3600, p. 1

TCW claims that it was harmed by Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana and/or Jeffrey Mayberry's conduct in breaching their fiduciary duties to TCW and that defendants are responsible for the harm because defendants were part of a conspiracy to breach fiduciary duties. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that certain defendants committed a breach of his or her fiduciary duties that harmed TCW, then you must determine whether the other defendants are also responsible for the harm. Defendants are responsible if TCW proves both of the following:

1. That defendants were aware that other defendants planned to commit the acts described above; and
2. That defendants agreed with the other defendants and intended that the acts described above be committed.

Mere knowledge of a wrongful act without cooperation or an agreement to cooperate is insufficient to make a defendant responsible for the harm.



Jury Instruction/Special  No. <u>3600</u>		Authorities  <b>CACI 3600: Conspiracy—Essential Factual Elements</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 3600, p. 2

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged co-conspirators. TCW is not required to prove that each defendant personally committed a wrongful act or that he or she knew all the details of the agreement or the identities of all the other participants.

Jury Instruction/Special  No. <u>3700</u>		Authorities  <b>CACI 3700: Introduction</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **3700**  
No. \_\_\_\_\_

A corporation is responsible for harm caused by the wrongful conduct of its employees while acting within the scope of their employment.

Jury Instruction/Special  No. <u>3710</u>		Authorities  <b>CACI 3710: Ratification</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction No. 3710, p. 1

TCW claims that Jeffrey Gundlach and/or DoubleLine is responsible for the harm caused by Cris Santa Ana's, Barbara VanEvery's, Jeffrey Mayberry's, Jiraindira Purushothaman's, Casey Moore's, and Gregory Ward's conduct because he and/or it approved that conduct after it occurred. If you find that Cris Santa Ana, Barbara VanEvery, Jeffrey Mayberry, Jiraindira Purushothaman, Casey Moore or Gregory Ward harmed TCW, you must decide whether Jeffrey Gundlach and/or DoubleLine approved that conduct. To establish its claim, TCW must prove all of the following:

1. That Cris Santa Ana, Barbara VanEvery, Jeffrey Mayberry, Jiraindira Purushothaman, Casey Moore or Gregory Ward intended to act on behalf of Jeffrey Gundlach and/or DoubleLine;

Jury Instruction/Special  No. <u>3710</u>		Authorities  <b>CACI 3710: Ratification</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **3710, p. 2**  
No. \_\_\_\_\_

2. That Jeffrey Gundlach and/or DoubleLine learned of Cris Santa Ana's, Barbara VanEvery's, Jeffrey Mayberry's, Jiraindira Purushothaman's, Casey Moore's, or Gregory Ward's conduct after it occurred; and

3. That Jeffrey Gundlach and/or DoubleLine approved Cris Santa Ana's, Barbara VanEvery's, Jeffrey Mayberry's, Jiraindira Purushothaman's, Casey Moore's, or Gregory Ward's conduct.

Approval can be shown through words, or it can be inferred from a person's conduct. Approval can be inferred if a person voluntarily keeps the benefits of his representative's unauthorized conduct after he learns of the unauthorized conduct.

# **TORT DAMAGES**

Jury Instruction/Special  No. <b>3900</b>		Authorities  <b>CACI 3900: Introduction to Tort Damages— Liability Contested</b>			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **3900**  
No. \_\_\_\_\_

If you decide that TCW has proved its claim against Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana, Jeffrey Mayberry or DoubleLine, you also must decide how much money will reasonably compensate TCW for the harm. This compensation is called “damages.”

The amount of damages must include an award for each item of harm that was caused by defendants’ wrongful conduct, even if the particular harm could not have been anticipated.

TCW does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

Jury Instruction/Special  No. <u>430</u>		Authorities  <b>CACI 430: Causation: Substantial Factor</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">           _____            Judicial Officer         </div>			
Withdrawn					

Instruction  
No. 430

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Conduct is not a substantial factor in causing harm if the same harm would have occurred without that contact.

Jury Instruction/Special  No. <b>3931</b>		Authorities  <b>CACI 3931: Mitigation of Damages</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **3931**  
No. \_\_\_\_\_

If you decide Gundlach, VanEvery, Santa Ana, Mayberry and DoubleLine are responsible for the original harm, TCW is not entitled to recover damages for harm that defendants prove TCW could have avoided with reasonable efforts or expenditures.

You should consider the reasonableness of TCW's efforts in light of the circumstances facing it at the time, including its ability to make the efforts or expenditures without undue risk or hardship.

If TCW made reasonable efforts to avoid harm, then your award should include reasonable amounts that it spent for this purpose.



Jury Instruction/Special  No. <u>3903N</u>		Authorities  <b>CACI 3903N: Lost Profits (Economic Damage)</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 3903N

To recover damages for lost profits TCW must prove it is reasonably certain it would have earned profits but for Gundlach, VanEvery, Santa Ana, Mayberry or DoubleLine's conduct.

To determine the amount of profits TCW would have earned, you must determine the gross amount TCW would have received but for defendants' wrongful conduct and then subtract from that amount the expenses including the value of the labor, rents, expenses, and interest of the capital employed TCW would have incurred if defendants' conduct had not occurred.

The amount of the lost profits need not be calculated with mathematical precision, but there must be a reasonable basis for computing the loss.

Jury Instruction/Special  No. <u>3904A</u>		Authorities  <b>CACI 3904A: Present Cash Value</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **3904A**  
No. \_\_\_\_\_

If you decide that TCW's harm includes future damages for loss of earnings, lost profits, and unjust enrichment, then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future. DoubleLine Capital, Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana, and/or Jeffrey Mayberry must prove the amount by which future damages should be reduced to present value.

To find present cash value, you must determine the amount of money that, if reasonably invested today, will provide TCW with the amount of its future damages.

You may consider expert testimony in determining the present cash value of future damages.

Jury Instruction/Special  No. <b>3925</b>		Authorities  <b>CACI 3925: Arguments of Counsel Not Evidence of Damages</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">           _____            Judicial Officer         </div>			
Withdrawn	<input type="checkbox"/>				

Instruction **3925**  
No. \_\_\_\_\_

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

Jury Instruction/Special  No. <u>3933</u>		Authorities  <b>CACI 3933: Damages From Multiple Defendants</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **3933**  
No. \_\_\_\_\_

In this case, TCW seeks damages from more than one defendant. You must determine the liability of each defendant to TCW separately.

If you determine that more than one defendant is liable to TCW for damages, you will be asked to find TCW's total damages .

In deciding on the amount of damages, consider only TCW's claimed losses. Do not attempt to divide the damages among the defendants. The allocation of responsibility for payment of damages among multiple defendants is to be done by the court after you reach your verdict.

Jury Instruction/Special  No. <u>3964</u>		Authorities  <b>CACI 3964: Jurors Not to Consider Attorneys Fees and Court Costs</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **3964**  
No. \_\_\_\_\_

You must not consider, or include as part of any award, attorney fees or expenses that the parties incurred in bringing or defending this lawsuit.

Jury Instruction/Special		Authorities			
No. <u>4411</u>		CACI 4411: Punitive Damages for Willful and Malicious Misappropriation			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">           _____            Judicial Officer         </div>			
Withdrawn	<input type="checkbox"/>				

Instruction  
No. 4411, p. 1

If you decide that defendants' misappropriation caused TCW harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed TCW and to discourage similar conduct in the future.

In order to recover punitive damages, TCW must prove by clear and convincing evidence that defendants acted willfully and maliciously. You must determine whether defendants acted willfully and maliciously, but you will not be asked to determine the amount of any punitive damages. I will calculate the amount later.

"Willfully" means that defendants acted with a purpose or willingness to commit the act or engage in the conduct in question, and the conduct was not reasonable under the circumstances at the time and was not undertaken in good faith.

Jury Instruction/Special		Authorities			
No. <u>4411</u>		CACI 4411: Punitive Damages for Willful and Malicious Misappropriation			
Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">           _____            Judicial Officer         </div>			
Withdrawn	<input type="checkbox"/>				

Instruction  
No. 4411, p. 2

“Maliciously” means that defendants acted with an intent to cause injury, or that defendants’ conduct was despicable and was done with a willful and knowing disregard for the rights of others. “Despicable conduct” is conduct so vile, base, or wretched that it would be looked down on and despised by ordinary decent people. Defendants acted with knowing disregard if they were aware of the probable consequences of their conduct and deliberately failed to avoid those consequences.

Jury Instruction/Special  No. <u>3940</u>		Authorities  <b>CACI 3940: Punitive Damages—Individual Defendant —Trial Not Bifurcated</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

3940, p. 1

Instruction  
No. \_\_\_\_\_

If you decide that Jeffrey Gundlach's conduct in breaching his fiduciary duties and/or interfering with TCW contractual relations caused TCW harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages only if TCW proves by clear and convincing evidence that Jeffrey Gundlach engaged in that conduct with malice, oppression, or fraud.

"Malice" means that Jeffrey Gundlach acted with intent to cause injury or that Jeffrey Gundlach's conduct was despicable and was done with a willful and knowing disregard of the rights of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that Jeffrey Gundlach's conduct was despicable and subjected TCW to cruel and unjust hardship in knowing disregard of its rights.



Jury Instruction/Special		Authorities			
No. <u>3940</u>		<b>CACI 3940: Punitive Damages—Individual Defendant —Trial Not Bifurcated</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

3940, p. 2

Instruction  
No. \_\_\_\_\_

“Despicable conduct” is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

“Fraud” means that Jeffrey Gundlach intentionally misrepresented or concealed a material fact and did so intending to harm TCW.

There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following factors in determining the amount:

- (a) How reprehensible was Jeffrey Gundlach’s conduct? In deciding how reprehensible Jeffrey Gundlach’s conduct was, you may consider, among other factors:
1. Whether TCW was financially weak or vulnerable and Jeffrey Gundlach knew TCW was financially weak or vulnerable and took advantage of it;
  2. Whether Jeffrey Gundlach’s conduct involved a pattern or practice; and
  3. Whether Jeffrey Gundlach acted with trickery or deceit.

Jury Instruction/Special  No. <b>3940</b>		Authorities  <b>CACI 3940: Punitive Damages—Individual Defendant —Trial Not Bifurcated</b>			
Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

**3940, p. 3**

Instruction  
No. \_\_\_\_\_

- (b) Is there a reasonable relationship between the amount of punitive damages and TCW's harm that Jeffrey Gundlach knew was likely to occur because of his conduct?
- (c) In view of Jeffrey Gundlach's financial condition, what amount is necessary to punish him and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because Jeffrey Gundlach has substantial financial resources. Any award you impose may not exceed Jeffrey Gundlach's ability to pay.

Punitive damages may not be used to punish Jeffrey Gundlach for the impact of his alleged misconduct on persons other than TCW.

Jury Instruction/Special  No. <u>    <b>SJI 58A</b>    </u>		Defendants ' Authorities <b>SJI 58A: Clear and Convincing Evidence</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **SJI 58A**  
No. \_\_\_\_\_

In order to recover punitive damages, TCW must prove by clear and convincing evidence that the defendant acted willfully and maliciously.

“Clear and convincing” evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence.

The clear and convincing standard is an intermediate standard, between proof beyond a reasonable doubt and proof by a preponderance of the evidence.

# **BREACH OF CONTRACT**

Jury Instruction/Special  No. <u>    <b>SJI 59</b>    </u>		Defendants' Authorities <b>SJI 59: Introduction to Contract Claims</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **SJI 59**  
No. \_\_\_\_\_

I will first instruct you on Jeffrey Gundlach's breach of contract claim.

I will next instruct you on the contract claims of Barbara VanEvery, Cris Santa Ana and Jeffrey Mayberry.

Jury Instruction/Special  No. <u>          </u> <b>SJI 93</b>		Defendants' Authorities <b>SJI 93: Employment Contract</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **SJI 93**  
No.           

Every employment relationship involves a contract of some kind between the employer and the employee. Contract and agreement mean the same thing. You must determine in this case what the terms of the contract between Mr. Gundlach and TCW were. TCW contends that TCW and Mr. Gundlach agreed to compensation but did not agree to any specified length and that, accordingly, he was an at will employee, who was paid all sums due on termination. Mr. Gundlach contends that the parties agreed to compensation as well as other terms, including a five year length, that he could be terminated only under certain specified conditions, and that he was to be paid accrued compensation upon termination.

Jury Instruction/Special  No. <b>302</b>		<b>Authorities</b>  <b>CACI 302: Contract Formation—Essential Factual Elements</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **302**  
No. \_\_\_\_\_

Jeffrey Gundlach asserts that he and TCW entered into an employment contract. To prove that a contract was created, Jeffrey Gundlach must prove all of the following:

1. That the contract terms were clear enough that the parties could understand what each was required to do;
2. That the parties agreed to give each other something of value; and
3. That the parties agreed to the terms of the contract.

When you examine whether the parties agreed to the terms of the contract, ask yourself if, under the circumstances, a reasonable person would conclude, from the words and conduct of each party, that there was an agreement. You may not consider the parties' hidden intentions.

If Jeffrey Gundlach did not prove all of the above, then a contract was not created.

Jury Instruction/Special  No. <u>304</u>		Authorities  <b>CACI 304: Oral or Written Contract Terms</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 304

Express contracts may be written or oral.

Contracts may be partly written and partly oral.

Oral contracts are just as valid as written contracts.



Jury Instruction/Special  No. <u>305</u>		Authorities  <b>CACI 305: Implied-in-Fact Contract</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 305

In deciding whether a contract was created, you should consider the conduct and relationship of the parties as well as all the circumstances of the case.

Implied contracts can be created by the conduct of the parties, without spoken or written words. Contracts created by conduct are just as valid as contracts formed with words.

Conduct will create a contract if the conduct of both parties is intentional and each knows, or has reason to know, that the other party will interpret the conduct as an agreement to enter into a contract.

There is no difference in legal effect between express or implied agreements.

Jury Instruction/Special  No. <u>315</u>		Authorities  <b>CACI 315: Interpretation—Meaning of Ordinary Words</b>			
Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **315**  
No. \_\_\_\_\_

You should assume that the parties intended the words in their contract to have their usual and ordinary meaning unless you decide that the parties intended the words to have a special meaning.

Jury Instruction/Special  No. <u>316</u>		Authorities  <b>CACI 316: Interpretation—Meaning of Technical Words</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **316**  
No. \_\_\_\_\_

You should assume that the parties intended technical words used in the contract to have the meaning that is usually given to them by people who work in that technical field, unless you decide that the parties clearly used the words in a different sense.

Jury Instruction/Special  No. <u>318</u>		Authorities  <b>CACI 318: Interpretation—Construction by Conduct</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 318

In deciding what the words in a contract meant to the parties, you may consider how the parties acted after the contract was created but before any disagreement between the parties arose.

Jury Instruction/Special <b>SJI 62-64</b>  No. _____		Defendants' Authorities <b>SJI 62-64: Contract Formation—No Signed Agreement</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 62-64, p. 1**  
 No. \_\_\_\_\_

When it is clear that a proposed written contract would become operative only when signed by the parties, the failure to sign the agreement means no binding contract was created. This is so even though the party later sought to be bound by the agreement indicated a willingness to sign the agreement.

On the other hand, if the respective parties orally agreed upon all of the terms and conditions of a proposed written agreement with the mutual intention that the oral agreement should thereupon become binding, the mere fact that a formal written agreement to the same effect has not yet been signed does not alter the binding validity of the oral agreement.

Whether it was the parties' mutual intention that an agreement to the terms contained in a proposed written agreement should be binding immediately is to be determined from the surrounding facts and circumstances. Evidence as to the parties' understanding and intent in

Jury Instruction/Special <b>SJI 62-64</b>  No. _____		Authorities <b>Defendants' SJI 62-64: Contract Formation—No Signed Agreement</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 62-64, p. 2**  
 No. \_\_\_\_\_

taking what actions they did take is admissible to ascertain when or whether a binding agreement was ever reached.

The actions of the parties may show conclusively that they have intended to enter into a binding agreement, even though one or more material terms are missing or are left to be agreed upon.

Jury Instruction/Special  No. <u>2400</u>		Authorities  <b>CACI 2400: Breach of Employment—Unspecified Term—"At Will" Presumption</b>			
Requested by Plaintiff	<input checked="checked" type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn	<input type="checkbox"/>				

Instruction **2400**  
No. \_\_\_\_\_

An employment relationship may be ended by either the employer or the employee, at any time, for any reason, or for no reason at all. This is called "at-will employment."

An employment relationship is not "at will" if the employee proves that the parties, by words or conduct, agreed that the employee would be discharged only for good cause.

Jury Instruction/Special		Authorities			
SJI 91 No. _____		Defendants' SJI 91: Breach of Contract—Implied Agreement Not to Terminate Without Cause			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **SJI 91**  
No. \_\_\_\_\_

An employment contract having no specified term is presumed to be “at will.” However, the absence of an express written or oral contract term concerning termination of employment does not necessarily indicate that the employment is intended to be “at will.” The presumption of at-will employment may be overcome by evidence of contrary intent. Factors apart from consideration and express terms may be used to ascertain the existence and content of an employment agreement, including the personnel policies or practices of the employer, the employee’s longevity of service, actions or communications by the employer reflecting assurances of continued employment, and the practices of the industry in which the employee is engaged.



Jury Instruction/Special  No. <b>2420 &amp; 2401</b>		Defendants' Authorities <b>CACI 2420 &amp; 2401: Breach of Employment Contract— Essential Factual Elements</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **2420 & 2401, p. 1**  
No. \_\_\_\_\_

Jeffrey Gundlach claims that TCW breached an employment contract for a specified term. To establish this claim for damages Jeffrey Gundlach must prove all of the following:

1. That Jeffrey Gundlach entered into an employment contract with the following terms:
  - (a) The term of the contract was to run through December 31, 2011; and
  - (b) Jeffrey Gundlach could be terminated only for gross misconduct;
2. That Jeffrey Gundlach substantially performed his job duties;
3. That TCW breached the employment contract by terminating Jeffrey Gundlach before the end of the term of the contract in the absence of gross misconduct.
4. That Jeffrey Gundlach was harmed by the breach or breaches.

In the alternative, Jeffrey Gundlach claims that TCW breached their employment contract by failing to pay him for work he performed before his termination. To establish this claim, Jeffrey Gundlach must prove all of the following:

Jury Instruction/Special  No. <b>2420 &amp; 2401</b>		Defendants' Authorities <b>CACI 2420 &amp; 2401: Breach of Employment Contract— Essential Factual Elements</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **2420 & 2401, p. 2**  
 No. \_\_\_\_\_

1. That Jeffrey Gundlach and TCW entered into an employment relationship;
2. That under the terms of their employment agreement, if Jeffrey Gundlach was terminated he would be paid compensation accrued to date of termination;
3. That Jeffrey Gundlach substantially performed his job duties unless his performance was excused or prevented;
4. That TCW terminated Jeffrey Gundlach without paying him for compensation accrued to the date of termination; and
5. That Jeffrey Gundlach was harmed by TCW's conduct.

Jury Instruction/Special  No. <b>2423</b>		Authorities  <b>CACI 2423: Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **2423**  
No. \_\_\_\_\_

Gundlach claims that TCW violated the duty to act fairly and in good faith. To establish this claim, Gundlach must prove all of the following:

1. That Gundlach and TCW entered into an employment relationship;
2. That Gundlach substantially performed his job duties;
3. That TCW terminated Gundlach's employment without fully compensating Gundlach for the work he performed prior to his termination and without proper cause;
4. That TCW's conduct was a failure to act fairly and in good faith; and
5. That Gundlach was harmed by TCW's conduct.

Both parties to an employment relationship have a duty not to do anything that prevents the other party from receiving the benefits of their agreement. Good faith means honesty of purpose without any intention to mislead or to take unfair advantage of another. Generally speaking, it means being faithful to one's duty or obligation.

Jury Instruction/Special  No. _____ <b>SJI 73A</b>		Defendants' Authorities <b>SJI 73A: Breach of Employment Contract—Damages</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 73A**  
 No. \_\_\_\_\_

If you find that TCW and Jeffrey Gundlach had an employment contract, that TCW breached,  
 you must decide the damages, if any, that flow from that breach.

Jury Instruction/Special  No. <u>350</u>		Authorities  <b>CACI 350: Introduction to Contract Damages</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

350  
Instruction  
No. \_\_\_\_\_

If you decide that Jeffrey Gundlach has proved his claim against TCW for breach of contract, you must also decide how much money will reasonably compensate him for the harm caused by the breach. This compensation is called “damages.” The purpose of such damages is to put Jeffrey Gundlach in as good a position as he would have been if TCW had performed as promised.

Jury Instruction/Special  No. <u>    <b>SJI 74</b>    </u>		Defendants' Authorities <b>SJI 74: Contract Claims of VanEvery, Santa Ana and Mayberry</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No.     **SJI 74**    

I have instructed you on Jeffrey Gundlach's breach of contract claim. I will now instruct you on Barbara VanEvery's, Cris Santa Ana's and Jeffrey Mayberry's breach of contract claims.

Jury Instruction/Special  No. <u>301</u>		Authorities  <b>CACI 301: Third-Party Beneficiary</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 301

Barbara VanEvery, Cris Santa Ana and Jeffrey Mayberry are not parties to the employment contract between Jeffrey Gundlach and TCW. However, they may be entitled to damages for breach of contract if they prove that Jeffrey Gundlach and TCW intended for Barbara VanEvery, Cris Santa Ana and/or Jeffrey Mayberry to benefit from their contract.

It is not necessary for Barbara VanEvery, Cris Santa Ana and/or Jeffrey Mayberry to have been named in the contract. In deciding what TCW and Jeffrey Gundlach intended, you should consider the entire contract and the circumstances under which it was made.

If you determine that Barbara VanEvery, Cris Santa Ana and Jeffrey Mayberry are third-party beneficiaries of the contract between Jeffrey Gundlach and TCW, you may award them damages for breach of that contract.

Jury Instruction/Special  No. <u>2423</u>		<b>Authorities</b>  <b>CACI 2423: Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested	X	Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **2423**  
No. \_\_\_\_\_

VanEvery, Santa Ana and Mayberry claim that TCW violated the duty to act fairly and in good faith. To establish this claim, they must prove all of the following:

1. That TCW entered into an employment relationship with them;
2. That they substantially performed their job duties;
3. That TCW terminated their employment without fully compensating them for the work they performed prior to their termination;
4. That TCW's conduct was a failure to act fairly and in good faith; and
5. That they were harmed by TCW's conduct.

Both parties to an employment relationship have a duty not to do anything that prevents the other party from receiving the benefits of their agreement. Good faith means honesty of purpose without any intention to mislead or to take unfair advantage of another. Generally speaking, it means being faithful to one's duty or obligation.



# **LABOR CODE VIOLATION**

Jury Instruction/Special  No. <u>2700</u>		Authorities  <b>CACI 2700: Nonpayment of Wages—Essential Factual Elements (Lab. Code §§ 201, 201, 218)</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **2700**  
No. \_\_\_\_\_

Jeffrey Gundlach, Barbara VanEvery, Cris Santa Ana and Jeffrey Mayberry claim that TCW owes them unpaid wages. To establish this claim, they must prove all of the following:

1. That they performed work for TCW;
2. That TCW owes them wages under the terms of the employment; and
3. The amount of unpaid wages.

“Wages” includes all amounts for labor performed by an employee, whether the amount is calculated by time, task, piece, commission, or some other method.

<b>Jury Instruction/Special</b>  <b>SJI 78A</b>  No. _____		<b>Defendants' Authorities</b> <b>SJI 78A: Labor Code Violation—Wages</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 78A**  
 No. \_\_\_\_\_

“Wages” include incentive compensation, such as bonuses, profit sharing plans and fee sharing arrangements, including fees to be paid in the future for work already performed.

Incentive compensation, such as bonuses, profit sharing plans and fee sharing arrangements, are not “wages” when the terms and conditions for payment are not met.

Jury Instruction/Special  No. _____ <b>SJI 80</b>		Defendants' Authorities <b>SJI 80: Labor Code Violation—Unpaid Wages Due Immediately</b>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified	<input checked="" type="checkbox"/>	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 80**  
No. \_\_\_\_\_

When an employer discharges or terminates an employee, wages that are unpaid at the time of the discharge are due and payable.

Jury Instruction/Special  No. <u>          </u> <b>SJI 81</b>		Defendants' Authorities <b>SJI 81: Labor Code Violation Under the Labor Code</b> <b>—Wages May Not Be Withheld by the Employer</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified	X	Given on Court's Motion	
Refused		_____ Judicial Officer			
Withdrawn					

Instruction **SJI 81**  
 No. \_\_\_\_\_

If an employer discharges an employee, the employer cannot withhold wages due an employee.

# **CONCLUDING INSTRUCTIONS**

Jury Instruction/Special  No. <u>5000</u>		Authorities  <b>CACI 5000: Duties of the Judge and Jury</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction No. 5000, p. 1

Members of the jury, you have now heard all the evidence and the closing arguments of the attorneys. The attorneys will have one last chance to talk to you in closing argument. But before they do, it is my duty to instruct you on the law that applies to this case. You must follow these instructions as well as those that I previously gave you. You will have a copy of my instructions with you when you go to the jury room to deliberate. I have provided each of you with your own copy of the instructions. I will display each instruction on the screen.

You must decide what the facts are. You must consider all the evidence and then decide what you think happened. You must decide the facts based on the evidence admitted in this trial. Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial. You must not let bias, sympathy, prejudice, or public opinion influence your decision.

Jury Instruction/Special  No. <b>5000</b>		Authorities  <b>CACI 5000: Duties of the Judge and Jury</b>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5000, p. 2**  
No. \_\_\_\_\_

I will now tell you the law that you must follow to reach your verdict. You must follow the law exactly as I give it to you, even if you disagree with it. If the attorneys have said/say anything different about what the law means, you must follow what I say.

In reaching your verdict, do not guess what I think your verdict should be from something I may have said or done.

Pay careful attention to all the instructions that I give you. All the instructions are important because together they state the law that you will use in this case. You must consider all of the instructions together.

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

If I repeat any ideas or rules of law during my instructions, that does not mean that these ideas or rules are more important than the others. In addition, the order in which the instructions are given does not make any difference.



Jury Instruction/Special  No. <u>5000</u>		Authorities  <b>CACI 5000: Duties of the Judge and Jury</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5000, p. 3**  
No. \_\_\_\_\_

Most of the instructions are typed. However, some handwritten or typewritten words may have been added, and some words may have been deleted. Do not discuss or consider why words may have been added or deleted. Please treat all the words the same, no matter what their format. Simply accept the instruction in its final form.

Jury Instruction/Special  No. <b>5002</b>		Authorities  <b>CACI 5002: Evidence</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5002, p. 1**  
No. \_\_\_\_\_

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you have seen or heard during the trial, including any exhibits that I admit into evidence. You may not consider as evidence anything that you saw or heard when court was not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggested that it was true. However, the attorneys for both sides have agreed that certain facts are true. This agreement is called a stipulation. No other proof is needed and you must accept those facts as true in this trial.

Jury Instruction/Special  No. <u>5002</u>		Authorities  <b>CACI 5002: Evidence</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5002, p. 2**  
No. \_\_\_\_\_

Each side had the right to object to evidence offered by the other side. If I sustained an objection to a question, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness already answered, you must ignore the answer.

During the trial I granted a motion to strike testimony that you heard. You must totally disregard that testimony. You must treat it as though it did not exist.

Jury Instruction/Special  No. <b>5003</b>		Authorities  <b>CACI 5003: Witnesses</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5003, p. 1**  
No. \_\_\_\_\_

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Jury Instruction/Special  No. <b>5003</b>		Authorities  <b>CACI 5003: Witnesses</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5003, p. 2**  
No. \_\_\_\_\_

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 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.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin or socioeconomic status, or **insert any other impermissible form of bias.**

Jury Instruction/Special  No. <b>5009</b>		Authorities  <b>CACI 5009: Predeliberation Instructions</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5009, p. 1**  
No. \_\_\_\_\_

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations or immediately announce how you plan to vote as it may interfere with an open discussion. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense, but do not use or consider any special training or unique personal experience that any of you have in matters involved in this case. Your training or experience is not a part of the evidence received in this case.

Jury Instruction/Special  No. <u>5009</u>		Authorities  <b>CACI 5009: Predeliberation Instructions</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 5009, p. 2

Sometimes jurors disagree or have questions about the evidence or about what the witnesses said in their testimony. If that happens, you may ask to have testimony read back to you or ask to see any exhibits admitted into evidence that have not already been provided to you. Also, jurors may need further explanation about the laws that apply to the case. If this happens during your discussions, write down your questions and give them to the clerk/bailiff/court attendant. I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will do my best to answer them. When you write me a note, do not tell me how you voted on an issue until I ask for this information in open court.

At least nine jurors must agree on a verdict. When you have finished filling out the form, your presiding juror must write the date and sign it at the bottom and then notify the bailiff/clerk/court attendant that you are ready to present your verdict in the courtroom.

Your decision must be based on your personal evaluation of the evidence presented in the case. Each of you may be asked in open court how you voted on each question.

Jury Instruction/Special  No. <u>5009</u>		Authorities  <b>CACI 5009: Predeliberation Instructions</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 5009, p. 3

While I know you would not do this, I am required to advise you that you must not base your decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then make the average your verdict.

You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.



Jury Instruction/Special  No. <b>5010</b>		Authorities  <b>CACI 5010: Taking Notes During the Trial</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5010**  
No. \_\_\_\_\_

If you have taken notes during the trial you may take your notebooks with you into the jury room.

You may use your notes only to help you remember what happened during the trial. Your independent recollection of the evidence should govern your verdict. You should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

At the end of the trial, your notes will be collected and destroyed/collected and retained by the court but not as a part of the case record/specify other disposition.

Jury Instruction/Special  No. <u>5011</u>		Authorities  <b>CACI 5011: Reading Back of Trial Testimony in Jury Room</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 5011

You may request in writing that trial testimony be read to you. I will have the court reporter read the testimony to you. You may request that all or a part of a witness's testimony be read.

Your request should be as specific as possible. It will be helpful if you can state:

1. The name of the witness;
2. The subject of the testimony you would like to have read; and
3. The name of the attorney or attorneys asking the questions when the testimony was given.

The court reporter is not permitted to talk with you when she or he is reading the testimony you have requested.

While the court reporter is reading the testimony, you may not deliberate or discuss the case.

You may not ask the court reporter to read testimony that was not specifically mentioned in a written request. If your notes differ from the testimony, you must accept the court reporter's record as accurate.

Jury Instruction/Special  No. <u>5012</u>		Authorities  <b>CACI 5012: Introduction to Special Verdict Form</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction  
No. 5012

I will give you a verdict forms with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the forms carefully. You must consider each question separately. Although you may discuss the evidence and the issues to be decided in any order, you must answer the questions on the verdict forms in the order they appear. After you answer a question, the form tells you what to do next. All 12 of you must deliberate on and answer each question. At least 9 of you must agree on an answer before all of you can move on to the next question. However, the same 9 or more people do not have to agree on each answer.

When you have finished filling out the forms, your presiding juror must write the date and sign it at the bottom of the last page and then notify the bailiff/clerk/court attendant that you are ready to present your verdict in the courtroom.

Jury Instruction/Special  No. <u>5015</u>		Authorities  <b>CACI 5015: Instruction to Alternate Jurors</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5015**  
No. \_\_\_\_\_

As alternate jurors, you are bound by the same rules that govern the conduct of the jurors who are sitting on the panel. You should not form or express any opinion about this case until after you have been substituted in for one of the deliberating jurors on the panel or until the jury has been discharged.

Jury Instruction/Special  No. <u>5016</u>		Authorities  <b>CACI 5016: Judge's Commenting on Evidence</b>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5016**  
No. \_\_\_\_\_

In this case, I have exercised my right to comment on the evidence. However, you the jury are the exclusive judges of all questions of fact and of the credibility of the witnesses. You are free to completely ignore my comments on the evidence and to reach whatever verdict you believe to be correct, even if it is contrary to any or all of those comments.

Jury Instruction/Special  No. <u>5017</u>		Authorities  <b>CACI 5017: Polling the Jury</b>			
Requested by Plaintiff		Requested by Defendant	X	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;">_____ Judicial Officer</div>			
Withdrawn					

Instruction **5017**  
No. \_\_\_\_\_

After your verdict is read in open court, you may be asked individually to indicate whether the verdict expresses your personal vote. This is referred to as “polling” the jury and is done to ensure that at least nine jurors have agreed to each decision.

The verdict forms that you will receive asks you to answer several questions. You must vote separately on each question. Although nine or more jurors must agree on each answer, it does not have to be the same nine for each answer. Therefore, it is important for each of you to remember how you have voted on each question so that if the jury is polled, each of you will be able to answer accurately about how you voted.

Each of you will be provided a draft copy of the verdict forms for your use in keeping track of your votes.

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I, the undersigned, declare that I am over the age of 18 and not a party to the within cause. I am employed by Munger, Tolles & Olson LLP in the County of Los Angeles, State of California. My business address is 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, California 90071-1560.

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